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ANDREW KORNBLUTH

*THE AUGUST TRIALS: THE HOLOCAUST  
AND POSTWAR JUSTICE IN POLAND.\**

TEMIDA IN THE SERVICE OF IDEOLOGY,  
THE POLISH NATION OR JUSTICE?

THE POLISH JUDICIARY CONFRONTING CRIMES AGAINST JEWS  
COMMITTED DURING WORLD WAR II

One of the first acts of criminal law in the world that dealt with responsibility for war crimes committed during the World War II was the decree of the Polish Committee of National Liberation (*Polski Komitet Wyzwolenia Narodowego*, PKWN) of 31 August 1944 concerning “The Punishment of Fascist-Hitlerite Criminals Guilty of Murder and Ill-treatment of the Civilian Population and Prisoners of War, and the Punishment of Traitors of the Polish Nation” (aka the August Decree or the *dekret sierpniowy*, *sierpniówka*).<sup>1</sup> An exceptional role in

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\* A. Kornbluth, *The August Trials: The Holocaust and Postwar Justice in Poland* (Cambridge, MA, London: Harvard University Press, 2021), 352 pp.

<sup>1</sup> The Decree of the Polish Committee of National Liberation (*Polski Komitet Wyzwolenia Narodowego*, PKWN) of 31 August 1944 concerning “The Punishment of Fascist-Hitlerite Criminals Guilty of

the “August Decree trials” was played by Special Criminal Courts (*specjalne sądy karne*, SSK), called to life already in September 1944 solely to adjudicate crimes covered by this decree. Of the eight courts of this type, a study has so far been written on the court in Toruń,<sup>2</sup> Gdańsk,<sup>3</sup> and Katowice.<sup>4</sup> A separate work, which is not cited by the author of the publication under review, presents the trials of persons accused of crimes in the Warta Land (Reichsgau Wartheland), who stood before the Special Criminal Courts in Poznań, Toruń, and in Warsaw (based in Łódź), as well as the Supreme National Tribunal.<sup>5</sup>

Although historians per se, historians of law, and legal scholars have already addressed the topic of the August Decree trials, relatively rarely have they turned to a comprehensive analysis of the trial records of the various courts hearing the August Decree cases. Such an attempt was made by, among others, Andrew Kornbluth, a research fellow at the Institute of Slavic, East European and Eurasian Studies at the University of California, Berkeley, in his book published in 2021 by Harvard University Press, *The August Trials: The Holocaust and Postwar Justice in Poland*. The August Decree Trials have been highlighted as the overarching issue in this study, only to be clarified in the subtitle, where it is mentioned that the author will be addressing the Holocaust and post-war justice in Poland (or, as one reviewer noted, “the legal response to the Holocaust”). Kornbluth’s study has been recognised and discussed in many prestigious periodicals around the world (from Canada to Australia),<sup>6</sup> and has received high praise. Reviews on the publisher’s

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Murder and Ill-treatment of the Civilian Population and Prisoners of War, and the Punishment of Traitors of the Polish Nation,” *Dziennik Ustaw* (1944), no. 4, item 16; A. Lityński, *Historia prawa Polski Ludowej* (Warsaw, 2013), pp. 114–116; A. Lityński, “Prawo karne Polski ‘lubelskiej’ (1944),” *Studia Iuridica Toruniensia* 2 (31) (2022), p. 136.

<sup>2</sup> J. Wojciechowska, “Przestępcy hitlerowscy przed Specjalnym Sądem Karnym w Toruniu (1945–1946),” *Studia Iuridica* 2 (6) (1965). Moreover, a short text about one category of defendants tried at the Toruń Special Criminal Court was written by Ewa Maria Rosa, see E.M. Rosa, “Procesy osadzonych w obozie pracy w Potulicach przed Specjalnym Sądem Karnym w Toruniu (1944–1946),” *Przegląd Prawa Ochrony Środowiska* 1 (2013), pp. 95–107.

<sup>3</sup> D. Burczyk, *Renegaci przed sądem. Specjalny Sąd Karny i Prokuratura Specjalnego Sądu Karnego w Gdańsku (1945–1946)* (Gdańsk–Warsaw, 2022).

<sup>4</sup> A. Dziurok, *Osądzenie przestępstw okresu II wojny światowej przez Specjalny Sąd Karny w Katowicach w latach 1945–1946* (Katowice–Warsaw, 2024).

<sup>5</sup> A. Pawlicki, *Procesy osób oskarżonych o popełnienie zbrodni niemieckich w Kraju Warty przed polskimi sądami specjalnymi w latach 1945–1946*, vol. 1–2 (Poznań–Warsaw, 2019).

<sup>6</sup> The following reviews of this book have been published, among others: C. Epstein, “Andrew Kornbluth, ‘The August Trials: The Holocaust and Postwar Justice in Poland,’” *Canadian Journal of History*

website leave no doubt – this is a ground-breaking, pioneering, excellent, brilliant and courageous book.

In his review, Tomasz Frydel pointed out only one mistake to the author – that the August Decree was amended five times, not three, as Kornbluth stated.<sup>7</sup>

While the publication has so far been assessed from the perspective of Holocaust scholars, this brief study will attempt to address it from the position of a historian dealing with the August Decree trials (hereinafter: August Trials, as in Kornbluth's work) and, more narrowly, with the operation of Special Criminal Courts.

In many places, Kornbluth goes beyond the historical and legal analysis of the August Trials and refers, among other things, to Polish historical policy, the creation of the myth of the innocence of Poles, and the depreciation of the memory of crimes against Jews. The ideological canvas of the narrative is, it may be argued, the weakest element of his study. In the introduction, entitled “The Country without a Quisling?,” the author cites, for example, the controversy surrounding the 2018 amendment to the Act on the Institute of National Remembrance, which included provisions to protect Poland's good name. In addition to criticising these solutions, he writes about the nationalist government of the Law and Justice party, which laid the foundations for an authoritarian state by remodeling the constitutional system. He stresses that these provisions were understood as a desire to stop the spread of theses about Polish involvement in the Holocaust. He then attempts to pinpoint the origins of the myth of innocence of Poles, who found that they had done everything they could to defend Jews during the war and portrayed themselves as the true victims of the war. Kornbluth argues that such an image functions in

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3 (56) (2021), pp. 418–420; T. Frydel, “The August Trials: The Holocaust and Postwar Justice in Poland.” By Andrew Kornbluth,” *Australian Journal of Jewish Studies* 34 (2021), pp. 262–270; K. Person, “Gabriel N. Finder, Alexander Prusin, ‘Justice behind the Iron Curtain: Nazis on Trial in Communist Poland’; Andrew Kornbluth, ‘The August Trials: The Holocaust and Postwar Justice in Poland’,” *Zagłada Żydów. Studia i Materiały* 17 (2021), pp. 811–815; G. Finder, “‘The August Trials: The Holocaust and Postwar Justice in Poland’.” By Andrew Kornbluth,” *Central European History* 3 (55) (2022), pp. 463–464; F. Hirsch, “‘The August Trials: The Holocaust and Postwar Justice in Poland’.” By Andrew Kornbluth,” *Slavic Review* 3 (81) (2022), pp. 773–775; E. Stańczyk, “Book Review: ‘The August Trials: The Holocaust and Postwar Justice in Poland’ by Andrew Kornbluth,” *Journal of Contemporary History* 2 (57) (2022), pp. 507–509; L. Zessin-Jurek, “‘The August Trials: The Holocaust and Postwar Justice in Poland’,” *Polish Review* 4 (67) (2022), pp. 158–161; L. McClintock, “The August Decree and Postwar Poland,” *American Historical Review* 1 (128) (2023), pp. 413–415; V. Petrović, “Transitional Justice Incubator: Bridging European Fault Lines,” *Contemporary European History* 4 (32) (2023), pp. 668–678.

<sup>7</sup> T. Frydel, “The August Trials,” p. 268.

Poles' memory culture, whereas the memory of collaboration and violence against the Jewish people by Poles is alive among Jews. These theses are so apparent to the author that he only recalls the memoirs of Oskar Pinkus, who wrote about the hostility of Poles towards Jews, although the latter did not even expect support (since helping was punishable by death) but only counted on inactivity and absence of hostility.<sup>8</sup>

The author indicates that he is concerned in his work not only with the August Trials but also with the related process of creating and perpetuating the memory of the innocence and heroism of Poles during the war. The source base for these considerations is the records of more than four hundred cases from 1944–1952 of persons accused of crimes against Jews under the August Decree. This perspective was broadened by another four hundred file units of cases covered by the August Decree – this time concerning Polish-on-Polish crimes. The source base is very solid, especially as it has been supplemented by, among others, the Ministry of Justice files through a query at The Central Archives of Modern Records. The choice of sources analysed is not entirely clear. Where does the figure of four hundred trials come from? After all, these are not all the records concerning accusations of crimes against Jews. So, what criterion was used for their selection? According to what territorial key were they selected? All that is known is that they pertain to cases from the territory of the General Governorate, and from the list of the archival records we learn that the author examined files of trials under the August Decree conducted by Special Criminal Courts (Warsaw, Cracow, Lublin), District Courts (Warsaw, Siedlce, Kielce, Lublin, Radom), Voivodeship Courts (for the Warsaw Voivodeship and the Capital City of Warsaw) and Appellate Courts (Warsaw, Kielce, Lublin). There appears not to be an analysis of the prosecution files (especially of the cases that ended at this stage of the proceedings), which seems necessary when drawing such far-reaching conclusions about the work of law enforcement agencies.

The researcher points to the negligence of the historical scholarly community, as the files of the August Decree have been poorly present in the World War II research (exceptions, in his opinion, are the works of Jan T. Gross and the researchers of the Polish Center for Holocaust Research). Also, according to him, the trials of the

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<sup>8</sup> A. Kornbluth, *The August Trials*, pp. 5–6.

defendants under this decree themselves have not been described. Kornbluth goes on to write that the files of these trials were made available only recently(!), most of them are held in the Archives of the IPN – the “controversial Polish Institute of National Remembrance” – and access to them is limited. It is hard to agree with the above-mentioned author that these files have been discovered only recently (a part of the introduction is titled “An Overlooked Reckoning”). By making such an assertion, Kornbluth creates an additional impression of the ground-breaking nature of his research. However, these materials have been present in the research corpus of Polish historians for years, although this study agrees with the scholar that – given their source potential – to an insufficient extent. This author researched the files of the August Decree trials as early as in the 1990s when they were held in the Archives of the Head Commission for the Investigation of Crimes against the Polish Nation in Warsaw (access was limited then). There have been no restrictions on scholars’ access to these files for many years, and many have been digitised and made available in this form. Hence, one may be surprised by the statement about the limited availability of these materials at the “controversial” place where they are held (IPN), which seems to suggest to the reader that there is some mechanism for hiding embarrassing files. At the same time, one has to agree with the author that the research potential of these files is used to describe the war period rather than the post-war period. On the other hand, it seems unjustified to state that the subject of postwar reckoning with collaborators of the World War II period suffered from the inattention of researchers due to the erroneous assumption that the entire judiciary system of “People’s” Poland was a Stalinist one (i.e. extremely politicised).<sup>9</sup> It should be noted, moreover, the Special Criminal Courts, for example, could not fit into this scheme since they ceased to operate in 1946, whereas Stalinism in Poland began in 1948.

Kornbluth repeats his earlier findings that Poland held more than thirty-two thousand trials for war crimes and collaboration under the August Decree, beginning in 1944. However, he is not precise, as he writes interchangeably about the number of cases, trials, and sentences. These are by no means synonymous terms since – as it is well known – in many cases, we were dealing with group trials, during which

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<sup>9</sup> *Ibid.*, p. 10.

the court heard the cases of several defendants. Thus, the number of cases tried, and trials held is lower than the number of persons tried. Additionally, the author assumes that the cases may have concluded with either a conviction or an acquittal. However, other possible outcomes, such as discontinuance (e.g., due to the death of the accused) or suspension of proceedings, should also be considered. In addition to the statistics known and referred to by the author, reference can be made to data published by the Ministry of Justice, which indicates the number of 16,841 adults legally sentenced under the August Decree between 1946 and 1962.<sup>10</sup> If one adds to this group a further 1,716 people convicted under these provisions between 1944 and 1945,<sup>11</sup> we shall obtain a figure of 18,557 people sentenced under the August Decree.

In his work, the above author develops the theses previously presented, among others, in an article entitled “Jest wielu Kainów pośród nas. Polski wymiar sprawiedliwości a Zagłada, 1944–1956” (“There Are Many Cains Among Us.” Polish Administration of Justice and the Holocaust, 1944–1956), published in the periodical *Zagłada Żydów. Studia i Materiały*.<sup>12</sup> This is also the title of the first chapter of the book *The August Trials*, while the quotation itself – “There Are Many Cains Among Us” – was taken from an article published in *Głos Wielkopolski* in March 1947. In the context of the subject matter raised by Kornbluth, the reader may get the impression that there were “voices of conscience” in the press, admitting that there were many Cains among Poles – murderers of their Jewish brothers. Meanwhile, the press article does not refer to the Jewish question at all but takes up the theme of traitors and informers, who not only did not suffer punishment but even found work in various institutions (the philharmonic hall, a hospital) and as “SS and Gestapo plugs in our society are nevertheless a true danger,” since they act as a “fifth column of militant Germanism.”<sup>13</sup>

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<sup>10</sup> *Prawomocne skazania osób dorosłych w latach 1946–2018* (Warsaw, 2020), pp. 25, 43, 56. <https://isws.ms.gov.pl/pl/baza-statystyczna/publikacje/>, accessed 14 December 2023.

<sup>11</sup> *Informator sądowy za rok 1947* (The Court Guide for 1947) gives data on people sentenced for the years 1944–1946. When we deduct the number of people sentenced in 1946, we get exactly 1,716 people sentenced for the years 1944–1945. The number of approximately 1,700 people sentenced in this period is also given by Z. Biegański in “Kara śmierci w orzecznictwie Specjalnych Sądów Karnych w Polsce (1944–1946),” *Echa Przeszłości* 5 (2004), p. 191.

<sup>12</sup> Andrew Kornbluth, “Jest wielu Kainów pośród nas. Polski wymiar sprawiedliwości a Zagłada, 1944–1956,” *Zagłada Żydów. Studia i Materiały* 9 (2013), pp. 157–172.

<sup>13</sup> “Na marginesie. Zaufany urzędnik...,” *Głos Wielkopolski*, 28 March 1947, p. 5.

Kornbluth argues that the national collective memory of collaboration in Poland is limited to the experiences of only Poles themselves. What shapes this collective memory is the collaboration of the renegade, whereas Jews had to contend “with a broad social consensus on the value of ethnic cleansing and the consequent willingness of the entire communities to join hands in their destruction.”<sup>14</sup> Wouldn’t the results of a broader sociological study be necessary to formulate such theses?

The author distinguishes the categories of crimes outlined in the August Decree according to nationality, distinguishing between crimes of Poles against Poles and Poles against Jews. It is a pity that he does not recognise other categories, including the key crimes in the context of the postwar reckoning under the August Decree, i.e., the crimes of the Germans and Volksdeutsche against Poles and Jews. For example, of those accused by the Special Criminal Courts in Gdańsk, Toruń, and Katowice, Volksdeutsche (and Germans) accounted for 81 to 93 percent of those sentenced.<sup>15</sup> It should be noted, when describing the judging of the crimes of the World War II, the thesis that the post-war reckoning was flawed by not including the main criminals – the Germans – should resound loudly. In Kornbluth’s work, however, the German criminals hardly feature, and the primary actors on the scene of the crimes become Poles. Doesn’t such a portrayal bring us dangerously close to presenting the war and the German occupation as events without much German involvement? To further disrupt the black-and-white picture drawn by Kornbluth (limiting the narrative to Polish-on-Jewish and Polish-on-Polish crimes), one can reference the case of Mojżesz Zabramny from Sosnowiec, who, as the chief physician at Arbeitslager Fünfteichen (a sub-camp of the Gross-Rosen Concentration Camp), mistreated the Jewish Polish citizens imprisoned there, failed to provide them with medical assistance, and even selected individuals to be burned in the crematorium. The Special Criminal Court in Katowice sentenced him to death

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<sup>14</sup> A. Kornbluth, *The August Trials*, pp. 15–16.

<sup>15</sup> Among those sentenced by the Special Criminal Court in Gdańsk, as many as 89.6 percent were the *Volksliste* holders; see D. Burczyk, *Renegaci przed sądem. Specjalny Sąd Karny i Prokuratura Specjalnego Sądu Karnego w Gdańsku (1945–1946)* (Gdańsk–Warsaw, 2022), p. 293. In the case of the Special Criminal Court in Toruń, 93 percent of the sentenced persons had been assigned to one of the four *Deutsche Volksliste* groups (J. Wojciechowska, “Przestępcy hitlerowscy,” p. 27). In the Katowice Special Criminal Court, as many as 73 percent of the sentenced persons were *Volksdeutsche*, and a further 8 percent were of German nationality (or had German citizenship).

but at the same time invoked Article 18 of the Criminal Code (indicating that his recognition of the meaning of the act or the management of his conduct at the time of committing the offense was significantly impaired) and finally sentenced him to 10 years imprisonment. The case file is no longer extant, but from press reports, we learn that the court found that the accused committed the crime at the time of a mental breakdown (“mental shock after the loss of his loved ones”) and out of fear of losing his life. Zabramny was said to have explained to the court that “in a short period of time he lost his parents, in-laws and his son, who were killed in the gas chambers and then burned in the crematorium, and he himself feared for his own life.”<sup>16</sup> Does this sentence fit in with the author’s thesis of leniency towards perpetrators of crimes against the Jews? A similar case involved, among others, the owner of a hotel in Katowice, who declared her religion to be Jewish and was sentenced to 7 years in prison for blackmailing and turning Jews in.<sup>17</sup> Has the author not found cases of Jewish-on-Jewish crimes in the file material analysed?

Painting a picture of the Polish-on-Polish crimes, the author identifies three categories of criminals: local officials and Blue Policemen, random collaborators (who were coerced to commit crimes or whose crimes were unplanned), and people motivated by material motivations. While this categorization is interesting, it raises serious doubts because the overall picture is based solely on analysing court files concerning selected areas of the General Governorate. Thus, can it be applied to all Polish lands occupied by the Germans, especially to areas incorporated into the Reich?

Focusing on the issues related to the August trials themselves, this article will not address the bold and controversial assertions about the complicity of Poles in crimes against Jews (Chapter 2, “Crowdsourcing Genocide”), the placing of the Catholic Church on the side of forces that promoted racist anti-Semitism, or the participation of the Underground in the murder of Jews. These arguments seem highly debatable, and there will probably be Holocaust historians who will engage in a polemic with them. This author would just like to point out that it is an error to write that thirty thousand ethnic Jews emigrated from Poland in 1968 as a result

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<sup>16</sup> A. Dziurok, *Osądzenie przestępstw okresu II wojny światowej*, p. 242.

<sup>17</sup> *Ibid.*, pp. 348–349.



of the anti-Semitic campaign. According to Dariusz Stola's findings, the number of post-March emigrants (in 1968–1971) is 12,927,<sup>18</sup> while Kornbluth gives the figure of thirty thousand, although, in a footnote, he only refers to an article by David Engel, which mentions the departure of about twenty-five thousand Jews.<sup>19</sup> It is an oversimplification moreover, to indicate that approximately three million Polish citizens signed the *Volksliste* (p. 108). It is worth recalling that the basis for being classified in one of the four groups of the German nationality list (*Deutsche Volksliste*, DVL) was the submission of an application (a questionnaire form) – obligatory in Upper Silesia and Pomerania. It was the German authorities (DVL commissions) who, based on questionnaires and community interviews, decided whether a person should be registered in a particular group. The post-war cases of Polish citizens renouncing their Polish nationality did not paralyse the activities of the Special Criminal Courts, as Kornbluth suggests. These courts played the role of appellate instances in cases under the Act of 6 May 1945 on the exclusion of hostile elements from Polish society. The public prosecutor of the special criminal court was entitled to lodge an appeal against the municipal court's decision to rehabilitate the applicant, and only in such a case did the special criminal court finally decide the case.

The above author consistently writes about special courts (instead of special criminal courts), although the term also covers other categories of courts that do not fall into the category of general jurisdiction, such as Military Garrison Courts (*Wojskowe Sądy Garnizonowe*, WSG) or Military Regional Courts (*Wojskowe Sądy Rejonowe*, WSR). However, it would be worthwhile to supplement the interesting and valuable (source-based) reflections on the role of co-hearing juries in jurisprudence with specific cases of the involvement of the so-called civic factor in passing judgments. Could the author really not find any instances of disagreement between the professional judge and the juries? For example, in the Katowice Special Criminal Court, in eight cases, juries outvoted the professional judge (the judge submitted a dissenting opinion), and in four other cases, one of the juries disagreed with the verdict of the majority of the panel. Such a situation occurred,

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<sup>18</sup> D. Stola, *Kampania antysyjonistyczna w Polsce 1967–1968* (Warsaw, 2018), p. 213.

<sup>19</sup> D. Engel, "Poland since 1939," *The YIVO Encyclopedia of Jews in Eastern Europe*, [https://yivoencyclopedia.org/article.aspx/Poland/Poland\\_since\\_1939](https://yivoencyclopedia.org/article.aspx/Poland/Poland_since_1939), accessed 14 December 2023.

i.a. in the case of the person accused of turning in eight Jews. The court found that the accused had acted to avert an imminent danger to his own welfare and that of his family. Under Article 22.1 of the 1932 Penal Code, a person who acted to prevent this danger was not liable to punishment for an act committed that had the characteristics of an offense unless the danger could not have been averted otherwise than by committing it. The court noted, however, that the accused, in turning in eight persons, sacrificed their lives to save himself and his family, which numbered only three persons. Therefore, in the court's view, Article 22.3 of the Polish 1932 Penal Code, which stated that "The good sacrificed must not represent a value obviously greater than the good protected," was applicable here. Therefore, the court found that the accused had exceeded the limits of a state of superior necessity and applied "only" extraordinary mitigation of the penalty (as stipulated under Article 22.3 of the 1932 Penal Code), rather than waiving the penalty. Rather than imposing the death penalty, the court (or, more precisely, the juries who outvoted the professional judge) sentenced the accused to 12 years of imprisonment. The dissenting opinion to the verdict was submitted by the presiding judge, arguing that the case could not be classified as exceeding the bounds of superior necessity, as the accused was not in imminent danger. According to the judge, the accused could have saved himself by fleeing. Instead, he reported the hiding Jews twice and revealed their hiding place to the German gendarmerie.<sup>20</sup>

Kornbluth illustrates his thesis about the leniency of the justice system towards perpetrators of crimes against the Jewish population with many examples. In some cases, however, they raise doubts. Here we see in the study an identification photograph of a criminal – Bolesław Gabriel – with the caption: "Acting on the orders of the village headman, Bolesław Gabriel, and three other watchmen seized a Jew and his daughter and transported them to the ghetto at Łęczna, which was shortly thereafter destroyed. Gabriel was sentenced to five and a half years in prison and was likely paroled in 1953" (p. 60). This argument illustrates the theme of the involvement of village wardens in the extermination of the Jews. The reader is not informed, however, that of the four wardens accused in this trial, two were acquitted (the grounds for the verdict read, among other things,

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<sup>20</sup> A. Dziurok, *Osądzenie przestępstw okresu II wojny światowej*, pp. 243–244.

that “upon seeing the captured Jews, they hastily moved away from the cart, thus not wishing to contribute to their capture”; one of them refused to carry out the order to take the Jews to the ghetto and only did so under threat).<sup>21</sup> The defendant Gabriel demanded that this verdict be overturned, pointing out that the taking of the Jew Mordka Niski to the ghetto had been done at his own request out of fear “of the local confidant of the German authorities” (the other defendant argued that the ghetto was not yet an extermination camp at that time, but only a place of isolation, where the position of the mayor was held by a Niski relative, who, incidentally, had escaped from the ghetto). The Supreme Court rejected these arguments and upheld the “lenient” sentence<sup>22</sup> (Gabriel was paroled on 29 April 1953), the hearing being presided over by the Supreme Court Judge Mieczysław Dobromęski – who himself was “racially persecuted” during the occupation (he was described in a report by the underground Directorate of the Association Freedom and Independence [*Zrzeszenie Wolność i Niezawisłość*] as “a Jew, a scumbag, a communist”).<sup>23</sup>

Kornbluth also describes the most spectacular example of civilian participation in the persecution of the Jews in the examined area. It concerns the residents of Wola Przybyśławska, summoned by the village headman to bury the bodies of several hundred Jews slaughtered by the Germans in the nearby forests. During this action, the villagers uncovered a bunker with a hiding group of approximately thirty Jews (men, women, and children). A group of about one hundred villagers escorted the Jews to the village and then to Markuszów, to the German police station (where the Jews were murdered). While escorting the Jews, several people abused them. Kornbluth writes that of the more than one hundred residents of Wola Przybyśławska involved in this, only four were sentenced, and, what is more, they were sentenced to minimum sentences of between one and half and

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<sup>21</sup> Archives of the Institute of National Remembrance Branch in Lublin (hereinafter AIPN Lu), collection Sąd Apelacyjny w Lublinie (Appellate Court in Lublin), 311/171, Judgment of the Voivodeship Court in Lublin, 29 June 1951, pp. 134–135.

<sup>22</sup> AIPN Lu, collection Sąd Apelacyjny w Lublinie (Appellate Court in Lublin), 311/171, Judgment of the Supreme Court, 29 April 1952, pp. 154–158.

<sup>23</sup> E. Romanowska, „Wkrótce już stanę przed innym sądem...” *Prawnicy II Rzeczypospolitej represjonowani w Polsce w latach 1944–1956* (Warsaw, 2020), p. 278; A. Dziurok, *Ośądzenie przestępstw okresu II wojny światowej*, p. 71.

three years in prison (p. 256). It is perhaps worth mentioning, however, that by a sentence of the Voivodeship Court in Lublin in 1951, the four mentioned residents were sentenced to five and half years in prison. The court justified the sentence with the fact that the defendants acted under special conditions of terror because:

most recent massacre of Jews by the Germans in the forest horrified the local inhabitants with its monstrosity, and at the same time warned them of the same reprisals for keeping or hiding Jews. If, therefore, Jews were found by a large group of people in such conditions, the accused were in a situation that threatened them with serious consequences on the part of the Germans if they let the Jews out, for news of the Jews could even have reached the German authorities by accident.

In addition, the court took as a mitigating circumstance:

accidental nature of the crime, for the defendants had supported and helped Jews apart from this incident, and the fact that they were not the sole perpetrators, for, along with them, there were more escorts who, for various reasons, had escaped justice.<sup>24</sup>

The scholar did not specify that the defendants were sentenced to between one and half and three years in prison by the Supreme Court (presided over by Mieczysław Szerer, about whom he himself writes in fact belonged to a group of several lawyers in the Supreme Court of Jewish origin). Perhaps the author did not reach the grounds of the Supreme Court's judgment, which reads, among other things, that the sentence of one and a half years' imprisonment for one of the defendants (Jan Drob) stemmed from the fact that he could not reveal himself to the mob (which displayed a threatening, "firm and unobjectionable attitude"), as he himself sheltered a Jewish family of nine in his house. The court, therefore,

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<sup>24</sup> AIPN Lu, collection Sąd Apelacyjny w Lublinie (Appellate Court in Lublin), 331/158, Judgment of the Voivodeship Court in Lublin, 29 January 1951, pp. 243–245.

recognised as a mitigating circumstance “the numerous assistance provided by the accused to the persecuted Jewish population – at the risk of his freedom and even his life.”<sup>25</sup> Thus, the case appears more complex than the author presents it. When discussing the village headman’s mobilisation of all two hundred and fifty inhabitants of Wola Przybysławska (without mentioning that it was done at the orders of the German authorities), the author seems to imply that they all participated in the repression of the Jews. However, it is worth being cautious in such suggestions, which is proven not only by the case of Jan Drob but, above all, by the case of the execution by the German gendarmerie of seven inhabitants of Wola Przybysławska for sheltering Jews.<sup>26</sup>

The above example demonstrates that the August Trials do not provide a good foundation for making general judgments about the behaviour of local communities. The testimonies of witnesses and defendants reveal that a small group of people took part in the direct persecution of Jews. Kornbluth writes that out of over one hundred people involved in escorting and surrendering the Jews to the German authorities, the court sentenced four people. It is worth supplementing this information with the fact that in another trial, the same sentence (five and a half years in prison) was also passed in the case of Roman Kozidrak, who is named in the case file as a person who took a direct part in leading the Jews out of the bunker and beating them during transport.<sup>27</sup> Although Kornbluth mentions that there had been a murder of a Jew earlier in Wola Przybysławska, he

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<sup>25</sup> *Ibid.*, Judgment of the Supreme Court, 3 August 1951, pp. 274–279.

<sup>26</sup> Archives of the Institute of National Remembrance (hereinafter AIPN), collection Główna Komisja Badania Zbrodni Hitlerowskich w Polsce 1949–1984 (Head Commission for the Investigation of Hitlerite Crimes in Poland 1949–1984), Files concerning the murder of Aniela Aftyka and her family, the Gawrons, Władysław Abramek and Stanisław Kamiński by the German gendarmerie for hiding Jews in the village of Wola Przybysławska, Distrikt Lublin (Lublin province), on 10 December 1942, 392/1994; *Ten jest z ojczyzny mojej. Polacy z pomocą Żydom 1939–1945*, ed. W. Bartoszewski, Z. Lewinówna (Warsaw, 2007), pp. 48, 507–510.

<sup>27</sup> AIPN Lu, collection Sąd Apelacyjny w Lublinie (Appellate Court in Lublin), 331/158, Decision to suspend the investigation and send warrants of capture, 2 November 1950, p. 109; AIPN, collection Centralny Zarząd Zakładów Karnych Ministerstwa Sprawiedliwości w Warszawie (Central Directorate of Penal Institutions of the Ministry of Justice in Warsaw), 2882/1, Central card registry of prisoners sentenced by Polish courts under the Decree of the Polish Committee for National Liberation of 31 August 1944, p. 109. The case files are available in the Archives of the IPN Branch in Lublin (AIPN Lu, Voivodeship Court in Lublin, 326/75, Files in the criminal case against Roman Kozidrak, accused of capturing about 20 people of Jewish nationality and bringing them to the German gendarmerie in the town of Wola Przybysławska, as a result of which these people were murdered).

does not provide information that Bronisław Król was sentenced to death for this murder.<sup>28</sup>

The case of Wola Przybyśławska was intended to illustrate the involvement of village leaders in the operation of murdering Jews. They were to act as coordinators of the persecution, set an example, and were responsible for handing over the captured persons to the German police. However, this study did not find any information that in 1942, an obligation was imposed on Polish village leaders to report on Jews hiding in their subordinate area, as well as on residents who were providing them with support.<sup>29</sup>

In Kornbluth's view, the files of the August trials have remained outside the debate of historians of recent times in Poland because they would mar the vision of the heroic image of the war in Poland, and indicate that the involvement of Poles in the ethnic cleansing of their Jewish neighbors, especially in the countryside, was greater and more enthusiastic than previously thought. Subsequent governments promoted a modern Polish identity formed under the communist dictatorship, based on the idea of Poles waging an uncompromising struggle against foreign rule throughout the 1939–1989 period. These arguments are followed by an attack on an academic and bureaucratic structure subsidised by hundreds of millions of dollars (*sic!*?), namely the Institute of National Remembrance, whose mission is to uphold the state narrative and counter critical opinions and research. This is not the place to polemicise with an author who has little knowledge of the activities of the IPN and has not bothered to reflect independently and in-depth on the subject, but merely repeats muddled political assessments.

Kornbluth puts forward the bold thesis that the debate about the Holocaust is a debate about the credibility of the files of the August Trials, which did not fit into

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<sup>28</sup> After hearing the defendant's review of this verdict, the Supreme Court upheld the sentence, and the president exercised his right of clemency and commuted the sentence to 15 years in prison (AIPN Lu, collection Sąd Apelacyjny w Lublinie [Appellate Court in Lublin], 331/94, Judgment of the Appellate Court in Lublin, 23 June 1950, pp. 126–128; *ibid.*, Judgment of the Supreme Court, 24 October 1950, pp. 135–136; *ibid.*, Letter from the General Prosecutor's Office of the Republic of Poland to the Voivodeship Court in Lublin, 19 January 1951, p. 148).

<sup>29</sup> A. Skibińska, "Dostał 10 lat, ale za co?: Analiza motywacji sprawców zbrodni na Żydach na wsi kieleckiej w latach 1942–1944," in *Zarys krajobrazu. Wieś polska wobec zagłady Żydów 1942–1945*, ed. B. Engelking, J. Grabowski (Warsaw, 2011), p. 352; cf. also *Dalej jest noc. Losy Żydów w wybranych powiatach okupowanej Polski*, vol. 2, ed. B. Engelking, J. Grabowski (Warsaw, 2018), p. 447.

the mechanism of political justice in the sense of being subordinate to the interests of communist power. In his view, they were more complex and democratic than they might appear. He argues that the crimes of Poles against Jews differed fundamentally from those committed against Poles in the degree of sadism, mortality rate, and social sanctions. While the “Polish-on-Polish” crimes were supposed to be covert and opportunistic, as they were met with social ostracism (in addition, they were usually lighter crimes, rarely resulting in the death of the victims), the crimes against the Jews were overt and programmed, and mobilised entire communities. These inconvenient truths allegedly caused the state, society, and the judiciary to create a denialist and exculpatory remembrance of the collusion of ethnic Poles in the Holocaust – a version of memory that is said to have prevailed to this day.

Kornbluth went on to formulate a serious accusation against the judiciary, pointing out not only the prevailing nationalism and anti-Semitism among judges but also their leniency in punishing the perpetrators of crimes against Jews. Did the author find statements in the grounds of the judgments that would confirm this thesis? The characteristics of the views of judges and prosecutors based mainly on the recollections of the prosecutor from the court in Siedlce, Władysław Grzymała, seems too simplistic. It is difficult to find in Kornbluth’s work an analysis of the careers and views of judges and prosecutors from the area in question on the basis of their personal files. Perhaps, then, it is worth waiting with a summary and general assessments of this group until these materials have been examined. The evaluation of the role of judges and prosecutors of Jewish nationality in the post-war retribution for war crimes committed on the occupied Polish lands also calls for in-depth reflection. For example, the author omitted the participation of the head of the Legal Department of the Presidium Bureau of the State National Council (*Krajowa Rada Narodowa*, KRN, Communist-nominated body replacing parliament in 1944–1947 – t.n.), Izaak Klajnerman, in the pardon procedure carried out by President Bolesław Bierut. Although Bierut usually considered the suggestions of lawyers giving opinions on the case of those sentenced for crimes under the August Decree, he was also capable of making different decisions. This was the case, for example, of Jan P., sentenced to death by the Special Criminal Court in Cracow for the murder of a Jew. Bierut ignored, among other things, the intervention of Julia Brystygier (then influential in the Communist party establish-

ment, having also a high position in the Ministry of Public Security – t.n.) and did not exercise his right of pardon.<sup>30</sup>

The author attributes more credibility to interrogations taken at the pre-trial stage than in the courtroom. Thus, he considers the interrogations made by the officers of the Security Department (*Urząd Bezpieczeństwa*, UB) to be closer in its contents to the truth, even if it was retracted in court with the caveat that beatings had coerced it during the investigation. This is a somewhat risky assumption, as analysing more than one thousand files from the August Trials leads me to argue the opposite. In the study's opinion (and a similar opinion is held by, among others, another August Trials scholar, Roman Gieroń),<sup>31</sup> the interrogation before the court is more credible. Should the defendants' explanation during court hearings that beatings or threats coerced their earlier testimony be considered merely a defense strategy? The judges verified the value of the testimonies and, given the discrepancies between those from the investigation and those from the courtroom, drew the appropriate conclusions themselves. The thesis of the exceptional leniency of the courts towards perpetrators of crimes committed against Jews is supported by statistics of convictions for such crimes. Kornbluth argues that while the overall conviction rate for crimes under the August Decree is about 50 percent, for cases of the individuals accused of crimes against Jews, it is about 14 percent (it is difficult to verify this statement as the author did not provide detailed statistics and the research material was selected by him according to unclear criteria).

However, in this situation, instead of writing about a certain "arrangement" influencing the jurisprudence in these cases, is it not worth considering the specifics of the trials? Has the author analysed the statistics of acquittals for denunciation and the practice of turning over persecuted and wanted individuals to the German authorities, and has this analysis included groups other than Jews? After all, the results of this reviewer's research show that charges of denunciation to the German authorities were very difficult to prove, and a significant percentage of such cases ended in acquittal. The basis for such a decision was not only the lack

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<sup>30</sup> Z. Biegański, "Kara śmierci w orzecznictwie," p. 197.

<sup>31</sup> Cf. R. Gieroń, *Półmrok. Procesy karne w sprawie przestępstw okupacyjnych popełnionych przez chłopów wobec Żydów w województwie krakowskim* (Cracow, 2020), pp. 330–331.



of sufficiently strong evidence of guilt, but even the recognition that personal rather than national or political issues were at the root of the denunciation (in this situation, the special criminal court even considered that the characteristics of an offense under Article 143 of the 1932 Penal Code,<sup>32</sup> rather than crimes under the August Decree, could be seen in such acts).

In cases of crimes against the Jews, the key issue seems to be the lack of prosecution witnesses able to provide insight into the circumstances and the nature of the crime. The mass extermination of Jews also meant the annihilation of potential witnesses, who, after all, usually came from the victims' immediate family circle and environment. Kornbluth himself mentions that Jewish survivors were reluctant to report a crime and participate in trials. This was said to be caused not only by fear of militia and Security Department officers but also of the perpetrators' families, which in turn influenced the reluctance to look for witnesses to the crimes in their place of residence. Psychological reasons, such as the fear of anti-Semitic riots and the desire to forget the trauma of the war and start a new life, also played a role. An acquittal due to insufficient proof of guilt was often a verdict indicative of the court's evidentiary helplessness (and the prosecutor's excessive optimism regarding the possibility of proving the defendant's guilt). According to Kornbluth, however, holding the perpetrators of crimes against Jews accountable was far more possible since the mechanism and evidence necessary to prosecute these crimes were readily available. What was missing was the political will of the government, the judiciary, and society. These theses can be seen as unauthorised generalisations, as can the claim that the August Trials actually became another step of excluding Jews from the community of victims, for the authorities sought to highlight crimes against Poles and "minimize crimes against Jews." In this context, it is worth asking whether the author is equally critical of the "highly merciful" sentences of the German courts for committing crimes against the Jews. Further, on the other hand, how does Kornbluth view the fact that German investigators

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<sup>32</sup> The Polish 1932 Penal Code (Kodeks Karny, KK) stipulated under Article 143 that "Anyone who falsely accuses another person before an authority or office responsible for prosecution, of an act punishable by means of an action of law, an administrative or a disciplinary procedure, is liable to a penalty of imprisonment of up to 5 years or arrest" (Decree of the President of the Republic of Poland of 11 July 1932 – Penal Code, *Dziennik Ustaw* (1932), no. 60, item 571).

and prosecutors showed little interest in crimes committed in occupied Poland that were not related to the Holocaust?

If the judiciary, as Kornbluth points out, created the myth of the heroic Polish nation, then why were the heroes of World War II (Emil Fieldorf-Nil and others) sentenced, and, what is more, on charges of collaboration with the occupying forces? Notably, the author was not interested in e.g., the “criminal” Fieldorf, sentenced under Article 1 of the August Decree by the Voivodeship Court for the Capital City of Warsaw (i.e., by the court staying within the scope of author’s research) for his alleged participation in the murders of civilians through the fact that, as the head of the Home Army’s Directorate of Sabotage and Diversion (Kedyw AK) he:

[...] issued orders, instructions and guidelines to subordinate units of the Kedyw, to dissect and liquidate units of Soviet partisans and left-wing underground independence groups [...] As a result, among others, Soviet partisans, members of the Polish Workers’ Party (PPR), People’s Guard (GL) and People’s Army (AL) and citizens of Jewish nationality were liquidated in the Białystok Voivodeship – 237 (two hundred and thirty-seven people), in the Nowogródek Voivodeship – 790 (seven hundred and ninety) people, in the Lublin Voivodeship – approx. 20 (twenty) people.<sup>33</sup>

In this context, one can ask did the author include General Fieldorf in the statistics of “Polish-on-Jewish” crimes?<sup>34</sup>

Also, the very stringent regulations against *Volksdeutsche* (their cases were dealt with, among other things, by Special Criminal Courts) contradict the general thesis of excusing Polish criminals and collaborators. These were not merely marginalized individuals (this is how Kornbluth characterises Poles involved in crimes against other Poles), but a group of some three million Polish citizens in-

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<sup>33</sup> AIPN, collection Sąd Najwyższy w Warszawie (Supreme Court in Warsaw), 2267/1, Copy of the sentence of the Court for the Voivodeship and the Capital City of Warsaw of 16 April 1951, pp. 7–15.

<sup>34</sup> For examples of accusations of alleged Home Army commanders’ orders to murder or turn in Jews, see among others: T. Domański, “Sierpniówki’ jako źródło do dziejów Armii Krajowej w Okręgu Radomsko-Kieleckim na przykładzie procesów przed Sądem Okręgowym, Sądem Apelacyjnym i Sądem Wojewódzkim w Kielcach. Wybrane problemy badawcze,” in *Z dziejów Polskiego Państwa Polskiego na Kielecczyźnie 1939–1945*, ed. J. Gapys, T. Domański (Kielce, 2016), pp. 193–196.

dicted for holding a German nationality list (punishable from mid-1946 onwards for renouncing Polish nationality).

Referring to the adjudication of wartime crimes, Kornbluth claims that the “judiciary that presided over the trials was independent and arguably even nationalistic” (?). Pointing out that the judiciary’s sentences were a testimony to its independence in adjudicating wartime crimes, he is critical of their leniency in cases of “Polish-on-Jewish” crimes, and emphasizes the courts’ participation in creating the heroic myth of the war. In Kornbluth’s argument, the Polish judiciary appears not so much as an administration of justice but rather as an administration for justifying the guilt of the Polish nation. However, do the flawed trials of retribution for wartime crimes in other communist but also democratic countries instead not point to some universal mechanism of “forgetting” and leniency? Neither Poland was an exception, nor the way the perpetrators of crimes against the Jews were treated here. After 1956, only a handful of those convicted under the August Decree remained in prison, regardless of the nationality of the victims of the crimes. Therefore, when analysing the August Trials, the nationality key of categorising perpetrators and victims does not seem adequate (and is certainly not conclusive).

Kornbluth’s work is undoubtedly an important addition to the literature, pointing to the need to make greater use of the files of the August Trials not so much when examining the period of the war but, above all when reflecting on the reckoning of the legacy of war and occupation under communist enslavement. When making sweeping judgments about the fairness of the courts’ jurisprudence moreover, it might be worthwhile to reflect on the fairness of one’s own judgments.