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PROJECTS OF PUNISHMENT IN POSTWAR POLAND: WAR CRIMINALS, COLLABORATORS, TRAITORS, AND THE (RE)CONSTRUCTION OF THE NATION

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ABSTRACT

Projects of Punishment in Postwar Poland: War Criminals, Collaborators, Traitors, and the (Re)Construction of the Nation traces the development and deployment of two "technologies of retribution" in Poland in the immediate aftermath of World War II: the *Main Commission to Investigate German War Crimes*, an organization tasked with coordinating the investigation and punishment of Nazi war criminals in international and domestic courts of law, and the project of constructing the legal and procedural infrastructure to punish Polish collaborators within the reactivated interwar criminal justice system. It uses these large-scale, justice-seeking projects as a framework in which to analyze how the social solidarities that undergird local communities are (re)forged in the aftermath of widespread atrocities. In doing so, it highlights how these "technologies of retribution" were shaped by the dynamic interactions between socialist political elites, interwar legal personnel who had been reinstated to help steer these projects, and finally, by individuals and local communities seeking retribution for acts of wartime wrongdoing. As these actors struggled to realize these projects of punishment, new forms of self- and national identification were produced that anchored local communities to the new postwar Polish socialist state.

INTRODUCTION

TECHNOLOGIES OF RETRIBUTION IN POSTWAR POLAND

As part of the standard school curriculum, all Polish children are required to read *Medallions*, a collection of short stories by the acclaimed author Zofia Nałkowska. These stories distill into literary form testimony Nałkowska had gathered while working for the Main Commission to Investigate German War Crimes in Poland. With a title that deliberately invoked the portraits affixed to the tombstones of the departed (known as medallions), Nałkowska captured in stark language and raw visual imagery the incomprehensibility of the mass atrocities visited upon Poland during the Nazi occupation. Now, over seventy years after the end of the war and the publication of her book, Nałkowska's *Medallions* is used to cultivate a collective moral outrage that "people dealt this fate to people" (the epigraph of the book) among the great-grandchildren of those who survived these traumas.

It was this sense of collective moral outrage that drove Polish efforts to rebuild shattered lives, fractured communities, and a functioning state in the immediate aftermath of the Nazi occupation. Against a backdrop of political, social, economic, and moral devastation, Poland's new socialist leaders recently returned from wartime exile in Moscow or from the communist underground aimed to harness and channel the popular drive for retribution through large-scale, justice-seeking projects that were to simultaneously legitimize the socialist state-building project. The "technologies of retribution" deployed to this end were twofold: the Main Commission to Investigate German War Crimes, an organization tasked with coordinating the investigation and punishment of Nazi war criminals in international and domestic courts of law, and the construction of an infrastructure to punish Polish collaborators within the reactivated interwar criminal justice system.

This dissertation uses these two "technologies of retribution" as a framework to analyze how the social solidarities that undergird local communities are (re)forged in the aftermath of widespread atrocities. It shows how these processes were shaped by the dynamic interactions between socialist political elites, interwar legal personnel who had been reinstated to help steer these projects, and finally, by individuals and local communities seeking retribution for acts of wartime wrongdoing. As these actors struggled to realize these projects of punishment, new forms of self- and national identification were produced that anchored local communities to the new postwar Polish state.

Crime, Punishment, and Nation-Building

During times of political, social, and economic stability, criminal law and its public performance in courts can play an important role in affirming the collective consensus about socially constructed norms of "right" and "wrong." The ritual of punishment embodied in the legal process not only allows society to express and channel moral outrage and reaffirm boundaries between the permissible and the forbidden, but it also allows transgressors the opportunity to atone for wrongdoing and rejoin the community. In the most extreme cases, it provides a vehicle by which to permanently excise offenders from the social body through lifelong imprisonment or death. In this manner, law and criminal legal practice draw the line between who is a member of the community and who is not.[1]

[1] The sociological literature dedicated to legal processes and community "membership" often focuses on the relationship between the state and the construction of citizenship rights that embody the "rules" of national membership. In such accounts, interactions of local communities with the "nationalizing state" play an integral role in how these rules of membership are articulated (Somers 1993, Tilly 1989). While such studies emphasize the inclusive aspects of the

Notably, this Durkheimian conceptualization of punitive law is inadequate when theorizing the role of criminal justice and punishment in the wake of state-sponsored violence, mass atrocities, and the political transitions that often accompany such events. At such times law does more than affirm the boundaries between right and wrong; it (re)*creates* those boundaries as well as their underlying social solidarities. Thus, instead of merely reflecting the Durkheimian "collective conscience," law and punishment take on constitutive powers in and of themselves.

This conceptualization of law and punishment undergirds an important strand of "democratic transition" scholarship. Although this body of work locates its primary historical antecedents in the association between the Nuremberg War Crimes Tribunal and the democratization of West Germany post-1945,[2] its heyday came in the 1970s, 1980s, and 1990s when authoritarian regimes in places as diverse as Latin America, Southern Europe, Eastern Europe, and the Soviet Union liberalized and democratized (for the most part peacefully). At this critical juncture between the demise of one political system and the advent of the new, legal scholars and theorists argued that democratic successor regimes were obligated to punish

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state-law-community nexus, other scholars have shown how law and legal practice can be deployed to exclude individuals and groups from the larger national community. In particular, they demonstrate how legally-guaranteed citizenship rights can diverge from the actual legal practice on the ground so as exclude certain members of the local and national community (Frederickson 1981), although exclusionary practices also provide contexts for radical social change(Schiengold 1986). Notably, although these studies do not necessarily focus on the role of penal law and boundary marking, they are important in that they argue that law, legal structures, and social and political charge are historically and contextually contingent (see also McCann 1994).

[2] See Ruti Teitel, *Transitional Justice* (UK: Oxford, 2000).

previous authoritarian leaders who had committed atrocities against their civilian populations.[3] Failure to do so not only represented an egregious breach of domestically binding international law, but it would also stunt subsequent efforts to build the norms and values necessary to maintain stable democratic governance.

Specifically, "legalists" argued that trials of the main architects of crimes committed under the auspices of and in the name of a prior authoritarian dictatorship would send a powerful message about the importance of the rule of law. Such trials would help transform "popular conceptions of correct behavior"[4] and promote the internalization of values that espouse habitual conformity with the law. In addition to developing a collective "legal culture" as a backbone for meaningful democratic government, scholars of the legalist persuasion were further convinced that criminal trials could play a key role in social repair, conceptualized as rebuilding social trust in the aftermath of political violence and mass atrocities.[5] In this sense, the courtroom could function as a forum for deliberation where the rules of evidence, procedure, and professional ethics allowed opposing sides to engage in civil discourse and dissensus[6] about the events in

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[3] See Diane Orentlicher, "Settling Accounts: The Duty to Prosecute Human Rights Violations of a Prior Regime," *Yale Law Journal* 100(8): 2537-2615; Naomi Roht-Arriaza, *Impunity and Human Rights in International Law and Practice* (UK: Oxford, 1995).

[4] See Payam Arkhavan, "Justice in the Hague, Peace in the Former Yugoslavia? A Commentary on the United Nations War Crimes Tribunal," *Human Rights Quarterly* 20(4): 737-816.

[5] See Martha Minow, *Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence* (Boston: Beacon Press, 1999); Laurel E. Fletcher and Harvey M. Weinstein, "Violence and Social Repair: Rethinking the Contribution of Justice to Reconciliation," *Human Rights Quarterly* 24(3): 639–773.

[6] This is a notable contrast to the Durkheimian conception of punitive justice based on consensus.

question. In this manner, victims who testified in court would achieve closure and regain a sense of agency over their own lives, and perpetrators would be forced to own their misdeeds and atone for them. More importantly, the public performance of criminal justice would facilitate the creation of a unifying collective memory for the nation.[7]

This vision of criminal trials as a vehicle for creating the norms and values essential for democratization, social (re)integration, and healing, as well as forging the social solidarities that undergird a sense of national belonging was vociferously countered by political and social scientists who took a much more pragmatic stance about the role of law and criminal trials during processes of large-scale political transition. This view was informed by a conceptual model of regime change that emphasized actors' rational interests instead of their values and beliefs. In essence, authoritarian regimes underwent liberalization and democratization because this best served the interests of elite and societal actors and not because of any normative shift in the political or social sphere.[8] In this interest-driven world, the prosecution of perpetrators of mass atrocities was simply an exercise in political pragmatics, with the "winners" often punishing simply to neutralize real and perceived opponents to their power. Thus, it was often best to forego such efforts: trials could potentially destabilize fragile new democracies by provoking revolt among those who were heavily implicated in past wrong-doing. Furthermore,

[7] See Carlos Santiago Nino, "The Duty to Punish Past Abuses of Human Rights Put into Context: The Case of Argentina," *Yale Law Journal* 100(8): 2619-2640; Mark Osiel, *Mass Atrocity, Collective Memory, and the Law* (Piscataway, 1999).

[8] See Terry Lynn Karl, "Dilemmas of Democratization in Latin America," *Comparative Politics* 23(October): 1–21; Juan Linz and Alfred Stepan, *Problems of Democratic Transition and Consolidation: Southern Europe, South America, and Post-communist Europe* (Baltimore: Johns Hopkins University Press, 1996); Guillermo O'Donnell and Philippe Schmitter, *Transitions from Authoritarian Rule: Tentative Conclusions about Uncertain Democracies* (Baltimore: Johns Hopkins University Press, 1986).

national judicial systems did not possess the capacity to stage such proceedings, mired down as they were by legal personnel associated with the previous regime and still crippled by law and legal procedures designed to serve the authoritarian state.[9] Clearly, the notion of social solidarity based upon shared values and identities that figured in legalist arguments was irrelevant for the post-transition world envisioned by the "pragmatists." In its stead, individual self-interest harnessed by the incentive structures of the new democratic political order could serve as a force of social and political cohesion in the absence of shared beliefs and values.

This dissertation positions itself at the juncture of these two theoretical conceptualizations. In keeping with the legalist understanding of punishment, it argues that exceptional times and exceptional crimes represent critical junctures when new collective values and beliefs can be forged and new national identities created. However, in doing so, it departs from the implicit legalist assumption that such projects occur against the backdrop of already-existing social solidarities. Instead, this dissertation recognizes the impact that the two-fold trauma associated with wide-scale political violence and regime transition has upon social relationships. While the horrors of state-sponsored violence and the climate of fear in which such acts were perpetrated break bonds of solidarity between families, friends, and community members, the dislocation and uncertainty of political transition further serves to shred the social fabric.

[9] See Jamal Benomar, "Justice After Transition," *Journal of Democracy* 4(1): 3–14; Luc, Huyse, "Justice after Transition: On the Choices Successor Elites Make in Dealing with the Past," *Law & Social Inquiry* 20(1): 51–78; J. Zalaquett, "Balancing Ethical Imperatives and Political Constraints: The Dilemma of New Democracies Confronting Past Human-Rights Violations," *Hastings Law Journal* 43(6):1425–38.

For its part, scholarship of the "pragmatic" persuasion provides insight into how politically motivated projects of justice are anchored to state-building processes in the aftermath of mass atrocity and regime transition. Yet the tendency to overemphasize the fluidity of political and legal practice and totally subordinate the latter to the former oversimplifies the complex and unintended ways that these spheres interact. The efforts by new elites to instrumentalize justice for their own political and ideological ends confront legal-institutional legacies, ideas, and everyday practices that persist and inflect the transformation of the criminal justices system nested within the larger process of regime transition.

Thus, the courtroom and the projects of punishment staged therein function as sites of state- and nation-building where new elites, legal personnel "recycled" from the previous regime, and social actors "from below" interact to produce new forms of self- and national identification. As new leaders struggle to define and engineer a role for punishment that conforms to the political and ideological aims of the larger state-building project, "legal imaginations" shaped by prior institutional and ideational contexts refract these efforts in ways that are not necessarily congruent with the aspirations and ideas of the new political and social order. Finally, at the societal level, individuals and local communities traumatized and atomized by the horrors of the past seek to (re)draw the boundaries between right and wrong and (re)define social "belongingness" by identifying and branding those who were complicit with the wrongdoings of the prior regime. The manner in which they do so further shapes how the ritual of punishment unfolds in the courtroom. Together these actors shape more than the trajectory of punishment; they forge the very essence of community solidarity and national belongingness that allows polities and societies to move forward in the aftermath of state-sponsored political violence.

In order to operationalize these interactions, this dissertation breaks from the standard practice of studying national and international trials and instead focuses on localized legal processes staged in district and appellate courts. In doing so, it shifts analytic weight away from the punishment of top leaders and the main architects of mass atrocities—remote figures signifying little to local populations—and instead focuses on local-level collaborators, those neighbors and co-residents of villages, towns, city districts, and apartment complexes who had become involved in larger projects of state-sponsored violence. The very fact that such individuals had been embedded in the same social milieu as those against whom they had offended added an intimacy and drive to subsequent efforts for retribution. Moreover, local level trials serve as sites where nationhood and "nationness" as an "institutionalized form"[10] collides with "group processes"[11] embodied in the "everyday practice" (as opposed to a staged national event) of identifying and punishing collaborators.

[10] See Rogers Brubaker, *Nationalism Reframed: Nationhood and the National Question in the New Europe* (UK: Cambridge, 1996).

[11] See Rogers Brubaker, Margit Feischmidt, Jon Fox and Liana Grancea, *Nationalist Politics and Everyday Ethnicity in a Transylvanian Town* (New Jersey: Princeton, 2006). Just as studies of citizenship have conceptualized law and legal structures as historically and contextually contingent, so too do recent studies of ethnicity and nationalism contend that these forces are fluid and articulated in context-specific ways. For example, Rogers Brubaker argues that scholars should abandon the reifying practice of treating nations and "ethnicity" as "real groups" with hardened boundaries, and instead focus on both a more dynamic and processual manner. Andreas Wimmer has adopted a similar theoretical approach in his typology of the different processes of ethnic boundary making (Wimmer 2008, 2013). Notably, whereas Wimmer collapses ethnicity and nationhood, Brubaker keeps these two analytical categories separate.

The "Holocaust in the East"

After the collapse of the Soviet Union and its socialist satellites made available previously restricted archival materials pertaining to the genocide of the Jews on these territories, area studies specialists and genocide scholars alike have turned their attention to court records generated during postwar investigations and trials to reconstruct the micro-histories of violence surrounding the destruction of local Jewish communities during World War II.[12] While this approach provides invaluable information about patterns of local collaboration and illuminates the tragic fate of Jewish communities in this region, such studies do not focus on postwar efforts to bring collaborators to justice. To date, there exist only a handful of English-language studies that focus on local-level Soviet trials[13] and none that systematically focus on their Polish equivalents. Moreover, these studies do not attempt to situate the punishment of local collaborators with the Holocaust within the larger postwar project of punishing collaboration. This study seeks to enhance this already-existing scholarship by illuminating where justice for

[12] See Barbara Engelking, *Jest Taki Piękny Słoneczny Dzień. Losy Żydów Szukających Ratunku na Wsi Polskiej 1942-1945* (Warszawa, 2011); Barbara Engelking and Jan Grabowski, eds., *Zarys Krajobrazu. Wieś Polska wobec Zagładz Żydów, 1942-1945* (Warszawa, 2011); Jan Grabowski, *Judenjagd. Polowanie na Żydów 1942-1945* (Warszawa, 2011); Jan T. Gross, *Neighbors* (New Jersey: Princeton, 2001).

[13] See Diana Dumitru, "An Analysis of Soviet Postwar Investigation and Trial Documents and Their Relevance for Holocaust Studies," in *The Holocaust in the East: Local Perpetrators and Soviet Responses,* ed. by Michael David-Fox, Peter Holquist, and Alexander Martin (Pittsburgh: University of Pittsburgh, 2014); Tanja Penter, "Collaboration on Trial: New Source Material on Soviet Postwar Trials against Collaborators," *Slavic Review* 64(4): 782–90; Tanja Penter, "Local Collaborators on Trial. Soviet War Crimes Trials Under Stalin (1943-1953)," *Cahiers du monde russe,* 49(2): 341–64.

the Jews fits into larger justice-seeking projects launched by Poland in the immediate aftermath of World War II.

Research Design and Methodology

In addition to using the archival holdings of the Main Commission to Investigate German War Crimes to trace this organization's developmental trajectory in the immediate postwar period, this dissertation also analyzes 260 cases investigated by the prosecutors' offices for the Łódź, Lublin, and Warsaw special criminal courts, a system of temporary courts that operated between October 1944 to November 1946 to try suspected Nazi collaborators. This sample of cases was generated by using the idenitification system employed by prosecutors' offices whereby each incoming case was registered with a *dspec* number (*dochodzenie specjalne* or special investigation) that corresponded to its line of entry in a special log book, along with the year in which the case was registered. The first *dspec* investigations were begun in October 1944 in the Lublin appellate court district, and at the beginning of January 1945 for the Warsaw appellate court district that also included Łódź and its environs. Although the Warsaw and Łódź districts shared a special criminal court, each had its own Office of the Prosecution. Ultimately, the *dspec* log books for these three prosecutors' offices were maintained until November 15, 1946 when the special criminal courts were liquidated. At this time all active cases were transferred to regular prosecutors' offices at the district court level where investigatory and prosecutorial activities continued.

Although difficult to estimate, the total number of *dspec* cases generated by each prosecutor's office easily ranged into the thousands. Hence, in order to assure that my sample captured the entire span of these offices' operation, I selected every thirtieth case logged by each

office, giving me a total of 80 cases for the Łódź and Warsaw offices, with an additional 20 cases for Lublin that were initially logged for 1944. In instances when a case had been assigned more than one *dspec* number,[14] when possible, I based my selection upon the first number that had been assigned in order to preserve the original chronology.

These *dspec* files represent the combined efforts of the prosecutor's office, the newly-created state security services (*Urząd Bezpieczeństwa* or UB), and the " People's Police" (*Milicja Obywatelska* or MO) to investigate and build cases against suspected collaborators. In the event that the prosecutor decided there was enough evidence to issue an indictment, the file was then passed to the special criminal court and was assigned a unique *kspec* number. Materials gathered in this companion file included: correspondence between the court and its prosecutor's office, trial transcripts, verdicts and their grounds, as well as documentation relating to sentencing, including the court's recommendation about whether or not a death sentence should be commuted by the acting president Bolesław Beirut.

Even if it might have been possible to achieve a greater level of systematization by using the more-reliable *kspec* log system whereby cases were generally assigned only one number, there are several important methodological advantages to using the *dspec* logging system. For one thing, this allowed the inclusion of cases that were dismissed by the prosecutors' offices without the issuance of an indictment, thus providing a broader spectrum of cases for analysis.

[14] Due to the sheer volume of cases in conjuction with severe understaffing, these offices were often unable to conduct investigations in a timely manner. As a result, cases that had been logged for one year were often *relogged* for the following year, and hence assigned a completely different *dspec* number based upon its new position in the log book. Further instances where an investigation could be assigned a new *dspec* number occurred when a case was tranferred from one jurisdiction to another—a not-infrequent occurance given the extreme mobility of the population during these years.

More importantly, using the *dspec* logging system allowed me to track cases *after* the closure of the special criminal courts and their subsequent transfer to the district court system—something that not would have been possible if I had relied solely on the *kspec* logging numbers.

The decision to sample cases from these three prosecutors' offices was grounded in both temporal and geographic considerations. First, since the investigation and prosecution of collaborators began in the Lublin district nearly four months prior to similar efforts in Łódź and Warsaw, this prosecutor's office and its associated special criminal court bore witness to the first encounters between new socialist elites and prewar legal personnel as they grappled with the procedural and moral intricacies associated with retroactively defining and addressing wartime criminality in its various manifestations. Hence, including the Lublin office in this sample makes possible an exploration of if and how these early endeavors set procedural and interpretive precedents for subsequent special criminal courts.

In addition to this temporal consideration, the selection of these offices operationalizes three different administrative legacies stemming from both the Nazi and (1939) Soviet occupation of Poland. Whereas Łódź and its environs had been directly incorporated into the Third Reich in 1939, Lublin and Warsaw had been governed separately as part of a Reich protectorate known as the "General Government." While this division left the jurisdictional boundaries of the prewar Lublin appellate court primarily intact, it bisected the prewar Warsaw appellate district. Moreover, the eastern part of the district had fallen under Soviet rule from September 1939 to June 1941. Hence, when the prewar boundaries of the Warsaw appellacy were restored in February 1945, the joint Łódź-Warsaw special criminal court was responsible for trying cases emanating from areas that had been annexed by Nazi Germany directly to the Third Reich, areas that had been part of the Reich protectorate, and Soviet-governed areas.

Notably, although scholars often dismiss legal documents produced in authoritarian political contexts as contrived show trials, the materials contained in these case files belies such a simple classification. Although the UB and MO often coerced confessions from suspects, prosecutors and judges were not unaware of this problem and subsequently provided such individuals multiple opportunities to narrate a different version of events (i.e., in subsequent depositions and during trial). And indeed, suspects took advantage of these opportunities and admitted openly that they had been beaten until they had signed a confession and so on. Furthermore, trial transcripts were rarely scripted, and defense witnesses were allowed to testify. These multiple accounts thus help establish authenticity and witness reliability.

Chapter Outline

Chapter One reconstructs the institutional development of the Main Commission to Investigate German War Crimes, the official state organ responsible for directing the investigation and punishment of Nazi war criminals. This chapter traces how prewar legal experts and key political figures in the new socialist order's Ministry of Justice struggled to define the Commission's organizational mission and structure during the years 1944–49. As legal experts attempted to come to terms with serious breeches in traditional legal protocol such as the violation of the principle of *lex retro non agit* (no retroactive punishment), they also attempted to adapt their legal understanding of "ordinary criminality" to the "extraordinary criminality" of the wartime era. For their part, new socialist elites found themselves caught at the intersection of the Soviet model for investigating and prosecuting war crimes, the independent efforts of Polish society to organize similar investigatory projects, and joint Allied efforts to prosecute major Nazi war criminals at an international tribunal and extradite lesser war criminals

to the countries where they had committed their crimes. In addition to analyzing how these contending pressures shaped the development trajectory and mission of the Main Commission, this chapter also examines the development of regional branches of the Commission located in Łódź, Lublin, and Warsaw.

Chapter Two traces the development of a legal-procedural infrastructure to cope with the punishment of "war criminals, collaborators, and traitors to the Polish nation." Even though new socialist leaders opted to stage punishment within the framework of the interwar criminal justice system and reemployed its legal personnel to enact this, they nevertheless intended for this project to conform to a socialist vision of punishment. This was signified by legal-theoretical efforts to link patterns of wartime collaboration with a suspect's socio-economic class, as well as by the pragmatic deployment of punishment to eliminate real and perceived enemies of the socialist state-building project. To help facilitate the realization of this vision, new elites deployed a set of special criminal courts and associated prosecutors' offices that operated according to simplified legal procedures and introduced politically-reliable jurors to the courtroom. These measures were intended to curtail the influence that prewar prosecutors and judges had on the investigation and punishment of individuals under the newly-promulgated decree Concerning the Punishment of Fascist-Hitler Criminals Guilty of Murder and Abuse of Civilians and Prisoners of War as well as Traitors to the Polish Nation.

An analysis of cases sampled from the prosecutors' offices for the Łódź, Lublin, and Warsaw special criminal courts reveals that processes of investigating and punishing suspected Polish collaborators were not inflected by socialist legal theories about the relationship between criminality and social class. Nor were outcomes predominantly shaped by the "legal imaginations" of prewar legal personnel as expressed by strict adherence to prewar legal

procedure. Instead, what emerges is a far more complex picture whereby the enactment of different forms of local/ethnic solidarity on the part of local communities profoundly shaped the investigation and punishment of suspected collaborators. Ultimately, adjudication was not driven by consolidation of a Polish socialist state but by the consolidation of an ethnic nation.

Chapter Three analyzes postwar efforts to address legacies of the *Volksdeutschliste*, a Nazi-era system of ethnic classification that claimed interwar Polish citizens with "at least one drop of German blood in their veins" as official members of the German nation. In the immediate postwar era, Polish leaders struggled to determine which of these "traitors to the Polish nation" could be rehabilitated as well as how they should be punished for their failure to uphold "Polish national distinctiveness" during the occupation. While they initially experimented with a variety of administrative and legislative forms, their efforts ultimately coalesced around a legal pathway to rehabilitation through punishment by the special criminal courts. An analysis of *Volksdeutsche* cases in this sample of investigations by the Łódź, Lublin, and Warsaw prosecutors' offices for the special criminal courts not only illuminates important geographic distinctions in patterns of occupation-era recruitment to the *Volksdeutschliste*, but it also reveals a profound divergence in the subsequent practices of punishment, a difference that fractured along the fault lines of prewar ethnic identity. Ultimately, this produced two distinct postwar understandings of "Polish national distinctiveness."

Chapter Four turns to the remnants of Poland's once-numerous Jewish communities. While the systematic destruction of Poland's Jewish minority did not feature prominently in the investigatory and documentary work conducted by the Main Commission in the immediate postwar period, proclamations made by new socialist elites did promise justice for "Auschwitz, Majdanek, Treblinka, [and] for the murder of the ghetto." Yet in this sample of cases from the

prosecutors' office for the Łódź, Lublin, and Warsaw special criminal courts, relatively few investigations pertained to the targeted persecution and destruction of Poland's Jewish minority and even fewer ultimately advanced to trial. While this is partially a function of procedural and evidentiary difficulties associated with investigating mass atrocity and genocide, the collusion of prosecutors with local communities effectively blocked meaningful efforts to bring such collaborators to justice, in this manner further contributing to the construction of the postwar Polish ethno-national state.

CHAPTER ONE

BETWEEN "OLD AND NEW" AND "EAST AND WEST": POLAND AND THE MAIN COMMISSION TO INVESTIGATE GERMAN WAR CRIMES, 1944–53

Introduction

On November 10, 1945, the Polish provisional government passed a statute creating the Main Commission to Investigate German War Crimes *(Główna Komisja Badania Zbrodni Niemieckich w Polsce,* hereafter Main Commission or Commission), an organ of the Ministry of Justice responsible for collecting and analyzing evidence that would be used to prosecute German war criminals and collaborators who had committed crimes on Polish territory or against Polish citizens between the years 1939–45, as well as propagating knowledge of these crimes and the victims among both domestic and international audiences.[1] Additionally, although not formally established by this statute, the Main Commission assumed responsibility for directing the work of the Polish Military Mission to Investigate German War Crimes *(Polska Misja Wojskowa Badania Niemieckich Zbrodni Wojennych),* an institution created in January 1946 to assist in the extradition of war criminals from occupied Germany to Poland to stand trial.[2]

In the coming months and years, the Main Commission, as well as its regional chapters, would join the ranks of the other Allied Nations similarly struggling to punish Nazi perpetrators, commemorate victims, and construct unifying national narratives about the war years. Both separately as nation-states and together as a community of nations, they would seek to implement various interwar agreements that specified the contours of international and domestic

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[1] O Głównej Komisji i Okręgowych Komisjach Badania Zbrodni Niemieckich w Polsce, November 10, 1945, *Dziennik Ustaw Rzeczpospolitej Polski* (Dz. U. RP), nr 51, poz 293.

[2] As per the 1943 Moscow Decree.

punishment—efforts that offered a chance to rebuild and reaffirm national unities that had been shaken by occupation and war. For Poland, such projects were to take on a particular significance given not only the scale of terror and destruction to be reckoned with in the aftermath of war, but also due to a prewar legacy of interrupted state- and nation-building. These legacies were to form the immediate backdrop for the Main Commission, and as such, were to play an integral role in shaping the project of investigating and punishing Nazi war criminals and their Polish collaborators.

In addition to old geopolitical insecurities, the Main Commission also found itself caught in an emerging geopolitical reality defined by growing animosity between the Western Allies and the Soviet Union, an animosity fueled by different political, social, and economic visions for the postwar European order. Among other things, these tensions manifested themselves in different conceptions of how to investigate and prosecute war criminals, and more fundamentally, who should be branded as such.

In the Soviet Union, the infrastructure for investigating war crimes had been officially launched on November 2, 1942 with the creation of the Extraordinary State Commission for Ascertaining and Investigating Atrocities of the German Fascist Invaders and their Accomplices and the Damages Inflicted by Them on Citizens, Collective Farms, Social Organizations, State Enterprises, and Institutions of the USSR (ChGK). Although lacking formal legal powers and an "expert" staff,[3] the Extraordinary Commission gathered witness statements and evidence that

[3] The commission was composed of prominent political and social figures such as the Leningrad party chairman Andrzej Zdanov, trade union chairman Nikolai Shvernik, the author Aleksei Tolstoy, Metropolitian Nikolaj of Kiew as well as five "academicians" and a famous woman aviator, Valentina Stepanovna Grizodubrova. M.A. Sorokina, "People and Procedures:

formed the basis for eighteen major domestic trials against Nazi war criminals and collaborators between 1943 and 1947,[4] as well as thousands of trials in local military tribunals. In addition to this, the Extraordinary Commission also assessed the physical and material damages visited on the Soviet Union by the Nazis in preparation for postwar reparation payments.

For their part, the Western Allies launched the United Nations War Crimes Commission (UNWCC) in October 1942—an organization responsible for coordinating Allied investigations of crimes committed during the war.[5] The Polish Goverment-in-Exile operating out of London eagerly seized upon this joint-Allied venture, since it had already been planning for the future prosecution of war criminals and collaborators in Polish courts of law. With the creation of the UNWCC, a special committee responsible for compiling evidence of crimes committed on Polish soil and organizing a central register of suspects was revamped as the Bureau for War Crimes. Now, in addition to these previous two activities, it would also prepare indictments for the UNWCC and cooperate in information-sharing efforts with similar bureaus established by other Allied Nations.[6]

Toward a History of the Investigation of Nazi Crimes in the USSR," *Kritika: Explorations in Russian and Eurasian History* 6(4): 817.

[4] Nathalie Moine and John Angell, "Defining 'War Crimes Against Humanity' in the Soviet Union: Nazi Arson in Soviet Villages and the Soviet Narrative on Jewish and non-Jewish Soviet War Victims, 1941-1947," *Cahiers du monde russe* 52(2): 471. Because the ChGK files lacked precise evidence and did not identify participants in the killings, defendants' confessions both before and during the hearings played a key role in establishing their guilt.

[5] Arieh J. Kochavi,"Britain and the Establishment of the United Nations War Crimes Commission," *The English Historical Review* 107(432): 323–49.

[6] Ogólne wskazówki dotyczące zagadnień zbrodni wojennych oraz zbierania materiałów dowodowych, 1945, GK 160/3, Zbrodnie wojenne. Korespondencja w sprawie delegatur zagranicznych Ministerstwa Sprawiedliwości do badania zbrodni wojennych, informacje o ściganiu zbrodni wojennych przez 'rząd Lubelski,' Instytut Pamięci Narodowej (IPN).

For its part, the Main Commission would struggle to define its mission in the center of these developing force fields between East and West. As one would expect, the Lublin government—the provisional political power that had established itself in Poland behind the advancing Red Army—was profoundly influenced by the Soviet model of investigation. Not only were key members of the rising socialist order communists who had spent the war years in Moscow or in the communist underground in Poland, the presence of the Red Army on Polish soil was a powerful reminder of where the provisional government's political loyalties lay. Nevertheless, one cannot dismiss the potential influence exerted by the Western model. After all, the Polish Government-in- Exile was an unpleasant reminder that the new socialist political order was not yet an unquestioned geopolitical reality, a fact that served to heighten Polish elites' desire for international recognition of their state- and the nation-building efforts proscribed by the Curzon line in the East and the Oder-Neisse in the West.

However, geopolitical tensions were not the only factors that would shape the institutional development of the Main Commission. In August 1945, law professor Stanisław Batawia[7] lamented the absence of "experts" at the Main Commission and noted that its current staff lacked "true understanding and sensitivity for local conditions" given that they had not been in Poland during the Nazi occupation.[8] Batawia's observation strikes at the heart of an important

[7] Born in 1892 in Łódź, Stanisław Batawia completed both medical and law degrees at the University of Warsaw between 1918–29. During the occupation, he worked at a health clinic near Warsaw. He returned to the field of law in 1945 when he became a law professor at the University of Warsaw until his retirement in 1968. *Biogramy uczonych polskich*. Zeszyt 1: A-J, s.v. "Batawia, Stanisław."

[8] Letter from Stanisław Batawia to the head of the Main Commission, September 29, 1945, GK 177/1, Protokoły z posiedzeń OK w Łodzi, sprawozdania z okresu listopad 1945-maj 1948, IPN.

dynamic that characterized not just the institutional development of the Main Commission but other political ministries and administrative branches of the new socialist political order as well: the yawning gap represented by those who had experienced the trauma of the Nazi occupation first-hand versus those who had spent this period in the Soviet Union. Encapsulated within this experiential divide was yet another more important distinction—a political one. The returnees with whom Batawia concerned himself in this memo were communist political exiles who had fled eastward in 1939 and were to form the political vanguard of the new postwar Polish socialist order.

Armed with an impeccable political pedigree, this elite vanguard represented a radical new vision for the future and aimed to rebuild Poland by reinventing it as a socialist state with the help of their political allies who had remained in the country during the occupation. However, theirs was a daunting task that could not be undertaken without the help and support of "old elites"—namely, those who had been employed in various political and administrative positions in the prewar Polish government and who possessed the expertise and know-how essential for crafting functioning institutions. Yet, this expertise came at a price: the "old" elites' retained potential allegiance to a world that had been smashed in 1939.

Tensions between those who lacked "true understanding and sensitivity for local conditions" and individuals like Stanisław Batawia who represented skilled experts from the interwar period played a decisive role in shaping the institutional development of the Main Commission and its regional branches. This was especially true in the six-month period between the Main Commission's first organizational meeting in May 1945 and the passage of the "November Statute," which legalized its existence six months later. In many respects, this period presented a critical window of opportunity for the Main Commission. Not only were the

atrocities of the war still fresh in the minds of victims and eyewitnesses whose depositions and testimony were key to bringing war criminals and collaborators to justice in courts of law, but a strong desire for retribution and punishment enflamed the population. In a period when it was critical to restore a sense of law and order to a population plunged into political, social, and moral chaos, the chance to channel such emotions into a state-sponsored project was a powerful means indeed by which to reforge a sense of social solidarity and create bonds between individuals and the newly-undertaken socialist state-building project.

The Birth of the Main Commission

When the State National Council (*Krajowa Rada Narodowa* or KRN)[9] decided to launch an official commission to investigate crimes of the Nazi occupation era on May 8, 1945, several prior instantiations had already existed on Polish soil. In fact, upon the liberation of Eastern Poland in July 1944, one of the first projects launched by the Polish Committee of National Liberation (PKWN)[10] aimed to investigate and publicize atrocities that had occurred at the Majdanek death camp just outside of Lublin. In conjunction with three Soviets representatives, the PKWN founded the joint Polish-Soviet Extraordinary Commission for the Investigation of Crimes Committed at the Majdanek Concentration Camp.[11]

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[9] Until the elections of 1947, this functioned as the governing body for Poland.

[10] The first provisional governing body in liberated Poland, the PKWN functioned until December 31, 1944 when it was replaced by the KRN.

[11] This twenty-five member commission consisted of PKWN members, Polish doctors, professors, and lawyers including Józef Kruszyński (prelate of the Lublin Cathedral Church), Emil Sommerstein (member of the PKWN), Ludwig Christians (president of the Polish Red Cross), and Leon Białkowski and Mieczysław Popławski (professors at the Catholic University of Lublin). Of particular note are Balcerzak (prosecutor at the Lublin Appellate Court) and

In response to the sweeping public response elicited by this high-profile investigation, in October 1944 the PKWN decided to found a permanent Commission to Investigate German Crimes on the Entire Territory of Poland (*Komisja do Zbadania Zbrodni Niemieckich na calym obszarze Polski).* [12]

Although the ongoing occupation and war meant that such a goal was not yet feasible, the imminent liberation of Warsaw did see the founding of the Commission for the Investigation of German War Crimes in Warsaw (hereafter Warsaw Commission) headed by colonel Marian Spychalski, the mayor of Warsaw and a leading figure in the First Polish Army.[13] This entity was staffed by high-profile representatives from the Warsaw city government, the prosecutor's office for the Warsaw district court, the Catholic Church, and members of the Jewish community as well as an unnamed representative from the Red Army.[14] With the expulsion of the Nazis from Warsaw and its environs in mid-January 1945, the Warsaw Commission expanded its

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Czesław Szczepański (president of the Lublin District Court) who were to later take part in the Lublin chapter of the Main Commission. The Majdanek commission also consisted of three Soviet representatives. Protokół nr 4 Polsko-Niemiecka Komisja Nadzywczajna dla zbadania zbrodni niemieckich na Majdanku, August 24, 1944, Folder 3, Materiały Polsko-Sowieckiej Komisji dla zbadania zbrodni niemieckich w Lublinie, 1940-1944, Zespół 25, Polsko-Sowiecka Komisja Nadzywczajna do zbadania zbrodni na terenie byłego obozu knocentracyjnego na Majdanku, Państwowe Archiwum na Majdanku (PAM).

[12] The Majdanek commission had been flooded with letters, ranging from requests about the whereabouts of loved ones who had been interned at Majdanek to letters that simply sought to bear witness to the atrocities of the Nazi occupation. Korespondencja w sprawie zbrodnie hitlerowskich, 1944-1947, Zespół 25, Folder 2, PAM.

[13] Janusz Królikowski, *Generałowie i Admirałowie Wojska Polskiego 1943–1990*, s.v. "Spychalski, Marian."

[14] Sprawozdanie do GK, July 20, 1945, GK 162/141, Sprawozdania Okręgowych Komisji Badania Zbrodni Hitlerowskich rok 1945-1946 i 1947-1948, IPN.

jurisdiction to the entire *Mazowiecki województwo*.[15] At this time, smaller committees composed of two-to-three members of the local People's Councils (*Rada Narodowa)*[16] were established for each district (*powiat)* and commune (*gmina*) in the *województwo* (province) to assist in gathering evidence and taking witness statements.[17]

Although it cited the Majdanek Commission as the organizational and inspirational template for its work, the Warsaw Commission did not have much in common with its predecessor. For one thing, the Majdanek Commission as well as the permanent commission initially proposed by the PKWN had limited the scope in their mission to investigate concentration camps, whereas the Warsaw Commission aimed to "uncover and commemorate barbarities" perpetrated on the Warsaw population by the Nazis. Additionally, with the postwar payment of reparations clearly in mind, the Warsaw Commission planned to investigate "material losses in all areas of life."[18] Finally, the decision to create a presidium consisting of a chairman, deputy chairman, and secretary[19] to guide the work of subcommissions ranging from a legal division to a documentary-archival one[20] represented a much more elaborated internal

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[15] This was the largest administrative-territorial unit at the subnational level.

[16] Newly-established local governing bodies had three territorial-administrative levels—the województwo (province), powiat (district), and gmina (commune) levels.

[17] Regułamin Komitetu do Badania Zbrodni Niemieckich, 1945, GK162/6, Regulamin i Projekt organizacji Biura Głównej Komisji, IPN.

[18] Protokół posiedzenia Komisji do badania zbrodni niemieckich w Warszawie, December 12, 1944, GK 182/219, Działalność GKBZN Oddział Warszawski—projekty, protokoły, posiedzeń Prezydium Komisji 1944-1945, IPN.

[19] Spychalksi himself was elected chairman.

[20] The subcommittees and their staff consisted of: 1) Legal: Chief Prosecutor for the Warsaw District Court Wojciechowicz; 2) Forensic: Head Judge of the Warsaw District Court

structure than the Majdanek Commission. Enjoying the luxury of an office as well as an official budget[21] only served to increase this sense of organizational permanence.

These earlier endeavours were to form the backdrop for the KRN's work in the heady days of May 1945 when the taste of victory was fresh and hopes for the future high. During this time, key members of the rising socialist order met regularly to draft a statute and organizational template for the future work of the Main Commission. This included activists from the interwar Polish Communist Party (KPP) and other leftist political organizations who had sought refuge in the Soviet Union during the war and occupation: the Minister and Vice-Ministers of Foreign Affairs Wincenty Rzymowski (SD)[22] and Zygmunt Modzelewski (KPP), the Minister of Public Security Mieczysław Miętkowski (KPP),[23] the Minister of Information and Propaganda Stefan Matuszewski (PPS),[24] and Vice-Premier of the KRN Stanisław Janusz.

These returnees were joined by members of the KRN who had spent the war years in Poland where they had distinguished themselves in the communist underground. This included

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Czeslaw Wasilkowski; 3) Industrial: Head of the Warsaw City Industrial Department engineer Golanski; 4) Destruction of Culture and Art: Płużański from the Warsaw City Division of Arts and Culture; 5) Education and Sciences: Professor Świdwiński from the Warsaw City Division of Education; 6) Religion and Spirituality: Rev. Łysik (a Catholic priest); 7) Jewish section: yet-to-be-determined delegate from the Jewish Historical Committee. Protokół posiedzenia Komisji do badania zbrodni niemieckich w Warszawie, December 21, 1944, GK 182/219, IPN.

[21] The Commission was to be financed from the Presidium of the Warsaw People's Council. Ibid.

[22] Alliance of Democrats (*Stronnictwo Demokratyczne*), a centrist-democratic, pre-war political party.

[23] His birth name was Mojżesz Bobrowicki. It was common for Polish-Jews to assume more Polish-sounding names after the war.

[24] The Polish Socialist Party.

Premier Edward Osóbka-Morawski (PPS),[25] the Minister of National Defense and Mayor of Warsaw Marian Spychalski (KPP), future Minister of Labor and Social Welfare Adam Kuryłowicz (PPS),[26] the Minister of Justice Henryk Świątkowski (PPS),[27] President of the Polish Supreme Court Wacław Barcikowski (SD), and Chief Prosecutor of the Polish Supreme Court Stefan Kurowski (SD).[28] From their number, only the Minister of Education, Czesław Wycech(SL),[29] was exceptional for his involvement with the Government Delegation for Poland (*Delegatura Rządu na Kraj*), an agency of the Polish Government-in-Exile. Finally, their ranks

[25] During the war, Janusz had been responsible for uniting several leftist underground organizations into the Workers' Party of Polish Socialists (*Robotnicza Partia Polskich Socjalistów*)—the precursor to the KRN. This bloc had formed in opposition to the underground group organized by the PPS (*Wolność, Równość, Niepodległość*). Andrzej Paczkowski, *Stanisław Mikołajczyk, czyli klęska realisty* (Warszawa, 1991), 87.

[26] President of Train Employees Union 1922–37. A representative for PPS in the Sejm, he was imprisoned in Auschwitz for his involvement in the PPS underground. Tadeusz Mołdawa, *Naczelne władze państwowe Polski Ludowej 1944-1979* (Warszawa, 1979), 234.

[27] A lawyer famed for his defense of socialist activists in the interwar period, Świątkowski had been a delegate to the Sejm for the leftist PPS party from 1928–30 and enjoyed the further distinction of having been imprisoned at Auschwitz for his involvement in the PPS underground. No author, "Henryk Świątkowski (1896-1970), Biuro Edukacji Publicznej IPN, http://ipn.gov.pl/najwazniejsze-wiadomosci/informacja-historyczna/henryk-swiatkowski-18961970, (accessed July 26, 2014).

[28] Both had been practicing lawyers during the inter-war period and had fought with the *Armia Ludowa*, the People' Army. Protokół posiedzenia GK, October 11, 1945, GK 162/6, Protokoły posiedzeń GK, IPN.

[29] He directed the "Secret Teaching Organization" (*Tajna Organizacja Nauczycielska*) for the Government Delegation for Poland (*Delegatura Rządu na Kraj*), an agency of the Polish Government in Exile and the highest authority of the Polish Secret State in occupied Poland. *Wielka Encyklopedia Powszechna PWN*, s.v. "Wycech, Czesław."

were joined by three writers known for their left-leaning political tendencies and who had been selected as KRN delegates: Zofia Nałkowska, Helena Boguszewska, and Jerzy Kornacki.[30]

In addition to members of the KRN, the first planning meeting for the Main Commission included: Professors Wojciechowski and Dr. Pospieszalski from the Institute for Western Affairs (*Instytut Zachodni*), a research organization founded in 1944 dedicated to territories "regained" from Germany (and to Polish-German relations more generally); the president of the Institute of National Remembrance,[31] Stanisław Płoski; law professor at the University of Poznan, Jozef Jan Bossowski; president of the Jewish Historical Committee Dr. Filip Friedman;[32] and president of the Central Committee of Polish Jews, Emil Sommerstein.[33] These academics were joined by legal experts from the interwar period such as Stanisław Batawia, Jan Sehn, Skorzynski, Roman Kiełkowski, and Jerzy Sawicki. Notably, aside from Professor Artur Śliwiński (PPS)[34] and Alfred Fiderkiewicz (KPP),[35] these individuals had not taken active part in prewar political life, but instead had dedicated themselves to their respective professions.

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[30] Protokół pierwszego posiedzenia Prezydium GK, 1945, GK 162/6, IPN.

[31] This research organization was created in November 1944 for the purpose of preserving the memory of the uprisings, battles, and suffering of the Polish people during the war years. Protokół pierwszego posiedzenia Prezydium GK, 1945, GK 162/123, IPN.

[32] He spent the war years in Lwów, hiding on the "Aryan" side of the city. After testifying at Nuremberg, he decided not to return to Poland and eventually emigrated to America. *Wielka Encyklopedia Powszechna PWN*, s.v. „Friedman, Filip."

[33] During the war imprisoned by the Soviets. Upon his release in 1949 he became a member of the PKWN. Sommerstein emigrated to America in 1946. *Wielka Encyklopedia Powszechna PWN*, s.v. „Sommerstein, Emil."

[34] Vice president of Warsaw (1919-1922) and Prime Minister of Poland in 1922.

[35] Mayor of Kraków.

Given both the number of attendees/future members at this first meeting as well their burdensome responsibilities in the new political administration, it was decided that only a much smaller group would actively participate in subsequent planning meetings. This select cadre was chosen based upon "real qualifications" that could "guarantee their dedication and the fruitfulness of their teamwork."[36] Although these "real qualifications" were never specified, the presence of academic and legal personnel among this select group is a strong indicator that these "real qualifications" included a different sort of expertise than that possessed by those newly returned from the Soviet Union and their immediate political allies. Among their ranks were Bossowski and Wojciechowski from the Institute of Western Affairs, Płoski from the Institute of National Remembrance, Filip Friedman from the Central Committee of Polish Jews, and legal experts Stanisław Batawia and Skorzyński. Additionally, legal experts from among the "new" elites had been selected as well: Minister of Justice Henryk Świątkowski, President of the Polish Supreme Court Wacław Barcikowski, and Chief Prosecutor of the Polish Supreme Court Stefan Kurowski.[37] Finally, the famous writers Zofia Nałkowska and Jan Kornacki were also present at many of these meetings, no doubt to help lend this endeavour a degree of social and cultural prestige.

Over the course of several meetings in May and June 1945, these delegates developed a mission statement that initially cast the Main Commission as an organization dedicated solely to amassing and analzying documentary evidence of the "German" crimes committed in Poland, a

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[36] … wybór czlonków Głównej Komisji, postanowiono przy tym, że o wyborze decydować bedą przede wszystkim realne kwalifikacje kandydatów, mogące być rękojmią ich ofiarności i owocności w pracy zespołowej." GK, 1945, GK 162/123, IPN.

[37] Protokół posiedzenia, October 11, 1945, GK 162/6, Regulamin i Projekt organizacji Biura Głownej Komisji, IPN.

necessary task given that there already existed "efforts to whitewash Hitlerism and create a new Napoleonic legend against the backdrop of the fleeting successes of the Third Reich."[38] However, by late June 1945, this mission had expanded to include uncovering and registering the crimes of the occupation period with the ultimate goal of "discovering the identity of her individual perpetrators so that they might be added to the international registry of war criminals."

In elaborating this latter function, drafters emphasized that investigations were to be "based upon the principles of modern criminology." Among other things, this meant that they needed to be conducted with the "greatest accuracy and objectivism" for the purpose of reconstructing reality" and "identifying individual perpetrators." To this end, the actual site of the crime needed to be examined for evidence—namely "all objects," including "the capo's stick, fragments of a corpse as well as even the smallest scrap of paper—as long as these objects could convey any information about the facts and circumstances related to the crime."[39] As a further guideline, such investigations were to be conducted according to the 1932 Laws of Criminal Procedure, in particular article 242 ("every person has the right and every agency has the obligation to report a crime to the Prosecutor's Office, the police and the local authorities").

In attempting to define the Main Commission's role in the investigation and prosecution of war criminals, delegates also projected a basic organizational structure that would govern its work. Initially, they decided that future Commission members should be nominated by the presidium of the KRN or the president of the cabinet of ministers (Rada Ministrów) in order to "lend the Commission greater prestige," and that membership should include prosecutors and

[38] Ibid., p 3.

[39] Okolnik I, 1945, GK 162/123, IPN.

judges who would be nominated by the Minister of Justice. It was also projected that once elected, Commission members would select a nine-member presidium. However, this plan was ultimately rejected in favor of one in which a three-member presidium would be appointed by the KRN (as opposed to Commission members themselves), and this presidium would, in turn, nominate a bureau consisting of three departments: General Affairs,[40] a Financial Division and an Inventory Division.

Ultimately, the first presidium nominated by the KRN in May 1945 consisted neither of nine nor three individuals, but instead five members: Stanislaw Janusz (head), Henryk Świątkowski (first deputy), Wincenty Rzymowski (second deputy)—all returnees from the Soviet Union—as well as the writers Zofia Nałkowska (third deputy) and Jerzy Kornacki (secretary). This presidium nominated Alfred Fiderkiewicz to head the bureau, but since his duties as mayor of Kraków kept him quite busy, he was soon replaced by Janusz Gumkowski, an enigmatic figure who did not seem to have had a prewar background in left-wing politics (or any politics for that matter), although he did have a law degree. His bureau took charge of directing investigations launched by the Main Commission, overseeing the work of any regional commissions that might be called into existence, translating and publishing Commission reports abroad, maintaining an archive of documents stemming from the period of occupation and war, drafting monthly budgets, and bookkeeping.[41]

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[40] The General Affairs Department was, in turn, to have five sub-departments: the secretariat, organizational, personnel, special affairs, press and propaganda. Protokół pierwszego posiedzenia Prezydium, 1945, GK 162/123, IPN.

[41] Ibid., p 8.

Despite drafters' efforts to concretize both the function and form of the Main Commission in writing, their efforts were to remain unacknowledged by a KRN reluctant to grant legal status to this organization. In an impassioned plea to the KRN, legal experts Edward Pęchałski and Jan Sehn wrote:

> It is of utmost importance to establish by law the legal character of the Main Commission and her area of jurisdiction. In its current state, it is unclear if the Commission is a legal-public organ with the task of conducting formal investigations into criminal matters, and if so, what right it has in this respect, or if the Commission is a representative of society with the task of researching Hitlerism and disseminating her consequences.… It is also unclear in what matter the Commission is to conduct its activities—namely, does it operate according to analogous laws of the criminal codex, or must it obey other formalities? After all, the Commission's legal relationship with the central authorities and administrative bodies are unclear ... and the fact that among Commission members are representatives of different central authorities and ministries ... does not clarify anything.[42]

And indeed, confusion about the Commission's role in the investigation and prosecution of crimes associated with the war and occupation resulted in near paralysis in summer 1945. After having conducted a much-publicized investigation of a Gdansk laboratory that had used fat from human corpses in the production of soap,[43] further investigatory activities were stalled by this state of confusion, a situation compounded by a lack of funds[44] and jurisdictional infighting

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[42] Do Obywatela Jerzego Kornackiego Posła Krajowej Rady Narodowej, 1945,GK 162/137/cd/1 Sprawozdania za lata 1945-1951 i 1956, IPN.

[43] Meeting minutes indicate that the impetus for this particular investigation was fueled in part by the desire to assure that the Soviets did not appropriate this investigation for themselves. Protokół pierwszego posiedzenia Prezydium, 1945, GK 162/123, IPN. See also, Zofia Nałkowska, "Professor Spanner," *Medaliony* (Kraków, 2004), 7–16.

[44] During this period the commission did not possess a legally guaranteed budget. Moreover, the initial 1,200,000.00 złoty per month initially promised to them was reduced by over half in July 1945 to 400,000.00 per month. Protokół posiedzenia GK, December 25, 1945, GK 162/123, IPN.

with the security services (*Urząd Bezpieczeństwa Publicznego* or UB*)* and the People's Police (*Milicja Obywatelska* or MO).[45]

In response to the fact that the Main Commission was frittering away a "critical window" for investigating these crimes, legal expert Stanisław Batawia urged that the Commission be transformed into a "true organ of investigation and prosecution" by employing a "skilled staff" and "responsible and competent workers."[46] To this end, he suggested that the president of the Polish Supreme Court (Barcikowski) and president of the Warsaw appellate court (Rudnicki) be named as Commission Head and Bureau Chief, respectively, with the additional recommendation that a leading role be given to the director of the Central Jewish Historical Commission (Filip Friedman) as well as a medical examiner and statistician. [47] Although he did not state so directly, by making this recommendation Batawia clearly implied that the current Commission heads, Minister of Justice Henryk Świątkowski and Bureau Chief Gumkowski, were not adequately suited for the task of creating an effective investigatory-prosecutorial body.

Although it was most certainly the case that members of the Main Commission from among the "new elite" were ill-prepared to oversee such work given their lack of legal training, this could hardly have been the case with either Świątkowski or Gumkowski; after all, both had law degrees. Thus, Batawia's desire to replace these two individuals most likely stemmed from

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[45] Although these latter two organizations were supposed to assist the Commission in its work, they actually hindered it by refusing to turn over valuable materials associated with the occupation and making sites of criminal activity inaccessible.

[46] Letter from Stanisław Batawia to the head of the *Main Commission,* September 29, 1945, GK 177/1, Protokoły z posiedzeń Okręgowej Komisji w Łodzi—sprawozdania z okresu listopada 1945 do maja 1948, IPN.

[47] Batawia's plan also included employing professors Wojciechowski and Jan Bossowki from the Institute for Western Affairs. Ibid., p. 90.

the fact that they had recently returned from wartime exile in the Soviet Union, hence their insight and understanding of the Nazi occupation were limited at best. For example, this "lack of sensitivity to local conditions" might have blinded them to different legacies stemming from the administrative division between the General Government and the territory directly annexed to the Reich in which Łódź found itself—a difference that Batawia believed should have been reflected in the organization of the Commission's work at the subnational level (but was not). Ultimately then, it was not just the lack of experience that was paralyzing the Commission but also a lack of sensitivity to local conditions.

As a legal expert and a witness to the brutal occupation and war, Batawia had no doubt as to what function the Main Commission should play in the new socialist political order—in his mind, it was to be a legal-prosecutorial organ. And although organizers at the Main Commission seemingly turned a deaf ear upon Batawia's restaffing suggestion, it did adopt another of his proposals, namely the distribution of questionnaires about camps and mass graves to every *gmina* (commune) in Poland that municipal court judges would fill out on the basis of information gathered from eyewitnesses and survivors. This questionnaire solicited information about sites of atrocity in these localities and included ghettos, concentration camps, work camps, transit camps, places of mass execution, etc. In addition to identifying and registering such sites, the questionnaire contained a series of questions about who and how many had been involved in the crime, how many victims there had been, what had been the victims' cause of death, when

this had taken place, and so on.[48] Because such testimonies would be taken under oath, they could later be used in legal proceedings against war criminals and collaborators.

Undoubtedly, this proposal appealed to elites at the Main Commission not only because it could provide their organization with a general sense of mission in a period of extreme uncertainty and lack of purpose, but also because it could be used to organize/coordinate the work of the six *wojewódtzwo* commissions launched in June and July 1945. Furthermore, it was hardly conicidental that the decision to launch this project coincided with the London Charter of August 1945 where not only the rules and procedures about punishing Nazi war criminals at the International Tribunal at Nuremberg were elaborated, but the earlier principles of the Moscow Declaration also reaffirmed.[49] This no doubt fueled the Main Commission's desire to cast itself as a legal-prosecutorial body, especially given that it considered Poland's participation at Nuremberg to be a matter of "prestige" and of "utmost importance."[50]

Ultimately, the implementation of this project confirmed Batawia's original concerns about the ineptitude of the Main Commission as a tool for investigating and bringing to justice those who had committed crimes under the auspices of the Nazi occupation. In addition to charging the województwo commissions with the task of distributing and overseeing the

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[48] Sprawozdanie z działalności Łódzkiej Okręgowej Komisji za okres GK maj 1945-czerwca 1949, undated, GK162/13, Likwidacja Okręgowych Komisji, IPN.

[49] This established war criminals would be extradited to the countries where they committed their crimes.

[50] Protokół zeszłego ogólnopolskiego zjazdu delegatów Okręgowych Komisji Badania Zbrodni Niemieckich w Polsce, December 21, 1945, GK 162/6, Reguły i Projekt organizacji Biura GK 1945, IPN.

completion of questionnares, it also distributed copies directly to district and municipal courts.[51] This lack of coordination between the Main Commission, the województwo commission, and the recently reactived municipal and district court system generated a flood of redundant paperwork that the Main Commission was unable to process, thus emphasizing the disjuncture between the former and latter entities.

This state of affairs was compounded by the fact that legal experts on the Commission's staff were operating under the assumption that crimes of mass killing and genocide could be investigated using regular criminal procedure based upon the establishment of the individual identities of the perpetrators and their victims. However, these traditional criminal-legal understandings were to fail miserably in the context of mass atrocity. In particular, the scale of these crimes and the anonymous basis upon which they had been carried out made efforts to establish individual identity nearly impossible. This is poignantly illustrated by Batawia's questionnaire—when they were returned to the Main Commission, they had been left mostly blank: local authorities usually had been unable to identify anything more than the site of criminal activity, with the perpetrators and victims remaining anonymous.[52]

Interestingly, legal experts were not unaware that they were dealing with a new sort of crime—after all, they had been eyewitnesses to the atrocities and were thus fully aware of their scale and scope. Nevertheless, they clung to old practices and procedures since this was how

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[51] Letter from J. Prokopowicz to the presidents of the Lublin, Zamość, Radom, and Kielce district courts, September 27, 1945, zespół 927, Sąd Okręgowy w Lublinie, syg 10, Główna Komisja Badania Zbrodni Niemieckich Oddział Wojeowódzki w Lublinie, Państwowe Archiwum w Lublinie (PAL).

[52] See for example, Kwestionariusze w sprawie obozów i gett w woj. Lubelskim, undated, Lu 1/9/38, IPN Lublin.

they had been trained and because this was their understandng about how to make the world right again. Ultimately, this brought into question not only whether the Main Commission should be a legal-investigatory body, but *could* it function as one given the unprecedented scale of crimes to be investigated and the continued adherence to old understandings of criminal justice.

In the summer of 1945, as efforts to create a state organ that would play a lead role in investigating and prosecuting Nazi criminals faltered, perhaps it was only inevitable that socialist elites became more preoccupied with the concept of the Main Commission as a research and educational organization, while legal experts still clung to the vision of the Commission as a legal-prosecutorial body. This only served to widen the already substantial gap between socialist elites and legal experts and created a sense of confusion about what constituted the "true purpose" of the Commission.

The supposed answer to these questions came on November 10, 1945 when the Polish Provisional government[53] signed the statute that officially created the Main Commission, thus ending the nearly five-month period of uncertainty about the Commission's status as an official organ of the Ministry of Justice. According to this document, the goals of the Commission were two-fold and listed in this order: "To research and gather materials pertaining to German crimes committed between 1939–1945 in Poland or against Polish citizens" for the purpose of "dissemin[ating] the results of these investigations at home and abroad"[54] and "to use her judicial

[53] This included Bolesław Beirut (president of the KRN), Edward Osóbka-Morawski (president of the Rada Ministrów), and Henryk Świątkowski, Minister of Justice.

[54] This included making these materials available to "similar organizations in other countries"(Article 3).

powers to conduct investigations and question witnesses in the manner established by the codex of criminal procedure."[55]

Although the November Statute attempted to address tensions revolving around the "true function" of the Main Commission as a research and legal-prosecutorial organ, it did not elaborate concrete guidelines for how these different functions were to be realized in practice. This lack of clarity was especially apparent vis-a-vis the Commission's legal-prosecutorial function. Among other things, this statute did not specify how the Main Commission's activities were to interface with other legal-investigatory organs of the socialist state. For example, were the Commission and its branches to issue indictments themselves or merely share the results of their investigations with public prosecutors' offices, who would, in turn, issue indictments? Furthermore, although the November Statute touched briefly upon the relationship between the Commission and policing bodies[56] that were ostensibly to assist the Main Commission and the województwo branches in investigating and building cases against suspects, it only granted the Commission "authority" over these institutions in "matters pertaining to crimes of the Nazi occupation" without specifying what comprised this "authority." Did it extend to the right of the Commission to request the questioning and detainment of suspects? Did it require the MO and UB to report such crimes automatically to the Main Commission (as opposed to the public prosecutor)? Finally, although the November Statute conferred legal powers on the Commission, these powers were based upon traditional understandings of criminal law that ultimately left the Commission ill-equipped to cope with the scale and scope of Nazi-era criminality.

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[55] Dz. U. RP, nr 51, poz 293.

[56] The People's Police (Milicja Obywatelska or MO) and the internal security services (Urząd Bezpieczeństwa Publicznego or UB).

The Województwo Commissions

During the Main Commission's organizational meetings in May 1945, members repeatedly emphasized the importance of "a scientific method of gathering evidence" based upon on the "laws of modern criminology."[57] Noting that these objectives were threatened by the "functional independence" of "all sorts of commissions, committees, and local institutions ... organized earlier or in the process of being organized for the purpose of investigating German crimes in Poland,"[58] the Main Commission quickly opted to exert a greater regional influence by establishing branches in the eastern cities of Białystok and Lublin, the central Polish cities of Łódź, and Warsaw, the southern cities of Kraków, Rzeszów, and Tarnów, as well as the former Prussian cities of Bydgoszcz, Gdansk, and Poznań. To their ranks were later added additional commissions in Radom, Częstochowa Katowice and Wrocław (December 1945), and Siedlce (June 1946). Generally, these sites roughly corresponded to the territorial-administrative unit of the województwo.

Delegates appointed by Minister of Justice Świątkowski were charged with overseeing the set-up and operation of these various branches. Given the importance and nature of the task entrusted to them, an ideal delegate would have been both politically reliable as well as in possession of some sort of legal expertise. Yet for the most part, Świątkowski's delegates represented one or the other qualification, but not both. Delegates for the Gdansk, Białystok, and Warsaw city branch commissions fell into the category of political reliability: whereas the vice-

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[57] Załącznik Nr 1 do zarządzenia nr/55/ Ministra Sprawiedliwości w sprawie statutu GK, 1945, GK 162/2, Statut GK, zarządzenia, IPN.

[58] Do Prezydium Krajowej Rady Narodowej. Pierwsze Sprawozdanie Miesięczne GK, June 6, 1945, GK, 162/123, IPN.

president of Gdansk[59] (Franciszek Chudon) served as a commission delegate for the pomorski województwo, the latter two commissions were headed by military leaders from the First Polish Army (Kłos and Spychalski, respectively). In contrast, delegates for Kraków (Pęchalski), Łódź (Opęchowski), Rzeszów/Tarnów (Maciołowski), and Poznań (Josnik) were judges and a public prosecutor working for the special criminal court, respectively, placing them squarely in the second category. Although the Bydgoszcz delegate, Tadeusz Esman, did not have a legal background, he had expertise as an archivist. Ultimately, only two delegates could not be placed in either of these categories—Michał Ońysko for Lublin and Stanisław Ostałowski for the Warsaw (mazowiecki) województwo. Whereas the former had been a banker before the war and seemingly without political affiliation, the latter had been the administrative head of the Grójec district (*powiat*) during (and perhaps prior to) the Nazi occupation.

Given the growing concern about "scientific integrity" and "functional independence" expressed by members of the Main Commission, it is unlikely that the above-mentioned delegates were sent to the field without some sort of guidance about how to organize work at the województwo level. Although no instructions were ever recorded in the Main Commission's meeting minutes, the fact that several województwo commissions[60] adopted the same tiered organizational structure as first deployed in the Warsaw województwo in January 1945 indicates that delegates had most likely received verbal instructions as to how to organize their work. However, these efforts to impose uniform structures at the województwo level were complicated

[59] A position of importance attained by demonstrating political loyalty to the new Polish socialist order.

[60] These are Białystok, Bydgoszcz (although the tiering was a bit different), Lublin, Poznań—and of course the Warsaw (mazowieckie) województwo.

by postwar conditions of transportation and communication in combination with the fact that the Main Commission's activities were not yet legally defined. As a result, Świątkowski's chosen delegates were given leeway to interpret both the perceived expectations of their superiors at the Main Commission as well as advance their own visions about how the investigation and punishment of war crimes should take shape.

Progress reports submitted by delegates from Lublin, Warsaw, and Łódź in these chaotic first months shed critical insight into how individual vision and local circumstances would shape the early organizational trajectories of these branch commissions. From these documents emerges a picture of how different personalities and professional backgrounds influenced the interpretation of perceived and real expectations from the authorities at the Main Commission as well as shaped the content (and the ability to realize) individual visions. Even the frequency and detail of these reports is telling, indicating the degree of zealousness possessed by a given delegate and his desire to please the authorities—and perhaps also a hidden fear of incurring displeasure.

In this regard, Lublin's delegate, Michał Ońysko, was most eager to win the favor of his superiors, for his progress reports were far more frequent than those from Łódź and Warsaw and provide the most detailed account of the activities and development of a województwo-level commission during the critical juncture between the founding of the Main Commission in May 1945 and the passage of the statute legalizing its existence in November 1945. Moreover, these accounts also shed an illuminating light on Ońysko as an effective organizer intent on linking the investigation of crimes of the occupation-era with the various administrative levels of the new socialist political order. Ultimately, the activities of the Lublin commission illustrate what happened when organization and not action was the primary institutional goal.

During the first organizational meeting of the Lublin województwo commission held during a session of the People's Council (Rada Narodowa) on May 14, 1945, Ońysko invited members of "leading institutions" to staff the commission—including the vice governor general of the Lublin województwo, the People's Council, the Security Services (*Urząd Bezpieczeństwa)*, and the district school superintendent.[61] As political and social leaders in the new socialist order, they were to use their influence to "spread among society the necessity of revealing all crimes committed by the German criminals ..." and "to reach into even the tiniest village or settlement so that not one moral, physical, or material crime be left unrevealed."[62]

To facilitate this "reach," Ońysko recommended that the commission establish sub-branches for each district (*powiat*) in the Lublin province to be headed by that powiat's Rada Narodowa.[63] For their part, powiat commissions would be responsible for "building cooperative relationships with social-political organizations" as well as coordinating and overseeing delegates from every commune. The commune-level commissions were to be directly responsible for gathering evidence of wartime atrocities committed in their localities, evidence

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[61] In fact, the membership of the Lublin commission was nearly identical to the membership of the province-level Rada Narodowa and included Józef Sokołowski **(**deputy governor of the Lublin province), Kracmień-Ojak **(**director of the district schools**),** Ludwik Czuguła (head of the Rada Narodowa), and Józef Kłassowski, a representative from the Ministry of Public Security. Sprawozdanie z wyjazdu do Lublina w 14-16 maja w celu zorganizowania Komisji Wojewódzkiej i Powiatowych dla badania zbrodni niemieckich w Województwie Lubelskim—w mysł delegacji z dnia 8.5.45 i na polecenie Ob Stanisława Janusza Wicepremiera i Przewodniczącego Komisji dla badania zbrodni niemieckich w Polsce, 1945, GK 162/142A, Sprawozdania Oddział Lublin 1945-1948, IPN Lublin.

[62] Ibid., 4.

[63] Further staff of the district commissions were to include: an additional delegate from the Rada Narodowa, the district school inspector, a representative for the powiat's *starosta*, a representative from the Peasants' Cooperative (*Samopomoc Chłopska*), and a representative from the Polish Red Cross. Ibid., 4.

that was then to be submitted to their immediate superiors at the powiat level, who would in turn pass this information further up the chain of command to Lublin. Once vetted by the województwo office for duplicate or contradictory reports, this information was to be directed to the Main Commission's central office.[64] Ultimately, this organizational structure was approved by the Lublin Rada Narodowa and was signed into województwo law on May 28, 1945. Not only was this the only województwo commission to enjoy a legal existence outside of the Main Commission statute, it was also unique in receiving subsidies from the województwo treasury. Given the fact that the Main Commission did not yet possess a fixed budget and relied instead upon irregular donations from the KRN budget, this was indeed a luxury.

Despite this carefully elaborated structure designed to penetrate to the heart of Polish society and despite the presence of a special military delegate from the Red Army at each powiat commission (or perhaps because of), Ońysko would later complain that the Lublin commission initially met with

> incomprehensible indifference and the apathy of a society that—despite expectations to the contrary—did not hurry to offer its help, instead jealously guarding secrets and evidence of Nazi atrocities. Even people from whom one would expect assistance, did not cooperate, and were not ready to disclose and make accesible documents about the crimes of the occupiers.[65]

[64] Initially information was submitted directly from the powiat (district) commission to the Main Commission in Warsaw. However, this turned out to be quite inefficient, as the Main Commission was overwhelmed by duplicate data. Hence, the final vetting of documents was delegated to the Lublin commission. Sprawozdanie z pobytu w Lublinie w dniach 25-29 czerwca w sprawach Woj. Kom., 1945, GK 162/142A, IPN Lublin.

[65] Sprawozdanie, undated, Lu 1/9/47, Sprawozdania z działalności OKBZN w Lublinie za lata 1945-46, IPN Lublin.

In order to muster popular support for the Commission's work, Ońysko launched a press campaign[66] to familiarize people with the mission of the województwo commission, emphasizing that it was to "provide the International Commission [Main Commission] with materials that qualify Poland's participation in the war and evaluate the crimes committed by the Germans."[67] This press campaign further emphasized the fact that the commission was not a political party but rather possessed a strictly "general-Polish" character ("*wyłacznie ogólno-polski*") that "co-opt[ed] representatives of all parties and political movements."[68] Perhaps these efforts had some positive effect, for in mid-July 1945, Ońsyko reported to his superiors at the Main Commission:

> ... thanks to extensive propaganda efforts—already in the first days people came with different questions as well as information about criminal activity ... I foresee that on account of the strong propaganda efforts across the entire wojewodztwo, the organization of powiat and gmina-level commissions, the involvement of teachers, the clergy, the military, political parties, and officials in our work, the number of reports and materials flowing into our bureau will increase drastically within a short period of time....[69]

If these hopes for the future were not born out, Ońysko's frenetic planning in the months leading up to the passage of the November Statute effectively masked this. During this period, Ońysko addressed the glaring absence of legal personnel among the Lublin commission staff by

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[66] At a planning meeting on June 25, 1945, it was decided that the local newspapers should run an advertisement every third day exhorting the public to not only submit any documentary material to the commission but also for individuals to come forward and testify about their wartime experiences. Sprawozdanie zo wyjazdu do Lublina, June 14-15, 1945, GK 162/142A, IPN.

[67] Ibid., p. 14–15.

[68] Z prac wojewódzkieh komisji do badania zbrodni niemieckich, *Sztandar Ludu*, 109 (1945), July 13.

[69] Sprawozdanie nr 6 z organizacji i prac Oddziału Wojewódzkiego w Lublinie, July 1–5, 1945, GK 162/142A, IPN.

nominating three judges for membership in the województwo commissions[70] and appointing municipal court judges to powiat staff — an important and necessary modification considering that one of the commission's primary tasks consisted of deposing (under oath) victims and eyewitnesses. In addition to this, Ońysko petitioned the Rada Narodowa to create and fund a separate city commission headed by Lublin mayor Tadeusz Kanura and Czeslaw Szczepański, president of the Lublin District Court, former member of the Polish-Soviet Extraordinary Commission, and newly-minted member of the województwo commission.[71] Although the city commission was initially to assume jurisdiction over both the city of Lublin and the nearby Majdanek concentration camp, Oyńsko recommended that his superiors at the Main Commission establish a separate "Society for the Preservation of Majdanek." Under the auspices of this latter entity, Ońykso arranged "Majdanek Week"—a series of commemerative ceremories that were to recur yearly.[72] He proceeded to promote his new project both at home and abroad through a

[70] This included president of the Lublin Appellate Court Czeslaw Szczepański, the President of the Special Criminal Court Tanewski, and Lublin District Court Judge Oskar Blindże. Letter from the Lublin Appellate Court to the Lublin District Court, August 16, 1945, teczka 927, Sąd Okręgowy w Lublinie, sygnatura 10, Główna Komisja Badania Zbrodni Niemieckich Oddział Wojewódzki w Lublinie 1945, PAL.

[71] As it turns out, two other judges were to take greater part in running the city commission—Moszyński and Policha. In sum, they took over 900 depositions about Nazi crimes committed in Lublin. Protokoły zeznań świadków, 1945, zespół 770, Miejska Komisja Badania Zbrodni Niemieckich w Lublinie, PAL.

[72] The first "Majdanek week" ceremonies were attended by US Ambassador Arthur Bliss and his wife, along with a representative from the US, Army Colonel Walter A Pashley. Sprawozdanie nr 7 z organizacji prac Oddziału od 16 lipca do 8 września, September 10, 1945, GK 162/142A, IPN.

series of somewhat bizarre suggestions that included sending an exhibit about Majdanek to China.[73]

In marked contrast to the frequency and detail of Ońysko's reports to his superiors at the Main Commission, Łódź województwo delegate Feliks Opęchowski was much more succinct in his progress reports. Nevertheless, it is possible to reconstruct key moments in the development of this branch commission during the summer and early fall of 1945. What emerges is a radically different course of action informed by a different vision of what function the Main Commission should perform in the investigation and prosecution of war crimes.

This no doubt had much to do with the background of delegate Feliks Opęchowski, an appellate court judge. As a result, his vision for the commission was informed by a greater legal understanding than had been the case in Lublin. Thus, instead of courting various political and social elites in the Rada Narodowa as future members of the commission, Opęchowski staffed the Łódź chapter with public prosecutors (J. Leszczynski, Stefan Warszawski, and Zygmunt Kurowski), the president of the Supreme Court (Wacław Barcikowski), an appellate court judge (Kazimierz Rudnicki) and legal experts including Stanisław Batawia, professor of law and medicine.[74] Furthermore, Opęchalski's team did not invest valuable time and resources in

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[73] In September 1945 Ońysko visited the Minister of Foreign Affairs, Department of the Far East in order to pitch the idea of sending an exhibit about Majdanek to China, in order to "spread the word about the barbaric actions of the Germans towards the Poles and other nations across the world." Later, in October 1945, Ońysko extended an invitation for a camp tour to members of the Nuremberg Tribunal on behalf of "the Województwo Commission and the State Museum at Majdanek." It does not appear that this invitation was ever accepted. Sprawozdanie nr 8 z organizacji i prac Oddziału za czas od 8-go września do 10-go października, October 11, 1945, GK, 162/142A, IPN.

[74] Sprawozdanie z działalności Oddziału Łódzkiego Komisji w okresie: maj-październik 1945, undated, GK, 162/141, GKBZH w Polsce. Sprawozdanie Okręgowych Komisji Badania Zbrodni Hilterowskich rok 1945-1946, 1947-1948, IPN.

developing a network of subcommissions at the powiat and gmina levels, but instead set about deposing eyewitnesses and victims and registering the personal data of camp returnees in recognition of the fact that speed was of the essence in obtaining reliable information that would hold up as evidence in a court of law.

The particular interests of commission members as well as unique local conditions were to shape the activities of the Lódź commission as well, perhaps best demonstrated by the investigation into the death camp at Chełmno nad Nerem. In contrast to similar projects undertaken by other województwo commissions, the Łódź team framed this investigation in terms of the targeted destruction of Polish Jews. Granted, no Poles had been interned or killed at Chełmno as had been the case with camps like Lublin's Majdanek, yet in this case and other instances where the population of camp inmates had been mixed, investigations undertaken by branch commissions tended to portray these exclusively as sites of Polish suffering.[75] In all likelihood, commission member Filip Friedman (president of the Central Jewish Historical Commission) had some bearing on this approach to the Chełmno investigation, as did the close proximity of the Central Jewish Historical Commission, also located in Łódź.[76]

Similarly, when commission member Henryk Kurnatowski (a judge) returned from the Mauthausen concentration camp with the inmate register, the Łódź commission set up a small

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[75] Notably, even the investigation of the Sobibór death camp by the Lublin Commission never officially recognized this as a site that had been dedicated exclusively to the extermination of Jews. See for example, Sprawozdanie z pobytu w Lublinie w dniach 25-29 czerwca w sprawach Woj. Kom, 1945, GK 162/142A, IPN.

[76] And indeed, there were even joint projects undertaken by both bodies, for example the mapping of actions against Jews in the Warthegau, a district in the Annexed Territories. Sprawozdanie z działalności Okręgowej Komisji w Łodzi za okres maj 1946-maj 1947, undated, GK 162/141, IPN.

archive to handle inquiries from family members about the fate of loved ones imprisoned there.[77] In addition to this, the commission also set about securing and organizing the plethora of occupation-era documents left behind in the wake of the Nazi retreat. Given that Łódź had been annexed directly to the Third Reich,[78] its organizational and administrative infrastructure had been far more entwined with the occupation authorities than had been the case in the General Government, hence providing a valuble source of documentary evidence about crimes committed by institutions of the Third Reich (for example, the Office of Race and Relocation or *Urząd Rasy i Przesiedleń*).[79]

Finally, even though the Warsaw (mazowiecki) województwo commission and the Warsaw city commission began operating nearly six months prior to other województwo commissions, these two entities left in their wake a sparse documentary record of their organizational activities. No doubt this can be attributed at least in part to staff turnovers: at the województwo level, Stanisław Ostałowski (administrator of the Grójec *powiat*) was replaced by Stanisław Płoski, professor and head of the Institute of National Remembrance; at the city level, Marian Spychalski was replaced by Judge Michał Hafter.[80] Personnel matters were further

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[77] This brought the censure of both the Polish Red Cross that saw outreach to former prisoners and their families as falling under its perview as well as from the Main Commission on the grounds that this interferred with its fact finding and documentary mission. Letter from Prosecutor Leszczynski of the Łódź Commission to the Main Commission, February 25, 1947, GK 162/278, Okręgowa Komisja Łódź, IPN.

[78] In contrast, Lublin and Warsaw found themselves in the Reich protectorate known as the General Government.

[79] Sprawozdanie z działalności Okręgowej Komisji w Łodzi za okres maj 1946-maj 1947, undated, GK 162/141, IPN.

[80] Other than this, the staff of the commissions remained unchanged. Protokół przewodniczących Okręgowych Komisji, June 5, 1946, GK 162/141, IPN.

complicated by geographic factors: although Main Commission headquarters were temporarily located in Kraków, this did not prevent a functional blurring between the Main Commission and the subcommissions in the future capital, as the former delegated various tasks of a national character to the latter. Among other things, this included planning and drafting questionnaires for distribution among other województwo commissions and acting as a liaison with similar investigative bodies abroad.[81] As a result, the Warsaw województwo and city commissions did not have the "space" to develop in the way that other subnational commissions did.

Ultimately, the trajectories represented by these three subcommissions can be generalized to the other branch commissions: delegates with legal backgrounds envisioned the goals of the Main Commission in investigatory-prosecutorial terms whereas delegates who had been selected for their (potential) political loyalty were more concerned with how the Main Commission and its branches could be a source of legitimation for the new socialist state-building project. Given the fact that the work of the Commission had not yet been legally regulated, delegates were able to imprint their particular visions and interpretations of what function the Main Commission and its branches could and should serve in a "reborn Poland." Notably, unlike at the national level where new political elites and legal professionals met face-to-face over the planning table, only one delegate had been assigned to each branch commission, making this an ideal environment in which to observe the independent effects that personal and professional backgrounds had on organizational development.

It is hardly surprising that delegates with legal training (such as Łódź's Opęchalski) were less concerned with extending Commission authority vertically down the three territorial-

[81] Sprawozdanie z działalności Oddziału Warszawa-Miasta GK za czas od dn 1.8..45 do 15.12.45, undated, GK 162/141, IPN.

administrative units of województwo, powiat, and gmina—that is, across the polito-administrative backbone of interwar Poland. Instead they focused their efforts on organizing how the branch commission would operate in conjuction with the newly-revived interwar legal system. For his part, Opęchalski concentrated on realizing this interface at the district court level, a logical choice given that these courts had traditionally been responsible for more serious types of crimes such as murder. However, this decision was not very logical in light of the scope of crimes that fell under the jurisdiction of the Main Commission in the aftermath of war and occupation. In this regard, decisions made by delegates at the Bydgoszcz and Poznań branches were more conducive to the new reality of a "reborn Poland" in that they attempted to involve a wider net of courts. For his part, Bydgoszcz delegate Tadeusz Esman, a historian and archivist, made sure that subcommissions were established for every municipal court in the województwo and that each was headed by the president of that particular municipal court (seven in total),[82] while Poznań delegate Prosecutor Jonsik ensured that powiat-level subcommissions were staffed with municipal court judges.[83] It is important to note that although the Main Commission did launch the questionnaire project with the understanding that municipal courts would be responsible for filling them out, in the summer of 1945 no discernible efforts were made on the part of the center to link these courts formally with the structure of the Main Commission.

In contrast to these efforts to build horizontal ties across courts, delegates like Ońysko who had most likely been chosen for their loyalty used these months in summer 1945 to build

[82] Sprawozdanie Okręgowej Komisji Badania Zbrodni Niemieckich w Bydgoszczy za czas do 30.5.46, undated, GK, 162/141, IPN.

[83] Sprawozdanie z działalności Wojewódzkiego Oddziału GK w Poznaniu, July 4, 1945, GK 162/141, IPN.

vertical connections that spanned the three-tiered politico-administrative structures that had governed Poland prior to World War II. Instead of considering the manner in which evidence should be collected so as to ensure its validity in courts of law, these delegates focused on harnessing the popular drive for vengeance. They recognized that the powerful hatred toward the Nazis and the desire for retribution could be a means by which to unify a population atomized by the brutality of the war and occupation, and in doing so, build support for the newly-launched socialist state-building project. To this end, extending the Main Commission down into the smaller administrative unit of the reborn Polish state was a means by which to extend a new organizational and political vision to the masses.

However, despite the potentially unifying power of vengeance, the process of deploying any newly-formed organ of the socialist state from the national political center to the highly localized gmina/village setting was no easy matter. As indicated by Ońysko, in his województwo the desire for vengeance was tinged with popular suspicion: people were reluctant to share information with the commission despite its efforts to cast itself in apolitical terms. This mistrust would only have been fueled by the fact that Ońykso was an outsider, coming originally from Warsaw and having most likely spent the war years in the Soviet Union.[84] As a result, he did not know local staff or local conditions.

Ultimately, Ońysko's efforts to expand the województwo commission down into the deepest crevices of Polish society became both the means and the ends. His concern with realizing this prescribed organizational template essentially meant that he paid more attention to the form of the commission than to the content of its work, and in doing so, was concerned with

[84] This is my suspicion, at least. The archives are oddly silent about where he was and what he did during the war…

casting these efforts as an expression of popular will, as revealed by the tone of his reports to his superiors at the Main Commission. Efforts to involve different politico-administrative tiers was not just an effort to incorporate recently reactivated administration structures associated with interwar Poland, but also represented efforts to harness newly-created administrative structures such as the Rada Narodowa. In this way, the województwo commission was to function as a bridge between old and new administrative structures.

Ultimately, the semi-autonomous development of these branch commissions was brought to a halt with the passage of the November Statute and their formal subordination to the Main Commission. Yet aside from establishing this basic relationship (as well as the fact that the Minister of Justice would appoint the heads of all branch commissions), the statute shed no further light upon how this cooperation was to look in practice. Moreover, it did not establish formal guidelines for how the branches were to be organized—that is, was the three-tiered structure of województwo-powiat-gmina to be the standard organizational frame adopted by all commissions, as most likely initially planned by the Main Commission? Interestingly, archival records indicate that there were no efforts to standardize the organization of the branch commissions already in existence; whatever structure had been deployed in summer 1945 was to remain intact. However, województwo commissions first created *after* the passage of the November Statute (Radom, Siedlce, Wrocław) did follow a common organizational plan: a województwo level headquarters staffed by qualified legal personnel oversaw the work of subcommissions at all municipal courts in the województwo.[85]

[85] Do Obywatela Kierownika Sądu Grodzkiego. Letter from the Radom Commission, December 5, 1946, GK 162/141, IPN.

These newly created branch commissions signaled an important shift in the priorities of the Main Commission. Although the November Statute foresaw a dual role for the Main Commission as both an organization to "research and gather materials pertaining to German crimes committed in Poland between 1939–1945" as well to "conduct investigations and question witnesses in the manner established by the codex of criminal procedure," the latter function seemingly outweighed the former in organization and planning at the województwo level. Not only were these more recent województwo commissions staffed by qualified legal personnel from the outset of their existence, they also interfaced with the local court system as opposed to politico-administrative structures of the new socialist state, as had initially been the case with the earliest commission launched in January 1945 in Warsaw.

Simultaneously, efforts were made to incorporate trained legal professionals into commissions created prior to the November Statute where delegates had chosen to pursue research and public education as opposed to a more legal-prosecutorial approach. Lublin is a case in point. After November 1945, the Minister of Justice appointed Jan Grzybowski, prosecutor from the Lublin województwo appellate court, to head this commission in the place of Ońysko, who was moved to the position of deputy director.[86] Ever the astute observer of the expectations of his superiors at the Main Commission, Ońysko's last act as Lublin delegate consisted of establishing a special województwo presidium of judges and prosecutors who were

[86] In this position, Ońysko was responsible for administrative and financial matters as well as press liaison. Protokół z zebrania członków GK w Polsce mianowanych przez Przewodniczącego GK na teren Lubelszczyzny, March 25, 1946, GK162/142A, IPN.

to be in charge of all future investigatory activities.[87] At this time, he also created a separate "historical-research section" to be directed by the historian Dr Zalewski.[88]

The increasing importance the Main Commission placed upon the performance of its województwo branches as legal-prosecutorial entities corresponded to international developments pertaining to the joint Allied punishment of war criminals, in particular the August 1945 London Charter in which the contours of the Nuremberg War Crimes Tribunal were elaborated. Despite the fact that Poland was denied the privilege of participating with its own independent prosecutorial team, the Main Commission nevertheless attached great importance to providing evidence and expert testimony to both the Soviet and American teams. Hence, starting in August 1945, the Main Commission was faced with a very real direction in which to develop its work, and it was to this end that efforts were made not just to rein in the semi-autonomous development of the województwo commissions, but also to channel their development toward investigation and prosecution.

The November Statute notwithstanding, the prior five months of semi-autonomous development were to have a profound impact upon the capacity of the województwo commissions to live up to this expectation, as once again illustrated by the diverging paths of the Łódź and Lublin commissions. In the former case, November 1945 did not mark a significant rupture with past procedure since delegate Opęchalski had from the outset envisioned the

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[87] This included Czeslaw Szepański, Oskar Blindże, Stanisław Dziewulski (both judges for the Lublin Appellate Court), Mieczyslaw Nowakowski (vice prosecutor for the Lublin Special Criminal Court), Leopold Policha (judge for the Lublin District Court), and Remigiusz Moszynski (judge for the appellate court). This team would continue to work for the Lublin commission until its closure in 1949. Alina Ewa Gałan, *Okręgowa Komisja Badania Zbrodni przeciwko Narodowi Polskiemu w Lublinie, 1944-1999* (Lublin, 2010), 61.

[88] Ibid., p. 254.

function of the Main Commission and its branches in legal-prosecutorial terms. As a result, once preparations for the Nuremberg Trials began in earnest, the Łódź commission slid seamlessly into its role in the investigatory process, gathering and preparing evidence to show "characteristics of the crimes committed on Polish territory, namely their scale and premeditation (*masowość i planowość).*"[89] Furthermore, the Łódź commission's evidence-gathering did not occur in a vacuum. Instead, correspondence between this entity and the Main Commission as well as between the Łódź commission and the Łódź district court shows a degree of coordination and cooperation that was absent at the Lublin commission.

For its part, the Lublin commission's activities after November 1945 and the introduction of trained legal personnel to commission staff did not change the fact that for the previous five months the commission had pursued a different developmental track. The Lublin commission was never really able to recover from this.

Although depositions were taken in this period, these were not shared with the Main Commission in a timely manner, and the passage of time made it more difficult to gather evidence. Administrative files from this period do not contain correspondence with other courts or the Main Commission and there are hardly any references to Nuremberg.

A statement made by prosecutor Grzybowski in February 1948 provides much insight into this situation. At this time, Grzybowski noted: "The work of both the Lublin city and województwo commissions, consisting primarily in securing evidence of German crimes, has

[89] Protokół z posiedzenia, September 23, 1945, GK 177/1, Protokoły z posiedzeń OK w Łodzi, sprawozdania z okresu listopad 1945-maj 1948, IPN.

been completed. Hence, we find ourselves in the phase of finishing up our work."[90] Although at this point in time the Nuremberg Trials were long over (having ended in fall 1946), Poland was still very much involved in the prosecution of "German war criminals" at the (Polish) Supreme National Tribunal as well as with the extradition of suspected war criminals from Germany to stand trial in Polish district and appellate courts. Hence, it seems that Grzybowski's understanding of the Lublin commission's function not did not involve active case building and information-sharing with other legal entities.

PMWBZN: Polish Military Mission for the Investigation of War Crimes in Europe

When Filip Friedman[91] suggested extending the Main Commission's investigatory activities to occupied Germany during a June 1945 (national) planning session, this proposal was quickly rejected as fiscally unfeasible given the tight budgetary constraints already hampering the Commission's work. Yet a mere six months later, the Ministry of Justice, the Ministry of Foreign Affairs, and the Ministry of National Defense—in conjunction with the commander-in-chief of the Polish Army—created the Polish Military Mission to Investigate German War Crimes (*Polska Misja Wojskowa Badania Niemieckich Zbrodni Wojennych*), an organization that was to be directed and financed by the Main Commission.[92] Over the next four years, the "Polish Mission" and by association, the Main Commission, would find itself involved in the pan-

[90] Protokół z konferencji członków Okręgowej Komisji w Lublinie, February 13, 1948, GK 175/5, Protokoły z zebrań Okręgowej Komisji i poszczególnych sekcji, IPN.

[91] Łódź commission, head of the Central Jewish Historical Committee

[92] Ministerstwo Obrony Narodowej. Rozkaz Nr. 29, January 23, 1946, GK 184/2, Odpisy rozkazów MON w sprawie powołania PMWBZW w amerykańskiej i brytyjskiej strefy okupacyjnej Niemiec, IPN.

European project of extraditing suspected war criminals who had been detained primarily in occupied Germany to the countries where they had originally committed their crimes.

The decision to expand the Commission's mandate and sphere of operation had not coincided with an improvement in the Main Commission's financial situation; the Commission would continue to be plagued by financial shortages in the upcoming months and years despite the passage of the November Statute and the legal guarantee of a portion of the Ministry of Justice's annual budget. Instead, the decision to create the Polish Mission hinged upon the extension of a formal invitation from the British and American occupation governments to establish investigatory committees in their respective zones of occupation. These committees were to be responsible for realizing an international project whose groundwork had been established at the 1943 Moscow Conference when the Big Three decided that Nazis would be sent back to the countries where they had committed criminal acts to be "judged on the spot by the peoples whom they have outraged."[93]

By the time these invitations had been extended to Warsaw in December 1945 and January 1946, investigatory teams operating under the auspices of the Polish government-in-exile (in London) had already existed for six months.[94] Composed of three-to-four Polish Army officers trained as lawyers or judges, these teams had begun the arduous task of identifying and preparing cases against suspected war criminals. This consisted of: deposing thousands of

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[93] Quoted in Gary Bass, *Stay the Hand of Vengeance: The Politics of War Crimes Tribunals* (Princeton, 2000), 149.

[94] Although diplomatic recognition had been withdrawn by later summer 1945, the "London government" continued to run war crimes investigatory commissions in the British and American zones of occupied Germany. Notatka Tadeusza Cypriana, August 17, 1945, GK162/1038, Korespondencja z Londynu, IPN.

displaced Polish citizens; registering the names of suspected war criminals at the United Nations War Crimes Commission (UNWCC) and its assisting CROWCASS[95] as a prerequisite for their eventual arrest; and finally, detaining suspects after their arrest had been formally approved by the British or American occupation authorities.[96] As the "investigations" division continued to build evidence against a given suspect (primarily by taking more depositions), the "extradition" department prepared the necessary applications that would ultimately be submitted to the zonal government for approval.[97] In the event a request was rejected, the investigative division would search for further incriminating evidence and another application for extradition would be submitted.

The plethora of international institutions[98] created to oversee and coordinate this national war crimes investigation as well as those of other Allied Nations were regulated by Control Council Law 10 (December 1945). In addition to authorizing zonal occupation governments to try non-major war criminals using their own legal systems and to determine their own extradition

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[95] The Central Registry of War Criminals and Security Suspects. This organization was responsible for creating and managing a register of suspected Nazi war criminals. Such a system aimed to help locate these individuals so they could be extradited to the countries where they had committed their crimes. In fact, extradition requests could only be honored if a suspect's name had been entered into the CROWCASS registry. Elżbieta Kobierska-Motas, *Ekstradycja przestępców wojennych do Polski z czterech stref okupaczjnych Niemiec 1946-1950 część I* (Warszawa, 1991), 36.

[96] It was also possible that a given suspect had already been detained in a camp since former members of the SS and the Gestapo were automatically arrested. Ministerstwo Obrony Narodowej. Wydział Wywiadu Obronnego, June 12, 1945, GK 160/3, Zbrodnie wojenne. Korespondencja w sprawach delegatur zagranicznych Ministerstwa Sprawiedliwości do badania zbrodni wojennych, informacje o ściganiu zbrodni wojennych przez "rząd Lubelski," IPN.

[97] Kobierska-Motas, *Ekstradycja*, 84.

[98] Including the Allied Control Council, the United Nations War Crimes Commission, CROCASS, etc.

procedures, this law provided definitions of crimes against peace, war crimes, and crimes against humanity as well as recommended penalties for these different categories. As in the London Charter, Law 10 did not foresee a "superior orders" argument as a valid line of defense, although it did allow courts to consider this as a mitigating factor in determining punishment.[99] The purpose was to ensure a uniform understanding of these crimes and a similar mode of punishment across the different zones of occupation.

Although this international justice project forged out of the 1943 Moscow Decree had called forth an unprecedented level of peacetime cooperation between the Allied Powers (as manifested by this legal and political infrastructure mentioned above), ideo-political cracks in this façade were soon to become deep rifts between the Western Allies and the Soviet Union—rifts that were to increasingly manifest themselves in the policies and practices associated with the extradition of war criminals. In general terms, this division can be characterized in the following manner: On the one hand, the American and British occupation authorities adopted a pragmatic stance toward extradition that emphasized "quality over quantity," recognizing the utility of focusing on a limited number of the most important suspects. On the other hand, a vengeful Soviet Union advocated a policy of "mass extradition" that included individuals who had been implicated in minor criminal offenses, including membership in "criminal organizations," a totalizing approach to punishment that they grounded in the London Charter (and its subsequent confirmation at Nuremberg).[100]

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[99] Podstawy historyczno-prawne na których opierają się zadania wydawania zbrodniarzy wojennych, undated, GK 184/4, Zarządzenia organizacyjne Szefa PMWBZW w Berlinie, IPN.

[100] It is hard to get a sense of what was going on in the Soviet zone. Overall, the tendency was not so much to extradite, but to punish within the zone itself, or to simply deport to the Soviet Union for forced labor.

Poland was to find herself at the geopolitical center of this ever-widening gulf between East and West, and new socialist elites recently returned from the Soviet Union or reemerged from the forests were to find themselves struggling to define their own stance on extradition between the forcefields exerted by these superpowers. Although their political loyalties obviously lay with their Soviet brothers, Polish elites were eager to gain wider recognition for their newly-launched state-building efforts, and hence, seized upon the opportunity to participate in the international justice project represented by extradition. Not only would this pave the way for the elimination of the final vestiges of the "Londoners" and their distressing claims to legitimate postwar political authority, but the chance to extradite war criminals indicated tacit international recognition of the validity of the socialist civilian criminal justice system that would stand in judgement over them. Such domestic punishment projects took on even greater significance in light of the bitter disappointment stemming from the limited role permitted to Poland at the Nuremberg War Crimes Tribunal.[101] The authorities recognized that this was their chance to conduct their own national-level "Nuremberg" trials[102] in addition to more local punishment in district and appellate courts.

Hence, upon their arrival to the British and American zones[103] in March 1946, the Polish Mission was eager to demonstrate both its willingness and capacity to cooperate with the larger

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[101] The Poles desperately lobbied both the Soviets and the American occupation authorities for the right to establish their own Office of Prosecution at Nuremberg. This request was rejected, and Poland had to content herself with writing a "Polish indictment." Please see Tadeusz Cyprian and Jerzy Sawicki, *Przed Trybunałem Świata. Refleksje, Wspomnenia, Dokumenty, T I i II* (Warszawa, 1962).

[102] In addition to district and appellate courts, a special court known as the Supreme National Tribubal or NTN was established to try the most important war criminals.

[103] A mission was established later (and for a shorter period) in the French zone.

community of nations involved in extradicting and punishing war criminals. And indeed, the initial stance occupied by Mission head Marian Muszkat (and backed by the Ministry of Justice and the Ministry of National Defense) was one favoring limited extradition. This readiness to adopt the Western Allies' strategy was also motivated by pragmatic considerations : it would keep costs minimal, would not overtax a Polish civilian criminal justice system already weighed down by thousands of domestic collaboration cases,[104] and finally, it would allow the Polish Mission to concentrate on overcoming the fear and suspicion held by the Allies—suspicions that had only been exacerbated by the Polish Mission's arrival in Frankfurt aboard a Soviet aircraft.[105]

Although a source of existential threat, the London Mission was ultimately of great benefit to the newly arrived team from Poland. Not only did there already exist a well-established organizational infrastructure and protocol for coordinating work with the various Allied institutions and organs of the British and American occupation governments, but London team members had also been instructed to stay and oversee the transfer of case files to their counterparts from Poland. Hence, "taking over the agenda of the 'Londoners' mission" provided

[104] These domestic collaboration cases were tried under the so-called "August Decree" of July 1944. Upon extradition to Poland, German war criminals were also charged under the same decree. Do Ministerstwa Sprawiedliwości w Warszawie od Mariana Muszkata, April 15, 1946, GK 184/34, Korespondencja wychodząca oddziału PMWBZW w strefie amerykańskiej w sprawach organizacyjnych, administracyjnych, IPN.

[105] Mission members were acutely aware of the distrust emanating from the Western Allies, and Mission head Marian Muszkat would address this frequently in memos sent to his superiors in Warsaw and in the Polish Army. In them, he describes a variety of "damage control" measures aimed at overcoming this distrust, including striking up personal acquaintances and holding social events/evenings. Do Szefa Polskiej Misji przy Zarządzie Wojskowym Niemiec w Berlinie pułkownika Prawina od Mariana Muszkata, March 31, 1946, GK184/19, Sprawozdania z działalności oddziału i zespołów terenowych PMWBZW w strefie amerykańskiej oraz korespondencja w sprawach organizacyjnych 1946, IPN.

a convenient organizational shortcut as well as a temporary solution to what was to become one of the greatest obstacles facing the Polish Mission—the absence of a politically reliable *and* experienced staff.

Even though the head of the Polish Mission, Colonel Marian (born Mendel) Muszkat, was both politically reliable[106] and a trained legal expert,[107] finding similarly qualified people to staff the various branches of the Mission was to be a difficult task made all the more complicated by the fact that such individuals had to be found among active duty officers (this was, after all, a military mission). Unfortunately for Muszkat and the Mission, officers with even the slightest legal training were in high demand in Poland (to staff military courts there) and could only be delegated to the Mission for short periods of time, leading to frequent and disruptive personnel turnovers.

Hence, it is hardly surprising that the first liason officers chosen to accompany the mission proved to be—in Muszkat's estimation—"unsuitable for work." In order to replace them with "experts" (*fachowców*), he attempted to recruit qualified legal personnel from "among people who are loyal to our government and wish to return to Poland,"[108] including both members of the London Team as well as former Polish prisoners of war. Given that the latter had

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[106] Muszkat spent the war years in the Soviet Union where he joined the First Polish Army in 1943. K. Szwagrzyk, *Prawnicy czasu bezprawia. Sędziowie i prokuratorzy wojskowi w Polsce 1944-1956*, s.v. "Muszkat, Marian."

[107] His pre-war legal training included a special emphasis on international law, something that would come in handy when formulating extradition policy.

[108] Do Szefa Najwyższego Sądu Wojskowego w Warszawie od Mariana Muszkata, April 15, 1946, GK 184/34, IPN.

been "cut off from the country for six years and [did] not know (our) current reality,"[109] he decided to balance this cadre with civilian legal experts from Poland who were given special military rank.

Ultimately, this core staff cobbled hurriedly together by Muszkat represented a range of experiences and political backgrounds. For the most part, Muszkat seemed to recognize that performance should outweigh political considerations, as indicated by his choice of deputy, the civilian recruit Edward Pęchalski, who had been a public prosecutor for the Kraków district and appellate court prior to and after the war. Pęchalski was joined by another civilian colleague from the Kraków jurisdiction and Minister of Justice, Jan Sehn. They, in conjunction with major Romuald Klimowiecki (a doctor of law and a military court judge prior to the war), represented those who had spent the war years in Poland—perhaps of untried political loyalties, but at least aware of Poland's "new reality." For their part, core staff members who had been cut off from this reality included two former concentration camp inmates, Stefan Jaskiewicz (Buchenwald), who was trained as a lawyer but had not practiced in the decade prior to the war, and Wincenty Hein (Dora Nordhausen), a legal assistant from Katowice who would run the Mission's archives/documentation section. They were joined by Henryk Gield, a lawyer and criminal law expert who had spent the war years in London working as a journalist for an émigré newspaper—the lone representative of the London team who chose to accept the "new reality" and return to socialist Poland.[110]

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[109]Do Ministerstwa Spraw Zagranicznych od Ministerstwa Obrony Narodowej Departament Służby Sprawiedliwości, June 7, 1946, GK184/5, Korespondencja w sprawie tworzenia w Berlinie organu d/s zbrodni wojennych oraz w sprawach przesunięć personalnych, IPN.

[110] *Biogramy Członków*, undated, GK 184/34, IPN.

Although pragmatic concerns outweighed politico-ideological prerogatives in Muszkat's selection of staff, this approach was not reflected in the subsequent policy of "mass extradition" he adopted shortly after the team's arrival in Germany. Even though Muszkat most likely recognized how unfeasible such a stance was given current "reality,"[111] he nevertheless justified this change in opinion to the Ministry of National Defense and the Ministry of Justice by citing article 5 of the 1932 Criminal Codex wherein "Polish criminal law applies to foreigners who committed crimes outside of Poland directed against the interests of the Polish state and Polish citizens." Disregarding this article and pursuing a policy of limited extradition would be equivalent to sanctioning the activities of lesser criminals and those who had merely followed orders.[112] Moreover, exonerating lesser criminals would create the conditions for their renewed activity, this time "supported by new allies that the Germans garner in their everyday contact with ... the occupation forces." According to Muszkat, eliminating the number of "potential friends" of America was "necessary… not only to prevent impunity for those who have something on their conscious in regard to Poland" but also to "exterminate Polish enemies … waiting for a chance to claim our western lands."[113]

In the first months after the Polish Mission's arrival in occupied Germany, zonal extradition policies did not present a significant obstacle to mass extradition—American and British authorities would approve a request based solely upon a report of a suspect's alleged

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[111] Not only was a constantly shifting team of thirty people ill-equipped to handle the volume of investigations associated with mass extradition, but there was also the costly problem of transport back to Poland.

[112] This was also the Russian stance at Nuremberg.

[113]Do Ministerstwa Sprawiedliwości w Warszawie od Marian Muszkata, April 15, 1946, GK 184/34, IPN.

criminal activities. Yet by June 1946 both these Western Allies began to require an individual's registration on the UNWCC's list of wanted war criminals before he or she could be extradicted. This change in policy was, in fact, a round-about strategy to get the Mission to provide prima facie evidence[114] against suspects, since such evidence was a prerequisite for registration on the UNWCC list in the first place.

Clearly, this new requirement was to put a greater strain on the Mission as an investigatory organ and would slow down the submission of extradition requests to the American and British authorities. Nevertheless, Muszkat and the Mission would continue to pursue a policy of mass extradition into fall 1946 by relying on a ruling at Nuremberg that recognized the "criminality" of organizations such as the SS and Gestapo. According to the general interpretation advanced by the Polish Mission, if one could prove that a given suspect had been a member of a "criminal organization," this provided prima facie evidence of his guilt, and hence was grounds for extradition. Once again, the British and American authorities for a brief period honored such extradition applications before rejecting this approach on the grounds that membership in a criminal organization did not constitute enough evidence of individual wrongdoing.[115]

Ultimately, Muszkat would cite this disagreement about membership in a "criminal organization" when justifying yet another policy reversal: a switch back to an extradition

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[114] This refers to evidence to prove the guilt of the suspect before trial. Do Mariana Muszkata w Londynie od W. Czechowskiego Szefa Misji dla spraw zbrodni wojennych, March 18, 1948, GK 184/32, Okresowe sprawozdania z działalności oddziałów PMWBZW w Berlinie i strefach amerykańskiej, brytyskiej i francuskiej oraz Delegata Polski przy OCCWC w Norymberdze i Delegata do Trybunału Ekstradycjnego, IPN.

[115] Sprawozdanie z działalności Misji w miesiącu kwietniu, May 2, 1947, GK162/141a, Sprawozdania z działalności Polskiej Misji Wojskowej w Berlinie, IPN.

strategy that emphasized "quality instead of quantity" and "concentrate[d] all efforts on investigating and extraditing the most important criminals of [German and Polish nationality], in particular those who figured on national and international wanted lists."[116] He believed that choosing to focus on such individuals would increase the approval rate of extradition requests that were frequently rejected on the grounds that there was not enough evidence. Moreover, given the Allies' steady release of suspected war criminals from detention camps,[117] "important criminals as well as Gestapo who had been stationed in Poland" were to be pursued to the extent that such individuals presented a "potentially dangerous political element" and where "criminal proceedings in Germany or in other Allied nations [did] not look promising."[118] No doubt this policy about-face was also influenced by cost-cutting measures at the Ministry of Public Security

[116] Do Ministra Sprawiedliwości Henryka Świątkowskiego w Warszawie od pułkownika Prawina, February 6, 1947, GK184/20, Sprawozdania z działalności oddziału i zespołów terenowych PMWBZW w strefie amerykańskiej oraz korespondencja w sprawach organizacyjnych, IPN.

[117] In June 1946, the American/British decision to release SS men ranking below "*unterscharführer*" had been criticized by Muszkat on the grounds that by the time a Polish extradition request had been processed and approved, a given suspect might have been released. Do Delegata Polskiego w Międzynarodowej Komisji Zbrodni Wojennych w Londynie od Ministra Sprawiedliwości, August 13, 1946, GK 184/19, Sprawozdania z działalności oddziału i zespołów terenowych PMWBZW w strefie amerykańskiej oraz korespondencja w sprawach organizacyjnych, IPN.

[118] Muszkat noted: "In conditions in which thousands of criminals are released, our initial attitude about mass extradition stopped being relevant, for it was not possible to prevent not only the penetration of the German social organism by former criminals but also by those who continue to be dangerous for our border and for general peace." Do Szefa Polskiej Misji Prawina od Mariana Muszkata, September 11, 1946, GK 184/34, IPN.

in November 1946 that left the Mission unable to provide for the transport of those approved for extradition to Poland.[119]

Ultimately, a policy of selective extradition would put pressure on the Polish Mission to identify precisely which major criminals were to be targeted. To this end, it was theoretically to rely upon the information provided by the Main Commission as to which criminals were of greatest interest to the Ministry of Justice and the Ministry of Public Security. However, a disorganized Commission, already struggling to coordinate the efforts of its województwo branches, was paralyzed, leaving the Mission to "stumble around blindly." It was "thanks only to chance" that it had found several dozen "significant" criminals for extradition.[120]

The Main Commission's inability to sort through the information gathered from the województwo commissions, identify major perpetrators, and relay this information and any potential evidence to the Mission was all the more problematic given the short window of opportunity that remained to submit extradition requests: in spring 1947, the British and American occupation authorities had announced that they would no longer be accepting requests after September and December 1947, respectively. Furthermore, at this time, British occupation authorities introduced another step in the extradition process—the "extradition tribunal"—wherein all suspects had the opportunity to defend themselves in a hearing prior to the approval (or rejection) of an extradition request. Given that many of the Polish extradition requests

[119] From this point forward, the Polish Mission would rely upon the generosity of the British and Americans for transport (either American trains to the Polish-Czech border or British boats).

[120] Memoriał w sprawie ustanowienia łącznika Polskich Misji Wojskowych Badania Niemieckich Zbrodni Wojennych przy Głównej Komisji Badania Zbrodni Niemieckich w Polsce, undated, GK 162/141A, IPN.

submitted to the British authorities provided only two pieces of evidence of wrongdoing—registration on the UNWCC list of war criminals (oftentimes submitted by another country) and CROWCASS and a statement from the suspect[121]— mission members were in desperate need of additional evidence about wartime activities, evidence that the Main Commission in Warsaw theoretically possessed yet was unable to share in a timely manner. This situation was further complicated by the fact that this new step in the extradition process also applied retroactively to cases that had already been approved by the British authorities, thus incurring the Mission's complaints of the violation of the principle *lex retro non agit* (law is not retroactive)—and more work for the Commission.[122]

The effect of this policy shift was felt immediately: After mid-1947,[123] there were virtually no extraditions to Poland from the American zone and the majority of cases heard at British Extradition Tribunals were rejected.[124]

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[121] Sprawozdanie z działalności PMWZW w brytyjskiej strefie z siedzibą w Bad Salzuflen, January 1948, GK 184/25, Miesięczne sprawozdania z działalności PMWBZW w strefie brytyjskiej za okres od 12.12.47 do 31.1.49, IPN.

[122] Ibid.

[123] During the first six months of 1947, a total of 1,037 suspects were extradited to Poland: 868 from the American zone, 132 from the British zone, seventeen from the French zone, and twenty from the Soviet zone. They joined 673 suspects extradited in 1946: 429 from the American zone, 240 from the British zone, one from the French zone, and one from the Soviet zone. This was to be the peak of the extradition process—between 1948 and 1950 only an additional 100 individuals were extradited: eighteen from the American zone, ten from the British zone, one from the French zone, and fourteen from the Soviet zone. Kobierska-Motas, *Ekstradycja*, 170-172.

[124] Sprawozdanie z działalności Oddziału brytyjskiego za marzec 1948, April 8, 1948, GK 162/140A, IPN.

Faced with the imminent end of the joint-Allied extradition project, the Polish Mission became more vocal about extraditing "quislings and traitors" in addition to Nazi-German war criminals. Although this did not represent a policy shift on the part of the Mission, these efforts had previously been blocked by the British and American occupation authorities who were fearful that this would become a front for the political purge of potential rivals to the new Polish political order.[125] Hence, British and American authorities did not accept extradition requests for "Polish citizens and former Polish citizens such as Ukrainains, Jews, and even Germans," in this manner refusing to recognize them as war criminals.[126]

Although the Polish Mission first tried to bypass this "logical contradiction"[127] with a policy of mass extradition, it was unsuccessful in registering "quislings and traitors" on the UNWCC and CROWCASS lists—the necessary first step in the extradition process. The Mission did not attempt to directly address this stance until faced with the tightening of the extradition process in 1947. At this time, Muszkat met with the director of CROWCASS (Major Levy) to lobby for the registration of "quislings and traitors," and thus their (international) recognition as war criminals. However, Levy equivocated by stating that the Allied authorities had not yet reached an agreement about this group of perpetrators, and hence CROWCASS would continue

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[125] And indeed these fears were not unfounded. The PMWBZN archives turned up details about (unsuccessful) efforts to extradite Bohun, a partisan who had been active in the Home Army. Do Szefa Polskiej Misji Wojskowej Prawina w Berlinie od Mariana Muszkata, January 9, 1948, GK 184/23, Sprawozdanie z działalności oddziałów i zespołów terenowych PMW w strefie amerykańskiej oraz korespondencja w sprawach organizacyjnych, personalnych, administracyjnych i ekstradycyjnych, IPN.

[126] To M. Szerer at the Polish Embassy in London from Marian Muszkat, January 9, 1947, GK 184/35, Korespondencja wychodzące 1946-1947, IPN.

[127] Ibid.

to register *only* German war criminals and those who had committed crimes against other nations.[128] Again in 1948, Muszkat would attempt to force the hand of the British and American occupation authorities by coming to an agreement with the French and Belgian war crimes commissions who were also interested in extraditing "quislings and traitors." According to Muszkat:

> I was successful in agreeing with the French and Belgian delegates about establishing a procedure for extradicting traitors/quislings ... it would behoove us not to treat these categories of perpetrators as war criminals on the international plane but instead as regular criminals subject to punishment under the regular criminal codex.[129]

Ultimately, this effort too would fail. Although frustrated by their inability to extradict Polish nationals who had (or had not) collaborated with the Nazi occupiers as well as by the near standstill in the extradition of war criminals, this hiatus actually offered a much-needed respite for an overtaxed Polish Mission struggling to maintain an image of itself as a legitimate instrument of justice in the eyes of the Western Allies. This was complicated not just by the influx of extradition approvals at the Polish Mission in 1946 and 1947, but also by the Main Commission's in-country oversight of these suspects once they found themselves on Polish soil. Theoretically, the Main Commission was to keep statistics for every extradited suspect, including when and where he would stand trial, the specific charges brought against him, the eventual verdict and sentence, etc. Not only would this allow for the speedy and accurate reply to

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[128] Sprawozdanie z działalności Misji za miesiąc sierpień i wrzesień 1947, September 30, 1947, GK 164/141A, IPN.

[129] Do Szefa Polskiej Misji Wojskowej w Berlinie Prawina, January 3, 1948, GK 184/23, Sprawozdanie z działalności oddziałów i zespołów terenowych PMW w strefie amerykańskiej oraz korespondencja w sprawach organizacyjnych, personalnych, administracyjnych i ekstradycynych 1948, IPN.

inquiries from family members seeking information about the fates of their loved ones, but it would also ensure that suspects were tried and sentenced within six-months after extradition in keeping with Article 5 Rule Number 10 of Allied Control Council procedures.

However, the Main Commission was unable to maintain an up-to-date and accurate register pertaining to these suspected war criminals, and once extradited to Poland, their whereabouts were unknown. This was a source of great embarrassment for the Polish Mission and the Main Commission since they were unable to respond to family members' requests for information. Although the Mission proposed the creation of a special liaison between itself and the Commission in order to manage a more efficient exchange of information,[130] such a plan was never implemented, most likely because of tight budgetary constraints. In any case, it is unlikely that this would have alleviated this public relations problem; after all, this was not a problem of communication but one of organization.

Ultimately, upon its liquidation on January 31, 1951, the Polish Mission had succeeded in extraditing 1,748 individiuals from the Western zones of occupation; 1,315 from the American zone; 396 from the British zone; and 37 from the French zone. Additionally, although the Soviets had deflected Polish efforts to establish a war crimes mission in its zone of occupation, an additional 69 suspected war criminals were extradited from here "on the fly"(*na bieżąco*).[131] Although this number seems quite small in light of the scale and scope of crimes committed on

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[130] Memoriał w sprawie ustanowienia łącznika Polskich Misji Wojskowych.

Badania Niemieckich Zbrodni Wojennych przy Głównej Komisji, undated, GK 162/141a, IPN.

[131] Kobierska-Motas, *Ekstradycja*, 170–72.

Polish soil, the number 1,817 is nothing to scoff at when one considers the chaotic conditions that reigned in the immediate postwar years as new governments/nations were taking shape.

In a contemporary world in which international cooperation in projects of punishing state crimes is commonplace, it is easy to discount the "newness" of these joint efforts to punish Nazi war criminals when even the understanding of what constituted a "war crime" was still very fluid. Although "war crimes" as an international legal concept had been codified in the Hague Convention in 1907 and then further elaborated at the Paris Peace Conference of 1919, applying this concept to crimes committed during the period 1939–45 was no straightforward matter, as poignantly captured by a statement made by the Polish government-in-exile's Chief War Crimes Liaison Officer in the British Zone, Colonel C. Bystram, in October 1945:

> The first person I arrested was a "big fish"—a member of the Nazi Party since 1932 and responsible for the deaths of twenty-three Poles and the mistreatment of several hundred others. When I boasted at Mission headquarters that I had nabbed a "big fish," there was no reaction, and the head of the Dutch Mission offhandedly commented that at their Mission a war criminal begins at 100 dead.[132]

Clearly, the Polish Mission in Warsaw was not alone in its struggle to formulate a coherent and consistent policy about which "war crimes" *should* and *could* be punished. Although often dismissed as politically-motivated, decisions about whom to punish (extradite) and how were much more nuanced as actors struggled to balance the capacity to punish (the "could") with the moral imperative of punishment (the "should")—an imperative shaped by conventional understandings of criminal law.

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[132] Rozdzielnik nr 3, London, October 11, 1945, GK160/3, Zbrodnie wojenne. Korespondencja w sprawach delegatur zagranicznych Ministerstwa Sprawiedliwości do badania zbrodni wojennych, informacje o ściganiu zbrodni wojennych przez „rząd Lubelski," IPN.

However, this observation is not to discount the role that politics did play in both shaping the capacity to extradite as well as the definition(s) of who should be considered a war criminal. As regards to the former, Poland's desire to participate in the joint-international extradition project was severely curtailed by the pragmatics of state-building in the aftermath of a devastating war where money and qualified personnel were in short supply—so short that Poland could not even finance the international transport of her own prisoners.[133] This limited capacity to extradite sat uneasily with Poland's perceived need to participate in this project, not only as a means of garnering international recognition for the newly-launched socialist state-building project, but also because of profound fears surrounding the task of constructing a *nation* in the aftermath of a substantial border-shift to the west into formerly Prussian lands.[134] Hence, for the Polish Mission, a war criminal was not always just someone defined by his or her former actions in occupied Poland, but also by his or her potential to act again in the future against the new Polish nation.

These existential fears in combination with a desire for vengeance influenced the Polish Mission's decision to pursue mass extradition—a stance that was consistent with the Main Commission's promise that not one crime would go unpunished, even though Mission head Marian Muszkat was well aware of both the number of potential criminals to be investigated in Germany as well as the limited capacity of his Mission. And indeed, the Polish Mission as well as the civilian criminal justice system back home were pushed way beyond capacity even when

[133] Hence, they had to rely on the generosity of the British and Americans to get prisoners to the Polish border.

[134] Notably, the Mission could extradite individuals who had committed crimes in the part of eastern Poland that was ultimately annexed by the Soviet Union.

pursuing a strategy of selective extradition, thus jeopardizing the international recognition that they was so desperately craving.

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CHAPTER TWO

THE THEORY AND PRACTICE OF PUNISHING NAZI COLLABORATORS

Introduction

> Fellow Countrymen! The hour of revenge has come for the suffering, for the burned villages, for the bombed cities, destroyed churches and schools, for extortions, camps, and executions; for Auschwitz, Majdanek, Treblinka, for the murder of the ghetto.[1]

With these rousing words, the Polish Committee of National Liberation (PKWN) rallied the inhabitants of newly liberated Eastern Poland behind a vengeance-seeking project that would unfold over the next decade. It was July 22, 1944, and Poland's prewar political pariahs and future heads of state had just crossed the Bug River—Poland's new eastern border—along with the joint Soviet-Polish military offensive that would ultimately push the Nazis back to Berlin. Riding the first flush of victory on Polish soil, the PKWN sought to rally a traumatized and atomized society behind its project of political, social, and economic transformation. To this end, they promised in a Manifesto issued to the Polish people that "the goal of independent Polish courts will be to guarantee swift justice. No German war criminal, no traitor to the Polish nation will escape punishment."[2]

While this impassioned call for retribution was a foreseeable response to the traumas and horrors of the last five years, the fact that new Polish elites framed vengeance within a formal legal context was not. Given the enormity of the task and the absence of a functioning national legal system, the PKWN's promise hardly seemed feasible when summary executions and other

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[1] Manifest Polskiego Komitetu Wyzwolenia Narodowego, July 22, 1944, https://pl.wikisource.org/wiki/Manifest_Polskiego_Komitetu_Wyzwolenia_Narodowego_(1944, accessed May 23, 2015.

[2] Ibid.

forms of vigilante justice could just as easily have satisfied the popular thirst for revenge, if not more so. Yet by eschewing such extra-judicial measures and choosing a legal route, new elites clearly signaled that domestic efforts to punish Nazi war criminals and their Polish collaborators would be part of a larger constellation of national and international projects dedicated to defining and prosecuting new categories of criminal activity associated with genocide and total war, a potentially useful source of legitimation for their newly-undertaken state-building project.

On the domestic front, efforts to bolster the reception of the new political and social order rested on claims of legal and constitutional continuity. By declaring in its Manifesto that it represented the "only legal source of power in Poland ... operating on the basis of the 1921 March Constitution," the PKWN sought to undermine the "pretenders" in the London government-in-exile whose authority rested on the "illegal fascist constitution of June 1935."[3] To further their claims to legal-constitutional continuity with the interwar Polish republic, the PKWN also reactivated the prewar criminal and procedural codexes—the body of formal law that established what constituted acts of criminal wrongdoing and the rules of correct investigative and courtroom procedure. Finally, justice in this reactivated criminal justice system was to be administered by the cadre of municipal, district, and appellate court judges as well as public prosecutors who had received their legal training and professionalization in the "bourgeois" courts of prewar Poland. Such was the importance that the PKWN attached to staffing these courts with experts that it decreed that prewar legal personnel were not to be

[3] Ibid.

conscripted into the army to fight onward to Berlin but would instead serve Poland by returning to their prewar professions.[4]

While the decision to reinstate the prewar criminal justice system was driven by concerns over constructing a legitimate state-building project, Polish socialist elites did not disguise the fact that this system would be inadequate for realizing the project of punishing war criminals and collaborators. There were two dimensions to this. First,

> from six years of night there hatched, like a new species of reptile, crimes that were heretofore unknown by any codex….
>
> Here however begins the problem. Not every evil is a crime. Should betrayal during interrogation or the loss of all personal dignity in the camps be punished by law? Where do we draw the line between an act that is to be prosecuted and acts that should arouse the horror and disdain of decent people? Where does crime begin?[5]

This statement eloquently captures the legal conundrum facing many European nations in the aftermath of World War II: How could traditional legal understandings of criminality grounded in individual action apply to state-sponsored wrongdoing in which perpetrators had acted within the bounds of the laws on the books and victims had numbered in the millions? The absence of fitting national and international legislation to capture new dimensions of criminality and criminal responsibility meant that liberated Europe had to engage in the kind of law-making that was problematic because it planned to punish after the fact, thus violating *lex retro non agit* (law is not retroactive). Moreover, the very meaning of justice itself had to be fundamentally

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[4] Dz.U. 1944, nr 2, poz. 5, Dekret Polskiego Komitetu Wyzwolenia Narodowego o częściowej mobilizacji i rejestracji ludności do służby wojskowej, August 15, 1944, http://isap.sejm.gov.pl/, accessed August 10, 2014.

[5] Jan Kot, "Prawo i Humanizm," *Demokratyczny Przegląd Prawniczy(DPP*) 1(listopad): 63.

altered given that punishment could never be commensurate to the moral wrongdoing that had been committed during those years of terror.

Second, new elites recognized that punishment enacted in the interwar legal system would hardly conform to Poland's "new socialist reality" in which criminal justice would "defend with all its might the basis of the socialist state"[6] and serve as an important vehicle by which to realize the revolutionary transformation of political, social, and economic life. This instrumental understanding of law justified its pragmatic application and did not preclude the branding of real or perceived opponents to the new socialist order as Nazi collaborators regardless of wartime behavior. After all, this would have been an effective means by which to discredit and neutralize individuals who had previously enjoyed political, social, and economic influence.

Aside from its pragmatic deployment to eliminate political opponents, the project of punishing war criminals and collaborators was also to serve as a vehicle by which to inject socialist legal-theoretical content into criminal law. Specifically, Jerzy Sawicki and Tadeusz Cyprian—two prewar legal experts who now vocally backed the socialist transformation underway in Poland—elaborated a typology of collaboration that linked patterns of wartime behavior to a socio-economic position in a system of classification that consisted of six sub-categories:

> 1) The "cynical collaborator" was an individual who sold his services to the occupiers for material gain. Such individuals were generally recruited from among the bourgeoisie, the landed gentry, and career criminals.

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[6] Zdzisław Albin Ziemba, *Prawo przeicwko spoleczeństwu: Polskie prawo karne w latach 1944–1956* (Warszawa, 1997), 36.

2) The "opportunist" frequently stemmed from among petty bureaucrats. He was not an eager collaborator but was instead driven to cooperate with the occupiers in order to secure his peace and well-being and not out of a sense of loyalty to the Nazis. Hence, the motivation to collaborate was psychological, not moral.
3) The "romantic" collaborator had been involved in underground resistance activities while also working on behalf of the Nazi occupiers. These individuals frequently stemmed from among the landed gentry and wealthy "bourgeoisie" and had justified this dual existence on the grounds that collaboration served to mask the fact that they were really working for the opposition.
4) The "slave" was a prewar bureaucrat who had continued to practice his profession during the occupation. He had justified the scrupulous fulfillment of the occupiers' orders on the grounds that in doing so, he was protecting the Polish population from harsh reprisals.
5) "Idealists" were factory owners and merchants who had collaborated economically with the occupiers, primarily by exploiting Polish workers and peasants as forced labor. Such action had been driven by the fear that the defeat of fascism would lead to the destruction of their privilege; and finally,
6) "Accidental" collaborators came from the working and agrarian classes and had been arrested for speculation and smuggling. In order to buy their freedom, they agreed to collaborate with the Nazis.[7]

This typology amounted to a legal-theoretical "ideal type"—a clear-cut vision of how prosecutors and judges from the prewar era should construct the punishment of collaboration so that this project satisfied both the social need for vengeance while instructing the population about the inheret evils of the capitalist socio-economic structures that had conditioned patterns of wartime collaboration in the first place.

[7] Jerzy Sawicki and Tadeusz Cyprian, "Prawo Polskie w Walce z Hitleryzmem i Kolaboracjonizmem," *DPP* 11/12 (listopad-grudzień):18–19.

Despite the important pragmatic and legal-theoretical functions attached to this socialist vision of punishment, new elites nevertheless had to contend with the fact that this project rested squarely in the hands of prewar prosecutors and judges whose "legal imaginations" had been shaped by profoundly different normative and procedural understandings of law and punishment. This left them ill-equipped to cope with both the unprecedented scale and scope of criminality as well as the ex post facto nature of punishment. Further, the subjugation of law to politics in the various pragmatic and theoretical ways proposed by representatives of the new socialist order would have been heretical to the prewar legal undestanding of law and punishment as a sphere separate from politics.

This chapter explores how the construction of collaboration and its punishment in the first years of the postwar Polish state was shaped by the collision of these force fields of stasis and change. Specifically, it asks: To what extent was the investigation and punishment of collaborators influenced by the legal-theoretical and pragmatic demands of the socialist state-building project and to what extent by the "legal imaginations" of the prewar legal personnel entrusted with its enactment? An analysis of sample of cases from the Łódź, Lublin, and Warsaw prosecutors' officers for the special criminal courts sheds critical light on these questions. However, before proceeding with this discussion, this chapter first elaborates and explains how socialist elites designed and constructed a legal and procedural infrastructure to cope with collaboration, a project that was framed in the revived system of interwar criminal justice.

Restoration, Extension, Revolution

The PKWN imparted great urgency to the project of re-establishing law and order to the political and moral vaccuum of Poland. To this end, one of its first priorities after regaining

territory from the Nazi occupiers was to reactivate local courts, no mean feat given the level of chaos and destruction that acompanied the passing front. Oftentimes court buildings and their archives had been destroyed or were in need of repair before they could assume operations. Many prewar legal personnel were dead or in hiding, leaving the courts understaffed. In addition to this, the most basic supplies needed to run the courts and their prosecutors' offices were not at hand: this included log books for recording cases, various forms for recording depositions, and coal for heating buildings for the upcoming winter.

These obstacles aside, the PKWN proceeded to reactivate a civil and criminal justice system based upon three instances: municipal courts, district courts, and appellate courts, and in doing so tried to follow as closely as possible the 1928 Law Concerning the Common Court System[8] that had established this three-tiered institutional infrastructure as well as its jurisdictional boundaries. Clearly the exegesis of war required certain adaptations to this basic infrastructure. In particular, the uneven advancement of the front frequently resulted in situations in which municipal courts began operating well before their corresponding courts of higher instance (i.e., district and appellate courts). To remedy this, the PKWN shifted certain municipalities into already-reactivated appellancies.[9]

Further jurisdictional adjustments reflected the redrawn borders of the postwar Polish state. In the east, this meant the abridgement of several appellancies. The Kraków jurisdiction was expanded to incorporate municipal and district courts that had previous fallen in the Lwów

[8] Dz.U. 1928, nr 12, poz. 93, Rozporządzenie Prezydenta Rzeczpospolitej o ustroju sądów powszechnych, February 6, 1928, http://isap.sejm.gov.pl/, accessed August 10, 2014.

[9] Dz.U. 1944, nr 11, poz. 58, Dekret PKWN o upoważnieniu do tworzenia sądów oraz zmiany ich okręgów, a ponadto do przenoszenia sędziów na inne miejsca służbowe, November 4, 1944, http://isap.sejm.gov.pl/, accessed August 10, 2014.

appellancy (now Western Ukraine). Similarly, the Białystok district court absorbed into its jurisdiction municipal courts that had previously found themselves in the Grodno district (now Białorus).[10] However, these were minor adjustments in comparison to the task that awaited the PKWN in territories north and west of the Vistula River, areas that had fallen under German rule for centuries. Now, the "Regained Territories" of Mazuria, Danzig-West Prussia, and Silesia added nearly one hundred thousand square kilometers to the new postwar Polish state—or 30 percent of the total landmass.[11]

Since these formerly German territories would form "the future source of Poland's strength and guarantee her a place in the international sphere," integrating these territorities as quickly as possible into the Polish nation hinged in large part upon the extension of the prewar Polish legal system to these territories. To this end, "operative groups" consisting of legal personnel and "judge-pioneers"(*sądownicy pionierzy)* from prewar Polish jurisdictions were sent to these areas to establish muncipal, district, and appellate courts. In these territories, the judge-pioneer "will not hide in his office, but will meet life head-on, will search out contact with society, and will involve himself in social issues. The prosecutor will not wait for the report of a crime, but will show initiative."[12] Already with this statement, an important procedural shift was signalled—prosecutors in a socialist system of justice would have much greater independence than their prewar counterparts.

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[10] Grzegorz Jakubowski, *Sądownictwo Powszechne w Polsce w Latach 1944–1950* (Warszawa, 2002), 127.

[11] Adam Wendel, „Zadanie Sądownictwa na ziemiach zachodnich, *DPP*, 1(listopad 1945): 16.

[12] Ibid., 16.

In addition to reactivating and extending the prewar civilian court system and its jurisdictional boundaries, prewar judges and prosecutors were re-employed to staff them. It has been estimated that 37 percent of the prewar judicial and prosecutorial staff returned to work—approximately 1,300 individuals from a prewar total of 3,500.[13] Given the fact that over one thousand judicial and prosecutorial positions had been created in the Regained Territories, this meant that there were considerable problems with understaffing. Measures to combat this included the passage of the decree *Concerning the Registration and Mandatory Employment of Individuals with Qualifications to Assume Judicial Positions* in February 1946,[14] as well as the promotion of less experienced prewar legal personnel to positions of greater responsibility, such as employeeing former municipal court judges in district courts, etc. Despite these cadre deficits, socialist elites were loath to employ nonprofessionals, meaning that prewar judges and prosecutors made up approximately 90 percent of the postwar legal cadre until the late 1940s.[15]

Ultimately, the restoration of Poland's prewar civilian criminal justice system sent a powerful message to both the population at large and the London government-in-exile about the PKWN's claim to legitimate political power. Further, its extension into the Regained Territories also functioned as a means by which to incorporate and claim former Prussian lands for the new postwar Polish state. Over the coming months and years, this restored and expanded infrastructure was to provide the framework in which new elites would experiment with

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[13] Jakubowski, *Sądownictwo Powszechne w Polsce,* 215.

[14] Dz.U 1946, nr 9, poz. 65, Dekret o rejestracji i przymusowym zatrudnieniu w władzach wymariu sprawiedliwości osób, mających kwalifikacje do objęcia stanowiska sędziowskiego, February 22, 1946, http://isap.sejm.gov.pl/, accessed September 8, 2014.

[15] Jakubowski, *Sądownictwo Powszechne w Polsce,* 215.

procedural and normative modifications that would revolutionize criminal justice to meet the demands of a new "socialist reality." Nested within this larger endeavor, the punishment of war criminals and collaborators was to be the first decisive step toward realizing this new vision for society.

Lawmaking in the "Shadow of the Crematoria"

Well before the defeat of Nazi Germany, Polish exiles in Moscow and London dreamed of vengeance, and in 1943 the first official declarations outlining basic categories of criminal wrongdoing that would be punished in postwar Polish courts were issued. In addition to meting out justice to "German war criminals," Polish socialists at home in the underground as well as in Moscow promised to punish: "Polish collaborators … who ... had been responsible for the defeat of September 1939 ... who provoke civil war and are traitors to the nation."[16] "Traitors to the nations" were individuals who had: 1) denounced others because of their political views and activities; 2) persecuted Jews; and, 3) led to the arrest of prisoners of war and other individuals in hiding.[17] For its part, the London government foresaw that "anyone who had committed a crime against 'the norms of international law' and to the detriment of the Polish nation, a Polish legal

[16] O co walczymy? (Deklaracja programowa Polskiej Partii Robotniczej), March 1, 1943, in *Kształtowanie się podstaw programowych Polskiej Partii Robotniczej w latach 1942–45: Wybór materiałów i dokumentów* (Warszawa, 1958), 93.

[17] Ibid.

entity, or a Polish citizen" would be subject to imprisonment, or if the crime resulted in "death, particular torment, or permanent physical or mental damage ...." life imprisonment, or death.[18]

Notably, unlike their brethern in the communist underground and in Moscow, the London government-in-exile deliberately sought to link postwar punishment to the cannon of already-existing international law—a strategy that reflected concern with the punishment of crime "after the fact," a cardinal violation of the legal principle *lex retro non agit* (law does not punish retroactively). As a result, a range of particularly vile acts such as denouncing individuals to the occupation authorities, bribery—in particular extorting Jews-in-hiding for money and other goods (known as *szmalcownictwo*)—were not subsumed under this provisional law.[19] Instead, members of the London government-in-exile foresaw that such acts would be punished under the 1932 Criminal Codex, thus relegating these extraordinary acts of criminal collaboration to the status of "regular" criminal activity.

Whatever these cursory efforts to establish basic legal understandings of wartime wrongdoing and criminal collaboration may have been, they hardly prepared Polish socialist elites recently returned from Moscow for the horrors that awaited them on the ground. It was here during the first days of the "Lublin Government" that the PKWN set about drafting new laws "in the shadow of the first crematorium discovered on Polish soil."[20] The PKWN would use

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[18] Dekret Prezydenta Rzeczpospolitej Polskiej o odpowiedzialności karnej za zbrodnia wojenne, London, March 30, 1943, *Ściganie i karanie sprawców zbrodni wojennych i zbrondi przeciwkso ludzkości, wybór dokumentów* (Warszawa, 1978), 127–128.

[19] Andrzej Pasek, *Przestępstwa okupacyjne w polskim prawnie karnym z lat 1944-1956* (Wrocław, 2002), 15.

[20] Sawicki i Cyprian, "Prawo Polskie w Wacle z Hitleryzmem I Kolaboracjonizmem, *DPP*, 15.

the long shadow cast by the crematoria at Majdanek to justify to the population at large—and most importantly, to prewar legal experts "raised in the liberal traditions of the Declaration of Rights of Man and Citizen"[21]—why special legislation to encompass these crimes was necessary, even if such legislation violated the cardinal legal principle *lex retro non agit*. According to the logic of new socialist elites, in the shadow of the crematoria, "abstract legal rules that … normally apply during periods of social and political normalcy" would have been a "barrier" in the quest for retribution.[22] In a similar vein, they also argued that the politically expedient task of eliminating fascism once and for all overrode legal niceties barring ex post facto justice. Finally, since the new Polish order aimed to manifest the true will of the people, the popular thirst for vengeance outweighed any formal legal concerns.[23]

Further changes to the practice of prewar criminal justice were justified on the grounds of the unique characteristics of a political system that had given birth to Majdanek. In essence, because the large-scale criminality of the Third Reich had rested upon an enormous technical-administrative apparatus in which people had acted as members of an organization, individual perpetrators would ultimately seek to exculpate themselves by arguing that they had been following the orders of a superior. In order to ensure that there existed no "sphere of operation in which there is no personal responsibility," the PKWN was of the opinion that any legislation

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[21] Ibid., 14.

[22] Ibid.

[23] This was also the justification used for the introduction of jurors to the courtroom. In essence, "the extent of the damage done to the people was so great that it is unimagineable to not include an 'element from the citizenry' (*element obywatelski*) in meting out justice." Jerzy Sawicki i Bolesław Walawski, *Zbiór Przepisów Specjalnych przeciwko Zbrodniarzom Hitlerowskim i Zdrajcom Narodu z Komentarzem* (Warszawa 1945), 48.

created to punish war criminals and collaborators should not recognize a line of defense in which the defendant claimed to have been following the orders of a superior,[24] even if doing so had been an act of absolute necessity (*wyższa konieczność*) required for individual survival. In fact, this line of argumentation was extended even further when new elites advocated the total abandonment of the legal principle of "necessity" since "the mere fact of submission to the occupier must be considered criminal."[25]

With these justifications for abandoning key procedural and normative underpinnings of regular criminal law in mind, the PKWN issued its decree *Concerning the Punishment of Fascist-Hitler Criminals Guilty of Murder and Abuse of Civilians and Prisoners of War as well as Traitors to the Polish Nation*[26] on August 31, 1944. This decree had been preceded by two earlier undated drafts. According to the first of these, "Germans, Italians, Romanians, Hungarians and Finns" as well as "spies and traitors from among the Polish citizenry" were to be sentenced to death for the crime of "persecuting civilians and prisoners of war." For their part, "locals" who had collaborated with the above would face a minimum prison term of fifteen years. This draft projected that cases would be tried in special military courts (*wojskowe sądy*

[24] Traditionally, a subordinate was not criminally accountable if he had merely fulfilled the orders of his superior.

[25] Sawicki i Cyprian, "Prawo Polskie w Wacle z Hitleryzmem I Kolaboracjonizmem, *DPP*, 17.

[26] Dz.U. 1944, nr 4, poz. 16, Dekret PKWN o wymiarze kary dla faszystowsko-hitlerowskich zbrodniarzy winnych zabójstwa i znęcanie się nad ludnością cywilną i jeńcami orza dlas zrdajców Narodu Polskiego, August 31, 1944, http://isap.sejm.gov.pl/, accessed March 7, 2013.

polowe),[27] a logical choice given the efforts already invested in reforming military criminal and procedural codexes.

A second draft was more specific about the types of criminal activity that would be subsumed under the decree. Four categories of activity would automatically incur the death penalty: 1) participating in the persecution and murder of civilians and prisoners of war; 2) cooperating with the occupation powers in apprehending individuals hunted and persecuted by the Nazis for non-"regular" criminal activities; 3) forcing a confession from someone by threatening to denounce him to the occupation authorities; and finally 4) inciting others to commit a crime on behalf of the occupation authorities. Three additional categories of criminal activity did not automatically invoke the death penalty. These included: 1) praising the crimes of the occupation authorities; 2) willingly becoming or attempting to become a member of a foreign and enemy nation fighting against the Polish State or her allies; and finally, 3) weakening the war economy or the armed forces by damaging or destroying industrial machinery or public works, disrupting production, or producing damaged goods. In contrast to the previous draft, suspects were now to be tried by "national criminal courts" (*narodowe sądy karne*).[28]

The decree that was finally issued on August 31, 1944 combined and honed elements from these previous drafts. It specified that "individuals who had played into the hands of the occupation authorities by participating in the persecution and murder of civilians and prisoners

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[27] Dekret PKWN o wymiarze kary dla faszystowskich zbrodniarzy winnych zabójstw i znęcanie się nad obywatelami polskimi, ludnością cywilną i jeńcami wojennymi, dla szpiegów i zdrajców Narodu Polskiego z pośród obywateli polskich i dla ich popleników, August 1944, zespół 285, syg 3979, teczka 2, Dekret o wymiarze kary, AAN.

[28] Ibid.

of war" (article 1a)[29] as well as those who "cooperated with the occupation powers in harming individuals on Polish territory, in particular by apprehending those hunted and persecuted by the Nazis for reasons unrelated to common criminal activity" (article 1b) were subject to the death penalty. Article 2 elaborated a third crime, namely forcing a confession from someone by threatening denouncement to the occupation authorities—an act that was subject to a minimum of fifteen years in prison and was aimed primarily at individuals who had extorted money and goods from Jews in hiding.[30] Finally, article 4 stated that anyone who "aided and abetted" in the perpetration of these three types of criminal activity would also face punishment under the decree. In all cases, a guilty verdict not only would result in death or prison but also the seizure of the guilty party's personal property (article 5§1b) as well as the temporary suspension of his or her public and honorary rights as citizens (article 5§1a).

Even though new elites had paved the way for the "August Decree" by arguing that the creation and use of law after the fact was fully justified in the "shadow of the crematoria," once the decree was promulgated, they increasingly sought to justify its application in terms of international law, a marked contrast to their previous efforts to sidestep the issue. The most noticeable efforts to link the Polish national project to international law occurred when the August Decree was amended in December 1946 to reflect international legal innovations worked out in the context of the Nuremberg War Crimes Tribunal.[31] The most important modifications

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[29] Notably, "persecution" remained undefined.

[30] Pasek, *Przestępstwa okupacyjne,* 96.

[31] Dz.U. 1946, nr 7, poz. 29, Dekret o zmianie dekretu z dnia 31 sierpnia 1944 r. o wymiarze kary dla faszystowsko-hitlerowskich zbrodniarzy winny zabójstw i znęcania się nad ludnością cywilną oraz dla zdrajców Narodu Polskiego, December 10, 1946, http://isap.sejm.gov.pl/, accessed March 7, 2013.

occurred to articles 1 and 4 (§1–3). Specifically, article 1 had been reworded so that the persecution of individuals for "political, national, religious or racial reasons" was punishable by death, while for its part article 4 (§1) now read that "Anyone who participated in a criminal organization created or recognized by the German nation or her allies or participated in any political organization that acted in the interests of the aforementioned" would be subject to punishment ranging from a minimum of three years in prison to death. Article 4 (§2) further elaborated a two-part definition of a "criminal organization"—namely any organization that "aimed to commit crimes against the peace, war crimes, or crimes against humanity," as well as "any organization that committed such crimes in order to achieve a different organizational goal." The third and final section (§3) listed four instances in which individuals could be prosecuted for their organizational affiliations: those who had occupied "leading positions" in the Nazi party, members of the SS, the Gestapo, and finally the SD.

These adaptations were a point of some pride for the KRN since Poland was not only the first country in Europe to have enacted domestic legislation regarding the punishment of collaborators and war criminals, but also the first to have incorporated Nuremberg principles into domestic law. However, it is important to note that these amendments to the August Decree represented a selective adaptation of Nuremberg principles to serve pragmatic political purposes.[32] In particular, the wording of article 4 §1 opened the door to a broad legal interpretation of guilt by organizational association since "*any* political organization that acted in

[32] This was much to the consternation of prewar legal experts. See Protokół posiedzenia Komisji Prawniczej w sprawie projektu dekretu o zmianie dekretu z 31.8.44, November 15, 1946, zespół 285, syg 3979, AAN.

the interest of the German nation and her allies" could be considered criminal.[33] Thus, courts were left with discretionary power to rule that membership in the SA was grounds for punishment even though this organization had been formally acquitted at Nuremberg. Furthermore, it criminalized involuntary organizational membership in stark contrast to the 1932 codex that had only criminalized voluntary organizational membership.[34]

Ultimately, these Nuremberg-inspired adaptations furthered a noticeable trend in the practice of amending the August Decree. Drafters initially strove to distinguish between regular crimes committed during the occupation and special crimes of collaboration by distinguishing the latter actions as those that "play[ed] into the hands of the occupation authorities" (*na rękę władzy państwa niemieckiego).*[35] Subsequent alterations, however, criminalized any behavior that had "tak[en] advantange of the *unique conditions* [my italics] created by the occupation to act to the detriment of civilians and prisoners of war."[36] In this manner, any criminal act listed in the 1932 Criminal Codex could now be subsumed under the August Decree. For their part, the Nuremberg amendments served to broaden even more the scope of acts that could be classified as "special crimes" of collaboration and signaled intentions to use the August Decree for more than rendering justice.

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[33] Both organizations had acted directly or indirectly on behalf of the Nazis. Do Obywatela Prokuratora Sądu Apelacyjnego w Warszawie z siedzibą w Łodzi od Prokuratora Z. Waleckiego Prokuratury w Częstochowie, January 25, 1947, zespół 285, syg 3979, AAN.

[34] See especially, article 166 regarding criminal conspiracy. Dz.U 1932 nr 60 poz. 571, Rozporządzenie Prezydenta Rzeczpospolitej, Kodeks karny, July 11, 1932, http://isap.sejm.gov.pl/, accessed March 30, 2013.

[35] Sawicki i Walawski, *Zbiór przepisów,* 5.

[36] Article 2, Dz.U. 1946, nr 7, poz. 29, Dekret o zmianie dekretu z dnia 31 sierpnia 1944.

The Special Criminal Courts

Although there are indications that the PKWN initially toyed with the idea of prosecuting "war criminals, collaborators, and traitors to the Polish nation" in Soviet-style military tribunals, this was ultimately not to be the case. Instead, on September 12, 1944 the Polish provisional government issued *Concerning Special Criminal Courts for Fascist-Nazi Criminals.*[37] This decree stipulated that one "special criminal court" [38] would be created for every appellate district in Poland and appended as "special chambers" to reactivated prewar district courts (article 2). As an extension of the prewar criminal justice system, special criminal courts were bound by the 1928 Codex of Criminal Procedure, but only insofar as this did not contradict new procedural rules established by the decree.[39]

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[37] Dz.U. 1944, nr 4, poz. 21, Dekret Polskiego Komitetu Wyzwolenia Narodowego o specjalnych sądach karnych dla spraw zbrodniarzy faszystowsko-hitlerowskich, September 12, 1944, http://isap.sejm.gov.pl/, accessed March 30, 2013.

[38] Oddly enough, the Nazi occupation administration had established the similary-named *Sondergerichte* (*sądy specjalne* in Polish) to crush real or perceived political opposition to Nazi rule. In Poland, these Sondergerichte were particularly brutal, and summarily sentenced and executed Poles and Jews for even the most minor transgressions of occupation law. Given the notoreity of the Sondergerichte, it seems highly impolitic of the PKWN to have opted to bestow on their courts an identical moniker.

[39] In addition to the network of special criminal courts and their associated prosecutors' offices, another legal entity was established within the parameters of the civilian criminal justice system to adjudicate cases against war criminals. The Supreme National Tribunal (*Najwyższy Trybunał Narodowy)* or NTN, established in January 1946, was comparable to the Supreme Court in terms of where it fell in the hierarchy of instances, and the president of the latter was also president of the former. Trials were presided over by three professional judges and four jurors. In total, the NTN sentenced forty-six war criminals between the years 1946–48 in seven high profile trials. This included Arthur Greiser, Amon Goeth, Ludwig Fischer, Rudolf Hoess, Albert Foerster, Jozef Buehler, as well as forty personnel at Auschwitz. Notably, they were all "German war criminals." See Alexander V. Prusin, Poland's Nuremberg: The Seven Court Cases of the Supreme National Tribunal, 1946–1948, *Holocaust and Genocide Studies* 24(1):1–25.

These new procedural rules affected nearly every stage of investigation and litigation. Instead of making an initial report of wrongdoing to the prewar Polish "blue police," aggrieved parties now turned to the People's Police (MO) or the Security Services (UB).[40] After a suspect had been detained by these new policing bodies, (s)he was interrogated and witness statements were taken. If, after an initial investigation, the MO/UB determined that there existed enough evidence of wrongdoing as established by the August Decree, the case file would be submitted to the prosecutor's office for the special criminal court in whose jurisiction the alleged act of wrongdoing had occurred. At this time, the prosecutor was to issue the official warrant of arrest (article 9)—a task that had previously required the signature of a judge. After the issuance of this warrant, the prosecutor's office had only fourteen days to build a case against the suspect (article 12), in comparison to the regular three months. Furthermore, although the interwar criminal procedural codex had permitted prosecutors to conduct informal inquiries (*dochodzenia*) for the purposes of writing an indictment, the evidence gathered during the inquiry could not be submitted at trial as formal evidence. Instead, only special "investigative judges" *(sędzie śledczy)*—at the behest of the prosecutor—were empowered to conduct formal investigations (*śledztwa*) to collect evidence that would be submitted at trial. Now, the September 1944 decree eliminated the role of the investigatory judge and left the prosecutor in charge of organizing his office's ongoing cooperation with the police and security services in the gathering of evidence.[41]

[40] On occasion, the initial act of denunciation was made directly to the prosecutor's office for the special criminal court. In such instances, the prosecutor would then direct the case to the MO and/or UB for further investigation.

[41] Jakubowski, *Sądownictwo powszechne w Polsce,* 35.

In theory, after a fourteen-day window had passed, the prosecutor's office had to either dismiss a case or indict the suspect(s). In contrast to prewar legal practice, indictments did not have to contain grounds—the formal justification for why the case warranted prosecution in the first place—nor was it permitted for a criminal defense lawyer to lodge an objection. Once the special criminal court had received the indictment, the judge appointed to the case had 48 hours to set a trial date. At this time, the accused and any witnesses were informed of the date and time they were to present themselves at the court. The participation of a defense lawyer was obligatory, and if the defendant could not afford such services, he/she was assigned a court-appointed defense lawyer.[42] Verdicts and sentences were to be handed down quickly—the court had to announce the verdict and its grounds immediately after deliberation, and on the same day as the trial. Although sentences were final and could not be appealed, individuals sentenced to death could petition the chairman of the KRN, Bolesław Beirut, for clemency.[43]

Without a doubt, one of the most significant procedural innovations was the inclusion of jurors in the courtroom. In contrast to prewar practice whereby three judges adjudicated a given case, every special criminal court hearing and trial was now to be overseen by one judge and two jurors randomly selected from lists drawn up by województwo-level "People's Councils" (*rady narodowe).* These candidates were selected for their political reliability through factories and workers' collectives in an effort to counterbalance the bourgeois legal training of judges and

[42] Ibid., 34. For the majority of cases in this sample, the defense attorney was court-appointed.

[43] In conjunction with this, the special criminal report issued an "Opinion on Leniency" (usually on the same day that the sentence was handed down).

prosecutors.[44] Indeed, since each opinion counted equally in the construction of the final verdict, practically speaking, this meant that if the two jurors were in agreement, the judge's dissenting opinion had no impact on the outcome of the trial. This was deemed as truly just since such decisions about the guilt or innocence of a suspect necessarily "belong to the representatives of society who are the majority."[45]

In addition to elevating the courts and legitimazing their performance in the eyes of citizens, including "representatives of society"[46] on the judicial panels was deemed particularly useful in adjudicating August Decree cases because jurors had "valuable knowledge about local conditions during the occupation." Yet at the same time, the authorities recognized that this intimate local knowledge could also pose a problem because jurors might be tempted to approach cases in a "subjective manner instead of as judges (*po sędziowsku*)."[47] For example, "a tailor tries to find himself on the jury of a case against the local tailor; another juror who lost his leg while in the Reich is extremely harsh and his attitude transfers from the administration of justice to the evaluation of proof of guilt.[48]

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[44] Eligible candidates included all literate Polish citizens over twenty-one years of age, excluding individuals who worked for the police and security services, active-duty military officers, religious clergy, and the mentally ill. Dz.U. 1944, nr 4, poz. 21, Dekret o specjalnych sądach karnych.

[45] Stefan Bancerz, "Czynnik społeczny w sądownictwie demokratycznej Polski," *DPP* 1(listopad):18.

[46] Marian Muszkat, „O reformę ustroju sądownictwa i prokuratury," *DPP* 2(grudzień): 27.

[47] Sprawozdanie z wizytacji SSK w Toruniu, March 30, 1946, zespół 285, syg 1436, Wizytacje sądów 1945-1946, AAN.

[48] Ibid.

Despite the theoretical and pragmatic utility of including jurors in the composition of special criminal courts, the provisional government expressed ambivalence about how much weight this "democratic element" should ultimately carry. Jurors' lack of formal legal knowledge and "superficial understanding" of the law often meant that their "decision-making" was not only guided by a subjective desire for revenge,[49] but also that they were too lenient in sentencing.[50] To counteract these tendencies, judges were instructed to teach jurors that "justice aims to conform to written law."[51] Furthermore, interdepartmental memos at the Ministry of Justice noted on more than one occassion that the "voice of the judge" should carry the deciding weight in the courtroom.[52]

This ambivalence was only further enhanced by reluctance on the part of jurors to perform duties for which they would not be remunerated. In a postwar reality characterized by hunger and extreme material deficits, individuals were more concerned with ensuring their day-to-day survival than in participating in the administration of justice, even more so since the destruction of communication and transportation systems hindered travel outside of one's immediate locality to regional courthouses. As a result, jurors were frequently late to hearings—if they appeared at all—and fines levied for a failure to appear were a source of great resentment.

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[49] Ibid.

[50] Do Prezydium Wojewódzkich Rad Narodowych. Okolnik 4 w sprawie ławników sądowych delegowanych przez wojewódzkie Rady Narodowe od Kancelaria Rady Państwa, February 1, 1949, zespół 285, syg 1555, Okolniki 1947 i 1949, AAN.

[51] Okolnik nr 24/46 w sprawie udziału ławników w wymiarze sprawiedliwości, undated, zespół 285, syg 1484, Okolniki 1946-47, AAN.

[52] Sprawozdanie z wizytacji SSK w Toruniu, March 30, 1946, zespół 285, syg 1436, AAN.

These sentiments were aptly expressed in a petition to the Lublin district court from a resident of the neighboring town of Kraśnik. In asking for his name to be removed from the list of jurors in the Lublin district he explained,

> I will not be of any use as a juror. I have very little education. I know nothing of the law. I have been destroyed by war and must rebuild my farm…. Apparently we now find ourselves in a Poland where there exists a democratic political system. In a democracy, no one should ever be forced to assume an occupation/take a position without his knowledge or against his will. This is similar to order of the long-dead laws of the Romanovs or the Bourbons…. Please leave me in peace.[53]

Difficulties with jurors were only one of the many problems that beset the special criminal court system. Understaffed prosecutors' offices and courts were unable to keep up with the flood of cases. This manifested itself in lengthy delays in both the issuance of official arrest warrants as well as the official instigation of investigations. To further complicate matters, the mass displacement and homelessness of the immediate postwar period oftentimes made witnesses difficult to locate or relocate after they had made their initial statements at the UB or MO. For its part, cooperation between the prosecutors' offices and the MO and UB was often strained by the fact that the latter two agencies were staffed by a cadre consisting of delegates from the First Polish Army, local communist activists, and opportunists who did not possess any knowledge of formal police procedure. As noted in December 1944 by a prosecutor for the Warsaw special criminal court:

> The UB operates completely independent of us-—there is a total absence of any connection between their activities and my plans. As a rule I am not informed about the investigations that they are conducting.... Suspects are often detained in arrest at the UB for several weeks before I am informed of the matter. This state

[53] Do Prezesa sądu okręgowego w Lubline od Jana Woźniaka, March 5, 1946, zespół 927, Sąd Okręgowy w Lublinie. Spis 2/2005, syg 87, Ławnicy i sądy doraźne, PAL.

> of affairs has evoked a lack of trust toward legal institutions, a panicked public opinion ... and my initiatives and abilities to investigate are limited.[54]

Similary, in January 1945, the Lublin special criminal court complained that

> the tiny percent of cases that have been processed can be explained by the lack of qualified functionaries with experience conducting investigations. In the greatest number of cases an investigation has either not been conducted, or is incomplete. And often the deputy-prosecutors must conduct the investigations by themselves or write down exact instructions for the police.[55]

Ultimately, the institutional life of the special criminal court system was to be short-lived: the October 17, 1946 decree *Concerning the Abolition of the Special Criminal Courts*[56] engineered their closing for reasons that remain shrouded in mystery. However this did not signify the end of the project of investigating and prosecuting "war criminals, collaborators, and traitors to the Polish nation." Instead, the backlog of cases that had accumulated by these prosecutors' offices was transferred to the regular district court system (article 2 nr 1) as new August Decree cases continued to flow into the offices of the regular prosecutors. According to data gathered by the Statistics Office for the Ministry of Justice, by January 1, 1948, the number of individuals accused of August Decree crimes that had been sentenced by the regular criminal court system was 9,463. Of these, 1,055 individuals had been condemned to death, 981 were

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[54] Od Prokuratora SSK dla Okręgu Sądu Apelacjnego w Warszawie z siedzibą w Siedlcach do Pana Kierownika Resortu Sprawiedliwości PKWN, December 17, 1944, zespół 185 PKWN, IX/9A, Specjalne Sądy Karne: Komunikaty, korespondencje m. in. Dotyczące organizacji i działalności, AAN.

[55] Od Prokuratora sądu specjalnego karnego do Resortu Sprawiedliwości w Lublinie Obywatela Pułkownika Chajna, November 7, 1944, zespół 185, IX/27, akta osobowe pracowników sądów i prokuratur terenowych okręgu lubelskiego—zgłoszenia do pracy, wykazy, korespondencje, AAN.

[56] Dz.U. 1946, nr 59, poz. 323, Dekret o zniesieniu specjalnych sądów karnych, October 17, 1946.

sentenced to prison terms longer than ten years, and 7,427 were sentenced to prison terms up to 10 years.[57] This compares to a total of 40,406 cases investigated and 12,529 indictments issued by prosecutors' offices for the special criminal courts.[58] Thus, even though the immediate postwar wave of retribution had abated somewhat, the project of punishing "war criminals, collaborators, and traitors to the Polish nation" would proceed for years to come.

The Practice of Punishment

With the creation of the August Decree and the special criminal court system, socialist elites clearly signalled that the punishment of "war criminals, collaborators and traitors to the Polish nation" was both a justice-driven project of vengeance as well as a politically-driven project subordinate to the theory and practice of socialism. The definition of collaboration allowed for broad interpretation, and the simplifiction of prewar legal procedure and its partial entrustment to the MO and UB made investigations less rigorous. Further, the introduction of jurors aimed to limit the influence of prewar legal personnel. All this suggests the above motivations to be true. Yet despite such efforts, new political elites still contended with the undeniable reality that the prosecutors and judges entrusted with this sacred task "began work without the necessary analysis of the essence of the socio-political revolution and without the

[57] Pasek, *Przestępstwa okupacyjne,*172.

[58] Notatka urzędowa w sprawie pracy Prokuratury w latach 1945–1949, undated, zespół 285, Ministerstwo Sprawiedliwości w Warszawie, syg 1569, Prokuratury Powszechne. Organizacja i dzialalność w latach 1945–49, AAN.

necessary revision of their views."[59] In a period of as yet unconsolidated political power that left space for independent action on the part of prosecutors and judges, these "legal imaginations" that had been forged over the course of prewar professional training and practice presented a significant danger to the construction of a socialist vision of punishment.

To what extent was the investigation and punishment of "war criminals, collaborators, and traitors to the Polish nation" influenced by the socialist state-building project and to what extent by the "legal imaginations" of the prewar legal personnel entrusted with its enactment? If the former prevailed, one might expect to see efforts to link patterns of wartime behavior to the socio-economic class of a suspect in a manner similar to that outlined by Sawicki and Cyprian. This would have affected investigations and their outcomes in the following macro-structural ways:

1) A greater number of investigations would have targeted "enemy" classes such as the landed gentry, factory owners and other capitists, as well as white-collar "bourgeoisie." Conversely, there would have been fewer investigations into blue collar workers and other members of the laboring classes as well as peasant farmers.
2) A higher rate of indictments would be found among "enemy" classes and a greater rate of dismissals among blue-collar workers and peasant-farmers.
   Of the indicted cases that went to trial (a sub-sample already skewed toward "less favored" socio-economic groups), one would nevertheless expect to see a class-driven divergence between rates of guilty verdicts and acquittals. In essence, trial outcomes would have been shaped in large part by the socio-economic background of the accused rather than by his/her actual wartime behavior.

[59] Sprawozdanie z pracy Departamentu Nadzoru Sądowego za czas do lipca 1949, undated, zespół 285, syg 1500, Działalność Departamentu Nadzoru Sądowego w latach 1945–lipiec 1949, Sprawozdanie, AAN.

In addition to this legal-theoretical influence on collaboration, the socialist project of justice was also driven by the pragmatics of state-building. As a result, one would expect to see the branding and punishment of collaborators implemented as a "purge" of potential enemies of the new political order. Indicators of such politicalization would include:

1) The targeting of administrative and political functionaries of the Second Republic as demonstrated by consistently higher rates of investigation and prosecution among such individuals.
2) Charges that sought to incorporate collaboration with the wartime persecution of communists.
3) The deliberate falsification of witness testimony as demonstrated by inconsistencies across multiple statements.
4) A higher rate of guilty verdicts and harsher sentencing for such individuals.

Finally, if the "legal imaginations" of prewar prosecutors and judges prevailed, one would expect to see the apolitical application of law and the adherence to formal legal procedures, as manifested by the following:

1) Prosecutors would have dismissed cases when there was not enough evidence of wrongdoing and indicted when there was. The difference between these two decisions would have rested upon the coherence and consistency of witness statements and depositions.
2) During trial, judges would have questioned inconsistencies between witness testimony and earlier statements and depositions, as well as inconsistencies with other witnesses' versions of events. Verdicts and their grounds would be based upon a logical assessment and careful weighing of all the facts, and judges would refrain from relying upon obviously falsified witness testimony.
3) In the event that a judge was "outvoted" by the jurors, he would have submitted a separate opinion and sought a retrial.

The subsequent sections turn to an analysis of cases sampled from the archives for the Łódź, Lublin, and Warsaw prosecutors' offices for the special criminal court.

Punishment and Socio-Economic Class

Thanks to the fact that August Decree investigations frequently recorded data about a suspect's occupational background, it is possible to assess the extent to which a class-based analysis of wrongdoing influenced the construction of collaboration. Table 1 shows a breakdown of suspects' occupations across the Łódź, Lublin, and Warsaw prosecutors' offices for the special criminal courts.

Table 1. Occupational Distribution for August Decree Cases

	Farmer	Skilled Tradesmen	White-Collar Worker	Police Officer/mil	Unskilled Worker	Prof[1]	Unemployed	Factory worker	Factory Owner	N/A	Total
Łódź	6	5	2	1	3	1	1	1	2	1	22
Lublin	21	9	8	6	2	4	3	1	1	5	60
Warsaw	16	12	12	8	7	5	3	2	--	6	71
Total	43	26	22	15	12	10	7	4	3	12	153

[1] Professionals

As can be seen, this sample is dominated by "farmers," those who maintained small plots of land and possessed minimal if any formal education. Given the fact that Poland was primarily an agrarian country, this fact is hardly surprising. Nor is the distribution of farmers across the three prosecutors' offices: Łódź and its environs had experienced greater industrialization in the nineteenth and early twentieth centuries than either the Lublin or Warsaw appellate districts. Further testament to the traditional agrarian life that dominated Polish life are the number of "skilled tradesmen" in the sample, including cobblers, tanners, bakers, blacksmiths, carpenters, metalworkers, etc.

Although these occupations were not the primary foci of socialist class analysis, factory owners, white-collar workers,[60] and professionals,[61] most certainly were. As enemies of the working class—represented here by unskilled workers,[62] factory workers, and the unemployed—a class-driven analysis of collaboration would most likely have targeted the former occupational categories at the expense of the latter. However, the distribution in the table above is inconclusive. While it is true that there were fewer investigations into "unskilled/factory workers" and the unemployed, this could simply be a function of demographics, a supposition that is supported by the fact that the majority of investigations in this sample were directed at farmers and skilled tradesmen.

Similarly, it does not appear that the socio-economic class of a suspect influenced indictment rates in the sample.

Table 2. Occupational Distributions for Unindicted August Decree Cases

	Farmer	Skilled Tradesmen	White-Collar Worker	Police Officer/mil	Unskilled Workers	Prof	Unemployed	Factory workers	Factory Owner	N/A	Total
Łódź	--	--	--	--	3	--	--	1	--	1	4
Lublin	8	4	3	1	--	1	--	--	1	3	21
Warsaw	10	8	11	7	4	3	3	--	--	6	52
Total	18	12	14	8	7	4	3	1	1	10	77

[60] White-collar workers include local-level administrators and shopkeepers.

[61] Individuals with higher education, the intelligentsia.

[62] These include drivers, railwaymen, and day laborers.

Table 3. Occupational Distributions for Indicted August Decree Cases

	Farmer	Skilled Tradesmen	White-Collar Worker	Police Officer/mil	Unskilled Workers	Prof	Unemployed	Factory workers	Factory Owner	N/A	Total
Łódź	6	5	2	1	--	1	1	--	2	--	18
Lublin	13	5	5	5	2	3	3	1	--	2	39
Warsaw	6	4	1	1	3	2	--	2	--	--	19
Total	25	14	8	7	5	6	4	3	2	2	76

As can be seen in tables 2 and 3, "class enemies" such as white-collar workers, professionals, and factory owners were no more likely to be indicted than members of favored classes, such as unskilled workers. In fact, more cases against white-collar workers were dismissed than indicted (14:8). Similarly, three factory workers were indicted while one was acquitted when one would expect the reverse if socio-economic class was driving patterns of prosecution.

Finally, of the indicted cases that went to trial, there appears to have been no class-driven divergence between rates of guilty verdicts and acquittals. Moreover, occupational distribution had no bearing on the harshness of punishment, as indicated by the frequency with which those found guilty were sentenced to death.

Table 4. August Decree Trial Outcomes by Occupational Distribution

	Acquitted	Guilty	Death	Died in detainment
Farmer	11	11	6	3
Skilled	5	9	3	--
White-collar	4	4	2	--
Pol/mil	5	2	2	--
unskilled	2	3	2	1
professional	2	4	2	--
Unemployed	--	3	2	1
Factory worker	1	2	2	--
Factory owner	--	2	1	--
N/A	1	1	1	--
Total	30	41	23	5

The Pragmatics of Punishment

Even if the distribution of cases/outcomes across socio-economic class appears random, the construction of collaboration might nevertheless have been deployed to neutralize real and perceived enemies to the socialist state-building project. In order to explore this possibility, it is necessary to examine processes of investigation and prosecution as they occurred *within* the occupational categories described above, in particular those that would have appeared most threatening to the consolidation of political power. This includes the Polish blue police (*granatowa policja)* and a sub-category of farmers who had been elected by their communities to serve as village elders (*sołtysi).* Notably, only men had been eligible for such positions.

While both blue police and village elders presented a potential threat to the authority of new elites and their state-building project, these groups had been deeply intertwined in the machinery of the occupation administration and could have in fact been implicated in acts of collaboration. For its part, the blue police had played a visible role in assisting the *gendarmerie*[63] and Gestapo in violent "pacifications" and "resettlements" of local Polish and Jewish populations. It had gained further notoriety for involvement in seemingly less consequential acts of "everyday" policing, such as arresting individuals for a variety of activities that had been made illegal by the occupiers (i.e., the slaughter of animals) as well as detaining individuals who had escaped forced labor in Germany. Even these acts of policing had the potential to bring grave bodily harm or even death since those detained by the blue police were often handed over to the gendarmerie or the Gestapo where harsh reprisals awaited, including execution or deportation to a concentration camp.

[63] German police stationed in rural areas.

For their part, village elders had been involved in ensuring that their local communities complied with the myriad of occupation policies that regulated daily life. This included ensuring that locals turned in agricultural products and other goods requisitioned by the occupation authorities and reporting them if they did not, the consequences often being imprisonment or deportation to a concentration camp. They were also responsible for reporting the presence of Jews or partisans hiding in the local community. Failure to do so often brought harsh retribution upon the entire village.

In what follows, a detailed analysis of the investigation and prosecution of blue police and village elders illuminates moments of politicalization in the construction of collaboration.

The Blue Police

In this sample, a total of fourteen cases involving blue police officers were investigated and seven individuals were ultimately indicted, primarily by the prosecutor's office for the Lublin special criminal court.

Table 5. August Decree Cases for the "Blue Police"

	Total Investigations	Indictments	Trials	Acquitted	Guilty
Łódż	--	--	--	--	--
Lublin	9	6	5	2	3
Warsaw	4	1	1	1	--
Total	13	7	6	3	3

Six cases were dismissed on the grounds that there was not enough evidence of wrongdoing to issue an indictment. In these instances, former blue police officers had been denounced by aggrieved parties seeking revenge for acts of "regular" policing. For example, the

career police officer Adam Krzemiński[64] had been denounced by fellow villagers from Piastków (a small town in the vicinity of Warsaw) as a Nazi collaborator because he had allegedly participated in actions to round up Poles to perform forced labor in Germany. Even more importantly, according to witnesses, Krzemiński had used his position as a blue police officer to requisition goods (food stuff, coal, etc.) from the inhabitants of Piastków. However, as more witness statements were gathered over the course of the investigation, it emerged that Krzemiński had only been known to requisition contraband and stolen goods, and in the event that the origins of such items had been investigated and clarified, had returned the goods to their rightful owners. Participation in forced labor roundups could not be confirmed and the only complainants were those who had been detained by Krzemiński for petty criminal transgressions.

In contrast to the dismissed cases, the seven individuals who were indicted under article 1 of the August Decree faced more serious charges. Their alleged wartime collaboration had consisted in activities such as assisting the Gestapo and gendarmerie during arrests; participating in home searches and partisan raids; arresting and delivering people into the hands of the occupation authorities; and, rounding up Poles slated for forced labor in Germany. In addition to these charges, three indictments included lesser charges associated with the requisition of goods from civilians. Finally, there was one instance in which a blue police officer was accused of collaborating in the persecution and murder of Jewish victims. This will be addressed in a later chapter.

Ultimately, six of the indicted blue police officers stood trial while the seventh died in detainment before his day in court. A close analysis of these trial transcripts, along with

[64] GK 366/1147, Krzemiński Adam, IPN.

depositions and police reports gathered during the investigatory phase, reveals the profound role the defendant's "social belongingness" played in shaping both the formal recognition and punishment of collaborators. Specifically, the annexation and incorporation of Western Poland into the governing and administrative structures of the Third Reich had displaced thousands of Polish blue police officers to the General Government where they were "outsiders" to the local communities in which they were now stationed. The ways in which this dynamic influenced trial outcomes is best illustrated by a comparison of the following two cases.

Piotr Stępczak, a wartime transplant from Western Poland to a village in the vicinity of Radom (in the Lublin district), was indicted on the grounds that he had persecuted members of the underground resistance and had killed one Walenty Flak for his involvement in anti-Nazi resistance (i.e., political persecution).[65] For his part, Stępczak did not admit guilt and defended his actions as those of a "regular" police officer who had been involved in policing "regular" criminal activities, and that the arrests in which he had participated had not been politically or personally motivated. Although he did admit he had participated in a joint action with the Gestapo and the gendarmerie to detain Flak, he explained that he had merely patrolled one of the potential escape routes and had not actually taken part in the shooting of the victim as he had attempted to flee.[66]

At Stępczak's trial, twenty-one witnesses for the prosecution aired a long list of grievances against the defendant involving arrests he had made among the local community during the occupation. Whereas witnesses cast these arrests as politically-motivated acts of

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[65] Akt oskarżenia, January 25, 1946, Lu 315/198, Stępczak Piotr i Zygfryd, IPN Lublin.

[66] Protokół przesłuchania oskarżonego, Rawicz, May 28, 1945, LU 315/198, IPN Lublin.

reprisal in pretrial statements and depositions, a more complex picture emerged during the trial itself—one in which these arrests had actually occurred in conjunction with acts that had been illegal under occupation law, such as black market trade and the slaughter of animals. This was also true for the most serious charge leveled against Stępczak—that he had killed Walenty Flak, a member of the Polish resistance. Although Flak's family claimed that his death had been a direct consequence of his involvement with the underground, other witnesses revealed that Flak had previously been arrested for the illegal slaughter of livestock, but then later had escaped detainment. It was upon his re-arrest that Flak had been shot while attempting to escape yet again. Notably, most witnesses agreed that Stępczak had not been the one to pull the trigger, but had only been present during the action.

Ultimately, only two witnesses took the stand on behalf of Stępczak. Both emphasized that in the local community, Stępczak had the reputation of a "strict" (*służbisty*) enforcer who followed the letter of the law without exception. Perhaps they hesitated to say more than this given the fact that this was an open court and fellow townsmen were no doubt present as they testified.[67]

Upon pronouncing Stępczak guilty and sentencing him to death, the judge and jurors unquestioningly accepted the testimony that implicated Stępczak in acts of political persecution as opposed to "regular" police work. In a last-ditch effort to get his client's death sentence commuted to life in prison, Stępczak's defense attorney petitioned Bolesław Beirut for clemency. This is quoted at length below:

> The condemned has twenty years of irreproachable service in the blue police to his name, during which time he earned the recognition and respect of the society

[67] Protokół rozprawy głownej, May 17, 1946, LU 315/198, IPN Lublin.

> of Rawicz and its environs.... If, during the last war, or rather occupation, the condemned did not rise to the occasion and was too eager in executing the orders of the occupier, we must not attribute this to the condemned's sympathy for the occupier or to a hostile attitude toward the Polish people, but rather to the unfortunate mentality that characterizes many of the older inhabitants of the Poznan district. The condemned—as a former inhabitant of the Prussian partition—is deeply rooted in Prussian influences ... that have succeeded in leaving their imprint on the mentalities of the local Polish population. The condemned, who was forced to serve for several years in the Prussian army, known for its so-called "drills," is the child of this period. He represents the type of "rough bureaucrat" (*szorstki służbista*) who is incapable of not fulfilling an order. As a result of these deeply-rooted characteristics, the condemned could not adapt during the last occupation and through his scrupulous fufillment of occupation orders became its very instrument.[68]

Much like Piotr Stępczak, Jan Gano had been charged with participating in partisan raids as well as roundups of local Poles for forced labor in the Reich. However, unlike Stępczak, Gano had served as a blue police officer in his home community of Parczew, near Lublin. This fact was to have a profound impact upon witness statements and trial testimony. In essence, because witnesses had long-standing relationships to Gano as a member of the local community, they were able to contextualize his actions as a Polish police officer who had been forced into the service of the occupier. In particular, in pretrial depositions and trial testimony, the seven witnesses expressed a nuanced understanding of the line that separated "regular" police work from "special" crimes of the occupation era. Thanks to their ability to see Gano as a "good Pole" in a bad situation, they interpreted Gano's wartime behavior as falling in the former category, not the latter.[69] Furthermore, in order to provide proof of Gano's outstanding Polish character,

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[68] Do Obywatela Prezydenta Krajowej Rady Narodowej w Warszawie od Jana Filipiak adwokata, May 20, 1946, LU 315/198, IPN Lublin.

[69] The example that surfaced in several testimonies was that a purported local partisan had been arrested not because of his anti-German activities but because he had stolen a pair of shoes. Protokół rozprawy głównej, Sąd Specjalny Karny w Lublinie, April 10 1945, LU 9/15, Gano Jan vel Gierzycki Rafał-Jan, IPN Lublin.

several of the witnesses noted that they had revealed to him information pertaining to partisan activity and that Gano had not reported them. It is notable that even the prosecutor's witnesses defended Gano's wartime behavior.

Ultimately, Gano was acquitted by the Lublin special criminal court on the grounds that

> the accused was a good person and patriot … [who] risked his life as a Polish police officer forced into the service of the German invader. Witnesses from different spheres of life and professions confirmed that the accused belonged to those exceptional blue police officers who did not stain the honor of the Polish uniform and the name of Poland. The accusation was based primarily on a complaint made by … a witness who arrived in Parczew after the arrival of the Soviet army and shortly thereafter vanished without a trace.[70]

Thus, Gano's denouncer was discredited as an "outsider" who had not been in Parczew during the occupation and had no knowledge of the local community. This once again highlights the importance of outsider status in the shaping of these outcomes.

In sum, just as it might have been easier for uprooted Polish police officers to enforce unpopular occupation policies upon anonymous local communities with whom they felt no solidarity, so too was it easier for these populations to subsequently brand these "outsiders" as collaborators. Without knowing much about the man behind the uniform or having his prewar behavior and "character" as a larger frame of reference, real or perceived grievances took on greater intensity. In this manner, acts of "everyday policing" were elided and confused with acts of political and personally motivated persecution. Ultimately, the distinction between vicious collaborator, venal functionary, and obedient subordinate was a matter of perception, colored by the solidarity or lack thereof between the accused and the local community.

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[70] Sentencja Wyroku, Sąd Specjalny Karny w Lublinie, April 10 1945, LU 9/15, IPN Lublin.

Village Elders

Table 6. August Decree Cases for Village Elders

	Total Investigations	Indictments	Trials	Acquitted	Guilty
Łódż	1	1	1	--	--
Lublin	4	4	4	1	3
Warsaw	12	5	5	3	2
Total	17	10	10	5	5

As can be seen in the chart above, seventeen village elders were investigated by the Łódź, Lublin, and Warsaw prosecutors' offices for the special criminal courts. Even though seven of these investigations were dismissed for lack of evidence,[71] ten village elders were indicted under article 1 §1 of the August Decree. Of these ten, six men were accused of denouncing escaped Soviet POWs and local communist activists to the occupation authorities. While this is a strong indicator in-and-of itself of the deliberate politicalization of collaboration charges, this suspicion is only deepened by the fact that five of these cases had been previously dismissed and subsequently reopened without any new evidence having come to light. Indeed, a closer analysis of these five cases reveals procedural irregularities, inconsistent witness testimony, and bizarre logical inconsistencies that seemingly point to ulterior motives underlying these efforts.[72] While

[71] As had been the case with the blue police dismissals, claims of wartime collaboration were frequently tied up with local disputes about the enforcement of occupation policies pertaining to agricultural requisitions. Local resentment of the enforcement of these policies often sought its target in the village elder.

[72] Generally speaking, several indicators can be used to assess whether or not an investigation and/or subsequent trial had been fabricated by police and legal authorities. First, procedural irregularities including the reopening of closed cases despite the absence of new evidence, decisions to issue indictments based upon statements made by one or two witnesses (as opposed to a more robust number), and finally the declaration of a guilty verdict based on the selfsame number of witnesses all flagrantly violated prewar legal procedure and can be taken as a sign of external pressure to "cook" a case. Second, the consistency of witness testimony can

judges ruled in four instances to acquit and did not succumb to whatever deeper political or personal machinations were at play, in one critical instance they chose to ignore prewar legal training.

Although the investigation against him had been dismissed in 1945, Stanisław Ostrowski, the wartime village elder of Sulejów, was indicted in 1950 for having acted to the "detriment of the Red Army by revealing to the Germans the whereabout of four Soviet deserters, the result in which two of them were shot and killed along with the villager Zofia Józwik."[73] Oddly enough, Ostrowski had a co-defendant whose case bore no obvious relationship to his own. Fellow villager Antoni Pstrzoch was accused of "using his position as a member of the Bahnschutz [during the occupation] to buy a cow from Leopoldyna Polawska at an unjust price."[74]

During both the 1945 and 1950 investigations, Ostrowski provided a consistent and coherent narrative of that night in the late fall of 1943 when the alleged "Red Army deserters" first appeared in the village, eaten at a local restaurant, and then sought lodging with the Józwik family. When the owner of the restaurant (perhaps not coincidentally the mother of the co-defendant Antoni Pstrzoch) asked Ostrowski to report the men's presence to the gendarmerie,

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also provide a window onto the potential fabrication of a case. In particular, when such testimony not only changed across various narrations (i.e., police statements, depositions, trial testimony) but also was inconsistent across different witnesses, this also raises a "red flag." Although it is possible that inconsistent witness testimony might be produced by a local community's own efforts to falsify evidence, when taken together with the prosecutors' and judges' procedural violations it provides strong evidence of fabrication.

[73] Akt oskarżenia, Wołomin, January 1, 1950, GK 317/175, Ostrowski Stanisław i Lewandowski Czesław, IPN.

[74] Ibid. One potential reason that Ostrowski and Pstrzoch were indicted together as co-defendants could have to do with the fact that the indictment was not written by a prosecutor but by an investigatory officer for the Security Services (UB)—a practice that became widespread starting in 1950.

Ostrowski—fearing denouncement for failure to do so—sent word to the Polish blue police in the hopes that keeping the matter in Polish hands might alleviate the severity of the outcome. Furthermore, he claimed that he sent a warning to the four strangers so that they had a chance to leave the village. However, these precautions were for naught—the messenger dispatched to the blue police headquarters in the neighboring village was intercepted by German soldiers who then took matters into their own hands by sending a half-a-dozen soldiers to Sulejów to kill the unknown men.[75]

Depositions and trial testimony from over a dozen witneses paint a conflicting picture as to the true identity of these four "deserters" from the Red Army. Clearly in doubt as to why Red Army deserters would risk appearing openly in an unknown village and why the Józwiks would willingly invite complete strangers into their home, the presiding judge questioned witnesses closely during the trial about the identity of these four strangers. While several witnesses claimed that they had heard the men speaking Russian, others avowed that the men had spoken "pure Polish." Furthermore, whereas the Józwik family claimed to have seen the men's Soviet identity papers, other witnesses professed that these men had been Polish "bandits" responsible for robbing neighboring villages, and others still referred to these men as Polish "partisans."[76]

In all liklihood, the conflicting arguments about the true identity of these men masks the fact that they had not been complete strangers, but instead local partisans known at least to the Jozwik family. The fact that the Józwiks were the staunchest supporters of the Soviet identity of these men lends further credence to this theory since it would have been in their best interest to

[75] Protokół przesłuchania Stanisława Ostrowskiego, January 7, 1945, GK 317/176, Ostrowski Stanisław, IPN; Protokół rozprawy głównej, June 12, 1950, GK 317/175, IPN.

[76] Protokół rozprawy głównej, March 30, 1950, GK 317/175, IPN.

obfuscate wartime contact with local partisans given the extent and brutality with which the new regime attempted to root out any form of past or present support of potential armed resistors to the new order. At the same time, as police reports, depositions, and trial testimony reveal, the Józwiks were intent on both revenge for the death of their daughter as well as restitution for the injury inflicted upon another (as revealed in a separate civil case suing Ostrowski for damages, a case that would have been supported by a guilty verdict in the criminal court).[77]

Ultimately, the court's decision to acquit Ostrowski is masked by as much mystery as the identity of the four unknown men. Did the court find enough evidence to support the version of events in which Ostrowski had sought to circumvent the German authorities by attempting to submit a report to the blue police? Or was the acquittal based upon the court's decision that these four men had been "bandits"(that is, "regular" criminals) preying upon local villages? Instead of addressing these questions in the grounds for the verdict, in a bizarre twist, the court instead chose only to discuss why Ostrowski's co-defendant had been sentenced to three years, since "the charges brought against Ostrowski in the indictment do not bear any relation to the charges brough against the co-defendent. [Therefore], the court will refrain from discussing the grounds for Ostrowski's acquittal and instead focus on the grounds for Antoni Pstrzoch's sentence of guilt."[78]

Similarly, when Jan Burda's case was was reopened in 1948, he was charged with having revealed the forest hiding place of escaped Soviet prisoners of war. However, in contrast to the

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[77] Wniosek o dopuszczenie wnioskodawcy w charakterze powództwa cywilnego przyznania prawa ubogim i wyznaczenie adwokata z urzędu, March 21, 1950, GK 317/175, IPN.

[78] Wyrok w imieniu Rzeczypospolitej Polskiej, Sąd Apelacjny w Warszawie w Wydziale I Karnym, June 13, 1950, GK 317/175, IPN.

eyewitness testimony in Ostrowski's case, Burda had been charged based only upon the hearsay of several fellow villagers who "had heard rumors" to the effect that Burda had reported the presence of Soviet prisoners of war on the territory of the commune (*gmina*). Moreover, depositions and trial testimony reveal that these witnesses were more concerned about the implications of two interrelated events in Burda's wartime biography: that he had been attacked by a group of unknown assailants on a remote forest road, and that he had gained the rights to run a formerly Jewish-owned (*pożydowski*)[79] restaurant after being rendered a cripple in the said attack. As regards to the former, witnesses debated whether the attack had been perpetrated by a group of bandits or whether this had in fact been a partisan group carrying out a death sentence against a Nazi collaborator. Whereas witnesses for the prosecution argued that the attack had been motivated by the latter, several witnesses for the defense pointed out that many criminal bands had roamed the woods during the occupation and had frequently perpetrated attacks against the local population to the extent that many locals had even buried clothes and household items in the ground so that they would not be plundered.[80]

In addition to debating the true nature of the attack on Burda, the witnesses for the prosecution also questioned his takeover of a formerly Jewish property[81] and the subsequent establishment of a restaurant in this locale, something that amounted to two separate concessions

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[79] The literal translation of this is "after the Jews."

[80] Protokół rozprawy głównej, Sąd Okęgowy w Siedlcach, November 24, 1948, LU 328/11, Jan Burda tom 1, IPN Lublin.

[81]Ibid. The localization of this property was on ulica Grabanowska—one of the streets in the former ghetto. One of the witnesses even identified the last name of the former owner—Malin. Clearly it was common knowledge that this was a formerly Jewish shop although the only person who mentioned this explicitly was Burda himself.

granted by the occupation authorities.[82] Although Burda explained his good luck as the result of an unforeseen tragedy—his hand had been amputated as a result of injuries sustained in the aforementioned attack and had rendered him incapable of farming his land—these witnesses were skeptical of any preferential treatment bestowed by the occupation authorities—much less two acts of favoritism—and took this as proof of Burda's collaboration with the Nazis. (After all, he must have done something to earn these perks.) Even the fact that Burda was later arrested and imprisoned by the Germans for the illegal production of vodka did little to alleviate the suspicions of some of his fellow townsmen.

Despite much testimony in his favor as well as a great deal of speculation (as opposed to coherent and consequential witness statements), Burda was initially found guilty by a majority consisting of the two jurors who had been chosen for their "political reliability." This ruling was based on the obviously fabricated testimony of one witness[83] as well as two depositions taken during the first investigation in 1945, later proven to have been movitated by personal conflict. When this verdict was formally challenged by the presiding judge in a cassation, the Supreme

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[82] In order to establish an eatery, Burda would have had to been granted rationed foodstuff.

[83] While employed in a construction brigade charged with demolishing Biała Podlaska's Old Synagogue (*bożnica*) in the vicinity of the restaurant, the witness claimed to have had ample time to observe Burda's day-to-day interactions with Nazi authorities; according to the witness, Burda had regularly spoken to the Gestapo officer who oversaw the demolition work and had frequently brought him vodka from his restaurant in return for bricks from the synagogue. Most damning of all, the witness claimed that the Gestapo overseer had told the witness that Burda was "their man." In addition to changing significantly across its various tellings, the events desribed by the witness would have occurred during Burda's arrest for the illegal production of vodka. Protokół rozprawy głównej, Sąd Okęgowy w Siedlcach, November 24, 1948, LU 32/11 tom 1, IPN Lublin.

Court threw out the verdict and called for a retrial.[84] At his retrial on March 14, 1949 Burda was acquitted.

While the victims of Ostrowski's and Burda's alleged acts of collaboration were directed toward the friends and allies of the new Polish political order, these friends and allies were most likely unknown to the local communities upon whose territory they had encroached. For example, Stanisław Puławski, the elder of a village located at the border between the Annexed Territories and the General Government, was indicted for having denounced fellow villager Stanisław Dan as a communist to the German border guards.[85] However, police reports, depositions, and trial testimony reveal that Dan's arrest had in fact been the direct result of his decision to ignore a work assignment issued by occupation authorities, and that Dan himself had no affiliation with communists. In a quest for vengeance, the Dan family attempted to cast the arrest of one of their own in a political light—one that would appeal to the new socialist authorities.[86] Nevertheless, despite the politically-loaded nature of the charge, the court acquitted Puławski in recognition that this was an instance in which an aggrieved party attempted to hijack the August Decree as retribution.[87] Thus, even if alleged victims had been astute enough to frame their victimhood in language that would be particularly appealing to the new order, this did not necessarily produce a verdict that affirmed the wartime suffering of communists at the hands of Nazi collaborators.

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[84] If this had happened at the special criminal court, this appeals process would not have been possible.

[85] Akt oskarżenia, September 28, 1948, GK 317/120, Puławski Stanisław, IPN.

[86] Protokół rozprawy głównej, May 26, 1950, GK 317/120, IPN.

[87] Sentencja wyroku, May 26, 1950, GK 317/120, IPN.

Interestingly, even though another village elder in this sample openly admitted that he had reported local communists to the occupation authorities, he too was acquitted, despite the relative ease the court would have had in branding him a Nazi collaborator on account of his admission. As the elder of a village that had the distinction of first being occupied by the Soviets in 1939 and then by the Nazis in 1941, Franciszek Filipiak had been accused of denouncing several local communists after the Nazi invasion. Filipiak explained that he had been summoned to the gendarmerie headquarters and "asked about those people" and what they had done during Soviet times. He did not conceal their role in the Soviet administration:

> Because it was true ... that they had been functionaries during Soviet times. Hence when they asked me if it was true I answered that indeed they had [been functionaries]. However, when the gendarmerie asked me what they were doing currently I said I did not know....The fact that they were taken away after my statements ... that is not my fault because I was not the first to make the report to the Germans, I did not tell them of my own will, but was summoned.[88]

Aside from the testimony from the wives of the denounced communists, seventeen other members of the community took the stand in Filipiak's defense and attested to his admirable conduct during the occupation.[89] Ultimately, Filipiak was acquitted on the grounds that it was impossible to know if his report had been the cause of the arrest.[90] Given the general wave of anti-communist sentiment after the 1941 Nazi invasion and the very real possibility that someone else could have, of their own free will, gone to report local communists to the new Nazi occupiers, there was not enough evidence of guilt. After all as Filipiak himself had noted: "At the

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[88] Protokoł przesłuchania podejrzanego, PUBP Białystok, October 8, 1946, Bi 410/198, t. 1-2, Akta w sprawie Franciszka Filipiaka, IPN Białystok.

[89] Protokoł rozprawy głównej, November 27, 1947, Bi 410/198, t 1-2, IPN Białystok.

[90] Sentencja wyroku, November 27, 1947, Bi 410/198, t 1-2, IPN Białystok.

beginning of the Nazi occupation ... during village meetings, the locals often asked why I, as village elder, had not reckoned with the remaining 'Reds,' but I said that any person who wants can go and report [a former communist to the Nazis]."[91]

Ultimately, the fact that prosecutors decided to indict in the face of highly suspect witness testimony speaks to the abandoment of prewar legal procedure in the face of a politicalized agenda for criminal justice and the punishment of Nazi collaborators. Nevertheless, this process was checked in the courtroom as judges stayed true to their prewar legal training by challenging a guilty verdict based upon obviously falsified testimony (Burda), by recognizing politically framed acts of personal vengeance (Puławski), and by refusing to convict despite a confession that could have been construed as incriminating (Filipiak). Even when legal procedure was violated, this was done with the intention of maintaining other prewar legal practices, as aptly demonstrated by the Ostrowski verdict. For whatever reasons—most likely out of fear—the judge sought to avoid explaining the grounds for a well-justified acquittal by focusing the grounds on a completely unrelated co-defendant who had been charged with a much lesser offense.

However, one of these five politicalized trials did produce a guilty verdict. Like Franciszek Filipiak, Benedikt Gont had been elder in a village that had fallen under joint Soviet-Nazi occupation, and like Filipiak, Gont had been accused of denouncing two communist functionaries to the Nazis. According to one of the alleged victims, "The Germans came and took me, saying that I had caused the detainment of Gont [during Soviet times]. At the local

[91] Protokoł rozprawy głównej, November 27, 1947, Bi 410/198, t 1-2, IPN Białystok.

administration, Gont said that I was a communist from the NKWD....”[92] Although only two witnesses substantiated this charge in pretrial depositions and during the trial itself, he was pronounced guilty and sentenced to death. For their part, the witnesses could hardly be touted as neutral parties to the affair since one was an alleged victim and the other the widow of the second victim. While the latter’s testimony had shifted radically between her deposition and trial testimony, the court attributed this to the fact that “the accused’s son who was previously a member of the gendarmerie is currently in hiding in the surrounding woods and hence the witness made her testimony gentle and imprecise out of fear of reprisal.”[93]

This statement reveals an important yet unstated undercurrent to the investigation and trial: Gont was Białorussian, and as such, has been registered on the Volksdeutschliste as a member of a “privileged nation.” The family’s special status as a privileged ethnic minority made Gont’s son eligible for service in the much-hated gendarmerie. Although Gont had stated that his nationality was “Bialorussian” during his first questioning at the UB, he never openly referred to this, nor did the two witnesses for the prosecution, who were no doubt acutely aware of this. Ultimately, Gont was pronounced guilty and sentenced to death on the basis of sparse and inconsistent testimony. Although it was possible that Gont had indeed denounced local communists (as had been the case with Filipiak) in retaliation for their previous denunciation of him to the communist authorities, there was simply not enough evidence for such a conviction.

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[92] Protokół rozprawy głównej, Sąd Specjalny Karny dla okręgu sądu apelacyjnego warszawskiego z siedzibą w Łodzi, Sesja wyjazdowa w Białymstoku, January 18, 1946, GK 209/329 Gont Benedykt, IPN.

[93] Sentencja wyroku, January 18, 1946, GK 209/32, IPN.

Perhaps Gont's status as a non-Polish ethnic "outsider" had blinded the judge (and the prosecutor before him) to the niceties of proper legal decision-making.

Such a supposition is rendered more meaningful in light of another case in the village elder subsample in which the alleged act of wrongdoing did not involve the persecution of communists or communist supporters. In the summer of 1945, the prosecutor's office for the Lublin special criminal court launched an investigation of the former village elder Andrzej Szutyk, a Ukrainian suspected of involvement with the "Ukrainian Insurgent Army"(UPA), a partisan organization that had simultaneously engaged in combat with the Nazis, the Soviets, as well as with Polish partisans. Although this investigation was soon dismissed for lack of evidence,[94] Szutyk's case was reopened a mere two months later when the following letter of denunciation arrived at the Lublin Prosecutor's Office:

> During the German occupation Szutyk and the Ukrainian SS organized a pogrom against the Poles.... He gathered together Poles under the pretext that they had not fufilled their milk quota and ordered them to lay on a bench for 25 lashes.... On the list [of individuals slated for this treatment] there were only Poles and no Ukrainians, even though the Ukrainians as well as the Poles did not turn in their milk quotas.[95]

Based upon this letter of denunciation and subsequent depositions taken from three eyewitnesses who also happened to be the aggrieved parties, the prosecutor's office indicted Szutyk under article 1 §2.[96] For his part, Szutyk explained that while he had to administer the beating described above, he had not ordered it and claimed that the decision had rested in the

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[94] Wniosek o umorzenie dochodzenia, January 29, 1946, LU 315/278, Szutyk Andrzej, IPN Lublin.

[95] Doniesiene do sądu specjalnego karnego w Lublinie, March 26, 1946, LU 315/278, IPN Lublin.

[96] Akt oskarżenia, June 26, 1946, LU 315/278, IPN Lublin.

hands of the chairman of the Dairy Control Commission, also a Ukrainian. Even though the investigation and trial did not provide any concrete evidence as to whether or not Szutyk had ordered the beatings, he was pronounced guilty and sentenced to thirteen years on the grounds that he had generally been "negatively disposed toward Poles."[97]

Ultimately, by violating prewar legal procedure and pronouncing Szutyk guilty, the judge had a hand in "transforming" this ethnic Ukrainian into a Pole. In a series of letters and petitions that Szutyk penned to the prison superintendant during his detention, he explained that his family had been "resettled" to Ukraine as part of the larger project of creating ethnically homogeneous Polish and Ukrainian postwar states. In order to be closer to his family, Szutyk had submitted multiple requests for a transfer to a Ukrainian prison in their vicinity, yet these had been repeatedly denied. Finally, in December 1953, after nearly a decade in a Polish prison, Szutyk finally wrote: "I regret ... what I have lost over the last eight years in particular being able to participate in rebuilding the People's Poland and also that I lost my family forever."[98] For all intents and purposes, Szutyk now clearly identified himself as Polish and put the reconstruction of the Polish national state before his Ukrainian family.

Conclusion

Ultimately, the project of punishment that took shape in the "shadow of the crematoria" could hardly address the horror that had been visited upon Polish society during the Nazi occupation. The main perpetrators themselves—the Nazis—had fled westward, leaving in their

[97] Sentencja wyroku, October 30, 1946, LU 315/278, IPN Lublin.

[98] Do Rady Państwa od Andrzeja Szutyka, December 20, 1953, LU 315/278, IPN Lublin.

wake a devestated landscape and a population clamoring for vengeance. While the leaders and architects of the Third Reich would eventually stand trial at Nuremberg in a distant exercise in justice that did not even include an independent Polish prosecutorial team, the perpetrators that mattered to Polish society were the gendarmes, the Kripo, Gestapo functionaries, and local agents of terror with whom they had come face-to-face with in their daily lives. Although the extradition project coordinated by the Main Commission and the Polish Military Mission promised to bring German functionaries back to face punishment in the courts of those whom they had harmed, such moments of justice were infrequent. Thus, the full force of punishment would come to rest on "ordinary Poles" who had become involved in the machinery of occupation and its various nefarious undertakings.

While there were clearly many individuals who had willingly or unwillingly participated in heinous acts of persecution and murder associated with genocide and mass atrocity, this sample of August Decree cases often does not reflect the scale or the brutality of this. Instead, investigations frequently pertained to seemingly petty everyday concerns and suspicions and reflected the efforts of opportunists seeking personal vengeance for long-standing grievances that transcended the war and occupation. Such cases do not conform to an idealized vision of the punishment of collaborators as the rendering of justice in the shadow of the crematoria. Yet in the aftermath of total war and state-sponsored criminality, the absence of the truly heinous is both a testament to the complexities of identifying one perpetrator out of thousands and establishing sufficient evidence of his or her guilt through the testimony of living eyewitnesses and victims, as well as to the difficulties that investigators and prosecutors faced in grasping distinctions between "regular" crimes and crimes that had been the product of the "unique conditions" of the occupation. Notably, the source of this confusion was twofold: for

investigators in the police and security services—their potential political agenda aside—their lack of training and often semi-literate state meant that they often acted out of ignorance, while for their part prosecutors were constrained by a prewar training that rejected ex post facto punishment.

Just as the picture of collaboration that emerges here hardly conforms to expectations projected by "the shadow of the crematoria," so too does it fail to adhere to a legal-theoretical ideal-type linking wartime behavior to socio-economic class. In fact, there is no indication that prosecutors and judges—or for that matter investigators at the MO and UB—ever sought to understand or construct collaboration as a function of socio-economic position. The same cannot be said about the subordination of law and legal procedure to the pragmatics of socialist state-building. It does appear that those who posed a potential threat to the consolidation of the new political order were targeted, as manifested by the number of village elders and blue police that appear in this sample. Their presence in the rosters of the prosecutors' offices and in the court dockets cannot simply be chalked up to the potentially compromising ways that such individuals had been intertwined in the machinery of the occupation. Instead, instances of obviously falsified witness testimony bear clear testament to ulterior motives lurking under efforts to punish Nazi collaborators.

In the event that an investigation had been launched with an ulterior political (or personal) motive in mind, it first had to pass through two legal "gateways" before the suspect in question could be branded a collaborator and thus effectively removed from political and social life. First, prosecutors had to decide if there was enough evidence of wrongdoing to warrant a trial. If so, the suspect was indicted and his or her case went before a judge who then weighed

the prosecutor's case, and in light of trial testimony, made the final decision about whether or not a suspect was guilty of collaboration and how he or she should be punished.

In this sample, not all investigations into blue police and village elders ended in the decision to indict, not an outcome one would expect if these cases had been driven solely by pragmatic political purposes. Instead, for the former, prosecutors chose to dismiss cases where there was indeed a lack of evidence of wrongdoing as demonstrated by sparse and inconsistent statements made by witnesses.[99] Moreover, when blue police were indicted, it was on the strength of multiple statements that presented a fairly consistent and coherent picture of grievances and wrongdoing. The same cannot be said for the village elders in this sample. While it is true that dismissed cases showed a clear lack of evidence, so too did a number of those that were ultimately indicted, as demonstrated by the six cases analyzed above.

Once past the first legal gateway represented by the prosecutor's office, judges were entrusted with the ultimate decision of innocence or guilt, and as a result, their adherence to prewar legal training represented a significant obstacle to a project of punishment motivated by the pragmatics of socialist state-building, something that jurors were supposed to counter-balance. However, an analysis of the trials of blue police and village elders reveals that outcomes were influenced by dynamics of social and national belongingness rather than by political pragmatics.

In the absence of physical evidence of wrongdoing, the ways in which witnesses constructed the "social belongingness" of a suspect mattered a lot because this was the filter by which they—and through them, the judge—perceived solidarity or the lack thereof with the local

[99] This is true for all the dismissed cases aside from one that will be discussed in detail in the subsequent chapter.

community as well as with the larger ethno-national body. Specifically, if an individual had been an "outsider" displaced by the war and occupation, the local community could not read the intentions behind individual action through a filter of previous knowledge of that individual. As a result, even the most trivial of behaviors could be construed as "playing into the hands of the occupation authorities."

For example, if an alleged collaborator—known and fairly well-liked by the community— had been involved in the requisitioning of winter coats during the occupation, this would be interpreted as the act of a reluctant individual who had been forced to comply with the orders of a brutal occupier. In no way did this compliance signal that the individual in question had renounced his allegiance to the local community or to the larger Polish ethno-national body; it was merely compliance in body, not in mind. In contrast, the intentions of alleged perpetrators who were unknown or disliked by the community could easily be interpreted as a malicious desire to profit from the deprivation of fellow-Poles or as the eager fulfillment of an order from a German superior. Even though these individuals could not demostrate solidarity with a local community of which they were not a part, they could and *should* have demonstrated solidarity as a fellow member of the Polish nation. In this manner, local communities branded such outsiders "collaborators" well before their day in court.

While such investigations into "outsiders" produced a seemingly coherent body of evidence that pointed to wrongdoing (because in the eyes of the local community, an injustice had been committed), it remained up to the judge to assess and interpret the intentions of the suspect himself, something that he did not have to do when the accused was an "insider" and positive testimony could be mustered to cast credible doubt on allegations of wartime wrongdoing. In such instances, prewar legal procedure simply dictated acquittal. Given the

difficulty in assessing the individual motives of "outsiders" and in the absence of any way to confirm it, judges would simply accept the community's assessment of collaboration.

However, it seems that even in instances where trial proceedings cast some doubt on the degree to which an "outsider" had "played into the hands of the occupation authorities," judges violated prewar legal training that dictated acquittal and accepted the community's interpretation of collaboration. Perhaps this decision was motivated by the fear that a wrongdoer might escape punishment. Perhaps the shadow of doubt that existed about the moral integrity and national solidarity of such individuals cast sand in the eye of judges and blinded them to their legal responsibilities.

"Outsider" status was not just a function of geographic disloction, but was also a function of a non-Polish ethnic identity. This is aptly demonstrated by outcomes for the village elders in this sample whereby judges rejected obvious attempts to politicalize these cases and acquitted in all instances save those where the accused was not ethnically Polish but had nevertheless been a citizen of the interwar Polish state. Whereas in the former the sparseness and inconsistency of incriminating witness statements provided sufficient grounds for acquittal, the same logic did not apply to the latter cases, and such individuals were branded as collaborators. Ultimately, it is impossible to tell if the investigations and trials of village elders who were "ethnic outsiders" were motivated by the pragmatics of eliminating potential enemies to the socialist state-building project or by the pragmatics of eliminating enemies of "Polishness."

CHAPTER THREE

THE *VOLKSDEUTSCHE*

Introduction

In October 1944, Polish citizen Maximilian Gross penned a letter to the Lublin special criminal court expressing his concern about the fate of ethnic German *Volksdeutsche*, those "hundreds of thousands of people who had been in the German army and in the German administration" prior to 1918 and who had taken Polish citizenship after Poland "came into existence."[1] Gross noted that after the Nazi invasion of Poland in September 1939, he did not know of "any case in which these 'traitors' to the German nation were punished on account of this 'betrayal.'" In fact, the opposite had been the case, as the Nazi administration in both the territories annexed directly to the Reich as well as in the General Government had developed an elaborate system of sorting and classifying interwar Polish citizens with "even a drop of German blood"[2] in their veins. Instead of being branded as traitors to the German Fatherland, these individuals had been rewarded for their German blood with "membership in the German nation," accompanied by special rights that set them apart from their former Polish compatriots.

In bringing up the wartime treatment of Polish citizens of German descent, Gross sought to justify a similar postwar approach towards such individuals. Instead of punishing them as "traitors to the Polish nation,"

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[1] Pismo do Jana Czechowskiego z Lublina od Maksymiliana Grossa, October 20, 1944, zespół 185, Polski Komitet Wyzwolenia Narodu, IX/8 Procedura ustrój sądownictwa: projekty, wnioski, zawiadomienia oraz korespondencja, AAN.

[2] Leszek Olejnik, *Zdrajcy Narodu? Losy Volksdeutschów w Polsce po II Wojnie Światowej* (Warszawa, 2006), 46.

> [A]ll Volksdeutsche should be amnestied, to the extent that they did not hurt anyone. Such amnestied Poles would most likely out of gratitude take up with the Lublin government with greater fervor than the first best Pole who pretends to support the Lublin government but in reality supports *Mikołajczyk* [i.e., the London government-in-exile] ….[3]

Gross's plea for leniency would ultimately fall upon deaf ears, as new Polish elites launched their state-building project with the clear aim to neutralize and punish "traitors to the nation," even if the exact contours of such an endeavor were still inchoate. Yet, as this project unfolded over the next several years, elites found themselves confronted with two categories of "traitors:" those whose interwar Polish identity cards had classified them as "Polish citizens of German descent," and those who had been classified as "Polish citizens of Polish descent." As the Polish provisional government struggled to develop a comprehensive legal pathway to rehabilitating these individuals through punishment, prosecutors'offices and courtrooms became sites where issues of national identity and national belongingness were shaped.

The Volksdeutsche During War

Poland's ethnic German Volksdeutsche population played a key role in Hitler's vision for greater *Lebensraum*, especially after the 1939 annexation of western and northern Poland, territories that included Silesia and Gdansk-East Prussia. Incorporating these "Annexed Territories" into the Reich was an ambitious project that required not just political and institutional *Gleichschaltung,* but also the expulsion of native Poles and Jews to the General Government, the Reich protectorate imposed upon what remained of the interwar Polish state after the Nazi and Soviet landgrab. The cleansing of these unsavory ethnic elements made way

[3] Pismo do Jana Czechowskiego, October 20, 1944, zespół 185, IX/8, AAN.

for the resettlement of Germans from the Reich (*Reichsdeutsche*) as well as a Volksdeutsche diaspora from across Eastern Europe.[4] They were to join the Volksdeutsche already inhabiting these lands—those citizens of interwar Poland who by dint of their German ethnicity had been permitted to stay.

In order to avoid expulsion from their homes in the Annexed Territories, Poles often attempted to pass themselves off as ethnic German Volksdeutsche. In order to prevent the dilution of pure German stock with Slavic blood, the newly-appointed Gauleiter of the Wartheland, Arthur Greiser, instituted a system of ethnic screening and classification for the Poznan district in October 1939.[5] While it first sought to separate individuals into two categories: "active Germans" who had participated in German cultural organizations in interwar Poland and "passive Germans" who had preserved their national identity but did not actively express it, this bipartite division would prove much too crude. After all, ethnic German Volksdeutsche had resided on Polish lands for centuries, and a simple division into "active" and "passive" Germans could hardly begin to express the myriad ways in which they had adapted and embraced the customs and habits of their Polish neighbors.

As a result, screening was expanded to include four groups (demarcated by the roman numerals I-IV) that categorized applicants not just according to their degree of German cultural "belongingness" as measured by organizational membership and socio-linguistic markers such as language and religious affiliation, but also based upon the percentage of German blood coursing

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[4] This was part of the larger *Heim ins Reich* program that aimed to resettle the Volksdeutsche diaspora from the territory annexed to the Soviets under the Molotov-Ribbentrop Pact. R.M. Douglas, *Orderly and Humane: The Expulsion of the Germans after the Second World War* (New Haven: Yale University Press, 2012), 46–52.

[5] Olejnik, *Zdrajcy Narodu*, 25.

through their veins. According to this revised classification system known as the *Volksdeutschliste* (or *Volksliste*), applicants were assigned to category I if they had actively participated in the political and cultural life of the German minority in interwar Poland and could prove that 75–100 percent of their ancestry was German (i.e., that they had only one ethnic Polish grandparent). Applicants eligible for category II membership could demonstrate 75 percent German ancestry and were "conscious" of their ethnic German identity, yet had been politically and culturally "passive" during the Second Republic. The "semi-Polonized" individuals of category III were those who could claim 50 percent German ancestry but had identified politically and culturally as Polish prior to 1939, and finally thoroughly Polonized individuals who despite German ancestry had actively identified as Polish found their place in the fourth category.[6] Notably, although there was a fairly clear demarcation between the first two categories and the second two categories, the differences between categories III and IV was quite fluid. For example, two individuals with 50 percent German blood could be ranked differently depending upon religious affiliation, language usage, etc.

An individual's categorization on the Volksdeutschliste was not only signified by the color of his or her identification card, or *kennkarte*, but also by the rights and privileges bestowed upon the cardholder. Various aspects of everyday life ranging from the types and amount of food an individual was allowed to buy, the type and place of his or her employment, to where he or she could live, etc. were structured around an individual's ranking on the Volksliste. It determined whether or not one could use public transportation, own a bicycle, radio, or camera. In this hierarchy of privileges, members of the first two categories

[6] Ibid., 26–27.

(distinguished by a blue *kennkarte*) not only received the best food rations, employment, housing, and welfare benefits, but they were also eligible for the ultimate privilege: full citizenship in the Reich (*Reichsbürgerschaft*). In contrast, members of categories III and IV (distinguished by a green and red *kennkarte* respectively) received fewer everyday perks and privileges and could never become full citizens of the Reich. Instead they could only receive "state membership" (*Staatsangehörigkeit*) after a mandatory waiting period.[7]

Although, Greiser's Volksdeutschliste had initially been intended only for the Poznań district, a decree issued by Himmler in 1941 soon required the ethnic screening of Volksdeutsche across all the Annexed Territories. Notably, while Greiser had deployed screening as an *exclusionary* measure to prevent Poles from passing as ethnic Germans, other districts in the Annexed Territories implemented the Volksdeutschliste as an *inclusionary* policy to bolster support for the new German administration and governing structures, and as such, actively recruited individuals to apply for membership. In fact, inhabitants of Upper Silesia—an area with historically strong ties to Germany—were not even required to submit formal applications, a convoluted process that required the preparation of genealogical charts, birth certificates, a home assessment as well as an official meeting with the German authorities. Instead, as "polonized" Germans (and not Poles), they were only required to fill out a simple questionnaire that would determine their category of membership in the German nation. Although the submission of a questionnaire was initially voluntary, after February 1942, it became mandatory.[8]

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[7] Hugo Service, *Germans to Poles: Communism, Nationalism and Ethnic Cleansing after the Second World War* (New York: Cambridge University Press, 2013), 32.

[8] Zygmunt Izdebski, *Niemiecka Lista Narodowa na Górnym Śląsku* (Katowice, 1946), 24.

In October 1941, one year after the Volksdeutschliste had been implemented in the Annexed Territories, Himmler established a similar system of ethnic screening and registration in the General Government.[9] Given the General Government's status as a dumping-ground for the Annexed Territories' Poles and Jews, as well as the presence of markedly fewer ethnic German diaspora, reclaiming "every drop of German blood" in this region did not assume the importance that it had in the Annexed Territories. Here a much simpler classification system was launched that consisted only of the categories Volksdeutsche and *Stammdeutsche* (or *deutschstämmige*), with the former roughly corresponding to categories I and II and the latter to categories III and IV. Although Himmler's decree did not initially foresee the further subdivision of these groups, in practice, screening commissions differentiated Stammdeutsche into the subcategories A and B, with only those in category A eventually eligible for German citizenship.[10]

As had been the case for the Poznań district, inhabitants of the General Government initially submitted applications at their own behest. However, as the tides of German fortune began to turn on the Eastern front, the occupiers adopted practices of forced recruitment in the General Government, similar to those employed in Silesia and Danzig. Moreover, as the mania for increasing German stock grew, the standards of acceptance to the Volksdeutschliste became increasingly lax throughout occupied Poland. Although this opened the doors to less ethnically desirable Polish elements, it did mean that an increasing number of interwar Polish citizens swore an oath of loyalty to the Reich. Finally, because Volksdeutsche from the Annexed

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[9] Jan Olejnik, 137.

[10] Czesław Madajczyk, *Polityka III Rzeszy w Okupowanej Polsce* (Warszawa, 1970), 454.

Territories registered in categories I-III were eligible for the Wehrmacht draft, increasing inclusiveness was a convenient and much-needed means by which to increase military manpower on the faltering Eastern front.

Ultimately, on the eve of the Red Army's advance into Poland in July 1944, an estimated 3.1 million citizens[11] of the Second Polish Republic were registered on the Volksdeutschliste[12]—three times the number that been counted as Volksdeutsche during the interwar period.[13] It would quickly become apparent to the self-proclaimed successor to the Second Republic that it was precisely this discrepancy that would haunt future state-building efforts. While many individuals registered as Volksdeutsche prior to 1939 and took it upon themselves to flee westward with the retreating German army or were later expelled as Germans during postwar population transfers, individuals who had *switched* national membership during the occupation and now wanted to rejoin the Polish nation would have to be carefully vetted and potentially punished for this national betrayal. Only then might they be considered worthy of membership in the postwar Polish nation.

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[11] In the Annexed Territories, 2.8 million were registered. In the General Government, in May 1945 there were approximately sixty to 100,000 registered Volksdeutsche and 50,000 *Stammdeutsche*. Olejnik, *Zdrajcy Narodu*, 142.

[12] Ibid., 28. Of course these statistics are somewhat imprecise due to changes in wartime population, as well as to more slapdash recordkeeping towards the end of the war.

[13] The number of Polish citizens of German descent during the Second Polish Republic has been estimated between 700,000–1,000,000, or approximately three percent of the population. Douglas, *Orderly and Humane,* 28; 43.

The Legal Framework for Punishing "Traitors to the Polish Nation"

While still in Moscow, Polish socialist elites only made cursory efforts to develop a legal infrastructure to cope with the postwar "Volksdeutsche problem" by amending articles 91 and 100 of the 1932 Military Criminal Codex. The former article stipulated that any Polish citizen who had served in an enemy army was criminally liable even if he had renounced Polish citizenship to become a member of the enemy nation for which he subsequently fought.[14] The commission of such a crime was punishable by a minimum of ten years in prison or by death. For its part, article 100 stipulated that any member of the Polish armed forces who had become a citizen of an enemy nation would face at least five years in prison and the confiscation of his property.[15] While these amendments to the military criminal codex were clearly aimed at the future recruits to the Polish Army who would fight onward toward Berlin, no provisions were made at this time to address the legal treatment of civilians who had signed the Volksdeutschliste. This was a possible indication that Poland's future socialist leaders anticipated trying all suspected Volksdeutsche in military courts, just as the Soviets adjudicated suspected wartime traitors and collaborators in NKWD-run military courts.

Despite expectations to the contrary, this was not the route ultimately pursued by the Polish provisional government. In fact, upon assuming power in July 1944, the Lublin

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[14] Similar to article 38 of the 1932 Military Criminal Codex, soldiers who had supported enemy efforts during wartime could be punished by up to ten years in prison. Furthermore, commanders who had surrendered to the enemy without due cause could be executed. See Dz.U. 1944 nr. 6 poz. 27, Dekret Polskiego Komitetu Wyzwolenia Narodowego, *Kodeks karny Wojska Polskiego*, September 23, 1944, http://isap.sejm.gov.pl/, accessed March 7, 2015 ; Dz.U. 1932 nr. 91 poz. 765, Rozporządzenie Prezydenta Rzeczpospolitej, *Kodeks karny wojskowy*, October 21, 1932, accessed March 7, 2015.

[15] Ibid.

government did not explicitly address the "Volksdeutsche problem," but instead drafted the August Decree that aimed to punish "war criminals, collaborators, and traitors to the Polish nation." Along with this, the provisional government established special criminal courts and their associated prosecutors' offices to investigate and prosecute these August Decree cases. While such measures created a legal infrastructure that could potentially cover individuals who had signed the Volksdeutschliste, new elites were still were unsure about whether or not to fit Volksdeutsche under this rubric.

It was only on November 4, 1944 that the PKWN decreed the creation of special detention camps for suspected Volksdeutsche over sixteen years of age, as elaborated in *Cautionary Measures Regarding Traitors to the Nation*. Also known as the November Decree, this document stipulated that

> any Polish citizen in the General Government who declared his membership in the Polish nation (*Volkszugehörigkeit*) or who claimed German ancestry (*deutschstämmige*), or who took advantage of accompanying rights and privileges—regardless of his criminal responsibility—is subject to detention for an undetermined time in a camp and [must perform] forced labor.[16]

This order of detainment also applied to all family members over the age of thirteen who cohabitated with suspected Volksdeutsche. Upon arrest, the suspect's movable and immovable property was to be confiscated by the PKWN Treasury Department and all parental, public, and honorary rights of citizenship suspended. These draconian measures also applied to anyone who offered assistance to Volksdeutsche. The detention of a suspect and the suspect's family would be regulated by the special criminal courts and their associated prosecutors' offices, with the

[16] Dz.U. 1944 nr. 11 poz. 54, Dekret PKWN, o środkach zabezpieczających w stosunku do zdrajców Narodu, November 4, 1944, accessed March 5, 2015.

latter issuing arrest warrants and the former approving them.[17] Only individuals who had signed the Volksdeutschliste by order of a Polish underground resistance organization were exempt from detention.

Even though prosecutors' offices for the special criminal courts were responsible for issuing legally-binding orders of detainment, the November Decree did not elaborate the legal basis upon which such individuals were to be investigated and ultimately charged with criminal wrongdoing. Were such cases to fall under the jurisdiction of Polish military courts as had been initially planned in Moscow? Or would such cases be prosecuted under the August Decree or perhaps be subsumed under the old civilian treason law? While the first option was quickly abandoned[18] in the face of vocal opposition from a military court system eagerly seeking to avoid the "ballast" of Volksdeutsch cases,[19] the latter option was carefully considered by the PKWN.

[17] Notably, warrants were frequently drafted and submitted well after a suspect's detainment, and although this violated prewar legal procedure, it was common practice in the special criminal court system. Ibid.

[18] This is according to an internal departmental memo dated December 1944.

[19] In fact, the head of the Supreme Military Court Aleksander Tarnowski had instructed military courts and offices of the prosecution under his jurisdiction to demobilize officers and soldiers suspected of having signed the Volksdeutschliste. Once demobilized, such individuals would then fall under the jurisdiction of the civilian court system. Uzasadnienie do projektów dekretu o wymiarze kary w stosunku do zdajców Narodu którzy zgłosili lub zgłaszają swą pryznależność do obcej narodowości walczącej z Państwem Polskim oraz zmiany art 100 kk Wojska Polskiego, undated, zespół 285, syg 3979, Uregułowanie prawne wymiaru kary faszystowsko-hitlerowskich zbrodniarzy, AAN.

The 1932 Civilian Criminal Codex's treason law, also known as article 100,[20] criminalized civilian actions that aided the enemy or harmed the interests of the Polish Army during war. However, the PKWN Department of Justice recognized that subsuming Volksdeutsche under the civilian article 100 would require a broad interpretation of "acting on behalf of the enemy ... to the detriment of the Polish Armed Forces," since the decision to become a member of the German nation had no bearing on the Polish Armed Forces.[21] The department was further concerned that article 100 permitted mitigated punishment if an act of treason had been unpremeditated as well as provided the right to appeal a verdict.[22] Such measures would ultimately soften the severity of punishment, something that the department wanted to avoid at all costs.

Ultimately, there would be little time to do more than issue the November Decree as a temporary mechanism of detainment, since by mid-January 1945 Soviet and Polish troops had already reached the Annexed Territories where the scale and scope of the "Volksdeutsche problem" had increased dramatically. However, because new elites generally assumed that Volksdeutsche registered in the Annexed Territories had been coerced by the Nazi occupiers into declaring membership in the German nation, a much more lenient stance was adopted here than

[20] Dz.U. 1932 nr. 22 poz. 165, Rozporządzenie Prezydenta Rzeczpospolitej, July 11, 1932, *Kodeks karny,* accessed March 5, 2015. This is not to be confused with article 100 of the military criminal codex that dealt with treason in the armed forces.

[21] At the time, the only Polish Armed Forces were part of the Red Army.

[22] Uzasadnienie do projektów dekretu o wymiarze kary, undated, zespół 285, syg 3979, AAN.

in the General Government where it was believed that individuals had registered for the Volksdeutschliste of their own free will.[23]

The Polish provisional government—now known as the KRN[24]—acted quickly to establish a legal and administrative architecture for a reverse system of classification—this time one that would sort and cull ethnic Poles from those who were ethnically German. To this end, it promulgated *Excluding Enemy Elements from Polish Society* on February 28, 1945. This decree applied only to the Volksdeutsche of the Annexed Territories and outlined a two-pronged strategy of administrative verification and legal rehabilitation. For its part, the administrative route was open to those who had lived in those parts of the Annexed Territories where inhabitants had been forcibly registered en masse as third-or-fourth-category Volksdeutsche—primarily in Upper Silesia and Danzig. Here, all individuals over fourteen years of age were required to submit an "Oath of Loyalty to the Nation and the Democratic Polish state."[25] Then the applicant would receive a temporary verification certificate, and after six months, if no evidence of compromising wartime behavior had emerged, a permanent certificate was granted. Failure to submit an "Oath of Loyalty" would result in detainment and the loss of public and honorary rights as citizens.

For its part, the judicial pathway was designed for all category II Volksdeutsche as well as for third and fourth category Volksdeutsche in regions where the occupiers had not implemented mass recruitment policies, primarily in the Warthegau. Here, individuals were

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[23] Olejnik, *Zdrajcy Narodu*, 88.

[24] This replaced the PKWN.

[25] *Deklaracji wierności Narodowi i demokratczynemu Państwu Polskiemu.*

required to submit an application to the municipal court[26] and formally state that (s)he 1) had been coerced into signing the Volksdeutschliste, and 2) had acted in a manner that preserved "Polish national distinctiveness" (*polska odrębność narodowa)*.[27] After a judge and two jurors had cursorily approved the application, a public hearing was scheduled at the applicant's cost during which members of the local community could testify *against* the applicant by demonstrating that s(he) had not upheld Polish national distinctiveness.

After weighing the testimony about an applicant's wartime behavior, the court could rule to fully rehabilitate, partially rehabilitate, or reject an application. In the first instance, an applicant's public and honorary rights as a Polish citizen along with any previously seized property would be restored. Instances of partial rehabilitation meant the temporary suspension of an applicant's rights as a Polish citizen as well as a fine ranging from five hundred to two million złotys and the permanent loss of property. Finally, when an application was rejected outright, the applicant was permanently stripped of his or her public and honorary rights as a citizen and detained for forced labor. In the event that an applicant decided to appeal the court's ruling, the case would be transferred to the jurisdiction of the special criminal court where a final decision about the application would be made in a public hearing presided over by three judges.[28] A municipal court had a ten-year window in which it could reverse an earlier ruling regarding

[26] Later this Oath of Loyalty was submitted to the powiat-level elder (*starosta*) or to the city mayor.

[27] Category II Volksdeutsche from regions where there had been mass recruitment to the Volksdeutschliste only had to prove the latter.

[28] In addition to ruling in cases where municipal courts had rejected rehabilitation applications, prosecutors for the special criminal courts were, in theory, to review all decisions made by the court of lower instance. They had one month after the receipt of case materials to log a complaint against the ruling.

administrative verification or legal rehabilitation if new evidence came to light.[29] Notably, this decree did not make any provisions for the rehabilitation of category I Volksdeutsche who had been considered 100 percent ethnically German by the occupiers because such individuals were to be expelled from Poland and "returned" to Germany.

In addition to establishing administrative and judicial pathways to reintegration into or expulsion from the Polish nation, the February 1945 decree also regulated the requisition of property belonging to those who were deemed unfit for rehabilitation, as well as category I Volksdeutsche (those with 100 percent German blood). The movable and immovable property of such individuals was forfeited to the state treasury, and provisions were set in place so that this property could not be protected from seizure by legally transferring it to a relative or another individual who was not under arrest. [30] As the administrator of these properties, the state treasury retained the right to entrust them to other public organs, social institutions, or private individuals (article 21). If successfully rehabilitated, individuals were entitled to reclaim their property or had the right to an equivalent settlement if theirs had already been parcelled out, as was often the case.[31]

After a series of delays, in July 1945 this plan was finally put into effect across all *województwos* that had formerly been annexed to the Third Reich. The process of reverse classification began with the "less German" categories III and IV whose members had until

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[29] Dz.U. 1945 nr. 21. poz. 128, Dekret o wyłączeniu ze społeczeństwa polskiego wrogich elementów, February 28, 1945, accessed March 5, 2015.

[30] Provisions were set in place so that this property could not be protected from seizure by legally transferring it to a relative or another individual.

[31] Ibid.

August 31, 1945 to submit their Oaths of Loyalty either to local administrators in districts where Nazis had implemented a policy of mass recruitment or to municipal courts elsewhere. This was a laughably unrealistic window given both the sheer number of applicants as well the disorganization and understaffing that plagued local administrative and judicial structures in the immediate postwar period. Even extending the deadline by one year did not alleviate the flood of paperwork. Moreover, many eligible individuals ended up missing the deadline completely because they had either recently returned home after being displaced by the upheavals of war and occupation or because they could not pay the application fees.

Notably, while applicants eligible for administrative verification were presumed to be Polish and to have upheld Polish national distictiveness, those who were required to pursue judicial rehabilitation were presumed to be German. As a result, the burden of proof fell on the applicant: not only did (s)he have to convince the judge and jury that the decision to sign the Volksdeutschliste had been coerced, but also that (s)he had preseved Polish national distinctiveness during the occupation. Having to prove that one was *not* German via the judicial route turned out to be much more time-consuming than simply affirming one's Polishness via the administrative route; thus rehabilitations inched along even more slowly than their administrative counterparts.

These delays left applicants for rehabilitation in an odd limbo; while they waited for their cases to be heard, were they considered citizens of Poland with all the accompanying rights and privileges of Polish citizens? Or had the act of signing the Volksdeutschliste negated their prewar citizenship, leaving them stateless until their new citizenship status could be adjudicated? Although legal experts at the Deparment of Justice had affirmed the continuity of interwar Polish citizenship on the grounds that the Nazi invasion of Poland had been illegal under international

law, and ipso facto any changes made to national law were invalid,[32] in practice the authorities on the ground tended to treat individuals who had declared membership in the German nation as non-citizens. This meant that those applicants for rehabilitation who had not been detained in work camps were banned from most employment, had no access to public services, and in essence, existed on the fringes of political and social life. Given the lengthy delays—in places like Upper Silesia, it was estimated that it would take over a decade to rehabilitate everyone via the February 1945 Decree[33]—not only was this economically unfeasible, but it also served to alienate potential adherents to the new political order.

Legal experts at the Ministry of Justice were sharply critical of this practice and entertained grave concerns about the February 1945 decree. For one thing, they noted that administrative and legal authorities ultimately had only two courses of action—full rehabilitation or permanent expulsion—despite the fact that "guilt is not always so great as to permanently exclude someone from Polish society, just as it is not always so small as to justify immediate inclusion in society."[34] For another, they found it problematic that prosecutors had a ten-year period in which to challenge the court's decision to rehabilitate an applicant, a situation that reduced the latter to a state of "temporary slavery." Finally, given the fact that the decree

[32] Wyniki dyskusji sekcji prawnej Instytutu Zachodniego w Poznaniu, May 6, 1945,zespół 285, Syg 5556, Rehabilitacje. Wyłączenie ze społeczeństwa polskiego wrogich elementów, AAN.

[33] Pismo od Ministerstwa Pracy i Opieki Społecznej do ob Premiera Edwarda Osobki-Morawskiego, September 13, 1945, zespół 285, syg 5555, Rehabilitacje. Okolniki, AAN.

[34] Wyniki dyskusji sekcji prawnej Instytutu Zachodniego ,zespół 285, Syg 5556, AAN.

regulating the treatment of Volksdeutsche "will be read and discussed overseas ... this will not be good propaganda for Poland."[35]

In response to some of these criticisms as well as in recognition of the fact that this decree made no provisions for the punishment or rehabilitation of Volksdeutsche and Stammdeutsche in the former General Government, a new decree was issued in June 1946 to replace the February 1945 *Excluding Enemy Elements from Polish Society* and the November 1944 *Cautionary Measures Regarding Traitors to the Nation.* Now, regardless of geographic location or Volksdeutschliste category, any "Polish citizen who declared membership in the German nation or in any national group privileged by the occupiers between September 1, 1939 and May 9, 1945" would be formally charged and tried in the special criminal court system. If found guilty, an individual faced up to ten years in prison. This excluded those who had previously been rehabilitated by municipal courts, as well individuals who had signed the Volksliste under the following circumstances:1) on the orders of the Polish resistance; 2) to avoid "harsh persecution" (*ciężkie prześladowanie*); and 3) to preserve their national identity. Similarly, individuals who had 1) participated in military action to free Poland or had voluntarily joined the Armed Forces or a resistance organization that fought against the Germans; and 2) were members of the German nation prior September 1, 1939[36] were exempt from punishment.[37] In the latter case, a separate decree *Concerning the Exclusion from Society of Polish People of German Nationality* published in September 1946 foresaw that all such individuals would be

[35] Ibid.

[36] This refers to those whose nationality was listed as "German" in their Polish passports.

[37] Dz.U. 1946. nr 41. poz 237, Dekret o odpowiedzialności karnej za odstępstwo od narodowości w czasie wojny 1939-1945 r., June 28, 1946, accessed March 5, 2015.

automatically stripped of their prewar citizenship and subsequently "repatriated" to Germany.[38] Notably, the June 1946 decree was somewhat less draconian than its predecessors since it now recognized unpremeditated action as well as "absolute necessity" as cause for leniency in sentencing.

Expectations for the Practice of Punishment or Rehabilitation

In a sample of 278 cases from the prosecutors' offices for the Lublin, Łódź, and Warsaw special criminal courts, 104 investigations pertained to individuals or families who had allegedly signed the Volksdeutschliste during the occupation (37 percent of the sample). While the Łódź office handeled the majority of the Volksdeutsche cases (43), the Lublin office did not lag far behind (36), and finally the Warsaw sample contains twenty-five cases. Variation in occupation-era policies of recruitment and registration as well as the deployment of different strategies to cope with the "Volksdeutsch problem" in the immediate postwar era led one to anticipate significant differences in the practices of punishment and rehabilitation implemented by these three prosecutors' offices.

For one thing, because no legal mechanism to punish or rehabilitate individual Volksdeutsche and *Deutschstämmige* existed for the former General Government until June 1946, one would expect the Lublin prosecutor's office, whose entire jurisdiction fell within this former Reich-protectorate, to have only issued legal orders of detainment per the November 1944 Decree until this date. Moreover, the belief that recruitment to the Volksdeutscheliste had been voluntary in the General Goverment would have fueled a particularly vengeful stance

[38] Dz.U. 1946. Nr. 55 poz. 310, Dekret o wyłączeniu ze społeczeństwa polskiego osób narodowości niemieckiej, September 13, 1946.

toward suspects. Because legal authorities would have simply assumed from the outset of an investigation that "betrayal" of the Polish people had been motivated by an absence of feelings of national solidarity, one could expect guilty verdicts to dominate post-June 1946 outcomes, even if suspects had demonstrated Polish national distinctiveness during the occupation.

In contrast to the Lublin District, a legal infrastructure to regulate the punishment or rehabilitation of Volksdeutsche had existed in Łódź and its environs from the outset of the territory's liberation. As part of the Annexed Territories in which the Nazi occupiers had *not* employed mass recruitment, cases initially investigated by the Łódź prosecutor's office for the special criminal court would have involved second, third, and fourth category Volksdeutsche whose applications for rehabilitation had been rejected by municipal courts. In reviewing the rulings of the lower courts, prosecutors at the Łódź office would have needed to carefully assess and categorize meaningful markers of Polish national distinctiveness. However, such markers could easily have been conflated with an individual's Volksdeutschliste category, resulting in the percentage of Polish blood flowing in one's veins mattering more than socio-linguistic markers of "Polishness" or individual self-identification. As a result, prosecutors and judges would have upheld rejections for rehabilitation from category II Volksdeutsche more frequently than for categories three and four, regardless of wartime behavior.

Because the February 1945 Decree did not stipulate how rejected applicants were to be punished aside from indefinite detainment in Polish work camps, more nuanced practices of sentencing would only have been possible after the passage of the June 1946 decree. Its promulgation would have required prosecutors at the Łódź office to revisit already-adjudicated cases to determine the length of imprisonment for the unrehabilitated. However, the ongoing influx of new cases into the office would likely have taken priority, leaving previously detained

Volksdeutsche in a state of legal limbo. Moreover, although a Volksdeutschliste category no longer functioned to distinguish the pathway to rehabilitation or punishment, prosecutors and judges would nevertheless have continued to be influenced by it, a fact that would have been reflected in the verdicts and sentences administered by the courts, with category II Volksdeutsche being found guilty more frequently and punished more harshly than individuals registered in the third and fourth categories.

Finally, the sample of cases from the Warsaw prosecutor's office should reflect the fact that this appellate distict had been bisected by the occupation authorities, with part of its territory having fallen in the Annexed Territories and part in the General Government. Because this prosecutor's office was faced with having to apply two different decrees until June 1946, one might expect to see a generalization of the November 1944 decree across all cases since this would have been less complex and time-consuming than the February 1945 decree. However, after June 1946, this practice would have been abandoned.

Lublin

Even though scholarship often assumes that the postwar "Volksdeutsche problem" did not greatly affect the former General Government, this sample of cases from the Lublin prosecutor's office indicates otherwise. Investigations pertaining to suspected Volks- and Stammdeutsche make up approximately 38 percent of the total sample for Lublin, or 36 out of 96 total cases. This included six women, eighteen men, and twelve families. While false denouncements (three), instances of mistaken identity (three), and deaths of detainees (four) somewhat reduced this caseload, prosecutors and judges were nevertheless left to determine the guilt or innocence of twenty-six parties whose names appeared on the registers left behind in the

wake of the German retreat. Although most of these suspected Volksdeutsche had been arrested prior to the existence of any legal machinery to adjudicate their punishment or rehabilitation, prosecutors nevertheless proceeded to investigate and build cases against them.

Despite the widespread perception among both elites and the population at large that applicants in the General Government had willingly sought out membership in the German nation, the majority of arrestees claimed that they had been forcibly recruited. Even though there was a clear incentive for them to minimize their agency in the application process, several consistent pathways to recruitment emerge from depositions and witness testimony preserved in these files. Five individuals claimed that they had fallen under the Nazi optic thanks to a German-sounding last name, Protestant religious affiliation, or because of the accidental discovery of such a marker, as in the case of the siblings Bronisław and Karolina Cejner. After Karolina had been arrested during a random street raid in spring 1944, her identification papers were checked. Because her religious affiliation was listed as "Protestant," the authorities released her but began sending summons that she appear before the Verification Commission—the entity that interviewed and approved applicants for membership in the German nation.[39]

Another common pathway to recruitment occurred through networks of families, friends, and acquaintances. When Feliks Staszak's cousin sought to earn a restaurant concession from the occupation authorities, he greased the wheels by explaining that they had a German great-grandfather; as a result, Staszak was summoned to stand before the Verification Commission.[40]

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[39] Protokół z przesłuchania Karoliny Cejner, WUB w Lublinie, December 20, 1944, LU 332/969, Zener/Cejner Bronisław i Karolina, IPN Lublin.

[40] Podanie do Prokuratury Sądu Specjalnego w Lublinie od adwokata Stefana Pirowskiego, March 4, 1945, LU 332/729, Staszak Feliks, IPN Lublin.

Similarly, after the village-mayor (*wójt*) in Zofia Lipa's village reported all inhabitants with German-sounding last names to the authorities,[41] the Lipa family was visited by the Gestapo and informed that if they did not register as *deutschstämmige* they would be sent to Majdanek.[42] Finally, Stefan Jaeger's acquaintance, who had self-identified as German before the war and hence felt that he did not "have to feel embarrassed about changing his nationality," pressured Jaeger to sign since he had a German last name. According to Jaeger, by the end of 1942, the cajoling had taken on a darker tone, as his acquaintance told him: "The Germans are already finishing up with the Jews, now they will begin on the Poles."[43] Jaeger continued to refuse until two officials came to his house with the application and told him that if he did not submit the paperwork within seven days he would go to prison, at which point he relented.

Suspects also reported instances in which they had attempted to aid a family member in exchange for submitting an application for the Volksdeutschliste. In two cases in this sample, procuring a family member's release from a concentration or work camp came at the price of registering as members of the German nation. Józefa Krukowska claimed that she had submitted the necessary paperwork on behalf of her husband so as to obtain his release from a concentration camp.[44] Similarly, the siblings Ewa and Jan-Zdzisław Marzec—only seventeen and fifteen years old—obtained their mother's release from Majdanek in exchange for registering

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[41] It is not known whether or not this was of his own volition.

[42] Podanie do Prokuratory Sądu Specjlanego karnego w Lublinie od Wandy Lipy, July 19, 1945, LU 10/116, Lipa Zofia, IPN Lublin.

[43] Wyrok w Imieniu Rzeczpospolitej Polskiej, Sąd Okręgowy Wydział Karny w Lubline, January 30, 1945, LU 319/1202, Jaeger Stefan, IPN Lublin.

[44] Protokół przesłuchania podejrzanego. PUBP w Zamościu, March 22, 1946, LU 332/875, Krukowska Józefa, IPN Lublin.

the entire family.[45] Although these cases represent an extreme, efforts to protect and preserve the family unit in less dire circumstances also featured in detainees' accounts. Stanisława Szyndler explained that her husband had registered himself and their two sons—but not her—in order to avoid deportation to the Reich for forced labor,[46] while Maria Rokicka applied in order to procure medical treatment for her son.[47]

Finally, recruitment to the Volksdeutschliste also occurred through the workplace. Józef Broda's German boss insisted that all his employees who had been expelled from the Annexed Territories in 1939 register themselves and their families as deutschstämmige. Failure to do so would result in imprisonment at Majdanek.[48] Similarly, as a Pole working in the Krasnystaw treasurer's office, Wacław Berus was pressured by his superiors to change his ethnic status.[49]

Regardless of the method by which an individual was recruited, it was often the case that the nuclear family was compelled to register as well. Decisions about whether or not the family should or should not relent and apply for membership in the German nation could have devastating effects on the solidarity of the family unit and the quality of domestic life. When Wiesław Dowbór's sister informed the family that she had "gone over to the Volksdeutsche" and

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[45] Protokół przesłuchania podejrzanego, Obóz pracy w Krzesimowie, February 1, 1945, LU 10/32, Ewa Marzec, IPN Lublin.

[46] Protokół przesłuchania podejrzanego, February 1, 1945, LU 332/1139, Szyndler Stanisława, IPN Lublin.

[47] Protokół przesłuchania podejrzanego, Obóz pracy w Krzesimowie, January 2, 1945, LU 10/137, Rokicka Maria, IPN Lublin.

[48] Prośba Anny Brody do Obywatela Prokuratora Sądu Okręgowego w Lublinie, March 3, 1947, LU 332/396 t. 1, Broda Józef i inni, IPN Lublin.

[49] Protokół przesłuchania podejrzanego, December 27, 1944, LU 319/707, Berus Zofia i Wacław, IPN Lublin.

suggested that her parents and siblings do the same because the "Germans might kill off all the Poles," this revelation caused a huge uproar in the family.[50] Before her father threw her out of the family apartment, Wiesław told his sister: "Let the Germans kill us all off, I intend to remain Polish."[51] For his part, Stefan Jaeger had succumbed to peer pressure and submitted the application paperwork in the weeks leading up to his wedding to a "passionate Polish patriot." When Jaeger finally worked up the courage to disclose this to his new wife, she demanded that he retract his application, so together they went to Lublin's SS-und Polizeiführer and requested the destruction of the application. Finally, Wacław Berus feared the potential repercussions at work if he refused to apply for the Volksdeutschliste. Yet despite her husband's concerns, his wife Zofia was opposed to applying. According to one witness, this difference of opinions "not only led to fights that … turned their marital life into hell … there were bitter confrontations between the two because Zofia accused him of cowardice."[52] Ultimately, Berus stood before the commission in 1943, and even though his wife was not present, he submitted paperwork on her behalf.

In the aftermath of the war and occupation, it was the family unit that bore the consequences of signing, regardless of whether or not the decision had been collective or unilateral, had produced consensus or fragmentation; entire families—including minor children—were arrested and sent to work camps. Yet at the same time, family members also

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[50] She had been recruited through her workplace, the *Arbeitsamt*.

[51] Protokół przesłuchania podejrzanego, Obóz pracy w Krzesimowie, December 22, 1944, LU 332/138, Dowbór Wiesław Eustachy, IPN Lublin.

[52] Podanie do sądu specjalnego karnego w Lubline od Jerzego Brzowowskiego, June 30, 1945, LU 319/707, IPN Lublin.

provided a powerful lobby for pardon and release. For example, even though Zofia and Wacław Berus's marriage had been sorely strained by his decision to sign the Volksdeutschliste, Zofia put the past aside and relentlessly petitioned the prosecutor's office for her husband's release.[53] Now, instead of berating her husband for his cowardice, she explained that he had been a "good Pole" who had voluntarily joined the Second Polish Army to "document his Polishness and dedicate his strength and knowledge in service to his country…."[54] Her persistence was instrumental in assuring her husband's pardon by Bolesław Beirut, the president of the provisional Polish government, in October 1946.

Ultimately, since all but two suspects had been arrested well before the passage of the June 28, 1946 Volksdeutsche decree, legal personnel had practically no guidelines about how to treat these "traitors to the Polish nation." As a result, the six cases that were formally resolved prior to June 1946 reflect a variety of legal approaches: three were dismissed outright, two individuals and families received special pardons from Bolesław Beirut (president of the KRN), and finally, two indictments were issued charging the individuals/families in question under article 100 of the 1932 Civilian Criminal Codex.

The fact that two detainees whose names appeared on the register were released outright is surprising given the general outrage towards those suspected of having signed the Volksdeutschliste. Nevertheless, a prosecutor decided that Janina Krukowska had acted out of "absolute necessity" when she had registered herself and her husband in 1943 in exchange for his

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[53] Although Zofia herself had been arrested along with her husband in September 1944, she was later released (August 1945) when the authorities could not find any evidence that her name appeared on the list of registered Volksdeutsche.

[54] Do Pana Prokuratora sądu specjalnego karnego od Zofii Berus, October 9, 1945, LU 319/707, IPN Lublin.

release from a concentration camp since "she understood that she would acquiesce to his death" if she allowed him to remain imprisoned.[55] Similarly, even though Stanisława Szyndler had enjoyed better food rations and other perks of membership in the German nation, the Lublin special criminal court ruled to dismiss the case against her in October 1945. Notably, just the previous week the court had received a petition from Stanisława Szyndler's only surviving son, now a war invalid. He wrote:

> My mother was a good Pole, the evidence of this being that during the occupation she helped Polish families as well as injured partisans. She was registered on the Volksdeutschliste on account of my father…. My brother and I were partisans with the 'Peasants' Battalions'[56] and after the arrival of the Red Army we joined up with the First Polish Army. My brother died on the front and I was seriously injured [losing the use of both his arms]…. Our mother raised her sons as true Poles and good sons of the Fatherland. Hence, now that one has sacrificed his life for the Fatherland and the other his health, does my mother really deserve to suffer in a Polish camp?[57]

This impassioned plea on his mother's behalf undoubtedly played a large role in the court's decision to dismiss the case on the grounds that aside from the presence of her name on the Volksdeutsch register, no concrete documentation existed that could confirm Szyndler's membership in the German nation. Furthermore, it ruled that there was no evidence that she had betrayed Polish national distinctiveness, but on the contrary had raised her sons to be good Poles.[58]

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[55] Wniosek o umorzenie dochodzenia, June 26, 1946, LU 332/875, IPN Lublin.

[56] *Bataliony Chłopskie* was the second largest underground resistance group after the Home Army (*Armia Krajowa*).

[57] Do Obywatela Prokuratora sądu specjalnego karnego w Lublinie, October 17, 1945, LU 332/1139, IPN Lublin.

[58] Wyciąg z protokołu wspólnego posiedzenia niejawnego sądu specjalnego karnego w Lublinie, October 23, 1945, LU 332/1139, IPN Lublin.

Aside from these dismissals, other cases were pardoned by the president of the provisional government, Bolesław Beirut. As already mentioned above, the relentless lobbying of Zofia Berus on her husband's behalf ultimately paid off in October 1946 when he was officially pardoned by Beirut.[59] Whereas Wacław Berus's greatest advocates were his wife and other family members, twenty-three witnesses testified on behalf of the siblings Bronisław and Karolina Cejner, confirming that they had never used German ration cards and had aided Polish prisoners by preparing food packets for them, oftentimes standing for hours in line to hand them off at the prison. Along with other Polish men, Bronisław had been forced to dig anti-tank trenches outside Lublin.[60] When the Cejner family was pardoned by Beirut, they regained their full rights as Polish citizens and their property was restored to them.

Finally, prior to the issuance of the June 1946 decree, two cases against suspected Volksdeutsche were brought to trial—an outcome produced by an error on the part of the investigating authorities (i.e., the People's Police and the Security Services). They had mistakenly sent the case files to the *regular* prosecutor's office for the Lublin district court instead of to the prosecutor's office for the special criminal court. As a result, the arrestees were indicted under article 100 of the 1932 Civilian Criminal Codex, the prewar treason law.

One of the individuals thus treated was Stefan Jaeger, who had withdrawn his application at the behest of his wife but whose name nevertheless remained on the register of local Volksdeutsche. Jaeger was indicted in fall 1944 and formally charged with "having aided the

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[59] Although he was released from a work camp at this time, he still forfeited his property to the state and lost his rights as a citizen for a period of three years.

[60] Opinia w sprawie uławskawienia Bronisława Cejnera, Specjalny Sąd Karny w Lublinie na posiedzeniu niejawnym, September 3, 1946, LU 332/969, IPN Lublin.

enemy by declaring his German ancestry to the authorities whereby he was formally recognized as an individual of German descent."[61] The case went to trial at the Lublin district court on January 30, 1945, and on the basis of testimony from the defendant and five witnesses—three wartime business associates, his wife, and a family friend—the court acquitted Jaeger. In addition to noting that Jaeger had originally been denounced as a Volksdeutscher by a business partner interested in seizing Jaeger's half of the enterprise, the court looked favorably on witness testimony that demonstrated Jaeger's membership in the "Polish nation" during the occupation.[62] The fact that Jaeger had been subject to the same sort of harassment that Poles frequently experienced at the hands of the occupiers—including several evictions from his current place of residence and random document checks—spoke to this fellowship with other Poles.

Ultimately, on the basis of this evidence as well as the fact that Jaeger had retracted his application before the tides of war had turned against the Germans,[63] the court ruled to acquit Jaeger because his actions did not meet the criteria of acting to the "enemy's benefit" as established by article 100. Specifically, the court reasoned that Jaeger could have only "acted to the benefit of the enemy" if he had been eligible for the Wehrmacht draft, something that only would have been possible if he had completed the registration process and obtained official identity papers as a member of the German nation.[64]

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[61] Akt oskarżenia przeciwko Stefanowi Jaeger, undated, LU 319/1202, IPN Lublin.

[62] Wyrok, Sąd Okręgowy w Lubline, LU 319/1202, IPN Lublin.

[63] In other words, Jaeger simply did not retract his application because he foresaw the defeat of the Nazis and the end of the occupation, but out of loyalty to the Polish nation.

[64] Ibid.

Although acquitted by the Lublin district court in January 1945, Jaeger's ordeal was not yet over. Upon his release from prison, he was immediately rearrested at the behest of the prosecutor's office for the Lublin special criminal court. While Jaeger languished in a work camp for suspected Volksdeutsche, his mother petitioned Bolesław Beirut for his release. In this letter, she explained that her son was a "diligent and calm citizen" but of "weak health and weak nerves … that [did] not predispose him to becoming a luminary of the nation" (*luminarz narodu*).[65] As a result of these weaknesses in personal character, her son was unable to hold forth against environmental pressures and agreed to submit an application. Notably, this effort to ground Jaeger's actions in weakness of character marks a distinct shift from previous trial testimony that emphasized his solidarity with fellow Poles in the face of Nazi persecution. In any case, Jaeger was pardoned by Bolesław Beirut on November 21, 1945.[66]

The confusion over jurisdictional authority that complicated Stefan Jaeger's case also marked proceedings against Leon Grzesiak and his wife Emilia. In this instance, the MO directed the initial police report to both the prosecutor's office for the special criminal court as well as to the regular prosecutor's office. Because this happened simultaneously, the Grzesiak case provides a unique opportunity to compare these parallel legal pathways. Notably, because the prosecutor's office for the Lublin special criminal court had a significant case backlog, it was only in July 1945—eleven months after the Grzesiaks had been detained—that the prosecutor

[65] Do Pana Prezydenta Krajowej Rady Narodowej w Warszawie od Marji Jaeger, August 1, 1945, LU 319/1202, IPN Lublin.

[66] Sentencja Wyroku, Sąd Dyscyplinarny Okręgowy w Lublinie, March 19, 1948, zespół 927, Sąd Okręgowy w Lublinie, syg 1, akta prezydialne.

retroactively signed their arrest warrant.[67] Generally, once a prosecutor had signed off on arrest warrants for "traitors to the nation," a judge and two jurors were required to uphold or reject the decision during a closed hearing of the special criminal court. In the Grzesiak case, the court ruled to uphold their arrest warrant in January 1946.[68] Another six months would pass before the prosecutor launched the official investigation (June 1946).[69] At this time, he discovered that the regular court system had charged, tried, and sentenced the Grzesiaks to twelve years in prison for having violated article 100 of the civilian criminal codex.[70] In fact, this verdict had been handed down in February 1945, five months before the prosecutor for the Lublin special criminal court signed a warrant for the Grzesiaks' arrest.

Although the Grzesiaks' file does not contain copies of the indictment or trial transcripts generated in the regular court system, it is nevertheless possible to reconstruct the general contours of the case on the basis of correspondence between the prosecutor's office for the special criminal court and the Department of Prosecutorial Oversight at the Ministry of Justice. From these, it emerges that not only had the Grzesiaks voluntarily applied for membership in the German nation, but they had also completed the entire verification process and received special

[67] Zarządzenia Prokuratora Sądu Specjalny w Lubline, July 20 1945, LU 332/738, IPN Lublin.

[68] Postanowienie po rozpoznaniu na posiedzeniu niejawnym sprawy Grzesiaka w przedmiocie przytrzymania i skierowania do miejsca odosobnienia, January 17, 1946, LU 332/738, IPN Lublin.

[69] Do Ministerstwa Sprawiedliwości w Warszawie, Nadzor Prokuratorski, od Prokuratora Filinskiego, June 1, 1946, LU 332/738, IPN Lublin.

[70] Rzeczpospolita Polska Ministerstwo Sprawiedliwości Nadzor Prokuratorski do Obywatela Prokuratora Specjalnego Sadu Karnego w Lublinie, June 24, 1946, LU 332/738, IPN Lublin.

identification papers in February 1944. Because Leon Grzesiak had been eligible for military service in the German armed forces and thus was capable of acting to the "enemy's benefit," he was pronounced guilty.[71] Even though the same could not be said for Grzesiak's wife, she too was pronounced guilty and received an identical sentence.

Letters of petition from the Grzesiaks' fifteen-year-old daughter Krystyna as well as from fellow villagers provide deeper insight into what motivated the decision to sign the Volksdeutschliste. Apparently Leon Grzesiak's wartime employment at a nearby factory had not paid enough to support his wife and four children, and this left the family vulnerable to the promise of improved rations and greater earning power associated with membership in the German nation.[72] Statements made by the Grzesiaks' neighbors did not condemn them for this, but instead showed sympathy and understanding for the difficult decision that the family had faced. The fact that the family had registered did not change the fact that they were "irreproachable citizens … who hated the Germans."[73]

Perhaps it was the impassioned pleas of the Grzesiaks' daughter and neighbors, or perhaps it was the family's class origins that moved Bolesław Beirut to pardon the Grzesiaks in May 1946. Moreover, when the prosecutor for the special criminal court began his official investigation into the Grzesiaks the following month, the Office of Prosecutorial Oversight at the

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[71] Do Ministerstwa Sprawiedliwości w Warszawie, LU 332/738, IPN Lublin.

[72] Podanie od Krystyny Grzesiak do Wojewódzkiej Rady Narodowiej w Lublinie, September 8, 1944, LU 332/738, IPN Lublin.

[73] Podanie od mieszkanców Koła Zadębia, gminy Wólka, powiatu Lubelskiego do Wojewódzkiej Rady Narodowiej w Lublinie, September 8, 1944, LU 332/738, IPN Lublin.

Ministry of Justice informed him that no further action should be taken in the case. It would be another year before the case was formally dismissed.

While the passage of the June 1946 decree *Concerning Criminal Responsibility for National Defection during World War II* ultimately had no effect on the Grzesiaks' case because the Ministry of Justice had decided to uphold the sanctity of the regular court proceedings, for the remaining arrestees in this sample, this long-overdue measure to establish and regulate a pathway to rehabilitation through punishment promised an eventual end to indefinite detainment in the miserable conditions of the work camp. Yet, despite the promise of resolution offered by this decree, only four individuals (three cases) in the Lublin sample were indicted under article 1 § 1 of the June Decree, while the remaining cases were eventually dismissed.

For Zofia Lipa, the siblings Ewa and Jan-Zdzisław Marzec, and Maria Rokicka, the passage of the June 1946 decree did not bring with it an immediate resolution to their legal status as non-citizens. Instead, for all four, the wheels of justice continued to turn slowly, and it was only in the early months of 1947 that they were formally indicted. By May all had been tried and pronounced guilty, receiving sentences between six months and two-and-half years in prison along with the cost of court fees and the temporary loss of their rights as citizens. Because their sentences counted time already served, this meant that they were immediately released after trial since the defendants had been detained back in the fall of 1944.[74] However, in this case, since Lipa and Rokicka had escaped from detention in 1946 and had been tried in absentia, the order of release applied only to the Marzec siblings.

[74] Sadly, the clock for "time served" began running once the special criminal court had retroactively approved the arrest warrant, which as we have seen, often did not occur until months after the initial arrest.

Interestingly, the reasons for seeking Volksdeutsche status provided by these four did not differ significantly from those whose cases were pardoned or dismissed outright. Just as Janina Krukowska had signed the Volksliste to secure her husband's release from a work camp, so too did the Marzec siblings sign to obtain their mother's release from Majdanek.[75] The fact that they had only been seventeen and fifteen at the time was not treated as a condition for leniency. For both Lipa and Rokicka, the decision had also been motivated by a sense of familial solidarity. Yet once again, even though the former had just been seventeen at the start of the occupation and only twenty-one when faced with the prospect of signing the Volksliste, youth and inexperience were not factors that helped her case, but rather counted against her.

In sum, the Lublin prosecutor's office for the special criminal court did not simply busy itself with signing orders of detainment prior to the issuance of the June 1946 decree, but instead actively engaged in investigation and case-building. In doing so, the office judged what cases were worthy of dismissal or outright pardon, actions that had not been foreseen by the November 1944 decree. Such decisions were at least partially influenced by prewar legal training and practice, as demonstrated by a decision to dismiss based upon "absolute necessity." They were also motivated by evaluations of what counted as "Polish national distinctiveness." Individuals and families who had suffered the same material deprivations, humiliations, and insecurities as Poles were to be considered compatriots, united in a community of the oppressed and terrorized, regardless of whether or not their names appeared on the Volksdeutsche register. Acts of assistance, such as using one's deutschstämmig status to protect and aid Poles, also featured

[75] During their incarceration, not only had Ewa been mistakenly repatriated as a Volksdeutsche to the Russian Zone in Germany, but the beloved mother whom they had wanted to save died in a typhus epidemic at the work camp where she was interned.

among cases that were eventually dismissed by the prosecutor's office. Interestingly, what did not figure into this calculation of Polish national distinctiveness were factors such as one's category of membership or the length of time one had been a member of the German nation.

However, there was an unevenness to this weighing of Polish national distinctiveness as demonstrated by parallels between cases that were dismissed outright by the prosecutor's office and those in which indictments were eventually written. Such variation in outcome can no doubt be attributed to the interpretations of different prosecutors as well as to the ability of family members to prevent a given case from getting buried under the avalanche of similar cases.

Ironically, the two ethnic German Volksdeutsche in the Lublin sample fared better than many of the Polish detainees. Although both individuals in question had languished in work camps until after the passage of the June 1946 decree, their cases were ultimately dismissed, but not on the expected grounds that this legislation did not apply to them as prewar Volksdeutsche. Instead, the prosecutor's office took heed of the overwhelmingly favorable testimony of their respective community members. Among other things, Karol Nelson's neighbors noted: "Because he was German he had access to the German administration, something he used to the advantage of the locals."[76] Similarly, residents of Marianne Kozbar's village noted that she had been automatically registered to the Volksdeutschliste because of her prewar status, yet had nevertheless refused to use her special German ration card. For this act of insubordination, the occupation authorities had evicted her from her farm.[77] Villagers further testified that Kozbar had

[76] Protokół przesłuchania świadka przez sąd grodzki we Włodawie, April 7, 1946, LU 319/1072, Nelson Karl, IPN Lublin.

[77] Wniosek o umorzenia dochodzenia, February 18, 1947, LU 319/544, Kozbar Marianne, IPN Lublin.

been an active supporter of the underground. For all accounts and purposes, these ethnic German Volksdeutsche had shown Polish national distinctiveness, and for this reason, their cases were dismissed.

Łódź

Even though the February 1945 decree *Excluding Enemy Elements from Polish Society* established the legal framework by which the Łódź prosecutor's office for the special criminal court was to review rehabilitation cases rejected by municipal courts, there is no evidence in this sample that it ever performed such a function. Instead, the office took an active role in prosecuting second, third, and fourth category Volksdeutsche under the August Decree, something that was possible due to the fact that Volksdeutsche in Annexed Territories had been required to join organizations such as the SS, the SA, the *Hitlerjugend*, etc., with more "prestigious" organizations such as the SS open only to those in the second category. In this sense, organizational membership functioned as a proxy for membership in the German nation and allowed the prosecutor's office to take a more punitive stance than would have been possible using only the February 1945 decree.

In total, twenty-four male Volksdeutsche were formally charged under article 1 §2 of the August Decree[78] for membership in the SA (15), the SS (5), the *Hitlerjugend* (2), the *Landwache* (1), and the *Selbstschutz* (1). As a less exclusive organization, former SA members numerically

[78] The August Decree stipulated that those "who played into the hands of the German occupation and acted *in another manner* to the detriment of the Polish nation or to the detriment of civilians or prisoners' of war…." were punishable by up to fifteen years in prison or death. Dz.U z 1945. Nr 7. poz 29, Dekret PKWN o wymiarze kary dla faszystowsko-hitlerowskich zbrodniarzy winnych zabójstw i znęcania się nad ludnością cywilną i jeńcami oraz dla zdrajców Narodu Polskiego, August 31, 1944, accessed March 15, 2015.

dominate the sample. In fact, the prosecutor's office for the Łódź special criminal court indicted five such individuals solely on the basis of membership in this organization despite the fact that no act of individual wrongdoing could be attributed to them. Nevertheless, as stated in these indictments, such individuals had

> …been member[s] of the SA, a criminal organization of the Nazi Party, used along with the Gestapo, SS, and the SD for police work, pacifications, and work in concentration camps, thus acting to the detriment of the Polish State and the civilian population.[79]

All were found guilty and sentenced to three years in prison (counting time already served) and lost their rights as citizens for an additional two years. These convictions were the product of brief trials in which there were few if any witnesses for the prosecution and whose testimony served only to confirm that the suspect had worn the yellow uniform of the SA—a fact that the defendants themselves had not denied. Moreover, even though numerous Polish witnesses vouched for the wartime behavior of these defendants, this seemingly had no influence on the court's standard ruling of three years imprisonment; those who had more neighbors testify on their behalf received the same sentence as those with fewer supporters. Ultimately, the absence of the standard grounds for the sentence and verdict[80] leave the logic behind these rulings ambiguous.

Interestingly, the court did grant exception to this typical sentence in two instances. Konrad Netz testified that he had initially signed the Volksdeutschliste and joined the SA in

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[79] See, for example, Akt oskarżenia przeciwko Wilhelmowi Heidrich, September 6, 1946, GK 209/618, Wilhelm Heidrich, IPN Łódź.

[80] This had not been the case with the Lublin sample. Although often brief, all decisions about dismissal, verdicts, and sentences had grounds explaining the reasoning behind a particular decision.

order to protect his Polish wife from harassment at the hands of occupation authorities. Although he was initially registered as category II, the fact that he "sided with Poles"[81] resulted in his demotion to category III. Perhaps this accounts for the fact that he was sentenced to only one year in prison. Similarly, although Otto Langeman had initially been sentenced to serve three years, his wife petitioned Bolesław Beirut for clemency. In her letter she pointed out that not only had her husband married a Polish woman but that he had permitted his eight children to be baptized in the Catholic Church even though he himself was Protestant. In response to this petition, Langeman's sentence was reduced to two years.[82]

In addition to these five individuals indicted solely for membership in the SA, a further eight men were detained and investigated on the grounds that they had committed additional acts of wrongdoing while members of this organization. These charges ranged from denouncing neighbors, to mistreating Polish day laborers, to displacing Polish families from their farms—acts that were not directly linked to membership in the SA but instead were tied to privileges that they had enjoyed as members of the German nation. Ultimately, five were indicted while the other three suspects died in detainment and their cases were closed.

The additional charge that was most harshly punished by the courts involved incidents when a suspect had taken over the farms of Poles expelled to the General Government. For example, Edward Glesman was indicted on two counts—membership in the SA and for "taking advantage of the conditions created by the occupation to cause the expulsion of Zygmunt Fisz

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[81] Protokół rozprawy głównej, Sąd Okręgowy w Płocku na sesji wyjazdowej w Rypinie, May 24, 1947, GK 277/318, Netz Konrad, IPN.

[82] Prośba do Pana Prezydenta Rzeczpospolitej Polski, April 21, 1947, GK 277/318, IPN.

from his farm in May 1943, and subsequently taking over the property."[83] According to Glesman,

> I admit that I was a member of the SA and that I took over Fisz's farm but at the same time I was born in Poland and I was a Pole…. The Germans themselves assigned Fisz's farm to me…. They expelled Fisz. The head of the Kreisbauernschaft and the village elder ordered Fisz to vacate the premises. I was there too. Fisz took the entire day to pack up, I gave him potatoes and wood. I did not keep his clothes....[84]

Even though the special criminal court convened twice in December 1945, none of the four witnesses for the prosecution responded to the summons, meaning that Glesman was ultimately pronounced guilty on the basis of four depositions. While these depositions had focused on Glesman's reappropriation of a Polish farm, the grounds for the verdict only discussed the fact that he had been a member of the SA.

> The court gives credence to the suspect's claim that he joined the SA in order to avoid being conscripted into the German army for a second time, and that he did so only in 1944. It was not proven during the trial that the suspect, as a member of the SA, turned any civilians over to the occupation authorities or that he was involved in persecuting civilians or in any other way harmed the moral and material interests of Poles…. [T]he suspect must have been aware of the harmfulness of the SA to the Polish people, yet in joining he nevertheless agreed to this and to collaborate with this organization. The motive for the crime was clear: the desire to cause the grounding and dominance of the fascist-Hitlerite regime on Polish soil.[85]

In a departure from the typical three-year sentence for SA members to whom no individual act of wrongdoing could be attributed (as implied by these grounds), the special

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[83] Akt oskarżenia przeciwko Edwardowi Arturowi Glesmanowi, undated, GK 209/379, Glesman Edward, IPN.

[84] Protokół rozprawy głównej, Sąd Specjalny Karny dla Okręgu Apelacyjnego w Warszawie z siedzibą w Łodzi na sesji wyjazdowej w Płocku, December 6-7, 1945, GK 209/379, IPN.

[85] Sentencja Wyroku, December 6-7, GK 209/379, IPN.

criminal court sentenced Glesman to eight years for membership in the SA and four years for the appropriation of Fisz's farm, for a combined sentence of twelve years. Perhaps the harshness of the punishment meted out for the first charge was meant to counterbalance a deliberate downplaying of the second. This supposition is seemingly confirmed by the above excerpt where, oddly enough, it is stated that Glesman had not harmed the material interests of Poles, even though he had taken over the property of Zygmunt Fisz.[86]

Charges associated with the appropriation of Polish property also featured prominently in indictments of former SS members. For example, an alleged victim, Franciszka Ślaska, accused the Volksdeutscher Michał Petrych of the following:

> [He] lived on my property during the German occupation and expelled me and took all of my goods, turning me out under the naked sky with a four-month old child. When I returned and asked for a pillow for my child he grabbed his gun and wanted to shoot me.[87]

Petrych was indicted in March 1946 on three separate charges that the prosecutor collapsed into one count: "[A]s a member of the SS … he acted to the detriment of the Polish civilian population, in particular by participating in the expulsion of Polish families and mistreating his Polish day laborers."[88] Notably, these charges did not specifically mention the names of the

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[86] Interestingly, Glesman petitioned the court in 1949 and requested that his sentence be vacated since the SA had been acquitted at Nuremberg [the only person in this sample to do so]. He never received a reply, and was ultimately released in 1954. Podanie do Sądu Okręgowego w Płocku, September 4, 1949, GK 209/379, IPN.

[87] Podanie do Ubezpieczenia w Leśnierzcu od Franciszki Ślaskiej, undated, GK 209/754, Petrych/Pietrych Michał, IPN.

[88] Akt oskarżenia, March 30, 1946, GK 209/754, IPN.

aggrieved—that is, the expelled Ślaska along with the two laborers who had allegedly been mistreated by Petrych.[89]

Although Ślaska was one of six witnesses called to testify against Petrych in July 1946, she—along with two other individuals—never responded to the summons. The three witnesses who did testify painted a picture not of a cruel SS officer but of a dedicated farmer who worked his prewar farm along with the additional property assigned to him by the occupation administration. Although he would, on occasion, resort to cuffing day laborers, witness testimony described this treatment not in terms of a universal ethnic hatred whereby all Poles were even-handedly mistreated by Petrych, but as the product of specific contexts—namely, when his day laborers were shirking their duties. Hence, witnesses reported that Petrych "got along well enough with Poles" and that he "treated Poles differently, both well and poorly."[90] Ultimately, the court found him guilty on all counts and sentenced him to ten years prison. In doing so, it never sought to clarify if Petrych had participated in expelling Ślaska or whether he simply was ceded the property by the authorities. Aside from Ślaska's inconsistent and probably exaggerated testimony in a deposition and police statement, no other witnesses were able to confirm or deny Petrych's direct participation in the expulsion of Ślaska.

Like Michał Petrych, Henryk Beifuss was indicted in March 1946 under article 1 §2 "as a member of the SS … who had acted to the detriment of the Polish State and the civilian

[89] Notably, Petrych was only charged under article 1 §2. Given the presence of additional allegations beyond SS membership, the prosecutor could have applied article 1 §1.

[90] Protokół rozprawy głównej, July 18, 1946, GK 209/754, IPN.

population by participating in the expulsion of the said population."[91] In the subsequent trial in which the prosecution mustered four witnesses, only one claimed that Beifuss had told him that he had participated in such a resettlement action in a neighboring village. However, since there were no direct eyewitnesses and Beifuss himself denied any participation in expulsions, he was acquitted of this charge.

Beifuss's subsequent trial testimony sheds light on the mechanics of recruitment to the SS—a process that was rarely elaborated on in such detail by the male Volksdeutsche in the Łódź sample. Unsurprisingly, Beifuss explained that he had not wanted to join the SS, but the village Sturmführer had visited him in 1942 and informed him that "everyone belonged to some sort of organization, and you have to as well."[92] It is not clear if Beifuss chose to join this particular organization or if the authorities decided for him. In any case, he explained that once conscripted for active military duty in 1943 he had turned in his SS uniform, and when he was dismissed from military service after only three weeks, he "did not belong to any organization."

Three witnesses for the prosecution testified to having seen Beifuss in his SS uniform, an article of clothing that he did not wear daily but did don when he went shopping since it assured him faster and better service. Interestingly, the witnesses did not seem particularly angered by this behavior. Instead, their testimony laid greater weight to the fact that when Beifuss was in uniform that he greeted Poles and spoke to them in Polish. Ultimately, the court ruled that "[his] relationship with the Polish people during the German occupation was correct … nevertheless he

[91] Akt oskarżenia przeciwko Henrykowi Beifussowi, March 21, 1946, GK 209/718 Beifuss Henryk, IPN.

[92] Protokół rozprawy głównej, Sąd Specjalny Karny dla Okręgu Apelacyjnego w Warszawie z siedziba w Łodzi na sesji wyjazdowej w Płocku, March 21, 1946, GK GK 209/718, IPN.

did belong, even for a short period of time, to a Hitlerite organization,"[93] and thus sentenced Beifuss to three years in prison.

Aside from the SA and the SS, the Volksdeutsche in the Łódź sample were indicted for participating in other paramilitary and police-like organizations such as the *Hilfspolizei* (1), the *Landwache* (2),[94] and the *Selbstschutz* (1) that were open only to members of the German nation. Whereas the individuals indicted for membership in the notorious SA and SS were accused of acts of physical violence associated with beating the day laborers working on their farms or in expelling Poles from their property, the charges leveled at participants in these other organizations appeared much more serious. For example, Willi Herman, a member of the *Hilfspolizei*, had worked as a guard at the notorious Radgoszcz prison in Łódź during the occupation. Oddly enough, the indictment did not allude to the fact that this formation was composed of members of the SA and/or the SS—meaning that before Herman had been in the *Hilfspolizei*, he had been a member in one of these organizations.[95]

For his part, Willi Herman did not deny that he had been a guard at Radgoszcz but sought to downplay this by explaining that he had only guarded the external perimeter of the prison. Only three witnesses for the prosecution could testify that they had seen Herman in uniform and armed, and there was disagreement about what the uniform looked like: two

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[93] Ibid.

[94] The *Landwache* was described in the following manner by Adolf Hartwig, a former member: "The Germans organized the so-called 'Landwache'… to guard the tram in Rzygów and to guard each gendarmerie station. Duty lasted from 6 in the evening until 4 in the morning."Protokół rozprawy głównej, September 3, 1945, GK 209/143, Hartwig Adolf, IPN.

[95] Akt oskarżenia, April 5, 1946, Ld 506/11 Willem Herman, IPN Łódź.

witnesses recalled seeing the death's head symbol—the mark of the SS Death's Head Unit.[96] However, as a category III Volksdeutscher, Herman would not have been eligible to serve in the SS. The court made no effort to explore this contradiction, nor did it try to situate Herman as a member of the SA. Ultimately, the court ruled in a manner similar to the nominal cases against the SA and SS in which no individual acts of wrongdoing could be proven, and sentenced Herman to three years in prison.

In contrast to Herman's relatively light sentence for his involvement with the *Hilfspolizei*, Erwin Deiter—who had briefly been a member of the equally notorious Selbstschutz—did not fare as well. According to the testimony of the Volksdeutscher Alfred Wilhelms, who had already been tried and sentenced to death in a separate trial, Deiter had been responsible for "beating Poles and Jews at the police headquarters in Rude Pabianice where he was secretary."[97] Deiter denied this and explained:

> In mid-September 1939 I worked for the *Selbstschutz* in Rude for about seven days. During this time there were no political arrests. I compiled lists of names to be checked out by the *Selbstschutz*—people who had been arrested on criminal charges … I did not participate in interrogations and beatings. After about a week I was transferred to the position of commune secretary….[98]

At the trial, there were only two witnesses for the prosecution. According to one,

> I worked for the former Polish Police in Rude until 1939. Hence I was very familiar with the local German community. I've known Deiter for a long time as a Nazi and an enemy of Polishness, operating in secret. In September 1939, along with other police officers I was evacuated and when I returned to Rude I saw Deiter with a swastika armband…. After three days I was called to the

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[96] A special division of the SS that served in prisons and concentration camps. Protokół rozprawy głównej, October 14, 1946, Ld 506/11, IPN Łódź.

[97] Akt oskarżenia, July 9, 1945, GK 209/137, Deiter Erwin, IPN.

[98] Protokół rozprawy głównej, August 27, 1945, GK 209/137, IPN.

> headquarters of the *Sicherheitspolizei* … I had to report there three times a day for four months. They expected that I would sign the Volksliste, and probably for this reason, they did not detain me. I found out that Deiter was responsible for summoning me. After four months I escaped to the General Government…. In the meantime Deiter destroyed my home and frequently shot into my windows during his benders with the Gestapo. As I already said, I reported to headquarters three times a day for 4 months in a room adjacent to the room where Poles were interrogated and beaten. Twice I saw how Deiter hit Poles in the head with a club…. Deiter was still at the headquarters in November 1940 around the time I escaped to the General Government.[99]

When the second witness recounted how he had been brutally beaten by Deiter, he explained that he was certain of the identity of his attacker because the accused "is a cripple and always walks with a crutch."[100] Even though this physical handicap sheds some doubt on Deiter's physical ability to have committed the acts described above, Deiter was nevertheless sentenced to death because the court "found that the torment and beating of Poles and Jews by the accused was completely proven. The accused belonged to the German police and it does not matter for what length of time, the fact that he belonged is enough."[101]

After receiving this sentence, Deiter wrote a letter of petition to Beirut, once again offering his version of events:

> I am only guilty of belonging to the *Selbstschutz* for seven days at the very beginning of the war…. After seven days they had to replace me because I could not cope with the work due to my physical weakness, but above all on account of my character that did not permit me to commit the excesses that were required of me.[102]

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[99] Ibid.

[100] Ibid.

[101] Sentencja Wyroku, August 27, 1945, GK 209/137, IPN.

[102] Prośba o ułaskawienie, August 27, 1945, GK 209/137, IPN.

However, these words fell on deaf ears—Deiter's request was denied and he was sentenced to death.

Although the conflation of membership in a "criminal organization" with Volksdeutsch status naturally skewed this sample towards men, it nevertheless includes investigations into seven women who had allegedly signed the Volksdeutschliste. While three cases were suspended or dismissed outright because the suspect had never been detained or because she had been stripped of her Polish citizenship and repatriated to Germany, four women were ultimately indicted under the August Decree. The charges leveled against them were not ostensibly about their status as Volksdeutsche, but instead revolved around alleged denunciations or property disputes. Nevertheless, these cases were profoundly inflected by their status as members of the German nation.

This dynamic is aptly illustrated by the case of Melania Makowska, who was indicted in September 1945 for "acting to the detriment of Poles by insulting and threatening them, for participating in the beating of Antonina Zielinska, and for appropriating Ceszław Klupinski's upholstery workshop."[103] Witness statements did not specifically address these charges but instead revolved around speculation as to whether or not the defendant had in fact signed the Volksdeutschliste. Although the general consensus of the sixteen witnesses who testified at the trial was that Makowska had been a loyal Pole, they did complain about the fact that she had used connections with her Volksdeutscher ex-husband to ensure that the title of her apartment was not voided by the occupation authorities. As for the claims that she had reappropriated an upholstery workshop, Makowska maintained, once again, that her ex-husband had taken

[103] Akt oskarżenia, September 7, 1945, GK 209/249 Melania Makowska vel Mohl, IPN.

possession of the said workshop at the request of its former owner to insure that the property was not seized outright by the occupation authorities.[104]

Ultimately, witness testimony on Makowska's behalf was instrumental in disproving the accusations leveled against her in the indictment. Nevertheless, the court sentenced her to three years on the grounds that she had signed the Volksdeutschliste, an act motivated by "her desire to aid Hitlerite-fascist propaganda and to weaken the national spirit of the Polish people…."[105] However, because Makowska had never been formally charged in the indictment for a crime in which she was ultimately found guilty, her lawyer requested a formal review of the proceedings. Ultimately, the Supreme Court ruled to uphold the verdict on grounds that were not supported in any way by the materials generated by the Łódź special criminal court.

> Makowska was not sentenced for national defection but for a crime defined by article 1 §2 of the August Decree…. Although during the trial there was discussion about whether or not she had signed the Volksdeutschliste and in the grounds for the verdict this was mentioned, this nevertheless had no influence on the pronouncement of guilt. In fact, the court found Makowska guilty of favoring Hitlerite propaganda, and not formally signing the Volksliste.[106]

Although Olga Loos's status as a category II Volksdeutsche did not feature prominently in the case against her, it formed the backdrop to the actions that ultimately earned her the death penalty. Loos was indicted in May 1946 for having denounced her co-worker Julian Lawski to

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[104] Protokół rozprawy głównej, November 9, 1945, GK 209/249, IPN.

[105] Ibid.

[106] Wyciąg z dziennika i protokołu posiedzenia niejawnego Izby Karnej Sądu Najwyższego w Warszawie z siedziba w Łodzi, May 24, 1948, GK 209/249, IPN.

the German authorities for singing "Sleep calmly/tomorrow there will be no more war/the Germans will hang/the Poles will laugh/and the Volksdeutsche will shit in the grass."[107]

According to Loos:

> Lawski was always poking fun and laughing at me at work.[108] One day when he began to make fun of me, the others began laughing at me as well. Then he began singing the song and everyone laughed at me even more [since she would soon "be shitting in the grass"]…. Later I went to the factory superintendent … he called the Gestapo. There was a trial and Lawski was sentenced to 1.5 years…. I heard later that he had died. If I had known that this is how things would have turned out, I never would have reported the affair. I only wanted the superintendent to get him to stop picking on me….[109]

The five witnesses for the prosecution provided a different characterization of Lawski's behavior, claiming that he had been a "playful" man who "never did harm to anyone" and "had never tormented the accused or anyone else." In fact, one witness stated that Polish workers had been afraid of Loos "because she spied on us and told the superintendent any detail."[110] Unfortunately, because none of the witnesses for the defense had been summoned to appear in court, it is difficult to assess whether Loos had really been singled out and teased by her Polish co-workers because she was a member of the German nation or whether this was simply an excuse to minimize her guilt in the eyes of the court. Yet because Loos had been accused of a singular act as opposed to systematic and regular denunciations, it is not unreasonable to believe that she had been motivated by personal feelings as opposed to a general duty to the German

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[107] "Śpi spokojnie/ jutro będzie już po wojnie/niemcy będą wiać/polacy będą się śmiać/a volksdojcie w trawy srać." Protokół przyjęcia ustnego zameldowania o przestępstwie, May 11, 1946, GK 209/983, Loos Olga, IPN.

[108] Because she was a Volksdeutsche.

[109] Protokół rozprawy głównej, October 18, 1946, GK 209/983, IPN.

[110] Ibid.

nation that would have most likely produced systematic denunciations against her Polish co-workers. The fact that she never sought to deny her involvement in Lawski's arrest as well as her expression of genuine remorse are further indications that Loos had acted at the spur of the moment to defend herself.

In sum, despite expectations to the contrary, the Łódź prosecutor's office for the special criminal court did not simply uphold or reject decisions about rehabilitation made by municipal courts prior to June 1946. It eschewed both the February 1945 and June 1946 decrees and instead actively pursued punishment via the August Decree. In doing so, prosecutors relied upon developing international legal norms about the culpability of individual members of "criminal organizations." The fact that prosecutors at the Nuremberg War Crimes Tribunal indicted organizations such as the SA, the SS, the SD, the Gestapo, etc. justified the domestic practice of charging Volksdeutsche as members of such organizations.

However, adherence to international legal conventions was a selective process justified by the pragmatics of domestic punishment. Thus, the acquittal of the SA as a criminal organization at Nuremberg did not alter the practice of holding individual Volksdeutsche criminally accountable for membership in this organization. In this manner, Polish prosecutors sought to legitimize collective punishment in the absence of any individual act of wrongdoing.

Interestingly, prosecutors and judges did not differentiate between the degree to which the primary organizations featured in this sample—the SA and the SS—had been implicated in Nazi-era criminal activity, and in effect, conflated the two. Although this might be interpreted as a strategy to sidestep the SA's acquittal at Nuremberg, this was not the case. Instead, the conflation of membership in the SA and the SS reflected the fact that both legal personnel and witnesses did not make any functional distinction between the two organizations aside from the

fact that members wore different uniforms. Instead, organizations such as the *Landwache* stood out much more in the accounts of victims and eyewitnesses and were not interchanged with other occupation-era organizations. This is most likely a function of location—because the *Landwache* was a rural organization, members' activities had been more visible to residents than would have been the case in a larger city such as Łódź.

Along this line, just as postwar legal personnel and witnesses did not distinguish between the SS and the SA, so too did they fail to distinguish between the different categories of membership in the German nation. Punishment was not affected by whether one had three German grandparents and had registered in category II or had one German grandparent and had been registered in category III. What did affect punishment was the real or perceived violation of private property rights, an irony given the current socialist state-building project. In such cases, even when witness testimony was sparse and of questionable veracity, the courts opted to levy a greater maximum sentence on defendants.

The fact that these male defendants had been drafted into the Wehrmacht and had fought against the Allies played no role in prosecutors' efforts to build cases against them even though such service in the enemy's armed forces could easily have been classified under article 100 of the 1932 Civilian Criminal Codex. Perhaps the desire to keep these cases under the jurisdiction of the special criminal court system inspired the decision not to pursue this line.

In a bizarre way, a true sign of "Polish national distinctiveness" was proven by the fact that these men *had* served in the Wehrmacht. At the war's end these men had been scattered across Europe, yet they had opted to return to Poland instead of staying abroad. As succinctly noted by the defendant Szyling: "I feel Polish, so I returned from a prisoner of war camp in

Norway."[111] No doubt these men would have been less eager to return home if they had been involved in truly reprehensible acts during the occupation era.

Even though the jurisdiction of the Łódź office encompassed part of the Annexed Territories where forcible recruitment had ostensibly not been used by the Nazi occupation authorities, the narratives provided by detainees belie this. Although not nearly as detailed or as frequent as the corresponding narratives in the Lublin sample, the picture of recruitment to the Volksdeutschliste that emerges is one in which the occupation authorities were quite desperate to expand membership in the German nation, to the extent that category II Volksdeutsche could not speak German or were illiterate.[112]

As with their male counterparts, women from the former Annexed Territories tended not to elaborate upon the machinery behind the application process. However, in the few instances they did, these women emphasized how their involvement had been conditioned by family relationships, specifically husbands. For example, Łucyna Marczak explained, "My mother and father were of German descent, but they consider themselves Polish, as do I. In 1939, I married Otto Paul who considered himself German. Under his influence I signed the Volksliste and received category II status."[113]

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[111] Protokół przesłuchania podejrzanego, December 18, 1946, Ld 498/86, Szyling Józef, IPN Łódź.

[112] This was the case for Petrych, who signed the Volksdeutschliste and was then forced to join the SS. However, he was thrown out several months later because his lack of education lowered the organizational profile.

[113] Protokół przesłuchania podejrzanej, April 6, 1946, Ld 506/6, Ottmann Hildegard vel Marczak Łucyna, IPN Łódź.

These and other women in the sample sought to counteract wartime membership in the German nation by describing the various ways that they had maintained loyalty to the Polish people. Makowska explained that she had rejected the special German ration card assigned to her by proving to the (unspecified) authorities that she was separated from her husband, thus maintaining solidarity in deprivation with her fellow countrymen.[114] Łucyna Marczak had kept her old Polish *kennkarte* and continued to use it instead of her German *kennkarte*.[115] Olga Loos noted: "I am a German but was born and live in Poland, I was raised among Poles. For this reason I was very close friends with many [Poles], and tried during the occupation to do everything in my power to help out…."[116]

Warsaw

Of the three prosecutors' offices considered in this sample, the Warsaw branch dealt with the fewest number of cases pertaining to alleged Volksdeutsche—only twenty-five cases, or 26 percent of the total Warsaw sample. Interestingly, unlike the Łódź prosecutor's office, its counterpart in Warsaw did conduct investigations under the auspices of the February 1945 *Excluding Enemy Elements from Polish Society* decree. Despite the fact that this decree only concerned Volksdeutsche from the former Annexed Territories, prosecutors in the Warsaw office applied it to inhabitants of the former General Government as well. In fact, of the nine

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[114] This sat in uneasy juxtaposition with the fact that she had used her ex-husband in other ways. In order to avoid expulsion from her apartment, the pair registered Makowska's apartment in his name. Protokół rozprawy głównej, November 9, 1945, GK 209/249, IPN.

[115] Protokół przesłuchania podejrzanej, April 6, 1946, Ld 506/6, IPN Łódź.

[116] Prośba o ułaskawienie, October 18, 1946, GK 209/983, IPN.

individuals investigated under the February Decree, seven had been registered as *deutschstämmige* in the General Government. This generalization of the February 1945 decree to *deutschstämmige* from the General Government was most likely a response to the open-endedness of the November Decree and the discomfort this produced for prosecutors unused to simply detaining individuals for indefinite periods of time prior to a formal investigation.

In marked contrast to the Lublin and Łódź samples, the case files produced by the Warsaw prosecutor's office are much shorter, and because they contain fewer witness statements and depositions, it is even more difficult to reconstruct both the individual motivations for having signed the Volksliste as well as the administrative logistics behind the process. Nevertheless, some patterns do emerge, particularly from the accounts of the women in the sample, who, as did their counterparts in Lublin and Łódź, tended to emphasize their subordinate role in the household decision-making process in order to explain their membership in the German nation. While this might very well have been the case, shifting this decision to the family patriarch also served as a convenient means by which to minimize one's own agency (a strategy that never seemed to garner the sympathy of the prosecutor or the court). It is difficult to imagine that this lack of spousal solidarity did not adversely affect the stability of the nuclear family.

Interestingly, the majority of the cases pertaining to Volksdeutsche in the Warsaw sample were either dismissed or suspended, more than had been the case in the Lublin and Łódź samples. Aside from three deaths in detainment and one instance of a proven false denunciation, four cases were suspended because the whereabouts of the suspect were unknown. Another dismissal was grounded in the fact that a category II Volksdeutsche had served in the Second Polish Army and was thus exempt from punishment as stipulated by the June 1946 decree.

Surprisingly, no action was taken on the part of the prosecutor in three cases. These files, consisting of less than five pages each, simply make note of a suspect's alleged membership in the German nation. No effort was made to conduct an investigation, interview and depose witnesses, or even detain the suspect. In the end, these cases were never formally dismissed or suspended, but left forgotten.

In two instances, it is unclear what motivated a prosecutor to close a case. Robert Glesman was detained in March 1945 in Grodzisk Mazowiecki, a small town south of Warsaw. During his interrogation he denied any wartime wrongdoing, in particular the accusation that he had denounced partisans to the *Kriminalpolizei*. Although his status as a Volksdeutsche was never explicitly mentioned, paperwork indicates that he had been registered as such. After the security services directed Glesman's case to the Warsaw office, no follow-up action was taken and the case was simply dismissed instead of investigated.[117] Similarly, upon her arrest in February 1945, Stefania Hueber denied signing the Volksliste and explained that her ex-husband had been registered as Volksdeutsche prior to the occupation. After divorcing in 1940, they shared custody of their child, who as the child of a mixed marriage, had been eligible for special rations and the opportunity to attend school. As with Glesman, the prosecutor's office never attempted to establish the veracity of her claims by deposing witnesses and dismissed her case in August 1946.[118]

In total, the Warsaw prosecutor's office issued four indictments, two under the August Decree and two under the June 1946 Volksdeutsch decree. As had been the practice in the Łódź

[117] Wniosek o umorzenie dochodzenia, October 31, 1945, GK 366/296, Glesman Robert, IPN.

[118] Wniosek o umorzenie dochodzenia, GK 366/209, Hueber Stefania, IPN.

prosecutor's office, the latter cases pertained to Volksdeutsche who had been involved in "criminal organizations"—in this instance, the *Selbstschutz*—in addition to mistreating and denouncing Polish acquaintances. Both suspects were from the former Annexed Territories and were found guilty on the basis of the testimony of less than five witnesses, most of whom had only given depositions and did not respond to a summons by the court. In one instance, the court sentenced the defendant to ten years in prison and in the other to five. In the absence of grounds, the logic behind these verdicts and their respective sentences remains shrouded in mystery.

The individuals indicted under the June 1946 decree had been wartime residents of the General Government. The case of Franciszka Libert bears striking similarity to individuals similarly charged under the June 1946 decree by the Lublin office. Her November 1947 trial was a nominal affair in which she was sentenced to two-and-a-half years, coincidentally the same amount of time she had already spent detained in a work camp.[119]

For their part, Friedrych and Marta Smolinksi had been registered as category II Volksdeutsche because Friedrych was Mazurian, an ethnic group considered to be German by the occupiers.[120] Even though they had been forcibly recruited through a mass campaign and thus theoretically required only to submit an Oath of Loyalty to the Polish nation (per the February 1945 decree), matters were not to unfold so smoothly for the husband and wife. Initially, both had submitted separate applications for rehabilitation at the Działdowo municipal court in June 1946. Then, in November of the same year, the court ruled to close the investigation into the couple's wartime behavior. However, the affair did not end here. Instead, in May 1947 the

[119] Sentencja Wyroku, November 21, 1947, GK 453/1187, Libert Franciszka, IPN.

[120] Even though they resided in the General Government, they were granted category II status because Friederych Smolinski was Mazurian.

prosecutor's office for the district court in whose jurisdiction Działdowo fell[121] instigated an investigation into the couple, no doubt on the grounds that the municipal court had not done a thorough enough job in the first place. The couple was indicted in October 1947 under the June 1946 decree for having "of their own free will" signed the Volksdeutschliste in 1940. For his part, Friedrych had "belonged to the SA while his wife raised their children in the German spirit and herself affirmed that she felt that 'German blood' flowed in her veins."[122]

During the Smolinskis' trial on May 28, 1948, four witnesses—ostensibly for the prosecution—took the stand, but instead of supporting the charges presented in the indictment avowed that the Smolinski family had been "good Poles" during the war, speaking Polish at home and keeping company with Poles, not Germans. They also explained that Friedrych Smolinski had recently converted to Catholicism. Moreover, the sole witness who had claimed in an earlier deposition that Marta Smolinska had openly praised Hitler now testified that she had been mistaken.[123] Ultimately, Smolinski was acquitted but Marta Smolinska was found guilty and sentenced to six months in prison. Although the court did not explain its reasoning, one might speculate that Smolinska, as a Pole and not a Mazurian, had been deemed disloyal even though her husband was the reason she had been categorized as Volksdeutsche in the first place.

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[121] The special criminal courts had been abolished in November 1946.

[122] Akt oskarżenia, Prokuratora Sądu Okręgowego w Mławie, October 20, 1947, GK 265/101 Smolinska Marta i Frydrych, IPN.

[123] Protokół rozprawy głównej, Sąd Okręgowy w Mławie na sesji wyjazdowej w Działdowie, June 26, 1948, GK 265/101, IPN.

Conclusion

Ultimately, new socialist elites' struggle to reclaim Volksdeutsche for the postwar Polish nation underwent a significant shift between the years 1944 and 1946. The first efforts to regulate the status of these "national traitors" was inflected by the ongoing war with Nazi Germany and thus aimed for immediate neutralization through detainment in work camps in the former General Government on the one hand, and on the other, for either punishment or rehabilitation through a bifurcated legal-administrative system in the Annexed Territories. Although the latter was seemingly less draconian than the former because it at least offered wartime Volksdeutsche an opportunity to restore their membership in the Polish nation, those who were not eligible for administrative rehabilitation and faced punishment did so without a clear sense that this would pave their return to Poland. Instead, like those detained in the General Government, they faced indefinite exclusion from the national and political body. In this light, the June 1946 decree *Concerning Criminal Responsibility for National Defection during World War II* offered some hope, for it promised rehabilitation through punishment. Now the pronunciation of guilt in national courts of law could be exculpated through detainment, the temporary loss of rights as a citizen, and the forfeiture of all material possession.

For its part, the picture of "Polish national distinctiveness" that emerges from the pages of these case files is fractured along the fault lines of prewar ethnic identity. In essence, individuals who had been registered as Polish citizens of German descent during the interwar years and geographically concentrated in the Łódź appellate court district had not betrayed the Polish nation; in a sense, the Polish nation had betrayed them because it had failed to create a singular sense of ethno-national identity prior to the outbreak of World War II. Instead these Volksdeutsche had hardly given a thought to the fact that they spoke both Polish and German,

identified religiously as Protestant, and had family members of both Polish and German descent. This had only begun to matter when it became the criteria for avoiding expulsion to the General Government and had garnered them somewhat better treatment at the brutal hands of the occupation authorities. In essence, interwar Volksdeutsche had taken the easy way out by choosing the German part of their identity, a decision born of personal weakness and not national betrayal.

Just as their alleged "Germanness" had mattered to the Nazis, now their "Polishness" mattered for the postwar, Polish state- and nation-building project. In a sense, this project was much less complicated than reclaiming those who had been registered as ethnic Poles on their interwar identity cards. For the latter, the submission of an application for Volksdeutsch status had been more than a sign of personal weakness—it was a sign of *national weakness*, indicating a lack of solidarity that was potentially much more perfidious. This difference had profound implications for the postwar construction of "Polish national distinctiveness." For interwar Volksdeutsche, Polish national distinctiveness was measured by socio-linguistic markers such as the use of the Polish language at home, its public use during the occupation, as well as by whether or not one had associated with Polish neighbors, raised one's children as Catholic, and so on. Such acts indicated that the Polish piece of an individual's mixed background had been chosen and favored over the German part regardless of the fact that one had been officially viewed as "German" by the occupiers.

However, socio-linguistic markers such as language and religious affiliation were insufficient proof of Polish national distinctiveness for those who had been classified as ethnic Poles by the interwar republic. Instead, Polish national distinctiveness was measured by the degree to which one partook of the solidary community born of collective wartime suffering.

Thus, if one had spent time in a concentration camp, lived in fear of street raids, been forced to perform demeaning forced labor, and had truly suffered alongside other Poles, such moments of suffering could help erase one's name from the Volksdeutsch register and ease one's return to the Polish nation.

These different visions of Polish national distinctiveness were profoundly imprinted by legal practice. The belief that interwar Volksdeutsche had become members of the German nation out of personal weakness often contributed to a sort of rubber-stamping of investigations and trials, something that was particularly evident when the sole charge involved membership in the SA. Such cases were characterized by only minimal investigative work, few witnesses called by either the prosecution or the defense, and verdicts that contained no grounds. Even when charges were more serious, investigations and trials did not seek to portray alleged wrongdoing in terms of a larger plan to destroy the Polish nation, but rather as highly individualized acts motivated by baser human sentiments such as greed, laziness, etc. In this vein, punishment was a mechanism by which interwar Volksdeutsche could retroactively join the Polish community of suffering by enduring abysmal conditions in prison and performing forced labor to rebuild the country.

In marked contrast to this, individuals who had been registered as ethnic Poles during the interwar period were guilty of national betrayal, and in the context of ongoing war and tenuous peace, were perceived as a true danger to postwar state- and nation-building. This perception was reflected in serious case-building efforts whereby prosecutors sought to understand how these ethnic Poles had been lured into signing the Volksdeutschliste and how this had affected their innermost being. Yet in the absence of clear guidelines about how to proceed, legal personnel often took matters into their own hands and deployed their prewar legal training to circumvent

practices of indefinite detainment whenever sufficient proof of suffering at the hands of the occupier could be demonstrated.

CHAPTER FOUR

THE HOLOCAUST ON TRIAL?

Introduction

The testimonies gathered by the writer Zofia Nałkowska during her time working at the Main Commission for the Investigation of German War Crimes later became the basis for *Medallions,* a collection of short stories that grappled with the individual and collective suffering unleashed on Poland during the war and Nazi occupation. Its stark prose reveals a complex picture of Polish *and* Jewish suffering that seemingly indicated that punishment in postwar Poland would include retribution for crimes committed against interwar Polish citizens of "Jewish descent" as well as for crimes committed against ethnic Poles. However, the trajectory of punishment that developed under the auspices of the Main Commission as well as through the punishment of "war criminals, collaborators, and traitors to the Polish nation" belied the promise of *Medallions*. The solidarity community of suffering constructed by the postwar Polish state left little room for engagement with the crimes perpetrated as part of the Holocaust.

Nevertheless, twenty-seven suspects in this sample of cases from the Łódź, Lublin, and Warsaw Offices of Prosecution for the Special Criminal Courts were accused of acts of wrongdoing perpetrated against Polish Jews during the occupation. Yet an analysis of these cases reveals how local Polish communities in collusion with institutions of justice effectively blocked or distorted meaningful investigation and prosecution of some of the greatest atrocities of the occupation.

Jewish Victims Speak

In this sample, ten investigations were begun at the behest of initial reports made by Jewish victims. Accusations of wrongdoing leveled against alleged Polish perpetrators included physical mistreatment and abuse, denouncement to the blue police or occupation authorities, and detainment and delivery into the hands of the authorities. Ultimately, prosecutors dismissed six cases and indicted four individuals. While some of these dismissals were profoundly shaped by procedural difficulties associated with investigating crimes of the Holocaust, nearly all reflected the prosecutors' failure to seriously investigate allegations of wrongdoing that Jewish survivors and eyewitnesses had leveled against Poles. Moreover, of the four indictees, all alleged Polish perpetrators were eventually acquitted, while the only guilty verdict was handed down in a case in which a Jewish survivor stood trial.

Efforts to punish individuals involved in genocide and mass atrocities in courts of law were often exercises in futility. The anonymity and randomness of crimes perpetrated within concentration camps or during roundups and executions frequently made it difficult to subsequently identify perpetrator(s). This was further compounded by the geographic displacement of both perpetrators and victims in the aftermath of the war as well as by a dearth of surviving eyewitnesses who could confirm individual accounts of collective persecution. As a result, prosecutors faced a variety of procedural challenges that significantly complicated case-building efforts.

These intricacies are aptly illustrated by the investigation into Józefa Kaniewska's wartime activities. In July 1946 on a busy street in Łódź, Basia Szwarc encountered Józefa Kaniewska, a woman she immediately recognized as a former *sztubowa* ("room elders" who assisted "bloc elders" in maintaining order in a given bloc) in the Transport Bloc at Auschwitz.

Szwarc rushed to the local MO to report that Kaniewska had stolen a diamond ring she had smuggled into camp, while two companions and fellow Auschwitz survivors gave statements about Kaniewska's brutal beatings of both Jews and Catholics in the bloc.[1] For her part, Kaniewska countered these allegations and explained that she had never been a *sztubowa* during her time as an Auschwitz prisoner and that Szwarc and the other witnesses had simply mistaken her for a *sztubowa* also called Jozia [Józefa] "who persecuted Jewish women."[2]

Thanks to the dislocation first produced by the concentration of strangers in camps such as Auschwitz and then to their subsequent dispersal and re-displacement in postwar Poland, the alleged act of wrongdoing that had been reported in Łódź fell outside of its jurisdiction. As a result, the Łódź prosecutor's office for the special criminal court was obliged to send the preliminary investigation to its corresponding office in Wadowice, a town in the vicinity of Auschwitz under whose jurisdiction the crime did fall.[3] Upon transfer, a prosecutor at the Wadowice office then had to lodge a formal request at the Łódź special criminal court for the witnesses and suspect to be deposed there, as they had all listed Łódź as their city of residence. However, by the time this exchange between prosecutors' offices had occurred, months had passed and the witnesses had left Poland, along with a stream of other Jewish survivors. The only recourse the prosecutor now had was to comb records and testimony housed at the Oświęcim

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[1] Protokół przyjęcia ustnego zameldowania o przestępstwie, July 30, 1946, Ld 506/17 Kaniewska Józefa, IPN Łódź; Protokół przesłuchania świadka, July 31, 1946, Ld 506/17, IPN Łódź.

[2] Protokół przesłuchania podejrzanej, August 2, 1946, Ld 506/17, IPN Łódź.

[3] Although this case technically fell in the jurisdiction of the Wadowice special criminal court and was ultimately dismissed by a prosecutor there, this case was also registered in Łódź and is thus included in my sample.

Museum to determine whether or not any other survivors had mentioned Kaniewska. This proved to be a dead end.

Ultimately, these procedural delays thwarted a more thorough investigation into allegations leveled against Józefa Kaniewska since in the absence of eyewitnesses, the prosecutor could not move forward. Interestingly, while this alone was grounds enough for dismissal, the prosecutor instead framed his decision in the following manner:

> Based upon witness testimony, it was established that the suspect enforced order in the block with a belt or her hand and that she took a diamond ring from the victim—however, these circumstances do not prove that beatings met the criteria of persecution [as described in the August Decree], since the suspect was responsible for maintaining order and discipline. Similarly the fact that the suspect took the victim's ring can be classified as a "regular crime" as defined by article 257 of the criminal codex and in no way fits the criteria described in the August Decree, specifically article 3, since the suspect simply took the victim's ring without "taking advantage of the special circumstances created by the war."[4]

The prosecutor not only argued that Kaniewska's brutal treatment of fellow prisoners was simply a function of her job, but also that the theft of the ring from a Jewish prisoner interned at Auschwitz did not meet the requirements of "taking advantage of the unique conditions of the occupation" and thus could not be considered collaboration. This is a bizarre conclusion to have reached given what evidence was available.

While a dearth of witnesses characterized the Kaniewska investigation, the physical absence of the suspect hindered the investigation of Oskar Knapczyński. In April 1946, the survivor Ita Gerszt reported the following:

> Stryków is a small town and everyone had heard that a certain Oskar Knappe was going to Jewish apartments looking for Jews in hiding and robbing their apartments.… I heard that Knappe had been called Knapczyński before the war.... In spring 1940 a Jewish district was created. Knappe lived in a house that

[4] Wniosek o umorzenie dochodzenia, February 15, 1947, Ld 506/17, IPN Łódź.

> had a private gate leading into our terrain. Knappe did not have any function [here in the ghetto] and no one had the right to enter our area, but Knappe snuck in and took whatever he wanted…. In this year, in September the Jewish district was closed and Knappe became the head of a Jewish work convoy that went out into the city…. At this time the Germans called him the King of the Jews (*Judenkönig*)…. He beat us with a rubber truncheon and he ordered us to run in front of his bicycle. He was especially brutal toward the intelligentsia [since] he himself was illiterate…. Knappe oversaw our district until liquidation … at that time he hit people and took away their baggage. During the deportation there were many Gestapo officers that beat and pushed us…. When I returned to Stryków in 1945, I heard from Poles that he beat, robbed, and denounced Poles as well as Jews. [This sentence was underlined in the original].[5]

Gerszt's testimony was confirmed by another Jewish survivor of the Stryków ghetto who reported that Knapczyński had haunted its streets and terrorized its inhabitants in a "yellow uniform with a swastika on the arm" (i.e., an SA uniform).[6]

Notably, the prosecutor's line of inquiry did not focus on uncovering more about Knapczyński's persecution of Stryków's Jewish population but instead dwelled on references about the suspect's Volksdeutsch status as well as on the alleged crimes he had committed against the Polish population, as indicated by the underscores and comments made on the relevant parts of Gerzt's testimony transcript. Moreover, the prosecutor made no explicit reference to the allegations about crimes perpetrated against the town's Jewish population in his correspondence about the case. Instead he noted only that "Oskar Knappe, the volksdeutscher who is currently in the British zone of occupation … participated in the murder of the civilian

[5] Protokół przesłuchania świadka, April 24, 1946, Ld 506/08 Knapczyński vel Knappe Oskar, IPN Łódź.

[6] Protokół przesłuchania świadka, May 7, 1946, Ld 506/08, IPN Łódź.

population…."[7] Regardless of the tenor the investigation had assumed, it was brought to a permanent halt when efforts to extradite Knapczyński failed.

Interestingly, the two Jewish victims who reported these crimes cast them as part of a pattern of wrongdoing that also victimized Poles, perhaps a deliberate strategy to awaken greater interest among Polish police investigators and prosecutors. Natalja Gurz made no such effort when she lodged her initial complaint at the Warsaw UB in August 1945. At this time, Gurz (who had spent the occupation years living under a false Aryan identity in Warsaw) reported that her landlord Wacław Mędrzejewski had extorted money from Jewish tenents and denounced them to the Gestapo. Statements taken from seven building residents—both Polish and Jewish—strongly supported Gurz's accusation that Mędrzejewski was a "scoundrel" (*szubrawiec*) who "denounced more than one person of Jewish nationality."[8]

In his defense, Mędrzejewski explained that he had known that seven residents of his building were Jews passing as Aryans during the occupation, but that this had been an open secret among the residents who referred to the building as the "little ghetto." Thus, any one of these tenants could have called the Gestapo. Moreover, he explained that the "bribes" he had allegedly demanded from the Jewish residents were in fact legitimate payments he needed to finish building and make repairs on the apartment building (noticably only on their apartments). He described a further incident in which he had demanded a bribe from his resident Pani Malinowska as an action not taken of his own will. Mędrzejewski claimed that two Germans

[7] Od prokuratora sądu specjalnego karnego w Łodzi do obywatela sędzia śledczego sądu okręgowego w Łodzi, May 17, 1946, Ld 506/08, IPN Łódź.

[8] Protokół przesłuchania świadka, August 28, 1945, GK 366/1060, Mędrzejewski Wacław, IPN.

dressed as civilians had come and demanded a bribe because they knew Malinowska was harboring a Jew.[9] After the Germans left and Mędrzejewski had informed his tenant of the situation, she had mistakenly misinterpreted the impetus of the demand as coming from him.[10]

Doubts are cast upon Mędrzejewski's already-suspicious explanations by inconsistencies that emerge between his police statements and the four Polish neighbors who spoke in his defense. They stated that Mędrzejewski had been unaware that Jews had been living in his building during the occupation, and hence, could never have blackmailed or threatened them.[11] However, this contradicts multiple statements made by the suspect himself in which he freely admitted to knowing the true identity of many of his building's inhabitants. Moreover, while it is true that other building residents knew the truth about their neighbors—after all, they called the building the "little ghetto"—it is unlikely that they had been responsible for denouncing Pani Malinowska and another Jewish resident of the building. If they had, Mędrzejewski would have faced dire consequences at the hands of the Gestapo for harboring Jews.

Ultimately, the prosecutor decided to dismiss the case on the grounds that

> an investigation was conducted to determine the veracity of statements made to the effect that Mędrzejewski had denounced several Jews ... and had extorted money from them. The [seven] witnesses ... condemned Mędrzejewski and described him as a scoundrel.... However, there are no concrete facts in their statements that unquestioningly implicate Mędrzejewski in denouncing Jews to the Gestapo.[12]

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[9] Not only was Malinowska harboring a Jew, she herself was Jewish with false Aryan papers. Mędrzejewski did not know this.

[10] Protokół przełuchania podejrzanego, September 9, 1945, GK 366/1060, IPN.

[11] Protokół przesłuchania świadka, September 20, 1945, GK 366/1060, IPN.

[12] Wniosek o umorzenia dochodzenia, June 10, 1947, GK 366/1060, IPN.

While it is most certainly the case that there were no direct eyewitnesses to Mędrzejewski reporting directly to the Gestapo, more than one eyewitness could nevertheless attest to the fact that he had demanded bribes from Jews living in hiding, and thus had taken advantage of the "unique situation created by the occupation." Even though the prosecutor was unhampered by the procedural difficulties that had shaped the trajectories of the prior two investigations and had sufficient grounds to issue an indictment under the August Decree, he nevertheless dismissed the case. This decision can only be attributed to a lack of will on the part of the agents of the law to move forward with prosecution.

Interestingly, universal dislike of Mędrzejewski forged a bond of collective solidarity between his Jewish and Polish tenants, the only example of this in the sample. Far more typical were moments of intra-ethnic Polish solidarity whereby local communities rallied to defend one of their own who had been accused of wrongdoing by a Jewish victim and clear community "outsider." For example, Edna Hochman accused Adam Tylec of the following:

> In autumn 1942 I began hiding in the forest along with my mother and sister.... One day the Germans organized a raid and all the Jews in hiding dispersed. At nightfall when the raid was over and the Germans had left, we returned to our hiding places.... A few Jews who were hiding with us told me that they saw my mother in a wagon next to Adam Tylec and Stanisław Kasprzak.... The Jews did not say whether Tylec and Kasprzak had put my mother in the cart or not.... After a few days when I went to the village at night for bread ... women there told me that Tylec had taken my mother to the guardhouse from whence the Germans took her. After the war Marianna Mitura, an old woman of eighty years, told me that Tylec had taken my mother to Tatar's place and then ordered Stanisław Wojcik to take my mother to the village guardhouse where the Germans were.... Mitura knew my mother well because they had been neighbors.[13]

[13] Protokół przesłuchania świadku, May 26 1948, LU 319/276, Tylec Adam, IPN Lublin.

Tylec—probably without knowning the content of the accusation—provided a completely different version of events that not only refuted Hochman's statement but also the ones subsequently made by fellow villagers. In one way or another, these villagers witnessed the detainment and delivery of a Jew they referred to as Mendlowa, their former neighbor in the village, into the hands of the German authorities. Tylec explained that one day when the entire village had been out near the forest performing a labor assignment for the Germans, Mendlowa had emerged from the forest and began to "lament" (*lamentować*). Shortly thereafter, blue police officers driving down the road caught sight of Mendlowa and took her away.[14] This version of events did not implicate any of the villagers in the detainment of Mendlowa but rendered them all equally passive bystanders to an event over which they had no personal agency.

Subsequent testimony provided by Stanisław Kasprzak, one of the men who had allegedly been in the cart with Tylec and Mendlowa, revealed that Kasprzak, Tylec, and another witness, Stanisław Mielnik, had been alone in the forest on that fateful day cutting trees. When returning to the village, they caught sight of Mendlowa on the roadside, and she asked them to take her along. After reaching their destination and pulling into Kasprzak's yard, no one seemed able to account for the whereabouts of Mendlowa, an eldery woman who was barefoot (at least according to their accounts). Kasprzak explained that he had not seen where Mendlowa wandered off to because he was busy unhitching his horse.[15] Apparantly neither had Stanisław Mielnik, who had gone inside to get warm.[16]

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[14] Protokół przesłuchania podejrzanego, June 19, 1947, LU 319/276, IPN Lublin.

[15] Protokół przesłuchania świadka Kasprzaka, June 21, 1947, LU 319/276, IPN Lublin.

[16] Protokół przesłuchania świadka Mielnika, June 21, 1947, LU 319/276, IPN Lublin.

Although this version leaves Mendlowa on the loose and adrift in the village, a further statement taken from Warzyniec Tatar, another individual who had been mentioned in Hochman's original statement, now locates the woman at his house, warming herself by his fire. Specifically, Tatar explained that Tylec and Mendlowa had shown up on his doorstep, and while the elderly woman rested in front of the fire, Tylec left. During his absence the village watchman, Stanisław Wójcik, arrived and took Mendlowa to the guardhouse. According to Tatar, he did not know who had alerted Wójcik about Mendlowa's presence in the village.[17] Finally, the village guard himself explained that he had received orders from his German superior at the guardhouse to detain Mendlowa, at which point the blue police came and transported her to their headquarters in a nearby town where all trace of her disappears.[18]

While Adam Tylec was the only one directly accused by Edna Hochman, witness statements reveal a chain of events that implicated many villagers in Mendlowa's detention and ultimate delivery into the hands of the Germans. While witnesses were careful to protect themselves by removing themselves from the unfolding events by locating themselves in the barn unhitching horses or inside eating dinner, they also made it a point to have "not known" where Tylec had gone or "could not remember" the night in question. Even the village guard, Wójcik, by claiming to have merely obeyed the orders of the occupiers when detaining Mendlowa, managed to defend Tylec while casting himself as a fearful subordinate who knew that the consequences for not obeying would be dire.

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[17] Protokół przesłuchania świadka Tatara, June 21, 1947, LU 319/276, IPN Lublin.

[18] Protokół przesłuchania świadka Wójcika, June 27, 1947, LU 319/276, IPN Lublin.

Ultimately, the prosecutor never questioned the radical diversion in Tylec's first version of events (subsequently modified to match the story of the other witnesses) and those made by eyewitnesses and fellow participants in the detainment of Mendlowa. He never questioned how the Germans at the guardhouse found out about Mendlowa's presence in the village, or even if there were Germans there in the first place since it was highly unusual for them to be stationed at rural outposts. No effort was made to interview the elderly woman, Mitura, who had told Hochman what had happened to her mother. In fact, the prosecutor initially closed the case without deposing Hochman,[19] but at her prompting, he briefly reopened the case. The deposition did not change the outcome in the least. Oddly enough, it was during her deposition that Edna Hochman referred to her mother as Ita Hochman and not by the surname Mendlowa.[20] This raises a disturbing possibility—had the villagers simply referred to the victim by a nickname or maiden name, or had they perhaps confused the detainment of one Jewish victim with another? The prosecutor never bothered to pursue this.

While the above cases do demonstrate a clear lack of will on the part of prosecutors to pursue reports of wrongdoing made by Jewish victims about Polish perpetrators, four investigations out of ten did ultimately result in the prosecutors' decision to indict. While two of the accused died in prison before trial,[21] the other two had their day in court, with one being pronounced guilty and sentenced to death, and the other acquitted.

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[19] Wniosek o umorzenie dochodzenia, July 21, 1947, LU 319/276, IPN Lublin.

[20] Protokół przesłuchania świadka Hochman, May 26, 1948, LU 319/276, IPN Lublin.

[21] The case against Antoni Rzucidło bore a striking similarity to the Tylec investigation. In November 1944, Sara Cymerman and Monika Rosental reported to the MO that they had witnessed how Rzucidło had taken six Jews from their hiding place and transported them to the gendarmerie. Rzucidło explained that he had only done so because he was the deputy to the

In April 1945, Dawid Kestenbaum reported to the Lublin MO that Maks Heimberg, a former member of the Borysław ghetto's *Judenrat* and *Ordnungspolizei* was living in Lublin under an assumed name. Kestenbaum acted "in the names of the dead" when he formally accused Heimberg of "collaborating in the murder of the 13,000 Jews of Borysław." He demanded that Heimberg "be sentenced in the place where he committed his crimes as per the decree issued by the International Commission for the punishment of Hitlerite criminals."[22] Soon thereafter, the Lublin prosecutor's office for the special criminal court detained Heimberg and launched an investigation into his alleged mistreatment of "Polish citizens."

Although the investigation began without explicit reference to the fact that Heimberg's alleged victims were Polish citizens of Jewish descent, the five-point indictment did not seek to mask this. In this document, Heimberg was charged with having participated in the murder of the civilian population of "Jewish nationality," beaten Jews interned in the Borysław work camp with a leather whip, revealed the hiding place of the Opermann family, pimped Jewish women to the Germans, and lastly, extorted money from Jews-in-hiding.[23]

Heimberg never denied that he had participated in the activities described in the indictment, but he sought to cast his actions as situational responses—not systematic acts—that

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village elder and had been ordered to do so. Furthermore, the Jews—locals who had been known to him before the war—had not tried to escape but had asked to be taken back to the ghetto. Władysław Kasprzak was accused of luring a Jew by the name of Swieca out of hiding and then stabbing him. Although he had been in the company of a group of other Polish men at the time, the prosecutor never attempted to investigate and charge the others for their alleged participation in this murder. See LU 9/10, Rzucidło Antoni, IPN Lublin; GK 209/576, Kasprzak Władysław, IPN.

[22] Protokół przyjęcia ustnego zawiadomienia o przestępstwie, April 11, 1945, LU 315/226, Heimberg Maks, IPN Lublin.

[23] Akt oskarżenia przeciwko Heimbergowi, March 27, 1946, LU 315/226, IPN Lublin.

had aimed to protect the larger Jewish community from widespread reprisal on the part of the Nazi authorities, who according to Heimberg, represented the lesser of two evils when compared to the local Ukrainian population.[24] In this vein, Heimberg explained that he had only beaten individuals who had failed to comply with forced labor regulations and had never revealed Jewish hiding places. Furthermore, he claimed only to have delivered Jewish women to the Gestapo at the behest of the *Judenrat* and not of his own volition and had never accepted bribes because his father had been the "richest merchant in Borysław" and he had not needed to.[25]

Interestingly, Heimberg did not interpret point one of the indictment—"participation in the murder of the Jewish community"—to mean his involvement in roundup actions in the ghetto.[26] Instead, he focused his trial testimony on his detainment of the "bandit" Rozenberg who had allegedly already run afoul of the authorities during Soviet times. Thus, Heimberg argued that detaining Rozenberg and subsequently delivering him into the hands of the Nazis was an act of "regular" policing unconnected to the larger project of murdering the Jews of Borysław. The fact that Heimberg never elaborated on Rozenberg's so-called "criminal behavior" casts suspicion on his version of events.

Witnesses provided a different interpretation of Rozenberg's activities. They described Rozenberg as a regular Jew who had escaped from the ghetto and joined the partisans. In fact, "when the Jewish partisan Rozenberg attempted to kill the most horrific executioner in

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[24] He explained that the *Judenrat* had been organized in the wake of a Ukrainian-led pogrom for the purpose of "making contact with the Germans" for protection against the Ukranians. Protokół przesłuchania Heimberga, May 14, 1945, LU 315/226, IPN Lublin.

[25] Protokół rozprawy głównej, June 5, 1946, LU 315/226, IPN Lublin.

[26] Notably, Heimberg himself never referred to these actions using the common term "liquidation."

Boryslaw, a man by the name of Pell—this bandit [Heimberg] restrained Rozenberg and twisted the knife from his hand and Pell shot Rozenberg on site."[27] In a notable reversal, Heimberg was now cast as the bandit, not Rozenberg.[28]

Ultimately, the eight witnesses (who were all Jewish survivors from Borysław) did not hesitate to attribute these acts to Heimberg; they had recognized him at the time of their commission thanks to the fact that Heimberg and his family had been prominent members of the Borysław Jewish community. While only three of eight witnesses were present at the trial,[29] their testimony was consistent with earlier depositions and reflected a nuanced interpretation of the intricate moral compromises that faced Jews who had worked directly with the Germans to administer the Borysław ghetto. While understanding that such individuals were often required to participate in the destruction of their own communities, it was the manner in which they did so that drew the criticism of these witnesses. According to one, "I believe that Heimberg's treatment of the Jews was too harsh because he did not have to carry out orders to the degree that he did…."[30] The other explained to the court:

> As an "Ordner" [i.e, a member of the Jewish *Ordnungspolizei*] he fulfilled the same tasks as other "Ordners." Their service consisted in helping the Germans during actions against the Jewish population. Even if "Ordners" had no choice but to participate in actions … Heimberg was too eager in fulfilling German orders….

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[27] Protokół przyjęcia ustnego zawiadomienia o przestępstwie w MO Lublinie, April 11, 1945, LU 315/226, IPN Lublin.

[28] The fact that the incident came up in the investigation phase and not the trial phase can very likely be attributed to the fact that the assassination of unpopular leaders by partisans was a sensitive issue in postwar Poland where the remnants of the Home Army still haunted the forests.

[29] The depositions of the other five witnesses were read aloud to the court.

[30] Protokół rozprawy głównej, June 5, 1946, LU 315/226, IPN Lublin.

> Heimberg did not have a good opinion among the general populace. There were cases when Heimberg took captured Jews to the collection points….[31]

On the basis of this testimony as well as the depositions that were read aloud during trial, the special criminal court pronounced Heimberg guilty.[32] While testimony about Heimberg's wartime betrayal of his local community was compelling, the defendant was never allowed to produce his own witnesses—five Borysław Jews who could allegedly attest to Heimberg's efforts to help his community at the risk of his own life. The court's refusal to produce witnesses for the defense was grounded in a legal technicality—Heimberg and his lawyer had only produced this list at the trial and such requests were to be made before the trial date. In the end, this testimony probably would not have helped; the court sentenced Heimberg to death, thus granting him the dubious distinction of being the only individual in the subsample of cases analyzed in this chapter to be thus punished. Ironically, he was also the only Jewish perpetrator.

The Heimberg case was unique in another respect as well. Thanks to his family's prominent status in the Borysław Jewish community, his actions during the occupation had not remained anonymous. His presence would have stood out even in the most panic-ridden and chaotic moments of persecution. As a result, a fair number of Jewish survivors were able recall in detail Heimberg's wartime actions. In contrast, Jan Kokot, a blue police officer who had been transferred from the Annexed Territories to serve as a ghetto watchman in Siedlce, a town in the General Government, had been unknown to both the local Polish and Jewish populations. This served to couch his actions in a greater degree of anonymity than had been possible for

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[31] Ibid.

[32] Sentencja wyroku, June 5, 1946, LU 315/226, IPN Lublin.

Heimberg. Thus, when Jakob Handlarski accused Jan Kokot of "… mercilessly kill[ing] Jews in Siedlce," and shooting and killing his brother Herszel and sister Chana during the liquidation of the Siedlce ghetto,[33] there were no other witnesses who could confirm or deny the following account:

> I am a butcher and during the German occupation my two brothers and I traded meat…. The meat trade was followed closely by the police. Kokot came looking for meat nearly every day and when he found some he would confiscate it. I do not know what he did with it then. When Kokot noticed someone bringing a live cow into the ghetto he would demand a bribe. On August 23, 1942, I was on Pilsudski Square and I saw Kokot killing people by shooting into the crowd. On this day he killed my brother Herszel and my sister Chana as well as other butchers against whom he bore a grudge for not giving him meat. My brother sat among the butchers and I was about 5 to 10 meters away from him. I saw how Kokot shot my brother who was one of the first to die. My sister Chana sat next to him and when Kokot shot at the group of butchers he killed her. He was about 20 meters from the group. The entire group in which my brother and sister sat was shot by him. There were about 40 people in total.[34]

Thanks to Kokot's involvement in the illegal meat trade in the ghetto, Handlarski not only recognized him when he shot his siblings, but was also able to identify him by name, something that would not have been possible in the absence of sustained contact prior to the ghetto liquidation.

Despite the fact that there were no other eyewitnesses to confirm Handlarski's version of events, meaning the case could easily have been dismissed for lack of evidence, the prosecutor decided to indict Kokot in a move that contradicted the general tendency to dismiss cases in which a Jewish victim had accused a Pole of wrongdoing. In the absence of grounds for this

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[33] Protokół przesłuchania świadka, March 23, 1945, GK 209/50, Kokot Jan, IPN.

[34] Protokół przesłuchania świadka, May 16, 1945, GK 209/50, IPN.

decision,[35] one can only speculate as to what motivated the prosecutor to act in this way. One promising explanation lies in the fact that Kokot had transitioned from his work with the blue police to the newly-instated People's Police, the MO. As a representative of the old institutional order of the Second Republic, it would have appeared highly suspect to new communist functionaries sensitive to potential disloyalties from this front.

For his part, Kokot took great pains to construct a narrative about how his postwar involvement with the MO's Investigative Division had "angered many people who now falsely accuse me."[36] He explained the situation in a letter addressed to the Łódź special criminal court in November 1945:

> When I was working in the MO's Department of Investigations, people came to report thefts. Among others, there were Jews who knew me from the occupation period. I tried to help every citizen according to the letter of the law (*litery prawa*). Once a citizen of Jewish nationality by the name of Gorzalek came to the department to report that his father-in-law (Lederman) had given his horse to a Polish peasant during the occupation for safe-keeping. He now wanted to reclaim the horse and I helped him do this. However, Prosecutor Wyszkowski did not agree with this and gave the horse back to the peasant. The next day Gorzalek reclaimed the horse himself, the result being that Wyszkowski issued a warrant for his arrest, and unfortunately it fell to me to arrest him. If this Gorzalek had been a bad person, there is no doubt that he would have sought revenge upon me.
>
> My denouncer Handlarski also came to the department. He wanted me to help him reclaim a sewing machine that his family left with a farmer. I told him that this required the approval of the prosecutor and directed Handlarski to Gluchowski who was in charge of the "Jewish Affairs" Division. In December 1944, on one of the occasions that they met, a fight broke out between them and I reprimanded

[35] While legal procedure normally required the inclusion of grounds for an indictment, the August Decree had eliminated this practice.

[36] Od Jana Kokota do sądu specjalnego karnego w Łodzi, September 15, 1945, GK 209/50, IPN.

> Handlarski and reminded him that he was not in a bar.[37] It was at this time that Handlarski denounced me…. My denouncer assumed that my case would end up in the military court, he thought that I would be deported to the depths of Russia and that I would not find out who had denounced me…. Because I am proletarian (*proletariusz*) I cannot afford a lawyer, and no doubt if I had money I would have been freed long ago because Handlarski blackmailed my wife and said that if she paid him this matter would be taken care of. I declined this proposition and decided to wait for justice…. Handlarski recognized that he had falsely accused me and therefore he was forced to leave Poland for Palestine, fearing my revenge as well as the justice system. Among the several hundred Jews living in Siedlce, Handlarski could not find anyone else to denounce me. [38]

As for his involvement in the deaths of the Handlarski siblings and the liquidation of the Siedlce ghetto, Kokot testified in the following manner at his January 1946 trial:

> On that critical day of August 22, 1942 I was serving on the corner of Sadowa and the First of May Streets. It was my task to ensure that people did not gather.[39] Jews were herded to the square ... I did not set foot outside the station—I was on duty from six in the morning until six in the evening. The liquidation of the ghetto took place several days later. The ghetto was surrounded by barbed wire, and the border ran through the corner of Sadowa and The First of May. I never saw Handlarski in the ghetto and I did not know him during the occupation. I did not know his brother and sister. When I was at the station on the corner of Sadowa and the First of May, I heard shots, it was early, and at the time people were saying that the Ukrainians and the Latvians were shooting the Jews.... I first ran into Handlarski in October 1944 when he came to our Department....[40]

Interestingly, two witnesses for the defense—survivors of the ghetto liquidation who were currently employed by the local branch of the security services (UB)—confirmed this account in

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[37] Kokot also mentioned earlier in a letter to the SSK that in retaliation for this, Handlowski brought a party member to the station and "nothing happened to Gluchowski because he was also a member of the Party…. Hence Handlarski's anger and hatred fell on me."

[38] Od Jana Kokota do Prokuratora sądu specjalnego karnego w Siedlcach, November 16, 1945, GK 209/50, IPN.

[39] This most likely refers to Aryan spectators, since as Kokot alleged, he was posted outside the ghetto perimeter on the day of its liquidation.

[40] Protokół rozprawy głównej, January 15, 1946, GK 209/50, IPN.

obviously falsified testimony. Even though both Mojsze Gorzalek,[41] who now went by the popular Polish name Marek to mask his Jewish identity, and Halberg had testified in pretrial depositions that they had not seen Kokot during the ghetto liquidation, the former now stated:

> On August 22, 1942, I escaped from the ghetto but before that I was on the corner of Sadowa and the First of May Streets, the place where the accused stood.… I consulted with him about what I should do and he said that he did not know…. On August 22, 1942 only shots were fired in the morning, the liquidation took place on Monday the 24th. I never heard that the accused treated Jews badly and I never heard anything about the murder of anyone from the Handlarski family.[42]

According to Halberg:

> On that critical day I remember that I saw the accused standing at the station on the corner of Sadowa and the First of May. On this day the Jews were driven to the square where there was a slaughter. The liquidation of the ghetto took place on a Monday or Tuesday—that is on the 24th or 25th of August. On the 22nd the Jews were forced to lay [in the square] with their faces to the ground. From the direction of Pilsudski Street, the Jews could see the blue police and the SS who shot at every upraised head. I did not see the accused among these officers…. It is impossible that the accused killed 30–50 Jews. I categorically confirm that Kokot was not present at the shooting of the Jews. At this time he was on guard duty at the corner of Sadowa and the First of May. I do not know if Jakob Handlarski was in the ghetto, I assume that he was not. Let me just add that from the corner of Sadowa and the First of May it is not even possible to see Pilsudski Square, the place where the Jews were herded…. I did not trust Handlarski. I think Handlarski began working for the security services in December 1944. I also worked for the security services in Siedlce, but I began my work earlier. Handlarski came to me and said that the accused killed his father and mother—he did not say his brother and sister….[43]

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[41] There is a strong chance that this is the same Gorzalek who unsuccessfully sought to reclaim his horse.

[42] Protokół rozprawy głównej, January 15, 1946, GK 209/50, IPN.

[43] Ibid.

Notably, the presiding judge did not inquire as to why Gorzalek and Halberg's s trial testimony made such a radical departure from their earlier depositions. Nor did he seek to draw out the irregularities between their testimony and that of Kokot. For example, Kokot had claimed that he "had not set foot outside the station" on the day that the ghetto liquidation began. If this were the case, how did Gorzalek manage to "consult" with the defendant about "what to do?" Moreover, given the panic and chaos that would have accompanied the roundup of several thousand Jewish inhabitants on that day, it seems improbable that Halberg would have noticed Kokot's presence at the station-—especially since it was not visible from the square where the Jews were detained.

In addition to testimony from Gorzalek and Halberg, eight of Kokot's colleagues from MO Siedlce also spoke in his defense. Those officers who had served in the blue police with him during the war testified that Kokot had not taken part in the liquidation of the ghetto but instead had been stationed at the corner of Sadowa and the First of May Streets. Furthermore, testimony from colleagues also shed a different light on the altercation that occurred between Handlarski and Gluchowski/Kokot in December 1944. According to the department secretary Helena Sala, the dispute had nothing to do with Handlarski's sewing machine: "I remember that the police officers were doing exercises in the courtyard. Gluchowski noted that one of them looked like a Jew. Handlarski was present at the time and a fight exploded. Handlarski accused him of anti-Semitism...."[44] The implication was that by stepping into the argument on Gluchowski's behalf, Kokot had also incurred Handlarski's condemnation as an anti-Semite. In this manner,

[44] Ibid.

Handlarski's accusation against Kokot was construed as an act of revenge grounded in a misconstrued accusation of anti-Semitism.

Ultimately the special criminal court aquitted Kokot on the grounds that the primary witness against him had left the country, and in doing so, avoided making a pronouncement about the accused's innocence or guilt.[45] Although it is most certainly the case that one eyewitness account can hardly be taken as absolute proof of guilt, the court nevertheless had ample reason to doubt the veracity of Kokot's version of events given the obvious falsifications and vagaries in witness testimony. Yet not only did the court fail to question the defendant and his witnesses more closely about these irregularities, it also made no effort to verify other potential tests of his credibility—for example by questioning his wife about whether or not Handlarski had indeed attempted to bribe her.

Yet, if Kokot had indeed been involved in the persecution and murder of Siedlce Jews, why did Jewish survivors come to his defense? In addition to Halberg and Gorzalek, Kokot also mentioned that as a former blue police officer interested in working for the MO, he had "submitted references from the Jews Halber, Orzel, and Blusztejn as well as from other members of the PPR…. These recommendations confirm that during the occupation I conducted myself irreproachably as regards Polish citizens of Jewish nationality."[46] Notably, Kokot's Jewish

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[45] Sentencja wyroku, January 15, 1946, Protokół rozprawy głównej, January, 1946, GK 209/50, IPN.

[46] Once again, no effort was made to procure these recommendation letters to use as evidence at the trial. Protokół przesłuchania podejrzanego, undated, GK 209/50, IPN.

defenders, like Kokot himself, were all associated in one way or another with the new political order, and it is possible that demonstrating solidarity with the new authoritites was more important than defending a highly stigmatized ethno-religious identity. Furthermore, small details in this case file, such as the Polonization of an obvious Jewish name or the falsification of personal data on official paperwork to hide Jewish ethno-religious identity, speak both to deep-seated fear born of the traumas of the occupation-era as well as desperation to assimilate in a climate marked by extreme anti-Semitism. Thus, coming to the defense of a Polish man could have been born out of fear of reprisal as well as out of a desire to recast oneself as "Polish" and not "Jewish."

Breaking the Bonds of Ethnic Solidarity: Poles Report other Poles

In this sample, sixteen investigations were begun at the behest of initial reports made by Poles. Eleven of these pertained solely to acts of wrongdoing perpetrated against Jewish victims, and five had involved both Jewish and Polish victims. While the former instances seemingly indicated a recognition and concern on the part of Poles for the particular nature of Jewish wartime suffering, a closer analysis of these cases belies this impression. Instead of being motivated by a sense of moral outrage or the desire for justice, these reports often aimed to exact personal revenge in unrelated matters involving intra-family conflict and disputes about property.

Such a dynamic is readily apparant in cases dismissed by the Łódź, Lublin, and Warsaw prosecutors' offices. For example, Witold Andruszkewicz's mother accused her son of having shot Jewish laborers that he oversaw in his work for the blue police. Over the course of the investigation, it was revealed that Andruszkewicz and his mother were embroiled in a heated feud since she did not approve of the woman he had married. This element of petty vengeance,

the absence of eyewitness testimony, and a strong character reference from a fellow prisoner from Andruszkewicz's time at Mathausen all weighed in the suspect's favor, and his case was dismissed.[47]

When not colored by personal disputes, jealousies sparked by the reappropriation of Jewish property also motivated Poles to file reports at the local police and security services. In Lublin, Antoni Angorze was accused of having stolen "formerly Jewish property" and for having "probably tortured and murdered Jews in the ghetto."[48] Notably, although this report made passing reference to the fact that Angorze had been directly responsible for persecuting Jews, the actual thrust of the complaint revolved around Angorze's possession of items of value. In the eyes of the original complainant, it did not matter if Angorze himself had directly harmed Jews to take possession of these items or if he had simply looted it in the aftermath of the act of violence. In any case, the prosecutor ruled to dismiss the case on the basis of two witness statements claiming that even though Angorze had worked for the blue police, he had nevertheless been a loyal Pole during the occupation.[49] In doing so, the prosecutor seemingly ignored the fact that Angorze's alleged loyalty to Poles did not bear any relation to his potential involvement in the persecution and murder of Jews.

A similar allegation was leveled at Kazimierz Kołaczkowski, a blue police officer from Rzeszów who had repeatedly returned home on leave from Białystok with "… 3 or 4 suitcases of

[47] See GK 453/465, Andruszkiewicz Witold, IPN.

[48] Do Szanownej Komisji od Kazika, undated, LU 319/4 Angorze Antoni, IPN Lublin.

[49] Wniosek o umorzenia dochodzenia, March 21, 1947, Lu 319/4, IPN Lublin.

clothes of different types."[50] This caught the attention of his neighbor since the previously impoverished Kołaczkowski family was now "provided for beyond their station" (*zaopatrzony ponad stan*).[51] Although the neighbor did not explicitly give voice to it in her report at the MO, the implication was clear: somehow Jewish property had fallen into Kołaczkowski's hands. Once again, it was this fact that interested the accuser, and not the potential acts of violence that resulted in their acquisition in the first place.

However, unlike in Angorze's case, an investigation by a prosecutor in Białystok quickly uncovered that Kołaczkowski had worked as a translator for the Gestapo's "Jewish section," and that he was implicated in extorting money from Białystok resident Mikołaj Sokol in exchange for the life of his half-Jewish daughter. As a child of "mixed blood," Sokol's daughter had been allowed to remain with him even after his Jewish wife had been sent to live in the Białystok ghetto (where she was subsequently murdered). When Kołaczkowski informed Sokol through an intermediary that word of the child's existence had reached the Gestapo, the former suggested that the situation could be "fixed" by paying a bribe. However, the latter refused to pay, thinking that the child was legally protected from seizure because she had been baptized. However,

> two months later and three weeks after the liquidation of the ghetto Kołaczkowski came to my apartment with a German man in civilian clothes who spoke Polish and they took the child along with her nanny. I …went immediately to the Gestapo headquarters where I found the nanny in tears. When I asked where the child was, the nanny said that she and other children had been taken away in a truck to the jail. Because it was 6 o'clock in the evening and nothing was open, I could not talk to the Gestapo. I then ran into Kołaczkowski who told me I would never see my child again.…[52]

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[50] Do Obywatela Kapitana Orłowskiego w Rzeszowie, October 18, 1944, Bi 410/188, Kołaczkowski Kazimierz, IPN Białystok.

[51] Ibid.

[52] Protokół przesłuchania świadka, December 15, 1944, Bi 410/188, IPN Białystok.

In his defense, Kołaczkowski explained that he had not known previously about Sokol's daughter and had merely been at Sokol's place in his capacity as a translator, not as a denouncer.[53]

Despite the fact that Sokol's version of events was internally consistent across several narrations and was supported by statements made by two other witnesses who implicated Kołaczkowski in both the extortion of Sokoł as well as a Jewish family that had been hiding outside the ghetto, the prosecutor dismissed the case on the grounds that

> during the investigation it was not determined if the suspect committed a crime. The allegations that he accepted bribes was not proven…. As regards the detainment of Sokol's child … it turns out that after the liquidation of the ghetto the Germans took 70 mostly mixed-blood children…. The fact that Kołaczkowski participated in the seizure of the child had to with the fact that he was a translator for the Gestapo … and the German authorities had long been aware of the existence of a half-breed child at Sokol's place, such as Senator Frank from Kraków and other German authorities as well as acquaintances of these people….[54]

In this manner, Kołaczkowski's role in the detainment and murder of Sokol's child was attributed to the decision of the governor of the General Government Hans Frank, who bizarrely enough is described here as if he had personal knowledge of Sokol's situation. No doubt, the prosecutor was simply attempting to convey the fact that the decision to murder half-Jewish children had been a policy decision emanating from above. Nevertheless, this did not change the fact that Kołaczkowski had used his position as translator at the Gestapo to terrorize the local Jewish population and to profit from their destruction. Even if it could not be proven if

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[53] Protokół przesłuchania podejrzanego, Rzesów, July 31, 1945, Bi 410/188, IPN Białystok.

[54] Wniosek o umorzenie dochodzenia, September 21, 1945, Bi 410/188, IPN Białystok.

Kołaczkowski himself had denounced the child, there was more than enough evidence of Kołaczkowski's pecuniary misconduct. In light of this flagrant procedural misconduct, it is hardly surprising that Sokol vehemently protested the dismissal:

> Kazimierz Kołaczkowski's collaboration with the Gestapo is uncountable. He himself came with another man on September 27, 1943 and took my child… my three-year old Irenka.... Kołaczakowski knew very well that he was taking the child to her death because the very same day she was taken I went to Kołaczkowski's friend Alexander Pulawski to ask him to intervene on my behalf. At Pulawski's I found Kołaczkowski and when I asked him what they had done to my child he answered that I would never see her again and Pulawski said to me: "bring the man a drink of vodka and don't think any more about the child." Moreover, two months before my child was taken, Pulawski [at the behest of Kołaczkowski] warned me that the Gestapo planned to take my child and if I could pay the child could remain with me. I did not pay because I considered this extortion and did not imagine how tragic the consequences would be. Far be it from me to demand the trial of an innocent man, but as someone who has been morally and materially harmed by the Nazi terror I am unable to understand how a case against a man on the murderers' payroll can be dismissed.[55]

Despite this impassioned plea, the Łódź special criminal court ultimately ruled not to reopen the case and argued that Sokol's complaint was completely unwarranted: after all, he had been warned two months before his daughter was taken and had ample time to have hidden the child or taken her away from Białystok. Since he had "trivialized" the warning, Sokoł himself was "first and foremost to blame for the fact that his child had been taken from him and executed."[56]

Thus, a clear pattern emerges in an analysis of this subset: initial reports of wrongdoing motivated by personal grievances and jealousy provided an excuse for prosecutors to dismiss

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[55] Zażalenie na postanowienie ob. Prokuratora o umorzeniu dochodzenia w sprawie Kołaczkowskiego, September 29, 1945, Bi 410/188, IPN Białystok.

[56] Wyciąg z dziennika posiedzenia niejawnego. Kzspec 29/45, November 6, 1945, Bi 410/188, IPN Białystok.

cases that they had no interest in pursuing in the first place. That they did so is all the more disturbing given the fact that when Poles broke the bonds of intra-ethnic solidarity to denounce other Poles for wrongs perpetrated against the "other," there was most likely some truth to their claims. After all, if one was inspired to create a fictitious account of wartime wrongdoing, why not have it feature Polish victims since it was a well-known fact this was the optimal strategy for gaining the attention of investigators and prosecutors? However, even when a report motivated by jealousy did uncover serious allegations of wartime wrongdoing (as had been the case with Kołaczkowski), the prosecutor nevertheless found other means by which to avoid indictment, and in doing so, demonstrated a chilling callousness and indifference for retribution for wrongdoings perpetrated against Poland's Jewish minority.

Sadly, this indifference was also evident in the case of Edmund Wojakowski, who had come to the attention of the Warsaw prosecutor's office after a call from the Musicians Union (*Związek Muzyków*). Apparently, a Verification Commission established at the Ministry of Culture to screen future employees about their wartime behavior had uncovered that the flutist Wojakowski had "offended the honor of Poland" by having denounced four Jews to the gendarmerie.[57]

Upon detainment, Wojakowski explained the situation in the following manner:

> In fall 1943 when I was living in Kraków I went home for vaction to Wołomin where I have my villa. After my arrival, my neighbors told me that Jews were hiding in my villa. When I went to go see for myself, I did indeed find four Jews who were unknown to me. I asked the Jews if they knew what kind of trouble they could get me into, and they replied that they did. I asked them to leave as

[57] Protokół nr 10 Komisji Werifikacyjnej, undated, GK 366/566, Wojakowski Edmund, IPN. As it turned out, Wojakowski had previously been detained by the MO but was released since a formal investigation had already begun.

> soon as possible and they said that they would. I did not say by when they had to leave my villa. After this I went home. This happened in the morning.
>
> That afternoon I went to the German police in order to get a permit to be away from Kraków for an extra day. The gendarmes gave me the permit and detained me, asking for the address of my villa. I had to go with them there. They did not state why I had to accompany them. In the car they treated me like I was under arrest. They stopped about 200 steps from my villa and drove me from the car in front of them. I showed them the house and then hid behind the neighbor's house. The gendarmes called for the Jews to come out of the basement, and when they did, the gendarmes began to shoot at them. After a bit, I asked the gendarmes if I could go and they allowed me to do so. As I walked away I saw that three Jews lay on the ground dead. That evening I went to Kraków. I did not denounce the Jews ... I did not denounce anyone to the Gestapo....[58]

The events described by Wojakowski raise important red flags that challenge the veracity of this account. For one thing, even though the presence of Jews in Wojakowski's villa was a "public secret," they had nevertheless managed to hide there for ten days. Coincidentally, it was only after Wojakowski's arrival that they were denounced. For another, if Wojakowski himself had not been the denouncer, then in all likelihood the Gestapo would have killed him as a willing participant in the harboring of Jews. Moreover, since Wojakowski had clearly been quite fearful of the consequences for himself, he could have reasoned that if he himself did not denounce the Jews then someone else could have reported him for not doing so.

Members of Wojakowski's immediate family, the community of Wołomin, as well as fellow musicians rallied behind Wojakowski. According to Wojakowski's niece,

> [M]y uncle was so involved in his artistic work as a musician that he never engaged in activities that were detrimental to citizens and that would have degraded his personal honor as a Pole.... After finding out from the inhabitants of Wołomin that the German authorities planned to search his property where Jews were hiding, at the risk of his own life he went to their hiding place, warned them

[58] Protokół przesłuchania, June 6, 1945, GK 366/566, IPN.

> and asked them to find a safe place, because he had heard that there might be a raid, and moreover that everyone in Wołomin spoke openly of this.[59]

Included with her letter was a list of forty-seven signatures of residents of Wołomin attesting to the fact that Wojakowski was "an honest and a good citizen who never collaborated with the Germans."[60] Furthermore, colleagues from the orchestra (three depositions) stated that prior to the war and occupation, Wojakowski had gotten along well with the Jewish conductor and other Jewish musicians, and that he was not an anti-Semite.[61] The only complaint that they had with him was that he had worked for the Kraków Philharmonic during the occupation instead of refusing to play before German audiences.[62] Ultimately, the weight of public support for Wojakowski motivated the prosecutor's decision to close the case without making an effort to further probe how Wojakowski had miraculously escaped the wrath of the Gestapo given the circumstances narrated by him in his deposition.

Interestingly, of the sixteen investigatons that were begun at the behest of initial reports made by Poles, the only cases that went to trial were those in which allegations of wrongdoing had involved both Jewish and Polish victims. Police statements, trial testimony, and depositions reveal that the primary interest of Polish witnesses and victims was upon wrongdoing directed against them, with allegations of criminal acts perpetrated against Jews featuring only peripherally. This raises the question: If so unimportant to them, why make the allegations at all? An analysis of the cases below reveals that allegations of wrongdoing perpetrated against Jews

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[59] Podanie do Pana Prokuratora sądu specjalnego, June 22, 1945, GK 366/566, IPN.

[60] Załącznik, June 22, 1945, GK 366/566, IPN.

[61] Protokół przesłuchania świadka, July 18, 1945, GK 366/566, IPN.

[62] Protokół przesłuchania świadka, July 19, 1945, GK 366/566, IPN.

were deployed as a strategy to maximize the punishment of individuals who had offended the local Polish community.

In June 1946, a representative of the *mazowiecki wojewód* PPS (Polish Socialist Party) reported that in 1941 in Raciąż he had observed how "a gendarme in the company of a civilian was searching for a Jew who had run away from the local work camp" and that "having found him in a latrine, returned him to the camp where the Jew was shot."[63] Thus began the investigation into Czesław Szczęsny, who had been identified as the civilian in question. It must have soon become very clear to the prosecutor that Szczęsny was not a particularly well-liked member of the community—fifteen witnesses came forward to complain about the various ways he had tormented the local population during the occupation. In doing so, nearly all underscored Szczęsny's reputation as the town troublemaker who was impertinent enough to use the informal "you" when addressing the village elder.[64] Notably, of these fifteen individuals, only two explicitly mentioned Szczęsny's treatment of Jewish victims. For his part, Jan Raszkowski explained how Szczęsny, in his capacity as overseer of a forced labor detail of Poles and Jews, had punished the crew by making them carry so many stones that "four Jews under the commander's whip could hardly carry them to the designated spot."[65] As for the other witness, he confirmed the version of events that had been initially reported by the PPS representative.

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[63] PPR Komitet Wojewódzki do WUBP w Warszawie, June 24, 1946, GK 277/77, Szczęsny Czesław, IPN.

[64] In fact, the most flattering comment made about him during his trial was that he was a "harmless drunk."

[65] Protokół przesłuchania świadka Jana Raszkowskiego, Sierpc, July 25, 1946, GK 277/77, IPN.

On the basis of these statements, Szczęsny was charged on two counts: that he had captured an escaped Jew and handed him over to the gendarme, and that he had denounced seven Poles, beaten six, and seized four coats. During his trial, Szczęsny—who entered a plea of not guilty—never sought to deny that he had participated in the search for the escaped Jew and explained the situation in the following manner:

> In 1941 and 1942 a Jewish transit camp was established in Raciąż. The municipality entrusted me with the transport of food to the camp. I purchased food in the local stores and delivered it to the camp commandant. Aside from this, my responsibilities consisted in overseeing whether roads and pathways were being maintained properly, and I went around with a group of workers to parks and other places. One day when I was at work in the park, a gendarme saw me, and ordered me to go to Leszczyński's farm where a Jew who had escaped from camp was supposedly hiding. It did not matter if I wanted to go or not, I had to go with him. The gendarme asked Leszczyński … whether a Jew was hiding at his place. He answered that he did not know anything about a Jew. The gendarme walked around the property and did not find anyone. Then Leszczyński's sixteen-year-old ward told the gendarme that the "Jude" was hiding in the latrine. I opened the door to the latrine and spotted the Jew. The gendarme ordered him to stand up but either from fear or injury he was not able to do so. At this point the gendarme ordered me to grab the Jew and take him to the camp. I led him in the direction of the camp and then returned to my people…. In my work crew there were no Yids….[66]

Ultimately, Szczęsny was pronounced guilty on both counts and sentenced to seven years for the first charge and three for the second.[67] Notably, no efforts were ever made to bring Leszczyński's ward to trial even though he was the one who had denounced the whereabouts of the hiding Jew to the gendarme.

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[66] Protokoł rozprawy głównej. SO Płock na sesji wyjazdowej w Raciążu, September 6, 1947, GK 277/77, IPN.

[67] Sentencja wyroku, September 6, 1947, GK 277/77, IPN.

Claims of wartime persecution of Jewish victims were also leveled against the Volksdeutscher Reinhold Nitschke in order to maximize the legal consequences against a much-despised "member of the German nation." Nitschke was formally accused of the following:

> As a member of the SA … [he had] taken part in the persecution of the civilian population of Brzeziny, in particular by serving as a ghetto guard and participating with the occupier in the oppression of the Jews imprisoned there, among other things by preventing Poles from giving them food … as well as arresting Anna Drezner who was slated to be sent to Germany for forced labor.[68]

In notable contrast to Szczęsny, only four witnesses for the prosecution gave depositions and then later testified at trial. They presented conflicting accounts of Nitschke's wartime treatment of the Jews of Brzeziny. Whereas two averred that Nitschke had only been involved in sending Poles—including Anna Drezner—to Germany for forced labor, the other two witnesses claimed that they had frequently seen Nitschke in the ghetto guarding Jewish labor brigades. According to the star witness Łucjan Białek's pretrial deposition,

> I had two Jewish friends with whom I grew up—Pakula Szlomo and Jankiel Rozencwejg—to whom I tried to bring food. Several times I was able to smuggle food into the ghetto, but once in September 1942 when I was putting a food packet through the fence to Pakula, Nitschkke caught sight of me, jumped onto the fence and shot at me a couple of times as I ran away.[69]

During Nitschke's trial however, Białek altered this account and testified that he only attempted on one occasion to give his friends food. Furthermore, he explained that after Nitschke's return from mandatory Wehrmacht service in 1943, he had participated in street actions to round up Poles for forced labor. However, this allegation was highly improbable in light of subsequent testimony given by Nitschke in which he explained that he had returned from

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[68] Akt oskarżenia, January 14, 1946, GK 209/490, Nitschke Reinhold, IPN.

[69] Protokół przesłuchania świadka Łucjana Białka, September 8, 1945, GK 209/490, IPN.

active military duty a cripple who could barely walk since all his toes had been frozen off in Latvia. He proceeded to demonstrate this to the court by removing his boots.[70]

The fact that the accused himself had probably lied in his deposition and during trial could not have bolstered his standing in the eyes of the court.[71] Yet, in the absence of multiple and credible witness statements, there existed much doubt as to the actual scope of Nitschke's wartime activities. Nevertheless, the court pronounced Nitschke guilty and sentenced him to death. After an impassioned plea in which Nitschke explained that he had only been guilty of SA membership and did not have on his conscience "a single human life,"[72] Bolesław Beirut commuted this sentence to life in prison.

Finally, Władysław Zdun was doubly disliked by the villagers of Krasniczyn: not only had he been appointed village elder by the occupiers instead of being popularly elected, he faced the additional distinction of having been a prewar member of the highly unpopular Polish communist party (the KPP) and an active member of the communist underground during the occupation.[73] Moreover, at the time of his arrest, Zdun had been employed at the newly-installed and much-feared local security services (UB). Police statements and pretrial depositions taken from witnesses did not make any reference to Zdun's political affiliations, but instead spoke of how he had "captured and transported to the gendarmerie a 14-year-old Jewish girl where she

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[70] Protokół rozprawy głównej, October 24, 1946, GK 209/490, IPN.

[71] Ibid. Nitschke first claimed that he had been mistaken for his brother-in-law who had committed the acts brought against him. Nischke then proceeded to undermine this assertion by testifing that his brother-in-law had been killed in 1941, well before the occurance of events listed in the indictment.

[72] Prośba o ułaskawienie, Octoer 25, 1946, GK 209/490, IPN.

[73] This fact the Nazis most certainly did not know about.

was subsequently murdered" and in a separate instance "captured and transported to the gendarmerie three Russian women who had escaped from forced labor in the Reich."[74]

In immediate response to these allegations of wartime collaboration leveled against one of their own, local communist authorities revisited an internal review of Zdun that had been conducted in 1943, when Zdun had expressed a desire to join the communist PPR party. At that time, the investigation did not find anything objectionable in Zdun's behavior, even though it was known that he had handed over a Jewish girl and three women to the Nazi authorities. Instead, it was deemed that Zdun had conducted all affairs the party entrusted to him "conscientiously and punctually" (*sumiennie i terminowo*).[75] The report surmised that "the accusation of Nazi collaboration brought against Zdun has been fabricated (*obmyslone*) by 'reactionary elements.'"[76] Additionally, the Krasnystaw UB responded to the arrest by submitting a postive "performance profile" (*charakterystyka pracy*) to the prosecutor. It noted that Zdun was "intellectually mature, politically reliable.... Morally powerful in his undertakings."[77]

However, less than a month later, in October 1946, the *wojewód*-level control committee for the PPR[78] had reached a much different conclusion about Zdun, namely that he had

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[74] Protokół przesłuchania świadków, December 13, 1946, LU 330/46, Zdun Władysław, IPN Lublin.

[75] Od Szefa PUBP w Krasnymstawie do Szefa WUBP w Lublinie, October 3, 1946, LU 330/46, IPN Lublin.

[76] Ibid.

[77] Charakterystyka z pracy, September 28, 1946, LU 330/46, IPN Lublin.

[78] Wojewódzka Komisja Kontroli Partyjnej PPR.

> enthusiastically fulfilled the duties of the German occupier and handed innocent people over to the gendarmerie and took the possessions of those who were then killed.... The *wojewód* control commission has confirmed that Zdun craftily snuck into the ranks of the PPR, thinking that he could hide here from assuming responsibility for his crimes, and has decided to expel Zdun from the Party, and bring attention to the Krasnystaw chapter's lack of sensitivity about this issue.[79]

It is worth noting that this assessment did not explicitly mention that one of Zdun's victims was a young Jewish girl.

For his part, Zdun never denied the charges leveled against him, but sought instead to contextualize them: when a fellow villager had reported the presence of the Jewish girl to him and demanded that he transport her to the gendarmerie, Zdun had attempted to convince the other villagers to deliver the girl so that he himself would not have to. When he refused, Zdun was left with no choice but to do so himself, and he was afraid his failure to do so would be reported to the Germans. He narrated a similar version of events about the fate of three Russian women.[80]

At Zdun's trial, twenty-three witnesses took the stand: thirteen for the prosecution and ten for the defense. Interestingly, the trial transcript shows that the former group's testimony shifted dramatically in the courtroom. Whereas pretrial interviews and depositions focused on the fate of the young Jewish girl and the three Soviet women, witnesses now spoke of the ways in which Zdun had wronged them during the occupation, complaints that usually involved the manner in which agricultural quotas had been collected.[81]

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[79] Postanowienie Wojewózkiej Komisji Kontroli Partyjnej PPR w Lublinie, October 23, 1946, LU 330/46, IPN Lublin.

[80] Protokół przesłuchania podejrzanego, October 14, 1946, LU 330/46, IPN Lublin.

[81] Protokół rozprawy głównej, August 1, 1947, LU 330/46, IPN Lublin.

For their part, Zdun's local communist allies stood by him even though he had been condemned by higher-ranking officials in Lublin and testified about Zdun's involvement with the communist underground during the occupation.[82] However, the judge dismissed this testimony outright on the grounds that it "did not contribute to the case, since testimony did not confirm what role and function the defendant had played in the AL (*Armia Ludowa*—People's Army) and then in the PPR."[83] Ultimately, the court's decision to pronounce Zdun guilty and sentence him to death was grounded in the fact that "the accused as village elder played the double-crossing role of the famous Azef,[84] on the one hand a denouncer to the occupation authorities, and on the other hand a participant in the underground movement, working on two fronts...."[85]

Conclusion

The picture of postwar punishment that emerges from the pages of these case files reveals a callous indifference to the wartime fate of Poland's Jewish minority. While this is hardly a surprising finding in light of the scholarship on postwar Polish-Jewish relations,[86] this study sheds light on how the indifference of local Polish populations was refracted through the legal system as prosecutors and judges of the special criminal courts selectively applied their prewar

[82] Ibid.

[83] Sentencja wyroku, August 1, 1947, LU 330/46, IPN Lublin.

[84] Social revolutionary and double agent for the Okhrana, the Imperial secret police.

[85] Sentencja wyroku, August 1, 1947, LU 330/46, IPN Lublin.

[86] See for example, Jan T. Gross, *Fear: Anti-Semitism in Poland after Auschwitz* (New York: Random House, 2006).

legal training to block the investigation and prosecution of Poles accused of perpetrating crimes against Jewish victims.

As the "gatekeepers" of the system of punishment, prosecutors often dismissed cases in which consistent and coherent witness testimony warranted the issuance of an indictment. This clear violation of prewar legal practice was often cast in the discretionary language of "lack of evidence," a personal judgment about the number of witnesses required to build a case. Yet, it was often the case that six coherent witness statements in a case pertaining to a Jewish victim would be dismissed while a corresponding claim of wrongdoing against a Polish victim would be indicted on the basis of much less witness testimony. Another tactic deployed by prosecutors was the acceptance of testimony at face value and the willful ignorance of witnesses' logical inconsistencies and outright lies. Finally, in those cases in which prosecution was impossible because of the absence of eyewitnesses, prosecutors stripped crimes perpetrated against Jewish victims of their "special status" as acts of collaboration. As a result, few investigations that involved alleged acts of wrongdoing against Jewish victims ever made it past this first legal hurdle.

The cases that did make it beyond this first legal gateway generally tended to be those that involved wrongdoing perpetrated against Poles and Jews. As depositions and trial testimony show, the real thrust of such investigations and trials was vengeance for real or perceived wrongdoing perpetrated against Poles either prior to or during the war. In this vein, accusations of wrongdoing that involved Jewish victims surfaced when a Polish suspect had broken the bonds of solidarity with the local Polish community. As a result, community members felt no obligation to protect one of their own, and to maximize their own vengeance, revealed the suspect's involvement in Holocaust-related crimes. Thus, the judges who presided over these

issued guilty verdicts that remained true to their prewar training; after all, there was ample enough witness testimony for such pronouncements, even if the testimony itself was more concerned about Polish national suffering than the atrocities of the Holocaust.

CONCLUSION

A NEW POSTWAR REALITY TAKES SHAPE "IN THE SHADOW OF THE CREMATORIA"

> Nothing of the past world is real. Nothing has remained. People are made to survive what seems to lie beyond their capability. Fear ultimately divides them—fear that the other may cause their death. [R]eality… draws near in fragmented events and tattered reports, in echoing shots, in the distant smoke drifts.…This reality… is not real—that is, until the mind struggles to gather it up, arrest, and understand it.[1]

The struggle to "make real" the events of the Nazi occupation and to overcome its divisive legacy of fear functioned as a catalyst for postwar Polish state-and nation-building efforts. In a new reality characterized by profound trauma, social dislocation, extreme material deprivation, and political flux, efforts to document the scale and scope of the political violence and mass atrocities that had been the hallmarks of five years of Nazi occupation, to memorialize and commemorate its victims, and to punish perpetrators provided a potentially powerful rallying point around which to draw atomized individuals and fractured communities together and to realize the "new socialist reality" on Polish soil. Yet collective moral outrage and desire for vengeance masked deeper fissures born of a myriad of prewar and wartime "realities," and it was at their intersection that both a master narrative of wartime suffering and a new Polish nation would emerge.

Designing "Technologies of Retribution"

The "technologies of retribution" that emerged in the immediate aftermath of the war and occupation to help manage Poland's postwar reality embodied two different approaches to

[1] Zofia Nałkowska, *Medallions* (Evanston, 2000), 17–18.

institution-building. While the Main Commission was created "from scratch," efforts to develop the legal machinery to punish "war criminals, collaborators, and traitors to the Polish nation" occurred within an institutional framework stemming from the previous regime. Notably, even though Poland's prewar criminal justice system had barely existed for two decades as a uniform entity, it had nevertheless represented a fusion of long-standing legal traditions stemming from Poland's various partitions.

Despite these different institutional origins, the developmental trajectories of these technologies of retribution were inflected by the interactions of two groups of actors whose experiences and understandings about how the world could and should work diverged drastically. For their part, Poland's prewar socialists who had spent the war years in the communist underground resistance movement or in Moscow were driven by a desire for vengeance that was filtered through the larger socialist state-building project. As the new political leaders of postwar Poland, their understanding about how to make the world right again in the aftermath of widespread political violence and mass atrocities hinged upon building a new political, social, and economic reality that would not only ensure that such horrors could never again occur, but that humans would more generally live in conditions of justice and equality under socialism. While the "ends" were clear, the means by which to achieve them were not, and as these elites experimented with ways to realize both retribution and socialist political transformation within the institutional contexts of the Main Commission and the interwar criminal justice system, returnees from Moscow were set apart by their inability to fully grasp the complexities of daily life in occupied Poland and the types of compromises individuals were forced to make in order to survive. In this, they set themselves apart from both the population at large as well as the their brethern who had fought in the communist underground.

For their part, legal personnel who had also weathered the war and occupation in Poland used their prewar educational and professional experiences as a framework for understanding how to make the world right again. In contrast to socialist elites, their "legal imaginations" prescribed both the means and the ends to this: technologies of retribution were to inhabit a space separate from and above politics whereby the application of formal legal procedures would govern the investigation and prosecution of wrongdoing. Unfortunately, these means and ends had been rendered meaningless in the shadow of the crematoria. The problem of ex post facto justice aside, "regular" methods of investigation and case building designed to handle individual criminal acts perpetrated against individuals could not cope with crime scenes where tens of thousands had perished and where the perpetrators had been caught up in the larger machinery of a criminal state enterprise. In this new reality, the traditional rationale for punishment grounded in retribution and deterrence also had no place. Whereas retribution had previously been understood in terms of equivalence, in the shadow of the crematoria, even the maximum punishment of death could never be commensurate with the murder of hundreds of thousands. Furthermore, punishment motivated by the desire to prevent further acts of wrongdoing sat uneasily with the criminality that emerged in the context of the widescale violence of the Nazi occupation since most of its criminals were law-abiding citizens.

In this sense, new elites enjoyed a certain sort of flexibility because they were unencumbered by the rigid understandings of crime and punishment that haunted legal experts. This allowed them more "space" to think innovatively about how to cope with the legacies of the wide-scale political violence and mass atrocities that had been visited upon Poland. This proved useful in overcoming the "wrongness" of ex post facto justice, thus making it easier to embrace the joint Allied project that had initially been set forth in the Moscow Decree.

However, in the absence of constricting "legal imaginations," the efforts of the new socialist elites to construct technologies of retribution were shaped by other concerns. This was particularly apparent in the opportunities and risks represented by the design and development of the Main Commission. Since it was built "from scratch," it represented a chance to forge a truly socialist institution in a postwar reality where many new political, social, and economic endeavors rested upon a prewar "bourgeoise" infrastructure. Yet, just as no clear precedent existed as to how to cope with the aftermath of widespread political violence and mass atrocity, so too was it unclear how to design a socialist institution dedicated to dealing with such legacies. Soviet experiments in this regard provided little guidance, and as Polish elites grappled with how to define the mission and organizational structure of the Main Commision in socialist terms, this displaced investigation and punishment, documentation, and commemoration, thus rendering the voice of prewar legal personnel irrelevant.

While Polish socialist elites played a defining role in shaping the design and development of the Main Commission, their ability to influence the punishment of war criminals, collaborators, and traitors to the Polish nation was more complex because they found themselves constrained by the institutional framework of the interwar criminal justice system. Thus, instead of defining this project "from scratch," they had to devise strategies for injecting socialist content into already-existing practices of punishment, a process of experimentation that was constrained by interwar legal personnel's ability (and desire) to adapt and respond to fairly rapid shifts in the legal and procedural "rules of the game." This represented a trade-off: while the institutional trappings of the interwar Polish criminal justice system and their associated legal personnel lended prestige and know-how to the development of this technology of retribution, the price new elites paid for this was steep, since they risked the corrupting influence of old "bourgeoise"

mentalities and structures upon their new reality. Once again, while these dangers were clear, the means to go about controlling and limiting them unleashed experimentation that often came at the cost of rendering justice.

Those Who Were "With Us," "Against Us," and Who Were "Never Part of Us": Punishment and the Enactment of the Nation

In institutional settings where understandings of criminality and identity were in flux, the branding and punishment of collaborators represented unique moments whereby categories of social and political "belongingness" could be (re)constructed. In the immediate postwar years, the efforts by new socialist elites to cast collaboration in terms of socio-economic class failed. The outcome was shaped both by the as-yet unconsolidated nature of their political power and corresponding ability to enforce directives from above, as well as the fact that legal personnel and the population at large had not yet internalized new class-inflected "vocabularies of motive" for themselves. Instead, those "from below"—prewar legal personnel in conjunction with local communities—shaped the very meaning of collaboration and its punishment. In doing so, they collectively passed judgment on the extent to which it had been acceptable to compromise personal beliefs and civic and ethnic identities, all the while considering loyalty to the local community and the larger Polish nation during the occupation. In weighing and assessing these occupation-era expressions of solidarity, legal personnel and local communities established the parameters for new solidarities at the level of the family, the community, and the nation.

The role of the family emerges most clearly in cases pertaining to interwar Polish citizens of "Polish descent" who had registered for the Volksdeutschliste. For these individuals, decisions about whether or not to abandon "Polish national distinctiveness" had fractured bonds

of solidarity in some families and had brought others closer together. Regardless of the individual choices that had been made during the occupation, it was the family that bore the brunt of the decision to register in the postwar period, and it was thanks to the ceaseless efforts of family that individuals were released from detention. Interestingly, these dynamic family interactions rarely featured in cases involving interwar Polish citizens of German descent who had registered for the Volksdeutschliste. Instead, family was only mentioned in instances when a marriage had been mixed, including both interwar Polish citizens of Polish and German descent. In such instances, marriage to a Polish spouse, although not enough proof of Polish national distinctiveness, did lessen the severity of punishment. Alternately, interwar Polish citizens of Polish descent who had Volksdeutsche spouses were treated as guilty by association.

Furthermore, the family only featured rarely in other August Decree cases not pertaining to Volksdeutsche from the Annexed Territories. The families of victims strove to cast the wartime behavior of beloved family members in terms of noble resistance to the occupation administration even though an act of criminal wrongdoing had actually been at stake. Family members colluded with one another to advance such interpretations both in instances when prewar Polish law (i.e., stealing) and occupation-era law (i.e., ban on animal slaughter) had been transgressed. Prosecutors and judges tended to reject the efforts of these families, regardless of the source of the law that had been violated. In doing so, they affirmed that Polish ethnic solidarity should not be placed above the law—that is, an individual was not a victim simply because (s)he had refused to obey occupation law. Nor was the individual who had arrested or reported him/her a collaborator even though (s)he had chosen to obey German law at the expense of showing solidarity with a fellow Pole. Thus, while prosecutors and judges affirmed and

supported the family as a unit of ethno-social solidarity, they rejected the family as an individual solidarity unit in favor of upholding the rule of law.

Just as had been the case with the family, widespread political violence and mass atrocities had fractured and atomized local communities, and in the aftermath, identifying and punishing those who had broken bonds of trust and solidarity represented a means by which to reaffirm and re-forge ties between community members. In this light, it is hardly surprising that a suspected collaborator's prewar "belongingness" in a given community—be it at the level of village, town, or city neighborhood—had a profound impact on the processes of punishment.

For interwar Polish citizens of "Polish descent" who had signed the Volksdeutschliste, testimony of local community members that affirmed both the preservation of Polishness in the family as well as individual participation in the community of Polish collective suffering were positively weighed by legal personnel. As a result, they frequently opted to dismiss such cases since these individuals had demonstrated that they had been "with" the Polish nation, despite nominal status as members of the German nation.

Social "belongingness" and the support of local community members took on a more complex cast for August Decree cases not pertaining to Volksdeutsche. In such instances, longstanding and positive relationships between fellow community members filtered interpretations of wartime behavior, meaning that understandings of collaboration were based less upon occupation-era acts of solidarity-in-suffering and more upon an understanding of personal intent. Thus, actions that might otherwise have been perceived as moments of compromise and accommodation at the expense of loyalty to the local community were instead refracted through knowledge of personal character and extenuating circumstances, and thus perceived as part of a repertoire of survival strategies.

Notably, these enactments of local community support were absent when suspected collaborators were disliked or were recent transplants to the local community. The default expectation for such individuals was that they—like other residents of a given locale—would demonstrate loyalty to the local Polish population, even if this came at the expense of performing professional duties or obeying occupation law. However, when such "outsiders" failed to meet these expectations, their actions were either interpreted in light of previous violations of community norms or simply without any knowledge of individual character to provide a larger context for the action. It was simply assumed that that they had acted "against" the local community—and by default, the Polish nation—out of malicious intent to destroy both.

Perceptions of "outsider" status were not only shaped by an individual's lack of longstanding ties to the local community, but also by non-Polish prewar ethnic identities. In such instances, even when such individuals had been longstanding residents of social and political influence, their Polish neighbors failed to rally in support of them in the postwar period. Perhaps this was a function of prewar patterns of ethnic stratification whereby non-Polish members of local communities had supported these individuals' rise to positions of prominence, or perhaps this was influenced by resentment over an occupation-era status as a privileged national group.

Legal personnel demonstrated a willingness to violate prewar training and professional experience to formally brand such individuals as collaborators. In doing so, they accepted sparse and inconsistent eyewitness testimony as proof of guilt. They did not cross-examine or seek to call witnesses from the local minority community who might have cast alleged acts of collaboration in a different light. In this manner, prosecutors and judges confirmed the community's branding of such individuals as "outsiders." Notably, even in instances when local Polish communities rallied in support of ethnic minorities (such as interwar Polish citizens of

"German descent"), prewar legal personnel indicted, prosecuted, and found such individuals guilty of collaboration.

Yet, it was legal personnel's respect for prewar proceduralism that effectively blocked efforts to investigate and prosecute alleged crimes perpetrated against Poland's Jewish minority. To do so, they utilized that fact that Jewish families and communities had been obliterated in the Holocaust, leaving behind few eyewitnesses. While sparse eyewitness testimony did not serve as an impediment to indicting non-Polish ethnic minorities, it did so when allegations of wrongdoing were leveled by Jewish survivors against Polish suspects. Furthermore, prosecutors and judges acted as willing partners with local Polish communities by overlooking obviously false and inconsistent witness statements that aimed to protect one of their own against allegations of wrongdoing involving Jewish victims. As Jews, even though they were known inhabitants of local communities, they had never been part of them and forever remained outsiders. Ultimately, the only times legal personnel demonstrated a willingness to punish Poles for wartime wrongdoing vis-à-vis the Jewish minority were when a suspect had offended the local Polish community. In such instances, local communities, prosecutors, and judges utilized this fact to maximize punishment in retaliation for wrongs committed against the local Polish population.

Thus, prosecutors and judges violated prewar legal training and professional experience in order to co-construct and validate the ethno-national boundaries of family and community. In doing so, they not only demonstrated solidarity with the aforementioned communities, they also contributed to the creation of a homogeneous postwar Polish national identity grounded in "Polishness" and Polish wartime suffering, a cohesive narrative that would form a critical building block for postwar socialist state-building in the "shadow of the crematoria." In this

"new reality" where justice was subordinate to the national community of collective suffering, the Main Commission would play a particularly important role in cultivating this vision, a project that was to occupy them for many years to come.

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