

INTRODUCTION

NUREMBERG'S NARRATIVES

REVISING THE LEGACY OF THE "SUBSEQUENT TRIALS"

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Less than a month after the final verdict of the Nuernberg Military Tribunals (NMT)¹ had been handed down in the so-called High Command Case, the departing chief prosecutor, Brigadier General Telford Taylor, wound up the four-year-long venture in a statement to the International News Service, articulating his expectations as to the legacy of the trial series. To those who thought that the war crimes proceedings, which by that time had come under scrutiny and criticism on both sides of the Atlantic, would fade into oblivion Taylor issued a stern warning: "I venture to predict that as time goes on we will hear more about Nuremberg rather than less, and that in a very real sense the conclusion of the trials marks the beginning, and not the end, of Nuremberg as a force of politics, law, and morals."² Although not everything did go as planned and most of the later Nuremberg trials indeed receded into prolonged obscurity, Taylor's prophecy was not wholly mistaken, and the trials would indeed show a remarkable resilience, if more indirect and implicit than had been intended, in shaping politics, law, and historiography (rather than morals). Tracing these—frequently twisted—roads of the NMT's influence and impact lies at the heart of the present volume.

Taylor's statement attested to the great ambitions entertained by the American prosecutors in preparing the NMT. The so-called Subse-

quent Trials went beyond their famous, in a malign way more glamorous predecessor, the International Military Tribunal (IMT) with its cast of high-ranking Nazis. While the IMT's ambition had been to punish the surviving leadership of the Third Reich and put on record Nazi criminality, the NMT, or rather their instigators, aspired to nothing less than indicting the entire Nazi state and analyzing its workings in an authoritative way. Structures rather than individuals, and institutional representatives rather than easily identifiable villains, were to be publicly prosecuted, literally for everyone to see. For that reason, the courtroom became the site of (pre)scholarly dispute over the nature of the German dictatorship, its power structures and dynamics, and most important of all, the highly charged issue of who was answerable for the regime's crimes.

On the German side, the trials presented a second major stage (after the IMT which had put the blame almost exclusively on the top level of the Nazi leadership) in the process of coming to terms with the legacy of guilt and the need for atonement. Not surprisingly, the defendants rejected entirely the American reading of the Third Reich, pleading "not guilty" both for themselves and for German society.³ Since the different explanations of the prosecution, the judges, the German lawyers, and the defendants often proved to be mutually exclusive, the Nuremberg trials rapidly turned from an effort at judicial reckoning to a forum for protracted negotiations over history which affected political as well as academic life in postwar Germany. A whole set of narratives of the all too recent history emerged from the NMT trials and made their way into historical textbooks, speeches of commemoration, and the phrasing of restitution acts. Conversely, other narratives such as victims' accounts remained conspicuously subdued or absent. As the contributions in the present volume argue, many of these representations and images, interpretations and legal legacies had their genesis in the NMT rather than the IMT. Patterns and paradigms which would determine historical research, policies of remembrance, and the evolution of international criminal law emanated from the "subsequent proceedings" and resonate until the present day.

That these narratives have by and large escaped the attention of historical research so far is the result of two key shortcomings of the existing, in fact abundant, studies dealing with Nuremberg: firstly, there has been too strong and exclusive a focus on the IMT at the cost of the NMT. Without denying its merits, the IMT-centered approach has led to a view of the Nuremberg stage which has preferred the spectacular over the profound, the big names and the drama at the surface over the intricate patterns and deep structures of analysis, narration, and interpretation.⁴ Secondly, the relative neglect of the NMT⁵ attests to a perspective on Nuremberg which conceives of the proceedings either as an epilogue to the Third Reich or as the prologue of its three successor states (and, indeed, often solely of the Federal Republic).⁶ Meanwhile,

little effort has been made so far to read the trials as trials, i.e. to take seriously both the epistemological premises of judicial proceedings and the dialectical tension of the historical-political trial.

From this perspective, the trials at Nuremberg (and Tokyo) stand out as the first major manifestations of what has by now come to be known as “transitional justice,” embracing the three types identified by Timothy Garton Ash as judicial trials, purges, and history lessons.⁷ The NMT as a concerted—if, from the German point of view, imposed—effort to come to terms with the past pursued all three objectives by trying to bring perpetrators to justice, to eliminate them from key positions in German society, be they in the public service or in business, and to establish a comprehensive, authoritative historical narrative of twentieth-century Germany and Nazi rule.

Transitional Justice, Trial Narratives and Historiography

Despite its recent career in academic debate, transitional justice is hardly a new concept. In fact, in his famous analysis of the political trial, first published in 1961, the American-German jurist Otto Kirchheimer paved the way towards such an understanding of justice at the intersection of history and law which to him accounted for the “peculiar dialectics” of the Allied proceedings at Nuremberg. These, he argued, had been the most important case of what he dubbed “successor justice”—a specific variant of the use of legal procedure for political ends which Kirchheimer conceptualized non-normatively and beyond the abuse of Stalinist and Nazi show trials⁸—and had thus been characterized by their “both retrospective and prospective” intentions.⁹ As a former analyst of the United States Office of Strategic Services (OSS) and a close collaborator of those OSS colleagues who went on to Nuremberg, Kirchheimer’s analysis not only built on first-hand knowledge, but also gave an insight into the multiple intentions of those who had done the ground work for the trial program. As a former German émigré, a well-reputed legal theoretician, and an OSS employee, Kirchheimer could lay some claim to representativeness for the members of the Nuremberg think-tank. And he was no less characteristic in his endeavor to fit the Nuremberg experience into a larger intellectual undertaking, in his case an analysis of the power and the obligations of law in the age of total war. In fact, his own academic path—first fighting Nazi Germany through analysis, and then evaluating Nuremberg’s contribution to the world order of the twentieth century’s latter half—was mirrored in the retro- and prospective pattern Kirchheimer found in the Nuremberg trials.

What was more, Kirchheimer tackled an issue that has been on the minds of many historians (and some lawyers) over the past decades, although the debate is nearly as old as the two disciplines: how close

family bonds between historiography and jurisprudence are, which epistemological premises they share, and how they relate to the larger categories of “truth” and “justice.” These do not need to be discussed here in detail. Suffice it to say that much of the criticism brought against the Nuremberg trials is rooted either in misunderstandings or in the lack of analytical rigor, or both, when it comes to differentiating between the diverse levels on which the war crimes trials were staged.¹⁰ Historians have frequently criticized Nuremberg for failing to account for historical complexity and bring about adequate justice, while jurists are wary of the historical agenda of the trials and the historians’ tendency not to appreciate the trials as legal institutions governed by established procedures and operating their own logic.¹¹ The present volume avoids both dead ends. Neither does it conceive of the law in general and the NMT in particular as a closed system only comprehensible if placed in the history of legal dogma, nor does it judge the trials by standards which ignore the peculiarity of legal thought and, more importantly, legal practice.

Instead, the contributions to this volume concentrate on another dimension of that double tenet of transitional justice as depicted by Kirchheimer. Its underlying contention that the successor trial as a specific legal institution shares its essentially diachronic perspective with historical research is one easily identifiable issue at stake. Another is the trial’s quality as a tool to enquire into political issues in the broadest sense, i.e. a social performance which raises questions of causality, responsibility, and legitimacy—this is the didactic quality of all criminal trials which Lawrence Douglas has emphasized.¹² And the trial also bears political significance in its own right and constitutes a subject of historical study itself.¹³ A third common denominator of the trial and historical analysis will be found in the narrative as the key means of structuring analysis. Both the legal trial and the historical study are reconstructions of past events and therefore essentially interpretative, leaving a residual degree of uncertainty which is reflected in historiographical *Quellenkritik* (source criticism), on the one hand, and in the legal figure of doubt, prohibiting conviction under the Rule of Law, on the other. Clearly, both undertakings also differ, mostly in their consequences. Whereas the trial is “a practical enterprise,” historical investigation is essentially (though not exclusively) academic.¹⁴ While historiography allows for ambiguity, the judgment, in the end, will usually have to side with either of the two narratives presented.¹⁵

Without obscuring these differences, it is the common denominators that the present volume sets out to investigate, with the narrative as a crucial junction. As Robert P. Burns has demonstrated for the trial, narratives help to organize vast and complex information, lending coherence and consistency to analysis. The courtroom dynamics are marked by a dialectical sequence of construction and deconstruction of narratives which is undertaken in turns by prosecution and

defense—in particular in the adversarial pattern of Anglo-Saxon law.¹⁶ Thus, the trial resembles historical debate, and both forums of discussion have proven to be mutually susceptible to their respective insights. In particular, practitioners of contemporary history have made ample use of legally generated sources—interrogations, protocols of proceedings, accumulated evidence, indictments, and judgments—while lawyers have, in turn, resorted to historiographical expertise in order to interpret evidence, or as a substitute where other proof has been unavailable. There is hardly any more compelling case for this intense, often fruitful cooperation than the legal and historical investigation of the literally immense crimes of National Socialist Germany.¹⁷

Early Analyses of the Third Reich and Nuremberg's Epistemic Community

In fact, the very scope of Nazi criminality and the difficulties with which the Allied—especially the distant American—prosecutors met when enquiring into the workings of the Third Reich, made them look out for structuring devices early on, and such analyses and interpretations were indeed readily available. Excavating Nazi Germany's diverse layers of power, influence, and responsibility, the task of exposing the scale of criminal deeds, and analyzing the dynamics of destruction was helped a good deal by interdisciplinary assistance provided by experts such as Otto Kirchheimer. The German lawyer was one of many émigrés who, in addition to American academics, entered the Allied services as government advisors, military and intelligence officers and who brought along a range of theoretical and methodological tools, or abstract knowledge to be turned into useful information. Jurists and philosophers, historians and economists conferred in Allied offices such as the OSS and the Foreign Economic Administration (FEA), in the Departments of War and Justice, within the Allied occupation authorities such as the Office of Military Government, US Element (OMGUS), and at Nuremberg where they formed a temporary, often pragmatic rather than principled, yet effective epistemic community.¹⁸ Despite considerable differences in terms of their academic training and their respective ideological creeds, these people—predominantly but not exclusively men—shared a set of common objectives which were best summarized in the famous 'four Ds' of the Potsdam Agreement in August 1945: the policies of democratization, denazification, demilitarization, and decartelization were not only the lines along which Germany would have to be rebuilt, these were also the categories in which much of Nazi criminality was sorted.¹⁹

As the following years of Allied occupation would show, there was less agreement on what precisely these objectives meant in practical terms between the four victorious powers as well as in their respective offices. However, in what Jeffrey Herf has called "the brief Nuremberg

interregnum between the end of the war and the crystallization of the Cold War,"²⁰ the determination to expose the Third Reich's offences overcame these differences. What was more, there was a general agreement that only an all-embracing approach to Nazi criminality, covering all spheres of society, would do. The years 1944 to 1947 may not have been that "golden era of judicial confrontation with the Nazi past" that Herf has rather optimistically found them to be. But it was during these years that plans for Allied occupation, German reconstruction and, most of all, judicial reckoning were devised by an epistemic community, short-lived though it was, which agreed on key issues—although frequently more on the questions to be asked than on the answers to be given: which had been the most harrowing crimes, who had been the most important perpetrators, and which wrong turns Germany had taken in the preceding decades. Thus, an American penologist like Sheldon Glueck, a German lawyer and political scientist such as Franz L. Neumann, jurists Raphael Lemkin and Hersch Lauterpacht, historians Hajo Holborn and Walter L. Dorn, and economists Edward Mason and Otto Nathan, half of them European émigrés, could all agree on the salient features of National Socialist rule and modern German history: (1) a tradition of authoritarianism and militarism; (2) a corresponding lack of liberal, democratic, and free-market institutions; (3) a racialized worldview—though its genuineness was less unequivocal with Marxist analysts like Neumann; and (4) a vicious onslaught on multilateralism which was targeted by the prosecution's double construct of conspiracy and crimes against peace for which the War Department lawyer Murray C. Bernays has become famous.²¹ Some of them, including Glueck, Neumann, Lemkin, and Bernays, joined the Nuremberg project in person, although the influence of their written works may have been even more profound. Glueck's articles on war crimes trials and aggressive war, Neumann's famed *Behemoth*, and Lemkin's opus magnum *Axis Rule*, in spite of the initial outsider position of its author, became set texts with the Nuremberg prosecution and helped to shape the narratives which would govern the war crimes trials at the Palace of Justice.

In his celebrated study, *Behemoth*, Neumann argued that the Nazi state was based on four pillars: the armed forces, private business, state bureaucracy, and the party (including the SS).²² Building on this paradigm, the NMT prosecutors emphasized precisely those crimes which showed the interaction between the said groups and accordingly composed the trial series. Among the twelve trials, three proceedings targeted German industrialists (the Flick, Krupp, and I.G. Farben cases), two indicted generals and field marshals (the Hostages and High Command cases), four put SS officers in the dock (the Medical, Pohl, RuSHA, and *Einsatzgruppen* cases), and two more investigated the role of state bureaucracy (Justice and Ministries cases); the solitary case against Erhard Milch combined features of all divisions. Obviously, Taylor's Office of Chief of Counsel for War Crimes (OCCWC) applied Neumann's

theoretical premises,²³ but there were also limits to the transformation of the abstract concept into judicial practice. The prosecutors made use of Neumann's study only to a certain degree both for practical reasons and the fact that other ideas resonated in the concept of the twelve trials as well.

Among those influential ideas was Sheldon Glueck's seminal study on aggressive war,²⁴ which may justly be described as the second set text of the Nuremberg paradigm. Glueck, who collaborated with members of both the IMT and the NMT staff, had already been a major influence on Robert H. Jackson's preparations for the four-power tribunal with its central objective of proving that the alleged "major war criminals" had been involved in the planning and waging of a war of aggression. In combination with Bernays's tactical advice to resort to the conspiracy charge,²⁵ the idea that "aggressive war" was the principal international crime had been ingested into the Nuremberg proceedings and had made the charge of "crimes against peace" the gravamen especially of Jackson's strategy. As a former member of Jackson's office, it is hardly surprising that Telford Taylor adopted a similar stance. However, the trials under his direction displayed a marked broadening of scope under the influence of Neumann's analysis, involving a larger group of protagonists and drawing a much more complex, institution-minded picture of the Third Reich.

Simultaneously, another important wartime study on the Nazi state gained influence among the staff of OCCWC. Raphael Lemkin's report, *Axis Rule in Occupied Europe*, and the concept of "genocide"²⁶ had a lasting effect on the composition of the trial series and the prosecutors' view on the Nazi crimes, serving as the third set text for the NMT paradigm.²⁷ The prosecution in the RuSHA, the Medical, and the *Einsatzgruppen* trials drew heavily on the "genocide" concept. It served as a prime means of describing both the dimension of the crimes and their underlying intentions, i.e. the extermination of a nation, an ethnic group, and other groups of persons. These trials formed a distinct group of "atrocities trials," although all trials featured atrocity charges which were easier to prove than the elaborate constructs of conspiracy and aggressive war. The prosecutors with Taylor leading the way saw atrocities, whether human experiments, kidnapping of children, expulsion, or mass murder, as crimes committed to achieve the aims of the "Nazi Plan."²⁸

The manifest influence the members of the above epistemic community, despite all compromises, exerted on the construction of the Nuremberg paradigm and to an even greater extent on the formulation of indictments and opening statements—the prime documents to phrase the narratives and arguments which make up the "double helix" of the theory of the case²⁹—betrays yet another narrative dimension, though on a meta-level of analysis. Biographical narratives are tightly interwoven with the evolution of the Nuremberg trial program and with its

implementation. Kirchheimer and Neumann, Lemkin and Lauterpacht ingested their professional expertise just as much as their personal experiences into their contributions on how to bring the Third Reich to justice. It was not by accident that it was Lemkin and Lauterpacht who, having lost nearly all of their families to Nazi murder, helped the largely unheard of categories of “genocide” and “crimes against humanity” into the courtroom.³⁰ Nor was it mere chance that Neumann and Kirchheimer, both students as well as critics of Carl Schmitt, found their legal concepts soon engaging those of their former mentor, most notably in a rehearsal of “*Behemoth vs. Leviathan*.”³¹

The Nuremberg Trials and their Protagonists

Whereas personal experience and professional expertise were thus infused into the shaping of the trials behind the scenes, other protagonists made a visible appearance on the Nuremberg stage, playing a crucial part in the actual dynamics of the proceedings and, not least of all, their public perception. Both IMT and NMT are most often looked at from the side of the perpetrators, and it is on them that the lights have been quite literally placed: a judicial freak show which puts on display the agents of genocide, terror, and war. However, they were but one faction implicated in shaping the trials. Others were involved, including the prosecution counsel—some of them well-known, some of them forgotten—and their large staff of analysts who never appeared in court, the defense lawyers, the judges who made a brief jump from and back into historical obscurity, and finally the witnesses, who mostly would remain nameless outside the trial transcript. Among those who formed Nuremberg’s outlook and impact, the two US Chief Prosecutors in the IMT and NMT, respectively, played major roles. With their ambitious tenets—the one to outlaw aggressive war as the supreme crime once and for all, the other to provide a full, legally and historically valid analysis of National Socialism, and also thanks to their penchant for rhetorical bravado (which generations of historians have liberally and gratefully quoted from)—Robert H. Jackson and Telford Taylor left their marks on the Nuremberg scenery. Conversely, both Jackson and Taylor, although pursuing successful careers well before the war,³² owe their share of fame to the spotlights which were directed on the Palace of Justice. It was Nuremberg which turned them—along with the British Chief Prosecutor Hartley Shawcross and the French jurist Henri Donnedieu de Vabres—into persons of historical significance and historiographical interest.

This is even truer for the second tier of officials. Prosecutors like Robert M.W. Kempner and Benjamin B. Ferencz rose to prominence thanks to their role in the trials and would build on the social capital accumulated at Nuremberg ever after. Both became public figures in

the wake of the trials and used the momentum to build a career out of them, the former as the self-conscious and self-styled thorn in West Germany's *Wirtschaftswunder* society, the other as a negotiator for the Jewish Claims Conference and an untiring campaigner for the International Criminal Court.³³ In his contribution to this volume, Dirk Pöppmann shows that Kempner was not only one of the key agents in shaping the trial program, but that he also came to epitomize everything the West German public loathed about the tribunals. Although rather successful in court, Kempner was singled out by critics as the mastermind of "victors' justice" with clear implications of the stereotype of the "vengeful Jew." However, for good or ill, this negative public attention stimulated Kempner's postwar career as a prominent critic of both old and new Nazism in Germany; Nuremberg thus made the man, Pöppmann concludes.

The significance of Nuremberg as a defining moment in individual careers holds much less truth for the majority of the judges. In the *Einsatzgruppen* case, however, Judge Michael Musmanno played a larger-than-life role which brought him a fair share of public attention on which much of his later career, including as an expert witness for the prosecution in the Eichmann trial in 1961, would rest.³⁴ Hilary Earl shows how the interaction of courtroom adversaries fashioned individual trials' dynamics and also boosted reputations. Revisiting the *Einsatzgruppen* trial, she highlights the interplay of the three main protagonists: much of the case proceeded as a dialogue between Musmanno and Otto Ohlendorf, accounting for both the huge success of the prosecution in achieving convictions of the defendants and for the differentiated sentences, which were ultimately pronounced by the presiding judge, a declared critic of capital punishment. Despite this key role, Musmanno faded into historical oblivion after his death whereas Ferencz made a career out of his Nuremberg experience, in this respect no different from Kempner. For most of the judges, anyway, usually being older than both prosecution and defense counsel, the Nuremberg assignment remained a singular event, briefly moving them beyond the routines of their previous careers, and not all of them were too happy with their involvement afterwards.³⁵

The same cannot be said for the German attorneys who, like some of their American counterparts, made good use of the career opportunities which opened up by acting on such a large stage. A great number of the Nuremberg defense counsel, as Devin Pendas's chapter highlights, specialized in "Nazi trials," often working more than once for the same client. This was the case for the industrial firms on trial in Nuremberg and their associates, many of whom faced private litigation suits once the criminal trials were closed.³⁶ Such follow-up proceedings provided one mechanism by which the Nuremberg debates, elaborated and modified by the courtroom personnel of defense and prosecution counsel, were transferred to other arenas and kept alive. Not least of all, the

clemency campaign itself, organized by Nuremberg's convicted defendants and their lawyers, had a major part in continuing the examination of National Socialist criminality. Although the West German politics of the past with their self-exculpatory dynamics clearly showed an impetus quite opposed to that originally pursued by the Allies, they may, as Robert Moeller has recently argued, have been the prerequisite for the more critical reflection on the breadth and scope of German responsibility which set in by the late 1960s.³⁷

The public onslaught on Nuremberg, in which former defense lawyers played a crucial role, was opposed by Taylor, Kempner, Ferencz, and their fellow prosecutors. They vigorously defended both the historical and the legal legacy of Nuremberg, choosing the same format as their adversaries: newspaper and journal articles, books, and public speeches. A good deal of "Nuremberg literature" for many decades was authored by the protagonists themselves, frequently even mutually reviewing their respective writings.³⁸ Thus, the Nuremberg source corpus combines the wartime and early postwar writings of the epistemic community as depicted above but also the memoirs, treatises, and essays in historiography by prosecutors, defense lawyers, and defendants. Many of these not only became genuine bestsellers, they also helped to spread notions of untarnished ethics and legends of righteousness among a larger public. This was the case with regard to the Wehrmacht. German generals' recollections of how they had remained true to the ideals of chivalrous warfare, ignorant of the crimes of the SS, and how they might have won the war had Hitler not interfered, were legion in the 1950s, adding up to a veritable literary sub-genre.³⁹

Not all protagonists of the Nuremberg trials have been able to exert such influence on historical research, though. In fact, the trials and their personnel also served as multipliers for empirical flaws, analytical shortcomings, and interpretative dead-ends. Donald Bloxham has amply demonstrated the deficiencies of the trials to—literally—do justice to the Holocaust which he traces back to the "tyranny of a construct" made up of the charges of conspiracy and aggressive war on the one hand and the lack of victims' testimony on the other.⁴⁰ In his chapter, Paul Weindling saves one group of Nuremberg's protagonists from historical oblivion. By examining the roles played by the victims of Nazi atrocities, Weindling argues that they were, on average, much more prominent and much more effective in the NMT than has been assumed until recently. In the Medical trial, the victims' voices were particularly audible and gave the proceedings a peculiar character. The prosecution strategy framed the experiments on humans into the larger picture of Nazi war and genocide.⁴¹ This view was accepted by the tribunal which condemned human experiments of any kind unless there was the clear agreement of the subject on the tenets and methods of research. This formula, known as "informed consent," would be widely adopted by physicians and scientists and gives credit to the victims' perspective the trial assumed.

Nuremberg's Impact on Historiography and International Law

"Nuremberg" is usually associated with the trial-by-document strategy favored by Jackson and executed paradigmatically by Ferencz in the *Einsatzgruppen* case, where the prosecution built its strategy entirely on German records.⁴² However, of the NMT cases, this was a rather extraordinary example, and if the *Einsatzgruppen* trial was on the far end in that respect, the Medical trial occupied the other extreme. Interestingly, the judges in the "Doctors' trial" imposed particularly severe sentences, second only to those of the *Einsatzgruppen* verdict, which raises questions about the success of the different prosecution strategies. Another explanation for the notable severity might be detected in the physicians' failure to create a convincing image of mere, disinterested experts.

In this the doctors clearly differed from the businessmen tried in the industrialist cases. Kim C. Priemel demonstrates that the three industrialist trials at Nuremberg were at the heart of the subsequent proceedings and played a pivotal role in shaping the trial series, its prerogatives, tenets, and outcomes. The defendants were charged as officers of the leading German economic institutions, as corporate officials of their own organizations, and as individuals, thus displaying the alleged guilt of the Nazi economic *system* as a willing and enthusiastic instrument of a criminal state bent on aggressive war. In turn, the German industrialists and financiers in the dock went to great lengths to fend off these accusations. Early on, they laid claim to interpretative sovereignty over the very recent past and constructed coherent frameworks of self-perception and self-presentation. As a result, the concept of "totalitarianism" rose to prominence. It soon became *the* interpretative blueprint among German elites and turned industrialists from perpetrators into victims for the next forty years, before the onset of a renewed and critical business history in the 1990s.

Alexa Stiller's chapter deals with one of the key questions in evaluating the legacy of Nuremberg—the significance of punishment of mass violence against civilians at the NMT trials and the question of how the Holocaust was located within this phenomenon. Analyzing a wide range of trials both at Nuremberg and outside, she argues that the prosecutors and researchers used the new concept of "genocide" in order to describe the pattern of deportation, forced recruitment, coerced abortion, mass murder, and other crimes, but entertained different understandings of this term. Their usage was confined to a descriptive rather than to a legal mode, since the mandatory standard of the Genocide Convention would not be fully formulated until December 1948, i.e. well after the trials' conclusion. Therefore, Taylor's team adopted "genocide" in exactly the way Lemkin had described it in his famous book in 1944. There, Lemkin had focused on the "techniques of genocide," highlight-

ing not only biological and physical action—as subsequently formulated by the Genocide Convention—but also political, social, economic, cultural, religious, and moral impairments on the life of a nation or a minority group. As Stiller argues in her contribution, the concept of genocide took more than one shape in the courts at Nuremberg, losing much of Lemkin’s broader vision along the way, and would be linked (and limited) to the murder of the European Jews for a long time.

This restricted perception of genocide also caused considerable collateral damage, especially when it came to identifying the agents of mass murder, expulsion, and destruction. The focus on the SS as the quintessential perpetrator group assumed its distinctive shape in the Palace of Justice and went on to characterize much of early historical research, not to mention more popular pictures. The strange career of the image of the “black order,” pursued in Jan Erik Schulte’s chapter, owed a lot to the “institutional approach” which the Nuremberg prosecutors devised as their analytical backbone. Originally intended as a heuristic tool to allow for a structural investigation of the Nazi state and a broader, representative portrayal of the sampled defendants, the institutional approach tended to hypothesize more homogeneity than was historically accurate in organizations like the SS or collective agents such as industry, leaving little room for individual scope of action and reflection. Moreover, the notion of an all powerful SS, a state within the state, was happily seized upon by those defendants who stood to gain from such an interpretation: private businessmen who could refer to Gestapo terror as the means that had coerced them into cooperation with the regime, or Wehrmacht generals who disavowed any involvement in the mass murder of Jews, Slavs, Roma, or other “racial enemies” in the front and rear areas of the occupied territories under their command. The very success of this strategy, so the argument of Schulte goes, laid the foundations for one of the most enduring historiographical myths in the years to come: the picture of the “Black Order” as a monolithic, highly efficient organization which had been single-handedly responsible for the extermination policy both in terms of planning and executing mass murder. The Nuremberg prosecutors thus unwittingly co-authored a one-sided perspective of the Nazi state, resulting in a perception of the SS as the main, if not sole agents of racial and genocidal crimes. The success of this narrative owed a lot to its exculpatory potential as it provided a welcome alibi for the majority of West German society.

The High Command case in particular had dramatic, lasting repercussions on the way the Wehrmacht would be perceived in postwar Germany. In the courtroom, the high-ranking generals and field marshals managed to distance themselves and the German army in general from Nazi crimes.⁴³ The bottom line of Wehrmacht defendants in the Nuremberg trials, Valerie Hébert argues, was the affirmation of patriotic duty on the one hand and putting all blame on Himmler’s troops on the other, carefully emphasizing that both spheres had had nothing in

common. Such an interpretation easily met with approval by a German public where virtually everyone had either served in the army or had a relative who had done so. The often cited “clean hands” of the Wehrmacht permeated the German conscience, curtailed the *Bundeswehr*’s efforts in coming to terms with the past,⁴⁴ and provided the incentive for the highly controversial Wehrmacht exhibition, which helped to change the popular perception of the army in the late 1990s.

Historians have made their own, increasingly proficient use of Nuremberg. Much of the groundwork done in the early years of historiography on the Third Reich nearly exclusively built on the Nuremberg records, including the pioneering studies of Léon Poliakov and Gerhard L. Weinberg, Alexander Dallin and Robert L. Koehl, Raul Hilberg, Martin Broszat, and Helmut Genschel.⁴⁵ Key documents such as the Hoßbach and Wannsee protocols were introduced to historians through the editions of documents and proceedings prepared by the Nuremberg staff,⁴⁶ and debates about the binding force of the Wehrmacht’s oath to Hitler or Himmler’s speech at Posen originated inside the courtroom.⁴⁷ One of the key issues at stake in the *Einsatzgruppen* trial, whether or not Hitler, Himmler, or Heydrich had ordered the outright murder of Soviet Jewry in 1941, would occupy historians for decades and spark the famous Krausnick-Streim controversy.⁴⁸ However, important as they are, the focus on documents and themes has somewhat obscured the way in which concepts and ideas, interpretations and, again, narratives, sprang from the courtroom and left their mark upon historical research on the Third Reich. Among the better-known cases of such discernible impact is Hilberg’s monumental study of the *Destruction of the European Jews*, with its analytical pattern of bureaucratically organized extermination which stands squarely in the tradition of Weberian theory, mediated by Hilberg’s erstwhile doctoral supervisor Franz Neumann.⁴⁹

Much of the rhetoric emanating from the Nuremberg Palace of Justice made use of visual metaphors such as the “Black Order” or the “clean hands.” But images—and the moving type in particular—also played a prominent role in their own right, innovating courtroom tactics and becoming regular icons of war crimes trials such as the many charts put on display or the earphones for simultaneous translation.⁵⁰ Ulrike Weckel’s analysis of cinematographic representations of and in Nuremberg thus combines two seemingly different perspectives: the use of films as evidence, dramatic peaks, and didactic tools in the proceedings as well as Hollywood re-enactments of the courtrooms proceedings which assess the success and failure of the trials. Weckel examines the uses and effects of filmic representation by comparing the actual role of documentary film in the Nuremberg trials with its fictionalized role in feature films about those trials. The chapter analyzes both American and Soviet prosecutors’ motivations for introducing Allied atrocity footage (which did not depict any of the relevant defendants) and the significantly different effects of each team’s film in the courtroom. While consensus on how the defend-

ants reacted to these movies is strikingly absent among eyewitnesses, the feature film *Judgment at Nuremberg*, modeled on the “Justice case,” departs from historical reality and makes one defendant confess his guilt. Weckel’s contribution analyzes how the use of atrocity footage motivates this twist, and what this departure from the historical facts reveals about contemporary desire for repentance.

If the NMT provided the model for Stanley Kramer’s screenplay, did they also impact on other war crimes trials, such as the Dachau tribunals, the West German proceedings, or the Eichmann Trial in 1961? Devin Pendas broadens the picture by shedding light on early German trials of Nazi crimes and by pointing to the later, spectacular proceedings such as the Frankfurt Auschwitz trial. Finding both differences and similarities, spread unevenly among trial tactics, arguments, interpretations, and consequences, Pendas casts a skeptical perspective on the fate of Nuremberg in postwar Germany. The NMT did not have the impact that was hoped for and expected by Taylor and others. They neither set an immediate and durable legal precedent nor did they decisively shape how Germans conceived of their recent history. In the longer term, however, the impact of the trial series was somewhat more significant, if indirect. German prosecutors from the late 1950s to the 1970s drew on Nuremberg evidence in preparing their cases, and more than one prominent defense attorney who rose to fame in later Nazi trials had had his first exposure to such cases before the NMT.⁵¹

On an international scale, the Nuremberg proceedings could hardly remain in the realm of mere academic interest. The trials had been a case of applied science and an example of progressive law in action which necessarily prompted the question of what to do with their legacy. To Lemkin, the trials had been a means rather than an end in his struggle for a universally binding ban on genocide. The declaration of the United Nations Genocide Convention in 1948 was thus his lifetime achievement, despite all the compromises along the way.⁵² More problematic than the codification, though, was the implementation of the standards formulated by the UN General Assembly as well as by the Nuernberg Military Tribunals.

In particular, the ambitious aim to rule out aggressive war remains a gaping hole in the legacy of the trials. Although the formula itself can lay some claim to official consensus, it has not passed the test of time in practice. This was not lost on the Nuremberg prosecutors either. Taylor wrestled with the issue of how to bring the distinctly American part in attacking crimes against peace at Nuremberg in accordance with the wars in Korea and Vietnam, whereas Ferencz fought an uphill battle in favor of an International Criminal Court but was opposed by his own government. Others, such as John J. McCloy who had been in the camp of the trial supporters in 1944–45 and who, as High Commissioner in the Federal Republic, gave in to the German clemency campaign, grew conspicuously silent in the Cold War years.⁵³

Popular narratives which draw a straight path from Nuremberg to The Hague or from the London Charter to the Rome Statute⁵⁴ are therefore misleading as they fail to notice the twisted road international criminal justice has taken since Taylor made his final closing statement in the Ministries case in 1949. Nor has the much-acclaimed IMT provided the pattern along which much of contemporary international penal law is modeled in practice. In his chapter, Lawrence Douglas sets out to show that, instead, it is the NMT with their strong emphasis on atrocities which have had a lasting influence on how crimes against humanity and war crimes are pursued. The legal pattern of the NMT rather than that of the IMT served as a model for the future development of international criminal law, in particular its practical application, and do so to the present day as the international tribunals for Yugoslavia and Rwanda, but to some extent also the Guantanamo military commissions, show. Likewise, the Medical Trial's Nuremberg Code on human experiments which has become widely accepted (if not generally adhered to) over the last seven decades is a distinct success story of the NMT.⁵⁵

Read together, as they should be, the chapters of this book offer a comprehensive analysis of the dynamics, the narratives, and the legacy of the trials before the Nuernberg Military Tribunals. They do not merely rescue the NMT from the long shadow of the IMT but show that the later trials shaped our views of the Third Reich and the Holocaust, on the one hand, and the paths of international criminal law on the other, possibly even more so than their famous precedent. More research on the Nuremberg trials will need to be done, if we are to appreciate fully the peculiar quality of the courtroom, especially in its international form, as a forum for negotiating recent history, and as a stage for representative justice—which transitional justice always is—as it applies to collectives which are far greater than those actually present on any of the benches. In doing so, we should take heed of Lawrence Douglas's caveat: "Just as the didactic trial must struggle to do justice to history, history also takes time to do justice to the trial."⁵⁶ If the present volume contributes to such an essentially reciprocal understanding of the Nuremberg trials and their two sides, the contributors' and editors' efforts will have been worthwhile.

Acknowledgments

This volume goes back to an international workshop organized with generous support from and held at the Center for Advanced Holocaust Studies at the U.S. Holocaust Memorial Museum in Washington, DC, in August 2008. We are most grateful for the help and support the Center's staff, in particular Suzanne Brown-Fleming, Robert Ehrenreich, and Lisa Yavnai, have given us and which laid the basis for an immensely productive workshop. We benefitted greatly from Jennifer Belmont's

organizational skills and from the untiring support we received from the staff of the museum's library and archives, notably Michlean Amir and Henry Mayer. Caroline Waddell of the USHMM Photo Archives kindly made the bulk of the photographs printed in this volume available to us. Thanks for permission to use illustrations are also due to the German Federal Archives, the State Archives NRW, the Bavarian State Library, and *Der Spiegel*.

We wish to express particular gratitude to the participants of the workshop who were not only willing to commit themselves to two weeks of intense discussion and research, but also to continue this thread for another two years in preparing the present volume. We hope that the spirited atmosphere of the workshop has found its way into print. We were lucky to have additional contributions to our discussion by Suzanne Brown-Fleming, Martin Dean, Robert Ehrenreich, and Patricia Heberer, who let us benefit from their great expertise in adjacent fields and helped to clarify our analytical objectives. This is particularly true for Jonathan Bush who was a never-ending source of information on Nuremberg and its protagonists and who spared a lot of time to join the circle during these two weeks and ever since.

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Notes

1. Throughout this book, the German "Nuernberg" will only be used as part of the tribunals' official designation. The geographical and historical place is referred to as "Nuremberg."
2. Statement by Telford Taylor to the International News Service, 9.5.1949, Telford Taylor Papers, Arthur W. Diamond Library, Columbia University Law School, 5-1-1-1.
3. Only one of the 177 tried defendants in the NMT pleaded "guilty" on one single count. Ernst Wilhelm Bohle, leader of the Foreign Organization of the German Nazi Party from 1933 to 1945, entered a plea of guilty to count eight, membership in a criminal organization. To count five of the indictment in the Ministries Case, war crimes and crimes against humanity, though, Bohle pleaded not guilty. See Opening Statement for Defendant Bohle, Dr. Gombel, *TWC*, XII, 270.
4. Cf. the classic accounts: Whitney R. Harris, *Tyranny on Trial. The Evidence at Nuremberg* (Dallas, 1954); Bradley F. Smith, *Reaching Judgment at Nuremberg* (London, 1977); id., *The Road to Nuremberg* (New York, 1981); Robert E. Conot, *Jus-*

- tice at Nuremberg* (New York, 1983); Ann Tusa and John Tusa, *The Nuremberg Trial* (London, 1984); Joseph E. Persico, *Nuremberg. Infamy on Trial* (New York, 1994). Ironically, Taylor himself contributed to this imbalance by dedicating nearly all of his widely read *The Anatomy of the Nuremberg Trials* (New York, 1992) to the IMT, while never finishing a follow-up project on the NMT (we are grateful to Jonathan Bush for sharing this information).
5. The first consolidated analysis of the NMT by a legal historian has very recently been published by Kevin Jon Heller, *The Nuremberg Military Tribunals and the Origins of International Criminal Law* (Oxford, 2011).
 6. Norbert Frei, *Adenauer's Germany and the Nazi Past. The Politics of Amnesty and Integration* (New York, 2002); Ulrich Brochhagen, *Nach Nürnberg. Vergangenheitsbewältigung und Westintegration in der Ära Adenauer* (Hamburg, 1994); Manfred Kittel, *Nach Nürnberg und Tokio. "Vergangenheitsbewältigung" in Japan und Westdeutschland 1945 bis 1968* (Munich, 2004).
 7. Timothy Garton Ash, "The Truth about Dictatorship," *The New York Review of Books* 45 (1998): 35–40. For further references, see also Louis Bickford, "Transitional Justice," in *Encyclopedia of Genocide and Crimes Against Humanity*, ed. Dinah L. Shelton (Detroit, 2005), 1045–47; "Transitional Justice," in *The Oxford Companion to International Criminal Justice*, editor-in-chief Antonio Cassese (Oxford, 2009), 538–40.
 8. Otto Kirchheimer, *Political Justice. The Use of Legal Procedure for Political Ends* (Princeton, 1961). This nuanced perspective is one of the many casualties of the polemic account offered in John Laughland, *A History of Political Trials. From Charles I to Saddam Hussein* (Oxford, 2008).
 9. Kirchheimer, *Political Justice*, 336–38; Judith N. Shklar, *Legalism. Law, Morals and Political Trials* (Cambridge, MA, 1986), 143–48, 220.
 10. Useful insights may be gained from system theory, in particular the distinction between different programs and codes of the systems science, law, and politics. Cf. Niklas Luhmann, *Law as a Social System* (Oxford, 2004); id., *Die Gesellschaft der Gesellschaft* (Frankfurt a.M., 1998), 316–20, 359–63, 481f. See also Shklar, *Legalism*, viii, 2f., who speaks of "legalism" as the "operative ideology of lawyers."
 11. For general discussions, see Marc Bloch, *The Historian's Craft*, with an introduction by Peter Burke (New York, 1992), 114–19, 160; Carlo Ginzburg, *The Judge and the Historian. Marginal Notes and a Late-Twentieth-Century Miscarriage of Justice* (London, 1999), 16–18.
 12. Lawrence Douglas, *The Memory of Judgment. Making Law and History in the Trials of the Holocaust* (New Haven/London, 2001).
 13. Cf. Kirchheimer, *Political Justice*, 110–18, 429–31; Shklar, *Legalism*, 149–51, 194–98; Bert van Roermund, "The Political Trial and Reconciliation," *The Trial on Trial, vol. 2. Judgment and Calling to Account*, eds. Antony Duff, Lindsay Farmer, Sandra Marshall, and Victor Tadros (Oxford, 2006), 173–90, here 173f.; Devin Pendas, *The Frankfurt Auschwitz Trial, 1963–1965. Genocide, History, and the Limits of the Law* (Cambridge, 2006), 2f.
 14. Robert P. Burns, *The Death of the American Trial* (Chicago, 2009), 25.
 15. Again, this is more characteristic of Anglo-Saxon and especially American law than it is of continental European law, where the task of investigation is assigned to the court; cf. Robert P. Burns, *A Theory of the Trial* (Princeton, 1999), 28f., 92.
 16. Burns, *Theory*, 59–61; id., "The Distinctiveness of Trial Narrative," *The Trial on Trial, Vol. 1. Truth and Due Process*, eds. Antony Duff, Lindsay Farmer, Sandra Marshall, and Victor Tadros (Oxford, 2004), 157–77. See also the collection of essays in *Law's Stories. Narrative and Rhetoric in the Law*, eds. Peter Brooks and Paul Gerwitz (New Haven, 1996), in particular Robert Weisberg, "Proclaiming Trials as Narratives: Premises and Pretenses," 61–83.
 17. Dirk van Laak, "Widerstand gegen die Geschichtsgewalt. Zur Kritik an der 'Vergangenheitsbewältigung,'" *Geschichte vor Gericht. Historiker, Richter und die Suche*

- nach *Gerechtigkeit*, eds. Norbert Frei, Dirk van Laak and Michael Stolleis (Munich, 2000), 11–28, here 11; Pendas, *Frankfurt Auschwitz Trial*, 142–47; cf. “Introduction,” in *Vom Recht zur Geschichte. Akten aus NS-Prozessen als Quellen der Zeitgeschichte*, eds. Jürgen Finger, Sven Keller and Andreas Wirsching (Göttingen, 2009), 9–24. For an overview of the legal reckoning with Nazi crimes, though unsystematic, see Patricia Heberer and Jürgen Matthäus, “Introduction. War Crimes and the Historian,” *Atrocities on Trial. Historical Perspectives on the Politics of Prosecuting War Crimes*, eds. Patricia Heberer and Jürgen Matthäus (Lincoln, NE, 2008), xiii–xxix; *Nazi Crimes and the Law*, eds. Nathan Stoltzfus and Henry Friedlander (Cambridge, 2008); *Der Nationalsozialismus vor Gericht. Die alliierten Prozesse gegen Kriegsverbrecher und Soldaten 1943–1952*, ed. Gerd R. Ueberschär, 2nd edn (Frankfurt a.M., 2000).
18. See Peter M. Haas, “Introduction: Epistemic Communities and International Policy Coordination,” *International Organizations* 46 (1992): 3f.: an epistemic community is “a network of professionals with recognized expertise and competence in a particular domain and authoritative claim to policy-relevant knowledge within that domain” who share a set of normative and principled beliefs, causal beliefs, notions of validity, and a common policy enterprise.
 19. See “Communiqué, 2.8.1945,” *Foreign Relations of the United States. Diplomatic Papers. The Conference of Berlin (the Potsdam Conference), 1945*, vol. 2, ed. United States Department of State (Washington, DC, 1960), 1499–514.
 20. Jeffrey Herf, *Divided Memory. The Nazi Past in the Two Germanys* (Cambridge, MA, 1997), 69.
 21. There is abundant research on institutions such as the OSS, on wartime debates on how to try Nazi crimes, and on individual protagonists; cf. Barry M. Katz, *Foreign Intelligence: Research and Analysis in the Office of Strategic Services 1942–1945* (Cambridge, MA, 1989); Petra Marquardt-Bigman, *Amerikanische Geheimdienstanalysen über Deutschland 1942–1949* (Munich, 1995); Arieh J. Kochavi, *Prelude to Nuremberg. Allied War Crimes Policy and the Question of Punishment* (Chapel Hill, NC, 1998); Tim B. Müller, “Bearing witness to the liquidation of Western Dasein: Herbert Marcuse and the Holocaust, 1941–1948”, *New German Critique* 85 (2002): 133–64; P. M. R. Stirk, “John H. Herz. Realism and the Fragility of the International Order,” *Review of International Studies* 31 (2005): 285–306; Shlomo Aronson, “Preparations for the Nuremberg Trial: The O.S.S., Charles Dwork, and the Holocaust,” *Holocaust and Genocide Studies* 12 (1998): 257–81; Ernst C. Stiefel and Frank Mecklenburg, *Deutsche Juristen im amerikanischen Exil (1933–1950)* (Tübingen, 1991); *Zur Archäologie der Demokratie in Deutschland. Analysen politischer Emigranten im amerikanischen Geheimdienst, vol. 1: 1943–1945*, ed. Alfons Söllner (Frankfurt a.M., 1982).
 22. Cf. Franz Neumann, *Behemoth. The Structure and Practice of National Socialism, 1933–1944* (Reprint Chicago, 2009).
 23. Cf. Joachim Perels, “Fast vergessen: Franz L. Neumanns Beitrag zur Konzipierung der Nürnberger Prozesse. Eine Erinnerung aus Anlaß seines 100. Geburtstages,” *Kritische Justiz* 34 (2001): 117–25.
 24. Sheldon Glueck, *War Criminals. Their Prosecution & Punishment* (New York, 1944) and “The Nuremberg Trial and Aggressive War,” *Harvard Law Review* 59 (1946): 396–445. Cf. Jonathan A. Bush, “The Supreme ... Crime” and Its Origins: The Lost Legislative History of the Crime of Aggressive War,” *Columbia Law Review* 102 (2002): 2324–423.
 25. See the pioneering study by Smith, *Road*, 50–52, 61f., 75–77, 233f.
 26. See Raphael Lemkin, *Axis Rule in Occupied Europe. Laws of Occupation, Analysis of Government, Proposals for Redress* (Washington, DC, 1944), 79–95.
 27. For a recent appraisal of the impact of Lemkin’s work, see the special issue of the *Journal of Genocide Research* 7 (2005), No. 4. Cf. Samantha Power, “A Problem from Hell.” *America and the Age of Genocide* (New York, 2002); John Cooper, *Raphael*

- Lemkin and the Struggle for the Genocide Convention* (Basingstoke, 2008); *Empire, Colony, Genocide. Conquest, Occupation, and Subaltern Resistance in World History*, ed. A. Dirk Moses (New York, 2008).
28. Cf. Opening Statement of the prosecution in the RuSHA Trial, *TWC*, IV, 622–27.
 29. Burns, *Theory*, 37. The two strands, narrative and argument, should not be seen as opposing forces but as mutually complementary. In fact, in trials which pursue a genuinely historiographical agenda, narrative becomes argument.
 30. Smith, *Reaching Judgment*, 59; Miriam Gessler and Daniel Segesser, “Raphael Lemkin and the International Debate on the Punishment of War Crimes (1919–1948),” *Journal of Genocide Research* 7 (2005): 453–68; Martti Koskenniemi, “Hersch Lauterpacht and the Development of International Criminal Law,” *Journal of International Criminal Justice* 2 (2004): 810–25; Ana Filipa Vrdoljak, “Human Rights and Genocide: The Work of Lauterpacht and Lemkin in Modern International Law,” *European Journal of International Law* 20 (2010): 1184–86.
 31. Cf. William E. Scheuerman, “Introduction,” in *The Rule of Law under Siege. Selected Essays of Franz L. Neumann and Otto Kirchheimer*, ed. William E. Scheuerman (Berkeley, 1996), 1–25; Stiefel and Mecklenburg, *Deutsche Juristen*, 20, 89, 100f., 107–9; Reinhard Mehring, *Carl Schmitt. Aufstieg und Fall. Eine Biographie* (Munich, 2009), 314f., 380.
 32. Cf. Jonathan A. Bush, “Soldiers Find Wars: A Life of Telford Taylor,” *Columbia Journal of Transnational Law* 37 (1999), 675–88; John Q. Barrett, “‘One Good Man’: The Jacksonian Shape of Nuremberg,” in *The Nuremberg Trials: International Criminal Law Since 1945*, eds. Herbert R. Reginbogin and Christoph J.M. Safferling (Munich, 2006), 129–37.
 33. Benjamin B. Ferencz, *Less than Slaves. Jewish Forced Labor and the Quest for Compensation* (Cambridge, MA, 1979); Robert M.W. Kempner, *Ankläger einer Epoche. Lebenserinnerungen* (Frankfurt a.M., 1983); *Gegen Barbarei. Essays Robert M.W. Kempner zu Ehren*, eds. Rainer Eisfeld and Ingo Müller (Frankfurt a.M., 1989).
 34. Cf. Hannah Arendt, *Eichmann in Jerusalem. A Report on the Banality of Evil* (London, 2006), 210–12.
 35. This is particularly true for several of the NMT judges, cf. Frank M. Buscher, *The U.S. War Crimes Program in Germany, 1946–1955* (New York, 1989), 34–36; Peter Maguire, *Law and War. An American Story* (New York, 2001), 170–77, 197–200; cf. Suzanne Bellamy, *Hoosier Justice at Nuremberg* (Indianapolis, 2010).
 36. Cf. Christian Dirks, “Selekteure als Lebensretter. Die Verteidigungsstrategie des Rechtsanwalts Dr. Hans Laternser,” in „*Gerichtstage halten über uns selbst... Geschichte und Wirkung des ersten Frankfurter Auschwitz-Prozesses*,“ ed. Irmtrud Wojak (Frankfurt a.M., 2001), 163–92; Kerstin von Lingen, *Kesselrings letzte Schlacht. Kriegsverbrecherprozesse, Vergangenheitspolitik und Wiederbewaffnung: Der Fall Kesselring* (Paderborn, 2004).
 37. Robert G. Moeller, “The Third Reich in Post-war German Memory,” in *Nazi Germany*, ed. Jane Caplan (Oxford, 2008), 246–66.
 38. See, for example, Taylor, *Anatomy*; id., *Die Nürnberger Prozesse. Kriegsverbrechen und Völkerrecht* (Zurich, 1950); id., *Sword and Swastika* (New York, 1952); id., “Review: Francis Biddle, In Brief Authority (New York, 1962),” *Harvard Law Review* 77 (1963): 201–4; Robert M.W. Kempner, “The Nuremberg Trials as Sources of Recent German Political and Historical Materials,” *American Political Science Review* 44 (1950): 447–59; Benjamin B. Ferencz, “Nurnberg Trial Procedure and the Rights of the Accused,” *Journal of Criminal Law and Criminology* 39 (1948): 144–51; id., “Review: Drexel A. Sprecher, Inside the Nuremberg Trial: A Prosecutor’s Comprehensive Account,” *American Journal of International Law* 93 (1999): 760f.; id., “Review: Bradley F. Smith, Reaching Judgment at Nuremberg (New York, 1977),” *American Journal of International Law* 74 (1980): 228–30; John H.E. Fried, “Review: Benjamin B. Ferencz, Less than Slaves. Jewish Forced Labor and the Quest

- for Compensation (Cambridge, MA, 1979),” *American Journal of International Law* 75 (1981): 702–4.
39. Erich Raeder, *Mein Leben*, 2 vols (Tübingen, 1956/57); Franz Halder, *Hitler als Feldherr. Der ehemalige Chef des Generalstabes berichtet die Wahrheit* (Munich, 1949); Heinz Guderian, *Erinnerungen eines Soldaten* (Heidelberg, 1951); id., *Panzer marsch! Aus dem Nachlaß des Schöpfers der deutschen Panzerwaffe* (Munich, 1956); Albert Kesselring, *Soldat bis zum letzten Tag* (Bonn, 1953); Erich von Manstein, *Verlorene Siege* (Bonn, 1955); id., *Erinnerungen* (Bonn, 1959).
 40. Donald Bloxham, *Genocide on Trial. War Criminals and the Formation of Holocaust, History and Memory* (Oxford, 2001), 69–75.
 41. See also Paul Weindling, *Nazi Medicine and the Nuremberg Trials. From Medical War Crimes to Informed Consent* (Basingstoke, 2004), 225–35.
 42. For the use of documents in the NMT trials, see John Mendelsohn, *Trial by Document. The Use of Seized Records in the United States Proceedings at Nuernberg* (Phil. Diss., University of Maryland, 1974).
 43. See Manfred Messerschmidt, “Forward Defense: the ‘Memorandum of the Generals’ for the Nuremberg Court,” in *War of Extermination. The German Military in World War II, 1941–1944*, eds. Hannes Heer and Klaus Naumann (New York, 2000), 381–99.
 44. Cf. Donald Abenheim, *Reforging the Iron Cross. The Search for Tradition in the West German Armed Forces* (Princeton, 1988).
 45. Cf. Léon Poliakov, *Harvest of Hate. The Nazi Program for the Destruction of the Jews of Europe* (Syracuse, NY, 1954); Gerhard L. Weinberg, *Germany and the Soviet Union 1939–1941* (Leiden, 1954); Robert L. Koehl, *RKFDV: German Resettlement and Population Policy 1939–1945. A History of the Reich Commission for the Strengthening of Germandom* (Cambridge, 1957); Alexander Dallin, *German Rule in Russia 1941–1945* (London, 1957); Martin Broszat, *Nationalsozialistische Polenpolitik 1939–1945* (Stuttgart, 1961); Raul Hilberg, *The Destruction of the European Jews* (New York, 1961); Helmut Genschel, *Die Verdrängung der Juden aus der Wirtschaft im Dritten Reich* (Göttingen, 1962).
 46. These are first and foremost the three official series, respectively labeled Blue, Red, and Green Series due to the cloth they were bound in: *Trial of the Major War Criminals before the International Military Tribunal, Nuremberg 14 Nov. 1945–1. Oct. 1946*, 42 vols (Nuremberg 1947–49); *Nazi Conspiracy and Aggression*, ed. Office of United States Chief of Counsel for Prosecution of Axis Criminality, 8 vols plus 2 suppl (Washington, DC, 1946–1948); *Trials of War Criminals Before the Nuernberg Military Tribunals under Control Council Law No. 10*, 15 vols (Washington, DC, 1949–53). In addition, there are numerous smaller editions of individual judgments, documents, etc., several of which have been compiled by prosecution and defense counsel from Nuremberg; e.g. *Das Urteil im Wilhelmstrassen-Prozess: Der amtliche Wortlaut der Entscheidung im Fall Nr. 11 des Nürnberger Militärtribunals gegen von Weizsäcker und andere, mit abweichender Urteilsbegründung, Berichtigungsbeschlüssen, den grundlegenden Gesetzesbestimmungen, einem Verzeichnis der Gerichtspersonen und Zeugen*, eds. Robert M.W. Kempner and Carl Haensel (Schwäbisch Gmünd, 1950).
 47. Cf. Gerald Weinberg’s reminiscences, “The Setting and Significance of the Nuremberg Trials: A Historian’s Perspective,” in *Nazi Crimes and the Law*, 35–41.
 48. See Hilary Earl’s contribution and Helmut Krausnick, “Hitler und die Befehle an die Einsatzgruppen im Sommer 1941,” in *Der Mord an den Juden im Zweiten Weltkrieg. Entschlußbildung und Verwirklichung*, eds. Eberhard Jäckel and Jürgen Rohwer (Stuttgart, 1985), 88–106; Alfred Streim, “Zur Eröffnung des allgemeinen Judenvernichtungsbefehls gegenüber den Einsatzgruppen,” in *ibid.*, 107–19, id., “The Tasks of the SS Einsatzgruppen,” *Simon Wiesenthal Center Annual* 4 (1987): 309–28.
 49. Neumann reported on M.A. and Ph.D. theses on German history based on the Nuremberg documents which had been in progress under his supervision at Colum-

- bia University. Among these announced studies were not only Hilberg's early one on the *German Civil Service and Antisemitism* but also a proposed project by Olga Lang, formerly a staff member of Taylor at the NMT, on *Genocide and the Master Race*. See Franz L. Neumann, "War Crimes Trials," *World Politics* 2 (1949): 135–47, here 145.
50. Both the main courtroom and the charts were prepared mostly by OSS staff; Report, Presentation Branch, 6.10.1945, Cornell Law Library, Donovan Nuremberg Trial Collection, Vol. XVIII, Section 58.01, http://library2.lawschool.cornell.edu/donovan/pdf/Batch_8/Vol_XVIII_58_01.pdf (accessed August 2010); Dan Kiley, "Architect of Palace of Justice Renovations," in *Witnesses to Nuremberg. An Oral History of American Participants at the War Crimes Trials*, eds. Bruce M. Stave and Michele Palmer with Leslie Frank (New York, 1998), 15–38.
 51. Cf. Annette Weinke, *Eine Gesellschaft ermittelt gegen sich selbst. Die Geschichte der Zentralen Stelle Ludwigsburg 1958–2008* (Darmstadt, 2008), 17, 176f.; Rebecca Wittmann, *Beyond Justice. The Auschwitz Trial* (Cambridge, MA, 2005), 284; Hannah Yablonka, *The State of Israel vs. Adolf Eichmann* (New York, 2004) 124–28.
 52. See also Cooper, *Lemkin*, and Gessler and Segesser, "Lemkin."
 53. Telford Taylor, *Nuremberg and Vietnam. An American Tragedy* (Chicago, 1970); Benjamin B. Ferencz, *An International Criminal Court. A Step Toward World Peace* (Dobbs Ferry, NY, 1990 [1st edn. 1975]); id., "Defining Aggression: Where it Stands and Where it's Going," *American Journal of International Law* 66 (1972): 491–508.
 54. Cf. Theodor Meron, "From Nuremberg to The Hague," in *War Crimes Law Comes of Age. Essays* (Oxford, 1998), 198–203; Hans-Heinrich Jescheck, "The General Principles of International Criminal Law Set Out in Nuremberg, as Mirrored in the ICC Statute," *Journal of International Criminal Justice* 2 (2004): 38–55; Christian Tomuschat, "The Legacy of Nuremberg," *Journal of International Criminal Justice* 4 (2006): 830–44; Andreas Zimmermann, "Das juristische Erbe von Nürnberg—Das Statut des Nürnberger Internationalen Militärtribunals und der Internationale Strafgerichtshof," in *The Nuremberg Trials*, eds. Reginbogin and Safferling, 266–76. For a critical perspective, see Annette Weinke, "Von Nürnberg nach Den Haag? Das Internationale Militärtribunal in historischer Perspektive", *Leipzig—Nürnberg—Den Haag. Neue Fragestellungen und Forschungen zum Verhältnis von Menschenrechtsverbrechen, justizieller Säuberung und Völkerstrafrecht*, ed. Helia-Verena Daubach (Düsseldorf, 2008), 20–33.
 55. Weindling, *Nazi Medicine*.
 56. Lawrence Douglas, "Perpetrator Proceedings and Didactic Trials," in *The Trial on Trial*, Vol. 2, 191–205, here 205.