



Harald Wiggenhorn. *Verliererjustiz: Die Leipziger Kriegsverbrecherprozesse nach dem Ersten Weltkrieg.* Studien Zur Geschichte des Völkerrechts. Baden-Baden: Nomos Verlag, 2005. xv + 548 pp. ISBN 978-3-8329-1538-4.

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War Crimes and Misdemeanors

The current general ignorance of the war crimes trials that began in Leipzig in 1921 contrasts notably with the significance attributed to those trials by contemporaries, argues Harald Wiggenhorn in his first monograph. For Germans of the era, the Entente demand for the extradition and/or prosecution of war criminals was as prominent a public issue as the despised war guilt clause of the Versailles Treaty. Wiggenhorn's detailed, carefully researched, and convincing analysis of the Leipzig trials is, for now, the definitive work on the subject.

In a helpful introduction, Wiggenhorn traces both the domestic and international debate over war crimes. Articles 228-230 of the Versailles treaty stipulated that Germany must extradite and allow Entente military courts to try Germans indicted for war crimes. Germany was required by Article 230 to support these tribunals through the provision of necessary documents. At least one German commentator noted caustically (and disingenuously) that had Serbia agreed to such conditions in 1914, there might not have been a World War. The introduction expands on the important work of Walter Schwengler in this era through extensive use of primary sources.^[1] The study is based primarily on court documents found at the Berlin-Lichterfelde branch of the Bundesarchiv, supplemented by Belgian, French, and British diplomatic materials relating to war crimes and extradition requests. Wiggenhorn also surveyed dozens of newspapers of varying political stripes to gauge public reaction to the

negotiations, proceedings, and verdicts.

In order to deflect Entente demands, the German government began drafting legislation to prosecute alleged war criminals in German courts. The Allies reluctantly agreed to this procedure, in part to avoid further destabilizing the teetering Weimar government. The Germans proceeded to drag their feet in the face of a list of nine hundred names provided by the Entente. Three officials worked in the department tasked with preparing these inherently complex cases. By May 1920, facing such realities, the Entente provided a list of forty-five individuals whose cases should be given top priority. No prominent figures (Kaiser Wilhelm II, Paul von Hindenburg, Erich Ludendorff) appeared on the list.

The middle portion of Wiggenhorn's book is devoted to description and analysis of the dozen or so carefully selected trials that actually took place in 1921 and 1922. Wiggenhorn describes the facts in each case, the strategies of the contestants, the verdict, and the public reaction. Certain patterns are clear: relatively low-ranking Germans were tried; public sympathy was aroused; mild sentences were imposed: public and official reaction in the Entente countries were both dismayed. So carefully and so slowly did the German administration proceed that, by Wiggenhorn's calculation, only four true "war criminals" were ever convicted, from a pool of more than sixteen hundred investigations, for a conviction rate of 0.245 percent.

In some ways, the actions of the main players are predictable. The Reichswehr fights tooth and nail, overtly and covertly, against any attempt to bring soldiers to justice. The Foreign Ministry wrangles with the Entente over procedural matters that will ensure both the trials' legitimacy and inefficacy. Indicted soldiers disappear overseas; addresses are lost (though pension payments continue to find their way successfully); secret funds for defense costs are established. Entente policy toward the German trials mirrors postwar policy in general: the French and the Belgians press for more numerous and more aggressive prosecutions while the British seem more accommodating. Domestically, only the radical Left (USPD and KPD) expresses any sentiment in favor of trials or offers even token criticism of the court's leniency.

It is one of Wiggenhorn's achievements that he has convinced me, for one, to add the issue of war crimes to the traditional litany of German objections to Versailles: war guilt, reparations, arms limitations, and loss of territory. The public reaction and the energy expended by the Foreign Ministry, the Justice Ministry, and the Reichswehr to deflect, delay, and undermine the demands for extradition and/or prosecution of war criminals is powerful evidence of the salience of the issue to Germans across the political spectrum. Equally convincingly, Wiggenhorn proves that Leipzig provided a powerful negative example to Allied jurists contemplating the punishment of Adolf Hitler, Heinrich Himmler, and others near the end of the Second World War. The Allies recalled their frustrations and the perversion of justice at Leipzig and went in a completely different direction. The "lesson of Leipzig" (p. 405) was that the Germans could

not be trusted to prosecute their own. Nuremberg was the answer to that problem. Though Germans criticized Nuremberg as an example of "victor's justice," Wiggenhorn clearly shows that "loser's justice" (hence the title) is not a morally defensible alternative.

Beyond Nuremberg, Wiggenhorn pursues other connections to the post-World War II period only tangentially. Similar political alliances existed among veterans' groups, the government, and political parties. Similar strategies for defending the "so-called war criminals" emerged. Germans in both eras pointed to the alleged crimes of enemy nations to undermine the legitimacy of the prosecutions. Several works of the last ten years or so, including my own, could have made more of these parallels had Wiggenhorn's book been available.[2] But such minor criticism only stems from imagining a book that might have been.

Notes

[1]. Walter Schwengler, *Völkerrecht, Versailler Vertrag und Auslieferungsfrage: Die Strafverfolgung wegen Kriegsverbrechen als Problem des Friedensschlusses 1919/20* (Stuttgart: Deutsche Verlags-Anstalt, 1982).

[2]. Bert-Oliver Manig, *Die Politik der Ehre: Die Rehabilitierung der Berufssoldaten in der frühen Bundesrepublik* (Göttingen: Wallstein, 2004); Norman J. W. Goda, *Tales from Spandau: Nazi Criminals and the Cold War* (Cambridge: Cambridge University Press, 2007); Jay Lockenour, *Soldiers as Citizens: Former Wehrmacht Officers in the Federal Republic of Germany, 1945-1955* (Lincoln: University of Nebraska Press, 2001); and Norbert Frei, *Vergangenheitspolitik: Die Anfänge der Bundesrepublik und die NS-Vergangenheit* (Munich: Beck, 1996).

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