Ingo Loose

Special Courts in the Annexed Polish Regions (1939-1945): Occupation Period Instruments of Terror and Social History Source

Introduction and Aims

The German Reich and the Soviet Union unleashed their attacks on the Second Polish Republic on the 1st and 17th of September 1939, following which Poland was split into three: the eastern part was incorporated into the Soviet Union in accordance with the secret protocol of the so-called Ribbentrop-Molotov Pact, a central Polish region called the General Government (GG) – which initially included the subtitle "for the Occupied Polish Regions" – was retained but with a deliberately unclear status, being in reality a colony under German suzerainty, and finally, the western regions, which were added to the German Reich and earmarked from the outset for complete "Germanization". "Germanization" was to be achieved primarily by expelling Jews and Poles, and replacing them with ethnic German settlers from East-Central and Eastern Europe. Officially, within a short period of time, the laws of the German Reich were introduced into these "annexed eastern regions", that is, the new Reichsgaue Wartheland and Danzig-West Prussia as well as the administrative regions of Zichenau and Kattowitz (East Upper Silesia).[1] Nonetheless, there were significant and revealing exceptions as to

1 Czesław Łuczak, *Pod niemieckim jarzmem (Kraj Warty 1939-1945)* (Poznań, 1996); Czesław Łuczak, *Polityka ludnościowa i ekonomiczna hitlerowskich Niemiec w okupowanej Polsce* (Poznań, 1979); Ryszard Kaczmarek, *Pod rządami gauleiterów: Elity i instancje władzy w rejencji katowickiej w latach 1939-1945* (Katowice, 1998); Mirosław Węcki, *Fritz Bracht (1899-1945): Nazistowski zarządca Górnego Śląska w latach II wojny światowej* (Katowice, 2014).

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how the law was implemented, and criminal law was without question one of the most important exceptions.[2] The reasons for this were obvious to the German occupiers, given that the regions in question were classified, for propaganda purposes, as ancient German lands which were supposed to be "re-Germanized" as much as possible during the war. This proved to be a very tall order given that in reality, barely ten percent of the local population was German, about the same proportion was Jewish, while Poles made up the vast majority – with all three groups having been Polish citizens before the invasion. Therefore, to the extent that conditions on the ground in the annexed regions differed from those in the Reich (and from the claims made by propaganda), the administration of justice became an important tool of National Socialist occupation policies from the outset. But it must be added that the term "occupation policies" only partly reflects what amounted to years of terror for Poles and Jews, where mass murder legitimized under pseudo-legal auspices was the order of the day. More so than any other judicial authorities, the numerous German special courts[3] stand out in particular, and, therefore, their function and judicial practices should be more closely examined. What were the tasks allocated within the framework of the occupation policies? To what degree did the consequent legal decisions affect the general situation and the ability of the people who lived in these regions to coexist? These are just some of the questions requiring elucidation.

Injustice, Case Law, and the Jurisdiction of Special Courts in the Annexed Polish Regions after 1933

The objectives of the German occupation policies in the annexed Polish regions were as extensive as they were contradictory – and during the war at least, there was no way that they could be achieved. Indeed, in spite of the violence with which the Germans pursued their goals, which included the integration of potential industrial and agrarian output into the German wartime economy, the integration of hundreds of thousands of ethnic German settlers from Eastern Europe, the plundering of Polish private property and of the gross national wealth of the Polish state, the exploitation of Polish labour, and, not least, the persecution of the Jews, the final results were am-

2 See Hinrich Rüping (ed), *Bibliographie zum Strafrecht im Nationalsozialismus: Literatur zum Straf-, Strafverfahrens- und Strafvollzugsrecht mit ihren Grundlagen und einem Anhang: Verzeichnis der veröffentlichten Entscheidungen der Sondergerichte* (München, 1985).

3 See Ingo Müller, *Furchtbare Juristen: Die unbewältigte Vergangenheit unserer Justiz* (München, 1987), especially pages 164-75 (chapter on the special courts in the East).

biguous. This was a mounting dilemma in face of which the Nazi leadership, in this case the Reich governors *(Reichsstatthalter)*, did not react by relaxing their methods, but rather by increasingly radicalizing them. At the point of contact of these conflicting objectives, it rapidly became obvious after September 1939 that the already precariously poised German legal system, which had long-since fallen in line with the National Socialist regime, could, in the interests of the regime, deform itself even further in accommodating itself to the needs of the occupation of Poland. When Ernst Fraenkel took the political situation of the 1930s into account and developed his famous model of a "dual state", he distinguished between an action-oriented "prerogative state" *(Maßnahmenstaat)* and a "normative state" *(Normenstaat)* that generally maintained the image of a state that upheld law and order.[4] However, these analytical distinctions break down when considering the occupied Polish regions and the violence that was unleashed there.

It was in any case a startling and irresolvable contradiction when, in the fall of 1939, the establishment of a so-called justice system came in parallel with the murder of tens of thousands of Poles and Jews at the hands of *Einsatzgruppen* of the Security Police and the SD – and later continued through the so-called AB-Aktion (*Außerordentliche Befriedungsaktion* – "Extraordinary Operation of Pacification") in the early summer of 1940 in the General Government. On the one hand, this legal development followed a trajectory that had become immediately evident after the Nazi seizure of power in 1933 and was certainly noticed in Poland,[5] namely, that injustice and then later crimes were legitimized under the cover of pseudo-justice, while legally established restrictions and conditions, especially those that came in the form of international agreements, were immediately discarded.[6] On the other hand, what Maximilian Becker aptly describes as "annexation justice,"[7] was, from the beginning, set the task of securing and sustaining a (supposedly) clear separation of ethnic groups along national-racist lines

4 Ernst Fraenkel, *Der Doppelstaat: Recht und Justiz im "Dritten Reich"* (Frankfurt am Main, 1984).

5 Leonard Górnicki, *Prawo Trzeciej Rzeszy w nauce i publicystyce prawniczej Polski Międzywojennej (1933-1939)* (Bielsko-Biała, 1993), 110-43 (in regard to criminal law).

6 By extension, this affected the General Government as well, given its intentionally unclearly defined status as a "neighbouring land of the Reich", in which General Governor Hans Franck had unlimited authority and could promulgate laws going beyond the bounds of the Hague Convention. The law establishing the special courts in the General Government in mid-November 1939 (VOBlGG 1939, 34) could probably be traced back directly to Franck. Also see Instytut Pamięci Narodowej (IPN), GK 196/385, fols. 152, 164: Josef Bühler, *Die Gesetzgebung im Generalgouvernement*.

7 Maximilian Becker, *Mitstreiter im Volkstumskampf: Deutsche Justiz in den eingegliederten Ostgebieten 1939-1945* (München, 2014).

and – just as importantly – maintaining a relationship of superiority between the Germans and the rest of the population. As it became clearer to the German authorities on the ground that they would have to continue reckoning with a majority-Polish population during the war and possibly for a much longer time thereafter, the number of radical voices diminished. For example, the district president of Posen, August Jäger, declared in October 1940 that a rudimentary guarantee of rights was needed for the non-German populations in order to "keep the Pole from turning into the private object of exploitation" of the Germans.[8] The "guarantee of rights" was supposed to hinder private exploitation (which it did not do), and yet the exploitation of the Polish people by the state was the occupier's declared strategy.

With regard to aligning laws in the Polish regions incorporated into the Reich, following shortly after the invasion of Poland, the Reich Ministry of the Interior pointed out to senior Reich officials that it "wanted to undertake a test in the direction of whether the appropriate preferential position of the ethnic Germans was indeed being given, and if necessary, to alter the Reich's legal provisions that are to be introduced, in order to keep foreign nationals *(fremdvölkische Volkszugehörige)* from becoming beneficiaries of German law."[9] Hereby, in the very beginning of the occupation, a legal principle, that is, the universal applicability of the law, was already being systematically and completely undermined, because all that really mattered was that the justice system in occupied Poland served as a guarantor of German hegemony.

There was, however, no intention of maintaining only legal inequality. The number of provisions with nationalist-socialist political objectives that went into effect in the Warthegau in the years that followed were legion, their purpose being to harass and plunder the Polish and Jewish populations and to deprive them of their rights. The legal system was emptied of meaningful content to such an extent and stage-managed *ad absurdum,* that it begs the question as to why anyone believed that the support provided by a system of laws was needed anymore at all. Ultimately, the amount of power-political arbitrariness that unfolded in the occupied regions throughout the entire occupation was so great that it is no wonder that the balance of law and sheer terror was officially pushed in favour of terror in 1942.

With these activities serving as a backdrop, in the fall of 1939, the special courts (*Sondergerichte,* SG) were introduced in the annexed Polish regions by

8 *Ostdeutscher Beobachter* (October 26, 1940); quoted in Holger Schlüter, *"… für die Menschlichkeit im Strafmaß bekannt …": Das Sondergericht Litzmannstadt und sein Vorsitzender Richter* (Recklinghausen, 2005), 64.

9 Bundesarchiv (further BArch), R 2/5112, fol. 72: RMdI, signed by Hans Pfundtner, addressed to the senior Reich administrators, dated November 16, 1939, with reference to implementing the law in the new eastern regions.

the military authorities; their responsibilities were "extensive, as compared to those in the Reich, and covered all criminal acts committed by the civilian population."[10] The most prominent features of the special courts were their swift trials and the significant reduction of defendants' rights, as reflected in the penalties and their severity, which is why the special courts can to some extent be understood as an extension of the permanent state of war in the struggle for ethnic dominance *(Volkstumskampf)*.[11]

Nonetheless, the responsibility of the special courts was not limited to "non-German foreign nationals" *(fremdvölkische)*, that is, Poles and Jews, but also included German criminals. This fact could not be revealed by the occupier-controlled press, which otherwise reported extensively on the judgments rendered by the special courts. Naturally, the German authorities wished to avoid undermining the "authority of German-ness *(Deutschtum)* among the Poles."[12] In the spring of 1942, the press office of the public prosecutor in Posen even put together an information leaflet for government agencies with guidelines for reporting on Germans guilty of delinquent behaviour in the occupied regions. The balance was thoroughly devastating: "the optimistic expectations", according to the Wartheland Gau press office in February 1942, "that the significantly larger Polish population and the natural propensity of Poles towards criminal activity would mean that the number of Germans found guilty of economic crimes in particular would be extremely low, has not proved true."[13] Just the opposite was true, with the number of criminal offenders stemming from the growing German segment of the population being distinctly disproportionate to their actual numbers.

Overall, it was therefore not surprising that economic crimes constituted by far the largest category of offences dealt with by the special courts, and the volume of economic crimes dealt with by the special courts continually increased after 1942. While, generally speaking, the motive of self-enrichment prevailed among German defendants in the eastern regions, Poles and Jews, facing food shortages of famine proportions and other serious deficits of consumer goods, were often systematically forced by bitter necessi-

10 Becker, *Mitstreiter im Volkstumskampf*, 48; also see Wiktor Lemiesz, *Paragraf i zbrodnia* (Warsaw, 1963). For the special courts in the German Reich, see Werner Johe, *Die gleichgeschaltete Justiz: Organisation des Rechtswesens und Politisierung der Rechtsprechung 1933-1945, dargestellt am Beispiel des Oberlandesgerichtsbezirks Hamburg* (Frankfurt am Main, 1967), 81-116.

11 The General Government and the special courts established there followed a very similar development. See Andrzej Wrzyszcz, *Okupacyjne sądownictwo niemieckie w Generalnym Gubernatorstwie 1939-1945: Organizacja i funkcjonowanie* (Lublin, 2008), especially 43-59, 130ff.

12 Archiwum Państwowe w Poznaniu (APP), 299/468, fol. 4.

13 Ibid., fol. 1.

ty to more or less work around fixed prices, hoard harvested products, or turn to the black market. There was a considerable gap between economic crimes and other offences, such as battery, assault, abortions (until it was no longer considered a crime for Polish women in light of "national-political" [*volkstumspolitische*] considerations), wearing the wrong badge (especially for those on the German racial lists [*Volksliste*] or similar), forgery in general (ration cards most commonly), and fraud. Finally, there were also numerous cases that appeared before the special courts concerning Germans and Poles who were charged with having illicit contact with one another – including intimate or simply friendly relations – whereby the penalties for German and Polish defendants varied substantially, with Poles receiving disproportionately more draconian punishments. One of the smallest groups of defendants were those Poles or Germans who assisted the persecuted Jewish population.

The special courts passed down judgments in "national-political" cases as well as capital cases, which is why the trials held by the special courts did not qualify as show trials. Officially, the judges were impartial, even though the National Socialists occasionally tested their political reliability; the long lead-up to the 1933 "political alignment" *(Gleichschaltung)* of the judiciary did the rest. Trials were not open to the public; information on court decisions was only made public through official press releases – which to varying degrees served propaganda purposes. Only in exceptional cases did "flying" special courts visit the provinces or smaller cities to signal the presence of the German justice system; supposedly, they were to have a deterrent effect on criminals through fear in the rural areas.

The countless ordinances and regulations that were issued in the first months of the occupation, which differed in wording but not in their repressive character, reached their climax in December 1941 in the creation of a separate criminal law for Poles and Jews. The death penalty, or life imprisonment, was set as the punishment for a number of criminal offenses. Defendants no longer had the right of appeal, sentences were carried out immediately, and for Poles in particular, legal counsel was denied; in all but a comparatively few cases, this was a serious problem for most Polish-speaking defendants, given that proceedings were held exclusively in German. When an attorney was provided, his defence was usually a farce, at best pleading for leniency or a just trial, in some cases going so far as to agree with the state prosecutor's request for the death penalty.[14] These considerations made themselves evident in the judgments that were delivered: nearly seventy-five

14 Gerd Weckbecker, *Zwischen Freispruch und Todesstrafe: Die Rechtsprechung der nationalsozialistischen Sondergerichte Frankfurt/Main und Bromberg* (Baden-Baden, 1998).

percent of all the defendants brought before the special court in Litzmannstadt (Łódź) were categorized as Poles, but over ninety percent of the death sentences fell on this group.[15]

Germans, meanwhile, practically always had a lawyer by their side – and this alone accounted for different legal outcomes.[16] The state secretary in the Reich Ministry of Justice, Roland Freisler, introduced the so-called Criminal Ordinance for Poles on December 18, 1941 in Posen before an audience of judges and state prosecutors from Warthegau and the districts of Danzig-West Prussia, East Prussia, and Upper Silesia, stating that the position of Poles and Jews in the Greater German Reich was "unique" *(einmalig und einzig)*, a fact "for which Poles as well as Jews had only themselves to blame due to their acts."[17] In reference to this special criminal ordinance, which was not only in force in the annexed regions and the General Government, but was also valid for Polish forced labourers in the Reich,[18] Freisler delivered a talk at the end of October 1941 before a gathering of state attorney generals in which he remarked: "We now have the task of maintaining whatever general degree of order is humanly possible among the Poles as well. Furthermore, we must bring Polish criminal law and the maintenance of that law into line with the needs of the Reich, that is, steadfastly ensuring that the peace and order of the Reich is not disturbed, that its honour and reputation remains above reproach. And we must also finally ensure that insufficient punishments for crimes committed by Poles do not have a contagious effect on Germans.[19]

Parallel to the creation of a standardized German racial list *(Volksliste)*, a legal racial classification system that covered over ninety percent of the population of occupied Poland was pushed ahead at the end of 1940 and the beginning of 1941. In a letter written on April 17, 1941 to the head of the Reich Chancellery, Hans Heinrich Lammers, accompanying a first draft of the decree, State Secretary Franz Schlegelberger of the Reich Ministry of Justice stated that it was his intention to place the special courts, "with their particularly fast and effective trials, at the centre of the struggle against all Polish and Jewish crime." According to Schlegelberger, the success of this scheme was substantiated by "the very impressive official figures produced

15 Schlüter, *Sondergericht Litzmannstadt*, 61-2.

16 Ibid., 75.

17 'Neues Strafrecht für Polen und Juden. Verkündung durch Staatssekretär Dr. Freisler von Posen aus', *Ostdeutscher Beobachter*, (December 20, 1941), 1.

18 The most famous is the case of Walerian Wróbel, a seventeen-year old boy, who was sentenced in July 1942 by the special court in Bremen. See Christoph Schminck-Gustavus, *Das Heimweh des Walerjan Wróbel: Ein Sondergerichtsverfahren 1941/42* (Bonn, 1986); Müller, *Furchtbare Juristen*, 171-3.

19 Landeshauptarchiv Schwerin (LHAS), 5.12-6/4, no. 633, fols. 48-52.

by the special courts during their first ten months of service in the eastern regions. For example, of the defendants brought before the special court in Bromberg, 201 were sentenced to death, 11 to life imprisonment, and 93 were sentenced to a total of 912 years, that is, an average sentence of ten years."[20] The Criminal Ordinance for Poles went into effect on December 4, 1941 and signified the complete loss of rights for Poles and Jews in the annexed territories, and the legal precedents set by the special courts in the years that followed amply testified to this fact.[21]

Nonetheless, the current state of research does not conclusively show in what way the procedures of the special courts differed. It depended on the manner in which "Germanization", or the general occupation policies were to progress. They progressed at different rates in the various Reichsgaue and administrative districts. The very extensive records of the special court in Zichenau give the impression that, in particular, it was used as an instrument of repression against the Poles, and the special courts in the higher regional court district *(Oberlandesgerichtsbezirk)* of Posen, which was identical with the territory of the Wartheland Reichsgau, also appeared to predominantly dispense severe justice (especially the special court in Posen). Similarly, the number of death sentences handed down by the special court in Bromberg (in the higher regional court district of Danzig) was above average.[22] In general, it must be emphasized that the disciplinary role of the courts and their function as a crime deterrent did not just apply to the Polish and Jewish populations, but was also aimed at many ethnic German settlers *(Rücksiedler)* from the Baltic states, the Soviet Union, and other regions who had little experience of the ethnic-nationalist politics of National Socialism, or economic opportunists *("Konjunkturritter")* who hailed from the German Reich.

If one analyses the data for the special courts in the annexed Polish regions, which is only partially complete, it becomes apparent that there were only relatively few Jewish defendants – and after the summer of 1942, practically none. There are three reasons for this: first, the Jewish population in most of these areas had already been sent to ghettos between 1939 and 1942. Second, in the face of their precarious situation and draconian persecutions, the Jewish populations did whatever they could under the occupation to avoid further repression, meaning that they conformed as much as they possibly could even though it was generally difficult to avoid being found guilty

20 BArch, R 43 II/1549, fols. 61-3, hier fol. 61: RJM (9170 Ostgeb. 2–II a² 996/41), signed by Schlegelberger and addressed to the Reich Chancellery, dated April 17, 1941, with reference to criminal law against Poles and Jews in the annexed eastern regions.

21 Schlüter, *Sondergericht Litzmannstadt*, *passim*.

22 Ibid., 80-4; Weckbecker, *Zwischen Freispruch und Todesstrafe*, 449.

of "criminal behaviour" given the number of discriminatory ordinances and prohibitions that they faced.[23] Third, of those Jews who fell into the hands of the criminal authorities, only in rare cases did they actually survive to appear before a special court. From the outset of the occupation, the murder of Jews was standard practice; but then, as a rule, the special courts also handed down tougher punishments for defendants who were classified as Jews.[24] Even a cursory glance through the trial documents of different special courts reveals that bills of indictment and court decisions were not short of statements such as "the untrustworthy Jew/Pole", "the shifty Jew", and so forth. Beginning in February 1942, to the detriment of Jewish defendants, Jewish witnesses were denied the right to testify in court, which reduced a defendant's chances of a successful defence even further.[25]

In sum, the wide range of possibilities provided by special criminal law were put to heavy use in the annexed eastern regions. Going one step further, in March 1942, the state attorney-general in Posen even suggested to the Reich Minister of Justice that the public prosecutors be given the power to issue sentences without trials.[26] In contrast to this, the state attorney-general in Kattowitz had already suggested earlier, at the beginning of January 1942, that especially mild sentences should be given in response to "crimes committed by Germans to the detriment of Poles and Jews",[27] a suggestion, however, which the Reich Ministry of Justice declined, apparently out of fear that the delinquent activities of Germans in occupied Poland, which already exceeded the national average for the German Reich, would get completely out of hand. All the same, provisions were written into criminal law which established a new type of imprisonment, namely, confinement in a penal camp (*Straflager*) and in a hard-labour penal camp (*verschärftes Straflager*) where prisoners "were to be kept busy with hard labour and severe labour",[28] which often simply amounted to incarceration in a concentration camp.

23 Schlüter, *Sondergericht Litzmannstadt*, 67.

24 On the Jewish genocide in the annexed regions, see Michael Alberti, *Die Verfolgung und Vernichtung der Juden im Reichsgau Wartheland 1939-1945* (Wiesbaden, 2004); Jacek Andrzej Młynarczyk and Jochen Böhler (eds), *Der Judenmord in den eingegliederten Gebieten 1939-1945* (Osnabrück, 2010).

25 Schlüter, *Sondergericht Litzmannstadt*, 68.

26 BArch, R 3001/20850, fol. 323: Generalstaatsanwalt Posen (414-1.6), unsigned, addressed to the Reich Ministry of Justice, c/o State Secretary Dr. Freisler, dated March 27, 1942, with reference to transferring authority for sentencing to the state prosecutor's office.

27 BArch, R 3001/20848, fol. 494: note from the Reich Ministry of Justice (9170 Ost/2 – II a^2 387.42), unsigned, dated February 2, 1942, with reference to the status report of the state attorney general's office in Kattowitz, dated January 3, 1942.

28 BArch, R 43 II/1549, fols. 96-100: Begründung zum Entwurf der Verordnung über die Strafrechtspflege gegen Polen und Juden in den eingegliederten Ostgebieten, dated September 25, 1942.

Throughout 1942, an extensive amount of correspondence was exchanged between the Reich Ministry of Justice and the Gauleiters and senior state prosecutors, especially those in the annexed eastern provinces, discussing the way in which criminal proceedings against Jews in their entirety were to be handed over to the police, that is, the Reichsführer-SS. Following an initial attempt at using police-organized summary courts (*Polizeistandgerichte*) in the fall of 1939, the idea was revived in the summer of 1942, when these courts took over "the vast majority of criminal prosecutions against 'foreign peoples'".[29] For Jews, the right to appeal was completely abrogated in 1942. Writing in response to a draft submitted by the Ministry of Justice, Reich Propaganda Minister Joseph Goebbels countered with an even more radical suggestion, "to revoke entirely the legal means for Jews within the justice system as well as the bureaucracy".[30]

Under Article 13 of the Reich Citizenship Law, adopted on July 1, 1943,[31] Jews were completely removed from the Criminal Ordinance for Poland and were placed from this point on entirely under special police laws, what was in fact, an altogether arbitrary system that existed beyond the bounds of any legal system at a time when the vast majority of Polish Jews in occupied Poland had already been murdered.

The Jewish population's complete loss of rights had in fact occurred much earlier in the General Government. For instance, as early as 1940, leaving the ghetto without permission could be punished with being shot on sight.[32] Unofficially, a similar practice almost certainly took root in the western regions of Poland as well. At a minimum, we do have a case that appeared before the special court in Kalisch, in which a Jewish defendant testified that he defended himself against a police officer only because it had been decided to shoot him.[33]

29 Becker, *Mitstreiter im Volkstumskampf*, 58.

30 BArch, R 3101/10435, fol. 14: Reichsminister for Public Enlightenment and Propaganda, signed by Goebbels (R 1400/23.7.42/122-1,9), addressed to the senior Reich administrators, dated August 12, 1942, with regard to limiting access to the legal system for Jews.

31 Dreizehnte Verordnung zum Reichsbürgergesetz vom 1. Juli 1943 (RGBl. I 1943, 372)

32 *Die Verfolgung und Ermordung der europäischen Juden durch das nationalsozialistische Deutschland 1933-1945*, vol. 4: *Polen September 1939 – Juli 1941*. Edited by Klaus-Peter Friedrich (München, 2011), 466-7, (document no. 211).

33 BArch, R 3001/138120, fols. 4-8: Judgment rendered by the special court in Kalisch, January 27, 1942.

Special Court Verdicts as a Social-Historical Source of the Occupation

It is actually surprising that researchers have paid very little attention to the rather large collection of documents left behind by most of the special courts.[34] Roughly speaking, about 30,000 special court files have survived, and of these, the records of the special courts in Litzmannstadt, Hohensalza, Kalisch, Bromberg, and Zichenau are by far the largest collections, kept today in the state archives in Łódź, Inowrocław, Bydgoszcz, Kalisz, and the Institute of National Remembrance (Instytut Pamięci Narodowej, IPN) in Warsaw. Only a few trial records survived from the largest special court, the one in the higher regional court district of Posen, but then, this collection includes hundreds of personal files, from the director of the regional court district down to the lowest-ranking assessor. Not only does this concentration of source material provide the opportunity to make a detailed analysis of particular criminal acts, it is also ideal for conducting comparative research on the conduct of the occupation authorities in the respective individual regions, to include biographical studies of the perpetrators. For a few areas, there are even reports from the judicial authorities, such as those for Königsberg.[35]

What remains for future research are fundamental questions pertaining, for example, to the identity of the judges and prosecutors, where they came from, what their ideological and professional backgrounds were, whether they moved to the annexed eastern territories voluntarily, and how their careers developed after 1945 in the various allied zones of occupation in Germany, and in West Germany after 1949 – where no special court judge had to worry that his wartime services "in the East" would catch up with him.

More important, perhaps, is the potential that these documents possess in regard of questions pertaining to the complexity of both Polish-German and Jewish-German relations – because, contrary to the common assumption that the large number of discriminatory decrees issued in the Reichsgau Wartheland point to the "efficiency" of regional legislation and jurisdiction, it would appear that the bulk of the legal provisions and the large number of cases that appeared before the special courts suggest otherwise. Indeed, they indicate that the National Socialist authorities were only partly successful in regulating and segregating the various ethnic groups. Alongside economic criminal proceedings that appeared before the special courts – as already

34 See, above all, Weckbecker, *Zwischen Freispruch und Todesstrafe*, as well as the previously mentioned studies by Becker and Schlüter.

35 Christian Tilitzki, *Alltag in Ostpreußen 1940-1945: Die geheimen Lageberichte der Königsberger Justiz 1940-1945* (Leer, 1998; Würzburg, 2003).

mentioned – the diverse types of contact that took place between ethnic groups (including denunciations) in occupied Poland were often the catalyst for investigations and the trials that followed.

Unofficial contact between Germans on the one side and Poles and Jews on the other was fundamentally understood as a political crime. The measures and regulations that were meant to curtail contact between these groups as much as possible were relatively numerous: they included a degrading mandatory greeting that had to be made to Germans, a ban on the use of the Polish language, practically non-existent insurance protection, a special Polish excise tax on already low wages, a ban on marriage before a certain age, which was imposed to artificially depress the birth rate, a ban on so-called mixed marriages *(Mischehen)* between Poles and Germans,[36] a practical ban on practicing one's religion in a number of places, segregated streetcars for Poles and Germans, separate cemeteries,[37] and even a ban initiated in November 1941 that forbade the sale of cake to Poles.[38] On the strength of National Socialist race laws, the special courts even passed verdicts based on retroactively applied law: in one case, the special court in Posen sentenced a thirty-eight-year-old ethnic German who had been a Polish citizen to three years imprisonment for "race defilement" *(Rassenschande)* because she had married a Polish Jew in Riga in 1937.[39]

Numerous memoranda and circular letters produced by the German authorities that focused on the relationship between Germans and Poles reveal what was at the heart of National Socialist policies of apartheid. Not only does this indicate how important this particular point was for the National Socialist ruling elites in the Warthegau – as well as in the rest of occupied Poland – but it also suggests that there was a great need for tighter regulation, or, to put it differently: that in reality, everyday contact between Poles and Germans often deviated from what was officially allowed and that these

36 APP, 299/835, fols. 237-41: signed Mehlhorn, Reich Governor Office, addressed to the district presidents in Posen, Hohensalza, and Litzmannstadt, dated March 21, 1941, with regard to the ban on marriages between ethnic Germans including those recognized as ethnic Germans, and ethnic Poles and other members of specific foreign groups.

37 Decree on cemetries in the Reichsgau Wartheland, from October 3, 1941, in VOBlRRW 1941, 539.

38 Regulation on the sale of cakes to Poles from November 10, 1941, in: VOBlRRW 1941, 584. For more on the development of this regulation, see APP, 299/835, fol. 156: District President of Posen, Abt. IV L (signed Daum), addressed to the National Food Office (*Landesernährungsamt*), Posen, dated October 8, 1941; APP, 299/854, fols. 4-5: Status report from the District President in Posen for the period from January 16 to February 15, 1941, dated February 21, 1941.

39 BArch, R 3001/137622, fols. 6-11: Judgment rendered by the special court in Posen on October 17, 1941.

boundaries were often set aside, especially since social contact could not be completely avoided. Numerous trials held before the special courts make it clear that, on the one hand, there was a large number of people who simply ignored these political boundaries, but on the other hand, that the punishment for overstepping these boundaries was drastic – even incarceration in a concentration camp, whereby the threshold here was much lower than in race defilement cases occurring in the so-called Old Reich (*Altreich*, i. e. Germany in the borders of 1937).

In fact, there were also Poles who hid Jews and helped them to flee, though the circumstances in the annexed territories made this more difficult than in the General Government. As a general rule, most of the cases coming before the special courts involving hiding Jews carried the death penalty; feeding Jews cut into the strategically important food supplies of the German people and this was sufficient reason to justify the death penalty: "What was especially reprehensible was that they [the defendants] took substantial amounts of meat from the food supply system and gave it to the Jews." A particularly unusual case appeared before the special court in Litzmannstadt in May 1944. A mother and son were sentenced to death, on the one hand, for undermining the well-being of the German people, and on the other hand for murder. The defendants had hidden three Jews for seven months, but then began to fear that they would be found out. So they murdered the three Jews, which was coincidentally discovered by the police, and which resulted in extensive investigations. In short, the defendants had no chance of survival, given that hiding Jews was reason enough to earn the death penalty. Still, this was probably the only case that came before a special court in which the defendants were sentenced for murdering Jews.[40]

In this context, a topic that can only be briefly touched upon is that of the special court trials that, after the passing of the Treachery Act *(Heimtückegesetz)* in December 1934, dealt with critical comments regarding the murder of European Jews. It should be noted that there were in fact a number of cases that appeared before the different special courts that led to charges being filed – though interestingly enough – against mostly German nationals in occupied Poland, for voicing criticisms against the extermination of the Jews. What is remarkable about these trials is not just the fact that there were, for example, in the fall of 1943, German nationals who, while living practically in the eye of the storm that was the struggle for ethnic dominance *("Volkstumskampf")*, were still willing to criticize the murder of Jews, and

40 BArch, R 3001/158738, fols. 2-8. The trial documents can be found in Archiwum Państwowe w Łodzi (APŁ), Sondergericht Litzmannstadt, no. 2752, *passim*. The trial is analyzed in Dorota Siepracka, 'Mordercy Żydów przed nazistowskim Sądem Specjalnym', *Pamięć i Sprawiedliwość,* 6 (2004), 233-46.

even saw Jews – according to one quote – as "magnificent people".[41] What the documents also very much show is that a general and sometimes even very detailed knowledge of the Holocaust existed amongst Germans – which is a very different conclusion that has often been reached in the debates of recent years regarding the level of knowledge of ordinary Germans about the Holocaust in "the East".

Conclusion

Research into the history of National Socialism often gives rise to underlying questions that ask how a bourgeois society in the middle of Europe could so radically transform itself within a short number of years, and set in motion a death machine swallowing unprecedented numbers of victims in their tens of millions. These questions are particularly pressing when looking at the special courts. Given the current state of research, the question cannot really be answered whether the striking legal decisions of the special courts conformed to the law's intentional assault on "foreign races", or whether there was a tendency for the courts to routinely interpret these laws even more radically. A comparison with special courts in the German Reich proper reveals only relatively few distinctive features, for instance, that the rulings in Bromberg and Posen were especially brutal and that they handed down death sentences at unusually high rates. Nonetheless, by using the special court in Litzmannstadt as an example, Holger Schlüter has convincingly indicated that "a sweeping will to annihilate, that could find a defendant guilty though it was known that the defendant was not guilty" is not supported by the evidence. Indeed, when considering the mass crimes of the SS, the Security Police, as well as the general police forces, there was no need for such action.[42]

In conclusion, we are left with the disturbing realization that parallel structures of jurisprudence on the one hand, and a system of mass criminality on the other, existed in the annexed Polish territories – and by extension, the General Government. This raises the question as to why anyone would want to look for justice to a judiciary that was reduced to pseudo-legal declarations, since such a judicial arrangement was no longer necessary to achieve the goals of the "negative population policy" ("*negative Bevölkerungspolitik*", Götz Aly). Show trials were not conducted, and, generally, the public only

41 BArch, R 3001/158074, fols. 2-3: bill of indictment from the special court in Litzmannstadt, dated April 7, 1943; BArch, R 3001/158095, fols. 2-4: bill of indictment from the special court in Posen, dated September 6, 1943.

42 See Schlüter, *Sondergericht Litzmannstadt*, 73.

found out about special court verdicts from press reports. Charges brought against individuals were not trumped up or bogus, but based on the hallmarks of crimes, albeit crimes defined according to National Socialist standards. At the very least, the German population could sleep soundly in the belief that German jurisprudence and the policies of the occupation authorities were a "success story", a story of legitimacy and justice, at least in the first years after 1939.

When looking at the development of special courts in occupied Poland, there are four distinguishing stages, namely 1) the installation of special courts in Germany proper long before 1939 as well as during the war; 2) the large number of special courts in the annexed territories being given greater responsibility and authority; 3) the Criminal Ordinance for Poland of December 1941, and 4) martial law enforced by the police after 1942. Nonetheless, this was in no way an evolutionary development. Rather, it is better understood as the steady erosion of legal principles and a sign that the courts, with the passage of time, were only of limited use to the objectives of the occupier's regime, or even stood in its way. Principles of law were distorted and successively emptied of meaning by 1942, after which date they were practically done away with altogether. Thus, even though special courts continued to function, their standards and norms became completely meaningless in face of Ernst Fraenkel's "prerogative state".