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Occasional Paper No. 1

Transitional Justice in Germany after 1945 and after 1990

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About the International Nuremberg Principles Academy

The International Nuremberg Principles Academy (Nuremberg Academy) is a foundation dedicated to the advancement of international criminal law. It is located in Nuremberg, the birthplace of modern international criminal law, and is conceived as a forum for the discussion of contemporary issues in the field. The mission of the Nuremberg Academy is to promote the universality, legality and acceptance of international criminal law. The foundation´s main fields of activity include interdisciplinary research, trainings and consultant services specially tailored to target groups, and human rights education. The Nuremberg Academy places a special focus on the cooperation with countries and societies currently facing challenges related to international criminal law. The Nuremberg Academy was founded by the German Foreign Office, the Free State of Bavaria and the City of Nuremberg.

About the author

Sanya Romeike studied Contemporary History, Ancient History and English Language at the Otto-Friedrich University in Bamberg before working as a research and teaching fellow at the Christian-Albrecht University in Kiel. Currently, she lives in Berlin and works as a freelance Historian. Her thematic interests are human rights, injustice during dictatorships, dealing with the past and memory cultures.

Images throughout the publication feature details of the Courtroom 600 in which the 1945/46 International Military Tribunal took place (pictures taken by Torsten Hönig).

The opinions expressed in this publication are solely those of the author and do not necessarily reflect the views of the International Nuremberg Principles Academy.

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List of Abbreviations

FRG	Federal Republic of Germany
BStU	Bundesbeauftragter für die Unterlagen des Staatssicherheitsdienstes der ehemaligen Deutschen Demokratischen Republik – Federal Commissioner for the Records of the State Security Service of the Former German Democratic Republic
GDR	German Democratic Republic
Gestapo	Secret State Police
IMT	International Military Tribunal
CCD 38	Control Council Directive No. 38
CCL 10	Allied Control Council Law No. 10
MfS	Ministerium für Staatssicherheit – Ministry for State Security
NS	National Socialism
NSDAP	Nationalsozialistische Deutsche Arbeiterpartei – National Socialist German Worker's Party (Nazi Party)
SED	Sozialistische Einheitspartei Deutschlands – Socialist Unity Party of Germany
SMAD	Sowjetische Militäradministration in Deutschland – Soviet Military Administration in Germany
SS	Schutzstaffel – Protection Squadron of the NSDAP

Foreword

The International Nuremberg Principles Academy presents this study on the German experience of dealing with its past after both World War II in 1945and the end of the communist dictatorship, in 1990. The study was written by German historian, Sanya Romeike, on behalf of the Academy.

The publication wishes to give its readers – especially those from countries facing the task of dealing with past dictatorships and wars – an overview of Germany's experience, spanning the last 70 years of the country's history. The study opens a vista for the reader, facilitating their access to these German experiences; it also aims to support its readers in acquiring more in-depth knowledge about single subtopics and instruments, by naming further sources of information on the website of the International Nuremberg Principles Academy.

The publication draws upon concepts of transitional justice, but does not claim to provide a comprehensive analysis of German history from that vantage point. Hence, some aspects (such as guarantees of non-recurrence) are excluded, as they would have been beyond the scope of this project. The work also provides insight into what kinds of opposition had to be overcome and how much time was needed for Germany to become an internationally recognized example of a country which had intensively and successfully confronted its own past. Yet criticism on the part of the author helps to illuminate how much still needs to be done. In one example, the author remarks that:

> 'The fact that German society was able to shift from suppression and silence to an active engagement with crimes and guilt is often considered a central factor in its democratization. Nevertheless, engaging with the Nazi past was and still is no easy and unanimous process, but instead one shaped by heated debates. To this day, it leads to controversies about the right way to deal with and interpret the past; this, however, is part of coming to terms with it, too.'

This emphasizes the paradigmatic focus of this research:

- On the one hand, it wishes to contribute to discussions in conflict and post-conflict states, and hopes these will be conducive to addressing past wrongs.
- On the other, it wishes to contribute to discussions about our own past in Germany too, since these are by no means concluded.

The Nuremberg Academy thanks Ms. Romeike for her great commitment and for her readiness to engage in a fruitful debate with members of the Academy as well. Special thanks are addressed to all those who have supported Ms. Romeike and the Academy in this project through their critical review and advice.

Bernd Borchardt
Founding Director, International Nuremberg Principles Academy

1. Introduction: What Is Transitional Justice?

The twentieth century is known as the 'age of extremes,' characterized by the severest crimes against humanity, wars, tyranny; but also by democratization and liberalization movements. Questions about the 'right' way of dealing with crimes, successful transitions and ways of establishing lasting peace and security in post-conflict situations have gained considerably in importance.

In this context, the concept of 'Transitional Justice' emerged and has since attained global significance. According to Buckley-Zistel, this refers to 'instruments and efforts to deal with the past of a violent conflict or regime in order to enable the transition towards a permanently peaceful, mostly democratic society.'[1]

The term was first used in the 1990s, a time of global post-Cold War transformation. Stemming from the human rights movement, its original conceptual focus was on the prosecution of human rights violations committed by past dictatorial or repressive regimes. Other than generating a considerable body of academic work, the idea has been increasingly appropriated and deployed by international organizations and the peace-building and human rights community over the last two decades; and its meaning has expanded into an umbrella term for a variety of instruments, mechanisms and measures that go far beyond the punitive aspect of dealing with the past.[2]

Today, it is characterized by linking the phase of transition closely to the pursuit of justice – with the latter not only understood in a judicial sense. It expresses the notion that peace and security can only be established when previous war crimes and human rights violations are addressed through appropriate mechanisms. Only 'a clear break with past injustice'[3] prevents the past from becoming a burden for the future; only a break makes it possible 'to forestall future crimes, to create confidence in a new form of government and to contribute to the reconciliation of conflicting parties.'[4] Over time, a variety of instruments to deal with the past have evolved, aiming to prevent atrocities and conflicts from recurring. The most important are:

- Criminal prosecution by international and national tribunals;
- Truth-seeking, i.e. the exposure of human rights violations through truth commissions;
- Reparations for victims in the form of rehabilitation, pecuniary compensation and restitution;
- Institutional reforms (especially judicial, police and military) and the dismissal of perpetrators –
  especially of old elites from socially important positions;
- Memorialization: for example, through memorials and museums.

[1] Translated from German, Buckley-Zistel, Susanne. 2007. Handreichung. 'Transitional Justice.' Accessed February 18, 2016, http://www.konfliktbearbeitung.net/downloads/file889.pdf, pp. 2-7; Buckley-Zistel, Susanne. 2008. 'Transitional Justice als Weg zu Frieden und Sicherheit. Möglichkeiten und Grenzen.' *SFB-Governance Working Paper Series* 15. Accessed February 17, 2016, http://www.sfb-governance.de/publikationen/working_papers/wp15/SFB-Governance-Working-Paper-15.pdf.

[2] Cf. Fischer, Martina. 2011. 'Transitional Justice and Reconciliation. Theory and Practice.' In: Austin, Beatrix & Fischer, Martina & Giessmann, Hans J. (Eds) *Advancing Conflict Transformation. The Berghoff Handbook II*, pp. 406-430. Opladen: Barbara Budrich Publishers, Buckley-Zistel Susanne & Koloma Beck, Teresa & Braun, Christian & Mieth, Friederike. 2014. 'Transitional Justice Theories: An Introduction.' In: Buckley-Zistel, Susanne & Koloma Beck, Teresa & Braun, Christian & Mieth, Friederike (Eds) Transitional Justice Theories. Abingdon: Routledge, p. 1-3.

[3] Translated from German; Buckley-Zistel, Handreichung, p. 2.

[4] Cf. Teitel, Ruti G. 2003. 'Transitional Justice Genealogy.' *Harvard Human Rights Journal* 16:69-94

Transformation processes following violent conflicts are complex and unique. Most cases call for a combination of several measures in order to deal effectively with the past. At the same time, experience has shown there can be tension between the mechanisms chosen, as well as with other requirements and needs of the transitional society. In particular, it has been demonstrated that tensions exist between various notions: 'justice' and 'peace' – two important goals of transitional justice; 'punishment' and 'reconciliation'; 'retributive justice' and 'restorative justice.'[5] Thus, transitional justice entails a certain potential for conflict as well as great opportunities to transform society. The context of transition and the challenges, circumstances and demands of parties and citizens dictate the mechanisms that are ultimately deployed, and whether these will succeed. In addition, crucial roles are played by the type of past conflict, the method of conflict resolution, the completeness of the transition in terms of removal of the ancien régime, both the character and dimension of past injustice, the stability of the affected country, the availability of resources, the stance of the new government and the structure of social order.

This study outlines and discusses Germany's experience of dealing with its past after the Second World War and the communist dictatorship. It does not claim to comprehensively analyze German history from the perspective of transitional justice studies. Rather, it details how Germany dealt with its past, and should be of interest to readers, especially those from states which are experiencing or have experienced violent conflicts or repressive rule. Today, Germany is internationally considered as an example of a country which has confronted its past, largely successfully. The paper also discloses just how engaging and contentious the transitional process can be, demonstrating how much time was needed and discussing the extent and different kinds of opposition encountered in dealing with the past in Germany after both 1945 and 1989/90.

[5] Cf. Palmer, Nicola & Clark, Phil. 2012. 'Challenging Transitional Justice.' In: Palmer, Nicola & Clark, Phil & Granville, Danielle (Eds) *Critical Perspectives in Transitional Justice*, pp. 1-16. Antwerpen: Intersentia, p. 1-16. Lustration, for example, has to be weighed against the needs of social reconstruction (such as the need for skilled employees). Often, this is not possible to achieve completely without granting amnesties and reintegrating offenders into society. This, however, can lead to disappointment and outrage in victims, or even to their renewed discrimination or persecution by old elites.

Nuremberg Trials, Courtroom; 1945/46.
Photo: Not specified. Source: Federal Archive.

2. Transitional Justice after 1945: Dealing with the National Socialist Dictatorship

a) Challenges and Circumstances

The process that took place in Germany after 1945, of coming to terms with what the National Socialist (Nazi) dictatorship had done, can be considered one of the most complex, multilayered cases of transitional justice in a postwar society.[6] This was because of the enormous challenges faced, as well as the specific circumstances in which the transition had to take place.

With the unconditional surrender of the German Wehrmacht (armed forces of the Nazi regime) on May 8, 1945, not only did the Second World War end in Europe, but twelve years of Nazi dictatorship did too. In the course of these events, Germany lost its sovereignty and only gained it back successively after 1949, when two new German states, the Federal Republic of Germany (FRG) and the German Democratic Republic (GDR) emerged. The victorious powers of the anti-Hitler coalition – the United States (US), the Soviet Union (USSR) and Great Britain – assumed, together with France, supreme authority over Germany. It was thus up to them to decide how to deal with the country whose warfare and targeted policy of extermination had exceeded any previously recorded crime in terms of character and extent.

The war unleashed by Germany had brought violence to almost every corner of Europe and cost the lives of more than 40 million people.[7] National Socialists had erected terror regimes in numerous European countries; social and political opponents had been persecuted; people were stigmatized as 'anti-socials,' 'criminals,' and 'Gypsies;' while homosexuals, Jehovah's Witnesses, physically and mentally disabled people, psychiatric patients, and especially Jews had been deported to concentration camps, enslaved, tortured and abused, ghettoized, disenfranchised and their property expropriated, systematically murdered in mass executions, extermination camps and through so-called 'euthanasia.' This was aggravated by crimes against prisoners of war, partisans, civilians and their own soldiers, as well as the enslavement of millions of forced laborers.

In the light of these crimes, the Allies had already started during the war to make broad plans about the future of post-war Germany. Their primary goal was the complete elimination of Nazism and militarism in German society, in order to prevent any future aggression and threat to global peace by Germany.[8] In October 1943, the Allies decided to punish German war criminals and hand Nazi perpetrators over to those countries where they had committed crimes, where they would be punished according to the laws of the respective country. Major 'war criminals,' in turn, were to be brought before an International Military Tribunal (IMT), where they would be punished by the joint victorious powers. The Allied plans did not stop at criminal prosecution. Given the deep entrenchment of National Socialism in German society, and the millions of willing accomplices, supporters, beneficiaries and

6 Cf. Cohen, David. 2006. 'Transitional Justice in Divided Germany after 1945.' In: Elster, John (Ed.) *Retribution and Reparation in the Transition to Democracy*, pp. 59-89. New York: Cambridge University Press.

7 All in all, around 55 million people lost their lives in World War II.

8 The Allied goals included the so-called four (or five) D's: demilitarization, denazification, decentralization, democratization (and deindustrialization).

opportunists whom the regime had been able to count on, at least partially, until its complete collapse, the purge of such individuals from socially important positions (denazification) and a 're-education' of the whole society seemed additionally necessary. Further, Germany was to pay reparations for war damages and redress for its crimes (the so-called 'Wiedergutmachung' – literally 'making good again').

Until the founding of the two German states in 1949, and partly until the mid-1950s,[9] dealing with the past in Germany was governed and controlled by outside actors. Despite the joint plans, there was hardly any joint action by the Allies. Irreconcilable differences of opinion and intentions among the wartime Allies stemmed from differing worldviews,[10] experiences with the Nazi regime and political interests. Due to the division of Germany into four occupation zones, each under the control of one victorious power, different approaches developed. The greatest differences existed between the United States, Britain and France on the one side – all of which aimed to establish a Western-style democracy – and the USSR on the other, which intended to create a socialist society under communist leadership with the help of German communists. This resulted in the establishment of a Soviet-style dictatorship. Depending on the interest and discretion of each occupying power, Germans were either more or less included in the process of dealing with the past, just as German interests were either considered or disregarded. Even after responsibility was handed over to the two German states, there was no unitary approach to dealing with the past, due to their wildly differing political and economic systems and, indeed, national identities.[11]

The following sections on single measures of Transitional Justice taken in the four occupation zones and the two German states reveal that dealing with the past after 1945 was a complex, volatile process. Various agents with changing interests, intentions and differing interpretations of the past played a critical role, as did phases of differing intensity. Especially during the post-war decade, a confusing variety of approaches can be detected, featuring numerous contradictions and unintended consequences.

b) Criminal Prosecution: Nazi Criminals on Trial

I. The Prosecution of Nazi Crimes by International Courts

The trial of the so-called major war criminals before the IMT began shortly after the end of World War II, on November 20, 1945 in Nuremberg, the 'City of the Nazi Party Rallies and the Racial Laws.'[12] The goals pursued by the trial were manifold: as it seemed impossible to capture and punish all Nazi perpetrators, the Allies intended to prosecute at least

[9] In 1954/55, both states were (mostly) given back their sovereignty: the FRG through the lifting of the Occupation Statute, the GDR through a declaration of the Soviet Union.

[10] Especially differing understandings of democracy and the roots of National Socialism or fascism.

[11] In the context of the Cold War's ideological competition, the FRG perceived itself as the only legal successor of the 'Third Reich'; while at the same time entirely dissociating itself, declaring itself as an anti-totalitarian State; the GDR, in turn, saw itself as a new state without any ties to, or responsibility for, the National Socialist past.

[12] Reichel, Peter. 2009. 'Der Nationalsozialismus vor Gericht und die Rückkehr zum Rechtsstaat.' In: Reichel, Peter & Schmid, Harald & Steinbach, Peter (Eds) *Nationalsozialismus - die zweite Geschichte: Überwindung, Deutung, Erinnerung*, pp. 22-26. München: C.H. Beck; Cohen, 'Transitional Justice', pp. 60-63; Steinbach, Peter. 1999. 'Der Nürnberger Prozeß gegen die Hauptkriegsverbrecher'. In: Ueberschär, Gerd R. (Ed.) *Der Nationalsozialismus vor Gericht. Die alliierten Prozesse gegen Kriegsverbrecher und Soldaten 1943–1952*, pp. 32–44. Frankfurt am Main: Fischer Verlag; Zentgraf, Henrike. 2013. 'Nürnberg' in Vergangenheit und Gegenwart. *Aus Politik und Zeitgeschichte* 63:8-14; Reichel, Peter. 2001. *Vergangenheitsbewältigung in Deutschland. Die Auseinandersetzung mit der NS-Diktatur von 1945 bis heute*. München: C.H. Beck Verlag; Weinke, Annette. 2006. *Die Nürnberger Prozesse. München*: C.H. Beck Verlag, pp. 17-58.

those identified as mainly responsible, to expose the gravest crimes and establish a sense of symbolic justice. Accordingly, the dock was filled with the leadership of the 'Third Reich' (that is to say, those survivors who, unlike Adolf Hitler, Josef Goebbels or Heinrich Himmler, had not abdicated responsibility by committing suicide).[13] However, it was not only about charging a small group of individuals, but treating them as representatives of the Nazi regime. Accordingly, the 24 defendants[14] were chosen to embody central state and administrative bodies; the military; the National Socialist German Worker's Party (*Nationalsozialistische Deutsche Arbeiterpartei* (NSDAP) or Nazi Party); occupation authorities; the Nazis' Protection Squadron (*Schutzstaffel* (SS)); the police; war industry; and private economy. The Allies' intention became especially apparent in charging six institutions as 'criminal organizations.' These included the Government; the leadership corps of the NSDAP; the SS, including the Security Service of the Reichsführer-SS; the Gestapo; the Storm Detachment; and the General Staff and Supreme Command of the Wehrmacht.

In order to cope with the unprecedented quality and quantity of the crimes, and with the aim of contributing to the advancement of international law, the victorious powers 'broke new juristic ground'[15] with the Charter of the International Military Tribunal (IMT Charter). It constituted the legal basis of the trial, in which the rules of procedure, criminal offenses and charges were defined and established. Yet the fact that the newly founded court consisted of judges and prosecutors from all four victorious powers was not the only novelty; so, in many aspects, were the main charges themselves.

These were made on the basis of the following groups of crimes:[16]

- Common plan and conspiracy to commit crimes against peace, war crimes and crimes against humanity;
- Crimes against peace: planning, preparation, initiation and waging of a war of aggression;
- War crimes: violation of the laws or customs of war;
- Crimes against humanity: including murder, extermination, enslavement, deportation and persecution on political, racial or religious grounds.

While charges 2 and 3 could draw upon international treaties and agreements such as the Geneva Conventions or Kellogg-Briand Pact, which had been breached by the acts in question, the other two charges had not yet been internationally codified as crimes and prosecuted as such. The Allies intended to end this culture of impunity and hold state representatives personally accountable for crimes of this kind for the first time.[17]

[13] For a complete list of all defendants and their functions in the Nazi state, see Weinke, *Nürnberger Prozesse*, pp. 29 f.

[14] Only 21 individuals stood in the dock: one defendant had committed suicide prior to trial; another was unfit for trial; and another could not be captured. The latter was charged in *absentia*.

[15] Translated from German, Zentgraf, 'Nürnberg', p. 9.

[16] For a chart on which defendant was charged and convicted on what crime, see Reichel, *Nationalsozialismus*, p. 29. For a detailed description of all charges, see Internationaler Militärgerichtshof. 1946. *Das Urteil von Nürnberg. Grundlagen eines neuen Völkerrechts. Vollständiger Text*. München: Nymphenburger Verlagshandlung.

[17] Another novelty in international law involved the indictment of six institutions as criminal organizations. In this regard, the IMT Charter established that if an organization was convicted by the Nuremberg court, it could then bring other members of the said organization to trial in the future. The Charter also defined that acting pursuant to orders could not be considered a legal reason for the exemption from punishment.

The novelty of both the charges and procedure led to numerous controversies. Among other things, it was objected that charges of 'crimes against humanity' would be illegitimate, as they would violate the *Rückwirkungsverbot*, which – following the principle of '*nulla poena sine lege*' – only allows for an act to be punished if it had already been punishable by law at the time when it was committed. Given the enormous cruelty of the crimes in question, the Allies rejected such legal positivist objections: in their view, the acts were crimes according to natural law alone, even when not codified by national or international law. The defendants, it was argued, had thus been aware that they were committing crimes.[18]

The defendants and their attorneys used objections such as these to denounce the trial as 'victor's justice' and challenge the legality of the charges, denying their legitimacy. The accused pleaded 'not guilty as charged,' invoked defense of superior orders, while noting that they had fulfilled their duties, passed all responsibility to Hitler or feigned ignorance.[19]

The Allies put a lot of effort into discovering and collecting evidence. This process had been initiated during the war. In the course of the trial, which attracted enormous attention from the national and international media, more than 5,000 documents were cited. Original film material showing, for example, the liberation of concentration camps or speeches of the defendants were also shown; 240 witnesses, including former concentration camp prisoners, survivors of extermination camps and members of the Nazi regime, testified. This meant that not only were the principles of the rule of law accounted for – according to which individual guilt has to be proven in order to convict a defendant – but another goal of the Allies, especially the United States, was fulfilled: the exposure of the extent of Nazi crimes and the enlightenment of both German society and the entire world public. This, the Allies hoped, would promote a change in mentality towards democratization within German society and deter it from future aggression.[20]

After 218 days, sentences were passed on September 30 and October 1, 1945. Three of the six organizations charged were convicted as criminal organizations: the Gestapo, the SS (a paramilitary organization linked to the Nazi Party, including the Security Service of the Reichsführer-SS), and the NSDAP leadership corps. Three defendants were acquitted; four were imprisoned for between 10 and 20 years; another three were sentenced to life in prison; while the remaining 12 were sentenced to death. The death sentences[21] were carried out on October 15, 1945.[22]

[18] An extensive legitimization of all charges can be found in 'Das Urteil von Nürnberg'.

[19] Meyer, Dennis. 2007. 'Nürnberger Prozess.' In: Fischer, Torben & Lorenz, Matthias N. (Eds) *Lexikon der 'Vergangenheitsbewältigung' in Deutschland. Debatten- und Diskursgeschichte des Nationalsozialismus nach 1945*, pp. 21–22. Bielefeld: Transcript.

[20] Ibid.

[21] Hermann Göring avoided his sentence by committing suicide. In the case of Martin Bormann, who was convicted in *absentia*, the sentence could never be carried out. His remains were found in 1972 in Berlin.

[22] Besides the Nuremberg Trial, the four occupying forces held numerous trials of their own in their respective zones of occupation (or in their own countries), such as the 12 American Nuremberg Follow-up Trials, or those of concentration camp personnel, conducted by other occupation forces. All in all, 1,814 people were convicted by the Americans; 1,085 by the British; 2,107 by the French; and, according to estimates, between 26,000 and 45,000 by the Soviet occupation forces. Cohen, 'Transitional Justice', pp. 63-67.

II. The Prosecution of Nazi Crimes by German Courts of the Western Occupation Zones and FRG

Parallel to the Allied efforts, only a few months after the war, the German judiciary instigated initial investigation proceedings into Nazi crimes and began to press charges. Although the Allies were concerned about entrusting Germans with this, they recognized that German society needed to see that Germans were not only being punished as criminals by Allied courts, but by the domestic judiciary itself.[23]

The German judiciary was officially granted permission to deal with Nazi crimes by the Allied Control Council Law No. 10 (CCL 10) of December 1945. However, its jurisdiction was limited to crimes committed by Germans against Germans or stateless persons. This was a considerable restriction: most of the gravest Nazi atrocities had been committed against those of other nationalities. At the same time, however, CCL 10 extended the scope of the German judiciary: in accordance with the Nuremberg verdicts, it codified 'crimes against peace,' 'war crimes,' 'crimes against humanity,' and 'membership of criminal organizations' as offenses, and defined penalties. This way, German courts were able to punish actions either not or insufficiently covered by the German Penal Code of 1871, the second legal basis of Nazi trials.[24]

The focus of the first phase of these prosecutions, which lasted until the founding of the FRG in 1949, was on denunciations; shootings of political prisoners and 'defeatists' shortly before the end of the war; crimes against German Jews (especially during '*Kristallnacht*'); and the persecution of political opponents. Denunciations especially represented a large share of these, amounting to 38 percent of all early Nazi trials. Moreover, several trials dealt with crimes of 'euthanasia', that is, the murder of mentally and physically disabled people and psychiatric patients.

This early phase was characterized by cases only rarely being initiated by systematic investigations of state attorneys; the vast majority of prosecutions were instead set in motion when perpetrators were reported to the police by Nazi victims, their dependents or friends. The number of proceedings increased rapidly and reached a peak in 1948. By the end of 1949, German courts had, all told, convicted 4,667 people of Nazi crimes, comparable with the number of convictions by the Western occupation powers. However, convictions for the gravest atrocities remained rare.[25]

[23] Broszat, Martin. 1981. 'Siegerjustiz oder strafrechtliche "Selbstreinigung". Vergangenheitsbewältigung der Justiz 1945-1949.' *Vierteljahrshefte für Zeitgeschichte* 4:477-544, Weinke, Annette. 2006. 'Alliierter Angriff auf die nationale Souveränität? Die Strafverfolgung von Kriegs- und NS- Verbrechen in der Bundesrepublik, der DDR und Österreich.' In: Frei, Norbert (Ed.) *Transnational Vergangenheitspolitik. Der Umgang mit deutschen Kriegsverbrechern in Europa nach dem Zweiten Weltkrieg*, pp. 37-94. Göttingen: Wallstein Verlag; Miquel, Marc von. 2005. 'Der befangene Rechtsstaat. Die westdeutsche Justiz und die NS-Vergangenheit.' In: Kenkmann, Alfons & Zimmermann, Hasko (Eds) *Nach Kriegen und Diktaturen. Umgang mit Vergangenheit als internationales Problem. Bilanzen und Perspektiven für das 21. Jahrhundert*, pp 81-96. Essen: Klartext; Greve, Michael. 2003. 'Täter oder Gehilfen? Zum strafrechtlichen Umgang mit NS-Gewaltverbrechern in der Bundesrepublik Deutschland.' In: Weckel, Ulrike & Wolfrum, Edgar (Eds) *'Bestien' und 'Befehlsempfänger'. Frauen und Männer in NS-Prozessen nach 1945*, pp. 194-221. Göttingen: Vandenhoeck & Ruprecht. Cohen, 'Transitional Justice,' pp. 82-86.

[24] This was true in the case of denunciations – which were not codified as crimes by the German penal code, but as 'crimes against humanity' by CCL 10. Ahrendt, Roland. 2007. 'Rückwirkungsverbot.' In: Fischer, Torben & Lorenz, Matthias N. (Eds) *Lexikon der Vergangenheitsbewältigung in Deutschland. Debatten- und Diskursgeschichte des Nationalsozialismus nach 1945*, pp. 27-28. Bielefeld: Transcript. Permission to apply CCL 10 was given to German courts in the different occupation zones to a varying extent, which resulted in considerable differences in the prosecution and punishment of atrocities.

[25] Raim, Edith. 2011. 'NS-Prozesse und Öffentlichkeit. Die Strafverfolgung von NS-Verbrechen durch die deutsche Justiz in den westlichen Besatzungszonen 1945-1949.' In: Osterloh, Jörg & Vollnhals, Clemens (Eds). 2011. *NS-Prozesse und deutsche Öffentlichkeit. Besatzungszeit, frühe Bundesrepublik und DDR*, pp. 33-53. Göttingen: Vandenhoek & Ruprecht. Numbers according to Eichmüller, Andreas. 2008. 'Die Strafverfolgung von NS-Verbrechen durch westdeutsche Justizbehörden seit 1945. Eine Zahlenbilanz.' *Vierteljahrshefte für Zeitgeschichte* 4:621-640.

With the founding of the FRG and gradual recovery of sovereignty, prosecution of such crimes changed in many regards.[26] On the one hand, the German judiciary's jurisdiction was extended to crimes against non-Germans (such as crimes committed in the former occupied territories). On the other, the application of CCL 10 as a special ex-post-facto criminal law in relation to 'crimes against humanity' was repealed at the request of the Federal German government in 1951. This reflected West German unwillingness to use retroactive penal provisions in order to punish Nazi crimes. In consequence, they could only be prosecuted through the German penal code, barely sufficient in such cases.

The number of investigations and trials declined quickly and considerably during the 1950s. While there were 1,465 trials in 1949, this fell to 957 the following year; 386 in 1951; and just 22 in 1959. This decline can be attributed to several causes. The number of reports to the police, which had previously triggered prosecutions, fell considerably.[27] Moreover, the German penal code was an inadequate legal framework, given that CCL 10 and its retroactive provisions had been nullified.[28] In particular, in the course of the 1950s, numerous relevant offenses passed the statute of limitations, so that by the end of the decade only bodily harm, unlawful detention resulting in death, manslaughter and murder could still be prosecuted. Parallel to this, possibilities of prosecution were further restricted through amnesties granted, for example, by the *Straffreiheitsgesetze* (Amnesty Acts) of 1949 and 1954.[29]

Both the statute of limitations and active granting of amnesties reflected widespread aversion toward the prosecution of Nazi crimes as the years passed. More and more voices even demanded granting general amnesty to Nazi perpetrators, giving expression to the predominant wish to put the past to rest. The 'true culprits,' according to the self-exonerating watchword, had already been punished in the Allied war crime trials as well as at the IMT at Nuremberg. This notion was shared by most of the German judiciary – whose ranks shortly after the war were dominated by former NSDAP jurists (constituting up to 80 percent in total). As this paper argues later, this was a consequence of deficient denazification. Such unwillingness to prosecute Nazi crimes not only led to a *de facto* self-amnesty for crimes of the judiciary, but also had considerable consequences for the non-punishment of other atrocities.

In 1958, though, the question of prosecutions took a positive turn. The so-called Ulm *Einsatzgruppen* Trial came about by lucky coincidence. Between April and August, ten leading members of a mobile killing squad (*Einsatzkommando*), which had murdered several thousand Jews in mass executions in the German-Lithuanian border area in

[26] Eichmüller, Andreas. 2011. 'Die strafrechtliche Verfolgung von NS-Verbrechen und die Öffentlichkeit in der frühen Bundesrepublik Deutschland 1949-1958.' In: Osterloh, Jörg & Vollnhals, Clemens (Eds). 2011. *NS-Prozesse und deutsche Öffentlichkeit. Besatzungszeit, frühe Bundesrepublik und DDR*, pp. 53-75. Göttingen: Vandenhoek & Ruprecht; Fröhlich, Claudia. 2011. 'Der "Ulmer Einsatzgruppen-Prozess" 1958. Wahrnehmung und Wirkung des ersten großen Holocaust-Prozesses.' In: Osterloh, Jörg & Vollnhals, Clemens (Eds). *NS-Prozesse und deutsche Öffentlichkeit. Besatzungszeit, frühe Bundesrepublik und DDR*, pp. 233-263. Göttingen: Vandenhoek & Ruprecht.

[27] This decline owed to many crimes having already been reported, and to the migration and receding memory of people who could have reported these to the police. The latter also had negative effects on collecting evidence.

[28] See footnote No. 34.

[29] The first law granted amnesty for crimes which would probably have been punished with less than six months' imprisonment. The second law exempted crimes committed after October 1944 which would probably be punished with less than three years' imprisonment. Given the mild penalties in the post-war period, many potential charges against Nazi perpetrators were thus impacted by this. Another reason for the drop in trials related to declining levels of pressure from the occupying forces, which themselves began to grant amnesties to already convicted Nazi perpetrators.

summer 1941, stood in the dock. During this 'first major Holocaust trial',[30] the character and extent of the mass atrocities in the occupied '*Ostgebiete*' (Eastern territories) – as well as the role of *Einsatzkommandos* – was revealed thanks to documents, historians and witnesses. Despite unambiguously establishing their participation in the murders, the court ruled that they had acted as accessories to murder, not murderers. As a result, they were merely convicted of complicity to murder and sentenced to three to fifteen years' penal servitude.

The trial, which received exceptional attention from the media, rendered the shortcomings of the prosecution of the Nazi crimes obvious: systematic investigations of many crimes had not been initiated. To remedy this, the Central Office of the State Justice Administrations for the Investigation of National Socialist Crimes (Central Office) was established at the end of 1958 in Ludwigsburg. As the central agency for the investigation of Nazi crimes, it was responsible for analyzing evidence, initiating preliminary investigations and coordinating criminal prosecution. Only then did systematic criminal prosecutions begin in the FRG, resulting in a considerable increase in investigations. In its first twelve months, the Central Office initiated around 500 preliminary investigations, involving several hundred suspects. A further 700 investigations followed between then and 1964. The focus was on crimes committed in the formerly occupied territories, especially those in Nazi extermination camps.[31]

Nevertheless, it was already too late for many trials; the shortcomings could not be made up for. Given the time that had elapsed since the atrocities had been committed, and the spatial distance from the crime scenes, it was often impossible to find enough evidence and witnesses to charge or convict perpetrators. Besides, investigations and proceedings often took a long time, meaning that many suspects died before they could be brought before court. Moreover, again in the 1960s, the government did nothing to prevent crimes from being excluded by the statute of limitations: fifteen years after World War II, only murder could still be punished. In consequence, numerous crimes went unpunished because intent, necessary for charging someone with murder, could not be proven; while the differentiation between murder and complicity to murder (in other words, between murderers and accessories), was a further problem.

In order to convict someone, besides action and intent, so-called murder criteria (such as base motives, bloodlust or cruelty) had to be proven.[32] In order to convict someone as a murderer, it also needed to be established that the offender had 'wanted the crime as his/her own deed'[33] (animus auctoris). This was not only hard to prove, but wholly unsuitable in the context of a state-directed, bureaucratically planned and organized killing machinery – which could not be reduced to the actions and personal motives of the individual perpetrator. It was easy for defendants to invoke 'superior orders' as a defense and portray themselves as mere 'instruments' for carrying out someone else's will. This resulted in the so-called *Gehilfenjudikatur*, the predominant legal practice of convicting Nazi perpetrators

[30] Fröhlich, 'Ulmer Einsatzgruppen-Prozess'.

[31] More detailed in Fröhlich, 'Ulmer Einsatzgruppen-Prozess'; as well as Weinke, Annette. 2008. *Eine Gesellschaft ermittelt gegen sich selbst. Eine Geschichte der Zentralen Stelle Ludwigsburg 1958-2008.* Darmstadt: Wissenschaftliche Buchgesellschaft.

[32] According to Martin Broszat, Nazi homicides had so far mostly been judged as manslaughter. In order for these crimes not to go unpunished, the Federal Court ruled that Nazi racial ideology was to be classified as a 'base motive', and thus crimes motivated by it were to be treated as murder. This new legal interpretation was crucial, as it made most of the convictions after 1960 possible. Nevertheless, murder continued to be distinguished from complicity. Cf. Broszat, 'Siegerjustiz,' p. 542.

[33] Translated from German, ibid.

as accessories, not murderers.[34] It reflected the widespread notion of attributing all responsibility to a small elite surrounding Hitler and excusing the large majority of perpetrators as 'minor assistants.'[35]

This became especially apparent in probably the most prominent trial in West German post-war history, the Frankfurt Auschwitz Trial. At this trial, which took place between December 1963 and August 1965, 22 men who had worked at Auschwitz were in the dock – ranging from the adjutant of the camp commandant, to SS doctors and members of the camp Gestapo, to a prisoner functionary. When the sentences were passed after 183 days of hearings, it was obvious that 'the law came up against the limits of its capacity to deal adequately with systematic genocide'[36]: only single 'excess perpetrators' (*Exzesstäter*) were convicted as murderers and received maximum penalties; but not all the others indirectly responsible for Auschwitz, as long as they had not acted 'overly enthusiastically' or sadistically.

The picture drawn of the genocide was thus considerably distorted; the Holocaust as a whole was atomized and buried underneath the actions of a few. Yet the trial was still of great importance: more than 200 survivors bore witness to the events in Auschwitz – the 'selections' at the ramp, gassings, shootings, torture and the killing of prisoners by phenol injections into the heart. Numerous experts were heard, who described, among other things, the political and historical context of the mass murders. More than 20,000 people attended the trial and countless media reports were devoted to it. In this way, the Holocaust was brought to the attention of German society in unprecedented detail and intensity. The trial prompted a turning point in how the country dealt with its past: slowly away from a desire to put it to rest and towards a culture of active engagement and memorialization.

However, even the Auschwitz Trial did not bring about a change in the administration of criminal law. It took until 1979 for the Bundestag to agree on abolishing the statute of limitations in cases of murder, so that Nazi mass murders remained punishable. To this day, individual perpetrators have to stand trial; however, many more proceedings and investigations have been quashed. 'Desk criminals' (*Schreibtischtäter*) especially – that is, those who had ordered, planned and organized the mass murders – were barely held accountable for their crimes.[37] Of all convictions since 1945, 70 percent were passed by

[34] This was especially a result of the abolition of CCL 10 as a retroactive special law, which left the German judiciary only with the standard German penal code whose categories of offenders were designed for 'ordinary' murders, but not for mass murders such as the Holocaust.

[35] See esp. Greve, Täter, pp. 197-221; Gerstle, Nathalie. 2007. 'Gehilfenjudikatur.' In: Fischer, Torben & Lorenz, Matthias N. (Eds) *Lexikon der 'Vergangenheitsbewältigung' in Deutschland. Debatten- und Diskursgeschichte des Nationalsozialismus nach 1945*, pp. 145-147. Bielefeld: Transcript. Also, for the following paragraphs: Fischer, Torben. 2007. 'Frankfurter Auschwitz-Prozess.' In: Fischer, Torben & Lorenz, Matthias N. (Eds) *Lexikon der 'Vergangenheitsbewältigung' in Deutschland. Debatten- und Diskursgeschichte des Nationalsozialismus nach 1945*, pp. 136-139. Bielefeld: Transcript; Pendas, Devin O. 2006. *The Frankfurt Auschwitz Trial, 1963-1965.Genocide, History, and the Limits of the Law*. Cambridge: Cambridge University Press.

[36] Pendas, 'Auschwitz Trial', p.10.

[37] Here, the so-called Cold Amnesty of 1968 played an important role as part of a penal reform, a crucial law (§ 50 Section 2 Criminal Code) was changed to the effect that complicity was to be punished more mildly when lacking 'special personal characteristics.' This shortened the statute of limitations to fifteen years, meaning it had already expired. Countless investigations were subsequently quashed; thousands of Nazi perpetrators escaped prosecution. Until today, it is contested whether this was an unfortunate accident or a conscious modification in order to give amnesty to Nazi perpetrators. Langer, Antje. 2007. 'Kalte Amnestie.' In: Fischer, Torben & Lorenz, Matthias N. (Eds) *'Lexikon der Vergangenheitsbewältigung' in Deutschland. Debatten- und Diskursgeschichte des Nationalsozialismus nach 1945*, pp. 200-201. Bielefeld: Transcript. According to David Cohen, 95 percent of all preliminary investigations by the Central Office did not lead to charges. Cohen, 'Transitional Justice,' p. 84.

1949, 22 percent between 1949 and 1958, and only 8 percent since 1958.[38] Investigations had been initiated against 172,294 individuals known by name by 2005; ultimately, only 14,693 had to stand trial. 6,656 were convicted and received penalties; but only 1,147 of these (17 percent) were convicted of homicide.

Measured against estimates of 200,000 to 250,000 Germans and Austrians having indirectly participated in the Holocaust (plus perpetrators from other countries, as well as those who had participated in other Nazi and war crimes), and the fact that, overall, around 100,000 Germans and Austrians were convicted in Europe of Nazi and war crimes, the FRG's contribution seems scant indeed.[39]

It was not until 2011, in fact, that a real re-think regarding legal practice on this question made itself felt. To account for the singularity of industrially conducted genocide, in the trial of John Demjanjuk, the court held that it was not a requirement that the defendant had personally committed an act of murder (*individueller Tatnachweis*). As 'part of the extermination industry,' he was convicted of complicity in the murder of more than 28,000 Jews at the Sobibor extermination camp.

III. The Prosecution of Nazi Crimes by German Courts in the Soviet Zone and the GDR

Prosecuting German war and Nazi crimes was especially important to the Soviet occupation forces, which had sustained the most victims and the heaviest damage. As early as 1943, trials were held in the Soviet Union; and from 1945 onwards, also by the Soviet Military Tribunals in the Soviet Occupied Zone (SOZ), which led to severe penalties (such as imprisonment of 20 or 25 years, or death sentences).[40] According to estimates, 40,000 people were convicted by Soviet occupation forces.[41] Not all of them were actual Nazi perpetrators; often, the trials were used to eliminate political opponents. Most trials were closed to the public, characterized by arbitrariness, brutality and disregard of rules of procedure based on the rule of law. More rarely, show trials were held in order to publicly depict capitalists as the 'true culprits' and propagate their expropriation. This, then, was not about revealing and punishing Nazi crimes, but about the instrumentalization of these trials to the benefit of communist ideology and claims to power.[42]

Like the other victorious powers, the Soviets were reluctant to entrust German courts with the prosecution of Nazis. The essential prerequisite was the denazification of the judiciary, handled most rigorously in the Soviet zone, which led to the replacement of compromised

[38] Expressed in numbers: 1945-1949: 4,667 convicted people; 1950-1958: 1,426; 1959-2005: 563. These and the following numbers are taken from: Eichmüller, 'Strafverfolgung Zahlenbilanz,' p. 621-640. Tabulated at: Bundesarchiv. Bilanz der Strafverfolgung wegen NS-Verbrechen. Accessed February 19, 2016, https://www.bundesarchiv.de/imperia/md/content/dienstorte/ludwigsburg/strafverfolgungsbilanz.pdf.

[39] Frei, Norbert. 2006. 'Nach der Tat. Die Ahndung deutscher Kriegs- und NS-Verbrechen in Europa – eine Bilanz.' In: Frei, Norbert (Ed.) *Transnationale Vergangenheitspolitik. Der Umgang mit deutschen Kriegsverbrechern in Europa nach dem Zweiten Weltkrieg*, pp. 7-37. Göttingen: Wallstein Verlag.

[40] Parallel to the advance of the Red Army and the occupation of Germany, several thousand suspected war and Nazi criminals were captured. Many of them were deported to prisoner of war camps in the Soviet Union. Wentker, Hermann. 2002. 'Die Ahndung von NS-Verbrechen in der Sowjetischen Besatzungszone und in der DDR.' *Kritische Justiz* 35:60-79.

[41] The number is disputed to this day. Estimates vary between 45,000 and 26,000 convicted. About 13,000 of these judgments were pronounced in the Soviet occupation zone. See Cohen, 'Transitional Justice,' pp. 63, 67.

[42] Wentker, 'Ahndung,' pp. 61-63; Cohen, 'Transitional Justice,' p. 67. More detailed in: Schmeitzner, Mike. 2011. 'Unter Ausschluss der Öffentlichkeit? Zur Verfolgung von NS-Verbrechen durch die sowjetische Sonderjustiz. 'In: Osterloh, Jörg & Vollnhals, Clemens (Eds). 2011. *NS-Prozesse und deutsche Öffentlichkeit. Besatzungszeit, frühe Bundesrepublik und DDR*, pp. 149-167. Göttingen: Vandenhoek & Ruprecht; Hilger, Andreas. 2006. 'Die Gerechtigkeit nehme ihren Lauf? Die Bestrafung deutscher Kriegs- und Gewaltverbrecher in der Sowjetunion und der SBZ/DDR'. In: Frei, Norbert (Ed.) *Transnational Vergangenheitspolitik. Der Umgang mit deutschen Kriegsverbrechern in Europa nach dem Zweiten Weltkrieg*, pp. 180-247. Göttingen: Wallstein Verlag.

jurists with uncompromised 'bourgeois' counterparts. From spring 1946 onwards, the judiciary could be entrusted with the prosecution of Nazi crimes committed by Germans against Germans or stateless people as defined in CCL 10. However, this permission was given only rarely: so that by 1947, only around 500 people had been convicted by German courts. These trials dealt mostly with denunciations, forced sterilization and 'euthanasia'. Both the Soviet Military Administration in Germany (SMAD; *Sowjetische Militäradministration in Deutschland*) and the Socialist Unity Party of Germany (SED; *Sozialistische Einheitspartei Deutschlands*) sought to influence the outcomes or rulings according to their interests.[43] In this early phase, however, the judiciary was mostly still able to resist attempts at manipulation and to keep its independence. In this way, severe but differentiated sentences were handed out, largely consistent with the rule of law. This foreshadowed future developments, which began with a mostly independent administration of justice, but morphed into increasing instrumentalization for the purposes of SMAD and SED.[44]

Crucial steps in this direction followed in 1947 with SMAD Order No. 201 and the third Implementation Ordinance, which rendered Control Council Directive No. 38 (CCD 38), originally intended as a guideline for denazification, the second legal basis of future trials. Drafted following the American denazification sample (see Chapter 2 c i), CCD 38 contained five categories of incrimination and corresponding penalties: major offenders, offenders, lesser offenders, followers and exonerated persons. Its application as a penal code meant a considerable expansion of punishable offenses, as people could, for example, be punished merely due to their membership of certain Nazi organizations. Actual, individual guilt in Nazi crimes did not need to be proven.

Further steps included, first, that the authority for prosecuting Nazi perpetrators was handed over to special criminal courts (*Sonderstrafkammern*) consisting of SED-affiliated 'people's judges,' who were especially chosen and trained for this task. Second, the task of initiating investigations and drafting indictments was passed from the judiciary to the conformist political police, which had the authority to decide who should be charged for what. Third, the rights of the defendants were restricted: they were now only allowed to consult a lawyer after the beginning of the main trial. This way, the position of both defendants and the judiciary was considerably weakened. The latter's independence was undermined; administration of justice based on the rule of law was less and less possible, while the SMAD and SED gained opportunities to influence trials as they so wished.

As a result, trials against Nazi criminals increased substantially. Until October 1949, 8,321 people were convicted by German courts. Here, CCD 38 was extensively used: only around 2,400 people were convicted as 'major offenders' for specific war and Nazi crimes, while around 5,000 were convicted in a sense of collective guilt – for example, merely on grounds of their membership of Nazi organizations. As in the case of Soviet trials, not all convicts

[43] This was the case, for example, in the Dresden 'Euthanasia' Trial of June 1947. The SMAD wanted it to be a show trial in which mitigating circumstances should be excluded. The SED, in turn, tried to exert pressure on the jurists through the media in order to obtain draconian penalties. Böhm, Boris & Scharnetzky, Julius. 2011. 'Wir fordern schwerste Bestrafung: Der Dresdner "Euthanasie"-Prozess 1947 und die Öffentlichkeit.' In: Osterloh, Jörg & Vollnhals, Clemens (Eds). 2011. *NS-Prozesse und deutsche Öffentlichkeit. Besatzungszeit, frühe Bundesrepublik und DDR*, pp. 189-206. Göttingen: Vandenhoek & Ruprecht.

[44] Ibid.; see also Wentker, 'Ahndung,' pp. 64-78; Weinke, 'Alliierter Angriff,' esp. pp. 44-62; Weinke, Annette. 2002. *Die Verfolgung von NS-Tätern im geteilten Deutschland. Vergangenheitsbewältigung 1949-1969 oder: Eine deutsch-deutsche Beziehungsgeschichte im Kalten Krieg*. Paderborn: Ferdinand Schöningh, esp. pp. 30, 43-47, 69-72.

were actual National Socialists. Since CCD 38 also defined as 'offenders' those 'who, after 8 May 1945, ha[d] endangered or [were] likely to endanger the peace of the German people or of the world, through advocating national socialism or militarism or inventing or disseminating malicious rumors,'[45] trials could be used to remove any kind of political opponent. Moreover, penalties began to increase in severity according to the SED's call for draconian sentences; death sentences, especially, were on the rise. The trials were also used for the socialist transformation of property relations; in many cases, convicts were punished by having their property expropriated and subsequently nationalized.

These so-called 201 proceedings reached their peak with the Waldheim Trials, in which 'the opportunities given by Order 201 were fully exploited.'[46] These trials, which started in April 1950, comprised around 3,400 secret trials handled by special courts, lasting mostly 20 to 30 minutes, and led to average sentences of 15 to 25 years' imprisonment. The defendants were prisoners from the last three Soviet internment camps in the SOZ, which the SED government had been requesting to close for some considerable time, as they impaired the image of an 'antifascist-democratic' new beginning.

While the SED intended to put an end to denazification and Nazi trials, and integrate all remaining prisoners into society when closing the camps, Soviet occupation forces frustrated these plans: only around 10,000 prisoners were released by the SMAD; around 10,500, who had already been convicted by Soviet Military Tribunals, were handed over to GDR jails.

Around 3,400 further prisoners were to be investigated and punished by the GDR's judiciary. These trials were initially closed to the public and kept secret. This would change when the process became publicly known, forcing the SED to alter course. Ten proceedings were turned into show trials, which, carefully prepared, took place in front of a selected audience. Defenders, witnesses, strict evidence-based argument and individual sentences were all deployed in order to fake adherence to the rule of law; as well as demonstrate severity towards 'fascists.'[47]

The Waldheim Trials heralded the end of the genuine prosecution of Nazi crimes. As in the FRG, the numbers of proceedings decreased steadily and considerably in the 1950s: from 331 trials in 1951 to 23 in 1955. Between then and 1989, only 120 more individuals were punished.[48] These few trials were hardly more than propaganda tools of the GDR's self-promotion as an antifascist state that had successfully battled fascism in its own territory. The FRG and how it had dealt with the past thereby served as the central point of reference. This found its expression in show trials against high-ranking West German officials, who were said to have participated in the Nazi regime. The trials were used to point out the FRG's shortcomings in coping with the Nazi past. Trials were held *in absentia* against the

[45] Wentker, Hermann. 2001. *Justiz in der SBZ/DDR 1945-1953. Transformation und Rolle ihrer zentralen Institutionen*. München: Oldenbourg Verlag.

[46] Translated from German, Wentker, 'Ahndung,' p. 69.

[47] More detailed in: Werkentin, Falco. 2011. 'Die Waldheimer Prozesse 1950 in den DDR-Medien.' In: Osterloh, Jörg & Vollnhals, Clemens (Eds). 2011. *NS-Prozesse und deutsche Öffentlichkeit. Besatzungszeit, frühe Bundesrepublik und DDR*, pp. 221-232. Göttingen: Vandenhoek & Ruprecht.

[48] Unlike in the FRG, the prosecution of Nazi crimes in the GDR was neither burdened by personnel continuity, nor by reservations regarding the use of retroactive criminal laws. Offenses codified by the IMT Charter (see Chapter 2 b i) were applied even after 1954/55. 'Crimes against humanity' and 'war crimes' were integrated into the GDR's penal code in 1968. Both the statute of limitations and the appeal to superior orders were suspended for these types of crimes.

Chief of the Chancellery or against the Federal Minister of the Expellees, who received severe penalties.

The accusations were not pure invention. Indeed, a great number of former National Socialists had acquired important positions in the FRG – among them were the 'defendants.' However, the SED was less interested in solving and punishing crime, than in destabilizing and discrediting the FRG in order to enhance the image of the GDR. The campaigns were not without consequences; they triggered many scandals in the FRG relating to how the latter had dealt with the past.

Trials against Nazi offenders in their own territory, on the other hand, were rare; and mostly only initiated in order not to obviously fall behind the West German prosecution efforts, or to demonstrate more severity and dedication in the punishment of fascists. These ambitions led to a number of trials held in parallel to similar ones in the FRG. One of them was the show trial of Horst Fischer, who had worked as a doctor at Auschwitz. Although his whereabouts were already known in 1964 his trial did not start until 1966, timed to take place simultaneously with the Frankfurt Auschwitz Trial. As in many previous trials, the Nazi past was given a re-interpretation in line with official state ideology: I.G. Farben – representative of West German capitalism – was depicted as chiefly responsible for fascism and Nazi crimes. The trial ended with Fischer's death sentence.

Beyond that, the GDR remained largely inactive, to the benefit of its own 'reputation as an exemplary antifascist German state',[49] even when having concrete information at hand. This approach increased throughout the 1980s and was especially used when dealing with Nazi perpetrators who had acquired higher-ranking positions in the GDR. The authorities chose not to prosecute suspected 'euthanasia' offenders working in high positions in the healthcare system. In other cases, the Ministry for State Security (MfS; *Ministerium für Staatssicherheit*) probably remained inactive in order to prevent the FRG from gaining in prestige: as in the case of Erich Gust, former deputy commander of the Buchenwald concentration camp, who was suspected of having participated in the murder of the prominent communist, Ernst Thälmann. The MfS neither initiated their own investigations, nor handed him over to the FRG 'Having the Thälmann murder not punished by the FRG's judiciary seemed more profitable than any kind of verdict in this instance.'[50]

c) Lustration: The Denazification of German Society

I. Denazification in the Western Zones and the FRG

Denazification began during the invasion of Allied troops, with the dismissal of leading representatives of the civil service. Parallel to this, actual or alleged war or Nazi criminals as well as those perceived as possible security threats were put under 'automatic arrest'. These especially included members of the NSDAP, SS, Security Service of the Reichsführer-SS and the Gestapo. All in all, 200,000 people were interned in the Western occupation zones, 100,000 of them in the American zone alone. While some were released

[49] Translated from German, Wentker, 'Ahndung', p. 76.

[50] Translated from German, ibid., p. 78.

early, others remained imprisoned for several months or up to three years.[51] In January 1946, the occupying powers tried to establish a uniform handling of purges in all zones; but the efforts mostly failed. Denazification was already in progress in the single occupation zones and had taken on differing forms.[52]

In the American zone, from July 1945, denazification was conducted by means of a questionnaire, comprising 131 questions. Holders of key positions had to fill it out, and provide information on their membership in Nazi organizations. Depending on their answers, they were placed in one of five dismissal categories[53] by the military government. The property and income of those in the category of severest incrimination were frozen. Although the initial plan had intended only to remove convinced National Socialists[54] from key social and administrative positions, the target group was expanded more and more.[55] This development reached its peak with the order to screen all economic sectors; former members of the NSDAP or affiliated organization were only to be allowed to work as 'ordinary workers.'[56] This way, all former members of central Nazi organizations were subject to denazification.[57]

By March 1946, 1.26m of the overall 1.39m questionnaires had been analyzed. Half of all those reviewed, some 620,617 people, fell into the category of mandatory or possible removal. By the end of the month, 336,892 were dismissed or not re-hired. In the civil service, this meant the removal of one- to two-thirds of its personnel. The resulting lack of experts impaired the functioning of the administration and economy considerably. It was further problematic that the measures were often considered unfair, especially the schematic categorization without individual distinction on whether those affected had voluntarily or involuntarily joined a Nazi organization.[58] Denazification thus attracted increasing opposition from the German population and led to solidarity between actually convinced National Socialists and followers. It also strengthened resistance against the occupiers, diminished the will to cooperate and promoted self-victimization.

The many difficulties led to a reappraisal in March 1946. The 'Act for Liberation from National Socialism and Militarism' (Liberation Act) brought about three important

[51] By the beginning of 1947, almost half of all prisoners had been released from Western internment camps, but only 7,000 of 67,000 prisoners from Soviet camps. Cohen, 'Transitional Justice,' p. 69.

[52] For the following paragraphs: Vollnhals, Clemens (Ed.). 1991. *Entnazifizierung. Politische Säuberung und Rehabilitierung in den vier Besatzungszonen 1945-1949*. München: Deutscher Taschenbuch Verlag, esp. pp. 7-24, 94-96; Henke, Klaus-Dietmar. 1991. 'Die Trennung vom Nationalsozialismus. Selbstzerstörung, politische Säuberung, "Entnazifizierung", Strafverfolgung.' In: Henke, Klaus-Dietmar & Woller, Hans (Eds) *Politische Säuberung in Europa. Die Abrechnung mit Faschismus und Kollaboration nach dem Zweiten Weltkrieg*, pp. 21-84. München: Deutscher Taschenbuch Verlag, further Cohen, 'Transitional Justice,' pp. 68-71.

[53] See United States European Command. 1945. 'USFET-Directive from July 1945.' The five categories were: mandatory removal; discretionary removal, adverse recommendation; discretionary removal, no adverse recommendation; no objection, no evidence of Nazi activity; retention recommended, evidence of anti-Nazi activity.

[54] National Socialists were considered convinced if they had, for example, become members of the NSDAP before May 1, 1937.

[55] This was the American occupation forces' reaction to voices in their own country demanding a more severe punishment of Nazis.

[56] Translated from German, Vollnhals, 'Entnazifizierung,' p. 12.

[57] Borgstedt, Angela. 2009. 'Die kompromittierte Gesellschaft. Entnazifizierung und Integration.' In: Reichel, Peter & Schmid, Harald & Steinbach, Peter (Eds) *Nationalsozialismus – die zweite Geschichte: Überwindung, Deutung, Erinnerung*, pp. 85-105. München: C.H. Beck.

[58] The occupying power did not have the necessary knowledge to judge individual involvement in a more nuanced manner. Considering the mass loyalty in the 'Third Reich,' it also did not trust German authorities enough to entrust them with denazification from the start.

changes. First, the denazification procedure was individualized, as it was expanded by a quasi-judicial case-by-case review. This meant there was still a schematic categorization according to formal criteria (such as membership of the NSDAP or organizations deemed criminal by the IMT); however, it was only provisionally valid, as were resulting occupational bans. While uncompromised people were 'sorted out,' the others had to undergo an individual assessment of their level of responsibility and actual involvement in the 'Third Reich.' Based on this, those reviewed were finally put in one of five incrimination categories 'according to free judicial discretion'[59]: major offenders, offenders, lesser offenders, followers and exonerated persons.[60] Depending on the category, the person reviewed had to face penalties ranging from fines to the loss of assets, pensions and civil rights, to occupational bans, up to ten years of labor camp. False statements in the questionnaire were punishable.

Second, denazification was handed over to the German authorities. Henceforth, S*pruchkammern*, local civilian courts with public prosecutors, were responsible, while the occupying power kept its authority as a supervisor. Third, denazification was extended to the whole adult population: anyone aged 18 or older. 13.41m people in the American occupation zone had to fill in a questionnaire, 3.66m (27 percent) of whom had to answer to the *Spruchkammern*.

During the following two years, what was initially an enthusiastic, extensive undertaking became more and more of a failure. There were several reasons for this. The burden of proof was reversed by the denazification process. According to the preliminary formal categorization, there was a presumption of guilt which the 'defendant' had to rebut in court if he wanted to exonerate himself.[61] This spurred the practice of so-called *Persilscheine*: affidavits by friends, neighbors, colleagues or clerics vouching for the integrity of the individual affected, and used to 'whitewash' incriminating pasts. This was aggravated by many courts exploiting their discretionary powers (for example, by invoking the 'right to political error') to help their compromised fellow citizens by handing out mild sentences. Many such individuals were thus turned into 'followers.' Denazification and rehabilitation went hand in hand.[62]

Additional factors played their part too. In the context of the Cold War and the corresponding communist threat, it became necessary for the Western Allies to win Germany over as a partner, meaning that their zeal for denazification began to wane. Instead, the Americans began to provide amnesty for masses of suspected followers. A wave of amnesties set in August 1946: excluding first the youth, then people affected by 'social hardship', and finally releasing prisoners of war from punishment. As a result, only 950,000 of what had previously been 3.66m people had to answer for their past. In addition, the American occupiers relaxed both the penalties and procedure of categorization: occupational bans were limited to major offenders, while offenders could be categorized as followers in summary procedures. Finally, it was mandated to bring denazification

[59] Translated from German, Henke, 'Trennung,' p. 38.

[60] Article 4 Befreiungsgesetz (Liberation Act). For a more detailed definition of each category, see Articles 5 to 13.

[61] If, for example, someone had become a member of the NSDAP before May 1, 1937, the presumption of guilt defined 'offender' as someone who had 'considerably promoted the party's tyranny.' Translated from German, Henke, Trennung, p. 39.

[62] Borgstedt, Gesellschaft, p. 93.

to an end – only heavily compromised people were to be held accountable after May 8, 1945.

This change of policy had considerable consequences: since the courts had dealt with less compromised and simple cases first, heavily incriminated people received milder penalties or went unpunished. The 'gap between aspiration and reality'[63] was now undeniable: more than 13m questionnaires had led to a conviction rate of only 10 percent, less than 1 percent of all those compromised received 'actual penalties or permanent disadvantages.'[64] Instead of 'purification' and atonement, denazification brought about the wide-reaching rehabilitation of incriminated people.

In the other Western occupation zones, denazification was oriented towards the approach taken by the Americans, but also had considerable differences and specifics.[65] In principle, it was viewed more pragmatically, as primarily a matter of the dissolution of party organizations and replacement of elites. Priority was given to the functioning of both administration and economy, especially because the two occupying forces wanted to minimize occupation costs, given the economic situation in their own countries.[66] Thus, a considerably smaller group of people was subject to reviews than in the American zone; the focus lay on the education system, the administration and the judiciary, while other occupational sectors were (almost) completely excluded. In this way, many National Socialists could remain undetected – which earned the French zone the nickname, 'Eldorado for the highly incriminated.'[67] There, 13 of 669,068 people reviewed were categorized as major offenders; 938 as offenders; 2.5 percent as lesser offenders; 44.7 percent as followers; and 0.5 percent as exonerated. All other proceedings were quashed.

How many of the two million reviews in the British zone led to convictions of major offenders is unknown; scattered numbers are indicative of mild verdicts. However, the British forces displayed severity towards members of those Nazi organizations which had been deemed criminal by the Nuremberg Trial (Chapter 2 b i). Unlike in other occupation zones, they were not held accountable through denazification procedures, but in 'classical' trials in front of specially set up courts. By the end of 1949, 24,145 trials had been held – 15,724 people were convicted; 5,614 of them received terms of imprisonment.

Although denazification in the French and British zones did not fail because of high aspirations (goals were more moderate), it scarcely amounted to an effective, substantial political purge. The already slim results in the Western occupation zones were diminished even further when even heavily compromised people were allowed to return to the civil service through a number of measures initiated after the founding of the FRG (Chapter 2 c ii).

[63] Translated from German, Benz, Wolfgang. 2009. 'Deutschland unter alliierter Besatzung 1945-1949.' In: Benz, Wolgang & Scholz, Michael F. (Eds) *Gebhardt Handbuch der Deutschen Geschichte*. Stuttgart: Klett-Cotta.

[64] Translated from German, ibid., p. 119.

[65] For the following paragraph Vollnhals, 'Entnazifizierung,' pp. 16, 24-42; Henke, 'Trennung,' pp. 41-52; Borgstedt, 'Gesellschaft,' pp. 90-95; Cohen, 'Transitional Justice,' pp. 71-80. For the respective procedure, see Vollnhals and Henke.

[66] Additionally, denazification in the French zones was shaped by the central political goal of rebuilding the French economy by exploiting German resources and weakening its dangerous neighbor.

[67] Translated from German, Vollnhals, 'Entnazifizierung,' p. 28.

II. Denazification in the Soviet Zone and GDR

Denazification was most rigorously and rapidly conducted in the Soviet occupation zone. Unlike the American forces, the SMAD did not have a precise denazification policy; however, it was clear from the start that the purge should not only be a 'reckoning with National Socialism,'[68] but above all, serve the primary goal of 'antifascist-democratic upheaval.' Hence, the SMAD aimed, not only for the removal of Nazis (and other politically unwelcome individuals), but for their targeted replacement by a new communist elite in order to safeguard the communist claim to leadership.[69] Here, the motto was, 'It has to look democratic, but we need to have things firmly under control.'[70]

Shortly after the war, the SMAD inaugurated mandatory registration of former NSDAP members. As in other zones, suspected Nazi criminals and members of central Nazi organizations were placed under 'automatic arrest.' Estimates speak of more than 120,000 people affected.[71] In tandem with this, removals of compromised people in socially relevant positions were initiated. From the beginning, the SMAD was supported in this by German communists and other Nazi opponents. In the earliest phase, for example, spontaneously established local 'antifascist committees' made up of various German Nazi opponents were engaged in the purge. Their precise local knowledge was of assistance in identifying important National Socialists. Further, German functionaries of the Communist Party, who had been politically trained in the Soviet Union, stood by their side 'as an extended arm of the Soviet Military Administration.'[72] The rather unsystematic, locally varying actions focused on the removal of central office holders, 'old fighters' and denunciators; detention of formerly active members of the NSDAP and Gestapo; but also the removal of unwelcome people under the pretext that they had been Nazis.[73]

This way, new state and provincial administrations with politically compliant figures in key positions had been established by July 1945. These were responsible for further denazification measures, over which they enjoyed vast discretionary powers; there were no uniform, zone-wide guidelines. As a result, denazification was handled differently by different authorities: while some states only removed former NSDAP members from leading positions, others removed former members irrespective of their position. Similarities existed insofar as those sectors affected most were those which appeared most integral to the socialist reorganization of society, namely, the judiciary, education system, police, industry and administration. Arbitrariness was not rare in this process, in that people also found themselves affected by supposed denazification measures despite having been neither active nor nominal Nazis. The real reason was they were just not considered as reliable communists. As in other zones, however, denazification was

[68] Translated from German, ibid., p. 43.

[69] Cohen, 'Transitional Justice,' pp. 80 ff. Also for the following paragraphs essential Vollnhals, 'Entnazifizierung,' pp. 43-55; Welsh, Helga A. 1991. 'Antifaschistisch-demokratische Umwälzung und politische Säuberung in der sowjetischen Besatzungszone Deutschlands.' In: Henke, Klaus-Dietmar & Woller, Hans (Eds). *Politische Säuberung in Europa. Die Abrechnung mit Faschismus und Kollaboration nach dem Zweiten Weltkrieg*, pp. 84-107. München: Deutscher Taschenbuch Verlag. For more on the socialist understanding of democracy, see Chapter 2 e ii.

[70] Quoted and translated from German, Mählert, Ulrich. 2010. *Kleine Geschichte der DDR*. München: C.H. Beck.

[71] Among these were not only Nazis but many people who were considered opponents of Soviet occupation goals. While a large proportion of prisoners in the Western zones were released by January 1947, this was only true of a small number of detainees in the Soviet zones. Many prisoners were brought to the Soviet Union for forced labor. According to estimates, more than one-third of the detainees died. Cf. Cohen, 'Transitional Justice,' pp. 69 ff.; footnote No.51.

[72] Cf. Vollnhals, 'Entnazifizierung,' p. 43.

[73] Cf. Borgstedt, 'Gesellschaft,' pp. 95 ff.

restricted by the need to keep affected institutions and economic sectors running, which made exceptions for specialized personnel necessary. Overall, around 390,500 people were removed or not re-hired by the end of 1946.[74]

In order to enforce a uniform approach, the SMAD released guidelines defining categories of mandatory and discretionary removal.[75] The handling of denazification was passed on to special commissions, mostly occupied by SED members. All previously granted work permits were rescinded, and 850,000 former NSDAP members reviewed once more. In consequence, the commissions were swamped with work and could only apply the guidelines very schematically. This led to a further 64,500 removals by mid-1947.

In August 1947, the SMAD suddenly changed its policy.[76] As denazification was both very advanced and had caused severe staff shortages in both administration and the economy, it was now to be limited to active National Socialists only, and brought to an end soon. Nominal members now found themselves considerably rehabilitated: they were given back their civil rights and, if willing to break with National Socialism, reintegrated into society. The ultimate end of denazification was scheduled for March 1948; proceedings against active National Socialists which had not been brought to an end by then were quashed, unless enough evidence had been gathered for criminal prosecution. Their cases, like those of Nazi criminals, were handed over to courts (Chapter 2 b iii). The change of policy meant that many active and heavily compromised National Socialists, whose cases had not yet been dealt with, were granted amnesty. How many people in the Soviet zone were affected by denazification overall is hard to say, as credible information is lacking. According to estimates, 200,000 of the 1.5m NSDAP members living in the SOZ had been permanently dismissed by the end of March 1948.[77]

The major differences between denazification in the Soviet and Western zones did not primarily lie within the procedure or its dimension, but in the permanence of the measures taken. In the Western zones, National Socialists had been considerably rehabilitated and reintegrated by 1948. This was especially true of the civil service, where the number of former NSDAP members soon amounted to 40 percent. In the cases of those who had lost their jobs in the course of denazification, the 1951 Act implementing Article 131 of the Basic Law, which granted 'denazified' persons a claim to re-employment, opened a path to the civil service. This way, another 39,000 people were reintegrated by March 1953.[78] The resultant strong personnel continuities were simultaneously beneficial for the FRG's rapid reconstruction while posing a considerable burden for the process of dealing with the past in general and the non-prosecution of Nazi crimes by the judiciary in particular.

[74] Cf. also Ibid.

[75] Control Council Directive No. 24, which had already been issued in January 1946 and was shaped by the American denazification policy, now came into force.

[76] See Sowjetische Militäradministration in Deutschland. 1947. Order No. 201 'Richtlinien zur Anwendung der Direktiven Nr. 24 und Nr. 38 des Kontrollrats über die Entnazifizierung'. Accessed February 18, 2016, http://www.argus.bstu.bundesarchiv.de/dy30bmer/mets/dy30bmer_005/index.htm?target=midosaFraContent&backlink=http://www.argus.bstu.bundesarchiv.de/dy30bmer/index.htm-kid-baebfc66-36ce-4551-b2ce-dcc41f4c15e0&sign=DY 30/IV 2/2.022/5.

[77] Cf. Cohen, 'Transitional Justice,' p. 81.

[78] See Sprockhoff, Anna & Fischer, Torben. 2007. '131er-Gesetzgebung.' In: Fischer, Torben & Lorenz, Matthias N. (Eds) *Lexikon der 'Vergangenheitsbewältigung' in Deutschland. Debatten- und Diskursgeschichte des Nationalsozialismus nach 1945*, pp. 94-96. Bielefeld: Transcript.

In the Soviet zone and the GDR, the purge was more permanent. The almost complete removal of National Socialists from the judiciary, the police and the administration was irreversible; despite political rehabilitation, former Nazis were not allowed to return. Most emerging vacancies had been filled by Communist Party or SED members or other (at least officially) politically compliant people through, for example, crash-course training of 'people's judges' and new teachers. Hence, National Socialists were permanently expelled from many occupational sectors; however, they were replaced by people 'at the service of a party' – the personnel reconstruction smoothed the path to socialist dictatorship.

That said, though, denazification in the Western zones and FRG was not completely without effect either. Although the actual goal of permanent removal of Nazis was not reached, denazification is said to have contributed to the exposure and discrediting of National Socialism. In addition, the measures had a shock effect on compromised people; they were at least temporarily 'socially declassed and humiliated.'[79] Even though it cannot be assumed that this led to internal reformation, those reintegrated were forced into 'political moderation and restraint' as well as to adapt to the new political circumstances if they were not to lose their newly won positions. According to Clemens Vollnhals, especially 'high and locally well-known functionaries [...] lived largely under toleration even after their formal rehabilitation, without managing to restore their former social status.'[80]

d) '*Wiedergutmachung*': Reparations, Restitution and Compensation

I. Reparations Claims of the Victorious Powers

Reparations for war damages and losses were defined by the Allies in the Potsdam Agreement of 1945. It established that claims for reparations were not to be satisfied by monetary payments but through the dismantling of German industry and infrastructure. The reparation territory was divided – the Soviet Union and Poland were to receive reparations from the Soviet zone, the Western powers and all other recipient states from the Western zones.[81] German foreign assets were withdrawn and monetized, whereby those from the 'East' were due to the Soviets, and those from 'Western' states were due to the Western powers. In addition, the German merchant marine and German gold holdings (also those in foreign countries) were confiscated.[82]

Further provisions were determined at the Paris Conference on Reparations in February 1946, in which 18 countries took part. Even though the precise amount of reparations was not determined, an allocation formula was agreed upon, calculated according to the size of the respective country, its contribution to the war and the extent of damage suffered. The distribution among the entitled states was to be administered by the IARA (Inter-

[79] Translated from German, Vollnhals, 'Entnazifizierung,' p. 64. As well as the two following quotes.

[80] Cf. ibid.; more detailed in Henke, 'Trennung,' pp. 56-66. For the question of whether it was inevitable for denazification to fail in the Western zones, see Vollnhals, 'Entnazifizierung,' pp. 55-64.

[81] The Soviet Union, which had suffered the greatest damage and losses, was to additionally receive 10 percent of the Western dismantling without charge, and another 15 percent in exchange for goods.

[82] Cf. Doehring, Karl. 2001. 'Reperationen nach dem zweiten Weltkrieg.' In: Doehring, Karl & Fehn, Bernd Josef & Hockert, Hans Günter (Eds) *Jahrhundertschuld, Jahrhundertsühne. Reparationen, Wiedergutmachung, Entschädigung für nationalsozialistisches Kriegs- und Verfolgungsunrecht*, pp. 16-20. München: Olzog-Verlag; Fisch, Jörg. 1992. *Reparationen nach dem Zweiten Weltkrieg*. München: C.H. Beck Verlag, esp. p. 69-80; Bührer, Werner. 1999. 'Reparationen.' In: Benz, Wolfgang (Ed.) *Deutschland unter alliierter Besatzung 1945-1949/55. Ein Handbuch*, pp. 161-166. Berlin: Akademie Verlag.

Allied Reparation Agency) in Brussels; the distribution among citizens lay in the hands of each recipient state itself. Thus 'all claims of their citizens against the former German government and its departments stemming from war, regardless whether of official or private nature'[83] were to be satisfied. No precise distinction was made between damages resulting from war or from persecution; all kinds of damages, except social insurance claims, were subsumed under the term 'reparations.'[84]

As the Allies held widely differing views and intentions on the subject of reparations, policies differed considerably from zone to zone.[85] Given its war damages, the Soviet Union was primarily interested in the reconstruction of its own country and the destruction of Germany's war-making potential. Hence, it pursued an excessive dismantling of German industrial facilities and infrastructure. Factories, machinery and rail tracks were dismantled, entrained and carted off to the Soviet Union. Only in July 1946 did the occupation force change its policy to taking reparations out of current production. Reparations came in other forms too, such as the use of prisoners of war and civilians as forced labor for the Soviet economy. In the light of the domestic problems in the GDR, the occupation forces decided to relinquish further reparations in 1953 as did Poland in the same year.

France, which was as interested as the Soviet Union in its own economic reconstruction and in weakening Germany, also covered its reparation claims through dismantling and forced labor of prisoners of war, albeit to a comparably lesser extent. The approaches of the British and American zones were wholly different. Even though both occupation powers were interested in the economic demilitarization of Germany, they wanted to keep peacetime industries intact in order to revive trade relations for the benefit of their own economies. Besides moderate dismantling, they satisfied their claims mostly through foreign assets, intellectual property and the transfer of know-how.[86] In particular, the United States, whose new policy in the light of the Cold War aimed at Germany's integration with the West, reduced its claims early on and instead shifted to active reconstruction through economic aid.

In 1953, all further reparation payments were postponed as result of the London Agreement on German External Debts. The agreement established that all pending claims were to be settled and covered only after the conclusion of a peace treaty. This meant the *de facto* end of all reparation payments as, until today, a peace treaty has never been concluded – the Two Plus Four Agreement of 1990 is not regarded as such by most. Generally, reparations were considered finished, except when it came to individual compensation claims of Nazi victims: which, after long debates, have become the subject of several international payment agreements (Chapter 2 d ii).[87]

[83] Translated from German, Frøland, Hans Otto. 2006. 'Eine gewaltige, nicht beglichene Schuld. Die deutsche Entschädigung für NS-Verfolgte in Norwegen.' In: Hockerts, Hans Günter & Moisel, Claudia & Winstel, Tobias (Eds) *Grenzen der Wiedergutmachung. Die Entschädigung für NS-Verfolgte in West- und Osteuropa 1945-2000*, pp. 285-356. Göttingen: Wallstein Verlag.

[84] Cf. Hockerts, Hans Günter. 2001. 'Wiedergutmachung in Deutschland 1945-2000. Eine historische Bilanz 1945-2000.' *Vierteljahreshefte für Zeitgeschichte* 2:167-214 (Subsequently short as Hockerts, Bilanz); Fisch, 'Reparationen,' pp. 109-111; Frøland, Schuld, p. 295 ff.; Hockerts, Hans Günter & Moisel, Claudia & Winstel, Tobias (Eds). 2006. *Grenzen der Wiedergutmachung. Die Entschädigung für NS-Verfolgte in West- und Osteuropa 1945-2000*. Göttingen: Wallstein Verlag (Subsequently short as Hockerts, 'Entschädigung').

[85] Essential for following paragraphs Bührer, 'Reparationen,' pp. 161-167; Fisch, 'Reparationen,' pp. 35-40; 104-116, 242-248.

[86] Numerous German scientists and technical experts were brought to the United States. More than a few of them were war criminals and Nazi perpetrators.

[87] Cf. Rombeck-Jaschinski, Ursula. 2005. *Das Londoner Schuldenabkommen. Die Regelung deutscher Auslandsschulden nach dem Zweiten Weltkrieg*. München: Oldenbourg Verlag; Hockerts, Bilanz, p. 191 ff.; Hockerts, Entschädigung, p. 14 ff.

It is almost impossible to quantify the overall amount of all reparations paid. For one thing, there is great disagreement on what should be counted as reparations; for another, it is hard to put a number on benefits such as know-how and forced labor. Often-cited estimates speak of $16.3bn in 1938 prices in the case of the Soviet zone; and $14.3bn or $16.8bn in the case of the Western zones.[88]

II. The Policy of Compensation in the FRG[89]

The restitution of robbed and expropriated assets started out in the American occupation zones. Shortly after the war, its forces established property control in order to identify stolen and withdrawn assets, secure them and return them to their rightful owners. To this end, the Western powers enacted initial restitution laws between 1947 and 1949, which ordered private individuals to return assets that had been expropriated or given away due to political persecution, or pay compensation. After the period of occupation, these were adopted into FRG law and expanded within the framework of the Federal Restitution Act 1957. The Act obliged the Federal Republic to pay compensation for assets which had been stolen by Nazi party or state authorities. Recipients were primarily Jewish victims and their surviving dependents. So-called 'heirless assets' – cases when former owners were murdered and no legal heirs existed – were assigned to Jewish successor organizations. Around DM 3.5bn had been returned by 100,000 private citizens by the mid-1950s, when 'private restitution' was largely completed. Many were properties and businesses from so-called 'Aryanization.'

Public restitutions by the FRG amounted to another DM 4bn, primarily paid as compensation for robbed and 'confiscated' assets, such as art, precious metals and stocks as well as jewelry, furniture and much else. In both cases, the sums did not amount to what had actually been stolen or expropriated from Jewish victims. Compensation was only paid for those assets which had not remained in foreign countries but were brought to the territory of the later FRG – which was often difficult or impossible to prove. Furthermore, only people residing in states with which West Germany held diplomatic relations were eligible to file applications for redress. In this way, people from the 'Eastern bloc,' who had been affected most, were excluded.[90]

The idea of '*Wiedergutmachung*' ('making good again') in terms of compensating damages to life, body, health, freedom, property and wealth, as well as occupational or financial advancement, was addressed by the Federal Supplementary Act of 1953, which was revised

[88] Cf. Fisch, 'Reparationen,' pp. 179-226, esp. 196, 216, 218; Hockerts, 'Entschädigung,' p. 16 ff. The Soviet zone/GDR thus had to carry the (in relative terms, and maybe even in absolute numbers), greater burden of reparations.

[89] As the focus of this publication lies in dealing with dictatorial pasts and their consequences, all measures taken in order to deal with the consequences of war are being excluded. However, the so-called *Lastenausgleich* (equalization of burdens) of 1952, dedicated to the financial compensation and safeguarding of German victims of war and its consequences, is worthy of mention. The intention was that the burdens of war should be borne in solidarity by the whole population and not by individuals only. Accordingly, all owners of existing tangible property in West Germany had to pay a levy. This amounted to 50 percent of the respective property, and had to be paid within 30 years into an equalization fund. The fund was used to pay equalization payments to war victims. In 2001, these payments amounted to around DM 115bn. The Lastenausgleich is considered the largest legal redistribution of wealth in history. Cf. Hauser, Richard. 2011. 'Zwei deutsche Lastenausgleiche – Eine kritische Würdigung.' *Vierteljahrshefte zur Wirtschaftsforschung* 4: 103-122. More detailed in: Wiegand, Lutz. 1992. *Der Lastenausgleich in der Bundesrepublik Deutschland 1949 bis 1985*. Frankfurt am Main: Peter Lang.

[90] Cf. Hockerts, 'Bilanz,' pp. 170-175; Hockerts, Hans Günter. 2013. 'Wiedergutmachung in Deutschland 1945-1990. Ein Überblick.' *Aus Politik und Zeitgeschichte* 25-26:15-22 (Subsequently short as Hockerts, 'Überblick'); Goschler, Constantin. 2005. *Schuld und Schulden. Die Politik der Wiedergutmachung für NS-Verfolgte seit 1945*. Göttingen: Wallstein Verlag, pp. 203-212, 262-272.

in 1956 (Federal Compensation Act) and again in 1965 (Final Federal Compensation Act).[91] The Act closely defined who was considered a victim, and specified both the type and extent of compensation. The deadline for filing applications was set for the end of 1969. After 1965, the Act was supplemented by hardship funds.[92]

On this basis, around 650,000 Nazi victims received one-time payments; 360,000 received a monthly pension. By 1998, the benefits paid amounted to DM 70-80bn.[93] The single benefits varied considerably. While one-time payments for concentration camp prisoners merely amounted to DM 5 for each day of imprisonment, medical costs and pensions in cases of damages to health and occupational advancement were significantly more generous. Around 80 percent of compensation payments went to foreign countries, about 50 percent of them to Israel. This, however, can easily obstruct the reality that most Nazi victims living in other countries did not receive compensation, as they were excluded due to the principle of territoriality.[94] The circle of recipients was further narrowed by a diplomatic clause establishing that only people residing in states with which the FRG held diplomatic relations were eligible to receive payments. Only Israel was excluded from this provision. Apart from the USSR, no relations existed with any Eastern European state on the effective dates. The Soviet Union, in turn, was not interested in negotiating compensation of any kind.[95]

The Federal government insisted that the claims of excluded foreign victims should be satisfied within the context of reparations, which were indefinitely postponed due to the London Agreement on German External Debts. Yet the government felt compelled to conclude international payment agreements with several other states due to foreign policy considerations. The first of this kind was the Luxembourg Agreement with Israel in 1952, which comprised benefits amounting to DM 3bn. This roughly equaled the costs of integration of half a million Holocaust survivors into Israeli society. A further DM 450m was given to the Jewish Claims Conference as compensation for Jews living outside Israel. Between 1959 and 1964, eleven so-called 'global agreements' were concluded with western, northern and southern European states[96] in order to compensate victims residing there, at least partially. These totaled DM 876m; their distribution among Nazi victims lay in the hands of the recipient states. In return, the German federal government wanted recipient states' assurance that all claims stemming from Nazi crimes would be settled. Yet other than Luxembourg, all states reserved the right to make further claims after the conclusion of a peace treaty, as defined in the London Agreement.

[91] The acts drew upon the groundwork of the American occupation force. See: Goschler, Constantin. 1992. *Wiedergutmachung. Westdeutschland und die Verfolgten des Nationalsozialismus. 1945-1954*. München: Oldenbourg Verlag; Ibid., Schuld. The Acts were not drafted by the FRG alone; important contributions came from the Conference on Jewish Material Claims Against Germany (Jewish Claims Conference), an umbrella association of more than 20 Jewish organizations founded in 1951 to represent the interests of Jewish victims living outside Israel.

[92] Cf. also for the following paragraphs Guckes, Ulrike. 2008. *Opferentschädigung nach zweierlei Maß? Eine vergleichende Untersuchung der gesetzlichen Grundlagen der Entschädigung für das Unrecht der NS-Diktatur und der SED-Diktatur*. Berlin: Berliner Wissenschafts- Verlag, pp. 33-38; essential Hockerts, 'Überblick,' pp. 17-22; Ibid., 'Bilanz,' pp. 175-203, 209-214; Reichel, 'Vergangenheitsbewältigung,' pp. 73-96; Goschler, 'Schuld,' pp. 233-247, 413-475.

[93] Numbers from Hockerts, 'Überblick,' p. 17.

[94] Due to this principle, compensation was limited to victims who had resided in the FRG or West Berlin on the effective date of December 31, 1952; or who had lived within the 1937 borders of the German Reich at the time of persecution and had made their residence in the FRG and West Berlin until the date in question. In this way, all victims of foreign nationality who had stayed or returned to their home countries – the majority of all victims – were excluded. Cf. also Federal Compensation Act § 4. The circle of recipients was later partially expanded.

[95] The circle of recipients was additionally narrowed down by application deadlines and criteria of eligibility.

[96] These were France, the Benelux states, Greece, United Kingdom, Norway, Denmark, Sweden, Italy and Switzerland.

In the 1970s, further agreements were concluded with Yugoslavia and Poland, which were more about economic aid than compensation. After the reunification of the two German states, the Federal government managed, with aid from the United States, to have the Two-Plus-Four Agreement not concluded as a formal peace treaty, but as a "Treaty on the Final Settlement With Respect to Germany". This way, it hoped, further compensation claims would be averted. Nevertheless, the government felt compelled to compensate previously excluded victims residing in Eastern Europe. To this end, 'global agreements' were concluded with Poland, Russia, Ukraine, Belarus, Estonia, Lithuania and the Czech Republic, amounting to DM 1.8m. The reunited Germany also covered the claims made by the Jewish Claims Conference – which had been rejected by the GDR and been caught up in restituting robbed and expropriated property (Chapter 2 d iii).

Foreign Nazi victims were not the only ones to be disadvantaged or excluded from compensation for such a lengthy period of time. The group of 'forgotten victims' also included people who had been persecuted as 'Gypsies,' 'anti-socials' or 'criminals'; victims of forced sterilization, forced labor, and 'euthanasia'; as well as homosexuals, deserters or 'subverters of the war effort'. They had not been forgotten by mistake, but instead deliberately excluded from the Federal Compensation Act's categorical definition of who was considered a victim of Nazi persecution. This stemmed from continuities in racial and criminal thinking: their cases were not specific Nazi injustice, it was argued, but '"normal" regulatory measure[s] by the state or "usual" consequence[s] of war.'[97] Only if it had gone beyond what is considered acceptable for a state under the rule of law, would people affected have become eligible for lesser social benefits; though not for compensation ('*Wiedergutmachung*'). It took until the 1980s for this discrimination to attract effective criticism, which finally led to the establishment of a hardship fund of DM 300m.

In the case of forced laborers, it actually took until the end of the 1990s for German companies and the Federal government to agree, in the light of impending class action suits in the United States, on establishing the foundation 'Remembrance, Responsibility and Future.' Equipped with a budget of DM 10bn, the foundation was responsible for making financial compensation available to surviving forced laborers. Until 2007, 1.66m former forced laborers received €4.37bn in compensation payments. Interest from a fund established by the foundation is being used to finance memorial and documentation projects.[98]

By the end of 2011, Germany had invested around €69bn in compensating for Nazi injustice.[99] In this way, the country has assumed responsibility for Nazi atrocities and the suffering of victims. This enabled Germany to gain considerably in international prestige, which was important for its integration with the West. It was, however, not '*Wiedergutmachung*' in its literal sense. For one thing, this is essentially – especially given the character and dimension of Nazi crimes – impossible: financial compensation

[97] Translated from German, Hockerts, 'Überblick', p. 18.

[98] Cf. also Walgenbach, Arndt. 2007. 'Zwangsarbeiter-Entschädigung'. In: Fischer, Torben & Lorenz, Matthias N. (Eds) *Lexikon der 'Vergangenheitsbewältigung' in Deutschland. Debatten- und Diskursgeschichte des Nationalsozialismus nach 1945*, pp. 323-325. Bielefeld: Transcript.

[99] Cf. Bundesministerium der Finanzen. 2012. 'Entschädigung von NS-Unrecht. Regelungen zur Wiedergutmachung.' Accessed February 18, 2016, http://www.bundesfinanzministerium.de/Content/DE/Downloads/Broschueren_Bestellservice/2012-11-08-entschaedigung-ns-unrecht.pdf?__blob=publicationFile&v=2.

can barely be more than a symbolic gesture of acknowledgment and help to mitigate suffering. For another, not everything was done which could have been possible: due to the late recognition of many Nazi victims and their claims, many compensation agreements came and continue to come too late. Only in 2015 were Soviet prisoners of war officially recognized as Nazi victims; yet only a small fraction of these 5.3m former prisoners, of whom only 2m survived in the first place, are still alive. Despite the amounts paid as compensation, it must be highlighted here that most of the more than 20m Nazi victims have never received compensation.[100]

III. The Policy of Compensation in the GDR

As early as the period of occupation, a different approach to compensation evolved in East Germany. Here, the understanding of '*Wiedergutmachung*' was limited to paying reparations to the Soviet Union. This stemmed from the SED state, unlike the FRG, not perceiving itself as a successor state or legal successor to the German Reich, but instead as 'a new creation under international law.'[101] The SED claimed that it did not stand in 'historical continuity with the German Reich and thus not bear responsibility for the crimes of Nazi Germany.'[102] When the Soviet Union announced the end of reparations in 1953, the SED state regarded its duty as fulfilled. Although payments were made to Nazi victims, these followed a completely different logic; they were not understood as compensation paid by a 'society of perpetrators' to its victims, but as social welfare benefits from the state to citizens in need and later as payments of honor to deserving citizens. Accordingly, the payments were limited to people residing in the GDR, while claims from other countries were categorically rejected.[103]

Shortly before the founding of the GDR, the 'Decree on the Creation of a New Ordinance to Secure the Rights of Recognized Victims of Nazi Persecution' was issued on October 5, 1949, which regulated social welfare benefits for Nazi victims until 1965. Victims of the Nazi regime were defined as those who 'had been persecuted in or outside of Germany on grounds of religion, race, political activity, resistance against the Nazi regime or political unreliability,'[104] as well as their dependents. They were eligible for improved social security in the form of invalidity insurance and pensions, as well as further benefits and privileges.[105] Unlike in the FRG, benefits for Nazi victims were not tied to damages stemming from persecution. The only prerequisite was to be recognized as a victim of the Nazi regime. This status was open for victims of political persecution, resistance fighters, Jews, so-called '*Versippte*,'[106] 'Gypsies' and victims of forced sterilization. However, in the case of victims of political persecution, resistance fighters, Sinti and Roma, recognition was bound to 'good conduct'. The first two of these categories were expected, among other things, to

[100] Cf. Hockerts, 'Bilanz,' p. 213 ff.; Musial, David. 2007. 'Wiedergutmachungs- und Entschädigungsgesetze.' In: Fischer, Torben & Lorenz, Matthias N. (Eds) *Lexikon der 'Vergangenheitsbewältigung' in Deutschland. Debatten- und Diskursgeschichte des Nationalsozialismus nach 1945*, pp. 58-60. Bielefeld: Transcript, Reichel, 'Vergangenheitsbewältigung,' p. 96.

[101] Translated from German, Hockerts, 'Bilanz,' p. 208.

[102] Translated from German, Goschler, 'Schuld,' p. 316.

[103] Cf. also for the following paragraphs Hockerts, 'Überblick,' p. 21 ff.; Ibid., 'Bilanz,' pp. 203-209; Guckes, 'Opferentschädigung,' p. 44 ff.; esp. Goschler, 'Wiedergutmachung,' pp. 361-411.

[104] Quoted and translated from German in Goschler, 'Schuld,' p. 373.

[105] These included preferential consideration in the allocation of housing space and business premises accommodation with furniture and healthcare. Their children also received study grants. Employed victims of the Nazi regime were further granted special employment protection and additional vacation days.

[106] In the Nazi regime, people were considered *'versippt'* when they were affiliated with Jews by marriage.

have preserved their 'antifascist-democratic attitude' after 1945. Sinti and Roma were expected to have a loyal attitude towards the GDR and to have registered with the employment agency after 1945. Anything to the contrary was grounds for exclusion.[107] Like in the FRG, victims of 'euthanasia,' forced laborers and homosexuals were generally excluded.

In 1949, 36,200 people were recognized as victims of Nazi persecution; in 1953 it was 40,622. The costs of social welfare benefits amounted to M (East German marks) 40.3m in 1953. The number of victims of the Nazi regime fell continuously over the following years. This was the result of deaths, migrations to the West, and the politically and economically motivated withdrawal of many Nazi victims, especially those who did not conform to the SED's political ideas.

Pensions were calculated according to victims' last annual earnings prior to persecution or reaching pension age. In consequence, resistance fighters, who mostly had a working-class background, received the lowest pensions; and thus perceived themselves as disadvantaged compared to other groups of victims. This was 'inconsistent with the socialist attitude towards class struggle.'[108] Hence in 1965, the SED changed its policy: previous benefits were replaced by honorary pensions. Critical to the amount was the status as either a 'fighter' or a 'victim,' with only political victims and resistance fighters belonging to the first group. In accordance with the 'GDR's system of values,'[109] 'fighters' received an honorary pension of M 800 per month when they attained pension age or in case of invalidity; and were favored over 'victims,' who received M 600.[110] These comprehensive benefits did not merely owe to humanitarian motives. They were also an investment in the state's public relations: assisting 'victims' but particularly 'fighters' as 'icons of antifascism'[111] helped legitimize the GDR's existence as 'antifascist state' and thus the rule of the SED.

Individual or collective compensation claims from outside its own territory were decisively rejected by the GDR. Until its collapse, the United States, Israel and the Jewish Claim Conference addressed the GDR repeatedly.[112] The GDR government, however, insisted on being a new state without any moral or political responsibility for the Nazis' injustice. Besides, it was argued, the state had rendered outstanding services to the 'eradication of the roots of fascism' – the mere 'existence of the GDR [was claimed to be] the true compensation.'[113] The satisfied reparation claims of the Soviet Union and comprehensive benefits granted to victims of the Nazi regime were also pointed out.

[107] Similar exclusion criteria were defined in the West German Federal Compensation Act. There, people were excluded when they 'fought the free democratic basic order.' This was primarily aimed against communists.

[108] Translated from German, Goschler, 'Schuld,' p. 379.

[109] Ibid., p. 384.

[110] Compared to the average pensions of blue-collar workers and employees of M 164, the two honorary pensions were remarkably high. The amount was raised several times in the following years.

[111] Translated from German, Goschler, 'Schuld,' p. 397.

[112] The Jewish Claims Conference demanded compensation payments totaling $1.5bn: two-thirds from the FRG and one third from the GDR The FRG fulfilled 'its part' with the Luxembourg Agreement. After 1989/90, the remaining part of the GDR was covered too.

[113] Translated from German, Goschler, 'Schuld,' p. 401.

e) Documentation, Admonition, Memorialization

I. Re-education and Civic Education in the Western Zones and the FRG

Re-education of German society, as intended by the Allies, was to be grounded in a 'radical cultural new beginning demanding denazification and control of the whole German cultural life.'[114] Parallel to denazification, shortly after the war, the occupying powers started to close down central informational, cultural and educational institutions such as schools, press agencies, radio stations, movie theaters, theaters, publishing houses and libraries. All kinds of media were checked for National Socialist, militaristic and racist content. National Socialist writings, symbols, institutions and organizations were prohibited. In addition, the Allies confronted the German population with the Nazis' crimes, hoping for the ultimate discrediting of the 'Third Reich' and its ideology. To this end, so-called atrocity films, showing scenes from the liberation of concentration and extermination camps, were run in movie theaters and prisoner of war camps.

However, re-education was not only about 'cleansing' German culture of Nazism and militarism. Instead, the occupying powers put a lot of effort into the positive reconstruction of cultural life, especially by importing their own cultural goods such as literature, plays, movies, but also through Allied radio stations and newspapers. They also established their own institutions, such as America Houses. Originally designed as informational libraries, these developed into cultural institutions with extensive offerings. Apart from the permanent institutions, 130 mobile library buses were created in order to reach populations of smaller towns. The focus lay on teaching an American-style understanding of democracy and on 'practicing' democratic participation. As 'windows to the West,' they were intended to give an insight into American culture and present it as a model worth copying. Similar goals were pursued with cultural centers in the British zone and the American cultural exchange program, through which, all in all, 14,000 German people had travelled to the United States by the end of the 1950s.[115]

Particular attention was devoted to 're-educating' German youth, who were crucial for the future, but regarded as especially shaped by National Socialist ideology. Thus, great efforts were put into reforming the education system. Compromised teachers were dismissed and replaced by politically reliable new teachers; less compromised teachers were retrained. National Socialist school books were replaced with those from the Weimar Republic or newly written books. In addition, curricula were cleared of National Socialist ideas and new subjects for civic education, such as civics and social studies, were introduced. Authoritarian teaching practices were replaced by democratic educational practices. In order to learn about democratic ideals, pupils and their parents were integrated into the organization of everyday school life.

[114] Schildt, Axel. 1999. 'Kultur und geistiges Leben.' In: Benz, Wolfgang (Ed.) *Deutschland unter alliierter Besatzung 1945-1949/55. Ein Handbuch*, p. 134. Berlin: Akademie Verlag.

[115] Cf. Kreis, Reinhild. 2014. 'Nach der "amerikanischen Kulturoffensive". Die amerikanische Reeducation-Politik in der Langzeitperspektive.' In Gerund, Katharina & Paul, Heike (Eds) *Die amerikanische Reeducation-Politik nach 1945. Interdisziplinäre Perspektiven aus America's Germany*, pp. 141-161. Bielefeld: Transcript; Benz, Wolfgang. 2009. *Auftrag Demokratie. Die Gründungsgeschichte der Bundesrepublik und die Entstehung der DDR 1945-1949*. Berlin: Metropol Verlag. Also: for the following paragraphs Gerund, Katharina & Paul, Heike (Eds). 2014. *Die amerikanische Reeducation-Politik nach 1945: Interdisziplinäre Perspektiven auf 'America's Germany'*. Bielefeld: Transcript. For more on the cultural exchange program, see: Latzin, Ellen. 2005. *Lernen von Amerika? Das US-Kulturaustauschprogramm für Bayern und seine Absolventen*. Stuttgart: Franz Steiner Verlag.

Even more extensive reform plans, aiming for the reorganization of the German school system according to each power's own national standard, failed due to opposition from politics and population. Yet Allied efforts were not limited to the school system. The American occupation force, for example, founded the German Youth Activities (GYA), and organized movie and dance nights, discussions, sports events, photography classes and much more in their own youth centers. In an informal and open atmosphere, young people were to internalize democratic ideals such as tolerance, fair play, pluralism, autonomy and self-initiative. Hitherto accustomed to drill, indoctrination and subservience to authority, they were now to be exposed to the values of American popular culture. In the French zone, in turn, international youth meetings were organized, aimed at a form of cultural exchange.[116]

In the course of the Cold War and Germany's integration with the West, the politics of re-education changed. The approach of 'lecturing from above' was superseded by treating Germans as equal partners. Eventually, with Germany's regaining of its sovereignty in 1955, the measures of the Allies came to an end – only a few institutions, such as American Houses (then renamed German-American Institutes) continued to exist. This, however, did not mean that civic education came to a close, but was continued by Germany on its own terms. Among the central initiatives and institutions was the still existing Federal Agency for Civic Education, founded in 1952.[117] As an agency for state-run civic education, it had the task of informing the public about the newly founded democratic state, its institutions, functioning, rules and values, and to promote democratic participation and critical engagement with the National Socialist past. For this purpose, it publishes a weekly journal and numerous publications, organizes competitions, produces educational films, newsreel posts and much more. In addition, it offers study trips devoted to promoting cultural exchange and international understanding.[118]

II. The 'Antifascist-Democratic Upheaval' in the Soviet Zone and GDR

Re-educating German society was not only a goal pursued by the Western occupation powers, but also by the Soviet Union within the SOZ. Here, however, re-education was part of the 'antifascist-democratic upheaval,' the socialist reorganization of state and society. It was shaped by a completely different understanding of democracy from that in the Western zones, as well as from 'fascism.' According to the socialist definition, democracy was the rule of the working class; to be realized through nationalizing the means of production and the rule of the Marxist-Leninist Party. 'Fascism,' on the other hand, was defined as 'openly terroristic dictatorship of the most reactionary, most chauvinistic and most imperialistic elements of finance capital.'[119] Capitalism, especially in the form of

[116] Cf. Füssl, Karl-Heinz. 1994. *Die Umerziehung der Deutschen: Jugend und Schule unter den Siegermächten des Zweiten Weltkriegs 1945-1955*. Paderborn: Ferdinand Schöningh; Füssl, Karl-Heniz. 1999. 'Bildung und Erziehung.' In: Benz, Wolfgang (Ed.) *Deutschland unter alliierter Besatzung 1945-1949/55. Ein Handbuch*, pp. 99-105. Berlin: Akademie Verlag; Herzig, Simone. 2012. 'Entnazifizierung und Re-Education in den westlichen Besatzungszonen. Konzeption, Durchführung und Scheitern.' In: Glunz, Claudia (Ed.) *Attitudes to War. Literatur und Film von Shakespeare bis Afghanistan*, pp. 129-134. Göttingen: Vandenhoeck & Ruprecht; Benz, Auftrag, pp. 136-139.

[117] Until 1963, it was called the Federal Agency for Homeland Service.

[118] Bundeszentrale für politische Bildung. Geschichte der Bundeszentrale für politische Bildung. 'Gründung und Aufbau 1952-1961.' Accessed February 17, 2016, http://www.bpb.de/geschichte/ deutsche-geschichte/geschichte-der-bpb/36421/gruendung-und-aufbau-1952-1961.

[119] Quoted and translated from German in Welsh, 'Umwälzung,' p. 103.

large-scale industry and large-scale land holdings, was thus considered the main root of National Socialism.[120] Thus, in order to eliminate the structural preconditions of fascism, not only purges, but also land reform and expropriations of 'war criminals' and 'capitalists' were promoted. In this way, essential steps for democratization (in the socialist understanding of the term) had already been taken. These were complemented by re-education measures aiming to reject National Socialist values and ideas and instead to increase the class-consciousness of the working class, and create 'working-class unity'[121] and a 'new type of human being.'[122]

As in the Western zones, special attention was devoted to the youth. Children and adoles-cents were to be embraced and socialized in communist organizations. After the dissolution of the Nazi youth organizations, the SMAD only allowed for the creation of the 'Free German Youth', which held a monopoly on youth organizations. Even though membership was formally voluntary, non-participation had negative social and occupational consequences. The Free German Youth and its affiliated children's organization, 'Ernst Thälmann,' provided an extensive offering, ranging from sports events to political events. Firmly tied to the SED, the activities served the purpose of political indoctrination. Instead of pluralism and the free development of the individual as in the Western zones, re-education in the Soviet zone led to subordination and forced conformity.

Plans for reorganizing the German educational system had already been drafted in the Soviet Union during the war. Major goals were the uniformity of the school system, the separation of school and church, as well as 'breaking the bourgeois monopoly on education'[123] by means of free entry of all children and education 'in the new spirit of combative democracy.'[124] As in other occupation zones, schools were closed, National Socialist teaching materials eliminated and the body of teachers was reviewed. The latter was most rigorously pursued in the SOZ; by the end of 1949, more than two-thirds – including teachers unwelcome for other political reasons – had been replaced by politically reliable new teachers. Thus the teaching staff became politicized in a way beneficial to the SED government. In addition, curricula were altered considerably. Changes affected, for example, the study of history, now dominated by historical materialism for the sake of socialist education.

The centerpiece of the Soviet school reform was the de-confessionalized comprehensive school, comprising eight grades. According to Soviet plans, children of workers and farmers were to be privileged in receiving admission to attend four years of *Oberschule* (secondary

[120] Cf. Osterloh, Jörg. 2011. 'Diese Angeklagten sind die Hauptkriegsverbrecher. Die KPD/SED und die Nürnberger Industriellen-Prozesse 1947/48.' In: Osterloh, Jörg & Vollnhals, Clemens (Eds). *NS-Prozesse und deutsche Öffentlichkeit. Besatzungszeit, frühe Bundesrepublik und DDR*, pp. 107-131. Göttingen: Vandenhoek & Ruprecht; Felbick, Dieter. 2003. 'Demokratie.' In: Felbick, Dieter (Ed.) *Schlagwörter der Nachkriegszeit 1945-1949*, pp. 175-206. Berlin: De Gruyter.

[121] Translated from German, Füssl, 'Umerziehung,' p. 192.

[122] Cf. Kleßmann, Christoph. 1981. 'Politische Rahmenbedingungen der Bildungspolitik in der SBZ/DDR 1945 bis 1952.' In: Heinemann, Manfred (Ed.) *Umerziehung und Wiederaufbau. Die Bildungspolitik der Besatzungsmächte in Deutschland und Österreich*, pp. 229-243. Stuttgart: Klett-Cotta, esp. p. 234-236; Fritsch-Bournazel, Renata. 1979. *Die Sowjetunion und die deutsche Teilung. Die sowjetische Deutschlandpolitik 1945-1949*. Opladen: Westdeutscher Verlag. Also essential for the following paragraphs Füssl, 'Umerziehung,' pp. 29-33, 187-364; Ibid., 'Bildung,' pp. 99-105.

[123] Translated from German, Füssl, 'Bildung,' p. 103.

[124] Translated from German, ibid., 'Umerziehung,' p. 193.

school). Beginning in 1949/50, children from other social classes were also admitted, as long as they displayed conformity with the system. Reforms also affected university education. *Arbeiter und Bauernfakultäten* (worker and farmer universities) were supposed to break the 'bourgeois education privilege' and bring forth conforming leadership elites. Socialist aspirations to educate the masses were expanded more and more into all spheres of life – and also those of adults. The totalitarian penetration of the 'Third Reich' was followed by the overall control and enforced political conformity of the SED regime.

III. Cultures of Remembrance in 'East' and 'West'

A vast array of memorial sites, plaques, monuments, museums, exhibitions and documentation centers devoted to commemorating victims and informing the public about Nazi crimes have been established in the territory of the former FRG. Today, the Nazi past is more present than ever before, and has become a 'central point of reference of national identity.'[125] This can easily obstruct the reality that engaging with the past had been problematic in different ways in both German states for decades.

Until the 1960s, engaging with the past in the FRG was predominantly shaped by what is often described as selective suppression and denial. Confronted with questions of guilt and responsibility through denazification and the exposure of crimes in Nazi trials, German society did not engage in a critical, constructive appraisal of its own past in the years of occupation and post-war chaos. Instead, by ignoring mass loyalty and shared responsibility, large parts of society depicted themselves as victims: as people seduced and betrayed by a small Nazi elite, which alone was to blame for crimes and war; as victims of war and of unjust occupation. Often, this was accompanied by setting guilt against guilt; German mass murders were contrasted with Allied air assaults and the expulsion of Germans from the East. Thereby, Nazi crimes were displaced in the context of a 'generally violent war' or obscured by abstract, metaphorical expressions.[126]

While the founding of the FRG and the creation of the Basic Law marked a break with the past on an institutional level, a 'certain silence' took hold within West German society: wishing for normality and harmony after years of chaos and hardship, and convinced of having atoned enough, the majority wanted to put the past to rest. This not only found its expression in the falling number of trials, but in a general declining engagement with National Socialist crimes; instead, 'not-wanting-to-know'[127] became dominant.

[125] Translated from German, Köhr, Katja. 2012. *Die vielen Gesichter des Holocaust. Museale Repräsentationen zwischen Individualisierung, Universalisierung und Nationalisierung*. Göttingen: Vandenhoeck & Ruprecht, p. 91.

[126] Essential for this chapter: Ibid., pp. 91-94; Wielenga, Friso. 1995. *Schatten deutscher Geschichte. Der Umgang mit dem Nationalsozialismus und der DDR-Vergangenheit in der Bundesrepublik*. Vierow bei Greifswald: SH-Verlag, pp. 27-50 (subsequently short as Wielenga, Geschichte); Wielenga, Friso. 2002. 'Erinnerungskulturen im Vergleich. Deutsche und niederländische Rückblicke auf die NS-Zeit und den Zweiten Weltkrieg.' In: Wielenga, Friso & Geeraedts, Loek (Eds) *Erinnerungskultur und Vergangenheitspolitik*, pp. 11-20. Münster: Aschendorf Verlag, Herbert, Ulrich & Groehler, Olaf. 1992. *Zweierlei Bewältigung. Vier Beiträge über den Umgang mit der NS-Vergangenheit in den beiden deutschen Staaten*. Hamburg: Ergebnisse Verlag, pp. 7-28; Frei, Norbert. 2009. 'Deutsche Lernprozesse – NS- Vergangenheit und Generationenfolge seit 1945.' In: Frei, Norbert (Ed.) *1945 und wir. Das Dritte Reich im Bewußtsein der Deutschen*, pp. 38-55. München: Deutscher Taschenbuch Verlag, Thamer, Hans-Ulrich. 2006. 'Der Holocaust in der deutschen Erinnerungskultur vor und nach 1989.' In: Brinkmeyer, Jens & Blasberg, Cornelia (Eds) *Erinnern des Holocaust? Eine neue Generation sucht Antworten*, pp. 81-93. Bielefeld: Aisthesis Verlag.

[127] According to Hermann Lübbe, this phase of 'a certain silence' was necessary for the majority of people to assimilate with the new democratic society. His thesis did not go unchallenged. Cf. Wielenga, 'Geschichte,' p. 49 ff.

In this climate, early memorialization efforts came from Nazi victims themselves, less often from the Allies. Initial crosses, memorial plaques or decorated burial sites remembering murdered victims were set up at the historic sites of crimes. However, many initiatives were obstructed by opposition from local residents; numerous buildings were destroyed or used for other purposes due to pragmatism, indifference or the conscious wish to forget about what had happened.[128] In the course of the 1950s, both the historic scenes of crimes and the events which had occurred there passed into oblivion.[129]

In the GDR, on the other hand, state-sponsored memorialization efforts set in as early as at the end of the 1940s. Initiatives of former prisoners were taken up and memorials with monuments erected at the sites of Nazi atrocities. The central memorials of the GDR, however, could only be realized in the 1950s, after the Soviet occupation force had closed down its last 'special camps;' and hence, the former concentration camps, Sachsenhausen and Buchenwald, were no longer used as internment camps. The GDR's state-directed policy of memorialization was massively expanded in the following years: three '*Nationale Mahn und Gedenkstätten*' (National Memorials), designed according to uniform guidelines shaped by the SED regime's official conception of history, were erected in or close to the former concentration camps Buchenwald, Sachsenhausen and Ravensbrück. Thematically, they were devoted to the communist resistance and liberation by the Red Army. Communist victims were thereby lionized, presented as the main group of victims and the most important opponents of the Nazi regime. By drawing a line of continuity from communist resistance to the antifascist GDR, the memorials were used to propagate the victory of communism over fascism and thus to legitimize the SED state.

To the benefit of the state's self-representation, other victims, as well as causes and mechanisms of the Nazi regime, were almost completely omitted. Capitalism was portrayed as the root of National Socialism, 'capitalists' and 'major landowners' as the ones truly guilty; while the loyalty of the masses was ignored and East German society was almost exclusively relieved from questions of guilt and responsibility. In this way, the Nazi past was considerably distorted and misinterpreted.[130]

In the FRG the 'denial of the past'[131] only gradually made way for public, critical engagement with the Nazi regime and its crimes. This shift was catalyzed, among other things, by a wave of anti-Semitic smearing in 1959, the Ulm Einsatzgruppen Trial of 1958, the Eichmann Trial in Israel of 1961, the Frankfurt Auschwitz Trial of 1963-65, and the broadcasting of the American series 'Holocaust' in 1979, as well as the growing up of an uncompromised, critical generation. It became more and more obvious what had been suppressed and concealed, leading to mounting criticism of the prevalent non-engagement with the past.

[128] In the post-war period, many former concentration camps and prisons were used as reception camps for displaced persons, refugees and expellees, or as Allied internment camps. Later, they were used as penitentiaries, factories, police and military facilities or housing space.

[129] Cf. Garbe, Detlef. 1992. 'Gedenkstätten. Orte der Erinnerung und die zunehmende Distanz zum Nationalsozialismus.' In: Loewy, Hanno (Ed.) *Holocaust. Die Grenzen des Verstehens. Eine Debatte über die Besetzung der Geschichte*, pp. 260-284. Hamburg: Rowohlt; Endlich, Stefanie. 2009. 'Orte des Erinnerns. Mahnmale und Gedenkstätten.' In: Reichel, Peter & Schmid, Harald & Steinbach, Peter (Eds) *Der Nationalsozialismus – die zweite Geschichte. Überwindung, Deutung, Erinnerung*, pp. 350-377. Bonn: Bundeszentrale für politische Bildung.

[130] Endlich, 'Orte,' esp. pp. 354, 360.

[131] Garbe, 'Gedenkstätten,' p. 273.

The emerging, increasingly critical public brought the past into the focus of society, and helped to gradually break[132] 'the pact of silence of the generation involved.'[133]

The focus of debates was now, finally, on the victims of the Nazi regime, especially those of the Holocaust, for which Auschwitz became a symbol. While previously almost only the survivors themselves had advocated for keeping memories alive, their efforts were now increasingly supported by citizen's initiatives. Starting at the end of the 1970s, numerous *Geschichtswerkstätten* (local history clubs) developed, which started to perform research on their respective local Nazi pasts. Along with youth organizations, school classes, church and unionist groups, they initiated numerous documentation and memorialization projects at historic sites of Nazi crimes.

Another, especially famous example of initiatives at the grassroots level is the peace organization Action Reconciliation (Aktion Sühnezeichen),[134] founded in 1958 to confront the legacy of National Socialism and advocate for peace and reconciliation. The organization sent young people to countries affected by World War II, where they did volunteer work for victims of war and the Nazi regime, against xenophobia and anti-Semitism, 'asking for forgiveness and peace.'[135] Since 1967, the organization has performed voluntary work at the Auschwitz memorial site.[136]

Apart from this, National Socialism, its crimes and the suffering of victims were addressed more and more by academics, in films, plays and literature. From the 1980s onwards, the focus was expanded to persecutors and the structural conditions of Nazism, which allowed the sheer complexity of crimes to gradually become apparent. This development found its expression in the creation of the exhibition 'Topography of Terror' in 1987, which deals with the principal authorities of the planning and execution of Nazi atrocities. During the 1990s, an exhibition on the crimes committed by the German Wehrmacht, which had thus far been idealized as an organization that had remained 'decent,' was held. Such exhibitions contributed in dismantling the myth that only a small elite had been responsible for Nazi crimes. At the same time, however, reactions demonstrated the continuing resistance among many towards dealing with the past and questions of guilt. Voices demanding the past be put to rest were still perceptible in the 1980s, however, they were no longer able to prevail.

A comparable critical engagement with the past did not occur within the GDR. Public remembrance remained bound to the SED's conception of history, which instrumentalized the past for the purposes of patriotic education and to promote its Marxist-Leninist ideology. Grassroots initiatives were only rarely permitted, as the SED government

[132] Thünemann, Holger. 2005. *Holocaust-Rezeption und Geschichtskultur. Zentrale Holocaust-Denkmäler in der Kontroverse. Ein deutsch-österreichischer Vergleich*. Idstein: Schulz-Kirchner Verlag, p. 55-57; Endlich, 'Orte,' pp. 362-366. Crucial for this change was the increasing democratization and liberalization of German society.

[133] Köhr, 'Gesichter,' p. 93.

[134] Since 1968, the organization has carried the name Action Reconciliation Service for Peace.

[135] Quoted and translated from German in Westphal, Jasmin. 2007. 'Aktion Sühnezeichen.' In: Fischer, Torben & Lorenz, Matthias N. (Eds) *Lexikon der 'Vergangenheitsbewältigung' in Deutschland. Debatten- und Diskursgeschichte des Nationalsozialismus nach 1945*, pp. 69- 71. Bielefeld: Transcript.

[136] Cf. ibid., pp. 69-71. The Action Reconciliation worked as one organization both in the FRG and in the GDR, but was divided by the building of the Berlin Wall in 1961. The organization is still active today; its projects and topics have changed and expanded since its foundation.

perceived them as a danger to its official politics of memory.[137] It took until the last People's Parliament of the GDR for a clear break with SED politics of memory to occur. In April 1990, the parliament publicly acknowledged the GDR's responsibility for the Holocaust in the name of its citizens, and asked Israel and all Jews for forgiveness for shortcomings in dealing with the past.

The 1990s oversaw a further increase in public engagement with the National Socialist past.[138] This stemmed, for one thing, from the majority of German society now belonging to a generation whose identity was no longer comparably burdened with dealing with the past. In addition, the context of confronting the past was considerably altered by the end of the Cold War and the reunification of both German states; it was no longer burdened by ideological conflicts, and the 'Iron Curtain' no longer obstructed the view of crimes committed in the 'East'. Furthermore, the collapse of the GDR as a central point of reference for the FRG's national identity made a new search for meaning necessary. In this context, remembrance came to the center of political and societal attention.

Thus far, most attention had been paid to the Holocaust and Jewish victims but other victims have gained in attention since.[139] These developments found their expression in the central memorial sites in the capital, Berlin. After long debate, the 'Memorial to the Murdered Jews of Europe' was inaugurated in 2005. It was followed by the 'Memorial to Homosexuals Persecuted under Nazism' in 2008 and the 'Memorial to the Sinti and Roma Victims of National Socialism' in 2012. Moreover, diverse local initiatives and entirely new forms of remembrance have developed. Among these are the so-called *Stolpersteine* – cobblestone-sized blocks covered by a small brass plate carrying the name, birth dates and information on the fate of a victim. The memorial stones are installed in front of the victim's last place of residence. To this day, 50,000 *Stolpersteine* have been installed in 1,300 places around Europe. The memorial project was further expanded by larger memorial stones installed at sites of mass crimes.[140]

With increasing distance, the past has become more and more present. Today, National Socialist crimes and their victims are an integral part of collective memory and Germany's political identity. That German society was able to shift from suppression and silence to an active engagement with crimes and guilt is often considered a central factor in its democratization. Yet, engaging with the Nazi past was and still is no easy or unanimous process, but instead one shaped by heated debate. To this day, it leads to controversies about the right way to handle and interpret the past; this, however, is part of coming to terms with it too.

[137] Endlich, 'Orte,' p. 364 ff.

[138] See also Niven, Bill. 2002. *Facing the Nazi Past. United Germany and the Legacy of the Third Reich*. New York: Routledge, p. 2 ff.; Bergem, Wolfgang. 2003. 'Barbarei als Sinnstiftung? Das NS-Regime in Vergangenheitspolitik und Erinnerungskultur der Bundesrepublik.' In: Bergem, Wolfgang (Ed.) *Die NS-Diktatur im deutsche Erinnerungsdiskurs*, pp. 88-101. Opladen: Leske und Budrich.

[139] Several groups of victims (such as Sinti and Roma, homosexuals, forced laborers, communists and Soviet prisoners of war) had for a long time not been recognized as such, due to persistent prejudices (Chapter 2 d ii).

[140] Cf. Deming, Gunter. 'Start.' Accessed February 16, 2016, http://www.stolpersteine.eu/start; Deming, Gunter. 'Technik.' Accessed February 17, 2016, http://www.stolpersteine.eu/technik; Thurn, Nike. 2007. 'Stolpersteine.' In: Fischer, Torben & Lorenz, Matthias N. (Eds) *Lexikon der 'Vergangenheitsbewältigung' in Deutschland. Debatten- und Diskursgeschichte des Nationalsozialismus nach 1945*, pp. 338-340. Bielefeld: Transcript.

Berlin, Normannenstraße, Occupation of the Stasi headquarter; January 16, 1990. Photo: Thomas Uhlemann. Source: Federal Archive.

3. Transitional Justice after 1990: Coming to Terms with the SED Dictatorship

a) Challenges and Circumstances

After the collapse of the SED regime and the reunification of the two German states in 1989/90, German society was and still is confronted with a substantial process of transformation and the need to deal with a dictatorial past for a second time in 50 years. While the process of coping with the consequences of dictatorship after 1945 is considered one of the most complex cases of transitional justice due to its specific challenges and circumstances (see Chapter 2 a i), the process after 1989/90 is considered a special historic case.

The circumstances under which the process took place were wholly different from those after 1945. The collapse of the SED dictatorship had not been caused by war, but by a peaceful revolution within the state. This meant that the process of coping with the past was not guided or controlled 'from outside,' but initiated by the East German people themselves and continued by the reunited German society after unification. Here, it was important that unification meant the incorporation of state according to international law, which merely meant an expansion of the FRG's territory and did not change 'its status as state or subject of international law.'[141] The GDR ceased to exist as a subject under international law, the so-called 'acceding territory' (*Beitrittsgebiet*) was incorporated into and aligned with the pre-existing West German democratic structures. The FRG was thus, unlike after 1945, not considered a legal successor or successor state. Rights and duties were only passed onto the FRG as explicitly stated in the Unification Treaty, which constituted the essential legal basis for the process of transformation and dealing with the past.

Regarding the challenges, this meant that German society – unlike after 1945 – did not have to face a double burden of coping with the consequences of war and dictatorship at the same time. Not only were there no war crimes to deal with, but the processes of coming to terms with the past and transformation were unburdened by matters such as post-war chaos and problems such as hunger, shortages, or the integration of millions of refugees and expellees. On the contrary, the West German state was able to provide extensive material and immaterial resources. The goal was clear from the outset: 'The integration of the imploding GDR into the modern, wealthy and democratic FRG.'[142] Even though the 'accession' turned out more difficult than expected, there were 'ideal preconditions'[143] for dealing with the past compared with the situation of Germany after 1945 or other post-communist states.[144] However, dealing with the SED dictatorship was accompanied by the

[141] Translated from German, Guckes, 'Opferentschädigung,' p. 22.

[142] Translated from German, Wielenga, 'Geschichte,' p. 111.

[143] Glatte, Sarah. 2011. *Judging the (East) German Past. A Critical Review of Transitional Justice in Post-Communist Germany*. Unpublished Bachelor's Thesis, University of Bath, United Kingdom.

[144] Cf. Glatte, 'German Past', pp. 6-8.; Glatte, Sarah. 2010. 'Twenty Years On – A Unified Germany? The Shortcomings of the German Reunification Process.' *German as a Foreign Language* 2:89-103. Also: Wielenga, 'Geschichte', pp. 19-26, 108-113; Wielenga, Friso. 1994. 'Schatten der deutschen Geschichte. Der Umgang mit der Nazi- und DDR-Vergangenheit in der Bundesrepublik Deutschland.' *Deutschland Archiv* 10:1058-1073 (subsequently short as Wielenga, 'Schatten').

challenge of the unification of two German societies which had become estranged during 40 years of separation. They were not a 'community of fate' bound by a shared past; their experiences differed tremendously. The newly unified German society had to deal with the dictatorial past of only 20 percent of its citizens in order to lay the foundations for a peaceful and stable shared future. The process of transformation was highly asymmetrical: almost everything stayed the same for 80 percent of the population, while almost everything changed for the citizens of the former GDR (due to the alignment with West German conditions, standards and structures). This proved a burden.

There are further important differences from the confrontation with the past after 1945. First, the process of transformation and dealing with the past after 1989/90 enjoyed greater popularity. This was because the SED dictatorship had never enjoyed acceptance or mass support similar to that of the Nazi regime. The starting point for both dealing with the past and democratization was thus better: 'The large majority of East Germans did not have to be convinced of the advantages of the rule of law [Rechtsstaat]. Unlike many Germans after 1945, they were not skeptical but hopeful democrats.'[145]

Second, the crimes of both German dictatorships differed in character and extent. The GDR had neither led a war of conquest, nor committed the mass murder of millions. However, the SED regime had systematically and massively violated human rights for the benefit of its own claim to power and the enforcement of its ideology. Unlike the Nazi regime, the SED dictatorship had committed crimes almost exclusively against its own citizens. Although they did not equal those of the 'Third Reich,' the crimes committed within the forty years of the GDR's existence had been of such an extent that their prosecution posed an enormous challenge.

Third, the question of guilt was a different one after 1989/90 than it had been in 1945. The number of perpetrators, accomplices and supporters was smaller. Only for a comparatively small group of people would a confrontation with the past after 1989/90 represent one with their 'own political and moral guilt.'[146] Additionally, the majority of German society displayed more solidarity with the victims of the SED regime than it initially had done with those of the Nazi regime. Both aspects made it easier to deal with past injustices.

Fourth, it was possible to look back on previous experience with Transitional Justice, which served as both a positive and negative point of reference. The first process of dealing with the past had the effect that the second was tackled early and intensively, with the determination not to repeat mistakes or fall short of former efforts.[147]

The approach taken was similar in outline: criminal prosecution, lustration, reparations, civic education and memorialization. However, given the specific

[145] Translated from German, Wielenga, 'Geschichte', p. 113.

[146] Translated from German, ibid., 'Schatten,' p. 1071.

[147] Cf. also Karstedt, Susanne. 1996. 'Die doppelte Vergangenheitsbewältigung der Deutschen. Die Verfahren im Urteil der Öffentlichkeit nach 1945 und 1989.' *Zeitschrift für Rechtssoziologie* 1:58-104; Weinke, Annette. 1998. 'Der Umgang mit der Stasi und ihren Mitarbeitern.' In: König, Helmut & Kohlstruck, Michael & Wöll, Andreas (Eds) *Vergangenheitsbewältigung am Ende des zwanzigsten Jahrhunderts*, pp. 167-191. Wiesbaden: VS Verlag für Sozialwissenschaften.

context, there were marked differences to the measures taken after 1945. There were, for example, no re-education measures, while rehabilitation played a crucial role. As a point of reference, the Nazi past and measures initiated to confront it had two further important consequences: measured against the atrocities of the Nazi regime, there was a danger of those of the SED regime being trivialized (or, indeed, of the Nazis' crimes being relativized in a simplified 'totalitarianism' debate); while success was measured against the measures taken after 1945, and were not always perceived as satisfactory.

b) Criminal Prosecution: GDR Crimes on Trial

The disclosure and prosecution of SED crimes began early. Several top SED officials had already been arrested or placed under house arrest during the period of upheaval at the end of 1989, while the GDR still existed. Commissions investigating allegations of electoral fraud, abuse of administrative authority, corruption and bribery were set up at various levels. Criminal investigations were also initiated against the police and the MfS due to violence against demonstrators.[148] However, only a few proceedings could be completed prior to unification; the great majority was handed over to the FRG's judiciary, which thus had the task of punishing crimes committed over the 40 years of the SED dictatorship.

As after 1945, the major challenges involved punishing the crimes of a totalitarian state through the means of rule of law. This was problematic because of the extent and variety of injustice: the crimes to be prosecuted ranged from killings and other acts of violence at the inner-German border, perversions of justice, MfS crimes,[149] to abuse of prisoners and denunciations, to electoral fraud, abuse of administrative authority, corruption, other economic offenses, espionage, or forced doping.[150]

The regulations regarding the legal basis for prosecutions established by the Unification Treaty constituted a further challenge. In order to account for the so-called 'prohibition of retroactivity' (*Rückwirkungsverbot*)[151] enshrined in the German Basic Law, no special, *ex-post-facto* criminal law (such as in the case of the Nuremberg Trials after 1945) was established. Instead, actions had to be punished according to the law in effect at the time of the offense, i.e. the law of the GDR – and only if it was also punishable under FRG law, now enforced nationwide. In cases where the law of the FRG was milder, it had to be applied instead of GDR law.

In this way, the German judiciary was confronted with a complex situation: it was legitimized by the Unification Treaty and even obliged by the 'principle of legality'

[148] Cf. Karstedt, 'Vergangenheitsbewältigung', p. 83 ff.; Marxen, Klaus & Werle, Gerhard & Schäfter, Petra. 2007. *Die Strafverfolgung von DDR-Unrecht. Fakten und Zahlen*. Berlin: Stiftung zur Aufarbeitung der SED-Diktatur, pp. 11-13.

[149] These include abduction and imprisonment of political opponents, coercion and extortion of statements, trespassing, breaches of secrecy, telephone tapping, opening letters and removal of valuables. Partially, denunciations and abuses of prisoners are subsumed under the term 'MfS crimes' too.

[150] For more information on each type of crime, see Marxen, Klaus & Werle, Gerhard (Eds). 2007. *Strafjustiz und DDR-Unrecht*. Berlin: De Gruyter.

[151] The *Rückwirkungsverbot* is the prohibition of retroactivity: an act can only be punished if it had already been punishable by law at the time it was committed.

(*Legalitätsprinzip*)[152] to prosecute crimes. At the same time, however, many acts contrary to the rule of law were either not punishable under GDR law, or the prospect of it was highly doubtful. Matters were further complicated by the judiciary having to both formally apply GDR law as well as consider the GDR's interpretation and application, in order not to contravene the *Rückwirkungsverbot*.[153] As a result, many acts went unpunished or could – by moral standards of justice – only be punished insufficiently. The basic problem that a large number of crimes had already passed the statute of limitations was solved by the legislature in March 1993: due to the politically motivated lack of prosecutions in the GDR, it was deemed that the limitation period was suspended and started anew on October 3, 1990. Four years later, the period was extended for cases of 'medium crimes' to October 3, 2000.[154]

Despite the many obstacles, the judiciary demonstrated a greater willingness to punish offenders than it had when dealing with Nazi crimes. This can partly be ascribed to the replacement of judicial elites after 1990 being more substantive: meaning a mostly uncompromised judiciary handled 'someone else's' instead of its 'own' injustice. This found its expression in systematic investigative work which started early,[155] and especially in a large number of investigations against the GDR judiciary on the grounds of perversion of justice.[156] Almost half of the 52,000 criminal investigation proceedings initiated before 1995 were devoted to this type of crime.[157]

According to GDR law, perversion of law applied when an illegal ruling was made knowingly. To prosecute such an act, both its unlawfulness and the intent needed to be proven.[158] In order not to contravene the *Rückwirkungsverbot* by applying GDR law incorrectly,[159] the Federal Court of Justice decided that not every incorrect application of laws by the GDR judiciary could count as perversion of justice; only cases in which 'the unlawfulness of the decision was so obvious, and in which the rights of others, especially human rights, were infringed upon to such an extent, that the ruling can

[152] The *Legalitätsprinzip* is the principle of compulsory prosecution: prosecutors are required to press charges when there is sufficient evidence to support a conviction.

[153] Jurists especially viewed these provisions as grave mistakes. Many complications could have been avoided had the FRG not excluded the so-called Nuremberg Clause (which allows for the *Rückwirkungsverbot* to be neglected in cases of severe crimes), when it signed the European Convention on Human Rights in 1952.

[154] Cf. Eser, Albin & Sieber, Ulrich & Arnold, Jörg (Eds). 2010. *Strafrecht in Reaktion auf Systemunrecht. Vergleichende Einblicke in Transitionsprozesse*. Freiburg: Max-Planck-Institut für ausländisches und internationales Strafrecht; Roggemann, Herwig. 1998. 'Die strafrechtliche Aufarbeitung der DDR-Vergangenheit am Beispiel der "Mauerschützen" und der Rechtsbeugungsverfahren. Eine Zwischenbilanz.' In: Drobnig, Ulrich (Ed.) *Die Strafrechtsjustiz der DDR im Systemwechsel. Partei und Justiz. Mauerschützen und Rechtsbeugung*, pp. 111-131. Berlin: Duncker & Humblot; Schaefgen, Christoph. 1996. *Vergangenheitsbewältigung durch die Justiz. Die Strafverfolgung von DDR-Regierungskriminalität*. Regensburg: Roderer.

[155] Wholly different from the early dealing with Nazi crimes, only 3-5 percent of all investigations were initiated by private citizens reporting crimes to the police. The judiciary could draw upon the preliminary work of the 'Central Registry of State Judicial Administration' in Salzgitter, which had started to collect evidence on human rights violations in the GDR in 1961. Cf. Roggemann, 'Aufarbeitung,' p. 229 ff.

[156] In contrast, there was hardly any investigation and prosecution of Nazi judicial crimes (Chapter 2 b ii).

[157] Hummer, Waldemar & Mayr-Singer, Jelka. 2000. 'Der deutsche Sonderweg bei der Aufarbeitung von SED-Unrecht. Vergangenheitsbewältigung durch Strafjustiz,' *Neue Justiz* 11:561-567.

[158] Although political norms of the GDR's penal code had been inconsistent with the rule of law, as they had massively violated basic and human rights, their mere application did not qualify as perversion of law. Convictions based on these norms could only entitle their annulment in rehabilitation proceedings (Chapter 3 d). Meinerzhagen, Ulrich. 1995. 'Die Verfahren gegen ehemalige Richter der DDR.' In: Weber, Jürgen & Piazolo, Michael (Eds) *Eine Diktatur vor Gericht. Aufarbeitung von SED-Unrecht durch die Justiz*, pp. 115-136. München: Olzog-Verlag; Amelung, Knut. 1996. *Die strafrechtliche Bewältigung des DDR-Unrechts durch die deutsche Justiz*. Dresden: Dresden University Press, pp. 21-28.

[159] By this, the court accounted for the point that the independence of GDR judges had been massively restricted, and that they had been obliged by the constitution to apply laws in the interest of the SED

count as an arbitrary act.'[160] The possibilities of prosecuting perversions of justice were thus tremendously limited: not only the *actus reus* (objective act), but also the *mens rea* (intent) were hard to prove. Confessions by the accused were rare, which made it necessary to search vast quantities of documents, such as case records or MfS files for hints and evidence. The personnel capacities for this task were almost inevitably insufficient, meaning that investigations often took long. In many cases, evidence could not be gathered (as, for example, records had been destroyed, archives had not been made accessible, or evidence was missing); a large number of investigations were discontinued. Even though the trials on perversion of law had the largest share (36.6 percent) of all trials concerning GDR crimes, their absolute number amounted to only 374 trials in total.[161] Given the enormous number of political trials and preliminary proceedings in the GDR[162] many judicial crimes went unpunished.

Another focus centered on the killings of fleeing GDR citizens at the inner-German border, to which the so-called Wall Shooter Trials were devoted.[163] The number of people killed by firearms, mines and spring guns at the border is contested; recent estimates speak of more than 1,000 people.[164] Although manslaughter was punishable under GDR law, it was disputed whether the actions of 'wall shooters' could be punished. The question arose from the fact that the shooters had acted according to internal regulations, orders and – since 1982 – the Border Act, which compelled the guards to use their weapons if necessary in order to prevent a person from committing the crime of 'unlawful border crossing.'

Even though 'excessive' use of firearms had theoretically been illegal, it had never been punished in the GDR; instead, any prevention of people fleeing the GDR even with force, had been rewarded. It was thus questionable whether the orders and laws justified their actions and excluded criminal liability. In one of the earliest trials, the Federal Court ruled that the Border Act was not a ground for justification as it had violated international law; more precisely, the human right to life and freedom of movement granted in the International Covenant on Civil and Political Rights, signed by the GDR in the 1970s. That the guards were mistaken about the unlawfulness of their actions was also rejected by the Federal Court, which stressed that the injustice of the shootings was obvious. However, the court took the totalitarian context into account and assessed their actions as 'less severe manslaughter' – the sentences were suspended on probation.

[160] Translated from German, Marxen, Klaus & Werle, Gerhard, 'Strafjustiz', p. 1010. This was the case when the text of the law had been extremely overstretched, penalties had been grossly disproportionate to the offense committed, and human rights had been gravely violated by procedural practice or when the trial was not meant to establish justice but instead used for political persecution. Ibid., p.1010 ff.

[161] Cf. Marxen, Werle & Schäfter, 'Strafverfolgung,' p. 28 ff.

[162] Estimates speak of around 200,000 to 250,000 political trials. Borbe, Ansgar. 2010. *Die Zahl der Opfer des SED-Regimes*. Erfurt: Landeszentrale für politische Bildung Thüringen, pp. 15-20.

[163] See for the following Hummer & Mayr-Singer, 'Sonderweg,' pp. 563-566; Amelung, 'Bewältigung,' pp. 11-17; Amelung, Knut. 2005. 'Die juristische Aufarbeitung des DDR-Unrechts. Strafrechtsdogmatik und politische Faktizität im Widerstreit.' In: Kenkmann, Alfons & Zimmermann, Hasko (Eds) *Nach Kriegen und Diktaturen. Umgang mit Vergangenheit als internationales Problem. Bilanzen und Perspektiven für das 21. Jahrhundert*, pp. 99-101. Essen: Klartext.

[164] 138 of them were killed at the Berlin Wall. For varying numbers, see Borbe, 'Zahl,' pp. 32-34.

The verdict of the Federal Court was groundbreaking for most of the following Wall Shooter trials. Nevertheless, it also attracted manifold criticism; complainants made it all the way to the Federal Constitutional Court. The court confirmed the ruling of the Federal Court, but applied the formula developed by Gustav Radbruch in the light of Nazi crimes: the border regime had been 'extreme state-sponsored injustice,' to which 'any grounds of justification based on it would be irrelevant.'[165] In the eyes of the courts, the *Rückwirkungsverbot* was not violated by this, but only set back in favor of the establishment of material justice. In spring 2001, the ruling was also confirmed by the European Court of Human Rights in Strasbourg.

Not only did the 'Wall Shooters' have to stand trial because of the killings at the inner-German border, but also members of the National Defense Council, the Politburo, as well as generals and commanders of the border troops who had been responsible for the border regime. Unlike in Nazi trials, those who had given orders were not just assessed as plotters and assistants but as indirect perpetrators. Instead of less, more responsibility was attributed to them than to the border guards. Their punishments were thus usually more severe than the relatively mild penalties of around one to two years' probation which the 'Wall Shooters' had received. Several members of the state leadership were sentenced to three to seven-and-a-half-years' imprisonment. However, some of the most central figures of the SED regime could not be held accountable, as they were unfit to stand trial for reasons of age and health. That the Head of State, Erich Honecker, went unpunished was a great disappointment to victims and oppositionists.[166]

While the appeal to international law and the Radbruch formula made it possible to prosecute the border shootings and thus, some of the gravest crimes of the SED regime, other 'less severe' but more extensive instances of injustice had to remain unpunished. This was the case for most of the so-called MfS crimes. They made up 14 percent of the trials; but given the numbers of 231 accused and 69 convicts on the one hand, and around 90,000 full-time and more than 170,000 unofficial members of the MfS on the other, this appears to have constituted a rather poor balance. Only a small number of convicts received imprisonment – which was almost exclusively suspended on probation.[167]

The low number of convictions had several explanations. For one thing, the opening of private letters, the secret entry into other people's homes and the breach of secrecy by doctors and attorneys could only be prosecuted if the victims themselves pressed charges within a short time. For another thing, infringements of postal privacy and telecommunications secrecy were not or only barely punishable under GDR law. Thus, only the gravest crimes committed by the MfS, such as abduction, murder and

[165] Translated from German, Hummer & Mayr-Singer, 'Sonderweg,' p. 564.

[166] Wassermann, Rudolf. 1995. 'Sind politische Verbrechen justitiabel? Möglichkeiten und Grenzen des Strafrechts.' In: Weber, Jürgen & Piazolo, Michael (Eds). *Eine Diktatur vor Gericht. Aufarbeitung von SED-Unrecht durch die Justiz*. München: Olzog-Verlag, pp. 30 ff.; Vergau, Jutta. 2000. *Die Aufarbeitung von Vergangenheit vor und nach 1989. Eine Analyse des Umgangs mit den historischen Hypotheken totalitärer Diktaturen in Deutschland*. Marburg: Tectum Verlag, pp. 156-158. All in all, there were 244 trials against 466 defendants due to violent acts at the border. 275 defendants were convicted. Marxen, Werle & Schäfter, 'Strafverfolgung,' pp. 28, 32, 41.

[167] Ibid., pp. 41-43, 48.

attempted murder, were justiciable. That Erich Mielke, Head of the MfS, was not punished because of his actions in the GDR, but because of a murder dating back to 1931, was to many people an embarrassing testimony for the prosecution of GDR injustice. From a different angle, however, Mielke's conviction can be seen as evidence for the judiciaries will to punish one of the most central figures of the SED regime.[168]

The prosecution of GDR injustice is virtually completed. However, the quantitative results are rather scanty. Up until 2005, investigation proceedings were initiated against 100,000 people, but only 1,737 were charged. Of these, just 750 were eventually convicted, only around 40 of who received imprisonment which was not suspended on probation.[169] This led to widely differing judgments: some speak of 'the surrender of the FRG's legal system in the face of GDR crimes',[170] others of a success – at least compared to the prosecution of Nazi crimes.[171] What seems sure is that the prosecutions fell short of the expectation of victims and oppositionists: 'We wanted justice and got the rule of law,'[172] as civil rights activist Bärbel Bohley put it, expressing the disillusionment of many. More could have been accomplished with a central investigative agency or enhanced personnel capacities. Above all, the judiciary's efforts to punish state crime were constrained by the *Rückwirkungsverbot*. That morally obvious injustice could not sufficiently be punished was hard to understand for laymen.

Compared to the prosecution of Nazi crimes, the authorities handled the statute of limitations more reasonably, refrained from granting amnesties, initiated systematic investigations earlier, punished judicial crime at least partially, convicted so-called 'desk criminals' (*Schreibtischtäter*)[173] more appropriately and exhausted the limited possibilities by invoking international law and the Radbruch formula to punish at least the gravest crimes and to legally classify them as injustice.[174] This, however, might still not balance out every disappointment.

c) Lustration: The 'Destasification' of the Civil Service

The personnel and political transformations did not begin with the reunification of the two German states – important steps had already been taken by then. During the course of the 'revolutionary' events starting in fall 1989, the collapse of the SED regime and the democratization of the GDR, many regime officials had already been

[168] Schroeder, Friedrich-Christian. 1995. 'Die strafrechtliche Verfolgung von Unrechtstaten des SED-Regimes.' In: Brunner, Georg (Ed.) *Juristische Bewältigung des kommunistischen Unrechts in Osteuropa und Deutschland*, pp. 213-215. Berlin: Arno Spitz Verlag; Knabe, Hubertus. 2007. *Die Täter sind unter uns: Über das Schönreden der SED-Diktatur*. Berlin: Propyläen, p. 100ff, Schaefgen, Vergangenheitsbewältigung, pp. 16-19.

[169] Marxen, Werle & Schäfter, 'Strafverfolgung,' p. 54; Eppelmann, Rainer. 2007. 'Zum Geleit.' In: Marxen, Klaus & Werle, Gerhard & Schäfter, Petra. *Die Strafverfolgung von DDR-Unrecht. Fakten und Zahlen*, pp. 3-4. Berlin: Stiftung zur Aufarbeitung der SED-Diktatur. When prosecuting other crimes, unrelated to the GDR, 30 percent of all investigations led to charges. Cf. Knabe, 'Täter,' p. 102 ff.

[170] For a very skeptical appraisal, see Knabe, 'Täter,' pp. 79-200.

[171] See for example Roggemann, 'Aufarbeitung,' p. 229 ff.

[172] Translated from German, Bohley, Bärbel. 2010. 'Zitate.' Accessed February 18, 2016, http://www.baerbelbohley.de/zitate.php.

[173] The term *Schreibtischtäter* refers to the people in the background who make plans, organize and give orders for crimes.

[174] Due to the considerable advancement of international law between 1945 and 1990, a detailed human rights protection system which the GDR had signed up to was available for the prosecution of severe SED crimes. This had not been the case during the early prosecution of Nazi crimes.

pushed out of central societal positions and the SED had mostly lost its political influence due to large party exclusions, withdrawals and resignations;[175] the dissolution of central party and state agencies;[176] and the transition of political power to democratic authorities.

The reunification initiated a new phase of lustration. Accounting for the widespread wish for 'destasification' and the need for a structural and political adaptation of the *Beitrittsgebiet*, the two governments defined the terms of the review of the civil service in the Unification Treaty. In principle, all civil service employees were to be taken on in order to ensure its functioning. However, politically compromised individuals were then to be removed by means of the employment law as a kind of 'negative selection.' The Treaty provided the means for extraordinary dismissal when the employee had 'violated the principles of humanity or the rule of law';[177] or had worked for the MfS, and for this reason 'a continuation of the employment contract appear[ed] unacceptable.'[178] On this basis, an extensive review of civil servants and applicants set in after the unification.[179] Those affected had to fill in questionnaires and provide information on possible MfS activities, memberships and functions in the SED or affiliated mass organizations.

Additionally, the Federal Commissioner for the Records of the State Security Service of the Former German Democratic Republic (BStU; *Behörde des Bundesbeauftragten für die Unterlagen des Staatssicherheitsdienstes der ehemaligen Deutschen Demokratischen Republik*)[180] was asked to investigate information of possible activities on the part of the individual in question with the MfS. By 1997, 1.42m enquiries had been undertaken by the BStU; in 6.3 percent of all reviews, official or unofficial activities for the MfS were detected. This did not automatically lead to dismissal. Those identified as compromised were given a personal hearing by their employer and each particular case was considered individually. According to estimates, up until 1997, the reviews led to 42,000 dismissals because of MfS activity: that is to say, a little less than half of all identified MfS members who were dismissed.[181]

The way in which reviews and dismissals were handled varied from state to state, partially even from district to district. This concerned not just the type and size of the

[175] The number of party members had declined from 2.3m to around 1.8m by December 1989, and finally dropped to 350,000 by August 1990. For the successive replacement of the upper echelons, see Derlien, Hans-Ulrich. 1997. 'Elitenzirkulation zwischen Implosion und Integration. Abgang, Rekrutierung und Zusammensetzung ostdeutscher Funktionseliten 1989-1994.' In: Wollmann, Hellmut & Derlien, Hans-Ulrich & König, Klaus & Renzsch, Wolfgang & Seibel, Wolfgang (Eds) *Transformation der politisch-administrativen Strukturen in Ostdeutschland*, pp. 329-416. Opladen: Leske und Budrich.

[176] Such as the National Defense Council, the Council of Ministers, the State Council, the Politburo, the Central Committee and the Ministry of State Security.

[177] These included violations of human rights granted by the International Covenant on Civil and Political Rights or named by the Universal Declaration of Human Rights.

[178] Translated from German, 'Bundeszentrale für politische Bildung.' No Date. Einigungsvertrag. Accessed February 18, 2016, http://www.bpb.de/nachschlagen/gesetze/einigungsvertrag/, Annex I Kap XIX A III.

[179] That the protesters had mostly managed to secure the MfS files by occupying its offices was a key prerequisite for the reviews.

[180] The BStU is responsible for administrating and researching the records of the MfS.

[181] Cf. Glatte, 'German Past,' p. 19 ff.; Wielenga, 'Geschichte,' pp. 87-89; Vergau, 'Aufarbeitung,' p. 127 ff. Shortly before its dissolution, the MfS had 94,000 official and 174,000 unofficial members. Mothes, Jörn & Schmidt, Jochen. 2000. 'Die Aufarbeitung der DDR-Vergangenheit. Versuch einer Zwischenbilanz.' *Der Bürger im Staat* 4:192-196.

questionnaire, but also the criteria of dismissal and the circle of people affected. Neither the criteria of 'MfS activity' nor 'unacceptable' were defined in the Unification Treaty in more detail.[182] While, for example, the notion persisted in Saxony or Berlin-Weißensee that mere gardeners, typists, nurses and members of the cleaning staff had to be dismissed if they had an MfS past, the same groups were kept on in Brandenburg without any personal hearing.[183] However, similarities existed in as much that servants of the police service or the educational system – branches which had played a leading role in the SED regime – were relatively strongly affected everywhere.[184]

The most substantial changes to the civil service, however, did not stem from extraordinary dismissals.[185] Instead, they accompanied the dissolution of numerous GDR institutions and the adaptation of its inflated apparatus of state and administrative machinery[186] to West German structures in the course of the unification. Here again, the Unification Treaty constituted the legal basis, as it permitted ordinary dismissals in case of:

- Deficient professional qualifications
- Deficient personal aptitude
- Lack of personnel requirements due to the dissolution or alteration of the workplace.[187]

600,000 people were affected by the dissolution of GDR institutions alone.[188] Furthermore, there were massive cutbacks, for example, in the education system, given the alignment to the West German pupil-teacher ratio[189] and the abolition of subjects like civics and military science. Moreover, there were dismissals on the grounds of 'insufficient professional qualification,' as in the case of teachers who had taught ideological subjects and whose scientific prowess was regarded as insufficient. The dismissals from the diplomatic service and the National People's Army were even

[182] Will, Rosemarie. 1997. 'Das Bundesverfassungsgericht und der Elitenwechsel in Ostdeutschland.' *Neue Justiz* 10:513-517; Majer, Diemut. 1996. 'Entnazifizierung gleich Entstasifizierung?' Vergangenheitsbewältigung und Rechtsstaat.' In: Haney, Gerhard & Maihofer, Werner & Sprenger, Gerhard (Eds) *Recht und Ideologie. Festschrift für Hermann Klenner zum 70. Geburtstag*, pp. 349-384. Freiburg: Rudolf Haufe Verlag.

[183] The 'loose' handling of the reviews in Brandenburg, which was also shown toward other occupational groups, allowed, for example, jurists and leading police officers who had worked for the MfS to keep their positions long after 2010. This only began to change with the creation of a commission of inquiry in Brandenburg in 2010.

[184] Wielenga, 'Geschichte,' pp. 87-91; Vergau, 'Aufarbeitung,' p. 129; Weichert, Thilo. 1991. 'Überprüfung der öffentlich Bediensteten in Ostdeutschland,' *Kritische Justiz* 4: 457-475; McAdams, James A. 2001. *Judging the Past in Unified Germany*. Cambridge: Cambridge University Press, p. 75 ff.

[185] Vollnhals, Clemens. 1995. 'Abrechnung mit der Diktatur. Politische Säuberung nach 1945 und 1989.' *Deutschland Archiv* 28:68-71; Wielenga, 'Geschichte,' p. 89.

[186] The GDR's civil service numbered, by the end, 2 million employees; while the country's whole population comprised around 16 million (including a 9 million working population). Measured against the population, this amounted to around 14 percent, which was twice as high as the FRG's level of 7 percent. Cf. Keller, Berndt & Henneberger, Fred. 1992. 'Beschäftigung und Arbeitsbeziehung im öffentlichen Dienst der neuen Bundesländer.' *Gewerkschaftliche Monatshefte* 6:331-342.

[187] Bundeszentrale für politische Bildung, Einigungsvertrag Annex I Kapitel XIX Sachgebiet A Paragraph III Nr. 1 passage 4.

[188] Loschelder, Wolfgang. 1995. 'Die Weiterbeschäftigung von Funktionsträgern des SED-Regimes im öffentlichen Dienst.' In: Brunner, Georg (Ed.) *Juristische Bewältigung des kommunistischen Unrechts in Osteuropa und Deutschland*, pp. 203-213. Berlin: Arno Spitz Verlag.

[189] Wielenga, 'Geschichte,' p. 89; Vollnhals, 'Abrechnung,' p. 69.

more drastic: only fourteen of the formerly 1,700 career diplomats and only 6,000 of the formerly 40,000 officers were kept on.[190]

Not all of these dismissals had to do with the past of the person affected. Nonetheless, it can be assumed that in cases of cutbacks (not of complete dissolutions), personal involvement in the SED regime was a key factor in the choice of who should be dismissed.[191]

Political aspects played an even greater role when it came to ordinary dismissals on grounds of 'insufficient personal aptitude.' Loyalty to the Constitution was a prerequisite to be given civil servant status; but this loyalty seemed questionable in the case of applicants whose involvement in central organizations of the SED state indicated a special identification with the SED regime. Therefore, compromised people could be said to lack personal aptitude and their employment could be terminated.

The fact that the Unification Treaty did not define which involvement in which organization should be considered as compromising – apart from specifying MfS activity and violations of the principles of humanity and the rule of law as reasons for extraordinary dismissal – turned out to be problematic. The wide discretion led to great differences in the handling of dismissals. The unequal treatment found its expression in the fact that some states carried out differentiating case-by-case reviews; Saxony, for example, dismissed all former holders of certain positions and professions in the SED regime, which were named in an own catalogue of dismissal criteria, from the civil service. The legal uncertainty gave rise to numerous trials, which partially even made it to the Federal Constitutional Court.[192]

The judiciary constituted a special case of lustration. It attracted particular attention because of its considerable involvement in the SED regime: state attorneys and judges had to undergo a separate, individual eligibility assessment, which decided on their continued employment. The selection and appointment committees were tasked with making predictions on whether the applicant would act according to the FRG's values and legal order and would advocate them in the future. Former activity in the SED or for the MfS was usually not automatically considered compromising. Prior legal practices which had been inhumane or contrary to the rule of law were instead viewed more skeptically. However, the criteria of assessment once again varied from state to state and led to differing quotas of continued employment. While in Berlin, only a few applicants were re-admitted to the civil service, almost half of all assessed applicants received positive results in the whole Beitrittsgebiet. Yet,

[190] Eckert, Rainer. 1997. '"Entnazifizierung" und "Entkommunisierung". Aufarbeitung der Vergangenheit in Deutschland.' In: Jesse, Eckhardt & Kailitz, Steffen (Eds) *Prägekräfte des 20. Jahrhunderts: Demokratie, Extremismus, Totalitarismus*, pp. 305-327. Baden-Baden: Nomos Verlagsgesellschaft; Deutscher Bundestag. 1998. 'Schlussbericht der Enquete-Kommission, Überwindung der Folgen der SED-Diktatur im Prozeß der deutschen Einheit.' Accessed February 17, 2016, http://dip21.bundestag.de/dip21/btd/13/110/1311000.pdf, p. 36 (subsequently short as Schlussbericht, 'Enquete-Kommission'); Weichert, 'Überprüfung,' p. 463. According to the information of the Foreign Office employees, only four career diplomats were kept on.

[191] Wielenga, 'Geschichte', p. 89.

[192] Will, 'Bundesverfassungsgericht'; Loschelder, 'Weiterbeschäftigung,' pp. 197-203; Majer, 'Entnazifizierung,' pp. 361-364. The Federal Constitutional Court decided that membership of SED organizations or similar could not generally be regarded as a deficiency of personal aptitude. Each person was to be reviewed individually and personal behavior after unification would be taken into account.

a significant part of the GDR's judiciary had abstained from taking the eligibility assessment in the first place: meaning that only just above one third (or more precisely, 1,080 of what had been 3,018 GDR judges and state attorneys at the end of 1989) were retained.[193]

Lustrations did not take place smoothly. Most problematic were, first, the strong focus on MfS members and second, the absence of uniform criteria for who should be seen as compromised and recommended for dismissal.[194] The tendency to attribute responsibility for the SED regime mainly to the 'Stasi,' while forgetting about the remaining 330,000 members of the nomenklatura, found its expression in the Unification Treaty. Review authorities themselves did not yet have the required knowledge on the relevance of certain functions and institutions of the SED regime.[195] The fact that no precise criteria for dismissals – besides MfS activity – were defined in the treaty made it possible for heavily compromised SED members to continue working in the civil service after 1990.

This meant that, not those who had possessed the power in the SED state, but their 'henchmen' from the secret police instead, were held accountable. This could only partially be corrected afterwards, as the treaty's provisions regarding ordinary dismissals were only valid until the end of 1993. How many of the former central officials remained in the civil service, and how much old networks continued to have an effect, has not yet been examined sufficiently.[196] It is assumed that personnel continuities existed at the lower and mid-levels, and that part of the *nomenklatura* found entry into the economy, where almost no reviews were conducted.[197] All in all, however, the view prevails that despite the mistakes discussed, the measures led to a substantial replacement of compromised with uncompromised individuals, especially in leading positions. The purge therefore seems to have been more successful than denazification (in the western occupation zones and the FRG) after 1945. Enough uncompromised East and West Germans were available as replacements to fill emerging vacancies.

[193] Wassermann, Rudolf. 1999. 'Rechtssystem.' In: Weidenfeld, Werner & Korte, Karl-Rudolf (Eds) *Handbuch zur deutschen Einheit 1949-1989-1999*, pp. 650-661. Frankfurt am Main: Campus Verlag; Staats, Johann-Friedrich. 2011. '"Lustration" – oder die Überprüfung der Richter und Staatsanwälte aus der DDR.' In: Bästlein, Klaus (Ed.) *Die Einheit. Juristische Hintergründe und Probleme. Deutschland im Jahr 1990*, pp. 85-104. Berlin: Berliner Landesbeauftragten für die Unterlagen des Staatssicherheitsdienstes der ehemaligen DDR; Weinke, Umgang, p. 182 ff. Those who passed the assessment were retained on probation. During the probation period of three to five years, lacking qualifications had to be caught up on, and a democratic attitude and legal practice in line with the rule of law had to be proven.

[194] This is one of the most crucial differences from the denazification in the American occupation zone after 1945, where detailed lists with criteria for dismissal were distributed (Chapter 2 c i). Cf. Majer, 'Entnazifizierung.'

[195] This was aggravated by the SED membership files, which would have made reviews easier, being destroyed in November 1989.

[196] Cf. Landesbeauftragter für die Unterlagen des Staatssicherheitsdienstes der ehemaligen DDR. 1995. 'Zweiter Tätigkeitsbericht.' Accessed February 18, 2016, http://www.berlin.de/imperia/md/content/lstu/taetigkeitsberichte/jb95.pdf?start&ts=1441800999&file=jb95.pdf; Deutscher Bundestag. 1994. Bericht der Enquete-Kommission, 'Aufarbeitung von Geschichte und Folgen der SED-Diktatur in Deutschland.' Accessed February 18, 2016, http://dipbt.bundestag.de/dip21/btd/12/078/1207820.pdf, pp. 214-218. For the following also: Schlussbericht Enquete-Kommission, pp. 36-43. Case studies by the inquiry commission indicate that members of the *nomenklatura* kept responsible positions primarily at community level. All in all, however, they probably had a rather small share in the civil service of the new states.

[197] In the whole private sector, only people in top positions were allowed to be reviewed by means of the Stasi files. In the case of all other employees, the only permitted means of review was self-disclosure. Cf. Bundesregierung. 2012. 'Bericht der Bundesregierung zum Stand der Aufarbeitung der SED-Diktatur.' Accessed February 18, 2016, https://www.bundesregierung.de/Content/DE/_Anlagen/BKM/2013-08-16-bericht-aufarbeitung-sed-diktatur.pdf?_blob=publicationFile&v=1, p. 55. In the economy, privatization functioned as an 'automatic purging mechanism,' through which at least former leading cadres lost their positions. Cf. Karstedt, 'Vergangenheitsbewältigung,' pp. 85, 88.

Hence, unlike after 1945, no collapse of administrative structures had to be feared as a consequence of a thorough purge.[198]

Moreover, there was a stronger consensus on the need to remove compromised individuals, albeit this began to weaken as time went by; a feeling of being treated unfairly arose on many sides. The vast differences between the actions taken led to doubts about the reliability and justness of the reviews. For many dissidents and victims of the SED regime, the dismissals did not go far enough. Additionally, there was disappointment at emerging vacancies not being automatically given to opponents of the SED regime but to conformists or West Germans.[199]

d) Rehabilitation and Reparations

I. Rehabilitating Victims of the SED Regime: Laws Correcting Injustice

During the 40 years of the GDR's existence, the injustice against its own citizens had not only been of an enormous extent, but also took diverse forms. It had ranged from imprisonment, physical violence and homicide, to expropriations of property, occupational bans and harassment against family members, to psychological terror and repression through surveillance, intimidation and public discrediting. Any kind of alleged or actual oppositional, resistant or merely non-conformist behavior was criminalized and served as a cause for persecution. Persecution occurred at the judicial level by means of the political penal code, as well as outside the courts. According to estimates, 200,000 to 250,000 people were persecuted and mostly imprisoned by means of the political penal code[200] alone. Rehabilitating[201] victims thus played a crucial role in the process of coming to terms with SED injustice.

The desire for rehabilitation found its expression as early as in the phase of upheaval. In October 1989, all people imprisoned for 'illegal border crossings' were granted amnesty and released. Parallel to this, a few convicts were rehabilitated by means of appeal quashing sentences. By June 1991, the freely elected People's Parliament started to draft a rehabilitation law comprised not only of rehabilitation in relation to criminal histories, but also administrative and occupational rehabilitation of SED victims. Rehabilitation was thereby intended to create the prerequisites for the entitlement to financial compensation. Yet, before the law could be adopted, the Unification Treaty laid the foundations for German unity. With the Treaty, the FRG bound itself to the rehabilitation and proper compensation of those who had 'become victims of politically motivated criminal prosecution or any other judicial decision inconsistent with the rule of law or the Constitution.'[202]

[198] However, also after 1989/90, it was possible to do without compromised individuals and their knowledge. Former MfS officers were needed in the handling of MfS property; similar is true for the evaluation of MfS files. Cf. Weichert, 'Überprüfung,' p. 458.

[199] Cf. Karstedt, 'Vergangenheitsbewältigung,' pp. 90-100; Vergau, 'Aufarbeitung,' pp. 130-132; Wielenga, 'Schatten,' pp. 1065-1068; ibid., 'Geschichte,' pp. 89-96; Majer, 'Entnazifizierung,' pp. 364-366.

[200] Cf. Eser, Albin & Arnold, Jörg & Sieber, Ulrich (Eds). 2001. *Strafrecht in Reaktion auf Systemunrecht. Vergleichende Einblicke in Transitionsprozesse. Ein Projektbericht*. Freiburg: Max-Planck-Institut; Mothes & Schmidt, Aufarbeitung, p. 192. Regarding the numbers of victims, see Borbe, 'Zahl,' pp. 15-20.

[201] The term 'rehabilitation' refers to the restoration of a victim's reputation and honor. After unification, 'rehabilitation' was used as an umbrella term for both the annulment of unjust acts and material redress. Cf. Guckes, 'Opferentschädigung,' p. 12 ff. Essential the following paragraphs: Ibid., pp. 53-69; Eser & Arnold, 'Strafrecht,' pp. 433-499; further Bundesregierung, 'Bericht,' p. 21.

[202] Quoted and translated from German in Eser & Arnold, 'Strafrecht,' p. 438.

The Federal government was reluctant to take over the law drafted by the People's Parliament for fear of unpredictable costs. The idea of rehabilitation and compensation was then finally specified in the first, so-called Statute for the Correction of SED Injustice.[203] Part of it was the Criminal Rehabilitation Act of November 1992. It allows for the annulment of verdicts and other judicial decisions of the Soviet occupation zone and the GDR, as far as they are considered inconsistent with the rule of law. Moreover, the law defines the terms for financial entitlements for rehabilitated individuals.

Decisions are considered inconsistent with the rule of law if they contradict the basic principles of a free democratic order based on the rule of law. Correspondingly, rehabilitation is especially available to those who had been politically persecuted by means of the penal code,[204] or who had received penalties grossly disproportionate to the offense committed. Further, the law is addressed to those who had been institutionalized in a psychiatric institution or placed under house arrest on grounds of political persecution or other extraneous purposes. Those affected can apply for rehabilitation with authorized rehabilitation senates and chambers until the end of 2019. Rehabilitated individuals are entitled to restitution or compensation for expropriated property, and to reimbursement of fines and procedural costs. Beyond that, in some cases, they are entitled to social benefits as compensation for imprisonment, lasting health damages and the loss of pensions.[205]

Two complementary laws followed in July 1994: the Administrative Rehabilitation Act and the Occupational Rehabilitation Act, which together form the second Statute for the Correction of SED Injustice. The former addresses the annulment of 'administrative decisions fundamentally inconsistent with the rule of law by GDR institutions or the declaration of their inconsistency with the rule of law'[206] from May 8, 1945 to October 2, 1990. More precisely, the law is directed at those who had become victims of administrative arbitrariness and administrative injustice, and who had thus suffered damage to their health, property loss or occupational disadvantage. The regulatory actions can be annulled on request if they were incompatible with basic principles of a free democratic order based on the rule of law[207] and the person affected still suffers from grave, unacceptable consequences. These include, for example, cases of forced expulsion from areas near the border and related expropriations, but also of physical damage owing to internment in labor camps, abuse by the police and reprisals by the MfS. Again, rehabilitated individuals are entitled to social benefits in case of lasting health damages and to compensation for expropriated property and occupational disadvantage.[208]

[203] Prior to the creation of these uniform nationwide provisions, a vast number of single regulations and instruments were applied. See Guckes, 'Opferentschädigung,' pp. 53-63; Eser & Arnold, 'Strafrecht,' pp. 443-451.

[204] Such as convictions of 'anti-state human trafficking' for aiding an escape, 'incitement hostile to the state' for free expression, 'illegal contacts' for contacts to people in non-socialist states, and 'illegal border crossing' for trying to escape from the GDR. Cf. Criminal Rehabilitation Act § 1.

[205] Cf. also Criminal Rehabilitation Act; Bundesstiftung zur Aufarbeitung der SED-Diktatur. 2016. 'Strafrechtliche Rehabilitierung.' Accessed February 18, 2016, http://www.bundesstiftung-aufarbeitung.de/strafrechtliche-rehabilitierung-1475.html.

[206] Translated from German, Bundesregierung, 'Bericht,' p. 21.

[207] These included acts that had severely violated the principles of fairness, proportionality and legal certainty, characterized by arbitrariness or political persecution.

[208] Cf. also Bundesstiftung zur Aufarbeitung der SED-Diktatur. 2016. 'Verwaltungsrechtliche Rehabilitierung.' Accessed February 17, 2016, http://www.bundesstiftung-aufarbeitung.de/verwaltungsrechtliche-rehabilitierung-1479.html.

The Occupational Rehabilitation Act, in turn, grants rehabilitation and social benefits to those who still suffer from the consequences of intrusion into their career: for example, politically persecuted individuals who were not allowed to work in the job they had trained for, practiced or had begun working in. Benefits include compensation for disadvantages in the pension scheme, monthly payments for economically indigent people, as well as occupational training and continuing education.[209] Between 1993 and 2011, all in all €1.4bn were spent by German federal and state governments on rehabilitation.[210]

The Statutes for the Correction of SED Injustice have received strong criticism from SED victims. It was suggested that the compensatory benefits lagged behind those for Nazi victims. Many felt unfairly treated as second class victims. Yet in fact, as is evident from the terms used, there are several differences. While in the case of Nazi victims, the term *Entschädigung* is used (which translates to the full redress of, or reparation for injustice), *Ausgleich* is used in the case of SED victims (which means equalization or balancing out of disadvantages). This explains why payments differ considerably in terms of their amount. Unlike in the case of Nazi victims, the Statutes for the Correction of SED Injustice do not aim to compensate for the whole of the injustice suffered, and are not assessed according to the damage suffered. The benefits are limited to the gravest forms of injustice, 'only' aim at easing lasting damages and are partially bound to economic indigence.

Whether this unequal treatment is morally legitimate given the differences in type and extent of injustice committed by both dictatorships is the subject of heated discussion.[211] According to the German Government, the '40 years of the GDR's system of injustice cannot be undone'[212] – since arbitrary and politically persecuting state-sponsored actions had taken place in all spheres of society, a complete revision would not be possible. From a legal point of view, the regulations are legitimate; with unification, the GDR ceased to exist, together with all its rights and duties. It was taken over by the FRG, as explicitly stated in the Unification Treaty. As the FRG was merely obliged to find a 'proper solution to compensation,' it was relatively free in its elaborations.[213]

However, such strong criticism led the government to make some improvements. Application periods were prolonged several times and benefits upgraded. Victims who had not suffered long term damage to their health, for example, were given the chance to be morally rehabilitated. A particular improvement involved the so-called victims' pension, introduced in August 2007 as the third Statute for the Correction of SED

[209] Cf. Bundesstiftung zur Aufarbeitung der SED-Diktatur. 2016. 'Berufliche Rehabilitierung.' Accessed February 18, 2016, http://www.bundesstiftung-aufarbeitung.de/berufliche-rehabilitierung-1477.html.

[210] Cf. Bundesregierung, 'Bericht,' p. 28. Further numbers on rehabilitation can be found on the website of the Federal Foundation for the Reappraisal of the SED Dictatorship.

[211] For a more extensive comparison, see Guckes, 'Opferentschädigung'; criticism also in Knabe, 'Täter,' pp. 201-239.

[212] Quoted and translated from German in Guckes, 'Opferentschädigung,' p. 66.

[213] Cf. ibid., pp. 20-24, 64-67; Eser & Arnold, 'Strafrecht,' pp. 438-443.

Injustice.[214] Furthermore, the 'Residential Education in the GDR between the years 1945 and 1990' fund was established in July 2012.[215]

Despite all the criticism, the measures are said to be of great psychological importance for many victims, as they constitute an official and public recognition of them as victims and an acknowledgement of their suffering.[216]

II. Restitution and Compensation: The Settlement of Open Property Questions

Redressing property loss turned out to be an even more complicated matter than rehabilitation.[217] The list of victims was long – thousands of GDR citizens had been affected by expropriations in the course of the socialist transformation of property relations through nationalization. Further thousands had been expropriated as part of political persecution. Property of people fleeing and leaving the GDR[218] and of those who had not returned after May 8, 1945, to what would later become the GDR, had been expropriated, or had become subject to forced administration and compulsory sale. Moreover, Nazi victims had never been given back their property by the GDR. This was mostly nationalized too.[219]

A reversion of all property changes was out of the question, since this would have meant another complete transformation of ownership – with unpredictable economic, administrative and financial consequences for the *Beitrittsgebiet* and the whole FRG. Therefore, it had to be decided which expropriations should be reversed and which should not. The governments of the GDR and the FRG agreed not to reverse the expropriations of the 'socialist revolutions of the economic order and property relations,'[220] but to solely reverse measures 'of politically motivated discrimination or other kinds of discrimination.'[221] Even though the expropriations by the Soviet occupation forces could be seen as discriminating, they were supposed to remain unchanged as they were acts 'on the basis of occupation law or occupation authority'.[222]

Especially problematic was the fact that, in the meantime, many expropriated possessions had been passed over to other GDR citizens. Therefore, restitution had to be arranged in such a way that the rights of the new owners would not be violated. The opinions

[214] The pension is directed at people who had been imprisoned for more than 180 days and are in need of financial support. At present, it amounts to €300 per month.

[215] Cf. Bundesregierung, 'Bericht,' pp. 27-29; Knabe, 'Täter,' pp. 232-239. With an amount of €40m, it serves to redress those who found themselves placed in homes for adolescents, children and infants in the Soviet occupation zone or GDR and had suffered injustice there. Estimates speak of 500,000 people affected; 140,000 of whom had been placed in so-called special homes or transit homes.

[216] Cf. Schuller, Wolfgang. 2006. 'Ziele und Prioritäten der strafrechtlichen Vergangenheitsbewältigung.' *Der Bürger im Staat* 3:161-165.

[217] Essential for the following chapter Fieberg, Gerhard & Reichenbach, Harald. 1995. 'Zu den Eckwerten der offenen Vermögensfragen.' In: Weber, Jürgen & Piazolo, Michael (Eds) *Eine Diktatur vor Gericht. Aufarbeitung von SED-Unrecht durch die Justiz*, pp. 201-214. München: Olzog-Verlag.

[218] Around 3.5 million people had left the GDR after 1949, mostly prior to the building of the Berlin Wall in 1961. In order to have a chance of having their exit visas approved, the applicants were forced to sell their property to the state, or to third parties.

[219] Cf. Knabe, 'Täter,' pp. 239-241; Borbe, 'Zahl,' pp. 51-54.

[220] Except when property was acquired by the state due to a targeted policy of excessive indebtedness or unfair methods.

[221] Translated from German, Fieberg, 'Vermögensfragen,' p. 213.

[222] Allegedly, this was a condition of the Soviet Union for agreeing to German unification. Mikhail Gorbachev, however, denied this. Cf. Knabe, 'Täter,' pp. 243-245; Lege, Joachim. 2004. 'Gleichheit im Unrecht für die Alteigentümer?' *Neue Justiz* 9:385-388.

and needs of the mostly West German former owners (that is, those who had fled or left the GDR: so-called non-returnees – but also discriminatingly expropriated GDR citizens and Nazi victims) and of those GDR citizens who had acquired rights to their properties from the state, were diametrically opposed. The first hoped for restitution and regarded the rights of the new owners as unworthy of protection, as they had been aware of acquiring expropriated property. The new owners, on the other hand, feared that they might lose their means of existence and living environment. In their view, the former owners had left their property voluntarily for a 'golden life in the West.' The fact that their property was now subject to negotiation triggered the feeling of being 'on the loser's side of the unification process.'[223] Open property questions seemed to become a burden for internal unification.

One of the central principles defined to settle open property questions[224] read 'restitution before compensation.' Thus, the view advocated mostly by West Germans prevailed to the disadvantage of the financial compensation endorsed by East Germans. This accounted for the point that a large number of refugees – the 'group most affected by open property questions'[225] – had not been officially expropriated, but had been deprived of their administrative control. As they were, legally speaking, still the owners, the FRG would have had to expropriate or exclude them from the reparations in order to reverse the procedure, namely 'compensation before restitution'. This would however have been contrary to the rule of law and was thus not taken into consideration.

To nevertheless find a socially acceptable compromise, there were a few exceptions to the principle of 'restitution before compensation.' Compensation was given priority when restitution was 'not possible due to legal or factual reasons.'[226] This was the case when new owners had rightfully acquired rights of ownership or usage: that is to say, in accordance with valid GDR law.[227] Whether they had known that the property had been expropriated was of no significance. With this, continuance was given priority over restitution interests. Further exceptions concerned cases in which restitution was considered impossible. These included pieces of land or buildings that were being used by communities; which had been altered in their type of usage or purpose and when there was public interest in their usage; which were used for residential construction, or those whose economic use would be impaired by restitution.[228] Claims for restitution were also rejected when there were certain investment interests. These included projects to create or secure employment or housing space. In all these cases, former

[223] Translated from German, Fieberg, 'Vermögensfragen,' p. 206.

[224] See Bundesministerium der Justiz und für Verbraucherschutz. 1990. 'Gesetz zur Regelung offener Vermögensfragen (Vermögensgesetz).' Accessed February 18, 2016, http://www.gesetze-im-internet.de/vermg/BJNR211590990.html.

[225] Translated from German, Fieberg, 'Vermögensfragen,' p. 207.

[226] Translated from German, Bundesregierung, 'Bericht,' p. 41.

[227] It was considered unrightful when property had been acquired through corruption, by using one's position of power, by deception or by exploiting the dilemma of the former owner.

[228] Cf. also Vermögensgesetz § 4 and 5.

owners received compensation payments.[229] The money came from a compensation fund: which in turn fed on, amongst other things, revenues from selling nationalized property (that which was not subject to property questions) in the course of privatization[230] and government grants.

Despite all efforts to balance opposing interests, the settlement of open property questions was massively criticized. It was quite often even described as '*the* mistake within the process of unification [...] and was blamed for almost all occurring adjustment problems of the acceding territory.'[231] On all sides, people felt at a disadvantage. Special protest came from those who had been expropriated as part of the socialist land reform. However, it needs to be stated here that, though excluded from restitution, they received equalization payments, which were not less than the compensation payments.[232] Critics rarely considered the difficulties which government agencies faced when settling open property in their entirety. As noted above, there was no feasible, lawful alternative to the principle of 'restitution before compensation.'

The controversies on open property questions were not beneficial to the internal unification of the two estranged parts of the population. However, the material injustice committed by the SED regime could not be brushed aside; not settling open property questions would probably have caused even more resentment and would posed an even greater burden for unification.[233]

By the end of 2011, 99.4 percent of all applications for restitution – concerning more than 2.2 million land parcels – and 93 percent of all claims for compensation or equalization payments had been processed.[234] €1.9bn were paid to Nazi victims as redress; and around €1.6bn to those whose property had been expropriated after 1945 as compensation and equalization.[235]

[229] See also Entschädigungs- und Ausgleichsleistungsgesetz (EALG; Compensation and Equalization Payments Act), September 27, 1994. The amount differed according to the type of use of the property in question, and was three to twenty times the value assessed for the time of expropriation in order to measure up to the current value at the time of unification. Already obtained payments, such as that from the Equalization of Burdens Act of 1952, were subtracted. 'From the amount of DM 10,000 onwards, the payments were staggered digressively; payments of more than DM 20,000, for example, were shortened by 40 percent, payments of more than DM 3 million by 95 percent.' Translated from German, Lege, 'Gleichheit,' p. 385. For the complicated calculation of the payments, see Klüsener, Robert. 2011. *Rechtsstaat auf dem Prüfstand. Wiedervereinigung und Vermögensfragen*. Berlin: Lit Verlag, p. 169 ff.

[230] These included, among others, proceeds of the privatization agency (*Treuhand*) amounting to DM 3bn; proceeds from the sale of former state property to those former GDR citizens who had already acquired rights of use; and to other private individuals. Cf. EALG § 10.

[231] Translated from German, Fieberg, 'Vermögensfragen,' p. 206 ff.

[232] Cf. Lege, 'Gleichheit'; Knabe, 'Täter,' pp. 245- 252. Further provisions addressed other groups which were excluded from restitution. People who had been expropriated due to the construction of the inner-German border, for example, were given the chance to buy their property back by paying a small part of the current value, or were eligible for compensation payments.

[233] Given previous compensation for consequences of both dictatorship and war, not redressing SED injustice would have been a discriminating neglect of SED victims. Moreover, it would have caused considerable legal uncertainty, as it is highly likely that people affected would have sought to assert claims by means of civil law. Cf. McAdams, 'Past,' pp. 164-166; Bundesministerium der Finanzen. 2007. 'Die Regelung offener Vermögensfragen.' Accessed February 18, 2016, http://www.bundesfinanzministerium.de/Content/DE/Standardartikel/Themen/Oeffentliche_Finanzen/Vermoegensrecht_und_Entschaedigungen/Offene_Vermoegensfragen/regelung-offener-vermoegensfragen.html.

[234] In addition, there were the entitlements to restitution or compensation of Nazi victims, which affected around 224,000 property holdings. Only 63 percent of these were dealt with at the time. This may owe to property relations having changed even more often in these cases, which thus became even more complicated. Cf. Bundesregierung, 'Bericht,' p. 41.

[235] Cf. ibid.

e) Documentation, Admonition, Memorialization

While critical engagement with the National Socialist past in the form of memorialization set in only rather gradually and developed in several stages, the engagement with the SED dictatorship had already started during the upheaval phase and proceeded parallel to criminal prosecution, lustrations and redress with 'great emotional intensity.'[236] There was barely any 'not-wanting-to-know' and 'not-wanting-to-remember'. Instead, the majority of people rather had a strong desire to uncover what had happened. This gave rise to intense debates of 'high moral aspirations.'[237]

The focus of the early process of coming to terms with the past centered upon the Ministry for State Security. Disclosure of the enormous extent of spying and repression caused lasting shock, not only for those who now discovered that their closest friends and family members had been spies. The great desire for disclosure found its expression in long, controversial debates on how to deal with the 180 km of secret service records, which contained information on more than 6 million people and had been collected throughout the GDR's 40 years of existence.[238] East Germans demanded that the files be made public, to disclose the extent of surveillance and involvement and to obtain clarity about their own past. Especially the Government feared that disclosing information collected through severe infringements of privacy might trigger social discord and unrest. Balancing disclosure and coming to terms with the past on the one hand, against nondisclosure on the other, led to a compromise in 1990: general disclosure was ruled out, but – under strict protection of personality rights – the files were made accessible to people who had been spied on, for historical research, trials, lustration and the screening of central officials. To this day, the BStU, the authority responsible for the files, has received around 3 million requests for information and record access from citizens. According to information from the Federal Foundation for the Reappraisal of the SED dictatorship, more than 1.8 million people had examined 'their' files by 2012.[239] The records were of considerable importance in dealing with the past; they did not cause social unrest, even though the disclosures prompted several sensationalist scandals in the media.[240]

The strong focus on the 'Stasi' had the consequence that, in public perceptions, MfS members became viewed as those with the main responsibility for the SED dictatorship. Their 'demonization'[241] blurred the fact that the 'persons in charge of the MfS were to be found in the government, and that not every unofficial collaborator was a "major traitor" or "main culprit".'[242] Only when the emotional peak of this issue had been passed did a more differentiated view of guilt, responsibility, conformism, opportunism and resistance become possible. Newer, more profound, objective questions arose. This can mainly be ascribed to the onset of a 'research boom'[243] and the emergence of numerous documentation and memorialization projects.[244]

[236] Translated from German, Wielenga, 'Geschichte,' p. 108.

[237] Cf. ibid., 'Schatten,' p. 1064. Translated from German, ibid., 'Geschichte,' p. 107 ff.

[238] Cf. Mothes & Schmidt, 'Aufarbeitung,' p. 192.

[239] Cf. Bundesregierung, 'Bericht,' pp. 20 ff., 52-58; Glatte, 'German Past,' p. 20; Bundesbeauftragte für die Unterlagen des Staatssicherheitsdienstes der ehemaligen Deutschen Demokratischen Republik. 'BStU in Zahlen.' Accessed February 18, 2016, http://www.bstu.bund.de/DE/BundesbeauftragterUndBehoerde/BStUZahlen/_node.html.

[240] Not only East Germans were deeply shocked by the disclosures about the MfS. As a rather positive image of the GDR had prevailed in the FRG during the 1970s and 1980s' policy of relaxation and rapprochement, West Germans were strongly dismayed by the disclosures, too.

[241] Quoted and translated from German in Vergau, 'Aufarbeitung,' p. 103.

The two inquiry commissions on 'Working Through the History and Consequences of the SED Dictatorship in Germany' and on 'Overcoming of the Consequences of the SED Dictatorship in the Process of German Unity,' established by the German Bundestag in 1992 and 1994, which are often described as truth commissions, rank among the most central authorities for coping with the GDR's past. They had the task of informing the public about the SED dictatorship, spreading knowledge and encouraging critical discussion. They were also charged with making recommendations for action to the federal government with specific regard to dealing with the past. Numerous victims, dissidents and experts were consulted in order to uncover and document the events of the SED dictatorship.[245]

The work of both inquiry commissions led to the establishment of the Federal Foundation for the Reappraisal of the SED dictatorship in 1998. Since then, the foundation has promoted a 'comprehensive, continuous and pluralistic engagement with the causes, the history and the consequences of the communist dictatorship as well as the German and European division.'[246] For this purpose, it had organized around 555 events by 2015, and published more than 200 written texts. Additionally, more than 2,500 projects, such as documentaries, papers, exhibitions and seminars, as well as the work at memorial sites and in archives, were supported.

These efforts are complemented by BStU services: which range from exhibitions at research seminars to project days for students. Besides this, the BStU maintains three information and documentation centers as well as two documentation and memorial sites. Here, the main focus lies on informing the public about 'the structures, methods, and actions of the State Security Service.'[247] Additionally, the Center for Contemporary History in Potsdam, the Institute of Contemporary History in Berlin and the Hannah Arendt Institute for the Research on Totalitarianism in Dresden are devoted to historical research on this topic.[248]

Memorial sites and museums are of special importance. These include the memorial and documentation centers at historic sites along the inner-German border. They show remains of former border installations and document the history of 'the Wall' and of German division, as well as the specific history of the particular location. Amongst the

[242] Translated from German, Wielenga, 'Geschichte,' p. 80.

[243] Translated from German, ibid., p. 108.

[244] Cf. ibid., pp. 73-81, 95; Vergau, 'Aufarbeitung,' p. 103 ff.

[245] For a critical and more detailed account, see McAdams, 'Past,' pp. 88-123.

[246] Translated from German, Bundesregierung, 'Bericht,' p. 47.

[247] Translated from German, ibid., p. 59.

[248] Cf. ibid, pp. 47 ff., 59-61, 69-76; Wielenga, 'Geschichte,' p. 108; Vergau, 'Aufarbeitung,' p. 104. Historical research on the GDR did not just start with unification; but it experienced a 'boom' as archives of the GDR were made accessible.

best known is the Berlin Wall Memorial, which comprises a visitors' center and several memorial grounds. One of the exhibition areas is devoted to 'The Wall and the Death Strip', and commemorates the death of 138 people who lost their lives at the Berlin Wall[249] with the installation of the 'Window of Remembrance.'

Further memorials are located at the historic sites of former jails in almost every former district capital of the GDR: such as in Berlin-Hohenschönhausen, Erfurt, Halle, Cottbus, Dresden, Schwerin and Bautzen. Exhibitions and collections give visitors an understanding of both the function and use of the jail, detention conditions and the fate of individual victims. The history of the GDR is the topic of further museum exhibitions. These include the permanent exhibition of the foundation House of the History of the Federal Republic of Germany; of the Forum of Contemporary History Leipzig; and the German Historical Museum Foundation.[250]

Despite intense academic research, and an abundance of documentation and memorial projects which have attracted several million visitors, today, two worrying tendencies can be observed: firstly, the decreasing knowledge about the SED dictatorship and secondly, its belittlement and glorification.[251] The former can be explained by the growing up of a generation with no personal memory of the GDR. To close these knowledge gaps, teaching in schools is especially necessary. Even though the GDR's history is part of the curriculum in all states, studies show that the majority of adolescents barely have any knowledge of the topic. This combines with the already unfavorable starting point, shaped by the fact that only around 20 percent of German society had directly experienced the GDR.

Moreover, public interest in the history of the GDR has declined significantly after the initial 'boom' brought about by unification.[252] Of importance here is the way in which the history of the SED dictatorship has been overshadowed by that of the 'Third Reich' and is often presumed as a shared past and a 'greater catastrophe.'[253] According to the prognosis of historian Friso Wielenga, although the GDR will not vanish from commemorative culture even in the long run, the 'crimes committed by the GDR regime will never sink as deep into the collective memory as the National Socialist crimes'; and the SED dictatorship 'will not become as sore a spot as the National Socialist past.'[254]

The second tendency, of belittlement or glorification, often referred to as *Ostalgie* or 'GDR nostalgia,' emanates from former GDR citizens themselves.[255] More precisely, it

[249] Cf. Gedenkstätte Berliner Mauer. 2016. 'Fenster des Gedenkens.' Accessed February 18, 2016, http://www.berliner-mauer-gedenkstaette.de/de/fenster-d-g-586.html; Bundesregierung, Bericht, pp. 79-81.

[250] Cf. Bundesregierung, 'Bericht,' pp. 92-98, 123-127.

[251] Cf. ibid., p. 15 ff.

[252] The increasing disinterest or a certain tiredness with dealing with the past found its expression in growing demands to close the book on the subject.

[253] Translated from German, Jarausch, Konrad. 2004. 'Die Zukunft der ostdeutschen Vergangenheit – Was wird aus der DDR-Geschichte?' In: Hüttmann, Jens & Mählert, Ulrich & Pasternack, Peer (Eds) *DDR-Geschichte vermitteln. Ansätze und Erfahrungen in Unterricht, Hochschullehre und politischer Bildung*, pp. 81-101. Berlin: Metropol Verlag, esp. p. 89.

[254] Translated from German, Wielenga, 'Schatten,' p. 1073. Cf. Bundesregierung, 'Bericht,' p. 65 ff.; Knabe, 'Täter,' pp. 22-30; Jarausch, 'Zukunft,' esp. pp. 81, 89.

[255] Essential for the following paragraphs: Wielenga, 'Geschichte,' pp. 71-73, 109 ff.; Knabe, 'Täter,' pp. 13-22; Ahbe, Thomas. 2005. *Ostalgie: Zum Umgang mit der DDR-Vergangenheit in den 1990er Jahren.* Erfurt: Landeszentrale für politische Bildung Thüringen, pp. 36, 42 ff., 64-66; Sabrow, Martin (Ed.). 2009. *Erinnerungsorte der DDR*. Bonn: C.H. Beck Verlag, p. 10-22; Großbölting, Thomas. 2010. 'Die DDR im vereinten Deutschland.' *Aus Politik und Zeitgeschichte* 25-26:35-40; Christoph, Klaus. 2013. 'Aufarbeitung der SED-Diktatur – heute so wie gestern?' *Aus Politik und Zeitgeschichte* 42-43:27-33.

stems from the radical changes which the unification brought about for them. The process of transition not only meant new freedoms and consumer possibilities, but also social dislocation (such as high unemployment rates, rising prices, social inequality, feelings of neglect) and identity loss. This provoked insecurity, disillusionment and the feeling of being overwhelmed and overrun by change, even of being 'colonized' by West Germany. Initial enthusiasm often turned into a desire for the familiar and the rejection of the new.

In this context, the strong focus on the injustice committed by the SED regime and the predominant emphasis of the dictatorial character in public remembrance was, for many, upsetting – even more so, the image drawn by the media 'that everything in the GDR was '*fundamentally bad*'.[256] Often this did not correspond with individual personal memories; to many it seemed as if the 'West Germans were taking away the history of the GDR', and as if they would lose 'not only control over their present but also their past.'[257] Contrary interpretations emerged in response, which strongly resemble the picture formerly propagated by the SED of the GDR as the better German state: a more humane society in which the values of equality, fairness and solidarity had been realized and National Socialism had been eliminated. Terror and the injustices committed by the SED regime against its own citizens are omitted from this narrative.

Around 2005, about 30 percent of East Germans held the opinion that the GDR had not been a dictatorship.[258] In 2010, roughly half of Eastern Germans held the view that the GDR had more positive than negative aspects.[259] There is disagreement on whether this development is threatening. It does not seem to go hand in hand with rejecting the new system; it is assumed that only about one in ten former GDR citizens actually want the GDR back.[260] It is rather the longing for an idealized past which never actually existed, and dissatisfaction with the present situation.

Concerning internal unification, some regard *Ostalgie* as a defense of their own past and thus as a positive self-assurance and integration strategy. Others interpret the tendency towards glorification as an expression and cause of a deepening alienation between East and West Germans. Regarding memorialization, glorification poses the danger of suppressing the memory of SED crimes and the suffering of the victims, and of cementing a distorted and one-sided image. However, glorifications have roused strong opposition and led to numerous debates on the 'right' way of remembering the GDR. This shows that the GDR past is still a sensitive topic and that coming to terms with it is anything but completed. Whether an image that accounts for the complexity of the SED regime – the contradictory experiences of home and injustice – will sink into collective memory, is up to the future.

[256] Translated from German, Wielenga, 'Schatten,' p. 1070.

[257] Translated from German, ibid., 'Geschichte,' p. 72.

[258] Cf. Knabe, 'Täter', p. 14.

[259] Cf. Christoph, 'Aufarbeitung'.

[260] Cf. ibid.

Fall of the Berlin Wall 1989/
Brandenburg Gate; November 10, 1989.
Photo: Klaus Lehnartz.
Source: Federal Archive.

4. Conclusion

The question of whether the dealing with the two German dictatorships can be regarded as successful has – just like in many other cases of transitional justice – not led to a unanimous, clear answer, and probably never will. The subject is too emotive to be adequately and appropriately assessed; the political, moral and normative standards are too multifarious; ideas on justice, guilt, responsibility and atonement are too differing; opinions on priorities and goals are too 'black-and-white'.

Several decades after the end of World War II, the FRG has plainly become a comparatively stable and democratic republic. Openly National Socialist or militaristic ideas are rather rare today, or at least hardly politically relevant. The major goal of the Allies – namely, that no war should ever again be started by Germany – has been achieved. Although causalities are difficult to identify, it can be said that the Western Allies' measures played an important role: Nazi trials and denazification contributed to the exposure of the Nazi regime's criminal character, discrediting National Socialism and promoting its rejection. By prescribing democracy 'from above,' vital institutional foundation stones were laid for a democratic future.

However, even though the new form of government and society was not questioned on the institutional, political level, the Allied measures – including re-education[261] – could not bring about a democratic society overnight. It proved rather a long haul to internal reformation and a sincere turn towards democratic values, characterized by temporary, opportunistic conformance to external conditions.[262] This was not only because changes in mentality generally take a long time to bear fruit; but also because change in Germany was heavily burdened by the re-integration of compromised individuals.[263]

Justice could not, or could only symbolically, be established through the engagement with the past. This is due to the fact that, given the kind and dimension of the crimes committed, *Wiedergutmachung*, 'making good again', in its literal sense was just not possible. In addition, criminal prosecution was narrow; its deployment severely restricted from the start, but it in any case fell well short of what 'was morally required and politically possible.'[264] In particular, the late recognition of many Nazi victims is the reason why most persecuted individuals never received redress. Moreover, the lack of political will to prosecute National Socialists and the insistence on a legal positivist understanding of the *Rückwirkungsverbot* had the effect of Nazi criminals being either insufficiently or worse, not at all brought to justice. On top of many of those compromised being able to continue

[261] The effects of re-education are hotly debated. It often attracted strong opposition from German society. Many historians assess the American cultural-exchange program as successful. Beyond this, democratizing and westernizing effects on adolescents were ascertained. However, these did not primarily stem from targeted programs, but from contact with both American popular culture and consumer culture, and the behavior and way of life of American soldiers. For more, see the published works of Kaspar Maases regarding the 'Americanization' of the youth.

[262] Crucial factors in the turn towards democracy included, among others, the economic miracle and the change of generations in the 1960s, as well as the political and military integration with the West. Cf. Henke, 'Trennung,' pp. 64-66.

[263] Today, the notion prevails that denazification as pursued and initiated by the United States was bound to fail, given the mass loyalty to and strong involvement of society during the Nazi regime on the one hand, and the task of establishing a new stable and consensual democratic order on the other. In such a scenario, only a purge limited to central key positions would have been feasible; and only this could have obtained acceptance from society. Cf. Vollnhals, 'Entnazifizierung,' pp. 55-64.

[264] Translated from German, Woller, Hans. 1991. 'Einleitung.' In: Henke, Klaus-Dietmar & Woller, Hans (Eds). *Politische Säuberung in Europa. Die Abrechnung mit Faschismus und Kollaboration nach dem Zweiten Weltkrieg*, pp.7-21. München: Deutscher Taschenbuch Verlag (referring to the political purges in Europe).

their careers in the FRG, victims naturally found all this a bitter, disappointing and humiliating experience.

Despite all shortcomings, Germany enjoys an international reputation of having successfully dealt with its past: in particular, exposing Nazi atrocities in such a way that any form of whitewashing or denial is now impossible.[265] The FRG has 'taken on the burden of its past,'[266] assumed responsibility for the crimes, dealt with them critically and paid significant compensation. This is often particularly stressed in international comparisons. Achievements and failures, good will and deliberate omission, critical examination and conscious ignorance are all part of the same story.

What is said about compensation holds equally true on the question of coping with the Nazi past in general: 'It is a history of its own dignity: full of trial and error, full of honest efforts to help Nazi victims obtain justice and satisfaction, but also studded with blindness and narrow-mindedness, full of shortcomings that often occurred in spite of efforts to redress.'[267] Yet today's positive international appraisals of Germany's confrontation with its past should not make its deficiencies and mistakes forgettable: given the shortcomings shown, it has scarcely been a glorious chapter in the history of the FRG.

In turn, the question is only rarely asked whether any confrontation with the past in the Soviet zone and the GDR can be regarded as successful. Although the trials and denazification process contributed to eliminating National Socialism in no small measure, and although Nazi victims living in the GDR received significant reparations, these efforts are too obviously discredited by their political instrumentalization and the commissioning of new forms of severe injustice.[268] Profound and critical engagement with the Nazi past did not take place in the GDR, plainly because of a dictatorially prescribed conception of history.[269]

Further, the second process of dealing with the past that of the SED dictatorship following the fall of the Berlin Wall in 1989/90, attracts controversial appraisals. At times, it almost seems to have had an even more polarizing effect. Debates are still often characterized by great emotionality. In this, lasting resentment and disappointment about actual or alleged mistakes and shortcomings find their voice. A popular criticism is that the measures taken have not met all hopes and wishes of victims and opponents of the SED regime. Often, people found that law and justice were not necessarily the same. Although the prosecution of SED injustice was less impeded by a reluctance to punish perpetrators than the prosecution of Nazi injustice, it was nevertheless limited from the beginning, and additionally constrained by the *Rückwirkungsverbot*. Whether politics and legislation should have been activated to remove these obstacles was a subject of heated debate.[270] Disappointment and anger was also generated by the idea of rehabilitation, the settlement of open property questions and reform of the civil service: which partly involved the dismissal of at least some tainted officials.

[265] Cf. Henke, 'Trennung,' p. 71 ff.

[266] Translated from German, Wielenga, 'Erinnerungskulturen,' p. 13.

[267] Translated from German, Frei, Norbert & Brunner, José & Goschler, Constantin. 2009. 'Komplizierte Lernprozesse. Zur Geschichte und Aktualität der Wiedergutmachung.' In: Frei, Norbert & Brunner, José & Goschler, Constantin (Eds) *Die Praxis der Wiedergutmachung. Geschichte, Erfahrung und Wirkung in Deutschland und Israel*, pp. 9-51. Göttingen: Wallstein Verlag. Cf. Wielenga, 'Schatten,' p. 1063.

[268] Weinke, 'Verfolgung,' p. 31 (referring to the verdicts of the SMT).

[269] Wielenga, 'Geschichte,' p. 22.

[270] Proponents stress that the original intention behind the *Rückwirkungsverbot* lay in the protection of individuals from arbitrary actions by the state - but not for state-sponsored crimes and injustice to go unpunished. Others, however, perceive adherence to it as a victory for the free democratic order, based on the primacy of the rule of law over prior injustice. They stress its importance for restoring trust in legal certainty and the rule of law.

For some, the measures went too far; for others, they did not go far enough. For a few people, this led to a loss of confidence in the new system. Yet the measures also helped many victims and opponents of the SED regime to obtain satisfaction and to overcome the injustices they had suffered. All of this points to another ambivalent outcome in this case of transitional justice. However, it is not yet possible to strike a differentiating, critical balance. First, the process of dealing with the GDR past is in no way completed yet; second, there are still not enough scientific studies in order to assess all the measures comprehensively and to identify all causalities. It is, for example, still unclear which disappointments stem from the rehabilitation measures taken, or which could instead be attributed to the process of transformation (including its asymmetry, its consequences for East Germans and the feelings of alienation between the two formerly divided parts of the population). It is still not possible to know how the voices of individuals relate to the opinion of the whole society. A concluding, objective and differentiating assessment is thus reserved for the future.

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