
Retribution as Legitimation:

The Uses of Political Justice in

Postwar Czechoslovakia

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During the Second World War the Czechoslovak government-in-exile led by Edvard Beneš repeatedly declared its intention to punish the men responsible for the country's defeat, dismemberment and occupation by Nazi Germany. On their return home in 1945, the former exiles established an extensive system of summary courts and administrative tribunals designed to purge society of 'Nazi criminals, traitors, and their accomplices'. In Prague's Pankrác courthouse the country's new National Court passed judgement on prominent Czech collaborators in one chamber, while the city's People's Court tried Nazi leaders in another. Despite the focus on wartime offences, these trials did not only seek to make amends for the past. Retribution against Nazis and domestic collaborators also aimed to legitimate the contemporary regime, justify its policies and delegitimise its opponents. This article will consider four postwar Czech trials in which the regime and its members attempted, with varying success, to use the courts for political purposes.

At first glance, it might appear that the leaders of postwar Czechoslovakia had little reason to worry about their legitimacy. Both Beneš and the multiparty government, in which the Communist Party of Czechoslovakia (CPCS) held a plurality, enjoyed widespread popular support among Czechs at home and unchallenged international recognition abroad. Nonetheless, the postwar regime still engaged in what Rodney Barker terms 'self-legitimation'. He explains, 'Far from being mere trappings or even mere instruments for deceiving the masses, legitimation appears to provide for rulers goods that are valued in themselves'.¹ The resort to self-legitimation was more than just a reflexive part of governance. Postwar Czechoslovakia's leaders felt the need to respond proactively to potential critics of their rule and policies. In particular, the regime was concerned about challenges to its claim to be the successor to the interwar republic. Moreover, as a group of exiles, most of whom had not experienced Nazi occupation, the country's Czech leaders sought domestic confirmation of the decisions they had taken abroad during the war. Trials offered a recognised means of addressing these concerns. Legal historian Otto Kirchheimer comments, 'Setting the new regime off from the old and sitting in judgement over the latter's policies

¹ Rodney Barker, *Legitimizing Identities: The Self-Presentations of Rulers and Subjects* (Cambridge: Cambridge University Press, 2001), 17.

and practices may belong to the constitutive acts of [a] new regime'.² In submitting themselves to the judgement of independent courts, however, the members of the Beneš regime could not guarantee that the results would be to their liking. As Kirchheimer notes, 'political justice without risks remains a contradiction in terms'.³

Continuities and discontinuities at home and abroad

In May 1945 jubilant crowds greeted Edvard Beneš's triumphant return to Prague. It was a far cry from October 1938 when the once-and-future Czechoslovak president had departed his country in disgrace. Back then, he had succumbed to the demands of the great powers and permitted the dismemberment of his state via the infamous Munich Pact. At the time Beneš had been a humiliating symbol of Czechoslovakia's failure, blamed by the country's press for the debacle.⁴ One contemporary joke asked, 'Does Beneš have a plan?' To which the answer was: 'Yes, an aeroplane', to escape the country and leave his fellow Czechs in the lurch. In his memoirs, a leading Slovak prosecutor recalled that when he had been called up for military service in winter 1938–9, 'All around [Czech officers] cursed Beneš'. One ordered him to take down his photograph of the former president.⁵ After Beneš resigned his office and left for an uncertain exile abroad, the Czechoslovak parliament legally elected Emil Hácha, chief justice of the country's Supreme Court, to the presidency of the so-called Second Republic. In a congratulatory letter Beneš addressed Hácha as 'Mr President' and wished the aged jurist well in the troubled times ahead.⁶ One leading Czech collaborator later commented with some justice, 'Whatever doubts about the force of Beneš's resignation – if there were any such doubts here at all – were definitively settled with the election of Dr Emil Hácha'.⁷

After the Germans induced Slovakia to declare independence on 14 March 1939, Hácha succumbed to Nazi threats to level Prague and 'placed the fate of the Czech people and country in the hands of the Führer of the German Reich'.⁸ On 16 March 1939, a day after completing their occupation of the Czech provinces, Hitler announced the creation of a 'Protectorate of Bohemia and Moravia'. Thanks to Hácha's Berlin capitulation, which allowed the Germans to claim that the takeover was legal, the elderly jurist stayed on as state-president of the Protectorate, but he

² Otto Kirchheimer, *Political Justice: The Use of Legal Procedure for Political Ends* (Princeton, NJ: Princeton University Press, 1961), 308.

³ Kirchheimer, *Political Justice*, 426.

⁴ Theodor Procházka Sr, *The Second Republic: The Disintegration of Post-Munich Czechoslovakia, October 1938–March 1939* (New York: East European Monographs, Columbia University Press, 1981), 56.

⁵ Anton Rašla, *Civilista v armáde: Spomienky na roky 1938–1945* (Bratislava: Vydavateľstvo politickej literatúry, 1967), 21–2.

⁶ Edvard Beneš, *Paměti: Od Mnichova k nové válce a k novému vítězství* (Prague: Orbis, 1947), 80–1; Zbyněk Zeman and Antonín Klimek, *The Life of Edvard Beneš: Czechoslovakia in Peace and War* (Oxford: Clarendon Press, 1997), 145.

⁷ Verdict, State Central Archive (Státní ústřední archiv, hereafter SÚA), Prague, f. NS, Ns 10/46, 263.

⁸ Vojtech Mastny, *The Czechs Under Nazi Rule: The Failure of National Resistance* (New York: Columbia University Press, 1971), 41.

and his purged government soon became little more than administrators for the Nazi authorities. In May the British implicitly recognised the end of Czechoslovakia by upgrading their representative in Bratislava to a 'new Commission as Consul . . . for the State of Slovakia'.⁹ Although the Soviets initially denounced the Nazi takeover of Czechoslovakia, after the Molotov–Ribbentrop Pact Moscow granted diplomatic recognition to the Slovak state.¹⁰ Meanwhile, the former Czechoslovak ambassador, Zdeněk Fierlinger, found himself humiliatingly ignored by Soviet leaders.¹¹ Despite later protestations to the contrary, at the time both Beneš's resignation and the demise of the state he once led were widely (if reluctantly) accepted both at home and abroad.

Paradoxically, the destruction of Czechoslovakia provided the justification for its re-establishment after the war. According to Beneš's 'theory of legal continuity', the German invasion of March 1939 and the Franco–British failure to uphold their guarantees to Czechoslovakia had violated, and thereby invalidated, the Munich Pact of September 1938. With the pact abrogated, Beneš explained in his memoirs, all that had come to pass in the previous six months, including his own resignation, was null and void. In other words, he remained president of Czechoslovakia. In short, Beneš wrote, 'Our state never stopped legally existing . . . Everything that occurred after 19 September 1938 happened illegally, unconstitutionally, and was forced upon us by threats, terror, and violence'.¹² Charles de Gaulle, Peter Novick explains, adopted a strikingly similar policy. The Free French declared that the formation of the Pétain cabinet on 17 June 1940 was illegal. As a result, the Vichy regime was a 'usurper', the armistice it signed was invalid, and Franco–German hostilities had never ceased. Like de Gaulle, for Beneš, 'the adoption of this doctrine was a practical necessity'.¹³

Although the Allies did not initially accept Beneš's claim to represent his country abroad, by summer 1941 Britain, the Soviet Union, and the United States had all extended diplomatic recognition to the Czechoslovak government-in-exile. Among Czechs, Beneš's reversal of fortune was remarkably fast. On 19 March 1939 Vladimír Hurban, the Czechoslovak ambassador to the United States, met the former president to discuss the co-ordination of the exile movement.¹⁴ Until June 1940, Štefan Osuský, the former Czechoslovak ambassador in Paris, challenged Beneš for the right to represent the country, but the Nazi defeat of France eliminated this rival claimant. For Czechs languishing in the Protectorate of Bohemia and Moravia the Nazi occupation

⁹ The British broke off relations after Slovak troops participated in the German invasion of Poland. *The Foreign Office List and Diplomatic Consular Year Book*, ed. Members of the Staff of the Foreign Office (London: Harrison and Sons, Ltd. 1940), 377.

¹⁰ Miroslav Ličko, 'The Development of Slovak–Soviet Relations during the Second World War', in Joseph Kirschbaum, ed., *Slovakia in the 19th & 20th Centuries* (Toronto: Slovak World Congress, 1973), 283.

¹¹ Zdeněk Fierlinger, *Od Michova po Košice: Svědectví dokumenty, 1939–1945* (Prague: Práce, 1946), 53–4.

¹² Beneš, *Paměti* 156, also 98, 113–14, 168–70.

¹³ Peter Novick, *The Resistance versus Vichy: The Purge of Collaborators in Liberated France* (New York: Columbia University Press, 1968), 142.

¹⁴ Edvard Beneš, *Memoirs: From Munich to New War and New Victory*, trans. Godfrey Lias (London: London, Allen & Unwin, 1954), 99–100.

instantly made the former president a symbol of hope for eventual liberation. By August 1939, US diplomat George F. Kennan commented, 'German clumsiness has given to Beneš's name a superficial boulevard popularity which his personality on its own merits was never able to command'.¹⁵ By the end of that year the three major non-communist Czech resistance groups had all accepted the former president's leadership.¹⁶ Once Operation Barbarossa had put paid to the Molotov–Ribbentrop Pact, the Czechoslovak Communists also recognised Beneš's authority, although they refused to join his government until the last days of the war. Even the Protectorate ministers initially deferred to Beneš, if only in private; most viewed their roles as those of temporary stewards in place of the once-and-future president.¹⁷ Although his support in Slovakia was considerably less, in 1944 the Slovak National Council – the umbrella underground organisation – accepted the president's right to speak for the country abroad.¹⁸

The postwar regime was founded in March 1945. With the Red Army steadily advancing across Czechoslovak territory and the Western allies still battling with the Germans over the Rhine, Beneš left London for Moscow with an entourage of hand-picked members of his London government. In the shadow of the Kremlin the Beneš group and the leaders of the CPCS negotiated the shape and programme of the government that would rule their country after the war. The self-selected negotiators were hardly representative. No members of the Czech underground attended and Slovak resistance leaders were invited to take part only when the issue of Czech–Slovak relations arose. The assembled men decided that postwar Czechoslovakia would be governed by a 'National Front' of six political parties, four Czech and two Slovak. The members of the National Front agreed to participate actively in the government and forbade the existence of an extra-governmental opposition. Conservative parties, including the Agrarians, Czechoslovakia's largest prewar party, were banned for their alleged collaboration with the Nazis after Munich. The largest Slovak political movement, the Hlinka People's Party, was also outlawed for its leading role in the Nazi-satellite Slovak state. The bans, however just, meant that the National Front parties together had earned less than 40 per cent of the state-wide vote in the last free prewar elections.¹⁹ Nonetheless, the Front arguably did reflect popular attitudes, which the Great Depression and foreign occupation had unmistakably radicalised. Even without a restricted system, the Communists and their Socialist allies would likely have done well at the polls – as they did in contemporary France and Italy.²⁰

¹⁵ George F. Kennan, *From Prague after Munich: Diplomatic Papers, 1938–1940* (Princeton, NJ: Princeton University Press, 1968), 224.

¹⁶ Mastny, *Czechs*, 146.

¹⁷ Verdict, SÚA, f. NS, Ns 10/46, 15.

¹⁸ Anton Rašla, *L'udové súdy v Československu po II. svetovej vojne ako forma mimoriadneho súdnictva* (Bratislava: Vydavateľstvo Slovenskej akadémie vied, 1969), 50–1.

¹⁹ If the votes of national minorities are not counted, the four parties combined did win a small majority of the votes of the Czech and Slovak electorate.

²⁰ Bradley F. Abrams, 'The Second World War and the East European Revolution', *East European Politics and Societies*, 16, 3 (2003), 630.

In a programme announced from the Slovak town of Košice, the National Front promised to establish a Provisional National Assembly once Czechoslovakia had been completely liberated. The Košice Programme also declared that Beneš would appoint 'a new government with respect to proportional representation of all components of the national resistance at home and abroad'.²¹ Despite these commitments, the returning exiles failed to open their ranks to the Czech underground. Apart from two ministers who had been interned in concentration camps, the remainder of the Czechs in the postwar cabinet, including those in charge of the most important ministries, had spent the war in either London or Moscow. As for the Provisional National Assembly, it did not meet until 28 October 1945 and its 300 members were appointed by the National Front, not elected by the people. In the meantime, the government ruled by decree.

Even after October 1945, the appointed Provisional National Assembly could not effectively confer a popular legitimacy on the postwar regime. Yossi Shain and Juan Linz explain:

all interim administrations are hindered as far as they lack a democratic mandate until free and contested elections are held and a popularly mandated government assumes power. Their lack of legitimacy is inherent in their self-labeling as 'provisional' or 'interim', which indicates their realization that their authority is transitional.²²

The country finally held its first postwar elections on 26 May 1946. The results, especially the near-universal participation of the electorate, offer evidence for the popular legitimacy enjoyed by the postwar regime. Although the elections were limited to approved parties, voters had the opportunity to reject all of the given candidates and cast a blank ballot. The CPCS pushed for blank ballots as a means to divert supporters of banned parties away from the other members of the National Front. Nonetheless, the Czech public universally rejected this opportunity to voice their dissatisfaction with the regime. In the end, less than one percent of the electorate cast blank ballots.²³ Similarly, the only available contemporary polling shows that more than 90 per cent of Czechs agreed with the government's programme. More than 80 per cent expressed satisfaction with the government.²⁴ Although Shain and Linz identify the process of voting as the end of an interim regime, the May 1946 elections actually ushered in another provisional parliament, a Constitutive National Assembly empowered to write a new founding document for the state. As for the new government cabinet, it was merely a reshuffled version of the old one, chosen by the same National Front leaders who had run the country since the end of the war.

²¹ Jiří Grospič, Jaroslav Chovanec and Juraj Vysokaj, eds., *Košický vládní program* (Prague: Státní pedagogické nakladatelství, 1977), 122.

²² Yossi Shain and Juan Linz, *Between States: Interim Governments and Democratic Transitions* (New York: Cambridge University Press, 1995), 4.

²³ Čeněk Adamec, Bohuš Pospíšil and Milan Tesař, *What's Your Opinion? A Year's Survey of Public Opinion in Czechoslovakia* (Prague: Orbis, 1947), 13.

²⁴ *Ibid.*, 14.

Retribution as legitimisation

Perhaps more than any other policy, retribution touched upon the government's Achilles heel. The so-called Great Decree that governed the punishment of collaborators in the Czech provinces had been written by the exiles in London and only slightly amended at home. In the damning words of the country's health minister, it was an 'émigré' law.²⁵ Nonetheless, when the Great Decree was promulgated in July 1945, the public accepted it without protest. By contrast, the decision to expand retribution several months later revealed a level of discontent among Czechs hitherto unknown. In a scathing editorial Ferdinand Peroutka, the most respected contemporary Czech journalist, proclaimed that the country's leaders had gone too far in their desire to punish collaborators. With fellow columnists he expressed outrage at the government's evasion of parliamentary oversight through its decision to promulgate the new retribution decree on the eve of the Provisional National Assembly's first meeting. Peroutka argued that, unlike the exiles, most deputies had experienced Nazi rule and could thus better judge their fellow citizens' wartime conduct.²⁶

The different perspectives of the home front and the exiles came to the fore in spring and summer 1946, when the Prague National Court tried five Czech government ministers of the former Protectorate of Bohemia and Moravia. On the eve of the trial, Czechoslovak Justice Minister Prokop Drtina addressed the nation on state radio. With remarkable transparency he laid bare the postwar regime's aims for the trial. He began by tying the indictment of the Czech ministers to the concurrent prosecution of Karl Hermann Frank, the former Nazi state-secretary who had ruled the Protectorate in the waning years of the war. Drtina revealed that the sequence had been intentional: 'German guilt [has been] judged first in the trial of Frank and only afterward has come the turn of Czech guilt'. Drtina further explained that the trial would not just prove the guilt of prominent Czech collaborators. The justice minister stressed that there was a greater meaning to the event:

For domestic and international political reasons, the judgement of the entire system of the so-called Protectorate government will be necessary . . . to the state continuity of the Czechoslovak Republic . . . The system itself is and must remain condemned in the eyes of our whole nation for today and the future.

In addition to announcing the regime's desire to delegitimise its predecessor, Drtina also directly addressed potential criticism that the exiles had no right to judge life in the Protectorate. He stated, 'None [of the National Court judges] belongs to the so-called foreign resistance and thus all are fully legitimated [*legitimováni*] to know exactly what was and what was not possible here during the war'.²⁷ The court's judges (one

²⁵ Government meeting (19 May 1945), SÚA, f. 100/24, aj. 1494, sv. 137.

²⁶ Ferdinand Peroutka, 'A přece.', *Svobodné noviny*, 11 Nov. 1945, 1 and 'Parlamentní úvahy', *Svobodné noviny*, 8 Dec. 1945, 1; Ladislav Gut, 'At' promluví sněmovna', *Svobodné slovo*, 21 Nov. 1945, 1; Helena Koželuhová, 'Nase národní čest', *Obzory*, I:15 (15 Dec. 1945), 229; H. Pánková, 'O cti a bezecti', *Lidová demokracie*, 24 Nov. 1945, 1–2.

²⁷ 'Nikoli msta, ale spravedlnost', *Svobodné slovo* (30 April 1946), SÚA, MZV-VA II (j41), k. 208.

professional and six ‘people’s judges’) had all endured the Nazi occupation. Some had even survived imprisonment in concentration camps. In other words, Drtina insinuated, the verdict would represent the unimpeachable will of the home front, not the mere wishes of the regime.

When it came to the question of state continuity, the judges did not disappoint the justice minister or his president. Their verdict unambiguously stated that ‘the nation had absolute faith in [Beneš]’.²⁸ The National Court fully endorsed Beneš’s theory that the postwar regime was the direct successor of the pre-Munich republic. In fact, the judges took the president’s ‘theory of state continuity’ one step further. Beneš had argued that the March 1939 invasion retroactively annulled the Munich Pact. The National Court, by contrast, maintained that the president had not legally resigned in October 1938. The Second Republic itself was illegitimate and therefore Hácha had no authority to sign over Bohemia and Moravia to Hitler.²⁹ The verdict explained:

[Beneš’s] resignation was legally invalid from the very beginning, not only because the president of the republic had been forced to [resign] as a result of the German position, not only because . . . the Great Powers, in particular Germany and Italy, did not feel from the outset legally bound [to the Munich Pact], but mainly because that resignation was never accepted by the sovereign nation, whose will at that moment . . . simply must have been decisive without regard to certain . . . formal provisions of the constitution . . . If one seeks to capture the will and sentiment of the nation at the moment when the president of the republic bade farewell to the nation, then it was rejection of that resignation. President Beneš still remained for the Czechoslovak people the president of the republic.³⁰

The court’s claim relied on three arguments. First, the verdict noted that the president’s resignation and Hácha’s later surrender resulted from German pressure. Since the two men had not submitted of their own free will, their decisions were invalid. Second, the judges reiterated Beneš’s claim that the great powers’ actions (or inaction) in March 1939 demonstrated their bad faith the previous September at Munich.

Third, and most significantly, the court relied upon an inventive (and amnesic) theory of popular will. The judges argued that the vast majority of the ‘Czechoslovak people’ had never ceased to view Beneš as their legitimate president, regardless of his resignation and flight abroad. The formulation ‘Czechoslovak people’ cleverly blurred the question of exactly whose popular will counted. Clearly, the court chose to ignore the country’s national minorities, whose allegiance to Beneš was questionable, to say the least. The National Court’s claim to know the will of the people also relied on a romanticised recollection of Czech wartime resistance. According to the verdict, ‘hundreds of thousands of Czech and Slovak heroes imprisoned and tortured to death and the Czechoslovak foreign armies are indubitable evidence that the whole nation grasped en masse right from the beginning every opportunity to show manifestly its opposition to the occupiers’. Most scholars, by contrast, take a less glorious

²⁸ Verdict, SÚA, Ns 10/46, 4–5.

²⁹ *Ibid.*, 12–16.

³⁰ *Ibid.*, 14.

view of the Czechs' wartime conduct. In Joseph Rothschild's words, 'They simply kept a pragmatically low profile and avoided the risks of resistance and reprisals'.³¹ In an even clearer case of amnesia, the verdict also claimed that the will of the Czechoslovak people was internationally recognised 'immediately by the USSR, by the other great powers at least in time'. The Soviet Union's 1939 pact with Nazi Germany, its recognition of the Slovak state, and its marginalisation of the Czechoslovak ambassador to Moscow, were all conveniently forgotten.³²

The National Court did more than endorse the claim that the postwar regime was the direct successor of the interwar Republic. Even before the verdict developed its novel theory of state continuity, the judges took great pains to refute a single statement by a defendant. In a barely concealed swipe at the exiles, one of the accused had testified, 'If I had been clever, I would have left the country too'.³³ In response to this insinuation of 'victors' justice', the verdict stressed that the exiles had been true patriots who had taken great risks for the good of the nation. By fleeing abroad Beneš and his followers had taken the first courageous steps to liberate the country. At a time when the outcome of the war was uncertain, the exiles 'abandoned all their property . . . left behind their families who they knew would personally suffer for their decision to flee . . . Despite all that, these men departed so that they could fight beyond our borders for the liberation of their homeland and their nation; they risked their lives, freedom, their dearest and the loss of the property'.³⁴

To the extent that the regime had sought legitimation, it should not have been disappointed by the verdict. After all, the National Court fully endorsed Beneš's theory of continuity and convicted all five defendants. But the ponderous 405-page verdict has probably only been read by a few legal scholars and historians. More significantly, although the judges handed down five convictions, they refused the prosecutor's call to sentence two of the defendants to death. Even that demand was already less than the government had originally sought. Instead, the National Court sentenced one defendant to life and three to prison terms ranging from two to twenty years; one defendant received no prison term at all. Communist leaders reacted to the verdict by unleashing a protest campaign which they had prepared for such a circumstance.³⁵ Within two weeks, the protest campaign compelled the government to express its dissatisfaction with the verdict. A public statement explained, 'the government understands the expressions of protest from the people'. After all, the court had not handed down a single death penalty even though the case concerned the 'establishment of guilt so great as the responsibility for the Protectorate government system'. The statement stressed that the government's view was reflected in the

³¹ Joseph Rothschild, *Return to Diversity: A Political History of East Central Europe since World War II* (New York: Oxford University Press, 1989), 33.

³² Verdict, SÚA, Ns 10/46, 14.

³³ *Ibid.*, 6.

³⁴ *Ibid.*, 6–7.

³⁵ 'Zápis 42. ze schůze předsednictva ÚV KSČ' (17 July 1946), SÚA, f. 02/1, sv. I, aj. 42.

prosecutor's indictment and his call for multiple capital sentences.³⁶ Left unmentioned was Drtina's earlier praise of the National Court judges as the legitimate voice of the home front.

There was good reason, however, to think that the verdict did reflect prevailing opinion. Despite the postwar ministers' unanimous agreement about the guilt of the defendants, it became clear over the course of the trial that many Czechs held a different view of the Protectorate government. In late May the editors of the Social Democratic Party's daily newspaper noted that they had received many letters defending the five ministers and accusing the court of not hearing witnesses in the defendants' favour. The editors remarked that similar appeals were being regularly received by the chief justice, prosecutor, and lay judges.³⁷ Perhaps the most visible display of public support for the defendants occurred on 28 June when a crowd in front of the courthouse vociferously demanded that the judges and national radio give more time to defence speeches.³⁸ In July Drtina drew his colleagues' attention to numerous letters he had received from 'distinguished individuals' who warned the government against being out of step with popular sentiment. He added that even the workers seemed to be in favour of 'a more lenient punishment'.³⁹ With such ambivalence about the guilt of the Protectorate ministers, the protest campaign against the verdict soon proved unpopular, even within the CPCS's own ranks.⁴⁰ After only a few weeks, CPCS leaders abandoned their public effort to force a retrial. Although the regime had submitted to a judicial process that produced a guilty verdict, the trial and its aftermath ultimately exposed a deep difference in opinion between the country's leaders and a significant portion of its Czech population.

Retribution as justification: banning the Agrarians

If the Protectorate government trial served to endorse Beneš's theory of continuity, then the prosecution of Rudolf Beran and his fellow Agrarians can be seen as an attempt to gain *ex post facto* juridical confirmation of executive fiat. The exiles had banned the Agrarian Party because of its alleged collaboration with the Germans in the fateful months before and after Munich. As former head of the party and prime minister of the Second Republic, Beran's conviction was necessary to justify the ban. A long-standing opponent of Edvard Beneš – Beran had initially tried to prevent the president's election in 1935 – the former Agrarian leader had few if any friends in the postwar political order. The Communists, for their part, blamed him for outlawing

³⁶ Transcript of the meeting of the government presidium (6 Aug. 1946), repr. in Karel Kaplan, ed., *Dva retribuční procesy: Komentované dokumenty (1946–1947)* (Prague: Ústav pro soudobé dějiny ČSAV, 1992), doc. 9, 92.

³⁷ *Právo lidu* (22 May 1946), f. MZV-VA II, j41, k. 210.

³⁸ Dušan Tomášek and Robert Kvaček, *Obžalována je vláda* (Prague: Themis, 1999), 171.

³⁹ Transcript of the meeting of the government presidium (15 July 1946), Kaplan, *Dva retribuční procesy*, doc. 4, 46–7.

⁴⁰ Responses to the Protectorate Government Verdict, SÚA, f. I (ZÚV-KSČ), sv. 2, aj. 13, pp. 360–71.

their party in the winter of 1938–9. Well in advance of Beran's trial the communist press declared him to be a high traitor, guilty of undermining the nation's will to oppose Nazi Germany and, ultimately, of delivering it to foreign occupation and bondage. Article after article denounced his many betrayals and prepared the public for his conviction.⁴¹

The events of March 1939, when Nazi Germany destroyed rump Czecho-Slovakia and created the Protectorate of Bohemia and Moravia, were a major focal point of the prosecution. Beran could not, after all, be charged with committing any serious crimes after April 1939, when he lost his position as premier and retreated into private life, only to be arrested in June 1941, tried by a Nazi court, and imprisoned for two years.⁴² The Second Republic had not been the Czechs' finest hour, but it laboured from the beginning in the shadow of Munich.⁴³ Without allies or defensible borders, the rump state had few options but accommodation with Nazi Germany; even the country's formerly liberal press recognised this unfortunate reality.⁴⁴ The fateful day of 15 March 1939, when German troops marched into the country virtually unopposed from within or without, demonstrated the hopelessness of the Second Republic's position. Before the Munich Pact, by contrast, Czechoslovakia had fortified borders, a strong army prepared to fight, and the unified support of at least its Czech population. Comparisons between the two events were inevitable and potentially unfavorable to Beneš, but according to one of his supporters the president 'did not see the danger which threatened him from the political trials that would revolve around Munich'.⁴⁵

The National Court ultimately threw out almost all of the prosecution's case against Beran, rejecting more than a dozen charges in the process, but then gave him a lengthy sentence on two of the more inconsequential counts. Beran was found guilty of welcoming German leaders to Prague Castle on 16 March 1939 and of selling military material to Germany prior to the occupation.⁴⁶ Otherwise, the lengthy verdict was primarily devoted to refuting the remainder of the indictment.

⁴¹ See, e.g., 'Beranovo přiznání k velezradě', *Rudé právo*, 23 May 1946; 'Beran – Muž Mnichova', *Práce*, 23 May 1946; 'Jak Beran pomáhal Hitlerovi obsadit České země', *Rudé právo*, 19 May 1946, SÚA, f. MZV-VA II (j41), k. 210.

⁴² On 25 June 1942 a German People's Court convicted Beran of high treason and sentenced him to 10 years' imprisonment. Beran verdict (21 April 1947), SÚA, f. NS, TNs 1/47, 71.

⁴³ Under the leadership of Beran, Czech conservatives purged followers of Beneš and engineered the reduction of the political sphere to two legal parties, a governing party of the right and a loyal opposition on the left. The Second Republic introduced censorship, removed the Prague municipal council and suppressed inconvenient newspapers and political movements, including the CPCS, which was banned in December 1938. Parliament also passed a Nazi-style 'enabling law' authorising government by decree for two years. In February 1939 the government even established a concentration camp for 'asocials and transients', that is, for Roma (Gypsies). Pavel Tigrid, *Kapesní průvodce inteligentní ženy po vlastním osudu* (Toronto: Sixty-Eight Publishers, 1988), 171–80; Mastny, *Czechs*, 20–3; Vilém Hejl, *Rozvrat: Mnichov a náš osud* (Toronto: Sixty-Eight Publishers, 1989), 53–63; Procházka, *Second Republic*, 107–10; Markus Pape, *A nikdo vám nebude věřit: Dokument o koncentračním táboře Lety u Písku* (Prague: GplusG, 1997), 26.

⁴⁴ Mastny, *Czechs*, 21.

⁴⁵ Ladislav Feierabend, *Politické vzpomínky* (Prague: Atlantis, 1996), III: 234.

⁴⁶ Beran verdict (21 April 1947), SÚA, f. NS, TNs 1/47, 120, 127.

The court rejected the prosecution's assertion that Beran favored totalitarianism and instead affirmed his 'democratic disposition' and his contributions to the Czech resistance.⁴⁷ In response to the charge that he was anti-communist, the judges ruled:

The circumstance that the defendant Rudolf Beran was an opponent of communism and the USSR . . . cannot in and of itself be a reason for the defendant to be ruled guilty . . . , for divergence in political conviction and other worldly opinions, the same as in, for example, religion, cannot in a democratic state be grounds for criminal responsibility.⁴⁸

The judges even exonerated Beran for the banning of the Communist Party, a decision that they ruled had been made for the good of the country and was allegedly accepted as such by the Communists at the time.⁴⁹ If a person can be exonerated in a conviction, then the verdict mainly cleared Beran of his guilt while condemning him to prison for twenty years – the rest of his life. One cannot avoid the suspicion that the judges felt obliged to convict Beran, but registered nonetheless their protest against the indictment.

The role of political revenge in the prosecution of Agrarian leaders was even more clearly demonstrated by the government's decision to try František Machník and Ferdinand Klindera. According to the indictment the pair's guilt, like that of other Agrarian politicians, consisted of pro-collaboration speeches made before the events of March 1939.⁵⁰ When Drtina proposed dropping charges against the two men, neither of whom had been active during the occupation, his Communist colleagues reacted with outrage.⁵¹ The fact that Machník had been sentenced to death by the Nazis, spent 120 days in irons, and lived through a death march was apparently not sufficient to clear his name. The zealous Information Minister denigrated Machník as just another Agrarian politician, an opponent of communism and the Soviet Union, who advanced the interests of rich landowners to the detriment of poor farmers. Apparently, the Agrarian party deserved punishment for its activities as far back as 1933.⁵² Under Communist pressure, the National Court finally tried Machník and Klindera, but it acquitted the former Agrarian leaders on all counts. For those who had hoped retroactively to justify the decision to ban the Agrarian Party, the National Court's verdicts must have been a disappointment.

⁴⁷ *Ibid.*, 81, 84.

⁴⁸ *Ibid.*, 217.

⁴⁹ *Ibid.*, 210–12.

⁵⁰ During the occupation a German court had sentenced Machník to death, but his request for mercy, in which he plaintively cited years of pro-German activity, was recovered after the war and used by the Interior Ministry to prepare its case against him. Transcript of the 64th meeting of the 3rd government (18 Feb. 1947), SÚA, f. 100/24 (KG), s. 1494, sv. 143.

⁵¹ In an attempt to share responsibility for controversial trials, and thereby evade blame for their outcomes, Drtina repeatedly turned to his fellow ministers to decide which defendants to call before the National Court. The Justice Minister regularly argued for the dismissal of unwinnable cases, while the CPCS and its allies invariably pushed for prosecution at all costs.

⁵² Transcript of the 64th meeting of the 3rd government (18 Feb. 1947), 33–6.

Retribution as justification: endorsing the 'Transfer'

As with the prosecution of the Agrarians, the punishment of prominent Nazis aimed to provide a judicial imprimatur on an executive act: in this case, the expulsion of the Sudeten Germans from postwar Czechoslovakia. In contrast to the trials of Beran and his colleagues, however, retribution against leading Nazis focused as much on an external as an internal audience. On 28 October 1945 President Beneš told the inaugural session of the Provisional National Assembly: 'When, during the planned trials against our Germans, everything will be told about that grand conspiracy and about the actual ties of our Germans to Hitler's government, the whole world will see that we are in the right'.⁵³ In the battle for international public opinion, the greatest postwar trial of them all offered the strongest justification for the most extreme measures. While frequent reports from the International Military Tribunal (IMT) at Nuremberg reminded Czechs of the malice of Nazi Germany, Czechoslovakia's leaders explained to them the significance of the trial.⁵⁴ One Czech editor argued, 'The Nuremberg Trial is simultaneously our best defence before the whole world and an explanation why we, like the Poles, do not want, or even can, continue to live under one roof together with the Germans'.⁵⁵ No less a figure than Robert Jackson, the chief US prosecutor before the IMT, endorsed this interpretation when, on a visit to Prague, he said: 'After the Nuremberg trial I understand why you are in favour of the transfer of the Germans'.⁵⁶

Above all, the trial of Karl Hermann Frank offered an opportunity to relive the horrors of the occupation. In March 1939 the former Carlsbad bookseller became Nazi State-Secretary (and later the State-Minister) of the Protectorate of Bohemia and Moravia. Though he originally worked in the shadow of the so-called Protector, Konstantin von Neurath, Frank quickly became known for his advocacy of repression and terror. After Neurath's successor, Reinhard Heydrich, was assassinated by Czechoslovak agents in late May 1942, Frank became the most powerful man in the Protectorate. As the highest-ranking officer of the Protectorate SS and German police, Frank was ultimately responsible for deportations to concentration camps and for sending Czechs to work in Germany. He signed orders for numerous death sentences, authorised executions and instituted martial law. He supervised the repression of Czech students in autumn 1939 and organized the reign of terror, including the destruction of the village of Lidice, that followed Heydrich's death. On his watch the Nazis expropriated the property of Czech organizations, executed resisters and deported Jews to certain death.⁵⁷

⁵³ Karel Novotný, ed., *Edvard Beneš: Odsun Němců z Československa: Výbor z pamětí, projevů a dokumentů 1940–1947* (Prague: Dita, 1996), 158.

⁵⁴ See for example: 'Dojmy z Norimberku', *Lidová demokracie*, 15 Feb. 1946, 1; 'Tragedie Lidice před norimberským soudem', *ibid.*, 19 Feb. 1946, 1; 'Dokumenty z Norimberku', *ibid.*, 22 Feb. 1946, 1; 'Portréty z Norimberku', *ibid.*, 15 Feb. 1946, 6.

⁵⁵ Josef Doležal, 'Proč s nimi nemůžeme žít', *ibid.*, 17 Feb. 1946, 1–2.

⁵⁶ 'Po norimberském procesu chápou . . .', *Rudé právo*, 14 April 46, 1.

⁵⁷ Karl Hermann Frank, *Zpověď K. H. Franka: Podle vlastních vypovědí v době vazby u Krajského soudu trestního na Pankráci* (Prague: Cíl, 1946), 184–91.

The Frank trial from beginning to end demonstrates how, as Barker explains, ‘the state actively promotes its own legitimacy’ through propaganda, rituals and education.⁵⁸ To augment the didactic value of the trial, the regime published a 191-page transcript of Frank’s testimony culled from interrogation reports. Issued the month the trial began and sold cheaply, the editor introduced the publication as evidence to justify the expulsion. He stated forthrightly that the Sudeten Germans’ treachery long predated the rise of the Nazi party; they had never been loyal citizens of Czechoslovakia, a state that had granted them full civic rights. The editor concluded, ‘The trial of K. H. Frank, notwithstanding his personal responsibility, cannot be considered a trial of an individual criminal, but a trial of the collective criminality of the German minority in Czechoslovakia’.⁵⁹ The prosecution of Frank was also a ritual, in which the populace participated by reading newspapers, viewing news clips, as spectators in the courtroom and, ultimately, for those who had tickets, in front of the scaffold. Finally, Drtina explained to the parliament, the trials of Frank and other leading Nazis would have a lasting impact:

I myself will see to it that those documents – which demonstrate the Germans’ intention to annihilate or, at the very least, deport our nation, and which have been gathered for these [retribution] trials – will be made available in popular and inexpensive publications to all our people . . . With no less importance I call on our schools to transmit concrete knowledge of the horrors of the German assault that our generation survived . . . And I believe that if we utilise the material about the German war guilt collected by our postwar political and military courts, then we will best serve not only the interest of our own nation, but also the securing of a lasting peace.⁶⁰

One columnist concluded his assessment of the Frank trial: ‘It is truly a historic trial which for future generations should justify measures so far-reaching as the transfer of the Germans from our lands’.⁶¹

Retribution as delegitimation

The Frank trial did not only offer the regime the opportunity to legitimise the expulsion, but the prosecution of the Nazi leader also became a weapon in the country’s postwar political struggle. As part of attempts to claim that only communists had resisted the Nazis, elements within the CPCS tried to undermine the legitimacy of non-communist members of the Czech underground. In the election campaign of 1946, Deputy Premier Petr Zenkl, the mayor of Prague, came under fire for his conduct while imprisoned in the Buchenwald concentration camp.⁶² The biggest battle, however, was over the reputation of Vladimír Krajina, the general secretary of the Czechoslovak National Socialist Party, the CPCS’s strongest political

⁵⁸ Rodney Barker, *Political Legitimacy and the State* (Oxford: Clarendon Press, 1990), 145.

⁵⁹ Frank, *Zpověď*, 3–5.

⁶⁰ Prokop Drtina, *Na soudu národa: Tři projevy Ministra spravedlnosti dr. Prokopa Drtiny o činnosti Mimořádných lidových soudů a Národního soudu* (Prague: Ministerstvo spravedlnosti, 1947), 16.

⁶¹ Bedřich Bobek, “K. H. Frank”, *Lidová demokracie*, 28 March 1946, 1.

⁶² Prokop Drtina, *Československo můj osud* (Toronto: Sixty-Eight Publishers, 1982), II, 164.

competitor.⁶³ Like his fellow party member Zenkl, Krajina was accused of acquiring a privileged position in a Nazi camp (in this case, Theresienstadt) thanks to collaboration. In addition to a desire to deny resister status to a political opponent, Communist leaders probably targeted Krajina because he was one of their most outspoken critics.

Charges against Krajina surfaced in the communist press in December 1945, but at that time the Interior Ministry claimed that it had no compromising evidence in its possession. The matter appeared settled, but the dearth of evidence did not prevent some from being manufactured. A secret police official interrogated Frank and produced a deposition detailing extensive collaboration between Krajina and the Nazis. When a prosecutor later confronted Frank, the Nazi leader expressed surprise at his alleged testimony and told a very different story: he had been forced to sign the document which he himself could not even read because it was written in Czech. The plot exposed the common practice by which Interior Ministry officers blackmailed, bribed, or just beat imprisoned Nazis into providing evidence against Czechs. This scandal, however, failed to end the campaign against Krajina. In the end, it took a government commission, sifting through reams of evidence and testimony, to clear his name and prove that all resistance was not red. After the Communist coup d'état of February 1948, however, the the new regime retried Krajina (who had fled abroad) *in absentia*, convicted him on the basis of Frank's false confession, and sentenced him to twenty-five years in prison.⁶⁴

The attempt to discredit Krajina was part of a larger process wherein CPCS leaders sought to pin the blame for the occupation on their political and ideological opponents. Addressing a gathering of Slovak functionaries in early April 1945, party chief Klement Gottwald explained:

[The] law for the prosecution of traitors and collaborators is a very sharp weapon, with which we can cut away from the bourgeoisie so many limbs that only its trunk will remain. This is a matter of the class struggle against the bourgeoisie – a struggle waged under the banner of the state and of the nation, under the banner of the republic.⁶⁵

In perhaps the most blatant example of this strategy, in the spring of 1947 CPCS cabinet ministers tried to force a trial of the wartime directors of the Bat'a factory in Zlín. At stake was more than just the punishment of a few men who may have aided the Nazis. The Bat'a shoe company, a symbol of national pride, represented a form of paternalistic capitalism that undermined the image of a cruel bourgeoisie intent on exploiting the working class. At a government meeting Gottwald insisted:

It is necessary to show the nation . . . how the captains of industry behaved themselves . . . We must destroy the legend which that unfortunate brother of [company founder] Tomáš Bat'a created for

⁶³ Despite the similarity in nomenclature, the Czechoslovak National Socialist Party (*Československá strana národně socialistická* – literally, the Czechoslovak Nationally Socialist Party), was in no way affiliated with its better known German namesake.

⁶⁴ Drtina, *Československo*, II, 116–17, 134–47; Krajina, *Vysoká*, 161–3, 209.

⁶⁵ SÚA, f. I (ZÚV KSČ), sv. I, aj. I, str. 14.

himself. . . It is high time that the nation and especially people in Zlín were shown who Jan Bat'a was. A certain aura still endures around the Bat'a family there.⁶⁶

The 'unfortunate brother', Jan Antonín Bat'a, technically still the owner of the company, would have made the ideal defendant – he had allegedly promoted a scheme to 'resettle' the Czech nation in Patagonia in South America. Fortunately for him, he had fled during the Second World War and ended up eventually in Brazil, which refused to extradite him.

In addition to wrangling over whether Jan Bat'a should be tried *in absentia*, the government repeatedly discussed the possibility of trying other managers of the Bat'a firm. The National Prosecutor had indicted four senior company officials, but believed that the prospects for conviction were slim. Drtina defended this view: 'Conditions at the Bat'a factories were so complicated and mixed up that there is a serious danger here that criminal proceedings will end in acquittal'. To that, another minister responded, 'It's not a matter simply of individual company functionaries, but of the entire system of the firm itself'.⁶⁷ Despite their protests, the CPCS and its allies were overruled: on 4 March 1947 a narrow majority of ministers voted not to prosecute three of the four executives.

Only the company's general director, Dominik Čipera, went on trial – not primarily as the former head of Bat'a, but as Minister of Public Works in the Beran and Protectorate governments. He was joined in the dock, not by a member of the Bat'a family, but by Jan Kapras, former Protectorate Minister of Education, a man who had nothing to do with the Bat'a firm. The prosecutor indicted Čipera on a litany of counts associated with his tenure at the company.⁶⁸ The National Court examined the claims that Čipera had 'supported and propagated fascism and Nazism' and came to a simple conclusion: he was innocent on all counts. More importantly, the judges used the trial as an opportunity to clear the name of the Bat'a company altogether. In the words of the verdict, 'The Bat'a firm . . . , it is true, did not avoid the necessity of working for the German defence forces, but neither did any other company in the occupied Czech lands'.⁶⁹ The court went so far as to view Čipera as a positive representative of his social class. One witness testified that Čipera had not joined the League against Bolshevism during the war because he 'did not want to create the impression that the so-called "bourgeoisie" was "anti-communist"'. The verdict concluded, 'He was therefore aware that if he joined the League, he would cast a shadow on the entire stratum of the nation to which he belonged'.⁷⁰ This

⁶⁶ 68th meeting, 3rd government (4 March 1947), 32.

⁶⁷ *Ibid.*, 40.

⁶⁸ As the alleged head of the firm, Čipera was accused of producing war materials for the Wehrmacht, seeking profit through military production, strengthening German control over the company, introducing the 'Aryan greeting' into the firm, mandating employee contributions to the German Red Cross and Winterhilfe, being responsible for company and local newspapers that praised the Nazis, allowing the factory's radio to be abused for fascist purposes and delivering pro-occupation radio addresses. Verdict against D. Čipera and J. Kapras (2 May 1947), SÚA, TNs 11/47, f. MS (VI/19), k. 1241.

⁶⁹ Čipera and Kapras verdict, SÚA, TNs 11/47, 58.

⁷⁰ *Ibid.*, 124.

attempt to use the National Court to promote the Communist version of the wartime past clearly failed.

Conclusion

In his classic study of postwar French retribution, Peter Novick notes, 'The concept of legitimacy is an extremely slippery one, resting as it does on largely intangible factors'.⁷¹ If legitimacy is a slippery concept for scholars to analyse, it is an equally illusory aim for political leaders to seek. In their quest for legitimation, leaders can never be entirely sure, especially in the absence of elections, that they have achieved the popular endorsement that they so dearly desire. Uncertain of its own position, the postwar Beneš regime turned to the courts to endorse its version of the past and, consequently, its claims to rule. The regime's resort to the courts for political ends arguably served to call into question the judges' claims to represent the home front and to rule impartially. The judges' refusal to accept the government's harsh view of retribution, however, demonstrated the National Court's independence and thereby buttressed the judiciary's own standing. If, as David Beetham writes, 'Legitimate power . . . is limited power',⁷² then courts are a primary means of maintaining limits on a regime. In response to the Protectorate verdict, the Czechoslovak government cabinet claimed that the prosecutor's indictment, not the judgement, reflected the regime's view. The court, however, may have done the country's leadership a favour by partially rejecting its views. Paradoxically, only by demonstrating their independence can courts gain (and maintain) the authority to confer legitimacy on a regime. In the end, although Beneš and his government may not have always achieved the exact outcome they sought, the regime did gain the judiciary's imprimatur on its claim to rule. If the country's leaders erred in their use of the courts, then perhaps they did so only in the exaggerated hopes they placed in the trials.

⁷¹ Novick, *Resistance versus Vichy*, 192.

⁷² David Beetham, *The Legitimation of Power* (Atlantic Highlands, NJ: Humanities Press International, 1991), 35.