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Justice on Trial

German Unification and the 1992 Leipzig Trial

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Introduction

In late September 1992, the District Court of Leipzig in eastern Germany handed down an indictment of former East German judge Otto Fuchs. Shortly thereafter, Judge Fuchs and his wife jumped out of a seventh story window. Fuchs was found in the morning, clutching his wife's hand as they lay, lifeless, on the cobblestone street below.¹ This tragic act marked the end of Fuchs' story, and the beginning of another, for Fuchs was not the only one subpoenaed by the Leipzig District Court that day. The court charged eighty-six-year-old Otto Jürgens with the same crime, and unlike his colleague, who jumped to his death to avoid being brought to justice, Jürgens decided to face his fate head-on.

These two men, only one of which lived to see his day in court, were being charged for their roles in orchestrating one of the most notorious show trials in East German history: the Waldheim Trials. The Waldheim Trials took place in a small courtroom at the East German Waldheim Penitentiary in 1950, only seven months after the East German state was founded. These trials, which were orchestrated by the East German, communist government, targeted former Nazis as part of a broader "denazification" campaign designed to demonize fascism in the wake of Hitler's fall.² The Waldheim Trials were political show trials that were designed to demonstrate the new state's power and dominance over its Nazi predecessors.³ As such, they represented one of East Germany's first attempts to address Nazi crimes in a legal setting.⁴ Forty-two years later, during the process of German reunification, Otto Jürgens, the only living

¹ "Waldheim-Richter: Ich war nicht SED-gelenkt," *Neues Deutschland*, November 19, 1992.

² Peter E. Quint, *The Imperfect Union: Constitutional Structures of German Unification* (Princeton: Princeton University Press, 2012), 50.

³ Quint, *The Imperfect Union*, 50.

⁴ Ulrich Merten, *The Gulag in East Germany: Soviet Special Camps 1945-1950* (New York: Teneo Press, 2018), 140.

Waldheim judge, was put on trial in the East German town of Leipzig as part of the political establishment of the new, democratic, unified German state. This thesis tells the story of that later trial, described here as the 1992 Leipzig trial, and its significance within the context of post-war and post-unification German national development.

This thesis follows the narrative of the 1992 Leipzig trial, which represented the unified German government's condemnation of the East German judicial system and its legal practices in an effort to bolster its own. Like the East and West German judicial trials that preceded it, the 1992 Leipzig trial was designed to carry out the political agenda of the government which instituted it. In the case of unified Germany in the early 1990s, the government's primary goal was to drive the state-building process forward.⁵

This thesis argues that the 1992 Leipzig trial functioned as part of the broader political process of state-building in unified Germany. This trial was designed as a critique of the East German state and its legal system, which aided in the establishment of the new, democratic, unified German nation. The trial also served as an expression of the new political and legal norms in unified Germany, which, after the fall of East Germany, were derivatives of the values that governed West Germany and its legal system. By condemning the legal values of the previous regime and endorsing those of the new liberal government, the trial functioned as a political catalyst for the unified German state-building process, at the heart of which was the expression of new standards of justice structured around due process, impartial sentencing and evidence accumulation. The 1992 trial also became a point of political contention in the midst of the German unification period. The responses were divided along political lines with a portion of the responses originating in former East German communities and the rest in former West

⁵ Quint, *The Imperfect Union*.

German communities. Despite this division, both responses to the trial illustrate its purpose as a pedagogical vehicle for the proliferation of new legal standards and norms in unified Germany.

As products of the unification process, which involved the merging of two distinct states and legal systems, the political complexities surrounding the 1992 Leipzig trial, and the unification process in general, had their origins in the political environments of East and West Germany.

After the fall of the Third Reich, the German empire was divided into two politically distinct states, each with their own interpretation of and approach to addressing the crimes of their shared past. The East German state was founded in 1949 as a Soviet-occupied, communist state, while West Germany was established the same year as a democratic state governed by the Allied nations. In the wake of the Holocaust, these two emerging nations were faced with the challenge of reintegrating into an international community that defined them by their atrocious actions during the Second World War.⁶ After the German defeat, the occupying Soviet and Allied powers expected a reckoning for the crimes of the Holocaust before they would support the new Germanies, both politically and financially.⁷ This recognition of the crimes of the Nazi era and public rejection of its fascist ideology became an essential way for the two states to distinguish themselves from their political predecessor.⁸ In order to project this departure from Nazism, the East and West German states engaged in “denazification” efforts designed to sever their ties with the previous regime.

Despite this shared goal, the two state’s approaches to these denazification campaigns varied widely from one another. The denazification campaigns of communist East Germany

⁶ Jeffrey Herf, *Divided Memory: The Nazi Past in the Two Germanys* (Cambridge, Mass: Harvard University Press, 1997), 3.

⁷ Ibid.

⁸ Ibid.

were informed by its totalitarian political structure and involved the proliferation of verbal and visual propaganda, mass arrests, and the political cleansing of former Nazis and enemies of the state.⁹ The West German denazification efforts were informed by the state's democratic values and entailed a more measured approach to targeting former Nazis. This involved the removal of any Nazi officials from power and the public prosecution of former Nazi criminals, especially those who participated in the Holocaust.¹⁰ As part of these denazification efforts, both East and West Germany made use of their legal systems as vehicles for denazification as well as tools to express their respective legal and political values. Decades later, the 1992 Leipzig trial became a product of these contested judicial legacies.

In East Germany, the 1950 Waldheim Trials represented one of the clearest examples of this state's judicial approach to denazification. These trials consisted of a series of very short hearings during which 3,400 former Nazis and enemies of the Soviet state were "tried" before a panel of East German Soviet judges.¹¹ As the presiding judges, Otto Fuchs and Otto Jürgens sentenced all 3,400 of these individuals in a series of 10-minute-long hearings, conducted on the basis of hearsay and political denunciations. No evidence was presented over the course of the proceedings.¹² The majority of the defendants were convicted and 32 were sentenced to death by hanging or firing squad.¹³ These proceedings speak to the performative and political nature of the trials, which, although typical of many totalitarian regimes, was the aspect of the trials which the orchestrators of the 1992 Leipzig Trial of the Waldheim judges criticized most openly.

⁹ Ibid., 13.

¹⁰ Frederick Taylor, *Exorcising Hitler: The Occupation and Denazification of Germany* (Bloomsbury Publishing, 2011), 266.

¹¹ Dr. Falco Werkentin, "Waldheimer-Prozesse," *Lexicon der Politischen Strafprozesse*, July 2018.

¹² Ibid.

¹³ Ibid.

Like East Germany, the West Germans held trials of former Nazis in an attempt to criminalize the actions of the Nazi regime and bolster their own legal values. For example, the Frankfurt Auschwitz Trial, which was conducted in West Germany in 1963, charged 22 former high and low-level Nazi personnel for their role in orchestrating the Holocaust and managing the Auschwitz work and death camps.¹⁴ This trial was conducted over two years and involved the accumulation of evidence and the presentation of cases in favor of and against the accused. The Auschwitz trials followed in the footsteps of other Holocaust trials carried out by western powers, such as the Nuremberg and the Eichmann Trials. These trials, which targeted high-level Nazi officials and organizers of the Holocaust, were a manifestation of the Allied states' democratic legal values in that they prioritized the accumulation and presentation of evidence, a practice that varied widely from the East German legal practices of the time.¹⁵ Similarly, the Frankfurt Auschwitz Trial was a product of the West German states' democratic commitment to due process and the establishment of an evidentiary record in the context of their legal denazification efforts.¹⁶ This thesis shows that, like the trials of East and West Germany, the unified German judicial trials, including the one which occurred in Leipzig in 1992, were direct products of their political environment.

While trials are not the only way that countries have grappled with historical crimes, this arena is particularly interesting because it functions as a site for the assertion of new legal norms.¹⁷ This expression of new standards of justice is especially essential in the context of transitional political periods. After the fall of the Nazis, the East German state used its legal

¹⁴ Rebecca Wittmann, *Beyond Justice: The Auschwitz Trial* (Cambridge, MA: Harvard University Press, 2012).

¹⁵ Herf, *Divided Memory*, 3.

¹⁶ Wittmann, *Beyond Justice*.

¹⁷ Martha Minow, *Between Vengeance and Forgiveness: Facing History After Genocide and Mass Violence* (Boston: Beacon Press, 1998), 29.

system to communicate its values of political allegiance and dedication to the Soviet state.¹⁸ In West Germany, the state used trials as a means of asserting new standards of justice structured around the liberal legal values of due process and judicial impartiality.¹⁹ After German unification, as this thesis argues, the new government used the 1992 Leipzig trial as a vehicle for the expression of new, western-oriented legal norms. In this sense, the 1992 Leipzig trial is part of a long tradition of German trials orchestrated with specific political purposes in mind, the most notable of which is the pedagogical communication of new legal and political values.

Additionally, this form of historical redress allows for the crimes committed to be officially documented as part of the historical record, which legitimizes and memorializes the experiences of the victims and chronicles the development of the nation's legal practices. This function is especially necessary during periods of transition when states are concerned with the establishment of new political and legal practices and values.²⁰ Therefore, the theoretical approach explored in this thesis uses the 1992 Leipzig trial as a lens through which to understand the social, legal, and political developments which took place during German unification.

While there have been historical works that address trials during the unification period, the 1992 Leipzig trial, which is at the heart of this thesis, remains unexplored. In general, there are three categories of works that have informed my research: general works on historical trials and their role as elements of the state-building process, works that discuss East and West German trials, and writings on the state-building process and transitional justice in reunified Germany.

¹⁸ Herf, *Divided Memory*.

¹⁹ Wittmann, *Beyond Justice*.

²⁰ Benedict R. Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (New York: Verso, 1991); Mary Fulbrook, *German National Identity after the Holocaust* (Cambridge: Polity Press, 1999).

When it comes to more general discussions of historical trials, the works of Lawrence Douglas, Charles Lansing, Christoph Burchard, David Cohen, Yuma Totani, Hannah Arendt, and Renee Romano have all deepened my understanding of trials as vehicles for historical analysis. With a specific focus on transitional justice trials such as the Nuremberg Trials, the Tokyo Trials, and the Eichmann Trials, as well as the reopening of Civil Rights era cold cases, these authors use historical trials as windows into the political and legal environments of different historical periods.²¹ Through the use of trial transcripts, periodicals, and personal accounts, these works emphasize how certain trials highlighted the political, racial, religious, and social tensions which defined their respective historical periods.²² Although these works do not focus specifically on the German unification period, their analyses of historical trials as arenas for socio-political discussions serve as inspiration for the structure and development of my argument.

As a branch of this general legal analysis, a section of my source base grapples with the role that the law plays in the construction of new states. These works, which include monographs by Jeffrey Herf and Mary Fulbrook, identify the legal arena as a site for the expression of new ideologies in the midst of political transition.²³ These authors examine the German post-war period and the development of the two states of East and West Germany through the lens of legal practices.²⁴ These authors make the argument that the assertion of new legal and political norms

²¹ Charles Lansing, *From Nazism to Communism: German Schoolteachers Under Two Dictatorships* (Cambridge, MA: Harvard University Press, 2010).; Christoph Burchard, "The Nuremberg Trial and its Impact on Germany" (Journal of International Criminal Justice, Volume 4, Issue 4, 1 September 2006.); Renee Romano, *Racial Reckoning: Prosecuting America's Civil Rights Murders*, (Cambridge, Massachusetts; London, England: Harvard University Press, 2014); Hannah Arendt, *Eichmann in Jerusalem: A Report on the Banality of Evil* (New York, N.Y.: Viking Press, 1963); David Cohen and Yuma Totani, *The Tokyo War Crimes Tribunal: Law, History and Jurisprudence* (Stanford University Press, 2019).

²² Ibid.

²³ Herf, *Divided Memory*.; Fulbrook, *German National Identity after the Holocaust*.

²⁴ Ibid.

was an essential aspect of the state-building process in the post-war Germanies.²⁵ Even though these works do not address unification era trials specifically, their discussion of the post-war state-building processes in East and West Germany serves as necessary background for my discussion.

Building on this historiography, authors Rebecca Wittmann, Devin O. Pendas, Martha Minow, and Falco Werkentin have written works that speak directly to post-war trials in East and West Germany.²⁶ These works discuss trials such as the West German Frankfurt Auschwitz Trials and the East German Waldheim Trials in great depth and provide analyses that speak to the importance of these trials as tools in the state-building process.²⁷ As the political predecessors to the unified German trials, the trials of East and West Germany illuminate the important role that the law played in constructing a future for these two states. These trials, and the historical works that discuss them, form the basis of my analysis of the 1992 Leipzig trial and the unification period.

As background for my analysis of unification era trials, I consulted historical works that address the unification period and the political complexities surrounding it. In particular, the works of James McAdams, Peter E. Quint, and Andrew Bickford include in-depth analyses of the unification period, the constitutional structures, and the legal changes which came with the merging of East and West Germany.²⁸ While most of these analyses are separated from the

²⁵ Ibid.

²⁶ Wittmann, *Beyond Justice.*; Devin O. Pendas, *The Frankfurt Auschwitz Trial, 1963-1965: Genocide, History and the Limits of the Law* (Cambridge, MA: Cambridge University Press, 2006); Werkentin, "Waldheimer-Prozesse."; Minow, *Between Vengeance and Forgiveness.*

²⁷ Ibid.

²⁸ James McAdams, *Germany Divided: From the Wall to Reunification* (Princeton University Press, 2001).; Quint, *The Imperfect Union.*; Andrew Bickford, *Fallen Elites: The Military Other in Post-Unification Germany* (Stanford, CA: Stanford University Press, 2011). Quint, *Imperfect Union.*

study of historical trials, they provide necessary background on the unified German legal structure and judicial practices during the 1990s.²⁹

Finally, my analysis most closely relates to the existing literature which grapples with trials within the German unification period. The works of Peter E. Quint, Andrew Bickford, Martha Minow, Tina Rosenberg, and Monika Zorn all analyze unified German historical trials.³⁰ The works of Quint, Minow, and Rosenberg directly address trials such as the 1991 Border Guard Trials, which involved the prosecution of East German border wall guards who shot defectors as they attempted to flee.³¹ However, their focus is not on the specific trial which I intend to analyze. Along with trial transcripts, these sources all make use of press articles and first-hand testimony, which are essential sources for my analysis.³² In that sense, these works have both informed my understanding of unified German judicial trends and set an example for how I should be addressing them.

Like many of my historiographical predecessors, my work is primarily a legal history in that it examines a period of political transition through the lens of a judicial trial. This work also contains elements of social history. These elements are especially apparent in my third chapter which examines the German public responses to the 1992 Leipzig trial.

Unlike those legal historians who have preceded me, my work does not rely heavily on trial transcripts because I could not get access to the Leipzig Court Archives which house the transcripts as the result of the German data protection act. This act makes it especially difficult for amateur academics to access information on individuals who may still be living, and since the

²⁹ Ibid.; Monika Zorn, *Hitlers zweimal getötete Opfer: Westdeutsche Endlösung des Antifaschismus auf dem Gebiet der DDR* (Berlin: Ahriman-Verlag GmbH, 1994).

³⁰ Ibid.; Tina Rosenberg, *The Haunted Land: Facing Europe's Ghosts after Communism* (New York: Vintage, 1995); Bickford, *Fallen Elites.*; Minow, *Between Vengeance and Forgiveness.*

³¹ Rosenberg, *The Haunted Land*, 343.

³² Ibid.

trial was so recent, this act was a barrier to my research. In place of trial transcripts, I have turned to personal interviews and newspaper articles from the time.

Throughout the thesis, I draw on interviews, which I conducted during my trip to Germany in January 2020, and newspaper articles from the period to contextualize and to substantiate my claims regarding the 1992 Leipzig trial. During my time in Germany, I was able to conduct five interviews with a variety of subjects who experienced the unification process, the 1992 Leipzig trial, and the public reactions to both. While these personal accounts helped to deepen my understanding of the trial proceedings and the surrounding political environment, they cannot necessarily be taken at face value. Since these accounts are opinions, it is important to consider the possibility of personal biases. However, these personal biases are interesting in and of themselves. These testimonies speak, in part, to the public reactions to these trials and the unification process on a smaller scale. Therefore, most of these sources have been incorporated into sections of the thesis that discuss public opinion.

Additionally, one of my interviews functioned as a useful source for the events of the trials, in light of a missing trial transcript. My interview with a *Tageszeitung* journalist who was an eyewitness of the trial, proved invaluable in the development of my argument. The journalist, who was one of the few journalists who covered the 1992 Leipzig trial and met defendant Otto Jürgens and prosecutor Deitrich Bauer was an essential source both in my retelling of the events of the trial and in my analysis of the political significance of the trial. The journalist provided me with the intimate details of the trial proceedings, the reactions of the defendant and prosecutor, as well as inside details regarding the public and press's response to the trials. This information was especially valuable for my second and third chapters.

Along with my interviews, this work relies heavily on newspaper and law journal articles published at the time of the trials. Articles from formerly West German papers *Der Spiegel*, *Der Tageszeitung*, and *The Nürnberger Nachrichten* provided essential details that illuminate the events of the trial, as well as information regarding the western reception of the trials. In order to craft a comprehensive understanding of this perspective, I analyzed every article that discussed the 1992 proceedings published by these outlets in the years during, directly before, and after the trial.

In order to bolster my analysis of the former East German community's response to the trials, I relied on the formerly East German newspaper *Neues Deutschland* and analyzed every article published on the trial between the years of 1990 and 1994. I also made use of international tribunals such as *Reuters News*, the *Wall Street Journal*, and *The Associated Press* to contextualize these local responses and illuminate the ways in which the international community regarded the trial and its purpose.

Aside from local and international periodicals, I also incorporate analyses of western-oriented unified German law journals that address the trials and express specific opinions. Journals such as *Juristen Zeitung* and *Neue Juristische Wochenschrift* published articles covering the trial and analyzing its purpose in great depth. The western perspective that these articles offer is especially useful in the context of my analysis of the trial reception and the political divide which defined it.

As is the case with many works of historical research, this thesis is subject to a series of limitations. The limited time frame in which I conducted my research contributed significantly to my source-base and the scope of my topic. Due to the inaccessible nature of the 1992 Leipzig trial transcript, my research rests heavily on newspaper articles and eyewitness testimony, which

are inherently subject to bias. As a result, this work functions more as an analysis of the press' responses and select public reactions to the unification process and the trials than an in-depth discussion of the proceedings themselves. Additionally, because I was only able to spend a short amount of time in Berlin conducting interviews and archival research, a lot of my analysis depends on state records, journal articles, and press reports, which inherently express more of the state's intentions and sentiments than those of the German public. However, I made use of a few select interviews and press articles to try and make the public voice more apparent.

Through an analysis of the 1992 Leipzig trial, this thesis delves into the politically complex history of German unification and emphasizes how the unified German state used its legal system, and the 1992 Leipzig trial, as a means of establishing new legal norms and calling the East German state to account for its judicial wrongdoings. As a state desperate to establish its own political and legal identity, distinct from that of the East German regime, the unified German government depended on the 1992 Leipzig trial to fulfill its political purpose and aid in the establishment of new legal norms grounded in liberal judicial values.

This thesis is divided into three chapters and proceeding chronologically. My first chapter discusses the unification period and the legal and political developments which paved the way for the 1992 Leipzig trial. The second chapter discusses the trial itself and the elements of the proceedings that were impacted by the political environment of unification. The third chapter, which takes place after the conclusion of the 1992 Leipzig trial, examines the public responses to the trial and the political divide which defined them. My conclusion highlights the significance of the Leipzig trial in aiding the unified German state-building process and illuminates the enduring importance of the trial's legal legacy in modern-day Germany.

Chapter 1

A New Germany: Trials and the State Building Process in Unified Germany

Years after its symbolic, and in places literal destruction, the Berlin Wall still stands tall in the outer regions of Berlin. The wall was maintained in certain districts of unified Berlin, such as the outskirts of Prinzlauerberg, in an effort to remember the nation's divided history.³³ These sections of the wall are now adorned with photographs and placards memorializing the unification event. The memorialized version of the wall tells a story of unity at a site of division. While some pieces of the wall stand tall in the heart of the bustling city, other wall memorials are located on the outskirts of Berlin, where the atmosphere is bleak. Upon visiting one of these more removed wall memorials in Prinzlauerberg, I noticed a difference in the industrial landscape on one side of the wall compared to the other. One side appeared to have been developed significantly, while the other remained barren and grey. "That is old East Berlin," noted my companion, a former West German lawyer, "pretty sad, isn't it?"³⁴

"You know, it was an occupation, not a peaceful unification."³⁵ This statement, expressed by one of my interviewees, highlights some of the politically hostile elements of the unification process.³⁶ As historian Andrew Bickford noted in his work *Fallen Elites: The Military Other in Post-Unification Germany*, "West German elites felt that they could do as they pleased" during unification. After all, the East German state had collapsed and they had won.³⁷ According to Bickford, this triumphalist attitude on the part of West Germans represented a

³³ Matt Kelley, "Gone but not Forgotten: Why the Berlin Wall Maintains a Grip on Us," *UVA Today*, University of Virginia, February 8, 2018.

³⁴ Anonymous, interviewed by author, Berlin, January 7, 2020.

³⁵ Ibid.

³⁶ Ibid.

³⁷ Bickford, *Fallen Elites*, 10.

“general trend in the early years of unification, when large numbers of GDR officials, bureaucrats, teachers, professors, and anyone whose loyalty to the new German state was seen as questionable, lost their jobs... and were replaced with West Germans or East Germans who were considered politically reliable.”³⁸ In legal terms, Bickford describes the notion of “disqualifying justice,” as a form of punishment employed “even if [the East Germans] could not be held directly responsible for abuses or illegal actions in the GDR.”³⁹ Even though these punitive measures were indirect, Bickford asserts their importance as the political and legal context for the trials that followed-- including the 1992 Leipzig trial.

As this chapter will discuss, this political cleansing process was an essential aspect of the German unification and state-building processes as it sought to establish a new German national identity in the wake of division. This chapter will show how the West German legal and political systems dominated the unification process in a way that condemned and excluded the East German judiciary. Ironically, however, this attempt to unify the nation under one political ideology and extend the western constitution and legal jurisdiction created even more political resentment and division within the new state.

At its core, German unification was a politically partisan state-building process that depended on the condemnation of one political ideology, namely East German communism, and the proliferation of another, namely West German liberalism. This process, and all of the complications associated with it, ultimately laid the political and legal groundwork for the 1992 Leipzig trial. Politically, the unification process involved the West German condemnation of East German ideologies, which became a driving motivation for the trial.

³⁸ Bickford, *Fallen Elites*, 11.

³⁹ *Ibid.*

This chapter aims to place the 1992 Leipzig trial within the context of the relevant political and legal controversies that arose during the German unification process. Through the use of first-hand accounts of witnesses and German press reports, this chapter highlights the politically divisive elements of German unification and the subsequent legal changes. It will focus on the legal dynamics of the transition to a Western-dominated governmental system and explore debates about the constitutional amendments that accompanied this process. Finally, the chapter will discuss the trials of the Berlin Wall Border Guards, which served as important precedents to the 1992 trial.

Political Unification

In the summer of 1989, months before the fall of the Berlin Wall, the politically turbulent nature of the looming merger was already apparent. Those both against and in favor of unification took to the streets in protests and demonstrations that spanned the nation.⁴⁰ As Andrew Curry, a reporter for the West German newspaper *Der Spiegel* reported, those against the merger were quickly drowned out by the significant demand for unification which came from protestors in both East and West Germany.⁴¹ “We all went out to protest, we wanted to be part of the West and we knew we had to fight for it,” recalls a former East German citizen and political activist.⁴² Despite the variety of smaller protests across the country, the epicenter of the pro-unification movement was the East German town of Leipzig, the future location of the 1992 trial.

From the beginning, the town of Leipzig played a significant role in the unification process. Between September 1989 and April 1991, Leipzig became the site of the largest and

⁴⁰ Hans Hoffmeister, Mirko Hemple, eds, *Die Wende in Thüringen: Ein Rückblick* (2nd ed.), Arnstadt / Weimar: Thüringische Landeszeitung / Rhino Verlag, 2000, 3.

⁴¹ Andrew Curry, “A Peaceful Revolution in Leipzig,” *Der Spiegel*, October 9, 2009.

⁴² Anonymous, interviewed by author, January 10, 2020.

longest pro-unification demonstration in Germany. Every Monday during this period, a group of dissatisfied East German citizens assembled in public spaces in Leipzig, eventually filling Karl Marx Platz (Karl Marx Square) and spilling over into the courtyards of St. Nicholas Church, to demand rights such as the freedom to travel to foreign countries and to elect a democratic government.⁴³ These individuals called for the basic freedoms which the citizens in West Germany enjoyed. Known as the “Leipzig Demonstrations” or the “Monday Demonstrations,” given that they took place every week on a Monday, the protests were broadcast within Germany and to countries across the world, with the *New York Times* referring to them as “the largest [German] rally in decades.”⁴⁴

West German press coverage of the protests prompted copy-cat demonstrations across West Germany. As unification historians Hans Hoffmeister and Mirko Hemple explain, individuals gathered in city squares and parks to demonstrate support for the Leipzigers and to express solidarity.⁴⁵ The Monday Demonstrations, which began in the church courtyards and public parks in Leipzig, served as an initial catalyst for the unification of East and West Germany.⁴⁶

These protests were at the heart of the unification movement, and it was not long until their demands were met. On November 9th, 1989, the Berlin Wall fell, signaling the collapse of the East German state and the reunification of East and West. The individuals who spearheaded the campaign for reunification included intellectuals, layman citizens, religious priests who had

⁴³ Hoffmeister and Hemple, *Die Wende in Thüringen*, 3.

⁴⁴ Serge Schmemmann, “100,000 Protest in Leipzig In Largest Rally in Decades,” *The New York Times*, October 17, 1989.

⁴⁵ Hoffmeister and Hemple, *Die Wende in Thüringen*, 3.

⁴⁶ Peter Critschley, “Did a prayer meeting really bring down the Berlin Wall and end the Cold War?”, *BBC*, October 9, 2015.

been participating in underground GDR opposition movements, those attempting to flee East Germany, and those disillusioned with the GDR's political ideology and their repressive governing tactics.⁴⁷ These individuals, many of whom had participated in the Monday Demonstrations in Leipzig, were considered the drivers of the "Peaceful Revolution" ("Friedliche Revolution").⁴⁸ Later, they, along with the governmental figures who supported their cause, would come to be known as GDR reformers. The protests helped to establish Leipzig's reputation as a city in favor of unification and against the oppressive power of the East German state. In many ways, the 1992 Leipzig trial, which occurred less than a year after the Monday demonstrations, was an extension of this political agenda.

Legal Unification and Constitutional Amendment

As was the case with the fall of the Nazi state, the collapse of communism and the East German nation marked a point of victory for liberal democratic ideology. The subsequent power imbalance between Eastern and Western ideologies went on to shape the course of unification and the legal and political integration of the two states. As one of my interviewees put it, "the West was absorbing the East, it wasn't like they were meeting in the middle."⁴⁹ This interviewee's West German perspective in this instance is significant. The power imbalance present during unification was so obvious that both West and East Germans recognized it. Although this political impartiality didn't come as a shock to most German citizens, this aspect of the political environment during unification serves as the foundation for my analysis of the trials which it produced.

⁴⁷ Dale Gareth, *Popular Protest in East Germany*, (London / New York: Routledge, 2006), 148.

⁴⁸ Ibid.

⁴⁹ Anonymous, interview.

Many historical works on unification make note of this political imbalance. Andrew Bickford, for example, focuses his analysis of the unification period on the impact that West German political bias had on East German elites and state officials.⁵⁰ As Bickford demonstrates, East German elites were barred from participation in the new state based on their previous political affiliations with the East German state.⁵¹ According to Bickford, this form of punishment was not necessarily based on “what they did,” and their actions as members of the Soviet state.⁵² Instead, “they were punished for...who they were in the past, regardless of wrongdoing, and because they ‘should have known better’ than to have served in what to West Germans was...a ‘state without the rule of law (*Unrechtsstaat*).’” By purposefully disqualifying former East German officials from positions in the new unified government based on their political allegiances, conspicuous political biases against the GDR’s ruling elite persisted throughout the unification process.⁵³

Despite this power imbalance, the former East and West German governments were not entirely at odds when it came to their shared goal of merging the two states.⁵⁴ In their discussion of the Monday Demonstrations in Leipzig, historians Hoffmeister and Hemple emphasize that both East and West Germans participated in the demonstrations, thereby alluding to the notion that citizens on both sides of the wall supported the proposal for unification.⁵⁵ This public cooperation was also present at the state level during the unification negotiations.

One of the more prominent dilemmas guiding these negotiations, and the issue most relevant to this discussion, was the establishment of a unified German legal system and the

⁵⁰ Bickford, *Fallen Elites*, 11.

⁵¹ Ibid.

⁵² Ibid.

⁵³ Quint, *The Imperfect Union*, 216.

⁵⁴ Ibid.

⁵⁵ Hoffmeister and Hemple, *Die Wende in Thüringen*, 3.

potential drafting of a new constitution. At the heart of this discussion was the question of whether the unified German state should be governed by a new set of laws which required constitutional amendment on both sides of the east/west border, or if the unified German state would be governed by the same constitution, or “Basic Law,” that existed in West Germany before reunification.⁵⁶ The former option, which involved the proposal of a “German Confederation” in place of a unified German state, would allow the East German state to maintain a degree of governmental and legal integrity, which made it a popular choice among those East German citizens who were opposed to unification.⁵⁷ The latter possibility would involve the complete popular and constitutional absorption of East Germany into West Germany.⁵⁸ As historian Peter Quint articulated in his analysis of the unification process and its political complexities, this latter choice meant that unified Germany would not be considered, in the eyes of the international community, to be a new state distinct from its East and West German predecessors.⁵⁹

East German Prime Minister Hans Modrow and West German Chancellor Helmut Kohl discussed this concept of a German Confederation at a roundtable in West Berlin, and according to a report published by German historian Volkmar Schoenenburg, both expressed initial enthusiasm about the idea.⁶⁰ However, when the possibility of complete constitutional and geographic unification was proposed, this initial proposal was swiftly rejected.⁶¹ In a statement broadcast to the East and West German public, Chancellor Kohl expressed his support for the

⁵⁶ Quint, *The Imperfect Union*, 216.

⁵⁷ *Ibid.*; Gareth, *Popular Protest in East Germany*, 150.

⁵⁸ Quint, *The Imperfect Union*, 216.

⁵⁹ *Ibid.*, 17.

⁶⁰ Volkmar Schoenenburg, “Vom Ludergeruch der Basisdemokratie, Geschichte und Schicksal des Verfassungsentwurfs der Runden Tisches der DDR” *Jahrbuch für Forschungen zur Geschichte der Arbeiterbewegung*, 2010.

⁶¹ *Ibid.*

West German absorption of East Germany and the extension of the Basic Law.⁶² The rejection of the German Confederation proposal speaks, to the political power imbalance that defined the unification negotiations.

Along with its impact on the state level, this imbalance was also a point of discussion in the private sphere. In my conversation with former a East German citizen, she articulated her concern with the West German absorption of the East: “It was almost as if East Germany was erased from the map, which was definitely more practical, but, naturally, it left a lot of people upset, I believe this is why a lot of people were angry and felt targeted by their government...we all felt a bit left behind.”⁶³ This kind of resentment towards the unified German government would later serve as the foundation for the East German critiques of the 1992 Leipzig trial and other trials that surfaced in the coming years.

Despite some unrest within the East German community, East and West German officials pushed forward with plans for complete unification. In order to facilitate the merger, the East German Parliament (*Volkskammer*) passed a resolution on the 23rd of August 1990 declaring the accession of the GDR (East German State) to the FRG (West German State), and extending the jurisdiction of the West German “Basic Law” to include former East German territory.⁶⁴ As a result, the West German constitution was not amended in any significant way and any attempts at merging the two constitutions were set aside.⁶⁵ Subsequently, high-ranking officials and political leaders from the GDR and FRG began negotiations regarding the peaceful judicial, political, and

⁶² Quint, *The Imperfect Union*, 217.

⁶³ Anonymous, interview.

⁶⁴ “Übermittlung des Beschlusses der Volkskammer über den Beitritt der DDR zum Geltungsbereich des Grundgesetzes der Bundesrepublik Deutschland,” Volkskammer der Deutschen Demokratischen Republik, Bundesarchiv—Digitalisierung und Onliestellung des Bestandes DA 1 Volkskammer der DDR, Teil 10, August 23, 1990.

⁶⁵ Ibid.

geographical integration of East and West Germany. The negotiations resulted in the signing of the “Unification Treaty,” or “Einigungsvertrag” (Unification Treaty),⁶⁶ which was approved by a majority vote in the East and West German governments and signed on the 31st of August 1990.⁶⁷

Even though this treaty passed, certain historians have identified the Unification Treaty as being influenced by western triumphalist sentiments. As historian Peter Quint explains in his work *The Imperfect Union: Constitutional Structures of German Unification*, the treaty was designed to provide an underlying legal framework for the unification process and the extension of the Basic Law’s geographical jurisdiction and the dissolution of the East German constitution.⁶⁸ Quint examines the political implications of the extension of the West German “Basic Law” and the dismissal of the East German constitution on the political climate of unification. He emphasizes the social and political impact that western dominance had on the unified German people, the unification process itself, and, as this chapter will later discuss, the trials it produced.⁶⁹

Rehabilitation and Compensation for Victims of the GDR

Political-partisanship extended beyond the boundaries of Berlin’s legal chambers, as anti-East German sentiments continued to spread throughout the public sphere. Lasting narratives of East German inferiority and West German triumphalism in the wake of unification created a tense political and social backdrop for the unification process. Narratives of East German inferiority, specifically with regard to the state’s legal system, abounded during the unification

⁶⁶ The treaty was also referred to at times as the “Wiedervereinigungsvertrag” (Reunification Treaty).

⁶⁷ Ann Imse, “Soviet Legislature Ratifies German Reunification Treaty, *Associated Press*, March 4, 1991.

⁶⁸ Quint, *The Imperfect Union*, 219.

⁶⁹ *Ibid.*

period, with many formerly West German papers and legal journals, including *Der Spiegel* and *Neue Juristischen Wochenschrift*, accusing East Germany of being an “Unrechtsstaat” (*unjust state*).⁷⁰ This claim was grounded for the most part in West German interpretations of lawless and morally reprehensible behavior on the parts of the East German state, officials, and courts, particularly with regard to their treatment of political adversaries or dissidents.⁷¹ The outrage over the maltreatment of GDR victims would soon become one of the primary motivating factors behind the unified German trials of that era, including the 1992 Leipzig trial.

At the heart of this social criticism was a discussion of the victims of the GDR. When asked about those who suffered under the Soviet-run East German regime, one of my formerly East German interviewees recognized their plight: “They were treated horribly, and everyone knew that. That was part of the reason no one talked about it.” The maltreatment of victims of the GDR was obvious to some East German citizens. However, given the constraints of East German authoritarian society, it is not surprising that little resulted from this recognition.⁷² In a 2014 interview with the International Rehabilitation Council for Torture Victims (IRCT), Professor Andreas Maercker, Psychology Professor at the University of Zurich and former GDR prisoner recalled the ways in which he was maltreated by Stasi and GDR authorities: Maercker specifically recalls instances of “beating, starvation, rape, electric shocks and long periods of solitary confinement.”⁷³ According to a survey conducted by the same organization of a number of German rehabilitation centers, over 300,000 individuals were affected by these forms of

⁷⁰ Horst Sendler, “Die DDR Ein Unrechtsstaat — Ja Oder Nein? Mißverständnisse Um „Rechtsstaat“ Und „Unrechtsstaat“,” *Neue Juristischen Wochenschrift* 26, no. 1, 1993; “Das waren Blutrichter,” *Der Spiegel*, September 7, 1992.

⁷¹ Quint, *The Imperfect Union*, 217.

⁷² Jurgen Kocka, *Civil Society and Dictatorship in Modern German History*, (Lebanon, NH: University Press of New England, 2010), 37.

⁷³ “After the fall: The hidden trauma behind the Berlin Wall,” International Rehabilitation Council for Torture Victims, 7 November 2014.

physical and psychological torture under the GDR regime.⁷⁴ After German unification, the victims of the GDR inspired a nationwide campaign to secure reparations and rehabilitation for them.

Initially, the drive to secure rehabilitation for victims stemmed from demands made by the families of the victims, and their personal dedication to amassing evidence against perpetrators.⁷⁵ Victims and surviving relatives sought monetary reparations for their suffering at the hands of the East German government⁷⁶ The fact that these claims regarding East German crimes played into the political narratives of East German inferiority propagated by the unified German state, made their claims significant in the eye of the state.⁷⁷ As a result, this campaign to secure reparations for GDR criminals was soon picked up by the unified German government and transformed into a tool to aid in the unification process. What started as a few, family-based, claims for reparations and the punishment of perpetrators grew into much larger, government-backed, political and legal campaigns.

In the context of transitional justice literature, academics have scrutinized the significant role that reparations, the voices of victims, and the demands of their family have played in the construction of new states and the dissemination of political values. In his work *Constructions of Victimhood: Remembering the Victims of State Socialism in Germany*, transitional justice historian David Clarke identified the compensation of victims in post-unification Germany as bolstering the narratives of western superiority during the unification process.⁷⁸ As Clarke

⁷⁴ Ibid.

⁷⁵ Martha Minow, *Between Vengeance and Forgiveness*, 42.; Tina Rosenberg, *The Haunted Land: Facing Europe's Ghosts After Communism* (New York: Vintage Books, 1996), 260.

⁷⁶ David Clarke, *Constructions of Victimhood: Remembering the Victims of State Socialism in Germany*, (Cham, Switzerland : Palgrave Macmillan, 2019).

⁷⁷ Ibid.

⁷⁸ Ibid., 145-219.

elucidated in his second chapter on victim compensation, the victims of East German crimes “mobilized a construction of their own victimhood that presented their suffering as a heroic contribution to the overcoming of state socialism and the eventual reunification of Germany.”⁷⁹ Clarke emphasized the political role that victim compensation played in the context of unification.

Similarly, in her work *Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence*, historian Martha Minow examines the various purposes that reparations served in the context of transitional justice periods throughout history.⁸⁰ Citing the South African Truth and Reconciliation Commission after the conclusion of Apartheid and the Holocaust reparation campaigns championed by the West German government after the Second World War, Minow identifies reparations as “crucial elements” for the restoration of justice, community, and nationhood.⁸¹ Minow claims that reparations not only help victims and their families achieve a sense of justice, but they also help to bind communities together and aid in the state-building process.⁸² In the context of German unification, it would make sense that this desire to reestablish a sense of German community and nationhood was paramount to the unified German government. In that sense, it follows that this political purpose served as an essential motivating factor behind the reparations campaign. Although this is of course not the only purpose of these reparation efforts, it is a significant one in the context of my analysis.

In an attempt to secure reparations for victims of the GDR, West German officials inserted a number of clauses discussing victim rehabilitation into the Unification Treaty. For

⁷⁹ Ibid., 146.

⁸⁰ Minow, *Between Vengeance and Forgiveness*, 92.

⁸¹ Ibid.

⁸² Ibid.

example, article 17 of this treaty outlined a plan for the financial compensation of every individual who was considered a “victim of the SED injustice regime...to an appropriate extent.”⁸³ This article provided very little specification as to the process of identifying appropriate victims and the degree of “appropriate” compensation which they were to be afforded.⁸⁴ In general, it suggested two possible approaches to GDR victim rehabilitation. The first approach addressed the issue of the appropriate recipients of monetary reparations. According to this approach, only those who had been victims of crimes considered illegal under the GDR criminal code at the time should be afforded reparations.⁸⁵ This meant that the reparations were contingent on the historic illegality of the crimes committed, which was determined by the GDR criminal code.

This approach was proposed in an attempt to avoid instances of retroactive justice that were expressly forbidden by the Basic Law.⁸⁶ Around the same time, similar concerns about retroactivity permeated judicial discussions in other parts of Europe after the fall of communism.⁸⁷ Scholars in Hungary, for example, campaigned in a similar manner to prevent retroactive changes in criminal law.⁸⁸ However, in response to these requests, the Hungarian parliament passed a law which extended the statute of limitations on crimes such as premeditated murder and injuries causing death for an indefinite period, so as to allow persecution regardless of the historic legality of the crime. According to the Hungarian government, a definite statute of limitations “would prevent justice, and leave untouched the perpetrators’ own efforts to

⁸³ “The Unification Treaty between the FRG and the GDR,” art. 17, ch. V, Berlin: 31 August, 1990.

⁸⁴ Quint, *The Imperfect Union*, 217.

⁸⁵ *Ibid.*

⁸⁶ “Basic Law for the Federal Republic of Germany,” Article 103 (2): Fair Trial, 23 May, 1949, last amended 28 March, 2019.

⁸⁷ Minow, *Between Vengeance and Forgiveness*, 38.

⁸⁸ *Ibid.*

consolidate government power as a total shield against accountability.”⁸⁹ This mindset parallels the approach taken in unified Germany to questions regarding the retroactive compensation of GDR victims.

The second approach ignored the historic legality of the crimes committed and considered everyone who had been a victim of GDR injustice to be worthy of compensation, whether their maltreatment was considered legal in the GDR or not.⁹⁰ As the unification process progressed, a shift towards this approach, which favored the legitimacy of all GDR victims’ claims to reparations, as informed by Western human rights standards, occurred as the result of popular and political campaigns to delegitimize the DDR.⁹¹

While the Unification Treaty would have provided a good platform for this discussion of GDR victim compensation, the treaty itself, along with the corresponding article, proved too vague to offer any specific recommendations about what victims should receive. This was partially because the responsibility of managing punishment and providing reparations was one that the unified German government was not eager to take on.⁹² Given that the new government was primarily composed of former West Germans or those who no longer felt an allegiance to the East German state, it was difficult to compel these officials to pass a reparations law that would reallocate thousands of dollars from their own budget to every GDR victim.⁹³ It was almost impossible to imagine creating a reparations plan or conducting legal trials without a specific indication of who was responsible, who was in need, and how the reparations and punishment processes were meant to be conducted. Therefore, it became essential for further

⁸⁹ Ibid.

⁹⁰ Quint, *The Imperfect Union*, 217.

⁹¹ Ibid.

⁹² Ibid., 218.

⁹³ Ibid.

legally binding specifications to be made as to how these processes would play out in unified Germany.⁹⁴ The result was the drafting of two specific statutes aimed at addressing exactly these concerns, namely the first and second “Statute(s) for the Correction of SED Injustice.”

First and Second Statute(s) for the Correction of SED Injustice

The first and second “Statute(s) for the Correction of SED Injustice” addressed this challenging issue of victim rehabilitation and compensation. The compensation in this context was monetary and the rehabilitation of victims included therapeutic resources and aid for those who had lost their jobs or struggled to find jobs as a result of prior East German persecution.⁹⁵ The first statute focused on the rehabilitation of perceived victims of East German unjust convictions as well as financial compensation for these victims. At the heart of this statute was the statewide annulment of former GDR convictions and sentences that were deemed unjust by the unified German courts. As a formal requirement for this annulment, convictions had to be deemed “inconsistent with the essential principles of a free order [and] the rule of law.”⁹⁶ One of the offenses specifically outlined as having met this requirement was the undue persecution of individuals based on political orientation. As the first article of the statute lays out, “oppressive measures imposed by criminal authorities without a judicial order will also give rise to rehabilitation and compensation.”⁹⁷ This statute went into effect on October 29th, 1992.

The second statute, which went into effect two years later in 1994, was devised in an effort to provide compensation for victims of administrative prejudice and employment

⁹⁴ Quint, *The Imperfect Union*, 218.

⁹⁵ Clarke, *Constructions of Victimhood*.

⁹⁶ “Law for Criminal Rehabilitation aka StrRehaG,” (*Erstes SED-Unrechtsbereinigungsgesetz*, October 29, 1992), 1(1).

⁹⁷ *Ibid*, 1(2).

discrimination at the hands of the East German state.⁹⁸ While the statutes did not specifically outline the mechanisms by which individuals should be prosecuted for their crimes in the GDR, they created a legal framework within which claims for retroactive rehabilitation and criminal persecution could be processed under unified German law.⁹⁹

While the newly unified German state considered the status of victims, it also turned to questions regarding the punishment of the East German officials who had committed atrocities in the GDR. The first statute for the correction of SED injustice specifically referenced the 1950 Waldheim trials and the offenses associated with them as a prototypical example of an Article One violation.¹⁰⁰ As Quint highlights in his analysis of the statutes, the first statute identifies the Waldheim trials as “inconsistent with the essential principles of a free order in accordance with the rule of law,” which established a legal precedent for the persecution of former Waldheim judges and reaffirmed the invalidity of the East German judicial system directing them.¹⁰¹ By identifying the decisions made at Waldheim as crimes worthy of compensation and possible rehabilitation for the victims involved, this statute fed into the narrative of East German incompetency and judicial illegitimacy proliferated by the unified German government during its state-building process.

Historians who have analyzed this particular moment of transitional justice in Germany have identified a variety of ways in which the western government used their legal system to exercise their authority over the east. In their works *Fallen Elites: The Military Other in Post-Unification Germany* and *Germany Divided: From the Wall to Reunification*, unification

⁹⁸ Quint, *The Imperfect Union*, 218.

⁹⁹ Ibid.

¹⁰⁰ “Law for Criminal Rehabilitation,” 1(1).

¹⁰¹ Quint, *The Imperfect Union*, 218.

specialists James McAdams and Andrew Bickford make note of the West German state's use of "disqualifying justice" to indirectly punish East German elites.¹⁰² Bickford described disqualifying justice, which was a term that McAdams coined during his discussion of the unification period, as a form of punishment employed "even if [the East Germans] could not be held directly responsible for abuses or illegal actions in the GDR."¹⁰³ As part of this punishment, McAdams explains that these individuals were disqualified from full rights and participation in the new state, based on their past affiliation(s) in the GDR.¹⁰⁴ Even though these punitive measures were indirect, both Bickford and McAdams stress their importance in the context of the trials that followed. This political bias, which influenced the unification process at the state level, had a similar influence on the unified German judicial trials of the period, including the 1992 Leipzig trial and the Border Guards Trials.

Trials of the NVA Border Guards

As a consequence of the precedent established by the Statutes for the Correction of SED Injustice, the unified German state conducted several trials with the intention of holding those who had committed atrocities under the East German regime to account. The "Border Guard Trials," served as a primary reference point for GDR prosecution efforts during the unification period. These trials, which were mandated by the unified German government, revolved primarily around the criminal prosecution of former NVA (National People's Army) guards and officials charged with the use of deadly force at the Berlin Wall.¹⁰⁵ Held in late 1991 and into

¹⁰² James McAdams, *Germany Divided*, 11.

¹⁰³ Bickford, *Fallen Elites*, 11.

¹⁰⁴ McAdams, *Germany Divided*.

¹⁰⁵ Quint, *The Imperfect Union*, 303.

1992, these trials were the first of their kind in unified Germany, and soon became a prototypical example of the state's attempts at grappling with their communist past.¹⁰⁶ Much like the 1992 Leipzig trial, the prosecution of border guards occurred because of a popular and political push to condemn the East German regime during a time in which this condemnation was central to the unified German state-building process.¹⁰⁷

The trials were originally orchestrated in response to the murder of political activist Chris Gueffroy, who attempted to cross the Berlin wall only nine months before reunification.¹⁰⁸ According to historian Tina Rosenberg, the unified German government felt compelled to indict the four border guards on duty at the time of Gueffroy's death based on the substantial evidence gathered by Gueffroy's mother in the wake of his death. Additionally, the Border Guard trials served as an opportunity to put "on trial both the Berlin Wall and the system that had built it."¹⁰⁹ Based on this analysis, the trials did more than secure justice for the victims of the accused. They also functioned as a means of furthering the new government's aims to condemn and discredit the East German legal and political systems in their entirety.

The most common allegations brought against the defendants of the Border Guard Trials, namely former guards Ingo Heinrich, Andreas Kuhnpast, Peter-Michael Schmett, and Michael Schmidt, were those of either intentional or unintentional homicide.¹¹⁰ Each of the defendants, who had at one point stood watch at the Berlin Wall in an attempt to discourage or prevent

¹⁰⁶ Francine S. Kiefer, "East German Border Guards Are Convicted," *The Christian Science Monitor*, January 21, 1992.

¹⁰⁷ Fulbrook, *German National Identity after the Holocaust*, 2.

¹⁰⁸ Minow, *Between Vengeance and Forgiveness*, 42.

¹⁰⁹ Rosenberg, *The Haunted Land*, 260.

¹¹⁰ Minow, *Between Vengeance and Forgiveness*, 42.

instances of “Republikflucht” (“desertion”), was held legally responsible for the individuals who they had shot at one point during their time on duty.

Each of the guards relayed a similar story, namely that they had identified a deserter, called out a warning with a threat to shoot, and fired a set of warning and eventually fatal gunshots thereafter.¹¹¹ It has been common for the guards to receive praise from their superiors higher up in the NVA chain of command in the aftermath of these shootings. However, after reunification, these same guards who had once received praise and rewards for their actions were now being prosecuted for these actions, publicly shamed, and labeled murderers.¹¹² One of the defendants, 27-year-old Ingo Heinrich, told the court “at that time I was following the laws and commands of the German Democratic Republic.”¹¹³ He was not wrong. The GDR “Border Law” of 1982 allowed for the use of deadly force in the case of felonies committed at the state border. In this case, party desertions or border crossings were considered felonies under the GDR criminal code.¹¹⁴ This clause made Heinrich’s actions legal under the East German criminal code.

The judge, Theodor Seidel, a former West German resident, disregarded this plea and sentenced Heinrich to three and a half years in prison for manslaughter. In a statement read out loud as he pronounced his sentence, Seidel explained the reasoning behind his decision: “Not everything that is legal is right.”¹¹⁵ This sentencing created a legal precedent for the criminal prosecution of individuals who committed morally reprehensible acts within the confines of the

¹¹¹ Rosenberg, *The Haunted Land*, 262.

¹¹² Peter E. Quint, “Judging the Past: The Prosecution of East German Border Guards and the GDR Chain of Command,” (*The Review of Politics* 61, no. 2, 1999), 305.

¹¹³ Stephan Kinzer, “2 East German Guards Convicted of Killing Man as He Fled to West,” *The New York Times*, January 21, 1992.

¹¹⁴ Peter E. Quint, “The Border Guard Trials and the East German Past—Seven Arguments,” (*The American Journal of Comparative Law* 48, no. 4, 2000), 542.

¹¹⁵ Kinzer, “2 East German Guards Convicted of Killing Man as He Fled to West.”

East German legal system, despite claims regarding issues of retributive justice. This, in turn, established a legal precedent which paved the way for the similar, yet more complex, 1992 Leipzig trial of Otto Jürgens.

As the next chapter discusses, the 1992 Leipzig trial aimed to facilitate the unification process, which already had resulted in a great deal of division. While this trial was a clear manifestation of West German triumphalism, it helped to establish and proliferate a new standard for judicial treatment of the past and new legal norms structured around due process. This, in turn, facilitated the unified German state-building process.

Chapter 2

Trying the DDR: An Analysis of the 1992 Leipzig trial

On the morning of November 10th, 1992, a weathered-looking older man shuffled into Room 115 of the Leipzig District Court House, flanked by his two lawyers. He moved slowly and cautiously, leaning on his lawyer's arm as he took his seat opposite the executive judge Wolfgang Helbig, age 45.¹¹⁶ Reclining back in his chair, he smiled and reached up to remove his hearing aid. He placed it on the table and winked at his lawyer.¹¹⁷

This aged defendant was former East German judge and lawyer Otto Jürgens. At age 86, he was being tried for murder and risked spending the rest of his life behind bars. At the time, however, his demeanor did not reflect that of a man threatened with years of imprisonment. In fact, as the *Tageszeitung* reporter and legal historian who observed the trial, put it, "he looked quite relaxed."¹¹⁸ Perhaps this was because the crime in question had taken place 42 years earlier, under a different regime and legal system, or because the charge itself was rather unconventional given the details of the crime. Secure in his perception of his own innocence, Jürgens sat back and watched as the proceedings against him unfolded, paying very little attention and periodically feigning deafness as his hearing aid sat, unused, on the table in front of him.¹¹⁹

On that morning, Otto Jürgens was being tried for his part in a set of show trials that had taken place 42 years earlier in Waldheim, Saxony. In 1950, Jürgens and the two other judges who presided over the infamous Waldheim Trials sentenced the defendant, Heinz Rosenmüller, a prosecutor at the Dresden Special Court between 1933 and 1945, to death without any due

¹¹⁶ Julia Albrecht, "Ein Todesurteil vor Gericht," *Die Tageszeitung*, December 12, 1992.

¹¹⁷ Account of eyewitness reporter, interviewed by author, Berlin, January 10, 2020.

¹¹⁸ *Ibid.*

¹¹⁹ *Ibid.*

process.¹²⁰ Decades later, after German unification, that sentence was redefined and tried as a form of murder within the context of an entirely new legal system. The Waldheim trials, in which 3,400 alleged Nazis and enemies of the Soviet state were sentenced to death or life imprisonment in a series of rapid-fire hearings, had come to be known across Germany as one of the darkest chapters of German legal history.¹²¹

In light of the potentially illegitimate death sentences handed out at Waldheim, formerly West German prosecutor Dietrich Bauer, who operated within the Leipzig jurisdiction, set about accumulating evidence to indict Jürgens and try him for his crimes under the newly established, and distinctly Western, unified German legal system.¹²² Bauer, a 52-year-old prosecutor from Stuttgart, first became interested in the Waldheim trials in early 1990 when he discovered evidence of Jürgens' transgressions. As he sifted through hundreds of documents at the recently dissolved GDR Interior Ministry, Bauer took an interest in Jürgens' involvement in the Waldheim Trials and was determined to bring him to justice.¹²³

Based on sources such as the first-hand accounts of eyewitnesses and journalistic reports covering the proceedings, this chapter will closely scrutinize the events of the 1992 Leipzig trial. Unfortunately, the trial transcripts were not made available in time of this research, which is why the chapter depends so heavily on additional primary sources such as eyewitness testimonies and in-depth press coverage of the trial proceedings. This chapter will investigate the trial's indictment, proceedings, and sentencing processes, with a focus on the political intentions and controversial outcomes of this legal spectacle. As the proceedings illuminate, the 1992 Leipzig trial functioned as a political tool for the assertion of the West German legal values of due

¹²⁰ "Staatliche Lynchjustiz," *Der Spiegel*, August 30, 1993.

¹²¹ Ulrich Merten, *The Gulag in East Germany: Soviet Special Camps 1945-1950* (New York: Teneo Press, 2018), 140; "Das waren Blutrichter," *Der Spiegel*.

¹²² Monika Zorn, *Hitlers zweimal getötete Opfer*; Albrecht, "Ein Todesurteil vor Gericht."

¹²³ "Das waren Blutrichter," *Der Spiegel*, September 7, 1992.

process, evidence accumulation, and apolitical sentencing. In specific, the transition from the charge of murder in the first degree to “perversion of justice,” which is a charge that originated in this historical period, highlights the trial’s function as a tool to establish new legal norms.

Judicial trials have long been used as a mechanism to redress crimes of the past.¹²⁴ Historians who have studied moments of transitional justice in Germany and other countries during the post -WWII and post-Cold War periods point to the use of trials in moments of political transition as an indicator of a new state’s effort to promote new legal norms and assert its faith in the rule of law.¹²⁵ As transitional justice historian Martha Minow argues in her work *Between Vengeance and Forgiveness: Facing History After Genocide and Mass Violence*, historical redress through judicial trials demonstrates a commitment to “the rule of law,” which she defines as a “formal system itself committed to fairness and opportunities for individuals to be heard both in accusation and in defense.”¹²⁶ This interpretation of the law as fair and grounded in due process is the product of a liberal legal tradition that emphasizes the importance of objectivity, and the 1992 Leipzig trial served as an expression of these values.¹²⁷

The use of trials as vehicles to communicate a message about the wrongs committed by a previous regime is by no means a new phenomenon. In fact, some of the most famous trials of this nature occurred in the immediate aftermath of World War II.¹²⁸ Historians Martha Minow and Pierre Hazan both cite the 1945 Nuremberg Trials, which were a set of trials orchestrated by the Allied powers to address the crimes of the Holocaust, as an indicator of the Allies’ desire to set a global standard for the treatment of human beings.¹²⁹

¹²⁴ Minow, *Between Vengeance and Forgiveness*, 29.

¹²⁵ *Ibid.*, 27.

¹²⁶ *Ibid.*

¹²⁷ *Ibid.*

¹²⁸ *Ibid.*

¹²⁹ *Ibid.*; Pierre Hazan, *Judging War, Judging History: Behind Truth and Reconciliation* (Stanford, CA: Stanford University Press, 2010), 16.

Like the Nuremberg Trials, the 1946 Tokyo War Crimes Trial, which involved the Allied prosecution of several Japanese WWII war criminals, was foundational in the fields of international law and transitional justice. This trial, which has gone down in history as the quintessential example of “victor’s justice,” has been scrutinized by many historians analyzing the role that the law played in the establishment of new norms for the treatment of “crimes against humanity.”¹³⁰ However, more recent contributions to the scholarship, including David Cohen and Yuma Totani’s *The Tokyo War Crimes Tribunal: Law, History, and Jurisprudence*, have complicated this interpretation of the trial by presenting it as a rigorous judicial process grounded in the moral and legal norms established by the international democratic community.¹³¹ In the wake of Hitler’s fall, these trials served the political function of communicating new norms regarding the handling of human rights abuses such as the Holocaust to the international community. Like the Tokyo Trials, the 1992 Leipzig trial was an allegedly rigorous judicial process. However, this trial was also informed by political goals as well as specific moral and legal values.

In the context of post-communist transitional justice efforts, the 1992 Leipzig trial was not the only one of its kind. Several trials of this nature occurred in Eastern Europe in the early 1990s, which renders the Leipzig trial part of a larger international trend that spanned the former Soviet bloc. According to historians Nadya Nedelski and Levania Stan, trials condemning the actions of communist officials were quite common in Europe after the fall of the Soviet Union.¹³² This was especially the case in countries that constituted the “Soviet Zone” before the bloc’s

¹³⁰ David Cohen and Yuma Totani, *The Tokyo War Crimes Tribunal: Law, History and Jurisprudence* (Stanford University Press, 2019).

¹³¹ *Ibid.*

¹³² Nadya Nedelski and Levania Stan, *Post-Communist Transitional Justice: Lessons From 25 Years of Experience* (Cambridge University Press, 2014), 1.

dissolution, which included Poland, Hungary, the Czech Republic/Czechoslovakia, and East Germany.¹³³ These countries used their legal systems to prosecute former communist leaders, officials, secret agents, and other “compromised persons occupying certain post-communist public positions.”¹³⁴ Historian David Roman cites these trials as manifestations of the political process of “lustration,” or political cleansing.¹³⁵ In the context of the German unification process, “lustration” is an apt characterization of the process of removing former East German elites from office and prosecuting them after the regime change.

The Leipzig trial was different from some of its companion trials in Eastern Europe in that it was more than a vehicle for “lustration.” The trial did more than seek to criticize one man or displace former political elites. Considering that the Leipzig trial targeted a former judge, this chapter argues that the trial had the effect of critiquing the entire East German legal system in which Jürgens functioned and adjudicated. Furthermore, since the Waldheim Trials were designed as a mechanism to grapple with the crimes of the Nazi regime, parallel to the western process of reckoning with Nazism in the Nuremberg Trials, the act of indicting and trying a Waldheim judge served as a broader condemnation of the East German state’s approach to Germany’s shared Nazi past. The 1992 trial did more than set a standard for the treatment of individuals under the unified German legal system: it aided in the legitimization of the unified German state and the proliferation of its political values.

Amidst the hectic political environment of unification, one might wonder why West German prosecutors would take the time and energy to put an East German judge on trial for judicial actions taken forty years earlier. Why did the new state consider this trial important or

¹³³ Nadya Nedelski and Levania Stan, *Post-Communist Transitional*, 9.

¹³⁴ *Ibid.*, 1.

¹³⁵ David Roman, *Lustration and Transitional Justice: Personnel Systems in the Czech Republic, Hungary and Poland*, (University of Pennsylvania Press, 2011).

necessary? As historian Mary Fulbrook explains, during the German unification period in the early 1990s, the merging of East and West depended on the assertion of West German political ideals over those of East Germany.¹³⁶ The 1992 trial functioned as a key facilitator of this transitional process by sending a clear political message that East German judicial practices were inferior to those of the West. To that end, the court proceedings themselves reflected and sought to demonstrate the due process and apolitical judicial integrity which defined the liberal legal values of the early 1990s.¹³⁷ Ironically, the political purpose of the Leipzig trial negates its claim to impartiality, rendering it a clear political tool within the context of unification.

The Indictment

After decades of retirement, Otto Jürgens was once again dragged into the limelight after West German prosecutor Dietrich Bauer took interest in him and his involvement with the 1950 Waldheim Trials.¹³⁸ According to historian Andrew Bickford, it was common for West German lawyers to be involved in the dissolution of former East German legal and governmental offices during the reunification period.¹³⁹ A former West German lawyer remembered how many lawyers, possibly including Bauer, were paid quite significant salaries to aid in the process of firing and relocating former East German state and legal officials.¹⁴⁰

This was the task that Bauer presumably set out to complete on that day at the GDR Interior Ministry, however, his trajectory changed quite quickly when he stumbled across two

¹³⁶ Fulbrook, *German National Identity after the Holocaust*, 53.

¹³⁷ For more on the liberal legal tradition see John M. Breen, "Neutrality in Liberal Legal Theory," *Harvard Journal of Law and Public Policy*, 2009, 513; Austin Sarat and Thomas R. Kearns, *History, Memory, and the Law*, (Ann Arbor: University of Michigan Press, 1999), 11.

¹³⁸ "Das waren Blutrichter," *Der Spiegel*.

¹³⁹ Bickford, *Fallen Elites: The Military Other in Post-Unification Germany*, 12.

¹⁴⁰ Anonymous, interview.

boxes labeled “Waldheimer Prozesse” housed in the ministry’s archives.¹⁴¹ These boxes contained stacks of paperwork detailing the events of the Waldheim Trials and the individuals involved. One of those individuals was former judge Otto Jürgens, who became the focal point of Bauer’s investigation into the Waldheim Trials, paving the way for the subsequent 1992 Leipzig trial.

Over the course of two years, Bauer scanned the archives in Berlin, Potsdam, and Dahlewitz-Hoppegarten to gather as much information on the Waldheim trials as possible.¹⁴² Even though much of the information concerning these trials had been destroyed during the fall of the Soviet Union and the purging of East German records, Bauer was able to gather enough information to indict the three judges responsible for the judgments they handed out at Waldheim.¹⁴³ The local and national newspapers covering the trials made note of Bauer's very apparent preparedness and extensive knowledge of the defendant and the Waldheim Trials. As formerly West German *Tageszeitung* correspondent Julia Albrecht reported, “Bauer has done his research, and his occasional smirk at Jürgens sometimes suggests that he could answer the questions posed to the accused more accurately than the latter.”¹⁴⁴

Despite his prominent role as the primary prosecutor in the Leipzig proceedings, little information was made public about prosecutor Bauer at the time of the trials. Journalistic publications that reported on the trials did not investigate the motivations behind Bauer’s determination to prosecute Jürgens. However, as a former West German citizen, Bauer’s political orientation likely stemmed from the moral and political values he grew up within West

¹⁴¹ “Das waren Blutrichter,” *Der Spiegel*.

¹⁴² Julia Albrecht, “Waldheim: „Staatlich sanktionierte Lynchjustiz,” *Die Tageszeitung*, August 26, 1993.

¹⁴³ Quint, *The Imperfect Union*, 48.

¹⁴⁴ Albrecht, “Waldheim: „Staatlich sanktionierte Lynchjustiz.”

Germany. In my interview with formerly a West German journalist, she explained that “many of us in West Germany were exposed to political propaganda about East Germans,” and it was not uncommon for West German citizens to resent their East German neighbors.¹⁴⁵ Even if Bauer did not resent Jürgens outright, his sense of morality was likely informed by his West German upbringing and the liberal legal tradition. As transitional justice historian Peter Quint elucidates in his work *The Imperfect Union*, many West German citizens considered show trials, such as the ones which Jürgens oversaw at Waldheim, to be wrong.¹⁴⁶ Furthermore, the West German state, like many other modern democratic nations, prided itself on its legal integrity and its commitment to justice and impartial truth-seeking when it came to matters of the law.¹⁴⁷

Back in 1950, Jürgens was one of two junior judges who presided over the Waldheim Trials. The typical structure of an East German criminal trial required the presence of a senior judge to preside over the proceedings, accompanied by two junior judges who assumed the role of a jury.¹⁴⁸ This meant that all three judges could potentially be identified and held responsible for the events at Waldheim. Nevertheless, by the time Bauer had gathered enough evidence to indict, the only living judge was Otto Jürgens. There was, however, no statute of limitations pertaining to crimes of a high degree in Germany, including murder with intent, or any crimes resulting in death, as cited in the German Criminal Code.¹⁴⁹

As a result, it was possible to legally indict the Waldheim judges for the crimes they committed 42 years prior by filing an accusation of murder or manslaughter, which is exactly what Bauer did.¹⁵⁰ The Waldheim judges had sentenced to death—or killed, as Bauer described

¹⁴⁵ Anonymous, interviewed by author, Berlin, January 9, 2020.

¹⁴⁶ Quint, *The Imperfect Union*, 208.

¹⁴⁷ Sarat and Kerns, *History, Memory, and the Law*, 11; Minow, *Between Vengeance and Forgiveness*.

¹⁴⁸ Anonymous, interview.

¹⁴⁹ Strafgesetzbuch (StGB), Section 78 (3).

¹⁵⁰ Anonymous, interview.; Quint, *The Imperfect Union*.

it —32 prisoners, including lawyer and journalist Heinz Rosenmüller. After being imprisoned at Waldheim, Rosenmüller was executed on the evening of November 4th, 1950.¹⁵¹ After two years of research, Bauer filed a charge of murder against Jürgens based on the argument that his death sentence led to the slaughter of an innocent man.¹⁵² The Leipzig District court was then compelled to prosecute, considering that an accusation of murder, substantiated by significant evidence, had been presented.¹⁵³

According to a reporter who attended the trial and covered it for West German newspaper *Die Tageszeitung*, there was very little governmental pushback when it came to indicting Jürgens, even though the crime could be considered a rather unconventional form of murder.¹⁵⁴ German newspapers from the time paid little attention to the indictment, suggesting that it did not create a great deal of controversy.¹⁵⁵ The fact that the state did not challenge the charge before the indictment suggests that the unified German government accepted Bauer's unique interpretation of murder in this context.

The Proceedings

The Leipzig trial of Otto Jürgens took place over 10 months, with weekly hearings consisting of interviews with the defendant and the public presentation of significant amounts of evidence against the accused.¹⁵⁶ When compared to the Waldheim Trials, which involved the sentencing of 3,400 individuals over a period of two months, the 1992 Leipzig trial appears painfully thorough.¹⁵⁷ In structure, this post-unification trial resembled those of former West

¹⁵¹ Albrecht, "Waldheim: „Staatlich sanktionierte Lynchjustiz.“

¹⁵² Ibid.

¹⁵³ Anonymous, interview.

¹⁵⁴ Ibid.

¹⁵⁵ Ibid.

¹⁵⁶ Monika Zorn, *Hitlers zweimal getötete Opfer*, 357.

¹⁵⁷ Werkentin, "Waldheimer-Prozesse," *Lexicon der Politischen Strafprozesse*, July 2018.

Germany, with an emphasis placed on the accumulation of evidence and the establishment of an evidentiary record. The similarities between unified German historical trials and their West German predecessors point to a deliberate dismissal of East German legal values, as well as the continued proliferation of the same legal and political values which informed West German historical trials.

For example, like its West German predecessors, the 1992 Leipzig trial placed a significant degree of importance on establishing an enduring evidentiary record. In West German judicial trials, collecting and recording ample evidence over a long course of time was a tool to legitimize these trials, and the Leipzig trial adopted the same mechanism.¹⁵⁸ In her analysis of the West German 1965 Frankfurt Auschwitz Trial, historian Rebecca Wittmann describes the grueling process of evidence accumulation which was required to indict an individual for historical crimes committed during the war.¹⁵⁹ It took upwards of five years for the West German prosecutors to gather sufficient evidence to indict the accused Nazi criminals during the Frankfurt Auschwitz Trials. This evidence, which consisted of eyewitness testimony from 319 witnesses, was presented over the course of the 183-day long trial.¹⁶⁰ Wittmann indicates that upon the accumulation of this evidence, the trial proceedings depended on the presentation of evidence and arguments from both sides, as well as the continued interrogation of the defendants, with designated lawyers assigned to both the defending and prosecuting parties.¹⁶¹

The 1992 Leipzig trial followed a similar pattern. It took a total of two years for prosecutor Bauer to gather enough evidence to indict Jürgens. This evidence included almost every piece of documentation associated with the 1950 Waldheim Trials, including a prison

¹⁵⁸ Wittmann, *Beyond Justice*, 146.

¹⁵⁹ *Ibid.*

¹⁶⁰ *Ibid.*, 144.

¹⁶¹ *Ibid.*, 150.

report stating the miserable conditions that the Waldheim prisoners had been subjected to, witness accounts of the barbaric treatment of the prisoners and the expedited trial proceedings, as well as eye-witness accounts of the 32 executions in question.¹⁶² This extensive evidentiary base not only allowed Bauer to indict Jürgens but also served as a legitimizing record of Jürgens' crimes.

In the case of both the West German Frankfurt Auschwitz Trials and the unified German Leipzig trial, the prosecuting teams placed a great deal of emphasis on the publication of evidence in an effort to legitimize and record both the crimes which had been committed and their claims against the perpetrators of those crimes. In the case of the West German Frankfurt Auschwitz proceedings, the court went to great lengths to ensure that all 183 days' worth of proceedings and witness accounts were recorded and made publicly available.¹⁶³ Today, records of this trial remain publicly accessible through a free online portal, allowing these trials to go down in history as one of Germany's most poignant and public acts of self-examination.¹⁶⁴ By projecting this massive amount of evidence and trial documentation to the West German public and preserving it for years to come, the West German government was demonstrating their commitment to the preservation of victim testimony.

In a similar vein, the 1992 Leipzig trial was a distinctly public affair, with journalists from across the nation reporting on the events of the trials as they unfolded. National newspapers such as *Die Tageszeitung*, *Der Spiegel* and *Die Frankfurter Allgemeine Zeitung*, as well as local papers such as *Die Leipziger Volkszeitung*, all published multiple reports on the trials which

¹⁶² Albrecht, "Ein Todesurteil vor Gericht.": Prison Conditions in East Germany: Conditions for Political Prisoners (Amnesty International, August 1966).

¹⁶³ Wittmann, *Beyond Justice*, 144.

¹⁶⁴ Laurence Reese, *Auschwitz: A New History* (New York: Public Affairs, 2005).

detailed the events of the proceedings.¹⁶⁵ The amount of evidence presented during the trial was substantial, and, as with the Frankfurt Auschwitz Trials, victim testimony was paramount to the Leipzig proceedings. The first six months of the trial were dedicated solely to witness testimony about the horrors of the Waldheim Trials. According to reports by *Die Tageszeitung* on December 12, 1992, the court recorded testimony from dozens of former Waldheim inmates who were treated inhumanely at the hands of Jürgens and his fellow East German judges.¹⁶⁶

One witness and victim, named Erwin Krombholz, was sentenced to 15 years in prison as a “war criminal” in Waldheim on charges of “membership in the National Socialist underground organization Wehrwolf.”¹⁶⁷ Krombholz was sentenced without any evidence or opportunity for defense and was tortured brutally upon his arrival at the prison. According to the court in Leipzig, “as a convict, who has been deprived of a defendant’s due rights, he is instrumental in taking evidence.”¹⁶⁸ In this case, the phrasing “taking evidence” refers to the process of constructing a case against Jürgens. The Leipzig court made an effort to put victim testimony at the center of the trial proceedings, and the fact that this testimony was considered “instrumental” in the process points to the unified German court’s dedication to the preservation of victims’ voices. Furthermore, the fact that this testimony was published so widely speaks, again, to the state’s interest in establishing an evidentiary record that could legitimize the proceedings and make sure the trial and its political lessons about liberal values of due process and evidence accumulation entered the German public consciousness.

¹⁶⁵ Albrecht, “Ein Todesurteil vor Gericht.”; Albrecht, “Waldheim: „Staatlich sanktionierte Lynchjustiz.”; Zorn, *Hitlers zweimal getötete Opfer*, 357.

¹⁶⁶ Albrecht, “Ein Todesurteil vor Gericht.”

¹⁶⁷ *Ibid.*

¹⁶⁸ *Ibid.*

These judicial norms stood in stark contrast to those of the East German state. East German trials, which were the product of a wholly different political system, were largely considered legitimate if they effectively represented and showcased the political values of the Soviet state.¹⁶⁹ In her discussion of East German war-crime trials after the fall of the Nazi regime, historian Mary Fulbrook emphasizes that denazification and historical trials in East Germany were considered successful if they demonstrated the power of the Soviet state.¹⁷⁰ This emphasizes the importance that the East German legal system placed on political performance.¹⁷¹ As historian Jeffrey Herf notes in his work *Divided Memories: The Nazi Past in the Two Germanies*, it made sense that the East German Waldheim Trials did not involve the presentation of significant amounts of evidence against the accused or the public exhibition of the trial transcripts.¹⁷² Unlike their West and unified German counterparts, East German historical trials such as the Waldheim Trials were not concerned with the establishment of an evidentiary record and instead focused looked to the trial's ability to function as propaganda tools as a measure of legitimacy.¹⁷³

These judicial values were not only dismissed but condemned outright by the victorious West German state during unification.¹⁷⁴ The fact that the structure of the 1992 trial bears a close resemblance to West German trials, such as the Frankfurt Auschwitz Trials, indicates the new state's prioritization of the Western legal tradition after the fall of the wall. As *Tageszeitung* reporter Julia Albrecht argued, the Leipzig trial aimed at criticizing the East German legal

¹⁶⁹ Herf, *Divided Memory*, 73.

¹⁷⁰ Fulbrook, *German National Identity after the Holocaust*, 53.

¹⁷¹ *Ibid.*

¹⁷² Herf, *Divided Memory*, 73.

¹⁷³ Jeffrey Herf, *Divided Memory*, 73.; Wittmann, *Beyond Justice*, 144.

¹⁷⁴ *Ibid.*

system and revealing its politicization and subsequent “bastardization of justice.”¹⁷⁵ This critique depends on a West German approach to justice, which prided itself on its neutrality and fairness.

Universally adopted liberal legal notions such as “judicial neutrality” and impartial adjudication for unbiased sentencing were integral elements of German legal practices during the unification period.¹⁷⁶ In the case of the 1992 Leipzig trial, the extensive record gathered against Jürgens, the significant time devoted to witness testimony, and the procedures followed during the trial to ensure that Jürgens due process rights were upheld, all demonstrated the Leipzig trial’s efforts to ensure that Jürgens had an objectively fair trial, in the liberal sense. According to a journalist who attended the courtroom sessions, the prolonged deliberation and extensive amount of evidence presented during the 1992 trial speak to the court’s dedication to “finding the truth” and proving it in an objective manner.¹⁷⁷ This emphasis on impartial sentencing stands in stark contrast to the political “show trials” of East Germany, the most obvious example of which were the Waldheim Trials.¹⁷⁸

The Leipzig trial’s commitment to due process and desire to establish new legal norms was perhaps most clear when, in a surprising twist during the third month of the trial, prosecutor Bauer dropped the charges of murder due to a lack of evidence against Jürgens specifically. As a press release published by the Leipzig District Court stated:

The accused 86-year-old judge could not be shown with absolute certainty that he actually voted for the death penalty in 1950. Therefore, the legal principle applies "in dubio pro reo" - in case of doubt for the accused, and the accusation of a legal violation and the severe deprivation of liberty remains.¹⁷⁹

¹⁷⁵ Albrecht, “Waldheim: „Staatlich sanktionierte Lynchjustiz.”

¹⁷⁶ For these notions see: John M. Breen, “Neutrality in Liberal Legal Theory,” *Harvard Journal of Law and Public Policy*, 2009, 513; Sarat and Kearns, *History, Memory, and the Law*, 11.

¹⁷⁷ Anonymous, interview. .

¹⁷⁸ Werkentin, “Waldheimer-Prozesse.”

¹⁷⁹ Albrecht, “Waldheim: „Staatlich sanktionierte Lynchjustiz.”

As a secondary judge in the Waldheim cases, Jürgens' power in the courtroom was limited to his ability to advise the primary judge, or chairman.¹⁸⁰ As a result, it was difficult to indict Jürgens as the primary orchestrator of the murder.

In place of the accusation of murder, Bauer shifted focus and brought two new official charges against Jürgens, namely “perversion of justice” and “deprivation of liberty,” both of which were not bound by a statute of limitations.¹⁸¹ In the early 1990s, it was quite common for former GDR political and legal officials to be scrutinized for depriving Soviet citizens of their right to “liberty” or for participating in judicial acts, such as show trials, which constituted a “perversion of justice.”¹⁸² The very notion of a right to liberty is grounded in liberal notions of civil rights. In this sense, this legal accusation was grounded in the political values of the new liberal government. Similarly, as Peter Quint explains, the concept of a “perversion of justice” in this context refers to “political justice,” which establishes a causal link between politicization and judicial failure.¹⁸³

This value of apolitical justice is a central tenet of the liberal legal tradition. Legal scholars Austin Sarat and Thomas R. Kearns state in their work *History, Memory, and the Law* that “the classic, liberal conception of justice requires impartial adjudication of claims and accusations.”¹⁸⁴ This impartiality implies that the law should occupy a space above politics, a notion which the majority of individuals in today’s liberal societies are familiar with. Therefore, the transition from the charge of murder in the first degree to “perversion of justice” highlights

¹⁸⁰ Gerhard Casper and Hans Zeisel "Lay Judges in the German Criminal Courts," *Journal of Legal Studies*, January 1972.

¹⁸¹ Quint, *The Imperfect Union*, 95.

¹⁸² *Ibid.*, 207.

¹⁸³ Quint, *The Imperfect Union*, 207.

¹⁸⁴ Sarat and Kearns, *History, Memory, and the Law*, 11.

the 1992 trial's function as a tool to establish new legal norms grounded in liberal values of apolitical justice.

On August 26, 1993, prosecutor Bauer stood before the judges and the rows of reporters eagerly waiting for his comments and presented his closing statement to the court.¹⁸⁵ "It was a state-sanctioned lynching," Bauer said of the Waldheim Trials. "Nothing was proven, yet blood ran down the street that night in Waldheim."¹⁸⁶ In this statement, and throughout the trial, the prosecution focused heavily on the Waldheim Trial's lack of due process in an effort to highlight the lack of judicial integrity displayed by Jürgens and the legal system that supported him. While the initial charge brought against Jürgens was that of premeditated murder, Bauer later focused the majority of his argument against Jürgens on the lack of evidence presented during the Waldheim Trials.

Bauer argued that the Waldheim Trials were purely political and conducted with the intention of furthering the Soviet agenda, not achieving justice.¹⁸⁷ In his conclusion, Bauer emphasized that "mere membership in one of the various organizations during the Nazi era was enough for a conviction."¹⁸⁸ This statement was designed to substantiate Bauer's ultimate claim that the trials were unjust because they had prioritized the Soviet political values over justice and due process for individual defendants. Both local and international press reports on the trial noted the lack of evidence and due process.¹⁸⁹ Additionally, Bauer cited the "fast-track" hearings which were exceedingly rushed and conducted "without witnesses, without evidence,

¹⁸⁵ Albrecht, "Waldheim: „Staatlich sanktionierte Lynchjustiz."

¹⁸⁶ Ibid.

¹⁸⁷ Albrecht, "Waldheim: „Staatlich sanktionierte Lynchjustiz."

¹⁸⁸ Ibid.

¹⁸⁹ Ibid.; "Staatliche Lynchjustiz," *Der Spiegel*.; "What's News: World Wide Briefing," *Wall Street Journal*, November 11, 1992.

and almost always without a defense lawyer.”¹⁹⁰ The only cause for prosecution was a “protocol handed down from the Soviets,” and very little regard was paid to the truth.¹⁹¹ This disregard for “proper” and unbiased judicial procedure was at the core of Bauer’s argument against Jürgens. In this closing statement, Bauer set a standard for judicial practices in unified Germany, a standard which is dependent on the presence of an evidentiary record, apolitical sentencing, and due process for the accused.

The Verdict

“Herr Jürgens, can you hear me?” On the 30th of August 1993, Leipzig Court judge Wolfgang Helbig addressed defendant Jürgens with a note of concern in his voice.¹⁹² “I repeat, Mr. Jürgens, can you hear me?” Silence, once more. After a gesture from Helbig, Jürgens’ lawyer clapped his hands right under his defendant’s nose. Finally, the accused Otto Jürgens, 86, gestured in response: Yes, he hears. “Did you also hear the prosecutor's plea?” Again, silence.¹⁹³ After another desperate glance from his council, Jürgens retrieved his hearing aid, which had been resting on the table in front of him every day for the last 10 months, and reinserted it. After a break in the negotiations, Helbig resumed proceedings with the assumption that Jürgens had been able to follow the plea after the reinsertion of his, clearly necessary, hearing aid. “We shall continue then with the reading of the verdict,” stated Helbig in a much more confident manner. Jürgens looked exceedingly displeased.¹⁹⁴

¹⁹⁰ “Staatliche Lynchjustiz,” *Der Spiegel*/.; “What’s News: World Wide Briefing,” *Wall Street Journal*.

¹⁹¹ *Ibid.*

¹⁹² Albrecht, “Waldheim: „Staatlich sanktionierte Lynchjustiz.”

¹⁹³ *Ibid.*

¹⁹⁴ *Ibid.*; Anonymous, interview. .

After 10 months of hearings and deliberations, West German executive judge Wolfgang Helbig reached a verdict and sentenced Jürgens to two years' probation. Like prosecutor Bauer, judge Helbig, who was 48 years old the time, was a practicing lawyer and judge in West Germany and retained his position during unification, a luxury which most East Germans were not afforded.¹⁹⁵ In a final statement to the court and press, Judge Helbig explained his verdict:

According to the Leipzig Regional Court, the judge Otto Jürgens was involved in the infamous Waldheim trials in 1950 in the conviction of more than 3,400 alleged war criminals. In rapid legal proceedings contrary to the rule of law, the prisoners interned by the Soviet occupying powers were each sentenced in ten minutes to long prison terms or to death. The Bundesgerichtshof (BGH) finds Jürgens guilty of participating in the Waldheim Trials with deliberate disregard of procedural rules and drastic impairment of the basic defense rights of the accused. The sum of these willful violations of the law, each of which alone constitutes a perversion of justice according to section 244 StGB-GDR (GDR Criminal Code).¹⁹⁶

In the end, the “perversion of justice” (*Rechtsbeugung*) charge stood out as the most significant to the court. This was also the charge that West German and international newspapers emphasized in their coverage of the trial.¹⁹⁷ Articles in the British paper *Reuters News* and *The Associated Press* place this charge, along with the “deprivation of liberty,” charge front and center. In her article, “East German Judge Guilty of Perverting Justice in War Trials,” *Reuters News* correspondent Bettina Vestring focused her analysis of the trial on the perversion of justice charge and its link to political “show trials.”¹⁹⁸ Similarly, Kevin Costelloe of *The Associated Press* linked this charge to the assertion of liberal legal values of due process when he

¹⁹⁵ Bickford, *Fallen Elites*, 10-11; Quint, *The Imperfect Union*, 208; Albrecht, “Waldheim: „Staatlich sanktionierte Lynchjustiz.”

¹⁹⁶ Urteil (Verdict): Otto Jürgens, AZ: 3 StR 252/95, (Leipzig: Bundesgerichtshof/5. und 6. Strafsenat 1993.)

¹⁹⁷ “Erstes Gerichtsverfahren gegen einen Beteiligten an berüchtigten Prozessen abgeschlossen; Zwei Jahre auf Bewährung für Waldheim-Richter; Der 87 jährige Otto Jürgens muß zudem 6000 Mark an den "Bund der Stalinistisch Verfolgten" zahlen,” *Nürnberger Nachrichten*, 1993; “Staatliche Lynchjustiz,” *Der Spiegel*.; Albrecht, “Waldheim: „Staatlich sanktionierte Lynchjustiz;” “What’s News: World Wide Briefing,” *Wall Street Journal*.

¹⁹⁸ Bettina Vestring, “East German Judge Guilty of Perverting Justice in War Trials, *Reuters News*, September 1, 1993.

stated that the perversion of justice charge, among other aspects of the trial, indicated that “the [unified German] government [had] taken pains to note that it [was] pursuing him for lack of due process.”¹⁹⁹ As this response indicated, the use of this charge underscored the new government’s intentions to set new judicial standards through the performance of the 1992 Leipzig trial.

The Leipzig trial’s “perversion of justice” charge created a framework and pathway for other trials in unified Germany designed to communicate new legal norms.²⁰⁰ In his work *The Imperfect Union*, unification historian Peter Quint suggests that “thousands of cases of suspected perversion of justice by former GDR judges have been investigated in Berlin alone.”²⁰¹ The 1992 Leipzig trial was one of the first formal applications of this charge in Germany; it offered a way for the newly-unified government to hold GDR criminals to account for the politically biased nature of East German judicial practices.²⁰² The desire to do so on the part of the unified German government speaks to its commitment to establishing new legal norms grounded in values of evidence accumulation and due process and illuminates the state’s intentions to use their legal system as a tool in this political process.

The evolution of the perceived role of the law during this period of transition reflects the integral relation between Germany’s legal system and political structure after unification. When the political environment of a state goes through a transition such as the unification process, the legal system follows suit.²⁰³ This concept of regime dependent legal systems was at the core of Jürgens’ defense. In a statement made to East

¹⁹⁹ Kevin Costelloe, “German Court Convicts Elderly Communist Judge in Post-War Show Trials,” *The Associated Press*, September 1, 1993.

²⁰⁰ Quint, *The Imperfect Union*, 208.

²⁰¹ Quint, *The Imperfect Union*, 208.

²⁰² *Ibid.*, 207-208.

²⁰³ Rosenberg, *The Haunted Land*, 343.

German newspaper *Neues Deutschland* after the verdict was declared, Jürgens stated that he “felt that he had done nothing wrong.” He complained that “what was right back then [in East Germany] could be wrong today.”²⁰⁴ Jürgens highlighted the fluidity of legal norms in Germany and how those norms depended on the regime in power.

To conclude this chapter, it should be noted that, in the context of a politically turbulent period such as unification, it seems odd to devote energy to a trial such as the one which occurred in Leipzig in 1992. However, as this chapter argues, this trial served several important political functions including facilitated the merger and the state-building process in unified Germany by promoting western judicial ideals and condemning those of the east. The 1992 Leipzig trial functioned both as a manifestation of the unified German state’s liberal legal norms and as an educational tool designed to proliferate West German values. As such, the trial itself served as a site for conveying new legal and political norms structured around due process and evidence accumulation. In this sense, the 1992 Leipzig trial illuminated the way in which the law in unified Germany became part of the broader political processes of state-building.

Regardless of the political motivations behind the trial, the Leipzig investigation and court events galvanized the German public. In the months leading up to the hearings, Otto Jürgens’ story captured the nation’s attention, with journalists across Germany calling the hearings a “unique historical event.”²⁰⁵ The next chapter will explore how the journalistic coverage of the trial introduced divergent interpretations that largely depended on the politically charged public sphere and the reporters’ orientations.

²⁰⁴ “Ich Fühle Mich Nicht Schuldig” *Neues Deutschland*, September 6, 1997.

²⁰⁵ “Das waren Blutrichter,” *Der Spiegel*.; Albrecht, “Ein Todesurteil vor Gericht.”

Chapter 3

A Divided Public: The Reception of the 1992 Leipzig trial

“Quiet down back there!” Judge Wolfgang Helbig’s command echoed through the wooden chamber in Room 115 of the Leipzig District Courthouse. This direction was aimed at a group of older men, sitting in the back of the courtroom, murmuring disapprovingly as judge Helbig read his verdict to the court.²⁰⁶ Former Waldheim Judge Otto Jürgens had been sentenced to only two years’ probation on the charges of perversion of justice and the deprivation of liberty.²⁰⁷ When Helbig announced the sentence, the men scoffed, prompting yet another reprimand from the judge. Eventually, the old men removed themselves, slamming the door angrily behind them.²⁰⁸

This group of men, who sporadically attended sessions of the 1992 Leipzig trial, were most likely elder residents of the recently disbanded East German state.²⁰⁹ According to a *Tageszeitung* journalist, who was present at the courtroom when the sentence was pronounced, these elder East Germans had come to support Jürgens in his fight for freedom.²¹⁰ In appearance, these men resembled aged defendant Jürgens quite closely, and their disapproving murmurs and occasional outbursts during prosecutor Bauer’s presentations showed that they disapproved of the trial.²¹¹

By the end of the trial, the German public was profoundly divided about how to perceive the verdict. Certain former East Germans viewed the trial as a manifestation of West German triumphalism and a mere exercise of victor’s justice, while some former West Germans critiqued

²⁰⁶ Anonymous, interview. .

²⁰⁷ Quint, *The Imperfect Union*, 210.

²⁰⁸ Anonymous, interview. .

²⁰⁹ Ibid.

²¹⁰ Ibid.

²¹¹ Ibid.

the trial for the leniency of Jürgens' sentence and for what they perceived as its purpose as a pedagogical tool designed to demonstrate the new state's political ideologies. Whether this trial functioned as a form of victor's justice or as an educational tool, the German public recognized the political goals of the 1992 Leipzig trial. This chapter explores the public critiques of the trial and the political divide which defined them. The political debate engendered by the Leipzig trial demonstrates that the trial functioned as an element of the state-building process in unified Germany.

East German Perspective: Victor's Justice Critique

The dissatisfied individuals who graced the courtroom in Leipzig that day represented a much larger group of displaced former East Germans who felt personally threatened by the unification process and, as a lawyer who I interviewed put it, the "West's occupation of the East."²¹²

Historian Andrew Bickford argues that former West German elites made use of many "repressive" tactics, including selective hiring and disqualifying justice, to silence former East Germans and strip them of any political voice or social mobility.²¹³ The *Tageszeitung* journalist noted that these harsher aspects of the unification processes, such as removing East German officials from positions of power and the dismantling of East German businesses, left certain former East Germans feeling displaced and resentful towards their new western government and the unification process as a whole.²¹⁴ This resentment towards the unification process was

²¹² Anonymous, interview.; Bickford, *Fallen Elites*, 10.

²¹³ Ibid, 10-11.

²¹⁴ Anonymous, interview.

manifested through the critique of government-orchestrated trials, which occurred in the early 1990s and were designed to criticize the East German legal system.

At the heart of these critiques was the accusation of victor's justice. This specific accusation, which refers to the unjust prosecution of one party based on the political values of another party, emphasizes the hypocritical and politically biased nature of the newly dominant legal system.²¹⁵ In their work *History, Memory, and the Law*, legal historians Austin Sarat and Thomas Kearns argue that in the context of a democratic triumph over another ideology, such as fascism or communism, this critique calls into question the objectivity of the new state's legal choices and serves as a criticism of the legal system itself.²¹⁶

While this critique was eventually applied to the 1992 Leipzig trial, the first trial of this nature to be criticized for victor's justice was the 1991 Border Guard Trial. According to the *Tageszeitung* journalist, many former East Germans viewed the Border Guards Trial, and eventually the 1992 Leipzig trial, as "personal attacks" on East Germany and its values as a state.²¹⁷ Tina Rosenberg reports that some East Germans saw the Border Guard Trials simply as a way for the West Germans to express their dominance over East Germans.²¹⁸ Rosenberg cites David Gill, a former East German government official, as having expressed that "the Wessis (East German slang for West Germans) feel that they won history and can do what they want."²¹⁹ As Rosenberg put it, "to these individuals, the trial... was victor's justice."²²⁰ This demographic was distressed by both the Border Guard Trial's clear dismissal of the East German state's legal

²¹⁵ Peskin, Victor, "Beyond Victor's Justice? The Challenge of Prosecuting the Winners at the International Criminal Tribunals for the Former Yugoslavia and Rwanda," *Journal of Human Rights* 4 (2005), 213-231.

²¹⁶ Sarat Kearns, *History, Memory, and the Law*, 11.

²¹⁷ Anonymous, interview. .

²¹⁸ Rosenberg, *The Haunted Land*, 344.

²¹⁹ Ibid.

²²⁰ Rosenberg, *The Haunted Land*, 344.

system and its political legitimacy, and the press articles which covered the trials speak to this critique.²²¹ As this chapter goes on to discuss, former East Germans also interpreted the 1992 Leipzig trial as a manifestation of victor's justice in that it used the law as a tool for Western political gain. Therefore, the targeting of GDR criminal trials for perceived victor's justice represented a larger trend during the unification period, of which the Border Guard Trial and the Leipzig trial were a part.

The unified German press quickly became an arena for the subtle expression of these sentiments. In particular, former East German newspaper *Neues Deutschland* targeted these trials and their outcomes as part of their critique of the unification process. Very few former East German newspapers survived the dissolution of the East German state.²²² However, as journalist Charley Wilder wrote in his *Der Spiegel* article discussing East German de-legitimization during unification, *Neues Deutschland* remained as one of the quintessential eastern leaning papers in unified Germany and the most prominent source on the Eastern perspective during unification.²²³ Therefore, the way in which the 1992 Leipzig trial was discussed in this paper shines a light on the eastern public's response to the trial.

In the case of this paper, the reporters articulated a subtle version of the victor's justice critique by undermining the objectivity of the prosecution and emphasizing the innocence of the defendant, in this case, Otto Jürgens. The articles published in *Neues Deutschland* at the time of the trial focused a great deal on prosecutor Bauer's western perspective, which had the effect of implying that he was politically biased. Shortly after Judge Helbig announced his verdict in 1993, *Neues Deutschland* published a piece subtly critiquing the primary prosecutor and

²²¹ Anonymous, interview. .

²²² Bickford, *Fallen Elites*, 10.

²²³ Charley Wilder "Delegitimizing the GDR: East German Papers offer Glimpse of History," *Der Spiegel*, June 27, 2013.

orchestrator of the trial. In the article, the unnamed author stressed Bauer's identity by referring to him as "*aufgewachsene West-Jurist Bauer*" ("the West German prosecutor Bauer") and he went on to restate Bauer's political orientation and citizenship multiple times throughout the piece, almost to the point of unnecessary repetition.²²⁴

Similarly, another *Neues Deutschland* article published a few months later referred to Bauer as a "West-Jurist," or a "Western Judge."²²⁵ Bauer's upbringing and political orientation were not reflected in any of the West German articles that were published at the same time. According to a West German lawyer who I interviewed, the term "West-Jurist" in a publication with East German origins is subtly derogatory in that it emphasizes the prosecutor's political bias where they should not be one.²²⁶ As one of my interviewees put it, this phraseology is "exactly what I would expect from an East German paper."²²⁷

Neues Deutschland's emphasis on Bauer's West German orientation was coupled with an empathy for Otto Jürgens that reflected another subtle form of critique of the 1992 Leipzig trial. A *Neues Deutschland* article from May 7th, 1993 raised questions about the prosecution and Jürgens' sentence by focusing on the testimony of one of the few witnesses in the trial who defended the proceedings at Waldheim.²²⁸ Sixty-eight-year-old Helga Tiedt, who had worked as a clerk during the Waldheim Trials, told the court that "the accused were treated properly, were not beaten, were allowed to sit down and comment on the accusations against them."²²⁹ Given the well-documented nature of the Waldheim proceedings and the treatment of the prisoners--

²²⁴ "Staatsnaher Ankläger verfolgt Antifa-Juristen," *Neues Deutschland*, February 5, 1993.

²²⁵ "Gegen diese Justiz hilft nur der Arzt: „Waldheim-Richter“ Otto Jürgens seit 30 Verhandlungstagen in Leipzig vor Gericht," *Neues Deutschland*, May 7, 1993.

²²⁶ Anonymous, interview.

²²⁷ Ibid.

²²⁸ "Gegen diese Justiz hilft nur der Arzt," *Neues Deutschland*.

²²⁹ Ibid.; Verhandlungstagen in Leipzig vor Gericht," *Neues Deutschland*, May 7, 1993.

treatment that a 1950 Amnesty International Report described as “akin to an internment camp,” Tiedt’s testimony was not particularly compelling.²³⁰ Yet, *Neues Deutschland* failed to include the evidence that undermined Tiedt’s testimony.²³¹ By placing her testimony front and center, the article appears to be critiquing the 1992 trial as unfair and unnecessary, given the supposedly “fair” treatment of Waldheim prisoners.

In the same vein of argumentation, several other *Neues Deutschland* articles pointed to defendant Jürgens’ age as a way of underscoring the unnecessary nature of the trial. The majority of a short article published on August 26th, 1993 focuses on a discussion of the defendant’s age and frailty.²³² As the first paragraph (of the two-paragraph article) read:

The 41st day of proceedings before the First Criminal Senate of the District Court of Leipzig in the trial against the 86-year-old former Waldheim judge Otto Jürgens began with a delay of two hours: the defendant's hearing aid failed to work and judge Wolfgang Heibig had to get a replacement.²³³

In this context, *Neues Deutschland* painted a picture of Jürgens as a frail elderly man, and this characterization made up the majority of the article.²³⁴ Another article from the same time made note of Jürgens’ poor physical health, noting his “frail” physique and describing him as a “poor old man,” as if his age or health status delegitimized his prosecution.²³⁵ Out of the more than 20 articles published in *Neues Deutschland* about the trial, 18 of them included a substantial discussion of Jürgens’ age and poor physical health.²³⁶ Although subtle, this focus encouraged sympathy for Jürgens and suggested that the unified German prosecution was unnecessary.

The final technique that these articles used to highlight the western bias of the trial was to

²³⁰ Prison Conditions in East Germany: Conditions for Political Prisoners (Amnesty International, August 1966).

²³¹ “Gegen diese Justiz hilft nur der Arzt,” *Neues Deutschland*.

²³² “Antifaschismus als „niedriger Beweggrund,” *Neues Deutschland*, Aug, 26, 1993.

²³³ Ibid.

²³⁴ Ibid.

²³⁵ “Staatsnahe Ankläger verfolgt Antifa-Juristen,” *Neues Deutschland*, 1993.

²³⁶ “Collective Works on Otto Jürgens,” *Neues Deutschland*, 1992-1997.

emphasize Jürgens' personal perspective in a way that reinforced his innocence. The author of one *Neues Deutschland* article introduced Jürgens by noting that he had "no criminal record"²³⁷ and highlighted Jürgens' claim that he "did nothing wrong."²³⁸ This sentiment was echoed in two additional articles, one published in *Neues Deutschland* in 1992 and another in 1997. The earlier article, entitled "Waldheim -Richter: Ich war nicht SED-gelenkt," (Waldheim Judge: I was not controlled by SED) was entirely devoted to Jürgens' defense.²³⁹ The article revolved around an interview that took place at Jürgens' house, making it the only article at the time to include an interview with the defendant outside of the courtroom. As the title suggests, the article focused on Jürgens' belief that he was not a Soviet puppet, and his actions were entirely legal at the time.²⁴⁰ Another article, published five years later, made the same argument about Jürgens' innocence. The article, entitled "Ich Fühle Mich Nicht Schuldig" ("I do not feel guilty"), focused entirely on Jürgens' claim that his actions were legal under Soviet law and that he should not be prosecuted.²⁴¹ The combination of this East German paper's extraordinary focus on Bauer's political perspective, Jürgens' age, and the validity of his defense speaks to its criticism of the unified German legal system's political bias and the paper's portrayal of Jürgens' trial as a form of West German victor's justice. These critiques, however, were subtly expressed.

The standards for German media during unification prevented many journalists from expressing their concerns about the trial more openly. According to the *Tageszeitung* journalist, the press' dedication to objectivity, whether they were Western or Eastern leaning in their political orientation, prevented them from making any obvious claims for or against any

²³⁷ "Gegen diese Justiz hilft nur der Arzt" *Neues Deutschland*.

²³⁸ *Ibid.*

²³⁹ "Waldheim -Richter: Ich war nicht SED-gelenkt," *Neues Deutschland*, November 19, 1992.

²⁴⁰ *Ibid.*

²⁴¹ "Ich Fühle Mich Nicht Schuldig," *Neues Deutschland*.

particular political party.²⁴² Therefore, it was rare to find newspaper articles that blatantly critiqued the trials, and, as with the *Neues Deutschland* article, any hint of a political leaning had to be quite subtle. As media historian Agnieszka Szymanska notes in her work “Do the Media Really Support the German Reunification?,” the new German government at the time of unification encouraged former East and West German press agencies to avoid biased writing in an effort to prevent tensions which might arise from the merging of the two states.²⁴³ Szymanska affirms that in the early 1990s, the media’s role was to facilitate unification by encouraging unity, not sowing discord.²⁴⁴ As a result, the *Tageszeitung* journalist insisted that those journalists who were displeased by the trial either expressed their discordant beliefs subtly, as was the case with *Neues Deutschland* articles or in private writings and conversations.²⁴⁵

This concern about openly expressing a critical opinion on these trials extended into the private sphere as well. One elderly former East German man who told me that the 1992 trial was an “obvious example of Western victor’s justice” insisted on remaining anonymous.²⁴⁶ This East German’s request to remain anonymous more than thirty years after the trial is a noteworthy example of a continued reluctance to criticize the western government openly.

The East German victors’ justice critique emphasized the way in which the 1992 trial was influenced by the politics of unification. Coverage in *Neues Deutschland* suggests that the former East German press found ways to subtly express their displeasure with the Western-oriented unified German government and to portray the 1992 trial as a political tool designed to delegitimize the East German legal system.

²⁴² Anonymous, interview. .

²⁴³ Agnieszka Szymanska, “Do the Media Really Support the German Reunification? The Content of the German Mainstream Influential Press During the Period of the East German Breakthrough and 20 Years Later,” Jagiellonian University in Krakow, 2014, DOI 10.14746.

²⁴⁴ Ibid.

²⁴⁵ Anonymous, interview. .

²⁴⁶ Anonymous East German national, interviewed by author, Berlin, January 11, 2020.

Western Perspective: Leniency Critique

Former East Germans were not the only ones to criticize the 1992 Leipzig trial. Certain West-leaning German citizens developed a very different critique of the trial. Rather than offering sympathy towards the elderly Jürgens or suggesting he might be innocent, critiques from the west focused on the leniency of Jürgens' sentence. These individuals saw two years' probation and a fine for a man who was originally indicted for murder as a very light sentence and an unnecessarily tolerant response to what they viewed as the serious crimes committed at Waldheim.²⁴⁷ These critics argued that the trial of Otto Jürgens was more of a political performance, designed to establish the state's new political and legal values than a criminal trial held to punish East German offenders.²⁴⁸

The leniency critique, which was pioneered primarily by former West Germans, suggested that the unified German government was unable to properly prosecute Jürgens as a criminal because of its political agenda and commitment to the unification and state-building processes. The verdict, which was only two-years-probation and a fine of 6000 Deutsche Marks, allowed Jürgens to essentially walk free and, as *Tageszeitung* reporter Julia Albrecht put it, "take the train back to his home in Halle" the day he was convicted.²⁴⁹ To some former West Germans and East German defectors, this was insufficient punishment for what was originally a murder charge. This critique had a similar effect to the East German's claim of victor's justice in that it highlighted the unified German government's use of the trial as a political tool, in this case, to

²⁴⁷ Quint, *The Imperfect Union*, 210.

²⁴⁸ Ibid.

²⁴⁹ Albrecht, "Ein Todesurteil vor Gericht."

encourage cooperation and establish new legal norms grounded in the democratic ideology of the new state.

This argument, made primarily by West German journalists, may be valid in the context of the unified German state's push for amnesty for former East German officials.²⁵⁰ On April 22, 1993, Prominent SED (Socialist Democratic Party) official Egon Bahr, requested amnesty for all GDR criminals in an effort to accelerate the "inner unification" process in Germany.²⁵¹ These amnesty discussions formed the political backdrop for the 1992 Leipzig trial, and Jürgens' sentence, which was declared the same year as Bahr's call for amnesty, was most likely influenced by this political motivation to encourage unity and grant amnesty.

Unified Germany was not the only state that deployed amnesty as an approach to facilitate transitional justice and the construction of a new state and body politic. Historian Martha Minow cites the South African Truth and Reconciliation Commission, which was established after the nation's break from Apartheid, as an example of the effective capacity of amnesty and forgiveness to build bridges and unite a nation under its new leadership.²⁵² Similarly, historian Paloma Aguilar cites the transition of power which occurred in Spain after the death of fascist dictator Francisco Franco as the optimal opportunity to move on and forget the crimes of the past. In her monograph *Memory and Amnesia*, Aguilar argues that if a conflict arises within a nation regarding the nature of past events, it is "almost impossible to build a common future, or achieve social harmony and political stability."²⁵³ These analyses further

²⁵⁰ Albrecht, "Ein Todesurteil vor Gericht."

²⁵¹ Quint, *The Imperfect Union*, 207; "Hans Modrow Judgement Report," FAZ, April 22, 1993, at 8 col. 2.

²⁵² Minow, *Between Vengeance and Forgiveness*, 72; For further discussion of historical memory, amnesia and the state-building process, see David Reiff, "The Cult of Memory: When History Does More Harm than Good," *The Guardian*, March 2, 2016.

²⁵³ Paloma Aguilar, *Memory and Amnesia: The Role of the Spanish Civil War in the Transition to Democracy* (New York: Berghahn, 2002), 17.

illuminate the possible social complications which the unified German government had to consider when making the choice to pursue criminal prosecution in place of amnesty.

Despite these calls for amnesty, West German-leaning media outlets still scrutinized certain unified German judicial trials for their leniency. At the end of May 1993, a year after Jürgens' trial began, former East German president Hans Modrow was convicted for election fraud committed during his time in office, and his light sentence was just as unpopular.²⁵⁴

Similarly to Jürgens, Modrow was sentenced to a "caution" (*Verwarnung*), which is the lightest possible sentence for a criminal charge.²⁵⁵ In response to public complaints, the German Federal Court (*Die Bundesgerichtshof*) repealed the mild judgment on the grounds that Modrow's actions were deliberately nefarious.²⁵⁶

In a public statement, the court noted that "it was the goal of the electoral manipulation to cover up the real number of opposing votes...in order to suppress the extent of the dissenting electorate that had turned against...the oppressive control of the SED (Socialist Unity Party of Germany)."²⁵⁷ The West German-dominated Federal Court emphasized the extent of Modrow's wrongdoing in hopes of securing a more significant sentence. However, upon re-sentencing, Modrow still avoided imprisonment, receiving instead a sentence of nine months' probation.²⁵⁸ According to Quint, this sentence did not satisfy those who had called for the initial resentencing.²⁵⁹ However, the judge's leniency did serve a political purpose in the context of reunification. Given that Modrow's sentence was read only a month after some of the initial calls

²⁵⁴ BDH, Judgement of November 3, 1994, *Neue Justiz*, 1995.

²⁵⁵ Quint, *The Imperfect Union*, 206.

²⁵⁶ *Ibid.*, 207.

²⁵⁷ BDH, Judgement of November 3.

²⁵⁸ Quint, *The Imperfect Union*, 207.

²⁵⁹ *Ibid.*

for amnesty were first expressed, it is likely that his trial functioned more as a performative declaration of the state's intention to facilitate unification than a punitive trial.²⁶⁰

The responses to Modrow's sentencing set the stage for the 1992 Leipzig trial and its leniency critique. As was the case with the East German critique, the West German analysis of the 1992 Leipzig trial as too lenient was most clearly expressed in the press. In order to emphasize the leniency of the trial, western leaning newspapers such as the *Nürnberger Nachrichten* and *Der Spiegel* focused their coverage of the trial on the illegality and severity of Jürgens' crimes at Waldheim in order to establish the need for a serious legal response. However, in the end, the trial was critiqued for its failure to serve this purpose.

An article in the *Nürnberger Nachrichten*, one of Germany's largest regional newspapers based in Nuremberg, emphasized defendant Jürgens' guilt in the face of the charges.²⁶¹ Jürgens, the paper wrote, "was able to see the illegality of his actions, yet he chose to commit the crimes, which he did intentionally."²⁶² Furthermore, Jürgens did so without "showing a sense of guilt" (Schuldbewußtsein zeigt er nicht).²⁶³ This characterization of Jürgens as guilty and worthy of criminal prosecution contrasts strongly with the East German interpretation of Jürgens and the trial itself. This characterization, which is echoed in several other articles published in the *Nürnberger Nachrichten*, did the work of establishing the severity of Jürgens' criminality, which was glossed over in East German newspapers at the time, so as to underscore the need for a verdict which matched the crime. As expressed in another western leaning newspaper, *Der*

²⁶⁰ "Hans Modrow Judgement Report," FAZ, April 22, 1993, at 8 col. 2.

²⁶¹ Alexander Jungkunz, "Über den 'Volksrichter' Otto Jürgens spricht heute das Landgericht Leipzig sein Urteil; Helfer 'staatlich sanktionierter Lynchjustiz'?; Die Anklage fordert fünf Jahre Haft für die Beteiligung an den berüchtigten Waldheim-Prozessen," *Nürnberger Nachrichten*, September 1, 1993.

²⁶² Ibid.

²⁶³ Ibid.

Spiegel, the 1992 trial failed to accomplish this necessary purpose which underscored its lenient nature.²⁶⁴

At the time of the trial, *Der Spiegel* published pieces that focused heavily on the abuses which occurred during the Waldheim Trials in order to underscore the need for significant judicial repercussions. An article published in *Der Spiegel* described the Waldheim Trial as being “among the darkest chapters in German justice.”²⁶⁵ The unnamed author followed this characterization with an in-depth discussion of the abuses which occurred at Waldheim, including the intentional “murder” of 32 victims.²⁶⁶ Similarly, another article published in *Der Spiegel* in 1992 described Jürgens’ crimes in detail, claiming that Jürgens and his fellow judges were “blood judges” (“*Blutrichter*”) and that “blood actually flowed” on the night of the murder.²⁶⁷ In this sense, the newspaper focused on the severity of Jürgens’ crimes by accepting Bauer’s interpretation of the death-sentences as murder, therefore establishing the need for a trial that addressed these injustices.

However, according to this western-leaning newspaper, the 1992 trial failed in this regard. At the end of the article, the author characterized the 1992 trial as a “fruitless attempt to legally deal with injustice.”²⁶⁸ The author made this claim before the verdict was read. However, to the author, it was clear that the charge of “murder,” although legitimate in their eyes, would be dropped in favor of a less significant charge. The author correctly predicted this development in the trial but was so sure of the trial’s lenient and performative nature that they published this critique a year before the verdict was even announced.²⁶⁹

²⁶⁴ “Staatliche Lynchjustiz,” *Der Spiegel*.

²⁶⁵ “Staatliche Lynchjustiz,” *Der Spiegel*.

²⁶⁶ Ibid.

²⁶⁷ “Das waren Blutrichter,” *Der Spiegel*.

²⁶⁸ Ibid.

²⁶⁹ Ibid.

These subtle critiques of the trial's necessary, yet lenient, nature were further substantiated by articles published in western-leaning law journals at the time. Unlike newspapers such as *Der Spiegel* and *Neues Deutschland*, unified German law journals were much more forthcoming in their reaction to the trials that took place as part of the unification process.

In an article published shortly after the conclusion of the Leipzig trial in the Frankfurt-based legal journal *Neue Juristische Wochenschrift* (NJW), for example, West German legal analyst Ernst Wolf described Helbig's sentencing as "ineffective" given that it illustrated the Federal Court's willingness to "overlook the gross human rights violations exhibited during the Waldheim Trials."²⁷⁰ Wolf emphasized the magnitude of Jürgens' crimes and accused Helbig and the Federal Court of settling on a sentence that did not reflect the seriousness of his actions. Wolf argued that the lenient sentence was most likely in service of the unification process, as the new government was primarily concerned at this point with smoothing over East and West German relations during the unification of the two states.²⁷¹ The sentence, he charged, aimed to facilitate relations between former East and West Germany.²⁷² But, as Wolf saw it, this political purpose "did not warrant the dismissal of a crime such as Jürgens'." The lenient sentence demonstrated an "inappropriate" degree of politicization.²⁷³ It made clear that Jürgens' trial was a political performance that prioritized facilitating unification over, as Wolf put it, the "honest realization of justice."²⁷⁴

²⁷⁰ Ernst Wolf, "Rechtsbeugung durch DDR Richter" (*Neue Juristische Wochenschrift*, Heft 21, 1994), 1390.

²⁷¹ Ibid.

²⁷² Szymanska, "Do the Media Really Support the German Reunification?"; Anonymous, interview. .

²⁷³ Wolf, "Rechtsbeugung durch DDR Richter."

²⁷⁴ Ibid

Similarly, in 1995, legal analyst Günter Bemann published an article in the western-oriented legal journal *Juristen Zeitung* that critiqued the 1992 verdict for its leniency. Throughout the article, Bemann referenced the trial's "inadequacy" and critiqued the Bundesgerichtshof (the district court) for its failure to achieve justice through such "forgiving" sentencing.²⁷⁵ In a brief analysis of this article, Peter Quint refers to Bemann's piece as a "bitter attack on [the verdict] for its leniency to the GDR judges and its willingness to accord some respect to the GDR judicial system."²⁷⁶ In the context of western-leaning legal journals, which were less widely available to the public, the critiques of the trial's leniency were much more obvious. Whether it was through a focus on the significance of the crimes at Waldheim and the need for an equally significant legal response or the outright identification of the trial proceedings and insufficient, the local western response to the 1992 Leipzig trial was concerned with issues of leniency.

This critique, however, highlights an especially significant political function of the 1992 Leipzig trial. As Quint points out, the Leipzig trial was being used by the unified German government "for purposes of public education."²⁷⁷ As a trial of a trial, Jürgens' proceedings simultaneously called into question the legitimacy of the East German state's legal practices and set a standard for how trials should be done in the future.

Coverage in newspapers with West German origins highlighted the educational role of the 1992 trial. According to historian Mary Fulbrook, in moments of political transition, an important part of the establishment of new legal and political norms is the public dismissal of

²⁷⁵ Günter Bemann, "Zu Aktuellen Problemen Der Rechtsbeugung," *Juristen Zeitung*, 1995.

²⁷⁶ Quint, *Imperfect Union*, 414. This discussion was very brief and occurred in a footnote.

²⁷⁷ *Ibid.*, 210.

those of the previous regime.²⁷⁸ Certain western-leaning German newspapers appear to have served this political function. A *Nürnberger Nachrichten* article published at the time of the trial made a point of criticizing not only Jürgens but the East German legal system itself.²⁷⁹ By describing Jürgens and as one of two “People's judges” who “were the semi-skilled, politically trained helpers of the chairmen in trials like those at Waldheim,” the article cast dispersions on the East German legal system, its organization, and its legitimacy.²⁸⁰ This critique of Jürgens and the East German state served to bolster the legitimacy of the unified German legal system and the government’s intentions to prosecute Jürgens.

International media commentary on the Leipzig trial, while scant, also functioned as a public condemnation of the East German legal system.²⁸¹ A piece by Bettina Vestring for British outlet *Reuters News* described Jürgens as having been “inadequately trained in the law, having failed his examinations twice. He was eventually made a prosecutor and judge nonetheless.”²⁸² This criticism served to undermine the legitimacy of the East German legal system while propping up that of the newly unified state.

In this sense, the 1992 trial functioned as an educational tool designed to proliferate the values of the new government and facilitate the unified German state-building process.²⁸³ Mary Fulbrook argues that the act of establishing new standards of justice and undermining those of the previous regime aids in the formation of a new state.²⁸⁴ Historians who have studied East

²⁷⁸ Fulbrook, *German National Identity after the Holocaust*.

²⁷⁹ “Erstes Gerichtsverfahren gegen einen Beteiligten an berüchtigten Prozessen abgeschlossen; Zwei Jahre auf Bewährung für Waldheim-Richter; Der 87jährige Otto Jürgens muß zudem 6000 Mark an den ‘Bund der Stalinistisch Verfolgten’ zahlen,” *Nürnberger Nachrichten*, September 2, 1993.

²⁸⁰ *Ibid.*

²⁸¹ Vestring, “East German Judge Guilty of Perverting Justice in War Trials.”

²⁸² *Ibid.*

²⁸³ Quint, *The Imperfect Union*, 210.

²⁸⁴ Fulbrook, *German National Identity after the Holocaust*.

and West German state-building processes note how the two states used their legal systems to legitimize their political and judicial efforts, especially regarding the treatment of the Holocaust, through trials such as the Waldheim and Frankfurt Auschwitz Trials.²⁸⁵ This legacy of trials as political tools in moments of transition informed the German unification process as well, making the establishment of new legal norms and the rejection of past ones essential aspects of the unified German state-building process.

In the context of a broader discussion of transitional justice trials around the world, Peter Quint cites the 1992 Leipzig trial as a quintessential example of a performative, political trial.²⁸⁶ This is especially significant given that one of Leipzig prosecutor Bauer's main critiques of the Waldheim trials was its politically performative nature. It is this paradox that makes the Leipzig trial an especially interesting historical occurrence. While the trial did not necessarily unite the German people in a time when the government was calling for unity, it did send a clear message about the unified German government's approach to both remembering the past and building a future. It was indeed, as *Der Spiegel* put it, a "unique historical event."²⁸⁷

²⁸⁵ For more discussions on historical memory, trials, and national identity in the post-war Germanies see Wittmann, *Beyond Justice.*, Fulbrook, *German National Identity after the Holocaust*, and Minow, *Between Vengeance and Forgiveness.*

²⁸⁶ Quint, *The Imperfect Union*, 210.

²⁸⁷ "Das waren Blutrichter," *Der Spiegel*.

Conclusion

Decades after unification, the use of trials as vehicles for political expression is alive and well in modern-day Germany. After Chancellor Angela Merkel made headlines with her unprecedented acceptance of nearly a million migrants and refugees into German territory during the Syrian refugee crisis, German public backlash from far-right parties has produced a contentious political landscape.²⁸⁸ In the midst of this tension, the German government, which has remained liberal and democratic, used its legal system as a tool to express a new standard for the treatment of German citizens.

In 2013, 20 years after the conclusion of the Leipzig trial, the government orchestrated yet another historical trial, this time targeting an underground Neo-Nazi coalition. The trial, known colloquially as the National Socialist Underground (NSU) Trial, was conducted between 2013 and 2018 by the Munich Higher Regional Court and aimed to address several crimes committed by the NSU terrorist group, most notably a series of murders targeting suspected immigrants and refugees.²⁸⁹ According to Philip Olterman of the *Guardian*, the trial was the longest and most expensive trial in German history.²⁹⁰

Like the 1992 Leipzig trial, the NSU Trial was designed to teach a political lesson in the midst of societal unrest. In a nation that has come to define itself by its treatment of the past, denouncing the Nazi party remains as necessary today as it was in 1945.²⁹¹ Even though this

²⁸⁸ “Seven Years On: A Timeline of the Syrian Refugee Crisis,” *The United Nations Refugee Agency (UNHCR)*, March 7, 2018.

²⁸⁹ Nicholas Kulish, “Neo-Nazis Suspected in Wave of Crimes in Germany,” *The New York Times*, November 14, 2011.

²⁹⁰ For more information on the NSU Trial see Philip Oltermann, “German neo-Nazi Beate Zschäpe sentenced to life for NSU murders,” *Guardian*, July 11, 2018.

²⁹¹ Herf, *Divided Memory*.

modern trial differs from the Leipzig trial in a number of regards, both trials were designed to send a message about the German state's political evolution and treatment of historical crimes. On February 23rd, 2012, in the direct wake of the NSU murders, Chancellor Angela Merkel held an official state ceremony in commemoration of the victims.²⁹² As part of the ceremony, which was broadcast across the country, Merkel called for the banning of the NSU and for a trial to bring them to justice. As Merkel expressed in her speech, this trial was designed to showcase the democratic nation's intolerance of Neo-Nazi behavior and the German state's tremendous political progress since the Second World War.²⁹³ Therefore, the NSU trial was orchestrated to both achieve justice for the victims of these hate crimes and to broadcast the nation's political evolution. In this sense, the NSU trial functioned quite similarly to the 1992 Leipzig trial. The 1992 Leipzig trial set a precedent for the German state's use of legal trials as arenas for the expression of political sentiments, and the NSU trial was a future manifestation of this legacy.

The 1992 Leipzig trial was a critique of the East German legal system, deliberately crafted to aid in the establishment and unification of the new state. As this thesis has shown, the Leipzig trial functioned both as a condemnation of the East and as an expression of the unified German state's Western-leaning legal values. The expression of these values was intended to aid in the establishment and unification of the new state under shared principles of democratic governance and law.

The politically divisive responses to the trial raise questions about whether the trial effectively united the German people. Yet, as the divisive responses illuminate, the trial did accomplish the goal of projecting a message about new legal standards in unified Germany.

²⁹² "Taking a Stand Against Neo-Nazi Terror: Merkel asks Victims' Relatives for Forgiveness," *Der Spiegel*, February 23, 2012.

²⁹³ "Speech by Federal Chancellor Angela Merkel at the Central Memorial ceremony to commemorate the victims of extreme right-wing violence," *Die Bundesregierung*, February 23, 2012.

Whether it functioned as a vehicle for victor's justice or as an educational tool, the former East and West German communities agreed that the 1992 Leipzig trial was more than a traditional criminal trial. As a product of a hectic transitional period, the Leipzig trial conveyed political lessons about new legal norms in a time when these lessons were necessary elements of the state-building process.²⁹⁴

As a trial of a trial, the proceedings at Leipzig could also be interpreted as an expression of the German state's focus on the past and its treatment in the present. Although the available sources aren't conclusive, it seems possible that this particular case was granted federal and public attention at the time because, in part, it could be used to convey political lessons about how the new state intended to grapple with the Holocaust. The treatment of Nazi crimes has remained a cornerstone of German national identity since the end of the Second World War, and as the NSU trial demonstrates, it is still a point of discussion in modern-day Germany.²⁹⁵

Whether the trial aimed to criticize the East German treatment of the Holocaust, its judicial practices, or both, the 1992 Leipzig trial set a precedent for future use of the German legal system as an arena for national introspection and legal critique. The law is an ever-fluctuating construct that is shaped by the political system in which it is executed. Trials, such as those that occurred in unified Germany, thus offer an important window into the political complexities of a historical era.

²⁹⁴ Peter Quint, *The Imperfect Union*, 22, 210.

²⁹⁵ "Taking a Stand Against Neo-Nazi Terror," *Der Spiegel*.; Fulbrook, *German National Identity after the Holocaust*.

Bibliography

Primary Sources

Archival Sources:

- “Basic Law for the Federal Republic of Germany” Article 103 (2): Fair Trial. Deutscher Bundestag (The German Parliament), 23 May, 1949, last amended 28 March, 2019, Bundesarchiv Berlin (The German Federal Archives in Berlin).
- “Law for Criminal Rehabilitation aka StrRehaG” (*Erstes SED-Unrechtsbereinigungsgesetz*) Article 1(1). October 29, 1992. Bundesarchiv Berlin (The German Federal Archives in Berlin).
- “Law for Criminal Rehabilitation aka StrRehaG” (*Erstes SED-Unrechtsbereinigungsgesetz*), Article 1(2), October 29, 1992, Bundesarchiv Berlin (The German Federal Archives in Berlin).
- Strafgesetzbuch (Criminal Code for the Federal Republic of Germany), Section 78 (3), Bundesarchiv Berlin (The German Federal Archives in Berlin).
- “The Unification Treaty between the FRG and the GDR,” Article. 17, ch. V. Deutscher Bundestag (The German Parliament), 31 August, 1990, Bundesarchiv Berlin (The German Federal Archives in Berlin).
- “Übermittlung des Beschlusses der Volkskammer über den Beitritt der DDR zum Geltungsbereich des Grundgesetzes der Bundesrepublik Deutschland,” Volkskammer der Deutschen Demokratischen Republik, Bundesarchiv (The German Federal Archives in Berlin)—*Digitalisierung und Onliedstellung des Bestandes DA I Volkskammer der DDR*, Section 10, August 23, 1990, Bundesarchiv Berlin (The German Federal Archives in Berlin).

Interviews and Personal Communication:

- Anonymous East German National. Interviewed by author, Berlin, January 11, 2020.
- Anonymous Journalist and eyewitness of the 1992 Leipzig trial. Interviewed by author, Berlin, January 10, 2020.
- Anonymous Former West German citizen. Interviewed by author, Berlin, January 9, 2020.
- Anonymous Former East German citizen. Interviewed by author, Berlin, January 10, 2020.
- Anonymous Former West German lawyer. Interviewed by author, Berlin, January 7, 2020.

Published Sources:

- “After the fall: The hidden trauma behind the Berlin Wall.” International Rehabilitation Council for Torture Victims, 7 November 2014.
- Albrecht, Julia. “Ein Todesurteil vor Gericht.” *Die Tageszeitung*, December 12, 1992.
- Albrecht, Julia. “Waldheim: „Staatlich sanktionierte Lynchjustiz,” *Die Tageszeitung*, August 26, 1993.
- “Antifaschismus als ‘niedriger Beweggrund.’” *Neues Deutschland*, August 26, 1993.
- Bemmann, Günter. "Zu Aktuellen Problemen Der Rechtsbeugung." *Juristen Zeitung*, 1995.
- “BGH (Bundesgerichtshof, Federal Court House) Judgement of November 3, 1994.” *Neue Justiz*, 1995.
- “BGH folgt Leipziger Landgericht; Urteil bestätigt; Revision des Waldheim-Richters Jürgens gegen Haftstrafe abgelehnt.” *Nürnberger Nachrichten*. September 1, 1994.
- Critschley, Peter. “Did a prayer meeting really bring down the Berlin Wall and end the Cold War?” *BBC*, October 9, 2015.
- Costelloe, Kevin. “German Court Convicts Elderly Communist Judge in Post-War Show Trials.” *The Associated Press*, September 1, 1993.
- Curry, Andrew. “A Peaceful Revolution in Leipzig.” *Der Spiegel*, October 9, 2009.
- “Das waren Blutrichter.” *Der Spiegel*, September 7, 1992.
- “Ein Dunkler Tatbestand.” *Neues Deutschland*, October 10, 1994.
- “Erstes Gerichtsverfahren gegen einen Beteiligten an berüchtigten Prozessen abgeschlossen; Zwei Jahre auf Bewährung für Waldheim-Richter; Der 87jährige Otto Jürgens muß zudem 6000 Mark an den ‘Bund der Stalinistisch Verfolgten’ zahlen.” *Nürnberger Nachrichten*. September 2, 1993.
- “Gegen diese Justiz hilft nur der Arzt: „Waldheim-Richter“ Otto Jürgens seit 30 Verhandlungstagen in Leipzig vor Gericht.” *Neues Deutschland*, May 7, 1993.
- “German Judge Punished for Role in Show Trials.” *The Record*, September 2, 1993.
- “Hans Modrow Judgement Report.” *FAZ (Frankfurter Allgemeine Zeitung)*, April 22, 1993.
- “Ich Fühle Mich Nicht Schuldig.” *Neues Deutschland*, September 6, 1997.
- Imse, Ann. “Soviet Legislature Ratifies German Reunification Treaty.” *Associated Press*, March 4, 1991.
- Jungkunz, Alexander. “Die Anklage fordert fünf Jahre Haft für die Beteiligung an den berüchtigten Waldheim-Prozessen.” *Nürnberger Nachrichten*. September 1, 1993.
- Jungkunz, Alexander. “Über den ‘Volksrichter’ Otto Jürgens spricht heute das Landgericht Leipzig sein Urteil: ‘staatlich sanktionierter Lynchjustiz?’” *Nürnberger Nachrichten*. September 1, 1993.
- Kiefer, Francine S. “East German Border Guards Are Convicted.” *The Christian Science Monitor*, January 21, 1992.
- Kinzer, Stephan. “2 East German Guards Convicted of Killing Man as He Fled to West.” *The New York Times*, January 21, 1992.

- Merkel, Angela. "Speech by Federal Chancellor Angela Merkel at the Central Memorial ceremony to commemorate the victims of extreme right-wing violence." *Die Bundesregierung*, February 23, 2012.
- "Prison Conditions in East Germany: Conditions for Political Prisoners." Amnesty International, August 1966.
- Schmemmann, Serge. "100,000 Protest in Leipzig In Largest Rally in Decades." *The New York Times*, October 17, 1989.
- Schoeneburg, Volkmar. "Vom Ludergeruch der Basisdemokratie, Geschichte und Schicksal des Verfassungsentwurfs der Runden Tisches der DDR." *Jahrbuch für Forschungen zur Geschichte der Arbeiterbewegung*, 2010.
- Sendler, Horst. "Die DDR Ein Unrechtsstaat — Ja Oder Nein? Mißverständnisse Um 'Rechtsstaat' und 'Unrechtsstaat'." *Neue Juristische Wochenschrift* 26, no. 1, 1993.
- "Staatliche Lynchjustiz." *Der Spiegel*, August 30, 1993.
- "Staatsnaher Ankläger verfolgt Antifa-Juristen," *Neues Deutschland*, February 5, 1993.
- "Taking a Stand Against Neo-Nazi Terror: Merkel asks Victims' Relatives for Forgiveness." *Der Spiegel*, February 23, 2012.
- Vestring, Bettina. "East German Judge Guilty of Perverting Justice in War Trials." *Reuters News*, September 1, 1993.
- "Waldheim-Richter: 'Ich war nicht SED-gelenkt.'" *Neues Deutschland*, November 19, 1992.
- "What's News: World Wide Briefing." *Wall Street Journal*, November 11, 1992.
- Wilder, Charley. "Delegitimizing the GDR: East German Papers offer Glimpse of History." *Der Spiegel*, June 27, 2013.
- Wolf, Ernst. "Rechtsbeugung durch DDR Richter." *Neue Juristische Wochenschrift*, 21, no. 1390, 1994.
- "World in Brief: Ex East German Judge Being Tried in Waldheim Case." *Atlanta Journal and Constitution*, 11 November 1992.
- "World in Brief: German Judge Convicted." *The Globe and Mail*, Reuter News Agency, September 2, 1993.

Secondary Sources

- Aguilar, Paloma. *Memory and Amnesia: The Role of the Spanish Civil War in the Transition to Democracy*. New York: Berghahn, 2002.
- Anderson, Benedict R. *Imagined Communities: Reflections on the Origin and Spread of Nationalism*. New York: Verso, 1991.
- Bickford, Andrew. *Fallen Elites: The Military Other in Post-Unification Germany*. Stanford University Press, 2011.
- Bickford, Andrew. "Soldiers, Citizens, and the State: East German Army Officers in Post-Unification Germany." *Comparative Studies in Society and History* 51, no. 2 (2009)

- Blessing, Benita. *The Antifascist Classroom: Denazification in Soviet-occupied Germany, 1945–1949*. Palgrave Macmillan, 2006.
- Breen, John M. “Neutrality in Liberal Legal Theory.” *Harvard Journal of Law and Public Policy*, 2009.
- Burchard, Christoph. “The Nuremberg Trial and its Impact on Germany.” *Journal of International Criminal Justice*, Volume 4, Issue 4, 1 September 2006.
- Casper, Gerhard and Hans Zeisel. “Lay Judges in the German Criminal Courts.” *Journal of Legal Studies*, January 1972.
- Cohen, David and Yuma Totani. *The Tokyo War Crimes Tribunal: Law, History and Jurisprudence*. Stanford University Press, 2019.
- Dirks, Christian. Review of *Die Verbrechen der anderen: Auschwitz und der Auschwitz Prozess der DDR*. H-Net Reviews in the Humanities and Social Sciences, May 2009.
- Douglas, Lawrence. *The Memory of Judgment: Making Law and History in the Trials of the Holocaust*. New Haven: Yale University Press. 2001.
- Fulbrook, Mary. *German National Identity after the Holocaust*. Cambridge: Polity Press, 1999.
- Hannah Arendt. *Eichmann in Jerusalem: A Report on the Banality of Evil*. New York: Penguin Books, 1994.
- Hazan, Pierre. *Judging War, Judging History: Behind Truth and Reconciliation*. Stanford, CA: Stanford University Press, 2010.
- Herf, Jeffrey. *Divided Memory: The Nazi Past in the Two Germanys*. Cambridge, Mass: Harvard University Press, 1997.
- Hoffmeister, Hans and Mirko Hemple, eds. *Die Wende in Thüringen: Ein Rückblick* (2nd ed.). Arnstadt / Weimar: Thüringische Landeszeitung / Rhino Verlag, 2000.
- Jarausch, Konrad Hugo. *After Hitler: Recivilizing Germans, 1945-1995*. New York: Oxford University Press, 2009.
- Kelley, Matt, “Gone but not Forgotten: Why the Berlin Wall Maintains a Grip on Us.” *UVA Today*, University of Virginia, February 8, 2018.
- Klonovsky, Michael and Jan von Flocken, *Stalins Lager in Deutschland: Dokumentation, Zeugenberichte, 1945-1950*. Munich, DE: Deutscher Taschenbuch Verlag, 1993.
- Kocka, Jürgen. *Civil Society and Dictatorship in Modern German History*. NH: University Press of New England, 2010.
- Kulish, Nicholas. “Neo-Nazis Suspected in Wave of Crimes in Germany.” *The New York Times*. November, 14 2011.
- Lansing, Charles. *From Nazism to Communism: German Schoolteachers Under Two Dictatorships*. Cambridge, MA: Harvard University Press, 2010.
- Maier, Charles S. *Dissolution: The Crisis of Communism and the End of East Germany*. Princeton University Press, 1997.
- Martin Sabrow, *Erinnerungsorte der DDR*. Beck C. H., 2009.
- McAdams, James. *Germany Divided. From the Wall to Reunification*. Princeton: Princeton UP, 1993.

- McCauley, Martin. *Marxism-Leninism in the German Democratic Republic*. London, England: The Macmillan Press LTD, 1979.
- Minow, Martha. *Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence*. Boston: Beacon Press, 2009.
- Nedelski, Nadya and Levania Stan. *Post-Communist Transitional Justice: Lessons From 25 Years of Experience*. Cambridge University Press, 2014.
- Olsen, Jon, B. *Tailoring Truth: Politicizing the Past and Negotiating Memory in East Germany, 1945-1990*. Berghahn Books, 2015.
- Pendas, Devin Owen. *The Frankfurt Auschwitz Trial, 1963-1965: Genocide, History and the Limits of the Law*. Cambridge, MA: Cambridge University Press, 2006.
- Peskin, Victor. "Beyond Victor's Justice? The Challenge of Prosecuting the Winners at the International Criminal Tribunals for the Former Yugoslavia and Rwanda." *Journal of Human Rights*, August 16, 2005.
- Quint, Peter E. "Judging the Past: The Prosecution of East German Border Guards and the GDR Chain of Command." *The Review of Politics* 61, no. 2, 1999.
- Quint, Peter E. "The Border Guard Trials and the East German Past-Seven Arguments," *The American Journal of Comparative Law* 48, no. 4, 2000.
- Quint, Peter E. *The Imperfect Union: Constitutional Structures of German Unification*. Princeton: Princeton University Press, 2012.
- Reese, Laurence. *Auschwitz: A New History*. New York: Public Affairs, 2005.
- Roman, David. *Lustration and Transitional Justice: Personnel Systems in the Czech Republic, Hungary and Poland*. University of Pennsylvania Press, 2011.
- Romano, Renee C. *Racial Reckoning: Prosecuting America's Civil Rights Murderers*. Cambridge, MA: Harvard University Press, 2014.
- Rosenberg, Tina. *The Haunted Land: Facing Europe's Ghosts after Communism*. New York: Vintage, 1995.
- Sarat, Austin and Thomas R. Kearns. *History, Memory, and the Law*. Ann Arbor: University of Michigan Press, 1999.
- "Seven Years On: A Timeline of the Syrian Refugee Crisis." *The United Nations Refugee Agency (UNHCR)*, March 7, 2018.
- Szymanska, Agnieszka. "Do the Media Really Support the German Reunification? The Content of the German Mainstream Influential Press During the Period of the East German Breakthrough and 20 Years Later." Jagiellonian University in Krakow, 2014.
- Taylor, Fredrick. *Exorcising Hitler: The Occupation and Denazification of Germany*. Bloomsbury Publishing, 2011.
- Ulrich Merten, *The Gulag in East Germany: Soviet Special Camps 1945-1950*. New York: Teneo Press, 2018.
- Werkentin, Falco, "Waldheimer-Prozesse." Lexicon der Politischen Strafprozesse, July 2018.
- Wittmann, Rebecca. *Beyond Justice: The Auschwitz Trial*. Cambridge, MA: Harvard University Press, 2012.

Zorn, Monika. *Hitlers zweimal getötete Opfer: Westdeutsche Endlösung des Antifaschismus auf dem Gebiet der DDR*. Berlin: Ahriman-Verlag GmbH, 1994.