

The Art of Retribution: Holocaust Memory and Justice in People's
Poland and Soviet Lithuania, 1944-69

By
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Abstract

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Professor Nathan Wood, Chair

The pursuit of Holocaust justice and representation in the European socialist borderlands is a story of the navigation of the murky terrain of responsibility for violence. In the closing days of World War II, territories in Eastern Europe liberated from Nazi domination faced the thorny problem of dealing with persons who had taken part in the murder of their Jewish neighbors. Lithuania and Poland together once formed the vast Polish-Lithuanian Commonwealth from 1569-1795 and were home to distinctive Jewish communities in the heart of European Jewish life in Russia's western imperial borderlands. Poland and Lithuania each enjoyed a brief period of independence in the aftermath of the First World War and lost it in the aftermath of the Second, but under separate trajectories. Lithuania was formally incorporated as a constituent republic of the Soviet Union, while Poland underwent Communist transition but retained its own autonomy within the Eastern Bloc. Both countries lost about ninety percent of their prewar Jewish population during the Holocaust. Like elsewhere in Eastern Europe, much of the physical violence against Jews had been carried out with the help of local collaborators. Retribution for wartime crimes and the transition to Communist rule were intimately connected. Yet regardless of high politics in the ebbs and flows of Cold War, the attempts in Communist Poland and Soviet Lithuania to represent and perform justice for the Holocaust in various settings—artistic and legal, secret and public, domestic and transnational—evidenced deep engagement with the concept of personal participation in violence. By comparing artistic responses to the Holocaust

with legal trials against perpetrators in Poland and Lithuania, the dissertation explores broader topics in postwar Soviet and European history through the lens of justice.

The dissertation begins by examining early artistic responses to the genocide of the Jews in the immediate aftermath of liberation from Nazi occupation and outlining developing discourses on trauma and justice emanating from the public. Subsequent chapters turn to the legal arenas in Poland and Lithuania to understand how crimes against Jews were discussed and how justice was configured in relation to broader judicial and political aims. The analysis then follows how Jews in postwar Poland and Lithuania used the communal and state mechanisms available to them to address the hurt they had experienced from fellow Jews. The final chapter reintegrates the ‘German perpetrator’ into the story of retribution against local non-German collaborators in the context of important Cold War moments in the 1960s, such as West Germany’s own efforts to begin prosecuting war criminals. The art, film, literature, and music addressed in the final chapter brings the story full circle by exploring the boundaries of moral and criminal liability for genocide as understood by the people and institutions who tried to artistically represent and prosecute the Holocaust in the very spaces where most of it had happened.

This project builds upon scholarship that seeks to show that there was justice for the Holocaust behind the Iron Curtain. While previous scholars have focused on single nations or republics in the Soviet Union since the Bolshevik Revolution, this study examines the various entangled ways a multiethnic borderland region under similar prewar conditions and differing (but still Communist) postwar ones confronted the same problem of accounting for the institutionalized murder of one of its largest minority groups by a foreign power and the ways in which ordinary people helped make it happen. A court of law typically cannot suspend the

perpetrator-victim dichotomy, but the artistic arena served as a space where the binary could be transcended. The artistic impetus to represent the nature of humanity was sometimes at odds with the state's priority of accounting for it. Managers of trials and several cultural figures who addressed war, Holocaust, and justice in their works often reified socialist ideological categories to fulfil propaganda goals but did so in meaningful ways for confronting the destruction of Europe's Jews.

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My deep interests in the theme of participation in historical violence stems from my experiences growing up in the Ozark Mountains of the U.S. South near Ku Klux Klan headquarters. I began researching and writing my dissertation during the rise of Trump and finished it while witnessing the faltering of state and society and the proliferation of mass death during the COVID-19 pandemic. This is not to suggest that I read my historical sources through the lens of the present, but rather to acknowledge that my place in the broader world around me has influenced the particular historical narratives I have emphasized in this dissertation.

Table of Contents

Preface.....	1
Introduction.....	3
Chapter One: Between Wartime Atrocity and the Genocide of the Jews, 1944-49.....	21
Chapter Two: 'The Problem of Punishment': Holocaust Trials in People's Poland.....	56
Chapter Three: 'The Gravity of the Crimes': Holocaust Trials in Soviet Lithuania.....	104
Chapter Four: Between Communal Judgment and State Punishment: Jews on Trial for Nazi Collaboration.....	151
Chapter Five: The Art of Justice, the Law of Retribution, 1948-69.....	187
Conclusion.....	238
Bibliography.....	244

Preface

Edelman's Question

In 1948 George Edelman sent a postcard to the Lithuanian Consulate in New York demanding to know what had happened to the Jews of his hometown. Edelman was a Litvak (a Lithuanian Jew) from Kėdainiai, born there in Tsarist times, who had immigrated to New York in the early twentieth century. On the back of a postcard featuring the gravestone of American writer Mark Twain, Edelman accused:

Dear Lithuania: You surely know what happened in Kėdainiai, my sacred Home-Town soon after the Germans crossed into Lithuania? You surely know. Will you tell me, please?

His postcard was reminiscent of Émile Zola's famous letter "J'Accuse...!" published across the pages of the *L'Aurore* newspaper in 1898 in which Zola accused the French government of antisemitism in the unlawful sentencing of Alfred Dreyfus for espionage. The Consul General, Jonas Budrys, replied to him that

while it could be assumed that the town of Kėdainiai and its population hardly escaped the sad lot of all Lithuania under the enemy occupation, it is very difficult under present circumstances to obtain particulars about happenings in specific localities.

For "particulars" Budrys advised that Edelman contact the American Federation for Lithuanian Jews. Unsatisfied, Edelman replied immediately with information obtained "thru a survivor from Kėdainai":

Surely you know that even before the Germans began their savage doings, the Christian Lithuanians in Kėdainiai fell upon their age-old neighbors and butchered over half of my people in the dear Home-Town.

The excuse offered was because among the Lithuanian Communist leaders there were two Jews in addition to the many Christian Communist leaders. My family in Kėdainiai, loyal to Lithuania, citizens in the townlet for over 300 years, perished in the massacre.

[...] Have you here no information?¹

Edelman's request for information, the basics of which he already had, was actually a plea for recognition of what had happened to the Jews during the war, and at whose hands.

The Holocaust memory and representation wave of the 1960s was a transnational moment of clarification regarding Edelman's question: what exactly had happened to the Jews? The staff of foreign consulates in the West and of communal and judicial organizations in Eastern Europe had contributed to the ambiguity, because they were the ones who had to respond to the inquiries from Jews seeking information about their family and from relatives of individual perpetrators who had ended up in court for their involvement in the Holocaust. Administrators would or could only hint at information but directed people elsewhere for the concrete facts. In the 1960s, authorities in the USSR, particularly in the autonomous republics in the Baltics such as Lithuania, and People's Poland would assert *we have information*. Over the debates on the meaning of wartime facts in the ebbs and flows of the Cold War, the public-facing refrain from behind the Iron Curtain was not to forget about the genocide of the Jews.

¹ Postcard, Lithuanian Central State Archive (Lietuvos centrinis valstybės archyvas) (LCVA), f. 658, ap. 1, b. 107, l. 238.

Introduction

On July 13, 1944, the day of the Soviet liberation of Vilnius from Nazi occupation, a photograph captured by an unknown journalist from *Kino Kronika* depicted Red Army soldiers conveying a line of men. In the background, soldiers stop a retreating individual in his tracks. The men are captioned only as “fascists.” We can presume the men under the caption “Soviet soldiers convoy fascists along streets” were Germans, with Lithuanians among them, and even, in Vilnius, maybe Poles. But perhaps, in this picture, they are all German. What is important about this photo was not, in fact, ethnicity—but that it was left out. I emphasize the photograph because it reflected the ambiguities of reckoning with and prosecuting the Holocaust (the main topic of this dissertation) in the geographic space where most of it had happened, and where most participants remained after the war to account for it. The photograph evokes the question—who was a fascist? And was everyone who committed violence against Jews a fascist? If not, were only fascists responsible?

The photograph reinforced a narrative of liberation and a clear binary between Soviets and fascists; for many East Europeans, the end of Nazi occupation is also remembered as the beginning of Soviet dominance and Communist rule. However, at the time, many Europeans who lived in territories eventually falling behind the Iron Curtain had, in the aftermath of the Second World War, embraced “socialist solutions to economic and political problems.”¹ The problem of bringing collaborators to justice for the Holocaust and reckoning with what had happened to the Jews was tackled head on in many parts of Europe that underwent Communist takeover during the first couple postwar decades. This dissertation is a study of how, in the first couple decades

¹ Norman Naimark and Leonid Gibianskii, “Introduction,” in *The Establishment of Communist Regimes in Eastern Europe, 1944-1949*, ed., idem. (Boulder, CO: Westview Press, 1997), 8. See generally Tara Zahra, “Imagined Noncommunities: National Indifference as Category of Analysis,” *Slavic Review* 61, no. 1 (2010): 93-119.

after WWII, governmental actors and the citizens under their purview in the Soviet Union (specifically the Lithuanian Soviet Socialist Republic) and the Polish People's Republic utilized and reckoned with the information available to them about the Holocaust.² As historian David Shneer has observed, "Soviet Holocaust discourse opened up space for including non-Germans into the category of perpetrator. If this did not happen very publicly on the pages of newspaper, it was certainly happening in war crimes tribunals."³

Historian Timothy Snyder conceived his monumental study on the violence of Hitler and Stalin from Soviet collectivization to the end of the Second World War as arising from "the human geography of victims" between Germany and the western fringes of Soviet Russia which he called "the bloodlands." The Holocaust in the heart of the bloodlands (the Holocaust 'by bullets') was different than in the camps, because most Jews were killed swiftly during mass shootings in the summer of 1941 and into 1942 in large pits close to their homes, with the help of local collaborators. Historian and sociologist Jan Gross ignited a wave of reckoning in scholarship as well as in the public memory in Poland and Eastern Europe with the role of non-Germans in implementing the Holocaust after the publication of his foundational book *Neighbors* in 2001.⁴ The Holocaust itself warranted a new understanding, precisely because locals had been so involved in it, which Snyder contextualized as conditioned by "the visible record of Soviet violence."⁵ His study was an indictment of imperialism and an exoneration of the

² For a general overview see Istvan Deak, *Europe on Trial: The Story of Collaboration, Resistance, and Retribution during World War II* (Boulder, CO: Westview Press, 2015), especially 191-93. Benjamin Frommer, *National Cleansing: Retribution against Nazi Collaborators in Postwar Czechoslovakia* (Cambridge: Cambridge University Press, 2005), 8. Tanja Pentar, "Collaboration on Trial: New Source Material on Soviet Postwar Trials against Collaborators," *Slavic Review* 64, no. 4 (2005): 782-790. Jürgen Matthäus, "Historiography and the Perpetrators of the Holocaust," in *Historiography of the Holocaust*, ed. Dan Stone (London: Palgrave, 2004), 203.

³ David Shneer, *Through Soviet-Jewish Eyes: Photography, War, and the Holocaust* (New Brunswick, NJ: Rutgers University Press, 2011), 181.

⁴ Jan Gross, *Neighbors: The Destruction of the Jewish Community in Jedwabne, Poland* (Princeton, NJ: Princeton University Press, 2001), 132-33.

⁵ Timothy Snyder, *Bloodlands: Europe between Hitler and Stalin* (New York: Basic Books, 2010), 197.

Enlightenment.⁶ However, many locals who participated had killed not only their own neighbors, but also Jews from other countries of Europe. The geographic form of the bloodlands or the “intimate violence” of peoples living “together and apart” in close proximity as neighbors under alternating Soviet and Nazi constraints does not entirely explain why the Nazis brought Jews to the bloodlands to kill them (upon realizing, based on conditions of war, that there it was possible).⁷ Threading the analysis throughout this study is the understanding that the Soviet imperial project (in opposition to the Nazi one) was about managing difference, not exterminating it.⁸

Lithuania and Poland together once formed the vast Polish-Lithuanian Commonwealth from 1569-1795 and were home to distinctive Jewish communities in the heart of European Jewish life in Russia’s western imperial borderlands. Poland and Lithuania each enjoyed a brief period of independence in the aftermath of the First World War and lost it in the aftermath of the Second, with separate trajectories. Lithuania was formally re-incorporated as a constituent republic of the Soviet Union, while Poland underwent Communist transition but retained its own autonomy within the Eastern Bloc.⁹ Both countries lost about ninety percent of their prewar Jewish population during the Holocaust. I focus on the ways people in different settings and of differing positionalities (Jews, non-Jews, governmental actors, cultural figures, accusers, and the accused, etc.) ascribed Nazi policy against Jews and tried to assess or represent responsibility somewhere between Hitler and everyone else. Individuals in the categories mentioned above

⁶ Ibid., 156.

⁷ See Jeffrey Burds, “Introduction: The Intimacy of Violence,” in *Holocaust in Rovno: The Massacre at Sosenki Forest, November 1941*, idem. (New York: Palgrave Macmillan, 2013), 1-5; and Shimon Redlich, *Together and Apart in Brzezany: Poles, Jews, and Ukrainians, 1919-1945* (Bloomington: Indiana University Press, 2002).

⁸ Terry Martin, *The Affirmative Action Empire: Nations and Nationalism in the Soviet Union, 1923-1939* (Ithaca, NY: Cornell University Press, 2001), 5-6, 13-15, 47, 73, 89, 219, 342-343.

⁹ On the borderlands context, see generally Kate Brown, *A Biography of No Place: From Ethnic Borderland to Soviet Heartland* (Cambridge, MA: Harvard University Press, 2003).

performed ideas of justice as revenge, as reckoning in a court of law, as reckoning in one's own community, as the introduction of preventative laws, as commemoration, as the teleological forging of a better world, and as disillusionment with the present and the desire to improve upon it.

My two primary source bases are also subtopics themselves: artistic representations of war and Holocaust in visual art, prose, music, film, theater, and poetry; and postwar criminal trials against local Holocaust perpetrators. In both fields, the emphasis is on postwar Poland and Lithuania. However, the borderland context and postwar internationalization of the Soviet sphere of influence extend the analysis at times to transnational or wider Soviet topics.¹⁰ Mostly, the analysis in this dissertation revolves around a central theme of “personal participation” in violence, as it was a major topic of concern appearing in the aftermath of the war and continued to do so over the decades.

Both art and law are performative spaces for self-reflection and interpretation. But due to the specter of punishment, law typically compels performances of innocence or minimized responsibility. The sources in this dissertation address topics of criminal guilt on the one hand, and responsibility beyond the jurisdiction of law on the other. However, the analysis in this dissertation falls more on criminal guilt, because that was the wider issue directly preoccupying many institutions and individuals in post-Holocaust Europe. As Communist states typically used punitive law to eradicate historical injustices determined by Marxist understandings of underlying structures, there has been a tendency to dismiss reckonings with the Holocaust in postwar Communist space as less than meaningful. This is because Soviet ideology purportedly viewed Nazi race-based atrocities against Jews as no real “mystery” but simply as a

¹⁰ See generally Michael David-Fox, Peter Holquist, and Alexander M. Martin, eds., *The Holocaust in the East: Local Perpetrators and Soviet Responses* (Pittsburgh, PA: University of Pittsburgh Press, 2014).

manifestation of capitalist ideology of the West.¹¹ However, in my study of reckoning in Poland and the USSR after the Holocaust, I take seriously the Communist discourse that certain kinds of behaviors, such as race ideology, were indeed “especially dangerous.” While the Communist regimes prioritized criticizing the hypocrisies and deficiencies of the political order in the West, in my analysis of legal reckonings with the Holocaust behind the Iron Curtain, I heed the point made by cultural scholar Michael Rothberg that “Part of the reason that a legal approach to racist violence fails to bring out the full dimensions of such cases is that it can focus only on a discrete, recent act [...] and cannot easily address the collective, historical legacies of racism that frame that singular event.”¹²

On the one hand, this dissertation demonstrates how the Communist regimes in People’s Poland and Soviet Lithuania expanded the criminal liability of egregious perpetrators of the Holocaust and produced useful idioms for representing complicity and harm. On the other, many individuals demonstrated, particularly in artistic representations of the Holocaust, the desire to engage more deeply with legacies of historical injustice beyond retribution. I demonstrate how cultural figures were searching for ways to address what Rothberg calls “the implicated subject,” or, “the one who participates in injustice, but in indirect ways.”¹³ The simultaneous desires to bring criminal perpetrators to justice and also to address historical legacies that made the Holocaust possible were sometimes at odds with one another. At its broadest scope, the story of Holocaust memory and justice in the socialist borderlands of postwar Europe (Poland and Soviet Lithuania) increases scholarly understanding on the implementation and aftermath of violence

¹¹ Zvi Gitelman, “Afterword: Soviet Jews in World War II: Experience, Perception and Interpretation,” in *Soviet Jews in World War II: Fighting, Witnessing, Remembering*, eds. Harriet Murav and Gennady Estraiikh (Brighton, MA: Academic Studies Press, 2014), 260.

¹² Michael Rothberg, *The Implicated Subject: Beyond Victims and Perpetrators* (Stanford, CA: Stanford University Press, 2019), 9.

¹³ *Ibid.*, 20, 43-47.

and genocide.¹⁴ However, this dissertation is grounded in wider topics in Soviet and East European history, such as Communist transition, memory politics, cultural production, and penal reform.

Primacy of Place over Politics

All of Europe remained silent about the fate of the Jews for several decades after the Holocaust, historian Tony Judt writes. Why then have Eastern Europe and the Soviet Union been specially marked for silence? In his seminal *Postwar: A History of Europe since 1945* Judt remarked, “It is not that the horrors and crimes of the war in the east were played down [...]. It is just that Jews were not part of the story.”¹⁵ Jan Gross has written of “the implicit contract between Communist authorities and the newly subjugated Polish society—that they mutually benefited from considering the wartime fate of Polish Jews a nonissue, would not scrutinize what exactly happened to the Jews during the war, and would encourage and facilitate the departure of remnants of Polish Jewry” which he interpreted as a “‘give’ for the ‘take’ of power.”¹⁶ Many of the territories that underwent Communist transition or incorporation into the Soviet Union after WWII had also typically been centers of prewar Jewish life and death in the Holocaust. The people who lived where the Holocaust happened were also most likely to confront it. Yet giving primacy of place to the politics of the region (i.e., that it was Communist space) tended to obscure the primacy of literal place, in that scholars have often overlooked the meaningful instances of reckoning that did happen. Historian Gabriel Finder writes that from the end of the war to the mid-1980s the “guardians of Polish collective memory” mirrored Soviet policy and

¹⁴ See generally Adam Hochschild, *King Leopold's Ghost: A Story of Greed, Terror, and Heroism in Colonial Africa* (Boston: Houghton Mifflin Company, 1998).

¹⁵ Tony Judt, *Postwar: A History of Europe since 1945* (New York: Penguin Books, 2005), 808, 822.

¹⁶ Jan Gross, *Fear: Anti-Semitism in Poland after Auschwitz* (New York: Random House Trade, 2006), 243.

“effectively assimilated both the slaughter of Polish Jewry and the resistance of the Jewish underground into a Polish national myth underpinned by obligatory Communist biases and in justification of Communist rule.” Jewish Holocaust memory was either “shoehorned” into Communist and Polish national narratives or “submerged” into the national tragedies of European peoples.¹⁷ However, the fate of the Jews was not silenced. While larger official narratives relegated the fate of the Jews to the blurred margins, there were times and places when the fate of the Jews was discussed and emphasized—and these are the focus of my dissertation.

In this dissertation I advance the position that in postwar Eastern Europe and the Soviet Union the genocide of the Jews was configured as a fundamental consequence of the war. Politics should not be the only lens through which we view the postwar transition; memory of the Holocaust did not stifle or disappear with the introduction of socialist authoritarian regimes. Rather, I argue that despite the suppression of Jewish topics and the bifurcated nature of memory of the war among Jews and non-Jews, reckoning with the genocide of the Jews did happen in meaningful ways. Literary scholar Harriet Murav and historian David Shneer have shown that not only were Jews part of the story, they often *made* the stories. Murav insists, “there indeed was a Holocaust in Soviet Russia, but it looks different from what came to be understood as the Holocaust in the West. [...] In the former Soviet Union [the] response to the destruction of the Jews takes on its own distinct outline in which the perspectives of Jewish victims, Jewish avengers, and Jewish victors overlap.”¹⁸ Shneer, moreover, writes that “Soviet Jews, as photographers, writers, filmmakers, and radio personalities, were mediating Nazi atrocities for the Soviet population.” Many Jewish intellectuals called on Jews “to see the mass murder of their

¹⁷ Gabriel N. Finder, “Introduction,” in *Polin: Studies in Polish Jewry*, vol. 22, *Making Holocaust Memory*, eds. idem., et al. (Oxford: The Littman Library of Jewish Civilization, 2008), 12.

¹⁸ Harriet Murav, *Music from a Speeding Train: Jewish Literature in Post-Revolution Russia* (Stanford, CA: Stanford University Press, 2011), 153-54.

European brothers and sisters as a problem for humanity, not for Jews alone, for both ideological and practical reasons.”¹⁹ Historian Polly Zavadvker ascribes the many Jewish intellectuals who mediated content between state and society as belonging to a “group of writers [and other artists] and survivors who expressed motives and purposes that challenged the state’s intentions.”²⁰ In my analysis of artistic representation in this dissertation, I explore art as a historical primary source, building upon the extant scholarship and interpretations to show how and when artistic frameworks complemented and/or departed from legal initiatives. I keep in mind Harriet Murav’s observation of the “tension between writing as a form of transgression and writing as an extension, transformation, and appropriation of legal and paternal authority.”²¹ Key questions artists faced emanating in the legal arena were how to interpret the facts of violence, against whom, and on part of whom.

Thus, this dissertation is part of emergent scholarship that seeks to show that Jews (as participants and also as topics) were very much part of the postwar story in Eastern Europe and the USSR but that this “looked different” than the expectations which developed in the west in the 1960s and 70s (i.e., that in order to count as meaningful, artistic and legal content on the Holocaust must focus solely and explicitly on Jews and that art must conform to particular aesthetic standards). In fact, I suggest that the USSR actually pulled the west into the Holocaust era.

While Jews played a mediating role in art, they did not necessarily play the same role in law. On the one hand, Jewish lawyers took a leading role in crafting postwar legal innovations to capture the nature of the Holocaust for preventing future race-based violence or for prosecuting

¹⁹ Shneer, *Through Soviet Jewish Eyes*, 197.

²⁰ Polly Zavadvker, “Preserving Events that are ‘Vanishing like Smoke’: *The Black Book* as Community of Survivors and Writers 1943-1946,” *Zutot* 11 (2014): 30.

²¹ Harriet Murav, *Russia's Legal Fictions* (Ann Arbor: University of Michigan Press, 1998), 229.

high-ranking members of the SS and proving state criminality. On the other hand, these processes were differentiated from wide-reaching retroactive trials of collaborators and Holocaust perpetrators, in which case Jews did not play the same role in mediating between state and society as did the artists. In Lithuania, most war crimes trials were under the auspices of the state security services which the government pushed Jews out of. Certainly, Jews participated in trials as witnesses and sometimes managed cases. But in the broader landscape of trials, Jews were often present only in that their deaths were the main subject of interrogations. It was typically other non-Jews who substantiated the charges.

The Jewish cultural figures I address fit into the community of writers and survivors described by Zavadivker. However, I conceptualize the actors in this dissertation more in terms of a permeable community of people (Jews and non-Jews, artists and jurists, governmental elites and casual citizens) who had to confront the Holocaust in the very spaces where most of it had happened and then try to make sense of it under new political conditions of Communism. I emphasize the primacy of space and terrain in that Poland and Lithuania constituted much of the territory of the former Pale of Settlement and had been home to large Jewish communities for several centuries. Those who survived the war had to reckon with the loss of those communities, and with those who had facilitated that loss. The people who lived where the Holocaust happened were the most likely to confront it, but in giving primacy of place to the political system of Communism, scholars have often dismissed the obvious: that many people were punished for murdering Jews and in the process had spent a lot of time talking about what had

happened.²² Postwar citizens in Poland and Lithuania occupied former spaces of Jewish life, wartime spaces of Jewish death, and postwar spaces of (mostly) Jewish absence and thus formed a type of “emotional community” of reckoning that was conditioned, but not occluded, by Communist transition.²³

In Poland and Lithuania before the war, many Jews had retained varying degrees of religious distinctiveness. Others were more interested in being part of a broader society around them. In the aftermath of the First World War and ensuing nation-building building projects, Vilnius was at the nexus of Polish-Lithuanian-Jewish questions. Litvaks (Lithuanian Jews) made up the city and resented the Polonization of what had formerly been a multi-national city. They articulated “misgivings about becoming Polish citizens” and looked instead towards the new Lithuanian capital in Kaunas, rather than to Polish “Wilno.” Historian Theodore Weeks writes that as WWI approached, “Polish-Jewish relations had become very strained; Lithuanians, on the other hand, had remained fairly neutral on the Jewish question (their main rival being, of course, the Poles).”²⁴ For Jews, “Vilna” was a Litvak city that had come under the authority of the Polish state. Litvak Jews and Polish Jews were distinctive communities and not particularly fond of one another. Polish Jews held stereotypes to the effect of “split the head of a Litvak and you’ll find a cross” while Litvaks mocked the Polish Jews to the south, particularly the Galitsianer, as too

²² See, for example, Agata Fijalkowski, “Politics, Law, and Justice in People's Poland: The Fieldorf File,” *Slavic Review* 73, no. 1 (Spring 2014): 85-6. The topic is addressed only in passing or in terms of repatriated German officers in the large volume Feliks Tych and Monika Adamczyk-Garbowska, eds., *Jewish Presence in Absence: The Aftermath of the Holocaust in Poland, 1944–2010*, trans. Grzegorz Dąbkowski and Jessica Taylor-Kucia (Jerusalem: Yad Vashem, 2016).

²³ Barbara Rosenwein, *Emotional Communities in the Early Middle Ages* (Ithaca, NY: Cornell University Press, 2006), 25-25. This is also embedded in Pierre Bourdieu’s concept of “habitus” in *Distinction: A Social Critique of the Judgement of Taste*, Richard Nice, trans. (Cambridge, MA: Harvard University Press, 1984 [1979]).

²⁴ Theodore R. Weeks, *Vilnius Between Nations, 1795-2000* (DeKalb: Northern Illinois University Press, 2015), 120-122.

emotive, naïve, and pious.²⁵ Both communities suffered violent pogroms in the late 19th and early 20th centuries as well as the antisemitic policies of both the Polish and Lithuanian authoritarian interwar governments.

This dissertation, however, is not really a story of the Jews, although it includes Jews, but of what people did to Jews. Ninety percent of the population of these distinctive Jewish communities were no longer there after the war, and many of those who had witnessed or shared responsibility in the violence had remained in place to account for it mattered. A repeating refrain throughout this dissertation is that the crux of postwar life revolved around reckoning with the harm that was done. Historian Amir Weiner writes, “At no point was the anti-Nazi crusade a part of the purification drive of the Soviet polity” even in the annexed territories.²⁶ But I want to emphasize that the prosecution of collaborators did not merely serve to fulfil the Soviet state “conspiracy” proving eternal enemies.²⁷ The postwar government wished to fundamentally break Soviet Lithuania’s prewar ideological past from the postwar future, not integrate it.²⁸ In Poland, war crimes trials were explicitly based on the assumption that many Poles (and Ukrainians and *Volksdeutsche*) had for a time aligned themselves with the Nazi polity.

Historian Erik Scott positions the Soviet Union as an empire of diasporas showing the “diversity of the Soviet multiethnic state in a way that the story of nationalities is not simply one of their suffering under Russian domination.”²⁹ Lithuania differs from Georgia, on which Scott

²⁵ Stereotypes in Allan Nadler, “Litvak,” in the YIVO Encyclopedia of Jews in Eastern Europe, accessed April 15, 2020, <https://yivoencyclopedia.org/article.aspx/Litvak>. See generally Ezra Mendelsohn, *The Jews of East Central Europe between the World Wars* (Bloomington: Indiana University Press, 1983).

²⁶ Amir Weiner, *Making Sense of War: The Second World War and the Fate of the Bolshevik Revolution* (Princeton, NJ: Princeton University Press, 2001), 163; see generally 153-54, 162-63, 184.

²⁷ See generally Sergey Kudrayshov and Vanessa Voissin, “The Early Stages of Legal Purges in Soviet Russia (1941-1945),” *Cahiers du monde russe* 49, no. 2 (2008): 266, 291, 295.

²⁸ Violeta Davoliute, *The Making and Breaking of Soviet Lithuania: Memory and Modernity in the Wake of War* (London: Routledge, 2013), 75.

²⁹ Erik Scott, *Familiar Strangers: The Georgian Diaspora and the Evolution of Soviet Empire* (Oxford: Oxford University Press, 2016), 19.

focuses, in that Soviet Lithuania was not a foundational Soviet republic and Baltic institutions were not as integrated with the center as Georgian ones were. Scott's model for the possibilities (and limits) of imperial participation helps us view Holocaust justice in the Baltics, and also in Poland, not just as the tributary of treason trials or revolutionizing campaigns, as some scholars have defined them, but also as a constitutive process in which the minority nationalities in the sphere of direct (Lithuania) and indirect (Poland) Soviet influence took part.³⁰

I specifically focus on those who participated in violence against Jews, rather than collaborators generally, because the governments in Poland and the USSR made distinctions between the collaborator category and Holocaust perpetrators. My study is not an institutional history of trials, but looks instead to the meanings that were made in, and of, them. As historians Seth Bernstein and Irina Makhlova affirm, "these processes reflected an attempt to grapple with what people had done during the war rather than a proactive attempt to remove people because of who they were."³¹ In their analysis of trials against German Nazis in postwar Poland, historians Gabriel Finder and Alexander Prusin concluded that they were "not Stalinist-type show trials," addressed the Holocaust in "a relatively open and even-handed manner," and evidenced Polish and Jewish memories which were "dynamic rather than static."³² Historian Andrew Kornbluth and sociologist Louisa McClintock moved the analysis to non-German perpetrators. "Broadly speaking," writes Kornbluth, trials "consisted of either faulting Jewish victims for what had befallen them or exonerating Polish perpetrators, or both."³³ McClintock focused on

³⁰ See Alexander V. Prusin, "The "Second Wave" of Soviet Justice: The 1960s War Crimes Trials," in *Rethinking Holocaust Justice: Essays across Disciplines*, ed. Norman J.W. Goda (New York: Berghann Books, 2018), 134-135.

³¹ Seth Bernstein and Irina Makhlova, "Aggregated Treason: A Quantitative Analysis of Collaborator Trials in Soviet Ukraine and Crimea," *Soviet and Post-Soviet Review* 46, no. 1 (February 2019): 51.

³² Alexander V. Prusin and Gabriel Finder, *Justice Behind the Iron Curtain: Nazis on Trial in Communist Poland* (Toronto: University of Toronto Press, 2018), 6-7.

³³ Andrew Kornbluth, "Poland on Trial: Postwar Courts, Sovietization, and the Holocaust, 1944-1956," (PhD diss., University of California, Berkeley, 2016), 103.

investigative bodies and punishment as a broader function of state building and national consolidation. On the outcomes of Holocaust reckoning, Kornbluth found that postwar law ultimately “eclipsed the issue of justice for victims and survivors” while McClintock similarly found that “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.”³⁴ As of yet, scholars have not addressed war crimes trials in Lithuania.³⁵

Kornbluth’s argument is a powerful one, because he posits postwar law in Poland as “a rare venue not corrupted by the Stalinization overtaking Poland” with trials held “in accordance with high European standards” in order to advance the argument that the “widespread inability to come to grips with native Holocaust perpetrators” in the pan-European justice “amounted to a tacit acknowledgement of the desirability of societies rendered ethnically homogenous by war and genocide.”³⁶ I take this point seriously, and use it as a starting base for one of the main arguments in my dissertation which is that Communist states in Poland and the USSR, namely Lithuania, used their legal ‘anti-standards,’ so to say, to demonstrate real effort to come to grips with local Holocaust perpetrators in meaningful ways. In Soviet Lithuania, the reckoning was really in the punishment. In People’s Poland, the more evident reckoning was actually not in retroactive war crimes trials against participants in past crimes against Jews, but in forward-

³⁴ Ibid., 209; Louisa McClintock, “Projects of Punishment in Postwar Poland: War Criminals, Collaborators, Traitors, and the (Re)Construction of the Nation,” (PhD diss., University of Chicago, 215), 16.

³⁵ See Alana Holland, “Soviet Holocaust Retribution in Lithuania, 1944-64,” *The Soviet and Post-Soviet Review* 46, no. 1 (February 2019): 3-29. Other works use Lithuanian trial records for content but do not focus on the processes themselves. See Rūta Vanagaitė, *Mūsiškiai* (Vilnius: Alma littera, 2016). On broad trends in Soviet historiography of the Holocaust in Lithuania, see Sara Shner-Neshamit, “Jewish-Lithuanian Relations during World War II,” in *Bitter Legacy: Confronting the Holocaust in the USSR*, Zvi Gitelman, ed. (Bloomington: Indiana University Press, 1997), 174. On antisemitism in Soviet Lithuania, see Justas Stončius, “*Antisemitizmas sovietinėje Lietuvoje 1944–1990 metais*,” (PhD diss., Klaipėda University, 2018).

³⁶ Kornbluth, “Poland on Trial,” 1.

looking legal innovations for preventing future race-based crimes. I argue that despite the oblique attention to Jews in the public evocation, law on treason and “dangerous anti-state crime in the building of the state” was used at times as a meaningful tool to reckon with the ethico-political dimensions of the war, namely the consequences of the Nazi moral order and broader European political one. That the USSR was never able to fully reckon with the distinctive consequences and failures of its own political order is beyond the scope of this dissertation. This dissertation departs from much of the existing scholarship by arguing that the reification of socialist ideological categories to fulfil propaganda goals and mobilize the masses behind the Iron Curtain did not inherently preclude meaningful confrontation with the destruction of Europe’s Jews as *sui generis*.

Chapter one is grounded in the borderlands context of political demands for representing wartime suffering and its meanings for Jews and non-Jews. It sets up a representational theme appearing in legalistic spheres, as well: capturing harmful behaviors against Jews because they were Jews versus accounting for the consequences of harm against people who happened to be Jews. Zinovii Tolkachev was a Soviet Ukrainian Red Army artist from Kiev, born in a Belorussian shtetl, who displayed his artwork in Poland and lived there from 1944-46. His artwork complemented the inauguration of war crimes trials against high-ranking German SS officers in Poland. While Tolkachev navigated the demands of transitioning to Communism and upholding a national narrative of suffering in Poland, I argue that his art specifically narrated the genocide of European Jews. Visitor responses to his artwork reflected emerging, and competing, discourses on how to represent the wartime fate of the Jews that would appear in postwar

legalistic frameworks, as well. Tolkachev made grievable, even momentarily, that which courts made prosecutable over time: mass murder of Jews.³⁷

Chapter two sets up the judicial capacity to balance revenge-seeking and justice, in its different forms, with the government's own broader-reaching aims for postwar Poland. This chapter shifts the emphasis from what 'the Germans' had done to confronting what others had done. In focusing on war crimes discourses in early postwar Poland and the transnational networking informing socio-penal law in the aftermath of war, I argue that meaningful reckoning with the Holocaust was pursued in the qualification of "anti-racist" crimes and conceptions of genocide and crimes against humanity into the expansion of laws against anti-state crime in the building of the state. This process was differentiated from retribution for past crimes against Jews. Chapter three examines how the Soviet regime and local actors consistently pursued justice for murdered Jews as an aim in and of itself while simultaneously utilizing the Jewish wartime fate for broader goals during postwar Sovietization and the ebbs and flows of the Cold War. Holocaust justice in the USSR evidenced as a commitment to an off-stage quiet justice, at the same time that authorities utilized 'on-stage' moments to point out the hypocrisy of the west or to go after anti-Soviet elements.

Chapter four examines the ways in which Jews who survived the Holocaust were implicated by state actors in the legal category of "collaborator" and/or implicated by fellow Jews as responsible for causing harm to other Jews. Comparing trials against Jewish collaborators with those against non-Jews shows the rhetorical distinctions that Communist regimes made, or sometimes did not make, between the collaborator category and Holocaust perpetrators. Throughout the chapter I place the legal frameworks of judgment in context with

³⁷ Judith Butler, *Frames of War: When is Life Grievable?* (New York: Verso Books, 2009), 54, 10.

Primo Levi's contemporaneous philosophical writings on 'privileged Jews' to explore how philosophical and legal understandings of justice functioned in competition amid the postwar desire to expand notions of criminal liability after the Holocaust. The fifth and final chapter brings the analysis full circle by examining how the cultural production of activist and satirist Felix Rexhausen, writer Zofia Posmysz, filmmaker Andrzej Munk, composer Mieczysław Weinberg, playwright Jokūbas Josačė, and poets Vytautas Bložė and Yevgeny Yevtushenko illustrated the borderlands nexus of artistic and legalistic understandings of 'personal participation' and the meaning of murder. Rather than suppressing Jewish content, oblique configurations under Communism evidenced differing statements on genocide, commemoration, justice, and responsibility in powerful ways. Zinovii Tolkachev returns as testament to the power of representations of the Holocaust in the art of retribution behind the Iron Curtain, even if the grief remained personal.

This dissertation is not a microhistory per se, as the focus is on larger themes and topics of justice and reckoning encompassing a wide variety of source bases, institutions, and socio-political contexts in postwar Poland, Lithuania, and the broader USSR. At the same time, most of the analysis centers on sometimes lengthy engagements with individuals or particular groups, some of whom are fictional. I posit individuals as characters in a story who make the observations about the broader developments around them. I approach postwar Lithuania and Poland in this dissertation as *entangled* rather than comparative cases. Although I use categories to ascribe subjects in ways conditioned by the historical subject matter (e.g., collaborators, nationalists, traitors, nation, state, ethnicity, victim, perpetrator), I approach my analysis more in

terms of configurations (e.g., of guilt, justice, responsibility, victimhood, belonging, society, etc.).³⁸

As historian James Loeffler reminds us in his study of music and the Holocaust in the Soviet Union, “Naming a genre provides the false comfort of coherence [...] If we really wish to hear the Holocaust in Soviet music, we must first start by asking what we gain, and what we lose, in applying our cultural labels to their historical music.” Loeffler describes an example of a trio by Mikhail Gnesin as “neither simply Holocaust music nor Soviet war music. It’s both—and yet neither.”³⁹ In my dissertation we might approach that which I have been calling “Holocaust justice” in the same way. The term “Holocaust” did not enter public discourse in the West until the 1960s (and really only after 1978 with the popularization of the television series “Holocaust”). It was not used in Russian or in the languages of the former socialist republics until the 1990s. Various terms were used such as *khurbn* (destruction) in Yiddish sources and *katastrofa* (catastrophe) in Russian ones or “tragedy” generally when Jews spoke directly and interpretively about the murder of European Jews by the Nazi regime. My use of the terms “Holocaust memory” or “Holocaust retribution” or “justice for the Holocaust” are necessarily interpretive and based on impressions of deep readings of trial records and internal correspondence among the state security and judicial institutions from the first couple decades after the war.

My interpretations are based on aggregated descriptions such as “mass shootings of Jews,” “arrested Jews,” “beat a Jew,” “mistreated two Jews,” “guarded Jews at the place of

³⁸ Michael Werner and Benedicte Zimmermann, “Beyond Comparison: Histoire Croisée and the Challenge of Reflexivity,” *History and Theory* 45, no. 1 (February 2006): 30-50. See also Clifford Geertz, “Local Knowledge: Fact and Law in Comparative Perspective,” in idem., *Local Knowledge: Further Essays in Interpretive Anthropology* (New York: Basic Books, 1983).

³⁹ James Loeffler, “‘In Memory of Our Murdered (Jewish) Children’: Hearing the Holocaust in Soviet Jewish Culture,” *Slavic Review* 73, no. 3 (Fall 2014): 610-11.

shooting,” “denounced two Jews,” “killed a Jew,” “participated in the murder of eleven Jews,” “beat Jews and took their food,” “convoyed Jews to the place of shooting,” “shot Jews himself,” “participated in sortings of Jews,” “participated in the liquidation of the Jewish ghetto,” and so on. The aesthetics of justice (that it was socialist) did not obscure its content which manifested in, I argue, not only justice for Jews at times, but also in meaningful configurations of personal responsibility in times of systematic injustice and violence. The legalistic frameworks in context with the artistic ones showed a yearning for moving beyond retribution, not to replace it, but to contemplate alternative realities of justice.

Chapter One

Between Wartime Atrocity and the Genocide of the Jews, 1944-49

On July 21, 1947, the well-known Soviet writer and correspondent Ilya Ehrenburg visited the Soviet Lithuanian Writer's Union in Vilnius. He was on tour to promote his recently finished novel *The Storm (Buria)* which won the Stalin Prize in 1947. Ehrenburg had entered Vilna in July 1944 during the Red Army's liberation of the city from Nazi domination. He warmly greeted Jewish partisans and collected witness testimonies on wartime atrocities, namely those against Jews, which were compiled into *The Black Book* edited for publication by Ehrenberg and the correspondent Vassily Grossman in 1945 and ultimately censored. One attendant in the audience chastised Ehrenburg for depicting a storm on the day of the city's liberation, interpreted as a veiled criticism of the Soviet state. Ehrenburg only blankly replied that there had been a big downpour that day; he did not know from where it came.¹

Historian Polly Zavadviker describes the Jewish writers who compiled and edited the text of *The Black Book* as a community whose members were formed not primarily by their Jewishness, but by their "shared experience of trauma" as Jews. She asserts that these Jewish writers "used history writing as a strategy to integrate the Jews as a people to their postwar surroundings" and that "[w]hile the state regarded the project of documenting Nazi atrocities as part of a larger propaganda campaign, the latter framed their work as an act of commemoration and a moral obligation."² Ehrenburg's real or metaphorical Vilna storm represented the complexities of navigating the labyrinthian demands of identity, especially for Jews, in the

¹ Stenogram, July 21, 1947, Lithuanian Archives of Literature and Art (Lietuvos literatūros ir meno archyvas) (LLMA), f. 34, (Lietuvos TSR rašytojų sąjunga), ap. 1 (Tvarkomosios organizacinės veiklos), b. 37 (Rašytojų susitikimo su Ilja Erenburga stenograma), l. 8.

² Polly Zavadviker, "Preserving Events that are 'Vanishing like Smoke': *The Black Book* as Community of Survivors and Writers 1943-1946," *Zutot* 11 (2014): 29-30, 38.

aftermath of the Holocaust. The borderlands context and competing Polish and Soviet political demands, which sometimes overlapped, affected the parameters of representations of wartime suffering and its meanings for Jews and non-Jews. For the former, their Jewishness was reinforced by the consequences of the Holocaust.

In this chapter, I extend the analysis beyond photography and writing to painting and sketching, and to other political situations in the socialist borderlands (namely, the transition to communism in Poland). The main analysis centers on the Soviet Ukrainian Red Army artist Zinovii Tolkachev from Kiev, born in a Belorussian shtetl, who displayed his artwork in Poland and lived there from 1944-46. I focus on how Tolkachev as a borderlands figure navigated the demands of transitioning to communism and upholding a national narrative of suffering in Poland, and the responses his artwork generated. Tolkachev's stay in Poland paralleled chronologically paralleled a representational arc from vengeance to understanding as it developed for Jewish creators personally and also within the propaganda demands of the changing postwar situation.

Soviet authorities aimed to universalize Jewish suffering for ideological reasons. At the same time, cultural scholar Jeremy Hicks writes that the liberation of the Majdanek death and concentration camp in eastern Poland in July 1944 constituted a “psychological and conceptual break” in relation to other Nazi crimes, due to the scale and nature of death. This resulted in a temporary departure from representational norms by which Soviet authorities allowed and even encouraged journalists to use emotive references to trauma rather than victory, as Soviet soldiers, authorities, and civilians were shocked by confrontations with Jewish suffering.³ However, this was not unique to Poland, as the Baltic press similarly evoked traumatic expression in the

³ Jeremy Hicks, “‘Too Gruesome to be Fully Taken in’: Konstantin Simonov’s ‘The Extermination Camp’ as Holocaust Literature,” *Russian Review* 72 (April 2013): 242-59.

aftermath of contemporaneous investigations of killing fields and evoked their connection to the camps. A December 1944 article in *Tiesa*, the main organ of the Communist Party in Lithuania, proclaimed “The images of Ponar, the 9th Fort in Kaunas, Majdanek, and other death camps haunt” those who ask “Who will pay?” and “Who will return the millions of precious lives and loved ones who were killed?”⁴

As the political situation in the Polish-Soviet borderlands was precarious for the Communists, and so whether to particularize and/or universalize wartime suffering carried tangible political consequences. Hicks argues that film directors depicted Jewish atrocity in order to instill a desire for vengeance but edited out specific references to Jewish ethnicity so that non-Jews would continue to fight and support the war effort. The levels of Jewish consciousness among Jews in the Red Army increased or lowered as a matter of personal experience; as Soviet Jewish soldiers encountered more atrocity and faced increasing antisemitism within the Red Army or elsewhere, they tended to identify more closely with the unique fate of Jews, as historian Mordechai Altshuler has argued.⁵ When Soviet authorities allowed explicit depictions of Jews, it was usually for atrocities occurring outside the borders of the Soviet Union, a phenomenon which Olga Gershenson calls “externalization.”⁶ I argue that Tolkachev made grievable, even momentarily, that which courts made prosecutable over time: mass murder of Jews. The responses to his artwork reflected competing understandings of justice, ranging from revenge to representation.

⁴ V. Šemis, “Piktadarybių kaltininkai turi būti nubausti,” *Tiesa*, no. 140, December 26, 1944 (“Panerių, IX forto Kaune, Maidaneko ir kitų mirties stovyklų vaidiniai [sic] persekioja [...]).”

⁵ Mordechai Altshuler, “Jewish Combatants of the Red Army Confront the Holocaust,” in *Soviet Jews in World War II: Fighting, Witnessing, Remembering*, ed. Harriet Murav and Gennady Estraiikh, *Borderlines: Russian and East European Jewish Studies* (Brighton, MA: Academic Studies Press, 2014), 18-24 and 30-31.

⁶ Jeremy Hicks, *First Films of the Holocaust: Soviet Cinema and the Genocide of the Jews, 1938-46* (University of Pittsburgh Press, 2012); Olga Gershenson, *The Phantom Holocaust: Soviet Cinema and Jewish Catastrophe* (New Brunswick, NJ: Rutgers University Press, 2013), 2.

‘Jewish Blood’ and ‘The Blood of Jews’: Representating Retribution

The poet Julian Tuwim’s 1944 manifesto against antisemitism entitled “My, Żydzi Polscy (We, Polish Jews)” heavily influenced early postwar representations of the Holocaust in Eastern Europe. Particularly, the manifesto referenced Nazi racial ideology of “blood” and “mysticism” in a few verses that cultural figures and survivors often evoked when representing Nazi atrocities against Jews for the public. Early responses to the Holocaust in Eastern Europe and the Soviet Union were framed according to the political imperatives and/or personal desires (which were not necessarily mutually exclusive) to balance Jewish particularism with the human consequences of war.⁷

Julian Tuwim left Poland at the outbreak of war in 1939 and ended up in New York in 1942. He worked for several journals before returning to Poland in 1946. He wrote “We, Polish Jews” for the London-based *Nowa Polska (New Poland)* in 1944. In the essay, Tuwim denounced Nazi racial theory and posited the manifesto as a testament to the right to call himself a Pole: “It is the same as breathing. I have not yet met a person that is proud of the fact that he breathes.” Tuwim asserts the right to call himself a Pole

because I was born in Poland [...] because it was in Poland that I was happy and unhappy, because from my exile I necessarily want to return to Poland, though they may promise me Paradisiacal delights elsewhere. [...] because that is what I was told in Polish in my family home. [...] because I have absorbed a certain number of their national faults. [...] because my hatred of Polish Fascists is greater than of Fascists of other nationalities.

⁷ See discussion of David Shneer, *Through Soviet Jewish Eyes: Photography, War, and the Holocaust* (New Brunswick, NJ: Rutgers University Press, 2011) and Harriet Murav, *Music from a Speeding Train: Jewish Literature in Post-Revolution Russia* (Stanford, CA: Stanford University Press, 2011) in the introduction of this dissertation.

In the essay, Tuwim provides a preemptive answer to the rebuttal:

‘Good. But then if a Pole, why then ‘We, Jews’?’ To this I respond: BECAUSE OF BLOOD—‘Therefore racism?’ No. Most certainly not racism. In fact the converse.

Blood is twofold: that in our veins and that from our veins. The first is the juice of our bodies and thus undergoes testing by physiologists. Whoever ascribes any special properties other than organic to this blood [...] brings destruction upon his own kind.

The second blood [...] the blood of those millions of innocent beings murdered, their blood not secreted in their arteries but their blood disclosed. As long as the world exists, there has not been such an inundation of martyr's blood, and the blood of Jews (not ‘Jewish blood’) flows through the deepest and the widest streams.⁸

Polly Zavadvker, reading Tuwim’s manifesto in the context of his prewar poetry, ascribes Tuwim’s ‘blood’ refrain as the poet’s “torment over a failure to reconcile his “Semitic blood” with a culturally Polish, or cosmopolitan, identity.” On the nexus of representing intent versus manifestation (the main debate surrounding definitions of genocide), Zavadvker evokes well-known Soviet Jewish writer and correspondent Vasily Grossman and suggests that for him “the fact that Nazis had killed Jews because of the blood that ran through their veins did not mean that Jews should be defined or represented that same way.”⁹ Tuwim’s text represents the complex navigation of identity and conforms to Zavadvker’s interpretation of the manifesto vis-à-vis Grossman’s stance on how Jews should be represented in the context of the Holocaust.

⁸ Julian Tuwim, “My, Żydzi Polscy,” [1944] in *Poles-Jews 1939-1945: Selection of Documents*, Andrzej Krzysztof Kunert, ed., Krystyna Piórkowska, trans. (Warsaw: Instytut Dziedzictwa Narodowego, 2001), last accessed May 22, 2020, *The Canadian Foundation of Polish-Jewish Heritage*, http://www.polish-jewish-heritage.org/Eng/RYTM_Tuwim_Eng.htm.

⁹ Polly Zavadvker, “Blood and Ink: Russian and Soviet Jewish Chroniclers of Catastrophe from World War I to World War II,” (Ph.D. diss, University of California at Santa Cruz, 2013), 259-61.

However, in my reading, Tuwim insists that the main problem is not that he cannot reconcile his own identities as both Jewish and Polish—but that *others* did not and will not.¹⁰

Tuwim evoked, in 1944, the human consequences for individuals who ascribe to race-based thinking: “destruction upon his own kind.” He articulated the consequences of antisemitism and the war—the genocide of the Jews—without ascribing essentialist antisemitism to Germans, Poles, or other nationalities. Tuwim posited antisemitism as a tool of destruction and oppression endemic to structures of European society, but disavowed the notion that certain peoples were inherently inhumane or antisemitic. Tolkachev belonged to a postwar context in which Jewish cultural figures emphasized that Jews should be represented not because of Nazi intention (that Nazis had targeted Jews for the blood that ran through their veins), but for the consequences (for the blood that had spilled from them as a result). David Shneer notes that many Soviet Jews “were more interested in seeing themselves as part of a larger collective, even in times of great suffering.”¹¹ Even so, integrationist notions of belonging did not preclude efforts to distinguish between wartime atrocity and genocide. Tolkachev upheld the Soviet liberation narrative in the sense that Nazi wartime violence against Jews ended upon entry of the Red Army, but he also undermined the salvation narrative as it pertained to his sense of the broader future of Jewish life in Eastern Europe.

Zinovii Tolkachev’s Art on War and Holocaust

Tolkachev occupied a crucial position as an artistic negotiator of Polish and Soviet interests during the precarious years of 1944-46 in the aftermath of the war and the transition to

¹⁰ On the complexities of Jewish identity, particularly in the Soviet context, see Yuri Slezkine, *The Jewish Century* (Princeton, NJ: Princeton University Press, 2005). On the Polish context and interwar antisemitism, see generally Ezra Mendelsohn, *The Jews of East Central Europe between the World Wars* (Bloomington: Indiana University Press, 1983), particularly 69-81.

¹¹ David Shneer, *Through Soviet-Jewish Eyes*, 169.

Communism in Poland. He dealt with questions of how to represent the loss of Jewish “blood” early after the war in 1944 and 1945 in a context of widespread desire for revenge and the political demand to aid in the establishment of Communism. Combining visual analysis with the historical examination of archival sources shows the genesis and reception of the narrative that Tolkachev crafted for his state, his viewers, and his own self. Through his art depicting Nazi atrocity, Tolkachev mediated between state and ordinary citizens’ responses to the Holocaust in the immediate liberation and early postwar period. His exhibition tour reached the major cities of liberated Poland from 1944-46. Series entitled *Majdanek*, *Flowers from Auschwitz*, and *Auschwitz* were platforms upon which Polish society and the Soviet state were to meet halfway and upon which Tolkachev negotiated space for recognition of the specifically Jewish fate. Tolkachev debuted his most Jewish series *Jesus in Majdanek* with later tours of *Flowers from Auschwitz* and *Auschwitz*.¹² Entries in the guestbooks to these exhibitions, written by those residing within the postwar Polish state, show how everyday people responded to the Nazi atrocities and the genocide of the Jews in the immediate aftermath of war. Tolkachev’s art generated Holocaust interpretation in Poland, and local responses elucidated early trajectories of war memory.

Tolkachev was a well-known Soviet artist and prominent documentarian for the Soviet state whose repertoire reflected an array of pre-revolutionary, revolutionary, and socialist-realist motifs. He was nominated for the Stalin Prize in 1946 for his wartime and early postwar art. A year later in 1947 the Soviet state condemned this work for “anti-Soviet elements” during the onset of the central campaign against “bourgeois nationalists” and “cosmopolitans” that lasted into the early 1950s. In his capacity as official artist for the Red Army, Tolkachev adhered to

¹² I give the Ukrainian titles and transliterations to the images except when obtaining the images from Russian sources, in which case I retain the Russian title and transliteration.

contemporaneous Soviet goals but was retroactively denounced in 1949 at the Third Congressional Session of the Academy of Soviet Artists for “bourgeois expressionism,” religious “mysticism,” and other things “harmful and foreign.”¹³ Tolkachev, facing double repercussions for both his Ukrainianness and his Jewishness, was denounced along with other artists from the Soviet west, particularly Ukraine and the newly incorporated Baltics, as well as Georgia and the eastern borderlands in central Asia.

Tolkachev has increasingly received scholarly attention as a figure in the legacy of Ukrainian Jewry and for his art of the Holocaust.¹⁴ Much of the scholarship on Soviet representations of the Holocaust focuses on writers, photographers, or filmmakers rather than visual artists, referencing Tolkachev only in passing.¹⁵ Mordechai Altshuler writes poets and writers were exempted from the prohibition on keeping diaries in the Red Army and “were allowed to express their feelings even while participating in the fighting.”¹⁶ This degree of emotional freedom afforded writers (especially journalists) also applied to official artists, photographers, and cinematographers. The latter performed the same assigned task for the Soviet state as did writers: documenting war.¹⁷

¹³ Matvei Manizer and *Akademiia khudozhestv SSSR, Tret'ia sessiia: voprosy teorii i kritiki sovetskogo izobrazitel'nogo iskusstva, 24 ianvaria-1 fevralia 1949 g.* (Moscow: Izdatel'stvo Akademii khudozhestv SSSR, 1949), 113-21.

¹⁴ Mirjam Rainer, “Zinovii Tolkatchev's Jesus in Majdanek: A Soviet Jewish Artist Confronting the Holocaust,” *PaRDeS: Zeitschrift der Vereinigung für Jüdische Studien*, 21 (2015): 59-85; idem., “From *the Shtetl* (1939-1946) to *the Flowers of Auschwitz* (1945-46) and Back: The Creation, Reception and Destiny of Zinovii Tolkachev's Art,” in *The Images of Rupture between the East and the West: Iconography of Auschwitz and Hiroshima in the Arts and Literature of the Eastern Europe*, ed. Urs Heftrich and Robert Jacobs et.al. (Heidelberg: Universitätsverlag Winter, 2016); Eric Benjaminson, “The Soviet Critique of a Liberator's Art: Zinovii Tolkachev and the Anti-Cosmopolitanism of the Late Stalinist Period” (unpublished paper, University of Oregon, 2017), accessed January 28, 2018, https://jsis.washington.edu/ellisoncenter/wpcontent/uploads/sites/13/2017/05/Benjaminson_Eric_TheSovietCritiqueofaLiberatorsArt.pdf.

¹⁵ Hicks, *First Films of the Holocaust*, 57-58, 145-46, 180; Gershenson, *The Phantom Holocaust*, 45-46.

¹⁶ Altshuler, “Jewish Combatants of the Red Army Confront the Holocaust,” in *Soviet Jews in World War II*, ed. Murav and Estraiikh, 17.

¹⁷ See generally David Shneer, *Through Soviet Jewish Eyes*.

Soviet Jewish soldiers responded in various ways when encountering Nazi atrocity directed towards Jews. Altshuler writes that some continued to view it as general Nazi atrocity directed toward everyone in their path. Others publically highlighted Jewish vulnerability and destruction. Tolkachev, like other Soviet Jews with creative authority, simultaneously articulated the unique fate of Jews and created general Soviet propaganda designed to “secure maximum support for the war against Germany” through the two state-sponsored goals of “inculcating hatred toward the enemy by spreading information about Nazi cruelty” and “creating a positive image of the Soviet hero fighting for his people, his country, and all of humanity.”¹⁸

Traveling with the Red Army, Tolkachev saw atrocity firsthand and was privy to reports of its occurrence elsewhere since the beginning of the German invasion of the Soviet Union in June 1941. In 1942, he exhibited a highly praised series on Nazi atrocities called “Occupants” which included sketches of suffering Jews. On June 24, 1944, Tolkachev was sent to the First Ukrainian Front Army.¹⁹ Soviet liberation of Poland was under way, and in August he arrived in Sokołów as part of the Red Army’s advance to Warsaw and Lublin. In 1942 the Germans, aided by local Poles and Ukrainians, had liquidated the Sokołów Ghetto and sent the last of the town’s Jews to the Treblinka death camp before burning the Jewish cemetery.²⁰

After staying the night in an abandoned house near the central square, Tolkachev’s unit awoke to find a little girl named Jadzia staring at them. He recalled her “shining golden” hair and how her “blue eyes smiled at [them].” Her mother baked bread for the soldiers and her father fed

¹⁸ Arkadi Zeltser, “How the Jewish Intelligentsia Created the Jewishness of the Jewish Hero: The Soviet Yiddish Press” in *Soviet Jews and World War II*, ed. Murav and Estraiikh, 104.

¹⁹ House of the Red Army, 1st Ukrainian Front, certificate no. 4/24 confirming that Tolkachev joined the 1st Ukrainian Front Army as an official artist, June 24, 1944, United States Holocaust Memorial Museum Archives (USHMMA), Record Group (RG) 31.0290 (Personal Archives of Zinovii Tolkachev), Folder 1 (Documents and correspondence).

²⁰ “Sokołów Podlaski” in *Pinkas hakehillot Polin*, vol. 7, *Lublin-Kielce* (Encyclopedia of Jewish Communities in Poland), ed. Abraham Wein, (Jerusalem, 1999), 339-42, (Hebrew), accessed January 28, 2018, English translation from http://www.jewishgen.org/yizkor/pinkas_poland/pol7_00339.html.

them sausages. Tolkachev, “touched by the attentive hospitality,” drew a sketch of Jadzia. Tolkachev later recalled how “here in this Polish home of Jadzia’s parents, my sketches of Majdanek were born; the images of that horrible place where the Hitlerites killed innocent people appeared.”²¹ Tolkachev sympathized with Polish suffering, insisting, “I understood that the war took place not only on the front, but with even more horrific force against the peaceful population.”²² Western Europe did not experience such high tolls in civilian casualties at the hands of the Nazis as did Eastern Europe and the USSR. But perhaps, for Tolkachev, blonde-haired and blue-eyed Jadzia and her family represented something of Catholic Sokołów that remained, while Jewish Sokołów was gone.

Liberation of Majdanek and the Commissioning of Emotion

The Majdanek concentration camp was constructed in 1941 on the outskirts of Lublin in the *Generalgouvernement* (the central part of Poland annexed neither to the Third Reich nor the Soviet Union which became an administrative entity after Nazi occupation of Poland in 1939) and originally was built for Soviet prisoners of war. Authorities used Jewish forced laborers to construct the camp. After 1942, Majdanek functioned as an extermination camp for Jews as part of the Final Solution. On November 3, 1943, about 18,000 Jews were killed. Most of Lublin’s Jews were not killed in Majdanek, but were deported to the Treblinka death camp. The camp imprisoned mostly Jewish forced laborers and Soviet POWs.

Debates among members of the Polish-Soviet Extraordinary Commission to Investigate Nazi Atrocities in the aftermath of liberation demonstrated that the authorities, namely Chairman Andrzej Witos, refused to consent to acknowledging the specificity of Jewish persecution at the

²¹ Muravin, *Dwoe iz mnogikh tysiach*, 98.

²² *Ibid.*, 95.

hands of the Germans, despite fellow committee member Emil Sommerstein's desire to do so. Witos served as Head of the Department of Agriculture in the new government set up by the Polish Committee of National Liberation [PKWN] (Soviet-backed Polish Communists) in July 1944, while Sommerstein occupied Head of the Department of Repatriation. Tolkachev was present for Commission investigations from late September 1944 and, like the Commission, universalized suffering since, as David Shneer notes, Majdanek "needed to be both universalized and made Polish if it was going to be used to justify the Soviet-installed Polish government" and future postwar territorial claims.²³

According to historian Arkadi Zeltser, from as early as 1941 not only had Soviet officers and soldiers begun to acknowledge Jewish victimhood but "more than a few" of them started "to wonder why exactly the Nazis hated Jews so much."²⁴ The Soviet norm was to present all victims as indiscriminate targets, but it was not exceptional for non-Jewish authorities to apprehend that victims were disproportionately Jews. In a debate on August 24, 1944, Witos seemingly empathized with Sommerstein who "as a representative of his [Jewish] people especially points out the extermination of the Jews of Poland and Europe." But still, Witos said, "It seems to me that we should speak of all nationalities" which in the context of the debate reads *it seems to me that we should not speak of Jews*.²⁵ Witos fully apprehended Jewish specificity, but thought that it was better not to emphasize it.²⁶

²³ Shneer, *Through Soviet Jewish Eyes*, 169.

²⁴ Arkadi Zeltser, "Differing Views among Red Army Personnel about the Nazi Mass Murder of Jews," *Kritika* 15 (Summer 2014): 570, 579.

²⁵ "no mne kazhetsia, chto my dolzhny govorit' o vsekh narodnostiakh"—Polish-Soviet Extraordinary Commission, "Preniia," recorded by Piotr Sobolewski, in "Protokol no. 5," August 24, 1944, Archive of the State Museum at Majdanek (*Archiwum Państwowego Muzeum na Majdanku*) (APMM), z. XXV, j.a. 4, ll. 51-52.

²⁶ For a broader analysis of Witos and the Polish-Soviet Commission, see Alana Holland, "Negotiating Jewish Victimhood at Majdanek: Reluctant Communists, Political Flux, and Nazi Guilt," (MA thesis, University of Illinois at Urbana-Champaign, 2015).

Tolkachev's work was not driven solely by political expediency, and Soviet initiatives should not be reduced to cynicism, recalling that writers and artists were encouraged to express emotion upon confrontation with atrocity. A book of Tolkachev's Majdanek sketches published in Polish and English in Cracow in 1945 praised the artist "who was to lend the most adequate expression to our feelings, for which we should in vain have tried to find the apt words."²⁷ Tolkachev rapidly created what, he said, the "heart demanded" in service of the state.²⁸

In October, Soviet officer Pokol'nik, Head of the Political Department of the First Ukrainian Front, appealed to the garrison commander for "assistance and support in [Tolkachev's] creative work," indicating haste and purpose on part of the Red Army.²⁹ Stalin had no longer questioned the assurance of a transition to communism, as by October the PKWN had firmly displaced the Polish government-in-exile in London. The precarious political situation of transition from summer to early fall 1944 gave way to new goals of maintaining favor among locals, securing international acceptance of the spread of Communist rule in Eastern Europe, suppressing potential and actual resistance, and repairing damage done by suppressing the Polish Home Army.

Already in August 1944 local elites began establishing a museum and crystallizing a narrative for Majdanek.³⁰ Commission secretary, Piotr Sobolewski, joined as director of the museum's Propaganda, Information, and Press Department and was introduced to Tolkachev in early October. Sobolewski supported using Tolkachev's sketches for a museum exhibition on Majdanek with the intent that it would debut specifically on the first day of the upcoming

²⁷ No author, "Al'bom reproduktskii fotografii risunkov Zinoviia Tolkacheva o zlodeianiiakh v Maidaneke (Pol'sha)," (Cracow, 1945), 6, State Archive of the Russian Federation (*Gosudarstvenii arkhiv Rossiiskoi Federatsii*) (GARF), f. R8114 (Jewish Anti-fascist Committee), op. 2, d. 133 (image album).

²⁸ Quoted in Muravin, *Dvoe iz mnogikh tysiach*, 63.

²⁹ Head of Political Dept. of Red Army First Ukrainian Front (no first name) Pokol'nik, "Politicheskoe upravlenie," no. 377, October 8, 1944, USHMMA, RG-31.029, Folder 1.

³⁰ PMM, *Państwowe Muzeum na Majdanku w latach 1944-1947*, 5-7.

November war crimes trials against German SS officers at Majdanek under the auspices of the Lublin Special Penalty Court. In the Lublin area, trials against local collaborators began as early as September, but Tolkachev's art was intended to specifically illustrate German guilt. Sobolewski implored Tolkachev to "speed up his work" in lieu of its "extraordinary significance."³¹ The two then worked tirelessly "without sleep" preparing the Majdanek exhibition.

Exhibitions on Display

On November 27, 1944, Tolkachev's *Majdanek* exhibition debuted at the State Museum at Majdanek. The Polish press noted its emotional resonance and Tolkachev's artistic sophistication.³² Members of the Polish government and the Soviet Military Mission attended the opening ceremony. At a meeting with the Polish government afterwards, General S. Shatilov praised the "Majdanek" exhibition, thanking Tolkachev for his "help in the fight against fascism and the strengthening of brotherly relations between the people of newly liberated Poland and the Soviet Army liberators." Upon returning to Ukraine, Tolkachev said that the support of both the Soviet commanders and the Polish government, along with a sense of the usefulness of his art, were essential stimuli.³³ The Polish government requested permission for the *Majdanek* exhibition to circulate throughout the major cities of newly liberated Poland, including Warsaw, Cracow, Lodz, Katowice, and Rzeszów.³⁴ Tolkachev's correspondence with Soviet Minister of

³¹ Muravin, *Dvoe iz mnogikh tysiach*, 107.

³² I. Witz, "'Majdanek': Wystawa prac Z. Tolkaczewa w muzeum Lubelskim," November 29, 1944, *Rzeczpospolita*, accessed January 24, 2018, <http://dlibra.umcs.lublin.pl/dlibra/doccontent?id=11222&from=FBC>.

³³ Muravin, *Dvoe iz mnogikh tysiach*, 107, 110.

³⁴ General S. Shatilov, "Udostoverenie," January 23, 1945, USHMMA, RG-31.029, Folder 1.

Foreign Affairs and former head of the Sovnarkom (Council of People's Commissars)

Viacheslav Molotov indicated the highest levels of Soviet state support.³⁵

The politicization of atrocity is a standard feature of modern governments, and the Soviet Union was no exception. Molotov's ready support of Tolkachev's work indicates that giving a "Polish" claim to victimhood in the Nazi death and concentration camps could help the Soviets maintain Allied support in Poland. When *Majdanek* debuted in fall 1944, most visitors indicated that the universalized suffering in the series effectively appealed to a universalized Polish victimhood. But once Tolkachev began depicting more atrocity sites in later exhibitions debuting in 1945 in the aftermath of the liberation of Auschwitz, visitors started to notice the absence of the Katyn massacre of 22,000 Polish military officers and members of the intelligentsia. Respondents also continued to express desire for revenge but some criticized narratives of singular German guilt.

Majdanek

The *Majdanek* series contained many quick sketches indicating Tolkachev's purpose as documentarian, but many drawings evoked the personal reflection of a sophisticated artist. Among such drawings, "Taleskoten" ("Tallit") provided an over-arching interpretation of the camp as a place of Jewish victimhood. In the image, a white Jewish prayer shawl is snagged on a piece of barbed wire fence surrounding Majdanek. It blows in the wind with a desolate landscape in the background, evoking loss. The shawl represents a poignant symbol marking Majdanek as a Jewish site. The positioning and size of the shawl evokes a large flag and suggests the eternity of

³⁵ Letter to Sovnarkom member Viacheslav Molotov from Zinovii Tolkachev, [1946?], USHMMA, RG-31.02901, Folder 1. In this letter Tolkachev reminds Molotov of their past correspondence and summarizes what transpired.

the Jewish people despite present death, reflecting Tolkachev's conformity to the Soviet narrative of ultimate victory.³⁶

Tolkachev did not use such explicit Jewish imagery in all the drawings. In another example, the only allusion to Jews is the title "Tretie listopada" ("Third of November"), referencing the mass shooting of 18,000 Jews on November 3, 1943. In this image, two children stand over masses of dead bodies with nothing marking their identity as Jewish. Observers of the SS trials in Lublin who also viewed Tolkachev's exhibit might have inferred that the victims were Jews. Two other images "Krempetskii Les" ("Krembeski Woods") and "Gazovaia Kamera 'B'" ("Gas Chamber 'B'") are highly emotive but depict Jews neither directly nor indirectly. The dying victims in the gas chamber have no ethnic markers, but those reading the press would have understood the woman and children as Polish as the Polish-Soviet Commission kept references to the murder of Poles in the press and referenced the Krembeski Woods.

Most of the thirty-nine images in the *Majdanek* series were devoid of ethnic distinction. Yet in most of the drawings Tolkachev depicted specific events—a mass shooting, an execution roundup, a gassing, or scenes of starvation and forced labor. Only "Taleskoten" was explicitly Jewish. But this drawing suggested interpretation beyond mere documentation. Tolkachev depicted Majdanek as primarily a place of Jewish destruction in "Taleskoten," but the exhibition itself appealed to all ethnicities.

Auschwitz and Flowers from Auschwitz

Tolkachev was part of the military investigatory commission during the liberation of Auschwitz in January 1945. The Red Army entered the camp on January 27, 1945, and Tolkachev arrived a

³⁶ Discussed in *Mezhdunaradnaia shkola prepodovaniia i izucheniia Katastrofy*, "Gody voiny," Yad Vashem, accessed January 24, 2018, http://www.yadvashem.org/yv/ru/education/lesson_plans/tolkachev.asp. See also Hicks, *First Films of the Holocaust*, 145-146.

few hours later. Tolkachev arrived at Majdanek only two months after the Red Army but participated in the immediate stages of the liberation of Auschwitz. His sketches reflect this difference, many of which he drew on the back of Nazi documents found at that camp. For example, he sketched a drawing of a mother and child undergoing chemical gassing titled “Tsiklon B” (“Zyklon B”) on the back of a German railroad plan from the advance into eastern Poland 1940.

In the first hours and days of the camp’s liberation Tolkachev sketched the drawings that later constituted part of the 36-image series *Flowers from Auschwitz* and an additional series called simply *Auschwitz*. The images in these series are devoid of Jewish imagery. In one example, after having seen a remaining mass stock of human hair shaved from victims, Tolkachev wrote on the charcoal drawing “Zustrich” (“Encounter”) that “Jadzia, who I drew in Sokołów, has the same yellow braids; my mother has the same gray hair.” He universalized the suffering of both personal connections, his Jewish mother and the young Polish Jadzia.

“Zustrich” reflected universalization of Tolkachev’s personal connections, while the “Spasitel” (“Savior”) sketch depicted the official Soviet liberation narrative. The sketch showed a Red Army soldier surrounded by an indiscriminate group of children in striped camp uniforms, embracing the soldier and looking up to him in admiration. About half of the approximately 700 children remaining at Auschwitz upon the Red Army’s entry into the camp were Jewish, but Tolkachev did not distinguish among the children. In the image he highlighted universal victory, not death, encouraging Poles—and the world—to identify favorably with the Soviets.

There is no particular Jewish resonance in the Auschwitz sketches, so Tolkachev either tacitly understood to avoid Jewish symbols or personally chose to favor a heroic and integrationist narrative. The Auschwitz images suggested emotional solidarity with his Soviet

army in the context of his role as liberator, while the Majdanek sketches suggested a personalized connection to broader European Jewry amid mass civilian suffering.

Jesus in Majdanek

Tolkachev manifested his Jewish consciousness most clearly in the exhibition *Jesus in Majdanek*. The series debuted in Lodz in 1945, and it seems that the exhibition may have been organized by the Lodz branch of the Central Committee of Jews in Poland. The surge in local antipathy and violence against Jews as the Germans retreated from eastern Poland in 1944 and 1945 likely influenced Tolkachev's decision to debut the series as an ad hoc exhibition in Lodz.³⁷ It is unknown whether *Jesus in Majdanek* appeared in other cities.

The series represents Jesus Christ's crucifixion and aftermath. In the first image, the Christ figure in the gas chamber evokes the crucifixion on the cross, with Mary weeping at Christ's feet. This alluded to the Polish Christian nation's crucifixion. Yet in images depicting Christ's path to the cross, Tolkachev marked Christ as a Jew with the yellow Star of David band around his arm. As Christ stands before a crowd of SS officers in another image titled "Se Liudyna" ("Behold the Man") he wears the symbols of many groups interned in the camp, including Poles, Jews, political prisoners, and Aryans who had sex with Jews. Yet Tolkachev marked Christ with a Star of David armband to distinguish him from the other victims and to point out the historical and biblical truth that Jesus was a Jew.³⁸ Finally, Tolkachev completely reversed the political narratives of victory and triumph in "Vorota vidchyneni" (The Gates Have

³⁷ See Daniel Blatman, "The Encounter between Jews and Poles in Lublin District after Liberation, 1944-1945," *East European Politics and Societies* 20 (November 2006): 598-691 and David Engel, "Patterns of Anti-Jewish Violence in Poland, 1944-1946," 9, Shoah Resource Center, Yad Vashem, accessed January 24, 2018, http://www.yadvashem.org/odot_pdf/Microsoft%20Word%20-%203128.pdf.

³⁸ The title "Se liudyna" ("Behold the Man") directly references 16th and 17th century Italian and 19th century Hungarian and Polish paintings of the same title in Latin (*Ecce Homo*) depicting the mockery of Christ before crucifixion.

Opened”). He appears to have resurrected Christ, but Jesus remains behind the gates, facing the barracks, undermining the biblical story of Jesus’ descent into hell and resurrection. In the image, there is no resurrection, which conforms to literary scholar Harriet Murav’s assessment that for postwar Soviet readers of Yiddish (and evidently borderland viewers of Soviet Jewish art), “The Messiah has not yet come for the Jews.”³⁹ The series alluded to Polish suffering via Christian martyrdom. Yet through the absence of a resurrection and other aesthetic and symbolic choices, Tolkachev specifically narrated the genocide of Polish and European Jewry, even though the Jesus figure spoke to the human tragedy of the war.⁴⁰

Tolkachev’s exhibitions appealed to domestic Polish suffering while simultaneously alluding to the Jewish nature of the camps, which was downplayed in the press.⁴¹ Authorities allowed Tolkachev to depart from the general narrative of victory in order to give emotional expression to the unprecedentedness of Nazi methods of atrocity, while simultaneously hoping to capitalize on his art to endear local Poles to Communist rule. Historian James Loeffler writes, “Rather than a mark of Jewish difference, Soviet music of the Holocaust emerges as an aspirational form of imperial belonging.”⁴² Tolkachev’s art was a testament to national (Polish) belonging for the victims, as well as his own imperial (Soviet) and Jewish communal belonging. In turn, his art demonstrated Poland’s entry into the ‘brotherly empire’ of European Communist states whereby

³⁹ Murav, *Music from a Speeding Train*, 205. See also the introduction of this dissertation.

⁴⁰ On Christ as a figure of human suffering in Tolkachev’s art, see Rainer, “Zinovii Tolkatchev’s Jesus in Majdanek”: 63, 78-79.

⁴¹ See Andrzej Witos, Nikolai I. Grashchenkov, and Dmitrii I. Kudriavtsev et al., “Communique of the Polish-Soviet Extraordinary Commission for Investigating the Crimes Committed by the Germans in the Majdanek Concentration Camp in Lublin,” (Lublin, 1944) [published in Russian and Polish in *Pravda*, *Izvestiia*, and *Nowe życie* on September 16, 1944]. This English version corresponds directly. In general, see Karel Berkhoff, *Motherland in Danger: Soviet Propaganda during World War II* (Cambridge, MA: Harvard University Press, 2012).

⁴² James Loeffler, “‘In Memory of Our Murdered (Jewish) Children’: Hearing the Holocaust in Soviet Jewish Culture,” *Slavic Review* 73, no. 3 (Fall 2014): 588-89.

Jews in Poland, particularly, argues Loeffler, “found themselves briefly empowered to articulate a fragile but real public memory of the Holocaust.”⁴³

Jesus in Majdanek superficially adhered to the narrative that Piotr Sobolewski had crafted for the State Museum at Majdanek in 1945. In one of the first museum publications Sobolewski wrote:

Majdanek—one of the nation’s crosses—is a symbol of torture and despair at the same time that it serves as a symbol of the most noble idea—brotherhood of nations, the most noble fight—for freedom, and finally it is a great victory of the Slavic people over the Nazis.⁴⁴

Sobolewski depicted Majdanek as a Christian symbol of suffering by calling it one of Poland’s “crosses.” While thousands of non-Jews perished and suffered in Majdanek, casting it as a symbol of Polish suffering in Catholic terms effectively excluded Jews from the narrative, continuing the longstanding myth of perpetual Polish national suffering as the eternal “Christ of nations.” Imagery of the cross was a powerful symbol for capturing Polish suffering. Jews had also developed a new tradition of reclaiming Jesus as a Jewish figure in art and literature, evidenced particularly in the work of Marc Chagall.⁴⁵ Additionally, Christian symbolism remained a widely accessible template for digesting trauma, even among the non-religious. But as the Holocaust effectively enacted the desires of the interwar Polish nationalists for a Poland without Jews, casting Majdanek as a Christian site in official institutional narratives undermined the historical place of Jews in the Polish nation.

⁴³ Ibid., 604.

⁴⁴ Piotr Sobolewski and Teresa Zagórska, *Majdanek: Za drutami zagłady* (Lublin: Czytelnik, 1945), 29.

⁴⁵ Rainer, “Zinovii Tolkathev's Jesus in Majdanek”: 79.

Sobolewski's excerpt betrays both Polish and Soviet nationalistic elements, and reflects the Soviet proclivity for representing atrocity as primarily Slavic amid pan-Soviet suffering. The Nazis targeted Communists and the Soviet Union for destruction and did not treat non-Slavic Soviet civilians as they treated Slavs, but they did not treat Slavs as harshly as Jews. The phrase "brotherhood of nations" placed newly Communist Poland as a brother among socialist peoples. Sobolewski recast Majdanek from a place of suffering to one of "great victory" to conform to standard Communist narratives of victory and strength. Whereas the beginning of the excerpt noted Poland's victimization, the rest quickly subsumed Polish uniqueness into broader Slavic terms, transforming the narrative of suffering into one of greater Slavic victory. The Polish imperial connection to Russianness via pan-Slavism vis-à-vis the Soviet Union was implicit. Projecting Polish, Slavic, or broader Soviet suffering belied Jewish specificity. Tolkachev subverted Sobolewski's template to narrate the genocide of the Jews. He departed from both Polish and Soviet norms and manifested his Jewish consciousness, which he did most forcefully in *Jesus in Majdanek* using Christian imagery to narrate the genocide of the Jews. It was for this work particularly that he was denounced by the Soviet state in 1949.

The Guestbooks: Locals Respond

Local responses to Tolkachev's art reflected emanating discourses on wartime trauma and various related themes such as commemoration, guilt, and justice. By October 5, 1945, at least 128,030 people had visited the exhibitions.⁴⁶ The analysis is based upon public guestbook entries for the exhibitions. As is typical with the guestbook format, many respondents reverted to clichés or wrote entries which were superficial, unreflective, and rushed. Yet the content of cliché and repetition itself reveals insights into the general emotional state of the public, in addition to state

⁴⁶ Letter to Gen. Lt. S. Shatilov from Zinovii Tolkachev, [after October 3, 1945], USHMMA, RG-31.029, Folder 1.

norms. At the same time, entries deviating from the common themes are telling as they speak to competing perspectives and suppressed content. Respondents typically wrote in Polish, and sometimes Yiddish or Russian. Officers and soldiers in the Polish People's Army and the Red Army attended the exhibitions alongside civilians.

Polish suffering and revenge were prominent themes. Some Polish-language entries highlighted Jewish victimhood, although whether the given respondents were Jewish is unclear. Visitors occasionally crossed out or marked through entire pages of Yiddish entries even when content was similar to Polish entries, such as one in which a respondent eagerly awaited postwar justice.⁴⁷ Many were not convinced of the Soviet liberation narrative. In a guestbook entry from August 5, 1945, one visitor wrote in Polish: "Long live the Polish-Soviet Union!" But somebody reading the entry had crossed out the phrase. In a *Jesus in Majdanek* entry from Lodz in June 1945, a visitor named Z. Lewandowski wrote that "God is late, but just."⁴⁸

One entry precisely illustrated the narrative that Molotov had hoped to convey in eastern Poland of the Soviets bringing peace and neutralizing ethnic turmoil: "Long live Comrade Stalin! Death to the barbarians who built the death camps for the destruction of innocent people. Signed: a Pole, a Jew, a Russian—Tadeusz Różycki/Avram Efroimowicz/Ivan Niskrasov."⁴⁹ This entry matched English framings in the 1945 "Majdanek" album from Cracow destined for international channels ascribing the "chief purpose of this destruction camp being to become a burial-ground of three nations above and before all, namely those of the Polish, Russians and Jews."⁵⁰ Most entries in the "Flowers from Auschwitz" exhibit in summer 1945 highlighted revenge, such as

⁴⁷ USHMMA, RG-31.029, Folder 4 (Guestbook to exhibition "Majdanek" and "Flowers of Auschwitz," Poland, 1945), 103 and 137 of original folio (digital scan).

⁴⁸ USHMMA, RG-31.029, Folder 6 (Guestbook to exhibition "Jesus in Majdanek," Lodz, Poland 1945), 4 of PDF: "Bóg jest nierychliwy, ale sprawiedliwy."

⁴⁹ USHMMA, RG-31.029, Folder 5 (Guestbook to exhibition "Flowers from Auschwitz," Poland 1945), 66 of original folio (digital scan).

⁵⁰ GARF, f. R8114, op. 2, d. 133, page 6 in album.

the entry from July 28: “For the torment of the Polish people all Germans must be destroyed.”⁵¹ Several camp survivors attended the exhibits, but in the memorial book their ethnicity is not always clear, as in the entry from May 3, 1945: “I was in Auschwitz. I am a living witness to Hitler’s crimes.”⁵² Other entries have a clear ethnic distinction, but it is unclear whether the respondent had been in the camps or spent the war elsewhere.

The guestbooks evidenced the discursive power of Tuwim’s 1944 London manifesto against antisemitism as a mode of representation in postwar spaces of Jewish loss. In an entry from June 30, 1945, the respondent (initials obscured) cited Tuwim: “A lot of blood was lost in this war, but the blood of Jews (not Jewish blood) flowed most abundantly in streams [*Duzo krwi w tej wojnie wypłynęła ale krew Żydów (nie Żydowska krew) najobfitszenie płynęła potokami*].”⁵³ The reference demonstrates the usability of Tuwim’s discourse on the consequences of Nazi racial ideology in postwar Poland and broader spaces of Communist transition and Jewish loss in the multiethnic borderlands context. A few pages earlier a woman named Halina Fiegelówna wrote: “Do not forget that you are Poles and that these wrongs were committed by the Hitlerites [*Nie zapomnijcie że jesteście polakami i te krzywdy wyszkądzone przez hitlerowców*].”⁵⁴ This was followed by an entry “Blood for blood!” It seems that Fiegelówna, who was Jewish if judging by surname alone, was urging Jews to focus on German guilt rather than that of the local population and to affirm the Polish victimhood narrative which some respondents were undermining. In a combined *Majdanek* and *Flowers of Auschwitz* guestbook, only a few pages after an entry from July 20, 1945, stating “Death to Germans for the murder of Polish children at Majdanek!” one visitor wrote, in Polish: “Death to Poles who compete with Hitler and his

⁵¹ USHMMA, RG-31.029, Folder 5, 53.

⁵² USHMMA, RG-31.029, Folder 4, 5.

⁵³ USHMMA, RG-31.029, Folder 4, 110.

⁵⁴ USHMMA, RG-31.029, Folder 4, 94.

evil.”⁵⁵ Among the visitors were those who had personally suffered or witnessed harm at the hands of Poles, Ukrainians, or *Volksdeutsche* and for whom emphasizing German guilt alone was insufficient.

The entries illustrated that respondents often did not differentiate among 1) Majdanek or Auschwitz which imprisoned several categories of victims from all over Europe, particularly Poland, but primarily killed Jews, 2) the camps at Treblinka and Sobibor designed only for killing Jews, and 3) the specifically Polish massacre at Katyn. For example, one viewer in July 1945 universalized all distinctive categories: “For Katyn, Auschwitz, Treblinka, Sobibor, and Majdanek—Death to fascists!”⁵⁶ The conflation of mass death was a common response until respondents began to notice the persistent absence of any depiction of Katyn illustrated by entries such as “Majdanek and Auschwitz—but where’s Katyn?” and “Majdanek—this is the same as Katyn.”⁵⁷ There is no indication in the entries that these visitors suspected the Soviets had perpetrated Katyn, only that they resented its exclusion. *Jesus in Majdanek* had particular resonance in the context of postwar antisemitism in Poland and the competing claims to memory and representation in the guestbooks. The series superficially reads as a tribute to Polish suffering in Christian imagery, and many visitors viewed it as such, while others again criticized the absence of Katyn.⁵⁸ One Jewish visitor perceived the statement on genocide that had been lost on many others, but rejected the fatalism: “Hitler wanted to kill the whole Jewish people but couldn’t—I was a Jewish prisoner in Sachsenhausen.”⁵⁹

⁵⁵ USHMMA, RG-31.029, Folder 4, 119, 139.

⁵⁶ USHMMA, RG-31.029, Folder 5, 32. See also USHMMA, RG-31.029, Folder 4, 14, 22, 145, 175.

⁵⁷ USHMMA, RG-31.029, Folder 4, 106, 145.

⁵⁸ For example, see USHMMA, RG-31.029, Folder 6, 28, 47, and 27, respectively.

⁵⁹ USHMMA, RG-31.029, Folder 6, 33-34.

Overall very few entries called for retribution against collaborators. When Tolkachev's art was exhibited alongside criminal trials, it was for proceedings against German SS officers and not locals. Entries such as "no rehabilitation of German officers" appeared frequently in the "Jesus in Majdanek" album particularly. I surmise that Soviet and Polish authorities may have envisioned using Tolkachev's albums to complement international war crimes trials at Nuremberg. Local Jews and non-Jews were encouraged to view Tolkachev's art in support of integrationist postwar aims and as proof of the criminality of the German state, which some entries unsettled by referencing instead the harm done by others.

Despite the physical presence of individual Jews in the immediate aftermath of the war, Tolkachev understood that Eastern European Jewry as a distinctive group was gone. About 250,000 Polish Jews survived the Holocaust, the majority of whom had fled to the Soviet Union in 1939. After the war most Polish Jews decided to return home to Poland but began to leave in waves due to encountering postwar antisemitism and the destruction of almost all aspects of Jewish life. By 1947 only about 90,000 Jews remained in Poland.⁶⁰ Tolkachev lived in Poland until the demobilization period in spring 1946. He returned to the Soviet Union with four tomes of the *Jewish Encyclopedia* and the three-volume 1865 publication of *History of the Jews in Poland*.⁶¹ Before leaving Poland he completed an album he started before the war entitled "The Shtetl" based on the stories of Sholem Aleichem in an album with Yiddish language commentary published in Lodz in 1946. The editor praised Tolkachev's allegorical narration of the Jewish

⁶⁰ See David Engel, "Poland since 1939," in *The YIVO Encyclopedia of Jews in Eastern Europe*, vol. 2, ed. Gershon Hundert (New Haven, CT: Yale University Press, 2008), last accessed May 22, 2020, https://yivoencyclopedia.org/article.aspx/Poland/Poland_since_1939.

⁶¹ Head of Committee for Artistic Affairs of Ukrainian SSR L. Pashenko, letter no. IZO/9 to Tolkachev, April 8, 1946; Minister of Committee for Arts of Ukrainian SSR Mykola Bazhan, telegram to Soviet Ambassador (no first name) Bilyka, April 24, 1946; and Tolkachev, list of inventory items and books acquired on Polish territory to be sent to Kiev, April 27, 1946 all in USHMMA, RG-31.029, Folder 1.

“national catastrophe [*natsyonalner katastrofe*]” and explained that the completed series should be “seen through the prism of the Jewish destruction [*khurbn*].”⁶²

Harmful Elements: State Campaigns against Nationalists and Cosmopolitans

Tolkachev did not consider his Jewish consciousness to have compromised his Soviet identity, but he was not spared once Stalin inaugurated a centralized campaign exposing nationalists and traitors in the late forties. During the heightened anti-nationalist campaign, many cultural figures were condemned for activities that had been condoned or even supported by the Soviet state during the wartime and immediate postwar periods. Narrating Polish and Jewish suffering with religious imagery had been useful to Soviet goals in the aftermath of liberation but was unacceptable as the Soviet Union gradually shifted from immediate postwar concerns. The artistic elements made him susceptible to denunciation as a cosmopolitan and for “religious Zionism.” At the Third Congress of Soviet Artists in 1949 Soviet cultural elites gathered to “unmask” the “rootless cosmopolitans” who had harmed Soviet art in postwar reconstruction.⁶³

Soviet nationalities policy was inherently contradictory. On the one hand, Lenin argued that promoting the national consciousness of ethnic minorities and providing them with national institutions would ease class conflict and ethnic/national tensions among territorial groups residing in the Soviet state; on the other hand, Soviet ideology stressed conformity and unity. After international socialism failed to take hold, the Soviet state became increasingly xenophobic and functioned according to the “politicization of ethnicity.”⁶⁴ Stalin had sought to eradicate Zionist sentiments in parts of the Soviet Jewish population by creating the Jewish national

⁶² “Zynowij Tolkaczow: Dos Shtetl,” (Lodz: Dos Naje Lebn, 1946), 1-2, 85.

⁶³ Manizer and *Akademiia khudozhestv SSSR, Tre'tia sessiia*, 6, 197.

⁶⁴ Terry Martin, *Affirmative Action Empire: Nations and Nationalism in the Soviet Union, 1923-1939* (Ithaca, NY: Cornell University Press, 2001), 1, 13, 342-44. Martin determines the 1930s as a period of “ethnicization of Soviet xenophobia” exacerbated by resistance to collectivization, sparking a greater fear of non-Russian nationalism and disloyalty based on real and imagined opposition.

territory of Birobidzhan in the far Russian east which ultimately “did not attract the Jewish masses.”⁶⁵ The Soviet Union supported the establishment of a Jewish state in Palestine in hopes that it would weaken British imperial influence in the Middle East and that such a state, founded by self-avowed socialists, would embrace Soviet ideals. Stalin’s most obvious anti-Jewish policies occurred in the aftermath of the founding of the state of Israel, which quickly proved itself not to be socialist. Stalin perceived the supposed lack of territoriality as evidence of Jewish disloyalty to the Soviet state. Thus Jews were charged with “rootless cosmopolitanism” in the context of the rise of postwar Soviet state antisemitism as the most extreme consequence of the general campaign against nationalists, giving rise in 1949 to the Soviet joke: “In order to avoid being branded as an anti-Semite, call a Jew a cosmopolitan.”⁶⁶ Judeophobia was prevalent in the postwar years, and Stalin capitalized on local antisemitism to launch a “totally unprecedented” campaign implicating Soviet Jews in charges of “Zionism.”⁶⁷ Tolkachev had not “overstepped [the] boundaries” as many prominent Soviet Jews had done by “openly asserting their Jewish identity and expressing approval for their their state’s recognition of a Jewish homeland in Palestine.”⁶⁸ Because he did not go as far as other members of the Soviet Jewish cultural elite, Tolkachev was blacklisted for a while but not imprisoned or killed.

During the war, Soviet authorities had implemented the relaxation of political orthodoxy as a concession for retaining domestic support for the war effort and legitimizing Communist

⁶⁵ Zvi Gitelman, *A Century of Ambivalence: The Jews of Russia and the Soviet Union, 1881 to the Present* (Bloomington: Indiana University Press, 1988), 106.

⁶⁶ See Allan Kagedan, “Revival, Reconstruction or Rejection: Soviet Jewry in the Postwar Years, 1944-48,” in *Jews and Jewish Life in Russia and the Soviet Union*, ed., Yaacov Ro’i (Cambridge: Cambridge University Press, 1995), 191, 194; Dora Shturman and Sergei Tiktin, ed. *Sovetskii soiuz v zerkale politicheskogo anekdota* (London: Overseas Publications Interchange Ltd., 1985), 414.

⁶⁷ Gitelman, *A Century of Ambivalence*, 106, 147, 154-56; Jonathan Frankel, “The Soviet Regime and Anti-Zionism,” *Essential Papers on Jews and the Left*, ed. Ezra Mendelsohn (New York: New York University Press, 1997), 448.

⁶⁸ Jeffrey Veidlinger, *The Moscow State Yiddish Theater: Jewish Culture on the Soviet Stage* (Bloomington: Indiana University Press, 2000), 274.

rule in territories liberated from Nazi occupation. Artists and cultural figures who had earnestly followed the winds of policy change by asserting various levels of group consciousness were then characterized as “harmful elements” to the Soviet body. Ukrainian and Baltic nationalists were particularly targeted in the anti-nationalist campaign starting in 1944. Ukrainian artists could expect to encounter the slur “boichuk.”⁶⁹ *Boichukizm* derived from the name of Ukrainian painter Mykhailo Boichuk who was famous for painting large frescoes and monumental canvases in a style combining elements of Ukrainian folklore, religious Byzantine iconography, and socialist ideas. He attracted a following of Ukrainian painters who became known as *boichukisty*, all of whom were repressed by Stalin in the thirties. *Boichukizm* then was used indiscriminately as a derogatory label for any artist who used Ukrainian folk elements (tantamount to being a Ukrainian nationalist in those days).

At the 1949 Third Congress of Soviet Artists, speaker P. M. Sysoev bemoaned the “influence of bourgeois art in the visual arts of the western regions of Ukraine” as “particularly widespread” and called for a counter-offensive against “relapses into decadent bourgeois art in the fine art of Ukraine” at the hands of “artist-Boichuks [*khudozhniki-boichukisty*].” Tolkachev was denounced together with another Ukrainian artist named Vitalii Ovchinnikov, who had painted the September 1941 mass execution of Jews at Babi Yar, for “opening up the echoes of the corrupt ideology of *boichukizm* and its bourgeois-nationalist orientation toward the West.” Tolkachev had exhibited *Jesus in Majdanek* together with Ovchinnikov’s *Babi Yar* in 1946 in Kiev upon returning from Poland. Whereas Tolkachev had narrated the genocide of the Jews in the camps, Ovchinnikov had narrated their destruction in the mass killing fields in Soviet territory from the perspective of neighbors grieving from their windows as they watched Jews

⁶⁹ Kagedan, “Revival, Reconstruction or Rejection,” in *Jews and Jewish Life in Russia and the Soviet Union*, ed. Ro’i, 196.

being marched to their deaths. Tolkachev and Ovchinnikov were chastised as “under the influence of the reactionary ideology of the West.” Having depicted both Jewish victimhood and universal war trauma, they were retroactively charged with “affirm[ing] fatalism...and the powers of the dark forces of fascism” and undermining the narrative of Soviet victory and power.⁷⁰

Tolkachev was subjected to two overlapping discourses: one targeting Jews for “cosmopolitan ideology” and another targeting nationalists in the new territories of the Soviet west for having failed to overcome the old cultural and social “epoch of imperialism.”⁷¹ Towards the end of 1947, the Soviet government ended the “liberal” relations it had maintained with religious organizations since the war.⁷² Upon having secured Communist rule in Eastern Europe and the annexation of the Baltic states and western Ukraine, the Soviet authorities viewed religious concessions with less utility. What was useful in 1946 for appealing to Poland’s self-identification as a victimized “cross of nations” was in 1949 criticized as “hopelessness and Christian humility, Christian obedience.”⁷³ Even though Tolkachev had conscientiously subverted the Christian imagery for which he was denounced, some critics viewed the Christian religious symbolism as another mark of the “Europeanness” from which western Ukraine and the new Baltic territories had yet to divorce themselves. The religious symbolism in this series made Tolkachev susceptible to indiscriminate charges of Ukrainian *boichukizm* and Jewish “cosmopolitanism.”

⁷⁰ Manizer and *Akademiia khudozhestv SSSR, Tret'ia sessiia*, 36, 113.

⁷¹ *Ibid.*, 66.

⁷² Tatiana Chumachenko, *Church and State in Soviet Russia: From WWII to the Khrushchev Years*, ed. and trans. Donald J. Raleigh (Armonk, NY: M.E. Sharpe, 2003), 55.

⁷³ Manizer and *Akademiia khudozhestv SSSR, Tret'ia sessiia*, 36.

Tolkachev was condemned as a decadent, a Jew, a Zionist, a religious mystic, and a Ukrainian bourgeois nationalist and was thus banned from teaching art in 1949. One of the concerns of the Third Congress was fear that the scrutinized artists might “mutilate and corrupt” the young generations of newly emerging Soviet artists.⁷⁴ The press declared that “Cosmopolitan ideology” was “getting in the way of Soviet patriotism.”⁷⁵ The Third Congress paid special attention to graphic art, since authorities envisioned the medium as having a “significant role” in the postwar education of the Soviet people through the proliferation of museums (war ones in particular) for educating the masses.⁷⁶ Museums were to have a central position on the postwar tourist agenda.⁷⁷ Critics at the Third Congress complained that the museums in the new Baltic republics and in Ukraine “still continue to show unprincipled, anti-national, formalistic works of art, deprived of educational knowledge.” The ideologues did not want to risk compromising patriotic education with Tolkachev’s “harmful” and “foreign” messages.⁷⁸

Tolkachev survived Stalin’s executions of the Jewish Antifascist Committee in 1952 and was never sentenced to prison. He was also targeted as a Ukrainian nationalist but had never engaged in anti-Soviet resistance and of course could not be associated with ranks of the Organization of Ukrainian Nationalists (OUN). The OUN had enthusiastically collaborated with Hitler in the murder of Jews, and thus Soviet authorities often capitalized on this information in the broader public campaigns against enemies which depicted all Ukrainian nationalists as fascists. The multidirectional layers in Tolkachev’s art kept him from being targeted primarily

⁷⁴ Ibid., 7 and 36.

⁷⁵ M. Baksin, “Burzhuaznaia estetika na sluzhbe reaktivnoi,” *Iskusstvo kino*, June 30, 1949.

⁷⁶ Manizer and *Akademiia khudozhestv SSSR, Tret’ia sessiia*, 66.

⁷⁷ Diane Koenker, *Club Red: Vacation Travel and the Soviet Dream* (Ithaca, NY: Cornell University Press, 2013), 57, 130.

⁷⁸ Manizer and *Akademiia khudozhestv SSSR, Tret’ia sessiia*, 66, 113.

for any one single charge. He was perhaps the epitome of a “Soviet nationalist,” so to say, but what to do with a “bourgeois” *Soviet* nationalist?

Tolkachev lived quietly in Kiev but attained prominence again with the re-publication in 1965 of his “Auschwitz” album which coincided with the apex of high-profile trials against nationalist Holocaust perpetrators in Ukraine and the Baltics and with international conference in Moscow on the repatriation of German nationals for war crimes prosecution.⁷⁹ At this time Tolkachev insisted: “I always acted in the service of building communism and socialism.”⁸⁰ One can only surmise whether Tolkachev might have made Jewish themes even more explicit in his early postwar art if he had had the freedom to do so, or whether his experiences under Stalin made him more interested in Jewish themes over time. While Tolkachev’s personal views on justice remain unclear, it is evident that some people (including both ordinary citizens and representatives of the state) utilized his representations of war and Holocaust to demand justice.

Conclusion

Zinovii Tolkachev represented the loss of Jewish “blood” early after the war in 1944 and 1945 in a context of widespread desire for revenge and establishing Communism in Poland. Later, in 1947, at the Soviet Lithuanian Writer’s Union in Vilnius to promote his Stalin-prize winning novel *The Storm*, the famous Soviet correspondent and writer Ilya Ehrenburg evoked the poet Julian Tuwim’s ‘blood’ refrain from “We Polish Jews” for representing Jewish loss. But he did so in the official context of prioritizing the spreading of socialist ideology in Europe rather than retribution. Lithuania had been incorporated as a Soviet republic briefly in 1940 and again in July 1944. The transition to Soviet rule and Communism was officially secured in 1947, and

⁷⁹ See chapter five of this dissertation.

⁸⁰ Tolkachev, “avtobyohrafiya,” December 12, 1965, USHMM, RG-31.0290, Folder 1.

by then most of Vilnius's Polish population had been "repatriated" to Poland, with Lublin as a particular destination and organizing center, beginning in 1945.⁸¹ The government clarified in the press that "repatriation" to Poland from the Lithuanian SSR applied to any Pole, regardless of prewar or postwar citizenship, but only to Jews who had been Polish citizens before 1939.⁸² Postwar Soviet reconstruction in the aftermath of the Holocaust further nationalized Lithuania in such a way that affirmed a place for Jews in postwar society, I argue, but otherwise reified homogenous national categories.⁸³

Ehrenburg's meeting with the Writer's Union in Vilnius exemplified topics demonstrated in this and subsequent chapters including the theme of revenge and its transformation into a political discourse towards 'understanding' (i.e., explicating) underlying structures of atrocity, and the nexus of forging postwar community and societal belonging. Ehrenburg had translated Tuwim's manifesto into Russian and, according to Polly Zavadviker, was rather "fond" of citing the blood refrain and did so often.⁸⁴ Tuwim's reference of "blood" (of Jews, of Germans) and the human consequences of war were artistic themes that mattered in the legal arena, too.

Ehrenburg's visit to Lithuania in 1947 should be understood in the context of a wave that year by which countries across Europe, including the USSR, began abolishing the death penalty. In the momentum of the human rights movement which developed as European jurists struggled over

⁸¹ State Archive in Lublin, (Archiwum Państwowe w Lublinie), (APL), z. 707 (Wojewódzki Oddział PUR w Lublinie 1944-51), sygn. 320 (Ekspedycja LSSR) generally; sygn. 280 (Układy międzynarodowe w sprawie repatriacji 1944-46), ll. 13-16; sygn. 318 (Wnioski i podania w sprawie sprowadzenia rodzin z LSRR, BSRR, USRR i ZSRR za rok 1945), l. 330. On population transfers in the Polish-Soviet borderlands, see Dmitry Halavach, "Reshaping Nations: Population Politics and Sovietization in the Polish-Soviet Borderlands 1944-1948," (PhD diss., Princeton University, 2019).

⁸² "Pranešimas lenkams ir buvusiems Lenkijos piliečiais žydams, gyvenantiems Lietuvos SSR," *Tiesa*, no. 141, June 28, 1945.

⁸³ See generally Theodore Weeks, *Vilnius Between Nations: 1795-2000* (DeKalb: Northern Illinois University Press, 2015) and Violeta Davoliūtė, *The Making and Breaking of Soviet Lithuania: Memory and Modernity in the Wake of War* (London: Routledge, 2013).

⁸⁴ Zavadviker, "Blood and Ink," 259-61.

whether to apply the death penalty to Nazi criminals, concerns about applying the death penalty to Nazi criminals derived from the fear of replicating the Nazi assumption of the right to take away life.⁸⁵ Poland, in contrast, retained the death penalty, but readjusted the qualifications.

Ehrenburg demonstrated the Soviet state position that victory in war had nullified the need for the death penalty: “During the war we needed not understanding, but shooting [*ne ponimanie, a istreblenie*].” Retribution for atrocities had been configured for stopping them in real time and for preventing future ones in the specific context of the Second World War. “But now that the war has ended, we need to understand these things [*nado poniat' eti veshi*]. I am trying to explain this.” For Ehrenburg, ‘understanding’ Germans was not to entirely suspend judgment but rather to explicate “how they came to that [...] how people became that way.”⁸⁶ When asked to discuss “your thoughts on the German people” Ehrenburg answered, “I personally like them very little. There is too much blood between them and me [*Mezhdu im i mnoi slishkom mnogo krovi*]. This is my personal matter.”⁸⁷ Here Ehrenburg distinguishes the Jewish fate from the broader wartime atrocity; and also asserts his private position as separate from, but not necessarily exclusive of, the official Soviet discourse of universal suffering. Ehrenburg described “the hero in this chapter” excerpted for the public reading at the union meeting as “Osip Al’per, a Ukrainian Jew, and a regiment commander. The Germans killed his mother and daughter. His wife fought, she was killed. He was left by himself.”⁸⁸ Tolkachev belonged to Ehrenburg’s community of writers and survivors, i.e., of Jews (typically Red Army soldiers, often from Ukraine) described by Zavadivker who encountered their hometowns with the army to find their families and communities gone.

⁸⁵ See chapter two.

⁸⁶ LLMA, f. 34, ap. 1, b. 37, l. 18.

⁸⁷ Ibid., l. 16.

⁸⁸ Ibid., l. 12.

On the topic of “the German people,” Ehrenburg argued that the postwar problem was not ordinary Germans who could be reeducated with the expansion of socialist ideals in Europe, but the “Fritzes” in the American and English zones of occupation who retained their civil administrative posts and became useful anti-Communists for the Western occupational authorities. Somebody offered that perhaps Germans were “inherently misanthropic [*po prirode chelovekonenavistny*]” to which Ehrenburg responded: “I don’t believe in blood, in the mysticism of blood [*ia ne veriu v krov', v mistiku krovi*]. That’s what the fascists believe in” and attributed his stance to Tuwim.⁸⁹

Ehrenburg’s allusion to blood (“There is too much blood between me and them”) and his insistence on depathologizing Germans as a people derived from Tuwim’s preemptive denial of the claim that representing Jews as particular victims in the war only served to replicate Nazi categories. Ehrenburg, like Tolkachev, conveyed that of all the human blood lost in the war, the blood of people who happened to be Jewish was lost disproportionately to the blood of others. He also made a statement on the humanity of perpetrators and victims: “We need to explain the human side of the matter. [...] I wanted to show the human side [*Nam nuzhno ob'iasnit' chelovecheskuiu storonu dela. [...] Mne khotelos' pokazat' chelovecheskuiu storonu*].”⁹⁰ Ehrenburg thus indirectly humanized Soviet categories of enemies, such as “bourgeois nationalists” who had ascribed to Nazi ideologies and race-baiting, as well as others who did the same or had otherwise participated in the violence against Jews. The Lithuanian context in Vilnius with the Ponar mass shooting site on the city’s outskirts would not have been lost on the audience. Even though Ehrenburg and *Black Book* editors removed references to collaboration and preferred instead to emphasize narratives of solidarity, Ehrenburg initiated the opportunity to

⁸⁹ Ibid., ll. 16-17.

⁹⁰ Ibid., l. 9.

talk locally about the war: “I’ve finished reading you the excerpts that are more or less connected to Vilnius, although indirectly. Maybe you would like to ask me something?”⁹¹ He became increasingly agitated and sardonic as questions covered only topics of standards of living and racism in the West, and plans for his next novel.

Maxim Shrayer argues that in 1945 “Ehrenburg articulated a point of view that was diametrically opposed to the one Adorno would make in 1949.” The German philosopher who fled Nazi Germany in 1934, Theodore Adorno, is well-known for his metaphorical critique of writing poetry after Auschwitz and for his insistence on new aesthetic modes of generating meaning. Ehrenburg, according to Shrayer, “was already asking [...] that both the poets and the victims of the Shoah be granted a modicum of remembrance and salvation through art and in art, however muted the art’s expression of Jewish losses.”⁹² The political context of 1947 dictated censorship and demands of representation. By the summer of 1947, it was increasingly apparent that Communist parties in Western Europe could no longer expect to win power. On the one hand, Ehrenburg was attuned to the waves of change in broader propaganda regarding the USSR’s relationship with postwar Germany.⁹³ Ehrenburg was actively reframing the narrative of “no rehabilitation for Germans!” that had been widespread in the immediate postwar years, and that Tolkachev, regardless of his own position on the matter, had helped advance. Ehrenburg evoked the political concerns about what “victory” would look like for postwar Europe—“*ona poraznomu mozhet vygliadet’* [it can look differently].” The politics of representation necessitated that Ehrenburg present a Soviet-sponsored salvation. The Western press reviewed

⁹¹ LLMA, f. 34, ap. 1, b. 37, l. 12.

⁹² Maxim Shrayer, “Ilya Ehrenburg’s January 1945 Novy Mir Cycle and Soviet Memory of the Shoah,” in *Eastern European Jewish Literature of the 20th and 21st Centuries: Identity and Poetics*, Klavdia Smola, ed. (Munich and Berlin: Verlag Otto Sagner, 2013), 204.

⁹³ See *For a Democratic Peace with Germany: Speeches and Statements by V. M. Molotov Minister of Foreign Affairs of the USSR*, London Session of the Council of Foreign Ministers, November 26-December 15, 1947 (London: “Soviet News,” 1948).

The Storm as mere propaganda. However, for Ehrenburg and others in the community of loss, art after Auschwitz—and after the killing fields in the East—was not barbaric and it was not only propaganda, but also a human response to trauma and means of probing how the Holocaust had happened.

While public memory culture of wartime trauma in the early postwar Polish-Soviet borderlands reflected a focus on representation and revenge for what “the Germans” had done, the legal arena was a space for addressing what everyone else had done under German rule. The process of legal trials of individuals who participated in the Holocaust created new collective categories of people and behaviors, as well as reinforced old ones. The intentions, manifestations, utility, and outcomes of emphasizing and condemning categories of enemy behavior (German, Polish, anti-Polish, Lithuanian, anti-Lithuanian, *Volksdeutsche*, collaborator, fascist, bourgeois, nationalist, anti-Soviet, anti-state, and any mixture of the above) varied. A common thread in artistic configurations addressed in this chapter was the nexus of ascribing atrocities against Jews and the people and systems responsible for them. The problem of legal punishment, to which the next three chapters turn, reflected the same initial questions most evident in the contemporaneous art and responses examined in this chapter: the balancing of justice and representation, and determining the precise nature of the gravity of the crime.

Chapter Two

‘The Problem of Punishment’: Holocaust Trials in People’s Poland

Tolkachev as a borderlands figure represented the trauma of the war and the Holocaust of East European Jewry in his art, which generated competing perspectives on how to respond. Typically, respondents called for revenge against the Germans. But the prosecution of crimes against Jews in Poland and the Soviet Union upon Soviet liberation from German occupation countenanced a public reckoning with those who had shared more intimate responsibility. As the contemporaneous responses to Tolkachev’s exhibitions reflected, the widespread desire for revenge and the necessity on part of institutions to present a narrative of its eventual fulfilment were strong.¹ Ilya Ehrenburg’s personal and political explanations for the shift from revenge to understanding at his visit to the Lithuanian Soviet Writer’s Union in 1947 spoke to the judicial capacity to balance revenge-seeking and differing forms of justice with the government’s own broader-reaching aims for Poland and Lithuania, which is the topic of this and subsequent chapters.

In Poland, most Jews were killed in death or concentration camps, while many others were individually denounced or killed in hiding by locals. Still others were killed in mass shootings, but on a smaller scale than those which occurred on occupied Soviet territory. After the war, several German SS officers and soldiers were tried in Poland for organizing the death and concentration camps. Such trials began in November 1944 in Lublin, where Tolkachev had debuted the first series in his all-Poland circuit of art on Nazi atrocities. Along with the Germans

¹ For a discussion of war crimes trials and the public desire for “swift justice” across Europe in the immediate aftermath of war, see Istvan Deak, *Europe on Trial: The Story of Collaboration, Resistance, and Retribution During World War II* (Philadelphia: Westview Press, 2015) and Benjamin Frommer, *National Cleansing: Retribution against Nazi Collaborators in Postwar Czechoslovakia* (Cambridge: Cambridge University Press, 2005).

who were put on trial in Poland for organizing the camps against whom vengeance was clearly directed, many locals simultaneously stood trial for their roles in getting Jews to the camps.

This chapter follows differing threads of analysis including the trials of suspected perpetrators with appeals and revisions, the authorities' purposes for prosecuting Nazi collaborators, and interpretation of the crimes and their connection to the Holocaust. I focus on early postwar trials (as opposed to several over time in the subsequent chapter on Soviet Lithuania) because in the case of People's Poland I aim to posit Holocaust "retribution" and Holocaust "justice" as distinctive and separate parts of a constitutive postwar moment of reckoning. The meaning is in the moment, and not in the trajectory of trials over time. War crimes trials when compared not only with broader postwar law in People's Poland but also within the specific context of postwar transnational configurations of the legal theory of *social defence* demonstrate the extent to which the Holocaust was a fundamental topic of postwar legal reckonings in Poland.

Retribution for the Holocaust aligned with broader processes of postwar state building in that a central goal was to determine whether and/or the degree to which defendants had acted to the detriment of Poles, or the Polish nation. Postwar criminal trials were a venue for administrators and participants (including witnesses, defendants, victims, and others) to probe and redefine Polish national belonging. Sociologist Louisa McClintock posits Holocaust trials as a foundational process of postwar Polish national rebuilding and construction anew with no real engagement with what had happened to the Jews.² The trials against ordinary people in People's

² Louisa McClintock, "Projects of Punishment in Postwar Poland: War Criminals, Collaborators, Traitors, and the (Re)Construction of the Nation," (PhD diss., University of Chicago, 2015), 7, 125, 129, 184.

Poland for crimes during the war were influenced by Soviets, but not controlled by them.³ They were carried out in accordance with prewar Polish legal code and structure, with the exception of new legal innovations such as the war crimes legislation of 31 August 1944 (the *Sierpniówka*, hereafter referred to as the August Decree) qualifying Nazi war crimes during the occupation. Additionally, “assessors” were added in 1945 whose role was political and consisted of helping judges interpret cases according to new socialist ideology (although they were not always involved). There was also some introduction of Soviet paperwork such as the *postanowienie* (ruling) modeled after the Soviet *postanovlenie*.

The August Decree was very similar to the Soviet legislation qualifying Nazi war crimes (Ukaz 39) in the Decree of April 19, 1943, by the Presidium of the Supreme Council of the USSR. The August Decree was intended specifically to qualify Nazi crimes during the occupation. Article One issued the death penalty to those who “acting at the hands of the German power” either

- a) participated in or continues to take part [*brał lub bierze udział*] in the murder of members of the civilian population or prisoners of war, in their abuse, or in their persecution,
- b) acted or act to the detriment of those residing in the Polish state [*działał lub działa na szkodę osób przebywających na obszarze Państwa Polskiego*], particularly through the capture or removal of persons wanted or persecuted by the occupying power for any reason (excluding the prosecution of ordinary crimes)

³ For studies that are more dismissive of the penalty courts in Poland, see, for example, Agata Fijalkowski, “Politics, Law, and Justice in People's Poland: The Fieldorf File,” *Slavic Review* 73, no. 1 (Spring 2014): 85-6 or Alexander V. Prusin, “Poland's Nuremberg: The Seven Court Cases of the Supreme National Tribunal, 1946-1948,” *Holocaust and Genocide Studies* 24, no. 1 (2010): 3.

Article Two issued up to 15 years of prison for people who blackmailed persons sought by the German occupational authorities, and Article Three stipulated that “Crimes under Articles 1 and 2 committed in service of the hostile occupying power either under its order or through coercion are not exempt from criminal liability.”⁴ The August Decree was retroactive and preventative in the context of a particular war that was still ongoing.

The main interest of this chapter, however, is the Decree of June 13, 1946, (referred to as the “Small Penal Code,” the *mały kodeks karny*), particularly Articles 30-34, as it was through them that postwar jurists in Poland tried to account for the Holocaust as a primarily Jewish event but with universal reach going forward. It was not meant for punishing past war crimes, but for capturing future ones. This chapter examines cases in People’s Poland from the early postwar period in which the substance of the charge included, entirely or in part, crimes against Jews, and analyzes to what effect Jews were included in and/or excluded from the “Polish” community of citizen-victims. The launching of the Special Penalty Courts in context with other legal introductions on anti-state crime for building communism indicated that retroactive (punitive) justice and forward-looking (preventative) penal practices were distinct and separate processes in response to wartime atrocities, particularly against Jews. Sometimes they overlapped but were not the same thing. I argue that in terms of the forward-looking legal changes through Articles 30-34 in Small Penal Code, Jews were actually the emphasis of the community of “Polish” victims but were not always included as such in retroactive punishment of crimes that had been committed against them in the war.

⁴ “Dekret Polskiego Komitetu Wyzwolenia Narodowego z dnia 31 sierpnia 1944 r. o wymiarze kary dla faszystowsko-hitlerowskich zbrodniarzy winnych zabójstw i znęcania się nad ludnością cywilną i jeńcami oraz dla zdrajców Narodu Polskiego,” in *Dziennik Ustaw Rzeczypospolitej Polskiej*, no. 4, September 13, 1944, accessed January 24, 2018, <http://prawo.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU19440040016>.

Emanating discourses on war crimes in Poland and the transnational networking informed the social and penal concepts that went into crafting the articles in the Small Code relevant to the Holocaust (which resembled American hate crime laws). One of the most frequent forms of Holocaust complicity in Poland was denunciation, the dynamics of which were not always fully captured by the Small Code as were cases of more direct violence. In the case against Aniela Klocek, to be examined in detail, the wartime behavior of the defendant was precisely the type of behavior *excluded* from qualification under the new “anti-racist” sections captured in the expansion of legislation on “especially dangerous” anti-state crime in People’s Poland. But the consequence of the differentiated behaviors was the same: the death of Jews. This case of retroactive war crimes punishment in context with the legislation ascribing future punishment during Communist state building passed a year after the defendant’s trial demonstrated the crux of questions regarding how to represent and account for genocide developing in the aftermath of the Holocaust, illustrated by Julian Tuwim’s popular refrain on “the blood of Jews (not Jewish blood)” addressed in chapter one: capturing harmful behaviors against Jews *because they were Jews* versus accounting for the consequences of harm against people *who happened to be Jewish* and its meanings for postwar society.

The Special Penalty Courts

After the Red Army liberated eastern Poland in summer 1944 from Nazi domination, Communist Poles declared a new acting government headquartered in Lublin called the Polish Committee for National Liberation (*Polski Komitet Wyzwolenia Narodowego*, hereafter referred to as the PKWN). The PKWN Poles established a judicial institution called the “Special Penalty Court” which they designed specifically to punish collaborators. Trials in the Special Penalty Court began in the early fall of 1944. Because courts, of any kind, that existed in Communist

Poland are still often presented as totalitarian manipulations of justice, it is important to emphasize that the Polish government-in-exile in London originally formed underground “Special Courts” in 1940, based on the 1932 Polish penal code, which initially tried only military collaborators, but included civilian cases by 1942. After liberation from German occupation in 1944, the PKWN Poles reinstated these courts above ground but added the new “penalty” component intended to qualify not just the mere cooperation with Nazis, but participation in Nazi violence and discrimination. The Special Penalty Courts supplemented the 1932 Penal Code with new statutes, namely the August Decree articulating specific crimes liable for prosecution and punishment in the penalty courts.⁵ Those who instituted the Special Penalty Courts did not envision them as a catch-all arena for stifling resistance or going after anti-state crime, nor did they expect that the courts would have particularly wide reach. In December of 1944, the leading judiciary figure in Poland, Leon Chajn, reemphasized to the regional branch of the National Council in Garwolin that

The Special Courts were established to judge *special* [emphasis mine], and therefore relatively few, crimes committed by fascist-Nazi criminals and are to be established only in the districts where there is an Appellate Court.⁶

Popular zeal in utilizing the courts or punitive excesses on part of their administrators should be distinguished from the intent of those who launched the courts, which was to punish Nazi

⁵ Jozef Garlinski, *Poland in the Second World War* (London: Macmillan Press, 1985), 122-123. See also Stanisław Salmonowicz, *Polskie Państwo Podziemne* (Warsaw: Wydawnictwa Szkolne i Pedagogiczne, 1994), and Andrzej Wasek and Stanisław Frankowski, “Polish Criminal Law and Procedure,” in *Legal Reform in Post-Communist Europe*, Frankowski and Paul B. Stephen III, eds. (London: Martinus Nijhoff Publishers, 1995), 283.

⁶ Note by head of the Resort (committee) of Justice Leon Chajn, December 20, 1944, Archive of Modern Records (Archiwum Akt Nowych) (AAN), z. 2/185 (Polski Komitet Wyzwolenia Narodowego w Lublinie), sygn. IX/9A (Resort Sprawiedliwości), l. 24: “Sądy Specjalne zostały powołane do życia dla osądzania specjalnych, a więc stosunkowo nielicznych, przestępstw popełnionych przez zbrodniarzy faszystowsko-hitlerowskich i są utworzone tylko w okręgach Sądu Apelacyjnego.”

atrocities and to stop further participation in them.

However, some who had been involved in Nazi crimes were also engaged in anti-Communist resistance, and so postwar retribution resembled practices in Soviet territory—like in the Lithuanian SSR, the topic of the next chapter—by which war crimes trials served the mutually compatible aims of justice and the stifling of nationalist resistance movements. To aid in the latter, the Ministry of Justice passed decrees in winter of 1945 enabling the expansion of the death penalty and the creation of ad hoc courts for “particularly dangerous crimes [*o przestępstwach szczególnie niebezpiecznych*]” such as currency speculation or anti-Communist partisan activity. Even so, in early January 1946, the head of prosecutorial oversight, Adolf Dąb, advised that “relatively small matters should not be administered under the ad hoc court, in which the punishment could give the public an impression of excessive solicitude” and to avoid prosecuting “workers and peasants.”⁷ But in the trials focusing on participation in Holocaust crimes, workers and peasants typically made up the bulk of defendants.

As the seat of the new government, Lublin’s Special Penalty Court had the most organizing power, having also been the venue by which major German SS officers were tried in November 1944 for crimes at the Majdanek concentration and death camp in the city’s outskirts. The penalty courts for cities still under German occupation held proceedings in temporary locations. For example, in December 1944 the Cracow Special Penalty court, temporarily seated in the southeastern city of Rzeszów, welcomed a crowd of nearly 500 people who were “firstly interested [...] in the matter of punishment for fascist-Hitlerite criminals” for a trial in the main hall of the People’s Theater in Rzeszów. The defendant, charged with “the murder and mistreatment of Polish civilians,” was a Ukrainian, Aleksandr Miśkiw, who had served in the

⁷ Circular 1/46, January 8, 1946, State Archive in Lublin (Archiwum Państwowe w Lublinie) (APL), z. 766 (Prokurator Sądu Okręgowego w Lublinie), sygn. 4 (Zeszyt korespondencji poufnej 1946), l. 16.

Bahnschutzpolizei.⁸ The retribution campaign as envisioned by those who designed the Special Penalty Court targeted two groups of people: 1) the *Volksdeutsche*, or, the ethnic Germans living outside Germany who had aligned themselves with the occupiers during the war, and 2) those individuals, of any ethnicity or citizenship, who had committed Nazi crimes or, more accurately, atrocities (*zbrodnie*) qualified in the August Decree.

Miśkiw was a good example of the sort of person authorities expected to put on trial, as Holocaust retribution could serve as a form of further nationalization in the wake of mass murder of Poland's Jewish population. Miśkiw's activities were easily categorized as collaborationist, as he was part of a German institutional unit, and he had carried out atrocities against civilians. That he was Ukrainian was even more advantageous. Postwar state construction in Poland involved the resettling of Germans and Ukrainians outside the country. War crimes trials were part and parcel of a process of postwar nation-state consolidation grounded in narratives of Polish martyrdom. In their exposés on the penalty courts, newspapers regularly featured examples of *Volksdeutsche* or Ukrainians who had harmed ethnic Poles. That his trial took place in a theater was a function of the lack of proper court space due to either destruction by the Germans or the Red Army's appropriation of buildings for its own use and should not be interpreted as a metaphor for Communist show trials and fabricated crimes. But the irony of using theaters as courtrooms is not totally lost; after all, the trials were intended to 'perform' justice for traumatized communities, project the legitimacy of Communist rule for those reluctant to accept it, forge good Communist citizens (under Moscow's gaze but out of its hands), and to define or redefine the boundaries of community and criminality after the Holocaust. When the penalty courts were disbanded in 1946, jurisdiction for "August cases" was transferred to the district and

⁸ Note to the Resort of Justice of the Polish Committee for National Liberation [PKWN] in Lublin by Special Penalty Court Chairman Adam Stawarski, December 9, 1944, AAN, z. 2/185, sygn. IX/9A, ll. 3-4.

appellate courts. Over time and in response to revisions of the August legislation, historian Andrew Kornbluth writes that “legality was becoming a kind of performance of legality [...] within a set of understood parameters: acquittal, a mild sentence, or, in the most extreme cases, a death sentence with a very high likelihood of commutation.”⁹ Most trials did not take place in big theater halls to an audience of 500, but rather in small rooms, closed to the public, with an audience of the ten or so people involved in the individual case. Still, the central crux of a given trial for wartime collaboration amounted to the same charge posed against Miśkiw: complicity in the murder and/or mistreatment of Polish civilians. The next sections explore the ways in which Jews were configured as Polish citizens, or not.

“Especially Dangerous Crimes” and the Nexus of Holocaust Justice in early Postwar Law

As the Special Penalty Courts were disbanded in 1946, Poland’s main prosecutor, Jerzy Sawicki, began to make substantial changes to the country’s criminal code. Jerzy Sawicki was born by the name of Izydor Reisler and was a survivor of the Lwów ghetto and was rumored to have been in the *Judenrat*. Sawicki had published in several liberal publications and worked in a private legal practice before the war and, according to Kornbluth, was “a Marxist, but hardly an apparatchik.” After the war, Sawicki became one of the lead prosecutors in the Majdanek trial in Lublin and supervised the penalty courts.¹⁰ Much attention has been paid to how postwar legal reforms, particularly those of the 1946 Small Penal Code, targeted anti-state behavior as a tool of mass political repression during Communist transition, particularly in targeting leaders of the underground Polish Home Army.¹¹ Legal scholar Karol Siemiaszko evokes the Small Penal code

⁹ Andrew Kornbluth, “Poland on Trial: Postwar Courts, Sovietization, and the Holocaust, 1944-1956,” (PhD diss., University of California, Berkeley, 2016), 157.

¹⁰ *Ibid.*, 130-31.

¹¹ See generally Agata Fijalkowski, *From Old Times to New Europe: The Polish Struggle for Democracy and Constitutionalism* (London: Routledge, 2010), 174-175.

as “among the most repressive penal acts of Communist law” targeting even people who “were not engaged in political struggle.”¹² When scholars address the Small Code, they typically do not mention the race violence precautions in Articles 30-34.¹³

A recurring theme in the history of postwar retribution in Poland was confusion among family members abroad who did not understand why their non-political family members were being put on trial. In late June of 1946, Michalina Kozenko, a resident of Brooklyn, N.Y., wrote to the Ministry of Justice in Warsaw inquiring about the arrest of her brother Adolf Lachowski and how to help him, adding “I only know that my brother was never mixed up in politics, and never did any political work.”¹⁴ The specifics of Lachowski’s case are unknown, only that he had been arrested by the secret police (*Urząd Bezpieczeństwa Publicznego*, UB) in Puławy in December of 1945 for “collaboration with the Germans” and was handed over to the penalty court in January of 1946.¹⁵ Word about trials and arrests got back to diaspora families in the west who would write to the central administrative offices in confusion. They had typically assumed that Communist trials only covered political struggle, not anticipating that authorities also endeavored to combat racial struggle. Importantly, the Small Code attempted to account for crimes against Jews as racist crimes as distinguished from crimes against Jews as non-racist crimes. However, the Small Code failed to capture actions on part of defendants who had not been acting actively “as racists,” so to speak, which had implications for Holocaust memory over time.

¹² Karol Siemaszko, “Orzecznictwo sądów powszechnych na gruncie małego kodeksu karnego w latach 1946-1950 w świetle dotychczasowych badań,” in *Krakowskie Studia z Historii Państwa i Prawa* 5, no. 4 (2012): 343.

¹³ See for example, Mirosława Melezini, *Środki Karne jako Instrument Polityki Kryminalnej* (Białystok: Temida 2, 2013), 51-52.

¹⁴ Letter dated June 27, 1946, APL, z. 766, sygn. 2 (Zeszyt korespondencji 1946), l. 363.

¹⁵ Note to the Lublin District Court from UB officers Waclaw Zasada and Antoni Dawidowicz, July 15, 1946, APL, z. 766, sygn. 2, l. 368.

Siemaszko elsewhere argues, accurately, that the Small Code was also intended to prevent the spreading of hostilities among displaced ethnicities, particularly those relocated to newly incorporated western territories formerly part of Germany; in other words, to ensure the smooth functioning of population transfers.¹⁶ But he reduces the Small Code to the totalitarian attempt “to control the opinions of its citizens and eliminate people whose views posed any perceived danger to the project of turning Poland into a Communist state.”¹⁷ Certainly, the reforms of the Small Code were designed for building socialism, and included the repression of enemy categories. However, reducing the Small Code to a tool of repression misrepresents a wide array of motivations behind the reforms—including the desire to stop the postwar violence against Jews and to address the underlying social tensions which had facilitated such widespread participation in anti-Jewish crimes in a situation of war. McClintock does not address the Small Code in her analysis of postwar justice, and Kornbluth mentions the Small Code only in passing to comment on changes in judicial procedure for combatting anti-state crime. He does, however, address the August Decree at great length, elucidating how it was revised in December 1946 to encapsulate participation in crimes against humanity by virtue of membership in a group whose aims were “crimes against peace, war crimes, or crimes against humanity.” He writes that the “ostensible reasoning behind the revision was to incorporate jurisprudence from the International Military Tribunal at Nuremberg.”¹⁸

But in my own emphasis on the Small Code, I take seriously the Communist discourse that racist actions and crimes against humanity were “especially dangerous,” whether committed as a member of a group or individually. Jan Gross has written of “the implicit contract between

¹⁶ Karol Siemaszko, “Criminal Liability for Statements in the Light of the Case Law Generated by Regional Courts in Regions Incorporated into Poland Following World War II,” *SOLON Law, Crime and History* 6, no. 2 (2016): 4.

¹⁷ *Ibid.*, 14.

¹⁸ Kornbluth, “Poland on Trial,” 124-25, 147.

Communist authorities and the newly subjugated Polish society—that they mutually benefited from considering the wartime fate of Polish Jews a nonissue, would not scrutinize what exactly happened to the Jews during the war, and would encourage and facilitate the departure of remnants of Polish Jewry” which he interpreted as a “‘give’ for the ‘take’ of power.”¹⁹ My own interpretation is that this contract ensued precisely because reckoning with the wartime fate of Jews had been so central to postwar political and social life, and that it was the winning—but not the predetermined—outcome among other visions for more direct engagement with the Holocaust.

The wartime, and postwar, fate of Polish Jews was prioritized by some leading figures in the government to the degree that both were explicitly evoked as reasoning for changes to the criminal code in 1946, qualified in the law itself and addressed in legal commentary. Whether they were *effective* going forward is a separate topic from the meaning jurists imagined for them. Seeking to normalize the legal system and to calm tensions induced by the perceived severity and haphazardness of early postwar retribution, figures like Sawicki opted for disbanding the Special Penalty Court (integrating them into the general courts) in favor of a more normative approach guarding against excesses. It seems that Sawicki integrated the core motivation for launching the penalty courts (an institutionalized means of preventing crime and treason in the context of Nazi occupation) into new legal measures on “especially dangerous” anti-state crime because he thought building communism was not worth it without also reckoning with the Holocaust and preventing crimes against humanity, which was not necessarily the same thing as meting out punishment for the Holocaust.

¹⁹ Jan Gross, *Fear: Anti-Semitism in Poland after Auschwitz* (New York: Random House Trade, 2006), 243.

Dispatches from the Polish delegation at the International Military Tribunal in Nuremberg and its representation in the Polish press demonstrated dissatisfaction with the proceedings and disappointment at the selective adherence to tribunal principles at Nuremberg and its subsequent proceedings. For example, in March 1947, the *Lower Silesia Forward* reported on the “strange logic of American lawyers” who did not want to criminalize the aerial bombing of civilians during the US trial in the American Zone of Occupation against *Luftwaffe* Field Marshal Erhard Milch. The press reported that the Americans did not want to convict Milch for aerial crimes resulting in Warsaw’s destruction for fear they would also be held legally responsible for dropping the atom bomb at Hiroshima and Nagasaki in 1945: “Because the Americans dropped the atom bomb... Milch is not guilty in the bombing of Polish cities.”²⁰ Still, Milch was charged with

- 1) participation in the planning and execution of war crimes, namely the subjection of prisoners of war (POWs) and foreign nationals to murder, cruel treatment, and forced labor
- 2) participation in the planning and execution of war crimes, specifically participation in two medical experiments dealing with the effects of high-altitude and freezing
- 3) crimes against humanity²¹

²⁰ *Naprzód Dolnośląski*, March 30-31, 1947, in United States Holocaust Memorial Museum Archives (USHMMA), RG-15.557 (Selected records of the Ministry of Justice in Warsaw), no. 1099 (Procesy Zbrodniarzy wojennych), 52.

²¹ Charges listed on “Subsequent Nuremberg Proceedings, Case #2: The Milch Case, *Encyclopedia*, United States Holocaust Memorial Museum, accessed online on May 8, 2020, <https://encyclopedia.ushmm.org/content/en/article/subsequent-nuremberg-proceedings-case-2-the-milch-case>.

Milch's trial began in December of 1946, and in April of 1947 he was convicted of the first and third charges and sentenced to life in prison. The sentence was commuted to 15 years, and he was paroled in 1954. His fate as a high-ranking organizer of Nazi policy was similar to the fates of thousands of ordinary people who stood trial in Poland not as organizers, but as participants, in Nazi war crimes whose trajectories of sentence and parole had timelines similar to that of Milch. His case and its responses in the Polish press is instructive because it illustrates the political nature of the problem of punishing war crimes in Poland: firstly, who and what should be punished; and secondly, fatigue at the Cold War discrepancies in what was, supposedly, to be the universal prosecution of war crimes.

As Nuremberg was intended as a venue for proving the criminality of the German state, the principles focused on categories of organization, conspiracy, participation as member of a group with intent to carry out crimes, and disruption of peace. But some legal authorities apprehended that focusing only on the Germans and their high-ranking functionaries or even local nationalists could not fully account for the unfolding of Nazi atrocities. Behind the world stage of Nuremberg, on which the categories of war crimes and Cold War boundaries were configured and re-configured, jurists across Europe came together on smaller platforms to address what they had perceived as the limits of modern criminal law itself. "Hitler was not normal," reported the *Warsaw News* in March 1947, quoting Milch at trial. But jurists, including Jerzy Sawicki who was a member of Poland's delegation to Nuremberg, were less concerned with the personality of Hitler in his final years, and more with what millions of 'normal' people had done under 'abnormal' conditions of war. Jurists evoked *social defence* legal philosophy to address whether the solution to rebuilding society was to affirm the value of the individual or to reconfigure the boundaries and importance of the community. One of the leading organizers of

postwar juridical networks aiming to address, through penal policy, the breakdown in relations between individuals and society was the French jurist, Marc Ancel. His early postwar collaboration with Poland's leading prosecutor, Jerzy Sawicki, had turned sour by the 1950s. But in the early postwar decades the two had worked together to confront a basic question derived in the aftermath of war—what is to be done about humans?

Social Defence in Postwar Europe

Marc Ancel was one of the main proponents of the *social defence* movement, a late 19th century criminal theory, which had as its basic premise the notion that the underlying function of penal law should be to prevent the crime, not merely punish the criminal. Early conceptions dictated that emphasis on prevention of the crime would then serve the “only purpose” of criminal law—the “protection of the personal security, life, property, and reputation of citizens”—and thus could “be truly achieved, however, only if the idea of moral responsibility is replaced by the notion of the dangerousness of the offender.”²² Until the First World War, there were no applications of the theory in law. After WWI, several countries began applying *social defence* principles in law, but with highly divergent understandings of its meaning, particularly regarding retributive penal policy, and the death penalty in particular.²³ The essence of *social defence* theory was that “mere retribution is not enough: society can be effectively protected only by social action.”²⁴ After WWI, governments including France, Weimar and Nazi Germany, Lithuania, the Soviet Union, and the United States increasingly evoked ideas of *social defence* for “the utilitarian function of penalty to defend society” in the pursuit of “community rights

²² Marc Ancel, *Social Defence: A Modern Approach to Criminal Problems* (London: Routledge, 1965), 51.

²³ *Ibid.*, 60-67.

²⁴ *Ibid.*, 201.

over individual rights.”²⁵ The USSR, of course, had used penal law to prosecute anti-state and anti-social enemy social categories, and Communist Poland did the same. Communist regimes consistently navigated, abandoned, or revived alternating approaches concerning when to eliminate and when to rehabilitate criminal offenders.

After the Second World War, the European-wide phenomenon of retribution against local non-Germans, especially in 1944 and 1945, and the confrontation with Nazi atrocities, particularly against Jews, seemed to have necessitated an inversion of the *social defence* paradigm from dangerous individuals to dangerous *society*. Like the artists addressed in the first chapter (and as will come to the fore with the return of artists in the fifth chapter), legal theorists were at odds to account for the complicity or conviction on the part of a lot of people as individuals, as opposed to official actions or stances enunciated by institutions of state. Recalling that in 1944 Leon Chajn had envisioned the Special Courts in Poland as prosecuting “special, and therefore relatively few” crimes, the actual unfolding of trials reinforced that individuals having committed or participated in Holocaust crimes were not exceptional, and not unlike very many of their fellow citizens.²⁶

Thus in Poland, shows Kornbluth, courts “would become particularly loath to condemn perpetrators whose crimes against Jews lacked “especial” brutality, could produce commonly-accepted pretexts for their actions, or had witnesses who changed their testimony in the defendants’ favor.”²⁷ As such, courts endeavored to punish only the worst of the worst, a universal postwar practice which Ancel criticized as arbitrary and unethical in its reliance on the

²⁵ Nicolas Picard, “Reconsidering Crime and Death Penalty after WWII: The Formation of Transnational Networks among Jurists and Criminologists (1945-1980),” unpublished presentation, 1st Flying University of Transnational Humanities, Research Institute of Comparative History and Culture (RICH), Hanyang University, Seoul, South Korea, June 11-16, 2010, last accessed May 23, 2020, <https://univ-paris1.academia.edu/NicolasPicard>, 8.

²⁶ See, for example, Kornbluth’s discussion of the capture and handing over of Jews by Polish peasants and the debates in Poland’s Supreme Court, “Poland at Trial,” 108.

²⁷ *Ibid.*, 101.

discretion of individual judges, lawyers, jury members, and witnesses. Ancel, writes historian Nicolas Picard, belonged to postwar networks of jurists and criminologists who revived old transnational networks or created new ones with the aim of promulgating new theories on the treatment and rehabilitation of criminals. The networks were based largely upon “New Social Defence ideas refusing to consider [criminals] as monsters doomed to be eliminated” with the ultimate goal of preventing the crimes the criminals had committed.²⁸ To this aim, criminal policy was to promote “the protection of society primarily and deliberately by the social and moral rehabilitation of the offender.”²⁹

It seemed that Marc Ancel was reaching for a system to supersede Cold War binaries, envisioning a criminal law system which could manifest socialist fraternity without relying upon punitive measures to do so.³⁰ Ancel thus worked to develop “new social defence” by which individual conflicts manifesting in group injustices were to be reduced “through a new harmonization of social relationships,” i.e., a form of managing political, economic, and social difference beyond liberal assimilation or “totalitarian amalgamation.” To this aim, Ancel addressed the criticism he faced from theorists on both sides of the Iron Curtain by consistently emphasizing over the first postwar decades that individuals do not exist alone but only in relation to other individuals. “The individual,” he claimed, “should therefore be thought of as existing not *against* the State but *within* the social community.”³¹

In the aftermath of the war, jurists framed concerns for society through the uplifting of the individual. Thus the institutionalization of *social defence* principles in the 1948 Universal

²⁸ Picard, “Reconsidering Crime and Death Penalty after WWII,” 15.

²⁹ See M. Grünhut’s discussion of Ancel and the 1952 French Bill of Draft in “New Projects for Probation in France and Belgium,” *The British Journal of Delinquency* 8, no. 3 (1958): 220.

³⁰ Ancel, *Social Defence*, 206.

³¹ *Ibid.*, 205.

Declaration of Human Rights evoked the “protection of the individual against society,” in order to protect society.³² Networks of lawyers and legal theorists, both Communist and liberal, had convened after the war to determine how to secure these protections through modern legal reform. In 1965, Ancel recalled how

in the special climate of the post-war period, beyond the inhuman excesses which had disgraced this century, specialists of all countries who also felt themselves to be men of goodwill, sought to rediscover a great tradition [...]

of *social defence* principles for rebuilding and safeguarding against the societal breakdowns of the war, which had been more dangerous for Jewish individuals than any others.³³

Among these men and women of goodwill was Jerzy Sawicki, whom Ancel had invited to the law faculty of the University of Paris in March of 1947 to speak on the postwar reforms in Polish criminal law since liberation from Nazi occupation and establishment of Communism. Later in May, Ancel inquired of Sawicki whether he might tailor his presentation to fit within the department’s series of talks on modern penitentiary systems.³⁴ The Polish Ministry of Justice had launched “district courts of social security [*zostały okręgowe sądy ubezpieczeń społecznych*]” on August 20, 1945, and a subsequent national “tribunal of social security [*Trybunał Ubezpieczeń Społecznych*]” in October of 1946.³⁵ These were not *social defence* courts, but rather were courts for administering governmental relief. Instead, Sawicki seemingly evoked *social defence* discursive elements such as “the principle of precautionary/preventative measures [*zasada środków zabezpieczających*]” or “social progressions [*zdobyczy socjalnych*]” or “full right to

³² Quoted in Picard, “Reconsidering Crime and Death Penalty after WWII,” 9.

³³ Ancel, *Social Defence*, 69.

³⁴ Letters from Marc Ancel to Jerzy Sawicki of March 28 and May 9, 1947, AAN, z. 2/285, sygn. 2758, ll. 2, 7.

³⁵ “Sprawozdanie z działalności sądów ubezpieczeń społecznych,” by Director of the Department of Court Supervision, January 10, 1952, AAN, z. 2/285, sygn. 457 (Kolegium ministerstwa sprawiedliwosci. Protokoly posiedzen od nr 16 do 58. 1952), l. 9.

defense for the accused [*oskarżonemu pełne prawo do obrony*]” in reference to the August Decree, Small Penal Code, and other pieces of legislation.³⁶ After the 1949 institutionalization of the *New Social Defence* as a society and legal theory, Sawicki evoked it specifically in critical articles such as “On the New Social Defence [*O Nowej Ochronie Społecznej*].”³⁷

When Sawicki arrived in Paris, he was prepared to account for the perceived retributive excesses of the Special Penalty Courts, which had since been dismantled and transferred to the jurisdiction of the district and appellate courts. But he also wished to contextualize them:

The war, occupation, and its effects, both material and moral, and also the deep changes in economic and social reform, brought about many great problems, for which the Criminal Code formulated in 1932 was unsatisfactory. [...] The first foundations of law in the special courts, having as their goal the punishment of war criminals and collaborators, were created in an atmosphere of exceptional tension.³⁸

Pre-existing laws could not account for the breakdowns in human solidarity, and the courts had been launched in the European-wide moment of “swift justice” and revenge. The State Department of Repatriation in Lublin remarked in 1945 upon the difficulties of differentiating the needs of those who had been repatriated from Germany and western countries (perhaps ethnic Poles deported for forced labor and/or surviving Jews returning from camps), and those who were coming from Siberia (perhaps Jews who had fled the USSR and returned to find no surviving family members and their homes occupied, or Poles who had been deported from eastern Poland after the Soviet annexation in 1939-1941). The situation was particularly bad in

³⁶ Untitled presentation transcript (undated, no earlier than July 1946), AAN, z. 2/285, sygn. 2758, ll. 12, 16, 13.

³⁷ This reference from a 1955 edition of *Państwo i Prawo* appears in Ancel, *Social Defence*, 193.

³⁸ AAN, z. 2/285, sygn. 2758, l. 9. I surmise that Sawicki lifted some of the turns of phrase or content from earlier writings, as Kornbluth quotes a 1945 writing that employs similar language regarding “exceptional tension” during the period of the penalty courts.

Biłgoraj and Lubartow where “there is a lot of antagonism between locals and those who were repatriated,” as well in Zamość where “[e]specially strong antagonism exists between locals and repatriants, which is reflected in numerous court cases.”³⁹

Sawicki also commented on the initial indiscriminate targeting of the *Volksdeutsche*, and he remarked upon how the decree of June 28, 1946, “on criminal liability for renunciation of nationality during the 1939-1945 war” had “finally settled” the issue. *Volksdeutsche* were now to be convicted “solely on the basis of criminal liability [*wyłącznie na gruncia odpowiedzialności karno-sądowej*]” as the law had “individualized responsibility for actions depending on the circumstances of the case and the personality of the offender [*zindywidualizował odpowiedzialność za działanie w zależności od okoliczności sprawy i osoby przestępcy*],” rather than merely a “cause-and-effect chain itself” of “prevention” that had drawn a straight line from *Volksdeutsche* to collaborator. Sawicki asserted that “Polish legislation on matters of collaboration has, however, come a long way from protective measures to penal measures [*przeszło zatym daleko dalszą drogę od środków zabezpieczających do sankcyj karnych*], from particular, district-based law, to law regulating these matters uniformly throughout the country.”

However, Sawicki emphasized that the changes did not “completely break with the nature of the set of precautionary measures [*nie zerwała całkowicie z charakterem zespołu środków zabezpieczających*]” evidenced in the “differentiation of rehabilitation regulations [*w alternatywności przepisów rehabilitacji*]” and “the application of the full range of protective measures [*w zastosowaniu w pełnym zakresie środków zabezpieczających*].” That is, Sawicki conveyed that while Polish law aimed to be less repressive, prevent dangerous crimes, and respect the individual, it would not completely forego the utility of criminal repression for

³⁹ Note from July 1945, APL, z. 707 (Wojewodzki Oddział PUR w Lublinie 1944-51), sygn. 191 (Protokoły z odpraw naczelników Odd. Pow. PUR 1945-50), ll. 13-14.

Communist state-building, or criminal repression in the sometimes rehabilitation, and sometimes elimination, of wartime collaborators.

The Small Criminal Code and the Holocaust

To this end, the Ministry of Justice issued the decree of June 13, 1946, the aforementioned “Small Criminal Code” for the “protection of the state economy, social progress, and the fight against the demoralization of the clerical apparatus.” Of particular interest is the third of three points describing the legislative success of the decree, which had

filled in some gaps in the current legislation, which, for example, did not have provisions for punishing nationalist, racial and religious dissensions.⁴⁰

The attention to actions fomenting hostilities among groups is significant, because it spoke to the desire among leaders in postwar Poland not merely to punish crimes and perpetrators, but to address the preconditions for participation in systematically organized violence. More specifically, Sawicki emphasized that certain penal changes had been conceived in response to the consequences of wartime racial violence against Jews in order to stop, as well, its continued postwar manifestations:

The totally new disposition written in articles 31 and 32 of the criminal code has as its goal the fight against racist actions and the anti-Jewish tumult, as well as tumult of a national, racial, or religious sort.⁴¹

The Small Code on “especially dangerous crimes in the building of the State” specifically evoked crimes against humanity, and was conceived, in no uncertain terms, to address

⁴⁰ AAN, z. 2/285, sygn. 2758, l. 16: “wypełnił pewne luki dotychczasowego ustawodawstwa, które np. nie znało przepisów karzących za sianie waśni narodowościowych, rasowych i religijnych.”

⁴¹ Ibid., ll. 16-17: “Zupełnie nowe dyspozycje zawierają przepisy art. 31 i 32 m.k.k. mające na celu zwalczanie akcji rasistowskiej i tumultów antyżydowskich jako też wszelkich wystąpień narodowościowych, rasowych i religijnych.”

participation in the Holocaust, for the sake of prevention of similar crimes in the future.⁴² This was done particularly in four specific articles within the second section of the code entitled “Crimes against public order [*Przestępstwa przeciwko porządkowi publicznemu*].”⁴³ Although only a few among 72 articles, their significance is fundamental to understanding the emerging legal representations of the Holocaust, genocide, and crimes against humanity as a constitutive process of Communist transition.

The Code employed clichés of class struggle as an interpretive note for Articles 30-34, but the rest of the text was devoid of Marxist rhetoric. Additionally, the whole set was to be interpreted through the lens of the consequences of the confluence of *longue durée* antisemitism in Polish history and the contingencies of war:

Articles 30-34 are to remove from the Polish society the tendencies caused by years of slavery and occupation. Reactive occupation governments during the partition period deliberately spread national and religious hostilities in Polish society, using, in particular, anti-Semitism to thwart the masses in seeking to cast off the yoke of national, political and class oppression [*posługując się zwłaszcza antysemityzmem dla odwrócenia w masach dążenia do zrzucenia jarzma ucisku narodowego, politycznego i klasowego*]. This harmful propaganda was of a particularly degenerate nature during the Nazi occupation. The purpose of the regulations is to combat these criminal remnants of slavery and raise up all groups of the population regardless of national, religious or racial differences into harmonious coexistence for the good of the Polish State [*wychowanie wszystkich grup ludności bez względu na różnice narodowościowe, wyznaniowe i rasowe dla harmonijnego współżycia dla dobra Państwa Polskiego*].⁴⁴

⁴² Ibid., 18.

⁴³ Witold Bogucki, *Mały Kodeks Karny* [MKK] (Warsaw: Książka, 1946), 42.

⁴⁴ Rodział II, art. 30, przepis (byław) 1 in Bogucki, *MKK*, 49-50.

This interpretation of “harmonious coexistence” as *what is good for the state is good for its individuals* and Marc Ancel’s renunciation of approaches to “a new harmonization of social relationships” in the “people’s democracies of Eastern Europe” reflected divergent understandings of how to build community in practice. People’s Poland and the USSR (as will be seen in the case of Soviet Lithuania, addressed in the next chapter) attempted to confront crimes against humanity, particularly Holocaust ones, by rebranding them as treasonous crimes against the state not merely to expand the apparatus of repression or to suppress enemy categories, but also, I argue, to maintain a working legal tool for prevention and prosecution. On the other hand, Communist authorities, in their imperial forms of management of peoples and policies of national homogenization, did not necessarily apprehend the attachments among individuals to alternative group identities. While valuing the state capacity to intervene to save individuals targeted as social groups from death, individuals, namely many Jews in postwar Poland and Lithuania who had not undergone the formative years of Bolshevik transition, might also have desired more meaningful ethnic or religious existences beyond simply “not death.”⁴⁵

In the aftermath of war and in the context of the rehabilitation of Jewish bodies, People’s Poland qualified the wartime racialized mass killings of specific groups of people, and their preceding contexts:

Article 30: Whoever publicly incites national, religious, or racial hostilities, or applauds them, is subject to punishment by imprisonment of up to 5 years.

⁴⁵ See generally Grzegorz Berendt, “A New Life: Jewish Institutions and Organizations in Poland from 1944 to 1950,” and August Grabski and Albert Stankowski, “Jewish Religious Life in Poland after the Holocaust,” in *Jewish Presence in Absence: The Aftermath of the Holocaust in Poland, 1944–2010*, eds. Feliks Tych and Monika Adamczyk-Garbowska, trans. Grzegorz Dąbkowski and Jessica Taylor-Kucia (Jerusalem: Yad Vashem, 2016), 219–281.

Article 31, § 1: Whoever publicly abuses, derides, or humiliates a group of people or an individual because of nationality, religion, or race is subject to punishment by imprisonment of up to 5 years, or arrest.

§ 2: The same punishment shall be imposed on anyone who violates bodily integrity or inflicts light bodily harm upon a person because of their nationality, religion, or race.

Article 32: Whoever commits a criminal act directed against a group of people or an individual due to nationality, religion, or racial affiliation, should the act result in death or serious bodily injury or a disruption of the normal course of public life or a threat to universal security, is subject to punishment by imprisonment no less than 3 years or for life, or the death penalty.

Article 33: Whoever takes part in a conspiracy having as its aim the committing of the crimes referred to in art. 31, statute 2 or art. 32, or as part of a group in public who together commit such a crime, is subject to punishment by imprisonment.

Article 34: Whoever, contrary to their duty, does not prevent the committal of the offenses referred to in Articles 30-33, is subject to imprisonment up to 5 years or arrest.⁴⁶

The Code itself did not specifically evoke crimes against humanity (*przestępstwa przeciw ludzkości*) but *did* explicitly evoke discourse based upon Rafael Lemkin's conception of genocide, qualifying, in Article 32, crimes "against a group of people or an individual due to nationality, religion, or racial affiliation [*przeciwko grupie ludności lub poszczególnej osobie z powodu przynależności narodowościowej, wyznaniowej lub rasowej*]."⁴⁷

The explanatory notions, or bylaws, to the articles indicated the specificity to which these

⁴⁶ Bogucki, *MKK*, 49-52.

⁴⁷ Rodział II, art. 32 in *ibid.*, 50.

articles were conceived to address genocide and the Holocaust. Article 30 “aims to combat racist agitation [*ma na celu zwalczanie agitacji rasistowskiej*].”⁴⁸ Article 31 “aims to combat the harassment and humiliation of entire populations and individuals [*ma na celu zwalczanie prześladowania i poniżania zarówno całych grup ludności jak i poszczególnych jednostek*]” in regards to which “Abuse, mocking or humiliation can be expressed by using certain words or gestures, as well as by using hands.”⁴⁹ Article 32 “applies to a single case, as well as an act of collective assault (excesses, pogroms) [*podpada zarówno napaść jednego sprawcy jak i akt zbiorowego gwałtu (ekscesy, pogrom)*],” a direct reference to the continued “sporadic attacks against Jews” in the countryside, which the PKWN Poles had been trying to manage since liberation 1944.⁵⁰ In a meeting of the Central Committee of Jews in Poland in March of 1945, PKWN member and Head of the Department of Repatriation, Emil Sommerstein, and the famous partisan fighter Yitzhak Zukierman emphasized the need to immediately address the safety of Jews were being killed daily by “Home Army bandits for unknown reasons.” Chairman Adolf Berman, a member of the National Council, replied in exasperation that “the premier is busy with general actions against subversive elements and Jewish matters (*sprawa żydowska*) are only a fragment for him, whereas for the Central Committee the safety of Jews is a fundamental matter.”⁵¹

Evidence suggests that these particular articles in the 1946 Small Code were also formulated to discourage Jewish emigration. In a resolution intended to assuage fears of the

⁴⁸ Rodział II, art. 30, prz. 2 in *ibid*.

⁴⁹ Art. 31, prz. 1 and 3 in *ibid*.

⁵⁰ Art. 32, prz. 2 in *ibid.*, 51. On the security for Jews, see representative of the PKWN section for assistance to Jews Captain Szlomo Herszenhorn’s letter to PKWN chairman Edward Bolesław Osóbka-Morawski, September 17, 1944, AAN, z. 2/185 (PKWN w Lublinie), sygn. I/47 (Prezydium; Ludność żydowska), l. 29.

⁵¹ Protocol of the Presidium of the Central Committee of Jews in Poland, March 25, 1945, Jewish Historical Institute (Archiwum Żydowskiego Instytutu Historycznego) (AŻIH), sygn. 303 (Centralny Komitet Żydów Polskich)/I (Wydział Prezydium 1 sekretariat Centralnego komitetu żydów w Polsce 1945-1950)/Akt 7 (Protokoły z posiedzen presidium i plenum CKŻP 8 styczeń-27 grudnia 1945), l. 19 (original pagination).

danger for Jews in Poland, the Central Committee passed a resolution in December 1945 “on the psychological and political situation for Jews”:

The criminal activities of Polish reactionary groups have largely contributed to the anxiety and nervousness of the Jewish population. ...a tragedy unprecedented in the history of the world... Many people whose families have been brutally murdered cannot stand the moral stress of living in places where their nearest of kin have perished... We understand that the present tendencies are partly due to frequent criminal attacks on Jews in towns and villages. But do not let us forget that the same criminals are attacking Polish democratic leaders and that the Polish government has repeatedly stated its intention of stopping these criminal activities and severely punishing the culprits. The Polish authorities are energetically fighting against these gangsters and have partly succeeded in stopping their criminal activities; the aim of the government is to make the country secure. The Central Committee of Polish Jews feels sure that notwithstanding their political opinions, all Jews who are linked with the Polish soil will rebuild their life in Poland.⁵²

The Central Committee knew that many Polish Jews no longer wished to stay in Poland due to both the psychological trauma of living where their families and communities were killed and because of the widespread continued violence against Jews. In a bid to convince Jews that the government could still protect them, the resolution conflated anti-Semites and anti-Communists in order to convince nervous Jews to trust that cessation of anti-Jewish violence would be the tributary of the state’s quelling of the anti-Communist resistance, i.e., the byproduct of securing public order. This approach prioritized keeping Jews in Poland and did not adequately account

⁵² “Resolution of the plenary session of the Central Committee of Polish Jews on December 28th 1945,” (English) sygn. 303/I/Akt 10 (Protokoly z posiedzen Prezydium i Plenum CKŻP 1 paz-28 grudzien 1945), l. 94.

for the fact that many of the individuals perpetrating anti-Jewish violence were actually, writes historian Alina Skibińska, members of the security service themselves.⁵³

Tellingly, per Article 32 of the Small Code passed half a year later, limits to personal freedom regarding incitement of ethnic and other hostilities was conceived analogously to the disruption of social order by falsely inciting “panic in a theater prompting mass escape through a narrow door” or, in the American parlance, the “no yelling fire” rule—amounting to the “disruption of normal public life [*zakłócenie normalnego toku życia publicznego*].”⁵⁴ This indicated that the government had realized the necessity of addressing ethnic and racial incitement (e.g., defamation that could then manifest in antisemitic violence against Jews) on its own terms as a threat to public order in and of itself that needed to be disentangled from an umbrella fight against bandits. Unfortunately, once passed, the decree did not deter the outbreak of the Kielce Pogrom a month later, where approximately 40 Jews were murdered.

Still, a year later, Jerzy Sawicki in his presentation of Polish legal reforms for the 1947 meetings with Marc Ancel in Paris had remained hopeful that the Small Code, having accounted for the perceived excesses of the penalty courts, would aid in probing the “limits of legislative sovereignty with particular regard to crimes against humanity [*granic suwerenności ustawodawczej z uwagą na twz. przestępstwa przeciw ludzkości*]” and “the prohibition of national, racial and religious discrimination [*zakaz dyskryminacji narodowościowych, rasowych i religijnych*].”⁵⁵ To this end, the second notation to Art. 31 is significant, because it illustrated as its guiding example anti-Jewish abuse informed by Nazi race theory, in opposition to abuse of individuals who just happened to be Jews:

⁵³ Alina Skibińska, “The Return of Jewish Holocaust Survivors,” in *Jewish Presence in Absence*, eds. Tych and Adamczyk-Garbowska, trans. Dąbkowski and Taylor-Kucia, 57-58.

⁵⁴ Art. 32, prz. 3 in Bogucki, *MKK*, 51.

⁵⁵ Sawicki untitled transcript, AAN, z. 2/285, sygn. 2758, l. 18.

This provision qualifies only abuse by derision or humiliation by reason of belonging, and not every act towards persons of such a group. For example, chastising a neighbor who is a Jew because of a domestic argument will not fall under the provisions of art. 31, while insulting one's neighbor just because he is a Jew warrants the sanctions of this article.⁵⁶

But it would appear, in the final analysis, that evoking Jewish victimhood in an effort at Holocaust justice did not necessarily fully capture participation in the genocide of the Jews. To illustrate, I turn now to the Special Penalty Courts, and a domestic dispute.

On Trial: Ordinary Behaviors in Extraordinary Times

Aniela Klocek's case exemplifies the kind of behavior excluded from future prosecution of race-based crime under configurations developed in the Small Code. She had denounced a Jewish couple, the Weisbergs, not because they were Jews but because they bothered her as tenants, and she knew that revealing them as Jews to authorities would solve the problem. I emphasize this trial because many cases in postwar Polish courts involved denunciation (e.g., 55% for denunciation versus 7% for murder in a sample of 96 cases from the Cracow Special Penalty Court and 17% for denunciation versus 29% for murder in a sample of 63 cases from the Lublin Special Penalty Court). Her case also demonstrates the level of entanglements involved between Poles, Jews, and *Volksdeutsche* (in one apartment block two miles from a concentration camp) which jurists in postwar Poland had to make sense of.

Klocek was 44 years old in the fall of 1944. Her case lasted from November of that year until January 1946 and was one of the first trials in the Lublin Special Penalty Court. Her

⁵⁶ Art. 31, prz. 2, in Bogucki, MKK, 50: "Pod przepis ten podpada tylko lżenie wyszydzanie lub poniżanie z powodu przynależności, a nie każdy postępek w stosunku do osób takiej grupy. Np. lżenie sąsiada Żyda z powodu sprzeczki na tle mieszkaniowym nie będzie podpadać pod przepis art. 31, podczas gdy lżenie swego sąsiada tylko dlatego, że on jest Żydem pociąga za sobą sankcje z tego artykułu."

neighbors, the 35-year-old Maria Mazur and 44-year-old Józef Mączka, had reported her to the police for denouncing the Weisbergs who were trying to pass as ‘Aryans’ under the surname Januszewicz, which had resulted in their presumed death in 1942 at the Majdanek concentration and death camp on the city’s outskirts. Klocek was also accused of betraying a non-Jewish Polish neighbor. The witnesses in Aniela’s case manifested a reluctance to meaningfully engage the topic of complicity in the fate of the Jews but a great willingness to allege personal complicity in collaboration against gentiles. Ordinary citizens often used the courts for settling scores, and the case against Klocek is such an example.⁵⁷ Klocek’s accusers recognized that they could use the August Decree to their advantage. Regardless of motivations for starting a case, crimes against Jews were frequent themes.

Józef Mączka had worked at Majdanek on the outskirts of Lublin taking care of sewage. In 1942, a worker in his unit approached him and asked for help finding a place to live. Mączka found the man a place in Klocek’s building, close to where he himself lived. Klocek, as landlord, allowed the man and his wife (the Weisbergs) to rent a room in her unit where they lived for two months. Who were the man and wife who rented Aniela’s room? Under what circumstances did they leave? These issues mattered to the court because it suspected that the mysterious man and woman were Jews, hiding from the deportation and death at the hands of the occupying Germans. Further, if Poles resident in the building had betrayed them under allegations of *szmalcownictwo*, that qualified as blackmail under Article Two of the August Decree covering individuals who “coerced benefits from persons under threat of denunciation into the hands of the occupying power.”⁵⁸

⁵⁷ For a broader argument on settling postwar social and political issues in postwar war crimes trials, particularly in Eastern Europe, see Deak, *Europe on Trial*, especially 191-93.

⁵⁸ Dekret Polskiego Komitetu Wyzwolenia Narodowego z dnia 31 sierpnia 1944, last accessed May 22, 2020, <http://prawo.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU19440040016>.

Szmalcownictwo was a widely used Polish pejorative slang connoting collaboration involving the denunciation of Jews (or exploitation under threat of denunciation) and encompassed the denunciation of ethnic Poles who helped Jews on the presumption that they were “szmalcownicy.”⁵⁹ *Szmalcownictwo* always involved Jews, and it usually involved money and blackmail.⁶⁰ As a pejorative slang word, the term did not appear in official writing or legislation, but the intragroup dynamics of *szmalcownictwo* are evident in the case.

Maria Mazur reported Klocek for two denunciations of separate Jewish couples at different periods in the war—one in 1939 (which the court eventually dismissed), the other of the Weisbergs in 1942. Mazur accused Klocek of denouncing the first Jewish couple at the beginning of the German occupation, whose apartment she then “took for herself” since it was a “better place.”⁶¹ By associating Klocek’s denunciation of the Jews with personal and material benefit, Maria primed Aniela for suspicions of *szmalcownictwo*, insinuating Klocek had perhaps blackmailed the Jews. It is unclear whether the first accusation was fabricated. But Mazur’s off-hand, yet cognizant, articulation of chronology of the Holocaust in Lublin distinguished the political and social environment of this first denunciation in 1939 when “none of the Jews had been thrown out of Lublin; only a Jewish quarter was created” from the second denunciation of the Weisbergs in 1942 when, she noted, “the Jews were already in the camps.”⁶² Mazur testified that Klocek had reported the Weisbergs to the Gestapo because of problems with registration

⁵⁹ A “szmalcownik” was the person who enriched themselves by taking advantage of the Jews’ predicament, while “szmalcownictwo” denoted the act itself.

⁶⁰ On this phenomenon, see Jan Grabowski, “‘Ja tego Żyda znam!’ Szantażowanie Żydów w Warszawie 1939-1943 (Warsaw: Wydawnictwo IFiS PAN, 2004). The phenomenon was so widespread that the Polish Underground Army had started prosecuting citizens for it in 1943 in their underground courts.

⁶¹ Protocol for Testimony of the Witness, Maria Mazur, Lublin District Court, Office of the Prosecutor, July 15, 1945, in case against Aniela Klocek (SSKL 130), USHMMA, RG-15.177M (Lublin Special Penalty Court) (Sąd Specjalny Karny w Lublinie) (SSKL) (Sygn. GK 205), 330.

⁶² *Ibid.*

“under the accusation that they were Jewish.” Mazur added that “due to this the whole family was killed at Majdanek.”⁶³

Klocek was indicted and sentenced to the death penalty under Article One of the August Decree qualifying murder, denunciation, and capture. Mazur claimed that Klocek had become jealous of her, because she, Mazur, had a big flat with nice furniture, a fur coat, and apparent connections to the Gestapo as a cook.⁶⁴ Mazur alleged that Klocek had reported on her to the German Housing Office for possessing too much space and had thrown her things from the balcony.⁶⁵

Additionally, Mazur accused Klocek of betraying not only the Weisbergs, but also a 59-year-old Polish woman named Antonina Lach. Mazur alleged that a *Volksdeutsch* man by the name of Frydrych had helped his co-nationals (the Germans) in their occupation of Poland in 1939.⁶⁶ Polish soldiers found out about this and tried to find him in retaliation. Mazur alleged that Klocek told Frydrych that it was Antonina Lach who told the soldiers about Frydrych. As a result, Frydrych harassed and threatened Lach (this was the basis of Mazur’s accusation).⁶⁷ Antonina Lach’s grievance with Aniela Klocek was connected to the Weisbergs. This was because, apparently, the Weisbergs told Lach that Klocek was the one who betrayed her to Frydrych.⁶⁸ That is why Lach joined Mazur in bringing Klocek to trial.⁶⁹

⁶³ Protocol on notification of a crime, filed by Maria Mazur, December 13, 1944, *ibid.*, 316.

⁶⁴ Protocol for Testimony of the Witness, Maria Mazur, Lublin District Court, Office of the Prosecutor, July 15, 1945, 330-31; Protocol for Oral Testimony of Maria Mazur, Special Penalty Court, December 29, 1945, *ibid.*, 360. According to Maria, “the anger between us arose from jealousy that I was more successful than her.”

⁶⁵ Protocol for Testimony of the Witness, Maria Mazur, Lublin District Court, Office of the Prosecutor, July 15, 1945, *ibid.*, 330.

⁶⁶ *Ibid.*, 330.

⁶⁷ Protocol on notification of a crime, filed by Maria Mazur, December 13, 1944, *ibid.*, 317.

⁶⁸ Protocol for Oral Testimony of Antonina Lach, Special Penalty Court, December 29, 1945, *ibid.*, 363.

⁶⁹ Protocol for Testimony of the Witness, Office of the Prosecutor, Lublin District Court, Antonina Lach, December 20, 1944, *ibid.*, 323.

Józef Mączka, who had originally brought the Weisbergs to Klocek, confirmed Klocek's tenuous relationships with both Lach and the Weisbergs. Apparently, Klocek "didn't like this tenant and his wife because she thought they were probably Jews since they often ate onions."⁷⁰ Mączka insinuated to the court that the couple was Jewish, and that Klocek disliked them and had perhaps relied on an old antisemitic trope associating Jews with particular smells, namely garlic and onions, to suspect that the Weisbergs were Jews in hiding. Mazur attested that Klocek had been angry enough with her tenants to resolve the problem irreparably and insinuated that she was a "szmalcownika."⁷¹

Experiencing the ordinary annoyances of unwanted roommates, in addition to the stresses of war, Klocek talked to Mazur about it: "I've had enough of them [...] all they ever do is fry onions, but to deal with them I just need to go to the city council and say that they are "Jews" and then they'll immediately be gone."⁷² Mazur alleged that "two or three days later these people were killed."⁷³ Mączka insinuated that Klocek had been responsible, alleging that after their arrest "a German came up to her and said: 'Matka, don't worry, they were Jews but now they're dead.'"⁷⁴ At trial, Klocek spoke about the fate of the Weisbergs but disavowed any complicity in their disappearance and distanced herself from her accusers, Mazur and Mączka. She recalled making the couple go register with the municipal office and obtain an ID card, a *Kennkarte*. She

⁷⁰ Protocol for Testimony of the Witness, Józef Mączka, Lublin District Court, Office of the Prosecutor, July 25, 1945, 328-29. See also Protocol for Oral Testimony of Józef Mączka, Special Penalty Court, December 29, 1945, *ibid.*, 362.

⁷¹ Protocol for Oral Testimony of Maria Mazur, Special Penalty Court, December 29, 1945, *ibid.*, 361. Klocek had complained about having tenants "who constantly fry onions" and had called them children of "a whore." "I've had enough of them."

⁷² Protocol for Testimony of the Witness, Maria Mazur, Lublin District Court, Office of the Prosecutor, July 15, 1945, *ibid.*, 330; Protocol for Oral Testimony of Maria Mazur, Special Penalty Court, December 29, 1945, *ibid.*, 361.

⁷³ *Ibid.*

⁷⁴ Protocol for Testimony of the Witness, Józef Mączka, Lublin District Court, Office of the Prosecutor, July 25, 1945, *ibid.*, 328; See also Protocol for Oral Testimony of Józef Mączka, Special Penalty Court, December 29, 1945, *ibid.*, 362.

also said, “This whole accusation against me was reported out of anger. [...] I spoke neither with Mazur nor Mączka on the subject of my tenants.”⁷⁵

Klocek had refrained from mentioning anything more revealing about her relationship with the tenants. Instead she impugned Mazur’s character to discredit the testimony and brought forth a counter-allegation: “Mazur hung out with the Germans. She would come home with them, and they would drink and party. A German lived with her, [she] has furniture and a fur coat.”⁷⁶ A group of several women living in the building with whom Klocek was friendly testified in her favor. As Mazur had fallen out of everybody’s graces during the war, the neighbors rallied around Klocek’s counter-allegation that *Mazur* collaborated with Germans. Anna Kołodyńska said, “I don’t know why Klocek is sitting here under investigation today [...] her relations with Poles were good” but “Germans were at Mazur’s place, she rode around with them in taxis [...] everyone was afraid of her.”⁷⁷ Kołodyńska added that anyway “when the Germans took someone from their home, everybody saw it.”⁷⁸ Maria Jeleniewska said she “neither heard nor saw anything bad” and that “I don’t know anything about Klocek’s Jewish tenants.”⁷⁹ Janina Bardecka lived in the unit next door to Aniela and said “if anything had happened, I would have seen it. [...] I didn’t hear anything about Jewish tenants or accusations.”⁸⁰

⁷⁵ Protocol for Oral Testimony of Aniela Klocek, Special Penalty Court, December 29, 1945, *ibid.*, 357. “In November 1942 a couple by the last name of Januszewicz arrived at my building. I couldn’t register them because they had prewar Polish identity cards. I demanded that they get identity cards [*Kennkarte*, the German-issued certificates]. They reported to the municipal office and sometime later were called upon to submit their marriage and birth certificates. Then the couple left my place.”

⁷⁶ *Ibid.*, 559.

⁷⁷ Protocol for Oral Testimony of Anna Kołodyńska, Special Penalty Court, December 29, 1945, *ibid.*, 365.

⁷⁸ *Ibid.*, 365.

⁷⁹ Oral Testimony of Maria Jeleniewska, *ibid.*, 366.

⁸⁰ Oral Testimony of Janina Bardecka, *ibid.*, 366.

Klocek's daughter, Sabina Klocek, similarly discredited Mazur's integrity, saying that "Germans didn't come to mama, but they did go to Ms. Mazur and drank and partied."⁸¹ Thus the neighbors tried to contrast Klocek's upstanding behavior with Mazur's frequent carousing with the Germans. Their charges against Mazur's failure to maintain sexual boundaries reflected the postwar need to reestablish them in the interests of defining the nation. However, nothing came of the neighbors' charges against Mazur, other than a record on file. But it illustrated internal division among the neighbors and a willingness to allege collaboration against one another for reasons grounded in status and wartime experiences.

It is evident that the court cared whether the tenants had been Jews or non-Jews, and whether Klocek had harmed Poles. Even though the participants explicitly addressed the anti-Jewish nature of the crimes at trial, the court records show that officials were meticulously annotating the testimony in effort to determine whether the Weisbergs were ethnic Poles or Jews.⁸² Mazur offered that they "looked intelligent; the man had a dark beard, but he didn't look like a Jew" and then admitted that Klocek had been unsure whether the couple was really Jewish.⁸³ When questioned, the witnesses took care to say that Klocek had not harmed *Poles*.⁸⁴ Their solidarity remained with Klocek, and not the Weisbergs, having discerned that the court was not primarily interested in prosecuting crimes against Jews solely as such, and that they therefore had nothing to gain by claiming to sympathize with the Jews. Even Mazur, who started the case, retracted her certainty that the Weisbergs had *died* rather than simply disappeared.⁸⁵

⁸¹ Oral Testimony of Sabina Klocek, *ibid.*, 367.

⁸² For example, *ibid.*, 328, 330-31, 333, 361-63.

⁸³ Protocol for Oral Testimony of Maria Mazur, Special Penalty Court, December 29, 1945, *ibid.*, 361.

⁸⁴ Oral Testimony of Teresa Kotarska, *ibid.*, 364, Teresa, carefully noted that she had "never threatened the *Poles* [emphasis mine]."; Oral Testimony of Józefa Kotarska, *ibid.*, 365.

⁸⁵ Oral Testimony of Maria Mazur, *ibid.*, 362. "When the Jews lived at Klocek's, I wasn't around, so I don't know if these Jews were killed."

Mączka, who initially helped the couple, also began to distance himself from them. He had not seen the arrest himself, he said, but only heard about it from Klocek when she caught him in the yard his way to work.⁸⁶ “I didn’t ask her anything, because I was in a hurry,” he said, and may have feared being accused of *szmalcownictwo* himself.⁸⁷ The court was suspicious and tried to determine whether Klocek had charged the couple for rent, or had otherwise extorted money from them.⁸⁸ The court also wanted to know whether she had benefited from the things the Jews had left behind, though whether she had remained uncertain.⁸⁹ Mączka said she had not taken any money. Regardless whether Mączka had taken money from the Jews, maybe together with Klocek, or helped them for altruistic reasons, he seemed to fear that appearing close to the Weisbergs or to Klocek would subject him potential accusations from the neighbors.

The court sentenced Klocek to the death penalty, but her lawyer, Stanisław Bielak, framed his clemency petition as an issue of judicial legitimacy. He claimed that Mazur’s and Mączka’s accusations were fabricated, a product of hostility. Bielak reasoned that Lach’s accusations were illegitimate, since he could not cross-examine the Weisbergs, and her statements could not be verified “without the testimony from those people.”⁹⁰ But the testimony was irretrievable, since the Jewish couple was understood by everyone to have been killed at Majdanek. So Bielak denied that Klocek had done any real harm to anyone: “If such a serious accusation turned out to be a fabrication, how can one attribute an action to the accused for which no harm was done to Polish citizens?”⁹¹ Bielak thus argued that the Weisbergs were not

⁸⁶ Protocol for Testimony of the Witness, Józef Mączka, Lublin District Court, Office of the Prosecutor, July 25, 1945, *ibid.*, 328; Protocol for Oral Testimony of Józef Mączka, Special Penalty Court, December 29, 1945, *ibid.*, 362.

⁸⁷ *Ibid.*, 362.

⁸⁸ *Ibid.*

⁸⁹ *Ibid.*, Protocol for Oral Testimony of Antonina Lach, 363.

⁹⁰ Petition of Clemency to the President of the Citizens’ National Council in Warsaw by the defense attorney Stanisław Bielak, Lublin Special Penalty Court, December 31, 1944, *ibid.*, 374.

⁹¹ *Ibid.*, 376

considered Polish citizens, because they were Jews, and that for any proof of “harm” on part of Klocek, the Weisbergs would have needed to appear in court to verify accusations of Polish-Polish harm (i.e., Klocek’s betrayal of Lach).

The witnesses originally included Jews as citizen-victims, as the denunciation of Jews was the main impetus for the trial in the first place. When compelled by the court to articulate the couple’s precise ethnicity, they began to say that Klocek had not harmed Poles. Even if Klocek had been responsible for the Weisbergs’ deaths, they were understood as Jewish, and thus configured as excluded from the postwar Polish victim community in order to evade punishing non-Jews for past crimes against Jews.

We can only surmise how the trial may have unfolded had the Weisberg survived and desired to confront Aniela Klocek in a court of law. The evidence suggests that they would not have been treated well, especially in Lublin, where trials were often construed to make the accused’s behavior seem like self-defense.⁹² Historian Alina Skibińska describes how “As a result of the judges’ questioning, Jews, injured and appearing as witnesses during these trials, would be ridiculed” and thus often “refused to appear in court for fear of further harassment and threats by the Poles.”⁹³ McClintock reminds us that the state agencies dealing with extradition and prosecution in Poland of German SS officers “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.” But in trials against collaborators “local Polish communities in collusion with institutions of justice effectively blocked or distorted meaningful

⁹² Letter by Provincial Committee of Jews in Lublin Secretary Szyldraut to Legal Department of the Central Committee of Jews in Warsaw, September 29, 1947, AŻIH, sygn. 303/XVI (Wydział Prawny)/Akt 153 (Lublin. WKZ. Akta organizacyjne. Korespondencja ogólna, 1946-1950), 8-9.

⁹³ Skibińska, “The Return of Jewish Holocaust Survivors,” 58.

investigation and prosecution of some of the greatest atrocities of the occupation.”⁹⁴ The balancing of “could with should” was more complicated when dealing with individuals further removed from direct violence.

Neither the various accusers and witnesses, nor Klocek’s lawyer, nor the central justice officials in Warsaw could link Klocek to a tangible crime that had, in their understanding, *directly* resulted in harm against Polish citizens.⁹⁵ By granting full release, the courts illustrated that while the new government prioritized prosecuting crimes against Jews, they did not necessarily prioritize punishing those who committed them. The rhetoric in the trial illustrated how *szmalcownictwo* functioned as a harmful, yet diffuse, behavior differentiated from more active participation in violence envisioned by the August Decree and conformed to a broader pattern of avoiding convictions of defendants who “did not themselves catch the Jews in hiding.”⁹⁶

The trial evidenced how non-Jews addressed the unique fate of the Jews under Nazi occupation but disavowed personal complicity in it. But moreover, Klocek’s case was a clear example of behavior (the domestic dispute) exempted from sanctions in the bylaws of the Small Code, as she had denounced the Weisbergs not “because they were Jews” (i.e., not because of ‘Jewish blood’) but because they were annoying tenants who happened to be Jews. But the consequence of her actions, to evoke the poet Julian Tuwim’s refrain from the representational politics of chapter one, contributed to the loss of the “blood of Jews” which “flows through the deepest and widest streams.” Regardless of the absence of ‘actively’ racist or ideological motive,

⁹⁴ McClintock, “Projects of Punishment in Postwar Poland,” 77, 187.

⁹⁵ Order of Release written by the Ministry of Justice in Warsaw to the Lublin Special Penalty Court, January 3, 1946, USHMMA, RG-15.177M, (Sygn. GK 205), 377.

⁹⁶ See for example, note in AAN, z. 2/285, sygn. 1564 (Sprawozdania z wizytacji prokuratur Sądów Okręgowych), l. 69.

Klocek's actions had still contributed to the functioning of genocide and were informed by the discursive structures in the world around her, but differed from those of criminal perpetrators more directly involved in violence whose harmful behavior was qualified in new law.

The Facts of Harm, the Gravity of Harm: Punishment for the Genocide of Jews and Postwar Society

The legalistic frameworks analyzed thus far show how jurists and defendants tried to assign meaning to the histories of war and trauma evidencing in trials and postwar life. Law, like art, is a realm of human construction of meaning. In trials, disagreement emerged over how to interpret the 'facts' of actions and events. In one example from 1947, Antoni Galączka was accused of denouncing a Jew in hiding to the authorities: "I admit to the fact, but not to guilt," he testified.⁹⁷ Galączka, unlike Aniela Klocek, had a more direct hand in violence and was sentenced in 1950 to three years in prison for helping escort Jews during the liquidation of the ghetto in Minsk Mazowiecki as a member of the Blue Police. He testified, "I stood near the car, while the Germans themselves went and arrested. [...] I very often saw many of the people whom the Germans sought and I did not harm them, nor did I hand them to the Germans."⁹⁸ In an appeal for clemency, Galączka's lawyer collected statements from Jews whom he had helped in the war.⁹⁹ McClintock suggests that, for Jews who testified on behalf of non-Jews accused of harming Jews, "it is possible that demonstrating solidarity with the new authorities was more important than defending a highly stigmatized ethno-religious identity" and that in a climate of postwar antisemitism "coming to the defense of a Polish man could have been born out of fear of

⁹⁷ "Protokol rozprawy glownej," April 19, 1950, USHMMA, RG-15.269 (District Court Warsaw), case of Antoni Galazka (WSO 2567), 343v.

⁹⁸ Ibid., 170-71.

⁹⁹ Ibid., 215.

reprisal as well as out of a desire to recast oneself as ‘Polish’ and not ‘Jewish’.”¹⁰⁰ Regardless, in navigating differing levels of guilt under various conditions of postwar reckoning, the accused often emphasized the times they had refrained from harm, while deflecting the times they hadn’t. But one of the main arguments of this dissertation is that the Communist states in Poland and Lithuania were deeply invested in making sense not of the help, but of the harm. Jews often challenged the frameworks on participation that non-Jews were developing for themselves in their postwar reckonings.

From the state perspective, the most harmful individuals were those who had killed directly. Tellingly, it was these cases, especially concerning members of nationalist groups, that most resembled Soviet procedures in their involvement of the Department of Public Security (*Resort Bezpieczeństwa Publicznego*), precursor to the secret police (Ministry of Public Security) formed in 1945, rather than the civil police. In such cases, it was more important to directly evoke the connection between “enemies of the people” and those who carried out “Hitler-fascist crimes.” At the same time, jurists, such as Janusz Kulicki in Lublin, complained that the security service was not involved enough in the Special Penalty Court (now streamlined into the District Court). Additionally, the courts were seeing a proliferation of August Decree cases generated from below which were *not* originally intended for the jurisdiction of the Special Penalty Court but which still encompassed behaviors technically warranting the death penalty as punishment of instance, such as denunciation in Aniela Klocek’s case above.

The government responded to pressure for reforms coming from jurists like Kulicki who recalled that the courts were intended for “the most serious crimes” precisely because they were crimes “not against the interests of individuals or small units of individuals, but against the entire

¹⁰⁰ McClintock, “Projects of Punishment in Postwar Poland,” 204.

Polish People” in connection with the “German invasion that brought about its destruction.” Kulicki reminded, “It’s these kinds of atrocities which are gravest, and therefore it’s the retribution for them which should be the most severe.”¹⁰¹ In this way, the genocide of the Jews became part of a broader narrative of Polish suffering in the quest to address crimes of the Nazi moral order.

The case against Bazyli Karaczewski whose case was managed by the Department of Public Security and forwarded to the Special Penalty Court in Lublin illustrated this distinction on the particularity of atrocities. Karaczewski, a Ukrainian, had been a member of the Organization of Ukrainian Nationalists and was arrested in September 1944 under the accusation that “from 1939-1944 he was a policeman, he harmed and shot citizens.” More concretely, he arrested Polish citizens who did not want to report for deportation to forced labor in Germany, captured and shot at Soviet partisans, captured Jews and handed them to the Gestapo, and “personally harmed” Jews. After interrogations he was indicted for having “voluntarily [*dobrowolnie*]” joined the Ukrainian police and having “taken part in all of the actions at the hands of the occupants, to the detriment of people residing in the territory of the Polish State.”¹⁰² When asked about his participation in the murder of eleven Jews, Karaczewski said he was not guilty because “These 11 Jews were murdered by the German *Schutzpolizei*.” When asked about his participation in the liquidation of the ghetto, he said that he was not a participant as the German SD and SS had organized it and tried to neutralize his role as a guard with the statement:

¹⁰¹ Note “W kwestji nowelizacji ustawodawstwa s sprawach karynych przeciwko zbrodniarzom faszystowsko-hitlerowskim i Zdrajcom Narodu” by Janusz Kulicki, June 6, 1945, APL, z. 927 (Sad Okregowy w Lublinie 1944-50), sygn. 16 (Sprawozdanie z dzialalności sadów 1944-45), l. 96. For a discussion of August Decree reforms, see Kornbluth, “Poland on Trial,” 87, 124: “nie przeciwko interesom jednostki, czy drobnej grupie jednostek, a przeciwko całemu Narodowi Polskiemu,” and “Tego rodzaju zbrodnie są najcięższe, stąd zapłata za nie musi być najsurowsza.”

¹⁰² “Akt Oskarżenia,” December 6, 1944, Departmental Archive of the Institute of National Remembrance in Lublin (Oddziałowe Archiwum Instytutu Pamięci Narodowej w Lublinie) (OA IPN Lu), sygn. IPN Lu 315/21 (case of Bazyli Karaczewski), l. 30 (in original pagination).

“During the day the Jewish police guarded the ghetto, and at night the Polish and Ukrainian police.”¹⁰³

But the witness Pomaraniec, also involved with the police, testified that while Karaczewski never talked about “the murder of Jews,” on the day that five Jewish families were killed in the forest, the returning commander said that “Karaczewski was the best [*najlepszym był Karaczewski*],” that he had “grabbed a fearful Jewish woman and child and killed them both [*oboje zabił*].” Pomaraniec could not speak to the ghetto charges but recalled, “I know of an incident when Karaczewski, trying to extort money from a Jew, attacked him with a dog. The dog bit the Jew. [...] Karaczewski often extorted money from Jews.”¹⁰⁴ Mendel Spokojny spoke to both his own experience and to what others had told him:

Karaczewski took part in the liquidation of the Jewish ghetto in Włodawa. During the action I was hiding in the attic, from where I watched the course of action. From my field of view, I saw Karaczewski shooting at the house where I was hiding. After a while, two corpses were removed from the house. I saw him shoot at people. I saw Karaczewski escorting a group of people. In the evening he robbed the ghetto. [...] People said that Karaczewski participated in the murder of 11 Jews in the village of Krasówka.¹⁰⁵

The court never proved that Karaczewski personally shot Jews, although Jewish witnesses testified that he did. But at any rate he was sentenced to death under Article One of the August Decree. His lawyer Tadeusz Boreslawski wrote an appeal asking the court for leniency, framed by an argument on the structural conditions of the Nazi moral order and the rebuilding of postwar society. He asked the court

¹⁰³ Ibid., 54v: “W ciągu dnia pilnowała ghetta milicja żydowska, a w nocy policja polska i ukraińska.”

¹⁰⁴ Ibid., 56-56v.

¹⁰⁵ Ibid., 57-57v.

to treat the accused as a man affected by the Nazi plague, taking into account his age, the environment he comes from, low level of intelligence, the defense believes that changing the death penalty to prison in these conditions will be correct, because the accused will have the opportunity to atone for his offenses, and after suffering punishment, can become a useful member of society.¹⁰⁶

In an appeal sent to the Ministry of Justice in Warsaw, the presiding judge W. Tanewski and assessors T. Dymowski and M. Niedźwiedź requested that no clemency be granted on the basis, the only one provided, that Karaczewski

committed a series of crimes [atrocities], wherein with particular cruelty and sadism he abused the Jewish population in the Włodowa region.¹⁰⁷

In May 1945, Jerzy Sawicki, in his capacity as leading prosecutor in the Ministry of Justice signed off on the decision. Karaczewski's case shows the pendulum of inconsistency, even within one court. As a Ukrainian, Karaczewski may have been punished more strictly. In his case, the closer scrutiny of the security services and the use of assessors seemed to have guarded against the proliferation of antisemitic bias common in other cases and to have assured a measure of justice for Jews. Karaczewski's case, in its emphasis on his voluntary behaviors, affirmed the agency of individuals even in extraordinary conditions of war undermined by emerging totalitarian configurations. It also illustrated that legalist frameworks for grappling with the Nazi

¹⁰⁶ Tadeusz Borelowski, "Próśba o Ułaskawienie," March 27, 1945, *ibid.*, l. 75: "potraktować oskarżonego, jako człowieka, dotkniętego zarazą hitlerowską, biorąc pod uwagę jego wiek, środowisko, z którego pochodzi, niski poziom inteligencji, obrone uważa, że zmiana kary śmierci na więzienie w tych warunkach będzie słuszną, bowiem oskarżony będzie miał możność odcierpieć swoje przewinienia, a po odcierpieniu kary może się stać jednostką pożyteczną dla społeczności."

¹⁰⁷ "Opinia w sprawie ułaskawienia," March 27, 1945, *ibid.*, l. 76: "dopuścił się szeregu zbrodni, przy czym ze szczególnym okrucieństwem i sadystą znął się nad ludnością żydowską na terenie powiatu Włodowskiego."

moral order (consequences, motivations, underlying social tensions, failings in existing political orders) and bringing perpetrators to justice were distinctive processes.

Lastly, the emphasis on the wording used in the initial indictment is significant (crimes against “people residing in the territory of the Polish State” as opposed to crimes against the “Polish people” or the “Polish state.” As we saw, Janusz Kulicki thought the courts should focus on crimes contributing to the “destruction” of the “whole Polish people.” But often, when trials were conducted with the understanding that crime against Poles were the point, Jews were not always included in the national victim-community. The case against Aleksandr Obarzanek illustrates this precisely. He was turned into to the police by fellow Poles and put on trial in the Lublin Special Penalty Court. The Germans had initially enlisted him as a translator, but he joined them on their raids, helped catch fleeing Jews, and beat Jewish workers under his authority. He was indicted in October 1944 because he “participated together with Germans, members of the SS, in the search for fugitive Jewish workers [...] and mistreated those workers, beating them often.”¹⁰⁸ Stanislaw Kotarski recalled, “I didn’t see whether Obarzanek participated in the shootings. I know that on the job Obarzanek often beat the Jewish workers for not working properly.”¹⁰⁹ Obarzanek received the more lenient charge of two years for blackmail and insisted: “My guilt is only that while working in Jastków as a milkman, and being a very excitable person, I hit a few subordinate workers a few times for their sluggishness at work; due to negligence at work I was beaten again by the Germans, which the court has heard about.”¹¹⁰ Obarzanek’s defense lawyer presented a petition signed by several people, including the local priest “who knows Obarzanek well,” attesting that he was a “person of religion and practicing

¹⁰⁸ “Akt Oskarżenia,” October 25, 1944, OA IPN Lu, sygn. IPN Lu-315/9 (case of Aleksander Obarzanek), l. 22.

¹⁰⁹ “Protokół,” Stanislaw Kotarski, September 26, 1944, *ibid.*, l. 3.

¹¹⁰ “Prósba,” September 6, 1945, *ibid.*, 61.

Catholic.” Obarzanek was posited as “good for society [*pozytecznym dla społeczeństwa*]” in that he was a good father and always behaved “like a good Polish patriot [*jako dobry polka-polak patryjota*].”¹¹¹ Using the gendered ethnic signifier “Polish patriot” rather than the citizen signifier denoting “patriot (of Poland)” distanced Obarzanek from Jews who were also Polish patriots. In Poland it often happened that defendants, witnesses, and legal staff used typically Roman Catholic religious positioning to substantiate innocence at trials which typically evolved into ethnic homogenizing processes competing with the visions of Communist society that were being forged in legislation elsewhere.

Conclusion: Neighbors and Society

On the “mystery” of the Nazi project to eradicate world Jewry, Jan Gross wrote in his foundational study of Holocaust collaboration in Poland that “one of the things we do know is that the *Einsatzgruppen*, German police detachments, and various functionaries who implemented the “final solution” did not compel the local population to participate directly in the murder of the Jews. [...] in general nobody was forced to kill the Jews.”¹¹² Gross reminds that Jews were hurt “in numerous interactions throughout the war. And it is not exclusively killings that are stressed in people’s recollections of the period” but “in the midst of all their situational variety, had one thing in common: they all carried potentially deadly consequences for the Jews.”¹¹³ This chapter has placed trials against defendants who participated directly in intentional murders and harmful policies targeting Jews (Karaczewski, Obarzanek, Gałaczka) in comparison with a detailed analysis of a defendant (Klocek) who did not actively target Jews and

¹¹¹ “Podanie,” Attorney Romuld Szablicki, October 18 and November 7, 1944, *ibid.*, 17-17v, 27v-28.

¹¹² Jan Gross, *Neighbors: The Destruction of the Jewish Community in Jedwabne, Poland* (Princeton University Press, 2001), 132-33.

¹¹³ *Ibid.*, 133-34.

whose actions were not ‘criminal’ per se, but were reflective of the defendant’s wartime indifference to *consequences* for Jews.

Gross focuses on the reasons some “neighbors” participated in murders of Jews and others did not in order to make a claim about the absence of society and to avoid assigning collective responsibility to Poles (after all, assigning guilt to the Polish nation is an admission that Jews are excluded from the nation). Gross reserves national guilt, where it lies, for Germans (which then raises similar questions about Jewish exclusion). At any rate, Gross suggests that the history of local violence against Jews should nonetheless remain part of the “canon of collective identity.”¹¹⁴ As we have seen, the *social defence* configurations emanating in postwar legal frameworks were about society (coming to terms with it, improving it, protecting it); neighbors are the people with whom we live but with whom we do not necessarily share a greater sense of fellow feeling or of belonging to something ‘bigger’. Shifting the emphasis from nation to neighbors eluded the issue that Sawicki and Ancel were confronting in the aftermath of the war that perhaps accounted for their inability to reconcile their differing political and penal systems; that is, how to configure responsibility for harmful actions of “neighbors” in the aggregate, many of whom, like the people who joined nationalist battalions, were involved in the destruction of not only their own neighbors, but also those of others. Both Majdanek and the killing fields in the east, such as Ponar in Lithuania, were part of the “bloodlands” to which international Jews, in addition to large communities of local Jews, were *brought*. Moreover, the purpose for *social defence* is both punitive and restorative, a desire to fix societal breakdowns (which presumes the otherwise existence of a shared sense of society). Communism aimed to forge a shared society,

¹¹⁴ Ibid., 136.

but Sawicki articulated that authorities were not prepared to abandon punitive measures (including the death penalty) for forging good Communist citizens in the new society.

This chapter has aimed to emphasize that in the broader context of legalistic frameworks making histories of Jewish trauma visible in postwar Poland, some jurists, usually Jewish ones, tried to ensure a postwar society inclusive of both Jews and non-Jews. A main argument forwarded in this dissertation is that authorities used law on anti-state crime in the aftermath of the Holocaust to confront harm against *people*, not states, as protecting the state was conceived by some as a tributary for protecting the people under its purview. In this chapter, we have seen how the Small Code aimed to account for incitement, intention, and structures of harm in ways which did not always capture the more diffuse participation in actions that bring tragic consequences to others.

The efforts in People's Poland to grapple with the Holocaust legally exhibited forward-looking preventative justice which at times departed from the retributive justice of retroactive criminal trials. The emphasis on the right of the individual in postwar human rights discourse was conceived in response to fascist atrocities, but evoked as a response to totalitarianism, generally. The rhetoric and policies of the human rights campaign, originating in 1945 at Nuremberg, obfuscated the distinctions between Nazism and Communism; in the pursuit of human rights, or "the preservation of individual freedom," policy discourse evoked "totalitarianism" when what was really meant was "fascism." In 1965, Ancel stressed that "in fact the modern *social defence* movement sprang initially from a revolt against totalitarianism and was primarily concerned to impose respect for the human personality."¹¹⁵

¹¹⁵ Ancel, *Social Defence*, 203.

I suggest that the implications of this obfuscation gained real consequence first in 1947 when countries across Europe began abolishing the death penalty, including the USSR. Poland, in contrast, retained the death penalty, but readjusted the qualifications. But 1950 marked, in my view, a particular watershed when the USSR reintroduced the death penalty for eliminating social danger as necessary tool for forging a better life, at least for its own citizens in May 1950. The European Convention on Human Rights (ECHR) then reinstated the death penalty in November of the same year but simultaneously specified it as “a limitation to the right to life.”¹¹⁶ Kornbluth marks 1949 and 1950 in Poland as “the period of the most severe enforcement of the August Decree since the abolition of the Special Courts in 1946, measured in terms of death sentences issued” whereby “postwar reckoning with collaboration entered its final phases.”¹¹⁷ This is not quite true, as in the 1960s the Polish Ministry of Justice began working with the Ministry of Justice in Soviet Lithuania to hunt down ethnic Lithuanians residing in Poland who had collaborated in anti-Jewish crimes. But after 1950, death sentences for August Crimes had significantly decreased, dwindling to zero by 1956. The Soviet Union began quietly using the death penalty in the late 1950s to prosecute Holocaust perpetrators until the 1965 abolishment of the statute of limitations on the death penalty for Nazi-era crimes. Capital punishment was a philosophical concern in postwar Europe. Jurists and intellectuals reasoned that because the Nazis had deemed certain humans as unworthy of life, postwar society had to uphold the right to life invariably, including that of Nazis on trial. The *new social defence* advocated practical legal reforms for changing society and preventing dangerous crimes, specifically those of the Holocaust, rather than merely meting punishment as a deterrent. One of its main tenets was that capital punishment was not useful in preventing crime.

¹¹⁶ See Picard, “Reconsidering Crime and Death Penalty after WWII,” 9.

¹¹⁷ Kornbluth, “Poland on Trial,” 191-93.

Regardless, the broader application of Communist law against anti-state crime expanded notions of criminal liability for harm after the Holocaust and was a meaningful example of reckoning with the Holocaust in postwar Poland. The trajectory of war crimes trials and legal reforms in People's Poland (and Soviet Lithuania, as we shall see in the following chapter) reflected the concerns among those remaining in former spaces of Jewish life of the infeasibility of putting every individual who had helped implement the Holocaust on trial, by virtue of the ubiquity of complicity at all levels of society. Thus, in grappling with the outcomes of the actions of many individuals, authorities prioritized capturing criminal liability of those whose objective guilt was most directly evident. Amid changing perceptions of the scope and purpose of criminal law in the aftermath of the war, the trials of Holocaust perpetrators in Poland where so many Jews had been murdered, and typically at the hands of or abetted by their non-Jewish neighbors, reflected the core dilemmas administrators faced while implementing the law and re-configuring community and criminal responsibility after the Holocaust (ascribing and punishing crimes, apprehending differing forms of responsibility, and navigating questions of postwar rehabilitation). The Soviet Union, to which this dissertation now turns, would navigate these questions until the end of its formal existence.

Chapter Three

‘The Gravity of the Crimes’: Holocaust Justice in Soviet Lithuania

In the Soviet Union, trials of suspected collaborators and Holocaust perpetrators during WWII were concomitant and shared institutional overlap with extrajudicial Soviet efforts to prosecute enemy social categories and destroy nationalist resistance movements in territories newly under Soviet control.¹ Trials of perpetrators in Lithuania reflected central aims in aggregated Soviet trials of collaborators but also attest to variation, as proceedings sometimes undermined the retributive politics projected from the center.² The trials and interrogations served as spaces where memories of Holocaust participation and responses to violence could be articulated, reframed, or repressed.³ This chapter advances the argument posed in the previous one that even in the USSR, the law on treason and anti-state crime could be used in the aftermath of the Holocaust as a meaningful way to confront harm against people, and not merely against the state.⁴ A common problem facing Europeans in the aftermath of the war was the need to account for those who had killed Jews. Despite the universalization of war memory in the public sphere, the Soviet Union confronted the issue, albeit on its own terms, by expanding the

¹ On Soviet retribution see Tanja Penter, “Local Collaborators on Trial: Soviet War Crimes Trials under Stalin (1943-1953),” *Cahiers du monde russe* 49, no. 2 (2008): 341-64; Alexander Prusin, ““Fascist Criminals to the Gallows!”: The Holocaust and Soviet War Crimes Trials, December 1945-February 1946,” *Holocaust and Genocide Studies* 17, no. 1 (2003): 1-30. On the Baltics see Olaf Mertelsmann and Aigi Rahi-Tamm, “Cleansing and Compromise: The Estonian SSR in 1944-45,” *Cahiers du monde russe* 49, no. 2 (2008): 319-40 (particularly 325, 334) and (more broadly) Richards Plavnieks, *Nazi Collaborators on Trial during the Cold War: Viktors Arājs and the Latvian Auxiliary Security Police* (Cham: Palgrave Macmillan, 2018). On “Soviet critiques and an alternative approach to international law” see Michelle Penn, “The Extermination of Peaceful Soviet Citizens: Aron Trainin and International Law,” (PhD diss., University of Colorado at Boulder, 2017), 5.

² Alana Holland, “Soviet Holocaust Retribution in Lithuania, 1944-64,” *The Soviet and Post-Soviet Review* 46, no. 1 (February 2019): 3-29.

³ See especially Oleksandr Melnyk, “Stalinist Justice as a Site of Memory: Anti-Jewish Violence in Kyiv's Podil District in September 1941 through the Prism of Soviet Investigative Documents,” *Jahrbuecher fuer Geschichte Osteuropas* 61, no. 2 (2013): 223-248.

⁴ Much of the content in this chapter is published in Alana Holland, “Soviet Holocaust Retribution in Lithuania, 1944-64,” *The Soviet and Post-Soviet Review* 46, no. 1 (February 2019): 3-29 with copyright by Brill.

boundaries of criminal liability after the Holocaust for those who directly carried out the violence. I posit this specific reckoning with Holocaust perpetrators as distinctive from broader collaborationist trials against anti-Soviet elements associated with the purification of internal, and eternal, enemies. As historians Seth Bernstein and Irina Makhalova assert, “[C]harges of collaboration were situated in the experiences of war” and “represent a real attempt to reckon with the war.” Even so, “not all social groups received the same treatment.”⁵ In trials of Holocaust perpetrators, Soviet authorities were invested in the integrity of trials, precisely because they were invested in the integrity of the information they generated. I probe beyond collaboration to understand how authorities apprehended the category which was never articulated for the public but made clearly visible, conceptually, in trials over time: the genocide of the Jews.

The primacy of place—Lithuania—matters more than the primacy of politics (that the justice was carried out by a Soviet authoritarian state). As discussed in chapter two, the Soviet authorities managing trials understood that “in general nobody was forced to kill the Jews.”⁶ Even if what they were doing remained oblique in the public expression for most of the time (configuring responsibility for, and punishing, crimes against Jews), the USSR consistently remained committed to doing it. In other words, the question of punishment was not a problem (because it was the point), the crux was determining the nature of the gravity of the harm.

⁵ Seth Bernstein and Irina Makhalova, “Aggregated Treason,” *The Soviet and Post-Soviet Review* 46, no. 1 (February 2019): 41.

⁶ Jan Gross, *Neighbors: The Destruction of the Jewish Community in Jedwabne, Poland* (Princeton, NJ: Princeton University Press, 2001), 132.

This chapter focuses on the trial dynamics of Soviet Holocaust retribution in Lithuania from 1944-69.⁷ Using trial records from the archives of the Committee of State Security (KGB) of the Lithuanian Soviet Socialist Republic (LSSR), I examine how ordinary citizens (witnesses and defendants) and governing elites, in the arena of postwar trials, described the mass murder of Jews and ascribed participation in it. This chapter shows the varying ways crimes against Jews were discussed, legally qualified, and punished in a newly incorporated Soviet republic where many Jews had died in the Holocaust. As elsewhere in the Soviet Union, most Jews of Lithuania were killed in mass shooting fields with local assistance, rather than in death or concentration camps. The largest of the execution sites operated in the Ponar (Yiddish) (Ponary in the Polish, Paneriai in the Lithuanian) forest outside of Vilnius, but shootings had taken place all over the country from 1941-44. As remarked upon in chapter one, Ponar was conceptualized as fundamentally the same in nature as Auschwitz and Majdanek, even though the mechanism of murder was entirely different and involved different helpers.

This chapter follows then two axes of analysis covering differing functions of trials from 1944-69 (including the process of appeals and revisions) from the authorities' point of view, and the interpretation of the crimes themselves and their relationship to the Holocaust amid conflicting ideological notions of the "redeemability" of collaborators for postwar society. Importantly, I place internal Soviet trials in the context of West Germany's gradual attempts to reckon with the Holocaust 'by bullets' on Soviet-occupied territory, Lithuanian in particular,

⁷ Several cases of accused or suspected collaborators are in Fond (f.) K-1, Sub-fond (ap.) 58 in the Special Archive of Lithuania (Lietuvos Ypatingsis Archyvas) (LYA). Select files (b.) have been used for this chapter together with several collections of internal security and judicial reports from 1944-69. Trials were subsumed under Military Tribunals and the People's Commissariat of Internal Affairs (NKVD)/Ministry of Internal Affairs (MVD) and Ministry of State Security (MGB) although later trials were streamlined into the general courts under the Ministry of Justice. Most cases were administered in Russian or in Lithuanian with use of a translator, but many were also done entirely in Lithuanian, especially those in the later 1950s and 1960s onward.

before ‘retreating’ a decade later back to Auschwitz, to ‘the camps’ so to say. Thus this chapter also includes a discussion of the Soviet efforts to help West Germany prosecute German nationals at the Auschwitz Frankfurt Trials in Frankfurt-am-Main from 1963-65. The ebbs and flows of the Cold War encompassed events such as the waning chances of Communist coalitions taking power in western Europe after 1947, the establishment of the State of Israel in 1948 and of West Germany in 1949, the death of Stalin in 1953, the Eichmann trial in 1961, abolishment of the statute of limitations for Nazi era crimes in 1965, and the Six Day War in 1967. All of these were watershed ‘moments’ in the political ramifications of trials in that they affected which categories of guilt the Soviet state wished to emphasize most forcefully (e.g., Germans vs. the “bourgeois nationalists”) in a given moment and to what extent the Jewish fate was depicted. But I argue that all of the ‘on-stage’ performances of justice were continuations of a quiet ‘off-stage’ justice to which the USSR had remained committed since the end of the war.

Trials regarding Soviet Lithuania remained influenced by, but not bound to, prewar Soviet aims. Soviet trials generated reflection among state officials, case managers, witnesses, and defendants upon individual participation in the Holocaust by those who were not members of the Nazi Party, SS, or Wehrmacht. I focus my main case studies on those which were closed before the 1965 abolition of the statute of limitations for punishing Nazi era crimes: Juozas Dzena (1944-45), Petras Černiauskas (1947-64), Jurgis Žitkus (1945-circa 1946, 1949-55), and the cousins Justas and Antanas Martišius (1951-59). Only Dzena’s trial was public. Open proceedings typically were utilized to evoke a direct line from “bourgeois nationalism” to Nazi blood crimes and, in the broader pan-European experience, satisfy widespread desire for revenge. The more frequent closed proceedings, which steadily continued over the years, did not serve the same didactic purpose and thus show more variation in the Soviet approaches to

perpetrators and crimes against Jews. The chapter then moves to examine broader processes in the 1960s, such prosecutions of nationalists in high-profile trials and the behind the scenes investigations aimed to help West Germany prosecute its own nationals for crimes done in Lithuania.

The cases under study are typical in that the facts of each fell into Soviet categories of enemies whose crimes could be punished as treason or counter-revolutionary activity under Article 58 of the Criminal Code of the Russian Soviet Federative Socialist Republic (*Ugolovnyi kodeks Rossiiskoi Sovetskoi Federativnoi Sotsialisticheskoi Respublikoi*) (hereafter referred to as the Russian Criminal Code). The onslaught of war had created another category of Soviet enemy: the collaborator. People who had actively assisted the Germans were legally categorized as *posobniki*, or accomplices. Accomplices who had actively participated in German-orchestrated violence, usually as members of local nationalist groups or police units, were punished more severely and evoked as *karateli* (literally “punishers” but understood as perpetrators of Nazi crimes, usually as members of punitive/death squads). Of the hundreds of thousands of people targeted in Soviet postwar justice as enemy categories of collaborators and nationalists, I chose to focus on one subcategory, the *karateli*, which probably involved only tens of thousands. Many of them were tried under the decree of the Presidium of the Supreme Soviet of the USSR of April 19, 1943, hereafter referred to as Ukaz 39, which qualified the “unprecedented” Nazi atrocities against civilians. As discussed in chapter two, this was a model for similar legislation in Poland qualifying Nazi crimes (the Decree of August 31, 1944). As Franziska Exeler has argued, the Soviet state was “deeply ambivalent about the politics of retribution,” and just as there was a “lack of clarity... [about] what exactly had constituted treacherous behavior during the war,” so, too, was there muddled clarity and inconsistency toward the *karateli*. While each case under

study deals with murders and participation in mass shootings of Jews, the degree to which authorities evoked Jewish specificity ranges from direct emphasis to obfuscation.⁸

The primary job of case managers was to determine which specific events had happened, whether an individual had participated, and how accordingly to distribute punishment in the name of justice or stamping out nationalist resistance movements, which authorities perceived as mutually compatible aims. In the previous chapter concerning People's Poland, I focused on early postwar trials because I aimed to posit Holocaust "retribution" and Holocaust "justice" as distinctive parts of a constitutive postwar moment that was not necessarily connected to retroactive punishment. The timeline in this chapter is more expansive, because I approach Holocaust justice in Soviet Lithuania as interpretive and holistic processes integrating retribution and its meanings over time.

Soviet war crimes trials were linked to stifling counter-revolutionary activity or treason. In cases involving high-ranking nationalists, it was more difficult to disentangle crimes against Jews and crimes against Soviet power. Authorities had a strong motivation to condemn Lithuanian (and other) nationalist leaders and to justify their execution or deportation to the Gulag, but were not always as strongly invested in the outcome of the trials involving ordinary people. Furthermore, Soviet officials considered crimes against Jews the most conspicuous and foundational of those committed on Soviet territory. Indeed, the Soviet military field courts and administrative-security apparatus confronted and punished individuals (German or otherwise) who had helped carry out the Nazi program of genocide. On the other hand, in the public evocation (official notes, publications, commemorations) of the "Evils Committed by the

⁸ Franziska Exeler, "The Ambivalent State: Determining Guilt in the Post-World War II Soviet Union," *Slavic Review* 75 (Fall 2016): 610, 629. On the inconsistent Soviet policy of silence regarding Jews and the Holocaust in the media, see Karel Berkhoff, *Motherland in Danger: Soviet Propaganda during World War II* (Cambridge, MA: Harvard University Press, 2012), 161.

German Invaders and their Accomplices” against the Soviet Union, the authorities chose to emphasize universal victimhood, the deaths of Soviet POWs, or titular national suffering rather than the genocide of the Jews.⁹

In practice, the Soviet regime and local actors pursued justice for murdered Jews as an aim in and of itself while simultaneously utilizing the Jewish wartime fate for broader goals during postwar Sovietization. In three instances examined here, reviews for rehabilitation coincided with the “second wave” of retribution specifically targeting *karateli* in the late 1950s and lasting over a decade and continuing in lesser degree until the end of the USSR, during which time some people earlier tried as *posobniki* were put on trial again as *karateli*. Alexander Prusin writes that in the second wave the Soviet Union “used the Final Solution as a tool of socialist education” for internal and, especially, external audiences in order to emphasize Soviet suffering during WWII, the supremacy of Soviet law, and the USSR’s commitment to punishing war criminals.¹⁰

However, in the 1960s, the USSR also introduced a series of penal reforms, including the release of “corrected” persons. Thus, the cases illustrated competing directions in the prosecution of Holocaust perpetrators: rehabilitation of “corrected” citizens who had lapsed morally, or continued retribution against “unredeemable” perpetrators.¹¹ Lithuania, according to historian Benjamin Pinkus, was the site of the beginning of the public “wave of Holocaust literature in which the extermination of the Jews occupied quite a central place,” citing the example of M.

⁹ See Arkadi Zeltser, “Differing Views among Red Army Personnel about the Nazi Mass Murder of Jews,” *Kritika* 15 (Summer 2014): 579.

¹⁰ Alexander V. Prusin, “The “Second Wave” of Soviet Justice: The 1960s War Crimes Trials,” in *Rethinking Holocaust Justice: Essays across Disciplines*, ed. Norman J. W. Goda (Berghahn Books: New York, 2018), 134-135, 147.

¹¹ On the irredeemability of collaborators, see Amir Weiner, *Making Sense of War: The Second World War and the Fate of the Bolshevik Revolution* (Princeton, NJ: Princeton University Press, 2001), 149, 153, 183.

Eglinis's *The Death Fort* which described Nazi atrocities at Lithuania's Ninth Fort in Kaunas and the escape of their accomplices.¹² We should also look to Lithuania to understand the public facing "second wave" of Holocaust justice in the USSR not only as a period in which Soviet authorities used the Holocaust as a public-facing pedagogical tool, ascribed by Prusin, but also as a commitment to its off-stage quiet justice and as an indication of how the USSR utilized the Eichmann moment to eventually compel the reluctant West to enter the Holocaust era.

The Articles of Retribution

Legally, the Soviet prosecution of collaborators constituted a "social and political purge" like earlier ones, with the exception that collaborators were charged with real crimes, as historians Sergey Kudryashov and Vanessa Voisson argue. Those charged with treason or crimes of collaboration under Article 58 became another category of repressed citizens, while, according to historian Aleksandr Epifanov, Soviet war crimes trials were used for "strengthening criminal repression."¹³ Amir Weiner describes the purge of collaborators as a two-part process of purification and reintegration.¹⁴ For the Soviet regime, the war had proven the existence of internal enemies—collaborators—whose purging would integrate the war into the "progressing revolutionary narrative," bridging the prewar and postwar Soviet Union. Lithuania had been annexed into the Soviet Union in 1940 but regained autonomy in 1941 during the Nazi occupation. Upon liberation from German occupation, the Soviet Union re-annexed Lithuania as

¹² Benjamin Pinkus, *The Soviet Government and the Jews 1948-1967*, ed. Jonathan Frankel (Cambridge: Cambridge University Press, 1984), 425.

¹³ Sergey Kudryashov and Vanessa Voisson, "The Early Stages of Legal Purges in Soviet Russia (1941-1945)," *Cahiers du monde russe* 49, 2 (2008): 266, 276-277. See also Claire Kaiser, "Betraying their Motherland: Soviet Military Tribunals of *Izmeniki Rodiny* in Kazakhstan and Uzbekistan, 1941-1953," *The Soviet and Post-Soviet Review* 41, no. 1 (2014): 58, 61, and Exeler, "The Ambivalent State": 611, 624. Aleksandr Epifanov, *Organizatsionnye i pravovye osnovy nakazaniia gitlerovskikh voennykh prestupnikov i ikh posobnikov v SSSR, 1941-1956* (Moscow: Iuniti-Diana, 2017), 223.

¹⁴ Weiner, *Making Sense of War*, 136, 143.

a Soviet republic in July 1944. Soviet authorities contradicted themselves because while their penal tactics reflected the ideological position that resistance was an “internal” problem, from fall 1944 authorities conceptually approached the LSSR as incorporation of the external enemy, to be fundamentally broken from the prewar period. The Soviet government perceived itself as purifying members of the Nazi polity in addition to the Soviet one.¹⁵

In practice, the Soviets carefully distinguished among various crimes of treason covered under Article 58. The men in the cases explored here were tried either under Art. 58-1-a (treason with punishment of death or ten years of hard labor) or Art. 58-1-b (treason by military personnel with punishment of death). Furthermore, the Soviet Union was the first to introduce a law dealing specifically with the unprecedented Nazi mass violence against civilians and Soviet POWs. Ukaz 39 “established the idea of a Nazi criminal project” in law.¹⁶ Referencing “unprecedented atrocities and extraordinary violence [*neslykhannykh zverstv i chudovishchnykh nasilii*],” the decree qualified war crimes and crimes against humanity, to use previous and posterior international law terminology, and particularly crimes of the Holocaust. In the internal reports to the Military Tribunals and the Extraordinary State Commission for Ascertaining and Investigating Crimes Perpetrated by the German-Fascist Invaders and their Accomplices (*Chrezvychainaia gosudarstvennaia komissia po ustanovleniiu i rassledovanniu zlodeianii nemetsko-fashistskikh zakhvatchikov i ikh soobshchnikov*) [ESC], statements such as “It was the Jewish population that was largely exposed to massacres [*Massovomu unichtozheniiu v osnovnom podvergalos' evreiskoe naselenie*]” were common, even if such specificity was not

¹⁵ Weiner argues differently, 153-54, 162-63, 184.

¹⁶ Kudrayshov and Voissin, “The Early Stages of Legal Purges in Soviet Russia”: 292.

retained in the public evocation.¹⁷ The difference between Art. 1 of the decree (directly perpetrating in murders and “tortures” punished by the death penalty) and Art. 2 (helping in said atrocities punished by 15-20 years of hard labor) is relevant, because authorities directly implicated defendants in the systematic murder of Jews but had more difficulty defining personal participation (*lichnoe uchastie*) in shootings, particularly. The decree, “more denunciatory than legal,” remained in effect until 1953.¹⁸ By 1948, most people involved in mass shootings of Jews were tried in the LSSR with Article 58, and not Ukaz 39.

The changing status of the death penalty (abolished in 1947 and reinstated in 1950) complicated consistency in meting punishment. Crimes normally warranting the death penalty were to be punished instead with 25 years of hard labor. The Soviet amnesty of September 17, 1955, was a turning point because those who had been prosecuted for collaborating with the Germans during the war became eligible for rehabilitation, except for the *karateli*.¹⁹ The amnesty, significantly, directly mentioned *karatel'* as an ascribed category of person: “The amnesty does not apply to the *karateli* [*ne primeniat' amnistii k karateliyam*] convicted of murder and torture of Soviet citizens.” Ukaz 39 mentioned *posobniki*, while a subsequent directive from 25 November 1943 distinguished between *izmenniki* (traitors) and *posobniki*. But neither specified the *karateli*.²⁰ Until the amnesty, the word *karateli* appearing in sources such as security reports, trial records, and the media typically (although not always) referred to Germans

¹⁷ Head of Lvov Oblast NKVD Voronin, “*Spetssoobshchenie*” to ESC Chairman Kuz'min, November 15, 1944, State Archive of the Russian Federation (*Gosudarstvennyi arkhiv Rossiiskoi federatsii*) (GARF), f. R7021, op. 149, d. 99, l. 6.

¹⁸ Kudryashov and Voisson: 292

¹⁹ See Mark Edle's discussion in *Stalin's Defectors*, 143.

²⁰ “Postanovlenie 22/M/16/U/CC Plenuma verkhovnogo suda SSSR ‘O kvalifikatsii deistvii sovetskikh grazhdan po okazaniyu pomoshchi vragu v raionakh, vremenno okkupirovannykh nemetskimi zakhvatchikami,’” (November 25, 1943) available from *Velikaia strana SSSR*, accessed November 24, 2018, http://www.great-country.ru/rubrika_myths/reprisal/00055.html.

and their violence, while the adjectival *karatel'naia* applied to activities/actions, expeditions, groups, etc., in which people could be implicated until the image of a non-German *karatel'* had fully crystallized.²¹

Soviet case managers had to balance competing signals and legislative directives for uncovering *karateli* and lawfully meting out punishment. In violation of regulations, twelve collaborators were sentenced to death in 1962 during a public trial in Kyiv, which Lev Simkin describes as having become “a type of precedent for the subsequent sentencing of collaborationists to the death penalty, up to March 4, 1965, when the abolition of the statute of limitations for crimes against humanity rendered the issue moot.”²² But in Lithuania, the precedent began even earlier, as early as 1958 in Vilnius. In 1962 there were at least four open trials of high profile *karateli* in Kaunas and Vilnius, some of which were televised and aimed at western audiences. One clip panned an applauding crowd as the judge delivered a “wrathful and correct verdict [*rūstus ir teisingas nuosprendis*]” against members of a Lithuanian police batallion, one of whom, having escaped to the west, was tried in absentia. In the cases under study here, the men were tried for “punitive activity [*karatel'naia deiatel'nost'*]” against Soviet citizens or Jews but were not called *karateli* in the legal records.

“Gravity of the Crimes”: Case Studies

Upon Soviet entry into formerly German-occupied territory, the Extraordinary State Commission (ESC) began investigations. Evidence was intended for postwar international proceedings

²¹ “Ukaz Prezidiuma Verkhovnogo Soviet SSR ‘Ob amnistii sovetskikh grazhdan, sotrudnichavshikh s okkupantami v period Velikoi Otechestvennoi voiny 1941–1945 gg’” (September 17, 1955), available from *Memorial*, accessed November 24, 2018, <http://www.memorial.krsk.ru/DOKUMENT/USSR/550917.htm>.

²² Lev Simkin, “Death Sentence Despite the Law: A Secret 1962 Crimes-against-Humanity Trial in Kiev,” *Holocaust and Genocide Studies* 27, no. 2 (2013): 309.

indicting Germany but was also utilized locally.²³ Taking voluntary statements or summoning witnesses was an initial method for determining involvement in Nazi occupational policy. Additionally, mere association with local nationalist groups was enough for authorities to indict someone for “anti-Soviet” activity, during the course of which participation in crimes against Jews might or might not be uncovered.²⁴ In the early days of re-occupation, arrests by the NKVD counter-intelligence group “SMERSH” (acronym for “Death to Spies”) were common. Interrogation officers often compelled defendants to reveal the names of others involved in the main charges or additional crimes. Thus, there were several venues for generating a case.

On January 10, 1945, Juozas Dzena, a forty-eight year old partisan, was arrested for crimes he had committed between 1941-43.²⁵ Beginning in 1941, Dzena had arrested local Jews for deportation to execution at Ponar and supervised a labor camp in Vievis for Soviet POWs and Jews. The Germans later moved the Vievis camp to Joniškis. With the arrival of the Red Army, Dzena and his wife, Petronėlė Tarvydienė (never formally married), attempted to flee Joniškis for Germany, moving south to Priekulė to avoid the approaching Red Army. One of Dzena’s accusers, the sixteen year-old Jewish survivor Grigorii Katz, had escaped the Vievis camp and joined a partisan group in 1943. After liberation from Nazi occupation, Katz joined the police. His job was to guard German POWs who were made to assist the ESC in uncovering pits and corpses at Ponary in which, Katz recalled, “many of the locals found their family members and

²³ Marina Sorokina, “People and Procedures: Toward a History of the Investigation of Nazi Crimes in the USSR,” *Kritika: Explorations in Russian and Eurasian History* 6 (Fall 2005): 811-813. Francine Hirsch, “The Soviets at Nuremberg: International Law, Propaganda, and the Making of the Postwar Order,” *The American Historical Review* 113 (June 2008): 701-30.

²⁴ See Harold Berman, *Soviet Criminal Law and Procedure: The RSFSR Codes* (Cambridge, MA: Harvard University Press, 1972), 21-22, 24, 34 and Sofiya Grachova, “‘Counter-Revolutionary Agitation’ in the Soviet Union during the Great Patriotic War: The Politics of Legal Retribution,” *Cahiers du Monde russe* 52 (April-September 2011): 377-78, 381.

²⁵ SMERSH Sr. investigator Lt. Muratkin, “Postanovleniia na arest,” January 10, 1945, LYA, f. K-1, ap. 58, b. 45615/3, ll. 1-2.

aquaintances.” Afterwards, Katz was sent to Priekulė where on December 12, 1944, he encountered Dzena and filed a report.²⁶ SMERSH found and summoned Tarvydienė before arresting Dzena in January.

SMERSH administered Dzena’s case and emphasized his membership since 1936 in a nationalist paramilitary group, the Lithuanian Rifleman’s Union (*Lietuvos šaulių sąjunga*), whose members were called Shaulists (*šauliai*). Because administrators had additionally identified him as a member of the Committee for the Restoration of Lithuania (*Vyriausysis Lietuvos išlaisvinimo komitetas*), under whose auspices he had committed crimes against Soviet partisans and activists in 1941, he qualified for sentencing under Art. 58-1-“a” of the Russian Criminal Code for treason by military personnel and Art. 1 of Ukaz 39 for participation in Nazi-orchestrated violence.²⁷ Investigating officer Senior Lieutenant Muratkin and court administrators pursued the charges against him, particularly the shooting of Jews and his activities as a camp overseer, to substantiate the gravity of his involvement with the Shaulists.

At the onset of interrogations, Lieutenant Muratkin told Dzena, “You are implicated in the testimony of the witness Katz... attesting that in September 1943 you participated in the ‘sorting’ [*sortirovka*] of the Jewish population.” A *sortirovka* was the roundup of a town’s Jewish population and for deportation to labor camps or shootings, and included dispossession of their property. Katz said Dzena had “personally” done the sorting “himself” and that he sent those who gave him gold to the camp but “demanded that the remaining majority, including the elderly and children, be sent to Ponary where they were shot.” Muratkin asked Dzena if he confirmed Katz’s allegation and whether he had “personally shot” a local Jew. Dzena denied

²⁶ Interrogations of Petronėlė Tarvydienė and Grigorii Katz, December 13 and 12, 1944, *ibid.*, ll. 54, 51, 47, respectively.

²⁷ SMERSH Sr. Lt. Muratkin, “Postanovlenie o peredache dela,” February 5, 1945, and SMERSH Guard Cap. Godlis, “Postanovlenie o pred’iavlenii obvineniia,” March 4, 1945, both in *ibid.*, ll. 98 and ll. 129-30.

both accusations and insisted: “I didn’t shoot or arrest Orzhekhovskii...or any other Jews...[or]... participate in any sortings of the Jewish population in September or any other time.”²⁸

But other locals, many of whom had labored in road construction for the Germans, attested otherwise. For example, the Russian witness Grigorii Shul’tsov said: “I personally saw how Dzena participated in this, because many went to watch the gathering of Jews, including me.” Jokūbas Baranauskas, a Lithuanian, added that Dzena had received a “good Jewish house” from the Committee for the Restoration of Lithuania. In late January, Muratkin questioned Dzena and Katz together. Dzena denied shooting Jews, while Katz insisted that “it happened before the eyes of everyone.” During an overnight interrogation in February with Captain Godlis, Dzena admitted to shooting two Jews who tried to run away from the camp at the behest of a German officer named Derling.²⁹

On March 13, 1945, Dzena faced public trial in an open Military Tribunal in the larger town of Kretinga, near Priekulė, where trials against collaborators were well-established likely due to the large resistance presence. There Dzena admitted: “In the presence of everyone in the camp I shot two Jews. For what reason did I shoot? I don’t know. ... I personally only beat 3 or 4 people. The goal of the committee was the destruction of Communists and Jews, Soviet partisans and soldiers.” Dzena differentiated his own motives from those of the nationalists, but Katz told the crowd that Dzena had eagerly espoused the myth of Judeo-Bolshevism, telling prisoners: “You’re contented to gaze into the Stalinist light, well, soon you yourselves will light up like

²⁸ Interrogations of Juozas Dzena, January 22, 1945, and Katz, December 12, 1944, all in *ibid.*, ll. 37, 49, and 36-37, respectively.

²⁹ Interrogations of Grigorii Shul’tsov, December 31, 1944, Jokūbas Baranauskas, December 28, 1944, face-to-face interrogation of Katz and Dzena, January 24, 1945, and Dzena, February 10, 1945, in *ibid.*, ll. 79, 59, 61, 95, and 106, respectively.

lamp posts.” Katz tried to convey that the abuse, racialized anti-Soviet attitudes vis-à-vis Jewishness, and mass murders of Jews were connected: “In 1942 Dzena arrested me and I was interned in a concentration camp because I am a Jew.”³⁰

Dzena was originally charged under Article 58-1 “a” of the Criminal Code for what amounted to a “hostile disposition towards Soviet power.”³¹ But Captain Godlis changed the indictment since in his view the crimes (e.g., shooting Red Army officers and the local Komsomol leader, robbing and sending local Jews to concentration camps, overseeing an “evil regime” of internment, and carrying out a “repressive regime against peaceful Soviet citizens of Lithuanian nationality”) fell under Ukaz 39 specifying participation in Nazi “tortures.” A few days later, Dzena was hanged in front of a crowd of 900 people in March 1945.

From the gallows Dzena pleaded “the chance to atone for my guilt... and to do something good for the Soviet state.”³² Sometimes the accused begged forgiveness from their victims, while authorities emphasized retribution.³³ In Dzena’s case, the judge wanted to avoid insinuating that justice was simply a matter of professed loyalty, especially regarding those who had participated in systematic murder, as he said: “These were not incidental atrocities that can be separated from the Nazis, it was a predetermined system of destruction of the peoples of the Soviet Union.” Justice Ul’ev drew specific comparisons to the concentration/death camps: “The whole world shudders at the atrocities the Hitlerites did at Majdanek, in Latvia, Lithuania, and other places under German occupation.” He called Dzena an “active organizer of... extermination of the

³⁰ “Protokol sudebnogo protsesssa,” Presiding Maj. Justice Ul’ev, Military Field Court of the 32nd Rifle Division, March 13, 1945, in *ibid.*, l. 144, 144 v.

³¹ SMERSH Guard Cap. Godlis, “Obvinitel’noe zakliuchenie,” in *ibid.*, l. 138.

³² “Protokol sudebnogo protsesssa,” in *ibid.*, l. 145 v.

³³ Oral history interview with Aldona Arbačiauskienė, Record Group (RG)-50.473*0179, Lithuania Documentation Project, The Jeff and Toby Herr Oral History Archive, United States Holocaust Memorial Museum Archives (USHMMA).

Lithuanian people,” obscuring the Jewish specificity that Katz only minutes earlier had sought to convey.³⁴

The negotiation of pragmatism (destroying resistance by connecting nationalists to Lithuanian suffering while obscuring Jewish specificity) and morality (confronting the unprecedentedness of Nazi atrocities against civilians, Jews specifically) remained evident in trials over time. As the Soviets advanced westward, they presented themselves as bringing justice to new territories under their rule. Those who testified against Dzena eagerly implicated him in the Germans’ “racist regime.”³⁵ From the Soviet perspective, projecting justice was a means of building sincere support among those who had been horrified by Nazi policies (and participation in them on part of many of their co-nationals) but who were otherwise indifferent or openly hostile to Soviet rule.

That same year, in 1945, the forty-three year old Jurgis Žitkus was reported to the NKVD in Kaišiadorys in a case of vigilante justice but did not share Dzena’s fate of execution.³⁶ Žitkus was arrested and transferred among camps, but released in circa-1946 on the basis of a false accusation.³⁷ It appeared that Žitkus had escaped retribution. He assumed work on a *sovkhoz* in Kaišiadorys as a beekeeper and Soviet agriculture representative. But in 1949 his name appeared on a secret list of wartime nationalist insurgents. Local authorities forwarded his name to the Lithuanian Ministry of State Security (*Ministerstvo gosudarstvennoi bezopasnosti*) [MGB], and in this new case he was charged with membership in the nationalist insurgency and participating in a shooting of “Soviet activists.”

³⁴ “Protokol sudebnogo protssessa,” LYA, f. K-1, ap. 58, b. 45615/3, ll. 144-45, 145v.

³⁵ Interrogation of Barnauskas, December 28, 1944, *ibid.*, l. 59.

³⁶ Boloslava Žitkienė, appeal [*zhaloba*] to USSR General Prosecutor, [no later than January 3, 1955], *ibid.*, b. 37244/3, l. 284.

³⁷ Žitkus, “*zhaloba*” to Minister of State Security Lavrentiy Beria, October 16, 1952, *ibid.*, l. 161.

Žitkus was charged with treason under both the alternating Soviet and Nazi occupations. His prewar job as a legal clerk had required Shaulist membership, which after the 1940 Soviet occupation, was subsumed into the Soviet People's Court. Upon the 1941 Nazi occupation, "fearing arrest on part of the Germans," Žitkus sought the advice of a local priest named Barnas who "harshly" told him that because of his service in the People's Court he needed to "answer for [his] actions." The priest "made a deal with somebody" for Žitkus to take over as leader of the detachment, as its extant one, Antanas Eidukevičius, had fallen sick.³⁸ For Žitkus's co-nationals, serving in the nationalist detachment mitigated the consequences of Soviet collaboration.

Authorities condemned those on the list for "anti-Soviet activity" defined as nationalist resistance. But the case files reveal that the detachment's activities included not only the guarding and shooting of Jews, but also some involvement in its planning.³⁹ Case managers emphasized that Eidukevičius "once personally was at a meeting at the German headquarters [in Kaišiadorys in 1941] where the question regarding Soviet citizens of Jewish nationality was discussed."⁴⁰ As leader, Žitkus knew what awaited Kaišiadorys's Jews, most whom were murdered at Ponary in 1941.

MGB Lieutenants Lysok and Aleksankin conducted a series of interrogations in June 1949, during which Žitkus stated: "I acknowledge myself as guilty in that I was a member of a punitive detachment and once went on a shooting of arrested Soviet citizens [pro-

³⁸ Interrogation of Žitkus, August 22, 1953 [transcript from June 9, 1949], ll. 172-73.

³⁹ In this file, references to Jews are obscured by the phrase "Soviet citizens." A deep reading of Žitkus's *zhaloba* and contextualization of the charges in comparison with other files indicates that the men were involved in shootings of Jews, differentiated from the eight "activists."

⁴⁰ Kaišiadorys regional MGB LSSR Lt. Aleksankin, "Postanovlenie" to Head of MGB LSSR Col. Leonov, August 9, 1949, *ibid.*, l. 135.

Communists].”⁴¹ Aleksankin indicted Žitkus for “voluntarily” joining the nationalist detachment, “appoint[ing] members to guard arrested Soviet citizens [Jews],” and “personally participat[ing] in the shooting of eight Soviet citizens [pro-Communists].”⁴² Aleksankin and his superiors in the Kaišiadorys MGB highlighted the re-prioritized “social danger of the accused” and sentenced Žitkus under Art. 58-1-“a” of the Criminal Code to the Special Board (*Osobyje Soveshchanie*) of the NKVD/MGB rather than a Military Tribunal. The Special Board, formed in 1934, was designed to fast-track retribution by bypassing a trial or tribunal for “traitors” and, since 1941, Nazi collaborators in Poland and the Baltics. Žitkus was sent to the Special Board because he was targeted as an anti-Soviet nationalist resister, rather than a perpetrator or collaborator.

The impetus for targeting nationalists coincided with Stalin’s union-wide campaign against “harmful elements” which intensified after 1948. The fight against “bourgeois nationalists” in Lithuania, prioritized since 1944, paralleled the inauguration of the fight against “cosmopolitans” in 1948. Coinciding with the rise of Soviet state antisemitism, the anti-cosmopolitan campaign was a response to the threat of resistance in the border regions amid anxiety over peoples perceived without a homeland, and the “failure” of republics in the Soviet west to overcome their prewar “bourgeois” pasts. Thus, Žitkus’s prewar membership in the Shaulists and rebel detachment was unredeemable, and in August 1949 the Special Board sentenced him to 25 years in a “special camp.” Central policy aims (e.g., the desire to physically remove real or perceived anti-Soviet activists within Soviet borders) were evidenced by the consistently veiled reference to Jews, focus on Žitkus’s connection to Lithuanian nationalists,

⁴¹ Interrogation of Žitkus, August 22, 1953 [transcript from June 9, 1949], and face-to-face interrogation from June 24, 1949, *ibid.*, ll. 171 and 21-23 *ob.*, respectively.

⁴² Kaišiadorys MGB Investigator Aleksankin, “Obvinitel’noe zakliuchenie,” August 12, 1949, *ibid.*, ll. 121, 130.

and the fast-track retribution of seven people without a trial for “*karatel'nuii deiatel'nost'* against Soviet citizens.”

In 1952 Žitkus wrote an appeal to Lavrentii Beria, head of the Soviet MGB, claiming to know the names of high-ranking members in the Lithuanian Central Committee who “hate Soviet power and are waiting for the death of communism.” To bring attention to his case, Žitkus positioned himself as wanting “to help in the interests of the exaltation of the ideas of communism.” It worked, and he was brought to Moscow. But Žitkus admitted to fabrication, and that he had been advised to “name someone in some high position.” In his appeal, Žitkus presented himself as a “Soviet activist” and insisted he had only joined the Shaulists because it was required for his prewar job. Mentioning his ailing health and desire to die near family, he also lamented that his apiary on the *sovkhos*, “organized with love,” had “come to nothing.”⁴³

During questioning in 1953 Žitkus denied participating in anti-Soviet activities and insisted that he had, out of fear, been compelled to join the insurgency as atonement to his co-nationals for working in a Soviet court. He maintained that the 1949 interrogations had been carried out “unobjectively.” When asked about the June 1941 shooting of “Soviet party activists,” he insisted he had been there “by chance” and had not participated himself. Captain Kuznetsov of the 10th Department of the Soviet Ministry of Internal Affairs (*Ministerstvo vnutrennykh del*) [MVD] in Moscow asked Žitkus to clarify a statement from June 23, 1949, in which he had admitted that the group “participated in the arrests of Soviet activists, and also carried out shootings of Soviet citizens.” Žitkus responded: “Yes it’s true. However, during the

⁴³ “Zhaloba” to Beria, October 16, 1952, and interrogation of Žitkus, August 22, 1953 in *ibid.*, ll. 158-9, 173-4, 170, and 161, respectively.

time I commanded the group, no members set out even once on the arrest or shooting of Soviet citizens,” a veiled reference to Jews.⁴⁴

When Žitkus’s case was reviewed in Vilnius in 1954, Chairman K. Liaudis of the KGB of the Soviet of Ministers of the LSSR approved Agent Prudniakov’s recommendation to preserve his sentence on the basis that Žitkus had “appointed insurgents to guard arrested Soviet citizens” and had “been present [*prisutstvoval*]” at the shooting of eight activists. This was an effort to adhere to the December 1953 decision in the Main War Prosecutor’s office of the Special Department of MVD by which Colonel A. Renev had denied rehabilitation because Žitkus had tried to “fool” Soviet authorities and “evade responsibility for his traitorous actions.” But in April 1955, the new Lieutenant-Colonel of Justice of the same Moscow War Prosecutor’s office, Shadrintsev, lessened Žitkus’s sentence from 25 to 10 years because he “did not personally participate in the shootings of Soviet citizens and other *karatel'nykh operatsiia*kh” and had “served in the punitive detachment under duress.” Shadrintsev added that Žitkus had “engaged in socially useful work” prior to his arrest.⁴⁵

While the case managers never pursued the crimes against the Kaišiadorys Jewish population at length during the multi-faceted process, in Žitkus’s own appeal to Beria it was evident that he had Jews on his mind: “I warn and give about 40 people the opportunity to escape the local Jewish ghetto,” he wrote, and insisted:

The only thing for which I might be guilty is that I was an involuntary witness to all of the horrors and evils—but was there even one person during the German occupation who

⁴⁴ Interrogations of Žitkus, August 22 and 25, 1953, ll. 174, 170-1, 177, respectively.

⁴⁵ KGB LSSR Captain Prudniakov, “Zakliuchenie,” November 23, 1954, “Spetsotdel” MVD SSSR Col. Justice A. Renev, report no. 7892/c, Main War Prosecutor’s Office, December 31, 1953, and Lt. Col. Justice Shadrintsev, “Zakliuchenie,” April 13, 1955, all in *ibid.*, ll. 272, 262, 294, and 300, respectively.

was not a witness to all of these horrors? Aren't all of these people then also guilty, and shouldn't they also be tried in court like me?⁴⁶

In deflecting his own guilt, Žitkus articulated the relationship between witnessing and complicity in the Holocaust in Eastern Europe among those who had gotten caught up in the tides of war and change. He perceived his trial as unfair, since others walked free, and hinted at the infeasibility of putting every individual who had helped implement the Holocaust on trial, by virtue of the ubiquitousness of complicity.

In the lengthy appeal Žitkus mostly exulted his own biography and denounced anti-Communists, but included memory of the Holocaust and reflection upon his own participation as a fragmented aside. He wrote the verbs “warn” and “give” in present tense, denoting a reframing, or revisiting, of memory. The Russian emphatic present-tense for past actions indicates emotionalized self-positioning. The subtext of the appeal suggests that Žitkus felt guilty about his wartime actions, or rather inaction, vis-à-vis the Jews; that perhaps warning Jews to flee the ghetto had not absolved him from more entangled complicity. After internal disagreement the court ultimately relied upon his status as a properly socialized Soviet citizen and the assessment that he “did not personally participate in shootings of Soviet citizens or other punitive [*karatel'nykh*] actions” to mitigate his sentence to 10 years, but did not fully rehabilitate him due to his involvement with the nationalists.

The next case, generated in 1951 at the height of the anti-cosmopolitan campaign, reflected the intersection of uncovering enemies and the moral aim of retribution. Forty-three year old Justas Martišius was working as a bookkeeper at a fish factory in Kaunas when he was

⁴⁶ “Zhaloba” to Beria, *ibid.*, ll. 158, 160. For an analysis of secondhand collaboration via inaction, see John Connelly, “Why the Poles Collaborated so Little: And Why That is No Reason for Nationalist Hubris,” *Slavic Review* 64 (Winter 2005): 771-81.

apparently arrested as a speculator but he was handed to the military division of the Lithuanian MGB after I. M. Germanavičius named Martišius as a sergeant in the Sonderkommando on 16 October 1951. A few days later Martišius was charged with “carrying out mass shootings of Soviet citizens and other *karatel'nye* activity.” S. P. Zalipugas, also under arrest, listed Justas and his cousin Antanas Martišius among those who “participated in the arrests and shootings of Soviet citizens with me.” The cousins’ wives, acquaintances, arrested Sonderkommando members, and a Polish man whose daughter was killed in a raid were summoned as witnesses.

A. Martišius (sentenced under Article 58-1-“a”) had joined the Sonderkommando at his cousin’s recommendation when he moved to Vilnius in March 1943. An acquaintance, Petras Černiauskas, got him a job with the Vilnius Gestapo.⁴⁷ J. Martišius, initially a Red Army soldier, had “surrendered in captivity” to the Germans. He defected and served in the Sonderkommando in Vilnius from August 1941 to April 1943, then as an orderly in a German construction batallion where he supervised forced labor until April 1944. He was sent off and on from 1942 to the camp in Vievis to perform various “*karatel'nye* functions,” including searching for Soviet activists or partisans. He was indicted under Art. 58-1-“b” of the Criminal Code. Authorities emphasized his service with the Vilnius SD which had “carried out the Germans’ special orders.”⁴⁸ Both cousins were evoked as *karateli* and traitors.

Lieutenant Baltaduonis asked J. Martišius why he joined “this criminal path, assisting Germans in this evil annihilation of Soviet citizens?” Security agents usually presumed anti-Soviet motivation, but Martišius insisted: “I didn’t have any kind of hostile anti-Soviet attitude,

⁴⁷ 4th Dept. MGB LSSR Senior Lt. Gorokhov, “Postanovlenie na arest,” October 27, 1951, MGB LSSR Jr. Lt. Baltaduonis, in “Nabliudatel’noe delo” folder [*Nd*], “Obvinitel’noe zakliuchenie” by investigating agent Junior Lieutenant Baltaduonis of the MGB USSR, March 28, 1952, and interrogation of A. Martišius, Vilnius, January 25, 1952, in “Sledovatel’noe delo” folder [*Sd*], all in LYA, f. K-1, ap. 58, b. 20046/3, ll. 1-2, 414 (*Sd*), 10 (*Nd*), 139-40, 417 (*Sd*), respectively.

⁴⁸ LYA, f. K-1, ap. 58, b. 20046/3, ll. 414-5 (*Sd*).

and when I joined the Sonderkommando I didn't know which kinds of functions it carried out. I only wanted to secure work. But by then I was no longer in a position to decline and had to carry out everything I was ordered." His cousin explained similarly, "I didn't know what kind of functions the Sonderkommando carried out..." and that Černiauskas said "we would need to guard a camp."⁴⁹ Individuals were not necessarily anti-Soviet, but likely would not have admitted to anti-Soviet motivations under interrogation. Whether the cousins really had not known they would be guarding Jews during shootings, they both relied on job opportunity and coercion to explain themselves.

Baltaduonis initially inquired about "Soviet citizens," but as the cousins answered specifically about "Jews," he, too, began asking about "mass shootings of the Jewish population" and then tried to determine whether the Sonderkommando had even arrested any Soviet POWs. Justas Martišius insisted he had never "personally shot" Jews: "I only guarded the shooting area... but I myself didn't shoot, and not one person was killed by me." The cousins identified tens of others "on the line of fire" like Butkūnas whom J. Martišius claimed was "one of the more active in the shooting of Jews."⁵⁰ In a face-to-face questioning, an SD leader named Jonas Tumas said he could not give any "concrete facts" about whether or not J. Martišius had shot Jews, only that "Martišius, sitting across from me...served in the security ranks of the SD" to which Martišius retorted that "Tumas himself distributed these orders."⁵¹

In the interrogation cell Justas Martišius separated himself from shootings while simultaneously implicating himself in the process. "I didn't personally shoot," he said, to which

⁴⁹ Interrogations of J. Martišius, October 31, 1951, November 9, 1951, A. Martišius, January 25, 1952, and Jonas Tumas, January 2, 1952, Vilnius, *ibid.*, ll. 20, 40-1, 139, 140-1, and 139-40, respectively.

⁵⁰ Interrogations of J. Martišius, November 9, 12, and 16, 1951, and Tumas, January 2, 1952, *ibid.*, ll. 42, 182-4, 39-40, 43, 46, and 49, respectively.

⁵¹ Interrogation of Tumas and J. Martišius, January 15, 1952, *ibid.*, ll. 232-33.

Baltaduonis responded, “So what did you do there?” Martišius explained: “I led Jews to the pit, undressed them, and after shooting organized the corpses in the pit.”⁵² Later at the trial he recounted activity after activity, and admitted he had traded Jewish clothing, but did not consider these activities as participation in shootings: “I myself did not personally participate in the shootings. ...Everything else I did because I was ordered to.”⁵³

The prosecutor sentenced the cousins to 25 years of imprisonment and confiscation of property, “taking into account that [they] did not personally take part in the shooting of Soviet citizens.” Nevertheless, Judge Ravich-Shcherbo projected moral condemnation for Justas Martišius: “Considering the gravity of the crimes he committed, he deserves the highest measure of punishment: shooting.”⁵⁴ The death penalty had been restored by the time of the trial in 1952. But in accordance with a legalistic understanding of personal participation in shootings (pulling the trigger), he ruled prison rather than death. The defense lawyer unsuccessfully appealed for further mitigation.⁵⁵

The court endeavored to draw a connection between the cousins and the “bourgeois nationalists” whom, in 1952, Stalin was intensely targeting. Prosecutor Markovskii elicited testimony from Antanas Martišius meant to connect Lithuanian nationalism to fascism: “At first I wore the uniform of the former Lithuanian bourgeois army, and then a German uniform.” But Justas Martišius had first worn the uniform of the Red Army before defecting.⁵⁶ While capture normally sufficed for conviction under Art. 58 as an “anti-state” crime, Lieutenant Baltaduonis

⁵² Interrogation of J. Martišius, November 12, 1951, *ibid.*, ll. 42-43.

⁵³ Col. Justice Ravich-Shcherdo, “Protokol sudebnogo zasedaniia,” War Tribunal of the Baltic Military District, May 23, 1952, *ibid.*, ll. 438-40, 449

⁵⁴ *Ibid.*, ll. 449-450, 450 v.

⁵⁵ 11th Vilnius Judicial Counsel E. I. Siniakova, “Kassatsionnaia zhaloba” to Military Collegium of USSR Supreme Court, October 24, 1952, *ibid.*, l. 462.

⁵⁶ “Protokol sudebnogo zasedaniia,” *ibid.*, ll. 441, 438.

and the court focused on the crimes of the Holocaust. The Martišius cousins were on a list of tens of suspected men who had “participated in the mass shootings of Jews” or “Soviet citizens” and were themselves compelled to generate similar lists.⁵⁷ In May 1952 at the height of the campaigns against nationalists and cosmopolitans, Lieutenant Baltaduonis and Justice Ravich-Shcherbo gave lip service to “bourgeois nationalism” and focused instead on the crimes of Nazi collaborators, the chief victims of which had been Jews.

Antanas Martišius died enroute to the Gulag, but Justas Martišius eventually appealed for rehabilitation in 1957. He wrote: “I didn’t cause any harm to Soviet citizens with my own hands.” He described his service as an “unavoidable position at the time” and maintained: “I don’t consider myself guilty.”⁵⁸ Central authorities in Moscow denied his appeal in 1959 using outside evidence from wartime and early postwar documents: Kazimierz Sakowicz’s *Ponary Diary* and an unpublished ESC Ponary report from no later than 1946. The diary detailed local complicity in the fate of the Jews. The ESC report omitted all references to local complicity, but emphasized systematic Jewish victimhood amid atrocities against Poles and Soviet POWs. Colonel Lovyshev of the Military Prosecutor Office in Moscow synthesized the two documents and made the overarching moral interpretation that since Martišius had served in the SD “exactly during the period noted by the ESC that the largest massacres of Soviet citizens of Jewish nationality and Soviet POWs were carried out at Ponary. ... This participation by [J.] Martišius in evils against Soviet citizens rightfully qualifies for... punishment given to him.”⁵⁹ As a participant in “torture of Soviet citizens,” J. Martišius was ineligible for amnesty. His case symbolized the irredeemability of collaborators as the Soviet “second wave” of retribution

⁵⁷ MGB LSSR Jr. Lt. Baltaduonis, “Postanovlenie,” Vilnius, January 12, 1952, *ibid.* ll. 282-83.

⁵⁸ J. Martišius, “Zhaloba” to Prosecutor of the Mordovian Autonomous Soviet Socialist Republic (MASSR), November 17, 1957, *ibid.*, ll. 480-81.

⁵⁹ Lt. Col. Lovyshev, “Postanovlenie,” Chief Military Prosecutor Office, December 4, 1959, *ibid.*, l. 486.

began, aimed toward the west, while America welcomed anti-Communists and worried less about Nazi collaborators.⁶⁰

The last case in this study most broadly charts changing administrative and political facets of retribution, but attests to the deep care with which some case managers invested their roles. Petras Černiauskas (who had recommended the SD to A. Martišius) had joined the Sonderkommando in June 1941. He quit but joined again in 1942 “due to the difficult living conditions for workers.”⁶¹ Černiauskas fled with the retreating German army under the auspices of a Latvian nationalist battalion in May 1944. In 1945, he was caught by the Red Army and placed in a Soviet deportation camp. He escaped and fled to Poland, where he worked as a tailor until his arrest in 1946 in the border town of Szczecin (a German town transferred to Poland in July 1945). A Pole named P. A. Sokołowski (arrested by the Vilnius Gestapo in 1943 and probably repatriated to Poland as the Soviets emptied Vilnius of its Polish population in 1945) recognized the twenty-eight year old Černiauskas at a local market and reported him. The Polish police held Černiauskas for eight months before handing him to Soviet authorities in May 1947. Rather than extraditing him to Soviet Lithuania for trial, the Soviet Department of Counterintelligence of the Ministry of Armed Forces (*Ministerstvo voozuzhenykh sil*) [MVS] controlled his pre-trial interrogations and then held a closed tribunal in Poland under the auspices of the Group of Soviet Forces in Germany (*Gruppa sovetskikh okkupatsionnykh voisk v Germanii*) [GSOVG]. Officer Nosov of the Department of Counterintelligence of the MVS

⁶⁰ See Kerstin von Lingen, *Allen Dulles, the OSS, and Nazi War Criminals: John Demjanjuk and America's Open-Door Policy for Nazi War Criminals* (Harrison, NY: Delphinium Books, 2013).

⁶¹ Testimony from June 1947 recorded in LSSR State Counselor of Justice Mitskevich, “Postanovlenie,” June 21, 1961, LYA, f. K-1, ap. 58, b. 43057/3, l. 111.

forwarded the case details to the MGB of Soviet Lithuania for record, while Černiauskas awaited trial in a holding cell.⁶²

Authorities indicted Černiauskas on the basis he had “himself participated in the shootings of Jews, as a guard” at Ponary. Initially Černiauskas maintained: “I myself did not directly shoot even a single Jew, but guarded them during the shooting.” Agent Miasnikov confronted him: “There is material evidence that you actually shot Jews personally.” After much denying, an exasperated Černiauskas abruptly answered: “Yes, I really shot Jews myself,” but he insisted that this had only been “two or three times in 1943” while the rest of the time he had “refused to take part in the shootings.” But he named 38 others who “systematically took part in mass shootings of Jews,” such as Boleslavas Lukošius who “was distinguished by his evil attitude toward Jews.”⁶³ Individuals were unlikely to admit to anti-Jewish attitudes under interrogation, but identified others as antisemitic. During the face-to-face questioning, Sokołowski testified how Černiauskas spoke of the money he earned from the SD and the shootings of “Jews, Russians, and Poles” at Ponary.⁶⁴ Nosov ascribed the actions ranging from serving the Gestapo, assisting with ghettoization, guarding, or shooting as “facilitation of the fascist regime.”

Noting that Černiauskas “personally shot 18 people, just because [they] were of Jewish nationality,” Nosov attributed Jewish specificity to Nazi crimes in Lithuania, and implicated Černiauskas in participation.⁶⁵ Lieutenant Popov of the MVS had indicted Černiauskas under

⁶² GVSOG Col. Justice Kalinin, note to Chairman of GSOVG War Tribunal Col. Justice L’vova and MVS Head Paltyshev, August 7, 1947, MVS Jr. Lt. Nosov, “Spravka,” July 28, 1947, and *idem.*, “Obvinitel’noe zakliuchenie,” July 30, 1947 all in *ibid.*, ll. 85, 80, and 84, respectively.

⁶³ MVS Sr. Lt. Miasnikov, “Postanovlenie,” June 6, 1947, and interrogations of Černiauskas, June 6 and 27, 1947, all in *ibid.*, ll. 25, 28-9, 40-53, and 42, respectively.

⁶⁴ Interrogation of Černiauskas and P. A. Sokołowsky, June [28], 1947, and LSSR Counselor Mitskevich, “Postanovlenie,” June 21, 1961, in *ibid.*, ll. 73, 75, and 112-113.

⁶⁵ “Obvinitel’noe zakliuchenie,” *ibid.*, ll. 82-83.

Article 58-1-“b” of the Russian Criminal Code as a traitor for “voluntarily joining the Sonderkommando.” Miasnikov amended the indictment to encapsulate the broader treasonous activity covered by part “a” since Černiauskas had “systematically” guarded political prisoners, “repeatedly himself participated in the shooting of Jews as guard,” headed a convoy of Jews, Poles, and Russian POWs to Germany, and had, in sum, “fear[ed] responsibility for his personal crimes before the homeland.”⁶⁶

Rather than pressing Černiauskas on his involvement with the Latvian batallion, as would be expected in Soviet trials against treason, Miasnikov focused on the crimes and victims. Noting that some of the Jews had been from countries such as Belgium or Austria, he meticulously tried to distinguish the “Polish” Jews from “Soviet” ones. Černiauskas clarified previous statements: “Now I insist that during the three times I participated in shootings, the Jews who were shot were mostly Polish citizens, but there were also Jews who had Soviet citizenship.”⁶⁷

Miasnikov finally indicted him under Ukaz 39, rather than Art. 58, since Černiauskas was “carrying out arrests and shootings of Soviet citizens, including Jews... [and that] he participated in the mass shootings of persons of Jewish nationality, some of whom were Soviet citizens....”⁶⁸ Miasnikov ascribed Jewish specificity (regardless of citizenship) to Nazi crimes and evoked Ukaz 39 to denounce Černiauskas’s participation in them. The reasoning differed little from the Art. 58-1-“a” indictment, but complemented the return of “moral fault” in 1947 as a primary element of Soviet jurisprudence, as opposed to the “social danger” qualified by Art. 58 (which

⁶⁶ MVS Lt. Popov, “Postanovlenie na arest” and “Postanovlenie ob izbranii mery presecheniia,” May 19, 1947, and Sr. Lt. Miasnikov, “Postanovlenie o pred’iavlenii obvineniia,” June 6, 1947, *ibid.*, ll. 2-3, and 25-26.

⁶⁷ Interrogation of Černiauskas, June 15, 1947, *ibid.*, l. 34.

⁶⁸ “Postanovlenie o perepred’iavlenii obvineniia” *ibid.*, l. 55.

returned to prominence in the later 40s).⁶⁹ As the death penalty had been abolished in May 1947, Miasnikov followed regulations stipulating 25 years in the Gulag in lieu of death.

During the tribunal Justice Maksiminov emphasized that Černiauskas “repeatedly participated in the mass shootings of Jews,” 18 of which he “personally shot,” and then concluded: “in total with his participation 450 people of Jewish nationality were shot.”⁷⁰ The charges explicitly centered on Černiauskas’s involvement in Nazi policy as it concerned the murder of Jews, but the fact that only “some” of the Jews had been Soviet citizens was framed as a necessary embellishment, rather than driving impetus.

Černiauskas wrote a release appeal from Taishet near Irkutsk in 1959, which reached the Soviet of Ministers of the LSSR in 1961. He differed from Žitkus and Martišius, who had debated the extent of their own guilt under coercion, but similarly evoked poor health and an “honorable attitude toward work.” He referenced his poor Russian at the time, and claimed that he should have been sentenced to 20 rather than the “unfounded” 25 years, concluding that the investigator had not implemented his sentence “according to principles of Soviet justice.”⁷¹ Whereas crimes against Jews had been central to his sentencing, personally reflecting upon them in his appeal was seemingly irrelevant to his prospects for release. Instead, Černiauskas appealed to the legitimacy of Soviet law.

Back in Lithuania, State Counselor of Justice V. Galinaitis and Senior Counselor Mitskevich declined to amend the sentence, as Černiauskas offered no evidence of “torture” and was guilty of “direct participation in the shooting of citizens of Jewish nationality.”⁷² Officials at

⁶⁹ See Berman, *Soviet Criminal Law and Procedure*, 26, 33 and Grachova, “‘Counter-Revolutionary Agitation’ in the Soviet Union during the Great Patriotic War”: 373-386.

⁷⁰ GSOVG Cap. Justice Maksiminov, “Protokol sudebnogo zasedaniia” and “Prigovor im. SSSR,” GSOVG War Tribunal, August 9, 1947, LYA, f. K-1, ap. 58, b. 43057, ll., 90-91, 92.

⁷¹ Černiauskas, “Zhaloba” to USSR Chief Prosecutor, October 25, 1959, *ibid.*, ll. 103-04.

⁷² “Postanovlenie,” June 21, 1961, *ibid.*, l. 113.

the Saratov Regional Military Tribunal concurred and in 1963 denied Černiauskas's appeal due to his "direct participation in the shooting of Jews" and "evasion of social life." But, in an about-face a year later in 1964, Lieutenant Colonel of Justice Zoltareva of the Volga Military District in Yavas in the Mordovian SSR granted him "immediate release" on the basis of his now "secondary role in shootings" and the assessment that he had "firmly embarked on the path to correction."⁷³

In the late fifties and early sixties the Soviet Union enacted a series of "experimental" Gulag reforms in pursuit of a more humanitarian penal code. Černiauskas's rehabilitation involved several regional jurisdictions and reflected trial and error attempts to adhere to the Directive of the Supreme Presidium of the USSR from April [20] 25, 1960, on the lessening of sentences for "corrected" persons.⁷⁴ Substantiated by differing versions and interpretations of the April 1960 decree, Černiauskas's case fell under prison reform, rather than legislation dealing with Nazi collaborators. For at least some Soviet authorities, 18 of 25 years had sufficed for the Soviet "correction" of Holocaust perpetrators.

Patterns of Holocaust Retribution

The moral impetus to mete punishment for the Holocaust co-existed with a central Soviet campaign which, at times, capitalized on the widely acknowledged evil of the Holocaust in order to suppress nationalists who threatened revolution in the LSSR. In October 1944, the NKVD ordered "the arrest of every active bourgeois nationalist" and bemoaned that in the LSSR "appropriate measures are not being taken to severely punish participants in atrocities of the

⁷³ Maj. Justice Korniušeniū, "Opredelenie sudebnogo zasedaniia," March 23, 1963, and Lt. Col. Justice Zolotareva, "Opredelenie sudebnogo zasedaniia," October 16, 1964, *ibid.*, ll. 118 and 129.

⁷⁴ S. I. Kuz'min and I. V. Selezneva, "Opyt reformirovaniia sistemy ispravitel'no-trudovykh uchrezhdenii v sovetskom gosudarstve (seredina 50-x-konets 60-kh gg.)," in "*Iurisprudentsiia*," *Vestnik MGOU* 3 (2014): 15-16, 17-19.

German occupants.”⁷⁵ Two decades later during the wave of trials against the *karateli*, a special 1962 documentary film *Why the Stones are Not Silent (Kodėl akmenys netyli)* “on the atrocities of the German-fascist accomplices against innocent people” was prepared for the exhibition “Bourgeois nationalists: the most evil enemies of the workers.”⁷⁶ Soviet propaganda consistently strove to connect the “bourgeois nationalists” to the Holocaust (without the Jews) in the public evocation. But the numerous closed trials did not have this same pedagogical drive and so it was more possible to address the Holocaust (with the Jews and without the nationalists), albeit inconsistently.

Establishing revolutionary law in Lithuania entailed the targeting of old and new enemy categories, namely kulaks, speculators, nationalists, collaborators, and “the hired dogs of the German occupants... [who have] no remorse for their committed crimes” [but] “quietly continue to live and work.”⁷⁷ In the broader postwar Soviet prosecution of treason and collaboration, many qualitatively different types of behaviors were rhetorically evoked with universal severity. But Soviet authorities did not attribute blood crimes against Jews to those who had not actually committed them.

Punishment for the sake of punishment consistently remained an aim in and of itself, but was deemed problematic if pursued at the expense of other campaigns. The structural transition to communism in Lithuania was completed in 1947, but the persistence of armed resistance exacerbated the central campaign to uncover spies and foreign agents. Major Goliakevich of the

⁷⁵ “LKP(b) CK ataskaita VKP(b) CK dėl VKP(b) CK nutarimo,” November 26, 1945, doc. 50 in *Lietuvos sovietizavimas 1944-1947 m.: VKP(b) CK dokumentai: dokumentų rinkinys*, Mindaugas Pocius, ed. (Vilnius: LII leidykla, 2015), 377 (Russian); “VKP(b) Kadru valdybos atsakingų organizatorių Kalošino ir Nikolajaus Majorovo informacinė pažyma VKP(b) CK sekretoriui G. Malenkovui,” October 15, 1944, doc. 8 in *ibid.*, 120 (Russian).

⁷⁶ Senior KGB SM SSSR investigator Nasonov, “spravka ‘O rezul'tatakh proverki sledstvennoi raboty Komiteta Gosbezopasnosti pri Sovete Ministrov Litovskoi SSR,’” April 25, 1963, LYA, f. K-51, ap. 1, b. 326, l. 76.

⁷⁷ “LKP(b) CK vadovybės kreipimasis į Lietuvos gyventojus dėl ginkluoto pogrindžio dalyvių legalizavimo,” July 30, 1946, doc. 64 in Pocius, *Lietuvos sovietizavimas 1944-1947 m.*, 507-508 (Russian).

MGB complained in 1951 that in the Lithuanian provinces “There are no arrests of spies... instead the regional departments go along the path of least resistance: documenting and arresting former German *karateli* and *posobniki*.”⁷⁸ Jews were targeted disproportionately during the anti-cosmopolitan campaign which gave rise to the Soviet political joke in 1949—*In order to avoid being branded an anti-semite, call a Jew a cosmopolitan*.⁷⁹ Amir Weiner writes that while Soviet security meticulously documented anti-Jewish massacres and punished the perpetrators, the authorities “made it clear that the surviving Jews were subject to the same policies as the rest of the population, no matter how traumatic their experience had been.”⁸⁰ This is why the Martišius cousins, in 1951, could be prosecuted for involvement in the murder of Jews while, simultaneously, a group of Jews from Šiauliai were prosecuted as Zionist spies in a high-profile trial against “Jewish bourgeois nationalists” whose case was closed “as with the *karateli* [*kak na karatelei*].”⁸¹

Until the second wave of trials against the *karateli* in which Jewish specificity significantly increased in the internal correspondence, whether to emphasize Jews seemingly depended not so much on chronology (e.g., before or after Stalin’s death), but upon the initiative of individual case managers or under which particular campaign the trial fell. Trial dynamics did not always conform to central objectives or necessarily follow clear chronological patterns. Sometimes there were discrepancies in approach among local authorities in Soviet Lithuania, central authorities in Moscow, and the provincial prison administration; other moments showed

⁷⁸ Head of 2nd Dept. UMGB Goliakevich, “Protokol operativnogo soveshchaniia rukovodiashchego sostava i operativnykh rabotnikov operotdelov UMGB po Klaipedskoi oblasti,” August 3-4, 1951, LYA, f. K-51, ap. 1, b. 123, l. 151.

⁷⁹ Dora Shturman and Sergei Tiktin, eds. *Sovetskii soiuz v zerkale politicheskogo anekdota* (London: Overseas Publications Interchange Ltd., 1985), 414.

⁸⁰ Weiner, *Making Sense of War*, 211-12.

⁸¹ 2nd Dept. MGB Lt. Cl. Chernikov, protocol from August [2], 1951, LYA, f. K-51, ap. 1, b. 123, l. 83.

uniformity in, or conformity to, the “pan-Union” project of punishing collaborators. Open trials from 1944-45 illustrated the initial perceptual shock and unprecedentedness of Nazi atrocities and racist ideology targeting Jews amid the general depravity of the wartime moral order.⁸² Coinciding with the Soviet re-annexation of Lithuania into the USSR, these trials served the dual purpose of publically confronting the Nazi moral order and projecting the legitimacy of Soviet rule amid the threat posed by nationalist resistance. Such trials satisfied the desire for revenge among locals and were meant to clearly connect those who had behaved like Dzena (i.e., enthusiastic participation in Nazi policy) to the nationalists.

Authorities strove to connect the killing fields to the death camps during the immediate European-wide moment of justice “before all the world,” but after the initial shock of the Nazi methods and tacit international acceptance of Lithuania as a Soviet republic, authorities viewed open trials with less utility. The case against Černiauskas in Poland in the aftermath of Nuremberg focused explicitly on murders of Jews and modeled the punishing aspect of Soviet repatriation within an international context of retribution. Žitkus’s Special Board case obscuring Jews paralleled the intensified campaign against “harmful elements” and internal nationalist resistance actually or seemingly threatening Soviet security at home and abroad. The Martišius cousins were sentenced in 1952 just before the apex of the most visible manifestation of Soviet state antisemitism—the murder of the Jewish Anti-Fascist Committee and onset of the Doctor’s Plot. Contradictorily, the Martišius trial became, at its core, about justice for Jews.

Not all who found themselves in interrogation cells and courtrooms in Soviet Lithuania as perpetrators of the Holocaust self-identified as Lithuanian nationalists, while others tried to downplay what might have been bonafide nationalistic motives. In some cases, attempts on part

⁸² See Jeremy Hicks, “‘Too gruesome to be fully taken in’: Konstantin Simonov’s ‘The Extermination Camp’ as Holocaust Literature,” *Russian Review* 72 (April 2013): 242-259.

of Soviet authorities to make the connection between nationalists and blood crimes fizzled out. The men in the cases explained themselves in the familiar terms of *I was only doing my job*. Once convicted, they often expressed the self-positioning: *I am guilty but how can I prove my worth now?* A schema of *I needed a job* often framed how these perpetrators of the Holocaust in Lithuania expressed themselves vis-à-vis the Germans with whom they had been accused of collaborating, and a schema of *I am useful to the new state* tended to frame their appeals to the Soviet authorities either under interrogation, at trial, or in rehabilitation appeals. When the individuals under interrogation expressed their wartime behavior vis-à-vis the murder of Jews, many admitted to participating in situational events that were part of the murder process but distanced themselves from broader responsibility. The individuals maintained a similar cognitive/interpretive stance: *I did not personally shoot (I did other things), thus I did not participate (because I did not personally shoot)*.

From the authorities' view, not having pulled a trigger was a mitigating circumstance but not enough to evade responsibility. Stills of film footage from the "The People's Murderer Court [*Liaudies žudikų teismas*]" by R. Gabalis in 1961 depict "a small courtroom full of people" there to observe and testify in a trial against policemen. The camera zooms in on the case dossier (*delo, byla*), the trembling hands of a woman who testifies about the "shooting of Jews in 1941-42" and the "postwar terror," and the defendant, Stoškus, as he answers to the judge and "energetically gestures his hands, seemingly to condemn others [*atrodo—smerkia kitus*]" perhaps who did things he perceived as worse.⁸³

By the mid-1960s the Soviet government had amassed a large body of appeals for rehabilitation from those who had committed "crimes against Soviet power during the Great

⁸³ R. Gabalis, "Liaudies žudikų teismas," 1961, Lithuanian Central State Archive (Lietuvos centrinis valstybės archyvas) (LCVA), VX, nr. 01(35), sequence 1228/35.

Patriotic War” defined as “assistance to the occupants, service in the police and *karatel'nykh* groups, etc.” In 1966 chief investigator, Major Kažis, of the KGB LSSR noted that some “only complain about long sentences, their health, difficult family situations” but commended the rest in that “they generally understand the gravity of their committed crimes, and condemn them.”⁸⁴ Whether the gravity was in acting against the state, or participating in the Holocaust was often left to individuals to navigate. Only Žitkus condemned his own complicity in the fate of the Jews but like Martišius in the end was not uncovered as a *karatel'*. A few months before the 1955 amnesty Žitkus’s remaining time was shortened for not participating (*not shooting, not guarding*) in atrocities but he remained in prison as an irredeemable category (*nationalist*). Even while the court had determined that Martišius did not personally participate in shootings (*pulling the trigger*), his participation in atrocities (*guarding*) precluded his own redeemability in 1959. But Černiauskas, whom authorities first denied release for “directly” participating in the murder of Jews (*shooting*), was freed a year later in 1964. With the 20th anniversary of the Great Patriotic War approaching, some Soviet authorities determined that retribution had been accomplished while the state continued to launch new cases or revisit old ones.

The Holocaust ‘On Stage’/‘Off Stage’: *What do they know about the Jews?*

The USSR used war crimes trials to make the West address the Holocaust in the East. The establishment of West Germany in 1949 inaugurated a ceasing of prosecutions of German war criminals and public silence about the past. The year 1958 was significant, however, because West Germany held a trial in Ulm against ten members of the *Einsatzgruppen* who had participated in the murder of 5,000 Jews in Lithuania. According to historian Dieter Pohl, the

⁸⁴ KGB LSSR Maj. Kažis, “spravka ‘O vstrechakh i besedakh s zakliuchennymi, otbyvaiushchimi nakazanie v Dubravnom ITL,’” July 22, 1966, LYA, f. K-51, ap. 1, b. 326, l. 207.

trial was important because it challenged the German public's conception of the geography of the Holocaust and also marked a change in the way trials in West Germany were instigated. After the Ulm trial, Pohl asserts, the West German state became more proactive in seeking out perpetrators:

One of the most important and immediate political fall-outs of the Ulm trial was that justice ministers in West Germany, spurred on by the realization that many grave Nazi crimes in Eastern Europe were left uninvestigated, completely reversed the existing investigation procedure. They no longer relied on coincidences to bring Nazi crimes to light but rather on systematically investigating them.⁸⁵

The change in West German approaches to war crimes prosecutions presented the opportunity for collaboration between the Soviet and West German states toward investigating Nazi crimes on Soviet territory.

From 1963-69 the central Soviet prosecutor's office mobilized the Soviet of Workers Deputies in Lithuania to investigate local Holocaust crimes. This was initially done for the purposes of collecting material on "the guilt of German criminals" to be used as legal aid to West Germany in the Frankfurt Auschwitz Trial.⁸⁶ It seems that the West German authorities had requested Soviet help, but it is also possible that the Soviet prosecutors initially volunteered the effort. Regardless, international cooperation between West Germany and the Soviet Union was envisioned. However, over several years of investigations, most of the witnesses had attested

⁸⁵ Sonia Phalnikar, interview with Dieter Pohl, "Landmark Trial Pushed Germany to Tackle Nazi Past (English)," *Deutsche Welle*, May 20, 2008, accessed March 7, 2020, <https://www.dw.com/en/landmark-trial-pushed-germany-to-tackle-nazi-past/a-3349537>.

⁸⁶ Head of Executive Committee of the Soviet of Workers Deputies of the LSSR I. Glovackas, "pažyma [spravka]," October 22, 1969, LYA, f. K-40, ap. 2, b. 65 ("Materialy, sviditel'stvuiushchie o prestupleniakh, sovershennykh v gody gitlerovskoi okkupatsii litovskoi sssr nemtskimi natsistami shakiaiskogo raiona"), l. 4.

primarily to the culpability not of the Germans, but to that of themselves and other Lithuanians.⁸⁷ In the end, it appears that the material was sent neither to Moscow nor to West Germany.

In the example of the Šakių region of Lithuania, it is clear that the investigations were conceived as aiding in the interests of the party-state. They were conducted under the auspices of the Soviet of Workers Deputies, one of the oldest party institutions, as an embellishing gesture towards condemning the capitalist west. But in the effort to uncover more information about “the guilt of German criminals [*v sbore i vyjavlenii dokazatel'stv vinovnosti nemetskikh prestupnikov*]” in shootings, the investigators had been unable to clearly delineate responsibility between the organizers and the implementors.⁸⁸ Kazimiras Šapauskas recalled how “at the beginning of July 1941 [...] the Germans with the help of local *karateli* shot the Jewish men in the town.” He clarified that “Lithuanian *karateli* convoyed them to the place of shooting but the German soldiers did the shooting.”⁸⁹ He then described later shootings of the remaining women, children, and elderly but could not identify in this instance who had participated in the shootings. He was unable to satisfy the request to give specific German names or to identify “which officer organized the shootings.” As mentioned, nothing seemed to have come of the material as the Auschwitz Frankfurt Trial came and passed.

Then, from 1965-67, especially, authorities launched “a series of complex group criminal cases against former participants of various punitive and bandit formations” with special effort to find out everything “[the accused] knows about the mass shootings of Jews [*kas jam žinoma apie*

⁸⁷ Ibid., ll. 11-12, 23.

⁸⁸ Protocol from October 23, 1963, *ibid.*, l. 4.

⁸⁹ *Ibid.*, l., 11.

masinį žydų tautybės asmenų šaudymą].”⁹⁰ This was perhaps in response to the West German trials, which had failed to bring most of the leading SS officers to account. Most of these trials were closed, such as the Molėtai proceedings to be described below, but authorities were to look for particularly demonstrable cases of people who had been part of official anti-Soviet nationalist groups and whose main crimes were against Jews.

In Soviet Lithuania, Head of the Lithuanian KGB Lieutenant-Colonel E. A. Kisminas chose the “most characteristic” ones for publicizing in the local and all-union press. In his view, the case against Kazimeras Dagis, Stiaponas Lasas, Stasis Varnas, Piatras Strumskis and others was exemplary: the men needed to be “former members in an insurgent battalion” and to have “personally participated in mass murders of Soviet-party workers, komsomols, and the Jewish population,” with atrocities against Jews the main emphasis. It was so important to emphasize Jews in relation to non-Jews that the victims of the group including Kazimeras Dagis and others were marked, literally, down to the last number: “3,200 Jewish men, Jewish women, and Jewish children, five Lithuanian Communists, one Pole, and one partisan [*3200 evreev, evreek i evreiskikh detei, 5 litovskikh kommunistov, 1 poliak i 1 partizan*].”⁹¹

The group case against Dagis and others was ideal for authorities because “alongside the defendants, a number of other bourgeois nationalists who found refuge in the West were exposed as the worst enemies of the Lithuanian [*not Soviet*] people.” As in Poland, war crimes trials were also used to solidify national belonging in postwar society and to reconfigure the parameters of

⁹⁰ Protocol of Vincentas Zukauskas, December 9, 1965, LYA, f. K-1, ap. 58, b. 47482/3 tom. 5, microfilm A1640, l. 3ap; Kisminas, “spravka ‘o sostianii sledstvennoi raboty Komiteta gosbezopastnosti pri sovete ministrov litovskoi sssr i o khode vypolneniia trebovanii prikaza kgb pri sovete ministrov sssr no. 085 ot 5 marta 1966 goda’,” October 25, 1966, LYA, f. K-51, ap. 1, b. 359 [“Informatsionnye soobsheniia, spravki sledstvennomu otdelu KGB SSSR o vzbuzhdennykh ugolovnykh delakh (antisovetskaia agitatsiia, sozdaniia antisovetskikh organizatsii, rasstrely evreev) 1967-69”], l. 60.

⁹¹ Summary by Head of KGB LSSR Alfonsas Randakevičius, June 10, 1965, LYA, f. K-51, ap. 1, b. 326 [“Informatsionnye soobsheniia i spravki o rabote sledstvennogo otdela, po rassledovaniiu ugolovnykh del. 1963-1966”], l. 13.

“good” behavior. But these trials were also aimed with an eye to the Lithuanian diaspora abroad. The pedagogical message was that a “good Lithuanian” (wherever he or she may be) should support Soviet policies, precisely because the chosen manifestation of anti-Soviet resistance had so often been the murder innocent people, namely Jews, and also Lithuanian Communists.

Gathering material against “active Nazi criminals who committed grave atrocities against peaceful civilians during the Great Patriotic War on the territory of the republic” was to be carried out with “great attention” since they were to be “submitted through diplomatic channels to the capitalist countries.”⁹² The Soviet state was invested in emphasizing the connection between ethnic “bourgeois nationalism” and the Holocaust to expose Lithuanian war criminals residing in the west. Therefore, when the USSR revisited its archive of prosecutions authorities aimed to find who had belonged to the nationalists and who had harmed Jews.

But what of the closed trials that did not make it through the diplomatic channels, such as the Molėtai proceedings? In October 1965 Jonas Starkus insisted, “I personally did not shoot the Jewish citizens who were condemned to death that day, but only drove them to the pit.”⁹³ In 1966 Starkus recanted earlier testimony to resist the nationalist association: “I never belonged to a bourgeois nationalist gang and I never convoyed any Jews to the place of shooting.”⁹⁴

Bronius Žvinys had been arrested in 1950 and was put on trial again in the 1960s with Starkus and several others when it was uncovered that he had participated directly in shootings. Although others had placed him at the site of shootings, Žvinys insisted to have always been somewhere else particularly on the day of a given shooting. “I didn’t shoot any citizens of Jewish nationality [in Molėtai] because at the time I was serving in the 7th police force in Vilnius,” he

⁹² LYA, f. K-51, ap. 1, b. 359, ll. 60-61; 68.

⁹³ LYA, f. K-51, ap. 58, b. 47482/3 tom. 1, l. 256ap and 259.

⁹⁴ Ibid., tom. 5, microfilm A1640, l. 79: “Aš asmeniškai tą dieną pasmerktų mirčiai žydų tautybės piliečių nešaudžiau, o juos tikrai nuvarydavau prie iškastos šaudymui duobės.”

said in July of 1965.⁹⁵ In his earlier trial he was pinned as having guarded Jews during shootings outside of Vilnius at Paneriai. But he had distanced himself by emphasizing that in Vilnius his role had been that of instructor in the police academy—“I personally [*asmeniškai*] did not go to Paneriai to guard Jews during shootings. Whether the students of the Vilnius police school went there, I don’t know. [...] Maybe they went to Paneriai during the punitive operations against partisans, but if they did, they never talked about it at school.”⁹⁶ Bronius’s brother, Jonas, was a local priest who used his home as a sort of spiritual and logistical base for partisans. He had been arrested after the war for anti-Soviet resistance and served a ten-year sentence, but it was suspected among the people of Molėtai that he had also been involved in shootings. It appears that he later worked in the KGB which may have accounted for why he managed to stay under the radar while his brother went back on trial. Jonas Žvinys had a sister whose grandson married a woman named Rita Pivoriene. She recalled how even though the subject of the what happened to the Jews had been taboo, a schoolteacher had once chastised “the priest who together with his cross went to shoot Jews.” Pivoriene heard “from people” (her teacher, the babysitter, her father, among others) that “the priest really shot Jews. And so did the brother.”⁹⁷

This process of “uncovering especially dangerous state crime [participation in shootings of Jews] [...] and the strengthening of socialist law [prosecuting uncovered *karateli*]” was a continuation of earlier proceedings.⁹⁸ Soviet authorities had been quietly issuing the death penalty for crimes against humanity, rebranded as ‘dangerous crime against the state’, after the 1955 amnesty since at least 1958. Authorities in both West Germany and the Soviet Union opted

⁹⁵ Ibid., tom. 1, l. 225.

⁹⁶ Ibid., tom. 2, l. 121.

⁹⁷ Testimony presented in Arkadijus Vinokuras, *Mes nežudėme* (Vilnius: Lietuvos gyventojų genocido ir rezistencijos tyrimo centras, 2017), 114-15, 123.

⁹⁸ LYA, f. K-51, ap. 1, b. 359, l. 71.

to use their own legal code for the prosecution of extraordinary wartime crimes. The USSR did this by for the most part by reinterpreting crimes against humanity as anti-state crime to ascribe murder, while West Germany used law on murder.

Communist justice wanted its citizens to perceive state and people as a holistic unity. As the Soviet Union extended its direct or indirect influence in Eastern and Central Europe, one of the Communist responses to fascist atrocity was to expand understandings of community by building a more inclusive society under the mantra that crimes against the state were to also be understood as crimes against its individual members. This was especially evident in trials of the members of Lithuanian nationalist battalions that had regularly carried out shootings of Jews. In a trial against Adomas Petronis in 1958, it was evident that the “especially grave” nature of the crimes was his participation in shooting civilian Jews. In a contemporaneous case against Algirdas Petronis, however, authorities interpreted the ‘gravity’ as acting against the state. And yet, in this instance, the gravity was in acting both against the state and also against its people, mutually: “Petronis committed especially grave crimes against the Soviet state, against its people.”⁹⁹ The death penalty—secret and determined in closed trials—was enforced in both of their cases. The point, in Petronis’s case, was *not* that he had harmed the state, but that he had harmed people and that these people were Jews.

Earlier in the chapter I mentioned the Soviet political joke *in order to avoid being called an anti-Semite, call a Jew a cosmopolitan* which developed in the late 1940s to ascribe the antisemitic unfolding of the anti-cosmopolitan campaign. Here I want to reemphasize the earlier point in the present chapter that at the height of the anti-cosmopolitan campaign against Jews in

⁹⁹ President of the Collegium of the LSSR Supreme Court Miežėnas, “*Nuosprendis*,” November 27, 1967, LYA, f. K-15, ap. 2, b. 24 [Case against Algirdas Petronis], ap. v. 127: “Petronis įvykdė ypatingai sunkų nusikaltimą prieš Tarybiną Valstybę—prieš jos liaudį.”

the early 1950s, non-Jewish Holocaust perpetrators were simultaneously being prosecuted for their wartime crimes against Jews. I want to offer my own aphorism, which never existed and which I have made up, to capture the nature of Holocaust retribution in the USSR as I interpret it—in order to pursue a measure of justice, call a perpetrator a traitor.

In fall of 1969, central authorities tried to renew the investigative process that had been initiated in 1963 as legal aid for Germany in the Auschwitz Frankfurt Trials. This was likely on the basis of what had taken transpired at the International Conference on the Repatriation of Nazi Criminals which took place in Moscow in March of 1969 on the theme “Retribution is Inevitable.”¹⁰⁰ The senior investigator of the Soviet KGB, Lieutenant-Colonel Nasonov, sent his subordinating head in Vilnius, Lt. Kisminas, some material to assist in “proving the guilt of Nazi war criminals,” a publication from that year’s International Conference on the Pursuit of Nazi Criminals entitled “Responsibility for War Crimes and Crimes against Humanity.”¹⁰¹

So in the fall of 1969 the same investigations under the auspices of the Soviet of Workers Deputies started again, with the same goal of uncovering and prosecuting German Nazis, and with the same difficulties in navigating responsibility. Jouzas Masteikas insisted that “the shooting was primarily carried out by the forces of Lithuanian *karateli*-white bands and the police.”¹⁰² Investigators pressed for any details about German activity. Pranas Miliusas could not give any German names but nevertheless assured that “not one [shooting] was carried out

¹⁰⁰ For the conference itself, see G. N. Aleksandrov and M. Iu. Raginskii, ed., *Vozmezdie neminuemo': Mezhdunarodnaia konferentsii po voprosam presledovaniia natsistskikh prestupnikov* (Moscow: Izdatel'stvo Agentstva pechati Novosti, 1969). I have not had access to this publication. The sound recordings of the proceedings are located in GARF, f. R9557, op. 1, d. 16. In June 2016, I was not granted access upon request.

¹⁰¹ Note from KGB SM SSR Senior Investigator Nasonov to Head of LSSR KGB E. A. Kisminas, May 6, 1969, LYA, f. K-51, ap. 1, b. 347 [“Perepiska KGB LSSR s KGB SSSR po peresylye sekretnoi informatsionnoi literatury 1965-71], l. 147.

¹⁰² LYA, f. K-40, ap. 2, b. 65, l. 18.

without the participation of the Germans [*bez uchastiia nemtsev ne proizvodilsia ni odin*].” When the 46-year old, Bronius Merkevičius, was prompted by Senior Lithuanian KGB Investigator Stanislovaitis to recall what he knew about the “crimes committed by the German Nazis” Merkevičius explicitly evoked their systematic anti-Jewish measures:

At the very beginning of the German occupation—and the town of Šakiai was occupied by the Germans on the first day of the Second World War—the Germans started to persecute the Jews.¹⁰³

And then “on the third day of the occupation all the Jewish men were arrested by our punitive squad and taken to be shot,” recalled Antanas Lapinskas, “at the orders of the German occupational power” in the nearby Kudirkos Naumiestis. “I should mention that on the second day of the occupation the Germans shot Lithuanian [Communist] activists,” he added. “In fall of 1941 I had to personally participate [*mne lichno prishlos*] in the mass shooting of the remaining Jews—women, children, and the elderly” during which time “I saw everything and had to shoot myself for a little while.” Did he *have* to? Many who had initially consented to join the shooting expeditions described their prolonged participation in terms of coercion. He continued:

During the shooting all the participants were given vodka, which we drank. A German officer who arrived at the place of shooting from Schirwindt organized the shooting and directly led this shooting.¹⁰⁴

Pranas Rutkauskas, upon recounting his own participation in the white bands, which he joined only after the first shootings in the area had occurred, testified:

¹⁰³ LYA, f. K-40, ap. 2, b. 65, l. 24: “a takzhe mne prishlos’ nekotorye vremia samomu rasstrelivat’.”

¹⁰⁴ LYA, f. K-40, ap. 2, b. 65, ll. 34-36: “organizoval rasstrel i neposredstvenno rukovodil etim rasstrelom.”

I don't know how many people were shot then. Before the war there were quite a lot of Jews in Kudirkos Naumiestis, but I can't say exactly how many. I can't tell about anything more concrete. I've said all I knew. I don't remember the name of the German punitive organs.¹⁰⁵

That locals had helped commit German atrocities against Soviet citizens (albeit citizens only since 1940), and that these victims were mainly Jews, and that everyone in the surrounding area had known what was happening was not new information to Soviet authorities in 1963 nor in 1969. The USSR had been consistently prosecuting Holocaust perpetrators in Lithuania since 1944. But this represented a return to earlier processes in order to make new meaning of the consequences of war and Holocaust.¹⁰⁶

To Soviet authorities, one of the most meaningful aspects of postwar justice had been their prosecution of collaborators, many of whom had participated in the Holocaust. Schirwindt, the former Prussian-German border town from which the German SS officer presiding over shootings in the area of Šakiai had commuted, was bombed by the Red Army in 1944 and no longer exists. The witnesses and former white band members could not remember the names of any German officers, although Rutkauskas had identified the presiding German SS officer as a certain "Officer Bengels." But as a "Bengel" in German is a "villain" or "scoundrel" it seems likely that the German "Bengels" was a synecdoche for missing names to satisfy the developing command to remember always, never to forget, and to emphasize a very clear narrative on what had happened to whom and by whom during the war:

¹⁰⁵ LYA, f. K-40, ap. 2, b. 65, ll. 73-74.

¹⁰⁶ David Shneer advances this argument in *Through Soviet Jewish Eyes* (New Brunswick, NJ: Rutgers University Press), 218, 224.

In 1941-1942 near the town of Šakiai on the edge of the Batiškės Forest the residents of Šakiai and the surrounding region who were of Jewish nationality and Soviet activists who were Lithuanians were shot by German Nazis with the help of Lithuanian nationalists.¹⁰⁷

But when the opportunity presented itself, the USSR welcomed the chance to further expose the hypocrisy of the West and its Cold War amnesia about the consequences of Nazism (illustrated by the acquittal or lesser sentencing of German SS officers at the Auschwitz Frankfurt Trials and the American staffing of former Nazi officials in the ranks of the West German Federal Intelligence Service). Soviet authorities were keen to reemphasize the guilt of the “Bengels” (and the ‘bourgeois nationalists’ hiding out in the west by association) in order to cement the image of Soviet wartime suffering through imagery of Jewish suffering. But in Lithuania, this amounted to a sort of de-Sovietization of suffering: in addition to specifying that most of the murdered “peaceful Soviet citizens” had been Jews (“*buvo sušaudyta 602 moterys, vaikai ir seniliai—žydai*”), it was also necessary to emphasize that most of the murdered “Soviet activists” had been ethnic Lithuanians (i.e., not Jews, not Russians).

In most trials against non-Jewish perpetrators in Lithuania, it was evident over time that the “gravity of the crimes” was really in the crimes themselves, articulated most specifically in two of a host of cases between 1958-60 dealing with Lithuanian perpetrators whose transgression was “personal participation in mass murder [*asmeninis dalyvavimas masinėse žudynėse*]” of Jews:

¹⁰⁷ LYA, f. K-40, ap. 2, b. 65, ll. 1ab, 75.

Zamauskas and Medišauskas committed very grave crimes, and the Justice Collegium finds no mitigating circumstances for their atrocities, crimes against humanity, and therefore specifies the most severe punishment.¹⁰⁸

In Soviet courts, at least in Lithuania, where much of the Holocaust had taken place, this was not a charge that Jewish collaborators ever saw, as we will see in chapter four.

After the Eichmann trial in 1961, the Soviet Union wanted to send the message that it, too, could provide justice for Jews, along with a clear statement on fault. For many Jews, that the Soviet authorities had prioritized punishing local perpetrators had evidently not been clear; recalling that when authorities closed the Jewish Museum in Vilnius in 1949 the staff thought it was because exhibitions depicted the role of Lithuanian nationalists in shootings.¹⁰⁹ If Jews did know about the prosecutions, they had not understood that it was impermissible to engage the public with the relevant content; immediately after the war, it had been permissible to hold public meetings on the streets in Vilnius to speak about what had happened to the Jews. Towards the end of the 1940s, the government began to publicly condemn “Jewish bourgeois nationalists” while simultaneously quietly continuing to prosecute participants in shootings of Jews. In the 1960s, authorities in the USSR utilized the Eichmann moment to do ‘on stage’ that which for the most part had been an off-stage production. Retribution for the Holocaust in its various waves and manifestations was not only a pedagogical performance to advance state goals, but a fundamental reckoning with the destruction of Jews.

¹⁰⁸ LYA, f. K-15, ap. 2, b. 24, ap. v. 202: “Zamauskas ir Medišauskas įvykdė labai sunkų nusikaltimą ir tokių švelninančių aplinkybių skiriant bausmę Zamauskui ir Medišauskui už jų žvėriškumus, nusikaltimus prieš žmoniją, Teisė Kolegija neranda ir todėl skirtina pati griežčiausia bausmė.”

¹⁰⁹ LYA, f. K-51, a. 1, b. 62 (“Dokładnye zapiski i spets. Soobshcheniia, vozrashchennye iz TsK KPL(b), svedeniia o litovskoi obshchine v SShA i prochee 1948-1951”), “Provedennye organami MGB repressii v otnoshenii evreiskikh natsionalistov, na protiazhenii 1946-47 i chastichno 1948 godov kosnulis’ ne tol’ko kadrovyykh sionistov, vozglavivshikh nelegal’nuiu rabotu, no i, na pervyi vzgliad, prosovetski nastroennykh evreev i dazhe chlenov partii,” l. 87.

Conclusion

As the West inaugurated an era of Holocaust retribution with the onset of the Eichmann trial in 1961, the Soviet Union was entering a second phase which continued until the end of the state itself. The prosecution of the Holocaust in local criminal trials was a vehicle for revolutionizing new territories and maintaining revolution in old ones but did not preclude the pursuit of justice for murdered Jews. Regardless of high politics, trials generated contemplation about participation in the Holocaust. Case handlers, witnesses, and defendants approached the murder of Jews as a holistic process but understood “participation” differently. The *karateli* were always understood as male, particularly because of the dynamics of shooting, while the primacy of social categories in Soviet justice made it difficult to address the legacies of antisemitism.

Non-racialized conceptions of Soviet nationality policy ensured that crimes against Jews were punished and openly discussed in interrogation cells and courtrooms, but the degree varied from case to case. Despite the long history of Soviet-perpetrated atrocities, only the Nazi moral order in the east in territories both within and outside Soviet occupational or state borders had made possible, openly condoned, and actively encouraged the mass murder of Jews; participation was punished, albeit inconsistently, in the Soviet moral order. At times, Soviet legal and penal practices generated both the physical and conceptual space for crafting memories of the Holocaust repressed elsewhere in Soviet society, even if those same practices impeded a full engagement with the topic of the destruction of European Jewry. The next chapter probes the experiences of Jewish victims who found themselves caught up in processes that had made the Holocaust prosecutable.

Chapter Four

Between Communal Judgment and State Punishment: Jews on Trial for Nazi

Collaboration

In 1944 a Polish Jew named Yankel Wiernik illegally published a pamphlet in Warsaw titled “A Year in Treblinka.” The Nazis murdered about 925,000 Jews from all over Europe, as well as many Poles, Soviet POWs, and Roma in this death camp in eastern Poland from 1942-43. Unlike the concentration camps, which were designed for imprisonment, the Nazis constructed the death camps (namely Sobibor, Belzec, Treblinka, and the Birkenau complex at Auschwitz) as sites solely for immediate mass killing, particularly of Jews. Wiernik had survived Treblinka as a carpenter and revolted with several hundred other Jews upon news of the camp’s imminent closure. Most of the Jews who fled were found and killed by the SS, but Wiernik survived and was encouraged by the Jewish underground in Poland to write a testimony, a copy of which made it into the hands of another survivor of Treblinka, Frantz Fabisian, who in August 1944 handed his copy to the Soviet Extraordinary State Commission for the Investigation of Crimes Committed by the German-Fascist Invaders on Soviet Territory (ESC). Wiernik attested to the primarily Jewish nature of the death camps and the Nazi regime’s coerced implication of Jews in the process of their own destruction. “Camps for Jews,” wrote Wiernik, “also need Jewish executioners, spies, and incendiaries. They were found [*V evreiskikh lageriakh nuzhnykh tozhe evreiskie palachi, shpiony i podzhigateli. Oni ikh i nashli*].”¹ As Omer Bartov puts it, “In the microcosm of genocide, no one can come out clean.”²

¹ “Kopiiia/perevod s pol'skogo/ "God v Treblinke"/Izdatel'stvo kordianatsionnoi komissii - 1944 g. Varshava,” State Archive of the Russian Federation (*Gosudarstvennoi archiv rossiiskoi federatsii*) (GARF), f. R7021, o. 149, d. 102, l. 52.

² Omer Bartov, “A Conversation with Omer Bartov about *Anatomy of a Genocide: The Life and Death of a Town Called Buczacz*,” (book panel, Association for the Study of Nationalities World Convention, Columbia University, New York, May 3, 2018).

One of Hannah Arendt's main criticisms of the Eichmann Trial in 1961 was that it had failed to account for the role of the *Judenrat* and the Jewish policeman, *kapos*, etc., in the Holocaust. The postwar Soviet and Polish judiciaries and the Jewish victims of the Holocaust who also utilized these institutions did not shy away from the issue of Jewish collaborators, but law and justice were not necessarily compatible partners in this endeavor. The Italian writer and Holocaust survivor Primo Levi navigated the complex implications of passing judgment upon Jews whose wartime behavior had harmed or compromised the fates, emotions, and physical well-being of other Jews during the Holocaust. In his writing, Levi was examining the universal human impulse to pass judgment in the context of philosophical contemplation on the Nazi implication of Jews in their own destruction; he was not making a claim about legal judgment in a court of law. Yet in postwar Europe, including Poland and the Soviet Union, people confronted the legal and philosophical implications of judgment most acutely in cases in which Jews were tried in legal courts for working in the Nazi-organized Jewish Councils (*Judenräte*) in the ghettos, the Jewish police, or as *kapos* in concentration camps. The moral lament enunciated by Wiernik in 1944 (that the ultimate tragedy of Nazi policy was that it compelled Jews to participate in their own murder) was evoked by Levi in his seminal essay on the topic, the "The Drowned and the Saved" in his 1947 autobiography *If This is a Man*:

We are more particularly interested in the Jewish prominents, because while the others are automatically invested with offices [...by...] virtue of their natural supremacy, the Jews have to plot hard and struggle to gain them. [...] They are the typical product of the structure of the German Lager: if one offers a position of privilege to a few individuals in a state of slavery, exacting in exchange the betrayal of a natural solidarity with their comrades, there will certainly be someone who will accept. [...] Survival without renunciation of any part of one's own moral world—apart from powerful and direct

interventions by fortune—was conceded only to very few superior individuals, made of the stuff of martyrs and saints.³

For Levi, the “incurable nature of the offence”—the deepest hurt of the Holocaust—was the moral degradation of Jews under Nazi conditions: “It is foolish to think that human justice can eradicate it.”⁴ Levi ended his essay about Jews who harmed as a mechanism of survival by evoking the fate of a French Jew named Henri: “I would give much to know his life as a free man, but I do not want to see him again.”⁵ Levi did not envision postwar retribution against Jews; when he thinks of Henri, Levi envisions him as “free,” that is, not imprisoned.

Contemporaneous to Levi’s early writings, in the 1940s and 1950s many Jews were put on trial in both secular state and Jewish communal courts for collaborating with the Nazis and contributing in some way to harm against other Jews. This chapter argues how competing configurations of a place for Jews in postwar society sometimes criminalized Jews’ wartime experiences in the very context of trying to overcome the consequences of the Holocaust.

As the previous two chapters have shown, Communist states in spaces of Jewish loss after the war were interested in expanding the boundaries of criminal liability in direct harm after the Holocaust. As Levi reminds us, Jews, due to the nature of Nazi policy, were in situations whereby Jewish individuals were intimately involved in direct acts of harm. This chapter explores the ways in which Jews occupying ‘privileged’ positions during the Holocaust were implicated by state actors in the legal category of “collaborator” and/or judged by fellow Jewish survivors as responsible for causing harm to other Jews. It follows the same line of analysis as

³ Primo Levi, “The Drowned and the Saved” [1947] in idem., *If This is a Man*, and, *The Truce*, Stuart Woolf, trans. (London: Abacus Books, 1987), 96-98.

⁴ Idem., “The Thaw” [1963] in *ibid.*, 188.

⁵ Idem., “The Drowned and the Saved” [1947], in *ibid.*, 106.

case studies in the two previous chapters: how authorities, witnesses, victims, and defendants assessed and ascribed personal guilt in Nazi policies.

Trials afforded the opportunity for Jews to judge the wartime conduct of ‘privileged’ Jews who, in their eyes, should have behaved differently. Primo Levi insists that the Jews in the “gray zone” should not be judged, but judges them despite himself, which cultural scholar Adam Brown describes as Levi’s “paradox of judgment.”⁶ Beyond the camps, at the end of his life Levi extended the gray zone “albeit to varying degrees” to “Quisling in Norway, the Vichy government in France, the Judenrat in Warsaw, the Saló Republic in Italy, right down to the Ukrainian and Baltic mercenaries employed elsewhere for the filthiest tasks (never in combat) and the *Sonderkommandos*.”⁷ Levi, according to Brown, thus implies that Jewish collaboration “may be compared to and contrasted with collaborators for whom the level of coercion was of an entirely different kind, if coercion existed at all (which in some cases it did not).”⁸ As this chapter on Jewish collaboration follows two respective chapters on non-Jewish collaboration in Poland and Lithuania, the comparison in my dissertation is evident.

Yet, an analysis of these Jews’ fates at trials is necessary not because Jewish collaboration is analytically parallel to non-Jewish collaboration, but because it helps us better understand the nexus of responsibility and the rhetorical distinctions that Communist regimes made, or sometimes did not make, between the collaborator category and Holocaust perpetrators. Throughout the chapter I place the legal frameworks of judgment against Jews in context with

⁶ Adam Brown, *Judging ‘Privileged’ Jews: Holocaust Ethics, Representation, and the ‘Grey Zone’* (New York: Berghahn Books, 2013), 54.

⁷ Primo Levi, “The Gray Zone,” in *The Drowned and the Saved*, translated by Raymond Rosenthal (New York: Simon and Schuster Paperbacks, 1986), 31.

⁸ Brown, *Judging ‘Privileged’ Jews*, 54.

the philosophical frameworks Primo Levi was simultaneously writing about in artistic autobiographical prose.

The honor trials under auspices of Jewish communal institutions allowed for the possibility of judgment (of conduct) without the problem of legal punishment. Yet, as this dissertation is occupied with the latter, in this chapter I focus explicitly on cases in the state courts in People's Poland and Soviet Lithuania as it shows how the impulse to reckon with harm fared in a legal arena (where punishment is a *raison d'être*) but the categories (Jewish and non-Jewish) in the offence were not neutral. Levi in 1947 asked "if it is necessary or good to retain any memory of this exceptional human state" before affirming in the text that "no human experience is without meaning or unworthy of analysis." However, Levi reminds us that all meaning disappears when necessary distinctions are amalgamated.⁹ I argue that even while practices of Holocaust justice behind the Iron Curtain subsumed Nazism's main victims into categories of guilt, a modicum of distinction was still preserved between wartime atrocity and the genocide of the Jews; if not necessarily in outcomes of punishment, at least in outlook.

Some Jewish individuals and institutions were prefiguring a sort of 'truth and reconciliation commission' for themselves which also manifested in the wider spaces of postwar Communist society. Truth and reconciliation commissions (typically focusing on reconciliation rather than retribution) developed in 1996 after the end of apartheid in South Africa.¹⁰ In trials under official Jewish communal auspices (which occurred in Poland but apparently not in Lithuania) punishing measures included loss of voting rights or material benefits. In the first synthetic study of the phenomenon of postwar Jewish honor courts, in which Jewish

⁹ Levi, "The Drowned and the Saved" [1947], 93.

¹⁰ Berel Lang, "Reconciliation: Not Retribution, not Justice, Perhaps not even Forgiveness," *The Monist* 92, no. 4 (October 2009): 607-608.

communities across Europe conducted trials against Jewish collaborators, the editors write that they were “of limited punitive power, because the court’s decisions were not binding on nonmembers and had no legal relevance outside the respective body.”¹¹ But in the cases in which Jews used tools of the secular state (the courts) to address internal harm in both Poland and Lithuania, legal punishment such as death sentences (although usually commuted) and prison terms was a tangible outcome.

This main case study with which this chapter begins demonstrates the dynamics of reckoning with personal wartime conduct while navigating ascription into both the Jewish community and the postwar socialist one. The analysis then moves to elucidate the deeper issues at play in prosecutions by discussing how the Central Committee of Jews in Poland [*Centralny Komitet Żydów w Polsce*] (hereafter CKŻP) as an institution configured Jewish ‘honor’ amid political and social tensions in the aftermath of the Holocaust. The institutional analysis in Poland foregrounds the differentiated postwar cultural, social, and legal contexts for Lithuania, demonstrated in the latter half of the chapter, and the positions the accused Jews in Lithuanian state courts found themselves in.

Jews who organized or participated in trials against other Jews for collaboration were participating in what David Engel describes as “action to settle accounts with those who they believed had transgressed the boundaries of morally obligatory communal solidarity.”¹² This was certainly true for many Jews, particularly religious ones, and for formal Jewish organizations interested in building postwar Jewish communal solidarity and cohesiveness—such as the CKŻP which controlled the honor courts in Poland, rendered as civil or social courts (*Sąd*

¹¹ Laura Jockusch and Gabriel N. Finder, “Revenge, Retribution, and Reconciliation in the Postwar Jewish World,” in *Jewish Honor Courts: Revenge, Retribution, and Reconciliation in Europe and Israel after the Holocaust*, ed., idem. (Detroit: Wayne State University Press, 2015), 3.

¹² David Engel, “Why Punish Collaborators?” in *ibid.*, 30.

Obywatelski/Społeczny przy Centralnym Komitecie Żydów w Polsce). Engel also writes that “European Jews who survived the Holocaust had no governmental apparatus of their own” and thus “could not wield the power of the state on their own behalf to prosecute those of their number who they thought had done them wrong under Nazi rule.”¹³ But Jews in Poland and especially Lithuania *did* use the power of the state for this aim, not always on behalf of the Jewish community as a whole but certainly on behalf of themselves as individuals. For the many Jews from differing geographic, political, social, and religious contexts, the only thing they shared in common with one another was that they had been grouped by the Nazis and their local collaborators as targets for systematic murder, evoking Julian Tuwim’s early postwar refrain from chapter one that “the blood of Jews (not ‘Jewish blood’) flows through the deepest and the widest streams.” Many Jews who died in the Holocaust, especially on Soviet territory, had previously envisioned themselves as part of a wider society.¹⁴

Historians Gabriel Finder and Alexander Prusin have shown how in Poland the Jewish civic court and the state courts “applied different legal and moral standards when judging Jewish defendants,” a function of the state court’s focus on criminal liability and the communal court’s focus on conduct and behavior.¹⁵ Historian Diana Dumitru writes in her examination of cases in Soviet Moldova that “[t]he Soviet court and judiciary institutions became a space for negotiations regarding the ethical boundaries of individual responsibility when acting under duress.”¹⁶ We have seen how the boundaries widened under Soviet courts (chapter three), and seemingly decreased under Polish ones (chapter two). Dumitru asserts that even while

¹³ *Ibid.*, 29.

¹⁴ See generally Yuri Slezkine, *The Jewish Century* (Princeton, NJ: Princeton University Press, 2005).

¹⁵ Gabriel N. Finder and Alexander V. Prusin, “Jewish Collaborators on Trial in Poland, 1944-1956,” in *Polin: Studies in Polish Jewry*, vol. 22, *Making Holocaust Memory*, ed. Finder et al. (Oxford: Littman Library of Jewish Civilization, 2008), 12.

¹⁶ Diana Dumitru, “From the Holocaust to the Gulag: Prosecuting Jewish “Collaboration” in Stalinist Courts after WWII,” unpublished working paper, 4.

“terrorized by the same enemy and sharing a space of confinement” Jews still typically “retained many of their earlier societal reference points” based on politics and social/economic class. Hostilities remained between socialist Jews who despised Jewish capitalists, and between Zionists and assimilationists. The continuing divisions in turn affected the wartime hierarchies of power and postwar dynamics of prosecution.¹⁷ The postwar Polish and Soviet state courts also negotiated communal obligations in that criminal justice was a tool for forging good Communist citizens and unified postwar society. Thus, trials were also spaces for the redressing of highly individualized matters alongside the functioning of state and/or elite-driven communal initiatives. Jews who felt it was important to try Jewish collaborators in state courts in Poland were also demonstrating, writes Finder, a “commitment to universal justice” and thereby “signaling their successful integration into the postwar Polish state.”¹⁸

In the Soviet Union, the formal institution of the Jewish honor court did not exist; the only centralized Jewish committee (the Jewish Anti-Fascist Committee) at the national, or union-wide, level did not prioritize such practices, nor would it have had the authority to do so. Jewish committees at the city level existed in some of the USSR’s national republics, particularly the newly re-incorporated Baltic ones after 1944. Yet Jewish committees in Soviet territory, such as those in Lithuania, for example, were established to deal first and foremost with the physical and material rehabilitation of surviving Jews, and it is unclear whether they established something like the honor court. Rather, in the Soviet Union some Jews used the state judiciary institutions in the same ends that Jews across Europe were using communal honor courts.

¹⁷ Ibid., 11-12.

¹⁸ Gabriel N. Finder, “Judenrat on Trial: Postwar Polish Jewry Sits in Judgment of Its Wartime Leadership,” in *Jewish Honor Courts*, 83-84.

According to Finder and Prusin, no more than fifty Jews were tried for collaboration in Polish state courts. Twenty-five Jews were tried in the honor courts under the auspices of the CKŻP, even though the leadership generated dossiers or held some type of proceedings for 175 Jews accused of collaboration between 1945-50.¹⁹ The numbers for Lithuania are less certain, but there are at least a couple dozen trials. The honor courts were composed strictly of Jews judging other Jews. In the state courts, the witnesses against the Jewish defendants were also typically other Jews, but the prosecutors and judges were typically not Jews. A phenomenon of non-Jews denouncing Jews as collaborators is not evident, although non-Jews might be summoned in to testify in particular situations. In the broader picture, very few Jews were tried for collaboration, a consequence of the fact that most Jews who had served the Germans had not survived to stand trial. Finder and Engel imply that in Poland the state courts were uncomfortable trying Jewish collaborators and were comparatively lenient. This chapter, however, will demonstrate how Jews were held to high standards of conduct, particularly when the defendant was in closer proximity to intimate situations of violence.

From ‘Orphan Jew’ to ‘Son in the Working Class’: Crime and Society in People’s Poland

Symcha-Binem Smolarz was arrested on February 4, 1946, in Lodz and formally indicted several months later in August under the August Decree (*Sierpniówka*), the common name for the legislation of August 31, 1944, for collaboration with the Germans, participation in Nazi atrocities, and wartime treason against the Polish state.²⁰ Modeled similarly after the Soviet Union’s Decree of the Presidium of April 19, 1943, (Ukaz 39) the August Decree was designed

¹⁹ Finder and Prusin, “Jewish Collaborators on Trial in Poland, 1944-1956,” in *Making Holocaust Memory*, 126, 128.

²⁰ “Akt oskarżenia,” August 30, 1946, Departmental Archive of the Institute of National Remembrance in Lublin (Oddziałowe Archiwum Instytutu Pamięci Narodowej w Lublinie) (OA IPNŁu), sygn. 315/292 (Case against Symcha Smolarz), 43.

to qualify Nazi atrocities in legislation. In the Soviet Union, when determining how to convict a person charged with helping in Nazi atrocities, local authorities consistently vacillated in their choices whether to use Ukaz 39 or prewar legal code, in which participation in Nazi crimes could also be qualified as treason and anti-state crime under Article 58 of the Russian Criminal Code. In Lithuania, it seems that authorities used Ukaz 39 for such crimes about 20% of the time while using Article 58 for the majority of atrocity cases, particularly after 1948 and the retiring of the death penalty in 1947. The switch from specific legislation qualifying Nazi war crimes to domestic legislation on treason was likely a result of East Germany's incorporation into the socialist bloc, whereby war crimes prosecution gave way to the importance of demonstrating the superiority of socialist law as Cold War borders began to crystallize in the postwar "peace." Unlike in the Soviet Union, which retired Ukaz 39 in 1953, in Poland the August Decree, revised twice, remained in Polish penal code until the 1990s, although the government had stopped pursuing most "August cases" by 1956 after Khrushchev's secret speech. Like the 1955 Soviet amnesty, those who had been convicted of murder were excluded from the 1956 Polish amnesty. However, during the onset of de-Stalinization in Poland, the "August trials" were basically discontinued because of their association with regime change and Stalin.²¹

Before his transfer to Lublin for trial, Smolarz had been arraigned and imprisoned by the Special Penalty Court in Lodz, where his case was initiated. Foreseeing the "eventually tragic" situation awaiting him, he expressed "hope" that he would "encounter understanding and a positive disposition" in his case.²² Smolarz was shown the list of witnesses and in an appeal a week later to the Lublin Special Penalty Court described how among them "only Ernberg said he

²¹ Andrew Kornbluth, "Poland on Trial: Postwar Courts, Sovietization, and the Holocaust, 1944-1956," (PhD diss., University of California, Berkeley, 2016), 203.

²² "Próśba," September 9, 1946, OA IPNŁu, sygn. 315/292, 82v: "mam nadzieję że spotkam się z zrozumieniem i pozytywnym ustosówkowaniem się do mej próśby."

would take me to court after the war [*Jedynie Ernberg powiedział, że on mnie oskarży (po wojnie)*].” Smolarz feared that “he will come and ‘judge’ me before the case is even unfolded,” implying a revenge case.²³

Smolarz was eventually sentenced in November 1946 under articles 1 and 2 of the August Decree for “collaboration with the Germans” as a *kapo*, particularly while working as a foreman (*Vorarbeiter*) in the concentration camps in Budyń and Kraśnik from 1942-44. In his indictment Vice-Procurator F. Rzączyński wrote that Smolarz had “mistreated prisoners in the camp who were Polish citizens of Jewish nationality.” Particularly, Smolarz was accused of beating Icek Fiszer who had brought the case against him and who had been a secretary in a local Jewish committee before the war. Rzączyński insisted that Smolarz had “acted to the detriment of civilians of Jewish nationality” and had been “exploiting the position the occupation had forced them [the Jews] into,” such as forcing Abram Olender to pay a bribe and taking Josesek Icek Kawa’s shoes.²⁴ All of these witnesses had initially testified against Smolarz in the Lodz District Court and continued to participate in the trial once it was forwarded to the Lublin jurisdiction. Other witnesses were summoned to testify against Smolarz, but it appears that his requests for witnesses in his own defense, including his appeals to the Central Committee of Jews in Poland, were unsuccessful. Tried and sentenced on November 15, 1946, for what amounted to “acting at the hands of the occupants,” Smolarz was originally given the death penalty with confiscation of property and loss of rights. After appeal, the sentence was commuted first to 15 years and then to 10 years in prison with permanent loss of rights.²⁵

²³ “Próśba,” September 18, 1946, *ibid.*, 83: “a on wyjedzie i niewątpliwie ‘posiedzę’ zanim sprawa się wyświetli.”

²⁴ *Ibid.*, 43-43v: “znęcał się nad osadzonymi w obozie obywatelami polskimi narodowości żydowskiej,” “działał na szkodę osób spośród cywilnej narodowości żydowskiej,” and “wyzyskując w ten sposób ich przymusowe położenie wytworzone przez okupację.”

²⁵ “Sentencja wyroku,” November 15, 1946, *ibid.*, 70-72.

The trial centered on Smolarz's conduct toward the witnesses who had brought the accusations forward, even though some witnesses also attested to things they had not personally experienced or seen. Icek Fiszer testified to being personally whipped by Smolarz but when asked to comment on others' accusations of Smolarz's mistreatment of the women in the camp, he admitted that "I myself didn't see anything, only heard about it."²⁶ Smolarz emphasized to Judge Kowalski:

I don't consider myself guilty [...] The Germans [...] chose me to be a foreman in the work camp for Jews. I don't know Icek Fiszer. I didn't have access to the women. Olender, as a policeman in the camp... I had no authority over him at all as a foreman.²⁷

Regardless, Smolarz was sentenced to death with confiscation of property, even though the assessor, Widelski, emphasized only one eye witness could attest to his most heinous behavior and that Smolarz was "forced" into beatings.²⁸ Assessors were formally added to military and general courts in Poland in 1946 (with some capacity earlier) whose role was to help judges interpret cases, particularly crimes captured under the new law on "especially dangerous crimes during the rebuilding of the state" for which the Small Penal Code discussed in chapter two had functioned.²⁹ Assessors required "political and not legal qualifications" for they were to assist the judges, most of whom had been trained in the perwar period, interpreting cases according to "needs of the accomplished revolution."³⁰ This indicated that Widelski was there to help the judge interpret Smolarz's case not really as a war crimes case, but as a

²⁶ "Protokół rozprawy głównej," November 15, 1946, *ibid.*, 66v.

²⁷ *Ibid.*, 66.

²⁸ "Sentencja wyroku," November 15, 1946, *ibid.*, 70v.

²⁹ See generally V. Gsovski, ed., *Highlights of Current Legislation and Activities in Mid-Europe*, vol. 5, no. 9 and 10 (Library of Congress: Washington, DC, 1957), 396-398.

³⁰ Deputy Minister of Justice Leon Chajm, *Demokratyczny Przegląd Prawniczy*, 7 (1946) quoted in *ibid.*, 396.

counterrevolutionary crimes case with an eye to judging conduct befitting of members of the postwar socialist community.

Widelski substantiated Smolarz's guilt based upon how he thought Smolarz presumably 'should' have behaved in relation to the wartime Jewish community: "Not many Jews survived Hitler's pogrom [*żydów nie wiele ocalało z pogromu hitlerowskiego*]. So if the Jews decided to initiate and support the accusation in the present case, then this one fact alone undoubtedly proves" that Smolarz had behaved accordingly. Whether Widelski was Jewish is unknown, but he had been involved in another trial in the Lublin area a year before as a lay judge in mitigating a death sentence to three years in the case of a non-Jewish Polish peasant woman who had denounced eight Jews in hiding.³¹ Widelski, evidently, had been invested in the political imperative established in 1944 to avoid prosecuting "workers and peasants" excessively, or even at all, in the Special Penalty Courts.³²

But in Smolarz's case, he pushed for the harshest sentence, reasoning that "The accused had also committed even those crimes (*zbrodnie*) which were not necessary for survival." Widelski summarized, "the charges against the accused completely conform to the features of the crimes qualified in the indictment." Widelski's circular fashioning meant that the crimes for which Smolarz was charged were the crimes he committed (the crimes are the crimes) and met the qualifications of the August Decree on war crimes. Thus Smolarz was accorded the "highest

³¹ Case discussed in Andrew Kornbluth, "The Holocaust and Postwar Justice in Poland in Three Acts" in *Microhistories of the Holocaust*, Claire Zalc and Tal Bruttman, ed. (New York: Berghahn Books, 2017), 272.

³² Note to the Resort of Justice of the Polish Committee for National Liberation [PKWN] in Lublin by Special Penalty Court Chairman Adam Stawarski, December 9, 1944, Archive of Modern Records (Archiwum Akt Nowych) (AAN), sygn. IX/9A (Resort Sprawiedliwości), ll. 3-4.

punishment for these crimes.”³³ In Poland, local authorities typically issued the death penalty as punishment of first instance, but the sentence was typically lessened.

Widelski’s reasoning indicates that the state courts differentiated the wartime fate of the Jews from that of the non-Jews. Additionally, Widelski echoed a pervasive trope among investigators, usually members of the security services, postulating that precisely because the German policy had been to indiscriminately kill Jews and because survival was so unlikely, any Jew who did survive could only have done so by collaborating, to someone else’s detriment. Yet, the seven other Jews who testified against Smolarz in this case had themselves survived, and one had even served in the police. There is no indication that they ever underwent trial, although maybe they later did. Cases under the August Decree against Jewish survivors were typically not pursued in state courts in Poland, this much of which Widelski had indicated in his substantiation for the harsh sentence. Smolarz’s case illustrates how, as Engel and Finder have reasoned, trials against Jewish collaborators targeted those whose conduct had been perceived as the “worst” or those persons who may have tried to occupy postwar leadership positions. Smolarz, in the former category, had desired primarily to return to a normal life and rehabilitate his health which was threatened by court’s venture into the judging of subjective conduct rather than objective criminal liability.

On the topic of judging conduct in the broader European postwar justice and the tendency to focus on those deemed as ‘the worst’, the reader will recall from chapter two that French jurist Marc Ancel had criticized this arbitrary practice for its reliance upon the discretion of individual

³³ “Sentencja wyroku,” November 15, 1946, OA IPN Lu, sygn. 315/292, 71-71v, 72: “Jeżeli więc żydzi zdecydowali się na zainicjowanie i popieranie oskarżenia w niniejszej sprawie, to jież sam ten jeden fakt dowodzi nieodparcie że [...]”; “Oskarżony popełnia jednak i zbrodnie, które nie były konieczne ani do utrzymania się przy życiu”; “Tak ustalone zarzucane oskarżonemu czyny całkowicie obejrzuje cechy zbrodni, zakwalifikawanych przez akt oskarżenia”; “najwyższy wymiar kary, przepisany za te zbrodnie.”

judges, lawyers, jury members, and witnesses. In Smolarz's case, Widelski's role as assessor was precisely to use his own discretion to influence the interpretation of facts and outcomes. That Jews supported the accusation and initiated the trial indicated only that these particular Jewish witnesses had resented Smolarz, not any criminal activity on Smolarz's part. On the other hand, the trial managers, led by Widelski, might have been trying to establish boundaries of criminality in Poland after the Holocaust. This would have aligned with the efforts of Poland's leading prosecutor at the time, Jerzy Sawicki, to account for behaviors which had contributed to the Holocaust by ascribing them in the new legislation on counterrevolutionary "especially dangerous crimes" with Articles 30-34 qualified in the 1946 Small Penal Code.³⁴ Sawicki had been on the Polish delegation at Nuremberg and is rumored to have been an informant on the Jewish Council in the ghetto in Lwów during the war. But these Small Code articles (which could apply to *future* postwar Jewish behavior in that they were designed to qualify future behavior of all Poles) were devised to capture the wartime contributions of non-Jews to the Holocaust, not the behavior of Jews 'on the bottom' as the only category of Nazi victims targeted indiscriminately for murder.³⁵

Smolarz had reasoned that the accusations in his case had amounted to the fact that the witnesses had resented his privileged position (i.e., better work and sleeping conditions): "They accuse me because I was on the staff, and they weren't [*Oni mnie skarżą, że ja byłem na funkcji, a oni nie*]." To evoke Primo Levi, Smolarz was "privileged" and they were not. Other Jews had resented his excessive brutal conduct, qualified as "crimes" (which would probably have been considered assault even in peacetime conditions), which were, the court argued, "not necessary for survival." But in their testimonies, *kapos* often stressed that German officers and overseers

³⁴ See chapter two of this dissertation.

³⁵ See generally Primo Levi, "On the Bottom," in *If This is a Man* [1947], 33.

tended to characterize lack of enthusiasm itself as disobedience, and thus grounds for punishment. Even Smolarz's main accuser, Icek Fiszer, when asked by the assessor B. Smutek whether Smolarz had been "forced to beat people" answered in the affirmative, "He was forced into beating because he himself was afraid of the Germans."³⁶

In his appeal to President Bolesław Bierut the day after the sentence, Smolarz asked him to consider that "the Germans murdered my whole family including my wife and her parents and my children, I was crazy, I didn't know what to do."³⁷ Smolarz was performing on trial in 1946 that which Primo Levi described in text a year later in 1947:

Imagine now a man who is deprived of everyone he loves, and at the same time of his house, his habits, his clothes, in short, of everything he possesses: he will be a hollow man, reduced to suffering and needs, forgetful of dignity and restraint, for he who loses all often easily loses himself. [...] it is now clear what we seek to express with the phrase: 'to lie on the bottom'.³⁸

Jews were 'on the bottom' because while others lost much, only Jews lost everything.

An official in the Ministry of Justice informed the District Court in Lublin that the President had "extended his right to grace" in Smolarz's case to 15 years in prison with permanent loss of rights in lieu of death with no substantiation other than Bierut had willed it.³⁹

A year later from prison Smolarz wrote a second request for release, this time emphasizing his anti-Nazism. Many Jews who were tried for collaboration had been compelled to explicitly

³⁶ "Protokół rozprawy głównej," November 15, 1946, OA IPNŁu, sygn. 315/292, 67: "On był zmuszony do bicia, bo sam się bał Niemców."

³⁷ "Podanie," November 16, 1946, *ibid.*, 74: "że wymordowali mi Niemcy całą rodzinę z żoną i rodziców i dzieci byłem jak obłąkany nie wiedziałem co robić."

³⁸ Levi, "On the Bottom" [1947], 33.

³⁹ Untitled note by Z. Kapitaniak in the Ministry of Justice in Warsaw, December 5, 1946, OA IPNŁu, sygn. 315/292, 90.

articulate their anti-Nazism, unable to fathom why they were being sentenced no differently than those whose sympathy, indifference towards, or tacit acceptance of Nazi ideology or practices had often informed their motivations. Smolarz emphasized that “German thugs [*szwabskie zbiry*] had killed my whole family” but that “if I have somehow committed any wrongs against my [Jewish] brothers, then I sorely repent [...and...] once again ask the President to consider the request of an orphan-Jew.”⁴⁰ Denied, he tried again a year later, adding in a follow-up appeal his desire to “return to society” to “work for the good of the Reborn Democratic Poland,” praising the “great justice of new Poland.”⁴¹ Denied again on July 21, 1948, by Lublin District Court assessors M. Puchalski and J. Jędrej and Judge J. Czerniak, it seems that the court had not been forwarding Smolarz’s appeals to Warsaw but had been deciding the outcome mostly themselves.

Smolarz had tried different routes from insisting upon innocence and confusion, to emphasizing the particular fate of the Jews (and his place therein) as Hitler’s main targets, to appealing to the new judicial sensibilities of an unpopular government. However, he consistently emphasized the injustice of his predicament over the years: “I went through the whole ordeal of a martyred person, only to find myself in prison again [*Przeszłem całą gehennę umęczonego człowieka, aby znów znaleźć się w więzieniu*].” In a lengthier appeal in 1951, Smolarz emphasized unjust procedures and how he had asked the CKŻP to find witnesses to testify in his favor, claiming that their inability to do so had “negatively affected the outcome.”⁴² Smolarz had been well-known among Jews in the Kraśnik camp for his brutal conduct, and so probably the CKŻP had been content to relegate Smolarz to “the worst,” as the CKŻP was interested in putting those like Smolarz on trial, not helping them.

⁴⁰ “Próśba,” May 30, 1947, *ibid.*, 95.

⁴¹ “Próśba,” June 21, 1948, *ibid.*, 100.

⁴² “Próśba,” November 3, 1951, *ibid.*, 107

The head of the prison administration in Nowogard seemed to empathize with Smolarz but nonetheless recommended that “more time in prison would be in order.” Smolarz’s sentence was not fully commuted but reduced to ten years. The reasoning exemplified the aim of socialist penal policy to not merely punish (anti-state) criminal behavior, but to mold new behavior in the new postwar community. In fact, the head of the prison even betrayed his own view that Smolarz had been sentenced too harshly, that he agreed with Smolarz’s insistence that the punishment was “wrong and unjust [*otrzymał niesłuszny i niesprawiedliwy*].” Smolarz was to be commended for not having made any “statements against People’s Poland during his time in prison” but still did not yet “deserve [*nie zasuguje*]” release “because he has not understood the significance of the crimes he committed [*gdyż niezrozumiał roli popełnionego przez siebie przestępstwa*].”⁴³

The difference in language authorities used to denote “crime” (*zbrodnia* vs. *przestępstwo*) over time (from 1946 to 1951) is significant, with *przestępstwa* referring to criminal offenses of any kind, *zbrodnia* ascribing more serious crimes of murder, rape, etc., and, importantly, the categorization of Nazi atrocities. All *zbrodni* are *przestępstwa* but not all *przestępstwa* are *zbrodni*. The more serious *zbrodnie* under the August Decree for war crimes (“*Czyny że stanowią zbrodnie przewidziane [...]*”) for which Smolarz had been sentenced in 1946 were evoked as the lesser *przestępstwa* in the early 1950s in response to his appeals (“*popełnionego przez siebie przestępstwa*”). It seems that the shift in terms can be accounted for by the ascendance of public discourse on crimes against humanity rendered as *zbrodnia przeciwko ludzkości* particularly as the demands of the Cold War effected a ‘return’ to the emphasis of German guilt as former Nazis and high ranking SS officers were escaping punishment by staffing the West German intelligence service and making useful lives for themselves as anti-Communists in the West.

⁴³ “Opinie,” (name unclear), November 19, 1951, *ibid.*, 105.

Authorities, in the early 1950s, made the interpretation that ascribing guilt to Smolarz in Nazi atrocities of the Holocaust, in contradistinction to some level of responsibility in harm against other Jews, was untenable.

Smolarz consistently conveyed that the camp had made him “live like an automaton” and affected his behavior “in face of the enemy.”⁴⁴ “I am a Jew who like millions of other Jews during the occupation experienced the tragedy of his life,” he had emphasized. In a final appeal in January 1954, Smolarz seemed to have finally learned what was expected of him, which was to embrace the postwar community of workers into which the socialist state had ascribed him. This time not only had Smolarz evoked the two amnesty decrees of 1947 and 1952 (evoking the legitimacy of socialist law) but, importantly, he had redefined himself. No longer an “orphan-Jew,” Smolarz asked the state to release him and apply the amnesty to “one more son in the working class [*jeszcze jednego syna klasie robotniczej*].”⁴⁵ The Voivodship (Regional) Court in Lublin commuted the final year of his sentence and released him in July 1955.⁴⁶

Jewish Honor between Restitution and Retribution

In March 1948 members of the Presidium of the Jewish Civic Court wrote a collective letter to the Polish Minister of Justice, Henryk Świątkowski, reminding him that the committee’s own court (the Civic/Honor Court), as distinguished from the state courts, had been created to deal with the cases of those Jews whose wartime actions “were in conflict with the duties and dignity of a Jewish citizen [*kolidowała z obowiązkami i godnością Obywatela-Żyda*].” The Presidium emphasized that even though the honor court employed secular lawyers, “the Civic Court evaluates the behavior of a Jewish Citizen and, finding him guilty, applies moral penalties

⁴⁴ “Próśba,” November 3, 1951, *ibid.*, 107v

⁴⁵ “Próśba,” January 24, 1954, *ibid.*, 122-122v.

⁴⁶ “Postanowienie,” June 23, 1955, *ibid.*, 141.

[kary natury moralnej] up to exclusion from the community,” as opposed to meting out punishment for criminal violations.⁴⁷ However, as Smolarz’s case indicated, these two arenas indeed at times overlapped and came into conflict. The Ministry of Justice had been questioning the Civic Court’s authority to re-try individual Jews whom the state courts had already found not guilty amid broader concerns the CKŻP was overstepping state boundaries in pursuit of communal interests. A year earlier in November 1947, Stanisław Temczyn (one of the lawyers presiding most frequently in honor court cases, according to historian Piotr Wróbel) reminded members that “our court is a civic court, and not universal one; we can’t force anyone to testify, we can’t force an appearance at court” and that to do so would be “perhaps a conflict with the state authorities.” For its part, the Presidium understood the differing roles of the state and communal courts but insisted in its letter to the Ministry of Justice that: “Both organizations should cooperate with and help each other, taking care that the innocent are not wronged but that the vermin [*szkodnicy*] from the occupation are condemned.”⁴⁸ On the one hand, the CKŻP did not envision legal punishment or forced testimonies as part of its own honor court functions, as to do so conflicted with the state agenda of establishing the authority of socialist law, ideology, and institutions. On the other hand, Smolarz’s case indicated the intersecting separate communal agendas of condemning wartime *szkodnicy*. When competing state and Jewish communal agendas intersected, neither Jewish institutions nor the state authorities necessarily intervened when evaluating behavior conflicted with punishing collaborators in a legal sense.

The honor process indicated the revival of prewar Jewish communal life, but also reflected the tensions between communal and individual identity. The CKŻP had been using

⁴⁷ Letter from CKŻP Presidium to Ministry of Justice, March 25, 1948, Archives of the Jewish Historical Institute (Archiwum Żydowskiego Instytutu Historycznego) (AŻIH), sygn. 313 (Sad Społeczny przy CKŻP)/Akt 149 (Korespondencja), l. 54.

⁴⁸ *Ibid.*, 53-54.

honor trials under its auspices to establish itself as the voice of Jews in postwar Poland, but Temczyn reminded the committee in 1947: “The work of the CKŻP and loyalty to it is a question of free will, and not coercion.”⁴⁹ But members represented different factions, some of whom advocated organizing Jewish immigration to Palestine or places outside Poland. The postwar Polish government wanted Jews in Poland not as Jews, but as brainpower in the rebuilding of the state. The Soviet government, especially in Lithuania, wanted Jews for their presumed loyalty. The competing performances of state and communal agendas at the intersection of punishment conflicted with what Jewish defendants in court wanted, which was to live as free individuals not in a metaphorical, political, or religious sense, but, as Smolarz implored, and as Levi envisioned, *no longer imprisoned*.

In summer of 1946, after an increase in anti-Jewish violence in the aftermath of the largest of the postwar pogroms in Kielce in April of that year, the CKŻP began to reckon with the knowledge that it had lost the confidence of most remaining Jews in Poland, for whom practical matters of help were of highest priority. “After Kielce we must speak frankly. The central committee is unpopular among Jewish society. We need to show Jews that we can save them,” emphasized one member.⁵⁰ “Are we just supposed to wait for everyone to die?” a member of the Lublin branch had implored in a letter to the Central Committee in April 1945.⁵¹ Many Jews who had no interest in politics and who were more concerned with material/physical rehabilitation and in confronting *postwar* violence felt abandoned by the CKŻP. However, the

⁴⁹ Protocol of CKŻP Presidium, November 20, 1947, AŻIH, sygn. 303 (Centralny Komitet Żydów w Polsce)/I (Wydział Prezydium i Sekretariat)/Akt 22 (Protokoły posiedzeń Prezydium CKŻP, 1947), l. 158.

⁵⁰ Protocol of CKŻP Presidium, July 13-14, 1946, AŻIH, sygn. 303/I/Akt 37 (Protokoły z narad przewodniczących i sekretarzy, i delegatów KZ), l. 48.

⁵¹ Letter from Regional Jewish Committee in Lublin (WKŻ) Chairman Spiro to CKŻP, April 5, 1945, AŻIH, sygn. 355 (Komitet Żydowski i Wojewódzki Komitet Żydowski w Lublinie)/Akt 31 (Korespondencja 1945), l. 120.

Central Committee was dealing with a truly astounding level of responsibility for all aspects of postwar rehabilitation and the political and social future of Jews in Poland, with requests for various things not under their auspices (but expected to be) coming in from individuals and institutions all over the world. At the same time, ideological infighting and disagreement over how to ensure the best future for Jewish life created a disconnect between the goals of various Committee sections and those of ordinary Jews whose loyalty they needed.

Some criticized the relegation of the safety of Jews to the Committee, arguing that the heavy hand of the state should secure it: “The administrative authorities and the state did not fulfil their responsibilities. Where was the governor? Where was the UB [security service]? I recall in 1944 seven Jews were taken from the train approaching Kiev and killed. The response of the Soviet authorities was different than in Kielce. An NKVD brigade came to Kiev,” implicitly praising the Soviet response.⁵² Another suggested that the Committee should ask Cardinal Hlond, the Archbishop of Warsaw, to remove the bishop of Kielce, while others argued it was necessary to do something about Polish antisemitism itself.⁵³ Another member insisted: “We can’t just talk only about antisemitism of the Polish people. Are there not degenerate and immoral elements among us as well? The Jewish police in the ghetto?”⁵⁴

Amid competing obligations, the CKŻP as an institution prioritized internal trials against Jews more than retroactive trials against local non-German persecutors. Certainly, as Prusin and Finder emphasize, the CKŻP legal department did regularly help the Ministry of Justice investigate local non-Jewish Polish or *Volksdeutsche* collaborators; the desire among survivors to bring non-German perpetrators to account (particularly Poles, Ukrainians, and Lithuanians) was

⁵² Protocol of CKŻP Presidium, July 13-14, 1946, AŻIH, sygn. 303/I/Akt 37, l. 49.

⁵³ *Ibid.*, 50.

⁵⁴ *Ibid.*, 52.

widespread.⁵⁵ But the evidence suggests that the legal department was primarily focused on housing and other material restitution, and that even though the Central Committee was involved in prosecutions of non-Jewish collaborators, the CKŻP as an institution typically did not actively encourage prosecutions against non-Jews or prioritize helping the survivors involved in them. In September 1947, a representative of the Lublin regional branch informed the CKŻP that the indictments in “cases against Poles and ‘*Volksdeutsche*’ who participated in the murder of Jews during the occupation” were designed “in favor of the accused” and that the trials were construed to make the accused’s behavior seem like self-defense. The Lublin representative asked the Committee to send a lawyer “who could ascend in these cases, where the honor of the Jewish people is concerned, and who could influence a just punishment. In Lublin there is no such Jewish lawyer who can do this.”⁵⁶ In similar vein, a few years later in May 1950 *Das Naje Lebn* correspondent P. Frid wrote that “murderers of Jews are lately being freed in the Lublin court.” He described the trial proceedings as “a well-known song and game” by which “the ‘Endecja’ lawyers” maintain that “that the murdered Jews were just typical bandits and agents of the gestapo and that their murder was a patriotic duty.”⁵⁷ Frid begged the Committee to “please intervene” and to “[h]ave a lawyer come to Lublin who will deal with this.”⁵⁸ In June 1950, CKŻP executive member and former Vice-Chairman Marek Bitter and Secretary J. Łazebnik forwarded Frid’s letter to the Minister of Justice with a brief note, “Allow us to mention, that signals of this kind have been coming to us already for a long time now,” indicating that the

⁵⁵ Finder and Prusin, “Jewish Collaborators on Trial in Poland, 1944-1956,” in *Making Holocaust Memory*, 131; Gabriel N. Finder, “Judenrat on Trial,” in *Jewish Honor Courts*, 83, 86.

⁵⁶ Letter from WKŻ Chairman Zajwendar to CKŻP, October 29, 1947, AŻIH, sygn. 303/XVI (Wydział Prawny)/Akt 153 (Lublin WKŻ), l. 8.

⁵⁷ The Endecja was the early 20th century right-wing Polish National Democratic Movement (commonly rendered by the Polish pronunciation of the initials N. D.)

⁵⁸ Letter by P. Frid, May 3, 1950, AŻIH, z. 303/I/Akt 96 (Korespondencja ogólna), l. 181 (Polish), l. 182 (Yiddish).

CKŻP had typically refrained from getting involved or appealing to high-ranking state officials to do so in trials against local non-Jewish perpetrators.⁵⁹

To be sure, not all Jews in the CKŻP supported internal honor courts. Szymon Zachariasz from the committee's Communist Party faction asked in a meeting in 1948: "Is the Civic Court necessary?" Ludwik Gutmacher, the lawyer heading the CKŻP's legal department, insisted that it "is only just now starting to work fully. It is premature to talk about its liquidation. The court hasn't yet fulfilled its work" of establishing the CKŻP's vision of Jewish life in postwar Poland. Postwar integration into the Polish state included weeding out the worst offenders in order to establish the remaining Jews as a community of heroes and martyrs, even though many surviving Jews neither felt like heroes nor subscribed to the triumphalist narratives of postwar representational politics. As Levi, in 1963 explained, "few among us ran to greet our saviors, few fell in prayer."⁶⁰

While honor courts were invested in reckoning with Jewish wartime conduct, the Jewish honor court in Poland did not perceive itself as also navigating moral responsibility for the Holocaust itself, which cannot be said for the state courts in both Poland and Lithuania in their trials of non-Jews. In 1947, CKŻP president Adolf Berman emphasized the "moral responsibility on part of the German people for the destruction of millions of Jews."⁶¹ In an honor court trial in 1948, former Jewish policeman, Henryk Rosenblat, reminded the committee, "After the liquidation of the ghetto I was also assigned to the deportation transport with the other Jews."

⁵⁹ Note from CKŻP Executive Committee Member Marek Better to Ministry of Justice, May 6, 1950, *ibid.*, 1. 176.

⁶⁰ Levi, "The Thaw" [1963], in *If This is a Man*, and, *The Truce*, 189

⁶¹ Protocol of CKŻP Presidium, June 27, 1947, AŻIH, sygn. 303/I/Akt 22, 1. 42.

Rosenblat also retorted, “The Jewish Police did not take any part in *categorizing* [emphasis mine] Jews to be sent to the camp.”⁶²

Competing understandings among Jews of what it meant to preserve ‘honor’ permeated in early postwar Poland and Lithuania. Many Jewish survivors openly spoke about Jewish collaboration, such as when Chaja Morewska (a survivor of the Vilna and Riga ghettos and several concentration camps) told the Jewish Historical Commission in Warsaw in 1945 that “the Jewish police together with the Lithuanian police participated in the actions [*Aktionen*] and robberies.” Jews typically did not refrain from speaking about the Jewish “gestapo agents” that non-Jews sometimes evoked when deflecting their own roles in the Holocaust. For some Jews, reckoning with Jewish behavior was a way to maintain prewar religious or other communal distinction, as well as to affirm belonging in the postwar societies of the states in which they resided, especially after the Holocaust.⁶³ Newly Communist Poland and Lithuania were invested in the homogenization of community and memory, which superficially amalgamated the collaborator category.⁶⁴ But even if reckoning with internal behavior was meaningful to certain Jewish survivors, others felt it was also important to uphold the honor of the Jewish dead, especially when it was evident that non-Jewish perpetrators were not being held accountable or that trials were descending into mockeries of Jews. “Devils take me when I sit in the courtroom, where in such a heinous manner, they profane all the victims murdered and torn from bunkers

⁶² “Rozprawa,” January 29, 1948, AŻIH 313/5 (Case against Henryk Rosenblat), ll. 17-19: “Po likwidacji getta zostałem wraz z innymi Żydami przydzielany do transportu na wyjazd,” “Policja Żydowska nie brała żadnego udziału przy klasyfikacji Żydów do obozu.”

⁶³ David Shneer, *Through Soviet-Jewish Eyes: Photography, War, and the Holocaust* (New Brunswick, NJ: Rutgers University Press, 2012), 169; Finder, “Judenrat on Trial,” in *Jewish Honor Courts*, 83.

⁶⁴ Amir Weiner, *Making Sense of War: The Second World War and the Fate of the Bolshevik Revolution* (Princeton, NJ: Princeton University Press, 2001), 136, 143, 211-12. Dumitru, “From the Holocaust to the Gulag,” 3, 12; Gabriel N. Finder, “Introduction,” in *Making Holocaust Memory*, 12.

and peasant huts,” described the correspondent Frid, in 1950, while observing a trial in a state court in Lublin against non-Jews.⁶⁵

Performing functions of Jewish honor courts in secular state courts where judgment was a function of criminal penal policy included Jews in a much broader community of judgment. While state courts conceptually distinguished the wartime Jewish fate from that of others, Jews were sometimes given equal or more severe punishments than non-Jews who voluntarily participated in the murder of Jews. In state trials some Jewish conduct during the Nazi occupation was evoked as treason or collaboration, ascribed as egregious, or interpreted as unnecessary. But while authorities prosecuted Jews for collaboration, they did not perceive them as complicit in the weight of Nazi *atrocities* when allocating criminal responsibility.

The Chain of Responsibility in Soviet Lithuania

In December 1952 while Simcha-Binem Smolarz was in the midst of his appeals process in the sixth year of imprisonment in Poland, Eta Solominienė was arrested by the Soviet Lithuanian Ministry of State Security [*Ministerstvo gosudarstvennoi bezopasnosti*] (MGB) in Vilnius. She had spent most of the war hiding in the forest with her two children but was sent to the Kaunas ghetto after the Lithuanian peasants on whose property she was hiding turned her in. Having survived the ghetto’s liquidation (although her children did not) she was sent to concentration camps in Poland and so was no longer in Lithuania when the Red Army re-occupied the country in July 1944. The new Soviet government tried her for actions that had taken place between late 1944-45 outside Lithuania and after its liberation from Nazi occupation. She was arrested for being a kapo in the Lubicz camp and for various misdeeds in the Stutthof

⁶⁵ AŻIH, sygn. 303/I/ 96, l. 181. See also Alina Skibinska, “The Return of Jewish Holocaust Survivors,” in *Jewish Presence in Absence: The Aftermath of the Holocaust in Poland, 1944–2010*, eds. Feliks Tych and Monika Adamczyk-Garbowska, trans. Grzegorz Dąbkowski and Jessica Taylor-Kucia (Jerusalem: Yad Vashem, 2016), 53.

camp, where many survivors of the Kaunas ghetto had ended up. As such, she was indicted under Article 58 of the Russian Criminal Code (the catch-all category for anti-state crimes) in accordance with paragraph 3 (abetting the enemy) for “assistance to the fascist occupants [*posobnicheskuiu deiatel'nost' fashistskim okkupantam*].”⁶⁶ She was sentenced to ten years in a correctional work camp on February 13, 1954.

In trials of Jews accused of wartime crimes in Soviet state courts in Lithuania, conduct as perceived by other Jewish victims was the main topic. “Eta was the cruelest, most violent, most inhumane overseer,” Golda Lanaitė testified.⁶⁷ Authorities actually took a back seat and allowed the proliferation of testimony among Jews to unfold to a much greater extent than allowed in the trials of non-Jews. In the latter, motive was much less important to authorities than ascertaining the facts of participation in Nazi atrocities. Among postwar Soviet goals, one was to publicly assign blame to nationalists, although individuals who were not members of nationalist groups were also punished. In cases against Jewish collaborators, authorities nonetheless accepted and qualified judgments on behalf of other victims according to Soviet categories of treason or collaboration.⁶⁸ Soviet authorities were not necessarily interested in taking Nazi outcomes for Jews into consideration when processing Soviet legal outcomes for Jews.

Thus, when Solominienė’s brother, Naum Kabas, wrote an appeal on her behalf in 1954, Counselor of Justice D. Novikov of the Investigative Procuracy of the LSSR summarized as “useless” its main points, “She was wrongly convicted, as she herself was in the camp and suffered under the Germans. The witnesses gave false testimony, the degree of punishment was

⁶⁶ Senior Investigating Lt. Lukaitis of the MGB LSSR, “Postanovlenie,” December 29, 1952, File 24987/3 BB, War crimes investigation and trial records from the former Lithuanian KGB Archives, in United States Holocaust Memorial Museum Archives (USHMMA), Record Group (RG)-26.004M, 22.

⁶⁷ “Protokol doprosa,” December 9, 1952, *ibid.*, 83.

⁶⁸ Dumitru, “From the Holocaust to the Gulag,” 3.

too harsh.” Novikov called the argumentation “unfounded.”⁶⁹ Kabas wrote again a year later, recalling how shocking it had been to watch the lawyers and judges rely upon insufficient evidence to convict her of assisting the enemy such as how Solominienė had “mocked this person or beaten that person.” “Could she after all her suffering and worry even assist these monsters? Could she even help them coming from her position?”⁷⁰

Around the same time as Solominienė, another Jewish collaborator named Veniamin Markovich Zakharin was sentenced in 1950 under Art. 58 but under paragraph 1-a (treason) for “carrying out criminal activities” as a doctor in the Kaunas ghetto and at Dachau. Like Solominienė, he was given ten years. The authorities in his case had tried to indict him as a nationalist traitor, which likely accounted for the different categorization (paragraph 1-b vs. 3), and likewise emphasized his conduct: “During the period of the bourgeois regime in Lithuania while working as a doctor in a prison in Kaunas he treated Communist prisoners harshly.”⁷¹ Major Leonov in the MGB indicted him “keeping in mind that Zakharin sufficiently admits that from 1941-1945, while in the ghetto set up by the Germans, the Kaunas ghetto, then in a concentration camp at Dachau, working as a doctor, he participated in mass sortings of imprisoned Jews, who were then sent by the Hitlerites to forced labor and destruction.”⁷² Regardless, Zakharin responded during interrogation that “I do not consider myself guilty” as “upon arrival in Dachau I, just like the rest of the prisoners, became a person with a number.”⁷³

⁶⁹ Counselor of Justice D. Novikov of the Investigative Procuracy of the LSSR, “Zakliuchenie,” June 18, 1954, File 24987/3 BB USHMMA, RG-26.004M, 217.

⁷⁰ Naum Rabas, “Pros’ba,” March 18, 1955, *ibid.*, 227: “izdevalas’ nad kem-libo ili izbivala kogo-libo,” “Mogla li ona posle vsekh stradanii i perezhivanii sposobstvovat’ etim izvergam?”

⁷¹ Chief Investigating Officer Demchenko of the MGB LSSR, “Postanovlenie,” August 3, 1950, File 34423/3 SB, USHMMA, RG-26.004M, 6.

⁷² Head of 2nd Department of the MGB LSSR Major Leonov, “Postanovlenie,” June 23, 1950, File 34423/3 BB, USHMMA, RG-26.004M, 49.

⁷³ “Protokol doprosa,” June 23, 1950, *ibid.*, 50-51: “Po pribytii v Dakhau ia, kak i drugie zakliuchennyye stal chelovekom pod nomerom.”

Zakharin emphasized, “Working as a doctor, I had no administrative rights in relationship to the prisoners. My responsibilities were to help the sick, and I did that in good faith.”⁷⁴ In his role as a doctor, Zakharin was responsible for determining who was healthy enough to work and who was not, which could mean the difference between life and death. Prisoners resented this ‘power’ which he could not necessarily leverage to help them and sometimes conveyed in harsh terms: “If you can’t work then go to the crematoria,” the witness Aleksandr Krakenovskii recalled Zakharin saying.⁷⁵

As Adam Brown reminds us, a “crucial, often overlooked, aspect of the Holocaust, the issue of “privileged” Jews concerns victims who, in order to prolong their lives, were forced to behave in ways that have often been interpreted as contributing in some way to the killing process.”⁷⁶ As Primo Levi formulated, the Nazi project was systematically designed as such so that Jews were in positions in which they would be responsible for carrying out actions that were directly harmful to other Jews. This phenomenon is in contrast to non-Jews in Poland and Lithuania who contributed in some way (usually very directly) to the killing process for reasons unrelated to prolonging their own lives, which Soviet authorities conducting trials understood, and punished. Polish authorities understood this, too, but used the vestiges of liberal legal understandings to misconstrue the facts of the case in ways that, writes historian Andrew Kornbluth, “consisted of either faulting Jewish victims for what had befallen them or exonerating Polish perpetrators, or both.”⁷⁷ Kornbluth asserts that this process “scrambled the chain of responsibility and eliminated the agency of local people.” The Soviet Union tended to refrain from exonerating those who harmed Jews in more direct acts of violence. However, at least in

⁷⁴ “Protokol doprosa,” June 9, 1950, *ibid.*, 21-22.

⁷⁵ “Protokol doprosa,” August 22, 1950, *ibid.*, 121.

⁷⁶ Adam Brown, *Judging ‘Privileged’ Jews*, 3.

⁷⁷ See Kornbluth, “Poland on Trial,” 103.

Lithuania, the Soviet state never prioritized investigating denunciations, which had made up a bulk of the percentage of cases in Poland. I surmise that the Lithuanian peasant woman who denounced Solominienė (which is how the latter ended up in Stutthof in the first place) was not tried for it.

In my interpretation, Soviet trials actually clarified the chain of responsibility and affirmed the agency of individuals, however limited. Jews were punished in postwar state courts as collaborators but not as Holocaust perpetrators. In Soviet Lithuania, Jews like Solominienė or Zakharin typically did not deny objectively participating in the Nazi process but disavowed accusations against their conduct under Nazi conditions. During a face-to-face interrogation with Asa Sridnitskaia, her accuser, Solominienė insisted that she “testifies correctly only in that during the fascist occupation I was a *kapo* in the Lubicz camp.”⁷⁸ Under interrogation Solominienė proffered, “I of course as a brigadier watched the prisoners in my brigade so that they all worked, although I didn’t force them to work at maximum strength” and “even sometimes spared them from hourly beatings.” She maintained, “I do not consider myself guilty of somehow mocking prisoners, taking their things,” etc.⁷⁹ And yet, according to Novikov, the “gravity of her crimes” was in the conduct. She had “treated prisoners harshly, took their things.”⁸⁰

In contrast, and as we saw in the previous chapter, Soviet trials against non-Jews in Lithuania who were complicit in Holocaust crimes centered not on conduct but on determining degree of “participation” namely in shootings, as well as arrests, beatings, sortings, guarding, and plunder (so, the Holocaust without saying “the Holocaust,” or, as rendered at the time, the

⁷⁸ “Protokol ochnoi stavki,” January 8, 1953,” File 24987/3 BB, USHMMA, RG-26.004M, 134.

⁷⁹ “Protokol doprosa,” January 6 and 7, 1953, *ibid.*, 34, 42.

⁸⁰ “Zakliucheniie,” June 18, 1954, *ibid.*, 216: “zhestko odnosilas’ k zakliuchennym, otbirala u nikh veshchi.”

“Jewish tragedy/catastrophe” (*evreiskaia tragediia/katastrofa*). The Soviet government did not focus on proving Jewish guilt in the Holocaust, because it did not consider Jews as guilty in perpetrating it. Thus cases against Jews melded into lengthy discussions on conduct befitting of a good citizen, while trials against non-Jewish collaborators remained focused on facts of participation in order to establish degree of guilt in the “grave” crime not of treason against the Soviet state, or even collaboration, but of Nazi-orchestrated murder (evoked sometimes in trials as crimes against humanity). In the cases of anti-Soviet nationalists, Soviet authorities used war crimes trials to convey that while nationalists may have been willing to sacrifice their own lives in anti-Soviet resistance, the gravity was that they had also taken it upon themselves to sacrifice the lives of others. Non-Jews who participated not as nationalists but for other reasons were lower on the chain; but because Soviet ideology demanded presenting a public front of friendship among the peoples, their actions were punished but not talked about openly. On the chain of responsibility, Jews remained, to evoke Levi, ‘on the bottom.’

Historian Amir Weiner writes that while Soviet security meticulously documented anti-Jewish massacres and punished the perpetrators, the authorities “made it clear that the surviving Jews were subject to the same policies as the rest of the population, no matter how traumatic their experience had been,” as we have seen in this chapter.⁸¹ And yet, there was the important exception in that Jews who were tried for collaboration were never tried with Ukaz 39, the USSR’s special legislation qualifying Nazi atrocities in law. This was a mark of distinction that did not mean that Jews received more lenient treatment in practice, as Article 58 and Ukaz 39 could sometimes effect the same punishments. In many trials against Jewish collaborators

⁸¹ Weiner, *Making Sense of War*, 211-12.

occurring in the 1950s, the emphasis was typically Zionism, “bourgeois nationalism,” cosmopolitanism, or spying.⁸² Thus, charges of being a *kapo* or member of the *Judenrat* were meant to substantiate those of anti-state crimes.⁸³ In this way, Jewish “nationalists” were treated like other nationalists and sometimes evoked as fascists when the emphasis of a given trial was on typical enemy behaviors of treason or sabotage or anti-state activity. But unlike others, Jews tried for collaboration in Soviet courts were never charged with crimes against humanity when the emphasis was on the crimes themselves. While Jews were not necessarily treated worse than everyone else in the legal arena of postwar retribution, it seems that Jews were often held to a higher standard of conduct even in their darkest hour by both themselves and others when faced with judgment in communal and state courts. In arenas of limited agency, Jews were expected to have exercised the most. In a word, the forging of unified society in the aftermath of war meant that in processes of universal justice, Jewish victims of the Holocaust sometimes found themselves held more strictly to the letter of the law than non-Jewish perpetrators.

When confronting the participation of its own citizens in the Holocaust, Communist authorities in Poland and Lithuania seemingly reasoned that if Jewish ‘difference’ had mattered for the wartime fate of the Jews, then perhaps the solution as they saw it was to also eliminate any meaningful Jewish distinction in the postwar community of Communists. Poland’s CKŻP and the smaller city-level Jewish committees in Lithuania were closed in 1950 and streamlined into more general Jewish cultural/social organizations, once the physical and material rehabilitation of surviving Jewish bodies had been ‘accomplished’ at least in the immediate

⁸² Zvi Gitelman, “Politics and the Historiography of the Holocaust in the Soviet Union,” in *Bitter Legacy: Confronting the Holocaust in the USSR*, ed., idem. (Bloomington: Indiana University Press, 1997), 18, 28-29.

⁸³ See for example the case of Efim Minc, March 20, 1950, File 43991/3 BB, USHMMA, RG-26.004M; Art. 58-1-a; accused of “Zionist revisionism” and for serving in the *Arbeitsamt* in the ghetto; accused of sending Jews to hard labor “from which in most cases these persons did not return to the ghetto but were shot by the Germans in Paneriai.”

sense. Despite the efforts to advance a more inclusive citizenry, many Jews caught up in trials in state courts in Poland and Lithuania implored authorities to apprehend the difference in the special predicament and fate of Jews. That is, while authorities apprehended the particularity of the Jewish fate when prosecuting non-Jewish perpetrators and formulating usable histories of trauma, they did not apply that information to mean that Jews should not be imprisoned for their conduct, as Jewish defendants asked them to. Smolarz's fate upon returning from prison is unknown, and it is unclear whether authorities in Moscow ever intervened in Eta Solominienė's case once the Lithuanian authorities forwarded it to Chairman Voroshilov of the Presidium of the Supreme Soviet. The last available details of her trajectory describe an attempt in 1956 to get a death certificate for her two children.

One of the main lines of analysis in this dissertation has been that people from many differing positionalities (Jews and non-Jews, elites, creatives, and everyday people) were all working out the philosophical question of personal responsibility for wartime harm in two intersecting yet distinctive arenas: legal and artistic. Tadeusz Borowski, for example, was a non-Jewish Pole who was interned in Auschwitz and Dachau as a political prisoner in 1943. Borowski published *This Way for the Gas, Ladies and Gentlemen* [English translation 1967], detailing camp life through the perspective of his alter-ego, the *kapo* Tadek. It was published originally in Polish as *Pożegnanie z Marią* in 1946, the same year Smolarz was sent to prison for his conduct as a *kapo*. Borowski had already committed suicide in 1951 by the time Smolarz was released in 1954. One wonders if Smolarz ever read Borowski's short stories. As will be examined in the next and final chapter, one of the artistic strategies both Jewish and non-Jewish artists employed was to invert the victim-perpetrator binary by performing representations of the universal human capacity to harm in order to make sense of the consequences of war. I offer this

counterfactual speculation of the Jewish Smolarz reading about a fictional non-Jewish *kapo*'s reconciliation with his own personal participation in the Holocaust to ponder how Jewish victims might have felt performing in a court of law, with its tangible punishments, answers to questions with which artists could experiment elsewhere. As a comparison to Smolarz, a non-Jewish woman, Janina Jodłowska, was also tried in Cracow in 1945 as *kapo* in Auschwitz but was found not guilty.⁸⁴

Conclusion

Memory of violence against Jews did not disappear with the ascendance of a socialist authoritarian regime. Rather, those who survived the war participated in socialist processes of reckoning with the Holocaust. The Communist regimes in Lithuania and Poland were quite effective in prosecuting Holocaust perpetrators who had voluntarily participated in crimes against Jews during the Holocaust. On the other hand, this efficiency (in its focus on objective action and adherence to categories in ascribing human behavior) limited the ability of the judiciary to produce just outcomes for Nazism's main victims, the Jews, whose conduct, cultural scholar Michael Rothberg's theorization of responsibility reminds us, need "not require victims to remain innocent in order to claim justice."⁸⁵ This chapter has argued that competing configurations of a place for Jews in postwar society, in the very context of trying to represent and overcome the consequences of the Holocaust, sometimes criminalized Jews for their own Holocaust experiences. The next chapter moves beyond criminal guilt to broader frameworks of responsibility.⁸⁶

⁸⁴ See case of Janina Jodłowska (SSKKr 444), USHMMA, RG-15.179M (Sąd Specjalny Karny w Krakowie) (SSKr) (Sygn. GK 203) (Special Penalty Court in Cracow).

⁸⁵ Michael Rothberg, *The Implicated Subject: Beyond Victims and Perpetrators* (Stanford, CA: Stanford University Press, 2019), 41.

⁸⁶ Rothberg theorizes differing forms of guilt, including moral and criminal, in relation to historical justice in *ibid.*, 43.

That the broader practices of Communist justice subsumed many innocent people did not detract citizens from making use of the mechanism available to them to look for justice (in whatever meanings the term held for them) where they could find it. The previous chapters have tried to show how, despite differences in patterns and pragmatics of retribution—or punishment—Communist states wanted people to understand the gravity of the crimes and to repent moral responsibility for what, Jan Gross aptly describes, people “*could have refrained from doing* [emphasis his].”⁸⁷ Many non-Jews who initially could have refrained from denouncing and helping the German occupants murder Jews later had to explain, that is to perform, in postwar courtrooms why they had not. Their reasons could change over the years and at different moments of the trial process. But Jews who were judged in postwar courts for their conduct emphasized to authorities the limits of what they could do as Jews living under Nazi occupation, and particularly in the specific environment of concentration camps. Perhaps Smolarz, Zakharin, and Solominienè could have refrained from some of their nastier behaviors toward other Jews but they could not have refrained from being Jews, that is, from existing ‘on the bottom’ of the Nazi hierarchy in camps where the instances of agency were most limited. Zakharin and Solominienè entered Primo Levi’s theorized realm of the ‘Lager’ (the camp) as a restricted totalitarian space where “It was better not to think” only *after* they had survived the ‘Holocaust by bullets’ in the east.⁸⁸

Death in the camps and death by bullets were conjoined in the memory of the Holocaust behind the Iron Curtain. Historian Jan Gross concludes that

⁸⁷ Jan T. Gross, *Fear: Anti-Semitism in Poland after Auschwitz: An Essay in Historical Interpretation* (New York: Random House, 2006), 252.

⁸⁸ Levi, “On the Bottom” [1947], 43.

Survivors guilt might serve as a good measure of the difficulties of coming to terms with the Shoah. [...] Is there any other group of Europeans imaginable who were objectively less implicated in the crime? If Holocaust survivors could not reconcile themselves to their role (or fate?) in this man-made catastrophe, who else can, or could ever be expected to?⁸⁹

The next and final chapter explores, then, how artistic frameworks in People's Poland and the USSR reflected, evoked, or undermined the ideologically sanctioned discourses available on who, precisely, among Europeans were expected to perform some level of reconciliation with their role in the Holocaust. Artists evoked, as well as challenged, legalistic frameworks—particularly regarding personal participation in murder—that had developed over time and made the Holocaust prosecutable behind the Iron Curtain, even if due to censorship, the grief often remained personal.

⁸⁹ Gross, *Fear*, 249.

Chapter Five

The Art of Justice, the Law of Retribution, 1948-69

On April 16, 1969, Adolf Hitler was put on trial for war crimes in Bückeburg, Germany. The world had been gripped by “sensation” when in 1966 Hitler and his wife Eva Braun had been found hiding out as pensioners in “a small little town in West Germany.” Hitler was charged with “many murders of both precedented and unprecedented kinds,” “inciting war,” “war crimes,” and host of other crimes. But Hitler pleaded “not guilty” claiming that “I only wanted what was good for Germany, I wanted to give her freedom and prosperity. That’s why I started a purported campaign against the Jews. Its success proved that I was right.” Lawyers reasoned that “True he had started this antisemitic campaign much earlier, but this was for tactical reasons. [...] Even more, nobody [...] could prove that Hitler himself did any crimes. [...] In the opinion of the defense, it’s the people who are guilty [...] who supported the national-socialist regime of their own free will.” At any rate, “no concrete facts were proven” concerning Hitler’s participation in the atrocities. And since the trial was conducted according to the highest standards of justice, his plea was upheld. The judge assured the shocked public that the ruling was actually “a triumph against the state of injustice.”¹

The above story is, of course, fiction. This satirical imagining of a postwar criminal trial against an unmasked Hitler derives from a pamphlet written by the German humorist Felix Rexhausen in 1965. Rexhausen was a human rights activist in the former Federal Republic of Germany (FRG), or West Germany. His pamphlet was a satirical indictment of the West German trials in Frankfurt-am-Main from 1963-65 against Auschwitz staff, many of whom had been members of the SS, known as the Frankfurt Auschwitz Trials. The trials inaugurated a high-

¹ Felix Rexhausen, “Ir Hitleris Nekaltas?” *Švyturys* 22 (1965), 6-7.

profile public reckoning among Germans with what had happened to the Jews. The process also prompted public debates concerning individual and collective German responsibility for the Holocaust. Coming off the heels of the Eichmann trial in 1961, the Frankfurt Auschwitz Trials relied on West German domestic law but were criticized by those such as Rexhausen for the way in which the judges had reconfigured the boundaries of responsibility for murder and genocide in totalitarian society. Aside from the highest ranking “executive decision-makers” in the Reich, only those who had acted directly and at their own initiative could be convicted of murder. Others who were “following orders,” such as those who poured cans of Zyklon-B into the chamber showers, could only be charged as accomplices to murder and not directly with murder themselves. As Kim Priemel writes, since “the ban on retroactive law meant that genocide could not be charged [...] it was much easier to pin down subordinate men who had sadistically maltreated or killed the inmates whereas the camp’s higher echelons, more remote from the barracks and chambers, got away with aiding and abetting.”²

Rexhausen criticized the logic of the trials by inverting its rhetoric to illustrate a hypothetical, if impending, future acquittal of Hitler who had not “himself” committed any crimes. In 1965 Rexhausen’s article appeared in Soviet Lithuania’s main arts and culture magazine *Švyturys*. Rexhausen was among a group of “non-Stalinist socialists” in the FRG and organizer of the West German branch of the human rights group Amnesty International in the early 1960s. An outspoken critic of all forms of totalitarianism, he was palatable for Soviet audiences because he belonged to circles critical of the “grip of anti-communism on domestic affairs” and brought attention to the plight of political prisoners in non-Communist states. He was a vocal advocate of gay rights whose criticism of totalitarian treatment of political prisoners

² Kim Priemel, “Consigning Justice to History: Transitional Justice after the Second World War,” *The Historical Journal* 56, no. 2 (June 2013): 575.

was not meant to absolve the Soviets but rather to condemn similar practices in West Germany. And his main avocation, writes historian Lora Wildenthal, was “dislodging newly prosperous West Germans’ self-satisfaction” since he believed “West Germans had not yet put enough distance between the Nazi era and their own political habits of thought,” illustrated by the fervor of anti-communism.³ That the cultural press in a Soviet republic would evoke Rexhausen’s politics reflected the USSR’s eagerness to support anything that could expose the hypocrisy of the West; but this was informed by years of its own investigations into the meaning of “personal participation” in violence during the Holocaust, which had anticipated similar debates at the Eichmann and Frankfurt Auschwitz trials.

The legal frameworks in People’s Poland and Soviet Lithuania discussed in the previous chapters, together with the transnational ones apparent in Rexhausen’s satire, informed and reflected the artistic frameworks on the trauma of war in the 1950s and 1960s. The Cold War press in Lithuania and the United States reflected transnational confrontations with the nexus of criminal guilt and wider responsibility for participation in the Holocaust, a central analytical theme in this and previous chapters. The Cold War press and expat correspondence from the late 1940s to 1960s contextualize the cultural productions that comprise the main focus of this chapter. Representatives of diaspora ethnicities in the West were typically at the front of efforts to convict the Soviet Union of genocide. They helped generate narratives claiming that Nazi totalitarianism and the criminality of the German state had been sufficiently dealt with at Nuremberg and that it was time to focus on Soviet crimes and policies. The USSR responded by emphasizing that the genocide of the Jews, in which the anti-Soviet nationalists had played a major role, had barely been addressed in the West, if at all. The USSR was joined by West

³ Lora Wildenthal, *The Language of Human Rights in West Germany* (Philadelphia: University of Pennsylvania Press, 2013), 76-80, 83-84.

German activists, such as Rexhausen, who also believed that the Nazi regime and the destruction of Jews had not been sufficiently dealt with in the West. Polish authorities welcomed the opportunity to probe more deeply into German guilt, but by the end of the 1960s began to suppress any engagement with Polish complicity in the Holocaust.⁴ Thus, the artistic works in this chapter demonstrated a deep probing into German and non-German categories of guilt conditioned by the broader Cold War discourses on totalitarianism and fears about the fragmentation of the socialist bloc.

Particularly, I address the back and forth ‘print performances’ between the Lithuanian diaspora and the newly socialist homeland, demonstrated respectively in *Draugas* (Friend) and *Švyturys* (Lighthouse), as well as some reportage in the Baltic expat press on the consequences of WWII because they informed Soviet expressions. The representational emphasis in this chapter thus brings it full circle with the first by showing how individuals created histories of trauma in ways that were meaningful to them in the context of competing concerns of state construction in postwar Poland and the USSR, namely Lithuania. Sometimes the artistic frameworks were usable for state goals (e.g., assigning categories of blame vs. contemplating wider themes of justice, responsibility, and human behavior) of a given moment and space but could just as quickly become problematic depending on the changing winds. Underlying the analysis is the nexus of artistic and legalistic understandings of ‘personal participation’ and the meaning of murder, demonstrated in previous chapters and coming to a fore in this one. I argue that as opposed to suppressing Jewish content, oblique configurations under communism addressed the Jewish fate in meaningful ways to comment on justice (fulfilled or unfulfilled) and responsibility.

⁴ See generally Michael C. Steinlauf, *Bondage to the Dead: Poland and the Memory of the Holocaust* (Syracuse, NY: Syracuse University Press, 1997), especially 75-86.

The internal dynamics of Holocaust justice and representation in Poland and Lithuania after the war reflected the changing relationships between Communist Europe and the west in the ebbs and flows of Cold War politics, during which the establishment of the state of Israel in 1948 and West Germany in 1949 were critical moments. In welcoming East Germany into the socialist bloc, the USSR avoided evoking the guilt of the German people but could take the opportunity to criticize the FRG and the West more broadly for not having sufficiently undergone denazification. The commitment to prosecuting wartime crimes against Jews remained stronger in Lithuania than Poland. Jurists in the latter, as chapter two addressed, had envisioned postwar legal changes to account for future anti-state crimes to deal with participation in genocide; more so than in punishing past participation using the August Decree qualifying Nazi war crimes. At the same time, the government could distinguish Polish postwar justice from that of West Germany by looking to its own Auschwitz trials in Cracow against 40 members of the SS under the Supreme National Tribunal in 1947. The Cracow Auschwitz trials had used international crimes against humanity legislation to sentence over half of the defendants to death by hanging—including Maria Mandel, the female commandant at Birkenau—with most others getting life in prison or 15 years. Only one was acquitted. Four of the German and Austrian defendants were women.

Although women were hanged in the postwar Soviet justice like elsewhere across Europe, in the public evocation of war memory, wartime violence in the USSR was typically gendered as male and nationalist. As historians Seth Bernstein and Irina Makhalova have found in their study of postwar treason trials, Soviet investigators believed that women were “less capable of serious crimes.”⁵ This was not the case in Poland, where many women were tried for

⁵ Seth Bernstein and Irina Makhalova, “Aggregate Treason: A Quantitative Analysis of Collaborator Trials in Soviet Ukraine and Crimea,” *The Soviet and Post-Soviet Review* 46, no. 1 (2019): 46.

war crimes, particularly denunciation. Some of the most popular postwar artistic representations of the Holocaust featured the image of the German female SS guard and were written by women, such as Zofia Posmysz's radio play (1959) and novel (1962) *The Passenger*. The novel and its various artistic treatments inform much of this chapter. The plot depicts an accounting of guilt and denial when a former SS officer encounters her former prisoner in Auschwitz while sailing to Brazil with her husband, a West German diplomat. Posmysz herself was imprisoned in Auschwitz as a political prisoner and has referenced Mandel's trial and others as inspiring the plot.⁶ Another source of inspiration for the original radio program happened in Paris in 1959 when Posmysz thought she heard the voice of her former German guard in Auschwitz.⁷

The practices of justice for Jews at times paralleled the broader imperatives or priorities of a given political moment but still existed on its own terms. However, the Khrushchev era of the 1950s and 1960s marked a noticeable shift in the public memory politics of the war away from the emphasis on heroism and vengeance towards narratives focusing on grief, remembrance, and reflection. This chapter reintegrates the image of the German perpetrator into what so far in my analysis has been a story largely without them. The memory and representation wave of the 1960s was a transnational moment of clarification regarding the question: what exactly had happened to the Jews?

On the one hand, as historian David Shneer has shown, the 1950s and 60s in the buildup toward the 20th anniversary of the end of the war reflected a "universal meditation on war and the consequences of the Holocaust" whereby the Soviet Union projected a "diplomatic image to be sent around the world" of the wartime suffering wrought by Nazi occupation as a testament to

⁶ Dalya Alberge, "Musical 'masterpiece' captures horror of Auschwitz concentration camp," *The Observer*, September 18, 2011, last accessed May 22, 2020, <http://www.musiques-regenees.fr/Vainberg/PosmyszZofia.html>.

⁷ On women who served in the SS, see Shelly Cline, "Women at Work: SS Aufseherinnen and the Gendered Perpetration of the Holocaust," (PhD diss., University of Kansas, 2014).

the USSR as the best guarantor of peace.⁸ Chapter three evidenced how war crimes trials supported this goal. Shneer shows how for many Jewish artists, particularly photojournalists, this era was an opportunity to “return to their archive” and to revisit the material that had meant the most to them. In the May 1965 issue of *Svyturys*, Evgenii Chaldei’s photo of the bodies of dead Jewish women appeared with the caption “the Jewish ghetto in Budapest” before a full spread featuring a photo of stockpiled confiscated guns “on the day of the capitulation of the Hitlerites” which was captioned as “the most interesting photo from my album [įdomiausia iš mano nuotrauka albumo].” The photo was accompanied by a reader’s response from the engineer A. Krečmeris that said “Maybe the Hitlerites shot my father with these guns.”⁹ The “second wave” of Holocaust justice in the 1950s and 60s was a public affirmation to Jews—in the context of revisiting the literal archive of information on atrocities (i.e., trial records) that authorities had been collecting since the end of the war—that, yes, the Hitlerites (a term including both Germans and non-Germans) had shot their fathers, and mothers, and children. The Soviet Jewish artist Zinovii Tolkachev from chapter one is thus relevant for this one, as his early postwar art was utilized in the Soviet state campaign in 1969 to internationally revive the repatriation of German Nazis for prosecution. Tolkachev demonstrated a return to past work and themes in order to make meaning anew for his state, and for himself.

This chapter analyzes the creative works of Jokūbas Josadė, Zinovii Tolkachev, Mieczysław Weinberg, Andrzej Munk, Zofia Posmysz, Vytautas Bložė, and Yevgeny Yevtushenko, alongside the legal and press discourses that surrounded them. The creative production of this cast of creators, both Jewish and non-Jewish, represented a belt of Holocaust

⁸ David Shneer, “Making the Holocaust Human: The Holocaust in a Wartime Soviet Photograph,” public lecture at the University of Kansas, Lawrence, KS, January 30, 2020. See also idem., *Through Soviet Jewish Eyes* (New Brunswick, NJ: Rutgers University Press), 218, 224.

⁹ *Švyturys*, no. 9 (May 1965), 15, 28.

memory in the spaces where most of Europe's Jews had died, particularly Poland, the Baltics, and Ukraine. Their work reflected a mosaic of depictions of victims, perpetrators, and others in which a main theme was interrogating the meaning of "personal participation" in violence (although Tolkachev is positioned solely within the framework of commemoration). I compare the artistic discourses on participation with those emanating in the legal arena as evidenced in the press. The analysis shows how differing people in specific socio-political conditions (including elites, bureaucrats, intellectuals and artists, victims, perpetrators, witnesses, and inheritors of legacies of violence) tried to assess and assign differing levels of criminal and moral responsibility for the Holocaust somewhere between Hitler and everyone else.

Soviet Lithuania was at the crux of the politics of Holocaust memory since the immediate postwar. While the Polish government publicly emphasized German guilt, the Soviet Union aptly extended blame beyond Germans in a way that western governments were unwilling to do. Even so, the USSR was never able to reconcile its own implication in the wider history of European antisemitism. The diverse array of perspectives in these two source bases—artistic and legal—represented deeper structural grappling with the questions *Who was killed? Who has killed?* and *What to do with those who killed?* I probe the ways artists evidenced or challenged dynamics of legalistic frameworks (personal participation in murder, specifically) that had made the Holocaust prosecutable. Oblique representations of Jewish suffering could function, I argue, as meaningful commemoration, although in many cases Soviet authorities censored them regardless. Additionally, more universal, rather than particularistic, depictions of the Holocaust could still produce powerful statements on the genocide of the Jews. In particular, several works reflected the desire to move beyond retributive justice—not in order to replace it—but to examine wider questions of responsibility, restoration, and the legacies of antisemitism. This

chapter starts, then, with an exploration of the discourses surrounding postwar justice in the Cold War press, which often stemmed from judicial processes addressed in previous chapters and narratives produced by the Baltic expat community. It was within this larger context that the artistic responses on the meaning of murder (in both its universal and Holocaust-specific contexts) addressed in the latter part of the chapter emerged.

The Meaning of Murder in the Cold War Press

Competing Narratives of Trauma and Peace

Rexhausen's satire on the legal erasure of responsibility for the Holocaust in comparison with Soviet investigations into Jewish wartime suffering reflected not only changing international relationships in the ebbs and flows of politics, but also deep grappling among people of various positionalities and in differing institutional capacities with the meaning of atrocity transcending Cold War borders. As West German officials began to investigate the Holocaust systematically, officials sought help in 1963 for the Frankfurt Auschwitz Trial, as we saw in chapter three, from the Soviet Union which had made investigating Nazi atrocities a main priority. The tensions between the guilt of individual SS officers in Germany and that of the collective "German people" in Rexhausen's satire mirrored the ambiguities further east, where authorities navigated similar issues of categorical and individual responsibility for murder. As historian Dieter Pohl states, "The main problem that plagued all Nazi war crime trials right up to the 1980s was the development of the so-called 'accessory to murder' construct" which held that as Hitler and the highest ranking members of the Reich were the main perpetrators, all others were only accomplices to murder.¹⁰ Renewed investigations in the 1960s into what German

¹⁰ Sonia Phalnikar, interview with Dieter Pohl, "Landmark Trial Pushed Germany to Tackle Nazi Past (English)," *Deutsche Welle*, May 20, 2008, last accessed May 22, 2020, <https://www.dw.com/en/landmark-trial-pushed-germany-to-tackle-nazi-past/a-3349537>.

Nazis had done in Lithuania had actually reinforced the role of Lithuanian accomplices in shootings and even further distanced Germans from direct violence.

The widely publicized 1958 trial in Ulm issued lenient sentences to German SS officers for their crimes in Lithuania but was significant in that it helped launch, Pohl notes, a ‘murderers among us’ discourse in the West to which Soviet authorities responded—but not among us! Should murderers be found, as they were, they would be dealt with in closed proceedings. Public prosecutions of nationalists, however, would give the appearance of judicial reckoning. As war crimes trials in Poland were coming to a close in the 1950s, the writer Zofia Posmysz was evidently inspired by the Ulm trial: “In the late 1950s, there were a number of trials of SS people accused of crimes,” she recently recalled, and “I constantly thought: If my guard appeared in court, what would her defense be? And if I were called as a witness, what would I testify?”¹¹

In the 1950s and 1960s, resentment had been building among Soviet and Polish authorities over the American staffing of former Nazis in the ranks of the West German Federal Intelligence Service and courts. The Baltic diaspora press played a strong role in anti-Communist propaganda, although Lithuanian progressives in the US were receptive to exposing fascists among some of the Lithuanian DPs.¹² The USSR resented the ways in which Baltic DPs were helping to create a narrative of Soviet territorial gains and oppressive measures against national minorities (such as deportations to Siberia) as “in every way equivalent to these crimes against humanity which were condemned and punished by the Nuremberg International Tribunal.”¹³ In a

¹¹ Quoted in William Grimes, “Haunted by History, but Gifted in Sharing It,” *The New York Times*, July 9, 2014.

¹² L. K. Kapočius, “Dokladnye zapiski i spets. Soobshcheniia, vozrashchennye iz TsK KPL(b), svedeniia o litovskoi obshchine v SShA i prochee 1948-1951,” Lithuanian Special Archive (Lietuvos ypatingas archyvas) (LYA), f. K-51, a. 1, b. 62 [*Osobyi Sektor TsK KP (b) December 1948/ Litovskoaia Koloniia v SshA (deiatel'nost litovskikh politicheskikh grupp v SshA s okriabria 1947 – sen. 1948 goda)*], l. 30.

¹³ Executive Secretary of the Estonian National Council, “For Genocide Action,” *New York Times*, May 29, 1949, collated in Lithuanian Central State Archive (Lietuvos centrinis valstybės archyvas) (LCVA), f. 658, ap. 1, b. 76, l. 15.

collective letter to the general assembly of the United Nations in 1949, Baltic representatives in the US denounced the postwar status quo by describing “the situation of the Baltic Peoples” as “the most tragic and the most drastic example of the degradation of human dignity and of genocide.” They remarked that “Whereas the German members of this conspiracy against Peace and Humanity were deservedly punished for their crimes,” it was now time for the Soviets to be punished.¹⁴

While authorities in People’s Poland consistently advanced the position that German members ‘of the conspiracy’ had actually not been punished sufficiently (if at all), the USSR emphasized the necessity of going beyond Germans to emphasize the *Baltic* members who were going unpunished while their representatives wrote anti-Soviet human rights declarations in the west. That is, Soviet authorities held that not only the organizers of the “conspiracy against Peace and Humanity” should be punished, but also those who had voluntarily assumed tangible roles in carrying out the violence.

Authorities were also worried about the economic crisis. In March 1953 Romanas Mariošius was overheard saying, “Difficult material conditions were created in Lithuania not because of the war, but because the Soviets rob and ruin the country and deport everyone from Lithuania.”¹⁵ Additionally, authorities were surveilling “the disposition of Lithuanian Jews” regarding Israel. A cafeteria director by the surname of Ausker said, “Many Jews are practically ready to leave for Israel,” surmising, “It’s better to die in a fight against Arabs defending their

¹⁴ Letter to President of the Third General Assembly of the United Nations Dr. Herbert Evatt, May 9, 1949, by Chairman of the Estonian National Council (ENC) A. Rei, ENC Secretary General H. Maandi, President of the Central Council of Latvia Bishop J. Rancāns, Chief of Foreign Service of the Latvian National Council R. Liepins, Chairman of the Supreme Lithuanian Committee of Liberation Mykolas Krupavičius, and Chairman of the Lithuanian Executive Council Vaclovas Sidzikauskas, collated in LCVA, f. 658, ap. 1, b. 20, ll. 35-36.

¹⁵ File “Operativnaia svodka i soobshcheniia MVD LSSR v TsK KPL ob agenturno-operativnoi rabote po razrabotke i likvidatsii natsionalisticheskikh gruppirovok, o rabote po vyivleniiu agentov inostrannykh razvedok, o nastroeniakh litovskikh evreev,” LYA, f. K-51, ap. 1, b. 156, ll. 236, 238.

land, than at the hands of Russians, who hate us and are ready to kill us for no reason.”¹⁶ Jews who wished to leave the USSR saw Stalin’s death as opening up the chance to go. Thus, at home, the later wave of Holocaust commemoration could function as a tool for reframing war trauma for non-Jews and signaling to Jews that the USSR was the best guarantor of justice as aging perpetrators either died or walked free in the West.

In February 1962 on the anniversary of the restoration of Lithuanian statehood following the Treaty of Versailles, US President Kennedy received the expat Lithuanian delegation at the White House. During their address, rather than evoking rhetoric of genocide and crimes against humanity, the delegation attempted to frame US-Baltic solidarity within the global wave of decolonization and as a natural conduit of Kennedy’s new policy of cultivating friendship among non-aligned states in the Middle East for containing communism. The delegation referenced Kennedy’s support of pan-Arabism and friendship with Egyptian leader Gamal Abdel Nasser by evoking a sort of ‘pan-east central Europeanism’ in the fight for “freedom of choice.” And there was brief mention of war crimes trials:

Hitler and his criminal regime long ago were condemned by the world at Nuremberg.

[...] And yet the present government of Soviet Russia continues to enjoy the fruits of his crime. [...].¹⁷

But in evoking Nuremberg, and not the recent 1961 Eichmann trial, the crux of differing narratives on the meaning of “peace” and which system could guarantee “a brighter future for all mankind” was evidenced. The Soviet response, building upon two decades of information

¹⁶ “Dokladnaia zapiska o nastroeniiakh evreiskogo naseleniia litovskoi ssr v sviazi s ustanovleniem diplomaticheskikh otnoshenii mezhdru sssr i gosudarstvom Izrael!” to Secretary of the Central Committee of the Communist Party of Lithuania Sniečkus from LSSR Minister of Internal Affairs Vildžiunas, August 24, 1953, LYA, f. K-51, ap. 1, b. 156, l. 73.

¹⁷ Text of the Lithuanian Delegation in Washington DC, February 16, 1962, LCVA, f. 658, ap. 1, b. 20, ll. 86-87.

collected in closed proceedings which had anticipated the Eichmann and Auschwitz Frankfurt Trials, was to question the brightness of a future (the “peace”) of a system whose ‘freedom of choice’ had enabled sacrificing the lives of others, namely Jews, in the pursuit of self-determination.

Who Killed the Jews?

Competing narratives on the most important consequence of the war contextualized the desire on part of Soviet authorities to clarify that most of the “peaceful Soviet citizens” murdered were Jews, particularly women, children, and the elderly; and that most of the “Soviet activists” were ethnic Lithuanians. From 1961-62 various city branches of the Soviet Committee for a Return to the Homeland began sending materials with titles such as “A Pastor? No – a mass murderer!” and “Under a Believer’s Mask – a Sadist” to members of the Baltic émigré communities exposing the wartime behaviors of priests leading congregations in the US and Canada.¹⁸ The Soviet government had wanted the Jews to stay, and the displaced Lithuanians and emigrants to come back. The reasoning was that as Soviet economic conditions were improving in the 1960s, perhaps disillusionment with the émigré spiritual leadership in the west could convince former DPs to return (many had fled with the intention of coming back).¹⁹ Thus, priests were accused of murdering Jews as well as “their own parishioners.” Priests were evoked not as shooters and guards, whom the government was accustomed to punishing, but as communal leaders who turned over names of Jews and pro-Soviet Lithuanians, preached on Nazi racial theory, etc. Fashioning priests as morally responsible prompted a serialized response by

¹⁸ Letter by J. Edgar Hoover of the Federal Bureau of Investigation to Deputy Director of the Central Intelligence Agency, June 25, 1962, Washington DC, and attached booklet by the Latvia Section of the Committee for the Promotion of Repatriation and Cultural Ties with Compatriots Abroad, *People Without a Conscience* (Riga, 1961), last accessed May 22, 2020, https://www.cia.gov/library/readingroom/docs/ERNSTONS,%20ARNOLDS_0021.pdf.

¹⁹ See Dalia Stakė Anysas, Dalia Cidzikaitė, and Laima Petrauskas Vanderstoep, ed. *We Thought We’d Be Back Soon: 18 Stories of Refugees, 1940-1944* (Vilnius: Aukso žuvys, 2017).

one Lithuanian priest, Vaclovas Martinkus, over several issues of the main Lithuanian-American daily *Draugas* in March 1962. In his article “Murderer or Savior [Žudikas ar Gelbėtojas]” Martinkus emphasized that “I also need to speak here about instances of *help to Jews* [Turiu čia papasakoti ir žydų gelbėjimo įvyki]” (emphasis in the original) and contested the “Soviet facts” of guilt.²⁰ While self-ascribed representatives of Lithuanian collective memory preferred to emphasize narratives of help, the Communist regimes (and some of the citizens under their purview) in post-Holocaust spaces were concerned with the meaning of the harm.

That summer, in the special July 13 issue of *Švyturys* commemorating the anniversary of the Soviet liberation of Vilnius, the writer A. Lieponis responded by publishing excerpts of Martinkus’s article in the form of a performance of an *ochnaia stavka* (face-to-face cross examination) between the (‘bourgeois’) diaspora and (Soviet) homeland.

Martinkus: The reader may think that even if this is Bolshevik propaganda, maybe there is some truth to it [*gal yra dalis ir tiesos*]. It's hard to imagine that all of this is just a fabricated lie. And yet, all 100% of it is a lie.

Lieponis: In our understanding, a murderer is not only the one who was shooting down people at the edge of the pit [*ne tik tas, kuris nuo duobės krašto šaudė į suguldytus žmones, bet ir tas ...*], but also the one who helped him choose the victims, who blessed those returning from the bloody orgy, who built a high-rise house from the property of those who were shot, who in that property cheerfully spent his days far removed from the graveyard of the slain [*leidžia sau dieneles toli nuo nužudytųjų kapų*].²¹

²⁰ Vaclovas Martinkus, “Žudikas ar Gelbėtojas,” *Draugas*, March 27 and 31, 1962.

²¹ A. Lieponis, “Žudikas ar Gelbėtojas?” *Švyturys*, July 13, 1962.

Debates in the Lithuanian press on both sides of the Iron Curtain about the boundaries of responsibility for murder among those removed from direct violence anticipated the same ones that were configured during the Frankfurt Auschwitz Trials a year later in 1963 and rehashed in Rexhausen's satire in the Soviet Lithuanian press in 1965 with German perpetrators in mind.

The Frankfurt Auschwitz Trials prompted the USSR to reassess its prosecutions of war criminals. Soviet authorities likely surmised that the Frankfurt process would expand the geographical and conceptual image of German crimes; meaning that, in addition to the camps and gas chambers, imagery would include the killing fields of Soviet-occupied territory. The Soviet Union had amnestied political prisoners and collaborators in 1955, except those who had directly participated in Nazi atrocities, and Poland did the same in 1956 following its earlier amnesty in 1952. In 1964, Poland suspended the statute of limitations "for perpetrators of the most serious Nazi crimes committed during the Second World War."²² The Soviet Union did the same a year later in 1965. Yet the Polish government was not enthusiastic about reviving an internal campaign against war criminals. Minister of Justice Marian Rybicki during a presidium of the Ministry of Justice in Poland referenced the Frankfurt Auschwitz Trials in his opposition to a new wave in Poland, recalling

Immediately after the war our special penalty courts, not being able to get the main criminals and Hitlerite leaders, who disappeared in the west, concentrated with total severity on the *Volksdeutsche* and collaborators. Often the main perpetrators and organizers of the crimes escaped responsibility, while their helpers and contractors

²² Dz.U. 1964 nr 15 poz. 86, last accessed May 22, 2020, <http://prawo.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU19640150086>.

underwent severe punishment. Therefore, to concentrate now on such cases while in Germany the most important criminals enjoy no punishment would be wrong.²³

While in his view the smaller fry were equally implicated, Rybicki questioned the ethics of continuing to prosecute the participants while the major organizers walked free. It seems that most cases in the dock were ended no later than 1965 with few new ones generated in 1964 or 1965. This was not the case in Soviet Lithuania where from 1965-66 authorities had launched a series of group trials specifically aimed at Holocaust perpetrators. The pedagogical message was that a “good Lithuanian” should support the Soviet regime, because the chosen manifestation of anti-Soviet resistance had so often been the murder innocent people, namely Jews, and also Lithuanian Communists.

After Nuremberg had established the guilt of the German state, Soviet authorities then moved on to proving the guilt of the “bourgeois nationalists.” As with references to the guilt of Germans, the USSR avoided blaming Lithuanians (as new members of the Soviet state) for the Holocaust and thus referenced only the actions of the nationalists. In Poland, prosecutions did not evoke “bourgeois nationalists” because the formal nationalist groups consistently engaged in anti-Nazi resistance and were not used for shooting expeditions and arrests. Members of the Polish police typically participated in murders of one or a few Jews, instead of hundreds, but faced similar charges of participating in arrests as the men north of the border. While in a large proportion of cases contained denunciation as the main charge, Soviet courts did not much investigate the phenomenon.

The reinforcement of the association between nationalists and the Holocaust in the Soviet Union had the effect of publicly exonerating “the neighbors” from moral culpability. But the

²³ Archive of Modern Records (Archiwum Akt Nowych) (AAN), z. 2/285 (Ministerstwo Sprawiedliwosci), sygn. 539 (Kolegium Ministerstwa Sprawiedliwosci. Protokoły z posiedzeń 1965), l. 21.

state expanded the criminal liability of participants in direct violence regardless of ideological disposition (including those who were not nationalists) and of the leaders and institutions who laid down the ideas informing violence. The latter, however, were typically targeted primarily for their category than their crimes. In Poland, the ideological demands of censorship meant making suffering Polish, while in Lithuania the Sovietization of suffering meant making it Lithuanian. As opposed to the immediate postwar period, as we saw in chapter one, in the 1960s the Soviet Union could not tolerate competing Polish victimhood claims, or insinuations that retribution was not the most preferred representation of justice. The differing trajectories of *The Passenger* in Poland and the USSR reflected the complexities of forging of a long-lasting Soviet cult of war memory, which began during this time.

Dancing around Memory: Variations on the Theme of Justice from Germany to Russia

Dancing is a familiar theme of postwar recovery and memory.²⁴ The act of dancing is related to postwar justice in Communist Poland and the Soviet Union because discourse in postwar socialist spaces posited that the capitalist west preferred to dance away the past rather than to account for it and to substitute entertainment for material well-being. This section demonstrates how discussions among fictional characters about personal participation in murder, particularly in variations of *The Passenger*, functioned against Cold War commemorative backdrops of music, dancing, and memory. In turn, I show the similarity of artistic and legal discourses on the meaning of personal participation in violence.

Erica Fraser has analyzed Soviet cartoon critiques of dancers who “showed off what they had received from the [Marshall] Plan—which was nothing but rags” while dancing to the swing

²⁴ See generally Christopher T. Nelson, *Dancing with the Dead: Memory, Performance, and Everyday Life in Postwar Okinawa* (Durham, NC: Duke University Press, 2008).

and be-bop introduced by American GIs.²⁵ Dancing is a universal coping mechanism for grief and trauma but was also connected to specific narratives of postwar liberation. A staple of American Holocaust memory culture is the beckoning to ‘come out and dance’ upon the distinctly American, and not Soviet, soldier’s arrival. Soviet authorities also advanced narratives of joyous liberation, but alternative victim responses included acknowledging the belated liberators with indifference and gesturing at the dead in bewilderment, grief, and silence.

In Eastern Europe and the Soviet Union, where millions of civilians had died, dance as a form of recovery was more difficult to navigate on the graves of the dead, but still compatible with socialist demands. Władysław Szpilman (the Warsaw ghetto survivor depicted in Roman Polanski’s film *The Pianist*) survived the Holocaust and resumed his position in postwar Poland as pianist and director of the Popular Music Department of the national radio. In 1947 he composed the foxtrot *Parę butów mam* (*I Have a Pair of Shoes*) with lyrics by Jerzy Wasowski which begins “I can’t imagine where all these malcontents came from [*Nie mogę pojąć, skąd tylu malkontentów*]” because, as the chorus goes, “I have a pair of shoes” (presumably for dancing) and “two changes of underwear” and “a tie and clothes and sixty-eight *złoty* in my pocket.” The lyrics reflected the themes of adaption and self-determination originating in the blues and jazz genre from which foxtrot derives. The lyricist Wasowski, who was not Jewish, evoked popular American musical refrains about being poor but signaled to Polish radio listeners that despite the difficulty of postwar conditions, there was reason enough to be content. For Szpilman, composing foxtrots in the postwar reflected his adaptation to life in Poland after the Holocaust. By the late 1940s, the demands of socialist realism in Polish artistic culture (*sozrealizm*) during Stalinization marginalized ‘bourgeois’ music like jazz to underground movements, while the

²⁵ Erica L. Fraser, *Military Masculinity and Postwar Recovery in the Soviet Union* (Toronto: University of Toronto Press, 2019), 87; Tony Judt, *Postwar: A History of Europe since 1945* (New York: Penguin Books, 2005), 234.

state promoted folk ensembles like *Mazowsze* founded in 1948. In Lithuania, folk ensembles such as *Lietuva* and *Kupiškėnų vestuvės* were especially popularized after the war.²⁶ But Soviet Lithuanian surveillance evidenced that people wanted more dance. One informant reported how in the fall of 1953 someone by the name of Stoškus in Perliai attributed Stalin's government as unafraid of anything, but "now the government is afraid of the US: how they play, and how they dance."²⁷ Music and dancing are prominent motifs in the various artistic treatments of Zofia Posmysz's *The Passenger*.

"The Passenger" and the Specter of Retribution

The story takes place on a transatlantic voyage in the aftermath of the establishment of West Germany in 1949. A former German SS officer named Liza has hidden the facts of her SS service from her husband, Walter, a West German diplomat. During the voyage Liza sees another passenger who resembles the former Polish inmate named Marta, whom Liza had made a privileged prisoner, who remained behind in the death block when Liza was transferred to a higher position at another camp as reward for her good service. Flashback scenes depict Liza's interactions with Marta in Auschwitz. Fearing that the woman is really Marta and will recognize her, Liza is made to confront and justify her past, to both herself and to Walter, in anticipation of having to confront her victim and, possibly, a court should Marta turn her in.

After the success of Posmysz's radio program in 1959, Andrzej Munk adapted *The Passenger* into a television series in 1960. Posmysz, who was Roman Catholic, and Munk, who was Jewish, were born two years apart in Cracow. Posmysz was arrested as a political prisoner for her association with students disseminating anti-Nazi leaflets and was interned in Auschwitz

²⁶ Violeta Davoliūtė, *The Making and Breaking of Soviet Lithuania: Memory and Modernity in the Wake of War* (London: Routledge, 2013), 136.

²⁷ LYA, f. K-51, ap. 1, b. 156, l. 209.

and Ravensbrück. Munk survived the war by hiding in Warsaw under a false name and working in construction. He also participated in the 1944 Warsaw Uprising. After the war Posmysz studied literature and Munk studied film. When Munk wished to make a film of *The Passenger* in 1961 Posmysz provided a screenplay but was not involved in the film itself. Andrzej Munk died in a car crash in 1961 when the film was halfway finished. The only live action scenes depict Liza's time at Auschwitz, while her postwar reckoning on the ship is presented in photo stills with commentary produced by the film team.²⁸ Meanwhile, Posmysz had produced the novel version in 1962, and Munk's unfinished film was released in its fragmented form in 1963.²⁹

Munk and Posmysz both demonstrated the desire to de-pathologize Germans by representing the human dimension of harmful choices, while still conforming to the political demand to expose the hypocrisy of the West. Posmysz's novel explores the theme of German collective guilt at length, particularly through scenes between Liza's husband, Walter, and an American passenger, a journalist named Mr. Bradley who has been posted to cover denazification in Germany. Between glasses of Pepsi and whiskey, Bradley compels Walter to account for all Germans, not in terms of inherent evil (their 'blood') but in categorical guilt:

Bradley: I'm talking about consent to atrocity [Mówiąc o zgodzie na zbrodnię], I didn't have in mind the disposition of the German people during Hitler's time [nie miałem na myśli postawy narodu niemieckiego w czasach Hitlera].

Walter: I understand [...] You will forgive me if I also say a few words about myself. I have the right to do so because I belong to the category of Germans, which under your

²⁸ See Wiktor Woroszyński, "Teksty filmowe, własne i tłumaczone," in *Archiwum Wiktora Woroszyńskiego* (Warsaw: Biblioteka Narodowa, [1965]), j. 46, ll. 2-19.

²⁹ Andrzej Munk, *Pasażerka* (1963), 00:8:46, Second Run DVD, 2006.

division of prisoners and all the rest have been universally condemned by you [przez pana globalnie osądzona]. [...] All others, if they did not actively participate in atrocities [jeśli nie współdziałała w zbrodni aktywnie], then fed them and fed on its waste. This is your position, if I understand it correctly. Could I ask you to specify more precisely off of what they fed? From the belongings of those murdered?

Bradley: You know that's not what I meant. Of course, some part of the nation fed on this, but the whole nation fed on the triumphs of Germany, the intoxication of victories, the whole nation fed on the hope of a global empire as daily bread...

Walter: Oh! ... so those who performed human experiments as if experimenting upon animals are acquitted, and you have judged others for... hope?³⁰ [...] But I ask you: how many people could have known that the goal of the German Reich was criminal?³¹

In attempt to distance himself from the Nazis, Walter reveals that he had joined the Wehrmacht to avoid service in the SS. Walter implores to Bradley to consider the “half of the nation” hereto “unnoticed” because they belonged neither to the “militant anti-fascists” nor to the Reich’s “praetorian guard” (analogies to the respective Cold War ascriptions of East and West Germany) but who had remained “passive [*bierna*].”³² Later Walter reminds Bradley that

we have seen at any rate that the world cannot do without us, that our so-called crimes are evidently not crimes [*nasze tak zwane zbrodnie nie są widocznie zbrodniami*], as they are just waved away, that so-called criminals are actually quite decent people, as yesterday's

³⁰ Zofia Posmysz, *Pasażerka* (Warsaw: Axis Mundi, 2019 [1962]), 31.

³¹ *Ibid.*, 32.

³² *Ibid.*, 33.

missionaries and knights in the anti-Hitler crusade have ushered them into the service of the new [anti-Communist] order [*dla nowego porządku*].³³

Walter, a West German diplomat, is happy to emphasize that western countries welcomed amnesties against former Nazis in the interests of fighting communism and staffed the West German intelligence service and judiciary with former Nazis. He mentions that Nazi criminals regularly escaped punishment due to fears of evoking Communist standards of justice. “And yet you are outraged,” Walter continues, “that when questioned by you about these ‘atrocities’ the German says, ‘I don’t know.’”³⁴ Walter would prefer to be left “alone in this fog and darkness” of lounge room smoke and repressed memory in which Bradley has “found” him.

But in private, Walter is the vehicle for Liza’s reckoning. Liza tells him that she cannot answer for the crimes of others. “Unless I should be responsible for everything and everyone!” Walter, riling from his talks with Bradley, responds that “No, you shouldn’t.”³⁵ Liza continues, “It wasn’t my job to determine punishments. I only wrote the report. I was new. I didn’t know what it was like in this criminal operation.”³⁶ Regarding her chosen prisoner, Marta, she repeats the refrain, “I was good to her.”³⁷

[...] I wasn’t a sadist. My hands are clean [*Moje ręce są czyste*—I never hit prisoners.

And it’s not my fault [*nie moja wina*] that others did.³⁸

Liza had taken part in gas chamber selections one time, and she inflicted punishments under the gaze of her superiors. By enlisting Marta as command leader, Liza ensured her lighter work and

³³ Ibid., 123-24.

³⁴ Ibid., 124.

³⁵ Ibid., 86.

³⁶ Ibid., 86.

³⁷ Ibid., 51, 60.

³⁸ Ibid., 79.

more food rations; she turned a blind eye to Marta's clandestine meetings with her boyfriend Tadek. And when Marta got sick, she pulled her out of the camp hospital, as the sick were always sent to the gas chamber. Liza expects Marta to be grateful to her, but soon understands that Marta resents her. When Liza learns that Marta organizes underground resistance, she begins to psychologically abuse Marta in a series of intimate power struggles to win not only Marta's allegiance, but her endearment. In retaliation to Marta's resentment, Liza betrays Tadek and he is killed.

Liza's confessions suffice as reckoning enough for Walter, until they learn that the mysterious woman is indeed Marta. Walter suggests that Liza depart at the next port in Lisbon and meet him at a later time in Brazil:

Liza: I'm no more guilty today than yesterday! I'm not guilty in general! I was only...

Walter: A good supervisor. You carried out your honest patriotic duty.

Liza: I wanted to be a good German. Like you want to be a good German.

Walter: You don't see any difference?

Liza: No! For ten years you didn't ask me even once about my work. And today you want to dump me!

Walter assures Liza that he is not judging her, but that with the specter of retribution looming it will be difficult for him to remain with Liza because of his "profession." Liza balks at this and decries

So then why were you silent when the world belonged to us?³⁹

Liza's accusation prompts Walter to reflect on the meaning of his own actions. The next day the Kretschmers learn that Marta will disembark in Lisbon. Liza tells Walter "We are saved

³⁹ Ibid., 193: "Dlaczego milczałeś, gdy świat należał do nas?"

[*Jesteśmy uratowani!*]” but Walter responds, “You don’t understand anything. We are condemned [*Jesteśmy skazani!*] Regardless of what she does.”⁴⁰ The collective self-accusation transcends the specter of Marta’s retribution. As Marta descends from the ship, she meets Liza’s gaze and the women stare into one another’s eyes in silence before Marta passes.

The novel ends with an agitated Bradley approaching Walter, for whom he has been searching, to discuss the latest demands of the German government. But Walter resists Bradley (“It seems that you will not have anyone to discuss this with”) and returns, presumably, to the dance floor with Liza. But the subtext also suggests a return to into the ‘fog and darkness’ of his own moral conscience despite the public demand for accounting. Amid the performances of guilt and justification for different audiences (the international press, the courtroom, the victim, the postwar community of friends, family, and others) Posmysz leaves readers with the command to acknowledge and to remember wartime suffering. Her novel humanizes Germans but does not easily extend guilt beyond them.

There are two main differences between Munk’s film and Posmysz’s novel, which reflected their differing positionalities, Jewish and non-Jewish, in relation to the Nazi occupants, and to Polish war myth of resistance and victimhood. Firstly, in the novel Liza is traveling to Brazil, but in the film, Liza is returning to Europe for the first time since the end of the war. Secondly, Posmysz does not mention Jews in her novel; she also barely evokes “Poles” but as Marta is a Polish political prisoner the ethnicity of victimhood is evident in the plot structure. In the film, although the story is narrated through the perspectives of a German SS officer and her Polish political prisoner, Munk establishes Auschwitz as a Jewish space from the very beginning. He frames the Holocaust as a particularly Jewish event by panning the camera along several

⁴⁰ Ibid., 201.

Stars of David on confiscated clothing. The frame moves along hairbrushes and other strewn possessions but pans again up towards the Stars of David. The camera then moves toward a Jewish prayer shawl, menorahs, and other Judaica. Later, in the two scenes in which children are led to the gas chamber, their Stars of David are visible.

In the novel, the resolution is clear: Liza faces her prisoner, who is really Marta; the latter disembarks in Lisbon and leaves Liza in ‘peace.’ But in the film, Liza returns to Europe where Marta boards the ship in London, representing the war victims left behind. Because Munk died before the film could be finished, there is no clear resolution. In fact, whereas in the novel the woman is certainly Marta, in the film it is only perhaps “Marta, or someone resembling her.” As the “brush with the past did not last long” we presume that Marta departs the ship and leaves Liza in ‘peace’. Viewers only know for certain what happened in the flashbacks to Marta’s and Liza’s time at Auschwitz: the hurt, but not the justification. As the narrator explains, “We are left with fragments – happy passengers... Liza, staring at Marta... trying to be sure it is really her... Under such tension Liza recalls the truth well enough.” Liza is compelled to recall the truth for herself, but as viewers

We shouldn’t ask too much of the Overseer... she’s admitted enough. Justifying oneself is only human. Anyway, what is this recollection of a game... between overseer and chosen prisoner? ...from cruelty and evil, only too human?

The film ends with the observation that “Liza won’t be challenged by truths buried in the mud of Auschwitz. Nobody can disturb Liza’s life among people indifferent to yesterday’s crimes, who even today...”

The ending conforms easily to the political demands of the time between Munk’s death and when his friends and crew finished the final version from 1961-63. Marek Haltof has

observed that it was a “warning against West German politics” in the aftermath of the erecting of the Berlin Wall. The suppression of references to Jews is often noted in discussions of many versions of *The Passenger*. Haltof emphasizes that Munk was “more interested in a universal dimension of his story” while historian Omer Bartov surmises that Munk “was already conscious” of the 1968 anti-Semitic campaign in Poland and that in the final version, had Munk lived, “the appropriation of Jewish heroism, the transformation of Marta from Jew to Pole, would have been given the kind of wry and ironic expression of which Munk was such a master.”⁴¹ In my reading, Munk has not suppressed references to Jews, neither in order to meet the demands of censorship nor for other purposes. Rather, he has actually emphasized the Jewish fate in meaningful ways that do not necessitate solely Jewish content. Munk has tried to tell a story that was both Polish and Jewish, because he was both Polish and Jewish. He respected that *The Passenger* was, in fact, not his own story—it was Posmysz’s story. Munk and Posmysz were both invested in the universal aspects of the Holocaust, and in humanizing the perpetrators. Munk did not share Posmysz’s experience as a camp prisoner, but neither did Posmysz share Munk’s experience as an assimilated Polish Jew forced to go through the war as an Aryan in hiding. But Munk did not preclude ironic expression from his humanization of the nature of harm, illustrated through Liza’s self-justifications, the film’s initial framing of death in the camps as primarily Jewish, and pessimistic allusions to the Communist present.

Munk narrated Jewish specificity from the beginning of the film as the entire framework from which to interpret the camp experience. In fact, in the hustle and bustle of sorting possessions during the arrival of new transports, Marta takes a small menorah from a newly confiscated suitcase in her hand and pauses to examine it before moving on. Munk

⁴¹ Marek Haltof, *Polish Film and the Holocaust: Politics and Memory* (New York: Berghann Books, 2012), 107. Bartov quoted in idem., 106.

simultaneously narrated the general suffering of Poles *and* represented the loss of Europe's (namely Poland's) Jews. In the depictions of Jewish transports walking to the gas chambers, Munk does not merely relegate Jews to passive victims, as Haltof suggests; he commands their recognition. Munk was not interested in narratives of triumph. He and other filmmakers of the Polish New Wave/Polish Film School of the 1950s and early 60s were criticized for their "pessimistic portrayal" of the present and their "abandonment" of narratives of wartime heroism and martyrology which, notes Haltof, resulted in a special 1960 party resolution to reassert control over artistic content.⁴²

While the film alternates between accounts of wartime horrors and postwar dancing and luxury aboard the ship, the film does not contain the Cold War lounge debates between the American Bradley and German Walter which were so central to Posmysz's novel. Instead, Munk transcends questions of German guilt, as well as the specter of retribution and ruin; providing another lens by which to interpret the content. In the eighth minute of the film Munk depicts a roll call line up of imprisoned women. The camera utilizes first person perspective so that the viewer sees the prisoners through the eyes of the perpetrator. The prisoners stare resolutely into the camera, keeping the gaze as the camera (Liza) moves along the line of women. But Munk turns the victim's gaze onto the future viewer. In the first place, the viewer is the postwar Polish citizen who must apprehend the meaning of Jewish loss. Liza encounters "Marta, or someone resembling her" because the viewer is asked to consider that maybe Marta did not survive, but most Roman Catholics did; maybe the Jewish newborn that Marta's command hides from Liza did survive, but most Jews did not. Additionally, by ambiguously alluding to "someone resembling" Marta, Munk opened the possibility for apprehending present and future suffering.

⁴² Ibid., 109.

The Polish citizen of Munk's present was to meet the gaze of victims in the past in order to reflect, together with Liza, upon the meaning of one's actions. As performance and media scholar Magda Romanska describes, the film and novel transcend grand historical narratives because Liza and Marta "are foremost two women caught in a personal power struggle."⁴³ But Munk wanted viewers to apprehend that the consequences of ordinary behavior in extraordinary situations do not affect all individuals neutrally. In turn, Munk extended the victim's gaze to the future viewer of any nationality behind or beyond the Iron Curtain with the demand not to be indifferent to the fates of others.

Readers will recall from chapter two that Aniela Klocek reported her Jewish tenants, whom she had originally *helped*, to the German authorities because she could no longer stand the annoyances of roommates in close quarters. She was put on trial by her neighbors in 1944 and convicted, but the sentence was overturned in 1946 at the appeal of her lawyer who argued that "no harm was caused to Poles." One can only speculate whether she saw Munk's film in 1963, and what kind of impression it might have made. Munk's film encouraged self-reflection on the universal capacity to harm, regardless of religion, ethnicity, or politics.

"The Passenger" and the Promise of Justice?

Posmysz's novel was translated into Russian in 1963. The famous Soviet composer Dmitry Shostakovich read the novel and recommended it to his friend and contemporary Mieczysław Weinberg with the idea that it could be adapted into an opera. Alexander Medvedev composed the libretto to the Weinberg's score, and the opera was set to be staged in 1968 but was recalled. While the opera was never staged until 2006, a score was published in 1977 with a

⁴³ Magda Romanska, "Mieczysław Weinberg's Opera 'The Passenger': On Memory and Forgetting, *The Theatre Times*, March 4, 2015, last accessed May 22, 2020, <https://thetheatretimes.com/mieczyslaw-weinbergs-opera-passenger-memory-forgetting/>.

forward by Shostakovich written in 1974.⁴⁴

Weinberg, a Polish Jewish composer, was born in Warsaw in 1919 around the same time as Munk and Posmysz. He fled to the Soviet Union in 1939 when the war broke out. He lost his entire family in the Holocaust and lived in Moscow from 1943 until his death in 1996. His father-in-law was the famous Yiddish actor and director of the Moscow State Yiddish Theater, Solomon Mikhoels, who was assassinated on Stalin's orders in 1948. Because of the association with Mikhoels, Weinberg was arrested in February 1953 during the "Doctor's Plot" under charges of "Jewish bourgeois nationalism." Weinberg retorted that he should have been charged with "Polish bourgeois nationalism" as his home was filled with Polish books and he could not read Yiddish.⁴⁵ Shostakovich wrote a letter to Stalin on Weinberg's behalf, but it is unclear whether this would have helped him. Weinberg was rehabilitated after Stalin died a month later.

Musicologist Daniel Elphick has analyzed Weinberg in the context of both his roots as a Polish avant-garde composer and his embrace of Soviet trends, deeply inspired by Shostakovich. Elphick traced how in the mid-1950s and 1960s, Weinberg's "urge to commemorate" deepened as it paralleled an underlying ennui in his compositions "effectively denying [the] certainty of progress towards a utopian but possible-to-imagine goal."⁴⁶ Weinberg returned to earlier commemorative compositions, such as "Deep Pits" in his 1944 *Jewish Songs after Shmuel Halkin* representing loss at Babi Yar. In 1962 he reworked "Deep Pits" into the fourth movement

⁴⁴ Moishe Vainberg, *Passazhirka: opera v 2 deistviiakh, 8 kartinakh s epilogom*, libretto by Aleksandr Medvedev, Iu. B. Lukin, ed. (Moscow: Sovetskii kompozitor, 1977 [1967-68]). Because an English translation exists and conforms to the published score in Russian, I will subsequently defer to the translation of David Fanning and David Pountney, except where noted otherwise, as presented in Mieczysław Weinberg, *The Passenger, Op. 97*, opera in two acts, eight scenes and an epilogue (1967-68), libretto by Alexander Medvedev after the eponymous novel by Zofia Posmysz, Bregenz Festival, July 31, 2010. I will cite first from the program, with Soviet score page number in brackets.

⁴⁵ See discussion in Daniel Elphick, *Music behind the Iron Curtain: Weinberg and his Polish Contemporaries* (Cambridge: Cambridge University Press, 2019), 124.

⁴⁶ *Ibid.*, 174, 242.

largo of his *Symphony No. 6, Op. 79*, but with Russian rather than Yiddish lyrics. In 1964 Weinberg composed *Symphony no. 8, op. 83 Flowers of Poland (Tsveti Pol'shi, Kwiaty Polskie)* to the music of Julian Tuwim's 1942 poetry cycle of the same name. In an article in *Sovetskaia Kul'tura* in 1965, Weinberg described his motivation for the piece using Tuwim's lyrics:

In the war my entire family was murdered by Hitler's executioners. For many years I wanted to write a work in which all the events would be reflected on which the poem was founded—the social contrasts in Poland before the war, the horrors of war, and at the same time the deep faith of the poet in the victory of freedom, justice and humanism.⁴⁷

In the eighth movement titled “Mother,” Tuwim's text mourns “The grave of my Polish Mother, My Jewish Mother.” The ninth movement, “Justice,” asks whether there will be justice for his mother by evoking a liturgical prayer in the tone of a Catholic hymn to God to “Teach us that under Your sun ‘You have neither Greek nor Jew’ [*Poucz nas, że pod słońcem Twoim ‘Nie masz Greczyna ani Żyda’*].”⁴⁸ In this vision, the Soviet liberation has promised hope for a society without religious and racial divisions, where justice always prevails: “May law always mean law, And justice – justice.” Yet, at the 3:38 mark, Weinberg transitions from liturgical praises to tonal evocations of labyrinthian haunting and repetition of the “justice” refrain in doubt—will justice really prevail? At 6:05, the trumpets return to end with the assertion: “Justice!”

Weinberg only visited Poland once after the war, in 1966. This was a turning point for him because, writes Elphick, until then “his life and music had [...] been filled with Memories of Warsaw” but the 1966 visit “forced him to confront the reality that the majority of prewar

⁴⁷ M. Vainberg, “Tsveti Pol'shi,” *Sovetskaia kul'tura*, March 23, 1965, trans. David Fanning, quoted and discussed in Daniel Elphick, “Commemorating the Past: Weinberg's Experiences as a Jewish Migrant in the USSR,” unpublished conference paper, Leeds, July 2014.

⁴⁸ Mieczysław Weinberg, *Symphony No. 8, Op. 83*, “Tsveti Pol'shi,” “Kwiaty Polskie” (Polish Flowers), lyrics by Julian Tuwim [1942], Naxos Music Library, last accessed May 22, 2020, https://www.naxos.com/catalogue/item.asp?item_code=8.572873.

Warsaw—both the buildings and the people—had gone.” He had confronted belatedly, that which Tolkachev had confronted immediately at the war’s end: the loss of Poland’s unique Jewish community amid the greater loss of European Jewry. This moment reinforced the crux of Weinberg’s feelings of injustice in the postwar—“the problem of being Jewish or Polish in the Soviet Union, and in turn being introduced as Jewish-Russian in Poland.”⁴⁹

Weinberg’s adaptation of *The Passenger* should be read within the context of resignation to a disillusioning present in favor of commemoration of the past. Weinberg retained the main plot in which a carefree Liza encounters her former prisoner Marta on a cruise liner and fearfully confesses her past to Walter to the background of kitschy postwar jazz. The subplot between Walter and Bradley has been removed, as has Walter’s own personal reckoning. In the opera, Weinberg emphasizes the victim perspective by setting most of the opera in Auschwitz, integrating the voices of imprisoned women from several European countries. In this version, Marta’s fiancé, Tadeusz, is a violinist forced to play in the camp orchestras. The anti-fascist struggle was a central tenet of the ideological demands of war representation, and so Weinberg emphasizes resistance in a key moment when Tadeusz is supposed to play the camp commander’s favorite German waltz but instead plays Bach’s *Chaconne* in D Minor. The piece is considered one of the greatest musical and human achievements. The commanding SS officer seizes the violin and smashes it. The lights on stage extinguish, inaugurating the final scene in which Marta walks alone as the chorus repeats “pitch black wall of death,” which evokes the reworking of “red pits, deep pits” into the 1962 *Symphony no. 6, op. 79*. The climax of the opera occurs when the passenger whom Liza fears to be Marta approaches the orchestra and asks the conductor to play the *Chaconne*.

⁴⁹ Daniel Elphick, *Music behind the Iron Curtain*, 193, 195.

Liza, in repression of her own guilt, accuses Marta of torment and ingratitude: “I want to hear her thank me for the fact that she’s living! [...] For the fact, that she is still alive. [...] That she has survived and is here and dancing!” Liza rushes toward Marta, but Marta moves forward toward her. Liza backs away into the corner of the salon, and into the past. In the epilogue, Marta sings a lament in answer to her fellow prisoners, “I hear you: ‘Do not forgive them, never ever!’” but promises only “I swear, I will never, I will never forget you.”⁵⁰ The ending is ambiguous as there is no clear catharsis, only the promise to never forget. Forgiveness remains possible, but not required.

Like the film, the opera is often remarked upon for its suppression of Jewish content. However, in context with Posmysz’s novel, Munk’s film, and Weinberg’s own identity as Jewish, and Polish, and Soviet, the universalization of suffering is not odd. As with Munk, I suggest that Weinberg did not suppress Jewish suffering, but, rather, emphasized the Jewish fate in a meaningful way. In an important scene, Marta and a Jewish woman named Hannah imagine what will happen after the war:

Marta: Will anyone remember us? Will they understand what we suffered here?

Hannah: After the war you will visit our house, the town where I grew up, Thessalonika!

It’s so beautiful how the sea mirrors the sky. Remember my address!

Marta: I remember everything you’ve said to me! But won’t we be going there together?

[Pomniu vse, o chem, o chem prosila ty, no my ved' s toboi poedem vmeste?]

Hannah: No, Marta, no! I am dying. I am a Jew, a Jew. This star that they pinned on me, this star that I have to wear is the fatal mark of death. *[Net, Marta, net. Ia umru... Ia – evreika, evreika. I eta zvezda na mne, i eta zvezda na mne – strashnyi znak smerti].*⁵¹

⁵⁰ Weinberg, *Passenger*, 69 [274-76].

⁵¹ *Ibid.*, 53 [99-102].

In this scene, not only has Weinberg implied that most of the international prisoners were Jewish, he distinguishes universal wartime atrocity from the genocide of the Jews. While the experience of individual suffering is shared, Marta must remember that the war did not bring the same consequences to all who suffered. For Weinberg, representing universal grief and also the unique fate of the Jews was not mutually exclusive. I suggest that this is not a relegation of Jews to the role of passive victims or a suppression, but a statement on genocide.

The opera version of *The Passenger* questioned what it means ‘to kill’ according to the polemics addressed at the beginning of the chapter. Liza insists, “I had to obey! [...] but don’t you imagine that I took part in all the brutal horrors of Auschwitz.” Walter commands, “Keep on talking [*Prodolzhai!*],” and Liza continues, “I never once took part in beating anyone. [...] I did all I could to help her.” But the Russian prisoner, Katia, is a foil to Liza’s emphasis on direct harm. In one flashback scene, Liza has just caught Marta and Tadek together but has promised not to punish them in return for “gratitude” in the future. Katia warns Marta not to trust her: “She’ll kill you, but she’s clever: she lets others do the killing [*ona ubivaet chuzhimi rukami*].”⁵² Katia’s warning is perhaps a statement on the German outsourcing of the direct violence to local volunteers, mercenaries, and nationalists in the killing fields, like Babi Yar and Paneriai.

Walter replicates Hannah Arendt’s thesis on the inability of ordinary people to “think,” that is, to exert judgment regarding one’s actions, in totalitarian society, which she theorized in her 1963 reportage on *Eichmann in Jerusalem*. In justifying herself, Liza also seeks Walter’s guidance; he asks, “Do I understand you correctly: If a torrent sweeps a matchstick into the

⁵² Ibid., 59 [160-61].

abyss, it is the matchstick that is guilty?”⁵³ He presses her just once more before they retreat to the dance floor, but the chorus intercedes:

Walter: Have you really told me everything [*A vse li ty skazala*]?

Chorus: Confess it all, confess it all [*Skazhi, skazhi, skazhi, skazhi*]!

Liza: I told you everything!

Chorus: No, no, no, no, no! [...] Let others [the dead] have the chance to speak

[*Pust' govoriat drugie*]!⁵⁴

When the victims talk back, they challenge the truths Liza has told herself. The chorus's injection also reads as commentary on western governments which no longer wished to probe too deeply into the past with the Soviet refrain *we have information*. Liza continues to recount her actions in silence, “Walter, are you listening to me? [...] Why are you silent all the time?”⁵⁵ She begs of Walter: “I don't fear being judged or condemned by a court, you alone are my judge, so tell me your verdict, but Walter, don't leave me!” Liza asks if she must “really feel responsible for the world and all of its suffering” and eventually finds understanding in Walter who tells her, “We all have the right to forget the past.”⁵⁶ Liza must not be responsible for all harm, but she must reckon with her own; and it is not necessarily the court of law that will facilitate her doing so. However, Walter, the only representative of Liza's wider community who can appeal to her, has instead allowed Liza to evade her role.

The epilogue depicts Marta's promise never to forget as she reflects alone on a riverbank, satisfying the Soviet representational demands in the 1960s of remembrance and reflection. It was a testament to the human tragedy of the war: “How painful it is to be human [*Kak bol'no byt'*

⁵³ Ibid., 49 [56-57] (An alternative translation of *shchepka* is sliver).

⁵⁴ Ibid., 49 [61-62].

⁵⁵ Ibid., 60 [136-137].

⁵⁶ Ibid., 66. [238-241].

chelovekom],” laments the prisoner Bronka.⁵⁷ And, as we have seen, Soviet representation of the war did not preclude references to Jewish suffering, but often utilized them.

However, due to the Polish provenance of the story and Weinberg’s own identity and devotion to Polish themes, *The Passenger* as an opera became problematic in the aftermath of Israel’s victory over Arab armies in the Six Day War in 1967 in a way that it had not been when the story was serialized in the Soviet press in 1963. The USSR aligned with Arab nations against Israel to combat ‘western imperial aggression’ and insisted that other governments in the Communist bloc drop diplomatic ties with Israel. Romania responded by expanding ties with western states and maintaining its diplomatic ties with Israel. This stoked Soviet fears of rising nationalism in Eastern Europe and fragmentation of the socialist bloc, as many Communist bloc countries, especially Poland, saw in Arab military losses a reflection of their own potential weaknesses in that their military structures were also dependent upon the USSR.⁵⁸ In Poland, many also applauded the victory of “our Jews” over “Soviet Arabs.”⁵⁹

It seems to me that *The Passenger*, as an opera by someone of Weinberg’s prominence and stature in the USSR, was cancelled first and foremost as a Polish lament that could potentially inspire other national memories of trauma in the titular republics and bloc nations. The high politics moment of the Six Day War and its aftermath paralleled the crushing of the Prague Spring in 1968, as well as the increased monitoring of the intelligentsia throughout the socialist world that followed. More particularly, disillusionment with Soviet modernity in the Baltics saw the emergence of a “discourse of trauma and deracination” expressed as a “lament”

⁵⁷ Ibid., 52 [96] (translation mine here).

⁵⁸ Ross Johnson, “After the Six-Day War: Political Crisis in Poland,” *Sources and Methods*, Wilson Center, “History and Public Policy Program, June 26, 2017, last accessed May 22, 2020, <https://www.wilsoncenter.org/blog-post/after-the-six-day-war-political-crisis-poland>.

⁵⁹ Iwona Irwin-Zarecka, *Neutralizing Memory: The Jew in Contemporary Poland* (New Brunswick, NJ: Transaction Publishers, 1989), 60.

in Lithuania from the mid-1960s onward. Historian Violeta Davoliūtė describes the 1960s in Lithuania as the inauguration of “a post-apocalyptic cultural atmosphere imbued with an overwhelming sense of nostalgia and trauma.” Unlike the folk revival of the early postwar, this one reflected “the postmodern impulse to ‘return’ to the unsullied, pre-modern and pre-Soviet original.”⁶⁰ In the last act of *The Passenger*, Marta moves “inexorably forward” and forces Liza to “descend into past.” But despite the promise of victory and remembrance, grieving Marta alone on a riverbank evoked postwar loneliness and isolation, rather than socialist fraternity.⁶¹

In Poland, the breakout of the Six Day War coincided with intra-party tensions. Soviet influence in security and politics brought a return of formerly censored Jewish-Polish topics into public discourse in 1967, as historian Dariusz Stola has shown. Shortly after the war broke out, the Polish media began an anti-Israel campaign ascribing Zionists as aggressors against Palestinians, and a highly publicized anti-Zionist campaign ensued. On June 19, leader of the Communist Party, Władysław Gomułka, gave a speech at the 6th Trade Union Congress where he spoke of Jews as a “fifth column” threatening national interests. By the time of the Six Day War, most of Poland’s actual Zionists had already immigrated to Israel. According to Stola, rhetoric defining “Jews as infected with dangerous ‘Zionism’” transformed the anti-Zionist campaign into a clearly antisemitic one by March 1968. ‘Real’ Zionism was a secondary issue, or not even an issue at all, but was used by Gomułka as a tool to consolidate power, quell student protests, and silence dissent among intellectuals by framing Jews as negative influencers. The campaign harnessed latent antisemitism by serving as a vehicle through which people could voice pent-up

⁶⁰ Davoliūtė, *The Making and Breaking of Soviet Lithuania*, 139, 146.

⁶¹ On the Soviet Jewish rejection of the teleological narrative of progress and salvation, see Harriet Murav, *Music from a Speeding Train: Jewish Literature in Post-Revolution Russia* (Stanford, CA: Stanford University Press, 2011), 205.

dissatisfactions; it proved difficult for Gomułka to stop.⁶² In the 1960s there were between 25,000-30,000 remaining Jews in Poland after several previous emigration waves; as a result of the 1968 antisemitic campaign 13,000 Jews were forced to leave Poland between 1968-70.⁶³ In the context of Weinberg's disillusionment with his return to Poland in 1966, observance of the country's events of 1968, and the difficulties navigating his identity in his embraced new home of Soviet Russia, *The Passenger* reads as a revised coda to the "Justice" cycle of his 1964 *Flowers of Poland* (*Symphony no. 8, op. 83*) to ask once again whether justice will prevail.

The Facts of Violence: Interpreting Personal Guilt from Legal to Artistic Constructs

The nature of human actions represented as a series of facts to be interpreted and given meaning over time characterized the various artistic treatments of *The Passenger* in Poland and the USSR. The artistic command to self-reflect upon the facts of violence sometimes aligned with the legalistic understandings of personal complicity generated in the process of trials but did not always align with the ideological demands to clearly demarcate guilt. In a review of the film in 1964, film critic James Price ascribed Munk's central concern as a confrontation with the "forces of cruelty in oneself" in that "[Liza's] 'guilt' or 'innocence' are less important to him (and to her) than that she should determine the true nature of her actions."⁶⁴ Posmysz and Weinberg (through Medvedev's libretto) both upheld a humanized but West-oriented framework; the former examined the implications of guilt for German perpetrators and the latter interpreted meaning for the victims. Two narratives were apparent: to be human is to harm, and to be human is to experience pain. Munk, noted Price, transcended the ideological demand to represent "this

⁶² Dariusz Stola, "Anti-Zionism as a Multipurpose Policy Instrument: The Anti-Zionist Campaign in Poland, 1967-68," *Journal of Israeli History, Politics, Society, Culture* 25, no. 1 (2006): 179, 187, 192-94.

⁶³ Dariusz Stola, "Jewish Emigration from Communist Poland: The Decline of Polish Jewry in the Aftermath of the Holocaust," *East European Jewish Affairs* (May 2017): 179-80.

⁶⁴ James Price, "The Passenger (Pasazerka) by Andrzej Munk," review in *Film Quarterly*, 18, no. 1 (Autumn, 1964): 42.

kind of thing” as “something that happens only *west* of the iron curtain.” Price’s subjectivity reflected his place in the Cold War fight for the meaning of facts. The film, he wrote, is one “both of unequivocal directness in its statement of the facts and of a haunting ambiguity in its interpretation of those facts.”⁶⁵ Munk “accepts [the facts of] Auschwitz” which was to also accept the facts of Communist repression. To accept Auschwitz was also to accept the role of the Judenrat and of kapos. But as we have seen, accepting and interpreting facts invited questions about blame and punishment for individuals in the context of systematic violence.

The Soviet Union pointed out the hypocrisy of the West for accepting (even if not judiciously) the facts of Auschwitz while refusing the facts of Paneriai or the Ninth Fort in the annexed Baltics; even as the USSR itself struggled to accept the facts of Babi Yar in the heart of the Soviet homeland. In 1960, various books on the Holocaust began to emerge particularly in Lithuania, such as historian S. Bistricksas’s “Facts Incriminate [*Faktai kaltina*]” subtitled “And the ones who were shot will speak [*Ir sušaudytieji prabyla*]” (echoing the *The Passenger* chorus, “Let others speak!”).⁶⁶ The 1959 Ulm trial had briefly brought ‘the Holocaust in the east’ through the example of Lithuania to the realm of western justice but tried only German SS officers. The 1963-65 trial in Frankfurt marked a mutual return among West German and Soviet authorities to “proving the guilt of German criminals [*vyiavlenii dokazatel'stv vinovnosti nemetskikh prestupnikov*].” The 1969 reattempt to provide legal aid to Germany for prosecuting murders by “the German Nazis with the help of Lithuanian bourgeois nationalists” did not make it out of Lithuania, neither to Moscow nor to Frankfurt.

Writers in Lithuania more directly evoked rhetoric on the meaning of the verb ‘to kill’ than treatments of the topic in the different versions of *The Passenger*. In 1965, Jokūbas Josadė

⁶⁵ Ibid.

⁶⁶ S. Bistricksas, *Faktai kaltina* (Vilnius: Valstybinė politinės ir mokslinės literatūros leidykla, 1960).

wrote initial drafts of a play called *Rokas and Sara* [*Rokas ir Sara*] which is about a Lithuanian nationalist and a Jewish woman who fall in love in 1940. The play begins when Rokas is caught sneaking out at night to see Sara, to whom he has proposed.

Father: She's not a good wife for you, stop!

Rokas: Why, because she's a Jew?

Father: Not only because of that. But also because she's a Jew.

Rokas: Oh, father! ...Out of all the people in the world I respect you the most... I can't believe what you are saying.

Father: I haven't said anything bad. Don't think that I'm... I love all people. My life principle is universal humanism, you know that.

Rokas: Then why is Sara not a suitable wife for me?⁶⁷

After the war, Josadė felt compelled to write about Lithuania's Jews, about the relationship between Jews and Lithuanians, nationalism, the aftermath of the Holocaust, and the persistence of antisemitism in the Soviet Union. Readers can guess the father's unfinished words, "Don't think that I'm [an anti-Semite]." The father explains, "A Lithuanian has to marry a Lithuanian so that the children will be Lithuanians. It's the only way to save the nation." The father speaks of the "resounding" word on the streets of "how we've been strangled by strangers."⁶⁸ Rokas responds, "But Sara is not a stranger. She's from here in Užupis." When the national plea will not appeal to Rokas, then his father evokes the more sinister reasoning that she will prove "strange and somehow different [*kažkokia keista, kitokia*]." Jews, according to his father, do every human behavior differently, "they even walk differently." He warns Rokas that, "you will be frustrated, you will feel all alone, and you won't understand why [...] You will begin to hate

⁶⁷ *Rokas ir Sara*, (1965), LLMA f. 690, ap. 1, b. 29, l. 9.

⁶⁸ *Ibid.*, l. 13.

her! [*Tu pradėsi neapkęsti jos!*].”⁶⁹ Rokas shames his father and runs away. Readers learn that Sara’s family also did not wish for her to marry Rokas. Josadė, like the jurist Marc Ancel addressed in chapter two, was preoccupied in his postwar writings with questions of difference, both its amalgamation and its preservation. Josadė obviously criticized the antisemitism of the Lithuanian anti-Soviet resistance, but also interrogated the assumptions that ascribed ‘universal humanism’ precluded the existence of antisemitism.

In the play, Sara’s family is killed in the Holocaust by the nationalist unit that Rokas had joined. After the war, Sara wishes for Rokas to understand the nature of his actions. She asks why he participated in the arrests with a gun in hand:

Rokas: It seemed to me that the most important thing was to help keep order [*padėti įvesti tvarką*]. [...] By then it was already impossible to disobey.

Sara: Why impossible? What could possibly make you do that which you did not want to do [*tai, ko nenorėjai*]?

Rokas: The law [*Isakymas*].

Sara: All laws in the world are useless when a person firmly believes in their own truth.⁷⁰

Rokas insists to Sara, “I didn’t shoot. On the contrary I condemned the murderers [*Aš nešaudžiau. Anaip tol, aš smerkiau, prakeikiau žudikus*].” But it is Sara’s wish that Rokas understand, “You didn’t kill, but still you killed [*Tu nežudei bet vis vien žudei*].”⁷¹ Sara wishes for Rokas to think about the practical consequences of his actions, “Be practical, you hear, Rokas?” But she does not wish to blame him, “You know that I do not hate you, my dear, my most beloved Rokas,” only that he understand the meaning of his participation.

⁶⁹ Ibid., ll. 16, 20.

⁷⁰ Ibid., l. 133.

⁷¹ Ibid., l. 156.

Rokas and Sara exists only as a stack of fragmented and disordered leaflets in the Lithuanian Archive of Art and Literature. Josadė wrote a second version in 1973, in Yiddish, titled *Adomas*. The final Lithuanian rendition, which Josadė wrote in the 1970s, was published only in 1990 as *The Silence Syndrome* [*Tylos sindromas*]. In the drama, it is in the aftermath of the 1952 so-called Doctor's Plot in which Kremlin doctors of Jewish origin were arrested on accusations of treason that Sara and Rokas (now Jonas) reflect upon the latter's wartime actions. *The Silence Syndrome* connected the meaning of past antisemitism and complicity to present injustice. It is unclear whether *Rokas and Sara* was censored, or if Josadė relegated it to the drawer because he needed more time to tell the story he wished to tell. But the direct evocation of nationalism and the meaning of murder for individuals (both victims and perpetrators) reflected the legal idioms on murder in the transnational discourses on Holocaust justice. In the artist's court, self-reflection was the point. In the Soviet court, self-reflection was a necessary step, but when it concerned war crimes, punishment was the point. The real Rokas, who did not personally shoot, would have been sentenced in 1965 to ten to twenty-five years for standing around keeping order.

The generational confrontations evident in *Rokas and Sara* reflected those in a poem titled "I Don't Want" "(Nenoriu!)" by Vytautas Bložė in 1962.⁷² Bložė, who was not Jewish, was born in Baisogala in 1930 and was 14 years old upon the Soviet liberation of Vilnius. His father was arrested for aiding anti-Soviet partisans and sent to Siberia where his mother and sister were deported in 1948. Bložė spent the late forties in hiding before enrolling at the university to study Russian literature in 1949. Bložė was a well-known Soviet writer of the standard socialist realist

⁷² On Lithuanian poets who responded to the Holocaust in the aftermath of Yevtushenko's "Babi Yar" see Solomonas Atamukas, "The Hard Long Road Toward the Truth: On The Sixtieth Anniversary Of The Holocaust In Lithuania," *Lituanus* 47, no. 4 (Winter 2001), last accessed May 22, 2020, http://www.lituanus.org/2001/0b1_4_03.htm.

fare, including poems expressing loyalty to the regime and lyrics to pop music. He was posited in the 1950s press as an example of the youth emerging from the new school of socialist writers. In the 1960s he began to incorporate surrealism, folklore, and polyphonic verse into his work— “[f]luid sentences in lengthy poems incorporated different cultures, different times and spaces, memories, stories, dreams, and archetypes that facilitated a free movement through history.”⁷³ Thus he belonged to the tradition of other Soviet poets of the 1960s generation such as Evgeny Evtushenko and Vladimir Vysotsky. The dissonance and subject matter took him out of the authorities’ good graces in the 1970s; his works were censored and he was committed to a psychiatric hospital.

In “I Don’t Want!..” Bložė struggles with confronting the trauma of complicity in killings during the Holocaust. He places the nationalists together with his own mother to make a statement about generation: “I was eleven years old then.” His mother “bought flour and salt” from the Jewish women who were killed. And now, he asserts, “I do not want them [the killers] to buy flour and salt.” Despite his young age, he projects a sense of awareness upon his past self: “I fully understood that this was the end of the world... [*aš pilnutinai supratau, kad tai pasaulio galas...*].” He juxtaposes this own positionality with his parents’ generation to ask

And about those who killed?

And how to deal with those who killed?

I am asking, what am I supposed to do with those who

killed?

O tie, kurie žudė?

⁷³ Rimantas Kmita, “Vytautas P. Bložė,” *MO Modern Art Museum*, last accessed May 22, 2020, <http://www.mmcentras.lt/vytautas-p-bloze-/78668>.

O kaip su tais, kurie žudė?

Aš klausiu, ką man daryt su tais, kurie

*žudė?*⁷⁴

As with Germany in the 1960s, there was a simultaneous generational reckoning between parents and children in the Soviet Union. Apparently, in 1965 Bložė initiated a revisiting of his father's court case, but it is unclear why.⁷⁵ Regardless of what Bložė may or may not have “understood” as a child, his generation spoke to the trauma of wartime violence, of children witnessing other children die, and then later in retrospect questioning the actions of their parents: “They killed the boy with whom I used to play.” Bložė's generation had begun to interrogate questions of wider responsibility beyond the court of law. He is at a loss with how to deal with those who “speak my own language.” He does not mention punishment, only that he does not want (*nenoriu!*) to “share” anything with them, not the sky, not water. But still he is one of them.

Aš nenoriu su jais dalintis	I don't want to share with them
dangaus ir žemės spalvom [...]	the colors of heaven and earth [...]
Aš nenoriu, kad jie	I don't want them
kalbėtų mano kalba [...]	to speak my language [...]

Bložė was undoubtedly inspired by Yevgeny Yevtushenko's 1965 “Monologue of Till Eulenspiegel” “Monolog Tiliia Ulenshpigeliia” which evoked the persistence of human suffering from the Spanish Inquisition to Holocaust (“as in the dungeons of Escorial to the concentration camps [*kak v podzemel'iakh pri Eskuriale, v kontslageriakh*]”) amid hope for justice yet. Literary scholar Ol'ga Kravtsova writes that in this poem Yevtushenko “shows us his unusual sense of

⁷⁴ Vytautas Bložė, “Nenoriu!..” [1965] in *Mirtis, Rečiatyvas ir Mėlynas Drugelis: Lietuvių poetai apie holokaustą* (Vilnius: VAGA, 1999), 45-46.

⁷⁵ Rimantas Kmita, “Vytautas P. Bložė,” MO Modern Art Museum, available from <http://www.mmcentras.lt/vytautas-p-bloze-/78668>.

responsibility for what is happening, a rare sense of ownership in the bloody pages of world history.”⁷⁶ Yevtushenko evokes the victim: “It’s sinful to remain slain in the earth, while the killers walk the earth.” He recites: “I wanted to get even with someone, I could not lie in ashes.” He ends the poem with a “twentieth century” lament: “The more I live in this world, the more the ash in my heart pounds [*tem bol'she ia zhivu na belom svete, tem bol'she pepla v serdtse mne stuchit!*].”⁷⁷ But Yevtushenko has also implicated himself by identifying with Till Eulenspiegel, the German trickster of classic medieval folktales—“They once called me Till, and I am still that same Till.”⁷⁸

The *Tales of Till Eulenspiegel* were written in the early 16th century, about 1500. The German fool Eulenspiegel engages in mischief in order to mirror the flaws of society and power. In one tale, Eulenspiegel tricked three Jews in Frankfurt-am-Main with false promises of knowledge of the Messiah’s return, and Yevtushenko seems to imply that he has done it once again in 1963-65 at the Auschwitz trials in Frankfurt-am-Main.⁷⁹ Historian Elisheva Carlebach writes that the classic European literary traditions that depicted Jews as duped by false messiahs (the Antichrist) “reinforced the suspicion that Jews who entered the Christian world could be presenting false facades, and intended to harm rather than redeem Christians.” The consequence was the dissemination of stereotypes about Jewish revenge fantasies for “the torment they had

⁷⁶ Olga Kravtsova, “Monologi Evtushenko: vybor i al'ternativnaia real'nost',” *Sever*, 11-12 (2013): available from <http://sever-journal.ru/vyshedshie-nomera/new-issueyear/11-12/literaturovedenie/monologi-evtushenko-vybor-i-al'ternativnaja-real-nost/>.

⁷⁷ Yevgeny Yevtushenko, “Monolog Tilia Ulenshpigelia,” 1965, accessed April 16, 2020, http://philosofiya.ru/monolog_tilya_ulenshpigelya.html.

⁷⁸ On topics of messianism and twentieth century “promised lands” and the Soviet choice, see Yuri Slezkine, *The Jewish Century* (Princeton, NJ: Princeton University Press, 2004), 205-207, 308-209.

⁷⁹ See “How Eulenspiegel cheated the Jews at Frankfurt-on-the-Main out of a thousand guilders, by selling them his excrement as prophet’s berries,” in *Till Eulenspiegel: His Adventures*, Paul Oppenheimer, trans. (London and New York: Routledge, 2001 [circa 1500]).

suffered at Christian hands.”⁸⁰

Yevtushenko ushered in public discussion about the persistence of antisemitism in the Soviet Union with the publication of his poem “Babi Yar” in 1962; Soviet authorities criticized the poem’s emphasis on the antisemitic nature of the massacre of nearly 34,000 Jews at Babi Yar in 1943 at the hands of Germans and their local collaborators on grounds that Ukrainians and others were killed, too. In my interpretation of “Monologue of Till Eulenspiegel” Yevtushenko has responded to the criticism. He recites:

In the name of the earth and all galaxies
 In the name of all widows and mothers
 I accuse! [*Ia obviniaiu!*] Who am I? I am Dutch.
 I am Russian. I am French. I am a Pole. I am a Jew.

Yevtushenko recites the universalist victim creed, but the evocation of the Spanish Inquisition together with the Holocaust directly connected the wartime fate of the Jews to the history of European religious antisemitism, implicating the Soviet Union in this wider European story. In turn, “I accuse!” evokes Émile Zola’s famous letter “J’Accuse...!” published across the pages of the *L’Aurore* newspaper in 1898 accusing the French government of antisemitism in the unlawful sentencing of Alfred Dreyfus for espionage, thus implicating the USSR, too, in the history of European modern racial antisemitism.

In my reading, Yevtushenko adopts the role of Eulenspiegel to represent an alternative reality where justice for the Jews might exist. He does so with a subtle indictment of the Soviet government for performing justice in high profile trials against nationalists and their priests in

⁸⁰ E. Carlebach, “The Last Deception: Failed Messiahs and Jewish Conversion in Early Modern German Lands,” in *Millenarianism and Messianism in Early Modern European Culture*, vol. 1, Matt. D. Goldish and Richard H. Popkin, ed. (Dordrecht: Kluwer Academic Publishers, 2001), 128-130.

the west (evoking stereotypes of Jewish revenge fantasies) without taking measures to remedy antisemitism in Soviet society. If such interpretation stands, Yevtushenko's critique was lost on authorities. In 1965, parts of the poem ascribing universal suffering of the Dutch, Poles, Russians, French, and Jews amid the ashes of Dachau were adapted into lyrics for the Soviet justice anthem "While the Murders Walk the Earth [*Poka ubiitsy khodiat po zemle*]" popularized by the opera singer Mark Bernes on May 1, 1965, upon the 20th anniversary of the Great Patriotic War. Vytautas Bložė's poem reflected an inward turn to mourning loss and complicity in a national trauma.

Dancing around the Dead

The gravestones from Jewish cemeteries in Vilnius, Lithuania, were used in postwar reconstruction projects, and "the clothing of the murdered at Majdanek" was repurposed for the living in Lublin, Poland.⁸¹ In the recovery period of relative newfound prosperity in the 1960s, it became possible to dance with the dead, too. In 1969, as many remaining Jews were emigrating from Poland in the aftermath of the Anti-Zionist Campaign of 1968 (many of whom had emigrated from the USSR *to* Poland a decade earlier), the first Jewish folk ensemble in Soviet Lithuania was founded. The return to prominence of the Soviet Ukrainian artist of Jewish descent, Zinovii Tolkachev, discussed in the first chapter of this dissertation, is significant in this context. To recall, Tolkachev was praised and nominated for the Stalin Prize for his exhibitions on wartime suffering in the major cities of Poland from 1944-46. In 1947, shortly upon returning to Kiev he was denounced for his 'bourgeois' and 'Zionist religious' expressionism during the Anti-Cosmopolitan Campaign. In 1959, his works began to appear, and were used in the new

⁸¹ Letter from Edward Osobka-Morawski to Andrzej Witos, November 1944, AAN, z. 2/185/0 [Polski Komitet Wyzwolenia Narodowego w Lublinie], sygn. I/81 [Prezydium; Zbrodnie hitlerowskie], l. 7.

grief and remembrance campaign on Nazi atrocities. In 1962, a sketch of a gaunt and frightened child from Tolkachev's 1945 "Auschwitz" series appeared in the Lithuanian and Polish language editions of Soviet Lithuania's version of *Soviet Woman* with the command: "Remember! Never forget! [*Atminkite! Niekuomet neužmirškite!*] [*Pamiętajcie! Nigdy nie zapomnijcie!*]."

Tolkachev's sketch was on the opposing page of a short story by Josadė called "An Intricate Tangle" "Painus rezginys." In a material manifestation of the labyrinth of identities both chosen and ascribed to one amid both the strict controls and also the fluidities of Soviet experience, Tolkachev was identified as "a Polish artist."⁸²

On September 14, 1965, the *Jewish Telegraphic Agency* issued the following brief about Tolkachev in its news bulletin: "Soviet Jewish Artist Issues Album Depicting Horrors of Auschwitz." The release remarked upon the album's introduction by the Soviet poet, Leonid Pervomaiski, who called the prints sketched on the back of German documents "evidence for the prosecution."⁸³ Perhaps the album had been intended for legal aid in the recently finished Auschwitz Frankfurt Trials, because the album was published again in 1969, likely to coincide with that year's International Conference on the Repatriation of Nazi Criminals in Moscow on the theme "Retribution is Inevitable." This, it seems, brought the utilization of Tolkachev's art complementing war crimes prosecution full circle from its immediate postwar origins in Poland.

In 1965, authorities in Kiev held a competition for a monument at Babi Yar. Tolkachev's entry featured a large constructivist monument with a fresco illustrating Jewish men and, mostly, women joyfully dancing in a traditional ensemble next to partners embracing in love. The joyous dancing evokes nostalgia for a lost community atop the memory of trauma, juxtaposed to victims

⁸² *Tarybinė moteris* (1962), no. 1 in LLMA f. 690, ap. 1, b. 25, ll. 140-141.

⁸³ "Soviet Jewish Artist Issues Album Depicting Horrors of Auschwitz," September 14, 1965, *Jewish Telegraphic Agency*, last accessed May 22, 2020, <https://www.jta.org/1965/09/14/archive/soviet-jewish-artist-issues-album-depicting-horrors-of-auschwitz>.

in the deep, red-hued pits of Babi Yar. Tolkachev has included a lone woman—distant but also nearby—robed and with a child whose arms are raised in gesture of the crucifixion. This appears to be a reclaiming of Christian imagery, as with his 1946 “Jesus in Majdanek” series, to narrate the genocide of the Jews by emphasizing that Jesus was a Jew, while also representing non-Jewish suffering.

The fresco presents the ambivalence of two possible narratives. One is of grief and nostalgia, a mourning for the Jews who used to dance, but now remain in the pits of Eastern Europe. And there is the other reading of joy, hope, and commemoration: all dance now, including Jews, but the past will not be forgotten. In the politics of Cold War discourse, the fresco reads as confirmation of the ideological juxtaposition of the Soviet Union whose citizens remember with a prosperous West Germany whose citizens danced away the past. From Tolkachev’s personal perspective, having become closer to Jewish themes over his life, it may have represented verse 30:1 in the Book of Tehillim (Psalms): “You have turned my mourning into dancing.” The competition was later cancelled, and still no monument stood over Babi Yar, but they did stand elsewhere.⁸⁴

Conclusion

Soviet authorities correctly pinned the connection between nationalist resistance movements in the Baltics and the genocide of the Jews and emphasized this in the public. But they were less sure how to proceed with perpetrators whose motives did not clearly align with those of the nationalists (*I needed a job, they gave us some vodka, I felt compelled, I was angry, there were no rules, those were the rules, I even helped Jews, and anyway am I responsible for*

⁸⁴ Arkadi Zeltser, *Unwelcome Memory: Holocaust Monuments in the Soviet Union* (Jerusalem: Yad Vashem, 2018), 103, 140.

the deeds of others?). Soviet administration usually opted to punish them—but quietly. In Poland, prosecutions typically dealt with intimate violence of neighbors but did not materialize into broader discussions about guilt (i.e., how to talk about the collective actions and inactions of many ‘neighbors’ in the aggregate) in a way that rivaled German guilt (as happened in Lithuania with the nationalists).

Rexhausen, in his imagined trial acquitting Hitler of war crimes due to lack of evidence of “personal participation” in violence, was commenting on the absurdity of the logical imperative of liberalism: that the freedom of thought and expression that is the cornerstone of Western liberalism had the consequence of exonerating people whose role in the perpetration of genocide was to strictly lay down the ideas and institutional structures, but not to carry out any of the acts of violence. The Soviet and Polish systems more efficiently prosecuted genocide because harboring harmful ideology was set up as a public offense; not just unethical or immoral, but illegal. This was a direct challenge to the Western and primarily American assumption that good ideas will triumph over bad ones.

In a January 1953 article in *Foreign Affairs* Hamilton Fish Armstrong emphasized that although “we are not going to war to set Stalin’s slave states free, we shall never be reconciled to their not being free.” Armstrong instead evoked an American tradition:

In a country like ours, where “selling” ideas is held to be an art, we ought not to see such vulnerable opponents as the Bolsheviks, with their bloody record of crime, purge, faked trials, forced labor, imperialism and war, out-think us regularly with peace congresses

and petitions, with propaganda on race and labor relations, in the indoctrination of scientists and artists, in the mobilization of well-meaning women and youth groups...⁸⁵

The different approach to free speech in the Soviet Union and Communist Eastern Europe held that although some ideas are right and true scientifically, ‘demonstrable’ so to say, the victory of those right and true ideas under any given instance is not assured; that harmful ideas could for a while and in certain conditions prosper; and that people who succumbed to this were not “deranged” or psychologically unfit. Perhaps they had not been properly socialized under Communism or were susceptible to ‘demonstrably bad’ ideas by virtue of class or social category, but they were not *crazy*. Unlike the dissidents who criticized Communist ideas (and the brutal methods of selling them), people who participated in crimes against Jews were never sentenced to one of the most infamous methods of Soviet treatment of enemies: psychiatric rehabilitation.

In a proposal to US Secretary of State Dean Rusk in 1964, Joseph Kajeckas of the Lithuanian Legation insisted:

The problem of Lithuanian freedom and independence is intimately connected with the problem of removing the consequences of World War II [...] and must remain on the agenda of the Great Powers until it is resolved on the basis of justice, for only on such a basis can there be a lasting peace.⁸⁶

Rexhausen’s satire in the Soviet Lithuanian cultural press reflected transnational perceptions of the hypocrisy of a West that had “long ago” moved on without sufficiently addressing the

⁸⁵ Hamilton Fish Armstrong, “The World is Round,” *Foreign Affairs* 31, no. 2 (January 1953): 179 collated in LCVA, f. 658, ap. 1, b. 108, l. 72.

⁸⁶ Memorandum no. 300 by Lithuanian Legation Charge d’Affaires Joseph Kajeckas to US Secretary of State Dean Rusk, March 9, 1964, LCVA, f. 658, ap. 1, b. 20, l. 114.

consequences of war: the violence that ordinary men, and women, had not committed with their own hands. The Soviet Union was loath to admit that it was an imperialist power. Moreover, Communist Poland and the USSR never dispensed with their own foundational violence. But in the international efforts to make meaning out of the consequences of WWII, the refrain from behind the Iron Curtain was not to forget the genocide of the Jews. The oblique artistic representations of Jewish suffering evoked legal idioms that had made the Holocaust prosecutable, even if in many cases due to censorship or otherwise, the grief remained personal.

Conclusion: A Measure of Responsibility

Regardless of high politics in the ebbs and flows of Cold War, the attempts to represent and perform justice for the Holocaust in Communist Poland and Soviet Lithuania evidenced deep engagement with the concept of personal participation in violence. The pursuit of Holocaust justice and representation in European socialist borderlands shows how cultural figures analyzed the implications of individual actions using socialist idioms, but without the punishing ideological demands of Communist state building—the crux of the tensions that developed between jurists Marc Ancel and Jerzy Sawicki in the postwar reconfigurations of criminal law for post-Holocaust Poland. The Soviet Union expanded the boundaries of criminal responsibility to confront the loss of European Jewry but could not always account for the more diffuse moral configurations of implication. However, while art performs the universal capacity of all humans to harm, the law must hold some of them accountable and differentiate among degrees of culpability. Art sometimes times reified dichotomous categories and was used for propagandistic mass mobilization, but this did not preclude meaningful investigation and contouring of guilt.

The Communist regimes in postwar Poland and Lithuania were equipped for the challenge of prosecuting genocide and often punished egregious perpetrators, but exercised the will inconsistently and did not always make the histories of trauma and justice visible to victims. The Holocaust became prosecutable, but not necessarily grievable. The courtroom compelled satire, as defendants, under the specter of punishment, performed innocence or lessened responsibility by compressing the boundaries of criminal liability which Communist states were expanding in the aftermath of the Holocaust. The artistic treatments on personal participation used both satire and tragedy to widen the scope of responsibility beyond criminal culpability.

The Soviet processes in particular compelled the West to eventually take Holocaust justice seriously. A *New York Times* article from October 14, 1976, reported on accusations against three men who had immigrated to the US between 1947 and 1951 for wartime crimes against Jews. The elderly men, two Latvians and one Lithuanian, had assaulted and participated in mass shootings of Jews in 1941 and 1942. In the mid-1950s and 1960s, the Soviet Union had begun a second review of war crimes cases. Some individuals were rehabilitated while others remained imprisoned or had their sentences only partially mitigated. The Soviet government had demanded the extradition of the Lithuanian emigrant from above, Boleslavas Maikovskis, in 1965. As the US had stopped pursuing cases against alleged collaborators in 1956, the American authorities had refused to deport him. But in 1976, on its own terms, the US Immigration and Naturalization Service opened deportation proceedings against Maikovskis and the two others. The Soviet demand in 1965 for Maikovskis's extradition and the US assertion of his guilt in 1976 reflected the Cold War politics of two opposing states vying for global moral authority. Harboring collaborators in the Holocaust reflected badly on US claims to moral superiority, while the USSR considered its long tradition of punishing collaborators as bolstering their own.

By the mid-1960s, Polish authorities were fatigued by the prospect of launching another wave of prosecution of local collaborators (which had mostly ended by 1956) as members of the German SS in Western trials continually received relatively lenient sentences, or none at all. The commitment to punishing local collaborators in Poland was never as strong as it had been in the USSR. After the anti-Zionist and antisemitic campaigns of 1968 and ensuing forced emigration of about twenty thousand Jews from Poland, the more dynamic Jewish and non-Jewish memory of the Holocaust of earlier decades examined in this dissertation was "expelled" along with the Jews. Michael Steinlauf ascribed the transformation as a situation by which "meaning of the

Holocaust had become Polish victimization *by* the Holocaust,” with the blame attributed to West Germans and Jews themselves.¹

This dissertation has tried to show how, at its core, confronting the harm that people had done to the Jews was an aim in and of itself in the first postwar decades in Soviet Lithuania and People’s Poland. To illustrate, I will evoke the example of Leonas Kybartas whose arrest trajectory expands 65 years and includes both the Soviet and post-Soviet periods. Kybartas was arrested in 1945 for participating in shootings of Jews in the Rainiai forest. He had joined a group of white band partisans “just when the German army entered the city” and had remained in it for two months, just long enough to shoot the Jews. He was charged with Art. 58-1-a for treason and Ukaz 39 for Nazi crimes as he “took an active part in shootings of Jews.” He was categorized in the report as a nationalist resister and had actually been working in the Soviet NKVD when he was arrested in 1945. He was sentenced to fifteen years of hard labor and his application for amnesty in 1955 was denied at first. Then he wrote an appeal in which he performed all of the constructs on guilt emanating in the transnational politics of criminal prosecution for Nazi crimes and which evidenced in the artistic works navigating the nexus of intent, outcome, and the meaning of harm analyzed in this dissertation. He wrote,

I’m not some especially important criminal, in reality I didn’t commit any kind of grave crimes.

My crimes (if we can term it that) occurred without bad will or evil initiatives on my part, due to the abnormal status of wartime.

We didn’t do any kind of illegal actions.

¹ Michael C. Steinlauf, *Bondage to the Dead: Poland and the Memory of the Holocaust* (Syracuse, NY: Syracuse University Press, 1997), 75, 85-86.

Kybartas evoked wartime conditions, in which the “will, wishes, and very personality of a person have no meaning [...] therefore my guilt, where it is, is factually totally without meaning.” In short, he was “a poor, illiterate person in a horrible time.” And anyway, those who did “worse” got “lesser punishments.”

What had been worse? Pulling the trigger? The German outsourcing of murder? His appeal was accepted, and he was home in Telsiai by September 1956, having served eleven years of his sentence.² In the late 1980s, the Ministry of Justice in what was still Soviet Lithuania passed a series of criminal reforms, among them a rehabilitation for those imprisoned under Article 58, on the assumption that any sentence was by default a corruption of justice. Many of those who were rehabilitated were listed in a book of victims of the Soviet genocide of Lithuanians. In the aftermath of the breakup of the Soviet Union, the judiciary of newly independent Lithuania realized that many actual Holocaust perpetrators, such as Kybartas, had been rehabilitated and therefore restored the original sentences. In 2010, Kybartas’s son filed an appeal for the court to

Classify Leon Kybartas as a non-participant in the genocide of the Jews and to be recognized as a victim of the [Soviet] occupational regime.³

On May 18, 2010, the Lithuanian Supreme Court denied his request, ruling that Kybartas, “having carried out the genocide of Lithuanian citizens of Jewish nationality [*vykdant žydų tautybės Lietuvos gyventojų genocidą*],” had received the proper judgment.⁴

² Case against Leonas Kybartas, Lithuanian Special Archive (Lietuvos Ypatingas Archivas) (LYA), K-1, ap. 58, b. 27445/3, 26, 45, 76-79v.

³ “Skundas,” Lietuvos Aukščiausiasis Teismas (Lithuanian Supreme Court), April 7, 2010, LYA, K-1, 58b., 391 [B.B. 47482/3], l. 2: “Išteisinti Leoną Kybartą kaip nedalyvausį žydų genocide ir pripažinti nukentėjusiuoju nuo okupacinio režimo.”

⁴ “Nutartis,” Lietuvos Aukščiausiasis Teismas, May 18, 2010, *ibid.*, l. 73.

At the end of his life, in the early 1990s, the writer and playwright Jokūbas Josadė engaged in a series of interviews with the Russian Jewish writer Yevsey Tseytlin. Josadė had written a play about a Lithuanian who fell in love with a Jewish woman on the eve of war. In the play, she compelled him to confront, twenty years after the war, his role in her father's death during the Holocaust. During the interviews with Tseytlin, Josadė lamented, "I am now a stranger to all! I can't understand how I "betrayed the Jews" and how I got in good with the Lithuanians. I wanted to do neither. I am in despair."⁵ After the war, Josadė had decided to prioritize writing in Lithuanian rather than Yiddish: "My reader lay in Ponary, in death holes all over Lithuania. I was looking for a new reader. And he spoke Lithuanian."⁶ Josadė recalled roaming the former Vilna ghetto, searching for answers, encountering the refrain: "I didn't see anything," "I was leaving," "I was ill," "I was very busy exactly at that time."⁷ When Josadė eventually learned who had killed his father, he decided not to take him to trial. The man had cancer, which was "justice enough." Josadė mused over the years on "The subject of retribution. Is it always necessary?"

I said to myself: 'You have to put the killer and the victim next to each other. Let them look one another in the eyes. Let them both say their own truth.

Isn't it revolting to dig around in the soul of the monster who killed your father?

It's a typical job for a writer.

For Josadė, the "longest tradition" of art was to "grasp the inner workings of a lost soul, regardless of the gravity of his crime, you have to understand it."⁸ But not all are writers and

⁵ Yevsey Tseytlin, *Long Conversations in Anticipation of a Joyous Death*, Alexander Rojavin, trans. (Bloomington, IN: Slavica Publishers, 2018 [1996]), 123.

⁶ *Ibid.*, 33.

⁷ *Ibid.*, 42.

⁸ *Ibid.*, 168-69.

poets. In the case against Leonas Kybartas from above, when the interrogating officer asked the Jewish victim, Cilė Bro, in 1945, whether she could stand a face-to-face questioning with him, Bro assured: “I can say, looking directly into the eyes of Leonas Kybartas, that he shot Jews in the forest, how I personally saw how he escorted them to shoot in the Rainiai forest.”⁹

Defendants who stood trial for participating in the Holocaust often utilized the discourses around them on the criminality of the German state and limited personal agency under totalitarianism to ward off accusations of their own guilt. In a case in the Kielce court in Poland, four men were arrested in October 1949 and sentenced to five years in prison for denouncing three Jews to the Polish Blue Police in 1943. Their sentences were reduced to three years. Wojciech Szostak’s wife appealed to the court on his behalf in 1950, claiming that “the entire responsibility of the Germans has fallen on him.”¹⁰ In the broader history of postwar reckoning with the Holocaust in the spaces where most of it had happened, the new Communist regimes in Poland and Lithuania, and their artists, did not aim to shift the full responsibility of the genocide of the Jews from the organizers to the accomplices, but did insist that they share a measure.

⁹ LYA, K-1, ap. 58, b. 27445/3, l. 35.

¹⁰ Case against Franciszek Pituly, Jozef Niedziala, Jozef Lukasik, Wincenty Czerw, and Stanislaw Szostak, (Appellate Court in Kielce) (SAK 21), United States Holocaust Memorial Museum Archives (USHMMA), RG-15.180M, l. 14: “cała odpowiedzialność wobec Niemców spadnie na niego.”

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