Comparative Transitional Justice: Germany after 1945

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Abstract:
Transitional Justice (TJ) is a multi-disciplinary research field. Yet, the first generation of research largely remained descriptive, practically oriented and focused on single case studies. In order to move the agenda forward, future research needs to become (1) more theory-guided and needs to move towards (2) more empirical comparisons of countries or mechanisms in order to arrive at more generalizable findings as regards the explanation of the effectiveness of the diverse mechanisms to coming to terms with past misdeeds. Although only covering a single country (post-war Germany), the paper contributes to this endeavor by providing an empirical comparison of the four TJ-mechanisms that were applied in the case of Germany’s atonement for the Holocaust: (1) the Nuremberg war crimes tribunal (1946), (2) the state apology delivered by Adenauer in the Bundestag (1951), the reparation payments (1953: Luxemburg Agreement; 2000: Foundation Remembrance, Responsibility and Future) as well as the amnesty laws (1952). The question is: To what extent has the mix of retributive and restorative mechanisms contributed to reconciliation? The analysis of the cross-case (mechanisms) and within-case variance (change over time) starts with a theoretical taxonomy of the mechanisms as regards its purpose or aim (retribution, restoration). The central argument of the paper is that the “amount” of reconciliation (or the success of each mechanisms) differs as regards the understanding of reconciliation, i.e. whether the target of these measures were (a) the victims (here: Israel/Jewry), (b) third states/international opinion (e.g. the US) or (c) the reconciliation of the German people with themselves.
I. Introduction

One of the biggest lacunae in Transitional Justice (TJ) research currently is the unanswered question: What is the “best” (most effective) way to deal with the consequences of past misdeeds in order to prevent the re-occurrence of armed conflict, cycles of revenge cycles, and future atrocities? The term Transitional Justice refers to the range of approaches and mechanisms which attempt to build societal peace after mass atrocities and systemic human rights abuses have occurred (Teitel 2000; van Zyl 2005: 209). The term “transition” refers to the transformation or change from autocratic to a (more) democratic system (Torpey 2006: 52), while the term “justice” denotes a normative component, namely that the victims of systematic physical violence of the past regime will (or should) encounter justice – e.g. the acknowledgement of and compensation for their suffering – during the passage towards the new regime aimed at institutionalizing a state of sustained respect for human rights norms, democracy, and the rule of law. The final stage of this process is the reconciliation of the perpetrators and victims of past atrocities within a new social contract or relationship. In order to promote such a transition,

“societies must confront the painful legacy, or burden, of the past in order to achieve a holistic sense of justice for all citizens, to establish or renew civic trust, to reconcile people and communities, and to prevent future abuses”.

To achieve this aim, the perpetrators and the victims ought to come to terms with the past misdeeds in order to prevent and punish atrocities as well as to repair and to heal the wounds. The various ways or mechanisms to achieve this aim include: (a) the criminal or legal prosecution of perpetrators (tribunals), (b) gaining knowledge about the extent and intensity of past crimes via truth-telling discourses (truth commissions), (c) rehabilitation and compensation of the victims (reparations), (d) perpetrators’ request for forgiveness (apologies) as well as, finally, (e) amnestying certain misdeeds for the sake of a faster social re-integration of the perpetrators and enabling society to move on. The paper analyzes the effect those instruments have on peace and reconciliation from theoretical-conceptual perspective.

It proceeds as follows: Section 1 focuses on reconciliation as the dependent variable reconciliation. Section 2 introduces the independent variables; the mechanisms or instruments currently under discussion to help societies to overcome historical injustice: (a) tribunals, (b) amnesties, (c) reparations, and (d) public apologies. From a theoretical point of view, this part investigates the purpose of each instrument, the causal mechanisms through which it is supposed to generate reconciliation, and establishes hypotheses and indicators to be tested in the empirical part of the paper. The latter (section 2) investigates the four TJ-mechanisms that were applied to address Germany’s Holocaust atrocities: (a) the Nuremberg war crimes tribunal (1946), (b) the two amnesty laws implemented in 1949 and 1954, (c) the reparation payments with Israel (1953; Luxemburg Agreement) and the Eastern European forced workers (2000; Foundation Remembrance, Responsibility and the Future) as well as (d) the public apologies delivered by Adenauer (1951) in the Bundestag and Rau (2000) in the Knesset, the Israeli parliament. The study thus is a cross-case analysis of the four mechanisms of TJ and further a within-case variance of the state of reconciliation. The conclusion, as usual, will summarize the findings which are that (1) each mechanism targets different audiences and thus contributes differently to reconciliation and (2) that only a mix of TJ mechanisms will contribute to an overall level of reconciliation between the former perpetrator (Germany) and its main victim (the Jews, here: Israel), (b) between Germany and its international environment, i.e. the re-integration into the international community, and finally the establishment of societal peace among the German people themselves through punishing the major perpetrators as well as granting amnesty to the mass of “fellow travelers” or minor guilty.

II. From revenge to reconciliation

Reconciliation, the dependent variable of this study, is defined as the process of re-establishing the social and political relations between former perpetrators and victims of extreme political violence. Modeled according to Johann Galtung (1992; 1998), reconciliation can be understood on the one hand as a process, on the other hand as a product. Reconciliation in the sense of a product or end point at which former opponents are reconciled is reached when three conditions are met:

(1) the absence of physical violence (step 1: negative peace);
(2) the absence of structural violence, i.e. when the original cause of the conflict (for example problems with minorities, border disputes, conflicts over resources) are dealt with in diplomatic ways (step 1 and step 2: positive peace); and
(3) when the parties are working on a common interpretation of the past conflict and a culture of peace (for example through common memorials, historical or educational commissions) develops.

The idea is that reconciliation is understood as a gradual process and that it takes place in steps including the possibility of failure and reversibility. That is why one can talk about reconciliation in the sense of a process even when not all three criteria have been met, as long as at least the goal of complete reconciliation is kept in view.

Table 1: Reconciliation: Phases and indicators

<table>
<thead>
<tr>
<th>Stage:</th>
<th>Degree of rapprochement:</th>
<th>Indicator:</th>
<th>Examples</th>
</tr>
</thead>
<tbody>
<tr>
<td>0</td>
<td>Violent conflict</td>
<td>Ongoing atrocities</td>
<td>Murder, expulsions etc.</td>
</tr>
<tr>
<td>1</td>
<td>Negative peace</td>
<td>Absence of large-scale physical harm or retaliatory measures</td>
<td>Common acceptance of co-existence, e.g. armistices, cease fires, to turn over weapons</td>
</tr>
<tr>
<td>2</td>
<td>Positive peace</td>
<td>Absence of structural violence</td>
<td>Common resolution of the root causes of the conflict</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>e.g. establishment of diplomatic relations, the bilateral implementation of minority rights, (legal) settlement of border- or resource conflicts, trade- and cooperation agreements</td>
</tr>
<tr>
<td>3</td>
<td>Cultural peace</td>
<td>Absence of cultural violence</td>
<td>Common remembrance and condemnation of past violence (one narrative of the past), e.g. common memorials, school books etc.</td>
</tr>
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The advantage of understanding reconciliation as a process rather than as an end-product (stage 3) is that the threshold for the positive values is neither too demanding nor too insensitive for the minor steps of rapprochement. What is more, I conceive of reconciliation as a collective process aimed at restoring the dignity of the victims and the social rehabilitation of the perpetrators. My understanding of reconciliation therefore investigates collective or joint guilt (cf. Jaspers 1987: 56). The primary objects of this study are nation-states or societal groups (often ethnicities), which I treat as collective actors that form an independent corporate, social and political identity based on a common history,
memory, and language. In this understanding, guilt does not fade away over time: states as well as their respective governments are politically responsible for their ancestors’ sins as they are their legal successor (Lübbe 2001: 75; Arendt 1968: 147). Of course, a crucial problem is the measurement of reconciliation. Although it seems promising to start with quantitative analysis, i.e. to correlate democracy- (Freedom House, polity IV), conflict- (COSIMO), and human rights data sets (CIRI) with the presence or absence of instruments to obtain initial insights in particular with regard to stage 1, the analysis (at least with regard to stage 2) will finally have to rely on process tracing to control for the causal influence of the mechanisms (e.g. with the help of INGO’s reports such as Human Rights Watch, amnesty international, International Center for Transitional Justice as well as press- and documentary analysis).

III. From transitional justice to reconciliation

If we look at the tool-box of reconciliation the following questions are central: (1) what is the best way (or instrument) to deal with past human rights violations, (2) what is their individual purpose or function, (3) under which conditions is the one or the other instrument likely to be effective or not, (4) can those instruments at all be compared, evaluated or measured with regard to a supposed collective impact on peace and reconciliation or (5) are they in fact opposite (or complementary) and serve different individual purposes rather than a collective goal of reconciliation?

Figure 1: Overview reconciliation mechanisms
The current state of scientific research in International Relations and TJ has, however, not yet systematically addressed such questions (cf. Olsen 2010: 19). Instead, the current peace- and conflict as well as TJ-literature is characterized by descriptively-rich, single country case studies, while the analysis of the causal relationship between transitional justice and reconciliation is under-researched and suffers from theoretical neglect (van Zyl 2005: 210). A comparative analysis and theory-guided framework for the evaluation of the mechanisms and conditions of successful reconciliation is, however, still missing. Academia has remained relatively “silent” on the questions of generic concepts and hypothesizing if, when, how, and why reconciliationary mechanisms work. Even our knowledge and functioning of individual instruments is quite limited (Brahm 2007: 17). Pierre Hazan (2006: 19, cf. 22) has rightly pointed out that the “mechanisms of transitional justice are the new mantras” – seemingly “magic” promises to achieve reconciliation, peace and justice, stability and democratization – although we do know not much about their function, effects or impact. This paper regards itself as a first step towards addressing this gap by conceptualizing the function of the four instruments and discussing their potential impact. The following part will follow a common template by analyzing the suggested mechanisms that could be applied after mass conflict to achieve reconciliation. Each part starts with the definition of the instrument, describes its causal effect, then discusses the conditions of success, evaluates the problems and advantages connected with the application of the mechanism and finally extract hypotheses with regard to the mechanism’s success or impact, which can, however, not be tested in this paper.

a. Apologies: Reconciliation through submission

1. Definition:
An apology is a public confession of having behaved in a socially culpable manner, i.e. the admittance of a wrongdoing (mostly criminal guilt) and the acceptance of the political responsibility that follows from the norm violation. The plea for being pardoned must be presented with an expression of regret and the promise that the behavior will not be repeated in the future (cf. Lazare 1995, 2004; Benoit 1995; Tavuchis 1991).

2. Causal effect:
An apology aims at firstly or primarily achieving reconciliation with the victim through unilateral submission of the former offender to the moral “judgment” of the offended with the aim of
attaining forgiveness and/or achieving a renewal of the social relationship in the future whilst not denying or suppressing the victim’s need for (and right to) remembrance of the dreadful past. Secondly, via publicly displaying oneself as an atoning persons that regrets one’s former misdeeds (moral renewal), an apology also aims at the re-integration of the former perpetrator into the broader social (here: international) environment.

3. Conditions of success:

Apologies belong to restorative justice approaches. In order to be successful, it is important that the former perpetrator voluntarily takes the initiative. An apology is first and foremost a unilateral effort of the perpetrator that signals regret, the acceptance of social blame, and the political responsibility for the harm caused. In collective settings, only the highest political representatives of a state are in a position to representatively accept collective responsibility for the wrongdoings of their forefathers. Private apologies of state politicians are not likely to be effective.

A successful apology process consists of two separate declarations of intentions: (1) the (political) request for forgiveness on behalf of the criminal perpetrators and (2) the acceptance of this request (or granting of forgiveness) on behalf of the victim. The psychological crunch point of any apology is the uncertainty under which it is given; it reverses the original (material) asymmetry of power into a symbolic relationship in which the offender “begging” for forgiveness submits oneself under the ruling of the offended. Making oneself (socially) vulnerable is the core risk the former offender has to take as the victim might not accept the apology, refuse to grant psychological relief (purification) and thus reject the request for forgiveness. However, in case the apology is accepted, the symmetry of the relationship between both sides is re-established on a new social basis or contract.

Apologies are one of the most demanding instruments of reconciliation and in no way are a trivial or materially “cost-less” gesture (cf. Hazan 2006: 43). Firstly, the speech act must be given in public and the person apologizing should be a high representative of the collective entity for which he asks for forgiveness (Manin 1997; Pitkin 1967). Secondly, the level of shown remorse is crucial (Schneider 2000; Lazarre 1995). Often apologies fail because of ambiguous signals and gestures, justification or defense of the act, diminishing of the crime, or mitigation of the assumed responsibility. Thirdly, it is questionable whether an apology could be more credible (or is at all credible) if not linked with a visible, painful proof of remorse (Minow 1998: chapter 5; Tavuchis 1991; Barkan 2000). As apologies
are considered primarily a symbolic recognition of suffering “only”, they might have to be combined with material compensation or reparation payments in order to avoid the impression of being mere rhetorical acts or “cheap talk”. Fourthly, the credibility of an apology could also increase if domestic political resistance is to be overcome. On the other hand, its credibility could at the same time diminish if it is not representative, i.e. if the apology given by the government is sharply contested and not backed by the parliament or the population.

4. Advantages, Disadvantages, Problems:
Due to their representative character, it is probably never too late to ask for forgiveness through submitting an apology. On the other hand, apologies are quite demanding as they have to demonstrate a credible level of self-reflection and remorse. In spite of a theoretically perfectly framed (and also practically performed) apology, they nonetheless run the risk of being rejected.

b. Reparations: Reconciliation through material compensation

1. Definition:
Reparations are a symbolic acknowledgement of having caused damage (cf. Hazan 2006: 44) by voluntarily offering restitution (land ownership, looted art) or material compensation (often monetary payment) for the injuries caused.

2. Causal effect:
Reparations aim at achieving reconciliation with the victim through offering payment for physical or mental suffering in the form of money or exchange of goods. The intention is to “soften” (or even to repair) the consequences of the harm caused. The basic problem of reparations is the question of “just” and “equitable” compensation of the pain or loss (van Zyl 2005: 213). The inherent contradiction of reparations is that they try to put “a price for the (un)price of loss” (Minow 1998).
Of course, as the term “loss” indicates, the moral and physical harm can never be undone: it is impossible to simply return victims to the status quo ante. No harm can be adequately compensated, matched, transformed into material reimbursement or converted into money (Maier 2003). Hence, reparations can neither repair nor restore what was stolen nor “making whole what has been smashed” (Torpey 2006). Thus, reparations rather focus on the consequences of harmful behavior and try to make those consequences more bearable (or “livable”) by “recovering” or “awarding” the
victim’s damage. The important point of offering indemnification therefore is symbolic, i.e. restoring the dignity of the victims as the perpetrator signals that one has recognized his guilt, understood his wrongdoing, publicly demonstrates remorse and is willing to do everything monetarily in order to “repair” the pain caused by hurting himself financially; i.e. accepting costs. In certain circumstances e.g. land issues, it is, however, possible that the loss is only temporal (e.g. expulsion from annexed land) and eventually might be returned (restoration: return of original property) or equally substituted (exchange: return of similar property or capital). Compared to apologies, reparations eventually do not symbolically reverse the former material or power asymmetry between perpetrator and victim. Here, the question is whether reparations are not in fact inherently discriminating as they can only be paid if the perpetrator is financially capable and therefore, from a material point of view, at least equal to if not eventually better off than the victim. Thus, the effect of apologies and reparations might be different: accepting an apology is equivalent to forgiveness, while accepting reparations is not and rather might be a financial necessity for the victims in order to survive. Similar to apologies, reparations aim at reestablishing primarily the social relationship with the victims as well as restoring the social image of the former perpetrator within the social environment.

3. Conditions of success:
Reparations belong to restorative justice approaches. Similar to apologies, it is important that the former perpetrator voluntarily takes the initiative to pay reparations. If reparations aim to be effective, they have to be paid by the offender (or the legal successor) on a voluntary basis and as a symbolic admission of guilt. They will not be morally credible of effective for reconciliation, if there are imposed by the victorious party, e.g. as war reparations or “looser tax” (e.g. Versailles Treaty; Potsdam Conference) nor as “blood-” or “hush money” aimed at silencing the victims. As regards the former, reparations are considered “as old as war itself” (Hazan 2006: 24), yet, as regards TJ. However, the “new” understanding of reparations is certainly that of a tool of a moral recognition, i.e. symbolically acknowledging the other party’s suffering.

As with apologies, reparations should neither be considered an instrumental approach to white-wash the offender or to “undo” the past. Still, the victim retains his right for remembrance. However, it is none the less important that reparations create an ultimate legal certainty for the side that admitted the guilt and committed itself to pay.
4. Advantages, Disadvantages, Problems:

There is definitively a time when it is too late to pay reparations – if the aim is to link reparations with forgiveness: The reconciliatory effect of reparations decreases the more time has passed since those persons eligible to claim compensation (and therefore grant forgiveness) are only the survivors of a crime. Supposedly the time frame is about one generation, which limits the reconciliatory potential of reparations: In addition, reparations are a technically complex matter (van Zyl 2005: 213) as the identification of the victims legally entitled to claim compensation and the question of who get what and for what kind of harm suffered might further complicate and prolong the process of reaching an agreement.

c. Tribunals: Reconciliation through prosecution

1. Definition:

A tribunal is a judicial body – often an ad-hoc constituted court – which has a public mandate to enquire into particular cases of atrocities in order to punish the individual perpetrators, who committed the offenses, according to the rule of law as well as due process. Any indictment is based on the principle of individual criminal guilt as well as personal responsibility (cf. Bass 2000).

2. Causal effect:

Tribunals aim at achieving reconciliation between the victims of systematic human rights violations and society as a whole through the prosecution and punishment of the criminal perpetrators. The retributive justice approach eventually meets the victims’ desires for revenge as they bring some sort of institutionalized retribution (cf. Meernik 2005; van Zyl 2005: 211). Hence, of all instruments discussed, tribunals in a way “settle accounts” as the perpetrator also suffers material “damage” – detention or capital punishment. Tribunals hold perpetrators accountable (Hazan 2006: 32, 34). They arrive at a final decision and opinion about past misdeeds by hearing perpetrators, victims, and eye-witnesses’ statements. After hearing the subjective stories of all parties concerned (personal truths), tribunals gather and compare evidence, “filter” unimpeachable evidence about pat atrocities, establish an, objective, factual truth, and pass a judgment over the offender’s involvement concerning the degree and size of the crime before passing a neutral and objective sentence (verdict) that also documents the perpetrators’ individual role and amount of wrongdoing. In doing so, the subjects found to bear criminal guilt are regarded as individual representatives of a rather criminal
collective. Similar with truth commissions, tribunals deliver binding judgments, i.e. one narrative of the past by making past atrocities an undisputable fact and destroying perpetrator’s “war hero” myths by officially affirming the actions as an injustice. What is more, tribunals have a didactic effect and reaffirm the constitutive or essential norms and values of a proper society (van Zyl 2005: 211). What is more, taking the suspects in custody prevents them from interfering into current or future state affairs. Too, they aim at disuading potential perpetrators and thus to prevent future and new crimes (Akhavan 2001).

3. Conditions of success:
Tribunals are strongly focused on punishment – i.e. making offenders accountable to the rule of law. Their immediate reconciliatory success therefore also rests on the ability to get hold of and detain the high-level perpetrators and masterminds of collective crime (Rudolph 2001: 685). Tribunals in general are not attributed with forgiveness, which does, however, not imply that they cannot contribute to reconciliation. Given their effects of “truth telling” (documentation of the crimes) and “deterrence” combined, one cannot stick to the claim that tribunals are solely backward looking (cf. Brahm 2007: 18). In a certain sense, tribunals display, however, a tendency for prescribing or dictate reconciliation “from above” instead of fostering a common contestation of the past (“reconciliation from below”): perpetrators and victims are separated as well as assigned rather passive roles as persons being judged. Tribunals, by their very nature, focus on individuals (Brahm 2007: 21). They are rather overwhelmed in dealing with collective mass atrocities (as e.g. in Rwanda). Similar to truth commissions, international criminal courts give victims a voice to provide information about their suffering and thus the opportunity for catharsis (Meernik 2005). They employ a third (neutral) actor between the offender and the victim. However, they do not follow a horizontal policy style of shared negotiation or more or less voluntary, but employ a hierarchical logic of guilt, which places the binding decision (court sentence) of the third actor above the two concerned parties (victim and perpetrator) (Rudolph 2001; Minow 1998: Chapter 3).

Contrary to truth commission, tribunals do not necessarily depend on the participatory willingness of the offender to clear matters up or to cooperate. In addition, the verdicts issued are only to a certain extent influenced by the degree of remorse or regret demonstrated by the offender; instead the size of punishment totally depends on the seriousness of the offence. A crucial factor for the success of tribunals is their composition and its modus operandi. While international judges are in particular
credited with neutrality and impartiality but admonished with indifference, national judges are credited because of their intense knowledge of the historic local circumstances and culture, but admonished with being prejudiced. What is more, tribunals ought to perform its investigations in an open, transparent, fair and verifiable manner in order to prevent accusations of partiality or “victor’s justice”.

4. Advantages, Disadvantages, Problems:
As tribunals “de-collectivize” guilt and emphasize individual culpability (Rudolph 2001: 684), they are structurally incapable of dealing with mass atrocities (e.g. Rwanda): Due to their rather accurate, cost-intensive, and time-consuming method of operating, criminal justice simply cannot cope with hundreds of crimes and thousands of offenders (van Zyl 2005: 211, 228). Similar with reparations, there is a time when it is too late to address past misdeeds with tribunals: the more time has passed since the crime occurred, the more likely it is that the perpetrators will die away (e.g. Cambodia). In fact, the punitive and reconciliatory effect of tribunals totally depends on the access and presence of the offenders. “Justice must not only be done, but [it also] must be seen to be done” (Hazan 2006: 32). Hence, if a tribunal is therefore not backed by the international community or national society, it will not achieve its objectives to prosecute the offenders. Tribunals have to avoid the stigma of “victor’s justice”. Similar with reparations, tribunals have assumed a new, modern function: From victors’ justice to the establishment of the rule of law in the international arena (Meernik 2005; Bass 2000: chap. 5).

**d. Amnesties: Reconciliation through institutionalized oblivion**

1. Definition:
Granting amnesties for particular crimes means that the perpetrators obtain political and legal pardon in spite of the injustices they have committed (cf. Meier 2010). Opting for an amnesty – renouncing the criminal prosecution of the perpetrators and not holding them accountable for their actions – usually is a very deliberate political decision based on the view that it is not useful to further confront society with the violent past, but to focus on the (better) future instead.
2. Causal effect:
Amnesties contribute to societal reconciliation in two ways: Firstly, by immediately re-integrating the perpetrators into the new political system and secondly, by providing the victims with a more promising and safer future, i.e. the implementation of a polity that respects the democratic change of government, the rule of law, and the implementation of human rights. Amnesties aim at re-integrating and thus rehabilitating the former perpetrators rather quickly without making the (violent) past a constant topic of the actual political discourse (forgetting the past). Amnesties either are the result of a very unusual amount of forgiveness on the side of the victims or – more likely – a necessary precondition of the transition, i.e. an instrumental political bargain during which the perpetrators consented to relinquishing power in exchange for non-prosecution (cf. Olsen 2010: 19). Amnesties thus are a kind of institutionalized oblivion or amnesia. Often they are simply the “moral” price of the old political elite to not hold on to their power and not to spoil political change towards a new regime.

3. Conditions of success:
Granting amnesties to perpetrators after mass atrocity is based on the principal of minimal justice – if not non-justice, i.e. rather struggling to come to terms with the past or wrestling it into submission. It means to forego criminal accountability for the sake of a better future, i.e. the transition into a new and more democratic state polity. However, in a certain way, one could also view the re-integration of the former perpetrators into the new polity as a rather extreme version of restorative justice. As regards reconciliation, there is no doubt that amnesties focus very much on re-establishing the social relations between society and the perpetrators and serve the instrumental function to prevent the country from falling into civil war. Reparations eventually ensure the proper transformation of a country, thus tacitly cooperating with the members of the old elite. Some would argue, however, that amnesties come at the expense of the victims, i.e. trading justice for stability and therefore function as a larger *apologia* for the crimes.

4. Advantages, Disadvantages, Problems:
From a legal or normative point of view, it is rather difficult to determine which crimes as well as which timeframe would fall under a particular amnesty.
IV. **Empirical investigation: Germany after 1945**

After the unconditional surrender of its armed forces on 8th May 1945, Germany was a wrecked entity – physically, politically, and morally. The sheer dimension of the Holocaust as well as all the other war crimes and genocides the Germans had committed made it nearly absurd to assume that Germany would ever be able (or allowed) to reconcile with somebody. Beyond any doubt, it was a least likely case of reconciliation. Firstly, as regards its international environment, the country was regarded an outlaw: the *Charter of the United Nations* classified Germany even as an “enemy State” of the community of nations. The Allied Powers, who had occupied the country, envisaged not just the dissolution of the *Third Reich* and its legacy, but had also discussed plans to completely dismember the country (*Morgenthau Plan*). Secondly, reconciliation with the major victim, i.e. the State of Israel, which had become the new homestead for most of the Holocaust survivors, however, seemed remote if not impossible (cf. Wolffsohn 1995). Among many Jews the feeling prevailed that Germany “deserved to be excommunicated forever” (Oz 2005: 10). Last but not least, with more than 7 million members of the Nazi party; 13 million soldiers returning from the front, 16 million ethnic Germans being expelled from the Eastern (Prussian) territories, and German cities bombed to ruins, another major question also was: How could German society finally be reconciled with itself?

1. **The Allied Control Council and the short period of retributive justice (1945-49)**

1.1 Tribunals

Considering the unforgivable dimension of the crime, it is rather a surprise that the efforts of the *Allied Control Council*, with whom supreme power rested in Germany until May 1949, only targeted retributive justice efforts including the punishment of the major criminal perpetrators rather than revenge (such as e.g. the expulsion of ethnic Germans from Poland or the Czechoslovakia) or victors’ justice. Already in October 1943, the US, UK and Soviet Union had stated in the so-called *Moscow Declaration* that they would address the misdeeds and punish the German perpetrators “in order that justice may be done”. Two years later in Yalta (February 1945), they agreed on establishing a special military tribunal to deal with Nazi crimes (cf. Fischer/Lorenz 2007: 18).

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From November 1945 to October 1946, the **Allied Powers** then prosecuted the remaining elite of the defeated Nazi Germany in the **Nuremberg War Crimes Tribunal** including 24 major war criminals such as e.g. Göring, Hess, Speer, or von Ribbentrop. Of the list twelve received death sentences (e.g. Joachim von Ribbentrop), three were acquitted (e.g. Hjalmar Schacht) and the rest imprisoned (e.g. Albert Speer, Rudolf Heß) or had escaped justice by committing suicide (e.g. Adolf Hitler, Heinrich Himmler, Joseph Goebbels; Hermann Göring). The indictments were crimes against peace, war of aggression, war crimes and crimes against humanity. Directly after the war, US-American polls had documented that 80 per cent of the German population supported the trials as they were supposed to be the correct instruments to punish “the truly guilty ones who had really committed something”, i.e. the highest leadership. However, when the US army implemented its **denazification**-campaign from 1946 onwards – a large scale lustration and vetting program to avoid reinstalling the old Nazi elites as the Federal Republic’s future civil servants – the German people already (!) became tired of the criminal prosecutions of Nazi crimes. Many who thought that Nuremberg was something like a “zero hour” became frustrated and disappointed. Thus, in the later 1940s decade, the numbers in support for the trials shrank to 38 per cent. In 1950s, the number of those who considered the whole Nuremberg tribunal “victors’ justice” and desired a “Schlußstrich” (ultimately ending the confrontation with the past) increased remarkably.

The reasons was that most Germans considered themselves being seduced, deceived and abused by the **Führer** and his party – the self-image of the “innocent” or “deceived” nation. All the years, Hitler had been credited with the successes (e.g. the economic recovery, the ending of the **Versailles Treaty**); after the war, the logic thus functioned vice versa: For the average German, “the Nazis” seemed the (only) ones to blame (cf. Assmann 2007: 170-173; Kershaw 2005). The responsibility for the crimes was projected onto the highest level – the Nazi government – and decoupled from the mass of the Germans. The complicity of the “ordinary German” with the criminal regime was not problematized although a broad spectrum of the population had supported Hitler’s rise to power. Many were aware of the crimes and more than just a few were involved in them – not necessarily as “willing executioners” (like e.g. Rudolf Höß, the commander of Auschwitz), but at least as active accomplices or “willing collaborators” who profited from e.g. the compulsory expropriation or “Aryanization” of Jewish property (cf. Bessel 2009: 5). From 1946 to 1949, the so-called **Subsequent Nuremberg Trials**

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Prosecuted the wider elite of the Nazi regime, e.g. the Doctor’s-, Judge’s-, IG Farben- or Einsatzgruppen Trial during which 142 out of 185 defendants were found guilty (cf. Fischer/Lorenz 2007: 22-23).

Yet, the prosecution of the perpetrators (retributive justice) was by no means stopped after the 1950's decade. In December 1958, the “Central Office of the State Justice Administration for the Investigation of National Socialist Crimes” in Ludwigsburg was founded. Its purpose is to investigate all categories of Nazi crimes (Meier 2010: 70); meanwhile the office has tracked down nearly 7,000 Nazi criminals. What is more, from 1963 to 1966, the Frankfurt Auschwitz Trials confronted the nation with the bestiality of the Holocaust, when individual murderers in Auschwitz such as Robert Mulkat were convicted (cf. König 2008: 533). The trials charged 22 mid-level officials for their participation in the genocide in the extermination camp Birkenau. Most of the defendants received imprisonment sentences of less than ten years. Too, the majority of the Germans was against the trials: the continued prosecution and awkward confrontation with yesterday’s dark past – strongly pushed ahead by the personal engagement of the solicitor-general of Hesse (Fritz Bauer) –, was regarded as “befouling one’s own nest”. As a result of the renewed public confrontation with the Nazi crimes, the “statute of limitations” for murder or homicide was contested but nonetheless extended twice (in 1960 and 1965). Eventually, that was a first sign that the Germans became aware of the fact that overcoming the past probably was not a question of time or timing.

1.2 Denazification: Lustration and Vetting

Already in 1948, the retributive efforts of the Allied Powers in the form of the large-scale denazification program, which ran from 1946 to 1951, were largely relaxed. The well-known British historian Ian Kershaw notes that the whole program meanwhile had become a “farce” (Kershaw 2005) as the Germans increasingly became a front state in the upcoming Cold War confrontation and therefore were of value for the UK and the US (cf. Fischer/Lorenz 2007: 19): Of the 13.4 million people that were officially investigated, the Allied Powers classified only 1.4 per cent as “major offenders” or

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7 Jerusalem Post 22 August 1965.
8 Jerusalem Post 16 and 22, August 1963.
9 Jerusalem Post 19 April 1961.
10 Jerusalem Post, 19 April 1961.
11 Der Spiegel, 21 February 2006.
“Nazi activists” (cf. Payne 2006: 216). 12 54 per cent of the people were categorized as fellow travelers (“followers” or “less incriminated”). However, the larger mass of the “hangers-on” (formal NSDAP members) faced occupational bans and attained a status of second-class citizenship. As early as in November 1945, 50 per cent of the Germans had supported the denazification of German society; in May 1949 public support levels had fallen to 17 per cent (cf. Fischer/Lorenz 2007: 19). The Allied effort to ensure a Nazi-free transformation of post-war Germany proved to be an impossible task as 7 million Germans alone had been members of the Nazi party. More and more the US feared that the program could significantly hamper the democratic reconstruction of the country.

2. The Adenauer era and the dense period of restorative justice

2.1. Amnesties

Of the about 18 million German soldiers, who had fought in World War II, 13 million returned from the front – disillusioned, wounded, and worn-out. In one way or the other, the “army of fellow travelers” had to be re-integrated into the new state. Their knowledge and experience was needed for the reconstruction. Even Eugen Kogon, a prominent historian, clear opponent of the regime and prisoner of the Nazi concentration camp in Buchenwald, endorsed the view that granting amnesty was a political and functional necessity (cf. Frei 1996: 15). He remarked – rather pointedly and in his own way – that the remaining alternatives were either “to kill or to win back” those people. 13 The newly installed West-German Chancellor Konrad Adenauer immediately opted to wipe out everybody’s record clean. “Tabula rasa” was Adenauer’s political compromise to re-integrate the otherwise lost generation of accomplices, helpers and accessories back into German society. 14 The so-called Bundesamnestie in January 1949 and the Zweites Straffreiheitsgesetz in 1954 probably represented the biggest amnesty program to foster the rehabilitation of the perpetrators ever executed in world history. The two laws amnestied most of the Nazi-perpetrators and NSDAP-members: The former law pardoned all crimes worthy of a six month prison sentence and less; about 800,000 persons benefited from it. The latter, however, also granted amnesty to those crimes committed during the

12 Only 0.6 per cent were considered “exonerated” (or opponents of the regime) while a total of 35 per cent was “not assignable” at all.
“collapse of the regime” (October 1944 - July 1945) if the perpetrator pleaded superior orders (Fischer/Lorenz 2007: 94). The list of pardoned crimes also included the execution of POW’s and (German) deserters as well as marching the detainees of concentration camps to death (!). In addition, Article 131 of the German Basic Law was amendment, which granted “occupational rehabilitation” to the mass of the Third Reich’s former civil servants (judges, teachers, policemen, professional soldiers etc.). Soon afterwards, about 80 per cent of the judges and prosecutors that had served the Nazi regime found themselves reinstalled in public office.\(^\text{15}\) For example, the Director of the Federal Chancellery of West Germany between 1953 and 1963, Hans Globke, had co-drafted the infamous “Law for the Protection of the German Blood”. This was the part of the Nuremberg Laws which had stripped the Jews of their civil- as well as human rights in 1935. Nonetheless, Adenauer allowed him to stay. Although all these measures received heavy criticism from the Allied Control Council and, of course, remain highly questionable from a moral point of view, US military governor Lucius Clay firmly backed Adenauer's policy. In spite of the fact that he could have rejected the legislation with a superior Control Council directive, Clay regarded winning back the political loyalty of the former Nazi cadres without any alternative: “If the nominal party member had not been given back their civil rights and the possibility of leading a normal life, a serious source of political unrest would have developed sooner or later”.\(^\text{16}\) At least, the amnesty seemed to have “guaranteed” that the young democracy was not politically challenged right from the start. After all, in spring 1951 there were first signs of an eventual “Nazi renaissance” when the far-right All German Bloc/League of Expellees and Deprived of Rights (BHE) and the ultra-nationalist Socialist Reich Party of Germany (SRP) had considerable electoral successes in the local German Länder elections.

In sum, apart from the controversial aspect of the continuity of the elites the amnesties indeed seemed to have “reconciled” and successfully reintegrated the mass of the German population that was in one way or the other enmeshed with the Third Reich into the new and much more democratic federal polity, the Bundesrepublik. Basically, the reparations turned out to be an “act of self-rehabilitation and self-legitimation of the new state” (Fischer/Lorenz 2007: 94). How all the people that tolerated and supported Hitler “suddenly” became democrats still remains a significant puzzle for historian and psychologists (cf. Mitscherlich/Mitscherlich 1967).

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\(^{16}\) Spiegel Online, 6. March 2012.

\(^{17}\) The party considered itself an advocacy group of the “deprived, the non-exonerated Ex-Nazis, and of the expellees of the former German eastern regions.
2.2 Reparations

The Germans label their reparation policies *Wiedergutmachung*, which literally means “payments to make things well again”. The German phrasing indicates the wishful thinking that the damage could be compensated by returning the victim to the *status-quo ante*, i.e. to the state of affairs before the injury occurred. According to a public opinion poll of the *Allensbach Institute* in 1949, 50 per cent of the German population supported paying reparations after the war – in particular, however, if it benefited German “victims” such as the war widows, orphans (96 per cent) or the Eastern expellees (90 per cent). Although 70 per cent supported reparations for the Jewish people, the numbers fell to 40 per cent when it came to the particular question of the restitution of Jewish property (cf. Fischer/Lorenz 2007: 58). However, another survey in December 1951 records that only 30 per cent of the German people were in favor of paying reparations to the Jews; every fifth thinking that the Jews themselves were somehow responsible for the misery, they had been in (Judt 2005: 271).

Already in 1947, the *Allied Command* ordered the restitution of Jewish property confiscated by the Nazis. The so-called *Rückerstattungsgesetz* demanded the return of “aryanized” possessions – only about 2 billion Euros (cf. Fischer/Lorenz 2007: 59) to their former Jewish holders – of course, only if they had survived the horrors of Auschwitz and could be identified. Some of property also was returned to Jewish organizations. Apart from restitution, the government waited until June 1956 to finally introduce a “Federal Compensation Law” or *Bundesentschädigungsgesetz* (BEG) which paid individual reparations to all persons who were persecuted by the Nazi regime for racial, religious, or political reasons from 1933 to 1945. The law became effective in retrospect, i.e. from 1953 onwards. Yet, only those persons were entitled to claim compensation that resided in Germany ahead of the year 1952 (or until the point of time they were forced to leave the country). To a big extent, the law thus excluded non-German residents from compensation. As late as in 1965, the *Jewish Claims Conference* – the representative organ of the international Jewry – reached a compromise with the German government that finally included paying reparations also to the group of the Eastern European (Jewish) immigrants to Israel since 1953. Today the biggest part of the BEG-reparations is the so-called “compensation pension” to the survivors:18 About 85 per cent are paid to victims

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18 It might be important to note that there are no reparations for the orphaned offspring.
residing outside Germany, 40 per cent of which are Israeli citizens. The monthly average is approximately 570 Euro per person. According to Department V B 4 of the Federal Ministry of Finance, Germany has paid about 68 billion Euro reparations (59 billion on an individual basis) until today (2010) (cf. Brunner et al. 2009: 13).

In addition, Germany agreed to pay collective reparations: From 1959 to 1964, the German government negotiated individual “Globalabkommen” with eleven (Western) European neighbors worth 876 Million German Mark (DM) (cf. Fischer/Lorenz 2007: 58). Because of the Cold War, the “class enemies” Russia and the successor states of the Soviet Union had to wait until 1991/93 to receive their fair share of the Wiedergutmachung.

Reconciliation with Israel, the major victim of Nazi-Germany and the new homestead for most Holocaust survivors, turned out to be more complicated. In September 1951, Israeli Prime Minister David Ben-Gurion officially claimed recompense worth 1.5 billion USD “for spoliation of property and expropriation of holdings of multitudes of Jews [...] that were slaughtered and left no one able personally to claim restitution” and received political support by the Allied High Command of the four occupying powers. Appropriate atonement for the Holocaust was made an informal precondition for Germany’s reintegration into the civilized world as well as the country’s eventual admission into NATO (cf. Kloke 2005: 4; Benz 1994: 96). It is questionable indeed, whether Germany would have paid reparations at all if the Israeli government had not permanently insisted on doing so. The Israeli government declared: “As long as this [demand] has not been met, […] equal status for Germany in the community of nations is unthinkable” (cited in Herf 1997: 281). Openly admitting Germany’s collective guilt was, however, impossible to sell to Adenauer’s partners in the coalition government, most of his fellow parliamentarians and German public (cf. Weingardt 2005: 112). Already the BEG was belated because of the absence of a domestic political compromise (cf. Fischer/Lorenz 2007: 58). However, in Israel, too, the reparations were highly contested: the Knesset supported the start of reparations negotiations only by small margin (61 out of 120 votes). Outside of the Knesset stones were thrown against policemen and the parliamentary building which

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22 Jerusalem Post, 28. September 1951.

lead to the arrest of about 154 protesters. Menachem Begin, the leader of the Herut opposition and later prime minister, had lost his whole family in the Holocaust. He branded the reparations as “blood money” and a tantamount to pardoning (Neuberger 2005: 16). While Begin argued that “every German is a murderer – Adenauer, too” and that Ben-Gurion had committed “moral treason” against the Israeli nation (Neuberger 2005: 19), Ben-Gurion appealed upon the Jewish people to accept the reparations in order to “prevent the murderers of our nation from becoming our heirs”. The day after the parliamentary approval, Jerusalem was full of posters with the names of the 61 so-called “traitors” who had voted in favour of the payments.

In Germany, Adenauer was very much in favor of paying reparations to Israel, needed however the assent of the parliament. Yet, already his coalition government, in particular the Democratic Party (DP) and the Free Democrats (FDP) led by Minister of Justice, Thomas Dehler, were deeply divided on the issue. And a representative survey collected by the Allensbach Institute in 1952 revealed that societal support for Adenauer’s policy of atonement vis-à-vis Israel was low: Only 11 per cent of the population supported paying reparations to Israel. 44 per cent considered them “unnecessary” and 26 per cent regarded them “justified in principle, but unreasonably high” (Primor/von Korff 2010: 109). The Chancellor acknowledged, however, Germany’s political responsibility for the Holocaust in spite of the fact that the Federal Republic could not be legally obligated for the misdeeds committed under Nazi rule (cf. von Jena 1986: 463-4). When the day of the decision arrived (18th March 1953), the Christian Democrat Chancellor finally got the reparations law passed by the legislature – but only with the help of the Social Democrats, the largest opposition group in the German parliament (cf. Weingard 2005: 92, footnote 121). Most of his own party comrades had abstained from voting (cf. Fischer/Lorenz 2007: 58).

The collective reparation agreement granted Israel the sum of 1.5 billion Euro (that time 3 billion German Mark) to be disbursed over a period of twelve years (until 1965). The State of Israel, the principal heir to the murdered Jews and their orphaned offspring, needed the money for the costly integration of the about half a million Jewish immigrants and survivors from Europe (Pross 1998: 22, von Jena 1986: 460, 464). This also is the reason why the payments’ official (or technical) reference

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24 Jerusalem Post 10 January 1952.
25 Both quoted and translated from Der Spiegel 9 January 2006. The government declared, too, that only God or the murdered victims were in a position to grant forgiveness.
26 The Jewish Claims Conference (JCC) represented the international Jewry and was granted 230 million Euros (that time 450 million German Mark).
was “recompense for the cost of the integration of the resettle Jewish refugees from Germany” rather than the more correct term “material recompense for genocide”. Bonn’s seemingly magnitude of remorse needs to be put into perspective: At first, Germany’s willingness to actively atone for its sins was at first very limited. Adenauer’s governmental declaration of 20th September 1949 did not even mention helping the Jews or the State of Israel. Later the year, he offered the rather limited amount of 10 million German Marks (that time about 2.5 million USD) as a “first and immediate sign” to make things well again (cf. Primor/von Korff 2010: 101). The proposed 40 US cents per murdered Jew may have signaled a rather limited degree of remorse: Israel, of course, rejected Adenauer’s first offer as “pittance”. Giving the complex domestic situation, it is difficult to tell, if Germany would have paid reparations at all if Israel would not have exerted constant diplomatic pressure.

The German government regarded the Wiedergutmachung primarily as a political necessity: If Germany wanted to be rehabilitated into international society, it had to behave appropriately. Adenauer accepted the joint liability and paid for the misbehavior that his legal predecessors in office had committed “in the German name”. He stated that “[…] not all of us were Nazis and many Nazis did not agree to the crimes committed in the name of our people. It is our […] duty to help the Jews even if we who are not guilty must make the sacrifices”. Adenauer’s approach thus was predominantly pragmatic: He understood the reparations not as a moral, but as a technical issue, i.e. a “material reparations problem”, as he named it. This eventually suggests that Bonn eventually hoped to convert culpability into debt and that the guilt could eventually be compensated over time. What is more, “doing penance” came at a comparatively low price: As early as in the first year of the reparation payments (1953), the 250 million DM delivered to Israel compared to 1 per cent of the federal budget of 28 billion DM (cf. Brunner et al. 2009: 13-4). Adenauer (1966: 144) commented later that the sacrifices were quite manageable: “High – if compared to Germany’s productivity – yet, quite moderate if compared to the damage inflicted” (Weingardt 2002: 421-22).

The Israeli label for the payments, Shilumim, rather means a disciplinary punishment excluding all notions of restitution, mitigation or forgiveness (Brunner et al. 2009: 18-19). Its government had

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27 See preamble in: Jerusalem Post 11 September 1952.
29 Jerusalem Post, 5. March 1953.
30 Deutscher Bundestag: 6697-8 (translation SE).
accepted the payments simply because the young state was nearly bankrupt. Its survival in the hostile Middle Eastern region was on the edge; peace- or trade agreements with the Arab neighbors did not exist. The only alternative to the pragmatic deal, i.e. to sue Germany within the limits of international law, was hardly promising: Bonn would have probably gotten away with a “platonic confession” and Israel meanwhile conquered by its Arab neighbors. Nonetheless, for the first time in history, reparations were not paid as a price of defeat but as a moral recognition and official acknowledgement of human suffering. The West German charge d'affairs in Wassenaar, the Netherlands, where the Luxembourg Agreement (!) was negotiated, Heinz Kremeler, explained that “material means cannot undo the crimes [but] are a way to express attitude of mind and spirit”. Bonn’s basic intention was “to make good the material damage caused”. Yet, Adenauer’s hopes that the pioneering move would “build a bridge of reconciliation” to Israel or that they would “put a solemn end to the most horrible part of [German] history” materialized only in the long term. Israeli FM Sharett made again clear that “the agreement did not mean that normal relations […] existed”. “Our hearts are still bleeding”, Levi Eschkol, Ben-Gurion’s successor, commented. Until 1956 the Israeli passports were still “valid for all countries except Germany” (Neuberger 200: 2).

In sum, Adenauer has to be credited for successfully coping with the complexities of a very difficult domestic and international situation which demanded making multiple compromises. Reconciliation had to be achieved abroad and at home: This included officially supporting retributive justice efforts (i.e. the prosecution of the criminal perpetrators), negotiating reparation payments for the victims, and publicly displaying remorse. “Der Alte” had successfully applied a holistic perspective and had made use of an interesting mix of diverse Transitional Justice instruments.

2.3 Apologies

Finally, Germany’s earlier TJ policies also included making an official sorry statement, i.e. offering an apology to the State of Israel during the reading of the above mentioned reparations bill in the German parliament (Bundestag) in September 1951. Yet, the speech act does not qualify as a public

32 Jerusalem Post 26 March 1952.
33 Jerusalem Post 11 September 1952.
36 Jerusalem Post 11 September 1952.
confession of or even a full apology for Germany’s sins. Instead, it was a rather limited demonstration of Germany’s collective remorse and opens as follows:

“The government of the Federal Republic of Germany and with it the great majority of the German people are aware of the immeasurable suffering inflicted upon the Jews […] The large majority of the German people abhorred the crimes and did not participate in them. […] Many Germans […] showed a willingness to help their fellow Jewish citizens. In the name of the German people, unspeakable crimes were committed which create a duty of moral and material restitution. […] Regarding the extent of the reparations, […] one has to take into account the limits set on the German ability by the bitter necessity to supply the countless victims of war and to care for the refugees and expellees. The Federal Government is prepared […] to bring about a solution to the material reparation problem […] [which is] the most distinguished duty of the German people.”

The Israeli press interpreted Adenauer’s statement as an attempt to “dissociate the German people from the Nazi crimes”. In fact, it is an exculpation of the vast majority of the Germans (cf. Stern 1991: 326): On the one hand, Adenauer did not (and could not) deny the Federal Republic’s political responsibility. After all, Bonn was the legal successor of criminal Nazi-Germany. On the other hand, the Chancellor did not – eventually also he could not (given the domestic opposition in the parliament and population) – openly acknowledge Germany’s collective guilt as demanded by Ben-Gurion. Instead he excused the German nation of its criminal guilt and portrayed the Holocaust as an exclusive product of Nazism, which distanced the seemingly “good”-minded German collective from the bad “selective” or criminal Nazi minority. What is more, his extensive use of passive language (“the unspeakable crimes [that] were committed”, the immeasurable suffering [that was] inflicted) and the emphasis on the “countless [German] victims of war”, i.e. the expellees and refugees who were, however, a consequence of Germany’s prior aggression, Adenauer created the impression that the Germans rather belonged to the victims’ side. Taken together, the speech diverts attention from the fact that the criminal perpetrators were German (and German only).

3. From the 1960’s until today: Restorative justice as internalized “lived” atonement

39 Half a century later, the Germany’s eight President Johannes Rau (2000-2005) openly criticized the euphemistic phrasing: Rau noted that it in fact hushed-up Germany’s perpetration in the Holocaust and World War II because it sounded “as if somebody had stolen our passport” (Rau in: Roll 2004: 96).
Until the mid-1960s, the question of German guilt for the Holocaust continued to remain a peripheral topic in the country’s domestic discourse (cf. Frei 1996: 8): The Germans looked ahead, not back, and were preoccupied with the economic reconstruction of their ruined country, the so-called *Wirtschaftswunder*. In 1965, Germany and Israel had established diplomatic relations and exchanged ambassadors (Rolf Pauls and Asher Ben-Nathan). The event, which would usually signal that “normal relations” existed, caused a huge anti-German rally in Tel Aviv during which 1,500 protesters shouted “Nazi raus!” and “No forgiveness!”.

Menachem Begin and his *Herut* party once again accused the Israeli government of seeking “normal relations with the murderers”. Israeli President Shazar noted that “alone relations of understanding and cooperation […] may be established”. Georg Kiesinger (1996-69), who followed Ehrhardt and Adenauer as Chancellor, continued to rely on the phrase of the crimes that had been committed “in the German name”. In his first governmental statement, the former Nazi party member Kiesinger declared that “under the misuse of the German name horrible atrocities were committed against Jewish people (cited from Weingardt 2005: 181).

His successor, Willy Brandt, was Germany’s first social-democratic chancellor (from 1969 to 1974) and won the Nobel Peace Prize in 1971 for his rapprochement policy with the Soviet Union, Poland, and Eastern Germany. During the *Third Reich*, the Nazis had deprived him of his German citizenship. Renamed “Herbert Frahm” he had to immigrate to Norway and returned after the war. As an individual, Brandt had no connections whatsoever to the *Third Reich* and thus had not laden any personal guilt upon his shoulders. Eventually, it therefore was Brandt only, who could credibly demonstrate (representative) collective remorse for the Nazi crimes as his character was “beyond any doubt”.

On 7th December 1970, the German chancellor “knelt in humble homage” before the *Jewish Heroes Monument* and thus paid tribute to the *Warsaw Ghetto Uprising* of 1943. The *Kniefall* is perhaps the most profound image of Germany’s contrition – an iconography of state atonement (cf. Lind 2009: 143) Brandt (1989: 222) explained: “Under the weight of recent history, I did what people do when words fail them” in order to “to recant in the name of the German people for a millionfold atrocity that

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40 Jerusalem Post 20 and 22 August 1965.
42 Jerusalem Post 20 August 1965.
43 Rainer Barzel in Jerusalem Post 16 March 1965.
had been committed *under the misuse of the German name*” [my italics] (Brandt 1989: 214). What the Chancellor considered natural and “[s]imply necessary in order to have a new beginning”, was highly contested at home: A representative survey of the *Allensbach Institute* one week later revealed that the government’s policy of atonement was not yet capable of winning a domestic majority: While 41 per cent of the Germans found the genuflection “appropriate”, 48 per cent considered it “exaggerated”. Compared with the reparations-survey 18 years earlier (1953), one could, however, argue that the number of supporters of atonement had risen to 41 per cent (1953: 11 per cent), while the adversaries of an open confrontation of the past had dropped to 50 per cent (1953: 70 per cent). The (negative) reactions also were influenced by the consequences of the *Neue Ostpolitik*. Brandt’s policy of rapprochement with Eastern Europe had finally relinquished Germany’s former Eastern territories (Silesia, Pomerania, and East Prussia) to Poland. The bilateral border treaty was signed the same day. Therefore, many Germans – in particular the expellee organizations and the conservative opposition – instrumentally interpreted the *Kniefall* as an overly submissive gesture towards the Communist class enemy (Brandt 1989: 221-3). For those groups, the gesture symbolized “sacrifice and betrayal” of the Prussian heartlands and its expelled population rather than an “acceptance of collective guilt” (Rauer 2004: 143).

Interestingly, the image of the atoning “class enemy” strongly irritated the Polish government: The event did not figure prominently in the Communist press. However, among the ordinary Poles the gesture was highly welcomed and perceived as Germany’s plea of forgiveness for the *Third Reich’s* brutal war of extermination and the horrific violence the Polish people – also the 3 million Polish Jews – had to suffer. For example, the later Polish President Aleksander Kwaśniewski (1995 -2005) recalled the *Kniefall* was a very touching moment: “The German Chancellor knelt down; an opponent of the Nazi regime, one who hadn’t had to fall on his knees at all”;

47 the Soviet dissident Lew Kopelew commented: “As soon as I saw him kneeling down […] I felt no more hatred! He knelt down and raised his people from the depths” (cf. Behrens 2010: 9). The gesture’s deafening silence meant that there wasn’t any nation or victim who could not have felt addressed – Brandt, by the way, never explained who had been his prime target, too – it was *not* perceived as a particular apology in or vis-à-vis Israel (cf. Meroz 1986: 69, 71-72): Auschwitz or Yad Vashem were regarded the more

46 Der Spiegel, 14. December 1970..
49 In his “Memories”, Brandt speaks of the “Polish Jewry” (Brandt 1989: 214), which, however, doesn’t clarify anything.
appropriate places of Israeli Holocaust memory. Given his rather “balanced” policy towards the oil-exporting Arab countries (cf. Weingardt 2005: 200-201, 217), the Chancellor with the “clean sheet” was never perceived as being particularly committed to Israel (Meroz 1986: 69, 71-72). In the international arena, however, the image of the German Chancellor, who had sunk to his knees in silent homage of the Jewish resistance fighters – his face turned into stone for about 20 seemingly infinite seconds –, had become the symbol for a remorseful and purged Germany. Yet, in a way, Germany still had remained silent about its past; it needed another 15 years until Germany openly – and vocally – acknowledged its guilt.

When Helmut Schmidt followed Willy Brandt as Chancellor in 1974; he would remain in office until 1982. The Social Democrat was a rather pragmatic politician, who was rather concerned with Western Europe’s regional integration, combatting the terrorism of the Red Army Fraction and the country’s first economic crisis (Shafir 2009). His relationship with his Israeli counterpart Menachem Begin (1977-1983), whose parents had died during the Holocaust, was characterized by personal animosities (cf. Meorz 1986: 90). Things turned even worse with Helmut Kohl, whose unfortunate comments on the “mercy of late birth”50 were followed by international accusations of promoting oblivion.51 When he persuaded the US-American President Ronald Reagan to commemorate the victims of World War II at a war cemetery in Bitburg, Germany, on 5th May 1985, the basic aim was to receive an official acknowledgement that the “Allied Powers” no longer regarded as an enemy but a reliable partner of the West. The visit turned into a complete fiasco, when it got out that the cemetery contained 49 graves of members of the Waffen-SS – in fact the particular battalion that had committed the Oradour-sur-Glane massacre. When Reagan (clumsily) remarked that “those young men” (i.e. “soldiers” in general) also were “victims of Nazism […] just as the victims in the concentration camps”,52 both countries looked like as if they actively advocated (self-)amnesty.

Only three days later, the German President Richard von Weizsäcker corrected that picture and set a remarkable “counterpoint”53 when the Bundestag officially commemorated the “40th anniversary of the end of the war in Europe and of National-Socialist Tyranny” on 8th May 1985.54 For the first time in history, a German official put all the atrocities committed by Germans publicly on record. Von

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54 [http://www.mediaculture-online.de/fileadmin/bibliothek/weizsaecker_speech_may85/weizsaecker_speech_may85.pdf](http://www.mediaculture-online.de/fileadmin/bibliothek/weizsaecker_speech_may85/weizsaecker_speech_may85.pdf) [9. December 2009]
Weizsäcker’s “confession” was internationally praised as a very honest and full account of Germany’s violent past\(^{\text{55}}\) although it rather was an honest “navel-gazing” primarily targeting German society than other nations (e.g. Israel):

“For us [Germans], the 8\(^{\text{th}}\) of May is above all a date to remember what people had to suffer. It is [...] not a day of celebration. [...] [it] is a day of remembrance. Remembering means recalling an occurrence honestly and undistortedly so that it becomes a part of our very beings. This places high demands on our truthfulness.”

He publicly promised that it was moral imperative for Germany to continue commemorating the past and named in detail all victims groups – the German ones included – of Nazi-Germay:

Today we mourn all the dead of the war and the tyranny. In particular we commemorate the six million Jews who were murdered in German concentration camps. [...] Today we sorrowfully recall all this human suffering. The genocide of the Jews is [...] unparalleled in history. We commemorate all nations who suffered in the war, especially the countless citizens of the Soviet Union and Poland who lost their lives. As Germans, we mourn our own compatriots who perished as soldiers, during air raids at home, in captivity or during expulsion. We commemorate the Sinti and Romany gypsies, the homosexuals and the mentally ill who were killed, as well as the people who had to die for their religious or political beliefs. We commemorate the hostages who were executed. We recall the victims of the resistance movements in all the countries occupied by us. As Germans, we pay homage to the victims of the German resistance – among the public, the military, the churches, the workers and trade unions, and the communists. We commemorate those who did not actively resist, but preferred to die instead of violating their consciences. [...] Today we sorrowfully recall all this human suffering.

The Israeli press applauded the speech: The *Jerusalem Post* commented that it was a “gesture of good will without precedence in the 40 years since World War II“;\(^{\text{56}}\) the Israeli ambassador to Germany Yitzhak Ben Ari noted that it was one the “greatest moments in Germany’s history”.\(^{\text{57}}\) Most Israelis were relieved to hear that Germany still cared about its historical responsibility. The declaration thus gained a lot of trust back that had been lost with Kohl’s earlier and rather awkward comments (cf. Weingardt 2002: 313).\(^{\text{58}}\) As a consequence, von Weizsäcker was invited to Israel – the first visit of a German head of state in the history of the two countries (Pflüger 2010: 66).\(^{\text{59}}\)


\(^{\text{57}}\) Frankfurter Rundschau, 7. May 2005.


\(^{\text{59}}\) The return visit of Chaim Herzog occurred in 1987.
An obvious continuation of von Weizsäcker’s “apology” – rather a public confession of sin – was Johannes Rau’s plea for forgiveness in front of the Israeli parliament on 16th February 2000, which reconfirmed that Germany cared about its past although the country’s first red-green government had stated that Germany in the future would no longer be that apologetic about its Nazi past or tolerate to being beaten around with its bad conscience. In the face of new self-confidence of the re-united “Berlin Republic”, Rau – also a Social Democrat but born in 1931 and therefore rather belonging to Kohl’s generation – publicly promised that Germany’s “new normalcy” included the continued responsibility “to keep the memory of German history alive” and thus would remain a reliable partner of Israel. He was the first German head of state invited to speak in the Knesset and also the first to speak in German – the language of the perpetrators. Avraham Burg, the President of the Knesset, noted that the language question had not been an easy one and that Rau’s speech would be accompanied with “butterflies in the stomach”. One third of the parliament’s members, many of whom belonging to Likud, boycotted the session. Two parliamentarians left in silent protest when Rau began his speech. Yet, already after the first sentences, which contained a self-humiliating and therefore very impressive plea for forgiveness, the absentees re-entered the diet (Roll 2004: 113).

In what might be considered an exemplary statement of regret, Rau stated:

“Before the people of Israel I pay humble tribute to those who were murdered, who have no graves at which I could ask their forgiveness. I ask forgiveness for what Germans have done - for myself and my generation, for the sake of our children and children’s children, whose future I would like to see at the side of the children of Israel. I do this before you, the representatives of the State of Israel, which [...] has given refuge to Jews around the world, but above all to the survivors of the Shoah. [...]”

“There can be no life without memory. [...] We Germans, too, will be accompanied for all time to come by the images of the murders for which Germans bear responsibility. [...] The perpetrators may take their personal guilt with them to their graves. But the consequences [...] must be borne by the generations to come. [...]”

62 The German capital was moved to Berlin during 1991 and 1999.
The question is often asked whether, given the past, there can be such a thing as normality between Germans and Israelis. [...] The only answer I can give is "no". The relationship between our countries will always be a special one. By acknowledging what took place we keep the memory of it alive. By learning the lessons of the past we build our common future. That is German-Israeli normality. [...] History must mean responsibility [...] Remembrance would be an empty gesture, were it not accompanied by responsible action.

Rau’s apology was straightforward and left no doubt about the (German) perpetrators or the nation’s collective responsibility: He explicitly apologized for “what Germans had done” (rather than “the Nazis few” as Adenauer had) and pledged that Germany was willing to bear the political responsibility for the Nazi crimes also in the future, more or less forever (“children’s children”). He further stated that the payment of reparations was not regarded as “blood money” but an expression of Germany’s “lived” remorse and empathy. The speech was awarded with lots of applause:

68 Prime Minister Ehud Barak and the leader of the opposition, Ariel Sharon, thanked Rau and praised Germany’s role in supporting Israel within the European Union.69 What is more, Barak eventually issued a kind of an “oral clearance certificate”, which documented the former perpetrator’s successful transformation:

„Germany has been undergoing an unceasing [...] soul searching. [...] This is proof that Germany is indeed not prepared to repeat the mistakes of the past and is not prepared to sweep the past under the rug. [...] It is no easy to overcome the traumas of the past, but if the President of Germany can be received [...] as an old friend [...] then there are no difficulties and obstacles in the present [...]”.

In sum, even the bilateral relations between Israel and Germany – the former victim and perpetrator – have reached a level of deep-felt political reconciliation. Germany’s willingness to bear the political responsibility for the atrocities meanwhile is genuine and supported by a broad societal consensus: The “responsibility for the Shoah is part of Germany's identity” the German President Horst Köhler declared in 2005.71 Public opinion polls (2000) confirm that 72 per cent of the Germans think that it is as “important” to commemorate the “crimes and mass murder during the Third Reich” (Frei 2005: 23-24).

71 Knesset speech in 2005.
As a further sign of active atonement or of a belated reparations, Germany established the *Foundation Remembrance, Responsibility and Future* in order to pay reparations to the Soviet POWs, Polish people, as well as the forced laborers from Eastern Europe and Russia, which had been exempted from reparations because of political reasons – the ideological class enemy was not to be supported during the time of the Cold War (Brunner et al. 2009: 26). Directly after reunification, Germany also concluded collective payment agreements worthy 440 million Euros with the East European states (as it had done with the Western European nations in the 1960s). Finally, Germany has set a remarkable and widely visible sign, which demonstrates that the country “accepts its enduring responsibility” for the Holocaust as a “part of [its] raison d’être” as German Chancellor Angela Merkel remarked in 2008: Since 2005, Germany actively remembers the Holocaust with the 19,000 square meters large *Memorial to the Murdered Jews of Europe*. The memorial is situated in central Berlin, Germany’s capital, in a distance of only 300 meters to the *Brandenburg Gate* and about 500 meters to the *Reichstag*. The so-called “Stelenfeld”, a labyrinth of 2,757 concrete blocks, is an “unmissable” and enduring architectural statement that the former perpetrator is willing to keep the memory of the atrocities and the responsibility for the Holocaust alive.

V. Conclusion:

Germany’s contrition for the Holocaust is a longer case study with lots of cross-case (instruments) as well as within-case variance (change over time). After 1945, a whole tool box of *Transitional Justice* instruments was applied to effectively address Germany’s darker part and to enable reconciliation between Germany and its international environment, its major victims, and among the German people themselves. Eventually, reconciliation was that successful (comparatively) exactly because so many instruments were used:

Firstly, the *tribunals* and the “de-nazification”/lustration programs made sure that the old elite could not hamper transformation into the new, more democratic polity as well as was (representatively) punished for the collective misdeeds. This satisfied eventual concerns for revenge from Germany’s neighbors that suffered considerably under the country’s war of extermination and the genocide that

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73 Knesset speech in 2005.
followed it. Too, tribunals signal the victims (inside and outside of Germany) that the (new) state or society acknowledges their suffering and that thereby confirms their indirect right that justice must be done, i.e. the perpetrators caught and punished.

Secondly, the *reparation payments* to its Western- and Eastern European neighbors in the 1950’s as well as the in 1990’s and finally in 2000 to the East European forced workers surely contributed to the reconciliation of Germany and its respective victim nations (more or less its immediate neighbors or regional environment). As demonstrated with regard to Israel (or the Jewish people in general) – the central victims of the Holocaust – the symbolic meaning of the reparations, which signal the former perpetrator’s honest degree of remorse, seemed at least equally important as the material dimension of the recompense. In any case, they counted more than the rather weak apology (or excuse) with which Adenauer rather hushed-up the perpetration of the ordinary Germans in the genocide of the Jews.

As regards the latter (*apologies*), the Germans have credibly expressed their regret for their misdeeds – a very rare event – if not “landmarks” (Brandt, von Weizsäcker, Rau) – in international politics (if compared to other nations). This is the reason why the atoning Germany also is considered an international “role model” of addressing former state wrongs (cf. Brunner et al. 2009: 21; Lind 2009: 133). On the other hand, one probably should not forget that it needed at least “40 years until Germany fully faced its historical responsibility, also vis-à-vis Israel” (quote Angela Merkel)\(^\text{76}\) and that one cannot expect an atoning or remorseful attitude to be simply there immediately after the crime. Too, Germany’s apologies demonstrated that it probably is never too late to (seriously) ask for forgiveness. It seems that apologies, indeed, are the only TJ instrument that has a transcendental quality in processing the past. It is important that the symbolic and material attempts “to make things well again” – the so-called *Wiedergutmachungspolitik* – went together. Reparations without apologies are likely perceived as “blood money” (cf. Israel in 1953) whilst any sorry statement without recompense is regarded an “empty shell” or rather unserious reconciliation initiative. The belated payments to the former Eastern European forced workers in 2000 increased the country’s credibility and standing internationally because it was probably too late – in a material sense – to pay the reparations.

Finally, amnesties should not be underestimated or unilaterally condemned as an instrument of reconciliation, yet, only if they are not the sole attempt to address the past. If they are, however, amnesties can be negatively equated with oblivion or amnesia, i.e. an attempt to purposely forget the atrocities and simply to overcome the past. But if they are complemented with retributive measures, in particular criminal tribunals to get hold of the leading perpetrators and lustration or vetting efforts to get rid of the mid-level ones, amnesties foster the social re-integration of the mass of the minor perpetrators and thus add to domestic reconciliation, too.

In sum, the German case basically confirms the holist hypothesis: the more efforts to address the past exist – if executed seriously (cf. Indonesia/Timor Leste might be an example in the other direction) – the more reconciliation will likely be the outcome. Further, the case demonstrated that different instruments target different reconciliation “audiences” and thus indicates than one instrument alone would hardly be sufficient to establish reconciliation in the wider sense of the word.
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