

Investigating, Punishing, Agitating

Nazi Perpetrator Trials
in the Eastern Bloc

Edited by
Katharina Rauschenberger,
Joachim von Puttkamer
and Sybille Steinbacher



Wallstein

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Contents

<i>Katharina Rauschenberger, Joachim von Puttkamer, Sybille Steinbacher</i>	
Introduction	7
<i>Mary Fulbrook</i>	
Complicity and the Holocaust in Eastern Europe Confrontations with a Compromised Past	18
<i>Jan Tomasz Gross</i>	
Jewish Life in Eastern Europe after 1945 National Differences and International Similarities	37
<i>András Kovács</i>	
»This is not a Jewish question; this is a question of fascism and anti-fascism« The Eichmann Case and the Hungarian Socialist Workers' Party	50
<i>Máté Zombory</i>	
Holocaust Historian or Anti-fascist Nazi Hunter? Jenő Lévai's Comeback at the End of the 1950s	58
<i>Hermann Wentker</i>	
Trials of Nazi Perpetrators in the GDR in the 1960s How Important Was the Intra-German Context?	78
<i>Lorena De Vita</i>	
The Eichmann Trial as a Warsaw Pact Concern? The View from East Berlin	92
<i>Katharina Rauschenberger</i>	
Friedrich Karl Kaul in Jerusalem and After Trials in the Anti-fascist Campaigns	114
<i>Audrey Kichelewski</i>	
Local Collaborators on Trial A Transnational Case Study in 1960s Poland	134

<i>Paulina Gulińska-Jurgiel</i>	
The Second Wave of the Investigation and Prosecution of Nazi Crimes in the 1960s The Case of Poland	153
<i>Michael Kraus</i>	
Ota Kraus and Erich Kulka – Contending with the Holocaust »To unmask what has happened here, so that it can never again be repeated!«	172
<i>Jan Lániček</i>	
The Cold War and Post-Holocaust Justice Czechoslovakia during late Stalinism	194
<i>Vojtěch Kyncl</i>	
From the Eichmann Case to the Malloth Trial The Prosecution of Nazi War Criminals in Czechoslovakia (1965-2005)	213
<i>Ilya A. Altman and Christina Winkler</i>	
Some Other Days in the Life of Ivan Denisovich Soviet Justice and the Perpetrators of the Holocaust	229
<i>David Alan Rich</i>	
The Foot Soldiers' Final Justice »Aktion Reinhard« Camp Guards' Soviet Trials, 1960-1970	246
<i>Gintarė Malinauskaitė</i>	
Holocaust and Soviet War Crimes Trials in the Cold War Context The Case of Soviet Lithuania in the 1960s	263
Editors and Contributors	281
Index of Names	283
Index of Places	288

Katharina Rauschenberger,
Joachim von Puttkamer, Sybille Steinbacher

Introduction

Like hardly any other subject, discourse on the Holocaust became a central aspect in the ideological debate during the Cold War. This concerned the judicial handling of the events in a particular manner. As early as in the Moscow Declaration in 1943, the Allies had agreed that the crimes committed in the Nazi-occupied territories had to be prosecuted by a court of law. After the International Military Tribunal in Nuremberg, the victorious powers drifted apart ideologically, and the subsequent Nuremberg trials were conducted solely by the American military administration. In the 1940s, however, to some extent even before the war ended, numerous trials against Nazi functionaries took place in the formerly occupied Eastern European countries.¹ These efforts flagged in both the East and the West in the 1950s. The large-scale general amnesty in the Soviet Union had consequences for the communist satellite states. This corresponded in the West to the Amnesty Act in the Federal Republic of Germany.² Following a short, intensive phase of prosecutions after 1945, starting in the 1950s, almost all European countries in the East and the West de-

- 1 On the early Nazi trials in Eastern Europe, see Tanja Pentec: *Local Collaborators on Trial. Soviet War Crimes Trials under Stalin (1943-1953)*, Heidelberg 2015; Gabriel N. Finder, Alexander V. Prusin: *Justice Behind the Iron Curtain. Nazis on Trial in Communist Poland*, Toronto 2018; Andrew Kornbluth: *The August Trials. The Holocaust and Postwar Justice in Poland*, Cambridge/Massachusetts 2021; Katarzyna Person: *Rehabilitation of Individuals Suspected of Collaboration. The Jewish Civic Court under the Central Committee of Jews in Poland 1946-1950*, in: Eric Le Bourhis, Irina Tcherneva, Vanessa Voisin (eds.): *Seeking Accountability for Nazi and War Crimes in East and Central Europe. A People's Justice?*, Rochester/New York 2022, pp. 261-282; Magnus Brechtken, Władysław Bułhak, Jürgen Zarusky (eds.): *Political and Transitional Justice in Germany, Poland and the Soviet Union from the 1930s to the 1950s*, Göttingen 2019; Laura Jockusch, Andreas Kraft, Kim Wünschmann (eds.): *Revenge, Retribution, Reconciliation. Justice and Emotions between Conflict and Mediation*, Jerusalem 2017; Regina Fritz: *Eine frühe Dokumentation des Holocaust in Ungarn. Die »Untersuchungskommission zur Erforschung und Bekanntmachung der von den Nationalsozialisten und Pfeilkreuzlern verübten Verbrechen« (1945)*, in: *Zeithistorische Forschungen* 14 (2017), pp. 352-368; Andreas Weigelt, Klaus-Dieter Müller, Thomas Saarschmidt, Mike Schmeitzner (eds.): *Todesurteile sowjetischer Militärtribunale gegen Deutsche (1944-1947). Eine historisch-biographische Studie*, Göttingen 2015.
- 2 Manfred Görtemaker, Christoph Safferling: *Die Akte Rosenberg. Das Bundesministerium der Justiz und die NS-Zeit*, Munich 2016, pp. 183-190. Norbert Frei: *Vergan-*

volved into integrating incriminated Nazis into post-war societies rather than holding them accountable. That changed in the 1960s on both sides of the Iron Curtain. In the post-Stalinist phase – a period of political thaw and increased openness in the Eastern bloc countries – the number of prosecutions of Nazi crimes not only increased once again, but there was also a tendency toward judicial professionalisation.³ The present volume is interested in this phase with respect to the question of whether or not against this background a serious examination of the Holocaust ever really took place within a legal framework. Did the courts truly make an effort to determine what actually happened?

The »dialectic relationship between the Cold War and the memory of the Holocaust«⁴ is apparent in the fact that the East-West conflict promoted the judicial prosecution of the crimes, which allowed for cross-system co-operation, while at the same time, the ideological rift between »the West« and »the East« also blocked criminal cases. Both can be understood in very concrete terms: On the one hand, documents and witnesses were in fact exchanged across the borders of the Iron Curtain; on the other hand, however, the ambitious investigations by the respective camps led to certain criminal proceedings precisely not being carried out. It is nevertheless possible to speak of a second wave of Nazi trials, not only for West Germany but also for Eastern Europe. Thus, the Cold War had a great influence on the history of the Nazi trials, but this happened in actions that to some extent were uncoordinated and also seemingly contradictory.

A significant driving force behind the so-called second wave of Nazi trials in Eastern Europe was the founding of the Central Office of the Land Judicial Authorities for the Investigation of National Socialist Crimes in Ludwigsburg, West Germany. This institution's task was to aid West German public prosecution offices in conducting systematic criminal investigations of Nazi crimes, precisely those committed in Eastern European countries. The Central Office actively contacted the investigative authorities in the Eastern European countries, requesting legal assistance from the public prosecutors, documentation offices and archives, although this was not yet formally regulated or even intended beyond the borders of the Iron Curtain. This put the idea on the agenda of the judicial authorities in the countries contacted, which to some extent were willing to support the West German investigations.

genheitspolitik. Die Anfänge der Bundesrepublik und die NS-Vergangenheit, Munich 1996.

- 3 Eric Le Bourhis, Irina Tcherneva, Vanessa Voisin: Introduction, in: idem (eds.): Seeking Accountability, p. 12.
- 4 Jan Gerber, Philipp Graf, Anna Pollmann (eds.): Geschichtsoptimismus und Katastrophenbewusstsein. Europa nach dem Holocaust, Göttingen 2022, p. 14.

When Adolf Eichmann was abducted in Argentina and brought to Israel, this started the preparation in Jerusalem for the trial for Nazi crimes that – after the Nuremberg Trials – was most followed worldwide. Here it seemed essential to the countries of the Warsaw Pact to achieve a procedure that was co-ordinated and agreed upon. The international nature of the Eichmann trial, and even just the question as to whether the countries of the Eastern bloc that were most strongly affected by the deportations organised by Eichmann should support his extradition, had an immediate impact on the significance of these countries in an international context.

Furthermore, the imminent expiration of West Germany's statute of limitations for Nazi crimes affected the countries impacted by the crimes in a particular way – different from, for example, East Germany. Through their individual investigations and the securing of documents, they spurred the West German authorities to take action. In some cases, therefore, certain Eastern European countries helped push forward the investigation proceedings.

The different conditions in the various nation states of Eastern and East Central Europe, despite the concurrent necessity to create or at least demonstrate unity within the socialist camp, make up the point of departure of this volume. It focusses on the relations between the state-socialist countries. A view toward the West obviously always played a role in what is discussed in the individual essays. The focus, however, is on the question of specific national and local aspects in the legal prosecution and on the collaboration or competition between the bloc countries. Recent research approaches present many ideas.

The historiography on the court proceedings against Nazi criminals in Eastern Europe increased from the 2000s onwards. This confirms the impression that these proceedings did not allow an authentic view of the work of the judiciary or of the public's acceptance of the trials, as they did not take place in accordance with the rule of law and were choreographed by the socialist parties of the respective countries and the state security authorities. Especially with an eye towards East Germany, but also regarding the neighbouring Soviet satellite states, it has been assumed that Nazi and war crimes trials were planned in connection with political campaigns and were instrumentalised. The reciprocal dynamics, especially between East and West Germany, might even have intensified this.⁵

5 Annette Weinke: *Die Verfolgung von NS-Tätern im geteilten Deutschland. Vergangenheitsbewältigung 1949-1969 oder: eine deutsch-deutsche Beziehungsgeschichte im kalten Krieg*, Paderborn et al. 2002; Hermann Wentker: *Die juristische Ahndung von NS-Verbrechen in der Sowjetischen Besatzungszone und in der DDR*, in: *Kritische Justiz* 35 (2002), pp. 60-78; Henry Leide: *NS-Verbrecher und Staatssicherheit. Die geheime Vergangenheitspolitik der DDR*, Göttingen 2005; idem: *Auschwitz*

That is certainly a fitting basic description. However, the question remains how uniform this picture was. Was there really a single prevailing pattern of delegitimising the Western countries that was underlying the trials? For the comparative treatment, trials in five Eastern European countries will be taken into account here. The examination has been limited to Hungary, East Germany, Poland, Czechoslovakia and the Soviet Union purely for reasons of efficiency and time constraints. Related studies for Eastern bloc countries in Southeastern Europe are still needed. Yet even the countries treated here had different experiences with the mass murder of European Jews in the Second World War. These differences were also reflected in the criminal prosecutions discussed here.

Consideration of the trials with respect to the Holocaust in the state-socialist countries of the Eastern bloc raises the question of the extent to which the murder of Jews became visible in the proceedings. Were they treated as a separate group of victims? Were the crimes of the Holocaust clearly identified as such? Or were they subsumed under the umbrella of anti-fascist victims?

und die Staatssicherheit. Strafverfolgung, Propaganda und Geheimhaltung in der DDR, Berlin 2019; Christian Dirks: Die Verbrechen der anderen. Auschwitz und der Auschwitz-Prozess der DDR. Das Verfahren gegen den KZ-Arzt Dr. Horst Fischer, Paderborn et al. 2004; Petra Schweizer-Martinschek: Die Strafverfolgung von NS-Euthanasie-Verbrechen in SBZ und DDR, Augsburg 2015; Zuzana Pivcova: Aufklärung und strafrechtliche Verfolgung von NS-Verbrechen in bzw. mit Hilfe der SCFR, in: Herbert Heuß, Arnold Roßberg (eds.): Schonung für die Mörder? Die justizielle Behandlung der NS-Völkermordverbrechen und ihre Bedeutung für die Gesellschaft und die Rechtskultur in Deutschland. Das Beispiel der Sinti und Roma, Heidelberg 2015, pp. 126-132; Lenka Šindelářová: Finale der Vernichtung. Die Einsatzgruppe H in der Slowakei 1944/1945, Darmstadt 2013; idem: Denkschriften an die Bundesrepublik. Die Arbeit der Tschechoslowakischen Regierungskommission zur Verfolgung von NS-Kriegsverbrechern (1965-1990), in: Martin Cüppers, Jürgen Matthäus, Andrej Angrick (eds.): Naziverbrechen. Täter, Taten, Bewältigungsversuche, Darmstadt 2013, pp. 275-288; Kata Bohus: Not a Jewish Question? The Holocaust in Hungary in the Press and Propaganda of the Kádár Regime during the Trial of Adolf Eichmann, in: *Hungarian Historical Review* 4 (2015), no. 3, pp. 737-772; Finder, Prusin: Justice behind the Iron Curtain; Gary Bruce: From Perpetrator to Cold-War Pawn. The Atrocities and Trial of Heinz Barth, in: *Holocaust and Genocide Studies* 29 (winter 2015), no. 3, pp. 374-399; Insa Eschebach: »Ermittlungskomplex Ravensbrück«. Das Frauenkonzentrationslager in den Akten des Ministeriums für Staatssicherheit (MfS), in: *Internationale Wissenschaftliche Korrespondenz zur Geschichte der deutschen Arbeiterbewegung (IWK)* 2 (1997), pp. 212-231; Vanessa Voisin: Le procès de Jérusalem et la représentation de la Shoah en URSS, in: Sylvie Lindeperg, Annette Wieviorka: *Le moment Eichmann*, Paris 2015, pp. 139-168; Nati Cantorovich: Soviet Reactions to the Eichmann Trial. A Preliminary Investigation 1960-1965, in: *Yad Vashem Studies* 35 (2007), no. 2, pp. 103-141; Benjamin Frommer: *National Cleansing. Retribution against Nazi Collaborators in Postwar Czechoslovakia*, Cambridge/Massachusetts 2005.

Which perpetrators did the investigations focus on? And how did that affect how their crimes were perceived? Recent research approaches no longer view these questions as opposing each other. Rather, they emphasise that there was not a single, monolithic doctrine of anti-fascism, but that the individual people's republics, and even local or regional interest groups, could also develop their own agendas.⁶ They emphasise that Jewish and anti-fascist self-images did not necessarily stand in opposition to each other but instead supplemented and reinforced one another. It is meanwhile undisputed that generalisations about »the Eastern bloc« do not hold up very long if they assume a distortion on remembrance in the East and contrast it with the willingness to confront the Holocaust in the West.⁷ There are also recent indications that an equation of post-war court proceedings in Eastern Europe with Nazi trials was itself a product of the Cold War; and that equating Soviet proceedings of the pre-war period with the post-war ones has given way to a more differentiated view.⁸

In their introductory chapters, Mary Fulbrook and Jan Tomasz Gross show how difficult it was and still is to consider and research the question regarding the collaboration or complicity of the local societies. As regards the judiciary, it was precisely these accusations that in the 1960s often repeatedly led to renewed charges even after criminal prosecutions had already taken place, as the contributions in this volume show.

Mary Fulbrook deals in depth with this question, which is relevant not solely with respect to the socialist people's republics, illustrating the opposition to discussion on the subject. She emphasises the significance of both local research and the transnational perspective on the resident population's participation in the murder of the Jews. *Jan Tomasz Gross* reinforces this assessment

6 Kata Bohus, Peter Hallama, Stephan Stach (eds.): *Growing in the Shadow of Antifascism. Remembering the Holocaust in State-Socialist Eastern Europe*, Budapest, Vienna, New York 2022; Zoltán Kékesi, Máté Zombory: *Antifascist Memory Revisited. Hungarian Historical Exhibitions in Oświęcim and Paris, 1965*, in: *Memory Studies* 15 (October 2022), no. 5, pp. 1087-1104, <https://journals.sagepub.com/doi/10.1177/17506980211066582> (23. 5. 2023).

7 Le Bourhis, Tcherneva, Voisin: Introduction, in: idem (eds.): *Seeking Accountability*, p. 12. See also Donald Bloxham: *Prosecuting the Past in the Postwar Decade. Political Strategy and National Myth-Making*, in: David Bankier, Dan Michman (eds.): *Holocaust and Justice. Representation and Historiography of the Holocaust in Post-War Trials*, Jerusalem 2010, pp. 23-43.

8 See Franziska Exeler: *Nazi Atrocities, International Criminal Law, and Soviet War Crimes Trials: The Soviet Union and the Global Moment of Post-Second World War Justice*, in: Immi Tallgren, Thomas Skouteris (eds.): *The New Histories of International Criminal Law*, Oxford 2019, pp. 189-219, here: pp. 194 f.; Enrico Heitzer, Julia Landau: *Tensions between Secrecy and Publicity. Internment, Investigation, Extradition, and Convictions in the Soviet Occupation Zone of Germany, 1945-1950*, in: Le Bourhis, Tcherneva, Voisin (eds.): *Seeking Accountability*, pp. 145-189, here: p. 160.

in his presentation of the focus on national myths of the formerly occupied countries since the 1950s. He argues that the domestic peace between the communist leaders and the local populations made it necessary for participation in concrete events to remain unquestioned, also as regards criminal proceedings, and that the societies in turn became accustomed – to some extent to the present day – to viewing the Holocaust as something that was an issue in the past but not for post-war orders and the independent countries since 1990.

Perspectives on the national contexts follow. With an eye toward Hungary, *András Kovács* views the Eichmann trial as the point of departure for the countries in which the mass murder and the deportations took place – Poland, the Soviet Union, Czechoslovakia and Hungary – having felt forced to find a common strategy for responding to the trial in Israel. If one also considers East Germany as the socialist country whose predecessor was the originator of the crimes, it becomes clear how the interests varied in presenting the actions committed by Eichmann to the respective populations. Kovács describes how the common path that was ultimately found – charging that West Germany was a neofascist state – did not prevent some socialist societies from reporting with varying intensities on Eichmann's crimes. *Máté Zombory* also emphasises that affiliation with the collective of anti-fascists did not mean that individuals did not follow their own path, establish their own contacts and make accessible their own stories about the circumstances that led to the »Final Solution«. Tracing the scholarly and political activities of Hungarian journalist and historian Jenő Lévai, Zombory describes an independent thinker committed to historical research who also helped Western prosecutors in their investigation and could take up his own position as a non-communist anti-fascist.

Hungary serves as an example showing that national differences in dealing with the Holocaust in research and court trials were likely and, in consideration of its own population, were made possible.

For East Germany, *Hermann Wentker* outlines how the state party and state security made every attempt to avoid conducting their own criminal proceedings against Nazi criminals. The risk was too great: Their claim that they represented a society purged of Nazism might begin to totter if the thus-far undetected Nazi past of an East German citizen were to be revealed. Individual show trials for propaganda purposes – for example, against the former SS doctor Horst Fischer, whose name turned up during the investigations at the first Auschwitz trial in Frankfurt – had the function of substantiating the willingness of East German authorities to prosecute. Other trials were not made public. In many cases, the State Security Ministry prevented proceedings from even being introduced.

Lorena De Vita focusses on the foreign policy strategies developed within the East German government, particularly within the context of the Eichmann

trial. Her presentation of the bilateral and multilateral relations among the Eastern European countries impressively shows how first the Hungarian and later the East German leadership attempted to dominate the agenda during the Eichmann trial and influence the other Eastern bloc countries in order to achieve a higher profile, especially internationally. It is interesting that this occurred, for example, when East Berlin – as the sole actor from the Warsaw Pact – attempted to become involved by introducing original documents into the trial without ever having been asked about them by the Israeli prosecutors.

Katharina Rauschenberger relates the strategy of the SED (Socialist Unity Party, East Germany's state party) during the Eichmann trial to the proceedings against Hans Maria Globke, Adenauer's State Secretary and Chief of Staff in West Germany's Federal Chancellery, which took place two years later in East Berlin. As shown by the exchange between the Committee for German Unity in the SED's Western office and Friedrich Karl Kaul, the lawyer sent to Israel, the SED followed the agreed-upon strategy of the Eastern bloc countries regarding how the Eichmann trial was to be communicated in East Germany. Reports on actual actions or the course of the trial were avoided, and the focus was set entirely on accusations against West Germany. A short time later, however, the charges against Globke led to concrete allegations about preparations for the murder of the Jews being brought up in the trial against the Bonn functionary, though they had been left out in Israel. Consequently, the crimes became visible and at the same time part of the anti-fascist narrative.

In summary, it can be said for East Germany that the trials, which had been increasingly conducted since the 1960s, focussed on individual members of the SS. Neither the division of labour in the organisation of the extermination camps nor the participation of the German public in preparing and carrying out the Holocaust, which would have corresponded to the accusation of collaboration in the occupied countries, were systematically prosecuted. Nevertheless, the Holocaust was not ignored. In the campaign against functionaries such as Globke, and amidst the backdrop of the attack on the West German elite, space was given to addressing the details of how Jews were stripped of their rights and murdered. On an international stage, and within the Eastern bloc, East Germany thereby sought a reputation as an anti-fascist state.

Poland, the country whose Jewish population was almost entirely annihilated by the Nazi regime, began proceedings primarily against groups of German perpetrators shortly after being liberated by Soviet troops and even before Germany surrendered. *Audrey Kichelewski* uses the trial against Stanisław Jasiński as an example of the charges pressed against Polish collaborators by Jewish survivors on their own initiative in the 1960s, in which Jewish witnesses from Israel and the United States could be included. However, she describes

the survivors' disappointment regarding the reappraisal of the events that involved an unrelenting politicisation of the trial.

Paulina Julińska-Gurgiel examines the role of the Main Commission for the Investigation of (the so-called) Hitlerite Crimes in Warsaw in the 1960s. She traces the increase in investigative proceedings – especially in Poland itself but also elsewhere in the Eastern bloc as well as in Western Europe – to the fact that the Main Commission was then better equipped and could be used more professionally to collect and research documents and scientifically evaluate them. Co-operation with other, in particular West German, prosecutors provided an essential impulse for the intensity of their own work.

In an international comparison, Poland thus maintained its special role in that it did not prohibit other countries, especially East Germany, from having direct contact with West German investigators such as the Central Office in Ludwigsburg and therefore also contributed significantly to the success of West German trials. At the same time, however, it stalled trials in Poland itself, since that would have confirmed participation of its own population in the Holocaust.

Jan Laníček focusses on Czechoslovakia, with his treatment of the 1950s during the country's purge within the communist party. Based on the example of Erich Kraus (not related to Ota Kraus), one of two surviving members of the Jewish Council of Elders in Prague, he shows that the anti-collaboration trials in the 1950s primarily targeted the surviving Jews, not the local state authorities. Threatening accusations of »Zionist conspiracy«, which Rudolf Slánský and other Jewish party functionaries had already been charged with, the secret police spied out Jews and forced them to co-operate. The secret police were thereby taken in by their own antisemitic stereotype of an international Jewish conspiracy. These practices were maintained into the 1970s, even if no further trials against Jews resulted.

Michael Kraus describes the early Holocaust research of his father, Ota Kraus, who worked together with Erich Kulka. Both survived several camps and in 1946 wrote one of the first comprehensive presentations on Auschwitz,⁹ which in its German translation served as evidence in the first Auschwitz trial in Frankfurt. Kraus and Kulka are both examples of the initiative taken by survivors to make Jewish suffering visible. They had to tolerate repression by the communist regime because their position was incompatible with the anti-fascist hero narratives of resistance by the Czechs and Slovaks that dominated the early 1950s. The disappointment at having their evidence rejected and the increased repression forced both of them to emigrate in the late 1960s.

9 Ota Kraus and Erich Schön: *Továrna na smrt* [The Death Factory], Prague 1946.

Vojtěch Kyncl examines the investigative work by the Czech Foreign Ministry and the Czechoslovak Government Commission for the Prosecution of Nazi War Criminals, which was established in 1965. He shows that the support for trials and their orientation primarily followed the intention to improve relations with East Germany and the Soviet Union and to put West Germany under pressure. The experience gained from the Auschwitz trial in Frankfurt am Main, which Czechoslovakia – in contrast to Poland – did not constructively support, did lead to increased investigations and cooperation with the Central Office in Ludwigsburg, but these primarily served to pass on the investigation findings to Austria, West Germany and East Germany, so that proceedings were initiated there. Only the East German judiciary pressed charges based on such findings.

The resulting overall picture of Czechoslovakia is that the shock of the antisemitic show trials of the 1950s went so deep that the Holocaust would not be discussed publicly for the next two decades. The strategy of the authorities was to pass on the investigation findings on individual perpetrators, in particular to East and West Germany, in expectation that those responsible would be called to account in East Germany but not in West Germany. This resulted in material for new charges against the West.

Ilya Altman and *Christina Winkler* trace the development of the Nazi and war crimes trials in the Soviet Union from 1943 onwards. Up to 1953, these trials led to numerous convictions for crimes against the Soviet people but disregarded the fact that the largest victim group were Jews. As the statute of limitations for Nazi crimes was nearing expiration in West Germany, the Soviet authorities sought to influence West German activities. After the Russian-Jewish author and translator Lev Ginzburg had published several articles in 1963 on the recent criminal proceedings in the Soviet Union on the Krasnodar massacres, Soviet authorities passed his reports on to West German prosecutors in order to encourage investigative proceedings.

David Alan Rich attaches great importance to the so-called Operation Reinhard trials in the Soviet Union in the 1960s. They should not be viewed simply as post-Stalinist terror trials but should rather be interpreted more as an expression of an internal development depicted in the reforms of the criminal code and criminal procedural law in the Soviet Union. Proceedings against the so-called Trawniki men led to a wealth of evidence and interrogation records, which provided information about the events. Moreover, in some cases, they were also accessible to the public and generally ended with death sentences. Since the Soviet Union did not seek to co-operate with the authorities in West Germany, which could have profited from the investigations, these trials have largely remained unknown in the West.

Gintarė Malinauskaitė also shows that the trials in the post-Stalinist phase in the 1960s were based on diligent investigative work and diverse pieces of

evidence. Following the Einsatzgruppen (mobile killing units) trials in Ulm, which referred to crimes that took place in Lithuania, the Lithuanian KGB conducted numerous trials thought of as a warning to the local population. The trials were also aimed at Western countries, especially the United States, where the Lithuanian exile community was very influential and downplayed the participation of Lithuanians in the mass murders. At the same time, efforts were made in the criminal proceedings to hold Catholic clerics particularly responsible for the mass murder of the Jews. For the Lithuanian population, however, the Holocaust became publicly visible in these trials, also through the accompanying media such as exhibitions, films, books and television broadcasts.

The essays on the Soviet Union show that the focus on the West and the influence on trials there, on the one hand, and their own treatment of collaborators, on the other, led to legal investigations. Even if the trials pursued a political agenda, they were based on intensive preparation and historical research. The time of forged documents was past. What was sought were fact-based judgements, although they targeted ideologically suspicious groups more often than those loyal to the Communist Party.

The comparison of the five countries examined here shows that, in all state-socialist countries with the exception of Czechoslovakia, there was public discourse on the Holocaust in the 1960s. Although the trials always had a political agenda and were usually planned by the state security services, they were largely based on legitimate research including intensive witness questioning and collections of documents. East Germany often focussed on German perpetrators; elsewhere, the emphasis was on local collaborators that recruited from groups that had been excluded from the anti-fascist self-image: so-called Trawniki men, Catholic clerics or expatriates as well as (repatriated) Jewish survivors who wanted to create an international Jewish public through their testimony. This volume traces both general lines of development and particular individual cases. It contributes toward differentiating the legal prosecution of Nazi crimes in Eastern and East Central Europe by furthering the understanding of the respective political and legal conditions.

This collection of essays is derived from the proceedings of the conference »The Holocaust and the Cold War: Culture and Justice«, which was hosted by the Fritz Bauer Institute and the Imre Kertész Kolleg in May 2021 as a joint online event. The talks selected for this volume were those that considered the legal aspects of the topic, which allowed for a distinct focus within the conference. We would like to thank Jaime Hyatt for the careful editing of the English manuscripts, Andrea Kirchner for co-ordinating the review process, and Christopher Gomer for compiling the indexes. Following the wishes of our authors, certain place names have been spelled differently throughout the vol-

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Mary Fulbrook

Complicity and the Holocaust in Eastern Europe

Confrontations with a Compromised Past

Introduction

Historians of the Holocaust in Eastern Europe face significant challenges in many areas today.¹ Following the collapse of the Iron Curtain and the end of communist rule in Eastern Europe, previously inaccessible archives were opened up, and progress was made in understanding how Nazi persecution of the Jews turned, from the »fateful months«² of summer 1941, into a European-wide programme of extermination. In particular, growing numbers of regional and local studies have illuminated the involvement of locals right across the broad swathe of territory stretching hundreds of kilometres from the Baltic to the Black Sea, in what has been termed the »Holocaust by bullets«.³ The historiography of perpetration, collaboration and complicity on the part of different actors in this region has grown rapidly. But at the same time, research has continued to be entangled with political interests and issues in ways that might not have been predicted before the fall of communism. Ethnonationalist and populist movements, political parties, and indeed some governments have sought to distort Holocaust history in the service of collective identity projects.

The issues frequently revolve around the extent of popular complicity in the Holocaust – particularly in occupied, annexed or incorporated territories, but also in states allied with Germany, and even within Nazi Germany (and Austria from 1938) itself. Attributing guilt and complicity in the mass extermination of the European Jews also inevitably raises moral and evaluative questions. Yet the debates have not remained at the level of scholarly research into the past; they have been affected by assumed connections with later and pres-

1 This article is based on my research during two collaborative projects sponsored by the Arts and Humanities Research Council, to whom I am most grateful for their support. This lecture was delivered at the Joint Annual Conference of the Fritz Bauer Institute, Frankfurt am Main, and the Imre Kertész Kolleg Jena, »The Holocaust and the Cold War: Culture and Justice«, 26-28 May 2021. A version of this paper was first published in: *Jewish Historical Studies* 53 (2021), pp. 115-135, <https://www.scienceopen.com/hosted-document?doi=10.14324/111.444:jhs.2022v53.009> (23. 5. 2023).

2 Christopher Browning: *Fateful Months. Essays on the Emergence of the Final Solution*, New York 1991.

3 Patrick Desbois: *The Holocaust by Bullets. A Priest's Journey to Uncover the Truth behind the Murder of 1.5 Million Jews*, New York 2008.

ent identities. Underlying some of the current debates about complicity in Eastern Europe are implicit assumptions about a national identity persisting across decades – a collective identity that can supposedly still be defiled or offended, even decades after the events in question. National myths of innocence, heroism and victimhood are at stake, on the assumption that »nations« have a persisting collective identity that can still be defamed even long after most perpetrators are dead.

By setting the question of complicity within a wider historical perspective, this article challenges the notion that persisting national identities are at stake. Everywhere, local configurations and changing circumstances under Nazi rule shaped the extent and character of complicity in the persecution and extermination of Jews and other victim groups; and everywhere, later conditions shaped the kinds of narratives that were constructed both at an individual level and in wider public discourses. By adopting a more differentiated analytical approach, historians can seek to puncture not only the specific myths that constitute Holocaust distortion, but also the more general myths of mono-ethnic »nations« that persist over time and feel threatened by historical truth-telling.

Complicity, guilt and »knowledge« in the »Reich« and beyond

It is clear that the Holocaust was initiated and organised by Nazi Germany: Without Hitler's driving vision, and without German leadership, personnel and organisations, the mass murder of European Jews and other victim groups would never have taken place.⁴ Rightly, much historical attention has focussed on understanding German policy and practices in pursuing what Nazis called the »Final Solution« of their self-imposed »Jewish Question«. Increasingly, historians and members of the public have come to recognise what participants already knew at the time: Not only the tens of thousands of members of the Einsatzgruppen, the SS and the police battalions, who are easily identified as perpetrators, but also many more hundreds of thousands of ordinary Wehrmacht soldiers, bureaucrats and civilian administrators were deeply implicated in the persecution and mass murder of millions of Jews and others across Europe. But what of the further millions of people who would never have considered themselves committed Nazis? And what of the innumerable collaborators, auxiliaries, facilitators and occasional helpers of the Nazi project in occupied territories?

4 In what follows, I use the term »Holocaust« in the broad sense to encompass the full range of victims of Nazi persecution, including Roma and Sinti, the mentally and physically disabled and others.

First, it is important to explore how far so-called ordinary Germans can be deemed to have been complicit, even if only by virtue of inaction and passivity in the face of violent inhumanity. The shape of German society was itself altered by everyday actions and changing social relations, ultimately facilitating the mass murder of the Jews.⁵

Under Nazi rule in the peacetime years of the 1930s, a societal transformation took place that not only ripped German society apart from within, »re-segregating« Germans of Jewish descent, but also paved the way for the genocide that followed. Initially, most people fell into line, a conformity rooted either in fear or in the desire for new opportunities and privileges. Over a couple of years, and certainly following the enactment of the Nuremberg Laws in 1935, this conformity necessarily shifted into more active compliance. For many, though far from all, behavioural compliance was increasingly rooted in ideological conviction, particularly among members of younger generations. Others furthered the Nazi regime in their outward behaviours – whatever inner doubts and reservations they may have had. The picture was never uniform, and one cannot speak of »the Germans« or »the people« as a supposedly homogeneous mass: Society continued to be deeply divided. But the direction of travel was one of increasing passivity or support, with widespread tendencies either to retreat and stand on the sidelines or to join in the »national project«. During the events of November 1938, known as Kristallnacht, there was significant popular involvement on the side of the Nazis – humiliating Jews as well as looting Jewish property – and, while there was public disapproval of the destruction of property, despite widespread mutterings of shame and individual help offered in private, there was little or no outright protest against this intensely violent action and its consequences.⁶ In the following months, Jews who were able to emigrate often experienced a degree of sympathy from individual compatriots, who nevertheless went on playing their roles in the nazification of society.

During the war, many more Germans were brought into the growing machinery of persecution. The mobilisation of a nation at war effectively turned the vast majority of »national comrades« (*Volksgenossen*) into accomplices in an inherently racist national mission, whether willingly or otherwise. Yet it is

5 These developments are explored further in Mary Fulbrook: *Bystander Society. Conformity and Complicity in Nazi Germany and the Holocaust*, Oxford 2023.

6 Alan Steinweis: *Kristallnacht 1938*, Cambridge/Massachusetts 2009; see also Wolfgang Benz: *Gewalt im November 1938. Die »Reichskristallnacht« – Initial zum Holocaust*, Berlin 2018; Wolf Gruner and Steven Ross (eds.): *New Perspectives on Kristallnacht. After 80 Years, the Nazi Pogrom in Global Comparison*, West Lafayette/Indiana 2019; Dieter Obst: »Reichskristallnacht«. Ursachen und Verlauf des antisemitischen Pogroms vom November 1938, Frankfurt am Main 1991.

striking what little evidence there is in later self-representations of having been involved in a criminal enterprise on a grander scale, including among Germans who had worked in the annexed and occupied territories, assisting policies of »germanisation«, resettlement and ghettoisation or exploitation of forced and slave labour. After the war, the legal definition of criminal culpability concentrated minds primarily on direct physical violence. The less immediate consequences of Nazi occupation policies – causing death at a distance, as it were, by reduction of rations, movement into overcrowded and unhygienic housing and the brutal exploitation of labour – seem not to have unduly troubled the consciences of those who had participated. Professionals who had held senior civilian administrative posts betrayed little sense of personal responsibility for the harm caused to those they saw as »sub-humans« (*Untermenschen*). By contrast, their accounts often shift the blame onto locals – Poles, Lithuanians, Latvians, Ukrainians and others, depending on the context – and onto other Germans, particularly the SS and Gestapo, as well as those considered to be fanatical Nazis. These groups conveniently serve as scapegoats, while such narratives also often betray continuing racist sentiments, persisting decades later. Meanwhile, the testimonies of victims and survivors provide agonising evidence of the damage caused by German occupation policies and practices.⁷

Once mobilised for war, of course, hundreds of thousands were actively involved in facilitating the killing of civilians. While the SS, Einsatzgruppen and police battalions were the primary perpetrators, the army was also deeply implicated, as were local collaborators across Eastern Europe. The precise figures are contested, but the net of guilt was spread far more broadly than any post-war system of justice could possibly hope to capture.

Mass involvement in collective violence on this scale raises the question of motivation versus mobilisation. The extent to which antisemitism was a driving and motivating force – which it certainly was for the Nazi leadership and ideologues – or to which it was, rather, a diverse set of attitudes and discourses that could be drawn on under extreme circumstances to try to justify the mass killings and assuage uncomfortable feelings among some, requires further exploration.

The war transformed attitudes, exacerbating antisemitism in new ways. Following the invasion of Poland in September 1939, and even more so after the invasion of the Soviet Union in June 1941, Germans encountered the distinctively different Jewish communities of Eastern Europe. Soldiers passing through occupied Poland, seeing Jews reduced to wearing rags and prone to

7 See Mary Fulbrook: *Reckonings. Legacies of Nazi Persecution and the Quest for Justice*, Oxford 2018; idem: *A Small Town near Auschwitz. Ordinary Nazis and the Holocaust*, Oxford 2012.

starvation and disease by Nazi policies, wrote home saying they now thought the stereotypes portrayed in the rabidly antisemitic weekly tabloid *Der Stürmer* were confirmed. As they moved east, with the war framed as a »self-defensive« fight against »Judeo-Bolshevism«, pre-existing indifference towards Jews could readily be whipped up into more active antisemitism; and the linkage between Jews and partisans could make summary executions seem an appropriate response. Any potential sympathy for the plight of Jews was countered by highlighting Germany's supposed need for living space and foodstuffs or the dangers of contamination by disease-ridden Jewish »vermin«. All this had an impact on popular responses. Travellers through eastern territories sometimes recorded news of massacres laconically: worthy of note, but not something to cause distress. Diary entries by people within the Reich, hearing news from the front, frequently also registered rumours of atrocities, some with a degree of shock and disbelief, others with passing interest but little more. There was, it seems, a remarkably widespread capacity to record reports of atrocities not quite with indifference but with little by way of outrage; at best, those who were clearly shocked also registered their own sense of impotence to do anything about it anyway. In any event, such »knowledge« was generally registered only briefly, amid other more urgently pressing matters of personal life.

Attitudes changed over the course of the war, from the early and speedy German victories to the later military setbacks and growing awareness of impending defeat.⁸ Most Germans were far more preoccupied with their own interests, the well-being of relatives and friends and fighting for the homeland than they were about the fates of former Jewish neighbours with whom they had been losing touch – let alone those unknown Jews in eastern territories with whom they had never had any personal contact. But, given mass mobilisation in the service of the fatherland, it was virtually impossible to remain neutral. Out of bystanders grew, on the one hand, innumerable accomplices and perpetrators; and, on the other hand, a few who engaged in acts of resistance or rescue, generally only when there were strong personal and emotional bonds with the victims or wider moral and political commitments overriding the risks involved. After the war, the majority who had been compliant with the demands of Nazi rule and who had become ever more complicit tried to profess innocence by ignorance: Millions claimed they had »known nothing about it«, even when they had been actively involved in actually making »it« possible.

If Nazi Germany spearheaded the Holocaust, it is also clear that it found accomplices across Europe. Without the collaboration, co-operation or acquiescence of millions of Europeans – in states variously allied with, occupied or annexed by the Reich – the deportation and mass murder of Europe's Jews

8 See Nicholas Stargardt: *The German War. A Nation under Arms*, London 2015.

could not have taken place on the scale and in the manner that it did. The responses and actions of other Europeans not only affected the timing and character of persecution, deportations and killings, but also significantly shaped the relative survival chances of Jews in different regions, ranging from more than 98 per cent in Denmark and 75 per cent in France, through 25 per cent in the Netherlands, to a mere 5 per cent at best in Lithuania, with other countries along the range between.

There was a fatal combination of German initiatives and various local interests, from organised nationalist movements (such as the Lithuanian Activist Front), through simmering forms of popular antisemitism that could be whipped up under particular conditions, to individual profiteering; there was also constrained co-operation under conditions of duress, as locals were »requisitioned« by Germans to carry out different tasks in the wider project of murder.⁹ All this was widely witnessed by innumerable onlookers at the eastern front. Germans often filmed mass killings where it was Lithuanians, Latvians or Ukrainians doing the shooting, already constructing later alibis for German non-involvement; the notion of never having actually shot anyone later served in many quarters as proof of innocence.

Certain incidents stand out, in part because we have unique eyewitness reports or visual images, as in the case of the infamous Lietukis garage massacre in Kovno (Kaunas, Lithuania) on 27 June 1941, or the killings on the Šķēde beach near Liepāja (Latvia) on 15-17 December of that year. But everywhere across Europe, local collaborators, facilitators and auxiliaries enabled the Nazis to put their murderous project into practice.¹⁰ In each case, longer-term relationships between Jewish and non-Jewish communities were significant, including questions of citizenship, social stratification, and the extent and character of personal and cultural as well as economic connections. There were also crucial shorter-term factors such as the impact of the brief Soviet occupation in the Baltic states in 1940-41 that gave fuel to the myth of »Judeo-Bolshevism« as well as providing brief hope to nationalist movements that collaboration with Germans might further their fight for independence.¹¹ In other areas, notably

- 9 See examples in Father Patrick Desbois: *In Broad Daylight. The Secret Procedures behind the Holocaust by Bullets*, trans. Hilary Reyl and Calvert Barksdale, New York 2018.
- 10 See David Gaunt, Paul Levine and Laura Palosuo (eds.): *Collaboration and Resistance during the Holocaust. Belarus, Estonia, Latvia, Lithuania*, Bern 2004; Waitman Wade Beorn: *The Holocaust in Eastern Europe. At the Epicentre of the Final Solution*, London 2018; Martin Dean: *Collaboration in the Holocaust. Crimes of the Local Police in Belorussia and Ukraine 1941-44*, New York 2000.
- 11 Christoph Dieckmann: *Deutsche Besatzungspolitik in Litauen 1941-1944*, 2nd ed., Göttingen 2016; Katrin Reichelt: *Lettland unter deutscher Besatzung 1941-1944. Der lettische Anteil am Holocaust*, Berlin 2011.

borderlands with longer experiences of Soviet rule, the distinctions between citizens of Jewish descent and other citizens were less evident or present in the perceptions of younger generations, potentially mitigating antisemitic hostility once under German occupation.¹² And, in the occupied present, the extent and character of the repressive forces and occupation regimes proved absolutely crucial to the choice between action and inaction.¹³

Whatever the configuration of forces in particular regions, it seems likely that most locals remained essentially passive onlookers to specific incidents of violence. Yet, many nevertheless also benefited from the removal of the Jews from their midst, and in multiple, often only tiny ways, a few individuals had the courage to put obstacles in the path of deportations and killings, helping some of the persecuted to survive. The variations in local dynamics, structures of power and repression, social relations between different communities, notions of civic activism, morality and solidarity, and the risks and potential benefits of action and inaction under changing circumstances over the course of the war are questions that can be addressed both within specific regions and comparatively, across Europe. The differences frequently have more to do with degrees of impotence – incapacity to act effectively given the constraints of repressive regimes – than with the »ignorance« often later claimed.

Given the scale of the Holocaust, millions of people (particularly across the eastern front, but also further afield) »knew« about aspects of what was taking place, whether or not they were themselves involved on the side of either the perpetrators or the victims. But people generally only perceived or registered fully what was in some way – geographically, socially, emotionally – close to them. There were wide variations in channels of knowledge, circulation of rumours and frameworks of interpretation, and there was a deep asymmetry in the extent to which people were either desperate for knowledge or, by con-

- 12 The literature is vast but see, e. g., Gaëlle Fisher and Caroline Mezger (eds.): *The Holocaust in the Borderlands. Interethnic Relations and the Dynamics of Violence in Occupied Eastern Europe*, Göttingen 2019; Leonid Rein: *The King and the Pawns. Collaboration in Byelorussia during World War II*, Oxford 2011; Barbara Epstein: *The Minsk Ghetto, 1941-43. Jewish Resistance and Soviet Internationalism*, Berkeley/California 2008; Diana Dumitru: *The State, Antisemitism, and Collaboration in the Holocaust. The Borderlands of Romania and the Soviet Union*, New York 2016; Raz Segal: *Genocide in the Carpathians. War, Social Breakdown, and Mass Violence, 1914-1945*, Stanford/California 2016.
- 13 For Western European comparisons, see Pim Griffioen and Ron Zeller: *Persecution and Deportation of the Jews in the Netherlands, France and Belgium, 1940-1945*, in a Comparative Perspective, Amsterdam, Paris 2013 (rev. 2018); Christina Morina: *The »Bystander« in Recent Dutch Historiography*, in: *German History* 32 (March 2014), no. 1, pp. 101-111; Jacques Semelin: *The Survival of the Jews in France, 1940-44*, trans. Cynthia Schoch and Natasha Lehrer, London 2018.

trast, avoided becoming too aware of what was happening. Those affected by persecution took a keen interest in news of friends, relatives and members of their community who had disappeared or been deported. But those who had supported or turned a blind eye to antisemitic measures during the pre-war years generally found it easier to ignore rumours of atrocities or to remain indifferent to what should have been morally deeply disturbing news, essentially refusing to form a wider picture of what was happening. Even people at the forefront of violence often had limited perspectives, preferring to believe the propaganda about »partisan warfare« than to register the enormity of killing women, children, babies, the sick and the elderly simply because they were Jewish. For virtually all non-victims, apart from the masterminds at the centre of the spider's web, secure knowledge of the extermination of Europe's Jews was partial, restricted to certain incidents and viewed from limited perspectives.

Within the Reich, non-Jewish Germans had already been practising habits either of looking away, protecting themselves from uncomfortable reactions or looking on relatively dispassionately. It is remarkable not only how many people did gather to stare but also how many people criticised having to see acts of violence while not actually criticising the violence itself. Either way, they were effectively condoning the perpetrators' actions by failing to intervene and allowing the violence to continue. It was no longer possible, in a situation of systemic violence persisting over time, to remain merely an innocent bystander – although the reasons for passivity ranged from antisemitism and indifference to the fate of the Jews, at one end of the spectrum, through the prioritisation of both personal and patriotic interests in wartime, to conflicted feelings of powerlessness and despair at the other. The one thing that few could claim at this time was ignorance. Even if the overall shape of a co-ordinated policy of extermination was not discernible to contemporaries, local incidents should have demonstrated all too clearly that acts of total inhumanity were taking place before everyone's eyes.

Yet, there was no wider picture of the Holocaust at the end of the war. Survivor accounts in the early post-war years, such as those captured in David Boder's remarkable collection of recorded interviews in Displaced Persons camps or the many stories collected by researchers for the Jewish Historical Commission, are often fragmentary, piecemeal.¹⁴ So, too, are the stories told by German soldiers in captivity, secretly recorded while talking among themselves. And at precisely the same time, Germans who had themselves been part of the system on the side of the perpetrators began to claim to have known nothing

14 See further https://voices.library.iit.edu/david_boder (23. 5. 2023); Alan Rosen: *The Wonder of their Voices. The 1946 Holocaust Interviews of David Boder*, New York 2010; see also Fulbrook, *Reckonings*.

about it – a claim that the photographer Margaret Bourke-White and journalists in 1945 Germany registered as becoming more or less a national anthem.¹⁵

The emergence of a wider understanding of the Holocaust came only during the following decades. It was shaped by the radical restructuring of European politics and societies in the decades of the Cold War that followed the defeat of Nazi Germany.

The presentation of new selves in post-war life

Among those hundreds of thousands who had played a significant role in the persecution and murder of Europe's Jews, evasion of justice and deception about a compromised past were crucial. This had begun straight after the end of the war, with varying attempts at »purification«, denazification or radical restructuring. Evasion was greatly assisted by the implications of the Cold War, both directly and indirectly.

Internationally, the course was set by the Allies. The American prioritisation of Cold War interests in the fight against communism meant that many Nazis were able to lead new lives quite openly in the West. Routes to escape justice such as the infamous »rat line« through Italy, assisted by the Vatican, allowed the more compromised individuals to disappear into relative obscurity, only rarely discovered and brought to account in the courtroom – most notoriously in the case of Adolf Eichmann. In the Federal Republic of Germany under its first Chancellor, Konrad Adenauer, the continuing fight against communism facilitated the rehabilitation and quiet reintegration of former Nazis into high places. In the German Democratic Republic (GDR) and Eastern Europe, those who were considered to be particularly useful to the communist project in some way – whether as scientists and engineers or as secret informers – were similarly either spirited away to the Soviet Union (often against their will) or assisted in quiet reintegration, easily subject to blackmail to assist in domestic surveillance and spying on compatriots, as seen in the East German Stasi (secret police or state security service). Over time, the imposition of communist rule in newly acquired satellite states in Eastern Europe frequently resulted in the renewed persecution of people who had recently also fought against Nazism but now from the »wrong« political perspective, having been committed to national independence rather than submission to communist dictatorship. Everywhere, people had to question their allegiances, old and new, and refashion themselves to fit new circumstances.

15 Margaret Bourke-White: *April in Germany, Life* (1945), repr. in: idem: *The Taste of War*, London 1985, p. 261.

The 1960s and 1970s marked a more stable era of the Cold War, as international tensions shifted away from Central Europe to flashpoints elsewhere, from the Cuban Missile Crisis to the Vietnam War. Former perpetrators variously transformed themselves into good democrats in the West, communists or at least passive citizens remaining under the radar in the East. And even as the spotlight fell on the big Nazi war crimes trials, the majority of people accommodated themselves to changed circumstances, adapting their behaviours and amending the stories they told (or did not tell) about their past.

Depending on where survivors ended up, they still often felt uncomfortable. In Poland, returning Jews soon discovered not only that their own communities had been destroyed, but also that Jewish returnees were deeply unwelcome. Treated to a hostile reception by former neighbours who had taken over their homes and possessions and justifiably fearful of extreme violence, many survivors fled again, hoping to emigrate to North America, Palestine or elsewhere. In France, there were other causes of unease: The official emphasis on resistance, and the significance of French citizenship rather than religion or ethnicity, led to a downplaying of the Jewish tragedy – evidenced, for example, in otherwise moving cultural representations such as Alain Renais's 1956 film *NIGHT AND FOG*. Even in societies with significant Jewish communities – New York, north London, parts of Australia, Palestine/Israel – survivors often had a hard time trying to fit in, and felt they had to make strenuous efforts to appear »normal« despite the enormity and impact of what they had been through. Wherever they settled, survivors felt they had to fit in with communities in which there was little understanding of their experiences or sympathy for their plight or to protect themselves from traumatic memories, including of former partners and children they had lost, or to protect their post-war families from full knowledge of the ghastliness that had overshadowed their own lives. Some members of the second generation, for example, only found out after the death of a parent that there had been a previous marriage and previous siblings who had not made it through and whose existence had been effectively silenced.

Among those on the perpetrator side, too, there were variations in self-presentation, some of which have had an impact on wider understandings of the Holocaust. After the defeat of Nazi Germany, people reformulated their previous activities in ways that would be more acceptable under differing Cold War circumstances. There were some obvious and easily detectable deceptions – the omission, for example, of potentially incriminating former functions or memberships of certain organisations, whether on denazification papers after the war or on later immigration and citizenship applications. But there were also more subtle ways in which aspects of a compromised past could be variously silenced or reshaped to look better in a later present.

Ways of talking about the Nazi era frequently included strategies for self-distancing, to avoid acknowledgement of guilt or complicity. Frequently used strategies included: highlighting »ignorance« (»I never knew anything about it«) with the implication that, had one known, one might have acted differently; highlighting distance, having supposedly been far away from wherever terrible things were happening; and highlighting powerlessness, lack of agency, having no alternatives, no leeway to resist or refuse, through fear of the consequences. Interestingly, this last defence is closely related to the defence often used in (West German) courts of law, of having been »only following orders« and having had to obey. Even though expert testimony for the Frankfurt Auschwitz trial (1963-65) demonstrated that the supposed fear of severe penalties for refusing to carry out orders was unfounded, this defence was nevertheless still effective: Having supposedly »acted under putative duress« (*Putativnotstand*) was still sufficient in many West German trials to prove that defendants who had sent tens of thousands of people into the gas chambers had not been acting of their own volition, out of »base motives«, but had merely been following orders and were therefore not guilty of the charge of murder.¹⁶

Systems of justice differed across states on either side of the Iron Curtain, and the statements of defendants and eyewitnesses varied accordingly. So, too, did the patterns of speech in everyday discourses about a compromised past. »Source criticism« belongs to the everyday toolbox of professional historians, and these issues are of course taken into account by scholars. But public consciousness of the past was affected by the discourses and politics of the Cold War era. When we look at the significance of war crimes trials in this wider context, some curious twists emerge, effectively aiding the evasions of the complicit.

One might think, at least as far as West Germany is concerned, that the Allied trials in the later 1940s and the big Nazi war crimes trials of the 1960s and 1970s would raise questions of guilt and complicity in the Holocaust to the centre of both scholarly research and public attention. And, of course, these trials did massively serve to stimulate investigations into particular crime scenes, producing extensive files of statements by witnesses and defendants as well as to pique public interest and provoke controversies fought out in the media spotlight. Without the huge body of material collected during legal investiga-

16 See further, Fulbrook: *Reckonings*. On the Auschwitz trial, see, e.g., Bernd Naumann: *Auschwitz. A Report on the Proceedings against Robert Karl Ludwig Mulka and Others – Before the Court at Frankfurt*, trans. Jean Steinberg, London 1966; Devin O. Pendas: *The Frankfurt Auschwitz Trial, 1963-1965. Genocide, History and the Limits of the Law*, Cambridge 2006; Rebecca Wittmann: *Beyond Justice. The »Auschwitz« Trial*, Cambridge 2008.