3. Understanding the Milošević Case: Legacy of an Unfinished Trial

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1. Introduction

This paper will address the question: what is the value of the record left by a trial that never came to conclusion? The expectations of the Milošević trial, for justice and accountability, were never met. His guilt was never formally established in the court and, in a legal sense, he died an innocent man. This paper argues that mass atrocities trials have not only a legal, but also an extralegal function purpose. Although the traditional objectives of criminal law—such as retribution and deterrence—were not achieved in Milošević’s case, no verdict was pronounced, and no judgment was written, the trial procedures, testimonies, expert reports, and documents produced as evidence left a comprehensive record to be studied by researchers from many different fields. The importance of this record should be understood in its relevance to societies in transition in the region, its contribution to the historical interpretation of the period, and for its role in shaping the collective memory. However, this will be a longstanding process where the same competing narratives as those heard at the trial will continue the contest: prosecution narrative vs. defense narrative.

This paper also argues that the trial record of Slobodan Milošević should not be used to ascertain a fixed view on the history of the causes and nature of the recent wars, or on his guilt or innocence. The trial record shows that there is an overlap between legal, political, and historical responsibility, and although Milošević’s legal responsibility will never be determined, the trial record provides material which can aid in more understanding of the extent of his political and historical responsibility.

2. Legal/Criminal, Political and Historical Responsibility

It is important to stress from the outset that, as the Milošević trial did not finish, one should not expect that a study on the trial has any unspoken or implied ambition to substitute a judgment that was never pronounced. Although every trial record is based on evidence intended to prove the guilt or innocence of those accused, the dominant view among modern day historians is that history "should not concern itself with ascribing praise or blame to individuals, but rather with tracking long-term
social and institutional change.” Indeed, historians and social scientists in the last several decades have increasingly minimized the significance of individuals, preferring to study group identity, group behaviour, and long-term structural and institutional change. Slobodan Milošević is something of an exception, as his political and historical role in the disintegration of Yugoslavia has already been the subject of many studies since the 1980s.

International criminal justice focuses on individual criminal responsibility and thus contributes to the record of the political and historical responsibility of an individual. The view advanced in this paper is that, given the unique position of Slobodan Milošević in the political system of Serbia and later in the Federal Republic of Yugoslavia (FRY, 1992-2003), expressed in his de jure and de facto powers, his personal criminal, political, and historical responsibilities are also core issues in understanding the processes that led to the disintegration of Yugoslavia and the violence that followed.

However, the exact nature of Milošević’s role and strategy, as well as the role and strategy of the other actors involved, remain a matter of dispute. The record left by the Milošević trial will inevitably contribute to a more comprehensive historical record to assist historians, and legal and other scholars in their research...

Milošević’s political life has been the subject of a number of books in which Milošević was cast as a central political figure in the former Yugoslavia in the period preceding and during the wars of the 1990s. Historians and political scientists ascribe a leading role to Milošević in the emergence of post-communist ideological movements and ideologies such as nationalism, which depend on a strong leadership. Those who critically assess his role in these processes, as well as those more supportive of it, all agree that his leadership was an undisputed fact. The historical value of the trial is augmented by the fact that Milošević took such a prominent role

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4 See, for example: “The actions of Slobodan Milosevic were...important, not just for developments within Serbia, but also outside of it.... The role of political leadership in general, and its instrumental uses of nationalism in particular, were very important.” in Valerie Bunce, *Subversive Institutions: The Design and the Destruction of Socialism and the State* (New York: Cambridge University Press, 1999), 149.