

of evidence and four hours of deliberation) and of the police officers who pummeled Rodney King; the \$1 million award to a woman who claimed that a CAT scan had zapped her psychic powers; the \$2.9 million awarded to a woman who spilled McDonald's coffee in her lap; the \$10.5 billion damages against Texaco (the jury reportedly tacked on another billion for each defense witness they loathed); and other tales of jurors befuddled or bamboozled, ignorant or indignant. Jury-room missteps may not be conclusive—judges routinely reduce excessive damage awards—but that's hardly a ringing defense of the system.

Now comes historian Levy, author of the Pulitzer Prize-winning *Origins of the Fifth Amendment* (1968) and some 30 other books, to show how we got here. The jury arose eight centuries ago because Henry II (1154–1189) distrusted the traditional modes of settling disputes. Professional fighters—lances for hire—had corrupted trial by battle. Trial by ordeal was at the mercy of the supervising priest, who, if feeling charitable, might assign the litigant a less-than-nightmarish ordeal: immersing his arm in lukewarm rather than boiling water, for instance, or eating bread while those around him prayed that he would choke if guilty. So Henry established local, 12-man inquisitorial bodies and gradually expanded their jurisdiction. Why 12? According to the 17th-century treatise *Duncomb's Trials*, “If the 12 apostles on their 12 thrones must try us in our eternal state, good reason has the law to appoint the number of 12 to try our temporal.”

As Britain refined the jury system, Pope Innocent III (1198–1216) launched the Holy Inquisition against heretics. Conviction required something akin to proof beyond a reasonable doubt, which placed a premium on confessions—even confessions obtained by torture. So, despite the putatively pro-defendant standard of proof, “the entire history of the Inquisition reveals not a single instance of complete acquittal.” Levy adroitly contrasts the inquisitorial system with the jury system, and assesses why Britain did not go the way of the Continent.

The British commitment to the local jury waned when jurors in the American colonies refused to enforce unpopular laws. Parliament shifted some trials in the colonies to judges (“the most grievous innovation of all,” John Adams declared) and other trials to British

juries (exposing the defendant, James Madison wrote, “to trial in a place where he was not even alleged to have ever made himself obnoxious”). The Declaration of Independence listed these practices as proof of Britain's plot to impose “absolute despotism” on the colonies. The issue in the founding era was not amateur versus expert, as Griswold later framed it; it was citizen versus state.

When it shifts from Europe to America, Levy's book unravels a bit, with twice-told tales and meager analysis. A larger problem is that his story ends around 1800. In that year (as in 1200), local jurors were valued because they were already familiar with the parties and the dispute. By 1900, judges often kept citizens with preexisting knowledge off juries. In 1800, too, juries often determined the law as well as the facts. By 1900, the Supreme Court had decreed that jurors were duty-bound to heed the judge's instructions on the law (though they had, and still have, the raw power to acquit against the evidence). Given these and other changes since 1800, Akhil Reed Amar, in *The Bill of Rights* (1998), pronounces today's jury “only a shadow of its former self.” Such an assessment, or at least another century of history, would have enriched Levy's book.

—Stephen Bates

### ***THE HOLOCAUST IN AMERICAN LIFE.***

By Peter Novick.

Houghton Mifflin. 373 pp. \$27

### ***SELLING THE HOLOCAUST: From Auschwitz to Schindler, How History Is Bought, Sold, and Packaged.***

By Tim Cole. Routledge. 214 pp. \$22.95

The crime we have come to call the Holocaust was not known by this name during World War II, and, in the years following the defeat of Nazi Germany, it did not receive the kind of public attention that it now attracts. These two books consider how the genocidal assault against the Jews became “the Holocaust” and assumed its present prominence in contemporary culture.

Novick, a University of Chicago historian, seeks to trace the development of Holocaust consciousness in the United States and to evaluate whether such aware-



ness is “good for the Jews” and others in this country. Having read widely in the archives of major American Jewish institutions, he is at his best in showing how Holocaust consciousness evolved over time, shifting from the margins to centrality within both Jewish culture and certain sectors of American culture. As pivotal moments in this development, he correctly identifies the 1961 Adolf Eichmann trial in Israel and the Arab-Israeli wars of 1967 and 1973. But with his predominantly American focus, Novick cannot explain why Holocaust consciousness developed in other countries as well.

Intent on exposing the Holocaust as a deliberately constructed strategy for shoring up American Jewish identity and mobilizing support for Zionist causes, he largely ignores less instrumental reasons why thoughtful people might feel compelled to take an interest in the Jewish catastrophe under Hitler. Where some might point to historical, religious, moral, or ethical claims on consciousness as legitimate prods to remember the Nazi crimes, Novick tends to see only the work of “Holocaust professionals” and other “promoters of Holocaust consciousness.” That approach, far too cynical and reductive, pervades this book and detracts from its value.

*Selling the Holocaust*, the work of a young British scholar, is more derivative but also less tendentious. Cole’s comparative approach serves him well as he explains how the Holocaust has been represented in different ways in Europe, Israel, and America. Focusing on three figures (Anne Frank, Adolf Eichmann, and Oskar Schindler) and three places (Auschwitz, Yad Vashem, and the United States Holocaust Memorial Museum in Washington, D.C.), he demonstrates how little consensus there is about the proper presentation and ultimate meaning of this history. While portraying Jewish victimization at the core of their Holocaust narrative, Israelis tend to stress the heroic dimensions of Jewish resistance to Nazism, for example, whereas memorial institutions in the United States highlight the role of American soldiers in liberating the Nazi camps. But Cole’s title is unfor-

tunate, as is his repeated use of the easily exploitable phrase “the myth of the Holocaust.”

Both authors evince far more interest in the shifting images of the Holocaust than in the traumatic event itself, an interpretive strategy that, while understandable to a point, in the end reduces all history to its representations. It is true that the past cannot be understood apart from the forms that mediate it, but the pain of this particular past cries out for far more attention than it receives in either of these books.

—Alvin H. Rosenfeld

### WHO KILLED KIROV?

#### *The Kremlin’s Greatest Mystery.*

By Amy Knight. Hill & Wang. 331 pp. \$26

Bolshevik luminary, firebrand, Lenin-grad party boss, Stalin’s close associate—Sergei Kirov was all of these until he was killed by a disgruntled, probably deranged militant on December 1, 1934. Contending that political opponents had orchestrated the murder, Stalin launched the Great Terror, the monstrous, four-year-long purges of party members and the whole of Soviet society. Given his rush to lay blame and the orgy of repression that followed, many have suspected that Stalin—not Grigori Zinoviev, Lev Kamenev, Nikolai Bukharin, or any of the other party leaders—masterminded the most enigmatic crime of the Soviet century, and perhaps the most consequential.

Based on Soviet archival materials and newly published documents, *Who Killed*

