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Introduction¹

Political Justice and Transitional Justice seem to be at best contingently related terms. Political Justice is usually associated with atonement for political repression and injustice, while Transitional Justice is a means of overcoming a repressive past. But the two phenomena are not as strictly separable as may seem. In 1961, when the term “Transitional Justice” did not exist yet, the German-American jurist and political theorist Otto Kirchheimer, treated “Trial by Fiat of the Successor Regime” as a form of political justice. This formulation was the title of the eighth chapter of his classic study *Political Justice: The Use of Legal Procedure for Political Ends*.² But Kirchheimer was far from denouncing Nuremberg as victors’ justice in the way many old Nazi apologists did (and new ones do now). For Kirchheimer, political justice is not a pejorative, but an analytical term. Somewhat paradoxically, if inevitably, it is the spread of the rule of law that leads to the extension of political schemes into the court room. Legal procedures lend authenticity to political action and specific legitimacy to power holders. This holds true for liberal democracies where legal procedures follow the principles of the rule of law and for totalitarian dictatorships where political trials are staged as cruel caricatures of justice which, more often than not, is not so obvious to the vast majority of its subjects. The great Moscow show trials of 1936-1938 offer a

- 1 The editors would like to thank Anne-Kristin Hübner for her tremendous support in preparing this volume, particularly in organizing the communication with all authors. We also thank her and Antoni Bohdanowicz for the rarely appreciated commitment as proofreaders. The texts were written originally in Polish, German and Russian. We are very grateful to Antoni Bohdanowicz for his work on harmonizing the translations for the English-speaking reader. For any mistakes and deficiencies still in the texts the responsibility is with the editors.
- 2 Otto Kirchheimer, *Political Justice: The Use of Legal Procedure for Political Ends* (Princeton, 1961).

most striking model of this specific form of political justice. On the bench of the first of these three trials sat military judge Iona Nikitchenko who, less than ten years later, was to become the main Soviet judge at the Nuremberg trials. Although for the most part, American, British, French and Soviet jurists sought to achieve objective and balanced cooperation, Nikitchenko at one point tried to foist the Soviet propaganda version of the mass-murder of Polish officers in Katyn by Germans (rather than by the NKVD) on the International Military Tribunal. In thwarting this looming gross miscarriage of justice, the Western judges managed to prevent Nuremberg from turning into a farcical mockery of justice.

This example, blatant as it may be, should suffice to demonstrate the overlapping of political and transitional justice. There is a plethora of other, more subtle entanglements between these two seemingly separate spheres of justice. The observable cases of confluence of classic political and transitional justice, as well as Kirchheimer's conception, inspired the idea of staging the international conference "Political and Transitional Justice in Germany, Poland and the Soviet Union from the 1930s to the 1950s" that took place in Warsaw in March 2015. The organisers wished to focus on Europe's sea-change decades from the 1930s to the 1950s which rumbled on to the once ominous, once tragic backdrop of dictatorship. The conference languages were Polish, Russian and German, whereas the editors of this volume decided to publish the contributions in English in order to make them available to a wider international readership. This collection of articles is not intended to serve as an encyclopaedic overview but to provide a variety of insights into a somewhat less well-known field of academic inquiry. The papers of historians (and one jurist) – both renowned and younger ones – from Germany, Poland and Russia, as well as Ukraine and Belarus, tackle a considerable range of aspects which should inspire comparative reflection. Through historical research into problems of power and justice, problems that have their specifics in any country and period but which also have their related structural principles, the editors of this volume hope to contribute to overcoming national divisions and establishing common, transnational perceptions of our shared cultural heritage.

The conference had been organized with the trilateral cooperation of the Institute of Contemporary History Munich-Berlin, the Institute of National Remembrance (IPN) with its headquarters in Warsaw and the Memorial Society in Moscow. It should be underscored that the histories of all these three institutions reflect the fact that their countries had been specifically affected by the problems of authoritarianism, totalitarianism, the Second World War and, consequently, the problems of coming to terms with this difficult past. Without ever losing sight of one's own history and responsibility for it, all

three partners strove to organize a scholarly exchange of views that would help to broaden the common intellectual ground.

The Institute for Contemporary History was founded in Munich after the Second World War in particular to establish an independent institution to investigate and research the roots and origins of National Socialism and the way it had come to power in Germany. The Institute's initiators came from spheres closer to politics than academic research. They deliberately aimed to have an institution free of a university's involvement. It had to be intellectually independent while pursuing research of the highest academic probity. The reason for this aim of independence from university professoriates was the scepticism if not mistrust of established university historians who had participated in one way or another in promoting the national narrative of German superiority and nationalism before and after 1933.

Many German historians had advocated and fuelled the governmental attacks against Article 231 of the Versailles Treaty (the war guilt clause) rather than investigate and deconstruct the origins of the First World War in an independent academic manner. Many historians regarded their profession as a vehicle for legitimizing German foreign policy and redeeming great power politics during the Weimar period. After 1933, many of them had supported the national socialist regime in one way or another. Many younger historians became supporters of the so-called "people's community history" ("Volkstumsgeschichte") and drafted plans for a Europe under German hegemony. As in many other professions, Jewish historians were forced out of the professional discipline of history. With this legacy of German academic historiography in mind, the founders of the Institute assumed that, by and large, traditional chairs of history and established university professors would be incapable of unprejudiced analyses of the reasons why democracy failed and why so many public and state institutions in Germany had become supportive or essential parts of the national socialist regime.

Another reason was the widespread assumption that even if there were historians at universities interested in researching the origins of National Socialism, this would collide with the tradition of great reluctance in German historiography to tackle subjects which had still not quite passed into history. It was the common perception of German academic historians that some water had to pass under the bridge before a topic lent itself to serious research. Last but not least, there was some reluctance among historians (and the wider public) to investigate the actions of people, particularly of the so-called "functional elites", who were still alive and started to re-assert themselves in the early 1950s in many walks of West German public life.

Irrespective of any qualms to the contrary, the urge to found a research institute dedicated to analyzing National Socialism in all its aspects persisted.

It took several attempts, the first two of which failed due to the uncertain financial situation before the foundation of the German Federal Republic (popularly known as West Germany). When the Institute was established in 1949, one of the major aims was to address the still sensitive discussion touching many a raw nerve, on denazification, triggered by the Nuremberg War Crimes trials. Since the German government documents had been seized by the allies, the question of source materials had to be resolved. Many German documents were kept and analyzed at collection points in the United States, particularly in Alexandria, Virginia, until the late 1950s. The Institute's archive in Munich started with copies of documents that had been scrutinized in evidence by the International Military Tribunal at Nuremberg. This was a crucial starting point for German-based research. The Institute thus started in the traditional way of examining all the linked questions triggered by the Nuremberg trial(s) and to adapt these questions for historical research. The analysis of these documents (with their well-known NG-, NO- and NI-prefixed reference numbers to develop search engines for research purposes) continued from 1949 to 1963 in cooperation with the Institute for International Law in Göttingen and the Westphalian Economic Archives in Dortmund. In the 1950s and 1960s the Institute produced a wide range of expert opinions and reports, particularly for legal purposes. The Institute's documentation of these reports starts in 1953. A selection of sixty nine reports on specific historical and judicial questions was published in 1958 to give an overview of the Institute's wide range of expertise.³ One of the reasons given for this publication was that the knowledge thereby disseminated had so far only been known to those who had been present in court.⁴

By 1959, the number of expert reports hit the one thousand mark. Within the following three years, the staff of around twelve people produced more than 2000 further expert opinions – roughly two a day. In 1961 alone, more than 600 reports were produced for courts, public institutions and administrative needs, and private citizens interested in specific questions relating to the past. Arguably, the most significant expert reports were those for the Frankfurt Auschwitz trial in 1963 to 1965,⁵ now regarded as milestones of historical scholarship on details of the Nazi regime.

3 *Gutachten des Instituts für Zeitgeschichte* vol. 1, (München, 1958).

4 Paul Kluge, 'Vorwort', in *Gutachten des Instituts für Zeitgeschichte*, vol. 1 (1958), 10.

5 Hans Buchheim, Martin Broszat, Hans-Adolf Jacobson, and Helmut Krausnick, *Anatomie des SS-Staates: Gutachten des Instituts für Zeitgeschichte*, 2 vols., (Olten and Freiburg im Breisgau, 1965). Vol. 1: Hans Buchheim, "Die SS – Das Herrschaftsinstrument: Befehl und Gehorsam", vol. 2: Martin Broszat, 'Nationalsozialistische Konzentrationslager 1933-1945', 7-160, Hans-Adolf Jacobson, 'Kommissarbefehl und Massenexekutionen sowjetischer Kriegsgefangener', 161-279, Helmut Krausnick,

While institutional interest in expert reports has slowed down over the decades since the 1970s, several important contributions where the Institute provided factual expertise in court should be mentioned. The most prominent recent example was the analysis of the ways in which the right wing National Democratic Party was related or even similar to the original National Socialist Party before 1945. Since the decision to ban the *Sozialistische Reichspartei* (SRP) in 1952 had been based by the Federal Constitutional Court on its clear similarity to the historical National Socialist Party, it was of decisive importance to understand whether or not the current National Democratic Party adhered to Nazi ideology in a similar way. A preliminary analysis by the Institute for Contemporary History in 2014, based on material which had been produced by the National Democratic Party in the years before, showed the clear congruence between the historical essence of National Socialism and the present day political declarations of the NPD. An updated version of the report was produced for the court hearing in March 2016.⁶ Although the court accepted that the NPD was by programme and ideology clearly unconstitutional, it did not impose a ban on it since it regarded the party as too small to pose a real threat to the German democratic system. Another recent example of the Institute's expertise in this area is a complex study on the German rule of law in its historical perspective, particularly since 1945. Produced in 2017 in cooperation with several stakeholders, including the Federal Constitutional Court and the Federal High Court of Justice, it aims to establish an institutionalized place for the history and public experience of German constitutional democracy and rule of law in Karlsruhe.⁷

Just like in the case of IfZ, the origin of the Institute of National Remembrance – Commission for the Prosecution of Crimes against the Polish Nation dates back to the post-war investigation and prosecution of World War II crimes, primarily Nazi atrocities.

While the original human motives and political mechanisms behind the establishment of both institutions were different in many respects, there were some similarities. There was the problem of suspended or limited sovereignty and strong foreign influence, mostly on politics, but on academia and the juridical system as well. This was due to the situation of a defeated and liberated Germany and a quasi-liberated Poland by Stalin. In theory,

⁶ 'Judenverfolgung', 281-448; 1967 in two volumes as dtv dokumente paperback; 2005 in 8. ed. as dtv 30145 in one volume.

⁶ 'Das Gutachten des Instituts für Zeitgeschichte zum zweiten NPD-Verbotsverfahren vor dem Bundesverfassungsgericht', *Vierteljahrshefte für Zeitgeschichte*, 65/4 (2017), 619-30 (introduction by Magnus Brechtken); 631-61 (summary of report); <https://doi.org/10.1515/vfzg-2017-0034> [31 July 2019].

⁷ <https://www.forum-recht-karlsruhe.de/downloads/> [27 March 2018].

Poland belonged to the victorious United Nations coalition; in practice, by fiat of the Big Three's diktat at Yalta, it was assigned to the Soviet sphere of influence which, in many respects, was no different to foreign occupation. This made it impossible for any official Polish institution to deal with Soviet war crimes, of which there were considerably more than just the Katyn massacre. Thus, for almost half a century, Soviet war crimes were a taboo topic in "People's Poland"; the topic could neither be broached in the public domain, nor made the subject of objective scholarly research.

Such were the conditions in which the direct predecessor of today's Institute of National Remembrance, called the Main Commission for the Investigation of German Crimes, was established. This new office of the new regime was neither an academic nor a scholarly research centre, but a specific part of the justice system, created in support of the drive to search out, prosecute and punish German war criminals. Given the then common anti-German sentiment in Poland and Europe, not to mention the widespread desire for retribution, the prosecution of German war criminals was intended to assert both the national and international legitimacy of the government imposed on Poland by Stalin. Even the documentation-gathering activity, which over time was to prove to be the most significant achievement of the Commission, was, to some extent, a side-effect of this fundamental, par excellence, political objective. Consequently, from the very beginning, the Commission's work strictly fitted in with the concept of 'political justice', in its broadest sense, as proposed by Kirchheimer.

After a few dormant years, the Commission was revitalised in the 1960s to become increasingly audible in the public debate on accounting for and commemorating the victims of Nazi crimes. Its activation was directly related to the then "national-communist" trend within the governing Polish United Workers' Party (PZPR). Being a visible tool of "political justice", in the process, it became an "historical foreign policy organ of intervention" in the controversies exercising West German society and its justice system (such as the dispute over the activities of Fritz Bauer, the Prosecutor General of Hessen). This entanglement in a dubious policy of remembrance did not obstruct but even helped the Commission to become a significant research centre in this area of interest, for, in the process, it acquired very rich and methodically compiled documentation, notably the testimonies of perpetrators and survivors, victims and witnesses.

Upon the collapse of the communist system in East-Central Europe, the Commission, by then known as the Institute of National Remembrance, for some time sought, without much success, a place for itself in the newly delineated area of uncensored debate on recent Polish history and its various "blank" and "black spots". The breakthrough came with the idea of combin-

ing the prosecuting powers of the Commission with the newly established archive, modelled on the German Gauck Institution, which was to collect and make available what was left of the Communist security apparatus's documents. One more component was to be added – that of the Public Education Office – which quickly became not only an educational centre, but also one of the most significant contemporary history research institutes in Poland. The IPN's work, often criticized, sometimes justifiably, and from different angles, political, historical and methodological alike, has undeniably generated the necessary critical mass to base the Polish debate on the country's recent history on proven facts.⁸

To sum up, despite their obvious differences, both institutions, the IPN and the IfZ, were not only centres of political justice-related research, but, to some extent, a sort of instruments of political justice when the time for atonement had come. The situation of partners from the Russian organisation Memorial is different. This organisation offers a clearly non-governmental perspective, which simultaneously engenders comparison of both the Soviet and Nazi totalitarian regimes and their respective systems of repression. This, in turn, brings into focus the various forms and shades of "political justice" in Germany, Poland and Russia (or, more broadly, the entire post-Soviet domain), and the ways of coming to terms with them.

Having begun to germinate in 1987, the Memorial Society was formally founded as a historical and civil rights society in January 1989 in Moscow – in the heyday of glasnost and perestroika. Among its prominent representatives were the physicist and former dissident Andrei Sakharov, the poet Evgeny Evtushenko and the historian Alexander Afanasev. But, from the very beginning, Memorial was a nationwide movement with branches in more than a hundred Soviet cities, and not the initiative of some elite group of intellectuals. Today it has branches not only in most regions of Russia, but also in other countries, as in Ukraine or Belarus, and even in such countries as Germany, Belgium and Italy. Memorial, with its headquarters in Moscow, is endowed with a specialized library, archives and an exhibition area.

The erection of a monument to the victims of political persecution was one of Memorial's first goals. In October 1990 a black rock from Solovetsky Islands in the White Sea, the "primordial cell" of the Gulag, was placed in Lubyanka Square, only a few steps away from the dreaded Cheka-OGPU-NKVD-KGB prison. This monument became a focal point for the remembrance of victims of communist persecution. Memorial did not confine itself to the symbolic level of dealing with the past, but soon developed into a lively centre of scholarly research into Soviet totalitarianism. Its members are

8 See also the essay by Władysław Bułhak in this volume.

highly active in this field and in endeavours to transmit factual information and historical awareness to broader sections of society. Memorial historians have covered a fair expanse of primary source research that has enriched our knowledge and, often, fundamentally changed popular perceptions regarding Stalinism after the opening of the Soviet archives in the early 1990s.

One of the leading figures in this pioneering enterprise was Arseni Borisovich Roginsky (1946-2017), the Chairman of the Board of International Memorial, who co-organized and participated in our conference. Sadly he passed away on December 18, 2017. It might have been especially satisfying for Arseni Borisovich to hold this volume in his hand, not only because of the level of the presentations and discussions in Warsaw, but also because having himself been the victim of its denial, political justice was central to his mission in life. Born the son of a politically persecuted engineer in his father's place of banishment, he was to become a dissident historian. He was sentenced to four years of imprisonment for his activities in 1981. He served his sentence in full, and was released in 1985. In 1992 he was rehabilitated. In 1991, together with Nikita Petrov and Nikita Okhotin, he served as an expert in the trial of the Communist Party of the Soviet Union. It was a trial which indubitably bore traits of transitional justice, but never turned into a "Russian Nuremberg" as some hoped it would. While legislation on the rehabilitation of victims of political persecution was passed and made deep inroads into the collective consciousness of post-Soviet society, there was no clear judicial classification of the Soviet state and its repressive measures, and while the victims were rehabilitated, their persecutors went free. This somewhat schizophrenic form of transitional justice was a constant target of Roginsky's criticism. His life's work was dedicated to the memory of the persecuted and the establishment of historical truth about the Soviet politics of persecution. In recognition and respect for his achievements, the editors dedicate this volume to the memory of Arseni Borisovich Roginsky.

The triple perspective explained above induces us to see "political justice" quite widely, by extending it to various politically or ideologically motivated actions of institutions involved in investigating and prosecuting crimes now passing into history. Our aim is not merely to restate the more orthodox understanding of events and developments which made it imperative to engage the willing cooperation of courts and prosecutors for political purposes. Nor is reference necessarily made to the comparable activities of various totalitarian regimes. We offer the articles in this volume in the hope that they will contribute to broadening the terms of reference of what remains a relevant public debate.

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This volume is divided into two sections, the first of which deals with varieties of political justice in the Soviet Union, Germany and Poland from the 1930s to the 1950s, while the second is dedicated to problems in dealing with state crimes. The aim of the conference was to make a *tour d'horizon* of essential exploratory findings in this field of interest. That is what determines the character of this volume.

Yan Rachinsky (Memorial, Moscow) opens the first section with an analysis of one of the most perfidious forms of political justice in Stalinist times, namely the practice of extrajudicial convictions which were then transformed into pseudo-judgements, mostly by the Military College of the Supreme Court of the USSR. When the defendants appeared before this collegiate body, the verdict of guilty, and as a rule the death sentence, had already been determined by Stalin and his Politburo henchmen. This is why the lists of victims were dubbed Stalin's shooting lists. As Rachinsky wrote, the fact of their existence had been disclosed by Khrushchev in his famous speech at the Twentieth Party Congress in 1956, but the lists themselves finally became available for public scrutiny only in the early 2000s. Memorial published them online at <http://stalin.memo.ru/>. This article contains Rachinsky's thorough analysis of the development and functioning of this practice.

While the deliberations based on the lists in most cases took only some minutes, the Stalinist show trials were great spectacles and, accordingly, required sufficient exposure time and an audience of appropriately immense proportions. Both were guaranteed for the trial of the "Union for the Liberation of Ukraine" ("SVU") which ran from March 9 to April 19, 1930 in the Kharkov Opera House. The article of Yuri Shapoval from the I. F. Kuras Institute of Political and Ethnic Studies of the National Academy of Sciences of Ukraine provides an in-depth analysis of a relatively early show trial, and illustrates how the Stalinist regime used this instrument in its ethnopolitics.

Irina Romanova, from the European Humanities University in Vilnius, Lithuania, not only acquaints the reader with the *mise-en-scene* of another regional show trial, the "Lepel Affair" in the Belarusian SSR in 1937, but describes how this trial triggered several hundred (!) similar court proceedings. The story of bad local chiefs who had violated Stalin's Constitution, abused power, and overburdened and maltreated the peasants was reshaped in different places with different actors over and over again. Romanova's contribution enables the reader to better understand how Stalinist "alternative realities" were forced on Soviet society by means of political justice.

Although Hitler's regime was no less totalitarian and ideologically motivated than Stalin's, the Nazi institutions of justice were less flexible than Soviet ones. Since Hitler's dictatorship was partly based on traditional insti-

tutions and supported by conservative elites, certain features and habits of the “Rechtsstaat” inevitably persevered. But this did not limit the regime’s power, since courts could always be bypassed by using the proxies the police had been equipped with from the start, in early 1933. At the same time courts and jurisprudence proved adaptable to the wishes of the “Führer” to a very high degree. In his article, Ingo Müller, former senior government official and professor emeritus of law of the Hamburg University of Applied Sciences, gives a concise analysis of the structures, the logic and development of this system that combined judicial and extrajudicial persecution to great effect. As the author of the book *Furchtbare Juristen* (Dreadful Jurists), the first edition of which appeared in 1987, Müller is one of the trail-blazers in developing a critical view of the justice system in Nazi Germany and its complicity with that regime.⁹

Ingo Loose (Leibniz Institute for Contemporary History Munich-Berlin) draws the reader’s attention to an especially radical phenomenon in the framework of the Nazi court system, namely the Special Courts in the Annexed Polish Regions between 1939 and 1945. Special Courts were instituted in the German Reich in 1933 which involved proceedings with drastically curtailed rights of defendants. This device was extended to occupied and annexed Polish territories, and combined with the anti-Polish racist laws that were introduced, these Special Courts were simply instruments of terror. From another angle, the documents of the procedures, as Loose explains, can be seen as revealing sources for the history of the occupation.

The article of Maximilian Becker (Leibniz Institute for Contemporary History Munich-Berlin) further develops the topic. The author analyses the “Obornik Murder Trial,” of August 25 and September 4, 1941 in Posen. The Special Court sentenced former Polish police officers and auxiliary policemen who, on September 4, 1939, i. e. in the opening phase of the German-Polish war, had transported some hundred interned Germans from Gniezno to the outskirts of Warsaw, many of whom died along the way. Eighteen defendants were sentenced to death while ten were found not guilty. The author shows how the trial was accompanied by intensive propaganda that surrounded the so-called “September crimes”, i. e. the alleged violent actions of Poles against Polish citizens of German descent. The numbers of victims were greatly exaggerated by the Germans, in justification of the German invasion and occupation of Poland. The views that were officially established by propaganda even found their way into German court judgments.

9 Ingo Müller, *Furchtbare Juristen: Die unbewältigte Vergangenheit unserer Justiz* (München, 1987).

Jarosław Rabiński, a historian affiliated with the Catholic University of Lublin, who specialises in the history of the Polish Christian Democratic movement, shows that the issue of “political justice” does not necessarily have to be connected with atrocities committed by foreign totalitarian regimes. He illustrates his argument by reference to the “Brest trials”, where the defendants were leading members of the opposition to the ruling “Sanacja” regime, including the former Prime Minister Wincenty Witos of the Polish People’s Party. The government-in-exile, which was formed in France under General Władysław Sikorski, after the defeat of Poland in 1939, faced a specific dilemma. It had to choose between the need of wartime “national unity” and having to come to terms with the legacy of the authoritarian Polish government, which had been accused of dismantling the democratic system and contributing to the military defeat against Germany. As Rabiński shows, the latter idea finally prevailed though its form was meeker than originally intended: a special commission was established to investigate the underlying causes of the September defeat, and its goal was to “register facts and collect documents”. Another symptom was the purge in the officer corps in exile by General Izydor Modelski. Rabiński stresses that the intended primary aspect of the measures in question was legitimisation. More or less factual sins of the predecessors were highlighted to justify the takeover of power by General Sikorski’s group, whose manner verged on a coup d’état.

Through Andrzej Paczkowski’s contribution readers may acquaint themselves with the basic facts of “political justice” as well as the most important period of dealing with the past in Poland in the 20th century. Paczkowski, a long-established authority in this field of study who is currently affiliated to the Institute of Political Studies of the Polish Academy of Sciences, focuses on the way Poland dealt with its occupation experience, particularly the German occupation. He also briefly characterises the phenomenon and introduces the notion of “total occupation” (derived from the complementary concept of “total war”). In his systematic scrutiny of that total experience, Paczkowski discusses such issues as the successfully implemented design to remove all Germans from Poland (within its new post-war borders), the solution to the problem of Volksdeutsche, i.e. Polish citizens enrolled on the so-called German People’s List and German citizens of Polish descent, the issue of punishing perpetrators of German atrocities and their collaborators (including Poles), and calling to account those who failed to fulfil “their obligations as Poles”. Poles and Polish citizens were not to give even the most vestigial displays of tacit support for the German occupiers (e.g. actors who performed in German theatres or propaganda films, or journalists who collaborated with the German-sponsored gutter press). Paczkowski approaches the reckoning with the occupation period as a pretext to eliminate political

opponents from another perspective. He juxtaposes the letter of the retribution regulations with the complicated reality of post-war Poland, which required such law to be applied flexibly. He stresses that coping with the German occupation was a nationwide issue, and a source of legitimisation for Communist power in Poland.

Władysław Bułhak, a senior researcher at the Historical Research Office of the Institute of National Remembrance and co-editor of this volume, describes the origins and perhaps somewhat ambiguous history of the institution he currently works for, in the context of the enforcement of “political justice”. So far, historiography has failed to provide a comprehensive overview of the subject. Bułhak begins with the documentation of German war crimes by the Polish government-in-exile in London, and Poland’s contribution to the broader efforts of the United Nations in this regard. He then sketches IPN’s successive evolutionary stages, initially called the Main Commission for the Investigation of German Crimes in Poland, as an organ of a state governed by Soviet-sponsored communists. He highlights the use of the Main Commission to legitimise the authorities in the early years of communist rule and the subsequent role played by the same Commission under a slightly new name and entirely new leadership in the 1960s, not only in prosecuting Nazi war criminals but also in the Moscow-orchestrated propaganda campaign against the ruling elites of West Germany. The overview also contains a brief description of the little-known period of the Commission’s activities in the years 1984-1998, by which time its name was changed to the Institute of National Remembrance. Finally, Bułhak discusses the origins and first years of the IPN as we know it today.

Paulina Gulińska-Jurgiel, a researcher affiliated with the interdisciplinary Aleksander Brückner Centre for Polish Studies, which is a joint project of the Halle and Jena universities, applies methodological and research tools to the broader categories of “political justice” and “transitional justice” as extant in the history of the Main Commission for the Examination of German Crimes in Poland. She poses the question regarding their analytical potential and possible restrictions with regard to Polish matters, in particular the period of the birth of the new political system. Gulińska-Jurgiel analyses the period between the summer of 1944 and late autumn 1945, focussing on the attempt to develop institutional forms for the functioning of the Commission for the Investigation of German-Nazi Crimes in Oświęcim (Oświęcim being the Polish name for Auschwitz). This Commission sought to reconstruct the operations of the Auschwitz-Birkenau death camp in the minutest of detail. In conclusion, she expresses her doubt as to whether the legal and sociological category of “political justice”, as understood by Otto Kirchheimer, fits the reality described, that is, the literal rummaging in the

remains of a death camp. In her approach, the notion of “transitional justice” as proposed by Rachel Kerr and Eirin Mobekk is more adequate.

Joanna Lubecka, an historian and political scientist who represents both the Cracow branch of the IPN and the Jesuit University Ignatianum, studies the way the cases of German perpetrators of war crimes were handled by courts. She focuses on three aspects that are seemingly far apart thematically, but which she sees as crucial for various reasons. She starts with the fact that the government which was imposed on the Poles by Moscow, aimed at legitimising its power by pushing the idea of “judicial retribution” against the perpetrators of German wartime atrocities. This was well received by the general public, even if that general public was not sympathetic to the new authorities. Lubecka proceeds to expand the perspective towards a discussion of the legal dilemmas European lawyers had to face when challenged with the task of developing a legal framework for judging atrocities committed on behalf of the Third Reich, which met the criterion of legality but ignored fundamental moral principles. She argues that the post-war trials were affected by “extra-legal arguments”, based on “justice” emanating from what was perceived to be natural law, and the political will of the allied governments. This also refers to the situation in Poland, where the issue of inadequacy of legal regulations in face of the crimes that had been committed was also raised. Therefore Lubecka’s focal point fits exactly into the orthodox understanding of the notion of “political justice”. She concludes studying the perpetrators when they had to face the reality of the Polish prisons of the latter half of the 1940s, which is a miniature study of their everyday life, family and emotional aspects included.

Adam Dziurok, a researcher at the IPN branch in Katowice and a lecturer at the Cardinal Stefan Wyszyński University in Warsaw, presents a local study of the process of dealing with the past, where he analyses the activity and case law of the Special Criminal Court in Katowice of 1945-1946. Due to its political and cultural character, the erstwhile Polish-German borderland, posed a number of difficulties with regard to the process discussed in this article. This is because the case law had to take into account the complicated issue of defendants’ sense of national identity, and the legal and historical idiosyncrasies of Upper Silesia. Dziurok determines that most of the cases (60 percent) did not concern major atrocities but passive membership of the SA, and the remainder were simple down-to-earth people, doing what they thought they were told to do (a typical defendant was “a hard-working miner or steelworker with a large family”). Dziurok reaches the general conclusion that Polish courts took account of the specific nature of the area by exploiting various loopholes and avoiding judgments in the spirit of the draconian provisions of the so-called *August decree*. Thus, the Silesian variety of justice

of 1945-1946 was relatively apolitical with nearly a half of the trials ending in acquittal.

Hubert Seliger (University of Augsburg) portrays Alfred Seidl, a defence attorney at the Nuremberg Trials and, in the 1950s and 1960s, one of the most influential figures in West German war crime trials. Seidl joined the NSDAP in 1937, but his political career only took off in post-war Bavaria. He joined the conservative CSU and made it to the post of Bavarian Interior Minister. Referring to Kirchheimer's "Political Justice", Seliger presents Seidl as a typical "political lawyer". Despite the changed political system, his affiliations revealed the significant "endurance of a mindset".

Nikita Petrov (Memorial, Moscow) deals with the problems of judicial and extra-judicial punishment and acts of retribution against German prisoners of war between 1941 and 1945. He describes the development and *modus operandi* of judicial and extra-judicial institutions during the war. He pays special attention to the only open Soviet trial of Germans during the war which, in many ways, bore the typical hallmarks of a show trial. Confronted with the real crimes of the German aggressors rather than fictitious ones, the Stalinist system of justice proved helpless and unable to define and punish the crimes in question in a legally correct manner.

Łukasz Jasiński, until 2018 a researcher at the Museum of the Second World War in Gdańsk, compares the ways the past was dealt with in Poland and Czechoslovakia, which was referred to as "retribution" in the latter country. The subject matter includes both the legal and institutional solutions, as well as the course of the process in both countries. He draws attention to the question of the extent to which the differences in the form of the German occupation, and the scale of repression and collaboration, resulted in the differences between the way these processes were implemented in Warsaw, in Prague and in Bratislava. Jasiński points out several important aspects: the unfounded notion that the Czechoslovak case lacks the "suppressed" experience of Soviet atrocities; the different dynamics of the Polish and Czechoslovak situations in 1945-1949 (both at the internal and the international level); and the clear differences in the ways the institutions and legal instruments intended to deal with Germans were used to combat anti-Communist opposition, both in the political and military spheres. In general, he reaches the conclusion that despite all the differences in conditions and their points of departure, the courses of Polish and Czechoslovak "retribution" proved very similar.

Marek Kornat, a professor at the Institute of History of the Polish Academy of Sciences and a lecturer at the University of Cardinal Stefan Wyszyński in Warsaw, deals with the political and legal origin of the primary retribution regulation issued by the Polish government in exile – the Decree of the

President of the Republic of Poland in Exile of 30 March 1943 “on criminal responsibility for war crimes” – and the content of this legislative act itself. He indicates that any reference to the ground-breaking concept of genocide, which had already been formulated by Rafał Lemkin, a Polish lawyer, is absent in the decree, which is a departure from the principles of legal positivism (including the key principle of Roman law – *lex retro non agit*). In this approach, the authors of this Decree and the official Polish doctrine concerning the prosecution and punishment of Nazi criminals, including primarily Waław Komarnicki, the Minister of Justice in the Polish Government in Exile, and their co-workers, assumed that the legislative authority had to adopt the principle of just retribution against perpetrators and treat it as a universal ethical principle derived from natural law. Kornat encloses the complete text of this decree and a note by Stanisław Glaser, a co-author of the concept, with his article, which is important for the proper understanding of this legislative act.

The wide variety of contributions in this volume summarizes and reflects the initial collaboration and ongoing academic and intellectual discourse of researchers from three institutions – the Institute of National Remembrance in Poland, the Leibniz Institute for Contemporary History in Germany, and Memorial in Russia. We have one aim in common: to provide research-based knowledge of the highest academic standards and to inform present-day civil society in a reliable and trustworthy manner about historical events and their context. The editors thus aim to throw light on the historical background of present-day discussions on political justice in support of readers seeking to gain independent views on current events displaying ostensibly similar phenomena.

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Jürgen Zarusky, who inspired the international conference on Political Justice which we organized as a common project in March 2015 and who unswervingly worked on this volume with us, passed away suddenly and unexpectedly to our great sorrow while this book went into print. Jürgen Zarusky has dedicated a considerable share of his academic life as well as of his engagement as a public citizen to the research and commemoration of the victims of authoritarian regimes. He unerringly sought truth and justice through his work and will always be remembered for the inspiring, humane and humorous spirit with which he enriched our work and the collaboration we had the privilege to enjoy.