

Transitional Justice Efforts after the Holocaust

Discussion of “justice and accountability efforts” after the Holocaust often invokes the image of postwar criminal prosecutions before the International Military Tribunal (IMT) and the subsequent Nuremberg trials. These efforts had a profound impact on our modern-day understanding of international criminal law and human rights and are foundational to current systems of international relations, institutions, and laws. However, the Nuremberg trials formed only one aspect of post-Holocaust attempts to deal with the past and move forward as a society. A range of efforts to achieve justice for victims and help society heal from a violent past and political upheaval emerged in the subsequent decades. Even as the term “transitional justice” did not exist until the 1990s,¹ many efforts implemented following the Holocaust (1933- 1945) and World War II (1939 - 1945), relate to what we would classify as “transitional justice” today.

While not intended to provide a comprehensive overview of post-war and post-Holocaust efforts that fall under the umbrella of transitional justice, this section aims to broaden the view for criminal justice actors beyond postwar trials to illustrate the variety of efforts that took place in the decades after the Holocaust. The efforts highlighted were pursued by a range of actors, including international military powers (the Allies), domestic governments, victim advocacy groups, and others. Particular attention will be paid to how these efforts touched the criminal justice system and their impact on the relationship between various criminal justice institutions and civil society. Efforts at justice and accountability after World War II extended to many different victim groups and across the many countries that fell under the control of the Nazi regime.² This section, however, focuses primarily on efforts to achieve justice for Jewish victims in the German context.³ Examining these efforts through the transitional justice framework can help us better understand the complex dynamics involved in moving forward as a society in the aftermath of mass atrocities, as well as how cultural norms around trauma and memory shaped the creation of transitional justice tools.

Transitional justice refers to “a range of tools, mechanisms, and approaches that societies emerging from periods of widespread violence and conflict may adopt as they seek to confront, address, and heal from the past.”⁴ These tools aim to help societies to address challenging questions that often arise in the aftermath of atrocities, including how to:

¹ “What is Transitional Justice?” ICTJ website, <https://www.ictj.org/about/transitional-justice>.

² See, e.g., United States Holocaust Memorial Museum, *Victims of the Nazi Era: Poles* (2000); Richard C. Lukacs, *Out of the Inferno: Poles Remember the Holocaust* (1989); Anton Weiss-Wendt, *The Nazi Genocide of the Roma: Reassessment and Commemoration* (2015); Erika Thurner, *National Socialism and Gypsies in Austria* (1998); Ildiko Barna and Andrea Peto, *Political Justice in Budapest after World War II* (2015). For information on atrocities and postwar justice relating to the Japanese imperial regime, see, e.g., Yuki Tanaka, *Hidden Horrors: Japanese War Crimes in World War II* (2017); Yuma Totani, *The Tokyo War Crimes Trial: The Pursuit of Justice in the Wake of World War II* (2008).

³ We welcome a more comprehensive examination of how these efforts extended to all groups targeted by the Nazi regime at a later time.

⁴ “About Transitional Justice,” United States Holocaust Memorial Museum, <https://www.ushmm.org/genocide-prevention/simon-skjodt-center/work/ferencz-international-justice-initiative/transitional-justice>

- Confront the past without inspiring revenge
- Decide who should be held responsible for violations
- Restore public trust in institutions that perpetrated or failed to respond to atrocities
- Promote reconciliation and trust among divided communities
- Develop and agree upon a shared history or collective memory
- Prevent the cycle of violence from repeating
- Compensate those who were harmed

In addressing these challenges, transitional justice can play a role in preventing future atrocities. By seeking to respond to trauma, repair social distrust, and restore confidence in government,⁵ transitional justice initiatives target key risk factors of instability, unpunished violence, prior discrimination, and exclusionary ideology.⁶ Scott Straus has identified the following “strategies for accountability” which will be used to organize our discussion of “transitional justice” efforts after the Holocaust:⁷

- Trials: Target individual wrongdoing.
- Fact-finding or truth-telling bodies: Allow victims and survivors the ability to share and publicly legitimize their experiences. Can reveal previously unknown information about violence and can promote social healing.
- Reparations: Make amends to victims of violence through restitution, compensation, apologies, or other means.
- Lustration/Vetting: Removes perpetrators and architects of violence from future governance structures. Creates institutional changes that will prevent future violence.
- Memorialization: Recognizes and preserves the memory of past violence. Educates future generations.

Also highlighted are some of the political and legal reforms instituted to repair harm done and to prevent the recurrence of totalitarianism and mass atrocities.

These strategies reflect a mix of retributive and restorative justice. Punitive mechanisms, such as trials and lustration, are examples of retributive justice. Nonpenal mechanisms -- such as truth-telling, reparations, memorialization, and legal reform -- are examples of restorative justice.⁸ Both retributive and restorative justice are concerned with righting a wrong. They may also imply that the offender owes something to the victim that is proportional to the harm done. Retributive justice involves recognizing the harm to victims and punishing the perpetrators while restorative justice involves acknowledging victims’

⁵ Scott Straus, *Fundamentals of Genocide and Mass Atrocity Prevention* (2016), p. 188.

<https://www.ushmm.org/m/pdfs/Fundamentals-of-Genocide-and-Mass-Atrocity-Prevention.pdf>

⁶ Ibid., p. 56.

⁷ Ibid., p. 210.

⁸ Ibid., p. 209. See also Lawrence W. Sherman & Heather Strang, *Restorative Justice: The Evidence* (2007).

harms and needs, the harms' impact on communities, and encouraging perpetrators to take responsibility, make right the wrongs, and address the causes of their behavior.⁹

The example of the Holocaust demonstrates that healing after mass atrocities does not occur overnight -- it is an ongoing process over the course of decades, and success or failure is contingent upon a variety of factors and is difficult to measure. Recognizing this reality can lend perspective to actors in the criminal justice system engaged in transitional justice efforts today. Studying post-Holocaust experiences also highlights the benefits and challenges of the various transitional justice tools at different points in time after mass atrocities have ended. This examination raises common challenges in pursuing accountability after mass atrocities: How do you assess responsibility when an entire society is involved? Who should be held accountable, and how might accountability extend beyond criminal liability? Finally, who has the authority or responsibility to pursue accountability? Examining these questions highlights the value of expanding efforts for justice and healing beyond criminal prosecutions and with an eye toward how these efforts can help prevent future atrocities.

Trials of War Criminals in Europe after WWII

Within the transitional justice framework, criminal prosecutions aim to hold individuals who ordered, planned, or perpetrated crimes responsible for their actions through criminal sanctions, such as fines or terms of imprisonment. Criminal prosecutions can also be a way to deter future perpetrators.¹⁰

International Military Tribunal (IMT) at Nuremberg

Even before the end of World War II, Allied governments focused world attention on the crimes of the German state and the Nazi regime and promised the victims justice after the defeat of the Axis powers. Following the war, the best known war crimes trial was the trial of "major" war criminals in Nuremberg, Germany. The defendants were leading German officials who survived the war and were arrested by Allied officers. They were tried before the International Military Tribunal (IMT) at Nuremberg, which consisted of judges and prosecutors from Great Britain, France, the Soviet Union, and the United States and defense attorneys from Germany. Between October 18, 1945, and October 1, 1946, the IMT tried 22 "major" war criminals—high ranking officials from the German military, state administration, the police and the Nazi party—on charges of conspiracy, crimes against peace, war crimes, and crimes against humanity. Allied prosecutors decided to rely primarily on German documentation to prove the guilt of the defendants so that only a limited number

⁹ Howard Zehr with Ali Gohar, *The Little Book of Restorative Justice* (2003), pp. 59-60. See also Lawrence W. Sherman & Heather Strang, *Restorative Justice: The Evidence* (2007).

¹⁰ "Transitional Justice Tools," United States Holocaust Memorial Museum, <https://www.ushmm.org/genocide-prevention/simon-skjodt-center/work/ferencz-international-justice-initiative/transitional-justice/criminal-prosecutions>

of survivors testified. Prosecutors gathered more than 3,000 tons of records for the trial and an important contribution of the trial proved to be the collection and preservation of the evidence of Nazi crimes. In the end, twelve of the defendants were sentenced to death, three were sentenced to life imprisonment, and four received prison terms ranging from 10 to 20 years. The IMT acquitted three of the defendants.¹¹

The Nuremberg Trial of major war criminals demonstrated that leaders of national governments could be held responsible for their crimes under international law. Two principles, which were part of international law before World War II—sovereign immunity and the doctrine of superior orders—were rejected by the international community for the post-war war crimes trials of Axis officials, thus setting a new standard of criminal responsibility under international law.¹² The doctrine of sovereign immunity held that heads of state were exempted from prosecution for actions taken while in office in their official capacity, while the doctrine of superior orders exempted subordinates from criminal prosecution for carrying out the orders issued by direct military or civilian superiors. The two principles taken together essentially meant that no one could be held responsible for any crime committed as part of official state policy.

The IMT at Nuremberg rejected, outright, the exculpatory claims of both sovereign immunity and the doctrine of superior orders. The IMT declared, "Leaders, organizers, instigators, and accomplices participating in the formation or execution of a common plan or conspiracy to commit any of the foregoing crimes are responsible for all acts performed by any persons in execution of such a plan."¹³

Justice Jackson, the chief American prosecutor at Nuremberg, explained the issue as follows:

We do not accept the paradox that legal responsibility should be the least where power is the greatest. We stand on the principle of responsible government declared some three centuries ago to King James by Lord Chief Justice Coke, who proclaimed that even a king is still under God and the Law. With the doctrine of immunity of a head of state usually is coupled another, that orders from an official superior protect one who obeys them. It will be noticed that the combination of these two doctrines means that nobody is responsible. Society as modernly organized cannot tolerate so broad an area of official irresponsibility.¹⁴

¹¹ Judgment of 1 October 1946, in the Trial of German Major War Criminals. Proceedings of the International Military Tribunal sitting at Nuremberg, Germany, Part 22 (22nd August 1946 to 1st October 1946).

¹² See Article 7 and 8 of the Charter of the International Military Tribunal, Nuremberg Trial Proceedings Vol. 1.

¹³ See Count 1 Subsection III Statement of the Offense, Article 6 IMT Charter.

¹⁴ See Section III of Justice Jackson's Report to the President on Atrocities and War Crimes; June 7, 1945.

In practice, the IMT did not reject the superior orders defense absolutely. The IMT stated that the true test of a superior orders defense was not the mere existence of the order, but "whether moral choice was in fact possible."¹⁵ This led the American tribunal (in the *Einsatzgruppen* case) to conclude that the

test to be applied is whether the subordinate acted under coercion or whether he himself approved of the principle involved in the order. If the second proposition is true, the plea of superior orders fails.... When the will of the doer merges with the will of the superior in the execution of the illegal act, the doer may not plead duress under superior orders.¹⁶

Thus, if a defendant agreed in principle with an order, the defendant could not later claim superior orders as a mitigating defense.

American military prosecutors therefore limited superior orders as a defense. They stated that mere compliance with superior orders did not constitute a defense to the charge of having committed a war crime although it might, in certain circumstances, be considered in mitigation of punishment.¹⁷ Such mitigation would depend upon the character and extent of the immediate compulsion under which the accused acted. The burden of proof was placed upon the defendant to show he disagreed with the orders he was given and the extent of the compulsion he faced to carry out the order.

The overwhelming majority of post-1945 war crimes trials involved lower-level officials and officers and incorporated the principles established by the IMT. They included concentration camp guards and commandants, police officers, members of the *Einsatzgruppen*, state administrators, judges, and doctors who participated in Nazi crimes. These war criminals were tried by military courts in the British, American, French, and Soviet zones of occupied Germany and Austria¹⁸ and in Italy. Other suspected German war criminals were tried by the courts of those countries where they had committed their crimes.

Two sets of trials by an American military tribunal at Nuremberg under the auspices of the IMT are especially important here: the trial of police, SS and SD officers as part of the *Einsatzgruppen* trial and the trial of leading justice officials, special court and Peoples' Court judges as part of the so-called "Justice" trial.¹⁹ In September 1947, the US Military

¹⁵ See International Law Commission, *Principles of International Law Recognized in the Charter of the Nürnberg Tribunal and in the Judgment of the Tribunal* United Nations, 2005.

¹⁶ *Trial of War Criminals Before the Nuremberg Military Tribunals under Control Council Law No. 10* Volume IV *Einsatzgruppen* Case p. 471.

¹⁷ Deputy Judge Advocate for War Crimes, European Command, Lieutenant Colonel Clio E. Straight, *The Report of the Deputy Judge Advocate for War Crimes, European Command, June 1944 to July 1948*, Office of the Judge Advocate General, 1948.

¹⁸ See Article III of Allied Control Council Law No. 10.

¹⁹ Officially the trial was called: *United States v. Josef Altstoetter, et al.*

Government for Germany created Military Tribunal II to try leading members of the Einsatzgruppen, the ninth of the Subsequent Nuremberg Proceedings.²⁰ The tribunal tried twenty-four defendants, all of them second tier leaders of the Einsatzgruppen, special task forces of the security police and SS assigned to shoot Jews behind the front during the 1941 invasion of the Soviet Union by German forces. The Einsatzgruppen killed at least 1.5 million people, overwhelmingly Jews. The defendants were charged with war crimes and crimes against humanity. The defendants claimed they had acted legally, as soldiers, and had merely been following orders, a claim the tribunal rejected. The tribunal found 20 of the defendants guilty on both counts. The tribunal noted in its judgment that, "Although the principle accusation is murder and, unhappily, man has been killing man ever since the days of Cain, the charge of purposeful homicide in this case reaches such fantastic proportions and surpasses such credible limits that believability must be bolstered with assurance a hundred times repeated."²¹ In all, 14 defendants were sentenced to death, two were sentenced to life terms, and the remaining defendants received sentences that ranged from 10 to 20 years. However, many of their sentences were subsequently commuted in the course of postwar negotiations between Chancellor Adenauer and U.S. High Commissioner for Germany John J. McCloy.

In February 1947, the US Military Government for Germany created Military Tribunal III to try the Justice Case, the third of the Subsequent Nuremberg Proceedings. The tribunal tried sixteen defendants—nine were officials in the Reich Ministry of Justice, while the others were members of the Peoples' and Special Courts. All were in American custody at the end of the war. All of the defendants pleaded not guilty to conspiracy, war crimes, and crimes against humanity. Essentially, American prosecutors charged the defendants with "judicial murder," with the destruction of the norms of law and justice, and finally with participation in the persecution, enslavement and extermination of targeted groups in Germany. In December 1947, the tribunal found ten of the defendants guilty and acquitted four.²² In rendering their verdicts the court declared,

The charge, in brief, is that of conscious participation in a nationwide government-organized system of cruelty and injustice, in violation of the laws of war and of humanity, and perpetrated in the name of law by the authority of the Ministry of

²⁰ Officially the trial was called: United States v. Otto Ohlendorf et al.

²¹ Trial of War Criminals Before the Nuremberg Military Tribunal under Control Council Law No. 10. Vol IV: The Einsatzgruppen Case, pp. 411-412.

²² The Tribunal suspended proceedings before verdict for two of the defendants due to illness.

Justice, and through the instrumentality of the courts. The murderer's dagger was hidden beneath the robes of the jurist.²³

Four of the guilty defendants received life sentences and six received prison terms ranging between five and ten years.

Trials in German Courts

In October 1945, the military government issued guidelines for the reestablishment of the German ordinary court system as it had existed under the Weimar Republic, effectively abrogating all changes made by the Nazis in the 1930s and 1940s.²⁴ Despite the reestablishment of German courts, the Allies retained jurisdiction over war crimes for Allied military courts in Germany.²⁵ German courts had jurisdiction only over crimes committed against German nationals such as the wave of crimes committed during the Nazi rise to power in 1933 or during *Kristallnacht* (the violent anti-Jewish pogroms in 1938) or the "Euthanasia" killings of Germans in long-term care facilities beginning in 1939. German courts gained jurisdiction over crimes committed against foreign nationals during the war only with the establishment of the Federal Republic of Germany (commonly known as West Germany) in 1949. German authorities soon realized that there were a large number of lower level perpetrators of war crimes living in Germany. In 1958 they established the Central Office for the Investigation of Nazi Crimes in Ludwigsburg, Germany, to coordinate the investigation and trial of German war criminals. However, German courts tried suspected war criminals under German law and not according to the procedures established by the IMT. This meant that German courts tried war criminals only for murder or manslaughter.²⁶ German courts typically regarded suspected Nazi war criminals only as accessories because they had killed on behalf of the Nazi state. Not only did this require the courts to minimize evidence of antisemitic sentiments made by defendants so that the court could apply superior orders as a mitigating factor in the trials, but charging defendants only as accessories generally reduced the overall length of criminal penalties imposed by German courts upon conviction.²⁷

²³ Verdict in the Justice Case, *United States v Altstoetter*, December 12, 1947, *Trials of War Criminals Before the Nuremberg Military Tribunals under Control Council Law No. 10* Washington D.C.: US Government Printing Office, 1949, p. 985.

²⁴ The Allied Control Council ordered the courts to reopen on the basis of the Court Organization Act of 1924 with the exception that there would be no multi-zonal final court of appeals or Supreme Court. Control Council Proclamation no. 3 Fundamental Principles of Judicial Reform October 20, 1945 in *ibid.* pp. 82-84.

²⁵ The Allies established only the district, state, and state superior courts, largely as they existed before the Nazi rise to power in 1933. They also invalidated Nazi laws—those with a political or racial context. See Allied Control Council Law Nos. 4 and 10.

²⁶ See Paragraphs 211 and 212 of the German criminal code (*Reichsstrafgesetzbuch*).

²⁷ See Henry Friedlander, *The Judiciary and Nazi Crimes in Postwar Germany*, p. 28 ff. Paper presented at the Western Association for German Studies (WAGS), El Paso, Texas, 1982.

Limited Criminal Prosecutions

Despite the trials in the immediate aftermath of World War II, most Nazi war criminals were never brought to trial or punished. Nazi war criminals with specialized scientific or security knowledge, for example, were sometimes recruited by Allied intelligence in the build up to the Cold War, the postwar competition²⁸ for international dominance between the United States and the Soviet Union. Some of the major German state and Nazi party officials did not survive the war and could, therefore, not face trial. Adolf Hitler, Führer and Reich Chancellor of the German state and leader of the Nazi party, committed suicide in Berlin rather than face defeat and surrender.²⁹ So, too, did Josef Goebbels, Reich Propaganda Minister and Nazi Party leader of Berlin, and Heinrich Himmler, chief of the German police and Reich leader of the SS. Himmler's deputy, Reinhard Heydrich, Head of the Security Police and SD, who was tasked with carrying out the Holocaust, was killed by British trained Czech partisans in Prague in 1941. Similarly, in the administration of justice, Supreme Court President Erwin Bumke and Minister of Justice Otto Thierack committed suicide in 1945, while Roland Freisler, presiding judge of the Peoples' Court in Berlin, was killed in the Allied bombing of Berlin in February 1945.

Some leading Nazis or German state officials escaped or disappeared in the chaos of German defeat in May 1945.³⁰ Indeed, the victorious Allies faced massive problems after the war. The war cost more than 50 million dead. Tens of thousands of towns and villages were completely destroyed. Most major cities, especially in Germany, had been laid waste. Millions more faced starvation in the fall and winter of 1945.³¹ Further, the Allies took more than 8 million German soldiers³² prisoner at the end of the war and more than 7 million foreign workers (displaced persons), brought against their will to Germany as forced laborers during the war, needed to be repatriated to their home countries as soon as possible. Wanted Nazi war criminals were able to hide amongst German prisoners of war or displaced persons until they could escape Allied custody. In this way Adolf Eichmann, who organized transports of Jews to killing centers in German-occupied Poland escaped to Argentina; Josef Mengele, the infamous Nazi doctor in Auschwitz who escaped to Argentina and then later to Brazil; and Franz Stangl, Commandant of the Sobibor and Treblinka killing centers where hundreds

²⁸ See, for example, Operation Paperclip. Alan Beyerchen, "German Scientists and Research Institutions in Allied Occupation Policy." Autumn 1982. *History of Education Quarterly*, Vol. 22, No. 3 Special Issue: Educational Policy and Reform in Modern Germany.

²⁹ Thousands of Germans committed suicide at the prospect of German defeat in 1945, fearing either trial for war crimes or brutality at the hands of Soviet forces. See Christian Goeschel, "Suicide at the End of the Third Reich" *Journal of Contemporary History* vol 4., No. 1, pp. 153-173.

³⁰ See for examples Daniel Stahl, *The Hunt for Nazis: South America's Dictatorships and the Prosecution of Nazi Crimes*. (Amsterdam: Amsterdam University Press, 2018).

³¹ "World War II in Europe," Holocaust Encyclopedia, United States Holocaust Memorial Museum, <https://encyclopedia.ushmm.org/content/en/article/world-war-ii-in-europe>

³² See Office of Military Government for Germany, Status Report on Military Government of Germany, U.S. Zone. March 15, 1946, p. 46.

of thousands of Jews were killed with poison gas, escaped to Brazil. All three escaped justice in 1945 and lived unmolested for decades in South America.³³

Finally, the Allied decision to hold legitimate trials had the unintended consequence of allowing many suspected war criminals to escape justice after the war. The Allied insistence that war crimes trials be legitimate trials under the rule of law—that is, specific individuals be tried for specific crimes following internationally agreed upon rules of evidence and criminal procedure including a guarantee for independent legal representation for the defense—meant that thousands of Nazi criminals could not be brought to trial because of insufficient evidence to ensure a conviction in court. The Allied Control Authority distributed the Central Registry of War Criminals and Security Suspects (CROWCASS) listing tens of thousands of suspected war criminals for trial after the war.³⁴ The CROWCASS registry listed the name, nationality, date of birth, specific crime, date of crime, place of crime, and the Allied country seeking the arrest of individuals suspected of war crimes. Often the defendant could not be located, or there proved to be insufficient evidence linking the specific individual to a specific crime so that a trial proved impractical and the suspected war criminal went free.

Nevertheless, the trial of Nazi war criminals after World War II brought the violent crimes of the Nazi regime to the attention of the German people. The acknowledgment of Nazi crimes, the extent of which could not be denied after the Nuremberg trials, forced Germans to recognize the necessity of investigating Nazi criminality and bringing the perpetrators to justice. This has proven to be a lasting legacy—virtually no one in Germany today disputes the validity of the Nuremberg trials and the veracity of Nazi crimes against humanity and the Holocaust.³⁵

Legal and Political Reforms

Criminal prosecutions coincided with other significant legal and political reforms to dismantle the Nazi legal system that had enabled atrocity crimes and prevent their recurrence. One of the first acts by the Allies in the reestablishment of German judicial authority was to repeal Nazi law and abolish the German ordinary court system. The Allies did not abolish all German law, but merely those laws which supported the Nazi state or which embodied Nazi racial ideology. Allied Control Council Law No. 1 repealed more than

³³ Eichmann was tried in Jerusalem and executed in 1961 for crimes against the Jewish people, Mengele died in a swimming accident in 1979; and Stangl was extradited and convicted of war crimes by a German court in 1967. He died in prison in 1971.

³⁴ By 1947 the CROWCASS registry included some 60,000 individuals wanted for war crimes. See United Nations War Crimes Commission, *History of the United Nations War Crimes Commission and the Development of the Laws of War* London, His Majesty's Stationary Office, 1948, p. 138.

³⁵ Even in December 1945, more than 80 percent of Germans believed the Nuremberg trials to be a fair and just trial of Nazi leaders. See Hadley Cantril ed., *Public Opinion, 1935-1946* (Princeton: Princeton University Press, 1951) pp 1035-36.

20 laws by name.³⁶ The Control Council abolished, for example, the Law Concerning Insidious Attacks Against the Party and the State,³⁷ which criminalized criticism of the Nazi party and Hitler's government and the Nuremberg Race Laws³⁸ which had established the Nazi racial state. As noted above, in October 1945, the Allies issued guidelines for the reestablishment of the German ordinary court system as it had existed under the Weimar Republic, invalidating the changes carried out by the Nazis in the 1930s and 1940s.³⁹

Also in the late 1940s, new German governments formed with Allied permission. They took over control from the Allied military governments. The Western zones became the Federal Republic of Germany (Bundesrepublik Deutschland, BRD or in English FRG), under the influence of the United States. It was colloquially known as West Germany. The Eastern zone became the Communist German Democratic Republic (Deutsche Demokratische Republik, DDR or in English GDR), under the influence of the Soviet Union. Both Germanies developed new Constitutions. They did so based on the understanding that the two separate German states were temporary and that they would soon be unified. Both constitutions attempted to correct the problems of the Weimar constitution and espoused liberal democratic values. In practice, only West Germany was a liberal democracy. East Germany was a Communist dictatorship that incorporated Marxist-Leninist principles and essentially gave control of government to the communist-controlled Socialist Unity Party.

The 1949 Constitution of West Germany (also known as the Basic Law or *Grundgesetz*) governs unified Germany today. In 1948, the Western Powers directed that the West German states form a Parliamentary Council, whose delegates were members of political parties licensed by the occupying powers, to draft the Constitution. The framers outlined a federal parliamentary democracy designed to avoid the instability of the Weimar Republic's fragmented, multiparty democracy and the authoritarianism of the Third Reich.⁴⁰ The first part sets out basic rights that contrast sharply with Nazi policies of persecution. Article 1 affirms that "[h]uman dignity is inviolable. To respect and protect it shall be the duty of all state authority."⁴¹ Subsequent articles affirm rights to life, nondiscrimination and equality before the law, and to seek asylum. Provisions uphold freedom of religion, expression, assembly, and to not be deprived of citizenship. Under Article 25, general rules of international law "directly create rights and duties for the inhabitants of the federal

³⁶ Military Government, Germany, Supreme Commanders Area of Control Law No. 1 on the Abrogation of Nazi Law (undated) in Beate Ruhm von Oppen, ed., "Documents on Germany under Occupation 1945-1954" (London: Oxford University Press, 1955), p. 9.

³⁷ RGBl I (1934) p. 1269.

³⁸ "Reich Citizenship Law" RGBl I (1935) p. 1146 and the "Law for the Protection of German Blood and German Honor" RGBl I (1935) p. 1146.

³⁹ The Allied Control Council ordered the courts to reopen on the basis of the Court Organization Act of 1924 with the exception that there would be no multi-zonal final court of appeals or Supreme Court. Control Council Proclamation no 3 Fundamental Principles of Judicial Reform October 20, 1945 in *ibid.* pp. 82-84.

⁴⁰ International Institute for Democracy and Electoral Assistance, "Constitutional History of Germany," <http://constitutionnet.org/country/constitutional-history-germany> (accessed October 20, 2020).

⁴¹ Basic Law, art. 1(1), <https://www.bundesregierung.de/breg-en/chancellor/basic-law-470510> (accessed October 20, 2020).

territory.”⁴² Public reception of the 1949 Constitution was initially mixed, in part because it was developed under occupied control. Its effectiveness over time has however nurtured widespread support.⁴³

In addition to enshrining fundamental rights and democratic principles, Germany also enacted laws to repair harm from the Holocaust and deter conditions that can lead to atrocities. For example, Article 116 of the Basic Law restores citizenship on application to German citizens who were deprived of citizenship on political, racial, or religious grounds between January 30, 1933 and May 8, 1945, and to their descendants.⁴⁴ In practice, the administrative process for citizenship applications has been complex, with about 40 percent of applications rejected in 2017 and 2018.⁴⁵ Section 130 of the German Criminal Code criminalizes “incitement to hatred” against national, racial, or religious groups by calling for “violent or arbitrary measures against them, or which assault the human dignity of others by maliciously maligning or defaming” such groups.⁴⁶ The law also criminalizes Holocaust denial, or downplaying, glorifying, or justifying acts committed under National Socialism “in a manner capable of disturbing the public peace.”⁴⁷ In seeking to protect minorities, these provisions have also raised concerns about freedom of expression.⁴⁸ Section 46 of the Criminal Code stipulates that racist or xenophobic motives may be taken into account as an aggravating circumstance when determining the sentence for a crime.⁴⁹ In 2006, the General Equal Treatment Act was passed to prohibit discrimination on the basis of race, gender, religion, age, disability or sexual orientation in areas of employment, education, and commerce.⁵⁰ Its implementation is overseen by the Federal Anti-Discrimination Agency. Together, these legal and political reforms helped develop an order based on fundamental rights, nondiscrimination, rule of law, and democratic values which public officials are sworn to uphold.

Fact-Finding and Truth-Telling Efforts

Fact-finding and truth-telling commissions form a key component of transitional justice after mass atrocities. The *International Center for Transitional Justice* defines truth commissions as “nonjudicial, independent panels of inquiry typically set up to establish the

⁴² Ibid., art. 25.

⁴³ International Institute for Democracy and Electoral Assistance, “Constitutional History of Germany,” <http://constitutionnet.org/country/constitutional-history-germany> (accessed October 20, 2020).

⁴⁴ Basic Law, art. 116.

⁴⁵ “Descendants of Nazi Victims Continue Fight for German Citizenship,” Deutsche Welle (Feb. 12, 2020), <https://www.dw.com/en/descendants-of-nazi-victims-continue-fight-for-german-citizenship/a-52295031> (accessed October 20, 2020).

⁴⁶ German Criminal Code, Section 130(1), https://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html (accessed October 20, 2020).

⁴⁷ Ibid., Section 130(3)-(4).

⁴⁸ Article 19, “Germany: Responding to ‘Hate Speech,’ 2018 Country Report,” <https://www.article19.org/wp-content/uploads/2018/07/Germany-Responding-to-%E2%80%98hate-speech%E2%80%99-v3-WEB.pdf> (accessed October 20, 2020).

⁴⁹ Ibid., Section 46(2).

⁵⁰ General Act on Equal Treatment, Sections 1-2 (2006), http://www.gesetze-im-internet.de/englisch_agg/englisch_agg.html#p0012.

facts and context of serious violations of human rights.”⁵¹ These commissions usually produce documentary reports, provide victim support, and generate policy recommendations. The concept of transitional justice and the current understanding of truth commissions did not exist as such in the aftermath of the Holocaust. However, victim-focused and victim-founded institutions played similar investigatory and documentary roles, building on a longer tradition of humanitarian reports and documentation.⁵²

Writing history and documenting suffering is a key part of Jewish culture.⁵³ Even in the midst of genocide, Jews in very different circumstances throughout Europe sought to record in writing what was happening to them. Most famously, Anne Frank, who kept a diary of her life in hiding in Amsterdam, was keenly aware of her role as documentarian and worked to edit her diary for publication.⁵⁴ In Germany, Victor Klemperer, a Jewish convert to Protestantism lived openly in a “mixed marriage” for most of the Nazi era. He recorded life in extraordinary detail and was well aware of the historical value of his work.⁵⁵ In the Warsaw Ghetto, Chaim A. Kaplan smuggled his diary to safety prior to his own deportation and murder. His last diary entry reads: “If the hunters do not stop, and if I am caught, I am afraid my work will be in vain. I am constantly bothered by the thought: If my life ends, what will become of my diary?”⁵⁶ But despite Kaplan’s worries, his diary survived and remains a powerful and emotional account of life and death in the Warsaw Ghetto. Diaries were some of the earliest efforts to document victims’ experiences, Jewish lives, and Nazi crimes.

Jewish organizations created archives of materials with similar goals. In 1933, a German Jewish scholar named Dr. Alfred Wiener established what is now the Wiener Library to document Nazi anti-Jewish policies.⁵⁷ Wiener and his collection eventually relocated to London where the library remains today. Under much more dangerous circumstances, historian Emanuel Ringelblum and his team created the secret Oneg Shabbat archive to

⁵¹ “Truth Commissions,” International Center for Transitional Justice (2008), <https://www.ictj.org/sites/default/files/ICTJ-Global-Truth-Commissions-2008-English.pdf> (accessed May 29, 2020).

⁵² See for example, Keith David Watenpaugh, *Bread from Stones: The Middle East and the Making of Modern Humanitarianism* (Oakland: University of California Press, 2015) and Alexandra Garbarini, “Document Volumes and the Status of Victim Testimony in the Era of the First World War and Its Aftermath,” *Études arméniennes contemporaines* 5 (2015): pp. 113-138.

⁵³ Laura Jokusch, *Collect and Record!: Jewish Holocaust Documentation in Early Postwar Europe* (New York: Oxford University Press, 2012), p. 18.

⁵⁴ Her diary, first published in Dutch in 1947 and in German in 1950, and in English in 1952, became a famous record of the Holocaust. On Anne Frank, “Anne Frank: Biography,” Holocaust Encyclopedia, United States Holocaust Memorial Museum, <https://encyclopedia.ushmm.org/content/en/article/anne-frank-biography> (accessed May 29, 2020); “Anne Frank Diary,” Holocaust Encyclopedia, United States Holocaust Memorial Museum, <https://encyclopedia.ushmm.org/content/en/article/anne-frank-diary> (accessed May 29, 2020).

⁵⁵ Victor Klemperer, *I Will Bear Witness: A Diary of the Nazi Years*, 2 volumes (New York: Modern Library, 1999–2001).

⁵⁶ “Chaim Aron Kaplan (1880–1942),” Jewish Virtual Library, <https://www.jewishvirtuallibrary.org/kaplan-chaim-aron> (accessed May 29, 2020); Chaim A. Kaplan, *Scroll of Agony: The Warsaw Diary of Chaim A. Kaplan*, edited by Abraham I. Katsch (London: Hamish Hamilton, 1966).

⁵⁷ Jokusch, *Collect and Record*, 6.

chronicle life in the Warsaw Ghetto. Their goal was not only to prevent the Nazis from erasing Jewish history, but also to collect evidence for postwar justice.⁵⁸

Archival and documentary efforts accelerated after the end of World War II, almost always as grassroots, non-governmental, Jewish initiatives. For example, the YIVO Holocaust Archive was established in 1945,⁵⁹ one of numerous efforts to collect materials and survivor testimonies. In *Collect and Record!*, historian Laura Jokusch traces the early efforts on the part of Holocaust survivors “to chronicle, witness, and testify.”⁶⁰ Jokusch notes that their efforts were acts of commemoration, but also documentation. Some even saw themselves as explicitly continuing the clandestine wartime documentation projects. Many of the early archives and historical commissions subsequently dissolved and left their archival collections to Yad Vashem, Israel’s official memorial, archive, and museum (established in 1953).⁶¹

International non-governmental organizations also collected information on Nazi crimes and Jewish victims. Under the auspices of the Red Cross, the organization that subsequently became known as the International Tracing Service (ITS) sought to collect a wide variety of materials. Their mission was “tracing missing persons and collecting, classifying, preserving, and rendering accessible to governments and interested individuals the documents.”⁶² Today the ITS at Bad Arolsen includes 200 million digital images and serves as an important resource for individuals seeking information about their missing relatives and for scholars of the Holocaust.

Many victims (rightly) believed that they could not trust the German/Austrian criminal justice systems to take the initiative to collect evidence or try war criminals. Indeed, in the postwar decades, criminal justice actors (many of whom had served the Nazi state) had incentives to avoid investigation, documentation, and trials. They did not want their own crimes, or the crimes of their friends and family, to come to light. Some certainly continued to harbor prejudices against the victim groups. In the 1950s, German Jewish prosecutor Fritz Bauer worked tirelessly to overcome the obstruction and antisemitism of his criminal justice colleagues. His efforts resulted in the Frankfurt Auschwitz Trial, which began in 1963.⁶³

Victim-founded organizations managed to preserve documents that might otherwise have been buried, lost, or destroyed. Materials collected by non-governmental organizations

⁵⁸ “The Oneg Shabbat Archive,” Holocaust Encyclopedia, United States Holocaust Memorial Museum, <https://encyclopedia.ushmm.org/content/en/article/the-oneg-shabbat-archive> (accessed May 3, 2020).

⁵⁹ “Holocaust Archive,” YIVO Institute for Jewish Research, <https://yivo.org/Holocaust-Archive> (accessed May 29, 2020).

⁶⁰ Jokusch, *Collect and Record*, 4.

⁶¹ Jokusch, *Collect and Record*, 16.

⁶² Kate Brunelle, “A Brief Historical Evolution of the International Tracing Service (ITS): The Largest Collection of Holocaust Related Documents,” *SLIS Connecting* 3, no. 2 (2014), <https://aquila.usm.edu/cgi/viewcontent.cgi?article=1066&context=slisconnecting> (accessed May 29, 2020).

⁶³ “Auschwitz Trial Ensured that Germany Would Never Forget,” *Deutsche Welle* (Aug. 18, 2015), <https://www.dw.com/en/auschwitz-trial-ensured-that-germany-would-never-forget/a-18654790> (accessed October 20, 2020).

enabled the prosecution of war criminals. For instance, YIVO and Wiener Library materials were used in the Nuremberg Trials,⁶⁴ and Hermann Langbein and the International Auschwitz Committee helped in the prosecution of the Frankfurt Auschwitz Trials.⁶⁵ Holocaust survivor Simon Wiesenthal became famous as a Nazi hunter and sought to trace the whereabouts of prominent Nazis. Criminal justice actors were often the subject of investigations. In 1963, Wiesenthal succeeded in outing Viennese policeman Karl Silberbauer as the Gestapo agent who arrested Anne Frank.⁶⁶ He succeeded despite significant obstruction from the Austrian Ministry of the Interior and the Vienna Police Directorate, where Silberbauer had resumed his police career.

Documentation efforts continued throughout the twentieth century into the present. In the 1980s and 1990s, numerous projects to collect survivor testimonies began (for example, the Fortunoff Video Archive at Yale University in 1981 and the Shoah Visual History Foundation in 1994).⁶⁷ The United States Holocaust Memorial Museum was founded in 1980 and opened to the public in 1993. The Museum collects archival records, photographs, films, oral histories, and memoirs from all over the world (housed in the Library and Archives) and traces the fates of Holocaust victims and survivors (the Resource Center).⁶⁸

Twenty-first century efforts continue the work done by victims during and immediately after the Holocaust. Organizations and archives dedicated to research, documentation, victim support, and policy recommendations abound. Many are devoted to building collections, naming victims, and teaching history. “Because the looting of European Judaica by the Nazis has been understood in the popular imagination as part of the tragedy of the Holocaust...” writes historian Lisa Leff, “the postwar recuperation of these materials has been understood as part of the work of reconstruction and memorialization.”⁶⁹ Thus, although Holocaust organizations often frame their mission in terms of scholarship and memory as opposed to transitional justice, they can (and perhaps should) be understood as part of post-Holocaust fact-finding and truth-telling processes.

German Reparations for the Holocaust

Reparations aim to ‘repair’ or restore a victim to the position that he or she would have been in if the violations had not occurred, and may involve financial payments, the provision of social services, and an official acknowledgement or apology. Reparations aim

⁶⁴ “Holocaust Archive,” and “History & Library,” The Wiener Holocaust Library, <https://www.wienerlibrary.co.uk/Our-History> (accessed May 29, 2020).

⁶⁵ Rebecca Elizabeth Wittman, “The Wheels of Justice Turn Slowly: The Pretrial Investigations of the Frankfurt Auschwitz Trials 1963–65,” *Central European History* 35, no. 3 (2002): 355.

⁶⁶ Simon Wiesenthal and Joseph Wechsberg, *The Murders Among Us: The Simon Wiesenthal Memoirs* (New York: Bantam, 1967), 181.

⁶⁷ Jokusch, *Collect and Record*, 10.

⁶⁸ For the Library and Archives, see <https://www.ushmm.org/collections/the-museums-collections/about>; for the Resource Center, see <https://www.ushmm.org/remember/resources-holocaust-survivors-victims>

⁶⁹ Lisa Leff, *The Archive Thief: The Man Who Salvaged French Jewish History in the Wake of the Holocaust* (New York: Oxford University Press, 2015), 6.

not only to help victims to rebuild their lives, they may also hold important symbolic value for victims and societies.⁷⁰

The first request for reparations from Germany for crimes committed during the Holocaust was made by Chaim Weizman on September 20, 1945. Speaking on behalf of the Jewish Agency for Palestine, Weizman appealed to the victorious Allied powers (the United States, France, the United Kingdom and the Soviet Union) to demand from Germany reparations and restitution because Nazi Germany's "...aim was not conquest and enslavement, but the complete physical extermination of the Jews, the utter destruction of their spiritual and religious heritage, and the confiscation of all their material possessions."⁷¹ Weizman made a powerful moral argument that the property confiscated from Jewish victims should not fall to the state which had committed the crime. He insisted that Jewish-owned property belonged to the heirs of the victims, if they could be established or to representatives of the Jewish people as a whole, if specific heirs could not be determined.⁷²

The Federal Republic of Germany first declared its readiness to pay reparations for material losses in the Holocaust in September 1951. Konrad Adenauer, then German Chancellor, agreed to compensate the state of Israel for material damages and to further negotiations with both Israel and representatives of Jewish communities around the world for compensation for material losses suffered by Jews in the Holocaust. The following month, the Jewish community established the Conference on Jewish Material Claims against Germany (Claims Conference) in New York, to help negotiate individual claims for compensation with Germany.

After six months of direct negotiations the parties agreed on September 10, 1952, to German reparation payments in the amount of some \$845 million to Israel paid out over 14 years with an initial payment of \$100 million designated to the Claims Conference for distribution to individual survivors with claims against Germany.

The Israeli parliament fiercely debated whether to accept reparations from Germany, some insisting that the money from Germany was blood money. They argued that Germany was attempting to buy forgiveness for the Holocaust as a way to improve the international standing of Germany. Opponents pointed out that German "good will" was further undermined by Germany's failure to bring Nazi war criminals to trial after the war. Adenauer responded by openly declaring before parliament in Germany German responsibility for "unspeakable crimes committed in the name of the German people."⁷³ For

⁷⁰ "Transitional Justice Tools: Reparations," United States Holocaust Memorial Museum, <https://www.ushmm.org/genocide-prevention/simon-skjodt-center/work/ferencz-international-justice-initiative/transitional-justice/transitional-justice-tools-reparations>

⁷¹ Foreign Relations of the United States: Diplomatic Papers, 1945, European Advisory Commission, Austria, Germany, Volume III, Document 989.

⁷² See point 6 Ibid.

⁷³ Adenauer said, "The Federal Government and the large majority of the German people are aware of the unspeakable suffering which, under the Nazi regime, was brought upon the Jews in Germany and in the occupied territories. [...] In the name of the German people, unspeakable crimes were committed which call for moral and material restitution." See Federal Foreign Office, Compensation for National Socialist Injustice at <https://www.auswaertiges-amt.de/en/aussenpolitik/themen/internatrecht/entschaedigung-node>

the first time, a German Chancellor publicly accepted German responsibility for the Holocaust. The Israeli parliament agreed to accept reparations from Germany by a slim majority.

Since 1956, the original reparations agreement has been greatly expanded, and over the years, Germany has paid billions of dollars to the victims of the Holocaust. The German government continues to support victims of National Socialist injustice with state benefits totaling in excess of one billion euros annually.⁷⁴ In 2012, representatives of the Claims Conference reflected that over the decades, the compensation program “was always about recognition We survivors and the Germans of today are together united. Both of us do not want our children’s past to be our children’s future.”⁷⁵

Lustration and Vetting

One of the most daunting tasks in postwar Germany and Austria was denazification—the removal of Nazis and Nazi ideas from society and government. Although the term is specific to the post-World War II era, denazification involved processes that are much more common: lustration and vetting. Within the transitional justice framework, lustration and vetting are intended to promote public confidence in institutions in the aftermath of a conflict.⁷⁶ Lustration prohibits certain groups of people (those tainted by membership in particular organizations) from serving in the government. In the case of former Nazis, this included to varying degrees members of the SS, the Nazi Party (NSDAP), the SD, and the Gestapo. Vetting is a process used to determine whether or not an individual is eligible to serve in the government. Ideally, Allied vetting procedures (which used standardized questionnaires called *Fragebogen*) would have prevented those implicated in significant criminal Nazi activities from holding important government positions. The Allied powers hoped to uniformly implement lustration and vetting processes, but in practice denazification was chaotic, incomplete, and inconsistent.⁷⁷ Eventually, the German and Austrian governments took over responsibility for these procedures, and denazification receded into the background as other economic and political priorities took precedent.

The denazification of the criminal justice system was especially important and quite complicated.⁷⁸ What level of affiliation with Nazism should make someone ineligible? Many

⁷⁴ Ibid. For additional information on the efforts of non-Jewish victim groups to receive reparations from Germany, see for example Claire Greenstein’s study of advocacy by Romani German survivors: “Patterned Payments: Explaining Victim Group Variation in West German Reparations Policy,” *International Journal of Transitional Justice*, Volume 14, Issue 2, July 2020, Pages 381–400, <https://doi.org/10.1093/ijtj/ijaa009>

⁷⁵ Melissa Eddy, “For 60th Year, Germany Honors Duty to Pay Holocaust Victims,” *New York Times* (Nov. 17, 2012), <https://www.nytimes.com/2012/11/18/world/europe/for-60th-year-germany-honors-duty-to-pay-holocaust-victims.html> (last accessed Oct. 20, 2020).

⁷⁶ “Transitional Justice Tools: Guarantees of Non-Recurrence,” United States Holocaust Memorial Museum, <https://www.ushmm.org/genocide-prevention/simon-skjodt-center/work/ferencz-international-justice-initiative/transitional-justice/guarantees-of-non-recurrence>

⁷⁷ Sanya Romeike, “Transitional Justice in Germany after 1945 and after 1990,” *Occasional Paper No. 1*, International Nuremberg Principles Academy (2016): 22–27.

⁷⁸ Guus Meershoek, “Reviewed Work: *Nachkriegspolizei. Sicherheit und Ordnung in Ost- und Westdeutschland 1945–1969* [Forum Zeitgeschichte, Band 10] by Gerhard Fürmetz, Herbert Reinke, Klaus Weinbauer,” *Crime, Historie & Sociétés/ Crime, History & Society* 6, no. 2 (2002): 136–139.

jurists had joined the Nazi Party and/or implemented Nazi policies; thus, it was difficult to find non-affiliated personnel to staff the post-war legal system. Similarly, large numbers of policemen had been involved in Nazi crimes and joined the SS and/or the Nazi Party. If all judges, lawyers, and policemen involved in the Nazi state were excluded, who would be left to staff the criminal justice system? Many of these tasks required legal training, forensic knowledge, investigatory skills, and experience. The Allied powers and later the German and Austrian governments had to carefully weigh their need for personnel and expertise against the moral imperative to denazify.

Despite the fact that they attempted to implement standardized procedures, Allied decision-makers navigated the contradictions and challenges of denazifying the criminal justice system differently. Thus, the specifics of lustration and vetting varied significantly between occupation zones and countries. In general, initial statements and intentions of denazification were much more restrictive than the policies that were subsequently implemented.⁷⁹ Due to a variety of factors, most importantly the developing Cold War, the vast majority of policemen, judges and prosecutors who served the Nazi state reintegrated into German society, and, in many cases, continued their careers.

In addition to lower level personnel cleared by the denazification process, at least some Nazi war criminals managed to pass through lustration and vetting and return to public service. They often did so by misrepresenting their war time activities. The case of Bernhard Fischer-Schweder is particularly noteworthy. As the Police Director in Memel (Klaipėda), Fischer-Schweder had authorized and participated in mass shootings of Jews in the summer of 1941. By using a slight variation of his last name, he managed to avoid denazification and the justice system for almost a decade after the war. He even held a position as director of a refugee camp. But eventually his past crimes caught up with him. Along with nine other Security Police and Einsatzkommando men, Fischer-Schweder was tried for the murder of thousands of civilians at the Ulm Einsatzkommando Trial in 1958.⁸⁰

For decades the myth of 1945 as the *Stunde Null* (zero hour) dominated German and Austrian memory. By emphasizing a sharp break with the Nazi past, postwar governments in West Germany, East Germany, and Austria could form new identities, rejoin the international community, and take sides in the Cold War. An emphasis on Germans and

⁷⁹ See for example, Devin O. Pendas, "Retroactive Law and Proactive Justice: Debating Crimes against Humanity in Germany, 1945–1950," *Central European History* 43 (2010): 433–34; Edith Raim, *Nazi Crimes Against Jews and German Post-War Justice: The West German Judicial System During Allied Occupation (1945–1949)* (Berlin: De Gruyter Oldenbourg, 2015); Jeffrey Scott Gaab "Zusammenbruch und Wiederaufbau": The Restoration of Justice in Bavaria, 1945–1949" (PhD Dissertation, State University of New York at Stony Brook, 1992); Curt Garner, "Public Service Personnel in West Germany in the 1950s : Controversial Policy Decisions and Their Effects on Social Composition, Gender Structure, and the Role of Former Nazis," *Journal of Social History* 29, no. 1 (1995): 25–80; Klaus Weinhauer, "The Modernization of West German Police: Between the Nazi Past and the Weimar Tradition," *Coping with the Nazi Past: West German Debates on Nazism and Generational Conflict, 1955–1975* (New York: Berghahn Books, 2007); Andrew Szanajda, *The Restoration of Justice in Postwar Hesse, 1945–1949* (Lanham: Lexington Books, 2007).

⁸⁰ Patrick Tobin, "No Time for 'Old Fighters': Postwar West Germany and the Origins of the 1958 Ulm Einsatzkommando Trial," *Central European History* 44, no. 4 (2011): 684–710.

Austrians as *victims*—of Nazi manipulation, of indiscriminate aerial warfare, of Soviet brutality against prisoners of war, and of expulsions from Eastern Europe—dominated the public sphere. Government and private institutions emphasized that lustration and vetting had been entirely successful and that the postwar governments were “Nazirein” (free of Nazis). But in recent decades, scholars have demonstrated that in fact there were extensive continuities in policy and personnel.⁸¹

Memorialization Efforts after the Holocaust

Memorialization recognizes and preserves the memory of past atrocities.⁸² It enables communities to mourn the dead, acknowledge the past, and educate the public. In doing so, memorialization efforts can help to support victims, counter denial, contribute to historical records and research, promote reconciliation, and prevent recurrence.

Memorialization 1945–1978

In the aftermath of the Holocaust, Jews throughout Europe and the world sought to memorialize the dead. This process took individual, communal, and official forms, but at all levels in the immediate postwar decades it was primarily a Jewish endeavor.⁸³ Many early initiatives drew upon the Jewish culture of mourning to make sense of catastrophic loss. They often included symbolic graves and written accounts and testimonies.

On the individual level, survivors sought to memorialize their loved ones who had died by telling their story in memoirs or interviews. These sometimes coincided with communal projects, which sought to document survivor voices, list victims, and tell the history of the Holocaust. For example, in the U.S. Zone of Germany, Jews founded the Central Historical Commission of the Central Committee of the Liberated Jews. Through this organization they interviewed survivors as a way of memorializing the dead, but also as potential evidence for war crimes trials (see section on Fact-Finding).⁸⁴

Communally, events and projects dedicated to collective memory and mourning proliferated in Jewish spaces intended for an internal, Jewish audience. In Displaced Persons camps, surviving Jews held memorial ceremonies, published newspaper articles, and erected tombstones and memorial stones.⁸⁵ Surviving remnants of Jewish communities in Europe, such as that in Northern Transylvania, also wrote newspaper articles about their fates,

⁸¹ Robert G. Moeller, “War Stories: The Search for a Usable Past in the Federal Republic of Germany,” *The American Historical Review* 101, no. 4 (1996): 1008–1048; Robert G. Moeller, *War Stories: The Search for a Usable Past in the Federal Republic of Germany* (London: University of California Press, 2003); Jeffrey Herf, *Divided Memory: The Nazi Past in the Two Germanys* (Cambridge: Harvard University Press, 1999).

⁸² Scott Straus, *Fundamentals of Genocide and Mass Atrocity Prevention* (2016), p. 226.

<https://www.ushmm.org/m/pdfs/Fundamentals-of-Genocide-and-Mass-Atrocity-Prevention.pdf>.

⁸³ Rita Horváth, “The Role of the Survivors in the Remembrance of the Holocaust: Memorial monuments and Yizkor Books,” *The Routledge History of the Holocaust* (New York: Routledge, 2010).

⁸⁴ Margarete Myers Feinstein, “Jewish Women Survivors in the Displaced Camps of Occupied Germany: Transmitters of the Past, Caretakers of the Present, and Builders of the Future,” *Shofar: An Interdisciplinary Journal of Jewish Studies* 24, no. 4 (2006): 76.

⁸⁵ “The Return to Life in Displaced Persons Camps, 1945–1946: A Visual Retrospective,” Yad Vashem, https://www.yadvashem.org/yv/en/exhibitions/dp_camps/index.asp (accessed May 29, 2020).

published memoirs and literary works about their experiences, and set up monuments and memorials.⁸⁶ In the synagogue of Gheorgheni (now Romania, but under the Nazis, Hungary) a memorial set up in 1949 read: “We were 986 / We remained 92,” and listed the names of the town’s 894 Holocaust victims.⁸⁷ In Europe, memorials to Holocaust victims typically appeared in synagogues and Jewish cemeteries. In the 1950s, the Pinkas Synagogue in Prague became a Holocaust memorial, also listing the names of the 78,000 murdered Bohemian and Moravian Jews.⁸⁸

Yizkor Books (memorial books) were particularly important communal memorialization projects. These books used surviving photographs, diaries, documents, and testimonies to reconstruct the stories of the destroyed Jewish communities (mostly in Eastern Europe).⁸⁹ These were diasporic projects that involved Jews scattered throughout the world who had previously called Eastern Europe home. Most were written in Yiddish or Hebrew, sometimes with translation into a non-Jewish language. Early Yizkor books appeared in the 1940s, but communities continued to publish them throughout the twentieth century.

Diasporic communities with little or no direct experience of Nazism also memorialized Holocaust victims in the early postwar years.⁹⁰ Unsurprisingly, Palestine/Israel was a key site of memorialization. Memorials and remembrance days occurred there with regularity. Yad Vashem, Israel’s official memorial, opened in 1953. In 1959, Israel established by law the official Yom Hashoah Remembrance Day to be held yearly on 27 Nisan.⁹¹ Outside of Israel, official monuments in public spaces were relatively rare in this early period because of ongoing antisemitism and the Cold War. In Eastern Europe, the brutality of German occupation, the large scale of local collaboration, national independence struggles, and the ideology of Soviet communism combined to make memorialization particularly fraught. In Western Europe and West Germany, the desire to move forward and forget the past made public memorialization a low-level priority.

Memorialization 1978–Present

In the last decades of the twentieth century and the first decades of the twenty-first century, official Holocaust memorials became commonplace throughout the West. These public memorials commemorate the dead, but also seek to teach about the dangers of Nazism, the path to authoritarianism, and the process of genocide. For example, the United States

⁸⁶ Zoltán Tibori-Szabó, “Memorialization of the Holocaust in Transylvania during the early post-war period,” *Southeast European and Black Sea Studies* (2017): 1–19.

⁸⁷ Tibori-Szabó, “Memorialization of the Holocaust in Transylvania,” 8–9.

⁸⁸ “Pinkas Synagogue,” Jewish Museum in Prague, <https://www.jewishmuseum.cz/en/explore/sites/pinkas-synagogue/> (accessed May 29, 2020).

⁸⁹ Rosemary Horowitz, ed., *Memorial Books of Eastern European Jewry: Essays on the History and Meanings of Yizker Volumes* (Jefferson, NC: MCFarland, 2011).

⁹⁰ For more information, see Eliyana R. Adler and Sheila E. Jelen, *Reconstructing the Old Country: American Jewry in the Post-Holocaust Decades* (Detroit: Wayne State University Press, 2017); Hasia R. Diner, *We Remember With Reverence and Love: American Jews and the Myth of Silence After the Holocaust, 1945–1962* (New York: New York University Press, 2010).

⁹¹ “The History of Holocaust Remembrance Day,” Haaretz (April 27, 2014), <https://www.haaretz.com/the-history-of-holocaust-remembrance-day-1.5246317> (accessed May 29, 2020).

Holocaust Memorial Museum states that it “provides a powerful lesson in the fragility of freedom, the myth of progress, and the need for vigilance in preserving democratic values.”⁹² As part of this mission of memorialization through education, the Museum runs programming for various professionals—including law enforcement, judges, members of the military, and civil servants—to generate reflection on their role in a democracy.

The varying goals of this second wave of Holocaust memorials have been shaped by the surrounding political environments and societies in which they are built. Consequently, Holocaust memorials have often been the subject of debate and controversy. In Communist states, Jewish victims of the Holocaust were denied particularity as victims; instead, they were subsumed under the category “victims of fascism.” Only since the fall of the Soviet Union have public memorials in Eastern Europe begun to focus on Jewish victims. Controversy is not unique to Europe; the creation of the United States Holocaust Memorial Museum, now a well-established institution, generated significant debate about who should be memorialized and how.⁹³ At times, memorials have even been used as tools to promote distortions or a rewriting of Holocaust history. For example, the “Memorial to the Victims of the German Invasion” erected in Budapest, Hungary in 2014 portrays Hungary as an innocent victim of Nazi Germany, ignoring the complicity of the Hungarian state and local population in the Holocaust and persecution of other groups such as the Roma. This memorial has inspired activists to erect a “living memorial” across the street to showcase Hungary’s complicity in the Holocaust and honor the victims through the display of photographs, documents, memorial stones, etc.⁹⁴

Memorialization in Germany is particularly important. There artists have experimented with counter-memorials designed not only to commemorate the dead, but also to remind the living of Nazi crimes. One famous counter-memorial, the Aschrott Fountain in Kassel (1987), inverted the fountain that had previously stood in the town square, placing it underground. Nazis had destroyed the fountain in 1939 because it had been donated by one of Kassel’s Jewish citizens.⁹⁵ Horst Hoheisel, the artist, said “The sunken fountain is not the memorial at all. It is only history turned into a pedestal, an invitation to passersby who stand upon it to search for the memorial in their own heads. For only there is the memorial to be found.”⁹⁶

One of the most important German memorials is the Stolperstein (stumbling block) project begun by artist Gunter Demnig in 1992.⁹⁷ Tens of thousands of stolpersteine memorialize

⁹² “About the Museum,” United States Holocaust Memorial Museum, <https://www.ushmm.org/information/about-the-museum> (accessed May 29, 2020).

⁹³ Edward T. Linenthal, *Preserving Memory: The Struggle to Create America’s Holocaust Museum* (New York: Columbia University Press, 2001).

⁹⁴ “German occupation memorial completed under cover of darkness,” *The Budapest Beacon* (July 21, 2014), <https://budapestbeacon.com/german-occupation-memorial-completed-under-cover-of-darkness/>

⁹⁵ James E. Young “Memory and Counter-Memory,” *Harvard Design Magazine* no. 9 (1999), <http://www.harvarddesignmagazine.org/issues/9/memory-and-counter-memory> (accessed May 4, 2020).

⁹⁶ Quoted in Young, “Memory and Counter-Memory.”

⁹⁷ The Stolpersteine official website has detailed information, it is online at: <http://www.stolpersteine.eu/en/home/> (accessed May 29, 2020); “Germany: 75,000th ‘Stolperstein’ for Holocaust victims laid,” *Deutsche Welle*, <https://www.dw.com/en/germany-75000th-stolperstein-for-holocaust-victims-laid/a-51827506> (accessed May 29, 2020).

victims in more than 1,200 towns and cities in Germany, Austria, Belgium, Croatia, the Czech Republic, Finland, France, Germany, Greece, Italy, Hungary, Lithuania, Luxembourg, Moldova, the Netherlands, Norway, Poland, Romania, Russia, Slovakia, Slovenia, Spain, Switzerland and Ukraine. Each Stolperstein commemorates the life of one person, listing their name, date of birth, and fate. Because they are placed at the victim's last known residence, the memorial stones are scattered throughout towns and cities. This integrates them into European life.

Another example is the Bayerische Platz Memorial (1993): posted signs throughout the Bavarian Quarter in Schöneberg featuring commonplace images on one side, and on the back the text of Nazi anti-Jewish laws. More than 6,000 Jewish Berliners were deported from Schöneberg to their deaths.⁹⁸ When the memorial first went up, one resident called the police reporting the signs as antisemitic activity. In response, policemen temporarily took down several of the exhibitions.⁹⁹ “Our memorial is uncomfortable,” says artist Renata Stih.¹⁰⁰ And that is the point of many of the newer memorials: not just to remember the victims, but also to force German society to reckon with its past. The most prominent German memorial is the Memorial to the Murdered Jews of Europe in Berlin, a popular tourist site that has ignited debate over how visitors should (or should not) interact with the memorial.¹⁰¹

Many Nazi perpetrator sites (including former concentration camps) have become museums dedicated to teaching the public about the horrors and crimes of Nazis. Germany also has many documentation centers for teaching about the history of Nazism. Particularly notable for criminal justice actors are the Wannsee House in Berlin and the Villa ten Hompel in Münster. The Wannsee House museum (opened 1992), located at the site of the infamous Wannsee conference, has a permanent exhibit on the Holocaust.¹⁰² The Villa ten Hompel, an Order Police headquarters, now has a museum (established 1999) that police groups regularly visit.¹⁰³

Memorialization of the Holocaust continues to play an important role in the world and the international community. In 2005, the United Nations passed a resolution declaring January 27 International Holocaust Remembrance Day. January 27 is the anniversary of the liberation of Auschwitz-Birkenau concentration camp, the largest camp of its kind.

⁹⁸ “Wir waren Nachbarn (We Were Neighbors): Exhibition at Schöneberg City Hall,”

<http://www.wirwarennachbarn.de/index.php/ueber-uns.html> (accessed May 29, 2020).

⁹⁹ Ian Johnson, “Jews Aren’t Allowed to Use Phones’: Berlin’s Most Unsettling Memorial,” *New York Review of Books* (June 15, 2013), <https://www.nybooks.com/daily/2013/06/15/jews-arent-allowed-use-telephones-berlin-memorial/> (accessed May 29, 2020).

¹⁰⁰ Johnson, “Jews Aren’t Allowed to Use Phones.”

¹⁰¹ For one of many examples, see Anthony Faiola, “Berlin’s Holocaust memorial is ‘not a place for fun selfies,’” *Washington Post* (January 29, 2017), https://www.washingtonpost.com/world/europe/berlins-holocaust-memorial-is-not-a-place-for-fun-selfies/2017/01/27/2e5b6324-e1ac-11e6-a419-eefe8eff0835_story.html (accessed May 29, 2020). For a scholarly perspective, see Daniel Reynolds, “Consumers or Witnesses? Holocaust Tourists and the Problem of Authenticity,” *Journal of Consumer Culture* 16, no. 2 (2016): 334–353.

¹⁰² Gedenk- und Bildungsstätte Haus der Wannsee-Konferenz, <https://www.ghwk.de/de> (accessed May 29, 2020).

¹⁰³ Villa Ten Hompel website: <https://www.stadt-muenster.de/en/villa-ten-hompel/welcome.html> (accessed May 29, 2020).

Conclusion

Studying efforts at justice and accountability after the Holocaust raises a number of considerations and questions for police, prosecutors, judges, and others working on atrocity prevention in the criminal justice sector today. On the one hand, the collective consciousness of the Holocaust formed by the Nuremberg trials, other subsequent trials, and legal reforms; victim efforts at documentation; and memorialization efforts have shaped German society and serve an important atrocity prevention function. On the other hand, the example of Germany after the Holocaust demonstrates that these efforts are often flawed—not every perpetrator can be tried in court; lustration efforts are often complicated and imperfect, sometimes allowing perpetrators to continue operating undisturbed in the very institutions tasked with justice efforts; and efforts to provide reparations and other remedies to victims can sometimes take decades. Assessing responsibility for mass atrocities can be complex when such a large segment of society is implicated, making it necessary for accountability efforts to extend beyond criminal liability. In addition, while some tools clearly require the involvement of the criminal justice system (such as trials), efforts that go beyond the limits of criminal justice raise the question of who bears the authority and responsibility to pursue accountability and reconciliation in the wake of mass atrocities. Cultural factors and the political environment can influence decisions on which transitional justice tools to pursue and how. Accordingly, as in other cases of transitional justice, defining success or overall impact is difficult.¹⁰⁴ Nonetheless, for criminal justice actors working in the atrocity prevention space, it is important to understand the full range of transitional justice tools—both those that might directly implicate the criminal justice system, and those that shape the larger society around them. These themes, along with examples from other mass atrocities that have occurred since the Holocaust, are incorporated into the curriculum in the day 4 module, “Redress after Mass Atrocities”.

¹⁰⁴ See, for example, Sanya Romeike, “Transitional Justice in Germany after 1945 and after 1990,” Occasional Paper No. 1, International Nuremberg Principles Academy (2016): 65, https://www.nurembergacademy.org/fileadmin/media/pdf/news/Transitional_Justice_in_Germany.pdf