

Transitional Justice in Germany, 1945-1950:  
Ironies, Paradoxes, and Unintended Consequences.

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In recent years, the literature on so-called transitional justice has grown substantially. This literature takes as its starting point the proposition that justice is an important component of post-authoritarian democratization. While attitudes towards criminal trials vary considerably within this literature, there is nonetheless a clear consensus that “better” trials will lead to better, i.e. more democratic outcomes. The German case serves as the touchstone of much of this literature, frequently cited as the great success story of transitional justice.

Yet few of these studies actually investigate the German case in any detail. If they did, they would realize that the history of transitional justice in Germany was far more complicated and far more ambivalent than any simple narrative of the “legacy of Nuremberg” acknowledges. This paper will examine a little known dimension of transitional justice in postwar Germany: the thousands of trials conducted by the Germans themselves for Nazi atrocities. It will argue that by comparing the trials in Western Germany, which democratized, with those in Eastern Germany, which did not, we can reconstruct the complex and unpredictable relationship between criminal justice and political transitions.