

Introduction

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The examination of legal proceedings related to Nazi Germany's war and the Holocaust has expanded significantly in the past two decades. It was not always so. Though the Trial of the Major War Criminals at Nuremberg in 1945–1946 generated significant scholarly literature, most of it, at least in the trial's immediate aftermath, concerned legal scholars' judgments of the trial's efficacy from a strictly legalistic perspective. Was the four-power trial based on *ex post facto* law and thus problematic for that reason, or did it provide the best possible due process to the defendants under the circumstances?¹ Cold War political wrangling over the subsequent Allied trials in the western German occupation zones as well as the sentences that they pronounced generated a discourse that was far more critical of the trials than laudatory.² Historians, meanwhile, used the records assembled at Nuremberg as an entrée into other captured German records as they wrote initial studies of the Third Reich, these focusing mainly on foreign policy and wartime strategy, though also to some degree on the Final Solution to the Jewish Question.³ But they did not historicize the trial, nor any of subsequent trials, as such. Studies that analyzed the postwar proceedings in and of themselves from a historical perspective developed only three decades after Nuremberg, and they focused mainly on the origins of the initial, groundbreaking trial.⁴

Matters changed in the 1990s for a number of reasons. The first was late- and post-Cold War interest among historians of Germany, and of other nations too, in *Vergangenheitsbewältigung*—the political, social, and intellectual attempt to confront, or to sidestep, the criminal wartime past. The degree to which postwar trials by the Allies, the Soviets, and the Germans themselves

were effective or ineffective in forcing such a confrontation was naturally a part of this kind of study.⁵ A second reason was the reemergence of genocide in the 1990s in former-Yugoslavia and in Rwanda coupled with the decision by the United Nations to try even minor perpetrators based on the broad legal principles used at Nuremberg and in accordance with the UN's 1948 Genocide Convention. These developments not only brought a new interest in the social sciences concerning the question of genocide and other state crimes. They also, together with developments in South America and South Africa, brought interest in transitional justice, most notably the degree to which trials, but also truth commissions, could aid through their narratives in creating the conditions for acknowledgement of state-sponsored criminality and ultimately peace.⁶

But the third reason for expanded scholarly interest in postwar trials was the tremendous expansion of interest in the Holocaust in the late 1980s and 1990s. This interest went in several directions.⁷ Using pretrial interrogation records and trial transcripts themselves, as well as captured German records held formerly by the Soviet Union, historians began to study the perpetrators in an effort to reconstruct the German decision-making process toward mass murder and also the mentality of killing.⁸ Scholarly interest in disciplines other than history, meanwhile, turned to the difficulties of representing the Holocaust in everything from survivor testimony to literature to art and film, partly incorporating recent thinking on trauma and memory, partly revisiting German philosopher Theodor Adorno's famous dictum on the impossibility of balancing the aesthetics of art on the one hand, and the horror of Auschwitz on the other.⁹ In the political arena, the issue of reparations re-emerged in the 1990s, partly in the form of renewed searches for looted assets and partly in the form of class-action lawsuits against international firms on behalf of still-living victims.¹⁰ The general interest in everything from assets to the escape and reintegration of unpunished Nazi criminals even led to the declassification of millions of pages of intelligence and diplomatic records in the United States, and efforts in that direction in Germany.¹¹

It should not be surprising in this broad context that historians also began to take up the theme of Holocaust trials and other postwar legal proceedings. They reexamined iconic trials such as the Trial of the Major War Criminals and the 1961 trial of Adolf Eichmann in Jerusalem, this time regarding the ways in which trials augmented our historical understanding of Nazi atrocities as well as the memories of the victims. Additional source materials from Nuremberg were published, ranging from pretrial interrogations of major Nazi perpetrators to psychiatric profiles of the same types of defendants.¹² Contemporary correspondence and memoirs of prosecu-

tors also appeared in published form.¹³ But scholars also began examining for the first time the lesser-known trials. These included the “subsequent” Nuremberg trials under the American Military Tribunal on which very little had been written,¹⁴ and also the Dachau trials held under the auspices of US military commissions, which were virtually unstudied.¹⁵ They also included the numerous trial programs carried out by the other Allied states.¹⁶ Scholars also examined the administration of justice in the Federal Republic of Germany before and after the watershed 1958 formation of the *Zentrale Stelle der Landesjustizverwaltung* in Ludwigsburg, which assembled evidence against Nazi perpetrators, and also in the German Democratic Republic, which used trials primarily as a propaganda tool against West Germany.¹⁷ Austria, which had its own unique issues with the Nazi past following revelations concerning Kurt Waldheim in 1985, has also come under scrutiny by historians there.¹⁸ The postwar proceedings in the Soviet Union and Eastern Europe have also been partially analyzed.¹⁹ Finally, there have been brief treatments of relatively obscure individual cases, often to make a larger point concerning the politics of justice in specific countries at specific times.²⁰ Even postwar Jewish honor courts have been examined for the first time.²¹ Scholars are not close to examining each and every postwar trial, but their progress in the past fifteen years in considering the most important ones has been remarkable.

In pausing, we might ask what the new scholarship on trials, particularly from different academic disciplines, has achieved. Surely from the legal perspective, the new scholarship has provided a fuller, more contextualized picture of Nuremberg itself and the development of international criminal law since 1945. At the same time, scholarship on national trials in Germany, France, the Soviet Union, and elsewhere has told us more about ways in which nations have confronted the past, or obscured it further, through the creation of signature legal proceedings and their choice of subjects and specific defendants. The scholarship has also elucidated the effect of domestic and international politics on war crimes trials, set in particular against the corrosive backdrop of the Cold War.²² The thinking on these issues is surely not complete. But for the most part our conceptions of the broader legal and political problems will probably not change dramatically with more research into those classes of trials on which we already have significant scholarship. The subsequent Nuremberg trials, for instance, were all based on Control Council Law Number 10 and all faced opposition in the US occupation zone in Germany. West German trials were all, until very recently, built on a narrow reading of the definition of murder in the German Penal Code, and the West German public in the 1960s was always ambivalent concerning trials of Nazi perpetrators in German courts. The circumstances of individual

trials indeed remain interesting, of course, but our understanding of these particular issues is not likely to be altered much.

Yet the wider meaning of Holocaust justice moves beyond the effort to deliver justice itself, even amid contentious politics. It also carries within it a host of questions concerning individual testimony, national and international discourse, gender, symbolism, and other themes of broader interest to Holocaust scholars across disciplines. We may thus consider whether current approaches to Holocaust justice are in need of expansion. Currently scholars, historians in particular, are fond, for instance, of a one-trial approach that establishes a narrative of a chosen case in order to elaborate certain broader themes, ranging from justice to memory to the ways in which the trial succeeds or fails in providing true justice. But might broader, perhaps comparative approaches be potentially fruitful as well? Are there types of sources that we have not fully mined—including surrounding diplomatic and intelligence sources, pre-trial interrogations and affidavits, and literary and film representations—when considering the problem of the meaning of Holocaust justice? Are more obscure trials worth examining? How might we approach the issue of guilt and victimization in more than historical and legal terms? Do we take pre-trial and courtroom testimony for granted, ignoring the heavy weight of the trial itself? And what of the many cases, including very recent ones, where justice was delayed or never delivered at all?

The most expansive issue to consider may concern the almost aesthetic theme of Holocaust representation, and specifically the degree to which the enormity, the horror, and the uniqueness of the Holocaust has been adequately represented within the confines of the courtroom and in other types of legal proceedings.²³ In her famous, flawed, yet enduring consideration of the trial of Adolf Eichmann in Jerusalem in 1961, Hannah Arendt rejected the Israeli prosecution's choreography of the proceedings, which aimed at infusing meaning by using Eichmann in such a way as to represent the Holocaust's totality and its horror through a multilayered narrative that spanned the European continent and beyond. In particular, Arendt rejected the prosecution's use of over a hundred witnesses, most of whom gave eyewitness accounts of the horrors, but few of whom had any direct connection with Eichmann himself. The proper purpose of any trial, Arendt famously insisted in her epilogue, "is to render justice, and nothing else; even the noblest of ulterior purposes ... can only detract from the law's main business." For Arendt, the Jerusalem proceedings became a "show trial" that detracted from their initial potential and ultimately their legacy.²⁴

At the time, most legal scholars who considered the matter agreed with Arendt, at least on this particular principle if not with her assessment of

Eichmann himself. The reemergence of state-sponsored mass violence, however, helped to change minds decades later. We have moved toward some consensus that the narrative—or better said, the narratives—of an atrocity trial might be its most important aspect, surely more important than the necessarily insufficient punishment that the defendant receives. Legal scholar Mark Osiel, building on the then-unorthodox thinking of 1960s political theorist Judith Shklar, argues that notwithstanding the lack of agreement concerning trial procedure, the political trial that serves liberal ends in the wake of mass atrocity is desirable and even essential.²⁵ The courtroom properly becomes a “theater of ideas” where the broad questions of collective memory and national identity are engaged through sometimes competing narratives; this pedagogical impact means that, for Osiel, trials “should be unabashedly designed as monumental spectacles.”²⁶

This is not to say that the process has ever been easy, particularly with regard to the Holocaust itself. On the one hand, the law must be observed; justice must be served to the defendants. But the proceeding also must do justice to the historical events. This conundrum necessitates bending the boundaries of both law and history in order to produce a narrative of atrocity that reaches legal consensus. In his book *The Memory of Judgment* (2001), Lawrence Douglas wrestles with this problem and argues that the glass is more than half full. The Holocaust helped to create the legitimately “didactic trial” that not only weighs evidence and delivers a considered verdict, but which also carries a historical narrative for posterity. Meanwhile a “jurisprudence of atrocity” emerged. On the other hand, Douglas shows that the attempts to represent an unprecedented crime within the constraints of law and procedure is not without problems. Nuremberg, for instance, carried a new charge—“crimes against humanity”—which referred to the mistreatment and murder of civilians even in peacetime and even by their own government. But the tribunal’s restrictive reading of this legal innovation necessitated a “tortured history,” whereby the Holocaust, though discussed from different angles, became an ancillary part of the main and more sure-footed criminal charge, which focused on Germany’s aggressive war.²⁷ Representation, though legitimately attempted, is never perfect.

This problem is endemic to all Holocaust proceedings, though the ways that it is confronted depends on the place and the time. Recent scholarship on the 1963–1965 Frankfurt Auschwitz Trial demonstrates how the determination of West German prosecutors to try Nazi criminals ran up against the Federal Republic of Germany’s constitutional rejection of “crimes against humanity” as *ex post facto* law. Prosecutors had to charge Nazi criminals with the comparatively pedestrian crime of murder, which made for its own refracted history. The need to demonstrate a direct physical or administra-

tive connection between the defendant and specific crimes together with the need to prove an internal “lust for killing” on the part of the defendant for a murder charge to stick, meant that the most monstrous perpetrators were convicted of murder while the more ordinary criminals, who could plausibly deny depravity, were convicted of being accomplices at most.

In France, the signature trial of Klaus Barbie in 1987 had very different problems of representation, these concerning the Holocaust’s uniqueness, a point of contention among scholars today.²⁸ The determination of former *résistants* to be included as victims under the rubric of “crimes against humanity” meant that the French courts’ definition of these types of crimes was recalibrated in such a way as to include Barbie’s torture of resisters under the same legal designation as his deportation of Jewish children, who were murdered for being Jewish children. Worse, Barbie’s lead attorney Jacques Vergès deployed a postmodernist defense that denied the Holocaust’s singular elements. The crimes of the Western world, for instance France’s crimes during the war in Algeria (1954–1962) and the killing of Palestinian Arabs by Jewish irregulars at Deir Yassin (1948) were equal in the annals of atrocity, and in a sense even worse owing to what Vergès insisted was Western “denial.”²⁹ As another Barbie attorney, the Algerian Nabil Bouaïta, argued to the court, “If you elevate the history of one people, automatically you commit an injustice.”³⁰

Nor are criminal proceedings the only ones with such implications. Restitution cases in fact also bear issues of representation far beyond the issue of monetary compensation. Michael R. Marrus has expressed skepticism in this regard concerning 1990s restitution cases, wherein US class action lawsuits mainly reflected US lawyers’ propensity to pursue the low hanging fruit of vulnerable targets, namely European companies that do business in the United States and can thus be sued. Latter day restitution moreover, plays out in the newspapers, where inaccurate and even sensational allegations can be made, and they are settled out of court with little public narrative one way or the other.³¹ On the other hand, the close reading of certain cases can be revealing regardless of their flaws. The struggles of heirs to recover family property, for instance, creates a close narrative for how the property was plundered in the first place and the successes and failures of restitution efforts with postwar authorities whether in occupied Germany, Western Europe, or the emerging communist bloc.

In the meantime, a most critical issue concerning Holocaust representation in criminal or restitution cases may be that of testimony. Holocaust testimony in the broad sense—in the form of diaries, memoirs, videotaped statements, fiction, and film—has been amply discussed both from the standpoints of its collection after the war, the psychological impact of trauma

on testimony, and the factual efficacy of testimony as opposed to official documents. This goes for the testimonies of perpetrators and victims alike. Gitta Sereny showed in her lengthy interviews with Treblinka Kommandant Franz Stangl and Hitler's munitions minister Albert Speer that both men, even long after their verdicts were read, constructed layered narratives mitigating their guilt so that they could live with themselves.³² But testimonies of perpetrators at trial are interesting too, coming as they do in full public view and under the pressure of cross-examination and the threat of punishment. Arendt legendarily evaluated Eichmann's testimony in a way that portrayed him as the reluctant cog that he argued himself to be, thus mistaking his essence.³³ Yet Eichmann's self-portrayal was interesting nonetheless, not least because his particular take on himself was less universal than we might think. In his trial before the American Military Tribunal in 1947 and 1948, Otto Ohlendorf, the first commander of Einsatzgruppe D, adopted a narrative whereby the murder of Jews in the USSR was an unimpeachable Führer order and whereby he had argued with Reinhard Heydrich on first receiving his assignment in the East. But he also characterized the mass murder of the Jews as a necessary security measure. "It is known from European history," he said under cross-examination, "that the Jews actually during all wars carried out espionage service on both sides." When questioned about murdering Jewish children, he added "the children were people who would grow up and ... would constitute a danger no smaller than that of the parents." And, referring to the Americans' difficulties with the Soviets in late 1947, he sought common ground. "[We] ... as the ones who were closer to Bolshevism than you in the States, much sooner came to realize [the danger] than you; and with this I agree ... with your statesmen in America at the moment."³⁴ Ohlendorf thus blamed superior orders and sought to immunize himself against carrying them out, but also embraced the orders on the grounds of military security while representing the preemptive killing of children as part of a community of interest shared with his prosecutors. It was a noteworthy performance. Yet for the most part we have studied neither pre-trial interrogations nor the trial testimonies of perpetrators in this way as explanatory statements that aimed at self-representation.³⁵

Jewish Holocaust testimony in traditional forms carries its own methodological challenges depending on, among other things, when and how the testimony was given.³⁶ But, as is the case with perpetrators, we have not thought about Jewish testimony within the courtroom as much as we might. Facing the accused while feeling the weight of speaking for millions, all within a charged political atmosphere that includes journalists and possibly television cameras, all make for a different kind of burden. Thus the Vilna poet and resister Avrom Sutzkever felt what he called a "crushing respon-

sibility” when he testified at Nuremberg as part of the Soviet case against the major war criminals. His testimony, he felt, was a unique instance; he did not know that there would be a host of trials afterwards. The presence in the dock of Alfred Rosenberg, the former minister for the eastern territories, added to the moment.³⁷ Sutzkever’s opening, in which he stood silently for some forty-five seconds, carries a poetic context tied to his sense of the singular moment and his understanding that Jewish testimony was hardly privileged at Nuremberg.³⁸ The Eichmann trial, Arendt’s criticisms notwithstanding, legitimized Jewish courtroom testimony. Yet this did not make it easy. Pinchas Freudiger, a former Orthodox member of Budapest’s Jewish Council, faced accusations of collaboration from the gallery; Joel Brand still felt a heavy burden of guilt for the failure to realize Eichmann’s blood-for-trucks ruse with the Allies in 1944; Israeli novelist Yehiel Dinur (aka Ka-Tzednik) collapsed on the stand as he faced apparitions from “the Planet Auschwitz” and perhaps, as he also bore the weight of the Israeli questions about resistance.³⁹ These, of course, are well-known testimonies. The larger point is that many others await analysis within this context.

The present volume comprises essays by diverse scholars from several disciplines ranging from law to history to religion to comparative literature to art history. All have an interest in Holocaust proceedings, and all have pressed past the chronological sequence of individual trials in order to examine postwar justice from different angles and perspectives, and in one way or another, all focus on the broader issue of Holocaust representation through the theme of justice. And while some have revisited well-studied proceedings such as the Eichmann trial or the fate of Klaus Barbie in an effort to offer new angles of consideration, others have looked at understudied or even very recent proceedings and have divined new ways to think about postwar justice.

The volume’s first section concerns innovative approaches to the problem of historic guilt. Eric Kligerman, a scholar of comparative literature, reconsiders Hannah Arendt’s *Eichmann in Jerusalem* not so much as a historical work, but as a work of literature in which Arendt’s view of Eichmann reflects the effect on Arendt’s reading of Franz Kafka. Though Arendt was surely incorrect concerning the criminal motivations of Eichmann personally, and thus the defining nature of his guilt, it is also true that her notion of “the banality of evil,” has been remarkably durable. The assessment of Eichmann as a Kafkaesque character provides not only a new way to read Arendt’s reading of Eichmann’s guilt; it also helps to explain why her image of Eichmann ultimately carried such power. Katherina von Kellenbach is a scholar of religious studies who has considered historic guilt from the intimate standpoint of interfamily relations and from the standpoint of broader

rituals of purification. Her assessment of West German defendants in the 1960s, their limited reading of their own guilt, their definition of themselves as scapegoats for a broadly guilty nation, and the degree to which their trials could or could not have led to a more general purification, all provides a new reading on West German justice in the 1960s.

The second section of this volume concerns the narrative of testimony both from the perspective of victims and from that of major perpetrators. Historian Anna Hájková deconstructs Jewish testimony about the Terezín ghetto. She demonstrates first that trial testimony on ghettos as opposed to concentration camps is an understudied area. But she also examines how witnesses were chosen for different types of trials by Jewish and communist organs, how they testified differently at the trials of German perpetrators and those of Jewish “collaborators,” how they defined their Jewishness depending on the circumstances of the trial, how certain language referencing resistance helped in having their stories accepted, how testimony changed as did political circumstances in Eastern Europe between the 1940s and 1970s, and how gendered language influenced narrative. Kerstin von Lingen, another historian, examines the testimony and the private conversations of major perpetrators, in particular Karl Wolff and Klaus Barbie. Using trial records and also closely guarded personal records, she further examines the issue of perpetrator narrative within the context of new scholarship on the seemingly oxymoronic principle of Nazi ethics. Here, the testimony emphasizes certain types of “honorable” killing, dissociating perpetrators from the murder of civilians while reassigning responsibility to superiors, all while deploying the time-bound ethical principles of honor and duty.

The volume’s third section concerns judicial narratives in the controversial field of Ukrainian perpetrators. Historian Alexander Prusin’s chapter concerns a practically unknown set of proceedings, the “second wave” of Soviet trials in the 1960s, which concentrated on Trawniki, the specially trained Ukrainian SS (*Schutzstaffel*) guards who aided in extermination measures. Prusin places the proceedings partly in a propaganda context. As West Germany debated whether to extend the statute of limitations on murders committed under the Nazis, Moscow aimed to show that Nazi crimes would never be forgiven in the USSR. At the same time, Nikita Khrushchev sought to discredit the arbitrary judicial standards of the Stalin years. The result was a series of investigations and trials that one would not expect, not only in terms of careful collection of evidence, but in terms of emphasizing, even in the midst of the Soviet anti-Zionist/antisemitic campaign of the 1960s, the mass murder of Jews, in court if not in the newspapers. Per Anders Rudling examines the case of Mykola Lebed, the Ukrainian nationalist leader who for a time collaborated with the Nazis and whose guerilla

organizations launched savage killings of Jews and Poles. After the war, Lebed forged a relationship with the CIA that lasted the entire length of the Cold War. Lebed's exposure by the *Village Voice* in the 1980s triggered fiery reactions in the Ukrainian émigré community concerning narratives of Ukrainian leaders' wartime pasts. Lawrence Douglas, a legal scholar, examines the saga of Ivan Demjanjuk, the Ukrainian Sobibór guard whose judicial saga in the United States, Israel, and Germany spanned more than four decades. Here Douglas looks at Demjanjuk's final chapter, his 2009 murder trial in Munich. In what turned out to be a landmark case rather than simply a judicial coda, the German court reinterpreted the murder statute to create more accurate judicial narratives of the extermination camps. Douglas thus shows a correction of previous German court narratives in Holocaust-related cases.

The fourth section includes new considerations on restitution and reparations by historian Regula Ludi, legal scholar Michael J. Bazyler, and art historian Sophie Lillie. Ludi provides an updated and essential theoretical basis for our understanding of reparations and restitution. It was not, she shows, an ancillary phenomenon based simply on monetary amounts of compensation. Its evolution, filtered through postwar European antifascist politics and scientific development in the field of psychological trauma, is at the very center of creating survivor narratives that brought differences between the Holocaust and other wartime brutalities such as political persecution into sharper relief. Bazyler provides a survey of the legal efforts at restitution since the 1990s, which he updates to include present-day efforts. Interestingly, he also points to narrative symbols in the litigation, especially as regards recent litigation about German, French, and Hungarian railroads. Though Bazyler concedes that civil litigation has distorted the narrative and even the public understanding of the Holocaust itself, he argues that this is a short-term problem; civil litigation, he says, has reintroduced law and history to one another, and has led to, among other things, new research on the business angles of genocide. Lillie examines in detail a very recent case of art restitution—that of Gustav Klimt's *Beethoven Frieze*. Here the Austrian state rejected the claims of the frieze's rightful owners, the heirs of the Jewish businessman Erich Lederer. The focus on a single masterwork's odyssey from its owners to the Nazi state to the Austrian state is interesting in its own right. It recreates the world of major private art collections in *fin-de-siècle* Vienna, Klimt's unorthodox place in it, the role of Jewish industrial families, and the rank opportunism of Vienna's museums in acquiring plundered works. But the Austrian decision not to restore the painting also demonstrates the shortcomings of restitution laws and the limits of state cooperation regardless of legitimate claims.

The final section deals with overall narratives concerning trials and trial programs themselves, and it circles back to interpretations of the Nuremberg and Dachau trials from the immediate postwar period to the present day. It is well known that the US trials had few German supporters. But by tracing the evolution of the hostile public relations campaign by the Catholic and Evangelical Churches in occupied Germany—a campaign that reached to Washington while questioning the motives of US prosecutors, especially the German-Jewish émigré Robert Kempner—JonDavid K. Wyneken examines how outside public pressure and a counter narrative of the trials was created. It is an instructive lesson for contemporary genocide trials. Tomaz Jardim, meanwhile, challenges present-day narratives about judicial proceedings after World War II. Nuremberg, he says, was actually the exception both in terms of the number of defendants and in terms of its commitment to due process. The military commission trials at Dachau, he says, were more the rule with lower level defendants and far more lax standards of evidence and procedure. For Jardim, the irony is that while Nuremberg fed into a tradition that led to the UN's International Criminal Court, the Dachau trials were part of a tradition that led to Guantanamo Bay.

As this introduction shows, this is not the first book of essays concerning the judicial reckoning with Nazism or with the adjudication of the Holocaust. There has been an effort, however, to collect viewpoints from a number of disciplinary perspectives and to suggest avenues that might augment future research approaches. We hope that our colleagues find the collection to be of interest and that it might help in future writing on the question of retribution.

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NOTES

1. Contrary legal opinions in Norman E. Tutorow, ed., *War Crimes, War Criminals, and War Crimes Trials: An Annotated Bibliography and Source Book* (New York, 1986).
2. Discussed in Frank Buscher, *The U.S. War Crimes Trial Program in Germany, 1946–1955* (Westport, CT, 1989); Tom Bower, *A Pledge Betrayed: America and Britain and*

- the Denazification of Post-War Germany* (New York, 1982); Ulrich Brochhagen, *Nach Nürnberg: Vergangenheitsbewältigung und Westintegration in der Ära Adenauer* (Hamburg, 1994); Thomas Alan Schwartz, "John McCloy and the Landsberg Cases," in *American Policy and the Reconstruction of West Germany, 1945–1955*, ed. Jeffrey M. Diefendorf, Axel Frohn, and Hermann-Josef Rupieper (New York, 1993), 433–54.
3. On the use of captured records including those used at Nuremberg, see Robert Wolfe, ed., *Captured German and Related Records: A National Archives Conference: Papers and Proceedings of the Conference on Captured German and Related Records, November 12–13, 1968, The National Archives Building, Washington, D.C.* (Athens, OH, 1974). The initial two waves of scholarship on the Third Reich is lengthy, but see for example John W. Wheeler-Bennett, *The Nemesis of Power: The German Army in Politics, 1918–1945* (London, 1953); Gerhard L. Weinberg, *The Foreign Policy of Hitler's Germany*, 2 vols. (Chicago, 1970–1980); Raul Hilberg, *The Destruction of the European Jews* (New York, 1961), rev. ed., 3 vols., (New York, 1985).
 4. Bradley F. Smith, *Reaching Judgment at Nuremberg* (New York, 1977); Bradley F. Smith, *The Road to Nuremberg* (New York, 1981); Bradley F. Smith, ed., *The American Road to Nuremberg: The Documentary Record, 1944–1945* (Stanford, CA, 1982).
 5. See Charles Maier, *The Unmasterable Past: History, Holocaust, and German National Identity* (Cambridge, MA, 1988); Jeffrey Herf, *Divided Memory: The Nazi Past in the Two Germanys* (Cambridge, MA, 1996); Norbert Frei, *Vergangenheitspolitik: Die Anfänge der Bundesrepublik und die NS-Vergangenheit* (Munich, 1996). See also Henry Rousso, *Le syndrome de Vichy, de 1944 à nos jours* (Paris, 1987).
 6. For early literature see, for example, Michael P. Scharf, *Balkan Justice: The Story Behind the First International War Crimes Trial Since Nuremberg* (Durham, NC, 1997); Gary Jonathan Bass, *Stay the Hand of Vengeance: The Politics of War Crimes Tribunals* (Princeton, NJ, 2000); Mark Osiel, *Mass Atrocity, Collective Memory, and the Law* (New Brunswick, NJ, 1997). The literature on transitional justice is massive, but see, for example, William Schabas, *Unimaginable Atrocities: Justice, Politics, and Rights at the War Crimes Tribunals* (New York, 2014); Hugo van der Merwe, Victoria Baxter, and Audrey R. Chapman, eds., *Assessing the Impact of Transitional Justice: Challenges for Empirical Research* (Washington, DC, 2009); *Journal of Genocide Research* 9, no. 2 (2007) [Special Issue: *Genocide and International Law*]. In general, on genocide studies, see Donald Bloxham and A. Dirk Moses, eds., *The Oxford Handbook of Genocide Studies* (New York, 2013).
 7. The library of books produced on the Holocaust since the end of the Cold War is too lengthy to mention but for contemporary assessments see Michael R. Marrus, *The Holocaust in History* (Lebanon, NH, 1987) and the essays in Michael Berenbaum and Abraham J. Peck, eds., *The Holocaust and History: The Known, the Unknown, the Disputed, and the Reexamined* (Bloomington, IN, 1998). For more recent historiography, see Dan Stone, *Histories of the Holocaust* (New York, 2010).
 8. For the use of different types of interrogation and trial records see, for example, Richard Breitman, *The Architect of Genocide: Himmler and the Final Solution* (New York, 1991); Christopher Browning, *Ordinary Men: Reserve Police Battalion 101 and the Final Solution in Poland* (New York, 1992). On the intersection of war crimes

- investigations and historical research, see Erich Haberer, "History and Justice: Paradigms of the Prosecution of Nazi Crimes," *Holocaust and Genocide Studies* 19, no. 3 (2005): 487–519.
9. Thus also taking up earlier work by Lawrence Langer, *The Holocaust and the Literary Imagination* (New Haven, CT, 1975). See especially Saul Friedländer, ed., *Probing the Limits of Representation: Nazism and the "Final Solution"* (Cambridge, MA, 1992). Also Lawrence Langer, ed., *Art from the Ashes: A Holocaust Anthology* (New York, 1995); Neil Levi and Michael Rothberg, eds., *The Holocaust: Theoretical Readings* (New Brunswick, NJ, 2003); and the newer readings in Peter Hayes and John K. Roth, eds., *The Oxford Handbook of Holocaust Studies* (New York, 2010).
 10. *The Eizenstat Report and Related Issues Concerning United States and Allied Efforts to Restore Gold and Other Assets Looted by Nazis during World War II: Hearing Before the Committee on Banking and Financial Services, House of Representatives, One Hundred Fifth Congress, First Session, June 25, 1997* (Washington, DC, 1997); Greg Bradsher, ed., *Holocaust-Era Assets: A Finding Aid to Records at the National Archives at College Park, Maryland* (Washington, DC, 1999). For a summary of the lawsuits, see Michael R. Marrus, *Some Measure of Justice: The Holocaust Era Restitution Campaign of the 1990s* (Madison, WI, 2009).
 11. The initial study in the United States is Richard Breitman, Norman J.W. Goda, Timothy Naftali, Robert Wolfe, *US Intelligence and the Nazis* (New York, 2005); Richard Breitman and Norman J.W. Goda, *Hitler's Shadow: Nazi War Criminals, US Intelligence, and the Cold War* (Washington, DC, 2012). For Germany see Eckart Conze, Norbert Frei, Peter Hayes, Moshe Zimmermann, *Das Amt und die Vergangenheit: Deutsche Diplomaten im Dritten Reich und in der Bundesrepublik* (Munich, 2010). Studies based on declassified West German intelligence records include Martin Cüppers, *Walther Rauff—In deutschen Diensten: Vom Nazi Verbrecher zum BND-Spion* (Darmstadt, 2013); Peter Hammerschmidt, *Deckname Adler: Klaus Barbie und die westlichen Geheimdienste* (Frankfurt am Main, 2014). See also Daniel Stahl, *Nazi-Jagd: Südamerikas Diktaturen und die Ahndung von NS-Verbrechen* (Göttingen, 2013); Gerald Steinacher, *Nazis on the Run: How Hitler's Henchmen Fled Justice* (New York, 2011).
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