Seeking Accountability for Nazi and War Crimes in East and Central Europe: A People's Justice? Introduction

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Edited by Eric Le Bourhis, Irina Tcherneva, and Vanessa Voisin

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Abbreviations

ÁBTL: (Hungarian) Historical Archives of the State Security Services

ADE: Committee of German Unity

AJA: American Jewish Archives

AS: Archive of the Sachsenhausen Memorial and Museum

BStU: (GDR) Stasi (State Security) Records Archive

BwA: Archives of the Buchenwald Memorial

CCL 10: Control Council Law No. 10 (Allied Control Council, December 20, 1945)

CDA: (Bulgarian) Central State Archives

CDJC: Jewish Contemporary Documentation Center (Paris)

Central Office in Ludwigsburg: Central Office of the Land Judicial Authorities for Investigation of National Socialist Crimes

CIC: International Camp Committee

CPA: (Bulgarian) Central Party Archives

CPSU: Communist Party of the Soviet Union

CSDF: Central Documentary Film Studio (Moscow)

DEFA: Deutsche Film AG (State film studio of the GDR)

DFF: German Television Broadcasting (FRG TV station)

DRAB: German Broadcasting Archive in Potsdam-Babelsberg

DRK Suchdienst: Archives of the Tracing Service of the German Red Cross

FFDJF: association *Fils et Filles des Déportés Juifs de France*

FPB or Field Photo: Field Photographic Branch (of the US Office of Strategic Services)

FSB: (Russian) Federal Security Service

GARF: State Archives of the Russian Federation

Gulag: (Soviet) Main Directorate of Camps

HDA-SBU: Sectoral State Archive of the Security Service of Ukraine

HStA Weimar: State Archive of Thuringia, Main State Archive Weimar

IAC: International Auschwitz Committee

IJA: Institute for Jewish Affairs (of the World Jewish Congress)

IMT: International Military Tribunal (in Nuremberg)

ITL: (Soviet) correctional labor camp

JHIA: (Polish) Jewish Historical Institute Archive

KGB: (Soviet) Committee for State Security (1954–91)

KZ: concentration camp (in German)

LAV NRW Dpt Rhineland: State Archives of North Rhine–Westphalia, Department Rhineland

LCP: (Soviet) Latvian Communist Party

LG Frankfurt/M: Regional Court of Frankfurt

LNB: National Library of Latvia

LOC: (US) Library of Congress

LVA: Latvian State Archive

MK: Cinema Museum (Moscow)

MNL OL: Hungarian National Archive

MVD: (Soviet) Ministry of Internal Affairs (1946–91)

NARA: (US) National Archives and Records Administration

NKVD: (Soviet) People's Commissariat for Internal Affairs (1934–46)

NSDAP: National Socialist German Workers' Party

NWDR: Northwest German Broadcasting Association

OF: (Bulgarian) Fatherland Front

OMGUS: US Office of Military Government for Germany

OSS: Office of Strategic Services (US intelligence agency)

OStA: (FRG) Senior State Prosecutor

ÖStA: Austrian State Archives

PDVA: (Latvian) State Archives for Personnel Records

RGAKFD: Russian State Documentary Film and Photo Archive

RGALI: Russian State Archive of Literature and Art

SAPMO: (German) Foundation for the Archives of the GDR's Parties and Mass Organizations at the Federal Archive

SD: Security Service of the Reichsführer-SS

SED: (GDR) Socialist Unity Party of Germany

SMERSh: (Soviet) organization of counterintelligence agencies in the Red Army

SMT: Soviet Military Tribunal (in the Soviet Occupation Zone of Germany)

SOL: statute of limitations

SOZ: Soviet Occupation Zone of Germany

SS: *Schutzstaffel* (protection squadron)

StA: (FRG, Staatsanwaltschaft) State Prosecutor's Office

SVAG: Soviet Military Administration in Germany

URO: United Restitution Organization

USHMM: United States Holocaust Memorial Museum

VGIK: All-Russian State Institute of Cinematography

VVN: (German) Association of Persecutees of the Nazi Regime

WDR: West German Broadcasting Corporation

Introduction

by Vanessa Voisin, Eric Le Bourhis, and Irina Tcherneva

Wait! Wait! Stop! You want to put an end to them?

A minute or two, and it would be over?

For Levnjuk, for Olena, for my Vasja, for our children,

for all those who were murdered, in two minutes they would have paid?

No! Let them wait for their fate. Let them drink their punishment to the dregs.

Ah, women, those of them who will die now will do very well.

Ah, no! Let them rather wait for the hour when their own wives and children

will turn away from them and say, "No, they were not our fathers!"

Let them answer for our misfortune and torment before the People's Court.

Let the anger of the people fall upon their heads!

And may the earth refuse them, the damned!

—Final diatribe of Feodosia in the film *Rainbow*, dir. Mark Donskoy,

Kiev Studio, 1944

The resort to international criminal justice after the Second World War has recently been reassessed by a body of creative scholarship that is looking into the foregrounding attempts to

design an international justice, transnational dynamics, or longer-term processes.[1] The emergence of new legal definitions and judicial instances (e.g., International Military Tribunal of Nuremberg and IMT for the Far East) has been increasingly studied within a wider framework, both in time and in space, without losing its unique character, while the respective parts played by the governments and the professional actors directly involved have acquired further nuance and deliberation.[2]

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1 Kerstin von Lingen, *"Crimes against Humanity": Eine Ideengeschichte der Zivilisierung von Kriegsgewalt 1864–1945* (Paderborn: Schöningh, 2018); Ornella Rovetta and Pieter Lagrou, eds., *Defeating Impunity: Attempts at International Justice in Europe since 1914* (New York: Berghahn Books, 2021); see also the English translation of Annette Weinke's *Gewalt, Geschichte, Gerechtigkeit: Transnationale Debatten über deutsche Staatsverbrechen im 20. Jahrhundert* (Göttingen: Wallstein, 2016): *Law, History, and Justice: Debating German State Crimes in the Long Twentieth Century* (New York: Berghahn Books, 2018); and *Revue d'histoire de la Shoah*, no. 214 (2021): special issue "Juger les criminels de guerre à l'est de l'Europe, 1943–1991."

2 Kim Christian Priemel*, The Betrayal: The Nuremberg Trials and German Divergence* (Oxford: Oxford University Press, 2016); Guillaume Mouralis and Marie-Bénédicte Vincent, eds., "The Nuremberg Trials: New Perspectives on the Professions," special issue of *Comparativ: Zeitschrift für Globalgeschichte und vergleichende Gesellschaftsforschung* 26, no. 4 (2017); Guillaume Mouralis, *Le Moment Nuremberg: Le procès international, les* lawyers *et la question raciale* (Paris: Presses de Sciences Po, 2019); Immi Tallgren and Thomas Skouteris, eds., *The*

Yet the year 1943 remains a turning point, when the idea of resorting to justice to legally qualify and punish the crimes committed by the Nazi occupiers and their local accomplices was asserted and effectuated. Admittedly, the St. James Declaration that the Allied powers signed in January 1942 had already expressed their collective appreciation of the particularity of the violence deployed by the occupier in Europe. It also affirmed their determination in the future to punish severely these infringements of extant rights and customs of war as well as of the international conventions adopted since the middle of the nineteenth century that governed wartime behavior. But the Soviet success at Stalingrad also marked a turning point in this respect: not even waiting for final victory, the governments in exile in London and Stalin in Moscow passed the first laws to punish invaders and indigenous traitors found guilty of unprecedented crimes against the nation. The first public trials of traitor-perpetrators were ostensibly held in Krasnodar and various Soviet towns and villages. At the Kharkov (Kharkiv) trial in December 1943, the Kremlin tried Axis prisoners of war as authorized by the recently

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New Histories of International Criminal Law: Retrials (Oxford: Oxford University Press, 2019); Francine Hirsch, *Soviet Judgment at Nuremberg: A New History of the International Military Tribunal after World War II* (New York: Oxford University Press, 2020); Sabina Ferhadbegović, "The Impact of the United Nations War Crimes Commission on the Yugoslav Prosecution of War Criminals in the Aftermath of the Second World War," *Journal of History of International Law*, forthcoming.

promulgated Moscow Tripartite Declaration, despite Anglo-American reluctance to hold wartime trials.[3]

The Soviet involvement in the prosecution of perpetrators of mass crimes committed in 1941–45 did not cease until the collapse of the Eastern bloc, even if the underlying motives evolved with the criminal enforcement priorities of the Kremlin and according to the Cold War's logic. All-encompassing, ill-defined, and often unproven accusations of betrayal (or war crimes when foreign nationals were involved)[4] progressively gave way to more focused investigations into mass crimes after Stalin's death, and more particularly after the 1955 amnesty of Soviet collaborators (those not involved in murder). The so-called antifascist campaign launched within

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3 Arieh Kochavi, *Prelude to Nuremberg: Allied War Crimes Policy and the Question of Punishment* (Chapel Hill: University of North Carolina Press, 1998); Marek Kornat, "Lex Retro Agit: Polish Legislation on Nazi German War Criminals in the Concepts of the Polish Government-in-Exile in London (1942–1943)," in *Political and Transitional Justice in Germany, Poland and the Soviet Union from the 1930s to the 1950s*, ed. Magnus Brechtken, Władysław Bułhak, and Jürgen Zarusky (Göttingen: Wallstein, 2019), 315–31.

4 On the fate of the foreign POWs and German civilians sentenced by Soviet military tribunals without solid evidence in the late 1940s to early 1950s, see *Sowjetische Militärtribunale*, vol. 1, *Die Verurteilung deutscher Kriegsgefangener 1941–1953*, ed. Andreas Hilger, Ute Schmidt, and Günther Wagenlehner (Cologne: Böhlau, 2001), and *Sowjetische Militärtribunale*, vol. 2, *Die Verurteilung deutscher Zivilisten 1945–1955*, ed. Andreas Hilger, Mike Schmeitzner, and Ute Schmidt (Cologne: Böhlau, 2003).

the Soviet bloc in the late 1950s included an element on the shortcomings of the denazification policies in West Germany and the supposed protection of Nazi war criminals by the United States, the United Kingdom, and Canada.[5] In the Soviet Union, at least a dozen trials took place in the 1980s, several of which unfolded in the midst of glasnost and perestroika. Echoing the crowds that came to witness the trials and executions of 1943, large public meetings demanding the extradition of "war criminals" who had taken refuge in the West or Australia accompanied these trials in the twilight of Soviet control of Ukraine.[6] The facial expressions worn by the participants in these meetings suggest less indignation at the impunity of these alleged murderers than a dispassionate, almost routine participation in yet another public ritual orchestrated by the authorities. Similarly, the call for accountability that closes the famous Mark Donskoy film *Rainbow* probably reflected as much the new policies of the Kremlin in 1943 as the popular

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5 Annette Weinke, *Die Verfolgung von NS-Tätern im geteilten Deutschland: Vergangenheitsbewältigungen 1949–1969, oder, eine deutsch-deutsche Beziehungsgeschichte im Kalten Krieg* (Paderborn: Schöningh, 2002); James Loeffler, *Rooted Cosmopolitans: Jews and Human Rights in the Twentieth Century* (New Haven, CT: Yale University Press, 2018), 230–60.

6 See newsclips in Open Society Archives (OSA, Budapest), HU OSA 300-80-1, box 715, folders "Prestuplenija političeskie, 1981–85" and "Prestuplenija političeskie, 1985–87." Photographs of four such rallies, in Mironovka, Naumovo, Zarečnoe, and Dzeržinsk, may be found in TsDAKFFD (Central State Audiovisual Archives, Kyiv).

expectations oscillating between thirst for revenge and for justice.[7] It would be hasty to conclude, however, that the trials of "war criminals" in the Soviet Union, or more generally in the Soviet bloc, were only "show" or "demonstration" trials—that is, events orchestrated and staged according to a script and objectives defined by the central political authorities.[8]

In the wake of recent stimulating research on political trials, their variety and their ubiquity through time and types of regimes,[9] the present volume explores the contradictions related to the publicity of this particular type of political trial as well as the diverse involvement of individuals and social groups in these proceedings, articulating these two dimensions—publicity and engagement—within the concept of "publicization of the trials." The contributions

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7 Masha Cerovic, Juliette Denis, Beate Fieseler, and Nathalie Moine, eds., "Sortie de guerre: L'URSS au lendemain de la Grande Guerre patriotique," *Cahiers du Monde russe* 49, nos. 2–3 (2008); Vanessa Voisin, *L'URSS contre ses traîtres: L'Épuration soviétique (1941–1955)* (Paris: Publications de la Sorbonne, 2015), 249–62, 331–70, 433–52; Franziska Exeler, "What Did You Do during the War? Personal Responses to the Aftermath of Nazi Occupation," *Kritika: Explorations in Russian and Eurasian History* 15, no. 4 (2016): 805–35.

8 Nicolas Werth, "La mise en scène pédagogique des grands procès staliniens," *Le Temps des médias* 15*,* no. 2 (Fall 2010): 142–55. For a review of literature on the Soviet case, see Vanessa Voisin, "Du 'procès spectacle' au fait social: Historiographie de la médiatisation des procès en Union soviétique," *Critique internationale* 75 (2017): 159–73.

9 See foremost Jens Meierhenrich and Devin O. Pendas, *Political Trials in Theory and History* (Cambridge: Cambridge University Press, 2016).

gathered here are the result of a collective writing process carried out in 2018–20, which is rooted in a reflection launched in 2016 on the social and media dimensions of trials for crimes of a scale and nature never before seen even in wartime—the violent crimes committed in Europe during the ascendancy of Hitler's Germany and the Second World War (1933–45).[10] For the sake of convenience, we refer here to them as "Nazi and war crimes," even if these terms originate in two very different fields—the German *Vergangenheitsbewältigung* and the international criminal law, respectively.[11] The terminological issue reflects the diversity of situations even if studying

10 This collective work began with an international colloquium held in Prague in October 2017 (*Acts of Justice, Public Events: World War II Criminals on Trial*, CEFRES, October 12–14, 2017). The reflection on publicization constitutes one axis of a research project on the trials of Nazi and war criminals in Central and Eastern Europe, from the Second World War to the disappearance of the USSR, financed by the French National Research Agency (ANR-16-CE27-0001, 2017–19).

11 We deal mostly with "Nazi crimes" (NS-Verbrechen) and "war crimes," and the participation of leaders or the state apparatus in genocide in Allied or satellite countries. This is, extended to the whole of Europe, the criminal perimeter defined in the two immense anthologies of West and East German verdicts: Christiaan F. Rüter and Dick W. de Mildt, eds., *Justiz und NS-Verbrechen: Sammlung Deutscher Strafurteile wegen Nationalsozialistischer Tötungsverbrechen, 1945–2012*, 49 vols. (Amsterdam/Munich: Amsterdam University Press/K. G. Saur Verlag, 1968–2012); and *DDR-Justiz und NS-Verbrechen: Sammlung*

only the crimes of the Second World War committed in Europe.[12] Conventions in scholarship often use the term "war crimes" inappropriately. This is particularly true if one wants to describe many of the crimes perpetrated by the invaders in occupied territory that are not war crimes in a legal sense because of their nature (the Holocaust), or the identity of the perpetrators (conationals of the victims). To the intricacy of the crimes themselves one must add the diversity of the legal designations used to judge them by the countries under study, and sometimes their evolution in time. In most cases, wartime and early postwar courts prosecuted the perpetrators not for "war crimes" but for "treason against the motherland" (Soviet Union), "crimes against the people" (Hungary), or similar charges that eventually fell into disuse. In other words, our use of the terms "Nazi crimes" and "war crimes" includes a wide array of historical realities and legal categories, as well as a spectrum of diverse behaviors, not to speak of the panoply of legal systems and the degree to which they differed in terms of their relationship to the rule of law.

<1>The Soviet-type Regimes and the "Global Moment of Post–Second World War Justice"

Ostdeutscher Strafurteile wegen Nationalsozialistischer Tötungsverbrechen, 1945–1990, 14 vols. (Amsterdam/Munich: Amsterdam University Press/K. G. Saur Verlag, 2002–9).

12 Recent research widened the scope of investigation by looking into all theaters of war, in Western and Eastern Europe as well as in Asia and the Pacific. See, for instance, the multivolume *Historical Origins of International Criminal Law*, ed. Morten Bergsmo, Wui Ling Cheah, Tianying Song, and Ping Yi, 4 vols. (Brussels: Torkel Opsahl Academic Epublisher, 2014–15).

The chronological and spatial limits of the work and the type of acts judged were defined by two sets of considerations.[13] The first relates to the emergence, during the Second World War, of a "legalist paradigm of war" that marked an unprecedented break in the relationship between war and justice, embodied by the Nuremberg International Military Tribunal and the new criminal qualifications it implemented.[14] Individual responsibility and state responsibility could now be conceived and even articulated in such a way as to judge both the political leaders of a murderous system and that system's perpetrators.

This innovation was the result of the conjunction between world war and total war, transcontinental genocide, and the mindset of the victors who had become convinced of the need for applicable international law that would be enforced, in sharp contrast to the de facto impunity after 1918 enjoyed by the perpetrators of the First World War's crimes. Whether liberated or

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13 Though the idea itself appeared in earlier works, the welcome designation of "Global Moment of Post–Second World War Justice" is borrowed from 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 Tallgren and Skouteris, *New Histories*, 189–219.

14 Devin O. Pendas, "'The Magical Scent of the Savage': Colonial Violence, the Crisis of Civilization, and the Origins of the Legalist Paradigm of War," *Boston College International and Comparative Law Review* 30 (Winter 2007): 29–53; Klaus Neumann and Janna Thompson, "Introduction: Beyond the Legalist Paradigm," in *Historical Justice and Memory: Critical Human Rights* (Madison: University of Wisconsin Press, 2015), 3–26.

defeated, each European country resorted to judicial tools to mark the decisive break with the "new world order" established during the conflict. Certainly, retribution went far beyond the judicial framework and employed other types of mechanisms, such as administrative purges, expulsions of ethnic groups, and summary executions.[15] Nevertheless, each nation solicited the tools of law to hold accountable political leaders considered responsible for defeat or collaboration with the enemy, as well as foreign war criminals (normally prisoners of war) and local collaborators.

Likewise, the political significance of postwar trials varied greatly, depending on whether the aim was to reestablish the previous regime or, on the contrary, to make a clear break with it in the name of a regeneration of the body politic and institutions, or even a reunification of a divided nation. But everywhere the condemnation of traitors—understood in a very wide sense, from petty but dishonorable collaboration to governmental commitment to the occupier's policy— was accompanied by close pursuit of wartime perpetrators (as collaborators or occupiers) and of the "desk perpetrators." After the amnesties for less deeply implicated convicts in the 1950s, the more seriously compromised perpetrators would remain the only ones to be prosecuted. It is this category of crimes, whose contours were defined differently according to national legislation, that is the main focus of this volume. Beyond the profound differences between countries in terms of war experience, a common destiny brought together for a time

15 For a global survey of cleansing measures, see István Deák, *Europe on Trial: The Story of Collaboration, Resistance, and Retribution during World War II* (Boulder, CO: Westview, 2015), 191–209.

restored democracies with reestablished or emerging dictatorships. The levels of violence reached under Nazi occupation and the shared tragedy of the Jewish and Roma genocides led everywhere to the creation of new qualifications or transitional arrangements to designate and punish these crimes, which have been increasingly studied in a comparative or global perspective over the last two decades.[16]

No postwar state retained the formulations of "crime against humanity" or "genocide" formulated at Nuremberg.[17] The newly independent West Germany was even encouraged by its

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16 István Deák, Jan Tomasz Gross, and Tony Judt, eds., *The Politics of Retribution in Europe: World War II and Its Aftermath* (Princeton, NJ: Princeton University Press, 2000); Beate Fieseler and Nathalie Moine, eds., *Pobediteli i pobezdennye: Ot vojny k miru, SSSR, Francija, Velikobritanija, Germanija, SŠA 1941–1950* (Moscow: ROSSPEN, 2010); Suzanne Bardgett, ed., *Justice, Politics and Memory in Europe after the Second World War* (London: Vallentine Mitchell, 2011); Nico Wouters, ed., *Transitional Justice and Memory in Europe (1945–2013)* (Cambridge: Intersentia, 2014); Michael J. Bazyler and Frank M. Tuerkheimer, *Forgotten Trials of the Holocaust* (New York: New York University Press, 2014); Bergsmo et al., *Historical Origins of International Criminal Law*.

17 This, even when they took inspiration from the new legal principles discussed at the United Nations War Crimes Commission, as in postwar Yugoslavia: Sabina Ferhadbegović, "Les actions en justice contre les crimes de la Shoah en Yougoslavie: Évolutions locales et impacts internationaux," *Revue d'histoire de La Shoah*, no. 214 (2021): 97–120. An English version is also available online: Sabina Ferhadbegovic, «The Prosecution of Shoah Crimes in Yugoslavia: Local

former occupiers to reject from its own sovereign practices after 1949 the one legal tool that would have allowed effective criminal prosecution for genocidal and wartime crimes: Inter-Allied Council Law No. 10.[18] But as early as April 1943 the Soviet Union had defined a new crime, ad hoc for "atrocities" committed by the "invaders and their accomplices," followed in August 1944 by the Lublin Committee in Poland, while Bulgaria was prosecuting anti-Semitic persecutions from the end of 1944, and Hungary sentenced many for "war crimes and crimes against the People."[19] The imperative need for historical redress was expressed even by the

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Developments and International Impacts», Revue d'Histoire de la Shoah 2021/2 (No 214) , p. 97-120

18 Scholarship has stressed the obstacle created to criminal prosecution of Nazi and war crimes to German courts by the strict observance of the 1871 German criminal code. See, e.g., Devin O. Pendas, "Retroactive Law and Proactive Justice: Debating Crimes against Humanity in Germany, 1945–1950," *Central European History*, no. 43 (2010): 428–63 (here, 431–36); Rebecca Wittmann, "Tainted Law: The West German Judiciary and the Prosecution of Nazi War Criminals," in *Atrocities on Trial: Historical Perspectives on the Politics of Prosecuting War Crimes*, ed. Patricia Heberer and Jürgen Matthäus (Lincoln: University of Nebraska Press, 2008), 211–29.

19 Claire Kaiser, "Betraying Their Motherland: Soviet Military Tribunals of Izmenniki Rodiny in Kazakhstan and Uzbekistan, 1941–1953," *Soviet and Post-Soviet Review* 41, no. 1 (2014): 57–83; Aleksandr E. Epifanov, *Organizacionnye i pravovye osnovy nakazanija gitlerovskih voennyh prestupnikov i ih posobnikov v SSSR, 1941–1956* (Moscow: Juniti-Diana, 2017); Voisin, *L'URSS*

former allies or satellite countries of the Third Reich, where the punishment of mass crimes was paradoxically accompanied by the elaboration of a narrative that largely exonerated the nation. Moreover, despite the distinct national trajectories—especially in the long term—an overall chronology can be observed for the whole of Europe. An intensive phase of trials began even before the end of the conflict, only to run out of steam in the early 1950s. The middle of this decade was marked by a series of amnesties and early releases of convicts before the resumption of strictly targeted prosecution of mass crimes (at least in the Federal Republic of Germany, the Soviet Union, Poland, Hungary, and later France).[20]

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contre ses traîtres; Andrzej Paczkowski, "Crime, Treason and Greed: The German Wartime Occupation of Poland and Polish Post-War Retributive Justice," in Brechtken et al., *Political and Transitional Justice*, 143–78; Nadège Ragaru, "Juger les crimes antisémites avant Nuremberg: L'expérience du Tribunal Populaire en Bulgarie (novembre 1944–avril 1945)," *Histoire@Politique* 26 (2015), and *"Et les Juifs bulgares furent sauvés . . .": Une histoire des savoirs sur la Shoah en Bulgarie* (Paris: Presses de Sciences Po, 2020); Laszlo Karsai, "The People's Court and Revolutionary Law in Hungary, 1945–1946," in Deák, Gross, and Judt, *Politics of Retribution*, 233–52; Máté Zombory, "Conceptions of the Catastrophe: Discourses on the Past before the Rise of Holocaust Memory," *Holocaust Studies* 23, nos. 1–2 (2017): 176–98.

20 The cardinal importance of the possibility of amnesty and early release offered by justice, despite its solemnity, is emphasized by Donald Bloxham in "Prosecuting the Past in the Postwar Decade: Political Strategy and National Myth-Making," in *Holocaust and Justice:*

The second set of considerations that prompted the editors to adopt a broad temporal and geographic framework was the particular tension peculiar to historical justice, "liberal show trials" or, to use Douglas's formulation, "exercises in didactic legality."[21] Nuremberg was criticized in its time by those who stressed that "victor's justice" was an oxymoron: the political character of this type of trial—that is, the prosecution of the former wartime elites for "treason against the nation" by the postconflict elites—would disqualify these proceedings from the point of view of liberal Western jurisprudence. The intensive publicity given to the proceedings incurred the risk that justice would become a show, not "that justice be done" (after the title of a 1945 US short film promoting the soon-to-begin Nuremberg Trial). Moreover, the role played by the Stalin-era Soviet Union both in the International Military Tribunal in Nuremberg and within

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Representation and Historiography of the Holocaust in Post-War Trials, ed. David Bankier and Dan Michman (Jerusalem: Yad Vashem/Berghahn Books, 2010), 23–43.

21 Mark Osiel defines the "liberal show trial" as a court proceeding whose scope goes beyond the judgment of individuals to take on historical, memorial, and political objectives, a purpose that warrants turning the courtroom drama into a "theater of ideas," but within the bounds of respect for the rights of defense. See Mark Osiel, *Mass Atrocity, Collective Memory, and the Law* (New Brunswick, NJ: Transaction, 1997); Lawrence Douglas, *The Memory of Judgment: Making Law and History in the Trials of the Holocaust* (New Haven, CT: Yale University Press, 2001), 3.

the zone of Red Army occupation reinforced the presumption of arbitrary politicized justice.[22] In the aftermath of the Eichmann trial, Hannah Arendt developed arguments of philosophy of law to assert that the logic of the criminal trial and the logic of historical pedagogy were incompatible. Judith Shklar's equally well argued refutation is less well known. Yet some scholars have argued that it is possible to conceive of an articulation of these two logics with respect to the law by playing with the plasticity of the judicial form.[23] These reflections in favor of the "didactic trial" are based on an examination of precedents in the West and the conditions guaranteed in liberal democracies. They take care to distance themselves from the trials of "war criminals" held in Eastern Europe,[24] which until recently remained unrecognized and tarnished by the suspicion of fabrication and denial of justice because of the Stalinist sham trials of the 1930s and the Stalinist-type political trials held in the early years of the people's democracies.[25]

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22 George Ginsburgs, *Moscow's Road to Nuremberg: The Soviet Background to the Trial* (The Hague: M. Nijhoff, 1996); Hirsch, *Soviet Judgment at Nuremberg*.

23 Douglas, *Memory of Judgment*, 1–7, 265–68; Hannah Arendt, *Eichmann in Jerusalem: A Report on the Banality of Evil* (New York: Viking, 1963); Judith Shklar, *Legalism: Law, Morals, and Political Trials* (Cambridge, MA: Harvard University Press, 1964).

24 Douglas, *Memory of Judgment*; Martti Koskenniemi, "Between Impunity and Show Trials," *Max Planck Yearbook of United Nations Law* 6 (2002): 1–35.

25 For a recent overview, see David M. Crowe, ed., *Stalin's Soviet Justice: "Show" Trials, War Crimes Trials, and Nuremberg* (London: Bloomsbury, 2019); and Exeler, "Nazi Atrocities."

More recently, Jens Meierhenrich and Devin O. Pendas offered a welcome renewed framework of analysis for political trials, claiming that they occur in liberal as well as illiberal regimes, can respect or not the legal rules of procedures, and are not necessarily public (though most often are) or partisan. Defining a typology of political trials—the *decisive*; the *didactic*, or the *destructive*—they underscored that a single trial could perfectly combine traits of each of these three ideal types, albeit to various degrees, or mutate from one to another with time. In a more provocative manner, they gathered in the same category, that of the (political enemy–)destructive trial, instances as historically distant as the Nazi war criminal cases and the Salem witch trials. Asserting the empirical diversity of political trials, Meierhenrich and Pendas reject a simplifying instrumental (functionalist) concept of these trials, preferring to conceive them "as peculiar *legal institutions* that embody *political dynamics*":

> Because trials, political trials above all, encounter and constitute multiple, extralegal audiences, the potential for dissent is innate. The specific characteristic of show trials, as a distinct subset of political trials, is that they seek—not always successfully—to stage manage the proceedings in such a way as to minimize this risk. They carefully frame the narrative in such a way as to constitute a highly determinant trial audience. Yet very often, political trials are characterized by multiple narratives appealing to and constituting distinct and divergent audiences, intentionally and otherwise. If political trials are political because they deal with the distribution of power, then this ability to shape, mobilize and normatively

convince distinct audiences gets to the heart of one dimension of their political character.[26]

Parallel to this theoretical renewal, the spectacular growth of work on these trials over the last fifteen to twenty years has established that, despite the persistence of serious procedural shortcomings by the standard of liberal jurisprudence (for instance, the ambivalent role of the defense—if not complete lack of it—and coercion against the accused), and in spite of political control over verdicts or of the choice of publicity versus closed-door trials, the "Nazi and war criminals" trials held in Central and Eastern Europe were not merely sham trials like the trials of political opponents mentioned above.[27] One can clearly distinguish between a massive *political*

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26 Jens Meierhenrich and Devin O. Pendas, "'The Justice of My Cause Is Clear, but There's Politics to Fear': Political Trials in Theory and History," in *Political Trials in Theory*, 1–64 (here, 3–4, quote on 42).

27 Among a broad scholarship see Krzysztof Persak, "Jedwabne before the Court: Poland's Justice and the Jedwabne Massacre—Investigations and Court Proceedings, 1947–1974," *East European Politics and Societies* 25, no. 3 (2011): 410–32; Andrew Kornbluth, "'Jest wielu Kainów pośród nas': Polski wymiar sprawiedliwości a Zagłada, 1944–1956," *Zagłada Żydów: Studia i Materiały* 9 (2013): 157–72; Katarzyna Person, "Mówi Jürgen Stroop: Proces likwidatora powstania w getcie warszawskim przed Sądem Wojewódzkim w Warszawie," *Zagłada Żydów: Studia i Materiały* 9 (2013): 380–428; Ildikó Barna and Andrea Pető, *Political Justice in Budapest after WWII* (Budapest: Central European University Press, 2015); Iuliu

cleansing in the aftermath of liberation or during Sovietization, on the one hand, and proceedings against perpetrators based on a more convincing body of evidence, admittedly of diverse quality and credibility, on the other. Moreover, in the case of countries where these prosecutions continued beyond the 1950s, there was a clear evolution of police and judicial practices toward professionalization.[28] A look at the whole period of the Cold War thus makes it possible to fully appreciate the "discrete historical moments" to which Douglas invites us to pay attention. And to agree with Bloxham: "While there is some value to distinguishing between communist and non-communist responses to Nazism, the role of the new ideological conflict should not lead to generalizations about eastern bloc distortion of memory versus more authentic western confrontation with the past: these are simply not tenable."[29] By extending the investigation to the East and up to the end of the Cold War, it is of course not a question of denying the constraints and effects of the latter, but also of considering the possibilities created by the competition between blocs and models of society.

Crăcană, *Dreptul în slujba puterii: Justiția în regimul comunist din România, 1944–1958* (Bucharest: Academia română, INST, 2015); Paczkowski, "Crime, Treason and Greed."

28 For the Soviet Union, see Emilia Koustova, "Instruire, juger et négocier le passé de guerre dans la Lituanie soviétique (Pabradė, 1944–1957)," *Revue d'histoire de La Shoah*, no. 214 (2021): 149–84; and Jasmin Söhner, "Un 'Châtiment inéluctable'? Le concours soviétique aux enquêtes ouest-allemandes sur les criminels de guerre et les criminels nazis, 1955–1969," ibid., 185–208.

29 Bloxham, "Prosecuting the Past," 26.

This book follows in the wake of work that, again without denying the peculiarities of Soviet-type regimes, does not preclude comparison, the study of movements, exchanges, and even points of convergence. This posture has thus led the group of authors to consider four of the six distinct kinds of trials that have been concerned (to a greater or lesser degree) with the crimes and history of the Holocaust, according to Marrus.[30] The respective contributions of Sylvie Lindeperg and of Victor Barbat examine the only case of "international trial," the IMT in Nuremberg (first category). Enrico Heitzer and Julia Landau focus on the trials held by the Soviet military authorities in their zone of jurisdiction, which remain far less studied than the trials in the Western zones of occupation (second category). The majority of the chapters deal with the predominant set (in terms of trial numbers): the cases against Nazi criminals conducted by successor regimes in countries across Europe and across the East–West divide (the third category). Katarzyna Person devotes her study to a little-known part of the trials of "Jews by other Jews" (category four): the processing of rehabilitation requests addressed to the community authorities in Poland. Finally, it is important to remember that in even the most politically motivated of trials, or those based on evidence of questionable credibility, the will of political leaders in no way prevented the active participation of citizens in one way or another. It is precisely this entry into the subject that interests us here because it allows us to question the "historical" trials of war criminals anew, by moving away from purely functionalist interpretations.

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30 Michael Marrus, "L'histoire et l'Holocauste dans le prétoire," in *Le génocide des Juifs entre procès et histoire, 1943–2000*, ed. Florent Brayard (Bruxelles: Éditions complexe, 2000), 25–55.

<1>The Fluctuating Involvement of Social Actors

What could various actors in society—survivors, bystanders, journalists, political and legal authorities—expect from the judgment of war criminals? How were these actors involved in the trials, and how much room did they have to maneuver? This volume focuses on the construction of the trials as social events, going "behind the scenes" of their preparation and public deployment.[31] To analyze a wide range of actors, we have incorporated scholarly insights on the development of legal tools, on visual documents on the Holocaust, on survivors' networks, and on the reception of the trials. And we have consistently cast a new light on the parts played, respectively, by impulses "from below" and by injunctions from the authorities—a key element of our attempt to establish rapprochement between East and West European perspectives. Such an analytic approach challenges historians' conception of information about the trials along unilateral channels flowing from the central government into society.[32] We demonstrate, instead,

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31 Guillaume Mouralis, "Le procès Papon: Justice et temporalité," *Terrain* 38 (March 2002), https://doi.org/10.4000/terrain.9953; Sylvie Lindeperg and Annette Wievorka, eds., *Le Moment Eichmann* (Paris: Albin Michel, 2016).

32 Richards Plavnieks, *Nazi Collaborators on Trial during the Cold War: Viktors Arājs and the Latvian Auxiliary Security Police* (New York: Palgrave Macmillan, 2018); and Meelis Maripuu, "Cold War Show Trials in Estonia: Justice and Propaganda in the Balance," in *Behind the Iron Curtain: Soviet Estonia in the Era of the Cold War*, ed. Tõnu Tannberg (Frankfurt: Peter Lang, 2015), 139–96.

the oscillating borders between the social and the political, between civic engagement and cooperation with the authorities. Aware of the epistemological challenges involved in juxtaposing cases from democratic and Soviet-type regimes, our analysis centers the entangled institutional and social initiatives from and toward political, judicial, and police power. To do so, we draw on two historiographical areas: the social history of professional groups, and the examination of that part of the public sphere in which the trials resonated. The first component necessitates joining historiographical strains that have hitherto remained apart, structured around issues specific to each profession. The practices and discourses of legal experts and investigators, and of the political authorities who helped to shape the trials, now constitute a privileged field of

analysis.[33] Drawing on the sociology of professions, historians have examined the evolution of legal norms[34] as well as methods of writing history.[35]

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33 Rebecca Wittmann, *Beyond Justice: The Auschwitz Trial* (Cambridge, MA: Harvard University Press, 2005); Devin O. Pendas, *The Frankfurt Auschwitz Trial, 1963–65: Genocide, History and the Limits of the Law* (Cambridge: Cambridge University Press, 2006); Ayşe Sıla Çehreli, *Les magistrats ouest-allemands font l'histoire: La "Zentrale Stelle" de Ludwigsburg* (Paris: L'Harmattan, 2014); Guillaume Mouralis, "Lawyers versus Jurisconsults: Sociography of the Main Nuremberg Trial," in *Justice in Wartime and Revolutions: Europe, 1795–1950,* ed. Margo De Koster, Hervé Leuwers, Dirk Luyten, and Xavier Rousseaux (Brussels: Archives générales du Royaume, 2012), 325–36; Guillaume Mouralis, "Outsiders du droit international: Trajectoires professionnelles et innovation juridique à Londres, Washington et Nuremberg, 1943–1945," *Monde*(*s)* 1 (2015): 113–34.

34 This characterizes Mouralis's approach, as well as the work of Anton Weiss-Wendt, *The Soviet Union and the Gutting of the UN Genocide Convention* (Madison: University of Wisconsin Press, 2017).

35 Brayard, *Le génocide des Juifs*; Dieter Pohl, "Prosecutors and Historians: Holocaust Investigations and Historiography in the Federal Republic, 1955–1975," in Bankier and Michman, *Holocaust and Justice*, 117–29; Nathalie Moine, "La commission d'enquête soviétique sur les crimes de guerre nazis: Entre reconquête du territoire, écriture du récit de la guerre et usages justiciers," *Le Mouvement Social* 222, no. 1 (2008): 81–109; Nathalie Moine, "Defining 'War Crimes against Humanity" in the Soviet Union: Nazi Arson of Soviet Villages

A distinct line of scholarship has been devoted to print and visual journalism. Some of these works have highlighted the friction between "legal dramaturgy" and the theatrics of journalistic narrative.[36] Still, the place where cinema and the courtroom meet has mainly been studied from two angles: the representation of the judicial sphere[37] and the use of images in the

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and the Soviet Narrative on Jewish and non-Jewish Soviet War Victims, 1941–1947," *Cahiers du Monde russe* 52, nos. 2–3 (2011): 441–73.

36 Julie A. Cassiday, *The Enemy on Trial: Early Soviet Courts on Stage and Screen* (DeKalb: Northern Illinois University Press, 2000); Lindeperg and Wieviorka, *Le Moment Eichmann*; Axel Fischer, "Promoting International Criminal Law: The Nuremberg Trial Film Project and US Information Policy after the Second World War," in Bergsmo et al., *Historical Origins*, 1:623–53.

37 Lawrence Douglas, Martha M. Umphrey, and Austin Sarat, *Law on the Screen* (Stanford, CA: Stanford University Press, 2005); Agnès de Luget and Magalie Flores-Lonjour, *Le Huis clos judiciaire au cinéma* (La Crèche: Geste Éditions, 2010); Émeline Seignobos, *La Parole judiciaire: Mises en scène rhétoriques et représentations télévisuelles* (Brussels: De Boeck Supérieur, 2011); James Jordan, ed., *From Nuremberg to Hollywood: The Holocaust and the Courtroom in American Fictive Film* (London: Vallentine Mitchell, 2016); Émeline Jouve and Lionel Miniato, eds., *Chronique judiciaire et fictionnalisation du procès: Discours, récits et représentations* (Paris: Mare & Martin, 2017). Some, like Woulter G. Weiner, have interrogated the didactic function of the legal sphere and documentary cinema: "Justice on Screen—a Study

courtroom.[38] Often reliant on an internal analysis of the edited films, the contributions examine only marginally the practices of reporters. Moreover, the gathering of knowledge on the Holocaust itself has frequently been subject to analysis, at the expense of an examination of trials as sites and conduits of social conflict.

Our endeavor to shift the emphasis from representations to practices is rooted in recent research that has historicized the order and instance of filming.[39] Interrogating the actions of

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of Four Documentary Films on the International Criminal Court," *Leiden Journal of International Law* 29 (2016): 1043–60.

38 Douglas, *Memory of Judgment*, 11–37; Kevin Reynolds, "Banking against Humanity: The Holocaust, the Reichsbank Loot Film and the American Prosecution at the Nuremberg International Military Tribunal," *History: The Journal of the Historical Association* 98, no. 332 (2013): 511–29; Christian Delage, *Caught on Camera: Film in the Courtroom from the Nuremberg Trials to the Trials of the Khmer Rouge* (Philadelphia: University of Pennsylvania Press, 2013)*;* Jennifer Tucker, "Photographic Migrations: The Tichborne Claimant, Popular Archives, and the 'Evidence of Camera Pictures,'" in *Documenting the World: Film, Photography and the Scientific Record*, ed. Kelley Wilder and Gregg Mitman (Chicago: University of Chicago Press, 2016), 22–44.

39 Valérie Pozner, Alexandre Sumpf, and Vanessa Voisin, eds., *Filmer la guerre, 1941–1946: Les Soviétiques face à la Shoah* (Paris: Mémorial de la Shoah, 2015); Irina Tcherneva, "Historiciser les images soviétiques de la Shoah (Estonie, Lituanie, 1944–1948)," *Vingtième*

filmmakers, journalists, and photographers during or before the proceedings, and situating those actions in the context of professional procedures within the police and justice system, can illuminate adaptations, expertise, and expectations regarding the legal events in question.[40] In this book, the essays by Ragaru, Lindeperg, Barbat, and Lachwitz are firmly anchored within this dynamic.

Such an analytic position is indebted to prior work on the media in Soviet-type regimes, work that has overturned an understanding of the media as functioning in terms of what Jeffrey Brooks calls "performative public culture." This has enabled a renewed examination of the autonomy of professional actors, in a way that goes beyond the traditional opposition of East and West. Historians have noted variations in journalistic accounts of Nazi crimes during the war,[41]

Siècle: Revue d'histoire 3, no. 139 (2018): 59–78; Sylvie Lindeperg, *Nuremberg, La bataille des images* (Paris: Payot, 2021).

40 Nadège Ragaru, "Viewing, Reading, and Listening to Trials in Eastern Europe: Charting a New Historiography," *Cahiers du Monde russe* 61, nos. 3–4 (2020): 297–316.

41 Karel C. Berkhoff, *Motherland in Danger: Soviet Propaganda during World War II* (London: Harvard University Press, 2012), 134–66. See also David Shneer, *Through Soviet Jewish Eyes: Photography, War and the Holocaust* (New Brunswick, NJ: Rutgers University Press, 2011); and Maxim Shrayer, *I Saw It: Ilya Selvinsky and the Legacy of Bearing Witness to the Shoah* (Boston: Academic Studies Press, 2013).

and in particular during the trials,[42] as well as the impact of the reporters' personal trajectories on their testimonies.[43] For the period following Stalin's death, scholarship on the Soviet print press, radio, TV, and documentary cinema has demonstrated the emergence of technocratic governance based on extensive expertise, a social commitment to the profession, and a concern for the preferences of readers and spectators.[44] In addition, journalists tended to distance themselves from the event as such—allegedly "orchestrated" by power—and personalize the narrative. In portraying the trials, they foregrounded the individual and emotional dimension, placing in the center of attention the witness. This tendency can be seen in democratic and Soviet-type regimes alike. Thus, writer-editors (studied by Söhner and Zombory) or witness-intellectuals (approached

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42 Jeremy Hicks, "'Soul Destroyers': Soviet Reporting of Nazi Genocide and Its Perpetrators at the Krasnodar and Khar'kov Trials," *History* 98, no. 332 (2009): 530–47.

43 Shneer, *Through Soviet Jewish Eyes*; David Schneer, *Grief: The Biography of a Holocaust Photograph* (Oxford: Oxford University Press, 2020).

44 Thomas C. Wolfe, *Governing Soviet Journalism: The Press and the Socialist Person after Stalin* (Bloomington: Indiana University Press, 2005); Kristin Roth-Ey, *Moscow Prime Time: How the Soviet Union Built the Media Empire that Lost the Cultural Cold War* (Ithaca, NY: Cornell University Press, 2011); Irina Tcherneva, "Le cinéma de non-fiction en URSS: Création, production et diffusion (1948–1968)" (PhD Diss., EHESS, 2014); Simon Huxtable, "The Life and Death of Brezhnev's Thaw: Changing Values in Soviet Journalism after Khrushchev, 1964–1968," in *Reconsidering Stagnation in the Brezhnev Era: Ideology and Exchange*, ed. Dina Fainberg and Artemy M. Kalinovsky (Lanham, MD: Lexington Books, 2016), 21–42.

by Le Bourhis and Tcherneva) adopted individual strategies that were in part channeled by the government, resorting to various forms of legitimacy in order to champion their cause before the authorities.

This analysis of the extent of the autonomy held by professionals, and of their interpretations of the legal issues, emerges out of our conception of the trials as structuring the public sphere. Thus, it is crucial to position the professions as "intraorganizational public spheres" or "midlevel public spheres" in Soviet-type regimes.[45] Research into the distinction between public and private spheres in the Eastern bloc[46] has clarified the significant role of

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45 Gabor T. Rittersporn, Malte Rolf, and Jan C. Behrends, *Public Spheres in Soviet-Type Societies: Between the Great Show of the Party-State and Religious Counter-Cultures* (Frankfurt: Peter Lang, 2003), 443–44.

46 The scholarship on the USSR has long debated the relevance of the Habermasian notion of the "public sphere." On this point, as well as for reflections on the horizons for transcending distinctions between private and public, cf., in particular, Gabor T. Rittersporn, Malte Rolf, Jan C. Behrends, "Open Spaces and Public Realm: Thoughts on the Public Sphere in Soviet-Type Systems," in Rittersporn, Rolf, and Behrends, *Public Spheres*, 423–52; Kristin Roth-Ey and Larissa Zakharova, "Communiquer en URSS et en Europe socialiste," *Cahiers du Monde russe* 56, nos. 2–3 (2015): 253–71; and Larissa Zakharova, "Sphères publiques soviétiques," 2017, https://www.politika.io/fr/notice/spheres-publiques-sovietiques (accessed May 22, 2020). The scholarship distinguishes between several types of public spheres: (1) official and plebiscitary; (2) semicontrolled; and (3) alternative and opposed to the authorities. The

"midlevel public spheres" alongside the "plebiscitary-acclamatory" form, which is how we would describe the courtroom. Sites of daily sociability, journalistic milieux, work groups, and associations aligned according to affinity and expertise—all developed their own channels of communication. These local spaces of interaction were characterized by multiple collective affiliations and by a high concentration of information. This category of analysis supports a rethinking of the spaces where survivors could meet, but also the sites of political socialization (e.g., Communist Youths) where groups were formed that could then be mobilized for the trials. In this respect, the historiography on survivor networks is particularly useful, as it offers insights into the ways in which survivor associations were constituted and how they influenced the investigations.[47]

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unprecedented development of means of communication and media in the 1950s–1960s both led to the construction of new publics and rendered the boundary between private and public spheres more porous.

47 Laura Jockusch, "Justice at Nuremberg? Jewish Responses to Nazi War-Crime Trials in Allied-Occupied Germany," *Jewish Social Studies: History, Culture, Society* 19, no. 1 (Fall 2012): 107–47; Laura Jockusch and Gabriel N. Finder, eds., *Jewish Honor Courts: Revenge, Retribution, and Reconciliation in Europe and Israel after the Holocaust* (Detroit, MI: Wayne State University Press/United States Holocaust Memorial Museum, 2015); Natalia Aleksiun, "Intimate Violence: Jewish Testimonies on Victims and Perpetrators in Eastern Galicia," *Holocaust Studies* 23, nos. 1–2 (2017): 17–33; Gabriel N. Finder and Alexander Prusin, *Justice behind the Iron Curtain: Nazis on Trial in Communist Poland* (Toronto: University of Toronto

This volume juxtaposes this approach by public and semipublic spheres with work on professional and civic investments, in order to identify these actors' organizational methods as well as their channels of communication with the authorities. The contributors expose the forms of professionalization among social actors during the legal proceedings (Stengel, Person), as well as various degrees of institutionalization, and the array of resources mobilized in the service of justice. This all requires a redefinition of the role played by legal, governmental, and police authorities, especially when they were called upon to cooperate with nongovernmental, professional, and commemorative actors. To what extent—and in what contexts—did the former respond to expectations "from below"? In answering this question, we also foreground various conceptions of the social functions of justice: reparation for the damage inflicted on victims; recognition of the harm caused and the infringement of rules; and the reminder that the state retained sole legitimacy in arbitrating these questions. The courtroom, as physical space and media environment, is construed as a site of encounter for multiple expectations, goals, and modes of action.

From the "plebiscitary-acclamatory" form of the public sphere to the intermediary public spheres that came into being through the exchange of knowledge and professional procedures, our analysis then turns to individual involvement in the trials. An impressive historiography has developed around writing practices in the Soviet Union as well as the countries of the Eastern

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Press, 2018); Wolfgang Schneider, "From the Ghetto to the Gulag, from the Ghetto to Israel: Soviet Collaboration Trials against the Shargorod Ghetto's Jewish Council," *Journal of Modern European History* 17, no. 1 (2019): 83–97.

bloc.[48] Rather than an atomized society of terrorized individuals infused with ideology—a Cold War interpretation—many more recent works (in particular those by historians of subjectivity[49]) trace how the language of power was appropriated, but also circumvented and redefined. Other recent studies have shown how impulses "from below" could lead to changes in administrative procedures (even in Stalin's Soviet Union).[50] The trials were formed as social facts not only

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48 Sheila Fitzpatrick, "Supplicants and Citizens: Public Letter-Writing in Soviet Russia in the 1930s," *Slavic Review* 55, no. 1 (1996): 78–105; Matthew E. Lenoe, "Letter-Writing and the State: Reader Correspondence with Newspapers as a Source for Early Soviet History," *Cahiers du Monde russe* 40, nos. 1–2 (1999): 139–70; Alexey Tikhomirov, "The Regime of Forced Trust: Making and Breaking Emotional Bonds between People and State in Soviet Russia, 1917–1941," *Slavonic and East European Review* 91, no. 1 (2013): 78–118; Larissa Zakharova, "Devenir soviétique grâce aux échanges épistolaires? Préparer la réinsertion sociale des prisonniers du droit commun en URSS dans les années 1960–1970," *Cahiers du Monde russe* 54, no. 3 (2013): 491–516.

49 Brigitte Studer, Berthold Unfried, and Irène Herrmann, eds., *Parler de soi sous Staline: La construction identitaire dans le communisme des années 1930* (Paris: Éditions de la MSH, 2002); Igal Halfin, ed., *Language and Revolution: Making of Modern Political Identity* (London: Frank Cass, 2002); Jochen Hellbeck, *Revolution on My Mind: Writing a Diary under Stalin* (Cambridge, MA: Harvard University Press, 2006).

50 Alain Blum and Emilia Koustova, "Negotiating Lives, Redefining Repressive Policies: Managing the Legacies of Stalinist Deportations," *Kritika* 19, no. 3 (2018): 537–71.

through vertical conduits (between authorities and constituents) but also via horizontal exchanges (between citizens).[51] Therefore, instead of distinguishing civic engagement from state supervision, this book highlights the multipositioning of actors as they responded to the trials while preserving their autonomy of action.

We thus compare as well as differentiate between the commitments of citizens in democratic and authoritarian regimes in bringing crimes to light and in judging them. The book examines their forms and mechanisms, distinguishing various scales. The first covers ad hoc contributions to justice (the provision of evidence, the search for witnesses by survivor committees, and the usage of social links in encouraging justice). As the chapters by Stengel and by Klein and Klarzyk demonstrate, nongovernmental actors acquired historical and documentary skills. On a second scale are individual and collective approaches that aimed to defend, or even build, their cause (Söhner and Zombory, Stengel). And a third scale tackles professional practices of narration and the portrayal of police and judicial proceedings (Ragaru, Lindeperg, Barbat, Lachwitz). Drawing on the various tools of the social history of professions and history "from below," we pinpoint the sites of formation of a social impulse for justice.

<1>Publicizing the Trials: Challenges and Stakes

Any judicial procedure requires and anticipates the controlled circulation of information on the crimes and the trials themselves: this is necessary for the police as well as for the legal actors, all

51 Larissa Zakharova, *De Moscou aux terres les plus lointaines: Communications, politique et société en URSS* (Paris: Édition de l'EHESS, 2020), 243–305.

while legitimizing justice and rendering it visible. The social demand for justice, in turn, disrupts this cycle, since it requires an intensified circulation of information—embarking on an investigation, finding new witnesses, lending a renewed visibility to the courtroom or an afterlife to the verdict. A tension between the controlled circulation of information and circulation that escapes the judicial actors is intrinsic to legal proceedings. We have gathered all of these interactions (between the political and legal authorities and society), as well as their effects on the trials, around the term "publicization"—a term we have placed at the heart of this volume.

Publicization involves sharing information on crimes, investigations, and trials known and accessible to as many people as possible or to targeted audiences. However, within a judicial framework, such dissemination was met with confidentiality restrictions in the law (particularly criminal justice). Depending on the country and the historical period, these restraints might apply to the investigation, the verdict, and/or the courtroom (in chamber). Meant to protect the defendants and witnesses, as well as the due process and independence of justice, these necessarily reduced the possibility of forms of social participation in justice—even when the circulation of information itself was necessary to the inquiry or intended for pedagogical purposes. In the Western world, this paradox of justice has been broached in law and sociology, regarding themes confined to national contexts (the right to information, democratization of law,

transparency, open justice).[52] In the Soviet bloc, it is a difficult question to study,[53] precisely because a culture of secrecy permeated the greater part of the administrations, particular with respect to justice, and limited the written sources that were conserved—beginning with those that framed and organized how confidentiality was to function.[54] It is thus more complicated to

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52 Jean-Marie Charon and Claude Furet, *Un secret si bien violé: La loi, le juge et le journaliste* (Paris: Le Seuil, 2000); Joseph Jaconelli, *Open Justice: A Critique of the Public Trial* (Oxford: Oxford University Press, 2002); Susan N. Herman, *The Right to a Speedy and Public Trial: A Reference Guide to the United States Constitution* (Westport, CT: Praeger, 2006); Special issue "Le secret entre opacité et transparence," *Les Cahiers de la Justice* 3 (2014); Jocelyn Simonson, "The Place of 'the People' in Criminal Procedure," *Columbia Law Review* 119, no. 1 (2019): 249–307.

53 Regarding the USSR, see the timeline of the courtroom openings and publicization in Peter H. Solomon, "Understanding the History of Soviet Criminal Justice: The Contribution of Archives and Other Sources," *Russian Review* 74, no. 3 (2015): 401–18; Voisin, *L'URSS contre ses traîtres*; and Exeler, "Nazi Atrocities."

54 Niels Erik Rosenfeldt, *The "Special" World: Stalin's Power Apparatus and the Soviet System's Secret Structures of Communication* (Copenhagen: Museum Tusculanum Press, University of Copenhagen, 2009); Mark Harrison, "Accounting for Secrets," *Journal of Economic History* 73, no. 4 (2013): 1017–49; Zakharova, *De Moscou aux terres les plus lointaines*.

examine why certain courtrooms were open, or the concrete reasons for struggling against the pervasive leaks.

Several chapters tackle the stakes of this very struggle: the beginning, in the Soviet Occupation Zone of Germany, of a highly limited opening on two occasions in 1947 (Heitzer and Landau); debates on the right to film trials, in West Germany (Lachwitz); the very gradual opening of collaborators' trials in the Soviet Union at the end of the 1950s (Le Bourhis and Tcherneva), and later for those from the Red Army—an extremely sensitive subject (Rich). In the Soviet case, this work should better illuminate what has traditionally been called the second wave of the trials, which until now have been overly associated with a few highly publicized trials.[55] The international factor often appears as a reason why the trials were opened up, but there are others as well. By observing publicity "accidents" and identifying periods of deliberate shifts, these contributions demonstrate how such trials particularly transformed the theoretical and practical basis for the visibility of justice.

More broadly, these trials also illuminated the risks of revealing too much: for judicial actors, the risk of undermining fair process or the individual rights that they expected (Lindeperg, Lachwitz), but also the risk of discrediting the trials if "public opinion" was to be informed of the role played by Jewish organizations (Stengel); for political actors, there was the risk of failing to master either collective investment or critiques of state policy at the local and

55 Alexander V. Prusin, "The 'Second Wave' of Soviet Justice: The 1960s War Crimes Trials," in *Rethinking Holocaust Justice: Essays across Disciplines*, ed. Norman J. W. Goda (New York: Berghahn Books, 2018), 129–57.

national (Le Bourhis and Tcherneva) or international (Rich) level. Prosecutors, survivors' organizations, communist leaders—all were caught between the need to rely on public exposure and the need to contain information: all had to weigh the risks and the benefits of publicity.

As we understand it, the notion of publicization includes these stakes as well as reception and media exposure, which have driven various works on the major trials (the IMT in Nuremberg, Eichmann in Jerusalem, Auschwitz in Frankfurt). The case of West Germany was the first in which both these questions were dealt with extensively. The perception of trials against 'Nazi' criminals by the West German public was a topic of concern for legal and political actors of the time (locally and among the Allies), which is well reflected by the scholarship. The lack of sources has nonetheless made the reception of the trials difficult to study, in West Germany as elsewhere; their coverage in the press has long served to compensate for this gap.[56] Since the 1990s, however, several historiographical trends have broadened the field. German scholarship has integrated the public dimension of justice into reflections on the concept, broadly defined, of confrontation (*Auseinandersetzung*) with the past, while conducting an in-depth analysis of the coverage of trials and its political issues.[57]

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56 Cf. the bibliography in the introduction to *NS-Prozesse und deutsche Öffentlichkeit: Besatzungszeit, frühe Bundesrepublik und DDR*, ed. Jörg Osterloh and Clemens Vollnhals (Göttingen: Vandenhoeck & Ruprecht, 2011).

57 See, e.g., Peter Krause, *Der Eichmann-Prozess in der deutschen Presse* (Frankfurt: Campus, 2002).

In recent years, studies of trial media coverage in Soviet-type regimes have also gained momentum. Such work has revealed the media's room for maneuver and the various forms of media exposure, as well as invited a more complex understanding of the Holocaust in the Soviet Union, relative to the taboo allegedly cast over its exposure there.[58] At the same time, other scholars have laid the foundations for studying the reception and participation of the public in legal proceedings.[59] Several chapters pick up on this final step with respect to lesser-known trials in the Eastern bloc, in order to have a deeper perspective on the spatial and social sites of reception for a case in the Soviet Union (Le Bourhis and Tcherneva), as well as the "infrapublics" formed around trials in the Soviet Occupation Zone of Germany, Poland and the

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58 This idea of a taboo has been increasingly nuanced since the 2010s: see Karel C. Berkhoff, "'Total Annihilation of the Jewish Population': The Holocaust in the Soviet Media, 1941–45," *Kritika* 10, no. 1 (2009): 61–105; Mordechai Altshuler, "The Holocaust in the Soviet Mass Media during the War and in the First Postwar Years Re-Examined," *Yad Vashem Studies* 39, no. 2 (2011): 121–68; Hicks, "Soul Destroyers"; Exeler, "Nazi Atrocities"; and Vanessa Voisin, "The 1963 Krasnodar Trial: Extraordinary Media Coverage for an Ordinary Soviet Trial of Second World War Perpetrators," *Cahiers du Monde russe* 61, nos. 3–4 (July–December 2020): 383–428.

59 Voisin, *L'URSS contre ses traîtres*; Irina Tcherneva, "L'image du crime se forme au fil de regards: Trajectoires du *Dernier chemin* (1944–1970) de Yosef Kuzkovski," in *Cahiers du CAP: Les spectacles du patrimoine—sources, exposition, usages* (Paris: Éditions de la Sorbonne, 2019), 67–107.

Soviet Union (Heitzer and Landau, Rich, Person). These microsegments of the population are variegated and difficult to fully account for: they are sometimes located outside the legal process (e.g., families of defendants in the Soviet Occupation Zone), other times involved in publicizing them (groups of professionals such as journalists and filmmakers), or even actors within the legal process itself, who can act to relay information (in particular, as witnesses, survivors, or bystanders).

Publicization, as we understand it, also involves a complex set of intersubjective and collective interactions, whose diversity is reflected in this volume. Several chapters highlight the role of conveyors and smugglers of information—and not only of witnesses who are at the focus of much recent scholarship. The issue of smuggling is essential, given the difficulty during the Cold War of even accessing information on crimes. This question affects testimonies, but also archival documentation—which, since Nuremberg, has been crucial in judging crimes that left few witnesses behind, several decades after the war at that. However, the documentation on the crimes produced by the perpetrators is widely dispersed and missing, as a result of wartime movement, destruction by the Nazis themselves during their retreat, seizure by Allied troops, and the redistribution and exchange of the documents that followed. The trials were a favorable conjuncture for their recirculation. The documents seized by British and American troops were gradually transmitted to West German authorities, beginning with the creation of the Central Office of the Land Judicial Authorities for Investigation of National Socialist Crimes in

Ludwigsburg in 1958.[60] East German, Polish, Czechoslovak, and Soviet sources (whether trophy documents or simply preserved) took a little longer to reach the West, given the ideological problem of pragmatic cooperation—unofficially beginning in 1960, and officially starting in 1965.[61] Several chapters illuminate the ways in which the ability to circulate these sources (testimonials and archival documentations) within a legal framework became an essential resource from the 1960s onward, in the West as in the East, within each bloc, or through the Iron Curtain: legal and political institutions did whatever they could to gain access to them, through individuals or nonprofessional groups (Stengel, Söhner and Zombory) or were confronted with smugglers (Klein and Klarzyk). This work thus builds on recent calls to write a connected history of the prosecutions in different countries.[62]

The way in which information was progressively and diversely appropriated by the judicial institutions was another key element of its circulation. How were rumors and letters of protest or accusation converted into institutional data (evidence, depositions, witness testimony)? While rumors or accusations triggered investigations everywhere, in Poland these encouraged Jews suspected of collaboration to ask to be cleared by community civil courts (Person). In

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60 Astrid M. Eckert, *The Struggle for the Files: The Western Allies and the Return of German Archives after the Second World War* (Cambridge: Cambridge University Press, 2014).

61 Weinke, *Die Verfolgung von NS-Tätern.*

62 Ibid.; Plavnieks, *Nazi Collaborators on Trial*; Marc Bergère, Jonas Campion, Emmanuel Droit, and Dominik Rigoll, eds., *Pour une histoire connectée et transnationale des épurations en Europe après 1945* (Brussels: Peter Lang, 2019).

addition, how was fragmentary information cross-checked, supplemented, or thrown out by investigators? And what of this returned to society, through media coverage or some other channel (Heitzer and Landau, Le Bourhis and Tcherneva)? This brings us to the question of the pedagogy of show trials and trial films, which has given rise to a rich historiography.[63] While such work has mostly focused on the content of publicized discourse (notably the visibility, or invisibility, of the Holocaust), the first chapters of this volume rather take advantage of the avenues recently opened (and already evoked) on the fabrication of trials as spectacles and the coproduction of trials as events. Lindeperg and Barbat examine the preparations for filming in the courtroom by American and Soviet film crews at the IMT in Nuremberg. In the fabrication of the pictures of political cleansing in early Communist Bulgaria, Ragaru highlights the discrepancies between the wishes of the commissioners and the creative realization by the

63 On Nuremberg, see quoted works by Lawrence Douglas, Sylvie Lindeperg, and Christian Delage. For the GDR, see Winfried Meyer, "Stalinistischer Schauprozess gegen KZ-Verbrecher? Der Berliner Sachsenhausen-Prozess vom Oktober 1947," *Dachauer Hefte: Studien und Dokumente zur Geschichte der nationalsozialistischen Konzentrationslager* 13 (1997): 153–80; and Günter Agde, "'Falls zusätzliche Aufnahmen gewünscht warden . . .': Medienstrategische und filmhistorike Aspekte zweier früher Sachsenhausen-Filme," in *Inszenierungen des Rechts: Schauprozesse, Medienprozesse und Prozessfilm in der DDR*, ed. Klaus Marxen and Annette Weinke (Berlin: Berliner Wissenschafts-Verlag, 2006), 121–40. For the USSR, see quoted research by Vanessa Voisin and the special issue of *Cahiers du Monde russe* 61, nos. 3–4 (July–December 2020) edited by Nadège Ragaru.

photographers. Further chapters examine the interferences between the transformations in "civic education" in West Germany with the TV coverage of trials (Lachwitz), the participation of nonlegal actors in the international resonance of an East German case (Söhner and Zombory), or the role of associations in the shaping of public trials in collusion or in conflict with state justice (Stengel, Klein and Klarzyk for West Germany).

The return of this information to society casts a new light on the relationship between justice and history. The scholarship has largely focused on the efforts to write history through the trials, on historians' involvement in the courtroom, and on historical generalizations and the lags that resulted.[64] Several contributions of this volume highlight precisely where historical knowledge emerged at an angle to the trial—sometimes even prior to it—and how specific actors combined the fight for accountability with a (quasi) professional historical activity (Söhner and Zombory, Klein and Klarzyk).

The book is structured in two parts focusing on the following themes: shaping the visibility of justice, and social investment in a range of police and judicial procedures. The first part offers two openings. Its first section, "Shaping the Spectacle: Politics and Professional Practices," is devoted to the fabrication of the judicial spectacle framed by various national traditions, policies, and visual cultures. The second section, "Disclosing Data: Doubt and Uncertainty," focuses on the evolving frontier between the desire for media coverage and the risks posed by the media and interpersonal exchanges on judicial, police, and political stakes. These risks and media constraints are deeply reconfigured between German and Soviet case

64 Heberer and Matthäus, *Atrocities on Trial.*

studies, from the 1940s until the 1970s. Part 2, dealing with social mobilization, encompasses the conversion of small-scale fragmentary information into legal data, on the one hand, and the organization of actors for cause advocacy, on the other. The third section, “From Rumor to Testimony: Challenges in Voluntary Social Involvement,” brings together analyses of Poland in the immediate postwar period, then the Soviet Union and Germany in the 1960s. The fourth section, “Individual and Collective Advocacy,” focuses on the development of historical and legal competencies among Hungarian, German, French, and US nongovernmental actors and looks in depth at the international circulation of information from 1960 to the mid-1980s. Together, the contributions, analyzing different judicial and political cultures, offer a multifaceted understanding of social motivations and expertise around accountability, of the multipositioning of actors engaged both with power holders and at a distance from them.