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RESEARCH ARTICLE

Bias in the Treatment of Non-Germans in the British and American Military Government Courts in Occupied Germany, 1945–46

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Abstract

Non-Germans—particularly "displaced persons"—were routinely blamed for crime in occupied western Germany. The Allied and German fixation on foreign gangs, violent criminals, and organized crime syndicates is well documented in contemporary reports, observations, and the press. An abundance of such data has long shaped provocative historical narratives of foreign-perpetrated criminality ranging from extensive disorder through to near uncontrolled anarchy. Such accounts complement assertions of a broader and more generalized crime wave. Over the last 30 years, however, a literature has emerged that casts doubt on the actual extent of lawlessness during the occupation of the west and, in turn, on the level non-German participation in crime. It may be that extensive reporting of non-German criminality at the time reflected the preexisting bigotries of Germans and the Allies, which when combined with anxieties about social and societal integrity became focused on the most marginalized groups in postwar society. This process of "group criminalization" is common and can have different motivations. Regardless of its cause, it was clearly evident in postwar western Germany and we hypothesized that it should have created harsher outcomes for non-German versus German criminal defendants when facing the Allied criminal justice system, such as greater rates of conviction and harsher punishments. This hypothesis was tested using newly collected military government court data from 1945 to 1946. Contrary to expectations, we found a more subtle bias against non-Germans than expected, which we argue reveals important characteristics about the US and British military government criminal justice system.

In postwar western Germany, the fixation on foreign and "displaced person" (DP) criminals by Germans and the Allied military authorities is well documented. Numerous reports from the US and British military governments (MG), and German police and administrators, along with accounts and anecdotes from contemporary observers and stories in the press, illustrate pervasive concern about foreign-perpetrated crime (e.g., MacDonogh 2009: 378). The volume of this qualitative data has long shaped historical accounts. Violent DP gangs and a black market dominated by non-German criminals are established tropes in postwar histories

that in turn complement common narratives of social disintegration and a resulting crime wave (Evans 1996: 753; Fairchild 1988: 36; Frederiksen 1953: 61; Klessmann 1982 [chapter 2]; Kosyra 1980: 65–74). However, starting with Alan Kramer (1988) and Bernd-A. Rusinek (1989: 7–23) in the 1980s, doubts have been raised about both the extent of postwar crime and of foreign criminality (see Kehoe 2016). Importantly, Kramer (1988) and, more recently, Jose Canoy (2007: 131) note the stark deviation between observer accounts and the evidence available on crime from police and court statistics. These quantitative data better align with a literature on military government, which beginning with John Gimbel's (1961) foundational study highlights the strict social control exercised by the Allies at the level of the German *Kreis*, roughly equivalent to a British county (Boehling 1996: 36; Henke 1995; Hudson 2015: 177–80; Szanajda 2007: 36–38). These histories therefore implicitly challenge more extreme descriptions of prolonged criminality and the supposedly high rate at which non-Germans committed crimes. Along with the questions raised by Canoy (2007: 131), Kramer (1988), and Rusinek (1989), a plausible alternative picture of social conditions emerges; one in which societal disruption did not so much cause an explosion of crime but instead provoked exaggerated fears amongst Germans and the Allies, which fixed on the most disaffected and transient minority groups.

To help resolve this tension between narratives of a crime wave dominated by non-Germans and a more controlled, yet fear-dominated, postwar society, in this article we examine the treatment of Germans versus non-Germans by the US and British MG justice systems. Given the widespread assumption at the time that non-Germans were more criminal than supposedly law-abiding Germans, we hypothesized that MG would treat non-Germans unfavorably. In particular, we posited they would have been convicted at higher rates than Germans and were more likely to have received longer sentences for similar offences. We test this hypothesis using new crime statistics derived from the records of the US and British MG courts collected from the US National Archives at College Park, Maryland, and from the British National Archives. These courts had three levels for handling cases of greater severity and were almost solely responsible for criminal justice in occupied western Germany during the first 15 months of the occupation, from the Allies' invasion across the Rhine in March 1945 to the end of June 1946. The records of the MG courts are vast, spanning multiple archives, and the latter date was selected because it marked the end of the exclusively military phase of the occupation in the US Zone and, in turn, the diffusion of greater responsibility for criminal justice to local Germans. Though military authority was retracted more slowly in the British Zone, the same end date was nonetheless selected to maintain consistency in the analyses (Ziemke 1975: 442–43).

Contrary to our expectations, the behavior of the MG courts was more nuanced than a simple dichotomized better treatment of Germans versus harsher treatment of non-Germans. As will be shown, the treatment of German and non-German defendants in both trial outcome and sentencing was more consistent, though some bias is evident in the charges laid against non-Germans and the rate at which they were referred to higher courts for potentially harsher punishments. The story that emerges is therefore one of potentially biased assessments of non-Germans by front-line officers and courts, which were then in turn mitigated by US and British MG's regulation of the criminal justice system.

Historical and Historiographical Context

On November 5, 1946, the Regional Commissioner for British MG in Hamburg summarized the numerous German complaints made to district-level MG across the zone. Germans were deeply upset about the Allies' inadequate policing of the black market. According to the commissioner, the complainants believed that the black market was "not normally available" to ordinary Germans and the "the leniency with which black market operators [were] dealt with by the courts" was further provoking "great resentment." Moreover, Germans' anger did not merely derive from seemingly differential treatment of Germans versus the nondescript "black market operators," but from a "popular belief" that the Allies were seeking to punish Germans and were, "in fact, encourag[ing] the black market as a means of wringing the last Mark out of the [German] population."[1]

Embeded in these conspiratorial claims were clear euphemisms about criminals being non-Germans, and by the end of 1946 such claims had become all too common. Other reports are more explicit about separating Germans from non-German operators of the black market, the latter typically being labeled "DPs."[2] By late 1946, "DP" had become a catchall label for groups long despised in Germany: primarily, Jews, Gypsies, Poles, and other Eastern European Slavs (Seipp 2013: 6). Even though the DP population fell rapidly over the first 12 months after the war ended, from approximately seven million to less than one million, by the beginning of 1946 the common wisdom amongst Germans and Allied MG Officers (MGOs) was that DPs were more criminally inclined than Germans (Kramer 1988). As the Hamburg Regional Commissioner's report suggests, it was common for Germans to imagine that most crime in western Germany had at its root a foreign cause (Canoy 2007: 107).

The British author's willingness to adopt a similarly bifurcated assessment of crime shows how quickly and deeply such thinking became ingrained in MGO thinking following the war. In 1950, former Military Governor for the US Zone General Lucius Clay wrote in his memoir that crime was a major problem in the summer of 1945 and the primary culprits were roaming DPs and DP gangs (Clay 1950: 256, 272). Other MGOs were even more blatant and their depictions of crime more graphic. As early as July 1945, for instance, the district MG commander for Dachau—home of infamous Nazi concentration camp—made the outlandish assertion that it was "widely known that *Ausländer* [foreigners] have many weapons." According to him, those living in the DP camps hid the weapons in the woods and when they went out used them to wreak havoc on Germans.[3] Other reports included similarly provocative accounts of violent gangs, organized crime syndicates, and mob lawlessness by non-Germans, indiscriminality spanning DPs and other foreigners.[4]

[1]Public Safety HQ Military Government Hamburg, "Subject: Monthly Report on Morale and Public Opinion," November 5, 1946, UK National Archives (hereafter: TNA), FO 1050/251, 3.

[2]Public Safety HQ Military Government Hamburg, "Subject: Monthly Report on Morale and Public Opinion," 3.

[3]Bendig, "Dachau War Diary," July 23, 1945, Bayerisches Hauptstaatsarchiv (BayHStA), OMGUS Reports, No. 168.

[4]For example see Counter Intelligence Corps investigations of organized crime networks in: US National Archives (hereafter NACP), RG 319, Entry A1-134-A, Container 21.

By the summer of 1945, MG detachments across the west routinely tracked DP criminality as a broader measure of social order, despite DPs rarely being more than a small part of the population. German police did likewise (Kehoe 2015: 187–88). Together, German and MGOs' claims about non-Germans criminals have long sustained a literature ascribing to foreigners disproportionate responsibility for pervasive criminality in the western zones. As Kramer (1988: 238) notes, by the 1980s many historians uncritically accepted as a *fait accompli* that DPs were more criminal than Germans. Such thinking continues. Popular author Giles MacDonogh (2009: 378) writes for example that the black market became "a stomping ground for DPs," of which "wild bands" became "the new brigands of post-war Germany." These narratives are deeply problematic, not least of all because from the earliest studies of postwar crime by Adolf Schönke (1948: 137–43) and Karl S. Bader (1949), it was clear that Germans comprised the vast majority of offenders appearing in the official records of criminal justice agencies—police and courts. Thirty years ago, Kramer (1988) noted this evidentiary problem in his seminal chapter on crime in the British Zone during the later occupation (1947–49). He showed that, contrary to narratives purporting a prolonged period of social chaos extending through the end of the military occupation in 1949 (or at least the currency reform in 1948), the vast majority of offenses were nonviolent and the rates of violent crimes had by 1947 dropped to prewar levels.

Kramer's (1988: 254) findings had little effect on the thrust of postwar historiography, which continued to describe an extended, disorderly, and violent postwar crime wave in west. This was no doubt partly due to his lack of data for the first years of the occupation (1945–46), a long gap that he acknowledged left open a possibly lengthy period of heightened violence. But it is also because "serious crimes" can too easily be separated from the much larger spread of minor petty offenses and there remains significant scope for inferences about the unknown rate of crime—the so-called "dark number"—the amount of crime that does not appear in the records of courts, police, or government. Continued ambiguity around the data supports assertions about the criminality of non-Germans in postwar Germany. Germans may have been mostly guilty of minor offenses in the strained postwar economy. But, if one assumes that the aftermath of war led to a general disintegration of societal infrastructure and social bonds that created a "law and order gap," as one collection of RAND Corporation authors calls it, it would seem there must have been more serious crime than detected by authorities and which is not therefore reflected in official statistics (Dobbins et al. 2003: 9–10). If so, the argument goes, the people most disconnected from German cultural and social life such as non-German DPs and refugees were likely its primary culprits.

Estimating the full extent of postwar crime has proven exceedingly difficult and may be impossible, given the state of the records (Kehoe 2016: 566–68). There are, however, reasons to be skeptical of more extreme assertions about postwar criminality. As scholars of MG have repeatedly noted, a large rate of crime and social disorder was antithetical to military objectives. The first aim of the US and British MG was pacifying and controlling Germans (Boehling 1996: 31–36;

Hudson 2015: 43).[5] The MG court system was critical to that end. Not only did both Allies agree that a system of legal instruments—laws, police, and courts—was necessary for social order; but early in the planning process they recognized that a well-regulated criminal justice system could help differentiate Allied rule from the arbitrariness of the Nazi regime (Nobleman 1950b: i; Szanajda 2007: 48). Prior to the invasion of Germany, attempts were made to formulate an entirely new MG court system. These failed, however, and when the invasion of Germany began in September 1944, Allied commander—Supreme Headquarters Allied Expeditionary Forces (SHAEF)—General Dwight Eisenhower restored a century-old US approach that empowered field officers to establish *Provost* courts and apply the uniform code of justice to occupied civilians. Eisenhower's decision has been critiqued for creating a "haphazard" situation, and although a more formalized court system developed with British planners was quickly deployed through early 1945, US and British field officers retained virtually unfettered power over criminal justice (Nobleman 1950b: 42).[6] The result was considerable variation between how different officers interpreted the law and their own power, and therefore how courts in each of the districts of occupied Germany exercised criminal justice (Kehoe 2016: 568).

Despite the beliefs of contemporaries and later observers like head of the courts in Bavaria Eli E. Nobleman (1950b: 51), organizational disorder did not necessarily translate into routine miscarriages of justice, nor permit extensive criminality. As scholars of crime have often argued, inferences about crime rates by contemporaries frequently reveal popular fears more than they do the actual crime rate. Scholars like Canoy (2007: 103–42) have applied this same logic to assessing reports from postwar Germany. In examining the immediate postwar period in Bavaria, Canoy discovered many reports of non-German gangs, violent armed robbers, rapists, and murderers, though few actual cases to drive these reports. He instead attributed them to prevailing anxieties about the threat of crime and social instability. This divergence between perceptions and tangible evidence of crime forced Canoy (2007: 131) to question the actual level of criminal violence in postwar Germany.

Many of the non-Germans that remained in Germany when the Nazi regime surrendered were dislocated (Wyman 1989). Many of them were also victims of Nazi enslavement and/or attempted extermination (Burleigh and Wippermann 1991: 77–135). During the occupation, they were therefore some of the most desperate and unsettled people. Nearly all of them lacked ties to local communities, harbored deep hatred for Germans, and suffered severe psychological damage from their treatment (Jacobmeyer 1985: 212–15). Their condition and prior experiences has also helped support the inference that they were more criminal than the majority German population. As Keith Lowe (2012: 49) writes on postwar Germany: "It does not take much imagination to realize that those who have been the victims of routine violence become much more likely to commit acts of violence themselves."

[5]This objective is clearly stated at the very beginning of the handbook for military government. See Supreme Headquarters Allied Expeditionary Force (SHAEF), Office of the Chief of Staff. Handbook for Military Government in Germany: Prior to Defeat or Surrender. 1945, introduction, point 1.

[6]Nobleman cites Paragraph 38 in War Department, FM 27-5. United States Army and Navy Manual of Military Government and Civil Affairs, December 22, 1943: 50.

Despite his claim that "countless psychological studies ... demonstrate this"—for which he provides no citations—the literature on perpetuating patterns of violence is far more nuanced. As Donatella Della Porta (1995: 5–6) argues in her study of extremist terrorist and political movements, it is difficult to draw a straight causal line from key traumatic events to the emergence of particular violent ideologies, let alone generalized violence. Instead, whilst emergent patterns of depression and domestic violence are evident in victims of trauma (Herman 2015: 35; Singer et al. 1995)—and these may have emergent sociological effects later (Guerra et al. 2003)—people that suffer sudden trauma do not tend to engage in the immediate, *en masse* violent criminality of the sort that Lowe (2012) imagines occurred in Germany. The studies that show heightened levels of violence and criminality amongst crime victims examine groups that have suffered multigenerational abuse such as African Americans and indigenous peoples in the United States, Canada, and Australia. And even in these studies, the rates of violence and criminality are not markedly higher than the majority population, such that higher arrest rates could just as easily result from sustained social disadvantage and targeted policing (Cunneen 2006). It is therefore not a foregone conclusion that after World War II victims of Nazism turned to violent crime for survival, revenge, or both, as has often been claimed.

Assumptions about greater levels of criminality amongst non-Germans in the postwar west predate the vast literature on the effects of trauma, which may explain why the claim has gone unchallenged for so long. Moreover, early accounts of postwar disorder bear striking resemblance to the predictions of US and British military planners of , and to Nazi propaganda at the end of the war. Writing in 1948, US military historian Dexter L. Freeman (1948: 23) portrays near anarchy in Darmstadt immediately following the city's capture by US forces and lays the blame entirely on "newly released DPs [that were] animals released from their cages." In his account, these people drank, looted, and sought violent revenge against Germans. Five year later, Oliver Frederiksen (1953: 61) describes a virtually lawless German countryside dominated by DP gangs so powerful that they threatened Allied military garrisons. More recent accounts often maintain similar imagery, particularly when describing the supposedly "massive crime wave" that swept postwar Germany (Bessel 2009: 321). From the beginning of the war, the western Allies assumed the Nazis' forced labor programs and the mass internment of racial and political enemies would result in a humanitarian crisis and social disorder following Germany's defeat. In classroom instruction and in the numerous specialized handbooks produced in Washington and London, US and British officers were instructed to expect mass disorder by non-Germans in former Nazi territory.[7] Perhaps the best example is from the US military's Field Manual for *Civil Affairs Military Government*, FM 27-5, which instructed officers to expect: "Rioting, looting, or other forms of disorder, particularly if the local police force has disintegrated."[8] These predictions were relatively accurate for the conditions in the

[7]C. W. Wickersham, "Address by Brigadier General C. W. Wickersham, U.S.A. at the Meeting of the Joint Committees on Military and Naval Affairs of the American Bar Association and the Federal Bar Association at Washington D.C., January 13, 1943, 8.00pm," January 13, 1943, University of Virginia Archives, School of Military Government Records, RG-6/34/1.131 Box 2 (47075), 1.

[8]War Department, FM 27-5 (1943): 14-15.

hours and days immediately following combat, when social disorder and violence appears to have been high (Kehoe 2019: 48–65). Newly released non-Germans did carouse, loot, and at times commit more violent crimes during these very early days of the occupation (ibid.: 61–62). Moreover, the humanitarian crisis was very real. According to Mark Wyman (1989: 17), Allied invasion released millions of brutalized people that had been enslaved and/or interned by the Nazi regime. He estimates that in the summer of 1945, seven million people were moving around the country starving, traumatized, and dislocated. The situation horrified Allied officers, especially MGOs responsible for local governance, who were firstly focused on maintaining the peace and also had to feed and house a daily stream of DPs and local Germans. There often existed considerable—and understandable—animosity between these groups and maintaining peaceful coexistence was a constant struggle for MGOs. These antecedents and the experience of occupation governance almost certainly contributed to concerns about social disorder within MG, whilst intergroup tensions motivated Germans' fears of non-German criminals.[9]

The Military Government Legal Code and Courts

German fears were also likely born of resentment for the privileges the Allies granted DPs. Prior to the occupation of Germany, US and British planners recognized that restoring the German criminal justice system was necessary to ensuring good order, but that it could not be expected to deal equitably with groups victimized by the Nazis (Kehoe 2019: 132). All DPs were therefore classed as "United Nations Personnel" along with the members of the occupying forces and exempted from German police and legal oversight. Responsibility for policing DPs fell entirely to MG. This differential treatment of most non-Germans remained in place until June 30, 1950, eight months after the founding of the Federal Republic of (West) Germany (FRG), despite responsibility for controlling Germans having been steadily ceded to German courts and police from late 1945 in the US Zone and early 1946 in the British Zone.[10] Throughout the military occupation, Germans resented this differential treatment and what they perceived to be the extra freedoms granted to non-Germans (ibid.: 212).[11]

In the first 13 postwar months of the occupation that we examine here, however, MG handled virtually all criminal justice in the occupied territories, including for

[9]On dealing with DPs at the district level see the daily reports of Everett S. Cofran in Augsburg for negotiations between DPs and Germans, particularly: "Daily Report. From 0800 7 July to 0800 8 July," 1945; Cofran, "Daily Report. From 0800 25 July to 0800 26 July," 1945; "Daily Report. From 0800 28 July to 0800 29 July," 1945. From: BayHStA, OMGUS Reports, No. 194.

[10]This process occurred somewhat differently in the US and British zones between the end of the war in May 1945 and the economic merging of the two zones on January 1, 1947. Thereafter, Douglas Botting's likening of the British occupation to a "new Raj" in which indirect, colonial-style oversight was exercised over German government became broadly applicable to the west. See Douglas Botting, *In the Ruins of the Reich* (George Allen & Unwin, 1985), 148.

[11]For analysis of this trend during the period examined in this article see Peter Vacca, "Weekly Intelligence Report, No. 9," January, 31 1946, 9. From collection: Peter Vacca, Office of Military Government for Bavaria Intelligence Branch, "Weekly and Periodic Intelligence Reports," NACP, RG 260, Entry A1 899, Boxes 168 and 169.

Germans and non-Germans. This was a result of direct military control over the occupation, which began when the first incursions were made into Germany in October 1944, and continued to July 1, 1946, over a year after the German surrender in May 1945. Throughout this first period of occupation, US and British MG maintained a wartime-like occupation. Specialist MG detachments near-independently governed each city (Stadt-) and rural district (Landkreis) with security support provided by regular combat forces. Depending on a district's population, these MG detachments consisted of between 5 and 30 officers and an equal number of enlisted personnel, with larger detachments deployed to major urban centers such as Cologne and Munich (Boehling 1996: 72). MG detachments controlled all aspects of local governance and established MG courts as necessary to administer criminal justice, which was often one of their first actions. By design, this system of military occupation was imposed progressively during the invasion in the immediate wake of combat forces. Aptly named Spearhead MG detachments, the first MGOs often established MG courts mere hours after German forces were defeated to handle arrests made by soldiers and assert Allied control. When the Nazis formally surrendered on May 7, the entirety of the west was under US and British military control, with the initial scaffolding for Zonal MG in place and a criminal justice system already in operation (Ziemke 1975: 188).

Standardization of criminal justice across the US and British zones came from joint planning and implicit agreement on the aims and methods of military occupation, which emphasized ensuring strict control, but avoided interceding in local customs, culture, and governance (Kehoe 2019: 21).[12] Enforcing order nonetheless meant retaining control over criminal justice and abrogating local law and courts. To that end, the western Allies (including the French) adopted the same MG legal code and MG court system specifically designed for occupying Germany (ibid.: 44). The MG legal code complemented the existing German Criminal Code of 1871 (which was suitably "denazified") under which normal offenses—for example, theft, fraud, assault, rape, and murder—were prosecuted.[13] The MG legal code outlined a further 43 offenses specifically designed to ensure German compliance with Allied rule. The first 20 under Article I carried any potential fine, prison sentence, or capital punishment, and included offenses such as armed resistance against the Allies (No. 4), attacking a member of the Allied forces (No. 7), illegal firearm possession (No. 9), looting (No. 16), and stealing from the Allied forces (No. 19). A further 23 charges under Article II were punishable by any fine or prison sentence. Among these was violating curfew (No. 22), possession of stolen Allied property (No. 31), and falsifying information about a person's Nazi past (No. 33). A final charge for "conspiracy" permitted prosecution of Nazis and members of any other German resistance group. The charge was most famously used at Nuremburg to prosecute Nazis for complicity in the regime's war crimes, but it also allowed MGOs to prosecute aiders and abettors of resistance, and also gangs and organized

[12]Geoffrey Best calls this an "arch-occupier" philosophy in *Humanity in Warfare: The Modern History of the International Law of Armed Conflicts* (Weidenfeld & Nicolson, 1980), 180.

[13]A version of the 1871 German Criminal Code was translated in English and printed for MGOs with instructions on how to apply it. See War Department, Military Government Information Guide: The Statutory Criminal Law of Germany (War Department, 1946).

criminal groups for offenses deemed dangerous to the social order, including armed robbery, smuggling, and black marketeering (ibid.: 45; Sellars 2013: 103–6).[14]

The MG court system consisted of three levels of court. Summary courts were the lowest and heard the vast majority of cases. Every person arrested was notionally required to have his or her case heard in one of these courts. The records of the Summary courts therefore provide the closest available account of arrests during the occupation. The higher Intermediate and General courts were far less common and heard only the small number of more serious cases. The structure was as follows:

1. Summary courts. Any district MG commander could establish these courts, which only required one officer to sit as judge and this was typically the local commander himself. The punishments they could impose were limited to a maximum of one year in prison and/or fines up to $1,000. Defendants charged with serious offenses such as firearm possession or murder, were to be referred to one of the two higher courts for trial.
2. Intermediate courts required three officers to sit as judges and defendants were provided with a defense attorney. These courts could impose sentences of up to 10 years imprisonment and/or fines up to $10,000. These courts could also refer serious cases to a *General* court.
3. General courts handled the most serious crimes, typically murders, rapes, armed robberies, and gang crimes in which defendants were charged with multiple offenses. Three officers sat as judges and one of them was required to be a lawyer. Defendants were also provided with an attorney. These courts could impose any lawful punishment, including unlimited fines, life imprisonment, and the death penalty. (Nobleman 1950a: 88)

The British-devised names for the courts was meant to diminish their overtly martial nature. They were, however, military tribunals in everything but name. Judges were always officers in the first years of the occupation and at the lowest levels they were also the MGOs responsible for local governance, which created a challenging dual role that potentially hindered objectivity (ibid.). In particular, the objectivity of officers sitting as judges in the summary courts was likely affected by the volume of cases to be considered alongside other pressing concerns of local administration and reconstruction. Strict martial rule meant numerous arrests of civilians for minor infractions of curfews and travel restrictions, as well as for petty theft and illegally trading small goods on the black market. In major cities, courts frequently became backlogged with cases and the number of defendants could reach 100 per day. Rural districts had fewer cases, but also fewer MGOs, which meant that courts sat less frequently and were still often backlogged. MGOs tried creative ways to alleviate the burden, from conducting mass trials with set penalties for offenses like curfew violations to summarily dismissing all nonserious cases (Kehoe 2015: 40, 87–88). Due to the pressures on district-level detachments, hearings in the summary courts were often perfunctory affairs. The charges were read, a plea entered, and a

[14]United States Army Service Forces, Military Government Handbook Germany. Section 2M: Proclamations, Ordinances, and Laws Issued by Allied Military Government in Germany, January 6, 1945.

quick determination was made by the judge to dismiss the case, try it, or refer it. If a case was tried, the trial typically occurred soon after and lasted mere minutes with a witness called to testify—such as the arresting soldier or police officer—and brief chance given for the defendant to offer a defense before judgment was rendered and sentence imposed. The case of Polish DP Salmon Korona provides a somewhat more serious example of this process. He was arrested on April 28, 1946 for participating in a riot that resulted in multiple incidents of break and enter and assault. He was charged under the MG legal code on April 30 with three offenses: Violating ordinance No. 18—"Incitement to or participation in rioting or public disorder"—"resisting arrest" (No. 38), and "disobeying the orders of US military police" (No. 43).[15] These were serious offenses; conviction for rioting carried a potential death sentence.[16] Even so, his case was tried in the local summary court on May 22, and on that day he was convicted and sentenced to one year in prison.[17]

Korona's sentence was reduced on appeal to six months in prison and six months good behavior, in part because the review court determined that his lack of sufficient German or English prevented him from mounting an adequate defense.[18] This case exemplifies the combined problems of necessarily rapid summary court hearings and the frustrations district-level MGOs felt about non-Germans. Most MGOs regarded management of foreign DPs and refugees (Germans could also be refugees) as a constant problem. Theystrained limited food, coal, housing, and employment, and tensions between them and local Germans often ran high (Kehoe 2015: 160–61). Arguments, brawling, and even killings occurred as a result (Evans 1996: 751–52). But when brought before court, non-Germans also tended to be more difficult to manage. Simple communication was a problem because English was the official language of the occupation and despite initial attempts to train Allied officers in German, few MGOs spoke the language (Boehling 1996: 38–40; Carruthers 2016: 29–31). Translation in court was left to German police, local administrators, or priests (Kuber 2018: 238–43). When a defendant could not speak German, communication became almost impossible (Wyman 1989: 49). MGOs recorded their frustrations in their diaries, official reports, and letters home, and there is evidence to suggest that MGOs' frustrations carried over into policing priorities (Kehoe 2015: 160–66). Whether or not such feelings affected trial outcomes is less clear, though DPs living in postwar Germany did at times note that the rapidity of trials in the summary courts essentially precluded them from understanding the charges or mounting an adequate defense. Given examples such as the Korona case, it is reasonable for us to hypothesise that MGO frustration translated into systemic bias toward non-Germans in the MG court system.

[15]No. 43 outlawed as act "to the prejudice of the good order," a catchall terminology that permitted arrest and charge for unruly behavior or acts deemed inimical to the social order. See Kehoe 2016: 565.

[16]United States Army Service Forces, Military Government Handbook Germany. Section 2M.

[17]"Korona/Salmon," case file: NACP, RG 466, Entry E-61, Box 1910. A sense of this speed is evident in the court registers, which list the volume of cases heard per day and often have notes in the margins about rapid decisions. The dates and brevity of fuller case files available for minor offenses also bears out speedy hearings.

[18]"Korona/Salmon," case file.

Method

To examine differential treatment of non-Germans versus Germans in occupied western Germany, we used newly collected summaries of cases from the registers of the MG courts in the US and British zones. The originals are housed in the US National Archives in College Park, Maryland (RG 466, Entry 61), and the British National Archives in Kew, London (Group FO 1060). The total number of MG courts remains uncertain, though there are approximately 3,000 boxes of records in the US National Archives (the exact number is unclear) and a similar (though similarly unclear) number in the United Kingdom, constituting potentially millions of cases ranging across every sort of offense from very minor infractions such as speeding tickets through to the most serious cases of rape and murder. We could therefore not feasibly collect every register for every court. We instead sampled city and rural districts from across the two zones with the aim of developing a picture of urban, semi-urban, and rural areas. The districts were: Augsburg, Bremen, Dieburg, Dillingen, Eschwege, and Nuremberg in the US Zone, and Cologne, Dannenburg, Hanover, and Oldenburg in the British Zone.

The registers are categorized by location and then court level, and primarily provide lists of defendants, judges, charges, pleas, findings, and sentences imposed for each case heard. They also inconsistently provide other valuable historical information. Ethnicity of defendants was periodically recorded along with other salient personal details including age, gender, and, occasionally, notes about prior criminal histories. But the inconsistencies in reporting reflect how fraught these sources are, a problem typical of historic criminal justice data. There are, firstly, considerable differences between how each court applied the law. Despite sharing a simplified procedure and the same laws, which was meant to standardize outcomes, different charges were applied to similar offenses, and there was wide variation in the sentences applied to convictions for the same charge or similar underlying offense (on these differences see: Kehoe 2019: 17–19). Some courts kept detailed records, including extensive notes about the defendant, the charges laid, and the key elements of the events surrounding the alleged offense. Others recorded very little. There is also evidence suggesting that, at times, records were not kept at all.[19] Records of ethnicity were especially haphazard. Some courts failed to ever record it.[20] For others, it was binary: German or non-German.[21] And at the other extreme, some courts categorized defendants into more than 20 ethnic or national identities.[22] Some of the variations between courts is explained by local conditions that almost certainly affected each detachment's approach to criminal justice, but for which the effects are nearly impossible to account for in aggregate . Among others, the size of the transient population, presence of DP camps, the extent of wartime damage and available infrastructure, proximity to zonal borders, and

[19]William G. East, "Subject: Court Register," September 1, 1945, NACP, RG 466, Entry E-61, Box 39. The Bruchsal military court record for this period shows no arrests or convictions: Bruchsal Summary Court Register, Box 39.

[20]Dillingen Summary Court, NACP, RG 466, Entry E-61, Box 46.

[21]Darmstadt Summary Court, NACP, RG 466, Entry E-61, Boxes 39–44.

[22]Hanover Summary Court, TNA, FO 1060/2951.

the training of MGOs, are additional confounders that complicate interpretations of these data (Seipp 2013: 50–54).

These problems are further compounded by the arbitrary way in which US and British MG categorized people. Throughout the occupation, MG in both zones attempted to assess German versus non-German criminality, typically by creating two categories: "Germans," and a catchall for all non-Germans, such as "other nationals," "foreigners," or "DPs."[23] Such division necessarily obscures considerable detail about who came before the courts and how they were treated, and the nuanced variations in treatment experienced by different ethnic national groups, including those comprising DPs and refugees, and also those categorized as "German." For instance, local Germans and ethnic Germans from outside Germany had very different experiences of postwar life. Those expelled from Eastern Europe faced considerable hostility from local Germans when they arrived in the west. They strained local resources and housing, which may have in turn resulted in differential treatment by the MG criminal justice system (Feinstein 2010: 38; Seipp 2013: 9). Potentially more important is the experience of German Jews and German Roma and Sinti who were both categorized as "German." Through the period examined here, US and British MG repeatedly refused to classify Jews as a separate nationality, but bigotry toward these groups persisted amongst Germans and the Allies, which may have affected their treatment by the MG courts (Hilton 2018: 10).

Acknowledging these limitations, we nonetheless opted in this first quantitative study to keep the analysis as simple as possible to provide a general picture of MG court behavior. We maintained the binary convention used most commonly by the United States and British during the occupation and created two categories: "German" and "Non-German." We also used only those records in which ethnicity was specifically recorded. (In many, it appears "German" was assumed and the category was left blank, but these were excluded.) The result was 3,685 records with a clearly recorded ethnicity for the defendant, all of which came from Cologne, Hanover, and Oldenburg, in the British Zone, and Bremen and Darmstadt in the American Zone, so our conclusions are necessarily limited at this time to these locations.

Any ethnicity other than "German" was classified as "non-German," yielding a total of 2,780 German defendants and 905 non-German defendants from across the courts sampled.

We separated the entries by the level of court that heard the case: Summary courts (Level 1), Intermediate courts (Level 2), and General courts (Level 3). Divided by ethnicity, we then analyzed the data on two metrics for each court level:

1. The court's finding—not guilty, guilty, or "referred," if the case was sent to a higher court for trial—
2. and length of sentence calculated as the number of days in prison.

[23]See divisions in summaries of trials in higher courts in the British Zone and that resulted in death sentences: TNA, FO 1060/1182. See also "German" versus "DP" in crime statistics compiled in: TNA, FO 1060/44.

Table 1. Charges by crime type laid against foreigners and Germans

	Foreigners (N = 905)	*Germans (N = 2,780)*
1. Crimes against person	9.9%	2.7%
2. Crimes against property	50.6%	53.1%
3. Crimes against occupation laws	28.0%	32.6%
4. Disobey/disorder	11.4%	11.3%
5. Other	0.1%	0.3%

We used "days" in prison to standardize the assessment of punishments across variable application of prison sentences and fines, which were often used in conjunction. This standardization to "days in prison" was achieved using the equation of 10 Reichs marks (RM) fine to one day in prison in the event of nonpayment (e.g., a 100 RM fine = 10 "days" imprisonment). This equation was regulated across both zones from early 1945.[24] We kept the "days" metric for longer sentences to avoid undue confusion, such that years in prison were multiples of 365 days (e.g., five years in prison became $365 \times 5 = 1{,}825$ "days").

Sentence length was coded as zero if the defendant was "cautioned," "admonished," "warned," or received a "warning," so long as there was no other punishment imposed.

There were very few death sentences in our sample; however, these were separated from the calculations to avoid warping the "days" formula (e.g., capital punishment = ∞ "days"). Death sentences are reported separately.

Finally, the same two calculations were then conducted separately for the US Zone and British Zone to assess variations between the two.

Results

Following criminological convention outlined by Morgan and Weatherburn (2006: 15–44), charges laid by the courts were divided into five categories of crime types: Crimes against the person (assault, intimidation, rape, and homicide); crimes against property (looting, theft, and possession of stolen goods); and crimes against occupation laws (curfew violation, firearm possession, falsification of documents, impersonation of Allied forces, and support of resistance). A fourth category "disobey/disorder" was created for two nonspecific catchall charges in the MG legal code, "Disobedience of any MG law or proclamation" (No. 21), and "Act to the prejudice of the good order" (No. 43). Both were broadly applied and could include behaviors such as drunk and disorderly, through to illegal gatherings, and protest. A fifth category—"other"—included charges for perjury and contempt of court, and also parking fines and other minor infractions.[25]

[24]It is repeated in numerous registers and files, for example: "Müller/Maria," case file. File available in: NACP, RG 466, Entry E-63, Box 1561.

[25]United States Army Service Forces, Military Government Handbook Germany. Section 2M.

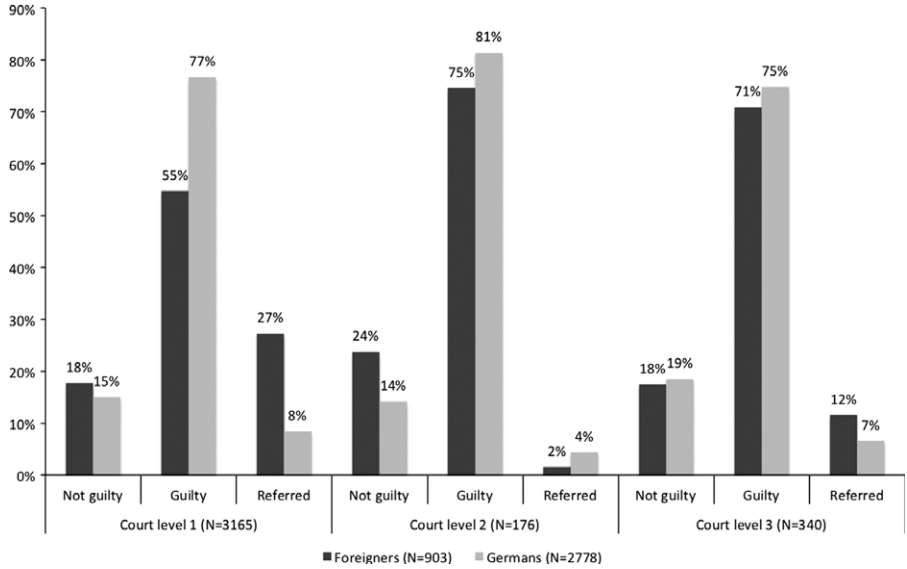

Figure 1. Findings by German versus "non-German" in the three military government court levels across the American and British zones.

Table 1 shows the percentage of charges for Germans and non-Germans divided into these five categories. There was a significant association between crime type and ethnicity ($p = .000$; FET), with non-Germans significantly more likely than Germans to have been charged with crimes against person (AdjR = 9.2). Proportions of charges for each of the other crime types were similar for both groups.

Figure 1 shows the trial outcomes—guilty, not guilty, or referred—within each of the three court levels for Germans compared with non-Germans. Results showed no associations in courts two (X^2 (2) = 3.33, $p = .189$) or three (X^2 (2) = 2.48, $p = .290$) between trial outcome and ethnicity, while in court one the chi-square test was statistically significant (X^2 (2) = 189.03, $p = .000$). Within court one, Germans were significantly more likely to be found guilty than non-Germans (AdjR = 11.1), and non-Germans were significantly more likely to be referred than Germans (AdjR = 13.2).[26]

Figure 2 shows the average sentence length for non-Germans and Germans within each court level. There were no differences between sentence length in any of the court levels: Germans and non-Germans received comparable sentences in court levels one (t (2273) = 0.44, $p = .66$); two (t (137) = 0.79, $p = .43$); and three (t (227) = 0.24, $p = .81$). Across all courts, 8 Germans and 10 non-Germans received a death sentence. Other notable outcomes included death in custody

[26]It is difficult to know where cases at court level 3 marked "referred" went. They were either sent back to a lower court for trial or were deferred to a different date. Given that number of defendants was small and the outcome was not statistically significant, this is not a pertinent issue here, but future research into MG legal processes may wish to explore court level 3 referrals in more detail.

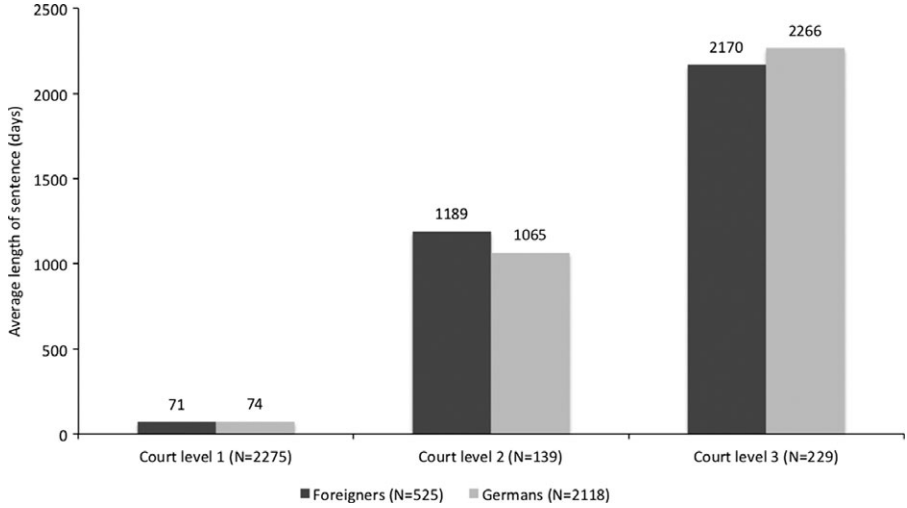

Figure 2. Average sentencing in "days" by court level across American and British zones.

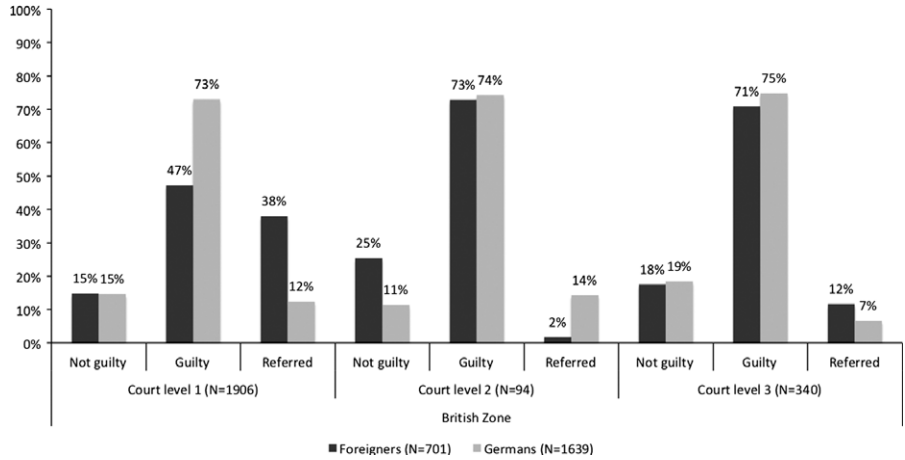

Figure 3. Trial outcomes by court level in the British Zone.

(one German); being sent to a POW camp (three Germans); being assessed as medically or mentally unfit (three Germans); being sent to a refugee camp (one German); or being deported (three non-Germans).

Figures 3 and 4 show the trial outcomes for Germans and non-Germans within each of the three court levels, further divided by zone (British and US). In the British zone, trial outcomes were similar in court three (X^2 (2) = 2.48, $p = .290$), however there were significant differences in courts one (X^2 (2) = 156.69, $p = .000$) and two ($p = .022$; FET). In court one, significantly more Germans than non-Germans were

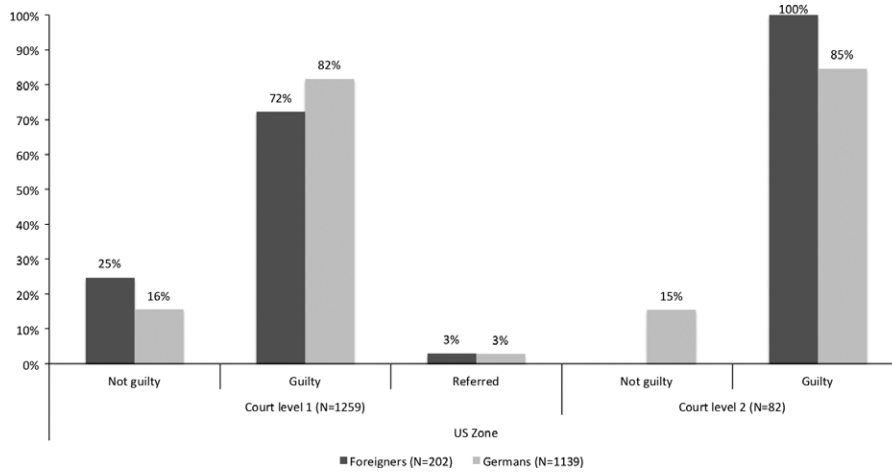

Figure 4. Trial outcomes by court level in the US Zone.

found guilty (AdjR = 10.2), and more non-Germans were referred (AdjR = 12.3). Conversely, in court two, more Germans were referred (AdjR = 2.4).

In the US zone, the chi-square test was statistically significant in court level one (X^2 (2) = 10.411, $p = .005$); non-Germans were more likely to be found not guilty (AdjR = 3.2) and Germans guilty (AdjR = 3.1). In court two, all (100 percent) non-Germans were found guilty, as were most (85 percent) Germans. None of the accused was referred.

Discussion

In keeping with past studies of the MG courts in occupied western Germany, our findings show that the vast majority of defendants were charged and tried in the summary courts (level 1), while only a small proportion were referred to the intermediate (level 2) and general (level 3) courts (Nobleman 1950a: 88; Szanajda 2007: 49). But our findings on the courts' behaviors were surprising. There was no evident bias in outcomes at the higher courts between Germans and non-Germans, nor was there any significant difference in the length of sentences that non-German received as opposed to Germans at any of the court levels. The latter finding was particularly striking, given that as discussed in the preceding text past studies have consistently shown that non-Germans—DPs in particular—were routinely demonized as criminals (Canoy 2007: 107; Feinstein 2010: 24–25). Moreover, when minority groups are associated with crime they are typically convicted more frequently and receive harsher sentences than the majority population (Berdejó 2018).

Group criminalization and original hypotheses

Both findings contradicted our original hypotheses, which held that the MG courts should have treated non-Germans significantly differently from Germans, because

German and Allied antipathy toward non-Germans is well documented. Enduring anti-Semitism; antipathy toward Poles, Slavs, and other Eastern Europeans; 13 years of xenophobic Nazi rule; and total defeat and subjugation to foreign rule made German hostility toward non-Germans predictable (Feinstein 2010: 24–28. On hostility toward Poles and Slavs see Kopp 2005: 76–96). It has been somewhat harder to explain the early emergence of similar feelings amongst the western Allies. Explanations include MGOs' annoyance at DPs' transience and the strain new arrivals placed on local supplies (Kehoe 2015: 160; Seipp 2013: 104–5); Allied soldiers' disgust at the condition and behavior of concentration camp inmates (Abzug 1985: 142–47; Carruthers 2016: 163–64; Feinstein 2010: 20–21; Shils 1946: 5); and existing prejudices against Slavs, Poles, Roma and Sinti, and, of course, Jews (Dinnerstein 1995; Dundes 1971: 186–203; Feinstein 2010: 24–28; Holmes 2015 [1979]). All were likely operative to some degree and together account for the rapid emergence of a US and British fixation on the threat posed by non-Germans criminals, the blaming of non-Germans for most crime, and even the blaming of them for much of Germany's postwar economic distress (Canoy 2007: 107; Feinstein 2010: 24–28).

MGOs' hostility toward non-Germans is also discernible from their handling of non-Germans defendants in MG court trials. Analysis of fuller case files reveals that MGOs sitting as judges often permitted questionable arrests and convictions on circumstantial and speculative evidence. These practices led to tens of thousands of cases being reviewed later by MG, by its successor in the 1950s—the High Commissioner for Occupied Germany—and by German courts in the 1960s. In many cases, convictions were reversed or sentences dramatically reduced.[27] This later pattern of review and reversal suggests that the first MG courts often weakly adhered to due process and rules of evidence. Such practices did not just affect non-Germans however, and often appears to have been a result of prioritizing social order and the assertion of MG's authority, over following proper judicial procedures (Kehoe 2019: 141; Nobleman 1950b: 51). However, in rushing to conviction, MGOs did tend to infer criminal inclinations from a defendant's identity and heavily relied on the assessments of German police who, as Canoy (2007: 115) argues, largely reflected the prejudices of the German population.

German and Allied attitudes toward non-Germans are a near-perfect example of group criminalization. An extension of the broader criminalization of certain activities and peoples, group criminalization is the process of attributing most criminality to a minority group and in turn assuming that group is inherently more criminal than the majority population (on criminalization more broadly as an aspect of defining social deviance see Jenness 2004; Meier 2019). The process of group criminalization has been extensively documented in criminological and psychological literature, which shows that it results in an assumption of perpetrator identity, proactive policing of the targeted group, and assumption of guilt by the courts. African Americans in the United States have provided the classic example, though the process is more widespread (Chiricos et al. 1997; St. John and Heald-Moore 1995; Yusef and Yusef 2018). Other groups including the mentally ill and even

[27]"Koroly/Alois," review case file: NACP, RG 466, Entry E-63, Box 1910. The review files are in the US National Archives in College Park, alphabetically by last name, in Record Group 466, Entry E-63 and E-64.

Scottish soccer fans have been criminalized as a group, resulting in similar patterns of treatment by police and the relevant courts (Fitzgibbon 2004, 2010; Lavalette and Mooney 2013). German and Allied attitudes led us to hypothesize that non-Germans would have been treated very differently by the MG criminal justice system. Specifically, we expected significantly different outcomes in the rates of conviction and in sentence length, yet beyond a higher rate of conviction for Germans over non-Germans in the summary courts, neither hypothesis was borne out in the data.

Explaining similarities in sentencing

There are initially three likely explanations for the similarity in sentencing at each of the court levels. (1) MG standardized the trial process and the sentencing recommendations for each charge, which may have overridden the judicial biases of MGOs sitting as judges. (2) The bulk of cases tried in the summary courts were minor infractions such as violating curfew, which MGOs tended to treat uniformly. Reflecting the norm of standardizing punishments, in Cologne, for example, a curfew violation nearly always resulted in a 50 RM fine, which was equivalent to five days imprisonment on nonpayment. The volume of prosecutions for these minor offenses and the pressures of occupation governance likely mitigated selective sentencing based on defendant identity.[28]

We could not directly test for a third option: that different charges were applied to Germans versus non-Germans for essentially the same underlying behavior. This option may have contributed to the one potential example of bias—the greater willingness of MGOs in the summary courts to refer non-German defendants to higher courts for trial. Greater likelihood of referral accounts for the significant disparity in the conviction rate of Germans versus non-Germans in these courts across the US and British zones. The decision to refer a case almost entirely reflected the belief of an MGO judge that a defendant deserved a sentence in excess of that which his court could impose. For the summary courts, that meant a sentence in excess of one-year of imprisonment and/or a 10,000 RM fine. Charges for serious offenses—for example, murder, attack on the Allied forces, sabotage, and looting—nearly always resulted in a referral. Consequently, higher referrals for non-Germans is partly explained by significantly more of them having been charged with such offenses, notably crimes against the person and looting. If accurately describing the underlying behavior, charges for violent offenses would most likely have genuinely deserved more severe punishments. But problematically, such charges fit a prevailing assumption that non-Germans were nearly entirely responsible for gang activity and violent crime, and therefore a higher rate of referrals may indicate an unsubstantiated inference to more serious criminality, driven by fear and rumor (Canoy 2007: 116). Moreover, even for non-Germans, serious offenses—particularly crimes against the person—accounted for a very small proportion of the charges laid and does not fully explain the higher proportion of referrals they received.

[28]Cologne Summary Court, TNA, FO 1060/2471. See also Nuremberg Summary Court, NACP, RG 466, Entry E-61, Box 117.

Obscured stories

There is a fourth explanation that derives from the limits of the available quantitative data. As noted in "Methods," exceedingly variable recordkeeping forced us to set aside most of the data collected for lack of clear knowledge of defendants' ethnic/national identity. Additionally, because of the variability between courts in the application of ethnic and national identities, we were forced to adopt the sweeping "German" and "non-German" categories. Though reflecting MG practice, these categories are at best awkward heuristics and likely obscure significant detail about defendants. We can safely assume that we have lost information about the treatment of specific groups. It may be, for instance, that certain groups, such as Jews from Eastern Europe and the Roma and Sinti, were treated significantly worse than other non-Germans DPs, as suggested by past studies (Feinstein 2010: 28). Similarly, Allied and German fixation on Polish DPs as criminals—even to the point of provoking complaint from the pro-Polish lobby in the United States—may have led to their receiving harsher sentences (Kehoe 2015: 64, 184).

The porousness of German identity creates another problem. Deeper exploration of two cases reveals how valuable narratives of Jewish and Romani experience can be obscured. In late August 1945, British MGOs arrested German Jew Karl Pickel for impersonating an American soldier and illegally carrying a pistol. He was classified as "German" in the MG court records and was referred to an intermediate court where he stood trial in October. Because of the severity of the charges, he was given a German defense attorney who, without consulting him, entered a guilty plea. A review of Pickel's treatment conducted in 1948 by British MG's Supreme Court determined that this was merely the first error by Pickel's defense attorney, which the lead British judge in the first trial corrected by reversing the plea and entering not guilty on Pickel's behalf. Pickel's defense did not improve, despite a flimsy prosecution case. The defense did not challenge the primary prosecution witness, a German police officer who claimed to have found the illegal weapon during a search of Pickel's apartment. The review court later noted that there was ample reason to question the officer's prejudices, the warrantless search, and therefore the unsubstantiated assertion that Pickel owned the weapon. The defense also failed to call as an exculpatory witness a British sergeant who had previously made contradictory statements about Pickel's guilt. (It is unclear from the available records what his statements were.) Despite a weak case, the intermediate court in 1945 convicted Pickel largely because he was a recidivist. It did not matter that his prior arrests occurred during the 1930s and were mainly for anti-Nazi activities.[29]

On January 4, 1946, Romani Alois Koroly, another minority classified as a German, was tried in a US summary court for theft and black marketeering. He had been arrested by German police along with two other men for theft of US petrol and beets. Though listed as "German," Koroly and the two other men were DPs who had been liberated from a Nazi concentration camp and lived in a DP camp. The trial was short and Koroly was convicted and sentenced to one year in prison, the maximum the summary court could impose. A few months later,

[29]Office of the Supreme Court, Control Commission for Germany, British Army of the Rhine, "Subject: Karl Pickel," November 25, 1948, TNA, FO 1060/4116.

a US MG review of the police investigation and of the trial revealed numerous irregularities. These primarily stemmed from the police targeting Koroly because he was Romani. The conviction hinged on the testimony of a 58-year-old German innkeeper who reported having repeatedly seen "four teenage ... Gypsies"[30] trading illegal goods. During a police interview he identified—though could not name—Koroly. Whilst Koroly was 24 and could potentially have been mistaken for a teenager, the other two men arrested were 37 and 40. The US MG reviewers later concluded that the defendants' ages should have made the innkeeper's testimony suspect, yet questions about its veracity had not been raised by the summary court MGO sitting as judge. Despite these irregularities, it is unclear whether the conviction was overturned.[31]

These two cases provide insight into the ambiguities that derive from the simplistic framework US and British MG applied to ethnicity and national identity. Even when MG courts included more than a binary division, MGOs typically added just two more categories: "Poles"—who comprised the largest group of DPs—and "Allies."[32] As much as important ethnic and national divisions may have affected the dispensation of justice, MG effectively washed such identifiers from the data. In keeping with US and British MG's refusal to identify a distinct identity for Jews and for Roma and Sinti, in none of the records examined was Jewish or anything indicating Roma or Sinti heritage specifically recorded in the registers and must be inferred from examination of the more extensive case files kept separately (e.g. in the US National Archives they are listed alphabetically by lead defendant in RG466 Entry 63). Moreover, any attempt to determine identity from defendants' names is fraught with a troubling degree of uncertainty. But the problem of defendant identity extends beyond obscuring victims of the Holocaust. For the most part, the myriad and well-known categories of DPs, refugees, and expellees in postwar Germany are virtually lost in the available data (Seipp 2013: 18–19). For instance, little effort was made by US and British MG to identify ethnic German expellees from Eastern Europe. These people suffered some hostility from local Germans and could also have experienced biased treatment by the MG criminal justice system (Feinstein 2010: 38–41). Future research should develop more information about defendants and thereby extend our initial quantitative analyses to the treatment of specific groups of non-Germans, Germans, Jews, German Jews, and others.

The problem of periodization

Whilst this study ends at July 1946, there is reason to hypothesize that the subsequent 18 months would show more pronounced bias against non-Germans. Most DPs were repatriated during 1945 and early 1946, which left behind the so-called hardcore DPs who either did not want to return to their homes in Eastern Europe or

[30]"Gypsy" is translated from the semipejorative German word *Zigeuner*.

[31]"Koroly/Alois," review case file.

[32]See divisions in summaries of trials in higher courts in the British Zone and that resulted in death sentences: TNA, FO 1060/1182. See also "Analysis of cases tried in Military Government Courts," TNA, FO 1060/1101.

were stateless, which was the case for the approximately 160,000–300,000 Jewish DPs that remained in Germany (Grossmann 2010:18; Wyman 1989: 69). The relationship that these DPs had with Germans and with the Allied authorities was noticeably more hostile. It was made worse by a dramatic change in the character of the occupation forces. Not only were most veteran US and British soldiers demobilized and returned home over the same period, but they were replaced by green soldiers who were more disorderly, had not directly witnessed the horrors of Nazism, and were more prone to see Germans as obedient collaborators and DPs as an irritation (Feinstein 2010: 25; Kehoe 2015: 186–91; Ziemke 1975: 421–22). In the US Zone in particular, soldiers' views of non-Germans were likely exacerbated by a process of "civilianization," which was initiated in October 1945 by US Deputy Military Governor Lucius Clay. It saw MG progressively retract whilst greater control over governance and policing was extended to the Germans (Clay 1945 cited in Smith 1974: 91–97; Ziemke 1975: 441–43). There were similar processes in the British Zone. Finally, over 1946 and 1947, waves of German expellees from Eastern Europe arrived in Germany. They placed greater strain on food, housing, and employment and increased social tensions. Expellees experienced hostility from local Germans, but most locals regarded ethnic Germans more favorably than non-German DPs and sided with them against non-Germans, who were pushed into camps and further to margins of postwar society (Feinstein 2010: 38). Such movement likely further contributed to group criminalization.

Judicial bias as an emergent pattern

But during the period we examined, these tensions do not appear to have filtered into the behavior of the MG criminal justice system when assessed overall. The bias in referrals seems to have emerged from a compounding tendency to refer more non-Germans than Germans. This bias is subtle. Drilling down to any one charge does not necessarily reveal the pattern. For instance, MG recommended that prosecutions for firearm possession be referred to a higher court in every instance as a clear threat to security (Nobleman 1946: 807). This did not happen and firearm cases were often tried in summary courts. In our sample, there were 101 charges for firearm possession laid in the summary courts, which included 55 Germans and 46 non-Germans. Of these, 39 cases were tried and 62 referred, which included 26 non-Germans and 36 Germans, or 57 percent for non-Germans versus 65 percent for Germans. It is important that a near equal number of Germans and non-Germans were arrested, which may suggest that police were targeting non-Germans, though given that these data come from multiple locations with different DP populations and local conditions, it is impossible to know. What is clear, however, is that such confounding figures suggest a more subtle bias toward arresting non-Germans and sending them to a higher court for trial.

An emergent pattern of response to non-German crime leading to a higher rate of referrals fits with US and British MGOs' rapidly formed beliefs about the criminality of non-Germans and a corresponding concern about criminal DPs, "DP gangs," and the threat posed by non-Germans to social stability. Yet, efforts to prevent non-German criminality through more assertive policing and harsher treatment appears to have only partially translated to judicial decision making in the

MG courts. It is also interesting that the difference is only at the initial, summary court level. The subtlety of this pattern of bias and the difference between the behavior of the frontline summary courts and the higher courts is most likely explained, firstly, by the dual position occupied by the MGOs that sat as judges in the summary courts. These officers had to manage local governance and then shift to a judicial function and concerns about local social conditions no doubt affected their decisions (Kehoe 2015: 49–50; Nobleman 1950b: 51).

These officers were, secondly, less constrained by the structures MG imposed around criminal justice. To separate Allied martial law from the arbitrariness of Nazi rule, SHAEF had aimed for uniformity of outcome across the MG criminal justice system such that two people charged with the same offense would ultimately receive the same sort of trial—that is in a summary, intermediate, or general court—and approximately the same punishment. Eli Nobleman (1950b: 43–51) argued that this objective was exceedingly optimistic. His concerns were seemingly borne out in the considerable variation between summary courts (Kehoe 2015: 38–40). But simplification of the legal code and a set of guidelines for referrals and sentencing may have been more effective than previously imagined, at least insofar as mitigating biased views of minority groups translating into their treatment by the MG courts. Conviction rates were very high for both Germans and non-Germans across the board, suggesting that MG's focus on controlling disorder and crime primarily guided actions by the courts (see discussion in Kehoe 2019: notably 30, 56). Nonetheless, personal prejudices more likely swayed single officers sitting as judges in the summary courts. Once referred, however, the higher courts were not as liable to the same pressures. The intermediate and general courts heard only a small fraction of cases, and had panels of judges, defense attorneys, and greater time. The result was a more deliberative trial process and the outcomes were standardized.

Conclusions and Future Directions

More quantitative and complementary analyses of the treatment of non-Germans in occupied Germany are required to test the findings presented here. As Kramer (1988) pointed out three decades ago, the data on criminal prosecutions in occupied western Germany run contrary to expectations. Non-Germans did not commit the majority of offenses and do not appear to have been markedly more criminal than the majority German population. Moreover, most of the criminality *in toto* was comparatively minor. Due to our sample being limited to the records that had information on ethnic identity, our data does not speak to proportions as Kramer's (1988) did. Nor are they representative of the non-German versus German population that came before the courts in 1945–46. However, some sense of the actual criminal behavior of non-Germans is gleaned from the distribution of charges and outcomes, which are remarkably similar to Germans except for a variation in violent crimes—which only account for a small proportion of the overall charges laid—and the relative proportion of referrals to higher courts.

Both of these findings suggest US and British MGOs' tendency to attribute most criminal activity to non-Germans. Moreover, qualitative analysis of individual cases involving non-Germans and minorities seems to bear out this finding. It is striking,

though, that the impact of this bias was not more pronounced in court outcomes and that beyond these differences outcomes and sentences for Germans and non-Germans were the same. Data for 1946–47 may show a clearer bias as the complexion of the DP and refugee population changed and the character of MG changed also. Future research should quantitatively examine the treatment of non-Germans by the MG criminal justice system during the later occupation. As it stands for 1945–46, even if the application of justice was uneven and somewhat haphazard, as critics have previously argued, the formulaic system devised by SHAEF appears to have created better stability across the US and British zones than expected either at the time or since. Non-Germans did suffer from MGOs' biases, but in this first period the structures governing MG criminal justice were seemingly sturdier and more equitable than previously thought.

Acknowledgments. We would like to thank the reviewers and the editors at *Social Science History* for their insightful advice and feedback on earlier drafts of this article.

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