

Introduction to the Special Section: Holocaust Perpetrators and the Law

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This special section presents selected papers from the conference Holocaust Perpetrators and the Law, held at the University of Central Florida in April 2024. Conceived by Thomas Kühne, Director of the Strassler Center for Holocaust and Genocide Studies at Clark University, and myself, the conference served as a sequel to the eponymous panel we organized at the 134th Annual Meeting of the American Historical Association in New York in January 2020. My own interest in this topic developed gradually over decades of research on Romanian perpetrators of crimes against humanity during the Second World War. While examining post-war investigative files, I noticed that not all Romanian perpetrators were willing, let alone eager, executors of murderous orders issued by their superiors. Many hesitated, attempted to shirk tasks they clearly resented, and ultimately complied only after being threatened with punishment for insubordination. Although outright refusals were extremely rare, enthusiastic killers were likewise a minority. These findings largely aligned with Christopher Browning's collective portrait of German killers from Reserve Police Battalion 101 in *Ordinary Men*.¹ Drawing on Browning's taxonomy of perpetrators – ideologically driven fanatics and conformists – and their motivations, I interpreted my findings in a 2017 article on the dynamics and logistics of Romanian massacres of Jews in Transnistria in 1941–42.²

It was only several years afterwards, while continuing my research on Romanian lethal violence against Jews, that I became aware that some perpetrators referred to their fear of punishment for implementing the lethal orders as the reason for their hesitation and attempted avoidance of following them. That opened new avenues for research on the state of the Romanian law at the time of the crimes' perpetration – which, as it turned out, criminalized not only the issuance of illegal orders by the commanding officers but also their implementation, thus obliging the latter's subordinate to refuse implementing 'obviously il-

1 Christopher R. Browning, *Ordinary Men: Reserve Police Battalion 101 and the Final Solution in Poland* (New York: HarperCollins, 1992).

2 Vladimir Solonari, 'A Conspiracy to Murder: The Dynamics of Romanian 'Policy' towards Jews in Transnistria', *Journal of Genocide Research*, 19.1(2017), pp. 1–21, doi: 10.1080/14623528.2016.1208387.

legal' orders – and of the law's effect, or lack of it, on the perpetrators' conduct.³ Romanian prosecutors, however, refrained from invoking the 1936 Penal Code that introduced this provision and remained in force during World War II, and instead applied the retroactive 1945 law and charged the defendants guilty of the crime of 'the disaster of the country' for 'having ordered or committed acts of terror, cruelty or suppression of population in the territory of war operations'.⁴ The issue of the perpetrators' awareness of their legal jeopardy for violating the law in force thus remained outside of the courts' interests, and did not attract attention of the Shoah's historians.

This situation stands in stark contrast to developments in post-war Germany, where Nazi-era perpetrators were indicted and sentenced for violating legal provisions in force at the time of their crimes. Because punishment under German law depended on the perpetrator's motives, the courts paid particular attention to their legal awareness and intent, and German jurists developed a refined taxonomy of legal defenses together with a methodology for assessing their validity.⁵ This naturally invited comparative research between Romanian and German situations and in particular of the impact of contemporary legal provisions on the perpetrators' conduct in the two countries.

I was particularly fortunate to receive enthusiastic support and invaluable advice on the German experience from Thomas Kühne, a renowned historian of German antisemitism and the perpetrators of the Holocaust. In our conversations, the idea for a conference focusing on the legal awareness of perpetrators at the time they committed crimes against humanity first took shape. After securing financial support from the Department of History at my home institution, the University of Central Florida, and its Jewish Studies Program, as well as from the Strassler Center for Holocaust and Genocide Studies at Clark University, where Dr. Kühne serves as Director, we were privileged to obtain additional sponsorship from the United States Holocaust Memorial Museum, the Bud Shorstein Center for Jewish Studies at the University of

3 CODUL PENAL "REGELE MIHAI I," art. 137, alin. 1, in Codul Penal „Regele Mihai I,” ed by Const. Gr. C. Zotta, 4th edn (Editura Cugetarea, 1939), p. 49.

4 LEGE Nr. 312 din 24 aprilie 1945 "Pentru urmărirea și sancționarea celor vinovați de dezastrul țării sau de crime de război," art. 2 al. d Monitorul oficial, Nr. 94 din 24 aprilie 1945, p. 3362.

5 See Herbert Jäger, *Verbrechen unter totalitärer Herrschaft: Studien zur nationalsozialistischen Gewaltkriminalität. Mit einem Nachwort zur Neuauflage von Adalbert Rückerl* (Suhrkamp Verlag, 1982), pp. 166–325. I thank Thomas Kühne for bringing this valuable book to my attention. See also Guenter Lewy, *Perpetrators: The World of the Holocaust Killers* (Oxford University Press, 2017).

Florida, and the Holocaust Memorial Resource & Education Center of Florida. Alongside Thomas Kühne and myself, the organizing committee included Dr. Natalia Aleksion, Harry Rich Professor of Holocaust Studies at the University of Florida, Gainesville, and Dr. Emil Kerenji, Applied Scholar at the United States Holocaust Memorial Museum, later replaced by Jürgen Matthäus from the same institution.

Although the initial impetus for the project stemmed from comparing the German and Romanian Holocaust experiences, the organizers hoped to secure the participation of scholars working on a broader range of countries and cases of genocide, while preserving the focus on perpetrators' legal awareness at the time they committed crimes against humanity. Unfortunately, we were disappointed, as scholars working on cases other than Germany and Romania submitted proposals that fell outside the scope of the conference. Out of forty-two applications, the committee selected thirteen, all dealing with either Germany or Romania. Shortly after the conference, the *Journal of Perpetrator Research* proposed publishing selected papers presented at the event, and I volunteered to serve as editor of the special section that would include them.

The section opens with Edward B. Westermann's article on the murder of perceived enemies of the nation under the false pretext of being 'shot while trying to escape' during the Nazi regime. The article highlights continuities between this practice of extrajudicial killings and similar actions during the Weimar Republic, particularly in its early years marked by violent confrontations between German nationalist paramilitaries and rebellious leftists. At times, police also resorted to the legal fiction of 'trying to escape' to justify the killing of communists, socialists, and militant workers. While not all instances of police misconduct were investigated, some were, perhaps limiting the abuse of power. After the Nazi 'seizure of power', Adolf Hitler, Hermann Göring in his capacity as Minister President of Prussia, and their subordinates, encouraged police to use lethal force against enemies of the Volk, offering protection and support in the event of accusations. The newly introduced requirement for police to cultivate 'friendly relations' with the SA and SS further blurred the line between legal and illegal violence, as Nazi Party paramilitaries were neither bound by nor expected to follow the law when acting in the party's interest. Hitler and other Nazi ideologues openly scorned 'bureaucratic formalities' in favour of forcibly defending the 'national community' against its perceived enemies, thereby perverting legal norms and encouraging police to disregard them. Fully aware that the law had become a dead letter and that their

superiors expected them to inflict lethal violence under the flimsiest of pretexts, many police officers (and, after the outbreak of World War II, Wehrmacht soldiers in occupied Eastern Europe and the Soviet Union) acted in brazen disregard of German and international law. SS men guarding concentration camps were even more lethally brutal toward their prisoners. This culture of impunity, combined with the mentality of 'working toward the Führer or the Reichsführer SS through acts of killing,' largely explains the radicalization of state terror under the National Socialist regime.

Corneliu Pintilescu's article also examines continuities between interwar and World War II practices of the police and the army, focusing on the Romanian gendarmerie. He is particularly interested in the notion of the 'state of siege' (*stare de asediu*), a concept borrowed by Romanian legislators from French jurisprudence and roughly equivalent, though not identical, to the English term 'state of emergency'. This measure was widely used to address social unrest — first communist, later far-right — during the interwar period, by granting extraordinary powers to the police and army and transferring cases involving threats to national security to military tribunals. Pintilescu concentrates on the Romanian province of Bessarabia, which became part of Greater Romania in 1918 following the Bolshevik Revolution and the collapse of the Russian Empire. As an area with significant Slavic and Jewish minorities, Bessarabia experienced intense communist subversion and Soviet interference, prompting Romanian authorities to respond with heavy-handed military and police repression. With the 'state of siege' in force most of the time, the Bessarabian gendarmerie not only exercised its enhanced powers of surveillance and search, but also frequently overstepped them, especially during real emergencies such as the Bolshevik-inspired Tatarbuniar Uprising in southern Bessarabia in September 1924. The most egregious abuse was the practice of murdering political suspects under the pretext of 'attempted escape from escort', a tactic eerily similar to that widely employed in Weimar Germany at the time. Pintilescu shows that although illegal killings occasionally became national scandals after being reported in the press, and were consequently investigated, prosecutions resulted in no prison sentences and only monetary compensation paid to the victims' families.

Pintilescu's analysis reveals a persistent tension between legal norms and what he calls the 'inner rules of the institution [of the gendarmerie]', according to which using lethal force against enemies of the state was considered permissible and even commendable, regardless of

legal constraints and in the expectation of impunity. The lethal brutality of the Bessarabian gendarmerie and police reached its apex in July and August 1941 when, following Romania's reconquest of the province, the gendarmerie engaged in an orgy of mass murder – primarily of Jews, but also, to a lesser extent, of suspected Soviet sympathizers of non-Jewish ethnicities. Since the publication of Matatias Carp's *Black Book* in 1948, which included excerpts from indictments and court sentences in the trials of perpetrators, historians have known that the orders to carry out these killings were issued by General Constantin 'Picky' Vasiliu, head of the Romanian gendarmerie and deputy minister of the interior, together with General Ioan Topor, Grand Pretor (prosecutor) of the Romanian army, during conferences with unit commanders on the eve of their march into Bessarabia. What was less understood was the mechanism by which those orders were enforced and the way they were rationalized, sometimes resisted, but mostly followed by the lower ranks. Pintilescu brings to the fore the continuities with the inter-war practices by highlighting the widespread use of the false pretext of 'trying to escape' in those cases in which gendarmes composed reports on the murder of group of detainees. Drawing on a wide range of archival sources, some used for the first time, he shows that while some gendarmes resisted or tried to avoid carrying lethal orders out, a threat of punishment was usually enough to bring them into line. If this did not work, they were replaced by more compliant colleagues. Learned obedience and legal cynicism prevailed over whatever qualms some of them had.

Verena Meier's article examines the role of legal framework and the institutional culture of the police in the persecution of Roma in Nazi Germany. Drawing on Ernst Fraenkel's concept of the 'dual state', Meier demonstrates that German police operated in close conjunction with both the judiciary and the Gestapo. The practice of 'preventive police detention', initially employed by local police departments in the federal states against 'asocials', primarily Roma, was formalized in December 1937 by a decree of the Reich Ministry of the Interior. This decree granted the protective police (*Schutzpolizei* or *Ordnungspolizei*) and the criminal police (*Kripo*) extensive powers to incarcerate individuals in concentration camps 'for an indefinite period, without judgment and without legal protection for the detainee'. These powers mirrored those held by the Gestapo, which had acted in close cooperation with the SS since 1933 to imprison alleged enemies of the state. Based on police files from regional archives in Magdeburg and Berlin, Meier argues that

German police employed both judicial imprisonment of Roma accused of various crimes – often on spurious grounds – and ‘preventive detention’ in concentration camps, guided by pragmatic considerations such as temporary camp closures due to overcrowding or failure to secure convictions in court for lack of evidence. In this sense, the boundary between the ‘normative state’, represented by court convictions, and the ‘prerogative state’, embodied in the practice of preventive detention, was largely theoretical. Meier contends that police officers may have perceived preventive detention as a continuation of long-standing practices of surveillance and stigmatization of “Gypsies,” deeply rooted in policing traditions of Imperial and Weimar Germany.

My own article was not presented at the conference and was submitted separately to the *Journal of Perpetrator Research*. However, the editors decided to include it in this special section because it aligns with its overarching theme. Although conceived independently of this project, the article can be brought into productive dialogue with other contributions, particularly Meier’s text. Like her, I examined the treatment of Roma people by a group of perpetrators: in my case, Romanian administrators and gendarmes in an occupied region of Ukraine that Romanians labeled ‘Transnistria’ from 1941 to 1944. Without comparing their actions to the interwar period, I sought to understand the nature of Romanian policy through close analysis of primary sources. I concluded that the policy toward deported Roma was incoherent. While Romanian dictator Ion Antonescu, who initiated the deportations, as well as provincial governor Gheorghe Alexianu and gendarmerie chief Constantin Vasiliu, preferred the Roma to perish, they were reluctant to issue explicit orders for their annihilation to lower-ranking officers. These officers, though generally hostile to Roma (and Jewish) deportees and facing a lack of resources for guarding, provisioning, or profitably employing them, were largely unwilling to resort to lethal violence. Some Romanian officers requested and received permission to kill ‘recalcitrant’ Roma, but it remains unclear whether and how often they carried out such killings. Gendarmes, however, did little to nothing to prevent killings of Roma by the ethnic German militia when they wandered into their villages. Although a few Romanian administrators and gendarmerie officers attempted to alleviate the Roma’s plight, most of these efforts failed because higher authorities sabotaged them. While direct evidence is lacking, it is likely that awareness of the legal consequences they might face for killing deportees in the event of a regime change – an

increasingly plausible scenario from late 1942 onward – tempered the behaviour of mid- and lower-level gendarmerie officers toward Roma. By the time Roma deportees arrived in Transnistria, the authorities had already ordered a halt to the mass killings of Jews (probably in spring 1942), and mid-level officers and administrators likely interpreted this prohibition as applying to Roma as well.

Emanuel Grec's article examines the role of law in the post-war Romanian trials of war criminals. Although these trials were highly politicized and legally questionable – due to the application of retroactive and vague legal norms – they sometimes featured defendants invoking legal defences that likely reflected their thinking at the time the crimes were committed. Situating the Romanian trials within what he calls 'a broader European effort to establish new norms of international law', Grec argues that the use of retroactive legal provisions should not be viewed solely as a communist maneuver, since Romanian authorities followed precedents set by the Allied powers in prosecuting Nazi perpetrators. Nevertheless, the trials had a pronounced 'pedagogical dimension', which Grec interprets as an effort to teach the populace the language and norms of a new post-war moral order aligned with the fledgling communist regime's ideology and interests. Focusing on the trials of those responsible for the massacre of Jews in Odesa in October 1941, Grec demonstrates that decisions about whom to prosecute were shaped not only by the available evidence but also by numerous non-legal factors, such as the social origins of potential defendants, their wartime records, the international climate, and Soviet foreign policy, which exerted enormous influence over the dynamics of Romanian prosecutions.

Of particular interest is Grec's observation that General Nicolae Macici – whom the prosecutors charged with the main responsibility for the massacre of thousands – claimed, simultaneously, that he did not issue the murderous order, and that it was legal under the international law that not only condoned reprisals for a terrorist attack on the occupying forces (the massacres were the Romanian response to the Soviet guerrillas blowing up their military headquarters in the city) but even called for them. Macici implied that failing to carry out reprisals would itself constitute a breach of international law. Although obviously wrong (art. 50 of the 1907 Hague Convention prohibited inflicting 'general penalty, pecuniary or otherwise, ... upon the population on account of the acts of individuals for which they cannot be regarded as jointly and severally responsible') and self-serving, Grec suggests that Macici's claim should

be taken more seriously than the reception it received from prosecutors or subsequent historians: this was perhaps the way both Macici and other perpetrators justified their actions to themselves.

Although they address different subjects and problems, the articles collectively underscore the importance of legal norms in shaping both the dynamics of persecution against targeted ethnic groups and, even more significantly, perpetrators' perceptions of whether those norms might be enforced against them. In other words, perpetrators were not only aware of the letter of the law but also assessed whether those norms were effectively 'alive' or 'dead'. The history of police crimes in Weimar Germany and Greater Romania during the interwar period, along with the corruption of law under the Nazi regime and in the early years of Antonescu's dictatorship, conditioned perpetrators to believe that established legal norms governing the use of force against perceived enemies had been effectively abolished and that extra-legal regulations and oral orders took precedence. The first three articles in this section trace both continuities with the interwar period and the radicalization of persecution practices during wartime.

My own article introduces a note of caution: when Romanian policy was moderated in the spring of 1942 and authorities ended the mass murder of deportees in Transnistria, mid-level officials and gendarmerie officers became less willing to apply lethal violence to newly arriving Roma, even though they resented them as an unwanted burden on scarce resources. They likely interpreted the changing conduct of their superiors as a signal that previously dormant legal norms might be reactivated, placing them at risk. Grec adds another dimension: international law on the rights of occupation, which was paradoxically invoked by the main culprits in the Odesa massacre to justify – preposterously – their crimes through abusive reinterpretation.

I conclude by expressing the hope that the articles in this section will stimulate further research into the influence of law and legal-institutional culture on the dynamics of mass violence against civilians perpetrated by agents of the state.

Works Cited

- Browning, Christopher R., *Ordinary Men: Reserve Police Battalion 101 and the Final Solution in Poland* (HarperCollins, 1992)
- Solonari, Vladimir, 'A Conspiracy to Murder: The Dynamics of Romanian 'Policy' towards Jews in Transnistria', *Journal of Genocide Research*, 19.1 (2017), pp. 1-21, doi:10.1080/14623528.2016.1208387
- Romania, Codul Penal "Regele Mihai I", in Codul Penal "Regele Mihai I", ed. By Const. Gr. C. Zotta, 4th edn (Editura Cugetarea, 1939)
- LEGE Nr. 312 "Pentru urmărirea și sancționarea celor vinovați de dezastrul țării sau de crime de război" din 24 aprilie 1945 Monitorul oficial, Nr. 94 din 24 aprilie 1945, p. 3362
- Jäger, Herbert, *Verbrechen unter totalitärer Herrschaft: Studien zur nationalsozialistischen Gewaltkriminalität. Mit einem Nachwort zur Neuauflage von Adalbert Rückerl* (Suhrkamp Verlag, 1982)
- Lewy, Guenter, *Perpetrators: The World of the Holocaust Killers* (Oxford University Press, 2017)

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