Julius Siegel: *A Kapo* in Four (Judicial) Acts*

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> We do not believe in the most obvious and facile deduction: that man is fundamentally brutal, egoistic and stupid in his conduct once every civilized institution is taken away.... We believe, rather, that the only conclusion to be drawn is that in the face of driving necessity and physical disabilities many social habits and instincts are reduced to silence.[1]

Preface

During World War II, Julius Siegel served the German occupiers of Poland in a number of capacities. He was responsible for mobilizing Jews for forced labor in the Polish city of Będzin immediately following its occupation by the Germans,[2] he was the "Jewish elder" in several labor camps in Germany; he was a foreman in a tailor shop

* This article is part of the author's doctoral dissertation, which she is writing under the supervision of Prof. Leora Bilsky of Tel Aviv University's Faculty of Law and Prof. David Meyers of the Department of History at the University of California, Los Angeles.

1 Primo Levi, *If This is a Man*, trans. Stuart Wolf (London: Orion, 1959), p. 100.

2 On the eve of World War II there were about 27,000 Jews in Będzin in Upper Silesia, almost half the population. Shortly after occupying the region the Germans ordered the establishment of a Jewish representative body to attend to community affairs. This body comprised mainly recognized civic officeholders who had been part of the local municipal administration during the interwar period. It was an elected rather than an appointed leadership. Following annexation of the Zaglembia region to the German Reich as part of Eastern Upper Silesia in January 1940, the Central Organization of Jewish Councils of Eastern Upper Silesia, colloquially known simply as the "Zentrale," was formed. It was headed by Moshe (Monik) Marin. The Będzin Judenrat, headed by Haim Molchedski, was part of this larger organization. Marin sent out supervisors on behalf of the central Judenrat to advise the heads of communities subordinate to him and to oversee their activities. Through the Jewish Department of Works and Police Department, Marin enforced to the letter German requisitions of Jewish forced labor. See *Entziqlopedia shel HaSho'ah*, vol. 1, pp. 196-7; Israel Gutman (ed.),

in which Jews were employed in making uniforms for the German army; and he was employed as a clerk in Auschwitz. Siegel was indicted on four separate occasions for his deeds against other Jews in his capacities in these roles: in 1946 in the public court of Jewish refugees in Cremone and later also in Milan in Italy;[3] in 1949 in the Honorary Court of the Zionist Organization in Israel (prior to the passing of the Nazis and Nazi Collaborators [Punishment] Law 5710 – 1950);[4] and on two occasions (after the passing of the law) in the Magistrate's Court[5] and the District Court.[6]

I employ a historical-cultural reading of the judicial texts of Siegel's trials, unrelated to questions of innocence or guilt, to examine the assertion that, unexpectedly, the same social norm underlies both community and state trials – in fact, the very decision to try Jews accused of collaboration. In both proceedings the halakhic-legal category of *din moser*, Law of Informer, was taken to apply to the accused.[7] This standard,

The Encyclopedia of the Holocaust, vol 1 (New York: Macmillan Publishing Company) pp. 157-9; and David Liver, *Ir HaMetim* (Tel Aviv: Tversky, 1946), pp. 22-3. In the 1960s, the city's Judenrat and Jewish Police figured prominently in the trial of Hirsch Bernbladt, who had been deputy commander of the local Jewish Police. He was indicted in 1963 under the Nazis and Nazi Collaborators (Punishment) Law. The District Court (CrimC. 15/63, *Attorney General vs. Baerenblatt* [1964], unpublished) convicted Bernbladt and sentenced him to five years imprisonment, but he was exonerated on appeal to the Supreme Court (CrimA. 77/64 *Bernbladt vs. Attorney General* PD 18(2) 70 (1964)). For an analysis of these two verdicts see Hemda Gur-Arie, "Sham' ve'Kan,' Mishpato shel Hirsch Berenbladt," *Iyunei Mishpat* 34 (forthcoming).

3 The documents pertaining to the procedures that took place in the displaced persons camp in Italy were translated to Hebrew by the Zionist Organization's Honorary Court and are kept in the Central Zionist Archive (CZA), S5/100861 (hereafter: Documents of the DP Courts).

4 Honorary Court File, Documents of the DP Courts.

5 CrimC. (TA) 3727/51, *Attorney General vs. Siegel* (1952) (unpublished).

6 CrimCase (TA) 475/52, *Attorney General vs. Siegel* (1953) (unpublished) (hereafter: Siegel in District Court).

7 This halakhic injunction was promulgated with the express purpose of combating the phenomenon of informing: "It is forbidden to inform on a fellow-Jew to the gentiles and endanger his physical person or his property. This applies even when the person concerned is a wicked person who commits sins, and even if he afflicts and beleaguers one" (Maimonides, *Mishneh Torah*, Hilkhot Hovel uMeziq, 8:9). For a synopsis of the law of *din moser* see David Assaf, "Informers," in *Encyclopedia of Jews in Eastern Europe*, YIVO Institute for Jewish Research, accessed June 19, 2011, http://www.yivoencyclopedia.org/article.aspx/Informers.

based on Jewish religious law, concerns those guilty of betraying their fellow Jews by informing on them to gentile authorities. I shall seek to show that the two judicial proceedings differ primarily in their juridical process. In the community trial there was a congruence between the social norm (the collaborator as traitor to the Jewish people) and the juridical norm (traitor to the Jewish people), while in the state trial there was a structural incongruence between the same social norm, which reflects the spirit of the law, and the criminal-legal norm (the Nazis and Nazi Collaborators [Punishment] Law), which reflects the letter of the law. I shall show that the congruence between the norms is manifested in the one-dimensional verdict of the Displaced Persons Court. In the Israeli District Court, on the other hand, the disparity between the norms becomes evident in a tension-filled verdict, in which the judicial and lay pictures of the world collapsed into each other.

I begin by reviewing attitudes toward Jewish collaborators from the time of the ghetto, through the period of the displaced persons (DP) camps, to the state of Israel, and by reviewing the way in which different legal systems addressed the phenomenon of Jewish collaboration. This will be followed by an in-depth analysis of two of the four legal proceedings against Siegel: that in the DP camp in Italy and the District Court trial in Israel.[8] In conclusion, I shall offer a new reading of the Nazis and Nazi Collaborators (Punishment) Law that reveals its underlying communal subtext. I contend that these elements are responsible for the incongruence between the implicit community norm and the explicit juridical norm.[9]

8 I chose to focus on these two proceedings because the trial in the Zionist Organization's Honorary Court was not completed, and the proceedings in the Magistrate's Court were a preparatory stage in the main proceedings, which took place in the District Court. The complete documentation of the two other proceedings enables me to focus on them and consider the differences between a community and a state trial.

9 Despite the abundance of studies currently available on Jewish displaced persons in Europe, no investigation of the judicial system created and operated in these camps has been undertaken, neither on the system as a whole nor that part of it that indicted and judged Jewish collaborators. The historians Hagit Lavsky and Zeev Mankowitz mention in passing the existence of a judicial system in the camps located in the British and American occupation zones in Germany; see Hagit Lavsky, *Liqrat Hayyim Hadashim: Nitzolim veAqurim beBergen-Belzen uveAizor HaKibush HaBriti beGermania 1945-1950*, trans. Tirzah Gur-Arie (Jerusalem: Yad Vashem, 2006); Hagit Lavsky, *New Beginnings: Holocaust Survivors in Bergen-Belsen and the British Zone in Germany (1945-1950)* (Detroit: Wayne State University Press, 2002); Zeev Mankowitz, *Life Between Memory and Hope: The Survivors of the Holocaust*

History and Law: Jewish Collaborators as "Traitors to the Jewish People"

The decision to confront the phenomenon of collaboration by means of legal proceedings in the DP camps and in the state of Israel cannot be understood without considering its socio-historical context. We therefore need first to consider the position of collaborators within the community, as well as their relationships with other Jews. In addition, it is also necessary to identify the social and community factors responsible for Jewish attitudes toward collaborators in the ghettos, the concentration and extermination camps, the DP camps and later also in the Yishuv (Jewish society in Palestine prior to independence) and Israel.[10]

in Occupied Germany (New York: Cambridge University Press, 2002). Two further books deal more extensively with the judicial system in the displaced persons camps: Angelica Konigseder and Juliane Wetzel, *Waiting for Hope: Jewish Displaced Persons in Post-World War II Germany*, trans. John A. Broadwin (Illinois: Northwestern University Press, 2001); Abraham J. Hyman, *The Undefeated* (Jerusalem and New York: Gefen Publishing House, 1993).

10 The structural and programmatic infrastructure of the Judenrat is laid out in two documents: the first is the "urgent letter" sent by Reinhard Heydrich in his capacity as head of the Central Office of Reich Security (RSHA) on September 21, 1939; the second is the special edict ordering the establishment of Jewish councils published by the Governor-General Hans Frank on November 28, 1939. For further details see Yeshayahu [Isaiah] Trunk, *Judenrate: HaMo'atzot HaYehudiot beMizrah Eiropa beTequfat HaKibush HaNazi*, trans. David Bar-Levav, Bracha Freundlich and Meir Grubstein (Jerusalem: Yad Vashem, 1979), pp. 19-20; Isaiah Trunk, *Judenrat: the Jewish councils in Eastern Europe under Nazi occupation* (New York: MacMillan, 1972) pp. 1-14; *HaEntziqlopedia shel HaSho'ah*, vol. 3, pp. 553-60. *Encyclopedia of the Holocaust,* vol. 2, pp. 157-9. For an extensive review of the appointed prisoners and their status in the camps, see Yisrael Gutman, "HaKevutzot HaLe'umiot HaShonot baMahanot uMa'amad HaAsirim Ba'alei HaTafqidim," in Yisrael Gutman and Rachel Manber (eds.), *Mahanot HaRikuz HaNatzim, Hartza'ot veDiunim beKinus HaBeinle'umi HaRevi'i shel Hoqrei HaSho'ah* (Jerusalem: Yad Vashem, 1984) pp. 115-41. Yisrael Gutman, "Social Stratificationin the Concentration Camps" in Yisrael Gutman and Avital Saf (eds.), *The Nazi Concentration Camps* (Jerusalem:Yad Vashem, 1984), pp.5 143-76 ; Danuta Tchach, "Minhal HaAsirim beAuschwitz," in Yisrael Gutman and Daniel Birnbaum (eds.), *Auschwitz: Anatomia shel Mahane Rikuz* (Jerusalem: Yad Vashem, 2003), pp. 341-61; Danuta Czech, "The Auschwitz Prisoner Administration," in Israel Gutman and Michael Berenbaum (eds.), *Anatomy of the Aschwitz Death Camp* (Bloomington and Indianapolis: Indiana University Press,1994) pp. 363-78.

I begin with a brief examination of the phenomenon of collaboration and the significance of the concept. The Hebrew term "*shituf pe'ula*" (which can mean either cooperation or collaboration) fails to express the particularly negative connotation borne by the term "collaboration" in other languages, where it specifically denotes cooperation with the enemy – in other words, treason.[11] Yet the complexities of life under occupation belie any simplistic dichotomy between resistance and collaboration. A broad swathe of human behavior lies between these extremes.[12] In the Jewish context, the concept of collaboration takes a unique form, because, under Nazi occupation, the Jews as a people faced an extreme form of coercion. They lived under a very real prospect of death, without any organized national or state entity that might have afforded some protection or assistance. The Germans exploited the mechanism of collaboration to coopt Jews for the implementation of Germany's anti-Jewish policy, and later also for the facilitation of the Final Solution. Of course, the Germans did not have the slightest intention of exempting the collaborators from their death sentences. Since all Jews, functionaries and laymen alike, were marked for extermination, the only thing the collaborators had to gain was a temporary stay of execution. What singled out the Jewish collaborators in the ghettos and in the camps was the fact that they assumed a position of authority over other Jews, thereby exacerbating the feelings of betrayal, hostility and hatred that were later to be manifested in survivor testimonies.

The question of collaboration, in particular among the Jews, inevitably raises the question of the nature and substance of the freedom of choice available to Jews in the ghettoes and the camps. They were hardly divested of all ability to make choices, since a Jew in a ghetto could choose not to become a policeman.[13] Siegel could have refused

11 The word "collaboration" is of Latin origin. In Latin its connotation was neutral, denoting simply joint activity or cooperation. According to Timothy Brook, the term became a negatively charged synonym for political cooperation with an occupying power following Marshal Petain's pronouncement on French radio on October 30, 1940, six days after his meeting with Hitler, that in his estimate there was now collaboration between France and Germany. See Timothy Brook, *Collaboration: Japanese Agents and Local Elites* (Cambridge, Mass.: Harvard University Press, 2005). The purge of "collaborators" with the Germans in the winter of 1944-1945, Brook maintains, placed a final negative stamp on the word.

12 Dan Michman, "Hitnagdut Yehudit baSho'ah uMashma'uta: He'arot Iyuniot," *Dapim leHeqer Tequfat HaSho'ah* 12 (1995), pp. 7, 36-40.

13 Like the Judenrat, whose members were named by the Germans, people enlisted in the Jewish police force of their own volition. In May 1943 Calel Prechodnik wrote in

to perform each of the roles he filled during the war and to bear the consequences of those decisions. But such choices, it must be remembered, were made in the shadow of death. It was the constant threat of death, whatever its intensity (the peril in the ghetto was certainly less than in the camp) that constituted the decisive impetus for making a choice, and which determined its scope and content.[14]

The exceptionally skewed sphere of choice within which the Jews lived under German rule – which naturally differed in extent in the ghettos and the camps and from one camp and ghetto to the next – makes the phenomenon of Jewish wartime collaboration a special case that does not allow for generalization.[15] A human

his diary about his motive for joining the Otwock ghetto police force: "I gathered that the war was not ending that soon and therefore, in order to rid myself of the horror of the siege and reach the work camps, in February '41 I enlisted with the ghetto police." Calel (Calek) Perechodnik, *HaTafqid HeAtzuv shel HaTi'ud: Yoman Mahbo*, trans. Uri Orlev and Tzofia Schieber (Jerusalem: Keter, 1993), p. 26.

14 Laurence Langer, a scholar of Holocaust literature and testimonies, cast the scope of choice (in the camp) as a 'choiceless choice', or one that offers no real choice, since no matter what path a prisoner chose, it eventually led to his death. See Lawrence Langer, "The Dilemma of Choice in the Death Camp," *Centerpoint* 4:1 (1980), p. 53. We may presume, however, that not every choice was premised on the knowledge of certain death. In this regard it is necessary to distinguish between the ghetto and the camp. In general, however, the decisions and choices prisoners made in the ghettoes and the camps can still be characterized as driven by a real and immediate fear for their lives.

15 The difference between Jewish and non-Jewish perspective on the concept of collaboration is demonstrated by the case of Michael Weichert, a Jewish theater director and critic from Krakow in Poland who headed a Jewish self-help institute during the war that operated under the auspices and supervision of the Germans. After the war, Weichert was indicted by a Polish court on charges of collaboration with the Germans. The Polish court exonerated him, finding that, in the absence of a clear intention to harm the Polish state or individual civilians, his behavior should not be regarded as criminal, even though it had in fact been wrongful. Weichert was again brought to trial on the same count of collaboration by the court of the Central Committee of Polish Jews, which convicted him. The difference between the two verdicts lies in the different definitions of the concept "collaboration". From the Polish perspective, there was a range of behavior between collaboration and resistance. Such acts transcended the collaboration/resistance dichotomy and were not tantamount to collaboration. No such spectrum existed as far as the Jews were concerned. The mere fact that Weichert had not fought against the Germans branded him a collaborator. See David Engel, "Who is a collaborator? The trials of Michal Weichert," in *The Jews in*

understanding of the way Jewish collaborators acted under barely imaginable pressure is only possible if we do not condemn unequivocally behaviors that are usually defined as collaboration.[16]

The debate over collaboration began in the ghettos and camps themselves, where many Jews viewed the members of the Judenrat, Jewish policemen, and *kapo*s as traitors. Even then the questions concerned the nature of the relationship with the Germans, the extent of collaboration and its limits, and the functionaries' motives and freedom of choice. In several cases, Jews killed other Jews suspected of collaboration. These were acts of individual retribution, but served in equal measure as a stern warning to the community.[17] Attacks on functionaries occurred also in the concentration camps and even on the way to them.[18] Jews in positions of authority, particularly those who enforced disciplinary measures, were regarded as guilty not merely at the personal level, but also and mainly at the community level, and were described as having betrayed the community and having become "like Germans."[19]

Poland, Vol. II (ed.) Slawomir Kapralski (Cracow: Judaica Foundation, Center for Jewish Culture, 1999).

16 One must, of course, distinguish between the conditions of life in the ghettos in different periods, and between the conditions in the ghettos and the camps, and consider the effect of the changing circumstances on human behavior. These differences underscore the problematic nature of making a sweeping moral judgment that conceptualizes collaboration as treason.

17 A proclamation issued by the Jewish Fighters Organization in the Warsaw ghetto announced the implementation of a death sentence on a traitor: "A death sentence has been carried out against Ya'akov Hirschfeld (manager of Helman's shop) for the crime of enticing the Jewish population to travel of its own free will to a destination chosen by the occupier, thereby acting against the interest of the Jewish people. The death sentence was implemented. The sentence should serve as a warning to others. The Jewish Fighters Organization." See Yosef Kermish and Nahman Blumenthal, *HaMeri veHaMered beGetto Varsha: Sefer Mismakhim* (Jerusalem: Yad Vashem, 1965), p. 127.

18 Moshe Puczyc, the deputy commander of the Jewish police in the Ostrowitz ghetto, who was indicted in Israel, told of the killing of Jewish functionaries on the way to Auschwitz: in Auschwitz , "it was customary that people who had behaved particularly badly as *kapos* or policemen in other places, once this became known, the prisoners themselves would eliminate them straight away." CrimC (TA) 10/51 Attorney General *vs. Puczyc* (1952, unpublished), protocol, direct examination, p. 147.

19 Contemporary scholarship, beginning with the groundbreaking research by the historian Isaiah Trunk, no longer makes negative generalizations such as "all the

Collaborators who survived the Holocaust were an integral part of the communities in the DP camps in Europe, and encounters with them produced harsh physical and emotional reactions. They were, after all, a painful reminder of recent events, and their very presence made them accessible targets for other survivors' anger, pain and frustration. Not all collaborators concealed themselves from the other survivors. Some acceded to positions of influence in the DP camps, thereby exacerbating the harsh feelings of their fellow inmates.[20] This is the backdrop to the resolution adopted in February 1947 at the second survivors' congress in the American occupation zone in Germany, held at Bad Reichenhall: "The Congress resolves to place outside the camp those people who, during the war, acted against the interest of the Jewish people. Any such people who occupy offices are suspended from work pending their removal."[21]

Judenrat." Nowadays it is recognized that each ghetto leader chose to act in his own way and was regarded accordingly by the ghetto's residents. Moreover, in locations for which adequate documentation exists, the position of a particular recorder of events may be observed to change over time. The historian Aharon Weiss adopted a similar scholarly approach in his dissertation on the Jewish police. See Yeshayahu [Isaiah] Trunk, *Judenrate: HaMo'atzot HaYehudiot beMizrah Eropa beTequfat HaKibush HaNatzi* (Jerusalem: Yad Vashem, 1979); Isaiah Trunk, *Judenrat: the Jewish councils in Eastern Europe under Nazi occupation* (New York: MacMillan, 1972). Aharon Weiss, "HaMishtara Hayehudit beGeneralguvernment uveShlezia Ilit beTequfat HaSho'ah", PhD diss., Hebrew University, Jerusalem, 1973. I should add that, despite scholarly progress, the public attitude toward the Jewish police force and the functionaries in the camps remains as generalized and negative as ever.

20 Reports of functionaries who were identified being assaulted and handed over to the military administration appeared in the camp newspapers, alongside announcements calling upon the public to submit information that could lead to their apprehension. See Zeev Mankowitz, *Bein Zikaron leTikva: Nitzolei HaSho'ah beGermania Hakevushah* (Jerusalem: Yad Vashem, 2006), pp. 230-1. Zeev Mankowitz, *Life Between Memory and Hope: The Survivors of the Holocaust in Occupied Germany* (New York: Cambridge University Press. 2002), p. 205.

21 Yad Vashem Archive (YVA), JM10260/2 (Yiddish). To the best of my knowledge, this is the first such document issued by one of the leadership bodies of displaced persons in the American zone in Germany, from which one may learn of the official position regarding Jewish collaborators. Engagement with this issue may perhaps be explained by the decision to devote the Second Congress of the She'erit-Ha-Pletah (aftermath) in the American Zone in Germany (February 1946) to internal problems in order to contend with the process of moral degeneration among the survivors. As the historian Zeev Mankowitz explains, the first step was to address the anti-democratic norms that

Yet it was not only former functionaries under the Nazi occupation who had assumed leadership positions in the DP camps who were regarded as being beyond the pale. All collaborators were perceived as having played a part in the devastation of the Jewish people, and their indictment was seen as a way of "purging" the social climate.[22] Jewish collaborators were brought to trial in the DP camps as part of the judicial system established by displaced persons in Germany, Austria and Italy, which dealt with civil and criminal cases, as well as personal status issues. Although in the DP camps the Jews were subject to the judicial authority of the American or British sovereign military power, they nevertheless established their own autonomous courts and enforcement bodies. These were not authorized by the military powers and, in fact, operated in clear violation of their regulations. Indictments were submitted to the courts, which heard testimonies, cross-examined witnesses, and issued verdicts.[23] The authority of the internal courts of law in the DP camps was in fact self-assumed, and rested upon the close link and reciprocal relations between "the law" and "the community," which was manifested in compliance with invitations to bear witness, agreement to bear testimony, appearance before the court and compliance with the verdicts. These courts emerged from and owed their authority to the people in the DP camps – they were grassroots institutions.[24]

As the DP camps were dismantled, and following the establishment of Israel and the easing of the USA's restrictions on immigration, community justice was replaced by state law. Here too the process should be contextualized in light of the special circumstances of the survivors' immigration to Israel (both prior to and following the founding of the state), and of their treatment by the Yishuv and later by Israeli society.

had penetrated the leadership of the displaced persons. See Mankowitz, *Bein Zikaron leTikva*, p. 315 and *Mankowitz, Between Mempry and Hope*, p.282.

22 The following is an excerpt from a report by the Central Legal Department of the Central Committee of liberated Jews in the American zone in Germany for the years 1946-1947: "Jews who committed misdeeds during the war toward the Jewish people, as German agents and collaborators in the ghettos, as *kapos* in the concentration camps and labor camps, and who in one way or another contributed to the devastation of the Jews," YVA JM10260/3.

23 The archive of the DP camps in Europe (in Germany, Austria and Italy) has remained virtually intact and is kept in the YIVO archive at the Institute for Jewish Research in New York. An incomplete copy of this archive is kept at Yad Vashem in Jerusalem.

24 The decision to establish the system was made before the community of displaced persons had granted authority to the courts and the judicial system in general. Discussion of this issue is beyond the scope of this article.

At this time the attitude toward Holocaust survivors was colored by a binary view that counterposed heroism (the ghetto fighters and anti-Nazi partisan irregulars) with cowardice (the millions who went to their deaths "like lambs to the slaughter," and collaborators). Survivors who were not proven heroes were automatically suspected of owing their survival to collaboration with the Nazis. "How is it that *you* survived?" was the question they were confronted with.[25]

Ironically, the survivors themselves reinforced these attitudes by reporting other survivors to the police, charging them with having been functionaries in ghettoes or camps. In going to the police, the accusers sought public acknowledgement of the suffering they had endured.[26]

Toward the end of 1949, the Knesset, Israel's parliament, began drafting the Nazis and Nazi Collaborators (Punishment) Law, which was passed in August 1950. This was perhaps too early a moment for an adequate perspective that would allow comprehension of the requisite historical review of the events of the Holocaust in general and the circumstances of the Jews in particular. In presenting the bill to the

25 The resentment generated by these suspicions among the survivors found expression in a multitude of testimonies and memoirs. The author Aharon Appelfeld, who survived the Holocaust as a young boy, has written of his attempts to fit into the children's group in the kibbutz: "He enquired, and his questions had that nasty ring of accusatory metal. What really happened there? And how come that you were saved?... The questions that came from the outside were of no use. They conveyed an abyss of misunderstanding, questions from this world, utterly unattached to the world from which we came. As though you were to ask for information about a deep chasm or, on the contrary, about eternity." Aharon Appelfeld, *Masot beGuf Rishon* (Jerusalem: HaSifria HaTzionit, 1979), pp. 35-6; Aaron Appelfeld, *Unto the Soul*, trans. Jeffery M. Green (New York: Rodham House, 1994). In her autobiography, the author and journalist Ruth Bondy wrote: "But here, in Israel, the Jews also asked me: how did you live through it? What did you have to do to survive? There was a glint of suspicion in their eyes: a *kapo*? A prostitute?..." Ruth Bondy, *Shevarim Sheleimim* (Tel Aviv: Gevanim, 1997), p. 44.

26 Prior to the passing of the Nazis and Nazi Collaborators (Punishment) Law, the police had no authority to arrest and investigate people against whom a complaint had been lodged relating their behavior toward other Jews during the Holocaust. They could only record an affidavit. This was not merely a matter of a lack of formal authority to investigate and indict, but rather a far more profound and essential lack of a conceptual apparatus that could incorporate the difference between the usual meaning of, for example, "assault" in criminal law and the "assault" attributed, say, to a Jewish policeman who assaulted a Jew in a ghetto in the course of his duty.

Knesset in March 1950, Minister of Justice Pinhas Rosen stated that the young state of Israel was now joining the family of nations that had passed legislation to punish the Nazis and their collaborators. The stormy debate over the bill, however, demonstrates that the members of the Knesset perceived the law to constitute a means of bringing alleged collaborators, and more precisely alleged Jewish collaborators, to justice. The minister of justice in fact granted official sanction to this view of the bill when he referred to the law's "practical" implications, as opposed to its symbolic significance:

> Finally, another word about the practical implications of the law.... The law applies also to those who carried out the orders of the Nazis and we cannot, unfortunately, be sure that such people are not among us, although they are certainly few in number.... The proposed law may furthermore contribute to clearing the air among the survivor remnant that has immigrated to Israel. Everyone who is familiar with its problems knows how painful is the issue of suspicions and mutual accusations that to this day hover over some of those liberated from the camps and ghettos who have immigrated to the country.... Let our camp be pure.[27]

Thus, in the sovereign state of Israel, as in the DP camps, the act of arraigning Jewish collaborators was perceived as an act of social cleansing.

The testimonies heard in trials of Jews prosecuted under the Nazis and Nazi Collaborators (Punishment) Law, the precise number of which is not known,[28] are

27 Knesset Proceedings 4, p. 1148 (1950).

28 The historian Hanna Yablonka maintains that some forty such trials were conducted. See Hanna Yablonka, "HaHoq le'Asiyat Din baNatzim uve'Ozreihem: Heibet Nosaf leShei'elat HaYisra'elim, HaNitzolim veHaSho'ah," *Qatedra* 82 (1997), p. 135. This count, however, refers to the period leading up to the Eichmann trial. Yet Jews continued to be brought to trial under the law thereafter, certainly into the mid-1970s. The information regarding the number of trials, moreover, fails to distinguish between trials that determined the defendants' criminal responsibility by finding them innocent or guilty, and preliminary proceedings or "initial investigations" conducted in Magistrates' Courts, which were not considered to be full judicial proceedings, but rather the stage at which the investigating judge examines whether there is sufficient evidence to indict the suspect. In most cases, neither the defendants themselves nor other defense witnesses gave evidence at this early juncture and in many cases prosecution witnesses were not cross-examined at all.

a historical trove of evidence about the deadly and horrific routine of the ghettos and camps. While the survivors had experienced it on a daily basis, it was beyond most Israelis' cognition and comprehension. Their testimonies remained buried in disintegrating files in the state archive. Only six verdicts against alleged collaborators were made public via the official publication of court rulings, four from the Supreme Court and two from the Tel Aviv District Court.

These were the historical and juridical circumstances under which Julius Siegel's legal journey proceeded. Siegel was not an extraordinary figure. He is hardly mentioned in testimonies not relating directly to his case, or in the memoirs and diaries of other Jews. But the four court cases in which he played a leading role are well documented, and thus afford a unique opportunity to examine how the law dealt with the phenomenon of Jewish collaborators with the Germans.

Julius Siegel: The Judicial Story

The following biographical facts may be gleaned from Julius Siegel's testimony during his various trials.[29] Born in 1895, he volunteered for service in the Austrian army in 1914. He graduated from officer school and served in that capacity. He claimed to be an engineer and was active in the Zionist Organization in Silesia, now in Poland. He had planned to resettle in Palestine but did not go in the end, so he related, because of his marriage to a woman from Będzin, to which city he then moved.

Following the German occupation of the city, Siegel worked for the first Judenrat and was responsible for preparing lists of Jewish forced laborers.[30] From October 1940

29 Siegel's name crops up in only a few external legal testimonies with reference to the city of Będzin and its Jews. I have failed to find any biographical detail pertaining to him other than in judicial texts, apart from the fact that he headed the "Soldiers' Alliance" in Będzin, whose membership comprised only former military personnel and which was officially recognized by the Polish government. The organization appears to have been ideologically associated with the Revisionist Movement. This is the only mention of Siegel's name in the memorial book of the city of Będzin (see A.S. Stein (ed.), *Pinqas* Będzin (Tel Aviv: Irgun Yotzei Będzin beYisra'el, 1959), pp. 272-3). In his study of the Judenrat, Isaiah Trunk mentions Siegel's trial in the Milan court as an example of a trial of a former member of a Judenrat, although there is no evidence to suggest that Siegel was in fact a member of the Judenrat. See Trunk, *Judenrate*, pp. 492-3. See Trunk, *Judenrate,* pp. 554-5.

30 The episode of forced labor played an important part in the daily lives of the Jews of Zaglembia. The Germans began to recruit Jews for forced labor from the outset of the occupation. This was an industrial area close to the German border in which many coal

onward he held various positions in the forced labor camps of Brande, Sakrau and Gross Mysłowice, among them the post of "Jewish elder" (*Judenältester*).[31] The Germans then sent him back to Będzin, where he was made a foreman in a tailoring workshop under German ownership in which thousands of Jews made uniforms for the German army. Siegel remained there until the final liquidation of Będzin's ghetto in August 1943. Along with the city's other remaining Jews, he was transported to Auschwitz, where he held a desk job in a cobbler's workshop. From Auschwitz he proceeded by way of a death march to Mauthausen, where he remained until the liberation of that camp. He reached Italy in August 1945. While assisting in the organization of a camp for Jews in the city of Padua he was identified and consequently dismissed from his post. Here began Siegel's judicial saga.

I will argue, through an analysis of the indictments, testimonies and verdicts, that in the community court the community and juridical norms were compatible, while the opposite was the case in the state court. Furthermore, in the community court the

mines were located. The Jews were initially put to work within the cities. Those with financial means managed to extricate themselves from this labor. In 1940 the Bureau of the Commissioner for Labor Forces of Foreign Peoples in Upper Silesia (referred to in most German documents as "Organisation Schmelt," after its leader) was set up in the area. It operated a network of labor camps in the region, in which some fifty thousand Jews were put to work. The Shmelt organization was helped by the labor departments established at the community centers and local Judenrat, which provided it with laborers. On the topic of forced labor in the lives of the Jews of Zaglembia, including Będzin, and on the "Organisation Schmelt," see Bella Guterman, "Yehudim beShurot Irgun Tot beMas'a lekibush Brit HaMo'atzot (October 1941-March 1942)," *Yad Vashem Qovetz Mehqarim* 29 (2001), p. 53; Bella Guterman, "Jews in the Service of Organization Todt in Occupied Soviet Territories October 1941-March 1942," *Yad Vashem Studies*, 29 (2001) p. 65; Avihu Ronen, "'Ovdei Kefia beMahanot shel 'Irgun Shmelt' beShlezia 1940-1944," *Dapim leHeqer HaSho'ah, Me'asef* 11 (1993), p. 17.

31 The office of *Judenältester* fulfilled two functions during the Holocaust. In locations at which the council of Jews appointed by the Germans was known as *Ältesternat* (Council of Elders), the head of the council was called *Judenältester* . This was the case, for example, in the ghettos of Lodz, Theresienstadt, Riga and others. This title was furthermore applied, perhaps unofficially, to senior Jewish functionaries in the camps. According to judicial and external testimonies, Siegel was the *Judenältester* in the Sakrau labor camp in Upper Silezia. See the testimony of Elyakim Itzkowitch, YVA O.3/ 7444, which speaks of Siegel as *Judenältester* in the Sakrau camp. In his testimonies Siegel referred to himself as a *Judenältester* .

defendant, witnesses, and judges displayed affinities, which was not the case in the District Court, where there was a clear disparity between the defendant and witnesses on the one hand and the judge on the other. I also consider the narrative technique employed by the witnesses in both these judicial settings, which did not focus only on the defendant and the charges brought against him, but rather on the history of the Jewish community of Będzin, from the beginning of the German occupation until its extermination, including the complicated encounter with Jewish collaborators. These testimonies furthermore provide a glimpse into life in the German forced labor camps in Upper Silesia. The public airing of these stories, so familiar to the displaced Jews, was, in Israel's initial years of the state, a revelation to the wider public.

i. The "DP Social Court" in Italy

Although they were dispersed among camps and assembled in centers throughout Italy, displaced Jews almost immediately formed local governing committees made up of veteran Zionist activists. These leaders established an organization that represented the DPs to the British and the Italian authorities, the Refugee Center, the Organization of Jewish Refugees in Italy. It was founded in August 1945; in November of that year the first convention of Jewish refugees in Italy convened in Rome. One of the decisions made at this gathering was to set up a court under the aegis of the Refugee Center for the purpose of trying and punishing Jews who had harmed their fellow-Jews during the war years.[32] The convention likewise decided to set up a "social court," thereby expressing its strong desire to combat by its own means "all instances of the demoralization spreading among the refugees.... [I]t was decided to establish local courts among the major concentrations of refugees in Italy.... These local courts, under the supervision of the social court of the refugees' organization in Italy, will operate according to the following regulations...."[33] A central court was located in Rome, with

32 Resolution number 2 in chapter 2 of the Congress Resolutions, which dealt with "Organization." On the congress resolutions see "Kinus Plitim Yehudi'im beItalia – 26, Nov. 28, 1945," *Ghetto Fighters House Archive* (GFH), computer number 2314 (Yiddish).

33 "Statute of the Social Courts," YVA JM10534/ 211 (Yiddish). The internal statute of the social court in the Rivoli camp states that "The Jewish Social Court ... performs the function of a popular court as is the custom ... in every country and among every people. Since the court does not function according to laws and clauses formulated according to legal principles, but rather according to a social rationale and principles of national ethics, according to which it will examine and pass judgment on all matters

five subordinate local courts operating in Milan, Rivoli, Cremona, Turin and Bari. A "Statute of the Local Courts" determined the contents and limits of their local authority. They were, for example, authorized to hear cases involving "public humiliation, dissemination of slander, gossiping and other types of vilification"; or "private monetary disputes of a social nature or those linked to the special living conditions of the particular community of refugees." The authorization clauses in the statute do not contain an explicit directive relating to Jewish collaborators, but this matter may be included in the category of "immoral behavior on the part of refugees that is liable to besmirch the reputation of the population of refugees in Italy or is liable to cause moral harm to the particular population of refugees."[34] The panel of judges comprised "members selected jointly by the Central Organization of Refugees and the Social Court of Rome, and in all cases their number will be determined by the Social Court of Rome."[35] The statute of the local courts determined that "the examination procedure and hearings in the local court will take place according to the generally accepted principles of law, which protect, as far as possible, the defendant's right to defend himself and whose objective is to reveal the objective truth."[36] A statute detailing the procedures to be adopted by the local courts, however, stipulated directives relating to the public nature of the hearings, the witnesses' obligation to speak "only the truth," and the courts' obligation "to examine all aspects of the matter and to clarify all aspects pertaining to the defendant's innocence or guilt."[37] The "penalties" that the local courts were entitled to impose were of a communal nature: a remark, reprimand or severe reprimand – with or without a warning; disqualification for appointment to any kind of social position, permanently or for a stipulated period; an appeal to Jewish or general welfare organizations to desist from all material or financial assistance to the convicted person; an approach to the camp administration or other institutions regarding expulsion of the guilty party from the particular camp or region; submission

brought before it, it bears the title of the Jewish social court." See YVA JM10534/208 (Yiddish). I have failed to find a document that links the decision to set up a court to bring Jewish collaborators to trial to "the social courts." This may be have been one and the same judicial system, and it was perhaps because of the importance attached to the issue of bringing Jewish collaborators to trial that a special clause regarding this matter was included in the convention's decisions.

34 Clauses 8(c), 8(d) and 8(b) of the Statute of the Social Courts.

35 Clause 5 of the Statute of the Social Courts.

36 Clause 13 of the Statute of the Social Courts.

37 "Court Procedures," YVA JM10534/211.

of the court ruling to the relevant emigration institutions with the option of requesting that their name be erased from the list of emigrants; and publication of the verdict in the journal *Baderekh*.[38]

ii. The Indictments

For unknown reasons, Siegel appeared before two different but equal panels of local courts. On June 29, 1946 he was arraigned for the first time before the court of the Cremona camp. The proceedings were suspended after two sessions and the hearing was transferred to the court in Milan, with the authorization of the central court in Rome. These were both local courts, operating at the same level. The indictment in the Cremona court rested upon one count: "I hereby accuse Siegel Julian ... of actively assisting the occupier during the German occupation in such a way that many Jews were sent to their death through his actions, many were transported to the camps after being turned in by him, and many were beaten by him."[39]

The indictment is thus broad and indeterminate, and could relate to any of a range of actions or failures to act. It makes no mention of specific locations or times, it does not specify any particular role, nor does it name any of the people Siegel ostensibly harmed. The witnesses thus had considerable discretion to testify to any event they thought relevant and to make any assertion they felt appropriate against Siegel.[40]

When Siegel's case was transferred to the Milan court an important amendment was introduced to the indictment. From being "an active assistant to the occupier," as he had been accused in Cremona, the count was changed to an explicit accusation of

38 Clause 17 of the Statute of the Social Courts. The Yiddish language journal *Baderekh* was published by the Refugee Center, the Organization of Jewish Refugees in Italy and became the journal of the displaced Jews in Italy.

39 "Indictment," Documents of the DP Courts.

40 This procedure was clearly incompatible with Israeli criminal law. The indictment in the DP court was couched in a broad manner, and was "translated" into specific actions only once evidence was heard. In Israeli law the indictment generally contains "indictment particulars," which describe particular actions or omissions that are assigned, according to the prosecution, to the appropriate judicial categories. The principle of legality, which is one of the most important principles in criminal law, determines that "punishment should be preceded by a warning," and this lends importance to the written, clear and precise definition of the unlawful action. See Yuval Levy and Eliezer Lederman, *Iqarim beAhrayut Pelilit* (Tel Aviv: Ramot Ma'arahot Hinukh, 1981), p. 67.

treason: "the subject of the hearing is the accusation against Julius Siegel of treason to the Jewish people." Both these charges, that Siegel acted as "an active assistant to the occupier," and that he had betrayed the Jewish people, indicate that Jewish collaborators were taken to be traitors.

According to the court record, it would appear that the prosecution witnesses in both the local courts were not cross-examined. Neither were any defense witnesses called, apart from the defendant himself, despite Siegel's explicit request to do so before the second panel. I begin my discussion of the testimonies with the evidence the defendant presented to both tribunals. Then I will discuss the testimonies of the witnesses for the prosecution.

iii. The Defense: Siegel's Testimony in Cremona

Siegel presented his claims in the form of a speech, quite unlike the procedure of questions and answers familiar in Israeli law.[41] He was thus able to choose, without interference, the starting point for his narrative, which facts to include in it, and the order in which to relate them. At this first trial, Siegel began with the German occupation of Będzin. This choice determined the territory covered by the narrative and the characterization of himself that he would offer to his accusers – that is, his fellow townsfolk, the witnesses, the judges, and the members of the DP camp community. "In the year 1939, when the Germans seized Będzin, they issued the order to clear the city of its rubble. Since the Jews were at a loss as to what to do, he assumed a position of leadership in this job."[42] That he began here and referred to "leadership" gives an indication of Siegel's line of argument: he suggested that he had in mind the general good when he took upon himself the task of "educating" the Jews. He described, for example, the preparations prior to the departure of a labor detail, an *Osteinsatz*, from

41 Siegel's testimony was probably recorded by the court secretary, and is written as a sort of summary in the third person. The judicial model adopted in the DP camps resembled that of European law, which differs from the Anglo-American legal system generally adopted in Israel. One of the differences lies in the sequence of the proceedings. According to the Continental model, the trial commences with the interrogation of the defendant rather than – as is the case in Anglo-American and Israeli law – with the prosecution evidence. On the differences between the Anglo-American and Continental judicial systems see Mirjan R. Damaska, *The Faces of Justice and State Authority* (New Haven: Yale University Press, 1986), pp. 3-6.

42 The Cremona Proceedings, in Documents of the DP Court. The testimony is recorded in the third person, thereby lending an aura of importance to the figure of Siegel.

Sakrau camp to an occupied area of the Soviet Union: "This reflects favorably on the defendant, showing that he sends the people dressed in new clothes with *Osteinsatz* armbands, without patches [without being marked as Jews], as the train departs to the tune of 'Hatikva.'"[43] Siegel's self-portrayal culminated with the declaration: "The Jew Siegel was famous throughout Europe."

Yet Siegel sought to educate not only the Jews. According to his somewhat self-glorifying account, he also wanted to alter the Germans' image of the Jews as passive and submissive: "The defendant declares that when a German officer addressed him with '*du*' [the familiar second person form of address denoting in this case the inferiority of the person addressed] he had the courage to say, why do you say '*du*,' I don't take the liberty of saying '*du*' to my subordinates. He declares that he never lifted his hat to a German but always saluted, as an equal."

Siegel regarded himself as a good superior: "He stresses that, upon entering Auschwitz, all the *Judenälteste* were tried by a popular court and punished appropriately. But he, being a good *Judenälteste*, was not punished." The harsh actions attributed to him by the prosecution witnesses were taken by him, he claimed, for their own good. It appears that Siegel did indeed see himself as having assisted the Germans, as the Cremona prosecutor charged, but he interpreted the concept of "assistance" very differently from the way the prosecution witnesses did. He thought of himself as having assisted the Germans for the sake of the Jews and in their best interests.

43 The Osteinsatz group comprised young Jews imprisoned in forced labor camps who were seconded to the task of restoring the railway network in the Soviet Union. As the Jewish elder in the Sakrau camp, Siegel was chosen to form the group. Candidates were separated from the other camp inmates, and 350 men were selected for parade drills led by Siegel. At the parade marking their departure in November 1941, Siegel took the opportunity to ask his German superior to take care of the families of the departing men. At the end of the ceremony Siegel ordered the prisoners to sing the Zionist anthem *Hatikva*. After some four months in the East an epidemic swept through the group. The few who survived the cold, the hard labor and disease were returned and distributed among labor camps. On the strange and cruel project of employing Jews in the conquest of the Soviet Union, see Guterman, "Jews in the Service of Organization Todt," p. 78.

iv. The Defense: Siegel's Testimony in Milan

Siegel's second round of testimony differs from the first both in structure and content. As stated, Siegel had begun his initial testimony with the Germans' entrance to Będzin. Before the court in Milan, however, he stepped farther back in time to recount his personal pre-war experience: "Completed his high school studies and continued to study at the polytechnic. In 1914 he volunteered for service in the Austrian army, graduated from the officers' academy and shortly thereafter was appointed an officer...."[44] To this he added that he had been "active in the Zionist Organization of Silesia. Participates in a Zionist Congress ... then on the point of departing for Palestine, but upon his marriage he remained in Będzin, where he was active in various organizations up to 1939."[45]

This change in time frame is no mere technicality. It transformed the narrative. In his second testimony, Siegel no longer presented himself as a man "in whom the Germans placed great trust, accepting whatever he suggested," or "the only Jew interviewed by the German press..."[46] In Milan, Siegel portrayed himself as a victim, who in all his roles was in fact subordinate to a more senior official. Although responsible for the allocation of Jews for forced labor, he was subject to the authority of the German official in charge of the labor: "Two managers on behalf of the community officially administered the labor office. Siegel was merely the leader, and the labor office was administered and operated according to the instructions of a German..."[47]

44 Proceedings of the Milan Court, Proceedings of the DP Court.

45 Ibid.

46 "Proceedings of the Cremona court," in Documents of the DP Courts.

47 "Proceedings of the Milan court," in Documents of the DP Courts. It should be said that this description accords with external testimonies, unrelated to Siegel, that underscore the role of the German superior and the fear that he instilled in the city's residents. In the book *Ir HaMetim* [City of the Dead], for example, one of the major books portraying life in Będzin after its occupation, David Liver emphasizes the pivotal position of Artel, the German in charge of labor affairs, who terrorized the Jews of the city. See Liver, *Ir HaMetim*, pp. 22-4. Siegel's name is not mentioned in this context in the city's memorial book, *Pinqas* Będzin, which addresses various aspects of Jewish life in the city during the Holocaust. Neither does he appear in another memorial book describing what befell the author and the Jewish community following Będzin's occupation. See Dov Zalmanowitz, *Aviv be'Alata, Ovdan HaNe'urim be*Będzin *uveMahanot* (Jerusalem: Yad Vashem, 2003). The witnesses, interestingly, attribute to Siegel the same characteristics attributed to the German superior Artel by external testimonies.

Siegel also revised the reason he offered for his departure for Brande, the labor camp. In his first testimony he presented the transfer as having been at his own initiative, "in order to share the general fate."[48] But in Milan, Siegel claimed that he went to the camp following a dispute with the head of the regional Judenrat, Moshe (Monik) Marin. When he returned to Będzin he was named the "Jewish elder" in what he called the "tailor shop," "since a Jew cannot act as the head."[49] Here, too, Siegel stressed his inferior status and his subordination to the Germans. After making his statement, the judges questioned him. While the record does not preserve the questions, their nature can be divined from his replies.[50] Siegel seems here not to have entirely foregone his self-image as an "educator": "I do not wish to deny that I beat Jews in the various camps. I beat them also when the Germans were absent. But among the Jews there were cases such as theft of bread, bodily filth, shirking work, and I couldn't have reacted otherwise to this... after I did this I always regretted it."

This admission and expression of regret, missing from the first testimony, serves to "soften" the impression of arrogance and toughness, while at the same time constructing a line of defense.

v. Testimonies for the Prosecution

The prosecution testimonies in both the local courts were neither tested nor verified by means of cross-examination or by calling defense witnesses. Most are not first-hand accounts, but consist rather of hearsay, a jumble of different events and periods, exaggerations and, not least, historical distortion and falsification. Most of the

48 "Proceedings of the Milan court," in Documents of the DP Courts.

49 The "shops" were German owned workshops established by the Judenrat in which Jews worked for the Germans. The holder of a work card was (temporarily) exempt from deportation. A tailor "shop" functioned in Będzin, employing thousands of workers, supervised by a German by the name of Rossner. In all the testimonies pertaining to Będzin the witnesses speak favorably of Rossner. He was the only one to "protect his Jewish workers and he did not abandon them to the labor camps and deportation ... prior to every deportation he would warn the Jews who worked for him of what was about to happen, and many Jews were saved thanks to him." See Liver, *Ir HaMetim*, pp. 45-8. In January 1944 the Gestapo arrested and executed Rossner.

50 Statute 7 of the statute of judicial proceedings of the DP courts stipulates: "The witness will initially be questioned by the court, and thereafter the parties will be able to pose questions to him, subject to the permission of the chairman." See "Statute of Judicial Proceedings" YVA JM10534/211 (Yiddish). This procedure accords with the Continental juridical system.

testimonies are couched in language such as "so and so's sister told me ...," "friends told me that ...," "I met people ... and spoke to them and heard reports about Siegel from them ...," "I later heard that ...," and so forth. Unlike regular judicial evidence, which is based on information received through one of the senses, these testimonies do not only pertain to the defendant and his deeds. Yet it is precisely these testimonies that provide a picture of the life of Jews in Będzin under German rule and in the labor camps.

The testimonies were submitted about one year after the end of the war, with the traumatic experiences still fresh in the witnesses' memories. This may well have been their first opportunity to speak publicly, in the distinguished forum of the social-community court, about what they had undergone. It was, moreover, a unique public occasion on which to settle a score with the Germans through a Jewish proxy.

What can one make of Siegel's character from the prosecution testimonies? In contradiction of the known facts, the witnesses portray Siegel as an omnipotent figure in the city. For example: "Julian Siegel was the supreme leader of all the group leaders."[51] Another witness likewise uses the expression "leader": "One day the Germans were looking for laborers, I myself was ordered to appear for work at a central point in a barracks. How surprised I was to find that the leader was Julius Siegel, who was the *Gauleiter*'s right-hand man,[52] the one we called '*der geller Leizer*,' ['the yellow Leizer']. . . . I must add that there was no one who could counter Siegel's dominance, and everyone was brutally cleared from his path."[53]

One witness, named Wechsberg, differentiated between Siegel the "collaborator" and the other Jews: "The larger part of the community refused to work even before then, since it did not wish to collaborate with the German occupier." He resorted to

51 Prosecution witness Genia Tsherna Lerner, in Documents of the DP Courts.

52 A *Gauleiter* was originally the head of a regional branch of the Nazi Party. With time the term came to denote any official functionary in a certain area. The man referred to by this witness was a German named Artel, who was in charge of labor affairs in Będzin. Apart from being particularly cruel, he was drunk for most of the day and kept a dog that he would set on the Jews. His nickname, "*Der geller Leizer*," the yellow Leizer, was earned by a combination of the brown party uniform he wore and his red nose, the consequence of his hard drinking. The expression "the *Gauleiter's* right-hand man" is repeated by additional witnesses in Cremona and Milan. See, for example, the testimony of Betzalel Rotner, written evidence, in Documents of the DP Courts.

53 Prosecution witness Berish Wechsberg, written evidence, in Documents of the DP Courts.

distorting history in order to enhance the impression of Siegel the collaborator. No one would dispute the fact that the Jews in all areas under Nazi occupation did all they could to obtain a work card, which meant exemption – albeit only temporary – from deportation to the camps. The Jews of Będzin were no exception in this respect.[54]

The witnesses believed that Siegel had been intent on promoting his own interests rather than those of the community: "Given his cordial relations with the *Gauleiter*, all he had in mind was to serve the Germans and he never looked after the affairs of the Jews."[55] As a result, according to the witness, "[people] were as afraid of Siegel as of the *Gauleiter*." Presenting Siegel as someone who had become "like" the German is the clearest manifestation of his treason.[56]

In their testimonies regarding Siegel's behavior in Bedzin, in the labor camps, and in Auschwitz, the witnesses likewise underscored his good relations with the Germans, rather than recounting specific actions. Their primary purpose was to demonstrate his "German" identity: "In his speech Siegel repeatedly emphasized his close and intimate relations with Lindner, saying that he often engaged in conversation with him...."[57]

54 The prosecution witness Genia Tsherna Lerner testified in the Honorary Court of the Zionist Organization that "2000 Jewish laborers registered [for work in the tailor 'shop']. Almost half of them did no work. *Many registered just so that they would not be sent to a camp outside of* Będzin." See Documents of the DP Courts (the emphasis is mine).

55 Testimony of Berish Wechsberg, in Documents of the DP Courts.

56 Comparison between the Jewish superiors and the Germans was a common rhetorical device in trials of Jewish collaborators, both in the DP camps and in Israel, and was designed to enhance the defendants' negative image. For example, a prosecution witness in the trial of the Jewish policeman Mordecai Goldstein, which took place in the Tel Aviv District Court, maintained: "Everyone was afraid of him. They feared him more than they feared the Germans. A German who entered the hut would not beat [us]. The defendant beat [us]." See CrimC 93/52 (TA) *Attorney General vs. Goldstein* (1953, unpublished), Proceedings, p.1.

57 Testimony of Dr. Moritz Hersteil, documentary evidence, in Documents of the DP Courts. In his testimony to Yad Vashem, Elyakim Itzkovitz recounts the same event, albeit from a different perspective: "And now the date of the first anniversary of the establishment of the camp was approaching. And I was once more summoned to the room of the *Judenältester* at the time, Julius Siegel.... He asked me to organize some kind of event to mark this day ...and now the day had arrived. At the end of a residential hut at least twenty meters long ... a stage was erected. Chairs removed from the rooms were arranged and at five in the evening the show began, with the civilian German

To reinforce the identification of Siegel with the Germans, the witness explained who Lindner was: "I should note that Lindner was the man who exterminated all the Jews in the part of Poland annexed to Germany and only a few people were permitted to approach him." This is a further example of a factual distortion that remained uncorrected. It established an image of Siegel as a friend of an arch-fiend. But Heinrich Lindner was, in fact, a second-rank SS officer who served in the Shmelt labor organization.[58] Historically speaking, one cannot attribute the extermination of Upper Silesia's Jews to Lindner, as the witness asserts. Yet it was sufficient to stress Siegel's cordial relations with the SS officer, whatever his position and status might have been, in order to present him as someone who had become "like" Lindner. The witness added: "In our camp Siegel was considered to be someone who had sold his soul to Lindner. Since it was inconceivable that they could derive any benefit from a man who was that close to Lindner, the greatest murderer of Jews, the man who exterminated not only the Jews of Silesia, but also the Jews of Belgium, Holland and France."[59]

Use of the expression "sold his soul" is certainly not fortuitous. As Judge Binyamin Halevy would do ten years later in the Kastner affair, the witness "corrected" history so that it would accord with a literary precedent, thereby producing an unmistakable and resounding moral statement.[60]

Descriptions of Siegel's behavior in Auschwitz likewise present him as currying favor with his superiors in the camp's internal hierarchy: "He maintained good

manager of the camp seated in the first row ... and then the *Judenältester* Julius Siegel climbed onto the stage and, speaking in German, launched into a passionate Zionist speech, the ending of which I can hear to this day and I remember his exact words, which were [German], and at this point he pointed at the yellow Star of David with the word *Jude* inside which we all wore [German]. 'Hatikva.' We rose in unison, and so did the Germans, and we sang 'Hatikva' with gusto. And then the performances began...." Testimony of Elyakim Itzkowitz, YVA O.3/7444 (the square brackets appear in the original).

58 With the rank of *SS-Obersturmbannführer*, Lindner was responsible, along with others, for deportations to the camps and for the unit that provided guards. See Stephan Lehnstedt, "Coercion and Incentive: Jewish Ghetto Labor in East Upper Silesia," *Holocaust and Genocide Studies* 24: 3 (2010), pp. 400, 408. On Organisation Shmelt and labor camps in Upper Silesia, see Guterman, "Jews in the Service of Organization Todt" and Ronen, "'Ovdei Kefia beMahanot."

59 Testimony of Dr. Moritz Hersteil, Documents of the DP Courts.

60 On the Kastner trial and the use of literary analogy see Leora Bilsky, *Transformative Justice* (Ann Arbor: The University of Michigan Press, 2004), pp. 41-60.

relations with the head [unclear word] who was a true Jew-hater."[61] The witness proceeds to attribute a motive to Siegel's behavior. In his view, it was not a matter of money changing hands: "He merely tried to dance before the Germans, to endear himself to them." The witness here employs the derogatory term "*Le-raked Be-fanav*" ("to dance before him") for a Jew who grovels before a gentile, not merely to cast him in a negative light but, primarily, to describe the intimacy of the gentile and the Jew, which must certainly have been at the expense of other Jews.[62]

The characteristics attributed to Siegel in Auschwitz were no different from those mentioned in descriptions of his behavior in other locations. The witness who testifies about Auschwitz describes a man feared by all, and like other witnesses, he too resorts to historical distortion in an attempt to enhance the figure's demonic dimension: "That was also the reason [the fear of Siegel] that people left the workshop for selection as *Muselmänner*, for extermination, that is."[63] Is it possible that "selection" and the probability of being sent to the gas chambers were an alternative that people chose freely rather than remaining subordinate to Siegel? Yet, as I have noted, the testimonies relating the daily routine make no pretense of factual precision, since they were not designed to provide additional information but rather to portray a traumatic experience the witness underwent.

The testimonies in the two courts in Italy pertain to two main elements, namely Siegel's moral character and his actions. Morally, he was presented as a "traitor," a

61 Testimony of Ya'akov Gottlieb before the Cremona court, in Documents of the DP Courts.

62 The expression "*mayofis*" (a corruption of the name of the liturgical Sabbath ode "Ma Yafit") became entrenched in Polish-Jewish culture. It refers to a song and dance performed by a Jew or someone mimicking a Jew before a Polish audience, which mocks him as he "entertains." For the Jews, "*mayofis*" became a demeaning expression denoting forced sycophancy and servile accommodation of the expectations of Polish grandees. See Chone Shmeruk, "Mayofis: Musag Mafteiah beToldot HaYahasim bein Yehudim LePolanim," in Chone Shmeruk, *HaQri'a laNavi: Mehqarei Historia veSifrut* (1999), pp. 101-17.

63 The parentheses appear in the original. The fear of Siegel is corroborated by external evidence. In his memoir of Gross Mysłowice camp, Dov Zalmanowitz relates: "I wandered about [the camp] in terror even though some people from Będzin were at the head of the camp. Names such as Siegel and Wexelman were notorious. These were powerful strongmen with whom neither I nor my family had anything to do." See Zalmanowitz, *Aviv be'Alata*, p. 114.

social indictment of supreme severity. The witnesses regarded Siegel as a man who had crossed the lines and had become "like" a German. As far as his actions were concerned, it appears that the witnesses believed that Siegel had been motivated by personal and selfish considerations in performing his roles and had in fact served the German interests. These two elements constituted an unacceptable collaboration, even though it was often difficult to differentiate between them.

To conclude this section, consider the way one witness described the reaction to the news that "Siegel together with his wife and daughter had been abducted in the street during a German roundup (*Aktsia*) and sent to Auschwitz. We were overjoyed by this, thinking that this was just what a traitor deserved."[64] In fact, Siegel's wife and daughter were sent to Auschwitz long before he was. Siegel himself was not "abducted" in the street, but transported to Auschwitz with the remaining Jews of Będzin in an *aktsia* that began on August 1, 1943. But the facts are unimportant here; the image is far stronger.

vi. Summing Up the Parties' Arguments

Siegel petitioned the court, on July 18, 1946, to postpone the hearing until defense witnesses had been called and every effort had been made to appoint a counsel for the defense. He was turned down.[65] The following day the court announced that the defendant's witnesses had not materialized and he had declared that that he had been unable to find an attorney. The prosecutor asserted that "the defendant's guilt has been entirely proven and ... he [should] be punished accordingly." The defendant was allowed the final word. Rather than sum up his defense of himself, Siegel took this opportunity to argue for a light sentence, even though the court had yet to find him guilty.

64 Testimony of Dr. Moritz Hersteil, Documents of the DP Courts.

65 An excerpt from the hearing: "Wishing to give the defendant the opportunity of hearing the witnesses that he proposed, and, on the other hand, not wishing to postpone the matter indefinitely by interrogating the witnesses proposed by Siegel, who are somewhere in the region of Munich, the court hereby decides to adjourn the trial until tomorrow, that is, July 19 at 2 p.m., in order to facilitate the appearance of the witnesses who are in Cremona and to enable the defendant to find an attorney." The session was adjourned at this point and on the next day the record shows that the witnesses summoned from Cremona had not appeared in court, and that the defendant "declares that he was unable to find an attorney and requests the court that, should the hearings continue, he be permitted to speak as a defense counsel and also as a

> [He] describes the circumstances in which he was required to work as a *Judenälteste* in all the aforementioned camps, as well as the nineteen months that he spent in concentration camps. He maintains that he always wanted to help Jews, he admits that he beat Jews and that he beat them not only in view of the Germans. He sincerely regrets this because he now understands that this was a crime, while in the camp he was so angry that he found no other means of reacting. He asks the court to consider all this in passing sentence as well as the fact that he lost his wife, his daughter, that he is already over 50 years old and still hopes to end his life by doing truly beneficial deeds for his people and his country.

From Siegel's perspective, the final chapter of the judicial proceeding was like his second testimony at the court in Milan. As I have noted, he altered the scope of his personal narrative by harking back to his life before the war. He presented himself as an ordinary person whose previous life of individual and Zionist activity had been laid waste by the conflict. The arrogant and respect-seeking figure that emerged in his initial testimony at Cremona was nowhere evident in the summing up, just as it was not in his second testimony at Milan. Now Siegel painted himself as an ageing man who had lost his family. The figure of the first testimony at Cremona, the one who "volunteered" for service in the labor camps and administrative positions, gave way to a man who "*had* to work as a *Judenälteste*" in the camps."[66] Keep in mind that the hope

defendant. After conferring further the court decides to continue the trial and to accede to the defendant's request." The request noted by the court is Siegel's request to allow him to represent himself. Defense witnesses were not called, apparently because of the difficulty of bringing them from Germany. The proceedings appear in Documents of the DP Courts.

66 Documents of the DP Courts. Compare Siegel's train of thought, which began with the Holocaust and ended in the Land of Israel, with the Holocaust narrative offered by Gideon Hausner in the Eichmann trial. Hausner used the trial to present a complete meta-narrative of the Jewish experience during the Holocaust. At the time this story had not yet been told, since the Nuremberg trials did not relate to the Holocaust as a Jewish narrative but rather centered on the war and the category of "crimes against humanity." Hausner's meta-narrative included not only the story of the extermination, but also the obvious lesson to be drawn from it – the Jewish people can survive only in the state of Israel. The testimonies related traumatic events linked to the extermination,

he expressed, to end his life by doing truly beneficial deeds for his country, came long before the UN partition resolution and the founding of the state. They cannot, then, be taken as a political statement. Rather, this is a personal speech intended to establish the speaker's humanity – if he were only given the opportunity, his "penance" would take the form of good works for his people and country.[67]

vii. The Judgment

The document produced by the court in Milan does not resemble a judgment in the familiar and regular sense, since the legal proceeding that produced it was fundamentally flawed.[68] The court failed to adhere to commonly accepted rules of evidence and procedure, as the judges themselves must have been aware.[69] Yet they nevertheless issued a document that they called a "judgment," which dealt with the fate of an individual and was likely to influence his life, both in Italy and in Israel. Indeed, this document would play a role in future proceedings, where it was regarded as a legitimate judicial ruling determining that Siegel had been a traitor to the Jewish people.

In analyzing the court's verdict, I present, as I did with the testimonies, the way in which the judges perceived the character of the defendant as a Jewish collaborator, and how they formed, out of all the stories brought before them, an image of the defendant. The image was one they knew well, because the judges shared a set of experiences with the witnesses and the defendant. In fact, this is the most salient difference between the "community" judges and their "state" counterparts. The figure of Siegel as collaborator was not foreign to the community judges. They had no need to learn about the circumstances – they were familiar with them from their own lives. Their perspective on the witnesses' testimony was not an exterior or ex post facto one. It was, rather, embedded in the events as they had occurred. Like the witnesses, they

not only as part of the program of the Final Solution but also as a personal experience of heroism and hope in the state of Israel. For more on this matter see Bilsky, *Transformative Justice*, pp. 140-3.

67 One of the penalties imposed on Siegel by the Milan Court was the submission of the court's verdict to the Jewish migration authorities in Italy, with the intention of preventing his immigration to Israel. Siegel, in his summation, presented immigrating to Palestine as an act of atonement.

68 The judgment was handed down in the court in Milan on June 19, 1946. See Documents of the DP Courts. All citations in this section are from the judgment.

69 There was at least one jurist among the judges at Siegel's trial.

too comprehended the phenomenon of collaboration to be treason to the Jewish people, and this perspective was clearly manifested in their judgment. Unlike the requirements of state criminal law, which demands that judges focus solely on a defendant's actions, the verdict does not address any given act, but rather Siegel's general behavior, which in the view of the judges was not "of the proper level." In doing so, the judges effectively closed the circle that was opened when Siegel was accused of having betrayed the Jewish people.

The judgment commences with the first act of the defendant deemed to constitute collaboration: joining the Judenrat in the capacity of manager of the labor office.[70] It states as a fact that "in this position Siegel excels in his commitment to the German occupier. He endeavors to do his duty devotedly." This assessment, I shall argue, serves as a type of "road map" for the remainder of the judgment, since its conclusion is spelled out already in the beginning. On the strength of this (erroneous) factual determination that Siegel had indeed been a member of the Judenrat, with all that it implies socially and publicly, the judges accept not only the witnesses' claims of fact, whatever the strength of their evidence, but also the witnesses' interpretations of those facts.[71] As the prosecution in the Israeli proceeding would later do, the Milan panel emphasized that Siegel "accepts this post (of responsibility in the camps) of his own

70 I wish to stress that I have found no external evidence to support the assertion that Siegel was a member of the Będzin Judenrat. As far as I know, Siegel worked as a salaried official of the first Jewish committee in the city of Będzin, which was set up directly after the Germans occupied the city.

71 A heated argument ensued both in the DP camps and later in the state of Israel as to whether the very act of joining a Judenrat or the Jewish police, or performing a function in the camps, were a priori impermissible acts or whether those who did so should be judged according to their behavior. The decision arrived at in both locations was that the person's actions should serve as the yardstick. Nonetheless, clause 3(a) of the Nazis and Nazi Collaborators (Punishment) Law stipulates: "A person who, during the period of Nazi rule, in a hostile country, was a member of a hostile organization, or held office or performed a function in such an organization, is liable to imprisonment for up to seven years." In addition to applying this definition to those "criminal organizations" declared as such by the International Military Tribunal, the clause empowers the court to define as a hostile organization "any other grouping of people that existed in a hostile country whose aim, or one of whose aims, was to implement actions of a hostile regime directed against persecuted people, or to assist in the implementation of such actions." To the best of my knowledge no Israeli court has ever issued a judgment on this count.

free will." The court largely employs the active mood: "imposes his will," "acts," "beats," "remembers." In doing so, it presented Siegel as an active figure acting on his own volition, not coerced. In this manner the judges steered the discussion away from the possibility that Siegel played this role in order to survive. In their judgment, they offered a picture of a Jewish collaborator who chose to do evil for self-serving reasons: "seeking to accede to the occupier's demands and to maintain his prestige...." The judges seem to have adopted the common wisdom that collaborators were egoists who exploited their positions both to enrich themselves at the expense of their fellow-Jews and to save their own lives while helping send others to their deaths.[72]

In contrast with the common judicial conception of criminal justice procedure, the court's final conclusion focused on Siegel's moral character rather than his actions: "The court concluded that, during a dark period in the annals of the Jewish people, in the sad days of the extermination of European Jewry, the defendant Siegel did not live up to the proper standard. As an educated and learned person with, as he himself asserted, a nationalist past, Siegel not only failed to help his brethren combat the nemesis in all circumstances and by all means – he, on the contrary, carried out all the orders of the brutal murderer and on occasion even went beyond what was bidden by beating his fellow Jews of his own accord."[73]

The "proper standard" is not a criterion in criminal law; rather, it is a social and moral yardstick.[74] The court determined that, in practical terms, the "proper

72 As a rule, the motive for a person's actions does not play a part in determining legal responsibility, since invoking it would expose the judicial proceeding to the socio-political context within which the transgression was committed. See V. F. Nourse, "Hearts and Minds: Understanding the New Culpability," *Buffalo Law Review* 6 (2002), p. 362. The judges in the DP court failed to distinguish the act from the motive, thereby indicating the difficulty of separating an action carried out in exceptional and extreme circumstances, in which actions deemed to be unlawful in a regular state became part of the "legal" system, from an action carried out in a regular state. Much of the testimony submitted in the trials of Jews in Israeli courts according to the Nazis and Nazi Collaborators (Punishment) Law exemplified the difficulty of separating the act from the motive.

73 The judges' underscoring of individual initiative here recalls the conclusion of Eichmann's judges that "this is not to say that he performed his job only by obeying orders. On the contrary, at all stages he did so out of an inner conviction, unequivocally and willingly." CrimC 40/61, Attorney General vs. Adolf Eichmann (Jerusalem: Sherut HaPirsumim, Merkaz HaHasbara, 1974), p. 246.

74 This, for example, is how Zorach Warhaftig, then a member of the Knesset, viewed

standard" required extending assistance to fellows Jews. Its opposite was to carry out the Germans' orders, and at times even to go beyond those orders (for example, by beating Jews when no German was present). The yardstick of appropriate behavior, according to the court, distinguishes between unavoidable cooperation and prohibited, morally reprehensible collaboration. It is this standard that should be used to judge the defendant's behavior. This is a dichotomous view, different from the prevailing standard in Israel, where the salient distinction was not between different types of collaborators but rather between physical heroism and collaboration. Possibly their personal familiarity with life in the ghetto and the camp in general led the judges to stress mutual assistance rather than heroism. Heroism, at least to the extent that that word connotes actively fighting against the oppressors, was not part of the behavioral repertoire of most Jews under the Nazis – in fact, it was a concept foreign to them. Mutual assistance, on the other hand, was immediate, familiar, and ongoing in the lives of these people. When they heard the stories recounted in court, the judges' personal memories took them back to that with which they were personally familiar, to their own and other Jews' distress, rather than to narratives of heroism. Yet both kinds of narrative set up dichotomies that erase the human space between two extremes, in the first case between heroism and collaboration, and in the second between mutual assistance and collaboration. The distance from personal experience and the different emphases in social discourse in the state of Israel seem to have caused one dichotomy to be replaced by the other. The basic cognitive template, however, remained the same.

The judges ruled that they had been presented with sufficient proof of Siegel's guilt to convict him of treason. But what does "sufficient" mean here? The text of their judgment does not show a genuine process whereby facts were established and their implications weighed. The judges did not even bother to explain why they accepted the evidence submitted by the prosecution rather than that of the defendant. Instead, they seem to have collated everything they heard from the witnesses and fashioned it into a single narrative. In the absence of counter-evidence, it would appear that the "sufficiency" depended on the position, the feelings, the experiences and the personal background of each of the members of the panel.

Jewish collaborators. During the Knesset debate on the Nazis and Nazi Collaborators (Punishment) bill he said: "To our regret and shame there were Jews – albeit only few – who out of weakness served as *kapos*." *Divrei HaKnesset* 4, p. 1154 (1950).

The punishments meted out to Siegel were of a social nature:

> 1. Unable to impose punishments other than those of a public nature, the public court condemns the activity of the defendant Julius Siegel over five and a half years, during which he fulfilled the role of Jewish elder in various German camps, as being criminal and harmful to the general Jewish community.
> 2. The court prohibits Julius Siegel from receiving any kind of public office in Jewish life.
> 3. The court will provide a copy of this judgment to all interested institutions in Italy.

The common denominator of these three sanctions was that they all impinged on Siegel's social ties with the Jewish community. They were inextricably linked to the explicit accusation of "treason against the Jewish people." Having torn the fabric of Jewish life, Siegel was banished from its public sphere. The interdiction was not restricted to disqualification from public office. In forwarding the judgment to Jewish organizations such as the Jewish Agency and the Joint Distribution Committee, the court in effect precluded Siegel's immigration to Palestine.[75]

Despite the ruling, Siegel did all he could to get to the Jewish homeland. And he succeeded – only to find himself facing a second round of legal proceedings. This began with an uncompleted judicial proceeding before the Zionist Organization's Court of Honor, and concluded with a proceeding before the Tel Aviv District Court.

Israel: The District Court

Background

> I arrived here on Yom Kippur eve, 1948. I arrived from Italy. I first approached the Jewish Agency, which then became the Israeli consulate ... at the time I had papers to travel to the USA. I have a well-off brother there. I showed these papers to the consul and I demanded that he write me permission to travel to Israel and that they try me because there at

75 According to the "Statutes of the Courts," Siegel was entitled to appeal the judgment of the Milan court. No such appeal is documented, and it appears that Siegel chose not to do so, but rather to devote his efforts to obtaining permission to migrate to Israel. See YVA JM10534/211 (Yiddish).

> the trial of the comrades they found me guilty and I wanted a fair trial and for this reason wanted to come to Israel. The consul corresponded with me and told me that he would write to the minister of justice. Here they arrested me and brought me to the minister of justice and they said there that there is no law here and I couldn't be put on trial. I demanded a trial before the Zionist Congress's Court of Honor.[76]

In this passage cited from his primary testimony in the District Court, Siegel describes his personal struggle to be given a "fair trial." But he also refers to two most significant facts. First, he notes the legislative void that prevailed in Israel prior to August 1950. The new state lacked laws that defined its jurisdiction and authority regarding the Holocaust in general and Jewish collaborators in particular. Second, he cites the cooperation between the community court and Jewish Agency emissaries (both prior and subsequent to the founding of the state) and officials in the Immigration Ministry (following the establishment of the state) regarding the grant of immigration permits to Israel.

The decision regarding Siegel appears in the internal correspondence between the Jewish Agency representatives in Italy: "The chairman of the [displaced persons] court [in Milan] is of the opinion that the man can be allowed to immigrate to Israel and to atone for his misdemeanors by means of devoted service. Arieh [Arieh Oron, the Israeli consul in Rome] agrees with this opinion."[77]

Aware of Siegel's status as a convicted collaborator with the Germans, the Israeli consul wrote to the Ministry of Justice: "following consultation with the public court, which made the above judgment on him, it was agreed to give Julius Siegel the opportunity to purge himself or to atone for his transgression, if proven, and his immigration was therefore approved."[78]

76 Siegel's testimony, Siegel in the District Court, direct examination, proceedings, pp. 65-6 (all subsequent references to the document "Siegel in the District Court" pertain to the proceedings).

77 Letter from Yosef Wilner to Yosef Stern in Milan, Aug. 28, 1948, CZA L16/ 67. One of the penalties that the DP courts were authorized to impose on those convicted (not only in the case of collaborators) was the forwarding of the judgment to "the authorized migration institutions." See Statute 17 of the "Statute of the local courts," YVA JM10534/211 (Yiddish).

78 Letter of the Israeli consul in Rome, Sept. 27, 1948, State Archive 2327/475. The Law of Return, 5710-1950, passed in July 1950, confers on every Jew the right to immigrate

The letter reflects a fascinating dynamic between, on the one hand, the Immigration Ministry and the Jewish Agency, both of them part of the machinery of government of a sovereign state, and on the other hand the displaced persons court, representing the community of displaced person in Italy. This was a singular case of cooperation based on moral criteria rather than on stipulations enshrined in law between a community and a state apparatus. These bodies believed that Jewish collaborators were not entitled to participate in building the country and society. It was a real and tangible manifestation of the decision made in February 1947 at the Second Congress of the She'erit-Ha-Pletah in the American Zone in Germany (February 1946), stipulating that Jewish collaborators were to be placed "outside the camp."[79]

In March 1951 Siegel made a statement at Israel's national police headquarters (located in Tel Aviv at that time),[80] and in November of that year, after being indicted under the Nazis and Nazi Collaborators (Punishment) Law, he appeared before the Tel Aviv Magistrate's Court.[81] Approximately one year after a Magistrate's Court judge

to Israel and to receive an immigrant card, but leaves it to the discretion of the minister of the interior (originally the minister of immigration) to refuse a Jew permission to immigrate if one of the conditions stipulated in clause 2(b) applies. The law came into effect on July 5, 1950. In other words, when Siegel requested to immigrate to the country there was in effect no judicial basis for preventing him from doing so. As noted, however, government ministries and the Jewish Agency emissaries abroad acted on unofficial guidelines that imposed restrictions on the immigration of people belonging to certain groups. On the matter of restricting immigration for various reasons, see Devora HaCohen, *Olim beSe'ara: Ha'Aliya HaGedola veQlitata beYisra'el, 1948-1953* (Jerusalem: Ben-Zvi Institute, 1994); Dvora HaCohen, *Immigrants in turmoil: mass Immigration to Israel and its repercussions in the 1950s and after*, translated from the Hebrew by Gila Brand (Syracuse: Syracuse University Press, 2003).

79 See text prior to reference 21, YVA JM10260/2 (Yiddish).

80 Following the statement taken from by the police, Siegel declared: "I understand the accusations attributed to me as translated into Yiddish ... and I wish to declare that I reject all the accusations leveled against me as being unfounded and I shall bring witnesses regarding this. I have written down all my arguments on this matter in order to publish them in books and I shall bring this before the court." Siegel's statement to the police, March 15, 1951, in Siegel in the District Court. To the best of my knowledge, Siegel did not publish his story following the trial.

81 The procedure of preliminary investigation was at that time regulated by clauses 13-27 of the Criminal Procedure Ordinance (judgment on the basis of a charge sheet), Laws of Eretz Yisrael 446A, which created a kind of "intermediate stage" in the process of investigating the truth between the initial police investigation and the judicial decision

had decided that sufficient evidence had been produced of the crime of "delivering up a persecuted person to an enemy administration" (clause 5 of the law) and "assault in a place of confinement" (clause 4 (a) (6) of the law), Siegel was indicted in the Tel Aviv District Court.[82] The indictment comprised three counts: handing Jews over to the Germans according to clause 5 – this accusation refers to the period during which Siegel was in charge of the workshop in Będzin (Rossner's "shop"); and two additional charges based on clause 4(a)(6): "assault leading to actual bodily harm in a place of confinement," in the Gross Mysłowice camp and the city of Będzin.

Siegel's trial commenced in March 1953 and, in addition to the evidence of the defendant himself , the court heard evidence from nine prosecution witnesses and twelve defense witnesses over a four-month period. Most of this testimony did not constitute "classical" judicial evidence. It consisted, rather, of second-hand testimonies, the stories of others, and above all hearsay. Alongside evidence directly relating to the defendant and his alleged actions, the court heard testimony relating to the events of the period and events in Będzin following the occupation, among them the activity of the Jewish committee, the founding of the first Judenrat, its functions, people's attitudes toward Judenrat officials, and events in the labor camps. The testimonies mix the personal with the public sphere, and jump from the defendant to Jewish collaborators in general. They combine judicial evidence, which describes what the witness experienced as an objective third party, with evidence that describes a traumatic collective experience, in which the narrator was not necessarily personally involved. It is these latter testimonies that paint a broader picture and which offer some possibility of understanding what actually transpired.[83]

in the form of a conclusive judgment. The investigating judge was required to decide whether the evidence produced justified putting the suspect on trial. This procedure was abrogated in 1958. As mentioned, I do not have the space to analyze this procedure in this article.

82 The indictment is included in the District Court file.

83 One may argue that the court apparently facilitated submission of these broad testimonies in accordance with clause 15 of the Nazis and Nazi Collaborators (Punishment) Law, which sanctions setting aside the rules of evidence. But this is, in my opinion, merely a formal assertion. In most of the trials of alleged Jewish collaborators that I have examined, both the prosecution and the defense understood the importance of broadening the historical scope, each for their own reasons. They thus waived their right to object to questions that were not in accord with the rules of evidence, even in cases where such objections was called for. On the formation of

i. The Prosecution: The Character of the Defendant

One of the mainstays of common judicial understanding of criminal law is the presumption that the judicial subject is a rational and autonomous being, occupying a sphere of choice in which he can be held responsible for his actions. The claim that the defendant may himself be a victim – that his actions may have been determined in whole or in part by forces beyond his control – is alien to the concept of the autonomous individual. The common judicial conception of criminal law furthermore has difficulty addressing individuals whose lives are a priori devoid of choice, unless their right to choose has been withdrawn by means of protective measures provided by law.[84] In keeping with this view, the prosecution portrayed Siegel as a rational actor who chose to collaborate with the Germans of his own volition and who thus freely chose to do harm to other Jews.[85] The prosecution portrayed Siegel as having acted within an autonomous sphere in which he was able to exercise control over his life. He was presumed to have been in a position to choose to accept or reject an assignment and of being able to choose between being a good and an evil superior. From the prosecution's perspective, the conditions under which Siegel lived as a Jew under German occupation – that is, the fact that he was, like all Jews, slated for extermination – did not impinge on his sphere of choice. A second element of prosecution strategy, intimately linked to the testimonies, was to demonize the defendant. This strategy portrayed the defendant as a rational man for whom all options were open, and who selfishly chose to behave cruelly toward his fellow-Jews. In this the Israeli prosecutors were no different from the prosecution in the DP court, which was unrestrained by

a new model of evidence in the wake of mass disasters that occurred in the twentieth century, see Michal Givoni, "Edut beFe'ula, Etiqa uPolitiqa beHumanitarizm Lelo Gevulot," PhD diss., Tel Aviv University, 2008, pp. 2-11.

84 On the Western view that places the individual at the center, see Alan Norrie, *Crime, Reason and History* (London: Weidenfeld & Nicholson, 1993), pp. 12-14. The individual's guilt must rest solely on his or her behavior. All other factors, such as their gender, character, status, or origin are irrelevant to the judicial proceeding. The separation enshrined in criminal law between the person of the defendant and their relationships stems from the desire to address the defendant's consciousness alone, namely, their free will. See John Lawrence Hill, "Law and the Concept of the Core of the Self," *Marquette Law Review* 80 (1997), pp. 294-302.

85 It should be noted that the prosecution prepared its case on the strength of the depositions it took prior to the judicial proceedings, and constructed its guiding narrative accordingly. The defense's strategies, interventions by the court, and witnesses who rescinded their prior statements all tended to spoil this narrative.

binding judicial categories. My analysis of the evidence presented in the camp trial demonstrates that this, too, rested on accepted legal theory, emphasizing Siegel's sphere of choice, and focusing on his negative personality traits.[86]

I shall divide the textual analysis of the testimonies into three topics: "informing" on Jews to the Germans; assessment of character traits and outward appearance; and Siegel's intimate ties with the Germans. Beyond these, the testimonies contain references to other matters that are unrelated to the indictment: the fate of the city of Będzin following the German occupation, attitudes toward Jewish collaborators and "social accusations." While the distinction is not always clearly evident, it contributes, in my opinion, both to an understanding of the singular structure of the testimonies and to an understanding of how the testimonies combine the norms of communal justice and criminal justice.

ii. "Delivering Up a Persecuted Person" to the Germans

The first accusation leveled at Siegel by a witness regarding the charge deriving from clause 5 of the Nazis and Nazi Collaborators (Punishment) Law, "delivering up a persecuted person to an enemy administration," was that he had established a "private" Judenrat with the intention of providing Jewish laborers to meet the Germans' demands. While the witness subsequently withdrew his claim that this had been a private initiative on Siegel's part, the importance of the story lies in the focus on his personal diligence and initiative: "Siegel sent the invitations in writing. I don't know if this was in his name or on behalf of the Judenrat... Siegel would lead those who reported to labor barracks. I saw how Siegel led them to work. On hundreds of occasions I saw the defendant Siegel leading the laborers [unclear word] to work ...

86 Western criminal law purports to address only the act and not the actor; the court is supposed to disregard factors such as social class, personality and motive, which are liable to introduce components beyond the control of the defendant. There are, however, many exceptions to these rules, not least in trials of Jewish collaborators. Yet these trials contained a further element that influenced the proceedings, since this was the first time that the phenomenon of collaboration had been addressed by criminal law. In this respect, Siegel's trial did not constitute an exception, and its proceedings were similar to those in trials of other Jewish collaborators. On engagement with the Holocaust as a primal form of justice and its consequences for the criminal proceeding, see Hemda Gur-Arie, *HaKarat HaNe'elam, HaSho'ah baMishpat HaYisra'eli*, PhD diss., Tel Aviv University, Faculty of Law, 2008.

he exempted anyone he wished to."[87] According to this testimony, Siegel played an active role: he founded, he led, he exempted. As in many other cases, the evidence fails the test of history, and finds no support in the historical writing on the city of Będzin during the Holocaust. Yet, as I have noted previously, historical precision plays little part in the testimony. The general picture is what is important – its portrayal of the anguish of people abducted and sent to forced labor. Within it Siegel's persona takes shape. He actively takes the initiative, seeking only to serve the Germans and subordinating the general good of the Jews to his personal interests.[88]

Another prosecution witness also described Siegel's pivotal role in sending Jews off to work: "In 1940 I saw what he did. He abducted Jews for labor. For excavations, etc. He led the Jews to work ... he abducted Jews in the street. He would walk around with the *Gauleiter* in the street and abduct the Jews. Only the defendant could identify Jews. He would abduct indigent Jews. The well-off paid [to exempt themselves]."[89] This witness regarded Siegel as "the commander," and described how he took the lead and was followed by the Germans, who played a secondary role, acting only when Jews refused to report for work. The testimony includes the implication that Siegel took bribes, in accord with prevalent allegations that Jewish functionaries were corrupt and grew rich at the expense of their fellow-Jews.

The witness who claimed that Siegel had set up a "private" Judenrat emphasized his part in "informing" on Jews to the Germans. "Siegel would submit lists of people who did not report or refused to pay up. I witnessed that. He would submit the lists to the German police. The Germans then took the listed people to the police ... and beat them and that convinced the Jews to pay. Siegel took care of the preparation of the

87 Prosecution witness Arieh Liver, Siegel in the District Court, pp. 2-3. The witness repeated the assertion that this was Siegel's own initiative during cross-examination: "I don't know on whose behalf Siegel was operating. He acted on his own behalf." He added that he did not know whether the Jewish committee, which functioned prior to the founding of the Judenrat, asked Siegel to take care of the allocation of Jewish laborers according to the Germans' demands. Ibid., p. 7.

88 The prosecution witness admitted in cross-examination: "I received the order from the labor office. The labor office was part of the community committee." In other words, Jews were not dispatched to work on Siegel's sole initiative. This was, rather, part of the activity of the community committee. Prosecution witness Avraham Fishel, ibid., cross-examination, p. 27.

89 Prosecution witness Wolf Schweitzer, ibid., direct examination, p. 32.

lists."[90] The witness drew a direct line between Siegel's lists and detainment by the Germans. This is precisely the essence of the halakhic-legal category of *din moser*. During the cross-examination, a procedure not employed by the Cremona and Milan courts, the witness changed his tune: "I did not see Siegel handing over the names and lists but I heard him threatening to do so. I didn't see him preparing lists. But I heard him say that he would hand anyone who didn't go to work over to the police. This was the German police."[91]

The transition from a position of certainty to one of doubt is a direct result of the imposition of the rules of criminal procedure and their effect on the narrative related in court. Legally speaking, cross-examination is of the utmost importance, since testimony is considered to be fact only after being subjected to cross-examination.

This and other such testimony regarding one of the gravest social transgressions – informing on Jews to the Germans – is based on rumor, which was an integral part of the system of communication that operated in the ghettos and camps. In the Milan court, in the absence of cross-examination and defense witnesses, these rumors attained the status of proven facts. In the Israeli District Court, the defense countered the rumors by means of cross-examination and by summoning its own witnesses. This is how a prosecution witness related a rumor that Siegel had prepared lists of people for deportation to Auschwitz: "People in the workshop said that Siegel had submitted a list of people who were subsequently sent to Auschwitz.... I did not see people being sent to Auschwitz. I saw the people and afterward did not see them again."[92]

Despite his disclaimer, the witness did not entirely dispel the rumor, since it is based on the logic of the ghetto rather than the logic of the court: "I saw the people and then I did not see them again." The witness automatically made a deduction based on his personal experience – people who are no longer seen, no longer exist. Legally speaking, however, this evidence is worthless.

90 Prosecution witness Arieh Liver, ibid., direct examination, pp. 4-6. A different prosecution witness related that "Siegel would go around with the *Gauleiter* on a horse-driven cart and they abducted Jews in the street ... and they would take the papers and it was the defendant who would take the papers and hand them to the Germans." Prosecution witness Wolf Schweitzer, ibid., direct examination, pp. 39-40.

91 Prosecution witness Arieh Liver, ibid., p. 8.

92 Prosecution witness Zvi Fogel, ibid., p. 17. He added that "I heard that the defendant prepared lists of people who were sent to Auschwitz not from the victims but from others. They did not tell me that they had seen the lists. They said they heard of this from others." Ibid., p. 20.

Another prosecution witness testified about the same event: "Then the defendant arrived and took out a piece of paper and read out names. Mine was among them. I was perhaps third on the list ... those of us whose names were read out stood next to the wall and six Germans entered. From the army. They lined us up three abreast ... after some time the defendant released two people ... then the Germans removed us and led us along for seven kilometers. The defendant stood by the gate ... on the way I asked the Germans why they were taking us. They said, what can we do? This is an order by the commandant and they showed us a letter signed by the defendant that said that we were sabotage Jews. I saw the letter with my own eyes. It said that we were Jews who engaged in sabotage...."[93]

Here again, note the manner in which the witness described Siegel's status vis-à-vis the Germans: Siegel was the commandant, it was he who rounded up people, he who released some of them. He was the commander obeyed by the Germans, as seen in the letter that bore his signature. The cross-examination revealed this portrayal to be but a matter of belief: "I believe that the defendant had the authority to order the transportation of people to Auschwitz. What the defendant said had force."[94] In fact, a group of twenty people were indeed taken from the "shop"; and no one disputed that these people were no longer seen in Będzin. Yet the testimony pertaining to the causes of the event and to Siegel's role in it was, for the most part, based on a distortion of reality. Nevertheless, the account well exemplified Siegel's character as portrayed by the witnesses: a Jew who acted on his own initiative and exerted authority even over Germans.

As in the trials of other Jews, in Siegel's case some prosecution witnesses did not toe the prosecution line, which sought to paint Siegel's character and actions entirely black. It is not that these witnesses had Siegel's best interests at heart, but rather that they were aware of the complexity of the situation of which they and Siegel himself had been part. They presented a figure that criminal justice has difficulty comprehending –

93 Prosecution witness Wolf Schweitzer, ibid., direct examination, pp. 36-7. During his cross-examination the witness was less certain about the identity of the person who signed the letter. In his testimony, Siegel denied the story of the witness regarding the deportation to Auschwitz: "I could not have issued an order to take Jews to Auschwitz. Or that someone would receive them there. I would have received two slaps on the face for such a letter and they would have sent me to Auschwitz. Given that I was a Jew, any signature of mine on a letter or notice would have been worthless." Siegel's testimony, ibid., direct examination, p. 63.

94 Prosecution witness Wolf Schweitzer, ibid., cross-examination, p. 37.

a victim who is also a perpetrator; a person who committed acts prohibited by the laws of enlightened states, but acts which acquire an entirely different meaning in the context of the ghetto and the camp. Several prosecution witnesses thus endeavored to characterize Siegel as a victim as well as an initiator and actor. "The Germans communicated the matter of managing the affairs of Jews in Będzin and the Germans did not intervene. They issued an order demanding that the Jews work. There were barracks and Siegel became the works manager or manager of the labor bureau. He *had* to carry out the Germans' orders."[95]

A further example of nuanced testimony by a prosecution witness described a morning at the city's army barracks, where the Jews summoned by the Jewish committee awaited instructions: "The defendant would arrive at 7 am ... followed later by the German known as "geller Leizer". Siegel would divide the people and hand over the note detailing the arrangement to the German. The German would give orders ... Siegel would shout and [indistinct word] slapped several of the people. The Jews who were the targets of the defendant's slaps were old and the reason [they were slapped] was that they did not obey orders promptly, like stand in line or stand straight ... when he slapped them they stood properly and that was in the presence of the German who stood next to him with a vicious dog which he would set on the Jews. The dog was trained to respond to the name 'Jew.'"[96]

This testimony portrayed a complex situation, in which the defendant, too, was a victim who feared a German superior, notorious for his cruelty. Siegel was indeed the Jew in authority, but this testimony described him as but one more Jew, one who tried to minimize the harm done by the German.[97] These different perspectives offered by

95 Prosecution witness Eliezer Wilder, ibid., direct examination, p. 45 (emphasis added).

96 Prosecution witness Lipa Kleinman, ibid., direct examination, p. 49. During his cross-examination he adds: "This *geller Leizer* would regularly come to the place where laborers were assembled and there would regularly set his dog on any Jew who did not stand properly," ibid., p. 51. This suggests that Siegel's brutality during the lineups stemmed partly from his apprehensions about what the German might do.

97 This witness's description of the Judenrat's efforts to persuade young Jews to go to for the work camps (in Germany) is likewise more balanced that those of other witnesses, and no doubt also closer to the historical facts. We now know that the chief of the regional Judenrat, Moshe (Monik) Marin, was influential in persuading young people to go to the work camps. Siegel's name did not come up in this context. See Ronen, "Ovdei Kefia baMahanot." Neither does David Liver mention Siegel in his *Ir HaMetim* in connection with sending young Jews to the labor camps.

the prosecution witnesses of what occurred in the city under the German occupation do not indicate that the witnesses were contradictory or unreliable. They represent the tension between narrow testimonies aimed at convicting the defendant and those that offer a broader view; between testimonies that describe juridical reality and those that describe how things really were. The lines that demarcate these narratives are sometimes blurred, and most testimonies contain elements of both. The reading I propose here goes beyond the juridical sphere. It is not restricted to an examination of the witnesses' reliability and the search for contradictions and lies. Rather, it seeks to address the testimonies as a historical narrative, albeit a partial one, of the daily lives of the witnesses and the defendant.

iii. *Argumentum ad hominem*

Personality traits and external appearance have no place in an indictment, and should therefore play no part in establishing a defendant's guilt. It is the defendant's behavior on which the judicial hearing should focus. Yet the witnesses constantly referred to Siegel's character as well as his outward appearance, without encountering any objections. What was the purpose of these descriptions, whether invited by the prosecution or voiced by the witnesses of their own volition? The defendant's personality traits and external appearance seem to have played a major role by the prosecution in shaping his persona. Accurate or not, these descriptions were integral parts of the prosecution's strategy of demonizing the defendant. This process, I contend, was designed not merely to convict the defendant, but also to help the court come to terms with an unfamiliar type of Jew and defendant.

The witnesses harped on Siegel's outward appearance, for example his boots and the whip (or cane) that he carried. To the Jews, these were symbols of German authority and provided further evidence that Siegel was "like the Germans."[98] A prosecution witness described Siegel thus: "Siegel wore boots and [carried] a truncheon [*spitzrod*] ... he walked proudly with a truncheon in his hand and thwacked his boots."[99] Note that the witness did not claim that Siegel used the stick to beat

98 Regarding the Jewish policemen in Będzin, David Liver writes that they "subsequently received boots. Boots became a symbol of their authority in the Jewish street. They instilled fear into Jewish homes. The resounding echo of army boots would let us know that a German or (Jewish) militiaman was approaching, and we feared them equally," Liver, *Ir HaMetim*, p. 34.

99 Parentheses in the original. Prosecution witness Yitzhak Pressman, Siegel in the District Court, direct examination, p. 10.

anyone, and provided only a physical description of a Jew wearing boots and bearing a truncheon. The appearance was integral to the persona of a collaborator, on a par with his behavior. Other prosecution witnesses added: "The defendant carried a small truncheon thrust in his boots. This truncheon bent but was not fragile and could be used to beat [someone]";[100] "the defendant always had a truncheon in his hand. It suited his attire..."[101] Another prosecution witness described Siegel's demeanor: "The first Jew I met who collaborated with the Germans was Siegel. At first I couldn't tell he was a Jew from his behavior. According to his behavior I thought he was a German."[102] His suit, riding breeches, shiny boots and whip were all described by witnesses not merely as parts of his attire but as signs of authority and elements that marked him as a "German." This was the witnesses' way of presenting Siegel not merely as someone who behaved like a German, but also looked like one.

iv. Association with the Germans

The witnesses depicted Siegel not only as someone who held positions in the service of the Germans, but also, and perhaps in particular, as someone who befriended them, who acted alongside them and not merely on their orders, and as someone who "earned" their esteem. These were all devices to reinforce the claims of his "German" nature. In describing his presence in the city, for example, one witness said: "The defendant would walk around with a cruel German officer who had a large dog. The officer was armed."[103] In other words, Siegel displayed an affinity for the Germans and enjoyed their trust – that is to say, he had personal relations with them. This, of course, underlined Siegel's moral guilt, independent of any criminal accusation (informing on Jews and "assault leading to actual bodily harm in a place of confinement"). Another witness testified that "the defendant was a confidant of the Germans in the workshop. As a confidant of theirs he had to ensure that [people] worked well, and he had to inform on those who did not work adequately and he had to hand 'victims' over to

100 Prosecution witness Wolf Schweitzer, ibid., direct examination, p. 34.

101 Prosecution witness Eliezer Wilder, ibid., p. 46.

102 Prosecution witness Zvi Fogel, ibid., direct examination, p. 15. One of the female prosecution witnesses in the Zionist Organization's Honorary Court referred to Siegel's outward appearance: "The defendant was always well attired. He wore high boots and carried a whip. He didn't look at all like a Jew and was indeed often not regarded as a Jew." See prosecution witness Rivka Rechtman, Proceedings of the Honorary Court, p. 9, CZA S5/100999.

103 Prosecution witness Eliezer Wilder, Siegel in the District Court, p. 46.

the Germans."[104] This witness makes no attempt to conceal his belief that Siegel was a traitor, since in return for this relationship of trust he was obliged to hand "victims" over to the Germans.

Testimonies that did not constitute "classic" judicial evidence, and which instead addressed more general issues or which did not rest upon personal knowledge, revealed the witnesses' general attitude toward Jewish collaborators: "Jews such as Siegel assembled us and handed us over to the Germans," a prosecution witness related.[105] He portrayed a new, different type of Jew, namely the collaborator. Not everyone consented to be placed in this category, but some did, as one witness said: "in order to gain favor with the Germans, [but] there were those that did not perform these roles."[106] This witness went on to describe the relations between regular Jews and Jews in positions of authority: "We were like prisoners and those in authority were a chosen people and there was distance between us."[107] By contrasting "prisoners" to "chosen people," the witness successfully represents powerful feelings of animosity and hostility. A further prosecution witness spoke of the disparity between "regular" Jews and Jewish collaborators: "A Jew who collaborated with the Germans was required by them to collect intelligence and to be a 'useful Jew' and received the letters N.J., which meant – 'useful Jew [in Yiddish].' I didn't see that he received such a card but everyone knew of this. Jews who did not have such a card would not have reached the positions that the defendant attained."[108]

The question of whether such a "useful Jew" card indeed existed or whether Siegel possessed such a card is of no importance. What is important is the detail, which adds to the emerging picture of the disparity between regular Jews and those in positions of authority, irrespective of the issue of Siegel. Other Jews thought of Jewish collaborators as acting disreputably: "The majority of the Judenrat were not previously on the community committee. Not everyone agreed to accept such contemptible work."[109]

104 Prosecution witness Zvi Fogel, ibid., direct examination, pp. 16-7. Another prosecution witness termed Siegel Artel's deputy: "At the time Siegel was the *Gauleiter's* deputy. The Jews of Będzin referred to him as such." Prosecution witness Moshe Pressman, ibid., direct examination, p. 24. There was no such position as Jewish deputy, but the witness's perspective on Siegel is important here – he was the Jewish deputy of this German commander, a position expressing affinity and a relation of trust.

105 Prosecution witness Zvi Fogel, ibid., direct examination, p. 15.

106 Prosecution witness Dov Klein, ibid., direct examination, p. 42.

107 Prosecution witness Dov Klein, ibid.

108 Prosecution witness Zvi Fogel, ibid., direct examination, p. 16.

109 Prosecution witness Zvi Fogel, ibid., direct examination, p. 18. Note that prosecution

v. A Social Indictment: The Underground and Zionism as Judicial Criteria

The testimonies in the District Court likewise exhibit the prevailing dichotomy in Jewish-Israeli discourse between physical rebellion and heroism on the one hand, and on the other collaboration, which is tantamount to cowardice. This is highlighted by the extensive usage of the term "underground."[110] "The defendant was not in the underground with us, as others were," one prosecution witness declared. "He didn't place himself at the disposal of the underground. He collaborated with the Germans."[111] The testimonies give the impression that the majority of Jews belonged to the underground, but this, too, is of course a distortion of the facts. An additional element manifested in the testimonies is allegiance to Zionism: "Siegel was not active in any Zionist movement," a prosecution witness asserted.[112] That the witness felt the need to bring up Siegel's lack of affiliation to the Zionist enterprise, an issue entirely unrelated to the indictment, indicates that the trial's social component coexisted with its juridical component. Siegel's attorney was well aware of this, and therefore called a defense witness to offer contrary evidence: "Before the war the defendant was in *Beitar HaTzohar* and in [indistinct word]. He was an active Zionist."[113] A different

witnesses in other trials affirmed the necessity of Jewish ghetto police. The ghetto required a force, they claimed, that could impose discipline at a time when the customary order was being undermined, not merely because of German orders but also because of Jewish behavior. See Rivka Brot, "Anashim baAizor HaAfor: Eduyot uPiskei Din beMishpateihem shel Shotrim Yehudiim ve-Blockälteste (Rosh Blok, Isha), Lefi HaHoq leAsiyat Din baNatzim uveOzreihem, 5710-1950," M.A. thesis, Tel Aviv University Faculty of Law, 2009, pp. 70-90.

110 The concept "underground" does not necessarily denote armed resistance. A good number of underground cells did not engage in combat but rather in educational activity, for example, or in clandestinely moving Jews to hideouts or to the forest. In this respect the concept "underground" has come to designate commendable behavior in the face of occupation, both in Europe and in Palestine. Yet it only gradually acquired this broader meaning as its sense metamorphosed gradually from "heroism" to "steadfastness." At the time of Siegel's trial in the early 1950s, however, the term primarily connoted armed resistance.

111 Prosecution witness Zvi Fogel, Siegel in the District Court, direct examination, p. 16.

112 Prosecution witness Arieh Lieber, ibid., direct examination, p. 4. For the sake of accuracy it should be noted that Siegel was probably active in the Revisionist movement in the city of Będzin, as prosecution witness Avraham Fishel attests, ibid., p. 22. Siegel himself attested: "I was commander of the Revisionist force in Będzin." Ibid., Siegel, direct examination, p. 52.

113 Defense witness David Bruckner, ibid., redirect examination, p. 78.

defense witness added: "Before the war the defendant belonged to Beitar and was a commander there. It was called *Brit HaHayal* or *HaHayalim HaMeshuhrarim* (and belongs to the Revisionists)."[114] The witnesses for the prosecution and the defense did not speak to Siegel's Zionist credentials spontaneously. They addressed the issue only in response to questions asked by the attorneys on either side, an indication of the importance that both the prosecution and the defense attached to Siegel's social standing. They viewed it as integral to the question of his guilt or innocence. Even though the defendant's membership in a Zionist organization or in an anti-Nazi underground cell had no bearing on whether he committed the crimes with which he was charged, both sides understood that this fact would establish whether Siegel stood inside or outside the Israeli-Jewish community.

The charge of "informer" was also part of the social "indictment." True, this count, based on clause 5 of the Nazis and Nazi Collaborators (Punishment) Law, was part of the judicial indictment. But the Hebrew term the law uses in the clause's title is fraught with historical and cultural meaning. In traditional Jewish law, the *moser* is a traitor to his community and is liable, under the law applying to informers, *din moser*, for the death penalty. According to one witness, "some Jewish collaborators with the Nazis informed about Jewish business on the black market."[115] Another prosecution witness remarked: "It was the collaborators ["useful Jews"] who informed about the Jews' hideouts."[116] The "social indictment" laid out here alongside the judicial indictment reinforces my assertion as to the existence of a communal element shared by both the formal state trial and the social proceeding.

114 Defense witness Yehuda Feffer, ibid., direct examination, p. 88 (parentheses in the original). This fact is likewise mentioned in the memorial book of Będzin community, see Stein, *Pinqas* Będzin, p. 273. Siegel himself stressed his Zionist credentials. He told the court in Italy, for example, about his Zionist activity, and later about his Zionist affiliation as a trainer of the Osteinsatz company: "Active in the Zionist Organization in Silesia. Participated in a Zionist Congress ... after setting the camp in order, he commenced Zionist activity. He sought to hold lectures and sing *Hatikva*." Proceedings of the Court in Cremona, in Documents of the DP Courts.

115 Prosecution witness Avraham Fishel, Siegel in the District Court, direct examination, p. 25.

116 Prosecution witness Avraham Fishel, ibid., direct examination, p. 26 (parentheses in the original). The drafters of the legislation may have deliberately used the expression *mesira* in defining the offence in order to place it within the context of a serious halakhic-social offense.

vi. The Defense

The task of the defense was not a simple one. Siegel seems to have been a rather marginal figure in the city of Będzin – his name seldom appears in external testimonies. In addition, his Zionist affiliation – to the Revisionist Movement – placed him outside the Zionist mainstream. Yet he was a mature and educated person with a military past, elements that could not easily be disregarded. It should also be born in mind that, in his testimony before the court in the DP camp, Siegel admitted that he had beaten Jews even when no German was present. How did the defense contend with these difficulties?

Textual analysis of the defense testimonies reveals three strata: Siegel was a "functionary" subject to the authority of others; the actions attributed to him were integral to his post; these actions were undertaken in order to protect Jews from punishment by the Germans.[117]

The more the prosecution attempted to portray Siegel as a "leader," a "commandant," a "chief" or a "manager," the more the defense sought to present him as a "small cog," a functionary who carried out the orders of his superiors, be they Jews or Germans. The defense thereby sought to minimize as far as possible the component of activism and initiative consistently stressed by the prosecution. Whereas the prosecution strove to paint Siegel as a figure who had behaved with wanton cruelty toward the Jews subordinate to him, the defense sought to present these same deeds as attempts to assist his underlings. With his confession to the court in Italy hovering in the background, the defense could not portray Siegel simply as a victim. His attorney thus fashioned Siegel's persona as combining elements of both victim and autonomous actor, while claiming that the actions in question were intended to promote the common good. This can be demonstrated by a reading of the testimonies of both Siegel and the defense witnesses.

vii. Siegel's Testimony

Siegel began his testimony by presenting himself as a victim: "I am 57 years old. I lost my wife and family in Auschwitz."[118] He went on to describe his task of allocating

117 The assertion that the disciplinary measures were intended to prevent more severe punishment at the hands of the Germans is grounded in clauses 10 and 11 of the Nazis and Nazi Collaborators (Punishment) Law, which grant exemption from criminal responsibility or lighter punishment, respectively, if, among other reasons, the prohibited action was intended to prevent a harsher act.

118 Siegel's testimony, Siegel in the District Court, direct examination, p. 52.

Jews to forced labor as a purely bureaucratic operation. He had been, he claimed, no more than a minor official subject to the authority of others:

> I was a community functionary. The person who supervised the work was Artel the German.... I had to allocate people to work at the assembly point in the barracks ... every morning.... Polish foremen oversaw the laborers ... each worker was summoned by the community to report for labor. They had to come to the barracks and from there they were sent to their place of work. The city engineer – a Pole – would allocate them there at the barracks to work places. The overseers of the various groups were also Poles.[119]

In Siegel's view, he bore no responsibility. He had merely carried out the orders of community officials:

> Two of the committee members supervised my work. There were various committees and I reported to the committee responsible for labor. In the morning I lined the people up. During the remainder of the day I sat in the office. The city engineer divided the people and determined that these would work here and those there according to such and such numbers and I would register them in the office.[120]

In order to underscore his subordinate status, Siegel related how he was subject to the whims of his German superior: "I sometimes received an order from the community to trot after Artel (to accompany him) on his rounds. He was a notorious drunkard. He could appear at a workplace and cause trouble and then I would warn them in advance that he was liable to appear. I would receive an order to follow him – two paces behind him, as I was ordered. When he addressed me I had to stand at attention."[121]

119 Siegel's testimony, ibid., direct examination, pp. 53-4.

120 Siegel's testimony, ibid., cross-examination, p. 67. Siegel added that "I could not release people from work. Only the presidium could do that. I had no authority to do a thing regarding this matter. The two committee members engaged in this. Anyone who wished to be released from work would apply to the presidium." Siegel's testimony, ibid., cross-examination, p. 68.

121 Ibid., p. 67 (parentheses in the original). He paints a similar picture during cross-examination: "I was not the manager of the community's labor bureau. I would merely

Yet Siegel did not view himself merely as a clerk, as a "small cog." He also protected the Jews from the Germans and, particularly during the initial period in Będzin, from his German overseer Artel, an infamously brutal man. When he browbeat and pushed Jews around, he was merely seeking to avert even worse measures by Artel. "A Jew was forbidden to put his hands in his trousers," Siegel related, "and were he to come across such a person – and the German usually showed up drunk – the German would beat him as well as those standing beside him. I would run around to make sure that everyone stood up straight during these two minutes so that they would not suffer from the German they called *der geller Leizer*."[122]

By his account, everything he did in his official capacity was in the Jews' best interests: "Each day different people would arrive and each day they had to be lined up quietly and made to stand straight so that they would not be beaten because one of them, for example, had his hand in his pocket. I never beat anyone. There were insolent people [indistinct word] kept his hands in his pocket, and I would then yell at him [saying] that because of him they would punish everyone in the group."[123]

Furthermore, he viewed his consignment to the labor camps in Germany as a personal sacrifice he made for the general good. He decided to join a group of several hundred of the city's poor who were sent to these camps because they were unable to ransom themselves.[124] Siegel limited his description of his responsibilities and status in the tailor "shop" in Będzin following his return from the labor camps as far as he could to the sphere of supervision. His task, he claimed, was to avert graver forms of punishment and to act for the general good: "In Będzin I subsequently acted as an overseer in the workshop. Rossner was the supervisor, above him were the Germans. My job there was to oversee the sanitary part... I had no position other than sanitary supervision. I tried to see to it that they would add more food."[125] He stressed his

arrange the people. I did not make out the orders. Some ten people worked in the office on this task. These ten people made out the orders according to cards." Siegel's testimony, ibid., cross-examination, p. 66.

122 Siegel's testimony, ibid., direct examination, p. 54.

123 Siegel's testimony, ibid., cross-examination, p. 67.

124 Siegel's testimony, ibid., direct examination, p. 56.

125 Ibid., pp. 59-60, 61. Siegel subsequently says: "I saw to it that things were in order and that everyone would receive his portion of food and that they would not throw cigarette butts in the yard.... I saw to it that people would not wander about and wouldn't draw attention to themselves by doing so because there was an order prohibiting smoking in the yard." Ibid., p. 69.

inferior status in the "shop" hierarchy: "Management was in German hands. The Germans were in command of all matters. Sanitary, management matters and the orders, even the sanitary matters were in the hands of the Germans. I had to stand to attention before a German and I was forbidden to open my mouth. I couldn't give any kind of order."[126]

Siegel likewise asserted that he performed only lowly functions at the Mysłowice labor camp, such as sanitary supervision and overseeing food distribution, roles he had been assigned by the Germans:

> At Mysłowice I took care of people's health (of the sanitary part)... I had no responsibility for work distribution there.... there was a Jewish doctor who determined who was capable of working.... I made sure that the food was fairly distributed ... the Germans assigned me to this job: overseeing the food. If the room was not clean, everyone would be punished by the Germans. The guard commander would enter every day and check that all was clean.... I was in charge of the ledgers in Mysłowice in the office. Apart from that I had no power or influence.[127]

In Auschwitz, Siegel maintained, he had played a similar role: "At Birkenau I was just a clerk. I did purely paper work."[128] Siegel's view of himself can be summed up in his own words: "I was friendly with everyone ... even children could approach me."[129] Humane and considerate as he was, not even children feared him.

viii. The Defense Witnesses

The defense used its witnesses to further its claim that Siegel had occupied a minor position in which he had no influence but nevertheless did his best to promote the common good. Speaking of Siegel's role during the early period in Będzin, one defense witness recounted how the defendant had allocated Jews for forced labor:

> Siegel prepared the lineup for the Germans. He would arrive in the morning and tell people to line up in threes or fours, etc. I was present.

126 Ibid., p. 61.
127 Ibid., pp. 57-8, 59.
128 Ibid., p. 68.
129 Ibid.

> Sometimes it was easy to line them up and sometimes not. Siegel would yell if someone stepped out of line.... [T]here was a printed form of work requests. The defendant did not sign it. There were clerks who filled out the forms. The Jewish community sent the orders. Siegel was in charge of this department. On behalf of the community. Siegel received the list of jobs from the community.[130]

The defense witnesses likewise describe his actions in the tailor "shop" in Będzin as having been undertaken in response to the orders and instructions he received, while at the same time trying to alleviate the position of the Jewish workers: "I was in the office in which Siegel worked. He engaged in maintaining cleanliness and order. There were other functionaries who had clout. Siegel had no say. There were other Jews who certainly had a say. A great deal of clout, that is. He made sure that Jews would leave the workplace in a particular order."[131]

The defense witnesses characterized Siegel's behavior at Gross Mysłowice in the same way. One witness testified: "He [Siegel] did office work and sent people to work."[132] Another added: "In Mysłowice I peeled potatoes, served food and worked in the kitchen. I was present when the workers came to eat. He stood to one side (the defendant) and made sure that order prevailed and that no one received a double portion of food since otherwise the food would not have sufficed. I didn't see him beating anyone."[133]

ix. The Use of Beatings: The Normative Order Inverted

The prosecution witnesses testified that Siegel frequently resorted to violence. In contrast, the defense witnesses adamantly asserted that he never raised a hand against anyone. Neither of these positions were accurate reports of actual events. Rather, each constituted a juridical construal of those events, in the context of the aim of convicting or exonerating Siegel. An understanding of these complex circumstances first requires an understanding of Siegel's actions in context. The use of violence in the conditions that prevailed in the ghetto and the camp had a different import than it has in normative society. In the ghetto and the camp blows were a "spoken language," the rule rather

130 Defense witness Hanokh Ehrlich, ibid., cross-examination, p. 86.
131 Defense witness Eliezer Menahem Kolimovitz, direct examination, p. 97.
132 Defense witness Ya'akov Rosens, ibid., direct examination, p. 81.
133 Defense witness Malka Gerstner, ibid., direct examination, p. 94 (parentheses in the original).

than the exception, and the beatings meted out by Jewish functionaries were integral to the performance of their duties.[134] Acceptance of the use of beatings as a "rule" of the place exposes the tension between regarding the same behavior as an offence in the "normal" world and as normative in the extreme circumstances of the ghetto and the camp. A reading of the testimonies must take into account how the witnesses cast Siegel's use of violence. Do they claim that when he beat fellow-Jews he was simply exploiting his position of power? Or do they confer on these acts an additional meaning, one that goes beyond how they are generally defined by the law – that is, as assault, or the use of violence with the intent of causing physical injury?

Most of the prosecution witnesses maintained that Siegel assaulted Jews, both in Będzin and in the labor camp. A few saw him do this or were themselves targets of his violence. Most, however, heard about the beatings from others: "The defendant together with his assistant walked around with a pole and he hit those who found it difficult to carry on. Among them were old and weak people... I too received a blow from Siegel. Those who were beaten by Siegel and his assistant got up and wanted to continue to jump, but they were unable and remained in place, eliciting laughter from the Germans who stood at a distance."[135] An additional prosecution witness related: "He beat [people] with a pole and I saw that he beat a girl who wished to approach another woman, probably her mother. He struck the girl (and perhaps she was already a woman) on her back."[136] Physically assaulting the weak, aged, and the very young is the epitome of cruelty, and this testimony supports the prosecution's claim that Siegel beat Jews deliberately, of his own free will. He did so, in part, to ingratiate himself with the Germans, while exploiting the power they gave him. In contrast, the testimonies provided by Siegel and the witnesses called by his defense attorney have a dual purpose – to deny that Siegel committed such actions, and to show that even if he did, he employed only the minimum amount of violence needed to protect the Jews under his charge from the Germans.

Siegel himself utterly denied that he ever beat anyone. Under direct examination, he declared: "I had no cane. I had a piece of wood two hands wide, from little finger

134 One of the prosecution witnesses put it succinctly: "The defendant's function was to beat Jews." Prosecution witness Avraham Fishel, ibid., direct examination, p. 22.

135 Prosecution witness Avrahm Fishel, ibid., direct examination, p. 23. The witness claimed that the defendant had forced the Jews to do physical exercises ("frog jumps"), and whoever failed to carry out his instructions was beaten.

136 Prosecution witness Wolf Schweitzer, ibid., direct examination, p. 34 (parentheses in the original).

to thumb. When I became angry I would break the stick (for example, if they [the Jews] took out 300 instead of 500 laborers)."[137] At another point he said: "Sometimes I also had a very small pole. I carried it for no particular reason. Not in order to prove my power (my authority)."[138] He only struck a person on one occasion, he claimed. But he then immediately offered an emotional justification, stressing that this had no connection to his duties:

> At Auschwitz there was an occasion on which I beat (someone). When I saw a Jew selling gold dental crowns on the black market. There was a *kommando* that incinerated Jews. The Jews trafficked in gold and gold teeth taken from the victims, and when I saw a Jew engaged in this (my wife and daughter also had gold teeth) I lost control and struck him.[139]

To reiterate: it is not my intention to identify falsehoods or contradictions in the testimonies. My purpose here is not to gauge the reliability and credibility of the witnesses in the context of a judicial proceeding aimed at determining the defendant's legal culpability. Nevertheless, it is important to note that some of the accounts offered by witnesses depart substantially from what we know on the strength of other testimonies, including that of Siegel himself, and other accounts of the behavior of Jewish functionaries in ghettos and camps. My interest is not in Siegel's juridical denial of the charge that he assaulted Jews, but rather in what I call his personal narrative denial. By that I mean the way his rejection of the charge served to fashion the image of him as a Jewish collaborator. It is reasonable to conclude that Siegel in fact used a pole or his hands to maintain order and discipline among his charges. Indeed, this emerges from his own testimony before the social court in Milan and from the testimonies of witnesses who appeared before the different courts that took up his case. Yet he nevertheless had to deny the charge categorically because the proceeding before the Israeli court was a criminal one which dealing with capital offences, not just a historical debate. The broader perspective is apparent if the testimonies are seen not only as a narrow juridical narrative meant to determine Siegel's guilt or innocence, but also, as I suggest, a historical narrative. That narrative presented actual events as they

137 Siegel's testimony, ibid., direct examination, p. 69 (parentheses in the original).

138 Ibid., p. 68 (parentheses in the original). In his cross-examination Siegel denies that he beat Jews in the Gross Mysłowice labor camp. See Siegel's testimony, ibid., cross-examination, p. 71.

139 Siegel's testimony, ibid., direct examination, pp. 64-5 (parentheses in the original).

took place, even though the testimonies are not always accurate, rather than through the skein of the categories of criminal law.

During both his direct and cross-examination, Siegel denied having resorted to violence, while under cross-examination he did his best to explain what really happened, steering clear of legal language.[140] Some of the defense witnesses, including those who testified that Siegel never assaulted Jews, supplemented his account. For example:

> If it occurred that someone wandered about outside he approached him or he would send one of the orderlies at his disposal. He may have raised his voice when speaking to them. I didn't hear him do that. I heard from people that he had spoken loudly. I stress that I didn't hear that he had beaten anyone. It is impossible that he beat people.[141]

A different defense witness initially asserted that Siegel did not beat people,[142] but this account subsequently underwent a transformation. It metamorphosed from a description of an imagined reality constructed for the purpose of the trial (Siegel never beat people) into a report of events as they occurred. In this latter account, the witness did not directly touch on Siegel and his deeds. But he did offer factual information: "It was preferable that a Jew browbeat a worker instead of the Germans, in order to preempt a beating from the German."[143] In this single sentence the witness conveyed to the court the nature of life under German occupation. Corporal measures employed by Jewish functionaries were more often than not intended to achieve goals that were foreign both to criminal law and to those accustomed to the role of the police in a properly functioning state. They were intended to save the Jews by averting far more serious disciplinary measures at the hands of the Germans.

No doubt there were Jewish collaborators who behaved cruelly toward their fellow Jews. Many testimonies bear this out.[144] A careful reading of these statements can

140 Siegel's testimony, p. 54, cross-examination pp. 67, 68, 69.

141 Defense witness David Bruckner, ibid., cross-examination, p. 78. A different witness related: "Siegel would yell if someone was out of line. I didn't see him do anything else. I never saw a truncheon in his hand," Hanokh Ehrlich, ibid., cross-examination, p. 86.

142 Defense witness Yehuda Feffer, ibid., direct examination, p. 88.

143 Ibid., p. 89.

144 See, for example, CrimC 9/51 (TA), *Attorney General vs. Ingster*, 5 P.M.(1952), p. 152. The testimonies against Ingster, recounting his cruelty toward Jewish prisoners, are harrowing.

transcend the drama of the witnesses' dramatic portrayals and see beyond the ideological frame of their narratives, which branded these alleged collaborators as criminals before they were even indicted. Yet the record shows that corporal punishment, beatings, manhandling, and bullying were integral to the behavioral repertoire of those Jews who were assigned responsibility for maintaining law and order in the ghettoes and camps. Such means came with the position not merely because they were established practice. Given the complexities of life under German occupation, such disciplinary measures were virtually essential for transforming Jews, among them very old people unused to physical labor, into workers. And not only workers, but workers whom the Nazis required to perform difficult physical tasks rapidly, with no rest, for many hours on end, under the watchful eye of German soldiers. A witness who, under direct examination, held forth at length about the blows that Siegel had administered, said under cross-examination that "when he arranged the work groups he shoved and hustled them."[145] The physical assault of the initial account had now become merely some pushing. This does not mean that Siegel never struck anyone. It does indicate, however, that the witnesses may well not have differentiated between the various physical measures that Siegel employed. From their perspective, if a Jew exerted force of any sort against a fellow Jew, he had turned him into a "German."

To put Siegel's resort to violence in a positive light, the defense departed from the restrictive judicial narrative by shifting the spotlight from the defendant as an individual to the community as a whole and to the facts on the ground. This stratagem placed the point of view within the confines of the city of Będzin and the labor camp, at the time of the events rather than . From this point of view, Siegel was compelled to operate within a sphere of restricted choice utterly foreign to any that his judges could conceive.[146]

Since it addresses individual responsibility rather than the general circumstances of communal life, the Nazis and Nazi Collaborators (Punishment) Law cannot comprehend a situation in which social and ethical mores are turned on their head, and

145 Prosecution witness Zvi Fogel, Siegel in the District Court, cross-examination, p. 89.

146 The witnesses who appeared during the proceedings against Siegel in the DP camp and in the honorary court likewise stressed Siegel's use of beatings, unrelated to any judicial guideline or category. I therefore wish to state clearly that I do not believe that the prosecution witnesses in all these proceedings were lying. They may well have exaggerated, but their portrayals obviously rested on their experience, including corporal punishment. I do not propose to dismiss these harsh descriptions but rather to read them in a different manner so as to comprehend the larger picture.

where the use of violence by those in authority is the rule rather than the exception.[147] Testimonies that endeavored to avoid the negative and positive extremes represented by the prosecution and defense respectively did not seek to establish or disprove guilt, but rather to lay out a general canvas, a portrait of life, in which the relations between the community and Jewish officeholders were embedded. These testimonies constitute a clear example of the contribution that the trials of Jewish collaborators could have made to exposing the conditions of daily life of the Jews in the ghettoes and camps. Yet it was precisely this picture that was excluded from public discourse at the time. It remained invisible because, among other reasons, the judgments were never officially published.[148]

The Judgment

Like most of the verdicts in trials of Jews indicted under Israel's Nazis and Nazi Collaborators (Punishment) Law, the judgment in the Siegel case was not published in the official court record.[149] His personal-legal story is found rather in a bulging file nearly bursting at the seams.

The case was heard by a single adjudicator, Judge Max Kennet. In a concise opinion numbering three and a half pages, Kennet "translated" Siegel's life into a verdict and criminal penalties in accordance with the testimonies he had heard and the clauses of the law. He acquitted Siegel on all the counts in the indictment (informing and causing grievous bodily injury), but convicted him of the lesser offense of simple assault, since it was proved that he twice hit one of the prosecution witnesses. The judge sentenced Siegel to ten days' imprisonment on this charge.

147 While the defense clauses indeed make provision for exemption from criminal responsibility (clause 10) or for lighter punishment (clause 11) in cases in which the prohibited action was taken with the intention of preventing a graver action, the conditions for application of these clauses are rigid and all but impractical. Clause 10(b), for example, stipulates that a condition for exemption from criminal responsibility is if the accused "carried out the act or failed to act with the intention of preventing graver consequences ... and actually prevented these consequences." The stipulation to prove that a certain action on the part of the Germans had indeed been prevented in practice is impractical and unrealistic.

148 Only six of the tens of judgments made in trials of Jews under the Nazis and Nazi Collaborators (Punishment) Law were published in the state of Israel's official record of judgments.

149 In Siegel in the District Court (hereafter, Judgment).

On first reading the verdict appears to be a dry, impersonal judicial report that addresses the letter of the indictment counts and the clauses of the Nazis and Nazi Collaborators (Punishment) Law. But that impression is mistaken. A superficial reading that does not look beyond the judicial narrative misses the judgmental tenor found between the lines. Using a historical-cultural approach, I propose to read the verdict as a series of tensions: between the judicial and the historical narratives; between the figure of the defendant constructed by the witnesses and that constructed by the judge; the tension between the prosecution witnesses and the judge; and between the language of testimony and formal legal language. These tensions intermingle within Judge Kennet's laconic verdict. Such a reading casts light on why the Nazis and Nazi Collaborators (Punishment) Law proved to be inadequate in the cases of Jewish collaborators. This is evident in the confrontation between communal law and state law, as manifested in the verdict.

From a purely juridical point of view, Siegel was brought up on criminal charges. The judge's task was to determine the facts of the case and whether the evidence presented by the prosecution proved that Siegel had indeed committed the criminal actions with which he had been charged. This involved proving not only that he had acted as charged but also that he had done so in a context that the Nazis and Nazi Collaborators (Punishment) Law defined as criminal. For example, since the Nazis and Nazi Collaborators (Punishment) Law defined as criminal acts of assault committed in "places of confinement," Judge Kennet thus had to determine whether the barracks at which the Jews were assembled before work, the mess where they ate lunch and the tailor shop constituted "places of confinement" as defined by the statue.[150] His punctilious discussion of this issue serves as a fascinating example of the

150 Judge Kennet summed up this issue as follows: "Was this a place of confinement? A place of confinement means 'any place in a hostile country which, according to the orders of a hostile regime, was designated for persecuted people, and this includes any part of such a place.' Herein lies the difficulty – we know that the Jews still moved about freely in the city and each lived in his home. It was not imperative to report since it was possible to pay a work ransom. The area was not designated for persecuted people since we know that it was a military camp. On the other hand, from Lieber's testimony we know that people sometimes assembled in the area adjacent to the community committee. *The legal onus exists only should I decide that, during those few moments that the assembly of laborers stood in view of the German, the area was designated for persecuted people*. I doubt that the law had such a place in mind or that it provided for such a place to be artificially included in the definition of a confined

unavoidable clash between complex real-world situations and one-dimensional legal definitions. Judge Kennet's analysis is certainly merited from the purely legal point of view. Yet this quite proper legal approach obliterates historical reality, and in doing so demonstrates the dissonance between one-dimensional legal categories and actual, complex events that the law does not, and perhaps cannot, comprehend.[151]

The tension between events as they happened and the form they take in the judicial process is compounded by the incommensurability of the figure of Siegel as constructed by the witnesses and that portrayed by the judge. As I have noted, the figure of Siegel broke free of the legal discourse. Siegel was not entirely "evil" in the judicial sense, since he was, after all, a victim of the Germans – he lost his own family in Auschwitz. But neither was he entirely "good," since the witnesses claimed he had acted brutally. But Judge Kennet could not make a nuanced determination. He had to find Siegel guilty or innocent. Criminal law offers no intermediate position. I suggest that Judge Kennet worked according to the following strategy. He culled from the various testimonies material such elements with which he was acquainted, and then, using this material, he assembled a character with which he was familiar. Judge Kennet, who had a reputation for being both thorough and severe, portrayed Siegel as demanding discipline in a positive and commendable manner. According to Judge Kennet, Siegel appreciated the need to maintain law and order. His objectives were, in fact, educational.[152]

For example, regarding the accusation of assault causing grievous bodily injury, Judge Kennet wrote: "The defendant gave the impression of being a man of principle with regard to discipline and order. He made a point of maintaining order and

place and I shall allow the defendant the benefit of the doubt, whether the place was or was not designated for persecuted people." Judgment, p. 4 (emphasis added).

151 A similar dissonance emerges when one looks up the dictionary definition of the term "ghetto," in order to understand what a "place of confinement" is. This is what the counsel for the defendant did in his summing up, in claiming that the prosecution had not proven the existence of a "place of confinement": "If they took place, the beatings occurred during the initial months of the occupation. All the witnesses testified that no internment camp existed in Będzin, and not even a ghetto. Refer to the definition of a ghetto in Gur's dictionary." Defense summation, Siegel in the District Court, p. 101. The definition is not included in the record.

152 On the process whereby judges become "acquainted" with defendants who belong to a "type" unfamiliar to them, particularly in trials pertaining to the Holocaust, see Hemda Gur-Arie, *HaKarat HaNe'elam*.

cleanliness wherever he held office. He appears to have had no wish whatsoever to abuse people."[153] He added:

> The blows were delivered in order to clarify to those beaten that it was forbidden to receive an additional portion of food and thereby to deprive the others; or that one must clean one's shoes before a lineup. Had these blows been delivered in a different place and in different circumstances, they would have been considered educational blows or blows designed to educate. The defendant here demanded cleanliness and order so as to preclude graver consequences for the people at the hands of the Germans who inspected the lineup.[154]

Basing himself on the evidence brought before the court, Judge Kennet chose to portray Siegel not only as a man of principle but also as one who sought to promote "the good of his people": "He feels that he is innocent of wrongdoing and despite the danger of this trial he chose to come to this country rather than to go to some other country, as he could have done. This becomes evident in the fact that he regarded this entire matter as justified and for the good of his people, so much so that it was not even impressed in his memory."[155]

A further type of tension discernable in the verdict is that between the judge and the prosecution witnesses. In contrast with his favorable portrayal of Siegel, Judge Kennet depicted the witnesses as unreliable. He maintained that the account given by one witness was "dubious." In reference to another, he wrote that "my impression is that the witness knows that he is relating something that he himself invented." In another case he asserted that "there is not sufficient proof to substantiate this story... The evidence of this witness is suspect and unreliable in my view."[156] Judge Kennet went so far as to impugn the motives of this witness: "It also transpires that the witness belongs to a leftist party while the defendant was a Revisionist with all the differences of opinion the two parties had abroad... I shall not rely on this witness to determine facts..."[157]

153 Judgment, p. 1.

154 Ibid., p. 2.

155 Ibid.

156 Ibid., pp. 2-3. It should be remembered that the Nazis and Nazi Collaborators (Punishment) Law enables departure from the rules of evidence, including reliance on hearsay. Judge Kennet, however, chose not to do so and to reject the evidence.

157 Ibid., p. 3. The tension between parties and movements among the displaced persons in Italy emerges from the declaration of one of the witnesses, who announced that he

Trained in formalist legal thinking, the judge was accustomed to hear testimonies that rest on personal knowledge, couched in terms such as "I was present when ..." or "I saw that ..." He was unable to "hear" testimony cast in the form "friends told me that..." or "in the underground it was known that..." He thus viewed the prosecution witnesses as unreliable and untenable and their testimony as spurred by ulterior motives. While it is not unusual for a judge to offer a negative assessment of a prosecution witness, it is rare for one to reject and disparage every single one of the prosecution witnesses in a case.

The tensions between the various layers of the judgment are, I contend, a manifestation of the clash between the law of the community and the law of the state. Called to provide a foundation for the accusations against Siegel, the witnesses brought the community along with them into the court. In came the city of Będzin, the ghetto, the labor camps and the Jewish collaborators – and everything that happened to them, their families, and the members of their community during the Holocaust. They offered testimony based not only on their personal experience but also on rumors and stories disseminated by word of mouth. Judge Kennet, in contrast, brought formal justice into the court – the procedures and standards of the state criminal justice system, and all he had learned from his experience as a judge about witnesses – who were required, by those procedures, to impart only knowledge gained at first hand. The outcome was a verdict that strained to comprehend the defendant's complex character, an amalgam

was unable to deliver his testimony because of illness: "I should add that even had there been no actual impediment (illness) I would have refused to return to testify on the matter of Siegel since, as became to known to me following my previous testimony, Siegel's (considerable number of) supporters made an effort to arouse the opinion in the camp that my testimony against Siegel stemmed from my personal animosity toward him or from my opposition to Beitar, that is, the party of which he is a member. In light of this description they began to hound me, publicly threatened me with a beating, and I even received an informal threat that I would suffer serious consequences were I to dare to testify at Siegel's trial. Such threats likewise reached me from Siegel's supporters in Milan" (parentheses in the original), affidavit by Dr. Hershtiel in Cremona, Documents of the DP Courts. According to the historian Ya'akov Markovitzki, there was considerable tension between members of Beitar and the activists and emissaries from the organized Yishuv, which on more than one occasion led to violent clashes. See Yaakov Markovitzki, "Beitar veShe'erit HaPleita beItalia, 1945-1946," *Iyunim beTequmat Yisra'el, Me'asef leve'ayot HaTzionut, HaYishuv uMedinat Yisra'el* 7 (1997), pp. 272-84.

of victim and free agent; a man who employed violence against his subordinates, but arguably only in order to protect them from far more serious harm at the hands of the Germans. Using formalist-legal language, Judge Kennet sought to clear a path through the complex accounts of witnesses whom he deemed unreliable.[158] I believe that the tension between the community in the state, as expressed in the judgment had its source in the Nazis and Nazi Collaborators (Punishment) Law.

Epilogue: Law, State and Community

The Rehabilitation Committee, a quasi-judicial body set up to try Jewish collaborators and one part of the legal system of the displaced Jews in the American zone of occupation in Germany, distinguished between communal justice and state justice. "The Rehabilitation Committee," its members declared, "is not the appropriate court in which to sentence former collaborators... [B]ut the Rehabilitation Committee can be the bench that will first and foremost see to... the moral purity of the surviving remnant..."[159]

Note that the committee stressed the distinction between the imposition of punishment, a power vested in the sovereign state, and the act of purification, a task the community of displaced persons took upon itself. My purpose here is not to examine Siegel's historical-legal-personal story and its meaning. Rather, in light of the distinction stated by the Rehabilitation Committee, I ask whether the Nazis and Nazi Collaborators (Punishment) Law is a statute intended to enable the Israeli state to punish malefactors or to offer Israeli society a framework for communal moral purification? Does the fact that the law was legislated by a sovereign state as part of its positive law necessarily guarantee its "statist" nature, or could it be a statute that preserves communal norms under the guise of state law, thereby sowing confusion among those called upon to interpret and apply it?

158 Holocaust survivors were first accorded legitimacy as "authorized witnesses" following the historic decision made by Gideon Hausner, the prosecutor in the Eichmann trial, to base the prosecution's case on their personal stories rather than to emulate the Nuremberg trials, which deliberately relied on voluminous documents. Up to that point the survivors had had to contend with a negative reputation, primarily owing to the assertion that one could not rely on the memory of survivors of traumatic experiences.

159 "Report on the Activity of the Rehabilitation Committee in the American Zone of Occupation of Germany for the Period between Aug. 25, 1948 - Feb. 15, 1949," YVA, Germany Collection, JM10280/223 (Yiddish).

The Nazis and Nazi Collaborators (Punishment) Law rests upon three judicial sources: the Nuremberg Charter, the charter of the International Military Tribunal attached to the London Four-Power agreement of August 8, 1945; the Convention on the Prevention and Punishment of Genocide, adopted by the UN General Assembly on December 9, 1948; and the Criminal Procedure Ordinance, 1936, the basis of Israel's criminal law at the time to which the law refers in order to define offences that are less grave than those determined in clause 1 of the law.[160] Alongside the judicial reading, I propose a Jewish-communal reading that can facilitate a fuller understanding of the law's foundations. In doing so, it explains the difficulties evident in the District Court verdict in the Siegel case.

I contend that the Nazis and Nazi Collaborators (Punishment) Law in fact represents Jewish communal codes of conduct in the guise of a state law. The decision to apply retroactive and extraterritorial criminal legislation to Jewish collaborators had not only an external juridical basis. It was not intended only to meet international requirements for joining "the family of nations," that is, to accord to postwar national laws about bringing Nazis and their collaborators to justice. The decision to make Jewish collaborators liable for prosecution was, I contend, a manifestation of an internal need by the Jewish-Israeli nation to reckon with individuals perceived to be traitors. These people, it was felt, caused mortal injury – not necessarily of a physical nature – to the Jewish people's social-communal fabric. In this respect, the need that the Nazis and Nazi Collaborators (Punishment) Law is intended to meet is a Jewish need.

The assertion that the law is of a communal nature is ostensibly unremarkable, since many criminal laws express the values of the society in which they operate and which the state seeks to defend by prohibiting certain forms of behavior.[161] I argue,

160 See clause 1 of the Charter of the International Military Tribunal (IMT). For a reference to this charter see, for example, clause 3(a)(1) of the Nazis and Nazi Collaborators (Punishment) Law with regard to the declaration of hostile organizations. The category of crimes against the Jewish people is defined identically to the definition of the crime of genocide according the genocide charter, although it refers specifically to cases in which the group singled out for extermination is the Jewish people. See Orna Ben-Naftali and Yogev Tuval, "Punishing International Crimes Committed by the Prosecuted," *Journal of International Criminal Justice* 4 (2006), pp.130-46; Orna Ben-Naftali and Yuval Shani, *HaMishpat HaBeinle'umi bein Milhama leShalom* (Tel Aviv: Ramot, Tel Aviv University, 2006), pp. 267-75.

161 See S.Z. Feller, *Yesodot beDinei HaOnshin* (Jerusalem: The Hebrew University, 1984), pp. 114-19.

however, that the Nazis and Nazi Collaborators (Punishment) Law goes farther. It does not represent a value that the state seeks to defend by decreeing that those who violate it must be punished. The law, after all, imposes penalties for past acts. It does not look to the future. The Nazis and Nazi Collaborators (Punishment) Law expresses a communal-moral (although not necessarily religious) perception founded on the ancient Jewish law of *din moser*. On this basis, anyone who performed a function in the ghettos and camps was understood, by definition, to be a traitor to his people. This perception was shared both by those who came from "there" and those who did not personally experience the Holocaust. The law's communal nature is evident in the decision to enshrine in law sanctions against Jews who committed acts during the period prior to the establishment of the state; in the fact that both the minister of justice and the members of Knesset who debated the bill understood that its practical objective was not to prosecute Nazis but rather their Jewish collaborators; and in the fact that the debates in the Knesset and in the Knesset's Law and Justice Committee and the subcommittee that deliberated the bill addressed solely the clauses relating to Jewish collaborators.[162]

The judgment handed down in Siegel's case by the District Court manifests the clash between the law's overt content, namely the criminal law, and its hidden complexion – the communal norm. In my analysis of the testimonies I have shown that, like the witnesses in the social court in Italy, the prosecution witnesses in Israel perceived Siegel and the other collaborators to be traitors, Jews who had become "like Germans." In other words, from the witnesses' perspective there was no significant difference between the communal and state judicial structures. But, being accustomed to precise legal discourse according to which the individual's guilt is determined solely by proving that he committed criminal acts, Judge Kennet was unable to "hear" what the witnesses were trying to say. It should hardly be surprising, then, that he found the witnesses' stories and motives suspect and wondered why they had not already relegated "all this business to oblivion, just as many other things that happen in life owing to necessity and pressure, for which the individual is not responsible, have been consigned to this same place."[163]

162 The debate on this issue was replete with emotion and political and ideological assertions regarding Jewish collaborators to such an extent that the Minister of Justice felt obliged to respond: "Sirs, this is not merely a declaration, this is a law." Knesset Proceedings 4, 1161 (1950).

163 Judgment, p. 2. The judge is here expressing his opinion on one of the clauses of the indictment – "assault that caused actual bodily harm" – in the Gross Mysłowice labor

The verdict of the District Court in Siegel's trial raises the question of the court's capacity to contend with the "Gray Zone," and with defendants who cannot be contained within the boundaries of criminal discourse. The ambiguity of the defendants derives from their dual status as, both, innocent (victims) and guilty (perpetrators); two statuses that are clearly distinguished by criminal law.[164] My analysis of the judgments and testimonies indicates that discussion of this question should take place during the legislative process. Making explicit the ideology on which the legislative act and its understanding rests may help anticipate the difficulties that can arise during judicial proceedings based on the law.

Translation: Avner Greenberg

camp. In the verdict, the judge "borrows" this specific opinion and applies it to the entire judicial proceeding.

164 The "Gray Zone" is an expression coined by the Jewish-Italian author and Holocaust survivor Primo Levi, in describing the area in which there is no clear, unequivocal division between good and evil, between the righteous and the evil person. See Primo Levi, *HaShok'im veHaNitzolim*, trans. Miriam Shusterman-Padovani (Tel Aviv, Am Oved, 1997), pp. 27-52. Primo Levi, *The Drowned and the Saved*, trans. Raymond Rosenthal (New York: Vintage International, 1989).