

***Auf der Flucht erschossen*, or ‘Shot while trying to Escape’: Legalized State Terror and Summary Execution in Nazi Germany**

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Abstract: This article evaluates the use of lethal force by state and non-state political actors, a practice that found one of its clearest expressions in the phrase ‘shot while trying to escape’: a pretext for extra-legal killing that emerged during the Weimar period in the actions of police and nationalist paramilitaries. However, the use of summary execution became an established institutional practice among SS and police forces under the Nazi regime and extended to the Wehrmacht with the start of the war. Without doubt, Adolf Hitler’s intervention in creating a parallel legal code through his personal edicts proved decisive in the transformation of killing under the pretext of alleged escape attempts into an accepted and routine bureaucratic practice. Further, Reich Leader of the SS and Chief of the German Police Heinrich Himmler, and the SS and police forces under his command, provided the means by which the Führer’s conceptions of crime and punishment advanced legal fiction into recognized legal terror in which summary murder became a bureaucratic prerogative.

Keywords: Holocaust, summary execution, Schutzstaffel (SS), Order Police, Wehrmacht

Introduction

In March 1933 Felix Fechenbach, a Social Democrat and the editor of the *Volksblatt* (*People’s Press*), was one of thousands of communists and socialists arrested by SA (*Sturmabteilung*) and SS (*Schutzstaffel*) police auxiliaries across Germany as Adolf Hitler and his Nazi regime consolidated control over the state. Many of these detainees ‘disappeared’ in the wake of their arrest or ‘vanished’ into improvised concentration camps scattered across the Third Reich.¹ For his part, Fechenbach was an especially high-profile prisoner who

1 Peter Leßmann, *Die preußische Schutzpolizei in der Weimarer Republik* (Düsseldorf: Droste Verlag, 1989), p. 393.

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had been a target of right-wing animus since his participation in the ill-fated attempt to create a revolutionary government in Bavaria in November 1918.² At that time, Fechenbach served as the private secretary to Minister President Kurt Eisner, a left-wing German Jewish radical and head of the short-lived Bavarian socialist government until his assassination on 21 February 1919.³ After being held for five months in 'protective custody', SA police auxiliaries prepared Fechenbach for transport to the concentration camp at Dachau on 7 August 1933. During the drive to a nearby train station, the car departed from the route and stopped in a wooded area. As a committed opponent of the regime and a man who had documented Nazi crimes, Fechenbach had no illusions about what was about to take place. In fact, he had warned his fellow prisoners not to believe any story of him attempting to escape should he be killed. Led into the forest, he refused to answer questions related to his political sources, whereupon two of his SA escorts opened fire with their pistols mortally wounding him. In a report on the incident to the Bavarian Interior Ministry on 9 August 1933, Reinhard Heydrich, the future Chief of the Security Police, notified his superiors that Fechenbach had been 'shot while trying to escape', an account repeated by local newspapers.⁴

Fechenbach's fate was unique not for the fact of his murder, but rather for the press coverage it received due to his notoriety as a prominent Jewish left-wing political figure, especially within Bavaria. In fact, his initial arrest under the pretext of 'protective custody' and his later execution using the fictive rationale of 'shot while trying to escape' underline two key steps in the perversion the German legal system during the first months of the Third Reich. From his perspective as an émigré from Nazi Germany, Sebastian Haffner identified 'legalized state terror' as a new and defining feature of political life in Germany after January 1933. He explained, 'Initially the terror was used fairly selectively. The first victims were the Communists and other left-wing political figures [...] In the first weeks, terror was not yet widespread, but it nev-

2 Michael Brenner, *In Hitler's Munich: Jews, the Revolution, and the Rise of Nazism*, trans. by Jeremiah Riemer (Princeton, NJ: Princeton University Press, 2022), p. 113.

3 Ian Kershaw, *Hitler: 1889-1936 Hubris* (New York: WW Norton, 1998), pp. 109, 112-13.

4 Hermann Schueler, *Auf der Flucht erschossen: Felix Fechenbach, 1894-1933* (Cologne: Verlag Kiepenheuer and Witsch, 1981), pp. 241-48. Heydrich's report tellingly failed to note that Fechenbach had survived for a brief time after his shooting and he failed to mention that the SA auxiliary policemen had done the shooting by placing responsibility on 'civil servants' of the local state government.

ertheless had crucial consequences'.⁵ Fechenbach's arrest and murder provides one example of how state terror became a *de facto* element of the legal process during the Nazi regime. This article expands the historical inquiry beyond the fate of one individual to examine how summary killing became a widespread organisational practice among SS and police forces, and within the Wehrmacht after the start of the war in 1939.

Promoting Legalized State Violence

This article evaluates the use of lethal force by state and non-state political actors, a practice that found one of its clearest expressions in the phrase 'shot while trying to escape': a pretext for extra-legal killing that emerged during the Weimar period in the actions of police and nationalist paramilitaries. However, the use of summary execution became an established institutional practice among SS and police forces under the Nazi regime and extended to the Wehrmacht with the start of the war. Without doubt, Adolf Hitler's intervention in creating a parallel legal code through his personal edicts proved decisive in the transformation of killing under the pretext of alleged escape attempts into an accepted and routine bureaucratic practice. Further, Reich Leader of the SS and Chief of the German Police Heinrich Himmler, and the SS and police forces under his command, provided the means by which the Führer's conceptions of crime and punishment advanced legal fiction into recognized legal terror in which summary murder became a bureaucratic prerogative.

Hitler ultimately succeeded in justifying state sanctioned murder and summary executions for 'crimes committed in the name of protecting the *Volk* from moral danger' as demonstrated by judicial acquiescence to Nazi killings during the 'Night of the Long Knives' on 30 June 1934 and in the wake of the *Kristallnacht* pogrom in November 1938.⁶ While these two events serve as vivid exemplars of the distortion of legal norms, the actions of SS and police forces from the earliest days of Nazi rule offer clear evidence of the rapid erosion of legal standards.

5 Sebastian Haffner, *The Ailing Empire: Germany from Bismarck to Hitler*, trans. by Jean Steinberg (New York: Fromm International Publishing, 1989), p. 183.

6 Claudia Koonz, *The Nazi Conscience* (Cambridge, MA: Harvard University Press, 2003), p. 98; Saul Friedländer, *Nazi Germany and the Jews: The Years of Persecution, 1933-1939* (New York: Harper Collins, 1997), pp. 276-77.

In his study of the German legal system, the historian Michael Stolleis remarked, 'The conditions of this dictatorship provide an especially good model for studying how traditional legal doctrine was distorted and devalued by a result-oriented vulgar jurisprudence [. . .] and how the individual processing of reality was deformed by external and internal pressure'.⁷ For his part, Hitler, after becoming Reich Chancellor, exerted enormous pressure on the legal system and created the expectation that judicial officials 'were ultimately answerable to the 'national community', not to abstract legal principles'.⁸ Indeed, Hitler and Nazi leaders demonstrated open 'contempt' for 'the German bureaucracy, with its notions of legal authority, proper procedure, and paternalistic responsibility'. The Führer widely mocked 'jurists and officials afraid to jump over their own shadows'.⁹ Such displays of public ridicule most certainly influenced the perceptions and actions of the Nazi Party rank and file, and more specifically the paramilitary arms of the SA and the SS.

During the National Socialist dictatorship, SS and police forces made frequent use of the phrase 'shot while trying to escape' to describe the killing of the regime's putative political and racial enemies within the confines of the concentration camps, the Jewish ghettos, and in anti-partisan operations in the East. In many cases, the phrase vindicated summary executions by providing a veneer of legality that served as both a euphemism and a justification for murder. The practice of summary execution prior to World War II and the expanded use of such killings after the start of the conflict illustrate the implementation of one form of legal terror and provide an important insight into the nascent process by which mass murder and cold-blooded atrocity was rationalized, legitimized, and normalized under the Nazi regime. The Nazi use of extra-judicial killing was not unique to the regime but had its origins in actions taken by police forces under Weimar. As this article reveals, this practice extended from the earliest years of the Weimar Republic.

7 Michael Stolleis, *A History of Public Law in Germany, 1914-1945*, trans. by Thomas Dunlap (Oxford: Oxford University Press, 2004), p. 251.

8 Nikolaus Wachsmann, *Hitler's Prisons: Legal Terror in Nazi Germany* (New Haven, CT: Yale University Press, 2004), p. 69.

9 Christopher Browning with Jürgen Matthäus, *The Origins of the Final Solution: The Evolution of Nazi Jewish Policy, September 1939-March 1942* (Lincoln: University of Nebraska Press, 2004), p. 399.

Legal Fiction under Weimar

After World War I, German nationalist paramilitary groups routinely used the euphemism 'shot while trying to escape' to eliminate political enemies. In perhaps the most prominent example, members of a secret unit of military veterans took custody of the German Communist leaders Karl Liebknecht and Rosa Luxemburg in January 1919. In Liebknecht's case, he was first beaten and then driven to the Tiergarten in Berlin and executed. The 'official' explanation given for his death, and the report circulating in the press, was that he had been shot while attempting to escape as his captors fixed a flat tire.¹⁰ As a young man, Sebastian Haffner recalled hearing of the murders and stated, '[a]s far as I know, that was the origin of 'shooting while attempting to escape', which has since become the conventional manner of dealing with political opponents east of the Rhine'.¹¹ Additionally, Haffner raised questions about the professionalism and neutrality of the Prussian police, and he noted how such killings were exclusively associated with the murder of communists.

The devolution of traditional legal protections and the breakdown in the rule of law reached from Berlin to Munich. The lawyer Max Hirschberg described the 'total dissolution of law' in the Bavarian capital in the early 1920s. He labelled the right-wing government under Gustav von Kahr as a 'fascist dictatorship' well before Hitler and the Nazi Party attempted to overthrow the state government in November 1923.¹² Already in 1922, Emil Gumbel, a professor of mathematics and a left-wing activist and writer, published a work detailing the evisceration of German legal protections and the normalization of political murder throughout Germany by right-wing hit squads in the years after World War I. Gumbel's work, *Four Years of Political Murder*, declared that 'protective custody' had become a means by which 'hundreds of these detainees were shot allegedly attempting to escape [...]

10 Mark Jones, *Founding Weimar: Violence and the German Revolution, 1918-1919* (Cambridge: Cambridge University Press, 2016), pp. 233-38. After executing Liebknecht, the men returned to take Rosa Luxemburg into custody. They beat and shot her and then dumped her body into a canal in Berlin. In this case, her gender and her diminutive stature may have made the legal fiction of an escape attempt too ridiculous even for her right-wing killers.

11 Sebastian Haffner, *Defying Hitler: A Memoir*, trans. by Oliver Pretzel (New York: Farrar, Straus and Giroux, 2002), pp. 33, 91.

12 Brenner, p. 251.

a public euphemism for extra-judicial execution, to which the courts appeared to turn a blind eye'.¹³

In his memoir, the playwright and left-wing revolutionary Ernst Toller described the rise of violence within Bavaria and the use of political murders by right-wing extremists in this period. In fact, Toller himself was almost a victim. After his arrest, he noted how a sympathetic guard had saved him from an execution plot by a group of ex-soldiers, under the pretext of 'shot while trying to escape', scheduled to take place during his exercise period in the prison yard.¹⁴ The participation of demobilized or active soldiers in summary executions of left-wing figures was not unique to Bavaria. For example, the former Imperial officer, popular author, and social democratic convert after World War I, Hans Paasche, perished at the hands of soldiers from the right-wing Ehrhardt Brigade at his farm in West Prussia on 21 May 1920. The killers shot Paasche in the back as he walked towards his house and successfully defended the murder with the police authorities as an 'escape attempt' (*Fluchtversuch*).¹⁵ In the early 1920s the willingness to use lethal force against real and alleged opponents of the state also extended to legitimate police forces, who proved especially ready to use their firearms against communists and labour activists within Bavaria seeking to organize unions or to promote general strikes.¹⁶

The use of lethal force by police forces during the early Weimar Republic was not merely limited to Bavaria but also extended to other states, notably Prussia. The legal fiction of 'shot while trying to escape' was in fact embedded in Weimar police structures since the Republic's tumultuous birth. Police forces, especially in large urban areas such as Berlin, became involved in radicalized acts of violence in which the liberal use of their firearms during large-scale civil unrest became common. The most prominent example occurred in the capital as the Communist Party and its members prepared to celebrate the traditional workers' holiday on 1 May 1929, despite a ban on public demonstrations. Over the course of three days, a 'war psychosis' reigned within

13 Timothy W. Ryback, *Hitler's First Victims: The Quest for Justice* (New York: Alfred A. Knopf, 2014), pp. 102–04.

14 Ernst Toller, *I was a German: The Autobiography of a Revolutionary*, trans. by Edward Crankshaw (New York: Paragon House, 1990), pp. 225–26.

15 *Auf der Flucht' erschossen: Schriften und Beiträge von und über Hans Paasche*, ed. by Helmut Donat (Bremen: privately printed, 1981), pp. 22–23, 134–43.

16 Johannes Schwarze, *Die Bayerische Polizei und ihre historische Funktion bei der Aufrechterhaltung der öffentlichen Sicherheit in Bayern von 1919–1930* (Munich: R. Wöfle, 1977), p. 220.

the police barracks as policemen engaged in on-and-off battles with communists for control of Berlin's streets.¹⁷ During the 'bloody May' protests, policemen fired 10,981 rounds of ammunition over a four-day period killing thirty-three and wounding ninety-eight persons. In contrast, no policemen were killed and of the forty-seven injured officers, only one had a gunshot wound.¹⁸ Responding to numerous charges of excessive force, the Berlin police authority denied responsibility based on the inability to identify specific policemen involved in lethal shootings, the alleged culpability of victims involved who took 'unnecessary risks', or by arguing that the victims' wounds had not been fatal and death occurred due to other factors.¹⁹

'Bloody May' was not the first occasion involving the lack of 'weapons discipline' and displaying the readiness of Weimar policemen to use their firearms, especially against communists. While the conditions justifying the use, and especially the first-use of firearms, by the Prussian police remained a contested point even among some legal experts at the time, summary execution was clearly outside the law even if it could not always be proved.²⁰ For example, the armed uprising of communist groups in Saxony in March 1921 provided a precedent for the use of lethal force by the police that involved the legal fiction of resistance or flight on the part of the victims. Police units from across the Republic engaged communist workers in battle at the Leuna industrial works near Leipzig resulting in numerous casualties and the arrest of some 1,800 persons. During the operation, four 'agitators' allegedly attempting to free their comrades were 'shot while trying to escape'.²¹ Almost forty investigations of police misconduct involving 'illegal killing or physical abuse' were launched in the wake of the unrest. In one case, Paul Müller, a Communist Party leader, was arrested on 26 March by members of a Düsseldorf police company and subsequently reported as 'shot while trying to escape'. The ensuing investigation into Müller's death revealed that the police used the pretext of transporting him to jail in order to take him to an isolated area where he was killed: events

17 Hsi-huey Liang, *The Berlin Police Force in the Weimar Republic* (Berkeley: University of California Press, 1970), pp. 107-08.

18 Leßmann, p. 274.

19 Liang, pp. 107-08.

20 Siegfried Zaika, *Polizeigeschichte: Die Exekutive im Lichte der historischen Konfliktforschung* (Lübeck: Georg Schmidt Römhild, 1979), pp. 55-57.

21 Christian Knatz, *'Ein Heer im grünen Rock'? Der Mitteldeutsche Aufstand 1921, die preußische Schutzpolizei und die Frage der inneren Sicherheit in der Weimarer Republik* (Berlin: Duncker and Humblot, 2000), p. 168.

that closely paralleled the murder of Fechenbach over twelve years later. In another case, the communist Karl Otto Peter was reported as shot and killed while 'plundering' and 'resisting arrest'. In fact, a subsequent investigation found that Peter had been arrested and shot on the orders of Police Captain Hans Ramshorn, a former member of the notorious right-wing Ehrhardt Brigade.²²

The acts of summary execution and the employment of lethal force under Weimar, and the use of the legal fiction of 'shot while trying to escape', provide several important insights. First, these actions indicate that lethal violence, to a degree, had emerged and been normalized within German society during the 1920s. Second, the use of deadly force, especially against members of the parties of the Left, highlights the growing perception of these parties as an existential threat to governance, at least amongst those tasked with maintaining public order. Finally, and perhaps most importantly, the justification of summary execution under the pretext of escape attempts by police and nationalist paramilitary formations set an ominous precedent for the expansion of such practices after Hitler became chancellor. In one sense this precedent, much like the routine invocation of Article 48 under Weimar, created a continuity in action that would be embraced by Hitler and his Nazi Party whether in the form of the 'Enabling Act' or the so-called shooting directive.

From Legal Fiction to Bureaucratic Norm

Hitler's appointment as Reich Chancellor initiated a campaign aimed at the 'destruction of Marxism' within Germany: a goal shared by traditional elites within the military, industry, and the government.²³ Legal terror and the use of procedural legality would form the basis for the assault on the bastions of the parties of the Left, and, eventually German Jews, while the German police and Nazi paramilitary formations would serve as the foot soldiers for the consolidation of Hitler's power.²⁴ In the case of the former, Hermann Göring, in his role as Minister President of Prussia, issued a 'Shooting Directive'

22 Knatz, pp. 196-99.

23 Ian Kershaw, p. 436.

24 Richard Bessel, 'Violence as Propaganda: The Role of the Storm Troopers in the Rise of National Socialism', in *The Formation of the Nazi Constituency, 1919-1933*, ed. by Thomas Childers (Totowa, NJ: Barnes & Noble Books, 1987), p. 138.

on 17 February 1933 that instructed Prussian policemen to develop 'friendly relations' with the SA and the SS while adopting the 'harsh-est measures' against enemies of the state, specifically the Communist Party and its supporters. Göring ordered, 'Police authorities, who in the execution of these duties make use of their firearms, will be supported by me regardless of the consequences of their actions'.²⁵ Göring's directive established an expectation for Prussian policemen to shoot first and ask questions later, a mindset shared by SS camp guards.²⁶ It also created an organisational practice that normalized the use of firearms by the police in dealing with alleged enemies of the state, whether criminal or political.

After the Nazi seizure of power the creation of hundreds, if not thousands, of 'wild concentration camps' and prisons throughout Germany under SA and SS control, in which communists, socialists, and Jews were humiliated, tortured, and killed, reflected a process in which the legal authority of the state was being transgressed and replaced by legalized state terror.²⁷ Furthermore, the perversion of the legal precept of 'protective custody' (*Schutzhaft*) and 'preventive custody' from their original intent as legal protections to their use as punitive measures by police and party auxiliaries degraded the authority of the public prosecutor and symbolized the advent of legal fiction in which judicial concepts lost their true meanings.²⁸ One of the legal fictions that permeated the concentration camp complex was the use of summary execution under the pretext of 'shot while trying to escape'. SS camp guards received instructions to employ this euphemism 'as a way of disposing of certain inmates'.²⁹

25 *Das Dritte Reich: Die Zertrümmerung des Parteienstaates und die Grundlegung der Diktatur*, vol. 9, ed. by Herbert Michaelis and Ernst Schraepler (Berlin: Dokumenten Verlag Dr. Herbert Wendler & Company, 1964), p. 38, author's translation.

26 Elissa Mailänder, *Female SS Guards and Workaday Violence: The Majdanek Concentration Camp, 1942-1944*, trans. by Patricia Szobar (East Lansing: Michigan State University Press, 2015), p. 220-22.

27 Leni Yahil, *The Holocaust: The Fate of European Jewry, 1932-1945*, trans. by Ina Friedman and Haya Galai (New York: Oxford University Press, 1990), p. 62. Yahil notes that Jews were killed in the early months of Nazi rule using the formulaic rationale of shot 'while trying to escape'.

28 George C. Browder, *Foundations of the Nazi Police State: The Formation of SIPO and SD* (Lexington: University Press of Kentucky, 1990), pp. 53-54.

29 Henry V. Dicks, *Licensed Mass Murder: A Socio-psychological Study of Some SS Killers* (New York: Basic Books, 1972), p. 100.

Reading between the Lines: Euphemism and Murder

Within the Third Reich, the emphasis on the use of lethal force was a necessary first step in the process of broadening and normalizing the use of terror by the state. Rudolf Diels, the first head of the Gestapo (Secret State Police) discussed the initial wave of violence aimed at 'Conservatives, Democrats, Catholics, Jews, Communists and Pacifists' during the Nuremberg Trials by noting, 'These murders were camouflaged by the expression: 'shot while trying to escape' or 'resisting arrest' or similar things.' He continued, 'Approximately 5[00]–700 people perished during this first wave of terror (from March until October 1933 approximately).'³⁰ In just one example, the 7 March 1933 Berlin edition of the Nazi controlled newspaper, *Völkischer Beobachter*, made prominent mention of two imprisoned communist leaders 'shot while trying to escape'.³¹ As a young boy living in Nazi Germany, Bernt Engelmann remembered the ubiquity of such newspaper stories and remarked, 'prisoners had simply been executed, "shot while trying to escape"'. He also recalled, 'Everyone knew what that phrase really meant'.³²

Willy Cohn, a German Jewish diarist, did not have to read between the lines. In a diary entry of 10 August 1933, Cohn noted Fechenbach's murder and wrote, 'At this time, many people are being shot while trying to escape. One doesn't dare to think about it'.³³ Another contemporary witness, Victor Klemperer, an astute observer and diarist of Nazi Germany, regularly commented on individuals executed under the pretext of escape attempts. In a diary entry of 24 May 1942, he expressed his anger and incredulity upon hearing that Ernst Kreidl, an acquaintance, was reportedly shot in a failed attempt to escape from the camp at Buchenwald. Klemperer recorded his incredulity, 'The man certainly did not have the faintest thought of attempting an absolutely impossible escape'. He continued, 'Sixty-three years old, weakened, prison clothing, without money [. . .] And in broad daylight'. With pal-

30 *Office of United States Chief of Counsel for Prosecution of Axis Criminality, Nazi Conspiracy and Aggression*, vol. V (Washington, D.C.: Government Printing Office, 1946), p. 289. Testimony of Rudolf Diels, document 2544-PS.

31 'Zwei Kommunistenführer beim Fluchtversuch erschossen', *Völkischer Beobachter* (Berlin edition), 7 March 1933, p. 2.

32 Bernt Engelmann, *In Hitler's Germany: Everyday Life in the Third Reich*, trans. by Krishna Winston (New York: Schocken Books, 1986), p. 31.

33 Willy Cohn, *Kein Recht, Nirgends*, vol. 1 (Cologne: Böhlau Verlag, 2007), p. 67, author's translation.

pable disgust, he finished by remarking, 'Undisguised murder. One of thousands upon thousands'.³⁴

If private citizens recognized the new reality of legalized state terror, so too did government officials who participated in the legal deceit. Friedrich Kellner, a German judicial official who opposed the Nazi regime, confided in his diary in September 1939 regarding the breakdown of the rule of law within Germany. He wrote that 'harmless utterances' sent thousands to concentration camps, and numerous of these prisoners were shot during alleged escape attempts.³⁵ Similarly, the chief public prosecutor for Berlin in 1935 argued that SS regulations concerning the use of lethal force to execute prisoners 'shot while trying to escape' did not exonerate these men from legal proceedings for manslaughter since 'they [the regulations] do not have the force of law' and remained in the strictest sense 'illegal' killings'. However, senior officials in the Justice Ministry simply chose to suspend charges against the perpetrators.³⁶ What this public prosecutor failed to understand was the fact that de facto bureaucratic practice had replaced traditional legal precepts. Actions designed to protect the health of the people's community had now become the law of the land. As Stolleis observed, the German legal profession as a whole experienced a 'self-immunization of perception' in which the 'fictitious' and the 'absurd' became reality.³⁷ The SS guards committing these murders were quite aware of the judiciary's complicity in these acts. In a postwar interview, one SS guard detailed, 'Here were all the judges, and they just signed the death certificates which we turned in to them without question. We had lost our sense of right!'.³⁸

The newspaper report concerning the killing of Fechenbach points to the role of the concentration camps in the extension of a process

34 Victor Klemperer, *I Will Bear Witness: A Diary of the Nazi Years, 1942-1945*, trans. by Martin Chalmers (New York: The Modern Library, 2001), 59-60, 151, 165-168, 170, 209. By 1943, Klemperer, a Jewish convert to Christianity, protected by his marriage to an Aryan woman, noted increasing reports of Gestapo killings of protected Jewish partners during alleged escaped attempts from custody.

35 *My Opposition: The Diary of Friedrich Kellner-A German against the Third Reich*, ed. and trans. by Robert Scott Kellner (Cambridge: Cambridge University Press, 2018), p. 37.

36 Ingo Müller, *Hitler's Justice: The Courts of the Third Reich*, trans. by Deborah Lucas Schneider (Cambridge, MA: Harvard University Press, 1991), pp. 175, 178. It is important to note that these complaints were not based on moral or ethical considerations, but rather related to bureaucratic and procedural objections involving the ability of the SS to bypass the existing legal system. See also Martin Broszat, *The Hitler State: The Foundation and Development of the Internal Structure of the Third Reich*, trans. by John W. Hiden (London: Longman, 1981), p. 336.

37 Stolleis, pp. 251-52.

38 Quoted in Dicks, p. 100.

of legal terror, but also to the emergence of the camps as sites of state sanctioned violence that 'normalized extreme violence, torture, and murder'.³⁹ The German Communist Lina Haag criticized the 'judicial despotism' of the Nazi regime and remarked, 'In a concentration camp there was no longer any pretence of legality to which one could appeal'.⁴⁰ Throughout the camp system in Germany and the occupied territories, real and alleged 'escape attempts' provided the 'legal' grounds for both individual and mass killing from the first days of the camps' operation.

At Dachau, the killing of prisoners 'shot while trying to escape' became a routine aspect of daily life. For example, SS guards used this pretext to execute a range of political and racial enemies including a Jewish businessman, Erwin Kahn, on 12 April; a communist functionary, Leonard Hausmann, on 17 May; and a Munich lawyer, Alfred Strauss, on 24 May 1933. The SS guard Karl Ehmann shot Hausmann at point blank range after escorting him out of the camp into the nearby woods and later bragged about his actions at a local pub.⁴¹ Ehmann's willingness to boast about the killing in a public locale reveals the perpetrators' comfort in discussing and legitimating these acts in the public domain.

The historian Christopher Dillon notes that such murders were intended to be 'exemplary' and that they involved the creation of a 'fictive official explanation' for the murder of camp prisoners.⁴² One state prosecutor from Munich, Josef Hartinger, unsuccessfully attempted to expose this legal fiction in order to charge and arrest the SS murderers. He was thwarted by a system that already in 1933 was rapidly tilting in favour of the SS by superseding traditional judicial prerogatives.⁴³ In a similar manner, killings in Buchenwald demonstrate that such actions were by no means limited to Dachau. Opened in the summer of 1937, the Jena state prosecutor reported on the results of an investigation of camp deaths to the Justice Ministry, 'In the first weeks, seven escaping inmates were shot by guards'. The state prosecutor then noted the good cooperation between his office and the camp's leadership and stated, 'judicial proceedings [against the guards] have been set aside'.⁴⁴

39 Nikolaus Wachsmann, *KL: A History of the Nazi Concentration Camps* (New York: Farrar, Straus and Giroux, 2015), p. 626.

40 Lina Haag, *How Long the Night*, trans. by E.W. Dickes and Arnold Bender (London: Victor Gollancz, 1948), pp. 87, 116.

41 Christopher Dillon, *Dachau and the SS: A Schooling in Violence* (Oxford: Oxford University Press, 2015), pp. 10, 39-40.

42 Dillon, pp. 42-44.

43 Ryback, pp. 180-188.

44 Wachsmann, p. 175.

War and Mass Murder

The use of fictive narratives, whether in the practice of 'shot while trying to escape', or the requirement for an SS doctor to certify a prisoner's health prior to floggings, provide examples of illusory legal protections that rationalized, normalized, and ultimately justified transgressive violence in the minds of the perpetrators. The outbreak of war in 1939 radicalized such practices within the SS and police. This process of normalization and justification extended to Order Police units operating in the East.⁴⁵ The complicity of the Order Police in mass killing became widespread and received added impetus from orders calling for the 'immediate use of firearms [...] even if only the hint of attempted resistance or the suspicion of attempted escape exists'.⁴⁶ In truth, many police units needed little encouragement to use their weapons in such cases.

In occupied Poland, summary execution became routine by the Autumn of 1939. One order from the Gestapo station at Poznan (Posen) on 13 December 1939 referenced a previous month's directive from Himmler concerning the 'handling of Jews, who are found on German Reich territory in violation of the resettlement order [*Umsiedlungsbe-fehl*]'. The order directs that any Jews or Poles found in the annexed German territories after having been resettled to the General Government are to be immediately summarily executed.⁴⁷ In a similar manner, a series of bi-weekly reports in 1942 from the Security Police (Sipo) Commissariat in Bilgoraj in the General Government clearly reveal the widespread use of alleged escape attempts as a pretext for mass murder. The final entry for each report appears under the heading 'Overview of the [Number of] Arrested Persons during the Reporting Period'. The 16–31 August report indicates that eight persons were arrested; how-

45 Christopher Browning, *Ordinary Men: Reserve Police Battalion 101 and the Final Solution* (New York: Harper Collins, 1992); Jürgen Matthäus, 'What about the 'Ordinary Men'? The German Order Police and the Holocaust in the Occupied Soviet Union,' *Holocaust and Genocide Studies*, 10 (1996), 134–50; Edward B. Westermann, *Hitler's Police Battalions: Enforcing Racial War in the East* (Lawrence: University Press of Kansas, 2005); Klaus-Michael Mallmann, 'Vom Fußvolk der 'Endlösung': Ordnungspolizei, Ostkrieg und Judenmord', *Tel Aviver Jahrbuch für deutsche Geschichte*, 26 (1997), 355–91; Wolfgang Curilla, *Die deutsche Ordnungspolizei und der Holocaust im Baltikum und in Weißrußland, 1941–1944* (Paderborn: Ferdinand Schöningh, 2006).

46 Washington, DC, US Holocaust Memorial Museum Archives (USHMMA), 'Der Höhere SS- und Polizeiführer Ost, Az.: Kr./Fi.-3822[?]42, Betr.: Verbrecherbekämpfung [5 June 1942], RG 15.011M, reel 7, file 91.

47 Ludwigsburg, Germany, Bundesarchiv-Ludwigsburg (BArch-L), Gestapo order Nr. 129/39 II/B-g, 13 December 1939, Verschiedenes 301 AAe, Band 131, p. 351.

ever, it adds the following entry, 'Executed (*Erschossene*) Criminals: 12 while trying to escape'. In comparison, the report for 1–15 September notes the arrest of five persons and the shooting of three others 'while trying to escape'.⁴⁸ During the last two weeks of September, the Security Police reported the arrest of fourteen persons and the execution of 89 persons, all 'shot while trying to escape'. For October, the increasing trend of killings continued with fifteen arrests and 138 executions, again all listed as 'shot while trying to escape', and, for January 1943, this last category included 151 persons.⁴⁹ The fact that police officials justified *every one* of these executions with the rationale 'shot while attempting to escape' offers irrefutable evidence of the phrase as both standard practice and a euphemism for mass murder.

As the Bilgoraj reports in 1942 reveal, a radicalization of anti-Jewish measures, especially after the invasion of the Soviet Union in June of 1941, accelerated acts of summary killing and mass shootings in the eastern occupied territories. For example, the commander of Police Battalion 105 ordered, 'Every suspicious person [*Verdächtige*] is to be shot immediately'. The unit also received instructions to execute both escaped prisoners of war as well as suspected partisans. In the case of the latter, the policemen were told that partisans were to be shot either 'in battle or while attempting to escape', offering a prefabricated fictive rationale and bureaucratic euphemism for such actions.⁵⁰ By the start of 1942, the police battalion's war diary openly boasted of the unit's 'many successful anti-partisan actions' including the laconic comment noting that '73 partisans were taken prisoner, that is, executed [*erschossen*]'.⁵¹

After the war, a former policeman and member of Reserve Police Battalion 69 described the routine use of summary execution during his questioning about the unit's activities in the East. Lorenz Oder* recalled his participation with twenty policemen in one anti-partisan

48 Washington, DC, USHMM, 'Sicherheitspolizei Kriminalkommissariat Bilgoraj, Tätigkeitsbericht für die Zeit vom 16.8. bis 31.8.1942 [31 August 1942];' and 'Sicherheitspolizei Kriminalkommissariat Bilgoraj, Tätigkeitsbericht für die Zeit vom 1.9. bis 15.9.1942 [15 September 1942]', RG 15.066M, reel 2, file 25.

49 Washington, DC, USHMM, 'Sicherheitspolizei Kriminalkommissariat Bilgoraj, Tätigkeitsbericht für die Zeit vom 1.10. bis 15.10.1942 [15 October 1942];' 'Sicherheitspolizei Kriminalkommissariat Bilgoraj, Tätigkeitsbericht für die Zeit vom 16.10. bis 31.10.1942 [29 October 1942 (sic)];' and 'Statistischer Monatsbericht, Distrikt Lublin [January 1943]', RG 15.066M, reel 2, file 25.

50 Karl Schneider, *Auswärts eingesetzt: Bremer Polizeibataillone und der Holocaust* (Essen: Klartext Verlag, 2011), pp. 198, 201, 245.

51 Washington, DC, National Archives and Records Administration (NARA), War Diary of the 207th Security Division, RG 242, T315, reel 1604, frame 752. Diary entry of 8 January 1942.

operation commanded by First Lieutenant of the Police, Jaeger*. Oder described how the unit, supported by a Wehrmacht anti-aircraft unit, surrounded the village of Peklana in Belarus. The Germans then initiated an attack against the village causing several houses to catch fire. After securing the village, the policemen detained four young men and led them into a nearby field. Lieutenant Jaeger released the prisoners and then gave the order to open fire on them as they attempted to walk away. Oder remembered Jaeger's 'laughing' and his 'mocking grin' during the killing.⁵² Oder's testimony perfectly illustrates the manner by which summary execution under the pretext of attempted escape borrowed from prewar practices and became normalized among police units in the occupied East.

'Legal' Murder within the Camps

The start of the war not only created new spaces for mass murder in the field, but it also radicalized existing practices of summary execution within the camps under the pretext of escape attempts. In his detailed study of the concentration camp system, Nikolaus Wachsmann noted how the Nazi regime's 'execution policy' accelerated summary killings as 'SS men on the ground felt emboldened to dispense their own brand of justice'. He then continued, 'once Nazi leaders had set the precedent of lawless executions, an upsurge in murderous initiatives by local Camp SS men was almost inevitable'.⁵³ While unauthorized killings were officially prohibited, such actions in fact became the rule rather than the exception after the invasion of Poland. For example, Isaac Pollak, a Polish Jew, was one of over 6,000 prisoners sent to work in the notorious stone quarry at Buchenwald in October 1939. Pollak alleged that the SS maintained a daily quota for the number of prisoners to be killed. He described how the SS guards targeted prisoners for murder during the process of carrying stones along a ten-foot corridor out of the quarry, 'There was a line. If you got under [i.e., out of] the line, by any chance, because you got beatings on the way up from the guards, they would shoot you. That meant that you had attempted to escape'. He continued, 'That was the explanation for killing or shooting the prisoners going up with the stones'.⁵⁴

52 Ludwigsburg, Germany, Barch-L, Interrogation protocol of Lorenz O. on 2 July 1962, 202 AR-Z 907/60, p. 213. An asterisk (*) indicates the use of a pseudonym for the surname.

53 Wachsmann, p. 219.

54 Isaac Pollak, *Living with Death* (New York: Vantage Press, 1989), p. 13.

If SS guards had the freedom to engage in summary executions, it should not be surprising that senior camp leadership also had the ability to engage in lethal violence against prisoners. For example, Amon Göth, the notorious commander of the Plaszow concentration camp in occupied Poland, was known for his heavy drinking, avarice, and brutality. On numerous occasions, Göth would shoot prisoners in 'cold blood' as he walked from his villa to his office in the camp. Mietek Pemper, a prisoner and clerk for the SS, recalled how Göth would gaze outside his office and 'Suddenly he would stand up, take one of the rifles from the rack on the wall, and open the window'. He continued, 'I would hear a few shots and then nothing but screams'.⁵⁵ While Göth later abandoned his practice of arbitrarily shooting prisoners in the wake of Himmler's order to preserve prisoner labour, he still resorted to subterfuge as in the case of a prisoner that he was interrogating. The questioning took place in his office along with other SS men, including an SS judicial official. Göth finished the questioning of the prisoner and ordered him to leave the building by climbing out the window, whereupon Göth shot the man and then called for the creation of fake 'interrogation transcripts about the escape attempt'.⁵⁶

The readiness of some guards to make use of their weapons was encouraged by the concentration camp leadership through the distribution of rewards for the shooting of prisoners in 'so-called escape attempts', including 'special leaves, salary bonuses, or rapid promotion'. In the case of the Sachsenhausen camp, SS Sergeant Anton Birke created the pretext for murdering a communist prisoner, Gustav Lampe, during a work detail in November 1936, by grabbing the prisoner's cap and throwing it beyond the sentry line. Birke then fatally shot Lampe for attempted escape as the prisoner went to retrieve his hat, a murder that earned Birke three days of leave.⁵⁷ Another prisoner at Sachsenhausen, Jerzy Pindera, described the 'hat game' as 'the most common killing method' used by the SS in the camp by 1939. Pindera described the dilemma faced by the inmate, 'When the prisoner crossed the *Postenkette* [sentry line] to retrieve his cap, he was shot by the guard because he was trying to escape. If the prisoner refused to

55 Mietek Pemper, *The Road to Rescue: The Untold Story of Schindler's List*, trans. by David Dollenmayer (New York: Other Press, 2008), pp. 44-45.

56 Pemper, pp. 116-19.

57 Harry Naujoks, *Mein Leben im KZ Sachsenhausen, 1936-1942: Erinnerungen des ehemaligen Lagerältesten* (Berlin: Dietz Verlag, 1989), p. 31.

cross the Postenkette, he was shot by the SS officer for insubordination'.⁵⁸

The pre-war activities of the SS had set the precedent for 'legal' murder, but the coming of war in 1939 provided the catalyst for a radicalization of such practices within the confines of the concentration camps and within the borderlands of Eastern Europe. The effectiveness of the SS schooling for violence initiated within Germany after Hitler's accession to the chancellorship can be seen in the use of 'pranks' such as the 'hat game' in the labour camps and killing centres in the occupied East after 1939. In Auschwitz, Wielslaw Kielar recalled an SS guard who snatched the cap from a prisoner, threw it, and then ordered the man, 'Go and fetch your cap'. As the prisoner bent down to retrieve his cap, the SS guard shot him for attempting to escape. When a nearby SS officer rode over to investigate, he questioned Kielar who reported that the prisoner had been 'shot', whereupon the SS officer corrected him: 'He was shot while attempting to escape. Understood?'.⁵⁹ In testimony during the Eichmann trial, another former prisoner at Auschwitz stated that it was common practice for prisoners killed by SS guards on work details outside the camp to be reported as 'shot while trying to escape', an explanation that legitimated the killing and promised the guard additional rewards.⁶⁰

The daily orders issued in Auschwitz provide another indication of the extent and the normalization of firearms use in the camp, as actions taken there borrowed from existing precedents and became further radicalized during the war. For example, a daily order to all SS personnel on 25 November 1944 concerning weapons discipline noted, 'Again and again it happens that individual SS men shoot wildly throughout the area from their posts'. The order then warned, 'This arbitrary shooting represents not only a danger for others, but to the camp's security as well' and promised punishment for such actions in the future.⁶¹ It was not lethal violence but a desire to preserve a sufficient labour force and to prevent 'friendly fire' incidents that led to this order.

58 Jerzy Pindera, *Liebe Mutti: One Man's Struggle to Survive in KZ Sachsenhausen, 1939-1945*, ed. by Lynne Taylor (Dallas, TX: University Press of America, 2004), p. 71.

59 Wieslaw Kielar, *Anus Mundi: 1500 Days in Auschwitz/Birkenau*, trans. by Susanne Flatauer (New York: Times Books, 1972), pp. 96-97.

60 *Sieben sagen aus: Zeugen im Eichmann-Prozess*, ed. by Dov B. Schmorak (Berlin: Arani Verlag, 1962), p. 15.

61 *Standort- und Kommandanturbefehle des Konzentrationslagers Auschwitz, 1940-1945*, ed. by Norbert Frei and others (Munich: K.G. Saur, 2000), p. 515.

The Wehrmacht and Summary Execution

With respect to the expanded boundaries of acceptable behaviour and brutality that existed in the East, the SS and police were not the only organizations to use the pretext of escape to justify killing. The actions of individual soldiers and Wehrmacht units, especially during the invasion of the Soviet Union, provide additional evidence for evaluating the use of summary execution. In truth, the summary execution of prisoners of war and those shot under contrived escape attempts, especially Jewish POWs, had precedent in the actions of some German army units during the invasion of Poland.⁶² From the first days of the invasion of Russia the summary execution of surrendering Soviet POWs became routine, a practice aimed especially at Jewish and female Red Army soldiers.⁶³ Already on 16 July 1941 in a meeting that included Field Marshal Wilhelm Keitel, the chief of the German High Command (OKW), Hitler outlined his plans for the conquered areas: 'The vast region must of course be pacified as quickly as possible; this is best done by "shooting anyone who even looks askance"'. Hitler's words were soon translated into concrete orders as nine days later the Army High Command (OKH) directed that 'Fleeing prisoners of war were to be shot immediately; it was not necessary to first call to them to stop'.⁶⁴ It, therefore, should not be surprising that the campaign into the Soviet Union – preceded by a series of criminal orders that freed German soldiers from both legal and moral obligations to Russian soldiers and citizens alike, including the notorious Commissar Order – allowed acts of atrocity and murder to become manifest.⁶⁵ In fact, by using these orders the German military

62 Michael Burleigh, *Moral Combat: Good and Evil in World War II* (New York: Harper Collins, 2011), p. 121; Ben Shepherd, *Hitler's Soldiers: The German Army in the Third Reich* (New Haven, CT: Yale University Press, 2016), p. 51. For the case of Jewish POWs, see Klaus-Michael Mallmann, *Genesis des Genozids: Polen 1939-1941*, ed. by Michael Mallmann and Bogdan Musial (Darmstadt: Wissenschaftliche Buchgesellschaft, 2004), p. 49.

63 Reinhard Rürup, *Der Krieg gegen die Sowjetunion, 1941-1945* (Berlin: Argon, 1991), p. 60; Hannes Heer, 'Stets zu erschiessen sind Frauen, die in der Roten Armee dienen': *Geständnisse deutscher Kriegsgefangener über ihren Einsatz an der Ostfront* (Hamburg: Hamburger Edition, 1995), p. 10; 'PW Detachment Ninth U.S. Army, Subject: An ex-SS man', 19 March 1945, see Saul Padover, *Experiment in Germany* (New York: Duell, Sloan and Pearce, 1946).

64 Alexander J. Kay, 'Transition to Genocide, July 1941: Einsatzkommando 9 and the Annihilation of Soviet Jewry,' *Holocaust and Genocide Studies*, 27 (2013), p. 419.

65 For a concise but excellent discussion of these orders see Geoffrey Megargee, *War of Annihilation: Combat and Genocide on the Eastern Front, 1941* (Lanham, MD: Rowman and Littlefield, 2006), pp. 35-41.

justice system implicated itself and created a 'façade behind which mass murder could appear as legal'.⁶⁶

Already in September 1941, German units regularly reported the capture of tens of thousands of Soviet prisoners of war, with some units recording as many as 100,000. By the end of the year, the total had reached approximately three million.⁶⁷ After the battle of Vyazma-Bryansk in October 1941, one Wehrmacht officer witnessed the inevitable result of the inability or unwillingness of Wehrmacht units to adequately guard or care for such numbers combined with the influence of existing criminal orders: 'all that was incredibly gruesome. Just to see that column of PW [Soviet prisoners of war] [. . .] when the PW were taken to the rear on foot, far beyond Smolensk'. He continued, 'I often travelled along that route – the ditches by the side of the roads were full of shot Russians'.⁶⁸ Like their counterparts in the Wehrmacht, members of the German police received orders to shoot 'fleeing or released POWs who are not from the area', a directive that was intended to apply to 'every male person found on the loose or found in suspicious circumstances in the forest'.⁶⁹

The horrific treatment of Soviet prisoners of war even became a point of concern for some German officers who worried that such practices would result in fanatical resistance instead of submission. Not surprisingly, stories of abuse and atrocity against surrendering Soviet soldiers spread quickly throughout the Red Army. A Soviet political commissar, Nikolai Moskvina, recorded these rumours in his diary, 'They say there's no shelter, no water [. . .] people are dying from hunger and disease, that many are without proper shoes'. He continued, 'They [Soviet POWs] are treated like slaves, shot for the slightest misdemeanour, or just out of mischief, for fun'.⁷⁰ Ibrai Tulebaev described the German treatment of captured prisoners in a camp. He testified, 'The men were penned inside at dusk; any who stepped outside were

66 Wolfram Wette, 'Frühe Selbstentlastung der Wehrmachtrichter, späte Rehabilitation ihrer Opfer', in *Mit reinem Gewissen: Wehrmachtrichter in der Bundesrepublik und ihre Opfer*, ed. by Joachim Perels and Wolfram Wette (Berlin: Aufbau, 2011), p. 83, author's translation.

67 Catherine Merridale, *Ivan's War: Life and Death in the Red Army, 1939-1945* (New York: Metropolitan Books, 2006), p. 111 and David Stahel, *Kiev 1941: Hitler's Battle for Supremacy in the East* (Cambridge: Cambridge University Press, 2012), p. 191.

68 *Tapping Hitler's Generals: Transcripts of Secret Conversations, 1942-1945*, trans. by Geoffrey Brooks and ed. by Sönke Neitzel (London: Frontline Books, 2007), p. 186.

69 Florian Dierl, 'The 'Internal Wehrmacht': German Order Police and the Transformation of State Power, 1936-1945' (unpublished PhD thesis, Royal Holloway College, 2007), p. 170.

70 Merridale, pp. 140-41.

shot. Each night ten or fifteen of them met this fate. By day, the German guards used prisoners for target practice and baited some of them with dogs. Sometimes they placed bets on the animals.⁷¹ In the case of Jewish POWs, designated as 'politically intolerable and suspect elements', a bullet to the back of the head at the hands of either the Wehrmacht guards or the Einsatzgruppen was standard practice.⁷²

Despite their ragged condition, Soviet POWs evoked little compassion from some German soldiers. Willy Peter Reese, an infantryman, recalled seeing captured Soviet soldiers at forced labour in the fall of 1941: 'Bearded faces, unkempt hair, empty eyes, and ripped uniforms [. . .] Every movement was dull and slothful, and the guards swore and hit out with sticks and rifle butts. I felt no anger at the ill-treatment of these helpless men, and no sympathy either'. Later that winter, Reese and his comrades came upon a group of Soviet soldiers about whom he noted laconically, 'They were shot. An order had been given not to take any prisoners'.⁷³ In his standard history of the German treatment of Soviet POWs, the historian Christian Streit estimated that the number killed by shooting alone reached as high as 100,000.⁷⁴

If German forces had the choice to execute surrendering Red Army soldiers, Soviet and Polish partisan forces enjoyed no such protections. One indication of how Wehrmacht leaders dehumanized partisans and encouraged their summary killing can be found in an order signed by Karl von Roques, Commanding General of Security Troops and Commander in Army Area North, on 23 July 1942. In dealing with the partisans, von Roques declared, 'These gangs must be hunted like the hunter hunts [his] prey'.⁷⁵ For his part, von Roques exemplified the Wehrmacht field commander who worked closely with Himmler's SS and police forces in the conduct of racial war in the East.⁷⁶ Whether dealing with real or alleged partisans, the policies and actions of the Wehrmacht often mirrored those of the SS and the police. Discussing the campaign in the Soviet Union in the fall of 1941, one German soldier, Peter von der Osten-Sacken, remarked, 'Prisoners were not taken. Whoever was

71 Merridale, p. 142.

72 Christian Streit, *Keine Kameraden: Die Wehrmacht und die sowjetischen Kriegsgefangenen, 1941-1945* (Bonn, Germany: Verlag J.H.W. Dietz, 1991), p. 109.

73 Willy Peter Reese, *A Stranger to Myself: The Inhumanity of War*, trans. Michael Hofmann (New York: Farrar, Straus and Giroux, 2005), p. 23.

74 Streit, p. 106.

75 Washington, DC, NARA, Order on partisan warfare, RG 242, T315, reel 1605, frame 115.

76 Valerie Hébert, *Hitler's Generals on Trial: The Last War Crimes Tribunal at Nuremberg* (Lawrence: University Press of Kansas, 2010), pp. 152-53.

identified as a partisan had to be expected to be shot'. He continued, 'That went also for the civilian population when they offered shelter to the partisans'.⁷⁷ Similarly, SS General Ernst Rode testified after the war that SS and police forces had instructions to take 'no prisoners' in anti-partisan operations.⁷⁸ In fact, Lieutenant Colonel of the Police Hans Leberecht von Bredow, the commander of gendarmerie forces in the Zhitomir district of Ukraine, ordered, 'The frequent escape of prisoners [...] gives me cause to note that all persons suspected of banditry or partisan activities are to be shot immediately upon capture'.⁷⁹

The practice of summary executions under the guise of escape attempts found its way back into the *Altreich* (Old Reich) by the summer of 1944, with regard to Allied bomber crews forced down over German territory. Joseph Goebbels, the notorious Minister for Popular Enlightenment and Propaganda, repeatedly used the phrase 'terror bombing' to describe Allied bombing attacks and promised to 'break terror with counter-terror' in a number of public speeches.⁸⁰ In fact, Nazi propaganda described Allied aircrews as *Terrorflieger* (terror flyers), *Luftgangster* (aerial gangsters) and *Kindermörder* (child murderers) while blaming world Jewry for the aerial onslaught aimed at the Third Reich.⁸¹ Goebbels' exhortations to employ counter-terror not only resulted in the lynching of American and British captured crewmembers, but the summary execution of two US bomber crews, a total of fifteen men, in June 1944 near Mecklenburg for attempted escape attempts. The farcical nature of the charge was emphasized in the shooting of six men upon capture, the murder of six more enroute to confinement, and the execution of two additional officers on that same day for alleged escape attempts.

It was not only Allied aircrew that suffered this fate, but also American and British POWs who succeeded in escaping from the camps and were subsequently recaptured. In the wake of a successful mass escape in March 1944 by seventy-six Allied prisoners from Stalag Luft III in Silesia, Ger-

77 David Stahel, *Operation Typhoon: Hitler's March on Moscow, October 1941* (Cambridge: Cambridge University Press, 2013), pp. 123-24.

78 International Military Tribunal, *Trials of the Major War Criminals before the International Military Tribunal*, vol 32 (Nuremberg: Secretariat of the Military Tribunal, 1948), p. 482.

79 Dierl, p. 170.

80 Ernst Kris and Hans Speier, *German Radio Propaganda: Report on Home Broadcasting during the War* (London: Oxford University Press, 1944), 457. See footnote 71.

81 Kevin T. Hall, *Terror Flyers: The Lynchings of American Airmen in Nazi Germany* (Bloomington: Indiana University Press, 2021), pp. 61, 63-64, 70, 76, 86-87. Additionally, Nazi propaganda racialized the bombing campaign by including numerous caricatures of African American aircrew purportedly involved in the bombing and strafing of innocent civilians.

man policemen summarily executed the recaptured escapees under the pretext of resisting arrest or for additional alleged escape attempts. In fact, one British officer made his way from Silesia to Alsace before being caught by the German police. In an incident reminiscent of the earlier death of Felix Fechenbach, the Gestapo ordered the execution of the British officer during his transport to the concentration camp at Natzweiler. During the drive to the camp, the British officer was permitted out of the car to relieve himself whereupon one of the Gestapo escorts shot him from behind. The Gestapo men delivered the corpse to Natzweiler and informed the camp commandant that the airman had been shot while trying to escape.⁸²

Conclusion

The historian Isabell Hull identified the genesis of Nazi genocidal violence within the 'military culture' of the German Imperial Army during colonial campaigns in Southwest Africa. She concludes, this military culture 'bequeathed practices, habits of action, and ways of behaving [...] [that] were easily harnessed for the ideological ends of even greater mass destruction and death' by the armies of the Third Reich; a case in which the military doctrines of the *Kaiserreich*, not Hitler's Reich, created the impetus for genocidal violence.⁸³ In this view the organizational beliefs and practices of the Imperial Army set a precedent for the later behaviour of the Wehrmacht. While some historians have questioned Hull's premise concerning the continuity of German military culture, her argument does expose the continuing effects of organizational behaviour on subsequent generations.⁸⁴ In this sense, the practice of procedural legality, including the summary execution of communists by police organizations in the 1920s rippled into police behaviour aimed at political and racial enemies during the Third Reich.

The use of the legal fiction of 'shot while trying to escape' by paramilitary nationalist groups and police authorities under Weimar created a welcome precedent for SS and police forces. In describing the rationale for his own actions after the war, one SS guard, Gustav Sorge,

82 Edward Russell (Lord Russell of Liverpool), *The Scourge of the Swastika: A Short History of Nazi War Crimes* (London: Cassell and Co., 1954), pp. 41, 43-46.

83 Isabell Hull, *Absolute Destruction: Military Culture and the Practices of War in Imperial Germany* (Ithaca, NY: Cornell University Press, 2005), p. 333.

84 Geoff Eley, review of *Absolute Destruction*, by Isabel Hull, in *English Historical Review* 121 (June 2006), 869-72; Volker R. Berghahn, review of *Absolute Destruction*, by Isabel Hull, in *American Historical Review* 110 (October 2005), 1269-70.

explained, 'Personally, I now believe that orders to act, in so far as they were given, were only meant to point lower-ranking officials in a certain direction so that they would then try to act, of their own accord, as the top leadership wished'.⁸⁵ When Adolf Eichmann was cross-examined during his trial in Jerusalem, the prosecutor asked him what legal right commandants in the concentration camps and killing centres had to kill deportees. Eichmann responded, 'No such law actually existed. I was not involved in such matters but I do know that orders from the Führer had the same value as law'.⁸⁶ By 1945, the camp commandant at Stutthof certainly knew how to translate Hitler's words into deadly bureaucratic practice as his SS guards reported between one to twelve prisoners shot each night while 'attempting to escape'.⁸⁷

The ability to demonstrate one's initiative in working towards the Führer or the Reichsführer SS through the act of killing was a key part of a mentality that spread throughout the SS and the police as well as the Wehrmacht and emphasized the low threshold for summary execution by the end of the war. In fact, such acts were not limited to the wild East, but also extended to occupied Holland where members of Reserve Police Battalion 62 staged fake escape attempts to summarily execute 20 Dutch workers who participated in a labour strike in May 1943.⁸⁸ In a similar way, Gestapo men in the city of Aachen in late 1944 used staged escape attempts to execute foreign workers as well as German citizens seeking to cross over to Allied lines as US forces closed in on the imperial seat of the First Reich.⁸⁹

This fictive justification continued until the waning days of war. Alfons Heck, a senior Hitler Youth leader, recalled an SS man using 'shot while trying to escape' as the punch line for a joke involving the killing of a prisoner sprawled in a ditch during a death march as the German western front collapsed.⁹⁰ It is perhaps fitting that a ubiquitous

85 Quoted in Wachsmann, *KL*, pp. 224-25.

86 Quoted in Sergio Minerbi, *The Eichmann Trial Diary: An Eyewitness Account of the Trial that Revealed the Holocaust*, trans. by Robert L. Miller (New York: Enigma Books, 2011), p. 149.

87 The Jewish Black Book Committee, *The Black Book: The Nazi Crime Against the Jewish People* (New York: Duell, Sloan and Pearce, 1946), p. 285. This information appeared in a report by Milton Bracker in the *New York Times* on 1 January 1945.

88 Wolfgang Curilla, *Die deutsche Ordnungspolizei im westlichen Europa 1940-1945* (Paderborn: Ferdinand Schöningh, 2020), pp. 233-35.

89 Sven Keller, *Volksgemeinschaft am Ende: Gesellschaft und Gewalt 1944/45* (Munich: Oldenbourg Verlag, 2013), pp. 232-34.

90 Alfons Heck, *A Child of Hitler: Germany in the Days when God Wore a Swastika* (Frederick, CO: Renaissance House, 1985), p. 110.

practice that had made a mockery of the law from the earliest days of the Nazi regime should come to serve as a punch line in a typically grotesque joke made by one of Himmler's elite, one of the black legion who had done so much in creating a world in which legal fiction was transformed into deadly reality.

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