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Judicial Efforts to Deal with War Crimes and Contested Pasts

Legal procedure has become a key instrument of coming to terms with the legacies of war, genocide and mass atrocity, occupation, collaboration, and civil war. From the case of Henry Wirz in 1865 to the Nuremberg trials, and from the My Lai court martial to today's International Criminal Court, the courtroom has become a central arena to determine the limitations of lawful warfare and historical responsibility. Yet the development of international criminal law is no triumphal march. Lawyers and politicians have always contested and constantly re-negotiated where exactly the lines between 'right' and 'wrong' run. Increasing codification of international criminal law has coincided with continuing disregard for these same rules if politically or economically expedient. Rather than a straight success story, the history of international criminal law offers the possibility to investigate changing patterns of political will, public response, and academic reasoning. Within this broad field, I encourage students to develop their own research project. Language of supervision and feedback will be English. The following are merely examples to draw inspiration from.

1. Judicial networks after World War II

After liberation in 1944/5, virtually all nations in Europe and East Asia resorted to criminal trials in dealing with both 'traditional' war crimes and with crimes which were either unprecedented in scope or in character, such as genocide, 'crimes against humanity, and 'crimes against peace'. Frequently different trials dealt with the same crimes, e.g. when German occupation on the Balkan was tried in a Yugoslavian court in Belgrade but also before an American tribunal at Nuremberg. The Nuremberg trials were also dealing with crimes in Norway which were simultaneously prosecuted by Norwegian lawyers at home. Other German perpetrators in Norway were actually tried and convicted in Poland. Manifold connections – personal, evidence, reporting – connected various proceedings, and these aspects have received little attention so far. Comparative perspectives could inquire into mutual observation and cooperation or might compare varying concepts of justice, retribution, due process and fair trial, and historical narratives. In-depth analyses of individual trials are also possible.

2. Conceptualising war crimes in a non-warring nation

Much of the theorising about the rules of war and their infringement has been done by those nations most heavily involved in wars in the modern era. In mostly non-belligerent or neutral countries such as Norway, Sweden, or Switzerland, the question arises how legal and political protagonists have conceived of war crimes as a politico-juridical problem over the past 150 years. As outside observers or victims of aggression, how was modern warfare understood, which problems were identified, which remedies suggested? (How) did the Cold War and e.g. Norway's prominent role in the UN or, in contrast, Switzerland's long non-membership, matter? And (how) did such discourses change with the contribution to UN- and NATO-led assignments in the former Yugoslavia or Afghanistan? Comparative views beyond Europe should prove particularly worthwhile.

3. Ad-hoc tribunals and justice

In the absence of a permanent international criminal court for most of post-World War II history, several ad hoc tribunals were established: from the Nuremberg trial 1945-49 to the tribunals for the former Yugoslavia and Rwanda in the 1990s or the special courts in Sierra Leone and Cambodia, all of which are considered the legal dimension of "Transitional Justice". How does an ad-hoc tribunal differ from a permanent court? Which distinctions exist between them? And how do they render

justice and with what results? Have the tribunals at Nuremberg, Tokyo, The Hague, Arusha, Freetown, and Phnom Penh been a success? How can we measure 'success' or 'failure'? Should we?

4. Warsaw Ghetto – Nuremberg Trials – Rio de Janeiro: The Photographer Joe Heydecker

Joe Heydecker is rarely named among the twentieth century's most famous photographers although he photographed some of its most poignant episodes. Heydecker's photos, including those of the Warsaw ghetto under German occupation or the Nuremberg war crimes trials, are stock images of collective memory. A thesis on Heydecker could draw on the pictures as well as on personal papers and might enquire into his biography, his professional ethics, and the role of visual sources in shaping memory, public debate, and collective responsibility.

5. The Evian Conference on Refugees

The 1938 Evian Conference in which delegates from 32 countries as well as representatives from relief organizations met in Evian-les-Bains to discuss the question of Jewish refugees from Nazi Germany has long been perceived as an embarrassing failure of the international community to help save the lives of people who later fall victim to the Holocaust. Still, the conference also articulated a new awareness of forced migration as an international problem which had grown in the wake of World War I. In both its ambitions and its failures the conference remains a significant but little-known event, leaving much room for inquiries into individual countries' strategies at Evian (which could be Norway but also other delegations), diplomatic efforts to avoid failure but also jeopardize success, or the conference's remarkable career at a *lieu de mémoire*, a site of memory, in Holocaust remembrance.