A criminologist in the ICTY archives

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A meso-level explanatory criminology

POLICE AND PERSECUTION IN THE BOSNIAN KRAJINA: DEMOCRATISATION, DEPROFESSIONALISATION AND MILITARISATION

Original Scientific Paper

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Handle with Care: ICTY, juridical by-products and criminological analyses

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This paper starts with claims made for the potential historical value of the evidence gathered, presented and scrutinised in international criminal courts. Human Rights Watch claimed of the ICTY that “future generations will use the evidence to understand the region’s history”, while

ICTY evidence on detention sites: an agenda for comparative research

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Introduction

This working paper develops material presented at the 18th annual meeting of the European Society of Criminology, held in Sarajevo, Bosnia and Herzegovina from 29 August to 1 September 2018. The paper sets out an approach for work in progress, which proposes a series of comparative analyses of sites of detention in the Yugoslav conflicts occurring
Into the archive: transcripts first

Can we produce good history, social science or criminology from the records left after a trial process?
Research and trial: do substance and method overlap?

**Research**
Operationalization of meso-level criminological research questions

**Trial**
Operationalization of binary micro-level question of innocence or guilt

Multiple actors:
- Judge
- Prosecutor
- Defence
- Accused
- Witnesses
- Translators

Rules of procedure and evidence
Legal cultures and concepts

Rules/ conventions of social science method
Education, prior reading, theory and concepts

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Current research aim and substance of cases

- Aim: to describe and explain violence in sites of detention in the wider context of the war and related atrocity crimes.
  - Detention sites are
    - Mid-level organisational forms; and
    - Where multiple organisational forms intersect (army, police, municipal govt...)
  - They bring together violence, organisation, ideology, identity and individual in defined spatial and temporal limits that facilitate close study.
Oral history methods in the chamber?

“It is difficult to envisage a process that would follow oral history methodology more closely”

• Enticed remembering
• Dialogical collaboration
• Incremental redescription

- Invisible early stages
- Inconsistently visible interim stages
- Structured dialogue where both parties know the answer
- Further dialogues with different interlocutors
- Referees can interpret rules differently

Eltringham (2009)
Witness given relative freedom to narrate

Witness U, examination in chief (Naletilić and Martinović, 25/9/01, 2911)

Prosecutor: Witness U, I would like to ask you, as a Mostar citizen, if you could give us a very brief overview of the main events that you personally observed, had knowledge of, for the fall of 1991 through 1993 in Mostar... I would like you just to narrate a little bit, but pay more attention to the relationship between the Muslim and Croat communities...

WU: ...It's very difficult to determine -- it's very difficult precisely to determine when the relationship amongst the groups deteriorated to such an extent that it turned into armed conflicts. In the fall of 1991, Mostar was occupied by forces of the former Yugoslav National Army, strengthened by a large number of so-called reservists, i.e., reserve soldiers, mostly from the Republic of Serbia and the Republic of Montenegro. Already, at that time, the citizens had a sense that something unusual or out of the ordinary was happening, and soon there was a major presence of these soldiers who did not look like real soldiers. This escalated through individual incidents. And then in the course of March and particularly April 1992, an armed conflict broke out between the citizens who, in part, spontaneously and, in part, in an organised fashion tried to oppose this evident threat. In May, the armed conflicts escalated and turned into a real war against the former Yugoslav National Army, or whatever was left of it. And the patriotically-oriented citizens of Bosniak and Croat ethnicity, and partially also citizens of Serb nationality who were citizens of Mostar, after a couple of months, these armed clashes went or turned in favour of the citizens of Mostar. And the armed formations, which had already started to form, or had already grown, so that at the end of June, Mostar, the main part of the city or the centre of the city, was liberated, liberated from those military or paramilitary forces. The summer of '92 came. The shelling of Mostar continued by Serb units who had taken the elevations surrounding the city. And in the very city itself, at the end of the summer and in the fall, there were small, minor incidents in the beginning between Croats and Bosniaks, mostly due to the fact that the Croats, who had never formed the majority in the city of Mostar. Never in the history of Mostar did they form the majority, and that's how it was before the war, so they wished to have absolute power. They wanted their military formations called "HVO" to be the dominant power in the military sense. The political leadership of the Croats -

Judge Liu: Yes, Mr. Meek. [to hear objection]... [to prosecutor after exchange]... Well, you may proceed with the concise questions, and give more guidance to your witness in your question.
Witness/counsel tension (1)

Salko Osmić, cross by Chris Meek for Naletilić (Naletilić and Martinović, 27/9/01, 3147)

CM: Good afternoon, Mr Osmić
SO: Good afternoon, Sir.
CM: How are you today?
SO: Al humdi’Allah, I’m well
(... 3150)
CM: Just a moment ago, sir... did you speak in Arabic?
SO: ... [this] is an expression I use frequently. And it is difficult to shred off habits.
CM: Have you had any contact with the Mujahedins?

• Witness puts down an identity marker at beginning of cross (only occasion such term is used)
• From after first break in cross, counsel ceases using ‘Sir’ or ‘Mr Osmić’ in favour of ‘Salko’
• No evident resistance to questioning, dialogue ‘flows’, and opens up background to witness

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Witness/counsel tension (2)

Witness U, cross by Krešimir Krsnik for Naletilić (Naletilić and Martinović, 25/9/01, 2987)

KK: On the left, it says: "Republic of Bosnia and Herzegovina, B and H Army, Military Unit, Defence of the Republic." It says –

WU: Please read it as it is written. It says "Obrana," not "Odbrana."... 

[redaction, pick up 26/9/01 3013] Judge Liu: Mr. Prosecutor, did you talk to your witness yesterday?

Pr: Yes, Your Honour. I talked to him in the morning... mostly about the problems of behaviour in the courtroom and the manner of answering questions to both parties...It seems to me that Witness U understood that he should behave himself properly here in the courtroom...

Judge Liu: I think all of us... have to get used to the adversary systems in this courtroom, including your witness.

[3014] Judge Liu: This trial chamber will further not tolerate any discussion between counsel and the witness in the courtroom

[3034] WU: [to KK] ...You are asking questions which for the most part have nothing to do with the case.

Judge Liu: Let's stop the debate between yourselves, but just to bear in mind that you should ask a question in the line of the normal procedures.

[3035] WU: ... If I may, I will explain it briefly.

KK: No, thank you. There's no need. [ends]
Key reference materials

- Andy Aitchison*/Andy Aydı̈n-Aitchison**

- Nigel Eltringham

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