CHAPTER 3
GERMANY COMES TO TERMS WITH THE PAST, AGAIN

The debate in East Germany about coming to terms with the past is intense. Unlike in neighboring Poland, political leaders and academics consider the topic of great importance to the country’s future as a liberal democracy, and their debates have generated a voluminous literature.

Does this mean East Germany is a Sonderfall, a special case that does not meaningfully fit in a comparative framework? One can advance two arguments in favor of this perspective. First, East Germany is burdened with the legacy of a “double past,” the weighty history of both fascism and communism. After 1989, East Germans had to confront both histories. The second unique aspect of the East German case is the unification of the two Germanys in 1990, just a year after the East had toppled the ruling communists. This meant that the newly unified German state took over the task of dealing with the communist past, a context that influenced the dynamics of policy-making. West German participants brought a new set of concerns to the process. They recognized that their state had been insufficiently rigorous in condemning the Nazis’ crimes and sought to atone for this mistake by adopting stricter policies with respect to the communists. The West Germans had ample experience in evaluating their past. They had already created patterns of discourse about the past, and postwar legislation on dealing with the legacy of Nazi rule was a body of useful precedents. Moreover, unlike the other post-communist countries, East Germany was subsumed into a wealthy state with an established administrative and legal apparatus. A vast cadre of scholars, bureaucrats, lawyers, and entrepreneurs was available to carry out the policies of coming to terms with the past.

Despite these factors, several reasons make East Germany a useful case for comparative analysis. East Germany was a part of the communist space for 40 years, and its legacy of abuses is comparable to those of other countries in the region. Furthermore, its legacy of the “double

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past” is not so unusual. In the 1990s, other countries in the region were still tidying up unfinished business from the Second World War. Hungary considered the restitution of property confiscated from Jews, and the Czech Republic contemplated an apology to the Sudeten Germans. Finally, though unification did alter the politics of transitional justice, the West did not swallow the East whole on the very eve of the transition. During the year that separated the crumbling of communist power and German unification, East Germany set its own agenda for transitional justice.

After unification, many East Germans began to believe that the West had taken over their indigenous process of coming to terms with the past. Policies of transitional justice thus came to be seen as Western dictates, with some saying that the Federal Republic of Germany was playing the role of an occupying force. For these frustrated Ossis, it seemed like the process of coming to terms with the past had accelerated and taken on a more retributive tone after the unification with the West.

I see the dynamics of policy-making differently. While it is true that unification created new political opportunities, it did not cause a sharp change of course. From the very beginning of the transition to democracy in October 1989, East Germans took seriously their task of dismantling the communists’ institutions of repression: They preserved secret police files and rehabilitated victims; they made provisions for lustration and initiated criminal investigations. Coming to terms with the past was prominent on the political agenda during the public demonstrations in fall 1989, the Round Table talks of the winter, and the six months in which the freely elected Volkskammer functioned. In those early days of the transition, the East Germans set a course for coming to terms with the past; their policies were relatively retributive.

While the Bundestag initially perpetuated this approach, in later years the policies grew more moderate. By the mid-1990s transitional justice in Germany no longer appeared so different from that in the Czech Republic, Hungary, or Poland. Ultimately, then, this is another significant reason for including East Germany in a comparative study of post-communist countries: Its approach to transitional justice is not anomalous.

Legacy of the Past

From its inception under the heel of the Soviet military, East Germany’s communist state was very repressive. The state quickly put down the country’s first outbreak of workers’ protest in 1953 and successfully