

# Reframing the Past: Justice, Guilt, and Consolidation in East and West Germany after Nazism<sup>1</sup>

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**ABSTRACT.** Only a minority of Germans involved in Nazi crimes were prosecuted after the war, and the transnational history of trials is only beginning to be explored. Even less well understood are the ways in which those who were tainted by complicity reframed their personal life stories. Millions had been willing facilitators, witting beneficiaries, or passive (and perhaps unhappily helpless) witnesses of Nazi persecution; many had been actively involved in sustaining Nazi rule; perhaps a quarter of a million had personally killed Jewish civilians, and several million had direct knowledge of genocide. How did these people re-envision their own lives after Nazism? And how did they reinterpret their own former behaviors—their actions and inaction—in light of public confrontations with Nazi crimes and constructions of “perpetrators” in trials? Going beyond well-trodden debates about “overcoming the past,” this paper explores patterns of personal memory among East and West Germans after Nazism.

Nur wenige der in nationalsozialistische Verbrechen verwickelten Deutschen wurde nach dem Krieg rechtlich belangt, und die Untersuchung der transnationalen Geschichte dieser Verfahren steht noch am Anfang. Noch weniger erforscht ist, wie Personen, die sich mitschuldig an den Verbrechen des Nationalsozialismus gemacht hatten, ihre eigenen Lebensgeschichten nach 1945 neu konzeptualisierten. Millionen deutsche Männer und Frauen waren willige Unterstützer, bewusste Nutznießer oder passive (und vielleicht unglücklich hilflose) Zeugen der nationalsozialistischen Verfolgungen; viele waren aktiv an der Aufrechterhaltung des NS-Systems beteiligt. Bis zu einer Viertelmillion Personen hatten eigenhändig jüdische Zivilisten getötet, und etliche Millionen wussten unmittelbar vom Völkermord. Wie haben diese Menschen ihr Leben nach dem Nationalsozialismus überdacht und neu gestaltet? Und wie haben sie ihr eigenes früheres Verhalten – ihr Handeln und ihre Untätigkeit – angesichts der öffentlichen Konfrontation mit Naziverbrechen und Konstruktionen von „Tätern“ und „Täterinnen“ in den Gerichtsverfahren neu interpretiert? Dieser Beitrag erforscht Muster der persönlichen Erinnerung von Ost- und Westdeutschen nach 1945 und beschreibt dabei neue Wege jenseits der traditionellen Debatten zur „Vergangenheitsbewältigung“.

**H**ow did those who had been complicit in the Nazi system subsequently deal with their Nazi past? Despite a voluminous literature on *Vergangenheitsbewältigung* (coming to terms with or “mastering” the past), there is little clarity on relationships between changing public confrontations—in political debates, memorials, media controversies, films, and creative literature—and reckonings in the private sphere, in family stories, or

<sup>1</sup>This article draws on Mary Fulbrook, *Reckonings: Legacies of Nazi Persecution and the Quest for Justice* (New York: Oxford University Press, 2018); and Mary Fulbrook, *Precipice: Bystander Society and the Holocaust* (provisional title, book in progress). I am very grateful to the UK Arts and Humanities Research Council (AHRC) for its support of both of these projects and the collaborative research of which they form a part.

individual accounts of a personal past. Scholarly approaches in different disciplines—history, literary criticism, psychology—have tended to work in parallel rather than in dialogue. Historical debates about the “politics of the past” are only tangentially brought into contact with “memory studies” or the social-psychological analysis of family narratives, while literary scholars focus on selected texts and cultural representations. Moreover, although much has been written about the testimony of survivors, relatively less work has been done on the self-representations of former perpetrators and those who were tainted by their support for Nazism. Perpetrator accounts produced in the context of legal proceedings are often studied for the light they can shed on the times of the crimes rather than the ways in which people later sought to present themselves; meanwhile, those who had been complicit in ways that were not legally culpable escaped the spotlight almost entirely.

Even so, generalizations about broad patterns and trends over time abound. One widely accepted version of West German history has it that, following an initial period of “amnesia” and repression in the early postwar years, people gradually came to confront their past in later decades. In this account, following the International Military Tribunal held in Nuremberg in 1945–46 and Allied successor trials in the occupation period, West Germans turned to building up new futures in the period of the economic miracle, while a selective “politics of the past” under Christian democratic chancellor Konrad Adenauer promoted the reintegration of former Nazis and gave voice to German victimhood narratives. Confrontation with Nazi crimes then resumed in the late 1950s and took off with the Eichmann and Auschwitz trials in the early 1960s, and more particularly once the “Holocaust”—now explicitly conceived as such—became a major focus from the later 1970s onward.

The related narrative around East German confrontations emphasizes by contrast the continued political instrumentalization of the Nazi past by the ruling communist Socialist Unity Party (*Sozialistische Einheitspartei Deutschlands*, SED) to buttress the official “antifascist” myth; and legal confrontations were, from the later 1950s, primarily used in an attempt to discredit the Federal Republic of Germany (FRG) as a safe haven for former Nazis and monopoly capitalists who had supported fascism. In this version, only the collapse of the German Democratic Republic (GDR) and its incorporation into the Federal Republic in 1990 finally allowed a belated confrontation with Nazism among East Germans.

In general outline, these condensed narratives may be true enough, at least as far as a skeletal chronology of public confrontations is concerned. But they provide little guidance as to the links between public confrontations and private accounts of the past. I want to complicate the picture somewhat by suggesting what might at first sight appear to be a paradoxical hypothesis. This hypothesis would warrant further and more detailed exploration than is possible here, where only the broad outlines can be sketched.

I shall argue that when we specifically consider legal reckonings with Nazi crimes, the first decade after the war in fact saw extensive confrontation with widespread complicity and involvement in Nazism, constructed particularly as a domestic issue where rifts had run deep throughout society during the Third Reich. But from the later 1970s, precisely as the Holocaust moved to center stage, and the public spotlight increasingly fell on non-German “survivors” and extermination sites in eastern Europe, it became easier, in many quarters, to downplay former complicity at home. The myth of ignorance, the claim to have “known nothing about it,” where “it” was understood as the gas chambers of the death camps, allowed a concomitant evasion of personal responsibility for the wider system that had made genocide possible. Moreover, because of generational shifts over

time, it was increasingly members of younger cohorts who were the subjects of oral history research toward the end of the twentieth century. They, by virtue of their age during the Third Reich, had genuinely held less responsibility for the crimes in the East.

In contrast to the generally accepted narrative, then, this interpretation would suggest a rather different pattern of development: a move from widespread postwar confrontations with complicity in sustaining Nazism at home to an easier cover-up and more plausible denial of guilt in later decades with the shift in focus to “the Holocaust.” So in brief, a move not from repression to confrontation, but from confrontation to evasion; or variations on this.

The story is of course far more complex than this brief summary of the hypothesis suggests, but the changing relationships between public approaches and private representations are more multifaceted than the traditional narratives imply. What follows are merely some markers of this alternative narrative. I shall start with some theoretical reflections and a brief analysis of the pre-1945 background, then turn to subsequent legal reckonings and wider patterns of addressing the Nazi past.

### Guilt, Complicity, and the “Bystander Society”

The broader context of life under Nazi rule—a persisting and ever more radical system of collective violence—complicates the notion of “perpetrator.” There are many possible definitions of *guilt*, but we need to distinguish particularly between two distinct usages of the term. The first is the subjective sense of “feeling guilty,” about having done something wrong or having failed to do something right, judged by whatever criteria seem subjectively salient, which might be moral, religious, or social rather than purely legal. The other is the external attribution of guilt to a person or wider group by relevant authorities. Again, there can be a range of criteria for judging guilt in this sense, which may or may not take subjective motives into account. The problem when dealing with the Nazi past in postwar Germany was that many people had, by their roles and behaviors, become to varying degrees complicit in or guilty of Nazi crimes; and yet they had also, subjectively, maintained a sense of inner distance, feeling they had not been personally motivated to commit these actions, or subsequently claiming they had only acted under duress. We need therefore to distinguish between people’s behaviors and how, in different contexts both at the time and later, they represented their actions to themselves and others.

The notion of “bystander” is even more problematic, with no good German equivalent of a term that has become widespread in Anglophone historiography since Raul Hilberg’s now classic trilogy of perpetrators, victims, and bystanders.<sup>2</sup> The related concept of “fellow traveler” (*Mitläufer*), while implying a degree of complicity, only really works for some contexts, particularly Germany, and not even very well there. There were at least two quite distinct routes to becoming a passive bystander: on the one hand, because of *indifference* to the fate of victims, now seen as beyond the community of empathy; and, on the other, a less willing *inaction* based on fear of the consequences of intervention on behalf of victims even while remaining critical of Nazism. The support for the regime implied by the notion of *Mitläufer* is far from adequate to the task of understanding a society in which

<sup>2</sup>Raul Hilberg, *Perpetrators, Victims, Bystanders: The Jewish Catastrophe 1933–1945* (New York: Harper Collins, 1993); Christina Morina and Krijn Thijs, eds., *Probing the Limits of Categorization. The Bystander in Holocaust History* (New York: Berghahn Books, 2018).

the many choose to remain passive, to look away, whether they are supportive or internally critical of the regime.

It is important here to point out that *bystander* is a “relational” term referencing some form of initial noninvolvement in the direct dynamics of violence in a particular situation—a noninvolvement that is inherently unstable and may be short lived. We tend to think of bystanders as potentially able to intervene—whether on the side of the victims or the perpetrators—or to call for assistance, or act as witnesses, informing authorities who might bring the perpetrators to justice. The situation is, however, quite different when, far from seeking to protect victims and punish perpetrators, it is in fact the state or the wider society that initiates, sponsors, condones, or legitimizes specific acts of violence.

In Nazi Germany, within a developing and ever more radical system of state-sponsored collective violence, the meaning of being a *bystander* changed. Bystanders were no longer just individuals who happened to be nearby at a specific time, caught in a simple snapshot of a particular incident; rather, they were part of a larger system persisting over time. And this system was sustained not only by the distinctive combination of force, fear, and fervor—the dynamics of repression and support—but also by continuing widespread “noninvolvement” in persecution. This “noninvolvement” was neither static nor neutral and was produced in the distinctive conditions of the time, such that what would have been unthinkable in other circumstances eventually became possible. A society where most people choose to remain bystanders relies on the construction of communities of empathy and the development of emotional defenses against feelings of sympathy with those castigated as outsiders. In Nazi Germany, a proclivity for “bystanding” was produced by changed patterns of social connection—or the severing of connections—as well as by perceptions of the responses of others. The formation of a “bystander society” was a matter of altered social relations, repeatedly rehearsed and reenacted in everyday life in the peacetime years and yielding horrific outcomes under conditions of war.

In the course of the 1930s, German society was transformed not merely by Nazi policies from above; it was also transformed from within, as people learned new ways of thinking about compatriots—friends, neighbors, colleagues—in “racial” terms and began to distinguish between those included in the Nazi “national community” (*Volksgemeinschaft*) and those who were cast out. Social and “racial” distinctions were enacted in everyday life, resulting in increasing isolation and stigmatization of those now designated as inferior. Certain incidents and policies—the April 1933 boycott of Jewish shops and the ensuing Law for the Restoration of a Professional Civil Service, the 1935 Nuremberg Laws, the 1938 November terror (“*Reichskristallnacht*”)—have rightly attracted attention, as have the consequences of these experiences for their victims. Less well explored, to date, are the ways in which those not excluded from the *Volksgemeinschaft* (the community of the people) also changed, as they began to see others with new eyes and engaged in new patterns of social relations that stigmatized and excluded those now designated as inferior. Former friendships were dropped, inconvenient acquaintances avoided on the street, and people of Jewish descent preemptively excluded from informal social circles and leisure organizations, as well as professional positions, as people adjusted their social connections to accord with the racialized scripts of Nazi Germany. By the time of *Reichskristallnacht* on November 9–10, 1938, it was not merely Nazi policies and practices that had changed. A new form of society had emerged, characterized by widespread unwillingness to intervene on behalf of victims of Nazi persecution, and, among significant numbers, greater willingness to

participate actively in assaults on and the humiliation of victims, as well as subsequent profiteering. A sense of “shame” was certainly widely recorded, as were negative reactions to the wanton destruction of property; but so too were the frequent decisions to look away, to “not see,” to remain uninvolved. November 1938 was a turning point for many German Jews, who now concentrated efforts on getting out. It was also a turning point for non-Jewish German society. Complex and multifaceted though it was, and sustained by changing combinations of enthusiasm and fear, a bystander society was born, which would subsequently make possible the genocide for which Nazi Germany has become infamous.<sup>3</sup>

During the war, large numbers of Germans became willing facilitators, witting beneficiaries, or passive witnesses—even if sometimes uncomfortable and unwilling witnesses—of Nazi inhumanity. With the ubiquitous visibility of violence, few could be unaware of the brutality and repression that ensued from attempts to step out of line. Very few were able to muster the courage and resources to become active opponents of a regime based on overwhelming force. And many were actively involved in sustaining this system, both across the Reich—whether in everyday practices, periodic denunciations, or in more formal roles—and, as the war spread across Europe, well beyond. Not only the SS and major industrialists, but also small businesses and farmers, were employers of forced and slave labor. The system of detention centers and labor camps spread, as the concentration camp universe expanded exponentially, and ever more people were drawn into roles in which violence was part of everyday practice, whether in camps or in the “euthanasia” institutions. More than a quarter of a million people were personally involved in killing Jewish civilians, and several million had direct knowledge of genocide.<sup>4</sup> This was not merely a matter of news leaking out, of photos sent home, and of whispered stories told by soldiers on leave; mass murder was widely talked about in the months after Stalingrad, when many interpreted Allied bombings of German cities as “retaliation” for what Germans had already done to the Jews. Selective orchestration of public discussion of this topic was even initiated—although not always successfully manipulated—by Joseph Goebbels, to stimulate a form of national complicity and sense of shared responsibility.<sup>5</sup>

A significant proportion of Germans who were adults during the Third Reich had therefore been variously knowledgeable about, beneficiaries of, complicit, or actively involved in Nazi crimes. Yet after the war, the refrain was commonly heard among Germans that they had “known nothing about it” (*davon nichts gewusst*)—with the implication that, by virtue of ignorance, they must also be innocent of any sins of commission or omission.

Subsequent claims to have been “merely bystanders”—or variants of this in popular parlance—have a fractured history, as legal and social confrontations with the past combined with changing public discourses to produce shifting narratives on the perpetrators’ side.

<sup>3</sup>Developed further in Fulbrook, *Precipice: Bystander Society*.

<sup>4</sup>Horst Möller, “Vorwort,” in *Verbrechen der Wehrmacht. Bilanz einer Debatte*, ed. Christian Hartmann et al. (Munich: Beck, 2005), 9–15, 12; Christian Hartmann, “Wie verbrecherisch war die Wehrmacht? Zur Beteiligung von Wehrmachtsangehörigen an Kriegs- und NS-Verbrechen,” in *Verbrechen der Wehrmacht. Bilanz einer Debatte*, ed. Christian Hartmann et al. (Munich: C. H. Beck, 2005), 69–79.

<sup>5</sup>Nicholas Stargardt, *The German War: A Nation under Arms, 1939–45* (London: Penguin, 2016). See also Ernst Klee, Willi Dreßen, and Volker Rieß, eds., “Schöne Zeiten,” *Judenmord aus der Sicht der Täter und Gaffer* (Frankfurt/M.: Fischer Verlag, 1988); Bernward Dörner, *Die Deutschen und der Holocaust. Was niemand wissen wollte, aber jeder wissen konnte* (Berlin: Propyläen Verlag, 2007); Frank Bajohr and Dieter Pohl, *Der Holocaust als offenes Geheimnis* (Munich: C. H. Beck, 2006); Peter Longerich, “*Davon haben wir nichts gewusst!*” *Die Deutschen und die Judenverfolgung 1933–1945* (Munich: Pantheon Books, 2006).

Given what we know about the extent of knowledge of and involvement in violence, we now need to move beyond simply exploding the myth of ignorance and shift to exploring its postwar development in more detail.

In the closing months of 1944, the American Army intelligence officer Saul Padover, who entered Germany with the American forces specifically to gauge German public opinion and assess German mentalities, noted that virtually everyone he talked to freely admitted that they knew about atrocities. Padover met barely anyone in his quite intensive research project, interviewing scores of Germans, who did not talk about atrocities. Clearly, the vast majority at this stage not only “knew about it,” but were also perfectly willing to admit to such knowledge.<sup>6</sup>

The refrain that “we knew nothing about it,” which was later so widespread, seems to have first become prevalent around the end of the war. The American photographer Margaret Bourke-White recorded it vividly in her account of a visit to the Buchenwald concentration camp in April 1945, when she photographed local townspeople being forced to walk by the piles of corpses in the former concentration camp. Many of them covered their faces with handkerchiefs or turned away to avoid the sight and stench of rotting bodies—and to deny their own role in having allowed murder to take place so close to home. There was of course a distinctive local aspect to this claim in Weimar, where people had been able to see the arrivals of prisoners at the station and the maltreatment of slave laborers in local workplaces, and where women had happily consorted with men employed at the camp and had every opportunity to hear about “it.” According to Bourke-White and her colleagues, the claim to have “known nothing about it” was developing in 1945 into something of a “national anthem.”<sup>7</sup>

What was new in the spring of 1945 was that people were no longer able to turn a blind eye to the sufferings of others but were instead forcibly confronted by the victorious powers with the evidence of their own complicity or guilt. At the sites of atrocities, such as the Gardelegen barn in Saxony-Anhalt, where more than a thousand prisoners had been burned alive, or mass graves, such as on the hillside next to the Hadamar clinic in Hesse that was used as a euthanasia institute, local people were forced to help with exhuming bodies or simply to look, actively, and register what the regime had carried out in the name of the German people.

People who have left traces of their inner lives in diaries and letters in the early postwar years seem to have been largely concerned with the difficulties of their own immediate situation, the struggle for survival, and the reconstruction of private lives.<sup>8</sup> There is little evidence of any soul-searching or feelings of guilt, despite both prior knowledge and subsequent explicit, enforced confrontation with Nazi crimes. Soldiers in captivity almost treated atrocities as background context to the stories they told one another.<sup>9</sup> Former Nazi

<sup>6</sup>Saul Padover, *Psychologist in Germany: The Story of an American Intelligence Officer* (London: Phoenix House, 1946).

<sup>7</sup>Margaret Bourke-White, “Dear Fatherland Rest Quietly,” in *The Taste of War: The Century Travellers* (London: Century Publishing, 1985), 213–315.

<sup>8</sup>Many examples of diaries, letters, and memoirs in the collections in the German Diary Archive (DTA) in Emmendingen, and in the Kempowski Archive in the Academy of Arts, Berlin. See also examples in Mary Fulbrook, *Dissonant Lives: Generations and Violence through the German Dictatorships*, 2 vols. (Oxford: Oxford University Press, 2011, 2017).

<sup>9</sup>Sönke Neitzel and Harald Welzer, *Soldaten: Protokolle vom Kämpfen, Töten und Sterben* (Frankfurt/M.: S. Fischer, 2011), esp. “Vernichtung,” 145–66, and “Referenzrahmen der Vernichtung,” 167–85.

Party members adopted the widespread distinction between “real” Nazis and themselves, claiming they had only joined the party for the best of reasons; they expressed shock when suddenly expected to account for their past, risking loss of professional occupations or having to pay a fine.<sup>10</sup> Teenagers often still thought in the Nazi terms in which they had been brought up, as in the case of a daughter of a Nazi who was now a prisoner of war. Her diary entries, written in a small village in Upper Bavaria, evince a great deal of self-pity and sympathy for the plight of the German people, accompanied by criticism of the Americans for their allegedly preferential treatment of the Jewish community by providing additional food supplies for celebration of the Jewish New Year.<sup>11</sup> Similar examples abound and shed selective light on private feelings beyond the evidence of the media, political debates, or opinion poll surveys. It seems that questions of guilt were not uppermost in the minds of most Germans beyond the well-known and rather thin stratum of unrepresentative intellectuals, such as the philosopher Karl Jaspers or some members of the churches. The most significant biographical fracture for most non-Jewish Germans had to do with the personal consequences of war, defeat, and occupation. And it took a considerable time before they developed ways of reframing this past to accommodate recognition of victims other than themselves.

In the ensuing years, there was a complicated, ever-changing dialectic between external attributions of guilt and strategies of self-representation. Documents from the era frequently display a sense of injured innocence, of surprise at being held to account at all. When held to account—whether in denazification proceedings or legal cases, or in a radically altered cultural climate—people adopted ways of minimizing their own role in the Nazi system. It took the defensive context of total defeat and external accusation to set off the train of denial of even “knowledge.” Most notable over the years are the shifting redefinitions of what was “truly evil.” What changed in succeeding decades, and varied with perspectives and experiences, was how narrowly “it” was defined and where precisely “it” was located. It is characteristic across the spectrum, however, that “it” was always just a little distant, a little too far away from where one had happened to be for any personal sense of guilt. Even a former female high-school teacher in the town of Oświęcim, whose pupils included the children of Auschwitz commandant Rudolf Höss, could protest a degree of ignorance.<sup>12</sup>

A second strategy, when even direct participation could not be denied, was to downplay personal agency. Out of a nation of perpetrators became a nation of puppets. “Only following orders” displaced guilt from the self who had acted to the person whose orders had been carried out. Innumerable reasons were given for having “had” to join the party, having “had” to behave as one did, and having “had” to act in ways that were detrimental or even fatal for others. This denial of agency as a means of evading recognition of guilt was in direct contrast to the phenomenon known as “survivor’s guilt,” where people felt anguished about failures to exert extraordinarily limited agency to save a loved one or perceived abuse of restricted agency to survive at the expense of another.

The extent to which either strategy was deployed varied with context and particular forms of challenge. But the feature to which I wish to draw attention here is that, as the

<sup>10</sup>For example, DTA 1828, Hugo M., *Briefe an einen vermissten Sohn* (1943–1971).

<sup>11</sup>DTA 3853-1, Ingrid P.

<sup>12</sup>DTA 463, Marianne B., “Bericht über die Dienstzeit als Gymnasiallehrerin in Auschwitz” (1.9.43–21.1.1945).

focus of trials shifted, it became easier to suggest that the “it” about which one “knew nothing” was far away in the East and not all around in the system of collective violence that so many had helped to sustain. This movement took place over two or three decades and correlated with generational shifts.

### Justice: Legal Contexts and Selective Constructions

The International Military Tribunal at Nuremberg and the subsequent trials under Allied auspices raised major Nazi crimes to public attention. They also underlined a determination to ensure that legal reckonings took place within an orderly judicial framework, displacing wilder acts of revenge and retaliation—which were by no means off the agenda in some quarters. But, however laudable in principle, there were several unintended consequences. The trials highlighted the roles of just a few prominent individuals and crimes; this was a first move in the narrowing conception of what it meant to be a “perpetrator.” Moreover, because it was the victorious Allies who were prosecuting Germans for offenses that were only retroactively defined, trials could more readily be dismissed as “victors’ justice.” And because the Cold War rapidly took precedence, clemency soon began to distort the penal consequences of legal judgments. Individuals convicted of serious offenses soon found their initially lengthy sentences commuted to shorter periods; and, with the general climate of amnesty in the early 1950s, the vast majority were released well before they had served even these lesser terms.

Frequently, the story of legal confrontations with Nazi crimes is then narrated in terms of a lull until the late 1950s. In West Germany, the 1958 trial in Ulm of members of a mobile killing squad (*Einsatzgruppe*) and the impending implications of the statute of limitations, along with increased pressure from the GDR, stimulated more vigorous pursuit of perpetrators, enhanced by the foundation of the Ludwigsburg Central Office of the State Justice Administrations for the Investigation of National Socialist Crimes in 1958. Meanwhile, in the context of Cold War rivalry, the GDR engaged in energetic propaganda campaigns pointing to former Nazis in high places in West Germany (not least Adenauer’s chief aide in his Chancellery, Hans Globke, whom the GDR put on trial *in absentia*). The Jerusalem trial of Adolf Eichmann in 1961 and the first Frankfurt Auschwitz trial from 1963 to 1965 are then supposed to have inaugurated an era of more open confrontation with the Nazi past in West Germany, with major trials in the 1960s and 1970s, alongside a continued political instrumentalization of the Nazi past in East Germany.

All of this is true enough, but it does not go quite far enough—neither as far as the story of legal confrontations is concerned, nor in relation to personal reckonings with the past.

In all three Third Reich successor states—Austria, the GDR, and the FRG—the vast majority of trials concerning Nazi crimes took place in the first decade after the war. Most significantly, widespread involvement in Nazi crimes at lower levels was subjected to far more attention in court than is generally realized. The early years were not simply a period of amnesty and amnesia, with silence broken only from the 1960s. Rather, the immediate postwar period was full of confrontations with a wealth of aspects of the violent recent past.

Most significantly in the present context, early legal confrontations in German courts dealt primarily not with the major crimes for which the Nazi regime was infamous, but rather, and indeed disproportionately, with the many small acts of complicity *within*



German society that had made the larger system possible. Early trials focused not only on perpetrators and victims who were “other,” but also on the fractures and tensions that had characterized the construction of the *Volksgemeinschaft* itself. Under Allied occupation, Germans were permitted to conduct trials only for crimes committed against fellow Germans, and stateless persons on German soil. This meant, in practice, that courts dealt mainly with crimes committed within Germany. Even after these restrictions were lifted, early trials in East and West Germany, as also in Austria, predominantly dealt with crimes that were, in every sense, “close to home,” and not with the crime complexes located in eastern Europe that later loomed so large.<sup>13</sup>

This early period was, then, a moment of widespread legal confrontation with familiar and locally known crimes—and this in significant measure. In Austria, some 23,477 sentences were passed in the decade from 1945 to 1955. Trials of Nazi perpetrators nearly dried up completely after the abolition of the People’s Courts and the regaining of sovereignty in 1955: a mere 35 sentences were passed after 1955, the last of which was in 1975.<sup>14</sup> The majority of these early Austrian trials dealt with crimes relating to domestic political issues; there was far less concern with crimes committed at the Mauthausen concentration camp or in its vast network of labor subcamps. Of the 9,808 individuals who had worked in this crime complex, only 41 were put on trial in Austria.<sup>15</sup>

In East Germany, similarly, the greatest number of trials was in the first decade after the war. Figures are uncertain, given the vicissitudes of the records, but the general trend is clear. Leaving aside the so-called “Waldheim trials” of 1950, a total of 725 cases involving homicide were brought between 1945 and 1954. A further 114 cases were tried in the succeeding decades until the collapse and disappearance of the GDR as a separate state in 1989–1990.<sup>16</sup> From the later 1950s, the emphasis shifted away from domestic concerns to pursuing high-profile campaigns against former Nazis in West Germany. Even so, legal pursuit of Nazi perpetrators who had remained in the GDR should not be underestimated. Roughly speaking, it can be estimated that, per head of population, individuals were six or seven times more likely to be convicted of Nazi crimes in East Germany than in the West.

In West Germany, by mid-November 1954 some 409 trials concerning homicidal offenses under Nazism had been held (190 up to December 1949), a figure that rose to 464 by July 1958. Following the foundation of the Ludwigsburg Central Office, a further

<sup>13</sup>Christian F. Rüter, “Die Ahndung von NS-Tötungsverbrechen. Westdeutschland, Holland und die DDR im Vergleich. Eine These,” in *Keine “Abrechnung.” NS-Verbrechen, Justiz und Gesellschaft in Europa nach 1945*, ed. Claudia Kuretsidis-Haider and Winfried Garscha (Leipzig and Vienna: Akademische Verlagsanstalt, 1998), 180–84.

<sup>14</sup>Claudia Kuretsidis-Haider, “Die Rezeption von NS-Prozessen in Österreich durch Medien, Politik und Gesellschaft im ersten Nachkriegsjahrzehnt,” in *NS-Prozesse und deutsche Öffentlichkeit: Besatzungszeit, frühe Bundesrepublik und DDR*, ed. Jörg Osterloh and Clemens Vollnhals (Göttingen: Vandenhoeck & Ruprecht, 2011), 403–30, esp. 403.

<sup>15</sup>Peter Eichelsberger, “‘Mauthausen vor Gericht,’ Die österreichischen Prozesse wegen Tötungsdelikten im KZ Mauthausen und seinen Außenlagern,” in *Holocaust und Kriegsverbrechen vor Gericht: Der Fall Österreich*, ed. Thomas Albrich et al. (Innsbruck and Vienna and Bozen: Studien Verlag, 2006), 198–228.

<sup>16</sup>Figures based on Christian F. Rüter and Dick W. de Mildt, eds., *DDR-Justiz und NS-Verbrechen: Sammlung ostdeutscher Strafurteile wegen nationalsozialistischer Tötungsverbrechen, Register und Dokumente* (Munich: K. G. Saur Verlag and Amsterdam University Press, 2010). See also Raimond Reiter, *30 Jahre Justiz und NS-Verbrechen: Die Aktualität einer Urteilssammlung* (Frankfurt/M.: Peter Lang, 1998).

543 cases involving homicidal crimes were brought to West German courts over the three decades following 1958.<sup>17</sup> If analyzing total numbers of West German trials for Nazi crimes, and not only those where death resulted, the rapid decline in annual totals from the early 1950s becomes far more striking. Before 1949, more than 13,000 proceedings had been initiated in the Western zones of occupation, and 70 percent of all convictions for Nazi crimes in West Germany took place during this period.<sup>18</sup> In 1948, a total of 2,011 guilty verdicts were passed in West German courts.<sup>19</sup> In 1949, there were some 1,465 trials, and in 1950 there were 957. Numbers then declined steadily to 157 in 1953 and 81 in 1954; from 1955, the annual figures dropped from 45 to below 30, with a mere 22 cases in 1959 and 23 in 1960.<sup>20</sup> In part this was because lesser offenses had been already dealt with or were no longer subject to legal proceedings because of the time limits for the prosecution of minor crimes, as well as the politically motivated granting of amnesties for crimes with light sentences. Thereafter, dealing with Nazi crimes became primarily a juridical matter of criminal law rather than a historical or social confrontation with widespread popular involvement in Nazism.<sup>21</sup> So, the first years after the war were crucial for pursuing low-level perpetrators of Nazi crimes committed on German soil. Yet the selection and profile of the specific crimes under consideration by East and West German courts differed markedly, reflecting their different social and political priorities. This meant that confrontations with the Nazi past were interpreted quite differently, in an early divergence.

In East Germany, there were sixty trials in the first twenty-three months after the war. All except one trial dealt with crimes committed on East German soil. Victims were predominantly non-Jewish German civilians; only around one in ten trials dealt with crimes in which victims were prisoners, German Jews, or soldiers in the end phase of the war. Cases were generally brought to trial because someone had made an accusation, through pure chance, or because specific issues were in some way still present and locally problematic.<sup>22</sup> More than half of the cases brought in East Germany prior to 1952 related to denunciations, generally of fellow Germans who had landed in prisons and concentration camps as a result of betrayals and comments made by former friends, neighbors, or acquaintances who perhaps bore a personal grudge or differed in their political views. Some 10 percent of trials dealt with the political upheavals of 1933 and the persecution of communists and left-wing opponents of Nazism in the early years of the Third Reich. Throughout the GDR's lifetime, denunciations remained a major priority in East German courts, making up by far the largest single

<sup>17</sup> Figures based on C. F. Rüter with L. Hekelaar Gombert and D. W. de Mildt, eds., *Justiz und NS-Verbrechen: Sammlung deutscher Strafurteile wegen nationalsozialistischer Tötungsverbrechen 1945–2012*, 49 vols. (Amsterdam and Munich: K. G. Saur Verlag and Amsterdam University Press, 1968–2012).

<sup>18</sup> Edith Raim, *Nazi Crimes against Jews and German Post-War Justice: The West German Judicial System during Allied Occupation (1945–1949)* (Oldenbourg: De Gruyter, 2015), 14–15.

<sup>19</sup> Raim, *Nazi Crimes against Jews and German Post-War Justice*, 152.

<sup>20</sup> Andreas Eichmüller, "Die strafrechtliche Verfolgung von NS-Verbrechen und die Öffentlichkeit in der frühen Bundesrepublik Deutschland 1949–1958," in *NS-Prozesse und deutsche Öffentlichkeit: Besatzungszeit, frühe Bundesrepublik und DDR*, ed. Jörg Osterloh and Clemens Vollnhals (Göttingen: Vandenhoeck und Ruprecht, 2011), 53–73, esp. 55.

<sup>21</sup> Annette Weinke, *Die Verfolgung von NS-Tätern im geteilten Deutschland. Vergangenheitsbewältigungen 1949–1989, oder; Eine deutsch-deutsch Beziehungsgeschichte im Kalten Krieg* (Paderborn: Schöningh, 2002), 352–53.

<sup>22</sup> Christian F. Rüter et al., eds., *DDR-Justiz und NS-Verbrechen*, vol. 8: *Die Verfahren Nr. 1780–1839 der Jahre 1945–1947* (Munich and Amsterdam: K. G. Saur Verlag and Amsterdam University Press, 2009), vi.

category of Nazi crimes to be put on trial: there were in total some 435 denunciation cases, compared to 172 cases for war crimes, 141 cases relating to crimes committed in “detainment centers,” and 118 trials for other crimes. Some twenty-three trials dealt with euthanasia killings. Cases addressing what we now conventionally think of as the Holocaust were, in relation to the sheer numbers of victims who had been murdered, relatively few: only seven trials dealt with crimes committed by *Einsatzgruppen*, thirteen with mass extermination camps, and sixty-two focused on “other mass extermination crimes.”<sup>23</sup>

The archival evidence relating to early East German cases is suggestive.<sup>24</sup> Relatively minor offenses attracting sentences of less than one year were subject to an amnesty following Order Number 43 of March 18, 1948. A list of some 238 cases of individuals who were affected includes significant numbers of the following categories of offense: denunciations of people who made antifascist comments or listened to foreign radio broadcasts; maltreatment of foreign workers; maltreatment of Jews, including participation in the violence of *Kristallnacht*; or being an active member of the Nazi Party or related organization, making a person an “offender” (*Belasteter*) according to Control Council Directive 38. Individual examples range from the obvious exercise of violence in official roles—for example, when employed at concentration camps and prisons—to cases where a person was not politically committed, did not belong to any Nazi organizations, and had simply reported on, for example, inadequate work by forced laborers, resulting in the latter being disciplined and shot by members of the army or handed over to the police with equally fatal consequences. These cases provide illuminating snapshots of a society where the behavior of significant numbers of people—not just party members or supporters—had gone far beyond simple conformity; rather, they reveal widespread active collusion in sustaining a deeply racist and violent system. These people had all been undergoing court proceedings before their cases were terminated, and presumably their offenses were the subject of much local discussion in the small communities that were characteristic of East German society. So, a confrontation with complicity and active involvement in Nazism was very present at this time.

West German trials differed markedly in emphasis and focus from those in East Germany. Again, choice of topics reflected political priorities: not the difficulties experienced by left-wingers following the Nazi takeover of power in 1933, nor even denunciations, but rather the difficulties experienced by “ordinary Germans” in the final months of the war seem to have preoccupied West German courts. More than half (53 percent) of West German cases were concerned with what were termed “final phase crimes” committed on German soil against fellow Germans.<sup>25</sup> Again, the contrast with the number of trials dealing with the Holocaust, which now looms so large in the popular imagination of Nazi violence, is interesting. Over the decades in West Germany, “final phase crimes” were prosecuted in 295 cases, contrasting with 52 cases pertaining to *Einsatzgruppen*, 45 trials for mass

<sup>23</sup>Statistics compiled from the Index by Crime Category of Christian F. Rüter and Dick de Mildt, eds., vol. 15: *DDR-Justiz und NS-Verbrechen: Register und Dokumente* (Munich and Amsterdam: K. G. Saur Verlag and Amsterdam University Press, 2010).

<sup>24</sup>Bundesarchiv (BArch), DP 3/1804, “Eingestellte Verfahren gemäss Befehl 43 des Obersten Chefs der SMAD.”

<sup>25</sup>Rüter, “Ahndung von NS-Tötungsverbrechen,” 183; Dick de Mildt, *In the Name of the People: Perpetrators of Genocide in the Reflections of Their Post-War Prosecution in West Germany: The “Euthanasia” and “Aktion Reinhard” Trial Cases* (The Hague: Martinus Nijhoff Publishers, 1996), 21.

extermination camps, and 187 addressing “other mass extermination crimes,” as well as 34 trials focusing on mass killings in the “euthanasia” program.<sup>26</sup>

Many trials do not enter into the publications relating only to homicidal crimes. The Munich Institute of Contemporary History has collected details of early postwar West German trials, including those dealing with incidents around *Kristallnacht*. These trials focused on issues that seem to have faded from popular memory including, notably, the widespread, organized, and active involvement of schoolchildren in the violence and subsequent looting of Jewish property and the humiliation of the discomfited, robbed, and assaulted Jews in November 1938. Alan E. Steinweis, who has researched this collection, pointedly notes that despite the prominence of the “shameful” involvement of schoolchildren that was highlighted in postwar testimonies and trial evidence, this later went “virtually unmentioned in the memoirs of Germans who grew up in the Third Reich.”<sup>27</sup> Edith Raim, who has undertaken a detailed analysis of early cases in West German courts during the period of occupation, emphasizes the sheer heterogeneity of the perpetrators involved in crimes relating to *Kristallnacht*.<sup>28</sup> Generally, perpetrators of Nazi crimes were young and male. But in November 1938, perpetrators were drawn from across the age range; not only the official instigators of violence, who often moved around different locations, but also large numbers of locals were involved, including significant numbers of women. There were many perpetrators, including members of local communities, and people were generally unwilling to give evidence that would incriminate those few who were actually charged. Some trials were instigated because of municipal authorities’ need to defray the costs of repair to damaged property, including desecrated graveyards and synagogues. More often, charges were brought by victims or their relatives, or by survivors across the world. Judges tended to be lenient and gave mild sentences, with frequent acquittals and mitigating explanations, and trials were the focus of widespread local interest and discussion. The overwhelming emphasis of early postwar trials, then, related to incidents that remained very much alive in local memory. In this way, the recent past remained prominent in the first decade after the war. But as the emphasis later shifted to the big trials and the experiences of survivors, including Jews from across Europe, the widespread complicity of the German population in Nazi rule faded more easily from view.

The relationship between euthanasia trials and wider perceptions is also of considerable interest in this connection. Just as the Nazi euthanasia program preceded the mass murder of the Jews, so too the trials for those involved in euthanasia were more prominent in the early postwar years, before the Holocaust became the object of wider attention. In the early period, there were relatively stringent sentences, but this period did not last long. Within a few years, those who had evaded early justice either received more lenient sentences, if they were actually brought to trial, or managed to escape prosecution entirely. Distinctions were made between those at the top and those lower down in organizational hierarchies, with defense strategies varying accordingly. As the shift from serious attributions of guilt took place, so too was there a continuing wider penumbra of repressed remorse and

<sup>26</sup>Statistics compiled from the Index by Crime Category of Rüter and de Mildt, eds., *Justiz und NS-Verbrechen*.

<sup>27</sup>Alan E. Steinweis, *Kristallnacht 1938* (Cambridge, MA: Belknap Press of Harvard University Press, 2009), 60.

<sup>28</sup>Raim, *Crimes against Jews and German Post-War Justice*.

sensitivities among families who had been involved in some way. Those who knew that they had fatally abandoned loved ones to murderous institutions, even while harboring suspicions about the kind of “care” their relatives were receiving, often could not bring themselves to speak about the lost relatives, who remained largely absent from family landscapes of memory. Only much later, with the passage of generations, did relatives who had met untimely deaths in institutional care begin to be spoken about, their fates explored—even if only by one or two uncomfortable spirits in the family, often against the wishes of others. Here, then, one could argue that there was a shift from direct confrontations with this area of Nazi criminality in the first few years after the war, through a long period of evasion—whether in courts of law or in family narratives and silences—to the remembrance of victims and belated expressions of shame. Again, however, by this time some form of justice could only be accomplished through the memorial landscape, and no longer in relation to legal guilt as evidenced in courts of law. And in the meantime, there passed whole generations who were unable or unwilling to confront their former complicity in this program.

### Consolidation: Integration into Postwar Societies

On both sides of the Iron Curtain, the vast majority of people who had been involved in Nazi violence escaped prosecution and found ways of accounting for their past, in public and in private. Details that could not readily be denied were selectively rearranged to fit more acceptable frameworks of interpretation. This was easier in the context of West German democracy than it was in East Germany, where the communist narrative prevailed with little space for public expression of alternative views.<sup>29</sup>

Among West German elites, there were a number of strategies. As is well known, the first chancellor, Konrad Adenauer, actively sought to reintegrate those who had served the Nazi state, including even his own chief aide in the chancellery, Hans Globke, who had assisted in drafting Adolf Hitler’s Nuremberg Laws. Civil servants were largely rehabilitated through Article 131 of the Basic Law, leading to the notion of “131ers”—old Nazis restored to their former jobs or who had their pensions paid in full, including for service to the Third Reich. Former military leaders recast their killing of civilians by repeating Nazi shibboleths denigrating even children and women as potentially dangerous “partisans.”<sup>30</sup> Managers of companies that had exploited large numbers of slave laborers, such as Heinkel or I. G. Farben, produced self-serving accounts that glossed over or denied any inhumanity.<sup>31</sup> The highly Nazified legal profession ensured that its previous actions, including condemning people to death for such minor transgressions as political jokes, could not be subject to

<sup>29</sup>See, for example, Norbert Frei, *Adenauer’s Germany and the Nazi Past* (New York: Columbia University Press, 2002); Jeffrey Herf, *Divided Memory: The Nazi Past in the Two Germanys* (Cambridge, MA: Harvard University Press, 1997).

<sup>30</sup>See, for example, Albert Kesselring, *Kesselring: A Soldier’s Record* (New York: William Morrow and Company, 1954), 271.

<sup>31</sup>See, for example, Fritz ter Meer, *Die I. G. Farben Industrie Aktiengesellschaft. Ihre Entstehung, Entwicklung und Bedeutung* (Düsseldorf: Econ-Verlag, 1953); Ernst Heinkel, *Stürmisches Leben*, with Jürgen Thorwald (Stuttgart: Mundus Verlag, 1953); Ernst Heinkel, *He 1000* (London: Hutchinson, 1956); Lutz Budrass, “Der Preis des Fortschritts. Ernst Heinkels Meistererzählung über die Tradition der deutschen Luftfahrtindustrie,” in *Unternehmer und NS-Verbrechen: Wirtschaftseliten im “Dritten Reich” und in der Bundesrepublik Deutschland*, ed. Jörg Osterloh and Harald Wixforth (Frankfurt/M.: Campus, 2014), 217–49.

postwar legal proceedings; judges argued that they had only done their duty by upholding the laws of the time. Even medical professionals who had been involved in the Nazi euthanasia program were, with very few exceptions, able to continue in practice. The notorious Werner Catel, a key instigator of child killings in 1939, continued to articulate the supposed rationale of the Nazi euthanasia program after the war. Not only did he publish a book on this as late as 1962, but the news magazine *Der Spiegel* even allotted him some six or seven pages in 1964 for an interview justifying the murder of people with disabilities.<sup>32</sup>

For the first decade and a half after the war, far from denying or repressing the past, professionals in West Germany enjoyed space to make their former activities sound acceptable and relatively harmless. By downplaying the essential inhumanity and criminality of professional involvement in Nazism, they protected their positions and sustained their careers. There is barely a whiff of subjective guilt to be sniffed in these circles. And despite attempts by a few individuals to mount cases against, for example, prominent industrialists, the capacity of the legal system to bring professionals to account in court was severely limited.

Stories told among those who did not publish accounts are harder to capture, but there are many suggestive traces.<sup>33</sup> This was a past that radically affected postwar lives, with both physical and psychological consequences, as well as effects on gender relations and family dynamics. The war had long-term personal consequences that needed to be addressed, such as when dealing with enduring ill health and injuries, or entitlement to widow's benefits, disability support, or pensions, fueling the wider sense of German victimhood following defeat and occupation. When talking among themselves, former soldiers often highlighted earlier heroism and camaraderie, and downplayed or even omitted entirely the experiences of their victims. But occasionally, members of the family would hear frank discussions among friends who met up in one another's homes, or would gain indirect glimpses of what it meant to "weed out" the weak and sick.

Informal and more organized networks could assist in the evasion of legal reckonings. When, for example, an investigation was opened into activities in the Dębica SS training grounds in southern Poland, one widow denied all knowledge of the whereabouts of her late husband's SS comrades; she then telephoned around "frantically," as her son later recalled, to warn them.<sup>34</sup> Prominent Nazis such as Werner Best ensured that former Gestapo members were consistent in claiming they had "known nothing" about the destinations or eventual fates of those they had deported. Members of the *Waffen-SS* had an association known as HIAG (Mutual Aid Association, *Hilfsgemeinschaft auf Gegenseitigkeit*) that helped individuals prepare for trials and ensured that stories were coordinated.<sup>35</sup> Assistance

<sup>32</sup>Werner Catel, *Grenzsituationen des Lebens: Beitrag zum Problem der begrenzten Euthanasie* (Nuremberg: Glock und Lutz, 1962); Hermann Renner, "Aus Menschlichkeit töten? Spiegel-Gespräch mit Professor Dr. Werner Catel über Kinder-Euthanasie," *Der Spiegel* 8, February, 19, 1964, 41–7.

<sup>33</sup>See, for example, Robert Moeller, *War Stories: The Search for a Usable Past in the Federal Republic of Germany* (Berkeley: University of California Press, 2001); Christina Morina, *Stalingrad: Remembering the Eastern Front in Germany since 1945* (New York: Cambridge University Press, 2011); Christiane Wienand, *Returning Memories: Former Prisoners of War in Divided and Reunited Germany* (Rochester, NY: Camden House, 2015); Svenja Goltermann, *The War in Their Minds: German Soldiers and Their Violent Pasts in West Germany* (Ann Arbor: University of Michigan Press, 2017).

<sup>34</sup>Kestenberg Archive, Jerusalem (257) 26–42, HM, 13, discussed in Fulbrook, *Reckonings*.

<sup>35</sup>Ulrich Herbert, *Best: Biographische Studien über Radikalismus, Weltanschauung und Vernunft, 1903–1989* (Bonn: Dietz Verlag, 1996), 498–500; Karsten Wilke, *Die "Hilfsgemeinschaft auf Gegenseitigkeit" (HIAG) 1950–1990: Veteranen der Waffen-SS in der Bundesrepublik* (Paderborn: Schöningh, 2011); and see, for

was also given to former Nazis by the organization Silent Assistance for Prisoners of War and Interned Persons (*Stille Hilfe für Kriegsgefangene und Internierte*), founded in 1951. The most well-known member was Heinrich Himmler's daughter, Gudrun Burwitz, and it also included former luminaries of the League of German Girls (*Bund Deutscher Mädel*) as well as prominent church people. West German judges knew about and tolerated such networks, and many displayed sympathy with defendants—although pointing to high levels of past Nazi Party membership in the legal profession is not in itself a sufficient explanation of leniency in sentencing.<sup>36</sup> But taken together, the level of integration of former Nazis in the society of the Federal Republic is quite remarkable.

The picture in East Germany was of course very different. Political, economic, and social policies after 1945 produced a radical transformation of society, while political control of the media ensured a more direct form of censorship than the less visible filtering mechanisms of capitalist markets. Networks among former Nazis were clearly less easily maintained under communist rule. Even so, not all Nazis went west, as SED propaganda liked to suggest. And on a far wider scale than generally appreciated, former Nazis were able to submerge themselves quietly into East German society. We gain occasional glimpses of the individual transformations that could take place—glimpses afforded, for example, when perpetrators were caught up in legal investigations at a later date. One example is Rudi Baer, a former SS guard in Treblinka, who in mid-1965 was tracked down in Halle. By now he was a self-employed carpenter, carrying out repairs in the housing block owned by his parents, respected by neighbors as an orderly married man, and drawing no undue political attention to himself. Josef Blösche, whose image in his SS role is well known from a photo of a small boy being rounded up in the Warsaw ghetto, was less lucky. Despite his apolitical immersion in East German society, again as a good worker and family man, Blösche was discovered and sentenced to death. A more proactive political transformation was demonstrated by Rudolf (Rudi) Zimmermann, who had assisted in deporting and murdering Jews in Mielec, Poland. He sought to assuage a guilty conscience by throwing himself into building up the GDR, garnering accolades as a stalwart member of the SED and the trade union organization (*Freier Deutscher Gewerkschaftsbund*), and as an outstanding worker in the crucial uranium-mining industry, as well as bringing up his four children as good GDR citizens. In 1967, Zimmermann was sentenced to life imprisonment.<sup>37</sup> These examples—Baer and Blösche remaining passive and apolitical, Zimmermann by contrast committed to the new socialist cause—are selected from many. It is likely that the individuals appearing in the legal records are representative of far wider numbers of former Nazis who were never tracked down but lived their lives as apparently good GDR citizens, whether professing active conversion to socialism or simply remaining passive and quiescent.

GDR history is often written primarily in terms of (implicitly prodemocratic) opposition to a communist dictatorship, and the Nazi past of many GDR citizens is a dimension largely missing from such narratives. The number of people who pop up in East German opinion reports as being of “negative” or “wavering” views and who actually had a Nazi background

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example, Christina Ullrich, “*Ich fühl’ mich nicht als Mörder.*” *Die Integration von NS-Tätern in die Nachkriegsgesellschaft* (Darmstadt: Wissenschaftliche Buchgesellschaft, 2011).

<sup>36</sup>See, for example, Ingo Müller, *Furchtbare Juristen: Die unbewältigte Vergangenheit unserer Justiz* (Munich: Kindler, 1987).

<sup>37</sup>Fulbrook, *Reckonings*.

is hard to ascertain. But rather than viewing the state in primarily synchronic and dichotomous terms (state versus society), it would be helpful to add in the diachronic dimension of past involvement in Nazi violence and present fear of potential discovery and reprisal.

If perpetrators rarely mentioned the victims of Nazi violence in their own stories, both they and the wider population could readily represent themselves as victims, whether of Allied bombings, flight and expulsion, or mass rapes and robberies. In the Federal Republic, refugee and expellee associations were politically influential, and had a voice in family stories and in the notable collection edited by historian Theodor Schieder and published in 1953 under the translated title *Documents on the Expulsion of the Germans from Eastern & Central Europe* by the Federal Ministry for Expellees, Refugees, and War Victims.<sup>38</sup> In East Germany, refugees and expellees officially became “resettlers” (*Umsiedler*), supposedly integrating seamlessly into the new state, but they too maintained social and cultural traditions from previous homelands and talked nostalgically about their past. More widely, many East Germans saw themselves as victims of the communist dictatorship, with the anti-Bolshevism of the pre-1945 period readily transposed into the Cold War era. Across the board, it seemed, whatever the degree of prior involvement in Nazism, the postwar self could be valued in positive terms, with little regard for the real victims of Nazi persecution. Bringing together acknowledgment of complicity and benefiting, on the one hand, with experiences of personal suffering on the other, was an almost impossible feat—and one that continues to pose challenges for historians.

Victims could, however, not be ignored entirely. Survivors made requests for compensation, needed assistance, or mounted legal challenges. Official reactions varied according to domestic and international considerations. Some groups were denied recognition, turned away and ignored, or even actively discriminated against. For decades, Sinti and Roma were still considered intrinsically “work-shy,” potentially criminal itinerants, and failed to gain compensation for mistreatment by the Nazis. Gay men still found themselves liable to prosecution until the late 1960s, and they were exposed to continuing discrimination long after decriminalization. Former slave laborers who had been exploited almost to death fought a long, hard battle to gain any compensation, while, as some acidly observed, their former persecutors were able to draw substantial pensions. Even Jehovah’s Witnesses were widely rebuked for implying that they had occupied the moral high ground in refusing to take up arms and swear obedience to Hitler, when millions had performed military service for the fatherland.<sup>39</sup> All victims had to engage in struggles for recognition and were more successful when assisted by international organizations or favorable circumstances, such as

<sup>38</sup>Theodor Schieder, ed., *Documents on the Expulsion of the Germans from Eastern & Central Europe* (Bonn: Federal Ministry for Expellees, Refugees, & War Victims, 1954–1963).

<sup>39</sup>See, for example, Wolfgang Benz, “Homosexuelle und ‘Gemeinschaftsfremde.’ Zur Diskriminierung von Opfergruppen nach der nationalsozialistischen Verfolgung,” *Dachauer Hefte 14: Verfolgung als Gruppenschicksal*, vol. 14 (November 1998): 3–16; Hans Frankenthal, *The Unwelcome One: Returning Home from Auschwitz*, with Andreas Plake, Babette Quinkert, and Florian Schmalz (Evanston, IL: Northwestern University Press, 2002); Gilad Margalit, *Germany and Its Gypsies: A Post-Auschwitz Ordeal* (Madison: University of Wisconsin Press, 2002); Christian Reimesch, *Vergessene Opfer des Nationalismus? Zur Entschädigung von Homosexuellen, Kriegsdienstverweigerern, Sinti und Roma und Kommunisten in der Bundesrepublik Deutschland* (Berlin: Verlag für Wissenschaft und Kultur, 2003); Niko Wahl, *Verfolgung und Vermögensentzug Homosexueller auf dem Gebiet der Republik Österreich während der NS-Zeit. Bemühungen um Restitution, Entschädigung und Pensionen in der Zweiten Republik* (Munich: Oldenbourg Verlag, 2004), chap. 14 and 15; and Heinz Heger, *The Men with the Pink Triangle* (London: Gay Men’s Press, 1980).



West German prioritization of good relations with the Western powers and with Israel, to which West Germany—but not the GDR—paid significant compensation. Meanwhile, in both East and West Germany there was selective heroization of some forms of resistance, while downplaying or silencing others: the left-wing and particularly communist resistance that was so lauded in the East was largely denigrated in the West, where by contrast conservative military resistance took a central role. Small acts of resistance in everyday life began to receive wider recognition only in later decades.

One of the principal characteristics of the first couple of decades after the war was, then, not so much a supposed “collective amnesia” among perpetrators, or “collective silence” among victims, but rather the distinctively bounded patterns of communication about the Nazi past. Any communication between former perpetrators and victims was in some sense still a confrontation. This only began to change from the mid-1970s onward, with the opening of new transgenerational conversations across different communities of connection.

### From Confrontations to Cover-ups

From the 1960s onward, as systems of justice in both East and West struggled with the legacies of mass violence, so too there was a wider shift in emphasis. The focus was increasingly displaced from the many small acts of violence at home that had been the object of the early trials, but were now well beyond the time limit for prosecution, to the extreme actions of small groups of murderers in faraway places that could still be subject to legal proceedings.

In West Germany, despite the best efforts of a few individuals—notably Fritz Bauer, the attorney general of Hesse, who tipped off the Israelis about Eichmann’s whereabouts, and mounted the Frankfurt Auschwitz trial—and despite the growing generational confrontations often summarized in the notion of “1968,” there was a problematic twist to subsequent confrontations. As key elite groups evaded justice, so the image of “perpetrators” narrowed. The use of ordinary criminal law, with its focus on “excess perpetrators,” emphasized the subjective, individually motivated, and brutal aspects of those acts of killing that were held to constitute murder. There was a heightened focus on particularly vicious SS men and their Ukrainian and other helpers. At the same time, the defense of “merely obeying orders” became ever more widespread. The West German justice system at times came perilously close to exonerating hundreds of thousands of killings that were just the ordinary business of the state at the time. East Germany by contrast continued to apply the Nuremberg principles and generally passed far harsher sentences. But despite continuing trials of individual former Nazis in East Germany well into the late 1980s, the primary focus was on highlighting contrasts with the West; and here, of course, there were no spaces for the heated controversies that punctuated the West German public sphere.

Developments from the 1970s were in some senses ironic, as diverging strands emerged simultaneously. As the generalized accusations of the “68ers” grew, so too did the defensiveness of an implicated older generation. Meanwhile, the notion of the Holocaust became ever more prominent. With the 1978–1979 showing of Gerald Green’s American television miniseries *Holocaust*, directed by Marvin J. Chomsky, there was massively heightened interest in the “Jewish tragedy.” Growing attention was paid to eliciting the stories of those now seen as “survivors,” with the rise of oral history, the growth of video testimony collection, and the foundation of major archives eliciting stories from survivors across the world. Significant

archives include the Fortunoff Archive at Yale, initiated in 1979, and the USC Shoah Foundation founded by Steven Spielberg and later partnered with the University of Southern California, which began collecting testimony from 1994. Younger generations of interviewees often focused on the horrors of the deportations, ghettos, and extermination camps. Meanwhile, oral history interviewees at this time were largely of an age cohort that had been relatively young during the Nazi era. For interviews of perpetrators or bystanders, this meant that the subjects could plausibly claim innocence and ignorance of the worst of the crimes. Although victim testimonies highlighted the extremes of persecution and survival, interviewees on the perpetrator side who had been youngsters at the time of Nazism portrayed happy memories of the “good times” at home. With the majority of Germans now portrayed as essentially ignorant and innocent bystanders, complicity and support for Nazism remained somewhat out of focus; self-transformation into a bystander society under Nazi rule largely disappeared from sight. In many accounts, we find mentions of having “seen” some evidence of the violence and destruction of *Kristallnacht* or “heard” about crimes in the east; but there is little explicit recollection of having been personally involved or benefitting. The emphasis is on what people “knew” and far less on what they did.

In the mid-1990s, Eric Johnson and Karl-Heinz Reuband carried out a massive survey of, as they entitled the resulting book, *What We Knew*.<sup>40</sup> The interview extracts they published indicate, however, something rather more interesting than what people “knew.” They reveal, rather, degrees of discomfort in talking about what they had been involved in. Although it is impossible to generalize from selected excerpts, there are some suggestive and striking patterns. It is notable that those who claim they knew “little or nothing” tend to have come from families that were generally supportive of Nazism. Those who claim to have known at least something, “hearing about mass murder” as Johnson and Reuband put it, are more frequently from oppositionally inclined families or anti-Nazi themselves—and this not merely a later claim, but on occasion supported by stories about a father’s imprisonment for political activities, or detention as a result of a denunciation, or similar. Those who, in Johnson and Reuband’s terms, had been involved in “witnessing and participating in mass murder” were not, unlike the first group, able simply to deny knowledge. But it is striking how frequently they claim for themselves what could be called a “bystander position”: they relate stories in which they directly “knew” about or had directly seen the aftermath of a mass killing and had heard about atrocities, but claim that they themselves had not actually perpetrated these acts. They would, of course, not wish to incriminate themselves; even so, the extent of claimed nonviolence extends far beyond such considerations. One, for example, whom Johnson and Reuband include in the “knowing little or nothing” section, was the son of a member of the city council and Rektor (director) of a school in Leobschütz, close to the Polish border. He implausibly claims that his father never said “Heil Hitler”—a sheer impossibility in his father’s social position—and rewrites the story of his youth, including witnessing *Kristallnacht* (at which time he was eighteen) as one of quasi-opposition and alleged need for protection. He served in the army in Poland and Russia, yet claims that he never “held a weapon nor anything like that.”<sup>41</sup> The reframing of this conformist past—a past embedded in the Nazi system yet without any

<sup>40</sup>Eric Johnson and Karl-Heinz Reuband, *What We Knew: Terror, Mass Murder and Everyday Life in Nazi Germany* (London: Hodder, 2005).

<sup>41</sup>Johnson and Reuband, *What We Knew*, 181.

evident victims—is arguably typical. Narratives by survivors and those on the perpetrator side did not match up. By the end of the twentieth century, the bystander myth was well and truly entrenched in popular discourse.

From the mid-1990s, however, there was among historians a shift in emphasis and a renewed focus on the involvement of “ordinary Germans” in Nazi crimes. Such disparate publications as Christopher Browning’s pathbreaking *Ordinary Men*, Daniel Goldhagen’s controversial *Hitler’s Willing Executioners*, and the challenging mobile exhibition on the *Crimes of the Wehrmacht* also brought to public attention—for the first time since the early postwar trials—the involvement of far more “ordinary people” in Nazi violence than the narrower legal focus and constructions of “perpetrators” in the intervening decades had suggested.<sup>42</sup> These interventions touched chords that were still sensitive among the older generation and reawakened debates about popular involvement in Nazi crimes. Yet this was often far too late for any real intergenerational dialogue within families.

Suppression in the meantime had implications for the ways in which families on the perpetrator side dealt with the past. Our knowledge of the implications for children of perpetrators remains sketchy, with publications often focusing on children of high-level Nazis. But there are some hints as to the wider ramifications for the children of “ordinary” perpetrators in East or West Germany. When interviewed in the 1990s, the West German son of the man who had served at the Dębica SS troop training grounds, referred to previously, was most concerned about what his father might have “known.” Despite dropping copious clues about what his father had likely actually *done*, the son appeared trapped in the West German defensive framework of having “known nothing about it.” Meanwhile, the East German son of Rudi Zimmermann had a quite different perspective on his father’s Nazi past, having known effectively nothing about the murders for which his father had been convicted. Rather, the family story—definitely constructed by Zimmermann’s wife—was that Zimmermann had been a victim of the Stasi and GDR injustice. In this way, his children were not wracked by the diffuse sense of inherited guilt that was so prevalent on the Western side of the inner-German border. The East German antifascist myth sustained, more generally, a culture less burdened by shame about the past.

It is impossible to gain a comprehensive overview of the ways in which subjective perceptions and emotional responses to the Nazi past shifted among former perpetrators and their families over the decades. Only traces can be gleaned from archival records, testimonies, memoirs, and interviews. Even so, selected cases allow the intimation of broader patterns and illuminate the complexity of the issue; there was something of twisting double helix in the shifting contours of public and private reckonings over the decades. Most of all, these cases underline the point that confrontations with the Nazi past can never remain purely a matter of public debates and representations, which often run at odds with engagement with the past in private lives.

<sup>42</sup>Christopher Browning, *Ordinary Men: Reserve Police Battalion 101 and the Final Solution in Poland* (New York: Harper Collins, 1992); Daniel Jonah Goldhagen, *Hitler’s Willing Executioners* (New York: Knopf, 1996); Hannes Heer and Klaus Naumann, eds., *Vernichtungskrieg: Verbrechen der Wehrmacht 1941–1944* (Hamburg: Hamburger Edition, 1995); Hannes Heer, *Vom Verschwinden der Täter: Der Vernichtungskrieg fand statt, aber keiner war dabei* (Berlin: Aufbau Taschenbuch Verlag, 2004).

## Conclusions

Millions of Germans not only “knew” far more than they were later prepared to admit but were also complicit in constructing a society that made genocide possible. Internal divisions and violence within a Nazified society were explicitly confronted in the manifold legal proceedings in the early years after the war, but then faded from view. The later narrowing of focus to the crimes against Jews in Eastern Europe deflected attention from that initial complicity and involvement in perpetration at home. As the Holocaust—symbolized by the gas chambers of Auschwitz—loomed ever larger in the public imagination, so too the “it” about which so many supposedly “knew nothing” receded ever further away, and with this, so did the need to confront everyday complicity in the Nazi system.

To understand the legacies for what might be called “post-Nazi Germany,” we have to extend our focus. We need to explore in more detail the links between domestic complicity in the transformation of social relations and the evolving practices of persecution, exploitation, and extermination. It is also important to explore the ways in which people later sought to claim that they had been just innocent bystanders who merely witnessed but were not themselves part of the unfolding and radicalization of Nazi violence. Here, we need to make the link between the later shift in public focus to “the Holocaust” and strategies of self-exculpation as far as broader questions of complicity are concerned. We need, then, to bring a social history of complicity and guilt—both externally attributed and subjectively experienced or denied—as well as patterns of communication across communities and generations, more sharply into focus if we are to understand the legacies of Nazism for the postwar German states, as well as the continuing significance of these questions today.

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