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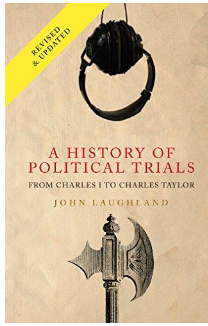

JE KINDLE-NOTITIES VOOR:

A History of Political Trials: From Charles I to Charles Taylor

door John Laughland

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71 Highlights

Highlight (Geel) | Locatie 245

> It seems wrong, however, to say that that the events in England and the continent were a consequence of the rise of secularism. On the contrary, it was religion that had been the cause of both the English Civil War and the Thirty Years war in Germany. Both conflicts were between two competing theologies: they were not conflicts between a religious and secular outlook. While the war in Europe was essentially between Protestants and Catholics, the English Civil War was, at bottom, a battle over control of the English Church. The Puritans who had seized control of ← 21 | 22 → the army were determined to prevent any backsliding by future monarchs towards Rome, and their suspicions that such a rapprochement might occur had been aroused when King Charles married Henriette of France, the daughter of the French king Henri IV and the sister of Louis XIII. Puritan radicals wanted the wholesale dismantling of the ecclesiastical structure of the Anglican Church which had remained broadly intact even after the Protestant revolution. They rejected the very notion of any Church structure other than that of the faithful gathered together in worship. The English revolutionaries argued that eternal truths were best perceived by ‘the saints’, i.e. themselves.1 The problem was not that King Charles believed in the divine right of kings, but that the revolutionaries believed in their own divine right instead. The Puritans’ determination to control the Church and Parliament was therefore not a consequence of democratic views. On the contrary, many of the more extreme Puritans specifically disagreed with the notion of the sovereignty of the people, regarding it as a potential impediment to the sovereignty of Christ – administered of course through them.

Highlight (Geel) | Locatie 262

> During this period, Charles appointed William Laud as archbishop of Canterbury. Laud was attached to High Anglicanism, a relatively ceremonial form of Protestantism which keeps one or two of the exterior forms of the old Catholic faith without actually abandoning Anglicanism’s key Protestant tenets. Laud introduced some superficial reforms such as putting stone altars back in place of the wooden communion tables which had been introduced at the Reformation. This was enough to convince the Puritans that their king was at the head of a Popish conspiracy, for their religious fundamentalism ran very deep: when the future Prosecutor of King Charles, John Cooke, was born, his parents deliberately travelled for many miles outside their village to have him baptized not by an Anglican priest but instead by a Puritan minister, the difference being that the latter would not even make the sign of the cross over the infant, a gesture rejected by the Puritans as an impure form of worship.2 It is no doubt for this reason that that great historian of seventeenth-century England, Christopher Hill, emphasized in 1969 that one should not ignore the role of the ‘lunatic fringe’ in history, i.e. the English revolutionaries.3

Highlight (Geel) | Locatie 357

Bradshaw merely replied that he was not prepared to debate the court's authority, occasionally making vague invocations of natural law, Scripture, and, on one occasion, an unrealistic claim that Charles had been 'elected' king and that he had broken the terms of his election. Bradshaw said, 'You were told over and over again, That the court did affirm their own Jurisdiction, that it was not for you, nor any other Man, to dispute the Jurisdiction of the supreme and highest Authority of England, from which there is no Appeal, and touching which there must be no Dispute.' Charles's arguments in court, therefore, had nothing to do with the concept known as the 'divine right of kings', with which his name is usually associated. On the contrary, his stated position throughout the trial was one of respect for the law as it then existed, including for the rights of the English people and the parliamentary institutions of the state. No law ← 26 | 27 → in the kingdom provided for the criminal trial of the king: on the contrary, the existing laws of treason provided for precisely the opposite, namely that any attack on the person of the king was a criminal act. Moreover, he was surely right to say that the king had a special duty not to act under constraint by an illegitimate authority: numerous heads of state were to be tried for collaboration after World War II for doing precisely this. Inasmuch as Charles invoked God, it was to show that he was charged with a divine duty not to betray the sacred trust which he had been given – not that he enjoyed divine right. Charles' s stated attachment to lawfulness was therefore quite compatible with modern constitutionalism. The

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Highlight (Geel) | Locatie 414

The king's refusal to plead threw the Commissioners into disarray. They argued over whether to consider it the equivalent of a guilty plea, as the law on treason provided. But this would have meant that there was no need to call any witnesses, as they wanted to do. They therefore resolved to hear the witnesses in committee, in the absence of the defendant and outside the procedures of the trial itself. Thirty-three prosecution witnesses were heard on 24 January and their depositions were read out at a public session of the High Court on 25 January, albeit still without the king there to hear them. The evidence offered concerned principally war crimes which royalist soldiers were accused of committing under the command of the king himself. The Commissioners reassembled

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Highlight (Geel) | Locatie 435

There were plenty of reasons for wanting the King dead – the Puritans wanted to dash royalist hopes in Ireland, where new anti-parliamentary forces were being raised – but monarchs had been deposed before, and even murdered, without being subjected to a criminal trial.

Highlight (Geel) | Locatie 472

In addition to these anthropological explanations for the idea of a trial, it is also clear that the soldiers' motivation for trying the king was explicitly theological. It is amusing, indeed, to see modern-day commentators regard the execution of King Charles as the beginning of secular liberalism, for in reality it was inspired instead by religious fundamentalism. The officers reasoned that the shedding of innocent blood had to be formally avenged through a judicial trial and a solemn public condemnation of the king. A negotiated settlement with evil was itself a form of evil which required expiation before God through an act of sacrifice. ← 31 | 32 →

Highlight (Geel) | Locatie 489

The Puritans therefore wanted Charles to be sacrificed, in the full theological and anthropological sense of the term: their sacrifice of him was to be a propitiatory offering made to God to placate His wrath for their own earlier attempts to compromise with evil instead of combating it. By quoting the Book of Numbers, they were saying that God's wrath would destroy them if they did not counter Charles's guilt and cleanse the land with a purificatory act – his execution – which closely resembled the original wrong and thereby cancelled it out. Because they believed that God's wrath would take the form of a terrible judgement, their sacrificial act had to resemble God's own judgement.

Highlight (Geel) | Locatie 495

The Puritans, indeed, were obsessed with the religious idea of the Last Judgement. Many of them believed that the end of the world was nigh. 'Fifth Monarchy' fanatics believed that the Second Coming was due in 1666 and that it would usher in a fifth monarchy to succeed the four discussed in the books of Daniel and Revelation (the Assyrian, Persian, Greek, and Roman empires). They were fascinated by the apocalyptic passages in the Old and New Testaments, and Oliver Cromwell himself was one of the principal apocalypticists. One of the main reasons why he permitted the return of Jews to England, indeed, was to prepare the country for their conversion at the end of time. ← 32 | 33 →

Highlight (Geel) | Locatie 625

In other words, the grim apparatus of a police state, based on terror and direct political control of the police and judiciary, was being put in place at the very time when the king's trial was being prepared. Maximilien Robespierre – 'the Incorruptible' – called for the members of the Committee of Police and General Security themselves to have the right to convict people, claiming that otherwise 'the vengeance of the people would be too greatly restricted'.8 This proposition was accepted in the Assembly, one deputy explaining that it would 'accelerate the judgement ← 38 | 39 → of the guilty' by 'suppressing any appeal'.9 Thus were born tribunals with powers of summary arrest and execution – true Bolshevik-style 'people's tribunals' avant la lettre. Louis's trial was itself followed by the Terror which began formally with the establishment of the Revolutionary Tribunal on 10 March 1793, less than two months after his execution; within a year, until Robespierre's own arrest in July 1794, between 17,000 and 50,000 people were judicially murdered by it.

Highlight (Geel) | Locatie 771

Historians have been unkind to the way that Louis answered these questions, claiming that he hid behind the inviolability he enjoyed under the 1791 constitution, or that he tried to blame his ministers, but a close reading of the transcript shows that Louis referred to the impossibility of prosecuting him for things which happened before 1791 on only one occasion. On seven occasions, he said that the matter was the responsibility of his ministers, but each time he defended their actions and did not try to shift blame onto others. In any case, it was true that the constitution did provide for ministerial responsibility, as it was an essentially parliamentary ← 44 | 45 → constitution based on the English model. Louis replied on eleven occasions with a straightforward denial, for instance 'There is not a single true word in that accusation.' On seven occasions, he denied all

knowledge of the facts alleged. Twenty-one of the fifty-one documents shown to him were genuinely unknown to him, since they were letters written by his brothers to third parties. On fourteen occasions, he replied to his accusers with exculpatory arguments, whether taken from articles of the constitution or from documentary sources.

Highlight (Geel) | Locatie 786

The reports of this hearing were falsified by the revolutionary press. So, for instance, when the King was accused of fomenting counter-revolution in the colonies via his 'agents' there, Louis replied, 'If there are persons in the colonies who say they are my agents, they have not spoken the truth.' This was reported in Le Moniteur as 'If there are some of my agents in the colonies, they have not spoken the truth': the reported version thus implied that Louis had admitted that he had such agents.28 On other occasions, the press falsified the question. When the king was asked why he had doubled the Swiss guards on 10 August, he replied that he was the constituted authority and that he had the right to defend himself. But the Moniteur reported the question as, 'Why did you gather troops in the palace?' and the Journal Universel as, 'Why did you give orders to fire onto the people?' which naturally cast a totally different light on the king's reply.29 The media distortion was so bad, indeed, that on 13 December 1792, a member of the Convention proposed that the transcript of the hearing of 11 December be published precisely because 'the newspapers have disfigured the cross-examination of the former king.'30

Highlight (Geel) | Locatie 876

The first vote was on the verdict. On 15 January, guilt was voted unanimously but with twenty-seven abstentions. The second vote was held on whether the decision should be submitted to the people for popular referendum, and the decision was that there should be no further ratification. The third was on the sentence, which was death. When Philippe Égalité – the duke of Orléans, the king's cousin, and a pretender to the throne who evidently hoped that he could become a Girondin monarch himself – voted for death, a groan went up; even the revolutionaries were shocked by this betrayal of his own cousin.

Highlight (Geel) | Locatie 1574

After the indictment had been read out, Pétain was asked to speak. The court fell silent. 'The French people, through its representatives meeting in a national assembly, entrusted me with power on 10 July 1940,' said the old marshal. 'It is to the French people that I have come to give an account of myself.' Pétain denied that the High Court represented the French people and maintained that he was addressing the nation, not it. He said he would make no further statement or answer any questions but that he would leave his defence to his lawyers. He recalled his great age and his past military glory. His life, he said, had been devoted to France. France had turned to him in its hour of need and 'begged' him to serve again. 'I became thereby the inheritor of a catastrophe for which I was not responsible; those who are really responsible are hiding behind me to avoid the anger of the people,' he said. He said that armistice had been 'a necessary and saving act' and that it had contributed to the victory of the Allies by ensuring a free Mediterranean and the integrity of the French empire. Power had been conferred on him legitimately and his government had been recognized by 'all the states in the world from the Holy See to the Soviet Union'. 'I used this power as a shield to protect the French people. For it, I sacrificed my prestige. I remained at the head of an occupied country.'

Highlight (Geel) | Locatie 1592

Pétain defended his government’s social policies and the change to the constitution. He said that he had worked only for the union and the reconciliation of the French, and that the Germans had taken him prisoner precisely because they accused him ‘of never ceasing to combat them and of ruining their efforts’. He said he had been supported by many French people not for his person but because he represented ‘a tradition which is that of the French and Christian civilization, against the excesses of all tyrannies’. He said the condemnation of him would be a condemnation of those who had put their hope in him, and that it would aggravate and prolong the discord of France.

Highlight (Geel) | Locatie 1717

By contrast, all the parliamentary jurors, including a Jewish deputy who had himself been the victim of racial persecution, were against the death penalty, save three. The matter went to a secret ballot and there were fourteen votes for the death penalty and thirteen against.24 There was then a vote on whether to suspend the death penalty, in view of the defendant’s great age. The vote for suspension was carried seventeen votes to ten; there is some speculation that the Gaullist members voted this way in order to be helpful to de Gaulle, who might have paid a high political price if Pétain had been executed. When the judges returned to the courtroom at 4.30 a.m. on the morning of 15 August and read out the sentence, Pétain looked confused as he was led outside. The old marshal was put in the back of a van and sent to the Ile d’Yeu, a small island off the Atlantic coast of France, where he eventually died on 23 July 1951, aged ninety-seven.

Highlight (Geel) | Locatie 1727

Marshal Pétain’s trial finished on 15 August 1945. Five days later, on 20 August 1945, in the Freemasons’ Hall in Oslo, the wartime leader of Norway, Vidkun Quisling, who had been minister-president of Norway from February 1942 to May 1945 and therefore, following the destitution of the king by the Nazis, de facto head of state, stood in the dock to face his own accusers on charges of treason.

Highlight (Geel) | Locatie 1924

Quisling did not acquit himself brilliantly. He insisted that he had fought against others who wanted to bring Norway under foreign control and that all his efforts had been devoted to maintaining the country’s independence, including from the Germans. But when he explained that he ← 99 | 100 → had proclaimed himself head of the government because the existing government was ‘away’, and that he did not realize that it and the parliament were still in session because he had not listened to the radio that morning, he made a fool of himself. Quisling was often evasive and dishonest, for instance when he pretended not to remember much about the meeting with the German intelligence officer in Copenhagen. He even seemed to believe that Hitler was his tool, not the other way around. But his physical exhaustion and weak health sapped both his powers of speech and his critical faculties. He deluded himself that the trial was going well when in fact many of his answers only incriminated him further.20

Highlight (Geel) | Locatie 2064

There are many popular misconceptions about the Nuremberg trials. One of the most persistent is that it was the trial of the Holocaust, whereas the full extent of the Holocaust in fact became evident only during the course of the trial itself. The Unted States Deputy Chief Prosecutor, Telford Taylor, had himself not even heard of the concentration camps in Poland by the spring of 1945,1 while Robert Jackson's report to the president of 6 June 1945, which laid out the reasons why Nazi atrocities should be prosecuted, did not even mention persecution of the Jews but instead only crimes committed against Czechs, Poles, and other peoples whose countries were occupied by the Nazis. From this mistaken perception, it is erroneously concluded that Nuremberg was novel because established for the first time the principle that universal 'crimes against humanity' could be punished even if they had been ordered by senior officials in the state or sanctioned by the law of the land.

Highlight (Geel) | Locatie 2071

It is true that Nuremberg applied the concept of crimes against humanity for the first time, but the idea that there is a natural law higher than the dictates of the state is nonetheless one of the oldest ideas in political philosophy. Cicero expounded it perfectly in his Laws: 'Even if there was no written law against rape at Rome in the reign of Lucretius Tarquinius, we cannot say on that account that Sextus Tarquinius did not break that eternal law by violating Lucretia.'2 It is therefore naive to suggest, as so many do, that Nuremberg dealt with this issue for the first time: as even Cicero realized, the problem is that such appeals to natural law can clash with other precepts of natural law, including considerations about the very nature of lawfulness itself. These can be damaged if positive law is ← 106 | 107 → amended after an event in order to criminalize it retrospectively. But in any case, the view that the head of state is morally bound to respect the law has enjoyed continuous currency until the beginning of the modern period. It is only with the rise of secularism that the idea has become common that the sovereign – in this case, the people – should be subject to no moral or religious constraints whatever.

Highlight (Geel) | Locatie 2082

Instead, where Nuremberg really broke new ground was that it brought prosecutions against individuals under international law for crimes against peace, that is, for planning and executing a war of aggression. This innovation was really two rolled into one: the notion of a 'crime against peace' was new, as was the application of the criminal law to individual state leaders for violations of international law. Previously, the subjects of international law had been states, not their leaders, and there had been no penal regime to enforce it. The notion of crimes against peace formed the basis for Counts 1 and 2 of the crimes listed in the indictment (conspiracy to commit crimes against peace and aggressive war itself), while war crimes and crimes against humanity were Counts 3 and 4. (The first two counts were effectively treated as the same count in the judgement.)

Highlight (Geel) | Locatie 2215

Stalin helped draw up the Convention for the Prevention and Punishment of Terrorism and the Convention for the Creation of an International Criminal Court, which the Council of the League of Nations approved in 1937. Indeed, one of the Soviet representatives at the London Conference, Aron Naumovich Trainin, who was one of the main theoreticians of the concept of crimes against peace, had proposed 'interventionism' to combat

international crimes in a book in 1935.20 (In the event, neither the Convention on Terrorism nor the Convention for the Creation of an International Criminal Court ever came into force.)

Highlight (Geel) | Locatie 2220

The Soviets acted in this way largely because they were ideologically in favour of world government. Under Communism and world revolution, the world was to be politically united, and the difference between international and domestic law would vanish as surely as the difference between town and country; when Trotsky's friends suggested to Lenin in 1917 that he should be put in charge of foreign affairs (as he soon was), Lenin retorted, 'What foreign affairs will we have now?'21 Criminalizing the acts ← 112 | 113 → of states was one way of discrediting the very idea of nationhood, which, as Marx and Engels had hoped in The Communist Manifesto, progressive forces would destroy.

Highlight (Geel) | Locatie 2259

At Moscow, the prosecutions envisaged were only for 'normal war crimes'. It was only after Stalin's speech 'On the Great Patriotic War of the Soviet Union', delivered on 6 November 1943, the twenty-sixth anniversary of the Bolshevik revolution, that the Allies started to threaten prosecuting the Germans for the war itself.29 In that speech, to the customary thunderous applause, Stalin outlined several objectives for the Allies, and these included re-establishing the nation-states of Europe subjugated by Nazi Germany, punishing the Germans for their crimes, and 'setting up an order in Europe which completely excludes the possibility of a new aggression by Germany'. Trainin's book Hitlerite Responsibility under Criminal Law, edited by Vyshinskii and published in Moscow in early 1944 and then in English translation in London in 1945, duly played a huge role in convincing the Allies to prosecute the Germans for crimes against peace, and in making this the central fact about the Nuremberg trials.

Highlight (Geel) | Locatie 2267

However, Soviet influence was not confined to the all-important concepts of crimes against peace and international tribunals. It also facilitated the Americans' insistence, against French objections, that conspiracy be included as a count on its own (Count 1).

Highlight (Geel) | Locatie 2269

Conspiracy is a notoriously elastic concept in law and does not even exist as a crime in many criminal codes; at the London Conference, the French argued in vain that only the offences themselves, towards which the alleged conspiracy is directed, should be punishable. The Soviets, by contrast, had no trouble with the concept of conspiracy.30 General Nikitchenko said specifically, 'We should not, of course, confine ourselves to persons who have actually committed the crimes but should also especially reach those who organized or conspired them.'31 The concept of conspiracy was extremely important for the jurisdiction of Nuremberg. It was only because the Prosecution presented crimes ← 114 | 115 → against humanity as an integral part of the conspiracy to commit crimes against peace that they were able to prosecute them at all: the judges at the International Military Tribunal read the terms of their own charter very strictly so that crimes against humanity which were not specifically war crimes (e.g. racial persecution) were prosecuted only inasmuch as

they were deemed to be part of the conspiracy to commit crimes against peace.32 This meant that no crimes against humanity committed before Germany invaded Poland on 1 September 1939 were adjudicated at Nuremberg (a point often forgotten today).

Highlight (Geel) | Locatie 2281

In addition to the use of criminal conspiracy theory, the Prosecution and the London Conference also adopted the notion of 'criminal organization' (which was in any case closely linked to the concept of criminal conspiracy). The author of the idea that the Nazi organizations should be proclaimed criminal organizations was Lt Col Murray Bernays, a Lithuanian-born naturalized American appointed by the United States chief of staff to investigate German war crimes. Bernays in turn drew on Raphael Lemkin's view that bodies like the SS were criminal conspiracies; Lemkin was later to formulate the legal concept of genocide. In the event, only a few of the institutions Bernays named were in fact criminalized: the political bureau of the Nazi Party, the SS, and the Gestapo. The court found that the Reichs cabinet, the Sturmabteilung (SA), the General Staff, and the Wehrmacht High Command were not criminal organizations. The allegation of conspiracy has great appeal to prosecutors because it allows the net of indictment to be cast very widely if necessary. The Soviets used it for their show trials. After the Nuremberg trials were over, and as Vyshinskii's reputation rose so high that the Law Institute of the Soviet Academy of Sciences was named after him, Soviet jurists argued that the conspiracy theory applied at Nuremberg and Tokyo had originated with him. P. S. Romashkin, a noted author of various standard textbooks on Soviet law, wrote that the liability theory used at Nuremberg had originally been formulated by Vyshinskii in his concluding speech at the Bukharin trial in 1938.33 At that trial, Bukharin had complained (after making a long self-accusatory confession of his own 'dastardly crimes') that he was being accused of conspiring with people he had never met. Vyshinskii attacked this line of defence as outdated and un-Soviet.

Highlight (Geel) | Locatie 2319

Vyshinskii had in fact been appointed by Stalin to a secret commission to ensure that everything at the trial went off as planned, and especially to ensure that no discussion of the Nazi–Soviet Pact was allowed in the courtroom. In keeping with the secret protocol of that pact, the Soviet Union had invaded Poland from the east as Germany invaded from the west, and it had also attacked Finland, the Baltic States, and Bessarabia. The Communists were therefore guilty of exactly the same crimes against peace as the Nazis. They were also guilty of numerous atrocities, most famously the mass slaughter of Poles at Katyn and also of huge-scale deportations (which they continued to practise, as did the Western Allies, after the end of the war).

Highlight (Geel) | Locatie 2325

If they had suspicions about Vyshinskii's presence or role at Nuremberg, the Western judges and prosecutors did not act on them. On the contrary, they collaborated with him and the Soviets generally, for the excellent reason that they wanted to cover up their own war crimes too. Of course the Nazis had committed the most unimaginable atrocities, but the Allies had gone very far in the struggle to defeat them, both by deliberately bombing civilians in German cities and then by ethnically cleansing whole swathes of Central Europe of Germans in 1946, an operation decided at Potsdam which killed two million and uprooted fourteen million people. Consequently, for instance, the British were happy to accede to Vyshinskii's demand that parts of the

speech which Sir Hartley Shawcross intended to give on 3 December 1945 be censored, because they needed the Soviets to support them when their own crimes risked coming under scrutiny.38 Hermann Goering, Nuremberg's star defendant and (among other things) the head of the Luftwaffe, was not indicted for the terror bombing of British cities (the famous Blitz) because the British did not want their own bomb attacks on German cities to be adduced in a tu quoque defence. The whole of Germany lay in rubble by the time the Nuremberg trials had started, and hundreds of thousands of civilians had perished in the firestorms with which Allied bombers deliberately destroyed her cities: the Germans' air raids on Britain 'paled by comparison', according to Prosecutor Telford Taylor.39 Moreover, the Enola Gay had dropped a nuclear bomb on Hiroshima the day after the Nuremberg Charter was promulgated, killing 120,000 Japanese civilians in one go. By the same token, when the American admiral Chester Nimitz sent a note to the judges saying that the British and American navies had waged naval warfare in exactly the same way as the Germans, the relevant charges against the German admiral, Karl Dönitz, were simply dropped. The illegality of the British, American, and Soviet actions was used to cover up the illegality of the German ones. The case of Katyn was especially disgraceful. The Prosecution knew that the charge against the Nazis for having slaughtered many thousands of Poles, mainly army officers, in the forest in September 1940 was risky because the Goebbels had already publicly blamed the Soviets for the massacre in 1943. The NKVD had indeed actually committed the atrocity, as the Soviet government eventually admitted in 1990, but the Soviets insisted that the charge be included in the indictment against the Nazis, and they were duly convicted of it.

Highlight (Geel) | Locatie 2345

So Nuremberg was a clear case of victors' justice. Other states, especially ones which had been victims of Nazi aggression, asked to be able to appoint judges to the Nuremberg bench, but their requests were rejected, and no judges from neutral states were appointed either. To be sure, there ← 117 | 118 → were sound jurisdictional reasons for this – the Allies reasoned that they were the holders of sovereignty in Germany, since the Nazis' unconditional surrender meant that there was literally no German government apart from the Allies themselves – but there can be little doubt that this rejection was also intended to prevent any of the Allies' own misdeeds from coming under scrutiny.

Highlight (Geel) | Locatie 2610

In a speech given in December 1945, President Beneš emphasized that the trials were part and parcel of an overall process of engineering change in Czechoslovak society5 – what we would today call 'transitional justice'. The whole process was proudly called a 'national purge' or 'national cleansing' (národní očista), the word 'purge' obviously having clear Stalinist connotations (as did the equivalent term, épuration, in France).6 The Communist leader, Klement Gottwald, was even more candid about the political nature of this process: 'The struggle against traitors and collaborators is a tool which we have today in the fight for the leadership of the nation … It is a very sharp weapon with which we can cut away so many limbs of the bourgeoisie that only its trunk will remain.' Not to use this weapon, he said, would make it rust.7 An integral part of this 'cleansing' was ethnic cleansing: expropriations and expulsions of Germans and Hungarians were specifically conditional on whether they had committed crimes defined in the same decrees used to prosecute Monsignor Tiso and other wartime leaders (for instance, the Decree No. 33 of the Slovak National Council, dated 15 May 1945). There is widespread understanding today that the Beneš decrees and the associated decrees passed by the Slovak National Assembly were grossly unfair violations

of due process, even if they flowed from the decision taken by the Allies at Potsdam to cleanse Central Europe of Germans.

Highlight (Geel) | Locatie 2623

The trial of former members of the Protectorate government before the specially constituted National Court opened on 29 April 1946. It was ← 131 | 132 → to last until 31 July. The defendants included two Protectorate prime ministers, Jaroslav Krejčí and Richard Bienert; the former minister of railways, Jindřich Kamenický; the former minister of finance, Josef Kalfus; and the former agriculture minister, Adolf Hrubý. The Protectorate state president himself, Emil Hácha, a tragic figure whose guilt remains a matter of debate (although 'Hachaism' became a byword for collaboration), had been arrested on 13 May 1945 on the orders of the Communist minister of the interior, Václav Nosek, and in a preliminary interrogation by the National Court, he had pleaded mental instability. He died in a prison hospital on 27 June 1945, before his trial could begin.

Highlight (Geel) | Locatie 2688

Following the defeat of the Axis powers and the invasion of Slovakia by the Red Army, how to resurrect Czechoslovakia became the main political question facing the country's politicians. What to do with Tiso became a major issue within that context. Tiso's fate divided the political parties because the Catholic, anti-Communist and pro-Tiso vote was strong in Slovakia, whereas the Communists had at least 40 per cent of ← 134 | 135 → the vote in the Czech lands, twice as much as its nearest competitor, as against only 30 per cent in Slovakia, half that enjoyed by the rival nationalist (and partly pro-Tiso) Democratic Party.11 The Communists wanted to humiliate and destroy Slovak opponents of Czechoslovak unity by executing Tiso; more liberal politicians wanted to appease them and bring them on board by granting him clemency. One Communist Party leader said, 'With this trial we are going to liquidate the whole reactionary Slovak past and the betrayal of the Slovak bourgeoisie and Slovak reaction.' 12 The Communists also wanted to engineer a split between the two wings of the Democratic Party, one half of which was Catholic, conservative, nationalist, and pro-Tiso, the other half of which was more pro-Czechoslovak and close to Beneš in Prague.13

Highlight (Geel) | Locatie 2826

The decision was not based on arguments about the guilt or innocence of the defendant but instead about how to preserve the unity of Czechoslovakia. The minister of defence, Ludvík Svoboda (later president of Communist Czechoslovakia) made it clear that Tiso should be executed because of what he symbolized: populism, fascism, treason, and collaboration.32 The Democrats, by contrast, wanted to strengthen Slovak loyalty to Czechoslovakia by granting Tiso clemency.33 In the end, Tiso's fate was sealed by the fact that he did not have enough friends: the president disliked him and he had too many enemies in both the Slovak and Czechoslovak governments. Having failed to get the Protectorate ministers executed in 1946, the Communists – stronger by now, as their grip on power had tightened – were determined not to let their prey escape this time. Tiso's

Highlight (Geel) | Locatie 2896

The ‘people’s courts’ were ad hoc committees who usurped the powers of the country’s proper courts of law, and which were set up in areas held by the Communists and retrospectively legalized in the decree of 25 January 1945 (itself subsequently revised and published as Law No. 7 enacted by the Hungarian parliament on 11 September 1945). The terms of the January 1945 Decree made it clear that the law the people’s courts would administer was political, personal, and retroactive, as it was to be in Slovakia (where the relevant decree was voted later, in May). The Hungarian decree defined as a war criminal any senior politician who had led Hungary into war or failed to prevent it or the later armistice; anyone who had aided or belonged to the Arrow Cross government; anyone who had committed war crimes; and any person who ‘either in print or in speeches … engaged in activities conducive to the country’s entry into the war … or aiming to influence public opinion in a direction harmful to the country’.4 Acts were also punished if they were deemed ‘fascist-friendly’ or ‘anti-democratic’.5 Law No. 7 (16 September 1945) made it clear that war criminals would be prosecuted even if the acts alleged had not been crimes when they committed them. The principle of collective responsibility was applied, as at Nuremberg and as at Quisling’s trial, for instance when membership of the fascist Arrow Cross was retrospectively criminalized. Prior to the entry into force of this law, trials had been carried out on the basis of government decrees alone, i.e. in contravention of the principle that trials should be carried out by tribunals established by law.

Highlight (Geel) | Locatie 2943

Ákos Major’s mentor, Gábor Péter – Soviet agent, head of the secret police, and instigator of the show trials, whose name became a byword for the Communist terror in Hungary – said that the people’s judges enforced ‘revolutionary legality’ and should not get bogged down in ‘the marshland of traditional legal practices’.10 (Péter was himself purged in 1953 and sentenced to life imprisonment.) This same dismissive attitude towards procedure was expressed by Nuremberg which declared that it would not be ‘bound by technical rules of evidence’ (Article 6 of the IMT charter) or, in our own day, by the International Criminal Tribunal for the former Yugoslavia (ICTY), which has boasted that its theory of criminal liability ‘disregards legal formalities’11 and that it ‘does not need to shackle itself to restrictive rules which have developed out of the ancient trial-by-jury system’.12

Highlight (Geel) | Locatie 3052

Judge Peter Jankó, for instance, sent Szálasi to his death in 1946 and went on to sentence the former Communist minister, László Rajk, to death in 1949 in one of the most notorious show trials of Rakósi’s Stalinist regime: Rajk was accused of Titoist, Trotskyite, fascist, and capitalist conspiracy, and his trial lasted from 16 to 24 September 1949.22 This was part of the anti-Yugoslav campaign initiated across Eastern Europe after Tito’s defection from the Soviet camp in 1948. (Before the break with Stalin, Tito himself had also used the judicial system to destroy his opponents, most notoriously in 1946, when Yugoslavia put the royalist leader, General Draža Mihailović, on trial, together with several of the ministers of the government in exile, including the prime minister, Slobodan Jovanović, who was tried in absentia.23 Mihailović was executed. Indeed, the wartime collaborationist leader of Serbia, Milan Nedić, was also due to be put on trial by Tito’s Communists but he fell out of his prison window in February 1946 before the proceedings had begun.)

Highlight (Geel) | Locatie 3171

As in Hungary and Bulgaria, it was as a result of Soviet pressure that the wartime head of state of Finland and his two prime ministers were prosecuted for war crimes. Article 13 of the armistice treaty imposed on Finland by the Soviet Union and signed in Moscow on 19 September 1944 required Finland to prosecute war criminals. But the judicial process was also used to eliminate other political enemies too. The head of the Allied Control Commission for Finland was the arch-Stalinist Andrei Alexandrovich Zhdanov, who as Party boss in Leningrad had played a key role in the great Soviet purges. In October 1944 Zhdanov handed the government in Helsinki a list of people whom Moscow wanted to see in the dock. But the strongman of Finland, Marshal Mannerheim, by then state president, used his good offices in Moscow to see that many of the senior officers' names were removed from the list. The Soviets continued to press their case and, on 5 March 1945, an article appeared in Pravda calling the Finnish wartime leaders war criminals and saying they were guilty of aggression against the Soviet Union. Zhdanov ratcheted up the pressure, insisting that a special law be passed to enable the trials to take place: otherwise, he said, an international tribunal would be used to try them instead.

Highlight (Geel) | Locatie 3183

Eight leading politicians were indicted: the wartime president from 1940 to 1944, Risto Ryti; Johan Wilhelm Rangell and Edwin Linkomies, his two prime ministers; and five other ministers including Väinö Tanner, the Social Democratic leader (who had been prime minister in 1926–7 but who was minister of trade, then finance, during the war) and Toivo Kivimäki, another former prime minister who had been Finnish ambassador to Moscow, and whose head the Soviets expressly demanded.12 The Finnish Communists especially wanted to eliminate Tanner in order better to consolidate their domination of the Left.

Highlight (Geel) | Locatie 3189

As was to be the case in Bulgaria and Hungary, the accusations against the wartime leaders were political and loosely phrased to include the whole gamut of Finland's war policy: that it had allowed German troops to enter and transit through Finland (which Sweden had too, although no Swede was ever prosecuted); that it had declared war on the Soviet Union; that it had rejected Soviet peace offers since 1941; that it had broken off diplomatic relations with the United Kingdom; and that it had actively cooperated with the Nazis by signing a pact with Ribbentrop in the summer of 1944. The terms of the indictment specifically mentioned war against the Soviet Union and other Allies, betraying thereby the special (i.e. not universal) quality of the so-called law under which the defendants were being prosecuted; it also contained the same allegations of behaviour contrary to the interests of the country that had characterized the indictment against Antonescu ('Whoever, in a decisive manner, has helped cause Finland to go to war in 1941 against the Union of the Soviet Socialist Republics, or the United Kingdom of Great Britain and Northern Ireland, or who has, during the war, prevented the achievement of peace, shall be punished for misuse of his office to the detriment of the country…').

Highlight (Geel) | Locatie 3198

Many Finns regarded these trials as an abomination, since of all countries, Finland could not be accused of attacking the Soviet Union: the Soviet Union had attacked Finland on 30 November 1939, a clearly illegal act for which it was expelled from the League of Nations. The Finns referred to the war of 1941–4 as 'the

continuation war', a mere continuation of the Winter War of 1939–40. Like Romania, Finland had also changed sides in 1944, and there was bitter fighting against the German troops in Lapland. Finns also resented the retroactive nature of the legislation, especially of course the introduction of the notion of 'crimes against peace'. There was widespread feeling that the prosecutions were contrary to the laws and constitution of Finland, as they undoubtedly were.

Highlight (Geel) | Locatie 3247

The trials were relatively fair. The prime minister and leader of the government in exile, George Papandreou, was forced to testify in the trial, since the defendants claimed that he and other leading Greek politicians had encouraged the collaborators to take up their posts. The argument advanced by the defendants – that they had been defending their country against Communism in their de facto alliance with the Nazis, which in any case they had not chosen but which had been forced on them by invasion and defeat – was exactly the same as that adopted by Quisling and Antonescu. Yet it carried considerable weight in a country which was then actually mired in a civil war against Communists. Ioannis Rallis even revealed that he had armed Napoleon Zervas, the anti-Communist Greek general and heroic resistance leader whose troops were even then continuing to fight the Communists on the new government's behalf. The courts ← 160 | 161 → in fact treated Communist fighters more harshly than the collaborationist defendants. The Communist press dismissed the proceedings as a farce.16 As elsewhere in Europe, the Communists wanted blood, but in Greece, at least, they did not get it.

Highlight (Geel) | Locatie 3256

The trial record was destroyed after six months, no doubt a reflection of the government's discomfort at these trials. This was in stark contrast to the huge publicity given to the 'show trials' staged against collaborators in neighbouring or nearby countries controlled by the Communists, and to the associated ideology of 'anti-fascism' which bolstered them in power for the next forty years.17 Even today, there is not a single transcript, document, article, or book about the trial of these three prime ministers to be found anywhere in any of the court libraries or the libraries of the Law Faculty or the Philosophy Faculty at the University of Athens.18 All records of that trial have simply been dropped down the memory hole.

Highlight (Geel) | Locatie 3266

Tokyo is the forgotten Nuremberg. Whereas today everyone remembers Nuremberg, the sister trial in Tokyo has largely vanished from historical memory and is seldom cited as a judicial precedent. This is in spite of the fact that the president of the International Military Tribunal (IMT) for the Far East proclaimed during the trial itself that there had been no more important trial in history.1 (Many other trials have been called 'the trial of the century' before being similarly forgotten.) The judgement of the tribunal was not published in full until 1977,2 and the complete proceedings of the trial not until 1998.3 This amnesia no doubt reflects the fact that, whereas American fury in 1945 was perhaps even greater at Japanese war crimes than at German ones, a few decades later the principal historical memory of World War II was that of the Holocaust perpetrated in Europe.

Highlight (Geel) | Locatie 3290

However, the head of state himself, Emperor Hirohito, was not in the dock. General MacArthur had decided that if the emperor were indicted, then direct military rule would have to be introduced in Japan, and that this would

require ‘one million reinforcements’.5 He was an admirer of the Japanese people and he understood the political repercussions of putting their emperor on trial. But it would have been very easy to convict the emperor on the same basis of command responsibility as that used to convict the prime ministers and other senior figures, especially since he was no mere figurehead. The judges connived in his exoneration, including by actively intervening during the trial to prevent any witnesses or defendants from implicating him or calling into question the policy decision taken by the American occupation authorities.6 Like Admiral Horthy, the head of state in Hungary, Emperor Hirohito was spared from prosecution by a purely political decision.

Highlight (Geel) | Locatie 3318

Like Nuremberg, Tokyo was a city in ruins as a result of Allied bombs. The United States air force had napalmed Tokyo on 9–10 March, killing 80,000 people in the firestorms thus provoked. Indeed, it was partly for this reason that the atomic bombs were dropped on Hiroshima and Nagasaki, killing well over 100,000 people outright, the vast majority civilians, and another 100,000 who died soon afterwards from radiation: there was nothing left in the capital to bomb.8 It was doubtless precisely because of the terrible violence which the Allies had inflicted on Japan that they concentrated their prosecution on aggression rather than war crimes, of which they had committed plenty themselves. The Americans held the upper hand and they wanted to force the Japanese to admit that they had started the conflict.

Highlight (Geel) | Locatie 3376

At Tokyo, the Prosecution alleged that the grand conspiracy of imperialism and aggression which united the defendants dated from as far back as 1927. A document known as the ‘Tanaka memorial’ named after the then prime minister, Giichi Tanaka, which provided the basis for Frank Capra’s propaganda film Why We Fight, and which the Prosecution took seriously, was supposed to show how the defendants shared a common plan from 1927 to 1945; it has subsequently turned out to be a fake on a par with the so-called ‘Operation Horseshoe’ document advanced by NATO and the Prosecution at the ICTY in support of its claims about an alleged conspiracy hatched by Slobodan Milošević and others to drive out the ethnic Albanian population of Kosovo. But the fact that the Prosecution argued (and the judges concurred in their verdict) that the ‘common plan’ had been hatched in 1927 meant that nearly two decades of Japanese domestic and foreign policy were equated, from the legal point of view, with a private criminal conspiracy to rob a bank or commit a murder. Yet such a version of political events can be advanced only by leaving the acts of other states out of the picture, and by taking the defendants’ political decisions out of their true world political context.

Highlight (Geel) | Locatie 3559

As with many such trials, however, the wheels of fortune eventually turned in favour the Yassıada defendants, albeit posthumously. Although the Democratic Party was not overtly Islamist, it was in opposition to the original Kemalist Republican People’s Party: as the Islamist AKP (Justice and Development) Party consolidated its power from the early 2000s onwards, so the convicted defendants of the Yassıada trials have been rehabilitated and honoured. The airport at Izmir is now named after Adnan Menderes, described by some as ‘Turkey’s first democratically elected leader’, while one of the largest universities in the country is now named after Celal Bayar. Meanwhile, fearing a re-run of the 1960 coup, in 2010 the

then Turkish Prime Minister (later President) Recep Tayyip Erdogan launched a massive pre-emptive judicial strike against the Turkish army, accusing it of preparing a coup. Some 150 senior officers of the Turkish armed forces – admirals, general and colonels – were arrested and tried to conspiracy. There can be fewer clearer illustrations of how law follows power. *

Highlight (Geel) | Locatie 3601

The charge of treason was easier to sustain than the charge of seizing power illegally because the socialists claimed that the colonels had acted with the support of the CIA and the Americans against the perceived Communist threat. When Andreas Papandreou, the future prime minister (and the son of the postwar prime minister), testified, he declared that the Greek intelligence service had been financed and helped by the CIA. 'I can assure you,' he said, 'that these men [the defendants] worked in direct cooperation and correspondence with the Americans.' Papandreou Junior was the Americans' bête noire; although he had studied in the United States and served with the American navy, he turned against them in the 1950s and started to attack the American role in Greece in inflammatory speeches. It was his and his father's Centre Union which had been tipped to win the elections halted by the 1967 coup. It has been persuasively argued that the coup was enacted according to plans prepared by NATO's secret cell in Greece and that Papadopoulos was the chief liaison officer between Greek intelligence and the CIA. The coup, in short, was 'a Gladio coup', Gladio being shorthand for the secret armies organized across Europe by NATO to prepare insurgencies against a hypothetical Communist invasion.4 However, the court president forbade almost all discussion of the question of CIA or American involvement during the trial and therefore the question of treason, in that sense, was largely neglected. Papadopoulos, Pattakos, and Makarezos were sentenced to death, commuted to life imprisonment; Zoitakis was given life.

Highlight (Geel) | Locatie 3750

Alfonsín left office later that year to be succeeded by a Peronist, Carlos Menem. Thus began the long political process by which successive presidents ruled first one way and then the other on the fate of the junta leaders. Menem pardoned Videla, Viola, and Galtieri in 1990, but this only threw the country into a new fever of argument about who should be prosecuted for what. The Full Stop Law and the law on Due Obedience were repealed in March 1988 but not with retroactive effect, i.e. they continued to prevent the prosecution of people for acts committed during military rule. This was a red rag to human rights groups like Amnesty International, the United Nations Human Rights Committee, and the Inter-American Commission on Human Rights, as well as to the more activist members of the Argentine judiciary, all of whom protested vehemently against these amnesty laws even though they had been democratically passed in a spirit of peace and welcomed at the time by the people. They agitated for further prosecutions, and their long campaign was successful. Menem lost power in 1999; the laws were eventually proclaimed unconstitutional by various courts, repealed again by the Congress in 2003, and proclaimed null and void by the Supreme Court in 2005. As the political wind blew first one way and then the next, the former military leaders were either free men or defendants facing serious criminal charges: it was on the basis of a judge's ruling that the two duly voted laws were unconstitutional that General Galtieri was again arrested in 2002 and prosecuted on human rights charges (although he died under house arrest in 2003 before his trial could start) and that warrants were also issued for the arrest of Alfonsín's immediate predecessor, General Reynaldo Bignone, in March 2007. Meanwhile Videla's presidential pardon was struck down in the courts in 2006 and his convictions upheld in 2007. There are few starker illustrations of how the law follows the imperatives of politics than the fate of the military leaders in Argentina.

Highlight (Geel) | Locatie 3835

In fact, Ceauşescu had given specific orders that there should be no bloodshed.6 Reports of scores of Soviet ‘observers’ or ‘experts’ at the scene in Timişoara7 suggest for some commentators the hidden hand of Moscow behind the events. The new reformist political agenda being set in Moscow required that the old guard in Eastern Europe be dismissed. The speculation is that someone had an interest in escalating the situation, against Ceauşescu’s orders; perhaps it was deemed necessary to have real deaths in order to fulfil the same purpose as that fulfilled by the fictitious death of Martin Smid in Prague the previous month.

Highlight (Geel) | Locatie 3842

Soon the propaganda started about mass graves, and it was here that one of the most macabre acts of the whole disinformation campaign was performed. A number of bodies were removed from the local morgue and lined up to be displayed and photographed, as if they had been taken fresh from the streets. It was actually clear that these people had been dead for some time, and indeed that autopsies had been performed on them, but no one noticed this important detail when it mattered.8 Ceauşescu had left the country at the height of these troubles for a state visit to Iran and he returned on 20 December. In an attempt to recover the situation, he went on television to denounce the insurgents as agents of foreign powers. ‘It is quite clear,’ he said, ‘that this campaign against Romania is part of a general plan against the independence and sovereignty of peoples.’ He referred to 1968, when he and Romania had stood up against the invasion of Czechoslovakia ‘and for the defence of the independence of Romania’, a clear indication that he thought that Moscow was behind the events in Timişoara.9

Highlight (Geel) | Locatie 3860

In an attempt to retrieve the situation, Ceauşescu ordered that a rally be held in University Square in Bucharest on 21 December. This square had been the scene, fifty years previously, of the ‘spontaneous demonstrations’ organized by the Communists calling for the death of Marshal Antonescu and witnessed by Princess Ileana in 1946. Ceauşescu gave a now famous speech allegedly interrupted by heckling. According to the version of events given at the time, and widely retained by history, the crowd started to shout ‘Timişoara’, the dictator stopped in mid-sentence, and the television transmission was cut. His expression of shock has entered history as the dramatic moment when the tyrant stared at a rebellious crowd and realized that the game was up. The reality is quite different. In fact, the interruption did not consist of heckling but instead of screaming. This is perfectly audible on the video and audio tapes of the event. Evidently something had happened in the square which frightened people badly, and there was mass hysteria. Some have claimed that the loudspeakers broadcast sounds of gunfire, others that there really was gunfire. It seems that people in the crowd thought ‘Timişoara’ was about to happen to them and they fled the square in panic. Ceauşescu’s reaction, moreover, to this was not one of shock or fear but instead one of confusion and concern. He tried to calm the people by raising his hand. Most importantly, what happened at the moment when his face appeared confused was that both the TV transmission and his microphone were cut (or failed). Ceauşescu spent several minutes shouting ‘Allo! Allo!’ (i.e. ‘Can you hear me?’ or ‘You there!’) and ‘Wait, comrades, wait!’, as if people were indeed leaving the square. After a few minutes, the sound was restored and Ceauşescu resumed his speech, much as if nothing had happened, announcing a rise in the basic salary and other paltry financial incentives for continued social

obedience. It is therefore quite wrong to say that the dictator realized that his time had come: on the contrary, he behaved as if nothing was wrong. But the image of the apparently frightened tyrant had been broadcast, and in the country as a whole his reputation was fatally damaged. If the interruption in transmission was deliberate, therefore, it cannot have been Ceauşescu's people who were responsible. Either it was a simple accident or the revolutionaries created ← 191 | 192 → the fatal image, and probably the original disturbance in the square itself. The revolution was an inside job. In any case, the Ceauşescus then remained in the Central Committee building for another day. On 22 December, Ceauşescu emerged again on the balcony overlooking University Square with a megaphone. After this second appearance on the balcony, he allegedly fled in a helicopter which took off from the roof of the Central Committee building, and later in a car, before being caught, arrested, and put on trial. But even this is not certain. If Ceauşescu had tried to flee, why did he put up such a robust defence at his trial, which occurred three days later, when he insisted that he was still president of Romania? Ceauşescu's notorious 'flight to Varennes' may itself have been disinformation. After all, on the morning of 6 October 2000, after the post-election disturbances which overthrew President Slobodan Milošević, a similar claim was made by his now victorious enemies that he had fled to the airport and taken off for Moscow; in fact, the deposed Yugoslav president was sitting quietly at his home in Dedinje. Certainly, during the Ceauşescu trial, the former president and his wife emphatically denied that they had fled, insisting instead that they had been betrayed.

Highlight (Geel) | Locatie 3889

At any rate, in the three days between Ceauşescu's last speech and the broadcast of his trial on 25 December, there was further fighting all over the country, although it was not clear who was shooting at whom. During these days, a maximum sense of hysteria was encouraged by the repeated claim made by the new authorities that 'terrorists' were at large, fighting for Ceauşescu, and that they were being helped by 'Arab mercenaries' – an interesting anticipation of the same rhetoric used by the proponents of the war on terror after 2001. In fact, the real identity of these 'terrorists' has never been conclusively established, while the claim that there were foreign mercenaries is almost certainly a myth. The minister of defence, meanwhile, was found dead, apparently after having committed suicide although many suspect that he was murdered.

Highlight (Geel) | Locatie 3897

In November 1989 six former senior Communists had issued a statement attacking Ceauşescu and calling themselves the National Salvation Front. One of their number, the veteran Stalinist, Silviu Brucan, had just returned from visits to Moscow and Washington. National Salvation Front was to be the name taken by the new power headed by the former Stalinist-era general secretary of the Communist Youth, Ion Iliescu, who soon succeeded Ceauşescu as president of Romania. ← 192

Highlight (Geel) | Locatie 3936

Ceauşescu insisted that he was still president of Romania (as Saddam Hussein was to insist he was president of Iraq at his trial in 2006), and he denied that he had starved his own people. As with the Quisling trial, Ceauşescu and his wife were accused of having lived in luxury – 'They were even worse

than the king, the former king of Romania' – and of having bank accounts in Switzerland. This charge, never proved, was also to be made against Slobodan Milošević, also never proved.

Highlight (Geel) | Locatie 3959

Ceauşescu insisted, 'Not a single person was shot in Palace Square [i.e. University Square, where he had made his famous speech] … no one was shot.' In an anticipation of the trial of Slobodan Milošević, the 'people' s

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Highlight (Geel) | Locatie 3961

tribunal' trying Ceauşescu tried to impose a Defence team on the couple, which the former president energetically refused to accept. The 'Defence' then spoke in the manner adopted by the Defence during the great Moscow show trials. Just as, in 1937, Ilya Braude, counsel for the Defence for Knyazev, had dwelt graphically and at length on his client' s 'despicable actions' , and just as Sergei Kaznacheyev, another Defence counsel, told the judges that, 'the picture of treachery and betrayal which has unfolded before you in the course of these few days is monstrous,' so the three 'Defence' lawyers in the Ceauşescu trial spent half of their speeches expressing disgust at the former president' s crimes and the other half extolling the legality of the grotesque charade in which they were participating.11 Addressing his own client, one of these counsels said,

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Highlight (Geel) | Locatie 3978

The judges soon concluded that the couple were guilty on all counts and that they merited the death sentence. The initial intention was to separate the couple, but Elena Ceauşescu insisted that they wanted to die together. Their hands were tied in the courtroom and Elena Ceauşescu protested that she was being hurt. 'Why are you doing this when I have been a mother to you all?' In an almost exact repetition of the fate meted out to Marshal Antonescu forty-three years previously, the pair was taken out into the courtyard and shot. Once again, the myth of revolution had triumphed.

Highlight (Geel) | Locatie 4098

Honecker therefore adopted the same strategy as Marshal Pétain and others by refusing the accept the validity of the procedure and by denouncing the trial as politically motivated. But also like so many other former heads of state in his position, including Pétain, he wanted to make a final statement for history. Given that Honecker's lifelong political career had started as it was now ending, in the Moabit prison in Berlin, he spoke with the vigour and vehemence of a man writing his own epitaph. For as Samuel Johnson told Boswell, 'Depend upon it, sir, when a man knows that he is to be hanged in a fortnight, it concentrates his mind wonderfully.'

Highlight (Geel) | Locatie 4144

Honecker then quoted various West German politicians who agreed that the wall had stabilized and then reduced the tension between the two German states and the two world blocs, and that it had ultimately laid the basis for peaceful coexistence between them. He quoted the conservative Bavarian prime minister, Franz-Josef Strauss,

who wrote this in his memoirs and also admitted that NATO had plans to drop an atomic bomb on East Germany. 'In my view,' Honecker said, 'there would have been no Basic Treaty between the two Germanies, no Helsinki process and no unification of Germany if the wall had not been built then, or if it had been torn down before the end of the Cold War.' For this reason, he said, neither he nor his colleagues bore any juridical, moral, or political guilt for having built it.

Highlight (Geel) | Locatie 4249

In 1990 the RPF, most of whose leaders were officers in the Ugandan army, invaded Rwanda with Uganda's backing. Kagame himself was chief of Ugandan military intelligence at that time, having been trained in the United States at Fort Leavenworth in Kansas. Some have speculated that the United States encouraged the invasion, President Habyarimana having refused to toe a pro-American line in foreign policy. The invasion was also partly directed at Congo (Zaire) to the west of Rwanda, and at seizing control of its vast natural resources, especially diamonds and coltan (a metallic ore used in mobile phones and DVD players). Following the events of 1994, indeed, the new American-backed Tutsi Rwandan army did take part in the invasion of Congo, together with Ugandan forces, an invasion which represented the beginning of the First Congo War of 1996–7 and ← 210 | 211 → which led directly to the overthrow President Mobutu of Zaire and to the installation of Laurent Kabila in his place.

Highlight (Geel) | Locatie 4257

After the 1990 RPF-Ugandan invasion of Rwanda (to which the world paid little attention, since it was more interested in the contemporaneous Iraqi invasion of Kuwait), there followed four years of violence and insurrection. The RPF forces used classic Maoist guerrilla tactics, roaming in and out of Uganda and driving huge numbers of Hutus out of the territory they seized. The resulting conflict eventually caused President Habyarimana to seek peace by signing the internationally backed Arusha Accords in August 1993. These accords provided for the RPF rebels to be included in the government, together with other political parties. Shortly after they were signed, however, the (also Hutu) president of neighbouring Burundi, Melchior Ndadaye, was assassinated in October 1993 by Tutsis in the army of Burundi, after only three months in office, and this caused hundreds of thousands of Hutus from Burundi to flee into Rwanda.

Highlight (Geel) | Locatie 4269

Whatever the truth, the killing sparked off was on a huge scale. It is not known how many people died and it is not known what percentage of Hutus and Tutsis were killed. One figure which has gained currency is 800,000 killed but even the human rights activists who advance this figure say that they do not know the real tally. Certainly such a figure is enormous; for comparison the highest rate of deportation to Auschwitz which the Nazis achieved was 400,000 from Hungary in two months in 1944. Others claim that 200,000 or so were killed between 6 April 1994 and mid-July 1994 when the RPF seized the Rwandan capital, Kigali. Whatever the truth, these are huge figures, especially considering that the method of killing was primitive rather than industrial. But the resulting claim of genocide, however plausible, has been politically exploited by the RPF Tutsi government to justify its return to the situation which prevailed before the referendum against the monarchy in 1961: Rwanda is now once ← 211 | 212 → again governed exclusively by the Tutsi minority, although this time with heavy backing from the United States rather than Belgium.

Highlight (Geel) | Locatie 4311

Because the ICTR prosecutes only Hutus, it is a clear example of victors' justice. Just as the Yugoslavia war crimes tribunal refused to open an investigation into whether NATO had committed war crimes in Yugoslavia in 1999 for fear that information from NATO sources to the prosecutor's office would dry up immediately, so Kigali made it absolutely clear to the ICTR prosecutors that the supply of witnesses and information from Rwanda would dry up immediately if there was so much as a hint of any impending prosecutions against members of the RPF.

Highlight (Geel) | Locatie 4352

The decision smacked of desperation. Perhaps it was an indication that the Prosecution case was precisely having difficulty proving its original claims. The Prosecution initially alleged that President Habyarimana's regime had had genocidal plans as early as 1990, and that it was merely waiting for the pretext to implement them. Somewhat inconsistently, it also argued, at least in the early trials, that Habyarimana's murderers killed him in order to get him out of the way so as to enable the genocide to happen. However, both these (contradictory) theories have been progressively abandoned in Prosecution arguments, as it becomes more difficult to pin the blame for the shooting down of the plane on Hutus. In 1997, indeed, the ICTR's investigations into the event were abruptly terminated. The UN investigator, the Australian Michael Hourigan, has alleged that this happened when it became clear that the finger pointed not at the Hutus but at Paul Kagame, the former Tutsi rebel leader and now president of Rwanda.10 This claim has also been made by a French investigating magistrate, Jean-Louis Brugière, acting for the families of the deceased French citizens. In November 2006 Brugière issued an international arrest warrant for nine senior Rwandan officials: the sixty-four-page warrant is a highly detailed and damning indictment of Kagame's role in precipitating the crisis in Rwanda. 11 It is only because French law prohibits arrest warrants against serving heads of state that Kagame's name itself is not on the list of indictees. But Brugière has accused Kagame of obstructing all investigations into the shooting, and also alleges that the CIA is the author of the original 'disinformation' that the plane was shot down by Hutus, which he describes as 'political' and 'intended to discredit France'. Brugière's arrest warrant was signed on 17 November 2006 and Rwanda broke off diplomatic relations with France within a week.12 The reason why the responsibility

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Highlight (Geel) | Locatie 4669

The reason for the determination not to cut a deal with the Bosnian Serbs lay in political ideology. Bosnia had been elevated by New Left Communists in Yugoslavia and their Western allies to an icon of multinationalism, at the very moment when the Western European powers were forging a new multinational political order in the European Community by turning it into a federal quasi-state, the European Union. Agreement on the Maastricht treaty was reached at the same European summit as the decision to recognize the secessionist states of Yugoslavia, a decision which dismembered that state in the hope of fashioning a new order out of the resulting chaos. These Yugo-nostalgics had tossed Yugoslavia itself aside as soon as the Serbs had started to grumble about the old 1974 Titoite constitution which divided and weakened them. For the EU leaders, and for the Americans under Clinton, Bosnia stood for precisely that postnational and postmodern future which they wanted for their own states, and ← 228 | 229 → which many of them had seen in Communist Yugoslavia. Opposed to the project of creating an independent Bosnia, and not wanting to belong to it, the Serbs represented an apparently reactionary and atavistic national force, an existential threat to the new European ideology.

Highlight (Geel) | Locatie 4679

The incoherent Western policy of insisting that Bosnia remain united as a state – incoherent because multinational Yugoslavia had been allowed to collapse, precisely in the name of the very right to self-determination that was then denied to the Bosnian Serbs – ensured that the fighting in Bosnia lasted for three years (1992–5). It ensured, in particular, that the 'ethnic cleansing' which is the inevitable consequence of all wars of partition continued on an large scale. If Bosnia had been allowed to collapse as Yugoslavia had done, the fighting might have been over in three months. Bosnia had never in history existed as a state, and its claim to existence was therefore much weaker than Yugoslavia's. Its Serb population (42 per cent) never wanted to secede from Yugoslavia in the first place, and the manner in which the various votes on independence were taken was brazenly illegal and corrupt, effectively a coup d'état. (The vote on the independence referendum was taken in the parliament at 3 o'clock in the morning, after the Bosnian Serb delegates had been told to go home, while the Islamist president, Alija Izetbegović, remained in power even though his term in office had expired. 34) Just as millions had died for Bolshevism, therefore, many tens of thousands of lives were sacrificed to the West' s determination to see the postmodern and postnational constructivist project of Bosnian state-building succeed.35 To this day, indeed, the West doggedly persists in its pretence that Bosnia-Herzegovina does and can exist as a state, even though in reality it exists on paper only because the presence of an international governor, and the division of the state into totally autonomous entities, mean that its three constituent peoples are not, in fact, governed by its government.

Highlight (Geel) | Locatie 4924

Inspired by the Manichaean, millenarian,1 and neo-Jacobin ideology of the neo-conservatives,2 some of whom demanded that the US pursue 'an end to evil' on the basis that 'there is no middle way for Americans – it is victory or Holocaust,'3 and by the neo-Trotskyite dogma of 'global democratic revolution' which President George W. Bush often said was the centrepiece of his foreign policy4 (for instance, 'The establishment of a free Iraq at the heart of the Middle East will be a crushing defeat to the forces of tyranny and terror, and a watershed event in the global democratic revolution'5), the invasion of Iraq was attacked by opponents as illegal because, like the Kosovo war, it was never authorized by the United Nations Security Council. Supporters of the war, London and Washington in first place, replied that the attack was covered by existing UN Security Council resolutions. The question of the legality of the war cannot be dissociated from the question of the legality of the subsequent trial and execution of the Iraqi president, Saddam Hussein.

Highlight (Geel) | Locatie 5013

The goal – apart from controlling Iraq's vast oil wealth – was to engineer the political transformation of Iraq and the whole Middle East. Many neo-conservative commentators admitted that a 'democratized' Iraq was to be the centrepiece of this new geopolitical arrangement.13 Former treasury secretary Paul O'Neill has written in his memoirs how an invasion of Iraq was part of the strategy of the Bush team immediately it took office, and that it was discussed at the very first meeting of the new National Security Council on 30 January 2001.14 At the second NSC meeting, on 1 February 2001, Donald Rumsfeld, the then secretary of defense, explained that getting rid of Saddam should be a key part of US foreign policy: 'Imagine what the region would look like without Saddam and with a regime that's allied with US interests,' Rumsfeld said. 'It would change everything in the region and beyond it. It would demonstrate what US policy is all about.'15

Highlight (Geel) | Locatie 5481

In other words, the Court found that Taylor did not order the crimes committed in Sierra Leone; he did not instigate them; he did not participate in a joint criminal enterprise to commit them; and he was not responsible for them as a commander. The only form of liability for which he was convicted was aiding and abetting – he was an accessory to crime.

Highlight (Geel) | Locatie 5528

The Perišić Appeal Chamber ruling of 2013 incidentally blew out of the water the totality of the arguments which had been deployed against Serbia-Yugoslavia and its leadership, especially the Serb then Yugoslav president, Slobodan Milošević, who died in 2006. No fighting took place ← 265 | 266 → on Serbian territory during the Bosnian civil war, yet the Serbs in Serbia were regularly accused of criminal responsibility for it. The Perišić ruling followed a similar ruling by the International Court of Justice in February 2007, which had also found that Serbia was not criminally responsible for war crimes committed in Bosnia.27 By the same token, therefore, help provided by Liberia to rebels in Sierra Leone should have been subject to the same legal assessment, namely whether or not this assistance was specifically directed towards the commission of crimes. But the Sierra Leone court did not apply the same standards to Charles Taylor as the ICTY had to Perišić. (It may be relevant that Perišić was arrested in Belgrade in 2002 for allegedly trying to pass secret documents indicting Milošević to a CIA handler.28) The fact that this part of the ruling generated several dissenting and separate opinions from the judges shows how controversial the jurisprudence is on the question of the criminal liability of accessories, as it is on other forms of indirect liability such as joint criminal enterprise and command responsibility. In the view of this author, the standard of recklessness which is often used to fill the gap between accusation and actual proof of criminal intent does not correspond to the wording of most war crimes statutes which emphasise the wilful nature of the allegedly criminal destruction. Recklessness or negligence may well be crimes but they are surely lesser ones than those which the laws of war, with their emphasis on intent, do not describe.