

## HISTORICAL JUSTICE IN INTERNATIONAL PERSPECTIVE: HOW SOCIETIES ARE TRYING TO RIGHT THE WRONGS OF THE PAST

Conference at the GHI, March 27-29, 2003. Conveners: Manfred Berg (Freie Universität Berlin), Christian Ostermann (Woodrow Wilson Center, Washington D.C.), Bernd Schäfer (GHI). Participants: Bain Attwood (Australian National University, Canberra), Brigitte Boenisch-Brednich (Victoria University of Wellington, New Zealand), Aurelie Campana (Université Robert Schuman, Strasbourg), Svend Aage Christensen (Danish Institute for International Studies, Copenhagen), Julie Fette (University of Maryland, Baltimore), Frank Furedi (University of Kent), Norman Goda (Ohio University, Athens), Constantin Goschler (Humboldt University Berlin), Claudia Haake (University of Western Ontario, London), Hope Harrison (George Washington University), Andreas Hilger (University of Hamburg), Richard Hill (Victoria University of Wellington, New Zealand), Sander Lee (Keene State College), Bronwyn Leebaw (University of California, Riverside), Lisa Magarrell (Institute for Transitional Justice, New York), Rachel May (University of Washington, Tacoma), A. James McAdams (University of Notre Dame), Nancy Meyers (Woodrow Wilson Center), Trudy Peterson (Woodrow Wilson Center), Karen Riechert (Washington, D.C.), David Thelen (University of Indiana, Bloomington), John Torpey (University of British Columbia, Vancouver), John David Smith (North Carolina State University, Raleigh), Philippa Strum (Woodrow Wilson Center), Jakob Tanner (University of Zurich), Andrew Valls (Morehouse College), Angelika von Wahl (San Francisco State University), Robert Waite (U.S. Department of Justice, Washington D.C.), Bernd Weisbrod (University of Göttingen).

History never was, and never will be, short of injustices and atrocities. Quests for their rectification, whether material or symbolic, have become a worldwide phenomenon, particularly over the last two decades. Deriving from those claims and calls are concepts of historical justice encompassing a broad and diverse spectrum of possible actions such as restitutions, reparations, compensations, rehabilitations, truth commissions, and official apologies. Seizing on these timely currents, the GHI and the Woodrow Wilson International Center invited scholars to a major interdisciplinary and international conference to address and explore these issues from various theoretical and practical perspectives. Response to the call for papers was overwhelming.

The participants represented a broad spectrum of scholarly areas of concentration, nationality, and firsthand experiences. Unfortunately, only

this limited number of scholars will be able to attest to the atmosphere of lively debate, mutual inspiration, and engagement that this conference generated. Conference reports in this publication usually do not strike exuberant self-congratulatory tones. Taking the risk of being accused of a biased convener's perspective, however, the sheer quantity of enthusiastic responses from participants during and even long after the conference must not be left unnoticed. These three days in March 2003 in Washington were deeply rewarding for everybody involved.

The first panel, broadly called "Theory and Approaches," was opened by Sander Lee with philosophical reflections on issues of justice in war crimes trials. He argued that commonly accepted natural law justifications for tribunals are misleading and might be more honestly described as positive law accounts. Despite their use of retroactive law, these trials can be morally justified. Furthermore, the nations of the world should publicly accept the legitimacy of legal mechanisms such as the newly formed International Criminal Court. Such mechanisms, according to Lee, will empower the international community to intervene appropriately in the event of a repetition of such crimes. Angelika von Wahl examined the question of what general factors lead governments to agree to pay reparations. Taking four post-1945 cases, she demonstrated how political factors influence government involvement and how politically weak lobbies yield meager results in terms of reparations despite the morality of their claims. Ethnically or racially motivated crimes would stand a better chance to be redressed than human rights abuses pertaining to sexual orientation or gender issues.

For Frank Furedi, the demand for the rectification of historical injustices is inextricably linked with the politics of recognition. Cultural forces that encourage the politicization of memory at the level of the individual foster the growing tendency to construct contemporary identity through the demand to right past wrongs. Today, history would play a uniquely important role in the therapeutic sense of endowing individuals' circumstances with meaning. However, Furedi asserted, the idea that the rectification of old injustices will create a more inclusive identity is contradicted by recent experience. Suffering as a unique experience differentiates the victim from others. Therapeutic history is more likely to divide than reconcile. In another vein, John Torpey defined the extensive contemporary concern with past injustices as an extraordinary shift in progressive ways of thinking about politics. Putative "lessons" of twentieth-century history have encouraged a shift from the labor movement's former rallying cry of "don't mourn, organize" to a sensibility that insists that we must "organize to mourn." Therefore, efforts to rectify past wrongs have arisen on the one hand as a substitute for expansive visions

of an alternative human future and on the other hand as a response to the rise of identity politics.

Slavery and the African-American quest for reparations was the topic of the conference's second panel. Manfred Berg attempted to analyze historical discourse and the theoretical assumptions employed by the antagonists in the current polemical controversy surrounding the issue of reparations for slavery. When addressing the impact of slavery, he probed into questions of historical continuity and counterfactual analysis, as well as the inadequate compensation for African-Americans today. Although he acknowledged these notions as legitimate tools of scholarly analysis, he labeled them as highly questionable sources of moral authority in order to substantiate material claims. Demanding reparations today would create an illusion of infinite corrective justice and actually impair the prospects of redistributive social reform on behalf of poor African-Americans. In his attempt to historicize the slave reparations debate, John David Smith argued that long before modern reparationists made their case for economic redress, African-Americans had clamored for payment for their 250 years of involuntary servitude. Focusing on the history of the slave reparations movement from 1865 to 1917, Smith concluded that the history of this early debate raises questions about the rhetorical use of the term "reparations" by its modern proponents. He also underscored the historical continuity of whites' unwillingness to apologize for or to admit guilt over African-American slavery. Andrew Valls asserted that merely ceasing to engage in abuses and vowing to act upon different values is not enough. Certain kinds of rituals and symbolic expressions would be warranted to explicitly reject the values of the past. Defining the post-civil rights era of the United States as an incomplete regime transition, Valls focused on the role of apologies in moral repair during those periods and argued that an apology to African-Americans would be required to establish a just transition.

Concluding the first day of the conference, and following an introduction by Bernd Schäfer, A. James McAdams from the University of Notre Dame gave the keynote lecture at the GHI on "Transitional Justice after 1989: Is Germany so Different?" His well-received remarks are published in the "Feature" section of this issue of the GHI *Bulletin*.

An entire panel was devoted at the beginning of the second day to the South African model and "the search for truth." Rachel May critically examined the contested notion of "truth" in the truth gathering projects that have become standard features of post-authoritarian regimes. She argued that several distinct categories of truth telling must be clearly delineated in order to carry out and evaluate the tasks of truth commissions. Ultimately, a more epistemologically rigorous notion of this term is both preferable and necessary. Using testimony before South Africa's

Truth Commission by victims and perpetrators of gross human rights violations to explore how history has framed its uses of the past, David Thelen emphasized the tensions that witnesses felt between being human beings and historical actors. He advocated the reenactment of the past as a means to delve more deeply into how participants experienced their worlds. Bronwyn Leebaw examined how the concept of restorative justice was adopted by the Commission. She argued that this occurred not only as a way to conceptualize the possibility of healing, but also to advance a form of critical historical judgment. Understanding tensions between those goals is important in assessing future efforts to apply restorative principles to historical justice projects.

Opening the fourth panel on "Indigenous Peoples," Claudia Haake outlined how through the peculiar application of a policy of removal, the Native American tribe of the Delawares went from being a sovereign entity to being a nation within the United States, and eventually to living among Cherokees as a nation within a nation within a nation. She demonstrated how the Delawares refused to surrender their legal identity and continued fighting by using the American judicial system. Svend Aage Christensen highlighted the 1953 relocation of the inhabitants of the hunting settlement of Ummannaq in Greenland due to the expansion of the American Thule Air Base. The subject of official investigations, lawsuits, and negotiations between the United States, Denmark, and Greenland, the still pending case for adequate reparations demonstrated the merits of individual versus collective compensation arrangements.

In his case study on Australia, Bain Attwood considered the multi-valent ways histories have influenced projects of reconciliation in settler societies. He portrayed the problem of historical justice in such societies as being actually much greater than classic cases like Nazi Germany. Colonial pasts would be more entrenched, as they had involved several generations and problems would thus be more intractable. In seeking to redress historical injustices, history's epistemological basis would tend to give rise to singular historical narratives and thus be complicit in the modern state's goal of a unitary nation. By contrast, memory could produce more diverse historical narratives. Therefore, rectification of historical injustices would require nation states to recognize not only people's different pasts and narratives but also the different visions of citizenship and democracy that these narratives entail. By contrast, as Richard Hill and Brigitte Boenisch-Brednich jointly demonstrated in the case of New Zealand, the negotiation of compensation to Maori for the Crown's past breaches of New Zealand's founding document (the 1840 Treaty of Waitangi) has reached an advanced level. However, they asserted that the majority European (*pakeha*) population has yet to realize that this provi-

sion of reparations for past wrongs will not suffice. Historical production in New Zealand was heavily involved in the Maori quest for autonomy (*rangatoratanga*) and constituted a major national discourse. There was cause for optimism, as New Zealand has become officially bicultural, in contrast to the assimilationist policies of the past. Biculturalism as an increasing feature of everyday life would provide hope that "Aotearoa" (the Maori name for the country) could take up a significant partnership position within "New Zealand."

Jakob Tanner opened the first panel on "Post-1945 Developments." Tanner explored the efforts toward a rectification of injustices of the Nazi regime by focusing on tensions between history, law, and money during the restitution process. He looked into the impact of historical research and interpretation, the role of "nations," and why the claim for historical justice is so often expressed in financial terms. Might money, beyond its capacity to mobilize material resources, function as a symbolic language of awareness, recognition, and reconciliation? Constantin Goschler dealt with the perception of divided "wrongs" within German society. Looking at the various decades since the end of World War II to the present, he explored the tension between victims of Nazi persecution and German self-victimization. Only with German reunification in the 1990s did claims for compensation of Nazi victims rise to a prominent position in Germany itself, even serving in part as models for worldwide efforts to redress historical injustices. Bernd Weisbrod drew further conclusions from post-1945 German history when he compared postdictatorial competitions of victimhood. "Politics of the past" would have served not only as cover for past complicity, thereby obscuring aspects of mass involvement, but would also have provided conditions for politics of recognition leading to the emergence of trust in democracy. Looking into the powerful social force of public apology, Julie Fette drew on the example of France, where President Chirac's 1995 official remorse for the state-sponsored antisemitism of the Vichy Regime had created a wave of groups stepping forward to atone for their particular guilt during those years. Fette analyzed how this process helped French society to transcend its past, and how the model of apology may be applied to other historical events, such as the French role during the war in Algeria.

In the next panel, Bob Waite looked into the American legal profession's response to Nazi atrocities and the issue of war crimes trials in Germany between 1942 and 1947. He examined lawyers' and legal organizations' perceptions of war crimes, the discussion of matters of international law, the view of the International Military Tribunal assembled at Nuremberg, and the legacy of its proceedings. Norman Goda discussed aspects of Spandau military prison, which had housed the seven major German war criminals convicted but not executed at Nuremberg. Span-

dau, the only international war crimes prison in history, was administered jointly by the four victorious allied powers of World War II. According to Goda, the case of Spandau demonstrated clearly how international politics and variant historical memories affect issues of international justice, even decades after the crimes in question. Steve Heder looked at evidence of crimes against humanity committed by the Khmer Rouge in Cambodia between 1975 and 1979 and ensuing efforts to bring perpetrators to justice after the fall of this regime. He then attempted to analytically situate the evidence and efforts at accountability within the ongoing discussion about the Nazi Holocaust. Whereas he viewed Cambodian events as best enlightened by seeing them in terms of functionalist accounts, Heder regretted that current "politically-driven" efforts by the United Nations for a trial of Cambodian crimes would perpetuate a more intentionalist, top-down theory of the case, which would shield from political scrutiny "small fish" with present political influence. Concluding this panel, Hope Harrison looked into German attempts to come to terms with the East German past after 1989. She discussed how both East and West Germans influenced this process, and she described the handling of the Stasi files and the initial steps taken by East Germans to bring former top officials to justice. Harrison also addressed how the unification process and postunification developments affected those overall efforts.

In the final panel, titled "Justice Pending and Unreconciled Past," Aurelie Campana assessed the development of Crimean Tatars' claims to redressing historical injustices from rehabilitation to the definition of new relationships with their historical homeland. She asserted that the quest for justice has greatly influenced the construction of the Crimean Tatar nation. Integrating this sentiment with an ongoing perception of resentment would explain the Tatars' intact determination to obtain complete rectification and achieve full reconciliation with the past. Andreas Hilger focused on the legal instruments of Russia's efforts to come to terms with Soviet repression against German, Polish, Hungarian, Austrian, or Japanese citizens after the end of the Second World War. He showed how those efforts are embedded in Russian politics and the inconsistent attitude toward the history of the USSR. In particular, Hilger emphasized the disregard of the historical ideologization of Soviet juridical measures. He defined this as a desire for clinical separation of inseparable parts of history to rebuild a strong Russian state in the present and therefore to create a continuity with former Soviet political priorities. Concluding the last panel, Karen Riechert drew on case studies of three Latin American countries (Argentina, Chile, and Guatemala) to discuss their notions of transitional justice. She suggested that a concept of a "transitional society" would more accurately describe the various processes, thereby over-

coming an all too strong dichotomy between “truth” and “justice.” She noted the need for more effective prosecution of former perpetrators together with trust-inspiring reforms of the judiciary and the police, as the truth commissions at work in all three countries had insisted upon in their final recommendations.

As we are watching current developments in postconflict Iraq and the stumbling from one pitfall of transitional justice to the next, many experiences and discussions at this conference could not have been more timely. Wrapping them up comprehensively in a volume of the GHI’s series with Cambridge University Press will be a service to this outstanding gathering of international scholars and hopefully to all prospective readers.

*Bernd Schäfer*