

comprehensive condemnation'.¹⁵ He further states that the principled concept of 'injustice' is necessary. It is important to recognise that the Third Reich cannot be considered unique, other than in terms of scale as the Stalinist regime in Cambodia, genocide oppression in Rwanda, the apartheid in South Africa including many others during the twentieth century, are regarded as extreme evil regimes in history. Most legal systems throughout the world have failed if we take Fuller's criteria. The UK's legal system has also shown evidence of a 'failing system' in particular retrospective decisions such as in *R v R*¹⁶; the use of statutory interpretation and judicial discretion; the rule of recognition¹⁷ as Hart defines - the *Hunting Act 2004* was criticised as people said the process was not done properly as it by-passed the Lord's assent; inconsistent adjudication, in particular the riot crimes have had different sentences, which distances it self from certainty that law is meant to be, according to Fuller.

After the collapse of the Third Reich, post-war German authorities and international jurisdictions were left with disentangling some of the consequences of Nazi legal administration. The judges and other professionals who upheld/implemented the law during the Nazi period were tried at Nuremberg in 1947 by an American Military Court. This was the first international trial making a moral judgment on Germany, which appeals to natural law ideals. The trials demonstrated the weaknesses and strengths of the proceedings. It was viewed that if we had relied on German law or the Stalin type solution, this would have been inappropriate justice. On an international basis, Nuremberg created a collection of legal precedents, which have been used in recent genocide events throughout the world. One of the criticisms levelled at such systems is that they are victors justice. Ironically, a retrospective law in accordance with Fuller's theory, is considered a failure to be a legal system. It seems clear that the 'Nazi period presented individual judges with intense personal and ethical dilemmas and while it is easy to condemn them in retrospect, oversimplifying their circumstances and declaring moral absolutes from a safe historical distance, it is more useful to examine critically and objectively the pressures they faced'.¹⁸

The most interesting decisions were those made in the 'grudge informer cases', whereby German soldiers who were home on leave had made critical remarks about Hitler/Nazi regime to his spouse who had then reported him to the Party in the expectation that he would be severely punished or killed.¹⁹ In the first case²⁰ it was argued that her action in informing upon her husband was not only lawful at the time but 'actually encouraged by some elements of the State, and so the question of

¹⁵ Penner, *McCoubrey & White's Textbook on Jurisprudence* (n 4).

¹⁶ [1992] 1 A.C. 599.

¹⁷ Penner, *McCoubrey & White's Textbook on Jurisprudence* (n 4) 92.

¹⁸ United States Holocaust Memorial Museum, *Law, Justice and the Holocaust* (n 1).

¹⁹ Penner, *McCoubrey & White's Textbook on Jurisprudence* (n 4) 245.

²⁰ H O Pappe, *Validity of Judicial Decisions in the Nazi Era*, 23 *Modern L Rev* 260.