

After Dictatorship

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Instruments of Transitional Justice in Post-Authoritarian
Systems

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Peter Hoeres

Historical Perspectives on Transitional Justice

Numerous institutions, organizations and individuals are engaged in the political, cultural, social, and religious reappraisal of dictatorships. These include the successor governments that replace dictatorships, political parties, and civil society organizations such as human rights associations, victims' associations and churches or other religious communities. After the end of the National Socialist and fascist dictatorships in 1945, the collapse of the communist regimes at the end of the 1980s and the fall of numerous dictatorships in Africa, Latin America, and Asia between the mid-1970s and mid-1990s, the challenge was to ensure a peaceful transition to post-dictatorial societies on the one hand, and to come to terms with the overthrown dictatorships, punish the perpetrators and provide satisfaction for the victims on the other. The underlying international circumstances, the historical-cultural contexts, and the preconditions in terms of historical mentalities in this regard were very different. The *memory boom* from the 1970s onwards and the emergence of the paradigm of commemorative culture since the 1990s¹ have also intrinsically motivated academic research to devote more attention to this subject area. What often got lost in this development was the broad historical perspective, was diachronic localization, but also – and this is especially true of the German preoccupation with coming to terms with the Nazi past – the international comparative perspective. As it happens, the German example is surprisingly absent in many cases from recent research on transitional justice.

Forgetting and Remembering

Forgetting is both a curse and a blessing. We forget wedding anniversaries, appointments, and purses. Some people even forget their children on the aeroplane. Old friends, ancestors and our own experiences are also forgotten. In extreme cases, forgetting means the erasure of memory, the non-existence of persons – at least for us. The forgotten deceased and friends are no longer in our world and the world of our interactions. Those who forget themselves and their past in the whirlpool of time and its sensations are in Mephisto's hands, just like Goethe's Faust, who remains the great 'forgetter' to the end.²

However, forgetting is also a blessing. We end disputes by unconsciously and consciously not remembering. Reconciliation, indeed, coping with everyday life

1 Cf. Christoph Cornelißen, 'Erinnerungskulturen, Version: 2.0', in *Docupedia-Zeitgeschichte*, 22 October 2012, accessed 22 March 2022, http://docupedia.de/zg/cornelissen_erinnerungskulturen_v2_de_2012.

2 Quoted in Harald Weinrich, *Lethe. Kunst und Kritik des Vergessens* (Munich: C. H. Beck, 1997), 160.

would be inconceivable otherwise. Forgetting is an anthropological constant and universal. There is not and has never been a people, nation or epoch that did not forget. According to Friedrich Nietzsche, without the ‘art and power of being able to forget’, life is attacked by the ‘historical disease’, identity is relativized, weakened, threatened.³ Memory itself, which lifts us out of the pure fulfilment of the present, is also based on forgetting and presupposes a selection process that, out of the wealth of possible recollections, snatches a few from the jaws of oblivion. This applies to both individual and collective memory. According to the eminent historical theorist, Reinhart Koselleck, the latter is determined by the ‘seven big Ps’: professors, priests, pastors, PR specialists, press representatives, poets, and politicians.⁴ However, those affected by history themselves also contribute to collective memory. In the same fashion, all these groups collaborate in forgetting, whether consciously or unconsciously.

Conscious forgetting can occur as punishment or mercy. Even in antiquity, forgetting was considered a precondition for peace. The decree to forget, following a phase of taking revenge on certain chief culprits, was seen as necessary, especially for internal pacification, after civil wars. An early example of this is the amnesty (ἀμνηστία/*amnēstia* = forgetting) after the so-called rule of the Thirty Tyrants in Athens in 404/403 BC. This amnesty pacified the warring parties following the punishment of the chief culprits responsible for the former reign of terror. Thereby, a successful and momentous pattern for establishing peace was tested, which consisted of forgetting the misdeeds of fellow travellers and accomplices.

In 356 BC, Herostratus set fire to the Temple of Artemis in Ephesus – one of the Seven Wonders of the World – in order to become famous forever. He paid for his thirst for glory not only with his death, but also with a *damnatio memoriae* (condemnation of memory), which the city of Ephesus imposed upon him. However, this did not result in his erasure from memory. Instead, his name and deed have been handed down to the present day. The later Roman *damnatio memoriae*, which was known as *abolitio nominis* at the time, and which e. g., condemned previous emperors to oblivion and decreed corresponding measures for art, likewise ultimately meant not an erasure but a stigmatizing remembrance. The modern form of this can be found in today’s renaming of streets and the annulment of honorary citizenships.

In the Middle Ages, oblivion continued to play a role not only in peace treaties, but also in confession as the forgetting of guilt after its admission, following repentance and penance. In the High and Late Middle Ages, amnesty was a regular part of peace treaties. In the modern era, after confessional and civil wars, amnesties and oblivion were fixed both in France by Henry IV in 1594 and in England by Charles II with the ‘Act of Free and General Pardon, Indemnity and Oblivion’ [sic] passed

³ Friedrich Nietzsche, *Unzeitgemäße Betrachtungen. Zweites Stück: Vom Nutzen und Nachtheil der Historie für das Leben* (Kritische Studienausgabe, vol. 1), ed. Giorgio Colli and Mazzino Montinari (Munich: dtv, 1999), 330.

⁴ Reinhart Koselleck, ‘Gibt es ein kollektives Gedächtnis?’, *Divinatio* 19 (2004), 23–28, 27.

by Parliament in 1660. In each case, instigators or regicides were excepted from the amnesties. After the devastating Thirty Years' War, which had swept gruesomely across Europe, amnesty and 'perpetual oblivion' were also explicitly declared in writing. The Peace of Westphalia states: 'Both sides grant each other perpetual oblivion and amnesty [*perpetua oblivio et amnestia*] of all that has been committed with inimical intent since the beginning of hostilities in any place and in any manner by one or the other party, on either side [...and that everything] be consigned to perpetual oblivion'.⁵ In the eighteenth century, many peace treaties included a so-called oblivion clause; that is, an assurance of forgetting the horrors of war and its consequences. For Kant, amnesty was part of the very concept of a peace settlement.⁶

At the Congress of Vienna, the French Foreign Minister Charles-Maurice de Talleyrand-Périgord, who had served all previous regimes, including Napoleon's, once again sat at the negotiating table on an equal footing. In spite of the bloody revolutionary period and the era of Napoleonic rule, article 11 of the 'Charte constitutionnelle' of 1814 explicitly commanded the following: 'All enquiries into opinions and votes given prior to the restoration of the present government are forbidden. The same oblivion is required from the tribunals and from citizens'.⁷

During the nineteenth century, the oblivion clause declined in importance in European international law. Nevertheless, the institution of amnesty continued to be explicitly or tacitly included in peace treaties up until the Germano-Russian peace settlement of Brest-Litovsk in early 1918. Even after the Second World War, Winston Churchill took up these traditions in his speech in Zurich on 19 September 1946, in which he called for a 'blessed act of oblivion'⁸ after the massacres had been punished. Behind this lay the realization that permanent remembrance always leads to new conflicts, just as the after-effects of the Paris Peace Conference 1919 had shown.⁹

In addition, in the twentieth century, policies such as those under and after Stalin were established to erase the memory of disagreeable personalities. The erasure of Leon Trotsky and Lev Kamenev from the famous photographs of Vladimir Ilyich

5 Art. II IPO, 'Die Westfälischen Friedensverträge vom 24. Oktober 1648. Texte und Übersetzungen', in *Acta Pacis Westphalicae. Supplementa electronica*, 1, accessed 22 March 2022, <http://www.pax-westphalica.de>.

6 Immanuel Kant, *Die Metaphysik der Sitten*, §58, quoted according to the version in Immanuel Kant, *Werke in zwölf Bänden*, vol. 8 (Frankfurt am Main: Suhrkamp, 1977), 471.

7 Dieter Gosewinkel and Johannes Masing (ed.), *Die Verfassungen in Europa 1789–1949* (Munich: C. H. Beck, 2006), 283.

8 Robert Rhodes James (ed.), *Winston S. Churchill: His Complete Speeches 1897–1963, Volume VII. 1943–1949* (New York and London: Chelsea House, 1974), 7381.

9 On this paragraph, see Aleida Assmann, *Formen des Vergessens* (Göttingen: Wallstein, 2016); Christian Meier, *Das Gebot zu vergessen und die Unabweisbarkeit des Erinnerns: Vom öffentlichen Umgang mit schlimmer Vergangenheit* (Munich: Siedler, 2010); Wolfgang Reinhard, 'Geschichte als Delegitimation', *Jahrbuch des Historischen Kollegs* (2002), 27–37; David Rieff, *In Praise of Forgetting: Historical Memory and Its Ironies*, (New Haven and London: Yale University Press, 2017); Helmut Quaritsch, 'Über Bürgerkriegs- und Feind-Amnestien', *Der Staat* 31 (1992), 389–418.

Lenin orating in the square in front of the Bolshoi Theatre in 1920 taken by Grigory Goldstein offers an iconic example of this. The ostracized Trotsky and Kamenev were first erased from the photographs by cropping, then in the 1970s by retouching.¹⁰ Similar methods were used in other communist states. However, those affected by memory can also demand a right to have their past lives forgotten. In the case of former Red Army Faction terrorist Susanne Albrecht, this led to the use of a court photograph of her in a history book being prohibited by court decision and now by law.¹¹ Following a ruling by the European Court of Justice in 2014, the newly proclaimed digital right to be forgotten was implemented. This gives individuals the ability to demand that Google not list links to time-barred websites and reports.¹²

If we take the victims' view, things look different: following the fall of a dictatorship, victims may demand recognition, satisfaction, compensation, and remembrance of their suffering. From this perspective, perpetrators should not go unpunished. They should be deprived of their privileges and ousted from influential positions (lustration). Furthermore, political lessons should be learned, and the victims rehabilitated and recognized. Only then can there be reconciliation and a subsidence of memory. Nonetheless, victims in particular may not necessarily want to be reminded on a daily basis of their suffering and the injustice they experienced.

These different needs and goals have determined the dialectical culture of remembrance since antiquity, which was characterized by the interplay of limited revenge and (restricted) amnesties, the commemoration of the dead and the prohibition of remembrance. The all-round ideologization of the enemy in the First World War broke with this tradition. Indeed, the ostracism of and discrimination against the enemy were made permanent by the peace treaties, which contained implicit attributions of guilt and thereby departed from traditional amnesty clauses: the Treaty of Versailles even provided for the extradition and punishment of the Kaiser and – unilaterally – of war criminals.¹³ Today, the commemoration of the genocides of the twentieth century, of the Holocaust, the Holodomor or the mass murder of the Armenians during the First World War, acts as a collective imperative to prevent the repetition of such atrocities. This kind of command to remember is also applied to other issues, such as the colonial past. However, it does not necessarily follow that

10 Klaus Waschik, 'Wo ist Trotzki? Sowjetische Bildpolitik als Erinnerungskontrolle in den 1930er Jahren', in *Das Jahrhundert der Bilder. Band 1: 1900 bis 1949* ed. Gerhard Paul (Göttingen: Vandenhoeck & Ruprecht, 2009), 252–259.

11 Anonymous, 'Gericht: Kein Foto von Ex-Terroristin', *Der Tagesspiegel*, 27 March 2007, accessed 22 March 2022, <https://www.tagesspiegel.de/gesellschaft/medien/gericht-kein-foto-von-ex-terroristin/827642.html>.

12 Jan Weismantel, *Das 'Recht auf Vergessenwerden' im Internet nach dem 'Google-Urteil' des EuGH. Begleitung eines offenen Prozesses* (Berlin: Duncker & Humblot, 2017).

13 Peter Hoeres, *Krieg der Philosophen: Die deutsche und die britische Philosophie im Ersten Weltkrieg* (Paderborn: Ferdinand Schöningh, 2004); Peter Hoeres, 'Der Versailler Vertrag: Ein Frieden, der kein Frieden war', *Aus Politik und Zeitgeschichte* 15 (2019), 38–44, accessed 22 March 2022, <https://www.bpb.de/apuz/288788/versailler-vertrag-ein-frieden-der-kein-frieden-war?p=all>.

permanent remembrance will prevent a repetition of atrocities. The numerous wars of recent times, such as those in the Balkans or in the Ukraine, resulted in part from an excess of remembrance rather than a lack of it and make generalizations regarding the pedagogics of memory appear questionable.¹⁴

In most post-dictatorial societies, it is therefore rather an interplay and struggle between the poles of remembrance and reappraisal on the one hand and reconciliation (*reconciliación, riconciliazione*) and forgetting, silence, but also repression and the obscuring of memory on the other, which can still be observed today. The central importance of justice in coming to terms with dictatorships – not for nothing is the generic term ‘transitional justice’ used – appears dialectical with regard to remembering and forgetting. ‘The demand on law has as much to do with forgetting as it has with remembering: paradoxically, if the past is too alive it will never be past, yet, the truth has to be remembered first in order that it can be forgotten.’¹⁵ If the law is applied, the legal institution of amnesty, as with confession, is not about pushing away and suppressing injustice, but first about revealing and naming the injustice. Only then can forgiveness be granted, or punishment be restrained.¹⁶ This is the idea behind the Truth and Reconciliation Commission (TRC) in South Africa, which promised amnesty in return for admissions of guilt.¹⁷ In order to achieve a depoliticization of the past in the long term, and thus to pacify the present, transitional justice must take into account and balance the will to truth and the desire for pacification in equal measure.

Research Perspectives: The German Example in Context

A fixed point in the historiographical preoccupation with coming to terms with dictatorships and governmentally-sanctioned crimes, as well as with the protagonists active in that process of coming to terms with the past and shaping cultures of remembrance, is the German *Vergangenheitsbewältigung* (coming to terms with the past) in relation to the Nazi era. In Germany itself, this discourse was for a long time limited to a kind of navel-gazing directed at the country’s own manifestations of coming to terms with that dictatorship. To this day, the debate remains predominantly stuck at this level.¹⁸ Theodor Adorno’s early critique of *Vergangenheitsbewäl-*

¹⁴ Rieff, *In Praise of Forgetting*, 96.

¹⁵ Emiliios Christodoulidis and Scott Veitch, ‘Introduction’, in *Lethe’s Law. Justice, Law and Ethics in Reconciliation*, ed. Emiliios Christodoulidis and Scott Veitch, (Oxford: Hart Publishing, 2001), ix-xv, x.

¹⁶ See also Quaritsch, ‘Bürgerkriegs Amnestien’.

¹⁷ Cf. the contribution by Hugo van der Merwe in this volume.

¹⁸ Even the new compendium by Magnus Brechtken (ed.), *Aufarbeitung des Nationalsozialismus. Ein Kompendium*, (Göttingen: Wallstein, 2021) confines itself to the history of the German reappraisal

tigung in 1959 triggered a terminological shift to the term *Aufarbeitung* (accounting for the past) and a critical assessment of the way in which Germany had initially dealt with the National Socialist period.¹⁹ The view which came to prevail for a long time, that Nazi crimes had been suppressed in German post-war society as a result of the country being reduced to rubble, the war dead and the forced displacement of the East Germans, has proven to be too crude, bold and simple in the light of ongoing research. Hermann Lübke's assessment of a 'communicative silence'²⁰ applies above all to the private sphere and the non-thematization of Nazi pasts in educational establishments and the workplace, and less to the public treatment of the topic. As early as 1946, the former concentration camp inmate Eugen Kogon published his bestseller *Der SS-Staat (The SS State)* about the concentration camp system, which has gone through no less than 47 editions to date.²¹

Following the Nuremberg Trials and the denazification proceedings, further developments brought the crimes of the National Socialist dictatorship to the attention of journalists and led to corresponding debates in the public arena. These included the Luxembourg Agreement of 1952, which was highly controversial at the time, and, one year later, the trial relating to the massacre perpetrated by the *Waffen-SS* at Oradour-sur-Glane. Even when applied to the 1950s, the assertion that 'silence reigned in West German public life regarding the "Third Reich"'²² is too sweeping. Hartmut Berghoff correctly writes that this phase cannot be adequately described by either the 'thesis of [psychological] repression or by that of coming to terms with the past'.²³ Berghoff identifies a process of change already present in 1955, which raises the question of how many years the assumed phase of silence lasted after the forced confrontation with Nazi crimes imposed by the Allies. Without question, however, 'Auschwitz' – as the cipher was at the time – i.e., the murder of the European Jews, was not the focal point of remembrance in the 1950s.

of the National Socialist past, with the exception of a brief essay by Arnd Bauerkämper and Christopher Browning's American perspective.

19 Theodor W. Adorno, 'Was bedeutet: Aufarbeitung der Vergangenheit [1959]', in Theodor W. Adorno, *Gesammelte Schriften*, vol. 10.2 (Frankfurt am Main: Suhrkamp, 1977), 555–572.

20 Hermann Lübke, *Vom Parteigenossen zum Bundesbürger – über beschwiegene und historisierte Vergangenheiten* (Munich: Wilhelm Fink, 2007), 7f.

21 Eugen Kogon, *Der SS-Staat: Das System der deutschen Konzentrationslager* (Munich: dtv, 1946), 127.

22 Edgar Wolfrum, 'Nationalsozialismus und Zweiter Weltkrieg: Berichte zur Geschichte der Erinnerung', in *Verbrechen erinnern. Die Auseinandersetzung mit Holocaust und Völkermord*, ed. Volkhard Knigge and Norbert Frei, (Munich: C. H. Beck, 2002), 133–149, 136.

23 Hartmut Berghoff, 'Zwischen Verdrängung und Aufarbeitung: Die bundesdeutsche Gesellschaft und ihre nationalsozialistische Vergangenheit in den Fünfziger Jahren', *Geschichte in Wissenschaft und Unterricht* 49 (1998), 96–114, 114. The thesis of repression is also opposed by Manfred Kittel, *Die Legende von der 'Zweiten Schuld': Vergangenheitsbewältigung in der Ära Adenauer* (Frankfurt am Main and Berlin: Ullstein, 1993). On the legal and political beginnings of the 'politics of the past', albeit with a different assessment of the topic, see also Norbert Frei, *Vergangenheitspolitik: Die Anfänge der Bundesrepublik und die NS-Vergangenheit* (Munich: Ullstein, 2012).

With the establishment of the ‘Central Office of the Land Judicial Authorities for the Investigation of National Socialist Crimes’ (*Zentrale Stelle der Landesjustizverwaltungen zur Aufklärung nationalsozialistischer Verbrechen*) in Ludwigsburg in 1958, the Ulm *Einsatzgruppen* trial in the same year, the anti-Semitic daubings and desecrations at the end of the 1950s, in which the Stasi was very probably also involved,²⁴ the Eichmann trial in Jerusalem and the Auschwitz trials at the beginning of the 1960s, the Holocaust, which was referred to as such from 1979 onwards, became increasingly discussed in many of its gruesome details.²⁵ The Institute of Contemporary History, founded in 1949 to research the Nazi period, published its expert reports in 1965 under the title *Anatomie des SS-Staates (Anatomy of the SS State)*.²⁶ The 1970s represented a ‘standstill’ in the study of the Holocaust, despite or because of the omnipresence of the term ‘fascism’. As Frank Bajohr notes: ‘In no decade since 1945 has there been less research into and less published on the Holocaust in Germany than in the 1970s’.²⁷ The cipher ‘1968’ does not, therefore, mark the beginning of the study of Nazi crimes, as is still often claimed, but is rather an interim pause therein.

It was not until the internationally extremely successful American television series *Holocaust*, which was broadcast in numerous countries in 1978/79, that interest in the subject was revived. At the same time, the series marked the beginning of a universalization of the memory of the Holocaust. This is strikingly expressed in the United States Holocaust Memorial Museum, which opened in 1993, and many comparable institutions, as well as in Holocaust memorial days – such as 27 January, the day of the liberation of the Auschwitz concentration camp, which was declared Holocaust Remembrance Day in 1996 in the Federal Republic of Germany and in 2005 by the EU Parliament and the UN General Assembly. At an international conference in Stockholm in the year 2000, the universal focus on the Holocaust was fixed in a declaration by 600 delegates from over 40 countries.²⁸ In Europe, however, just as in other spheres, a gulf is evident between the culture of remembrance represented by the politics of memory in Northern and Western European countries on the one hand and that of post-communist Eastern European states on the other. For the latter – to the irritation of Western Europeans – the experience of communist dictatorships

24 Hubertus Knabe, *Die unterwanderte Republik: Stasi im Westen* (Berlin: Propyläen, 1999), 126–132.

25 Peter Hoeres, *Zeitung für Deutschland: Die Geschichte der FAZ* (Munich and Salzburg: Benevento, 2019), 96–105.

26 Hans Buchheim, *Die SS – Das Herrschaftsinstrument: Befehl und Gehorsam (Anatomie des SS-Staates, vol. 1)* (Olten and Freiburg im Breisgau: dtv, 1965); Martin Broszat, Hans-Adolf Jacobsen and Helmut Krausnick, *Konzentrationslager, Kommissarbefehl, Judenverfolgung (Anatomie des SS-Staates, vol. 2)* (Olten and Freiburg im Breisgau: dtv, 1965).

27 Frank Bajohr, ‘Holocaustforschung – Entwicklungslinien in Deutschland seit 1945’, in Brechtken, *Aufarbeitung*, – 142, 132.

28 Jens Kroh, *Transnationale Erinnerung: Der Holocaust im Fokus geschichtspolitischer Initiativen* (Frankfurt am Main: Campus, 2008).

is of as central or at least equal importance to the experience of the German occupation during the Second World War.²⁹

Recent years have witnessed the increasing development of comparative perspectives on transitional justice. The German example has been compared with that of Italy, Japan and other countries, or, at least – and more frequently – juxtaposed with them.³⁰ In addition, transnational influences on processes of coming to terms with the past have been elaborated upon, albeit hitherto far too rarely in historical studies.³¹ At the *Historikertag* in Münster in 2018, a section was devoted to the topic of ‘Divided Memory and Continuity of Elites: Post-totalitarian Societies in Comparison’, which compared the developments in Germany with those in Italy, Russia and China.³² The landscapes of memory in Eastern Europe, which differ greatly from those in Western societies and are always also orientated towards communism and its consequences, have recently attracted particular attention.³³ Transitional justice research, on the other hand, often deals with histories of transformation without explicit reference to Germany’s dual dictatorial past.³⁴ However, an extensive project

29 Arnd Bauerkämper, ‘Transnationale Dimensionen der “Vergangenheitsaufarbeitung”’, in Brechtken, *Aufarbeitung*, 20–37, 31; Ulrike Jureit, ‘Wem gehört der Holocaust?’, in *Gefühlte Opfer: Illusionen der Vergangenheitsbewältigung*, ed. Ulrike Jureit and Carsten Schneider, *Vergangenheitsbewältigung* (Stuttgart: Klett-Cotta, 2010), 95–103.

30 Knigge and Frei (ed.), *Verbrechen erinnern*; Norbert Frei (ed.), *Transnationale Vergangenheitspolitik: Der Umgang mit deutschen Kriegsverbrechern in Europa nach dem Zweiten Weltkrieg* (Göttingen: Wallstein, 2006). The intra-German examination of the Holocaust with a comparison between the Federal Republic and the GDR is described in Jeffrey Herf, *The Jewish Enemy: Nazi Propaganda during World War II and the Holocaust* (Cambridge: Harvard University Press, 2006).

31 Ian Buruma, *Erbschaft der Schuld: Vergangenheitsbewältigung in Deutschland und Japan* (translated by Klaus Binder and Jeremy Gaines. Munich and Vienna: Carl Hanser, 1994); Christoph Cornelißen, Lutz Klinkhammer and Wolfgang Schwentker (eds.), *Erinnerungskulturen: Deutschland, Italien und Japan seit 1945* (Frankfurt am Main: Fischer, 2003); Manfred Kittel: *Nach Nürnberg: ‘Vergangenheitsbewältigung’ in Japan und Westdeutschland 1945 bis 1968* (Munich: De Gruyter Oldenbourg, 2004); Gian Enrico Rusconi, *Deutschland – Italien, Italien – Deutschland: Geschichte einer schwierigen Beziehung von Bismarck bis zu Berlusconi* (translated by Antje Peter. Paderborn: Ferdinand Schöningh, 2006).

32 Maximilian Kutzner, ‘Tagungsbericht: HT 2018: Gespaltene Erinnerung und Elitenkontinuitäten. Posttotalitäre Gesellschaften im Vergleich, 25.09.2018–28.09.2018 Münster’, *H-Soz-Kult*, 2 November 2018, accessed 22 March 2022, www.hsozkult.de/conferencereport/id/tagungsberichte-7923.

33 Carola Lau, *Erinnerungsverwaltung, Vergangenheitspolitik und Erinnerungskultur nach 1989: Institute für nationales Gedenken im östlichen Europa im Vergleich* (Göttingen: Vandenhoeck & Ruprecht, 2017); Jörg Ganzenmüller (ed.), *Recht und Gerechtigkeit: Die strafrechtliche Aufarbeitung von Diktaturen in Europa* (Cologne: C. H. Beck, 2017).

34 Cf., for example, Kira Auer, *Vergangenheitsbewältigung in Ruanda, Kambodscha und Guatemala: Die Implementierung normativer Ansprüche* (Baden-Baden: Nomos, 2014); Veit Straßner, *Die offenen Wunden Lateinamerikas: Vergangenheitspolitik im postautoritären Argentinien, Uruguay und Chile* (Wiesbaden: Verlag für Sozialwissenschaften, 2007) or the articles in the *International Journal of Transitional Justice*, accessed 22 March 2022, <https://academic.oup.com/ijtj/issue/14/3>. However, see also Luc Huyse, *Transitional Justice after War and Dictatorship: Learning from European Experiences 1945–2010. Final Report January 2013* (Brussels: CEGES SOMA, 2013).

on international transitional criminal justice, initiated in 1996 by the Max Planck Institute for Foreign and International Criminal Law and completed in 2012, admittedly included the double dictatorship within Germany's past and the ways in which such things have been dealt with legally.³⁵

From a comparative perspective, it becomes clear that the German approach to the Nazi dictatorship is an exception in terms of intensity and of the scope of public, political, legal, historical, and moral reappraisal that it involves. Here, a German *Sonderweg* is indeed palpable.³⁶ This holds least true in judicial terms, although here, too, there are only case-by-case analogies and comparative cases to permit such a conclusion. The comprehensive, albeit questionable, process of 'denazification' and the verdicts reached at the Nuremberg Trials, as well as in immediately subsequent trials, were followed by investigations and sentences passed by the occupying powers. Of 172,000 people investigated in West Germany/the Federal Republic, a total of 6,656 were sentenced.³⁷ In the GDR, almost 13,000 guilty verdicts were returned against Nazi perpetrators.³⁸

To compare and contrast this with the punishment of another particularly extensive genocide – estimates put the death toll as high as a quarter of the population – in Cambodia, the Extraordinary Chambers in the Courts of Cambodia (ECCC) carried out a total of three sentences in relation the barbaric rule of the Khmer Rouge.³⁹ In China, a public show trial was organized against the so-called 'Gang of Four' for the terrible years of the Cultural Revolution from 1966 to 1976 with its millions of victims. In 1981, the Special Tribunal handed down two death sentences – later commuted to life imprisonment – and substantial prison sentences for the ten people considered to be part of the 'Gang of Four'. Further prosecutions for crimes committed during the Cultural Revolution occurred regionally only in the short period between the end of the Cultural Revolution and the early 1980s. In addition to judicial decisions, individuals were expelled from the party or forced to indulge in self-criticism, although

35 Albin Eser, Ulrich Sieber and [from sub-volume 8 onwards] Jörg Arnold (eds.), *Strafrecht in Reaktion auf Systemunrecht: Vergleichende Einblicke in Transitionsprozesse* (14 vols., Berlin: Duncker & Humblot, 2000–2012).

36 This is also the view taken in Christoph Cornelißen, '„Vergangenheitsbewältigung“ – ein deutscher Sonderweg?', in *Aufarbeitung der Diktatur – Diktat der Aufarbeitung? Normierungsprozesse beim Umgang mit diktatorischer Vergangenheit*, ed. Katrin Hammerstein et. al., (Göttingen: Steiner, 2009), 21–36.

37 Bajohr, 'Holocaustforschung', 128.

38 Andreas Eichmüller, 'Die Strafverfolgung von NS-Verbrechen durch westdeutsche Justizbehörden seit 1945: Eine Zahlenbilanz', *Vierteljahrshefte für Zeitgeschichte* 56 (2008), 621–640; Jörg Echternkamp, 'Die Verfolgung nationalsozialistischer Gewaltverbrechen', accessed 22 March 2022, <https://www.bpb.de/geschichte/deutsche-geschichte/der-zweite-weltkrieg/199413/die-verfolgung-nationalsozialistischer-gewaltverbrechen>.

39 On current developments, see Till Fährnders, 'Khieu Samphan gibt sich ahnungslos', *Frankfurter Allgemeine Zeitung*, 16 August 2021, 8. On transitional justice in Cambodia in general, compare David Chandler, 'Cambodia Deals with its Past: Collective Memory, Demonisation and Induced Amnesia', *Totalitarian Movements and Political Religions* 9 (2008), 355–369.

prosecutions were not brought against large groups of members of the People's Liberation Army. Moreover, wholesale inquiries and administrative punishments were carried out. Between 1976 and 1986, extensive rehabilitation measures were implemented. It must be said, however, that there was no change in the system, but rather a change in political direction, and that criminal law was once again instrumentalized politically. This form of transitional justice can hardly be compared with procedures founded on the rule of law.⁴⁰

In the case of Ethiopia, it is possible to speak of a fairly comprehensive process of transitional justice at the judicial level. Despite this, here, too, a conspicuous decrease can be observed if one looks at the sentences actually carried out. Out of more than 5,000 accused persons, 2,188 had to be tried in absentia. 3,600 people were sentenced, but the majority of the leadership clique centred around the dictator Mengistu had, like himself, absconded abroad. In Ethiopia, unlike Germany, it is striking that only a very rudimentary culture of remembrance has been established in the aftermath of judicial proceedings at authentic sites or via the founding of museums and the erection of monuments. The small 'Red Terror Martyrs Memorial Museum' in Addis Ababa, which opened in 2010, was set up on the initiative of a victims' group and is funded by donations.⁴¹ Today, the African Union resides on the site of the former central prison in a new building financed by the Chinese state. Only a small memorial reminds visitors that thousands of inmates lost their lives here. In 1974, the Dergue regime had 60 members of the royal family and the imperial government murdered at this location.⁴²

After the rather disappointing UN tribunal in neighbouring Tanzania and genocide trials in national courts, transitional justice in Rwanda following the genocide there was anchored in the traditional Lower case 'g' (gacaca) courts. However, these are scarcely compatible with Western ideas of legal procedures conducted in accordance with the rule of law, and they have been criticized by human rights organizations. Nevertheless, they have contributed to speaking the truth about the genocide and to participation at the local level.⁴³

From a transnational perspective, it is furthermore clear that in the wake of the universalization of Holocaust remembrance, accounting for the past as practised in

⁴⁰ Eser et al, *Strafrecht in Reaktion auf Systemunrecht*, vol. 9: Thomas Richter, *China* (Berlin: Duncker & Humblot, 2006); vol. 14: *Transitionsstrafrecht und Vergangenheitspolitik* (Berlin: Duncker & Humblot, 2012), 269–272 and 388f.; Daniel Leese, *Maos langer Schatten: Chinas Umgang mit der Vergangenheit* (Munich: C. H. Beck, 2020), 411–481.

⁴¹ See the contribution by Tadesse Simie Metekia in this volume. Tellingly, the museum does not currently have a website.

⁴² Cf. accessed 22 March 2022, <https://after-dictatorship.org/kontinente/afrika/aethiopien/erinnerungsorte.html>.

⁴³ See the article by Julia Viebach in this volume. On the relevant criticism, see, for instance, Human Rights Watch, *Justice Compromised –: The Legacy of Rwanda's Community-Based Gacaca Courts*, 31 May 2011, accessed 22 March 2022, https://www.hrw.org/sites/default/files/reports/rwanda0511webwcover_0.pdf.

Germany in relation to the Nazi era does not necessarily attract attention as a model, but more frequently as a specific example of transitional justice.⁴⁴ It is sometimes even seen as exemplary, for instance, in China with regard to the period of Japanese occupation, as well as amongst critics of the official commemorative culture in Japan itself.⁴⁵ As far as transitional justice in relation to the GDR is concerned, the Stasi Records Agency and Archive (BStU), founded in 1992, plays a pioneering role for comparable institutions in Eastern Europe.⁴⁶

The historical Paradox of Memory

From a diachronic perspective, a paradox of the history of memory can be identified for the dictatorships of the twentieth century across all countries. To wit: the further back in time these existed, the stronger the desire for reappraisal, for banning the relics of the defunct regimes, for reparations and remembrance.⁴⁷ The intensified preoccupation with the dictatorial past is fostered by a generational change. The fact that those cohorts who supported or had been pillars of the dictatorship are dying off makes it possible for a new generation to raise its voice against the dictatorship without the danger of too much opposition or even a slide into civil war.⁴⁸ The course of coming to terms with the past is influenced and altered by changes in government between post-dictatorial parties and the opposition. This can be observed particularly in Albania, but also in Latin American countries.⁴⁹ The ideal-typical⁵⁰ (i. e., not obligatory) chronological course in many countries runs as follows: when a regime falls, the upper echelons of its leadership are replaced. On the one hand, there is an amnesty for the victims of the previous dictatorship, but on the other hand there is a far-reaching amnesty for the classes supporting the *ancien régime*. This is accompanied by an explicit or implicit *pacto de silencio* or a ‘thick line’,

⁴⁴ Jan Eckel and Claudia Moisel (eds.), *Universalisierung des Holocaust? Erinnerungskultur und Geschichtspolitik in internationaler Perspektive* (Göttingen: Wallstein, 2008); Jureit/Schneider, *Gefühlte Opfer*; Daniel Levy and Natan Sznaider, *Erinnerung im globalen Zeitalter: Der Holocaust* (Frankfurt am Main: Suhrkamp, 2001); Peter Novick, *The Holocaust in American Life* (Boston: Houghton Mifflin Company, 1999).

⁴⁵ Bauerkämper, *Transnationale Dimensionen der ‘Vergangenheitsaufarbeitung’*, 33–35.

⁴⁶ Lau, *Erinnerungsverwaltung, Vergangenheitspolitik und Erinnerungskultur nach 1989*, 20 f.

⁴⁷ Similarly for German society, Hermann Lübke, ‘Der Nationalsozialismus im deutschen Nachkriegsbewusstsein’, *Historische Zeitschrift* 236 (1983), 579–599.

⁴⁸ In view of the millions of former soldiers, some of whom were still returning from Russian captivity, a critical examination of the Wehrmacht was, for instance, scarcely possible in the 1950s.

⁴⁹ Compare the contributions by Jonila Godole, Ricardo Brodsky and Veit Strassner in the present volume.

⁵⁰ On the concept of the ideal type, which aims at a unitary limiting concept whilst eliminating the accidental, cf. Max Weber, ‘Die “Objektivität” sozialwissenschaftlicher und sozialpolitischer Erkenntnis’, *Archiv für Sozialwissenschaft und Sozialpolitik* 19 (1904), 22–87.

as Polish Prime Minister Tadeusz Mazowiecki put it in his 1989 government declaration, drawn between a new government and the past.⁵¹ The overriding goal is to avoid a civil war, or to stabilize the new democratic (or otherwise) rule and achieve national reconciliation. Consolidation is followed by a first major wave of transitional justice with truth commissions and tribunals, as well as compensation for a narrowly defined group, often formerly dismissed state officials or direct victims. In a second wave, a new generation revisits the issues. The dictatorship is judged even more critically and dealt with more decisively. The immunity and amnesty granted previously are partially revoked, remaining monuments are razed to the ground and, if necessary, the body of the former dictator is reburied, as in Spain. Compensation is then extended to other groups such as the relatives of victims, as can also be observed in Latin America.

With regard to the Nazi era, the last major group of victims to receive compensation from Germany were the former forced labourers, most of whom came from Eastern Europe. It was not until the year 2000 that a compensation fund of 10 billion DM was established for them, half of which was contributed by German companies.⁵² In 2009, the German *Bundestag* passed a final bill of rehabilitation concerning convicted ‘war traitors’ – a measure that would have been unthinkable in the post-war period.

(Inter)disciplinary Approaches

The historical study of coming to terms with dictatorships takes a paradigm of commemorative culture as its starting point. Methodologically, it pursues an individualizing, inductive and archive-supported tack. In doing so, it cannot, on occasion, entirely avoid a teleology of worse-to-better,⁵³ which ignores the reductions in

51 Dominik Trutkowski compares both countries in their respective phases of transformation in his *Die ausgehandelten Revolutionen: Politische Kommunikation in Parlament und Öffentlichkeit beim Umbruch zur Demokratie in Spanien und Polen* (Düsseldorf: Droste, 2021).

52 Cord Pagenstecher, ‘Der lange Weg zur Entschädigung’, 2 June 2016, accessed 22 March 2022, <https://www.bpb.de/geschichte/nationalsozialismus/ns-zwangsarbeit/227273/der-lange-weg-zur-entschaedigung>.

53 The director of the Obersalzberg Documentation Centre, Sven Keller, provides an example of this, arguing without any trace of critical reflection on his own shock pedagogy, in his contribution ‘Er bleibt – aber wie? Der Obersalzberg als Hitler-Ort’, in Brechtken, *Aufarbeitung*, 284–316. By contrast, Peter Reichel, in his *Vergangenheitsbewältigung in Deutschland: Die Auseinandersetzung mit der NS-Diktatur von 1945 bis heute* (Munich: Beck’sche Reihe, 2001), rightly warned against describing the history of coming to terms with the past in Germany as a path ‘that led from the darkness of questionable silence about the past and the suppression of guilt into the light of an exemplary illumination of the past and a flourishing culture of remembrance. That’s just not how it was’ (201).

complexity and ahistorical disambiguations of today's culture of remembrance.⁵⁴ By contrast, the political science approach to the topic operates in a typologically-systematizing and deductive fashion with the paradigm of transitional justice. This has come to be understood as encompassing much more than dealing with the experience of dictatorship at a legal level. Namely, the term further embraces extrajudicial punishment, the establishment of truth commissions (as they have been employed particularly in South Africa and the Latin American countries, in some cases several times),⁵⁵ the development of a material culture of remembrance in the form of authentic memorial sites, monuments and museums, the symbolic and material compensation of victims and the lustration of incriminated functionaries.⁵⁶

These political science studies are often situated in current debates about the politics of memory and are critical of the results of official remembrance policy. In other words, they not only take stock in a systematizing and lexical manner,⁵⁷ but also intervene in ongoing political processes.⁵⁸ As is likewise the case in many historical studies, it is often unclear what ideal of successful transitional justice the researchers are working with.⁵⁹ Does it involve the complete prosecution of all perpetrators and an investigation into all details? Is it about a permanent presence in the political and cultural discourse? From a more distanced perspective, one can counter that establishing peace, preventing civil war, and stabilizing the rule of law are already major achievements of transitional societies. From this perspective, coming to terms with the past in a sustainable, lasting, and intensive fashion is essentially a phenomenon of affluence, the preconditions of which are a stable political culture and economic prosperity. To put it bluntly, neither a homeless, starving and traumatized refugee from the Eastern territories of Germany in 1945 nor an Albanian peasant family struggling for subsistence in the transitional period after the fall of the communist dictatorship would have possessed the economic, social and mental prerequisites to be able or willing to initiate a critical culture of remembrance.⁶⁰ A cer-

54 On this, see Peter Hoeres, 'Vom Paradox zur Eindeutigkeit: Der 8. Mai in der westdeutschen Erinnerungskultur', in *Der 8. Mai 1945 im Geschichtsbild der Deutschen und ihrer Nachbarn*, ed. Bernd Heidenreich, Evelyn Brockhoff and Andreas Rödder, (Wiesbaden: Hessische Landeszentrale für politische Bildung, 2016), 47–58.

55 Compare the contributions by Veit Strassner, Ricardo Brodsky and Hugo van der Merwe in the present volume.

56 Susanne Buckley-Zistel, 'Vergangenes Unrecht aufarbeiten: Eine globale Perspektive', *Aus Politik und Zeitgeschichte* 25–26 (2013), accessed 22 March 2022, <https://www.bpb.de/apuz/162889/vergangenes-unrecht-aufarbeiten-eine-globale-perspektive?p=all>.

57 Anja Mihr, Gert Pickel and Susanne Pickel (eds.), *Handbuch Transitional Justice: Aufarbeitung von Unrecht – hin zur Rechtsstaatlichkeit und Demokratie* (Wiesbaden: Springer VS, 2018); Gerhard Werle and Moritz Vormbaum, *Transitional Justice: Vergangenheitsbewältigung durch Recht* (Berlin: Springer Lehrbuch, 2018).

58 In this spirit, compare the mission statement of the *International Journal of Transitional Justice*, accessed 22 March 2022, <https://academic.oup.com/ijtj/pages/About>.

59 On this topic, compare the suggestions made by Hubertus Knabe at the end of this volume.

60 On Albania, compare the article by Jonila Godole in the present volume.

tain consensus in relation to remembrance policy, a shared rejection of the previous dictatorship by relevant parts of society and a simultaneous acceptance of the new system (ideally one founded on the rule of law and democratic principles) are further required in order to be able to deal with the past without endangering political stability.

Transitional justice and the academic study of this phenomenon have been encouraged by the rise of the victim paradigm. The suffering and experiences of the victims of dictatorships increasingly became the focus of attention – and research – towards the end of the twentieth century. Human rights organizations and the human rights discourse in general helped to foster this development.⁶¹

The globally observable boom in the political, journalistic and academic preoccupation with the dictatorships of the twentieth century and their legacies on the one hand, and the marked national focus of much transitional justice research on the other, also lie behind the idea for the project *After Dictatorship: Instruments of Transitional Justice in Former Authoritarian Systems – An International Comparison*, which aims to examine and compare different forms and instruments of coming to terms with the past. In doing so, the project integrates historical and political science-based methods in an interdisciplinary way. This is also evident in the professional provenance of the authors of the country studies on Albania, Argentina, Ethiopia, Chile, Rwanda, South Africa, and Uruguay that follow in this volume. The former separation of historical scholarship from political science along the lines of the thirty-year rule pertaining to the release of archival documents has recently been circumvented by numerous historical studies. This is due to a change in the types of media that constitute the sources and an understanding of contemporary history as a critical prehistory to our present, borrowed from Michel Foucault.⁶² This volume also reaches into the present, for the process of coming to terms with the dictatorships of the twentieth century has not been brought to a close anywhere on the globe – and can hardly be expected to be so.

Coming to terms with dictatorships and state crimes takes time. As a rule, the demands are increasing, and the past is being viewed in an ever-more critical fashion. Seen from a historical perspective, the extensive, highly morally charged form of coming to terms with the past as it is often experienced today tends to constitute an

⁶¹ Cf. Thorsten Bonacker, 'Global Victimhood: On the Charisma of the Victim in Transitional Justice Processes', *World Political Science* 9 (2013), 97–129. This corresponds with the shift from researching the perpetrators to studying the victims in the commemorative culture of the Holocaust and Holocaust research. For a critical perspective on identifying with the victims of the Holocaust, see Jureit/Schneider, *Gefühlte Opfer*.

⁶² Compare the relevant subtitles of Andreas Rödder, *21.0: Eine kurze Geschichte der Gegenwart* (Munich: C. H. Beck, 2015); Philipp Sarasin, *1977. Eine kurze Geschichte der Gegenwart* (Berlin: Suhrkamp, 2021) and the name of the corresponding series of historical works published by Wallstein, accessed 22 March 2022, <https://www.wallstein-verlag.de/reihen/geschichte-der-gegenwart.html>, in addition to a Swiss blog at <https://geschichtedergegenwart.ch>. The connection to Foucault, however, is not always as clear as it is in Sarasin's case.

exception. Opposing tendencies are also currently making themselves felt, as can be observed in Russia or China. Perpetrators and groups of perpetrators are whitewashed by their alleged achievements, and the victims are then liable to appear as collateral damage caused by modernization or the requirements of war. The expectations placed on transitional justice should thus not be set too high, and the sensitive process of transforming dictatorships should not be made more difficult by exaggerated aspirations. Expectations must further be managed in a way that protects victims from disappointment and at the same time tries to meet realistic demands.

A diachronic and synchronic view of coming to terms with dictatorships is helpful in this respect. Which instruments of transitional justice have been and are being used, how do they function, what generalizations can be made, and where do the political, social, economic and – last but not least – religious contexts frame and influence coming to terms with dictatorships? For example, there are no counterparts to the *gacaca* courts in Rwanda in other countries, while truth commissions and international tribunals have become part of the standard repertoire of transitional justice. By contrast, amnesties and the exchange of functional elites have existed as means of coping with tyranny and changes of rulers since antiquity. In the following, the diversity, but also the constants of the processes involved in overcoming the past will become clear on the basis of seven case studies of transitional justice. At the end of the volume, these will be compared and combined under the guiding question of ‘what is effective?’