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# THE CHANGING VIEW OF THE “BYSTANDER” IN HOLOCAUST SCHOLARSHIP: HISTORICAL, ETHICAL, AND POLITICAL IMPLICATIONS

Victoria J. Barnett\*

## *Abstract*

*The role of “bystanders” has been a central theme in discussions about the ethical legacy of the Holocaust. In early Holocaust historiography, “bystander” was often used as a generalized catchall term designating passivity toward Nazi crimes. “Bystander behavior” became synonymous with passivity to the plight of others, including the failure to speak out against injustice and/or assist its victims. More recent scholarship has documented the extent to which local populations and institutions were actively complicit in Nazi crimes, participating in and benefitting from the persecution of Jewish citizens, not only in Germany but across Europe. This newer research has sparked a debate about the very use of the term “bystander” and the concomitant assumptions about passivity. The historiographical shift has also altered ethical interpretations about the role of “bystanders” in a way that has broader implications for contemporary discussions about analogous situations. Traditionally, ethical behavior has been understood and addressed as an individual phenomenon, yet the Holocaust and other cases of genocide represent collective forms of violence and victimization, raising complex questions about the links between individual responsibility and collective behavior. The political and ethical implications of the role of “bystanders” remain as complex as they were in the immediate wake of the Holocaust.*

## I. INTRODUCTION

The bystander question has emerged as a central and provocative theme in Holocaust scholarship, one that has found broader resonance in contemporary attempts to apply the lessons of the Holocaust to other situations. After May 1945, there was international shock and revulsion at the brutal, systematic murders of millions of innocent human beings and the equally troubling phenomenon of ordinary German citizens who failed to respond as their Jewish neighbors were ostracized, persecuted, and ultimately deported to their deaths. This was joined by a broader condemnation of the international community’s failure to address

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effectively the Nazi threat during the 1930s (including the refusal of many countries to accept more Jewish refugees) and, after 1939, to stop the full-scale genocide of the European Jews.

From the very beginning, there was an inherent tension in legal, political, and academic approaches to the bystander problem. This tension derived from the difficulty of understanding (and in legal cases, addressing) a collective phenomenon through the lens of ethics and norms that apply to individual behavior. The Holocaust (and other instances of genocide and state-sponsored persecution of minorities) was a collectively perpetrated crime against a collective group of victims, yet norms governing individual behavior and responsibility became the dominant framework for addressing the related ethical issues. There were logical and pragmatic reasons for this. Human beings act as individuals, even when they act on behalf of a greater entity, and the ethical language for understanding such behavior is framed in terms of individual motive, action, and responsibility. Judicially, even “crimes against humanity” are redressed through the prosecution of the responsible individuals. Nations, international bodies, and institutions represent and are led by individuals. Despite the emphasis on the collective failure of international and institutional bodies during the Holocaust, discussions about “bystanders” inevitably turned to the role and responsibilities of the individuals involved, whether at a local, international, or corporate level.

The following sections will offer (1) an overview of the literature; (2) an analysis of one case study, the denazification programs in postwar Germany, illustrating the complexity of the issues; and (3) an analysis of the limits of analogy when the case of bystanders in the Holocaust is compared to other situations.

## II. OVERVIEW OF THE LITERATURE

A brief review of how the bystander phenomenon has been examined in Holocaust scholarship illustrates how the historiography both illuminated and complicated these issues. As historians David Cesarani and Paul Levine have observed, in the early scholarship on the Holocaust the term “bystanders” was used primarily as a collective designation for the international community and its citizens for their failure to stop the genocide.<sup>1</sup> Despite historians’ consensus that such a failure had occurred, the nature of that failure and the reasons for it were contested.<sup>2</sup> This was partly due to the very different kinds of “bystanders” under examination, ranging from leaders like President Franklin Roosevelt and Pope Pius XII, to international banks and corporations, to diplomatic and humanitarian circles.<sup>3</sup>

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<sup>1</sup> DAVID CESARANI & PAUL A. LEVINE, ‘BYSTANDERS’ TO THE HOLOCAUST: A RE-EVALUATION 8–9 (David Cesarani & Paul A. Levine eds., 2002).

<sup>2</sup> Tony Kushner, ‘Pissing in the Wind’? *The Search for Nuance in the Study of Holocaust ‘Bystanders,’* in CESARANI & LEVINE, *supra* note 1, at 57–76.

<sup>3</sup> See MICHAEL R. MARRUS, *THE HOLOCAUST IN HISTORY* 83 (1987).

From the beginning, as Levine noted, discussions of bystanders were “characterized more by ambiguity, controversy and charges of political and moral failure.”<sup>4</sup> Although over the decades a well-documented record emerged with respect to the actions of different individuals and groups, their underlying motives and the broader circumstantial factors were often less clear—but at the end of the day, did motives and historical complexities matter, when millions of people had been murdered? The bystander debate has always been as much an ethical matter as a historical one, underscored by the view of many Holocaust scholars that the Holocaust was not simply a historical event but the unprecedented moral failure of Western civilization. The figure of the bystander epitomized this. As the renowned Holocaust survivor and scholar Elie Wiesel stated: “What hurts the victim most is not the cruelty of the oppressor, but the silence of the bystander.”<sup>5</sup> Another Holocaust scholar, Yehuda Bauer, put it simply: “thou shalt not be a perpetrator; thou shalt not be a victim; and thou shalt never, but never, be a bystander.”<sup>6</sup>

The denazification programs created in the aftermath of the 1945 Potsdam Agreement were an early attempt to address the guilt and responsibilities of German citizens. After the Cold War began, however, the behavior of German citizens was understood as having occurred in a totalitarian state in which the options for ordinary citizens consisted of either following or disobeying orders. Ordinary citizens were not viewed as having much agency or autonomy; at the very least, it was assumed that they had made their decisions under the massive pressure of a totalitarian state. This view was fostered in particular by two early works by scholars who had fled Nazi Germany: Hannah Arendt’s *The Origins of Totalitarianism* (1958) and Theodor Adorno’s *The Authoritarian Personality* (1950).<sup>7</sup> In the early 1960s, Yale University psychologist Stanley Milgram built upon these perspectives, developing a series of experiments intended to test the extent to which people would follow orders they knew to be inhumane.<sup>8</sup>

The emphasis in these early works was on understanding the conditions under which ordinary people “followed orders,” the underlying assumption being that bystanders were people who were otherwise on the sidelines and not directly involved in the creation or implementation of Nazi ideology and policy. Their fundamental role in history was a passive one. That message was underscored by Holocaust survivors’ recollections of neighbors who refused to help or who looked away, and by the relatively rare examples of heroic solidarity, rescue, and resistance.

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<sup>4</sup> Paul A. Levine, *Attitudes and Action: Comparing the Responses of Mid-level Bureaucrats to the Holocaust*, in CESARANI & LEVINE, *supra* note 1, at 213.

<sup>5</sup> Elie Wiesel, *Forward* to Carol Rittner, *THE COURAGE TO CARE*, at ix–xii (1986).

<sup>6</sup> Yehuda Bauer, *On the Holocaust and Its Implications*, HOLOCAUST & U.N. OUTREACH PROGRAMME, <http://www.un.org/en/holocaustremembrance/docs/paper1.shtml> [<https://perma.cc/ERD4-VAFG>].

<sup>7</sup> HANNAH ARENDT, *THE ORIGINS OF TOTALITARIANISM* 389–460 (1958); T. W. ADORNO ET AL., *THE AUTHORITARIAN PERSONALITY* 1–19 (Max Horkheimer & Samuel H. Flowerman eds., 1950).

<sup>8</sup> STANLEY MILGRAM, *OBEDIENCE TO AUTHORITY: AN EXPERIMENTAL VIEW* (1974).

As the field of Holocaust scholarship expanded, however, more complex narratives emerged about the role of ordinary citizens, institutions, international organizations, and governments. Holocaust historiography established that, far from being passive, many individuals and groups had played active roles. Raul Hilberg's seminal three-volume work, *The Destruction of the European Jews* (1967), focused on victims and perpetrators, but extensively documented the role and complicity of other actors.<sup>9</sup> His subsequent book, *Perpetrators, Victims, Bystanders: The Jewish Catastrophe, 1933–1945* (1992), went into greater detail, giving an in depth overview of how people had responded to the persecution of the Jews in Nazi Germany and throughout Europe.<sup>10</sup> Hilberg summarized the many different roles played by bystanders (e.g., banker, neighbor, train conductor, mayor, church leader), delineating the options open to different professions and the potential significance of their roles. He also categorized them in terms of the motives and outcomes of their actions—as helpers, gainers, collaborators, onlookers, and witnesses.<sup>11</sup> Some bystanders, he noted, may have remained passive “onlookers,” but others gained materially, for example, by acquiring property that had been owned by Jews.<sup>12</sup> It was a reminder that the category of bystander encompassed an extraordinarily wide range of actors and behaviors, a point borne out by the three volumes on bystanders published in 1989 as part of a nine-volume series on the Holocaust edited by historian Michael Marrus.<sup>13</sup> The bystanders examined in the Marrus anthology ranged from international aid organizations to governments to individuals (such as Pope Pius XII and the German theologian and resistance figure Dietrich Bonhoeffer) to the populations of occupied countries.

Historians also began to explore the numerous ways in which bystanders had actually participated in Nazi crimes or benefitted from them. In 1996–97, the U.S. Senate Banking Committee held hearings on the “Nazi gold” controversy, which concerned the activities of Swiss banks that had profited from Nazi crimes.<sup>14</sup> In some cases, these banks had refused to notify Jewish families about bank accounts of relatives who had been murdered; in other cases, the banks made significant profits by trading in gold that the Third Reich had plundered from occupied nations during the war.<sup>15</sup> Occurring fifty years after the Holocaust ended, the Senate hearings led to greater public awareness of the complicity of international bodies and corporations during the Holocaust. It also raised the profile of

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<sup>9</sup> See generally RAUL HILBERG, *THE DESTRUCTION OF THE EUROPEAN JEWS* (1967).

<sup>10</sup> See generally RAUL HILBERG, *PERPETRATORS, VICTIMS, BYSTANDERS: THE JEWISH CATASTROPHE 1933–1945* (1993).

<sup>11</sup> *Id.* at 212–16.

<sup>12</sup> *Id.* at 214.

<sup>13</sup> MICHAEL R. MARRUS, 1 *THE NAZI HOLOCAUST: HISTORICAL ARTICLES ON THE DESTRUCTION OF THE EUROPEAN JEWS* (Michael R. Marrus ed., 1989).

<sup>14</sup> CESARANI & LEVINE, *supra* note 1, at 9–11.

<sup>15</sup> See JONATHAN BOYD & STEPHEN WARD, *NAZI GOLD: THE BRITISH AND ALLIED ATTEMPT TO DEAL WITH LOOT FROM THE SECOND WORLD WAR AND THE IMPLICATIONS FOR THE TRIPARTITE GOLD COMMISSION 5–7, RES. DEP’T HOLOCAUST EDUC. TR.* (2d ed. 1997).

organizations, notably The Conference on Jewish Material Claims Against Germany, that have promoted the investigation of such crimes and implemented legal measures, including restitution.<sup>16</sup>

With respect to Germany itself, there is now a significant body of scholarship and documentation about the support at all levels of German society for the Nazi measures throughout the period of the Third Reich. Robert Gellately’s book *The Gestapo and German Society: Enforcing Racial Policy, 1933–1945* (1990) and his subsequent study *Backing Hitler: Consent and Coercion in Nazi Germany* (2001) documented how the active participation of German citizens enabled the spread and power of the Nazi police state.<sup>17</sup> A number of studies about the Protestant churches in Germany have illustrated the extent to which broad sectors of the German Protestant Church supported many aspects of National Socialism, a corrective to early works that portrayed the role of the churches more heroically.<sup>18</sup> Peter Fritzsche’s *Germans into Nazis* (1998) explored how Germans from all walks of life came to identify, personally and politically, with the Nazi party.<sup>19</sup> Christopher Browning’s seminal book *Ordinary Men: Reserve Police Battalion 101 and the Final Solution in Poland* (1992) documented the extent to which German reserve police officers had participated in Nazi crimes.<sup>20</sup> In 1995, the Hamburg Institute for Social Research created an exhibition on the role of the German *Wehrmacht*, the armed forces that operated independently from the Nazi Waffen SS military units. *Wehrmacht* veterans claimed to have remained uninvolved in German military atrocities, yet the historiography that culminated in the 1995 exhibition established the extent to which they too had been involved in Nazi crimes.<sup>21</sup>

Studies of the behavior of populations in countries under Nazi occupation after 1939 have revealed similar, if more complicated, patterns of complicity and

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<sup>16</sup> See MICHAEL J. BAZYLER & ROGER P. ALFORD, *HOLOCAUST RESTITUTION: PERSPECTIVES ON THE LITIGATION AND ITS LEGACY* (MICHAEL J. BAZYLER & ROGER P. ALFORD EDS., 2006).

<sup>17</sup> See generally ROBERT GELLATELY, *THE GESTAPO AND GERMAN SOCIETY: ENFORCING RACIAL POLICY 1933–1945* (1990); ROBERT GELLATELY, *BACKING HITLER: CONSENT AND COERCION IN NAZI GERMANY* (2001).

<sup>18</sup> See, e.g., VICTORIA BARNETT, *FOR THE SOUL OF THE PEOPLE: PROTESTANT PROTEST AGAINST HITLER* (1992); DORIS L. BERGEN, *TWISTED CROSS: THE GERMAN CHRISTIAN MOVEMENT IN THE THIRD REICH* (1996). For an overview of how the historiography about the churches changed over the decades, see Robert P. Ericksen, *Christian Complicity?: Changing Views on German Churches and the Holocaust*, U.S. HOLOCAUST MEMORIAL MUSEUM (Nov. 8, 2007), [https://www.ushmm.org/m/pdfs/Publication\\_OP\\_2009-11.pdf](https://www.ushmm.org/m/pdfs/Publication_OP_2009-11.pdf) [<https://perma.cc/PY2B-B9Z3>].

<sup>19</sup> See generally PETER FRITSCHKE, *GERMANS INTO NAZIS* (1998).

<sup>20</sup> CHRISTOPHER R. BROWNING, *ORDINARY MEN: RESERVE POLICE BATTALION 101 AND THE FINAL SOLUTION IN POLAND* (1992).

<sup>21</sup> For an extensive analysis of this exhibition and the public discussion about it, see *THE DISCURSIVE CONSTRUCTION OF HISTORY: REMEMBERING THE WEHRMACHT’S WAR OF ANNIHILATION* (Hannes Heer et al. eds., Steven Fligelston trans., New York: Palgrave Macmillan 2008).

collaboration.<sup>22</sup> Historian Tim Cole, for example, examined the behavior of local populations in Hungary during the establishment of town ghettos and subsequent deportation for their Jewish neighbors.<sup>23</sup> In the case of the village of Nyíregyháza, Cole discovered that local civilians who owned horse-drawn carts were paid a fixed daily rate to transport their Jewish neighbors from the ghetto to the deportation trains; he was able to reconstruct the behavior of Nyíregyháza citizens by examining the invoices that people submitted for payment, through accounts in local archives, and from survivor testimony about the behavior of the non-Jewish population.<sup>24</sup>

This scholarship documents what could be called “active complicity,” complicating where scholars draw the line between “bystanders” and “perpetrators,” which has led to debate about the very use of the term “bystander,” with its connotations of passivity and noninvolvement.<sup>25</sup> This in turn has led scholars to explore more deeply the processes by which people who began as bystanders became more involved as time passed. In a study of the June 1944 creation of the ghetto in Budapest, for example, Ehrenreich and Cole examined the responses of the Jewish community and non-Jewish Hungarian citizens, members of the local bureaucracy, and others.<sup>26</sup> Ehrenreich and Cole created a triangular model illustrating the involvement and interaction between victims, bystanders, and perpetrators. The model showed how different responses to the intensified anti-Jewish measures could lead a bystander to become either a victim (if the bystander became involved in rescue or resistance) or a perpetrator (if the bystander became actively involved in persecution and murder).<sup>27</sup> In my book *Bystanders: Conscience and Complicity During the Holocaust* (1999), I used a complex, multifaceted approach to understanding the issue, first by examining the multiple levels (individual, institutional, and international) of “bystander behavior” and secondly by emphasizing the factors that shaped the chronological development of such behavior (in the case of Nazi Germany, from 1933–1945; in

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<sup>22</sup> There is now an extensive body of research on the behavior of civilian populations throughout Nazi occupied Europe. For some of the more striking recent studies of localized involvement in Nazi crimes, see JAN T. GROSS, *NEIGHBORS: THE DESTRUCTION OF THE JEWISH COMMUNITY IN JEDWABNE, POLAND* (2001) and TIM COLE, *TRACES OF THE HOLOCAUST: JOURNEYING IN AND OUT OF THE GHETTOS* (2011).

<sup>23</sup> COLE, *supra* note 22.

<sup>24</sup> *See id.* at 151.

<sup>25</sup> Several recent conferences have focused on this issue, including a 2008 conference sponsored by The Living History Forum in Sweden and a 2016 conference in Amsterdam, titled “Probing the Limits of Categorization: The Bystander in Holocaust History.” *Probing the Limits of Categorization: The Bystander in Holocaust History*, LOOKING AT THE ONLOOKERS AND BYSTANDERS (Living History Forum, Henrik Edgren ed., 2012).

<sup>26</sup> Robert M. Ehrenreich & Tim Cole, *The Perpetrator-Bystander-Victim Constellation: Rethinking Genocidal Relationships*, 64 HUMAN ORGANIZATION 213, 213–224 (2005).

<sup>27</sup> *Id.* at 216.

the case of occupied countries, during the wartime period).<sup>28</sup> Both studies depicted “bystander behavior” during the Holocaust as a fluid process in which there was a gradual movement over time either toward complicity or resistance.<sup>29</sup>

These historiographical developments have led to an unsatisfying stalemate about the most appropriate terminology to describe the patterns of behavior during the Holocaust by those who were neither victims nor perpetrators. By definition, a “bystander” is one “who is present when an event takes place, but who does not become directly involved in it.”<sup>30</sup> As noted in my book, that definition could be applied in 1933 to a German citizen who by 1935 had become more deeply involved in National Socialism in multiple ways—but at that point does one need to find another word?<sup>31</sup> If the word “bystander” connotes passivity or noninvolvement, what other words more accurately apply to the situation of such people? Building on Hilberg’s early distinctions, some scholars have suggested descriptors of actual action: “onlooker,” for example, or “collaborator.” A recent book on Gestapo informers is titled *Indirect Perpetrators*.<sup>32</sup> The more specific the descriptor, the clearer the ethical verdict. Nonetheless, even when one is describing a specific behavior (such as collaboration with Nazi crimes or gaining financially from them), the behaviors and motives involved may be complex. The historical reality was that people played different roles over the course of the twelve years of the Third Reich. Any discussion of the bystander phenomenon during the Holocaust entails a more complicated and multifaceted historical and ethical examination of the actions of individuals and groups, one that acknowledges the greater autonomy and therefore greater responsibility of many individuals and groups previously categorized as “bystanders.” This in turn became the foundation of the subsequent ethical and legal attempts to address the problem.

Although they were developed to uncover perpetrators and collaborators, the Allied denazification measures in early postwar Germany can be seen as one such attempt, since these measures reached extensively into the sphere of bystanders. The challenges that arose during denazification epitomize the complexities that later confounded Holocaust scholars as well as those who have tried subsequently to address such issues in the wake of cases of genocide and mass violence.

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<sup>28</sup> VICTORIA J. BARNETT, *BYSTANDERS: CONSCIENCE AND COMPLICITY DURING THE HOLOCAUST* (1999)

<sup>29</sup> See Victoria J. Barnett, *Reflections on the Concept of “Bystander,”* in *supra* note 25, at 35–52.

<sup>30</sup> *Bystander*, BLACK’S LAW DICTIONARY (2014).

<sup>31</sup> BARNETT, *supra* note 28, at 90–94.

<sup>32</sup> ANDREW SZANAJDA, *INDIRECT PERPETRATORS: THE PROSECUTION OF INFORMERS IN GERMANY, 1945–1965* (2010).

### III. DENAZIFICATION IN POSTWAR GERMANY: AN EARLY CASE STUDY IN THE COMPLEXITY OF BYSTANDER ISSUES

In the spring of 1945, outraged by what they had found in concentration camps, U.S., French, and British troops spontaneously called German citizens to account. Local townspeople were ordered to walk through nearby camps past piles of corpses, and to cook for camp survivors, clean barracks, and sometimes bury the dead.<sup>33</sup> U.S. troops collected affidavits from local clergy outside the concentration camps to document the burials of the victims in local churchyards.<sup>34</sup> In some cases troops took matters into their own hands, holding summary trials and executions of camp personnel.<sup>35</sup>

This atmosphere soon changed, as Allied leaders realized that more formalized measures were necessary if there was to be a viable peace and postwar democracy in Germany. In the late summer of 1945 Soviet leader Josef Stalin, British Prime Minister Clement Attlee,<sup>36</sup> and President Harry Truman met in Potsdam, Germany, to work out the terms of the defeat of Nazi Germany and set the foundation for what was to come.<sup>37</sup> They established different zones of occupation, under the jurisdiction of the respective military governments. The Potsdam Agreement included the intent to demilitarize Germany and reeducate its population.<sup>38</sup>

The Nuremberg trials of twenty-two Nazi leaders, held in 1945–46, were the most visible and significant example of holding Germany internationally accountable; it was the first time that perpetrators of “crimes against humanity”

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<sup>33</sup> See MICHAEL BERENBAUM, *THE WORLD MUST KNOW: THE HISTORY OF THE HOLOCAUST AS TOLD IN THE UNITED STATES HOLOCAUST MEMORIAL MUSEUM* 184–92 (Johns Hopkins Univ. Press 2005) (1993) (noting the material about the reactions of the Allied liberation troops to local German civilians). The Museum’s film collections include film footage of such interactions between British and U.S. troops and German civilians at the camps at Bergen-Belsen, Buchenwald, Dachau, and Nordhausen. See *Steven Spielberg Film and Video Archive*, U.S. HOLOCAUST MEMORIAL MUSEUM, [https://www.ushmm.org/online/film/display/detail.php?file\\_num=200](https://www.ushmm.org/online/film/display/detail.php?file_num=200) [<https://perma.cc/KAA6-36RH>].

<sup>34</sup> The International Tracing Service (ITS) Records contain at least several hundred such affidavits in the records of the different camps. The ITS records comprise millions of documents, including individual records of people imprisoned in the Nazi camp system, that were collected by the International Red Cross after 1945. The U.S. Holocaust Memorial Museum has digitized and indexed the collections for research. See *International Tracing Service Inventory Search*, U.S. HOLOCAUST MEMORIAL MUSEUM, <https://www.ushmm.org/online/its-inventory/simple.php> [<https://perma.cc/LDA7-V6VU>]; see also SUZANNE BROWN-FLEMING, *NAZI PERSECUTION AND POSTWAR REPERCUSSIONS: THE INTERNATIONAL TRACING SERVICE ARCHIVE AND HOLOCAUST RESEARCH* (Rowman and Littlefield, 2016).

<sup>35</sup> See TOMAZ JARDIM, *THE MAUTHAUSEN TRIAL: AMERICAN MILITARY JUSTICE IN GERMANY* (2012).

<sup>36</sup> Winston Churchill was present for the first weeks of the Potsdam conference.

<sup>37</sup> See CONSTANTINE FITZGIBBON, *DENAZIFICATION* 75–82 (1969).

<sup>38</sup> *Id.* at 77–78.

were prosecuted by the international community.<sup>39</sup> These were followed by the 1948 United Nations Convention on the Prevention and Punishment of the Crime of Genocide and the 1948 Universal Declaration of Human Rights.<sup>40</sup> All signaled a new international consensus about the seriousness of what had occurred under Nazi rule and an affirmation of certain universal standards with respect to the rights of minorities.

This was the background for the denazification programs, an unprecedented attempt to delegitimize National Socialism among the German population and launch a process of reeducation, primarily by identifying and penalizing local Nazi leaders and collaborators.<sup>41</sup> The program was interpreted and implemented differently in the respective Allied zones. In the Soviet zone the goal was fairly straightforward: to weed out civil servants who had been members of the Nazi party; by the end of 1945 about two-thirds of these public employees had been dismissed.<sup>42</sup> In the U.S., British, and French zones, the aim was broader: questionnaires were distributed among the adult population to determine not only party membership but the degree of involvement (no questionnaires were distributed in the Soviet zone).<sup>43</sup> All adults in the U.S. zone were required to register and fill out a lengthy questionnaire about their activities during the years of National Socialism.<sup>44</sup> They were then listed under one of five categories, ranging from “major offender” (category 1) to “exonerated” (category 5).<sup>45</sup> They could obtain affidavits from people approved by the Allied authorities (in many cases, these were Christian clergy) who absolved them of anything more than nominal party membership; the popular term for these certificates was *Persilscheine*, named after a laundry detergent.<sup>46</sup>

In the U.S. zone alone, thirteen and a half million adults registered during the denazification programs.<sup>47</sup> In the U.S., British, and French zones combined there were ultimately about 3.6 million denazification proceedings (for individuals who fell in categories 1–4).<sup>48</sup> Only about 25,000 of these individuals ended up with classifications of one or two, and those cases had to be reviewed before tribunals.<sup>49</sup> The sheer numbers of people involved led U.S. authorities to modify the program, offering an amnesty for people who obtained *Persilscheine*.<sup>50</sup> In most cases the

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<sup>39</sup> DARREN O’BYRNE, HUMAN RIGHTS: AN INTRODUCTION 91 (2014).

<sup>40</sup> *Id.* at 85–87.

<sup>41</sup> See FITZGIBBON, *supra* note 37; Norbert Frei, ADENAUER’S GERMANY AND THE NAZI PAST: THE POLITICS OF AMNESTY AND INTEGRATION (Joel Golb trans., Columbia Univ. Press 2002).

<sup>42</sup> FITZGIBBON, *supra* note 37, at 100–101.

<sup>43</sup> *Id.* at 131.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*; see also FREI, *supra* note 41, at 32–33.

<sup>46</sup> See BARNETT, *supra* note 18, at 221–24.

<sup>47</sup> FITZGIBBON, *supra* note 37, at 131.

<sup>48</sup> FREI, *supra* note 41, at 38–39.

<sup>49</sup> *Id.* at 38.

<sup>50</sup> FITZGIBBON, *supra* note 37, at 140.

task of dealing with individuals who fell into categories 2 and 3 was handed over to the institutions that employed them, including churches, businesses, universities, and some branches of the civil service.<sup>51</sup> This meant less clearly defined areas of accountability, with fewer consequences for individuals who in fact may have been quite actively involved in supporting Nazi policies, as is illustrated by the uneven denazification of Roman Catholic and Protestant clergy who had been Nazi party members.<sup>52</sup> Denazification proved to be bureaucratically unwieldy and widely unpopular, provoking a great deal of resentment against Allied authorities.<sup>53</sup> Formal denazification ended in 1951, although it should be noted that there were over nine hundred war crimes proceedings in German courts up to the present day.<sup>54</sup>

Denazification can be considered both a legal and political attempt to address many of the questions that subsequently arose about bystander behavior. The fact that Allied authorities attempted such an ambitious program indicates that they viewed these issues as important. The behavior of ordinary people in Nazi Germany, and the widespread support for the Nazi regime that had led so many to participate in or benefit from Nazi crimes, clearly had implications for German political culture and stability in the wake of Nazism. The stumbling blocks encountered by the Allies were the same issues that proved so difficult later for Holocaust scholars: Where is the line that differentiates a bystander from a perpetrator? Are there degrees of complicity, and once a certain degree has been reached, is someone criminally liable? Such questions were the rationale behind the five levels of denazification classification, but they could not resolve all the questions about motive, intent, and actual involvement. Moreover, such an approach inherently affected millions of people, and the uneven success of denazification shows the political impossibility of legally addressing complicity on a collective level through the prosecution of individuals.

Even where legal liability seemed straightforward, the social and political mechanisms for addressing the ethical and moral aspects were enormously complicated. The Nazi regime had implemented a number of policies that were fully legal under National Socialism, although they were internationally viewed at the time as criminal and declared to be criminal in Germany itself after 1945.<sup>55</sup> Most of the German population acquiesced to such policies and benefitted from them (and their legality under Nazism was a defense used after 1945, not just by Nazi leaders on trial at Nuremberg, but by local officials, judges, and other

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<sup>51</sup> For examples from the churches and universities, see ROBERT P. ERICKSEN, *COMPLICITY IN THE HOLOCAUST: CHURCHES AND UNIVERSITIES IN NAZI GERMANY* 168–79 (2012).

<sup>52</sup> See KEVIN P. SPICER, *HITLER'S PRIESTS: CATHOLIC CLERGY AND NATIONAL SOCIALISM* 203–07 (2008); BERGEN, *supra* note 18, at 218–24.

<sup>53</sup> See BARNETT, *supra* note 18, at 221–24; SPICER, *supra* note 52, at 12–14.

<sup>54</sup> See *Holocaust Encyclopedia: War Crimes Trials*, U.S. HOLOCAUST MEMORIAL MUSEUM, <https://www.ushmm.org/wlc/en/article.php?ModuleId=10005140> [<https://perma.cc/NWG6-EJZL>].

<sup>55</sup> FITZGIBBON, *supra* note 37, at 66–67.

professionals caught up in denazification proceedings).<sup>56</sup> Allied authorities soon realized that they could not put most German citizens on trial or bar them from their professions. How, then, could the question of complicity be addressed?

The German psychiatrist and philosopher Karl Jaspers offered one of the earliest attempts to address these questions. An early critic of the Nazi regime whose wife was Jewish, Jaspers had lost his teaching position in 1937 and been banned from publishing in 1938.<sup>57</sup> Assisted by friends, the couple remained in Nazi Germany and managed to evade the camps.<sup>58</sup>

In 1946 Jaspers published a short book, *The Question of German Guilt*, which was largely an analysis of the debates in Germany about denazification and collective guilt.<sup>59</sup> Jaspers identified four distinct kinds of guilt: criminal guilt, political guilt, moral guilt, and metaphysical guilt.<sup>60</sup> Jaspers defined criminal guilt as actions that broke established law, political guilt as the “co-responsibility” of each citizen for the actions of the state, and moral guilt as the direct individual responsibility for one’s own actions, whether taken independently or under order.<sup>61</sup> Metaphysical guilt referred to the spiritual responsibility of each individual for the state of the world, a level of guilt in which, as Jaspers put it, “jurisdiction rests with God alone.”<sup>62</sup>

Each kind of guilt had to be addressed and redressed in a different way, but Jaspers argued that of the four, only criminal guilt could be addressed satisfactorily in a court of law.<sup>63</sup> Denazification could identify criminal and to some extent address political guilt, but even on those points it was hampered by the collective nature of Nazi crimes. Yet, the underlying rationale for denazification had been to address broader issues of political guilt by making citizens acknowledge their failed civic responsibilities.<sup>64</sup>

Jaspers rejected the notion of collective guilt as impossible and unethical. “One cannot make an individual out of a people,” he wrote.<sup>65</sup> Yet, the concept of political guilt inherently encompassed individual responsibility, because the policies of Nazi Germany were grounded “in modes of conduct of the majority of the German population. A people answers for its polity. . . . We are collectively liable.”<sup>66</sup>

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<sup>56</sup> *Id.*

<sup>57</sup> Raymond Langley, *Jaspers’ Interpretation of Marx and Freud*, EXISTENZ, Fall 2008, at 46–47.

<sup>58</sup> *Id.*

<sup>59</sup> See KARL JASPERS, *THE QUESTION OF GERMAN GUILT* (Greenwood Press 1978) (1947).

<sup>60</sup> *Id.* at 31–32.

<sup>61</sup> *Id.*

<sup>62</sup> *Id.* at 32.

<sup>63</sup> *Id.* at 39.

<sup>64</sup> FITZGIBBON, *supra* note 37, at 185–94 (listing the questions from the denazification questionnaires).

<sup>65</sup> *Id.* at 41.

<sup>66</sup> *Id.* at 61.

Jaspers' distinction between collective guilt and collective liability or responsibility was also an articulation of the need for political measures that could address what had just happened. Denazification was initially conceived as a program that would identify mid- and lower-level Nazis, ascertain the extent of actual guilt, and prosecute individuals whose criminal guilt could be established.<sup>67</sup> Yet while denazification's third and fourth categories of involvement did not suffice for criminal prosecution, these categories did not establish someone's lack of involvement in what was going on. Denazification triggered an ongoing and spirited discussion among postwar German leaders from a number of different arenas, including political leaders, church and academic leaders, journalists, and public intellectuals.<sup>68</sup> That discussion continued in the following decades, turning into a process by which German society gradually established a consensus about the nation's history under National Socialism and acknowledged what Jaspers had called its "collective liability."<sup>69</sup> What denazification could not accomplish alone was eventually brought about by other means, including politically symbolic acts, such as German Chancellor Willy Brandt's kneeling in 1970 before a memorial to the victims of the Warsaw ghetto and German president Richard von Weizsäcker's 1985 speech "Facing up to Germany's Past," on the fortieth anniversary of the defeat of Nazi Germany.<sup>70</sup>

Denazification was implemented only in postwar Germany, and it was carried out more thoroughly and systematically in the western zones than in the Soviet zone. While Jewish survivors from other countries certainly gave accounts of their betrayal by neighbors, it would be several decades before the patterns of complicity and collaboration throughout Europe were well-documented and published, and only in more recent historiography have these patterns been acknowledged to be a central factor in the persecution of Jews in those countries. If anything, the process of addressing the bystander issue in the occupied countries was more uneven and contentious than in postwar Germany. The historical realities were different, beginning with the fact that these were populations under foreign military occupation during the war years who could (and did) argue that they had been victims of Nazi violence as well. There are genuine distinctions between the circumstances surrounding German citizens in 1933 and those facing Polish villagers in 1940 or Hungarian citizens in 1944. At the same time, there were collaborationist governments in Bulgaria, Croatia, Hungary, Romania, Slovakia, and Vichy France, and movements sympathetic to Nazism in other countries.<sup>71</sup>

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<sup>67</sup> *Id.* at 87–94, 140–41.

<sup>68</sup> See ERICKSEN, *supra* note 51; BARNETT, *supra* note 18, at 209–39.

<sup>69</sup> JASPERS, *supra* note 59, at 61.

<sup>70</sup> Richard von Weizsäcker, Zum 40. Jahrestag der Beendigung des Krieges in Europa und der nationalsozialistischen Gewaltherrschaft: in der Gedenkstunde im Plenarsaal des Deutschen Bundestages (May 8, 1985) (Bonn: Bundeszentrale für politische Bildung, 1985).

<sup>71</sup> See, e.g., COLE, *supra* note 22; GERHARD HIRSCHFELD, COLLABORATION IN FRANCE: POLITICS AND CULTURE DURING THE NAZI OCCUPATION, 1940–44 (Gerhard Hirschfeld & Patrick Marsh eds., 1989); DAVID GAUNT, PAUL A.

Anti-Semitism was a factor throughout Europe, leading even civilians resentful of the Nazis to turn against their Jewish neighbors.

The history of denazification illustrates the particular complexities of trying to address the bystander question in the context of a collective crime like genocide, as opposed to the context of individual behavior in more politically stable circumstances. In the aftermath of genocide, how does one hold a wide sector of individual citizens accountable in a meaningful way, and what does that mean for the political and social viability of what follows?

In Germany, denazification was an early step, but it was followed in the ensuing decades by other distinct processes that collectively had the effect of establishing a consensus in West Germany about that nation’s obligation to remember its Nazi past.<sup>72</sup> The process by which the German government and its citizens arrived at this consensus was complex, driven by different stages of memorialization, ongoing historiography, contemporary events that triggered renewed debate about the past (such as the 1985 Bitburg controversy), and commemorations of major anniversaries.<sup>73</sup>

#### IV. UNDERSTANDING THE ROLE OF BYSTANDERS IN OTHER CONTEXTS: THE LIMITS OF ANALOGY

Understanding the role of “bystanders” during the Holocaust entails dealing with multiple levels of historical complexity. Yet, as noted at the beginning of this article, the bystander issue in the Holocaust resonates precisely because it speaks to a set of ethical issues that are quite relevant in other contexts: (1) the decisions that individuals make about how to respond to what happens around them; (2) the vulnerability of victims and their dependence upon outside individuals or groups to protect and assist them; (3) the need for measures, legal or otherwise, that can address the issue of complicity and the failure to protect victims; and (4) the implications of “bystander behavior” for society and political culture. “The

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LEVINE & LAURA PALOSUO, *COLLABORATION AND RESISTANCE DURING THE HOLOCAUST: BELARUS, ESTONIA, LATVIA, LITHUANIA* (2004).

<sup>72</sup> This applies to the Federal Republic of Germany. The process in the German Democratic Republic was quite different and cannot be gone into here. An extensive comparison of how the two Germanys dealt with the Nazi past between 1948–1989 can be found in a book by Tetyana Pavlush. TETYANA PAVLUSH, *KIRCHE NACH AUSCHWITZ ZWISCHEN THEOLOGIE UND VERGANGENHEITSPOLITIK: DIE AUSEINANDERSETZUNG DER EVANGELISCHEN KIRCHEN BEIDER DEUTSCHER STAATEN MIT DER JUDENVERNICHTUNG IM “DRITTEN REICH” IM POLITISCH-GESELLSCHAFTLICHEN KONTEXT* (Peter Lang ed., 2015). See my review of that work: Victoria J. Barnett, *Review of Tetyana Pavlush, Kirche Nach Auschwitz Zwischen Theologie und Vergangenheitspolitik*, 22 *CONTEMP. CHURCH HIST. Q.*, no. 2, 2016, <https://contemporarychurchhistory.org/2016/06/review-of-tetyana-pavlush-kirche-nach-auschwitz-zwischen-theologie-und-vergangenheitspolitik/> [<https://perma.cc/3TXN-87G8>].

<sup>73</sup> See JACOB S. EDER, *HOLOCAUST ANGST: THE FEDERAL REPUBLIC OF GERMANY & AMERICAN HOLOCAUST MEMORY SINCE THE 1970S* (2016); NORBERT FREI, *1945 UND WIR: DAS DRITTE REICH IM BEWUSSTSEIN DER DEUTSCHEN* (2005).

support, opposition, or indifference” of bystanders, notes social psychologist Ervin Staub, “largely shapes the course of events.”<sup>74</sup>

To what extent can the insights about the multifaceted role of “bystanders” during the Holocaust be applied to other instances, ranging from contemporary cases of mass violence to problems of school bullying and campus rape? Some scholarship on the role of bystanders in the Holocaust has identified where possible analogies lie, notably works that focus on the dynamics of basic human behavior, psychology, and social behavior.<sup>75</sup> Much of the historiography illustrates the extent to which individual complicity in Nazi crimes was driven by mundane motives like greed, opportunism, and conformity—motives that may influence “bystanders” in other situations.<sup>76</sup>

Some caution must be taken with analogies. More examination is needed of the relationship between these basic human behaviors and their political context during the Holocaust, particularly with respect to the influence of mass ideology, anti-Semitism, and nationalism on the ethical choices of individual citizens and on social institutions, like the churches, that had the potential to offer platforms for resistance but failed to do so. The Holocaust was an extraordinary situation: a totalitarian state based upon a racialized ideology that sought to eradicate the Jewish population from Europe. Nazi ideology created a new system of ethics and norms, overturning and reversing previous ethical norms about the responsibilities of individual citizens. There was a “Nazi ethic” to which most German citizens conformed; in that context, “bystanders” became complicit through their very presence in the system.<sup>77</sup>

Even in cases (such as the desire for approval from one’s peers or supervisors) where the human motives during the Holocaust appear similar to motives today in cases in which the bystander question arises, there is a contextual (and historians would argue a legal) difference between the options faced by citizens in Nazi Germany and those, for example, in the contemporary United States. After 1933, when anti-Jewish measures and other new laws were implemented in Nazi Germany, citizens were expected to obey them and inform on people who circumvented the law. “Bystanders” in such situations might await repercussions for resisting the law. In contrast, the role of bystanders in the United States in instances of rape or bullying, while they might suffer consequences from those committing these acts, are trying to prevent actions categorized in this society as criminal (in the case of rape and some cases of bullying) behavior.

Analogies with respect to the dynamics between individual behavior, and how it affects and is judged by political culture, may be more productive. Despite the distinctions between totalitarian and nontotalitarian settings, the historiography on

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<sup>74</sup> ERVIN STAUB, *THE ROOTS OF EVIL: THE ORIGINS OF GENOCIDE AND OTHER GROUP VIOLENCE* 20 (1989).

<sup>75</sup> See BARNETT, *supra* note 28; STAUB, *supra* note 74; JAMES WALLER, *BECOMING EVIL: HOW ORDINARY PEOPLE COMMIT GENOCIDE AND MASS KILLING* (2d. ed. 2007).

<sup>76</sup> See STAUB, *supra* note 74, at 13–48.

<sup>77</sup> See PETER J. HAAS, *MORALITY AFTER AUSCHWITZ: THE RADICAL CHALLENGE OF THE NAZI ETHIC* (1988); CLAUDIA KOONZ, *THE NAZI CONSCIENCE* (Belknap Press 2003).

the Holocaust has raised awareness about the autonomy and power of individual citizens as a significant factor in what happened under National Socialism. The aforementioned works by Browning, Ericksen, and Gellately show the extent to which individuals actively chose to become involved in the Nazi project. Jaspers recognized this in 1946 when he wrote of the “collective liability” of the German population for what the Nazi regime had done.<sup>78</sup>

This historical clarity about the complicity of bystanders has led to greater ethical clarity, which has been a crucial factor for the post-Holocaust political culture of Germany and other nations where the Holocaust occurred. As Barnett writes, “in the decades since the Holocaust, ethical reflection and historiography have gone hand in hand. . . . History, done well, helps to keep us ethically honest by keeping the truth of the record out there.”<sup>79</sup> In Germany, this has been exemplified more effectively through political measures, sometimes symbolic ones, than through legal measures.<sup>80</sup> Discussions about memorialization can trigger national conversations that address the ethical issues of the past, leading to ways to incorporate new historical understandings into the political and social culture. This may signal a path beyond the impasse in some academic discussions about the contemporary relevance of “bystander” behavior. If approached as a legal matter, the complexities and distinctions between different situations may prove insurmountable. If addressing the role of bystanders and related issues of complicity is understood as an important element in shaping political culture and concomitant notions of citizen responsibility, however, individual citizens may develop a more proactive stance with respect to the fates of those around them and a greater sense of responsibility for the course of their society as a whole.

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<sup>78</sup> JASPERS, *supra* note 59, at 61.

<sup>79</sup> Victoria J. Barnett, *The Creation of Ethical “Gray Zones” in the German Protestant Church: Reflections on the Historical Quest for Ethical Clarity*, in *GRAY ZONES: AMBIGUITY AND COMPROMISE IN THE HOLOCAUST AND ITS AFTERMATH* 368–69 (Jonathan Petropoulos & John K. Roth eds., 2005).

<sup>80</sup> The “Stolpersteine” (stumbling block) project in Germany is a striking example. German artist Gunther Deming launched the project in 2009; in the meantime similar initiatives have been started in countries that were under Nazi occupation. In the original project, local communities throughout Germany identified where Jewish residents lived, worshipped, and worked before the Holocaust, and marked them by using a raised cobblestone in the street or sidewalk in front of the site. STOLPERSTEINE, <http://www.stolpersteine.eu/en/> [<https://perma.cc/7W3F-727P>].