



REVIEW ARTICLE

Transitional Justice Incubator: Bridging European Fault Lines

Vladimir Petrović

Institute for Contemporary History, Trg Nikole Pašića 11, Belgrade, Serbia
vladimir.petrovic@isi.ac.rs

Francine Hirsch, *Soviet Judgement at Nuremberg: A New History of the International Military Tribunal after World War II* (Oxford: Oxford University Press, 2020), 512 pp. (hb), £26.00, ISBN 978-0199377930.

Devin O. Pendas, *Democracy, Nazi Trials, and Transitional Justice in Germany, 1945–1950* (Cambridge: Cambridge University Press, 2020) 230 pp. (hb), £75.00, ISBN 978-0521871297.

Andrew Kornbluth, *The August Trials: The Holocaust and Postwar Justice in Poland* (Cambridge, MA: Harvard University Press, 2021) 352 pp. (hb), £36.95, ISBN 978-0674249134.

Introduction

Transitional justice is typically perceived as a product of the third wave of democratisation, which came to the fore after the fall of the Iron Curtain, bringing along with it various mechanisms, from truth commissions and lustration procedures to national trials, leading to the creation of hybrid and international tribunals of global reach.¹ Despite its obvious relevance, the aftermath of the Second World War is generally treated as a cursory prehistory in the transitional justice literature. With the exception of the Nuremberg trials, robust research on legal and extralegal ventures which characterised the first postwar decade remains largely disconnected from contemporary transitional justice concerns, and yet it offers a number of valuable lessons.² Three recent publications which are the subject of this review are therefore a welcome intervention, highlighting the scope and depth, successes and fallacies of efforts to come to terms with the atrocious legacy of the Second World War in its immediate aftermath.

¹ Neil J. Kritz, *Transitional Justice: How Emerging Democracies Reckon with Former Regimes* (Washington, DC: US Institute of Peace Press, 1995); Paige Arthur, 'How "Transitions" Reshaped Human Rights: A Conceptual History of Transitional Justice', *Human Rights Quarterly*, 31 (2009), 321–67; Philippe Sands, ed., *From Nuremberg to the Hague: The Future of International Criminal Justice* (Cambridge: Cambridge University Press, 2003). There are exceptions, which trace this concept from antiquity: Jon Elster, *Closing the Books: Transitional Justice in Historical Perspective* (New York: Columbia University Press, 2005). Importantly, 1945 is pinpointed as a decisive caesura by Ruti Teitel, 'Transitional Justice Genealogy', *Harvard Human Rights Journal*, 16 (2003), 69–94.

² Cf. Winfried R Garscha, ed., *Keine 'Abrechnung' NS-Verbrechen, Justiz und Gesellschaft in Europa nach 1945* (Wien: Akademische Verlag Anst, 1998); Norbert Frei, Dirk van Laak and Michael Stolleis, eds., *Geschichte vor Gericht: Historiker, Richter und suche nach Gerechtigkeit* (München: Verlag C. H. Beck, 2000); Donald Bloxham, *Genocide on Trial: War Crimes Trials and the Formation of Holocaust History and Memory* (Oxford: Oxford University Press, 2001); Patricia Hebere and Jürgen Matthäus, eds., *Atrocities on Trial: Historical Perspectives on the Politics of Prosecuting War Crimes* (Lincoln: University of Nebraska Press, 2008); Jörg Osterloh and Clemens Vollnhals, eds., *NS Prozesse und Deutsche Öffentlichkeit: Besatzungszeit, frühe Bundesrepublik und DDR* (Göttingen: Vandenhoeck & Ruprecht, 2011); Kim C. Primiel and Alexa Stiller, *Reassessing the Nuremberg Military Tribunals: Transitional Justice, Trial Narratives and Historiography* (New York: Berghahn Books, 2012).

Such intervention is timely. Over eighty years after the Second World War, its central place in European and global culture of memory is as apparent as ever. Instead of fading away into history books, its different aspects are still inspiring novels, documentaries and movies. Even the courtrooms are still busy with the judicial consequences of this carnage of unseen proportions, culminating in a systematic mass murder of entire groups on a scale previously unseen. Monuments and museums, research projects and other forms of knowledge production are committed to keeping this memory alive, as European integration is prompting articulation and projection of a common vision of the past. Yet, as Mary Fulbrook observed, ‘the selective memorial landscape of Europe today, and the well-known cultural and public representations of this past, cannot do justice to the variety of subjective experiences and personal legacies of involvement in violence under Nazi rule. Reckoning with a still disturbing past entails a myriad of attempts to rectify continuing imbalances or to address a persisting sense of injustice, whether such attempts take place in courts of law or in personal accounts’.³ As such reckoning remains challenging, it is worth noting that this was not for the lack of trying. Recent studies are unearthing the immediate postwar period in Europe for what it was – a true transitional justice laboratory, rich in attempts to face the continent’s dark legacy, albeit chequered with failures to do so.

The Eastern Face of Nuremberg

In this landscape a special place is occupied by the International Military Tribunal, which tried two dozen of the top Nazi perpetrators in 1945–6. Known as Nuremberg by the location where those proceedings took place, it captures disproportionate academic and public attention, leaving many other judicial ventures in deep shadow. After years of robust scholarly production on Nuremberg, one might ask what more we can learn about it.⁴ Yet Francine Hirsch’s recent study of *Soviet Judgement at Nuremberg* is boldly subtitled ‘A New History of the International Military Tribunal after World War II’. Such a subtitle is fully justified by the content, as Hirsch indeed delivers what she promised, that is ‘the untold story’.⁵ The entire trajectory of the trials is followed across over 400 pages. Along that road, the role of the Soviet Union is taken in all seriousness. Based on meticulous research of hitherto barely scrutinised documents in Russian, Hirsch convincingly claims that it is questionable whether Nuremberg would have ever have happened without the Soviet presence, and that it would surely have looked completely different. In that respect, this book reassesses the usual view of Nuremberg as a triumph of Western liberal legal theory and practice. Instead, she aspires to show how the Soviets were responsible for Nuremberg’s successes, as well as its failures.

Despite its title and overall message, this book is not to be mistaken as some sort of apologia for the Soviet side. On the contrary, it details the thorniest aspects of dispensing justice Soviet style – authoritarianism, lack of transparency, struggle over the control of the narrative, suppression of

³ Mary Fulbrook, *Reckonings: Legacies of Nazi Persecution and the Quest for Justice* (Oxford: Oxford University Press, 2018), vii. Shortcomings of this process in postwar Germany and France are described by Henry Rousso, *The Vichy Syndrome: History and Memory in France since 1944* (Cambridge, MA: Harvard University Press, 1991) and Norbert Frei, *Vergangenheitspolitik. Die Anfänger der Bundesrepublik und die NS-Vergangenheit* (München: C.H. Beck, 1996).

⁴ Classical literature on Nuremberg: Ann Tusa and John Tusa, *The Nuremberg Trial* (New York: Atheneum, 1984). An influential account of an important participant: Telford Taylor, *The Anatomy of the Nuremberg Trials: A Personal Memoir* (New York: Alfred A. Knopf, 1992); Michael R. Marrus, *The Nuremberg War Crimes Trial, 1945–46: A Brief History with Documents* (Bedford: St. Martin’s, 1998). More recent notable contributions: David A. Blumenthal and Timothy L. H. McCormack, eds., *The Legacy of Nuremberg: Civilizing Influence or Institutionalized Vengeance?* (The Hague: Martinus Nijhoff, 2007); Guénaél Mettraux, *Perspectives on the Nuremberg Trial* (Oxford: Oxford University Press, 2008). The official record of the trial is accessible in several digitised collections, most extensively at The Avalon Project, The International Military Tribunal for Germany, https://avalon.law.yale.edu/subject_menus/imt.asp (last visited 9 Feb. 2022).

⁵ Francine Hirsch, *Soviet Judgement at Nuremberg: A New History of the International Military Tribunal after World War II* (Oxford: Oxford University Press, 2020), 1.

evidence and even forging of documents. Hirsch investigates this colossal clash of political philosophies and legal cultures as the force which ultimately shaped the Nuremberg tribunal and gave rise to international criminal law, for better or for worse. As we learn about Soviet prosecutorial strategies, we understand that they were also faced with some of the same dilemmas which were besetting their Western colleagues, both on the strategic level of promoting national interests, the conceptual level of dealing with novel legal concepts, and the tactical level of making the trial move forward, down to the unique logistical challenges which it posed.⁶ Skilfully crossing between these four perspectives, the book takes us through the Nuremberg learning curve, helping us to understand it as an important process, and not a lionised myth.

The Soviets initially assumed that they would be in control of the courtroom. The book confirms that they 'took Nazi guilt as a given; they could not conceive of a trial in which the defendants did anything other than confess their crimes, preferably from a prepared script, and then get hustled off for execution'.⁷ This aspect is covered through detailed tracing of the behind-the-scenes role of Andrei Vyshinsky, the orchestrator of the Stalinist show trials. However, the correspondence between Moscow and its principal Nuremberg prosecutor, Roman Rudenko, also reveals the limitation of this long hand in the face of a trial which needed to be conducted with the other representative of the Allies. It also reveals the importance of some practicalities, such as the disclosure of huge amounts of evidence in a multilingual environment, which are rarely addressed but which play a vital role in a courtroom environment.⁸ The nature of this evidence is also examined in detail by Hirsch. Hence, we also get a better understanding of the evolution in the Soviet prosecutorial strategy. Initially conceived as trial by documents, the Soviet case was soon jeopardised both by logistical problems of translating such massive written evidence and by the boredom of its repetitiveness.⁹ The introduction of witnesses was not only a way of diversifying this approach but a reaction to the Western prosecutorial strategies and adjustment to the environment in which the defence is allowed a more proactive stance than the Soviets could initially imagine. The book also traces personal accounts of Soviet filmmakers like Roman Karmen and is accompanied by illustrations of photographers like Evgeny Khaldei, both helpful in understanding the cacophonous nature of Soviet involvement in Nuremberg.

Interestingly enough, the Soviet presence at Nuremberg left an ambiguous trace. On the one hand, it occasionally threatened to overturn the boat and delegitimise the proceedings entirely, most infamously through their stubborn attempts to pin the 1940 Katyn massacre of imprisoned Polish officers on the Nazis.¹⁰ On the other hand, their utilitarian take on the proceedings occasionally opened up new spaces. In that respect, it suffices to point out that the coinage 'crimes against peace' was the brainchild of a Soviet jurist, Aron Trainin, another architect of Nuremberg.¹¹ In regard to crimes against humanity, it was the Soviet prosecution which most comprehensively documented the scope of the extermination program of the Jewish population, calling it 'the bloody orgy of extermination'.¹² Some of the most dramatic visual evidence was introduced by the Soviets, whose military liberated the death camps.¹³ However, in light of their reputation, even the most genuine evidence was met with suspicion, as Nuremberg was 'also an early front of the Cold War. . . . For decades, when Soviet participation in Nuremberg was discussed at all in the United States, it was described as regrettable

⁶ Ibid., 214.

⁷ Ibid., 27.

⁸ Ibid., 160.

⁹ This aspect is frequently overlooked, yet observers as perceptive as Rebecca West described the trials as 'the citadel of boredom'. Rebecca West, *A Train of Powder* (London: Virago Press, 1955), 3.

¹⁰ Hirsch, *Soviet Judgement*, 321. This outrageous charge was eventually omitted from the judgement.

¹¹ Ibid., 35–7.

¹² Ibid., 27.

¹³ Lawrence Douglas, 'Film as Witness: Screening Nazi Concentration Camps before the Nuremberg Tribunal', *The Yale Law Journal*, 105, 2 (1995), 449–81.

but unavoidable – a sort of Faustian bargain'.¹⁴ Such were the origins of the 'myth of a Nuremberg moment'. It is difficult not to agree with Hirsch that

in the end, Nuremberg was simultaneously about justice and politics. The full story is far messier than the myth – but it is no less heroic. . . . These men and women worked hard to find common ground in Nuremberg, and in important ways they succeeded. They created a comprehensive record of the crimes of the Third Reich, shared moments of catharsis, and pushed forward the work of denazification. They set the precedent that launching an aggressive war was a crime, and they laid a foundation for the development of new international laws and institutions devoted to the protection of human rights in wartime and in peacetime.¹⁵

The Soviets certainly contributed to that process, eventually to their detriment, given that 'the ideals of human rights would be intertwined with the politics of the Cold War for decades to come'.¹⁶

The German Laboratory

One of the crucial Cold War battlegrounds was certainly Germany, occupied and divided among the increasingly opposed wartime Allies. A recent study of Devin Pendas, *Democracy, Nazi Trials, and Transitional Justice in Germany, 1945–1950*, gives a detailed account of both the scope and limitations of transformative efforts in postwar Germany. Nuremberg is his starting point too. Subtly using the insights into transitional justice frameworks, Pendas asks: 'The point of transitional justice is to foster a political transition, generally presumed to be a democratic one. Did Nuremberg, or indeed the Allied war crimes trial program more generally, foster political transition in Germany after the Second World War?'¹⁷ He argues not, resting on research which shows that

until well into the 1960s, a sizable majority of Germans rejected the Nuremberg trials (both the IMT and the subsequent proceedings) as biased examples of 'victor's justice'. Much to the consternation of the American occupation authorities, the percentage of those viewing the Nuremberg Trial, i.e. the IMT, as 'fair' fell from 78 percent in 1946 to 38 percent in 1950, while 30 percent felt the trial was 'unfair' by the later date.¹⁸

Therefore, Pendas proposes to examine the role played by less visible yet impactful trials which happened during the first postwar years but which were later overshadowed by Nuremberg. In order to rectify this Pendas offers two manoeuvres: first, 'to cast a wider net than many of the studies which focus exclusively on Nuremberg. . . . Second, one cannot focus simply on Western Germany, the three Western occupation zones that eventually became the FRG', as the 'history of neither half of postwar Germany can be understood in isolation'.¹⁹ His net, cast in the East, returned an interesting catch. Carefully examining German sources, Pendas offers telling statistics. Out of 95,000 Germans and Austrians put on trial after the war, 52,721 were held responsible in Eastern Europe, as opposed to 2,890 in the courts in Western Europe. The rest were prosecuted in Germany, where the Allies jointly tried around 9,000 persons in front of occupational courts, reactivating the German courts too.²⁰ Hence in western parts of occupied Germany, 14,046 investigations were launched between

¹⁴ Hirsch, *Soviet Judgement*, 6.

¹⁵ *Ibid.*, 13.

¹⁶ *Ibid.*, 14.

¹⁷ Devin O. Pendas, *Democracy, Nazi Trials, and Transitional Justice in Germany, 1945–1950* (Cambridge: Cambridge University Press, 2020), 24–5.

¹⁸ *Ibid.*, 37. More in Christopher Burchard, 'The Nuremberg Trial and its Impact on Germany', *Journal of International Criminal Justice*, 4 (2006), 800–29.

¹⁹ Pendas, *Democracy*, 5.

²⁰ *Ibid.*, 57.

1945 and end 1949, leading to 4,667 convictions and 3,703 acquittals in the Western occupational zones.²¹ There were almost twice as many convictions in the Soviet-controlled eastern part of Germany, adding up to 12,726 individuals held responsible for wartime crimes in the German postwar laboratory of transitional justice, which also included a robust if fraught procedure known as denazification.²²

Although these numbers might not yet be definitive, they are certainly telling. Contrary to entrenched perceptions of the postwar distribution of trials, the bulk of the judicial reckoning with the Nazi past occurred behind the Iron Curtain. Soviets and governments influenced by them were at the forefront not only in terms of numbers but also in the scope of prosecutions, charging many defendants with crimes against humanity and thus furthering the legal philosophy deployed by Trainin in Nuremberg.²³ This charge was more readily ‘implemented in the East, where dispensing ex post facto justice was more accustomed than in the West, where such prosecution of crimes against humanity was neither necessary, as most crimes could be prosecuted under ordinary German law anyway, nor just, because the Nazis themselves provided a notorious example of what happened when one abandoned the prohibition on ex post facto law’.²⁴ Regarding the general quality of these proceedings, Pendas finds, again against the common wisdom, that they were much more than show trials:

Or, to put it more precisely, it was only after the founding of the GDR, with the so-called Waldheim Trials of 1950, that Nazi trials in East Germany devolved into authoritarian purge trials on the Soviet model. In the earlier period, especially in 1946 and 1947, these trials were conducted according to reasonable standards of due process and staffed by judges at least as qualified as those conducting such trials in the West.²⁵

Furthermore, Pendas reminds us that deterioration of the efforts to legally confront the Nazi past was not an isolated Soviet phenomenon. It had occurred in West Germany, where the amnesty law came into effect after 1949.²⁶ He details the attempts to curb a comprehensive prosecution of Nazi criminality, shared by a significant part of the West German judiciary and legal scholars, coupled with a rising lenience of the American authorities toward convicted war criminals.²⁷

However, concludes Pendas, ‘between the end of the war in May 1945 and the founding of the two German states in 1949, occupied Germany was the subject of a massive experiment in transitional justice’.²⁸ He also contributes an entire chapter to trials which were planned but did not happen, reminding us that in this field we are far too focused on the outcome, and less so on the process. There were many legal, procedural, technical and political reasons which could abort a trial or stall proceedings. Therefore, it is wise to crosscheck the statistics about the trials by keeping a tab on the number of conducted prosecutions and open cases, which was kept by the Central Office of the State Justice Administrations for the Investigation of National Socialist Crimes in Ludwigsburg.²⁹ Even after such computing one should be cautious about translating quantitative data into qualitative

²¹ Figures from Germany rest on the research of Andreas Eichmüller, ‘Die Strafverfolgung von NS-Verbrechen durch westdeutsche Justizbehörden seit 1945’, *Vierteljahreshefte für Zeitgeschichte*, 56, 4 (2008), 621–40.

²² Cf. Perry Biddiscombe, *The Denazification of Germany: A History, 1945–1950* (Stroud: Tempus, 2007); Frederick Taylor, *Exorcising Hitler: The Occupation and Denazification of Germany* (London: Bloomsbury Press, 2011).

²³ Hirsch, *Soviet Judgement*, 8. Cf. Michelle Penn, ‘“Genocide is Fascism in Action”: Aron Trainin and Soviet Portrayals of Genocide’, *Journal of Genocide Research*, 22, 1 (2020), 1–18.

²⁴ Pendas, *Democracy*, 104.

²⁵ *Ibid.*, 144.

²⁶ *Ibid.*, 193.

²⁷ Cf. Robert Hutchinson, ‘The Nuremberg Military Tribunals and “American Justice”’ (18 Sept. 2021) <https://www.nationalarchives.gov.uk/war/articles/american-justice-at-nuremberg-military-tribunals>.

²⁸ *Ibid.*, 198.

²⁹ Zentrale Stelle der Landesjustizverwaltungen zur Aufklärung nationalsozialistischer Verbrechen <https://zentrale-stelle-ludwigsburg.justiz-bw.de/pb/,Lde/Startseite>. Early statistics of one of the chiefs of this unit, Adalbert Ruckerl, *NS-Verbrechen vor Gericht* (Heidelberg: Müller Juristischer Verlag, 1982), 329–32 (last accessed December 21, 2021).

conclusions, as Pendas surely is. ‘The sentences imposed for Nazi crimes by German courts were overwhelmingly modest. Roughly 30 percent of all convictions resulted in a prison sentence of less than six months, and another 30 percent in a sentence of between six months and one year. From 1945 to 2005, only 9 percent of convictions resulted in a sentence of more than five years, including 166 life sentences.’³⁰

How to reconcile these statistics, so incommensurable with the scope of criminality, with the undoubtedly deep transformation of contemporary Germany where critical reflection about the Nazi past is a constitutive element across the political spectrum?³¹ There is no single answer as to how this point was reached. A powerful argument was put forward about a new postwar generation questioning the values and wartime activities of their elders.³² Yet these efforts can also be linked to judicial activity, especially the Frankfurt Auschwitz trial which was previously scrutinised by Pendas.³³ This trial also did not come from nowhere. The biography of its chief architect, prosecutor Fritz Bauer, whose efforts have rightfully been lauded in recent cinema (cf. *Der Staat gegen Fritz Bauer*, 2015), points to the importance of his activity in the late 1940s and early 1950s.³⁴ The same could be said about the Ulm Einsatzkommando trial. Launched in 1958, a year otherwise recognised as a low point in prosecuting Nazi crimes, it resulted in an impetus for ‘domestication’ of war crimes investigations.³⁵ Temporary setbacks and seemingly untimely initiatives might ultimately deliver in the long run. If we abandon the illusion that *Vergangenheitsbewältigung* advances in a temporally linear way, a new space opens for examination of complex mutual influences and connections between political, legal and didactic fields. This book is a great starting point in that direction, reminding us that ‘although German courts continued to prosecute Nazi crimes throughout the postwar period, and indeed continue to do so as of this writing, the bulk of Nazi trials took place during the occupation period. West German trials for Nazi crimes are very much an artifact of the transition period’.³⁶

Tackling the Holocaust behind the Iron Curtain

Just as Nuremberg eclipses the other trials held in postwar Germany, so does the German model of facing its past overshadow other attempts in that direction. Yet they occurred across Europe through examining the scope and nature of collaboration during the Nazi occupation, which was and remains among the thorniest wartime issues. By now we have learned a lot about fractured and belated judicial reckonings with the Vichy regime in France, especially about its role in the deportation of French

³⁰ Pendas, *Democracy*, 37. More in Christopher Burchard, ‘The Nuremberg Trial and its Impact on Germany’, *Journal of International Criminal Justice*, 4 (2006), 800–29.

³¹ The debates in this file are not focused on whether to confront the past but how to do it most effectively for the new generation. Cf. ‘New German Historians’ Debate? A Conversation with Sultan Doughan’, in A. Dirk Moses and Michael Rothberg, *Journal for the History of Ideas Blog*, <https://jhiblog.org/2022/02/02/a-new-german-historians-debate-a-conversation-with-sultan-doughan-a-dirk-moses-and-michael-rothberg-part-i/> (last visited 12 Feb. 2022).

³² Harald Welzer, Sabine Moller and Karoline Tschuggnall, ‘Opa war kein Nazi’. *Nationalsozialismus und Holocaust im Familiengedächtnis* (Frankfurt am Main: Fischer Verlag, 2002); Mary Fulbrook, ‘Reframing the Past: Justice, Guilt, and Consolidation in East and West Germany after Nazism’, *Central European History*, 53, 2 (2020), 294–313.

³³ Devin Pendas, *Frankfurt Auschwitz Trial, 1963–1965: Genocide, History, and the Limits of the Law* (New York: Cambridge University Press, 2006).

³⁴ Vladimir Petrović, ‘Germany versus Germany: Resistance Against Hitler, Postwar Judiciary and the 1952 Remer Case’, in Berber Bevernage and Nico Wouters, eds., *The Palgrave Handbook of State-Sponsored History After 1945* (London: Palgrave Macmillan, 2018), 551–65.

³⁵ Patrick Tobin, ‘No Time for “Old Fighters”: Postwar West Germany and the Origins of the 1958 Ulm “Einsatzkommando” Trial’, *Central European History*, 44, 4 (2011), 684–710; Claudia Fröhlich, ‘Der “Ulmer Einsatzgruppenprozess” 1958: Wahrnehmung und Wirkung des ersten großen Holocaust-Prozesses’ (Göttingen, 2011), in Jörg Osterloh and Clemens Vollnhals, eds., *NS Prozesse und Deutsche Öffentlichkeit: Besatzungszeit, frühe Bundesrepublik und DDR* (Göttingen: Vandenhoeck & Ruprecht, 2011), 233–61; Cf. Erich Haberer, ‘History and Justice: Paradigms of the Prosecution of Nazi Crimes’, *Holocaust and Genocide Studies*, 19, 3 (2005), 487–519.

³⁶ Pendas, *Democracy*, 102.

Jews.³⁷ Yet similar insights from the eastern side of our continent are slower to enter the English-dominated academic realm. Once they do, we realize how needed they were. Such is the case with a study entitled *The August Trials: The Holocaust and Postwar Justice in Poland*, written by Andrew Kornbluth, who comprehensively examined a Polish war crimes prosecution program, conducted under the so-called ‘August Decrees’ of 1944. Large-scale prosecutions of Polish wartime collaborators resulted in an astounding 32,000 trials, generating over 20,000 guilty verdicts, including 1,835 death sentences, of which fewer than half were executed.³⁸ The bulk of these sentences was pronounced before 1956, when the program was modified and toned down.

This was not an easy study to write. It rests on extensive archival research and also delivers results which counter prevailing perceptions, which are apprehensive about war crimes prosecution programs in the countries liberated by the Red Army. In the Cold War narrative, these countries were perceived as little more than Soviet satellites, and the conditions were not met to consider their war crimes prosecutions as anything but political justice.³⁹ However, Kornbluth masterfully situates the postwar trials in the immensely complex context of postwar Poland, characterised by a revanchist atmosphere, territorial relocation and expulsion of Germans, but also by an ongoing conflict between the Poles and the Ukrainians, as well as animosity directed toward the few remaining Jews in this region, described recently as the heart of the European bloodlands.⁴⁰ Acknowledging the impact of the Red Army and revolutionary activists in every important sphere of what was soon to become a People’s Republic of Poland, Kornbluth does not neglect the less visible, but not necessarily less important, institutional role of prewar members of the judiciary, present in those prosecutions both with their idea of the rule of law and their nationalist prejudices. Analysing all those conflicting vectors which gave shape to the August trials, Kornbluth’s book reveals much more than meets the eye through a detailed scrutiny of an impressive documentation generated by those proceedings.⁴¹

Deep contextual layering, along with a detailed examination of these proceedings, paints a very nuanced picture. Powerful currents and countercurrents were at work in Polish postwar courtrooms. The desire to punish the collaborators, especially those who had denounced their fellow countrymen to the Occupation authorities, profiting from their misery, or police personnel from organisations such as the collaborationist Blue Police, was perfectly understandable. Yet there were limits to that zeal, as thorough investigations to that end had a potential to undermine an image of Poland as a ‘country without a Quisling’.⁴² In view of such narratives, as well as against the background of the undeniable extent of Polish suffering under the Nazi rule, even the full scope of Polish perpetration over Poles would be difficult to reckon with. Even tougher was the unearthing of Polish participation in the Holocaust, which these investigations also pointed towards.⁴³ From urban denunciations and policing the ghettos, to extortion and violence in the countryside, it was difficult not to perceive this occupied territory as a land ‘with many Cains’, in the words of one newspaper editorial from that time.⁴⁴

Kornbluth navigates these tricky waters relying on a careful methodology. After providing an overview of the entire activity of the tribunals, he focuses in depth on ‘over 400 trials conducted in Poland between 1944 and 1952 of crimes committed against Jews by Poles’, as well as another 400 trials of crimes committed in the context of the Holocaust by Poles against Poles during the Occupation. In

³⁷ Henry Rousso, *The Haunting Past: History, Memory, and Justice in Contemporary France* (Philadelphia: University of Pennsylvania Press, 2002); Richard J Golsan, *Vichy’s Afterlife: History and Counterhistory in Postwar France* (Lincoln: University of Nebraska Press, 2000); Richard J. Golsan, ed., *The Papon Affair: Memory and Justice on Trial* (New York: Routledge, 2000.).

³⁸ Andrew Kornbluth, *The August Trials: The Holocaust and Postwar Justice in Poland* (Cambridge, MA: Harvard University Press, 2021), 7.

³⁹ *Ibid.*, 226.

⁴⁰ Timothy Snyder, *Bloodlands: Europe between Hitler and Stalin* (New York: Basic Books, 2010).

⁴¹ Kornbluth, *The August Trials*, 283–4.

⁴² *Ibid.*, 1.

⁴³ Jan Grabowski ‘The Polish Police Collaboration in the Holocaust’, US Holocaust Memorial Museum, https://www.ushmm.org/m/pdfs/20170502-Grabowski_OP.pdf (last visited 12 Feb. 2022).

⁴⁴ Kornbluth, *The August Trials*, 17.

the course of this scrutiny, Kornbluth observes some important discrepancies. For instance, although the general rate of convictions in trials of this kind was around 50 per cent, it was much lower if the victims were Jewish citizens of Poland (around 14 per cent). Those indicted for crimes against the Jews were not only likelier to get acquitted but were also likelier to receive a lighter sentence if found guilty.⁴⁵ It is not difficult to spot a bias there, and also tempting to connect it with new insights into enduring antisemitic sentiments in postwar Poland.⁴⁶ Yet trials held under the August Decree, biased as they might have been in their choice of defendants and sentencing policies, were head and shoulders above Stalinist judicial practices. They do not belong to the same genre as the Moscow Trials of the sixteen anticommunist leaders of the Polish wartime resistance (1945) or the Krakow curia trials (1953), where the chief motive was indeed a power grab and the maintenance of control, and where disregard for the rule of law was apparent.⁴⁷ In a procedural sense, the August trials were led by committed professionals and offered some insight into the depths of wartime Polish participation in Nazi antisemitic policies. But that could not become the dominant topic of the proceedings: 'In Poland, wartime collaboration is perceived and understood to mean the effects of cooperation with or concession to the Nazi occupation as experienced by ethnic Poles; the experiences of ethnic Jews do not figure in this national collective memory'.⁴⁸

The resilience of such narratives can help us to understand the depth of some of the debates in contemporary Poland, which are otherwise difficult to comprehend. From my student days I recollect the shock triggered at the beginning of the century by the study of sociologist Jan Gross. Under the title *The Neighbors*, his book examined local Polish participation in the destruction of the Jewish population of Jedwabne. The lively debate which followed publication of the book largely revolved around the issue of the generalisability of this micro historical study – was this an isolated or a typical event, an outlier or a regularity?⁴⁹ Meanwhile, mounting evidence, including the judicial records on which Kornbluth's findings are based, has pointed towards many similar events. However, alongside the reckoning came a powerful backlash, expressed through new memory laws, the creation of institutions and the solidification of national historical narratives, and altering of the conditions for researching the most delicate aspects of that country's past.⁵⁰ Such limitation, not at all confined to Poland, reminds us that a responsible vision of a European future might call for bold examination of numerous historical fault lines which are scarring the continent.

Bridging the Fault Lines: The Transnational Turn in Studying Transitional Justice

Taken together, the studies under review here offer not only novel insights into the dynamics of immediate postwar justice but also important lesson for scholars of contemporary transitional justice. All three authors recognise the exceptional importance that trials played in the process of dealing with the problematic past, yet they all observe their constraints: 'The IMT remains a landmark event of the twentieth century, a starting point for conversations about transitional justice, international law,

⁴⁵ Ibid., 9.

⁴⁶ Cf. Anna Cichopek-Gajraj, *Beyond Violence: Jewish Survivors in Poland and Slovakia, 1944–1948* (Cambridge: Cambridge University Press, 2014); Lukasz Krzyzanowski, *Ghost Citizens: Jewish Return to a Postwar City* (Cambridge, MA: Harvard University Press, 2020).

⁴⁷ Interestingly, the prosecutor of the trial of the sixteen was Roman Rudenko, who went on to become the chief Soviet prosecutor in Nuremberg. Hirsch, *Soviet Judgement*, 77.

⁴⁸ Kornbluth, *The August Trials*, 15.

⁴⁹ Jan Gross, *Neighbors: The Destruction of the Jewish Community in Jedwabne, Poland* (Princeton: Princeton University Press, 2001). Cf. Antony Polonsky and Joanna B. Michlic, eds., *The Neighbors Respond: The Controversy over the Jedwabne Massacre in Poland* (Princeton: Princeton University Press, 2004).

⁵⁰ Uladzislau Belavusau, 'The Rise of Memory Laws in Poland', *Security and Human Rights*, 29, 1–4 (2018), 36–54. Nikolay Koposov, *Memory Laws, Memory Wars: The Politics of the Past in Europe and Russia* (New York: Cambridge University Press, 2018). Gross was under the inexcusable pressure by the Polish authorities even before the laws were enacted. 'Polish Move to Strip Holocaust Expert of Award Sparks Protest', *The Guardian*, 14 Feb. 2016, <https://www.theguardian.com/world/2016/feb/14/academics-defend-historian-over-polish-jew-killings-claims> (last visited 13 Feb. 2022).

genocide, and human rights', states Hirsch.⁵¹ Although she harbours no illusion about the complexities of their motives, she observes that the Allies 'drew up a set of principles that became the foundation for new international law – principles that, however flawed in practice, still provide a set of ideals toward which states and their citizens can aspire'.⁵² The importance of unintended consequences is visible in Kornbluth's findings too. Completely aware of the limitations of Polish postwar judicial efforts, he nonetheless maintains that

the trial evidence suggests that the involvement of Poles in the ethnic cleansing of their Jewish neighbors, particularly in the countryside, was more enthusiastic, more elaborate, and more widespread than previously believed. But as we have seen, it was never the intention of the Soviet-backed state, the fiercely independent judiciary, or the recalcitrant society that took part in the trials to create a lasting indictment of wartime behavior. On the contrary, the verdicts they forged together reflected a consensus about the need to excuse much of that wartime conduct and codify a variety of exculpatory myths about the war.⁵³

Yet his book probably could not have been written if there were no such trials. Pendas also observes a similar tendency. He argues that 'for all this diversity and complexity, it is apparent that transitional justice in Germany worked, just not in the ways that contemporary theorists might expect and not always for goals democracy advocates might support. . . . There is no such thing as transitional justice as such; only specific attempts to make amends for the atrocities of the past'.⁵⁴

Yet, as this review aims to emphasise, these cases are not isolated but very connected, both horizontally and vertically. On a horizontal plane, it is easy to observe how national programmes of war crimes prosecution were both departing from Nuremberg and also influencing one another. True, we know now that the attempts to come to terms with the Second World War have been incomplete, partial, biased and self-serving in different national frameworks. Many of these inadequacies were pinned on the Cold War. This global confrontation, we are told, curbed joint efforts of the Allies as expressed in Nuremberg during the immediate postwar period. In the East, facing the Nazi legacy was instrumentalised in the process of solidifying authoritarian regimes of a different kind. In the West, anti-communism provided an umbrella for many operatives of the Nazi regime. Reckoning with the past (or its absence) became a tool in the propaganda war between the two blocs. Now we know too that the obstacles outlived the Cold War. In some ways, the complexities increased after its ending, exposing a deep gulf between the western and eastern part of the continent, which endured after 1989, despite its partial political unification.⁵⁵ There are many fault lines which need to be bridged. Indeed, these studies display an excellent knowledge of the local context and demonstrate the benefits of an in-depth analysis of primary sources in Russian, German, Polish and other languages as well.

Under such circumstances, integrating already developed national case studies into a coherent comparative yet transnational approach seems to be the next logical move. Such studies are actually already in the pipeline, emphasising the constant circulation of those ideas, personalities and practices in prosecution of the crimes of the Second World War.⁵⁶ This transnational flux offers not only promising

⁵¹ Hirsch, *Soviet Judgement*, 6.

⁵² *Ibid.*, 416.

⁵³ Kornbluth, *The August Trials*, 269.

⁵⁴ Pendas, *Democracy*, 201.

⁵⁵ Istvan Rev, *Retroactive Justice: Prehistory of Post-Communism* (Stanford: Stanford University Press, 2005); Lavinia Stan and Nadya Nedelsky, *Post-Communist Transitional Justice: Lessons from Twenty-Five Years of Experience* (New York: Cambridge University Press, 2015).

⁵⁶ Sabina Ferhadbegovic, 'The Prosecution of Shoah Crimes in Yugoslavia: Local Developments and International Impacts', *Revue d'Histoire de la Shoah*, 2021/2 (214), 97–120. Eric Le Bourhis, Irina Tcherneva and Vanessa Voisin, eds., *That Justice Be Done: Social Impulses and Professional Contribution to the Accountability for Nazi and War Crimes, 1940s–1980s* (Rochester, NY: Rochester University Press, forthcoming). One should also be aware of the growing body of

insights but reminds us that the immediate postwar judicial efforts, limited as they were, set the scene for future developments.

This development is surely not linear and remains permanently under construction. From the Lieber Code and the Red Cross (1863) to a stream of Geneva and Hague conventions, the emerging humanitarian principles were constantly challenged by armed conflicts, culminating in the carnage of the First World War. Failed attempts to punish the individually responsible and a punitive peace settlement were followed by another race between creative ideas and destructive forces.⁵⁷ The international system symbolised by the League of Nations, improved Geneva conventions of 1929, and even attempts to abolish war altogether expressed in the Briand-Kellogg pact proved unable to stop another, far deadlier global encounter. In the aftermath of the Second World War that pendulum shifted again, not only with Nuremberg and Tokyo, but also with the creation of the United Nations and International Court of Justice (1945), a new set of Geneva conventions (1949), and an impressive range of international obligations such as the Convention on the Prevention and Punishment of the Crime of Genocide and the Universal Declaration of Human Rights (1948).⁵⁸ This impressive paperwork was of little use to the millions of people, mostly civilians, who lost their lives in the proxy wars which characterised the Cold War era. However, it did provide a background for unprecedented developments in the 1990s. During this decade, the promise of global international criminal accountability did play a role in the creation of ad hoc international tribunals for Yugoslavia and Rwanda, leading up to the establishment of the permanent International Criminal Court in 2002 and a score of hybrid tribunals, national commissions and other mechanisms aimed at overcoming the legacy of past crimes.⁵⁹

Created on the wings of the 'end of history' paradigm, transitional justice was characterised by huge hopes about the globalised world in which liberal democracies would peacefully coexist. Now we know this to be an illusion, perhaps noble or naïve, or both. We are confronted with new realities, unsure even where the transition is actually taking us, let alone how just is it. As Pendas puts it, 'the presumptions of transitional justice theory regarding the democratizing force of law in situations of political transition seem, in this case at least, to be over optimistic at best'.⁶⁰ Against such a background the recent crisis of transitional justice efforts, exacerbated by increasing challenges to the liberal democratic vision, obliges us to look at the situation anew. It could be that we will remember this period, roughly between 1989 and 2001, as a unique time in human history, characterised by a seeming consensus over norms of international order and a set of attempts, uneven as they were, to put it into practice. Just as the enthusiasm which accompanied these developments gave rise to the lionisation of Nuremberg, it is only natural that the first setbacks in the activity of the ICC prompt critical examinations of its archetypical predecessor.

There are reasons to welcome such approaches, as complacent discourses rarely bring deep insights. As Europe descends into war again and these values cannot be taken for granted any more, they need to be argued for. Studies like those reviewed here are offering indispensable

literature on the war crimes prosecution programme in the Far East, from the Tokyo Tribunal to less known cases: Yuma Totani (2009) *The Tokyo War Crimes Trial: The Pursuit of Justice in the Wake of World War II* (Cambridge, MA: Harvard University Asia Center). Also Neil Boister and Robert Cryer, *The Tokyo International Military Tribunal: A Reappraisal* (Oxford: Oxford University Press, 2008); Yuki Tanaka, Tim McCormack and Gerry Simpson, eds., *Beyond Victor's Justice: The Tokyo War Crimes Trials Revisited* (Leiden: Martinus Nijhoff, 2011). In many ways, this is not only European but a truly global story.

⁵⁷ Alan Kramer, 'The First Wave of International War Crimes Trials: Istanbul and Leipzig', *European Review*, 14, 4 (2006), 441–55.

⁵⁸ Martti Koskeniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870–1960* (Cambridge: Cambridge University Press, 2001).

⁵⁹ Benjamin Ferencz, 'The Experience of Nuremberg', in Dinah Shelton, ed., *International Crimes, Peace, and Human Rights: The Role of the International Criminal Court* (New York: Transnational Publishers, 2000), 8–9; Neil J. Kritz, ed., *Transitional Justice: How Emerging Democracies Reckon with Former Regimes* (Washington, DC: United States Institute, 1995).

⁶⁰ Pendas, *Democracy*, 164.

arguments to that end. They treat postwar justice as a problematic yet indispensable endeavour. As they look into the ambiguities of the judicial, political and social transformation, postwar Europe comes across not only as a laboratory but as an incubator of transitional justice. That actually leaves space for the possibility that we are currently not just witnessing an irreversible deterioration of international relations and a global erosion of human rights standards but are partaking in yet another incubation of those ideals.