Hitler's Judges: Ideological Commitment and the Death Penalty in Nazi Germany*

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Abstract:

To what extent do judges in courts in authoritarian regimes merely implement the will of the state? What determines judges' behaviour in such contexts? We address these questions by examining the role of judicial policy preferences in influencing whether judges in Nazi Germany sentenced defendants charged with serious political offences - treason and high treason - to death. Our findings lend support to the attitudinal model of judicial decision-making. Specifically, we find that judicial policy preferences, measured by the depth of the ideological commitment of the judge to the Nazi Party worldview, were an important determinant of whether judges imposed the death sentence. We also find that judges who were more ideologically committed to the Nazi Party were more likely to impose the death sentence on those who belonged to the most organised political opposition groups to the Nazi state, those whose acts of treason or high treason involved violent resistance against the state, and those with characteristics to which Nazism was intolerant.

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1. Introduction

There is a growing body of research examining the manner in which authoritarian states use courts as instruments of governance (Moustafa, 2014). This literature has found that courts are frequently deployed to exercise state power vis-à-vis opposition groups (Moustafa, 2007; Rajah, 2012). Regime-related theories, developed in political science, suggest that authoritarian regimes use the courts to further their political goals through establishing a dual legal structure in which they leave the ordinary judiciary largely to exercise independence in the routine administration of justice, while transferring politically sensitive cases to courts specifically established to hear such cases (Guarnieri, 2010; Linz, 2000; Toharia, 1975).

In such politicized courts, judges are expected to implement the will of the regime. But such expectations are not always fulfilled. Indeed, there is an emerging literature that suggests that some judges in authoritarian courts behave more as agents for change than puppets of the regime. For example, Ip (2012, p. 331) finds that the Supreme People's Court of China has acted "with considerable autonomy to influence an ever-widening range of policy domains". In another example, Moustafa (2007) asserts that the Egyptian Supreme Constitutional Court has been responsible for an expansion of political rights in that country, contrary to the interest of the authoritarian state. Ip (2011, p.1) refers to several other such instances as well, maintaining that courts "in at least some authoritarian polities are more autonomous and activist than previously assumed, occasionally defying their regimes, sometimes with impunity". The main point here is that there is mounting evidence that judges in authoritarian regimes do not necessarily always exercise their discretion to advance the interest of the state.

If one accepts this point, two questions naturally arise: what determines how judges will behave in political courts in authoritarian regimes and to what extent judges do, in fact, implement the will of the authoritarian state? We answer these questions by examining the factors that determined whether judges in Nazi Germany sentenced to death defendants charged with high treason and treason, the most serious of political offences.

Nazi Germany provides a good example of the bifurcation of the criminal justice system in one-party states. When the Nazis came to power in January 1933, cases of treason and high treason were tried before the Supreme Court (*Reichsgericht*). Thus, between September and December 1933, it was the Supreme Court which heard charges of high treason against defendants alleged to have burned down the *Reichstag* (Germany's parliament) on February 27, 1933. This was a politically sensitive case for the Nazis because the fire, which they blamed on communists, had been the catalyst for sweeping legislation that had dramatically diminished the rights of those opposed to the regime. For the state, the trial did not go as hoped. Four of the five defendants were acquitted for lack of evidence. Hitler later described the verdict as “laughable” and the judges as “senile” (Picker, 1951). In response, in April 1934 the Nazis enacted further legislation establishing the People's Court (*Volksgerichtshof*) and transferred jurisdiction for cases of treason and high treason to it. In so doing, the regime created a court that was specifically designed to hear serious political offences.

Traditionally, authoritarian states, fearful of judicial review, have been regarded as reluctant to cede independence to the courts. More recently, however, there has been increasing recognition that some authoritarian regimes may be willing to provide autonomy to their judiciaries. In Nazi Germany, judges of the People's Court, for example, were given a high level of discretion over sentencing. Sentencing options were elastic with respect to both the type and severity of punishment handed down. Moreover, the State provided no specific guidelines on sentencing, meaning that judges were free to impose sentences for treason and high treason that increased in severity up to capital punishment. In addition, since decisions of the People's Court (and Supreme Court before August 1934) were final, no appeal was possible (Geerling et al., 2016; Köch 1989; Marxen 1994; Zarusky, 2011).

The literature developed to explain judicial behaviour posits a range of competing theories on how judges exercise discretion. Ongoing debate exists over whether judges are guided more by the law or ideology. At one end of the spectrum, formalists contend that judges simply interpret and apply the law without reference to their own preferences. At the other end, there are those who subscribe to attitudinal models of judicial behaviour, which give a central role to the policy preferences of judges as measured by their political ideology. A midway position is occupied by agency theorists who, while recognising the importance of judicial policy preferences, suggest that judges' ability to implement their preferences are constrained by the institutional environment as well as oversight by courts higher in the judicial hierarchy (see e.g. Epstein & Knight, 1998; Garoupa et al., 2013; Segal & Spaeth, 2002).

We test the attitudinal model using data on the imposition of the death sentence for treason and high treason in the Supreme Court and People's Court from when the Nazis came to power at the beginning of 1933 until the end of World War II. About 98 per cent of the defendants in our sample were sentenced in the People's Court from 1934.¹ Our hypothesis is that because the People's Court was established by the Nazi regime to hear offences against the state, by its very nature it was highly politicised and that judicial policy preferences (reflected in the judge's political ideology) should play an important role in how cases were decided. To put it differently, our contention is that the extent to which judges were willing to implement the will of the authoritarian state depended on how closely their own political ideology aligned with that of the regime. The potentially central role of judicial policy preferences was reinforced by the fact that the applicable laws regarding the sentence to be imposed for treason and high treason were vague and that decisions of the People's Court were not subject to review by courts higher in the judicial hierarchy.

The judges who heard the cases in our sample were a fairly homogenous group. All but one of the 26 judges in our sample were members of the Nazi Party or one of its ancillary organisations.² Merely being a member of the Nazi Party, though, did not necessarily signal strong ideological commitment to Nazi values. It could be motivated by other factors, such as professional advancement. Thus, in order to differentiate between judges in terms of their ideological commitment to the Nazi worldview, we use a binary variable set equal to 1 if the judge joined the Nazi Party

¹ Our sample consists of 1,157 cases involving 3,579 defendants. Of these, 33 cases (73 defendants) or 2.04 per cent of our sample were tried in the Supreme Court and 1,124 cases (3,506 defendants), or 97.96 per cent in the People's Court.

² It should not be assumed that the sole judge in the sample who never joined any party organisation, Wilhem Bruner, was significantly independently minded. Indeed, his appointment to the People's Court was possible only because the authorities deemed him to be politically 'safe' (Gruchmann, 1988).

before the Nazis came to power in January 1933. Hereafter, these pre-1933 judges will be referred to by the German term for such early members of the Nazi party, the *Alte Kämpfer* (old fighters). We assume here that the *Alte Kämpfer* held personal views that were strongly aligned to the values of the Nazi Party. Indeed, given that they had all joined the party before its seizure of power, their dedication to the movement and its causes was in most cases deeply held. Judges who were *Alte Kämpfer* handed down sentences for about 40 per cent of the defendants in our sample.³

The first step of our analysis examines the role of the policy preferences of the judges in influencing the likelihood that a defendant charged with treason or high treason received the death sentence. All judges of the Supreme Court and People's Court were white, ethnically German males. Hence, there is no variation in the gender or race of the judges in the sample. In all cases, however, we control for other important judicial characteristics such as the judge's age, professional background (had they served on the Bench during the Weimar Republic, prior to the Nazis' coming to power?) and religion (were they raised as Roman Catholics?), in addition to our main variable of interest, the ideological commitment of the judge to Nazism (did they join the party before 1933?) We also control for the offence type, defendant's prior criminal history including prior political and non-political offences, demographic and human capital characteristics and political affiliation.

³ A list of the 26 judges, together with whether they were *Alte Kämpfer*, the number of defendants they sentenced and the proportion of defendants that they sentenced are given in Appendix 1 (Table A1.1).

We then interact our proxy for judicial ideology with various characteristics of the defendant, to examine whether judges who were more ideologically committed were more inclined to impose the death penalty on members of the better organized oppositional groups, those engaged in violent resistance against the state, and individuals with characteristics against which the Nazis had an ideological prejudice or showed intolerance. This step of the analysis provides a direct test of whether those judges most ideologically aligned to the Nazi regime exercised their policy preferences so as to further the interests of that state.

We find that overall *Alte Kämpfer* were 3.64 percentage points more likely to impose a death sentence than other judges. Furthermore, relative to their less ideologically committed brethren, *Alte Kämpfer* were 11.52 percentage points more likely to impose the death sentence on those engaged in violent resistance. Similarly, *Alte Kämpfer* were 2.77 and 1.99 percentage points more likely to impose the death penalty on members of the comintern-aligned communist and social democratic parties respectively. The targeting of these parties by *Alte Kämpfer* made political sense. From the regime's perspective, the greatest and most imminent threat for most of its existence lay in the two mass left-wing parties of the period, the communists (KPD/KPÖ) and social democrats (SPD/SPÖ). These were parties that the *Alte Kämpfer* had literally fought on the streets during the years of the Weimar Republic and, in the 1930 and 1940s, they remained the political movements best positioned to challenge Nazi supremacy. It should be noted that it was not until the final stages of the war that most conservative and nationalist political movements and organisations broke from the consensus that underpinned Hitler's rule (Benz, 2014, pp. 18-22; Weitz, 2009, pp. 81-127).

Among judges with an ideological commitment to Nazism, we also find considerable evidence of bias against defendants with specific characteristics. Compared to judges who did not join the Nazi Party before 1933, the *Alte Kämpfer* were thus more likely to sentence devout Roman Catholics (10.85 percentage points), defendants with partial Jewish ancestry (15.17 percentage points), juveniles (21.9 percentage points) and foreigners (19.15 percentage points) to death. The hatred of extremist Nazis like the *Alte Kämpfer* to those of Jewish background and foreigners more generally is, of course, well known. Yet, Nazi ideology was also deeply antagonistic towards all organised religion, especially those varieties, like Roman Catholicism, which sought to maintain their independence from Nazi control and influence. Individuals who attempted to assert Roman Catholic values in place of Nazi values were thus harshly persecuted. Furthermore, core to the Nazi worldview was the belief that those elements of German society which acted to weaken or hold it back from attaining its National Socialist destiny should be quickly and mercilessly expunged. As a consequence, one would expect that, unlike judges of other persuasions who might regard relative youth and economic disadvantage as mitigating factors at times of sentencing, the ideologically driven *Alte Kämpfer* would have shown markedly less sympathy or tolerance to juveniles or the unemployed who had chosen to challenge the regime's right to rule.⁴

We also examine whether judges who were exposed to distinct historical periods (the Revolution of 1918-19 and period of hyperinflation - June 1921 to January 1924), which may have shaped these judges views with respect to Nazism, were more likely

⁴ For a good overview of Nazi ideology, see Kershaw (2000, especially, 20-46).

to impose the death sentence. We find that judges who came of age during the hyperinflation were 8.3 percentage points more likely to sentence a defendant to death and that *Alte Kämpfer*, whose hometown or suburb lay in a centre of the Revolution of 1918-19 were 5.8 percentage points more likely to sentence a defendant to death.

Our findings are important because they provide insights into the practical realities of judicial empowerment by providing rare empirical evidence on how the exercise of judicial discretion in authoritarian states is reflected in sentencing outcomes. We find that judicial policy preferences, measured by the political ideology of the judge, did matter in Nazi Germany. This, however, only tells part of the story. Courts set up by authoritarian states to sentence the political opponents of the regime are often depicted as kangaroo courts. Indeed, initial post-war assessments of the People's Court portrayed it as little more than a vehicle for the show trials of the regime's most prominent opponents. It was labelled as merely a "court in name only", a "terror court" or "blood tribunal" with largely preordained outcomes (Jahntz & Kahne, 1992; Ruping, 1984, 1985). While few authors would contend that the People's Court judgments were impartial or that its judges were not subservient to the wishes of the regime, we offer here a more nuanced interpretation of its history. Our results show that, rather than having a preordained outcome in which death was *the only permissible* sentence irrespective of mitigating circumstances, a range of judicial and defendant characteristics as well as the offence committed influenced whether the death sentence was imposed or not.

The existing economics literature on sentencing in capital cases has focused mainly on gender and racial disparities in the likelihood of being sentenced to death for

homicide in the United States (see e.g. Alesina & Ferrarra, 2014; Iyengar, 2011; Kastellec, 2015). In a related study, Argys and Mocan (2004) examine the factors that influence whether individuals already on death row for committing homicide in the United States end up being executed. Kubik and Moran (2003) consider the role that election-year political considerations have in determining the timing of executions in the United States. We extend this literature on the determinants of receiving, or implementing, the death penalty in several directions.

First, instead of situating the study in a modern day democracy (the United States) as existing studies do, we extend this literature to examine the imposition of the death penalty in a court of an authoritarian regime of historical significance. While there is a growing interest in the use of capital punishment in modern day authoritarian states, our understanding of what determines whether courts in such states impose the death sentence is scant. A lack of information is an issue here. While Amnesty International does produce limited data on death sentences,⁵ information on judge and defendant characteristics in specific cases is hard, if not impossible, to come by. By studying a politicized court in an historically important authoritarian state, we shed light on sentencing more generally in authoritarian states.

Second, instead of focusing on cases of homicide, our sample consists of individuals convicted of the most serious political offences (treason and high treason). As such, ours is one of the first studies to examine the determinants of sentencing in a political court, established to sentence political opponents of an authoritarian regime. In addition to factors considered in previous studies (demographic characteristics of the

⁵ Amnesty International has statistics on death sentences imposed for many authoritarian states for the period 2007-2014, but many of these are approximations and there is not corresponding data on cases in which the death penalty was not imposed or case level characteristics.

defendant, offence type and prior criminal history), we explore for the first time the role of both the political affiliation of the defendant and the ideological orientation of the sentencing judge.⁶

Third, our research contributes to the literature on the workings of the People's Court itself. As noted above, earlier histories of the court depicted it purely as an instrument of terror. Recent studies based on archival research, however, have challenged this overly simplistic assessment, emphasising instead its continuities with German legal practices (Gruchmann, 1988; Marxen, 1994; Schlüter, 1995). Our results lend further weight to this more nuanced assessment of the People's Court.

Our study is related to Geerling et al. (2016) which also examines the determinants of sentencing for treason and high treason in Nazi Germany. We, however, differ from that study in important respects. First, we analyse cases over a longer time frame. We consider all such cases until the end of World War II; Geerling et al. (2016) examines cases only from the pre-war years. Second, our focus is on the imposition of the death penalty; Geerling et al. (2016) looks at sentencing more generally. Third, and perhaps most importantly, we examine the role of both defendant and judicial characteristics in influencing sentence outcomes; Geerling et al. (2016) only considers defendant characteristics. Given that Geerling et al. (2016) does not consider judicial characteristics, they do not examine the role of judges' policy preferences in sentencing, which is the key objective of this study.

⁶ Argys and Mocan (2004) consider the relevance of the political environment (e.g. if the Governor was Democrat, Republican or was a lame duck) on whether death sentences for homicide in the United States were commuted to life in prison. Kubik and Moran (2003) consider the role of election cycles in the timing of executions. Neither considers the political background of the individual sentenced to death.

The paper proceeds as follows. Section 2 discusses the institutional background. Section 3 outlines the positive political theory of criminal sentencing and our key testable propositions. The data and method are outlined in Section 4. The main empirical results are presented in Section 5 and we offer robustness checks in Section 6. Section 7 concludes.

2. Institutional Background

When the Nazis came to power in January 1933, Articles 80-92 of the *Reichsstrafgesetzbuch* (Federal Penal Code), first promulgated in 1871, defined the acts of high treason and treason in Germany. High treason consists of those acts that internally undermine the power and integrity of the state, while treason concerns itself with acts which harm the state externally. The code defined three categories of high treason: attacks that threatened the head of state; attempts to change or alter the territory of the Federal state; and violations of the constitution (Lauf, 1994; Marxen, 1994; Schlüter, 1995).

The *Reichstag* fire and subsequent trial provided the impetus for the restructuring of the German judicial system. In April 1934, the *Law Amending Provisions of Criminal Law and Criminal Procedure* created the People's Court and transferred jurisdiction of high treason and treason to it from the Supreme Court. Each case of treason or high treason in the People's Court was heard before a single presiding judge. Hence, all decisions of the People's Court were effectively decisions of a single judge.⁷ The

⁷ In each trial, in addition to the presiding judge, there were four others who sat on the case in one of three senates. Three of these four others who sat on cases were lay members of the Court, drawn from the Nazi Party to provide "political expertise" (Zaruský and Mehringer, 1998; Gruchmann, 1998). It is important to recognise that these others who sat on the case played an advisory role only and did not have a vote on whether the defendant was guilty or decide on the punishment to be imposed. The decisions as to guilt and punishment were made solely by the presiding judge, who also provided the reasons for his decision. Hence, in all practical respects, decisions on the People's Court were decisions of the presiding judge sitting alone.

adoption of this law brought all decrees with respect to high treason and treason into line. The death penalty was applicable to all crimes listed in articles 80-83. The People's Court now decided in the first and last instance in all matters which previously came under the jurisdiction of the Supreme Court. No appeal against a decision of the presiding judge was possible. The presiding judge was also given significant flexibility in determining punishment. In all cases, judges were free to hand down sentences that increased in severity: prison, penitentiary with hard labor and the loss of civil rights and capital punishment (Zarusky and Mehringer, 1998).

3. Positive Political Theory of Criminal Sentencing

In the literature on positive political theory, judges are modelled as strategic policy maximizers who seek to maximize their preferences, subject to constraints imposed by other factors, such as adherence to legal doctrine (see e.g. Cross et al., 2012; Schanzenbach & Tiller, 2006; Shavell, 2006). Such an approach has been used to model the sentencing preferences of U.S. judges under Federal Sentencing Guidelines (e.g. Fischman & Schanzenbach, 2011; Schanzenbach & Tiller, 2006). Our conceptual framework draws on these studies, although there are important differences, given that these studies model sentencing preferences of judges in a democratic common law country (the United States) sitting in Federal District courts and subject to appeal to higher courts in the judicial hierarchy.

In our conceptual set up we assume that there are two actors: the authoritarian Nazi regime with a preference for remaining in power and judges of the Supreme Court and People's Court who have their own preferences over the sentencing outcomes. Thus, for a given crime and set of defendant characteristics, some judges would prefer to impose the death penalty while others may opt for a lighter sentence.

We assume that the preferences of different judges are derived from their ideological beliefs. This approach is consistent with the U.S. literature which asserts that policy preferences on sentencing are reflected in political persuasion, namely, whether the judge in question is a Democrat or Republican. This relationship is typically proxied by looking at whether the appointing President was a Democrat or Republican. In the U.S. context, the conventional wisdom is that Democrat judges prefer more lenient sentences for street crimes and harsher sentences for white collar crimes than their Republican counterparts (Schanzenbach & Tiller, 2006).

Rather than the Democrat/Republican dichotomy, in this paper we use the depth of the judge's ideological commitment to the Nazi Party to measure his policy preferences. To the extent that judges have discretion in applying the law, they will do so in a manner consistent with their view of the world, informed by their ideological policy preferences. We assume that the ideology of *Alte Kämpfer* was closely aligned with the interests of the Party and Nazi state, and, as a result, they were more likely to exercise their discretion to reinforce the position and status of the regime. It is worth noting that our measure of ideological preference is much stronger than that typically used in U.S. studies, because it relies on the judge actually joining the Nazi Party in the period before there was any professional advantage in so doing.

We take it as given that the main objective of the authoritarian state is to remain in power and stamp out opposition to its rule. In the courts, this objective manifests itself in several preferred sentencing outcomes, which can be summarized as follows. First, the authoritarian state would prefer capital punishment for those opposed to it. Death is the only outcome that permanently removes an opponent. Second, the authoritarian state would prefer the death sentence for members of the most organised opposition

groups, given that they represent the greatest threat to the state. Third, the authoritarian state would prefer the death sentence for those engaged in violent resistance against it. Fourth, the authoritarian state would prefer harsher sentences up to, and including, the death sentence for those against whom the regime had an ideological bias. In Nazi Germany, these prejudices included *inter alia* those of partial Jewish ancestry, foreigners and the long-term unemployed.

In positive political theory, judges express their sentencing preferences subject to having to comply with legal doctrine. In common law countries, legal doctrine is usually taken to be adherence to a system of precedent and fear of judicial reversal by a Court higher in the hierarchy. This was not the case in Nazi Germany, however, where there was no judicial review of decisions of the People's Court. Consistent with the Germanic civil law tradition, judges of the Court provided written reasons for their decision, but there was no system of precedent and cases were not decided with reference to earlier cases.

While legal obedience is less of a constraint in a court not subject to appeal, judges are still required to act within the constraints of the legislation, so it is not totally irrelevant (Cross et al., 2012). In Nazi Germany, adherence to legal doctrine meant in practice that judges had to decide cases with reference to the legislation governing sentencing for treason and high treason. The relevant legislation was the *Law Amending Provisions of Criminal Law and Criminal Procedure*, enacted in April 1934. Articles 80-83 of the Penal Code made a broad range of treasonous or high treasonous offences punishable through either long terms of incarceration or capital punishment. This degree of flexibility in sentencing meant that the judges had

enormous discretion and that adherence to legal doctrine prescribed in the Penal Code imposed only a very weak constraint. Judges possessed significant latitude in determining the type and severity of punishment imposed.

Some of the literature on courts in authoritarian regimes has focused on the circumstances in which judges exercise their preferences in defiance of the regime (see Ip, 2011, 2012). If the starting point of analysis is that the preferences of judges as a group differ from those of the regime, one could begin with the assumption that the preference of judges is to impose fewer death sentences than preferred by the state. If one takes this approach, it follows that if the *Alte Kämpfer* wanted to impose fewer death sentences, they could more easily do so than other judges because their loyalty to the regime was beyond question. As a result, their deliberations would not be as likely to come on the radar of the state.

However, for non- *Alte Kämpfer* judges, most of whom were also members of the Nazi Party, it might be argued that their loyalty to the state could be questioned because they had joined the Party later, potentially making the Party leadership suspicious of their motives and commitment. In a principal (state) agent (judiciary) sense, the non- *Alte Kämpfer* may have been subject to a higher level of monitoring; there was no equivalent principal agent problem for the *Alte Kämpfer*. If one accepts this reasoning, one might then actually expect non-*Alte Kämpfer* judges to sentence more people to death than *Alte Kämpfer* judges in order to demonstrate their loyalty to the state and because they were less able to get away with imposing a lighter sentence consistent with their preferences.

While we accept this is one way to view the situation, we do not see judicial behaviour in Nazi Germany as a principal agent problem, but rather as an issue of how judges acted at the margin of discretion. All of the judges were personally appointed by Hitler, with advice given by the Justice Minister. The mindset of all the judges on the People's Court was broadly aligned to that of the regime. The non- *Alte Kämpfer* judges were certainly not rebels. Hence, we do not see it as particularly useful to view sentencing behaviour in Nazi Germany in terms of defiance of the state, as opposed to the exercise of judicial discretion at the margin. It was this discretion that was influenced by ideological commitment. Our hypothesis that the extent to which judges of the Supreme Court and People's Court were willing to implement the will of the Nazi regime depended on their political ideology, or degree of political commitment to the authoritarian state, suggests the following testable propositions:

Proposition 1: Alte Kämpfer will be more likely to impose the death penalty for treason and high treason.

Proposition 2: Alte Kämpfer will be more likely to choose capital punishment for defendants who were members of the most regime-threatening oppositional groups.

Proposition 3: Alte Kämpfer will be more likely to choose capital punishment for defendants who were engaged in violent resistance against the regime.

Proposition 4: Alte Kämpfer will be more likely to apply the death penalty to individuals with characteristics against which the Nazi Party had a strong ideological prejudice.

The psychology literature suggests that individuals' identity formation are most affected by major events in early adulthood (see e.g. Grotevant, 1987). Previous research in the economics and finance literature suggest that early life events impact on the management styles of CEOs (Malmendier et al., 2011; Schoar & Zuo, 2011). We examine whether sentencing outcomes were affected by discrete historical events in the judges' early adulthood that may have had a profound psychological impact and, thus, particularly shaped these judges' views with respect to Nazism. The two historical events are: (a) Was the judge's home town or suburb located in a center of the Revolution of 1918-19? (b) Was the judge aged 18-21 during the period of hyperinflation (June 1921 to January 1924)? We expect that judges whose hometown was in a center of the 1918-19 Revolution or were aged 18-21 during the period of hyperinflation to be more anti-communist, anti-democratic and anti-Weimar in their outlooks. As each of these characteristics was core to Nazism, possessing them in strength was consistent with a deeper holding of Nazi values.

Proposition 5: Judges affected by discrete historical events in their early adulthood that are likely to have contributed to a deeper sense of Nazism will be more likely to impose the death penalty for treason and high treason.

4. Data and Method

Data

The data come from the official state records of cases tried before the People's Court and Supreme Court, 1933-45, as collated by the Resistance as High Treason

(*Widerstand als Hochverrat*) project. The *Widerstand als Hochverrat* microfiche series comprises around 70,000 pages of court files that document the judicial prosecution of more than 6,000 men and women charged with high treason and treason who appeared before the central courts of the Third Reich. This study focuses on cases where resistance took place within the territorial boundaries of Germany following the *Anschluss* (union) with Austria in March 1938. Altogether, this amounted to 1,334 cases presided over by thirty-five judges and involving 4,177 defendants. Twenty-seven of these judges served in the People's Court. To measure a judge's ideological commitment to Nazism, we sought details about their background and career. The *Bundesarchiv* (Federal Archive) in Berlin contains personal files of judges who served on the Supreme Court and People's Court as well as Nazi Party membership records which survived the war. We were able to locate records for 26 of the 35 judges (21 of the 27 judges from the People's Court) and supplemented this knowledge with leading legal encyclopaedias of the Third Reich (Klee, 2003). These files provided information on the judges' age, career prior to the Nazis coming to power (whether they had served on the bench during the Weimar Republic), whether they joined the Nazi Party (if so, when) and whether they were brought up as a Roman Catholic. In total, the final sample consisted of 26 judges who presided over 1,157 cases involving 3,579 defendants; that is, 85.68 per cent of all the defendants charged with treason and high treason for activities carried out within Germany.

Table 1 contains data on the frequency of capital punishment for the sample as a whole as well as whether the judge was *Alte Kämpfer*. Of the 3,579 defendants in our sample 1,094, or 30.6 per cent, received the death sentence. *Alte Kämpfer* sentenced 37.8 per cent of defendants appearing before them to death, while their brethren who

had not joined the Nazi Party prior to 1933 sentenced 25.7 per cent of defendants to death. The difference in means of the proportion of defendants sentenced to death between judges strongly committed to the ideology of the Party and those who were not (12.1 per cent) is significant at 1 per cent.

Table 2 contains information on independent variables. A description of each variable is contained in the Appendix 1 (Table A1.2). In just under 40 per cent of cases, the presiding judge had joined the Nazi Party prior to 1933. We also have data on the judge's age (mean age was 54.88 years), whether the judge had been on the bench during the Weimar Republic (49.62 per cent had) and whether the judge was brought up a Roman Catholic (2.91 per cent had been).

We have data for a number of demographic, ethnic and human capital characteristics of the defendant. The mean age of defendants was 37.78 years, 17.6 per cent had completed high school or above, 86.95 per cent were male, 8.3 per cent were unemployed, 3.35 per cent were of partial Jewish ancestry, 2.01 per cent were foreigners, 1.56 per cent were juveniles and 7.68 per cent were Roman Catholic. We also know the severity of the offence with which the defendant was charged: treason (2.85 per cent), minor high treason (6.93 per cent), major high treason (52 per cent) or multiple offences (38.22 per cent) and if the offence was committed with violence (7.99 per cent). Information on the defendant's prior convictions (political and non-political offences), the year in which the defendant was sentenced, as well as the region in which their resistance activities took place is available as well.

Finally, we have data on the defendant's oppositional political affiliation, broken into four classifications. 'Comintern Communist' denotes membership of either the Communist Party of Germany (KPD) or Communist Party of Austria (KPÖ), whereas 'Social Democratic' indicates that the defendant was a member of either the Social Democratic Party of Germany (SPD) or the Social Democratic Party of Austria (SPÖ). The KPD/KPÖ and SPD/SPÖ were the main organized left-wing opposition groups to the Nazis. 'Other left-wing' here refers to those who were members of one of numerous smaller, less well-organised left-wing opposition groups, such as the Revolutionary Socialists,⁸ Anarchists/Syndicalists,⁹ Trotskyists,¹⁰ KPDO,¹¹ or other Communist splinter groups and self-help organizations.¹² 'Right-wing' denotes that the defendant belonged to a right-wing or conservative group opposed to the Nazi regime: namely, the *Schwarze Front*,¹³ BJ,¹⁴ catholic groups,¹⁵ National Conservatives¹⁶ as well as those who participated in the 20 July plot,¹⁷ the White Rose,¹⁸ and the Legitimists movement in Austria.¹⁹

[Tables 1 & 2]

⁸ The Revolutionary Socialists were a radical socialist group, which had broken off from the SPD.

⁹ 'Anarchist/Syndicalist' refers to membership of an anarchist or syndicalist organization.

¹⁰ Trotskyists were communists belonging to a party adhering to the views of Leon Trotsky.

¹¹ 'KPDO' stands for the Communist Party of Germany-Opposition. As its name suggests, the KPDO was an alternative Communist Party comprised of communists who had left or been forced out of the KPD because of their opposition to the party leadership's embrace of Stalinism.

¹² Communist splinter groups were other, small communist parties not affiliated to the Comintern. 'Communist Help Organization' refers to organizations set up to provide relief to the families of victims of Nazi oppression.

¹³ The '*Schwarze Front*' (Black Front) was a 'left-wing' Nazi group, which was opposed to Hitler and had split from the Nazi Party in 1930.

¹⁴ 'BJ' stands for *Bündische Jugend*, a loosely assembled association of German hiking groups which espoused a traditionalist, nationalistic and anti-democratic worldview.

¹⁵ 'Catholic group' refers to all organizations, most importantly the Center Party (*Zentrum*), that worked to preserve Catholic values in Germany.

¹⁶ National-conservative' refers to all organizations that espoused a conservative agenda. These organizations tended to be nationalistic, anti-Semitic, monarchist and militaristic.

¹⁷ The July 20 plot refers to the conspiracy to assassinate Hitler on July 20, 1944.

¹⁸ The White Rose was a non-violent, intellectual resistance group centred around the University of Munich.

¹⁹ Legitimists rejected the *Anschluss* with Germany in 1938 and campaigned for the restoration of the Habsburg dynasty in Austria.

Random assignment

The validity of our findings rest on the assumption that the Court used random assignment of cases to judges, implying that sentencing outcomes can be fairly compared across judges (Abrams et al., 2012; Ashenfelter et al., 1995; Eisenberg et al., 2012; Lim et al., 2015; Sorensen et al., 2012). To test the plausibility of this assumption, we adopt a Monte Carlo simulation methodology similar to Abrams et al (2012) to assess the degree to which case assignment was random. A key challenge for testing for randomization is the lack of counterfactual scenarios in the data. We observe only one realisation with all the possible allocations of cases across judges. To address this, we use Monte Carlo simulations to create hypothetical scenarios and then compare the observed realisation (our dataset) with the distribution of all the hypothetical counterfactual scenarios to draw inferences about whether the observed realisation could have been picked by chance among all simulated scenarios.

In implementing this testing strategy, we assume that if cases are randomly assigned to judges, observable defendant characteristics should have the same moments across different judges. For instance, in our dataset average defendant age is around 38 years, meaning that if cases were randomly assigned, we would expect the average age of the defendant appearing before each judge to be around 38 years as well. However, as pointed out in Abrams et al (2012, p.360): “The difficulty in determining whether a dataset results from random assignment is in quantifying exactly what it means for most judges to have defendants with mean age of around [38].” It is unrealistic to expect that the average defendant age for each judge to be exactly 38, so the question becomes how much variation in the average defendant age can be

attributed to sampling variability? The way to answer this question is to create a simulated dataset by randomly assigning defendants to different judges and measuring the variability in defendants' ages across various such randomly assigned samples. If the variation in age in the observed sample is within the bounds of variability in age present in the simulated samples, then we can conclude that the allocation is random and any inter-judge variation is due to sampling variability only.

The procedure we adopt is as follows. Let X be a defendant or court characteristic from the set of all observable defendant and case characteristics. For each X we generate 1,000 simulated observations such that each simulated observation is denoted as X_{ijcs} , indicating observation i for judge j in year c for simulation number s . Using the same notation, the equivalent value of X in the actual dataset is denoted by X_{ijc0} . This process of generating the simulated observation was iterated for each i and j and the whole dataset was simulated 1,000 times, giving us 1,000 alternative scenarios of allocation of cases to judges.

Next, we compute the mean value of X for each judge, for each simulated dataset:

$$\bar{X}_{js} = \frac{1}{N_j} \sum_{i \in J} X_{ijcs}$$

such that J is the set of all judges, with each judge having N_j cases. We then compute the mean for each simulated dataset obtained in the above step. Next, we rank these means across simulations, and find a p – value for the actual distribution depending

upon where it lies in the simulated distribution. We repeat this procedure for all of the observable defendant characteristics represented by X in the above equation²⁰.

Table 3 presents the test results for defendant characteristics including the mean value for the observed data, the mean and standard deviation of the simulated data and the associated $p - value$ indicating the position of the observed mean in the distribution of simulated means. With the exception of foreigner and those charged with treason only, the $p - value$ for the other observable defendant or case characteristics do not lie in the left or right 5 per cent tail of the simulated distribution. Thus, there is strong evidence that assignment of observable defendant characteristics across judges, and in particular those likely to be correlated with severity, is indeed random.

[Table 3]

It is important to note that we are not suggesting that necessarily each and every case was allocated across judges randomly. It may be that specific high profile cases were allocated to high profile judges. For example, it is unlikely to be random that Roland Freisler, President of the People's Court from August 1942 to February 1945, was the presiding judge that heard the case against the July 20 plotters (defendants charged with the conspiracy to assassinate Hitler on July 20, 1944). All that our estimation strategy relies on is that, taken as a whole, assignment was random conditional on some observable characteristics for which we can control. The July 20 trial was a high profile case because it involved a plot to assassinate Hitler. More generally, we are able to identify cases in our sample involving violence against Hitler. The results,

²⁰ As mentioned in Abrams et al (2012), one can use various other measures such as interquartile range, standard deviation and mean absolute deviation to compare the empirical distribution with simulated distributions. Our choice of mean as the preferred measure was governed by the fact that mean is a measure central tendency in the data and can be used for both continuous and discrete data.

reported in the final row of Table 3, suggest that taken as a whole, such cases were randomly assigned across judges.

Based on the random assignment of observable characteristics for which we can test, we conclude that judges receive cases with the same distribution of unobservable case characteristics as well (see also Abrams et al., 2012). Hence, any differences in the imposition of the death sentence can be attributed to the characteristics of the judges and their preferences, rather than non-random allocation of cases across judges.

Estimation strategy

Having established that the allocation of cases to judges was random, we now examine inter-judge variation in the imposition of the death sentence. We employ a logit model to examine the probability of receiving the death sentence. The dependent variable is a binary variable set equal to 1 if the defendant was sentenced to death; zero otherwise. Considering that the incidence of receiving the death sentence was not normally distributed, we also applied rare events logistic (RElogit) regression (King & Zeng, 2001) for robustness and to correct for potential rare events bias.

In all cases, in addition to our proxy for judicial policy preferences, we include a full set of controls as given in Table 2 and described in Appendix 1. There is likely to be considerable variation in sentencing practices over time. For example, as the Second World War progressed and the position of the Nazi regime became increasingly desperate, the death penalty was imposed with much greater regularity than before the war. Similarly, there may be variation in sentencing practices across regions of activity. Hence, all models also include time-specific and location fixed effects to account for this variation.

To test propositions 2 to 4, in alternative specifications we used logit models in which we interacted our proxy for judicial policy preferences with the political affiliation of the defendant, whether the defendant was engaged in violent resistance and various defendant characteristics (being devoutly Roman Catholic, of partial Jewish ancestry, a foreigner, juvenile and unemployed) which Nazis were either intolerant to or prejudiced against.

5. Results

Table 4 presents the logit results for the likelihood of receiving the death sentence. We report the marginal effects $\times 100$ for ease of interpretation. We present four specifications. In column (1) we include only *Alte Kämpfer*. In column (2) we include all judge characteristics. In column (3) we add defendant characteristics. The final column is the full specification. Table A1.3 compares the sign and significance of the coefficient across the logit and RElogit model for the full specification. The sign is the same and the magnitude of the coefficient is very similar for all variables.

[Table 4]

Consistent with our first proposition, the sign on *Alte Kämpfer* is positive and significant in all four columns. If we do not control for other variables, *Alte Kämpfer* were 11.88 percentage points more likely to impose the death sentence. Controlling for other judge characteristics, this figure is 16.67 percentage points and controlling for judge and defendant characteristics together it is 13.40 percentage points. In the full specification, in which we also control for offence type and fixed effects for the location of the offence and year of sentencing, *Alte Kämpfer* were 3.64 percentage points more likely to impose the death sentence than other judges on the court

Of the other judicial characteristics, we find that judge age has a nonlinear effect on the likelihood of imposing the death sentence. In the full specification, the likelihood of imposing the death penalty peaks at age 53. In columns (2) and (3) Roman Catholic judges are less likely to impose the death penalty, although this variable is no longer significant in the full specification. In specification (2), judges who were on the bench in the Weimar Republic were 6.93 percentage points less likely to impose the death penalty, but this variable is insignificant in the final two specifications.

Among defendant characteristics, those with at least a high school education and males were 5.64 and 10.03 percentage points respectively more likely to receive the death sentence, while juveniles were 19.65 per cent less likely to face capital punishment in the full specification. Older defendants were also more prone to receive the death sentence, although the coefficient is only weakly significant in the full specification. Prior criminal history mattered as far as having previous political convictions. In the full specification, relative to those without any prior convictions, having prior major or minor political convictions increased the likelihood of receiving the death sentence, although having previous non-political convictions was insignificant. In column (4), being affiliated with an organised political group either had no effect (Comintern Communist) or a negative effect (Social Democratic, other left wing, right wing splinter) on the likelihood of receiving the death sentence, relative to those defendants who were not affiliated with any political group.

In the final column we add the offence type. Offence type mattered. Those charged with more serious political offences — major high treason (35.61 percentage points) or treason (54.69 percentage points) or multiple offences (53.41 percentage points) —

were more likely to be sentenced to death than those charged with minor high treason. Similarly, those who committed a violent offence were 13.02 percentage points more likely to receive the death sentence than if the offence did not involve violence.

[Table 5]

Table 5 presents the results of the interaction of *Alte Kämpfer* with the political affiliation of the defendant on the likelihood of receiving the death sentence. Each of the four interaction terms are significant. The results are consistent with proposition 2. *Alte Kämpfer* were more likely to impose the death penalty on members of the most organised opposition to the Nazi state (defendants who were members of Comintern Communist or Social Democratic parties) than judges who did not join the Nazi Party prior to 1933. *Alte Kämpfer* were 2.77 percentage points more likely to sentence a member of a comintern-aligned communist party to death than other judges. Similarly, *Alte Kämpfer* were 1.99 percentage points more likely to hand down the death penalty to members of a social democratic party. By contrast, *Alte Kämpfer* were relatively more lenient with members of the right wing and other left wing groups. They were 0.95 percentage points more likely to sentence a member of a right wing group to death, but 4.34 percentage points less likely to sentence members of smaller left wing groups.

[Table 6]

Table 6 reports the results for whether *Alte Kämpfer* were more likely to sentence to death those engaged in violent resistance against the state. Consistent with proposition 3, we find that *Alte Kämpfer* were 11.52 percentage points more likely to impose the death sentence on those engaged in violent resistance than their less ideologically committed brethren.

[Tables 7-11]

Tables 7 to 11 report on whether *Alte Kämpfer* were more likely to sentence to death defendants with particular characteristics than non-*Alte Kämpfer*. These characteristics – being unemployed, of partial Jewish ancestry, a foreigner, juvenile or a devout Roman Catholic – were characteristics against which the Nazis were either prejudiced or highly intolerant. Table 7 reports the results for being unemployed. The interaction term is insignificant. Table 8 reports the results for partial Jewish ancestry. *Alte Kämpfer* were 15.17 percentage points more likely to sentence a defendant who was of partial Jewish ancestry to death than judges who lacked their degree of ideological commitment. Table 9 reports the results for whether the defendant was a foreigner. *Alte Kämpfer* were 19.15 percentage points more likely to sentence to death a defendant who was a foreigner than judges who had not joined the Nazi Party prior to 1933.

Table 10 reports the results for juvenile defendants. While overall juveniles were less likely to be sentenced to death, *Alte Kämpfer* were 21.90 percentage points more likely to sentence a juvenile to death than other judges of the court. Table 11 reports the results for defendants who were devoutly Roman Catholic. *Alte Kämpfer* were 10.85 percentage points more likely to sentence a Roman Catholic to death than judges who had not joined the Party before 1933.

Taken together, our analysis provides considerable evidence in support of proposition 4. Specifically, we find that judges who held a strong ideological commitment to Nazism, as evidenced by their relatively early entry into the Party, were more likely to impose the death penalty on individuals possessing characteristics against which the

Nazi Party had an ideological prejudice: namely, devout Roman Catholics, foreigners, rebellious juveniles and those of partial Jewish ancestry.

[Table 12]

Table 12 examines whether judges who were aged 18-21 during the period of hyperinflation (June 1921 to January 1924) or whose hometown or suburb lay in a centre of the Revolution of 1918-19 were more likely to impose the death sentence. There is mixed support for our fifth proposition. Judges aged 18-21 during the period of hyperinflation were 8.3 percentage points more likely to impose the death sentence, but this is only weakly significant. The coefficient on the dummy variable denoting that the judge's hometown or suburb was in a centre of the 1918-19 Revolution was insignificant. We also tried interacting *Alte Kämpfer* with both life events to see if *Alte Kämpfer* judges who experienced these events were more likely to sentence to death. There was not enough variation in the hyperinflation specification so the interaction term was dropped. However, *Alte Kämpfer* judges whose hometown or suburb was located in a centre of the Revolution of 1918-19 were 5.84 percentage points more likely to impose a death sentence than *Alte Kämpfer* judges who did not come from such a location.²¹

6. Robustness Checks

Our main results include defendants sentenced for treason and high treason in the Supreme Court and People's Court. Defendants tried in the Supreme Court were arguably treated more leniently given that it was not established as a political court to hear cases against political opponents of the Nazis. It must be remembered that what Hitler perceived as the lenient treatment of the majority of defendants in the *Reichstag* fire trial was the catalyst for the establishment of the People's Court in the first place.

²¹ We also interacted both dummies with whether the defendant belonged to a Comintern Communist or Social Democratic party, but both interaction terms were insignificant.

As a first robustness check on our findings, we redid the analysis excluding the 73 defendants sentenced in the Supreme Court. The results corresponding to those for the full sample in Tables 4-11 are reported in Appendix 2. The results, including the magnitude of the marginal effects, are almost identical. Excluding defendants tried in the Supreme Court has no effect on the results.

Freisler is remembered as the most notorious *Alte Kämpfer* of the Nazi period with a proclivity to impose the death sentence. In our sample, Freisler sentenced 199 defendants; of whom, he sentenced 61.31 per cent to death. This was approximately 10 per cent higher than any other judge in the sample (see Table A1.2). Could it be that Freisler's sentencing behaviour as the alpha *Alte Kämpfer* is driving our results? To explore this issue, we redid the analysis excluding the 199 defendants sentenced by Freisler. The results corresponding to those for the full sample in Tables 4-11 are reported in Appendix 3. With the exception of the interaction between the judge being *Alte Kämpfer* and the defendant being devoutly Roman Catholic, which ceases to be significant, the sign and significance of *Alte Kämpfer* and its interaction with defendant characteristics are identical and the magnitude of the marginal effects are very similar. Hence, excluding Freisler from the sample makes very little difference to the main results.

The proportion of death sentences handed down for treason and high treason escalated during the war. In our sample, 1,077 defendants were sentenced in the period 1933-1939; of whom, just 19 (1.76 per cent) received the death penalty. Meanwhile, 2,502 defendants were sentenced during wartime; of whom 1,075 (42.97 per cent) received the death penalty. As a further robustness check, we split our sample into the periods

1933-1939 and 1940-1945. The models for the pre-war period did not converge using either logit or RELogit, because of the lack of variation in several independent variables with respect to receiving the death penalty. The results for defendants sentenced in wartime corresponding to those for the full sample in Tables 4-11 are reported in Appendix 4. The coefficient on *Alte Kämpfer* in the baseline results (corresponding to Table 4) continues to be positive, but ceases to be significant. The results for most of the interaction terms are very similar to those in Tables 5-11. The only exception is that the coefficient on *Alte Kämpfer* x Social Democratic, which is significant at 10 per cent in Table 5 ceases to be significant (although *Alte Kämpfer* x Comintern Communist continues to be significant with similar marginal effects). Overall, if we restrict our sample to defendants sentenced during the war, we no longer find support for Proposition 1, but support for Propositions 2-4 remain unchanged.²²

Of the seven *Alte Kämpfer* judges in our sample, two (Engert and Freisler) joined the Party before September 1930 when the Nazis became the largest party on the right. In September 1930 no one could have known for sure, or even considered it highly likely, that Hitler would become Chancellor. Some at the time believed that the Nazi Party had, in fact, peaked. Moreover, until 1933, the conservative side of German politics actively worked to keep him out (as, of course, did the left). Hence, those who joined the Nazi Party between September 1930 and January 1933 were still displaying a strong sense of belief in Hitler's party.

²² We also included a dummy variable for World War II in the full sample. The likelihood of being sentenced to death in World War II was 34.11 percentage points higher than before the War. *Alte Kämpfer* were 1.72 percentage points more likely to sentence a defendant to death in World War II. We also interacted *Alte Kämpfer* with individual war years (*Alte Kämpfer* x 1940, *Alte Kämpfer* x 1941 and so on) to ascertain if there was a non-linear effect after the failure to capture Moscow or defeat at Stalingrad, but most of the interaction terms were insignificant and no non-linear effect was observed.

This said, as a further robustness check, we examine if it makes any difference if we redefine our ideological commitment dummy variable such that it equals 1 for the ‘early’ *Alte Kämpfer* (Engert and Freisler) and zero otherwise. The results corresponding to Tables 4-11 are reported in Appendix 5. There is support for Propositions 1 and 2 and partial support for Proposition 4. Engert and Freisler were 8.3 percentage points more likely to sentence a defendant to death than the other judges, compared with 3.6 percentage points for *Alte Kämpfer* in Table 4. In terms of Proposition 4, Engert and Freisler interacted with the defendant being a foreigner, juvenile or devoutly Roman Catholic cease to be significant, but the interaction with partial Jewish ancestry continues to be significant and the marginal effect is much larger (31.1 percentage points compared with 15.2 percentage points in Table 8).

Finally, in the main results we control for regional differences in the location where the offence was committed. One might think that *Alte Kämpfer* might target regions in which resistance activities were highest. While resistance was scattered all over Germany, there were heavy concentrations of it in Berlin, Vienna, Saxony, North Rhine Westphalia and Hamburg. In a further robustness check we interacted *Alte Kämpfer* with each of these five regions separately in the one specification. We found that *Alte Kämpfer* were 4.4 percentage points more likely to sentence a defendant to death if the offence was committed in Berlin, but the other interaction terms were insignificant.

7. Summary and Discussion

We have examined the factors influencing the likelihood of imposing the death sentence in Nazi Germany for treason and high treason. More than 95 per cent of the

cases in our sample were heard in the People's Court, a court established by the Nazis in 1934 to hear cases of serious political offences. Earlier histories of the People's Court depicted it as no more than a 'blood tribunal', in which judges conducted show trials with predetermined sentences consistent with the will of the Nazi regime. In recent years, however, there has been a noticeable shift in the scholarship on the role of courts in authoritarian regimes, such that it has now generally come to be recognised that judges in these contexts do not always simply exercise their discretion to facilitate the goals of the state. This change in thinking about the role of courts in authoritarian systems is reflected in recent, more nuanced assessments of the People's Court, too. What this new literature has lacked, though, is direct empirical evidence on the determinants of judicial discretion in such contexts and, in particular, why some judges appear more willing to implement the will of the state than others.

We hypothesised that judicial policy preferences, as reflected in the ideological commitment of the Court's judges to Nazi values, should have been important in determining the sentence imposed, especially for defendants who belonged to the major groups opposed to the state, those engaged in violent resistance against the state, and those who possessed specific characteristics to which the Nazis were known to be strongly antagonistic.

Our main results support such an attitudinal approach to the exercise of judicial discretion. As predicted, we found that judges with deeper ideological commitment to the values and aims of Nazism were indeed more likely to impose the death penalty than those who did not share the same level of commitment. Similarly, these ideologically committed judges were also more inclined to hand down the death

sentence to members of the most organised opposition groups, those involved in violent resistance against the state, and defendants with characteristics repellent to core Nazis beliefs. The results remain fairly robust to alternative ways to define ideological commitment and alternative time periods. We also find some evidence that judges exposed to historical events in Germany that are likely to have shaped their pro-Nazi leanings were more likely to impose the death sentence either via a direct effect (hyperinflation) or when interacted with *Alte Kämpfer* (the Revolution of 1918-19).

There were, of course, other factors at play, too. The seriousness of the offence involved and the defendant's prior political convictions also had a clear influence on whether the death sentence was imposed. Another interesting finding of our paper is that, like their counterparts hearing criminal cases in western democracies, Nazi judges, notwithstanding the intense political nature of the trials over which they were presiding, also took into account characteristics of the defendant in sentencing that were unrelated to the case, such as age, educational attainments and gender. In these regards, our results parallel in many ways those of existing studies for the United States (see e.g. Mustard 2001; Sorensen et al., 2010, 2012), although they do differ noticeably with respect to the impact of educational attainment. Studies of the United States Federal Courts, for example, suggest that on the whole the better educated receive lighter sentences (see e.g. Mustard, 2001). We, however, found the converse in our context, a result that derived in large part from the fact that better educated resisters to the Nazi regime tended to hold more senior roles in oppositional groups.

None of our findings, of course, can or should be taken to signify that those who appeared before Nazi courts received fair trials. They manifestly did not. Rather what the evidence presented here tells us is that a more nuanced understanding of courts operating in such contexts is called for. Moreover, our findings suggest that a fuller investigation of sentencing practices and judicial discretion outside the United States, including in authoritarian states, is warranted, not just so that we understand those systems better, important as that might be, but also because in gaining such knowledge we may be better placed to provide a clearer perspective on which aspects of sentencing are generally experienced irrespective of judicial tradition and which are unique to specific contexts.

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Table 1
Death Sentence

<i>Alte Kämpfer</i>				
		Yes	No	Total
Death sentence	Yes	15.03% [N = 538]	15.53% [N = 556]	30.56% [N = 1094]
	No	24.67% [N = 883]	44.76% [N = 1602]	69.43% [N = 2485]
	Total	39.70% [N = 1421]	60.29% [N = 2158]	100% [N = 3579]
	Proportion death penalty	0.378 (0.013)	0.257 (0.009)	Difference in means 0.121*** (0.015)

Notes: (1.) Standard errors in parenthesis. (2) Number of observations in brackets. (2.) *** represents statistical significance at 1 per cent level.

Table 2: Descriptive statistics for independent variables
Continuous independent variables

Variable	Obs	Mean	Std. Dev.	Min	Max
Age	3,579	37.78	10.50	16	77
Judge age	3,579	54.88	6.77	41	67

Dummy variables

Variable	Frequency	Per cent
<u>Defendant/case characteristics</u>		
Education	630	17.60
Male	3,112	86.95
Unemployed	297	8.30
Partial Jewish ancestry	120	3.35
Foreigner	72	2.01
Juvenile	56	1.56
Catholic	275	7.68
Treason only	102	2.85
Minor high treason only	248	6.93
Major high treason only	1,861	52.00
Multiple offences	1,368	38.22
Violence	286	7.99
Pre. major political	288	8.05
Pre. minor political	407	11.37
Pre. non political	570	15.93
Comintern communist	2,374	66.33
Social Democratic	165	4.61
Other left wing	362	10.11
Right wing	492	13.75
<u>Judge characteristics</u>		
Judge Weimar	1,776	49.62
Judge Catholic	104	2.91
<i>Alte Kämpfer</i>	1,421	39.70
Hometown 1918 Revolution	2,681	74.91
Hyperinflation	142	3.97
<u>Time/Region effects</u>		
Sentenced 1933	21	0.59
Sentenced 1934	117	3.27
Sentenced 1935	200	5.59
Sentenced 1936	233	6.51
Sentenced 1937	184	5.14
Sentenced 1938	187	5.22
Sentenced 1939	135	3.77
Sentenced 1940	113	3.16
Sentenced 1941	125	3.49
Sentenced 1942	508	14.19
Sentenced 1943	661	18.47
Sentenced 1944	950	26.54
Sentenced 1945	145	4.05
Bavaria	179	5.00

Berlin	1,032	28.83
Brandenburg	53	1.48
Bremen	39	1.09
Hamburg	252	7.04
Hessen	124	3.46
Lower Saxony	127	3.55
Mecklenburg	24	0.67
North Rhine-Westphalia	443	12.38
Rhineland	73	2.04
Saarland	93	2.60
Saxony	438	12.24
Saxony-Anhalt	124	3.46
Schleswig Holstein	71	1.98
Thüringen	56	1.56
East Prussia	21	0.59
Silesia	68	1.90

Table 3: Random Assignment Simulation Results by Case and Defendant Characteristics

Defendant Characteristics	Empirical IQR	Simulation IQR		p-value
		Mean	SD	
Age	36.53	36.79	0.57	0.33
Education	0.14	0.17	0.02	0.06
Male	0.89	0.87	0.02	0.82
Unemployed	0.17	0.15	0.03	0.75
Partial Jewish Ancestry	0.02	0.03	0.01	0.36
Foreigner	0.01	0.02	0.01	0.05
Juvenile	0.02	0.01	0.01	0.75
Catholic	0.05	0.06	0.01	0.09
Minor High Treason only	0.17	0.16	0.03	0.71
Treason Only	0.05	0.03	0.01	0.99
Major High Treason only	0.45	0.50	0.03	0.08
Multiple Offences	0.33	0.32	0.02	0.74
Violence	0.08	0.09	0.02	0.30
Pre. maj. Political	0.11	0.08	0.02	0.93
Pre. min. political	0.16	0.13	0.02	0.90
Pre non-political	0.23	0.19	0.03	0.87
Comintern Communist	0.68	0.70	0.03	0.32
Violence against Hitler	0.02	0.02	0.01	0.30

Notes: (1). The empirical mean reported is the mean value of the actual data. (2). The simulation means and standard deviations are calculated from the distribution of the simulated means using 1000 simulated datasets. (3). The p-values indicate the percentile of the simulated data to which the empirical data correspond. (4). Simulations randomly choose an outcome for the cases initiated in the same year as the original case.

Table 4: Logit marginal effects for death sentence

VARIABLES	Specification 1		Specification 2		Specification 3		Specification 4	
	ME x 100	z-stat.	ME x 100	z-stat.	ME x 100	z-stat.	ME x 100	z-stat.
Age					1.190***	2.713	0.552*	1.811
Age-Squared					-0.00888*	-1.711	-0.00540	-1.515
Education					5.755***	2.666	5.640***	3.361
Male					15.99***	6.635	10.03***	5.451
Unemployed					-57.22***	-6.979	-8.715	-1.463
Partial Jewish ancestry					1.580	0.376	-3.554	-1.187
Foreigner					-1.281	-0.268	-5.080	-1.469
Juvenile					-6.217	-0.907	-19.65***	-3.929
Catholic					0.584	0.194	2.258	1.079
Treason only							54.69***	5.738
Major high treason only							35.61***	3.788
Multiple offences							53.41***	5.821
Violence							13.02***	5.164
Pre. major Political						1.833	5.256***	2.751
Pre. minor Political					5.109**	2.266	3.506**	2.072
Pre. non-political					-6.256***	-2.988	0.431	0.274
Comintern Communist					-5.856**	-2.163	1.171	0.609
Social Democratic					-45.97***	-6.571	-13.70***	-2.670
Other left wing					-23.87***	-6.579	-7.285***	-2.736
Right wing					-26.60***	-7.597	-14.05***	-4.877
Judge Age			14.06***	7.430	13.12***	7.545	3.618***	2.926
Judge Age-Squared			-0.122***	-7.053	-0.117***	-7.372	-0.0340***	-3.058
Judge Weimar			-6.933**	-2.547	-3.181	-1.274	0.0865	0.0492
Judge Catholic			-37.95***	-3.958	-29.23***	-3.370	-9.123	-1.501
<i>Alte Kämpfer</i>	11.88***	7.687	16.67***	6.907	13.40***	5.905	3.636**	2.108
Observations	3,579	3,579	3,579	3,579	3,579	3,579	3,579	3,579
Time Fixed Effects	No		No		No		Yes	
Location Fixed Effects	No		No		No		Yes	
Log Likelihood	-2173.972		-2116.451		-1898.399		-1369.845	
Pseudo R2	.013		.039		.138		.378	
Prediction Death Sentence ($p > 0.5$)	0.00%		0.00%		28.43%		70.75%	
Prediction Survival ($p < 0.5$)	100%		100%		89.22%		85.63%	
Area under ROC curve	0.568		0.613		0.741		0.884	

Notes: * significant at 10%; ** significant at 5%; *** significant at 1%. For offence type Minor high treason is reference. For prior conviction, no prior conviction is reference. For political affiliation of the defendant, no formal affiliation is reference.

Table 5 *Alte Kämpfer* interacted with political status of the defendant

Variables	Logit Model	
	Marginal Effects x 100	z-statistic
<i>Alte Kämpfer</i>	18.97***	4.456
Comintern Communist	6.263***	2.716
Social Democratic	-8.227	-1.242
Other left wing	0.879	0.283
Right wing	-8.309***	-2.617
<i>Alte Kämpfer</i> x Comintern Communist	-16.20***	-3.916
<i>Alte Kämpfer</i> x Social Democratic	-16.98*	-1.727
<i>Alte Kämpfer</i> x Other left wing	-23.31***	-4.107
<i>Alte Kämpfer</i> x Right wing	-18.02***	-3.537
Observations	3,579	
All other controls	Yes	
Time and Location Fixed Effects	Yes	
Log Likelihood	-1357.66	
Pseudo R2	0.384	

Notes: See notes to Table 4.

Table 6 *Alte Kämpfer* interacted with whether the defendant engaged in violent resistance

VARIABLES	(1) Marginal Effects x 100	(2) z-statistic
<i>Alte Kämpfer</i>	3.129*	1.803
Violence	8.885***	2.895
<i>Alte Kämpfer</i> x Violence	8.386**	2.000
Observations	3,579	3,579
All other controls	Yes	
Time and Location Fixed Effects	Yes	
Log Likelihood	-1367.741	
Pseudo R2	.379	

Table 7: *Alte Kämpfer* interacted with whether the defendant was unemployed

Variables	Logit Model	
	Marginal Effects x 100	z-statistic
Unemployed	-16.83*	-1.656
<i>Alte Kämpfer</i>	3.354**	1.980
<i>Alte Kämpfer</i> x Unemployed	15.10	1.187
Observations	3,579	
All other controls	Yes	
Time and Location Fixed Effects	Yes	
Log Likelihood	-1369.104	
Pseudo R2	0.379	

Notes: See notes to table 4

Table 8: *Alte Kämpfer* interacted with whether the defendant was of partial Jewish ancestry

Variables	Logit Model	
	Marginal Effects x 100	z-statistic
Partial Jewish ancestry	-8.851**	-2.197
<i>Alte Kämpfer</i>	3.220*	1.866
<i>Alte Kämpfer</i> x partial Jewish ancestry	11.95**	2.078
Observations	3,579	
All other controls	Yes	
Time and Location Fixed Effects	Yes	
Log Likelihood	-1367.558	
Pseudo R2	0.379	

Notes: See notes to table 4

Table 9: *Alte Kämpfer* interacted with whether the defendant was a foreigner

Variables	Logit Model	
	Marginal Effects x 100	z-statistic
Foreigner	-12.43**	-2.451
<i>Alte Kämpfer</i>	3.100*	1.790
<i>Alte Kämpfer</i> x Foreigner	16.05**	2.217
Observations	3,579	
All other controls	Yes	
Time and Location Fixed Effects	Yes	
Log Likelihood	-1367.146	
Pseudo R2	0.379	

Notes: See notes to table 4

Table 10: *Alte Kämpfer* interacted with whether the defendant was a juvenile

Variables	Logit Model	
	Marginal Effects x 100	z-statistic
Juvenile	-31.73***	-3.488
<i>Alte Kämpfer</i>	3.407**	1.982
<i>Alte Kämpfer</i> x Juvenile	18.49*	1.848
Observations	3,579	
All other controls	Yes	
Time and Location Fixed Effects	Yes	
Log Likelihood	-1367.832	
Pseudo R2	0.379	

Notes: See notes to table 4

Table 11: *Alte Kämpfer* interacted with whether the defendant was devoutly Roman Catholic

Variables	Logit Model	
	Marginal Effects x 100	z-statistic
Catholic	-1.745	-0.594
<i>Alte Kämpfer</i>	3.205*	1.854
<i>Alte Kämpfer</i> x Catholic	7.642**	1.975
Observations	3,579	
All other controls	Yes	
Time and Location Fixed Effects	Yes	
Log Likelihood	-1367.786	
Pseudo R2	0.379	

Notes: See notes to table 4

Table 12: Effect of events in early adulthood on sentencing to death

VARIABLES	(1)	(2)	(3)	(4)
	Marginal Effects x 100	z-statistic	Marginal Effects x 100	z-statistic
Judge aged 18-21 during hyperinflation	8.308*	1.660		
Judge's home town or suburb was in a center of 1918-19 Revolution			-2.236	-1.476
Observations	3,579	3,579	3,579	3,579
Time Fixed Effects	Yes		Yes	
Location Fixed Effects	Yes		Yes	
Log Likelihood	-1370.767		-1371.074	
Pseudo R2	.378		.378	

Standard errors in parentheses * p<0.1. Each specification includes full set of controls except *Alte Kämpfer*.

Appendix 1

Table A1.1: List of Judges included in the sample

Name of Judge	<i>Alte Kämpfer?</i>	Number of defendants in sample sentenced	Proportion of defendants in sample sentenced to death
Albrecht	No	450	0.44
Bruner	No	63	0.00
Coninx	No	1	0.00
Crohne	Yes	217	0.36
Diescher	No	79	0.49
Diester	No	3	0.00
Engert	Yes	463	0.23
Freisler	Yes	199	0.61
Granzow	No	202	0.34
Greulich	No	22	0.00
Großpietsch	No	3	1.00
Hartmann	No	779	0.21
Illner	No	11	0.18
Köhler	No	100	0.30
Lämmle	No	223	0.09
Linz	No	19	0.00
Löhmann	No	68	0.43
Mengelkoch	No	7	0.00
Merten	Yes	311	0.51
Niethammer	No	1	0.00
Rheinisch	No	45	0.00
Schaad	No	79	0.01
Springmann	No	3	0.00
Stier	Yes	142	0.41
Thierack	Yes	41	0.05
Zieger	Yes	48	0.27
Overall	Proportion Yes = .269	Total defendants sentenced: 3579	Proportion sentenced to death = 0.305

Table A1.2: Description of independent variables

Age	Age of defendant at time of trial (years)
Education	The highest educational attainment of defendant is at the high school level or above
Male	Defendant is male
Unemployed	Defendant is unemployed
Partial Jewish ancestry	Defendant is an individual with mixed German and Jewish ancestry
Foreigner	Defendant's nationality is neither German nor Austrian
Juvenile	Defendant is aged less than 18 years old.
Catholic	Defendant describes themselves as devoutly Roman Catholic
Treason only	Defendant charged with treason only
Major high treason only	Defendant charged with major high treason only. Major high treason includes: being a member of an illegal organization; engaging in illegal writings; engaging in crimes abroad; subversion of the police or armed forces; and separatism. Minor high treason consists of: conspiracy to commit high treason; aiding and abetting; and failure to report
Minor high treason only	Defendant charged with minor high treason only. Minor high treason consists of: conspiracy to commit high treason; aiding and abetting; and failure to report
Multiple offences	Defendant charged with two or more of treason, minor high treason and major high treason
Violence	Offence was committed involving or intending violence
Pre. major political	Defendant had a previous major political conviction
Pre. minor political	Defendant had a previous minor political conviction
Pre. non political	Defendant had a previous non-political conviction
Comintern communist	Defendant was a member of either the KPD or KPÖ, both Comintern (Moscow)-aligned parties.
Social Democratic	Defendant was a member of the SPD or SPÖ
Other left wing	Defendant was a member of a smaller, left wing group
Right wing	Defendant was a member of a right-wing or national conservative group
Judge age	Age of the judge at the time of trial (years)
Judge Weimar	Judge had been on the bench in the Weimar Republic (1919-1933)
Judge Catholic	Judge had had a Roman Catholic upbringing
<i>Alte Kämpfer</i>	Judge joined the Nazi Party prior to its coming to power in January 1933
Hometown 1918-19 Revolution	Judge's hometown or suburb lay in a centre of the Revolution of 1918-19.
Hyperinflation	Judge was aged 18-21 during the hyperinflation (June 1921 to January 1924)

Table A1.3: Logit and RElogit coefficients for death sentence

Variables	Logit Model		RE-Logit Model	
	Coefficients	z-statistic	Coefficients	z-statistic
Age	0.0530*	1.837	0.0513*	1.916
Age-Squared	-0.000518	-1.530	-0.000502	-1.601
Education	0.541***	3.543	0.526***	3.611
Male	0.962***	6.427	0.941***	6.460
Unemployed	-0.836	-1.442	-0.708	-1.424
Partial Jewish ancestry	-0.341	-1.194	-0.326	-1.145
Foreigner	-0.487	-1.485	-0.488	-1.326
Juvenile	-1.885***	-4.229	-1.833***	-4.148
Catholic	0.217	1.082	0.208	1.102
Treason only	5.247***	5.003	4.675***	4.509
Major high treason only	3.416***	3.362	2.885***	2.916
Multiple offences	5.123***	5.058	4.559***	4.611
Violence	1.249***	5.951	1.213***	5.853
Pre. maj. Political	0.504***	2.835	0.492***	2.685
Pre. min. political	0.336**	2.119	0.334**	2.010
Pre non-political	0.0413	0.274	0.0347	0.225
Comintern	0.112	0.610	0.119	0.572
Communist				
Social Democratic	-1.315***	-2.711	-1.226**	-2.519
Other left wing	-0.699***	-2.823	-0.672**	-2.459
Right wing	-1.348***	-5.451	-1.311***	-4.937
Judge Age	0.347***	3.072	0.343***	3.061
Judge Age-Squared	-0.00326***	-3.225	-0.00322***	-3.219
Judge Weimar	0.00830	0.0492	0.0107	0.0635
Judge Catholic	-0.875	-1.505	-0.780	-1.433
<i>Alte Kämpfer</i>	0.349**	2.158	0.342**	2.117
Constant	-17.03***	-5.033	-16.27***	-4.935
Observations	3,579		3,579	
Time Fixed Effects	Yes		Yes	
Location Fixed Effects	Yes		Yes	
Log Likelihood	-1369.845			
Pseudo R2	0.378			
Prediction Death Sentence ($p > 0.5$)		70.75%		
Prediction Survival ($p < 0.5$)		85.63%		
Area under ROC curve		0.884		

Notes: * significant at 10%; ** significant at 5%; *** significant at 1%. For offence type Minor high treason is reference. For prior conviction, no prior conviction is reference. For political affiliation of the defendant, no formal affiliation is reference.

Appendix 2: Results restricted to cases heard in the People's Court

Table A2.1 Logit and RElogit for death sentence

VARIABLES	Logit Coefficients	z-statistic	Marginal Effects x 100	z-statistic	ReLogit Coefficients	z-statistic
Age	0.0510*	1.767	0.565*	1.746	0.0494*	1.841
Age-Squared	-0.000501	-1.481	-0.00555	-1.468	-0.000485	-1.548
Education	0.537***	3.522	5.953***	3.361	0.523***	3.591
Male	0.963***	6.438	10.67***	5.544	0.943***	6.484
Unemployed	-0.743	-1.251	-8.227	-1.263	-0.599	-1.163
Partial Jewish ancestry	-0.333	-1.169	-3.691	-1.163	-0.319	-1.127
Foreigner	-0.492	-1.496	-5.451	-1.481	-0.492	-1.332
Juvenile	-1.878***	-4.220	-20.81***	-3.950	-1.828***	-4.146
Catholic	0.213	1.065	2.359	1.062	0.205	1.088
Treason only	5.196***	4.955	57.56***	5.511	4.626***	4.465
Major high treason only	3.385***	3.331	37.50***	3.660	2.855***	2.886
Multiple offences	5.072***	5.006	56.18***	5.574	4.509***	4.563
Violence	1.239***	5.896	13.73***	5.187	1.203***	5.798
Pre. maj. Political	0.494***	2.779	5.475***	2.708	0.482***	2.633
Pre. min. political	0.338**	2.131	3.749**	2.089	0.335**	2.019
Pre non-political	0.0466	0.309	0.516	0.309	0.0383	0.248
Comintern Communist	0.130	0.707	1.444	0.706	0.134	0.647
Social Democratic	-1.296***	-2.680	-14.36***	-2.647	-1.210**	-2.508
Other left wing	-0.687***	-2.775	-7.607***	-2.698	-0.660**	-2.419
Right wing	-1.336***	-5.407	-14.80***	-4.897	-1.301***	-4.918
Judge Age	0.336***	2.974	3.722***	2.853	0.333***	2.977
Judge Age-Squared	-0.00316***	-3.123	-0.0350***	-2.984	-0.00313***	-3.130
Judge Weimar	0.0269	0.159	0.298	0.159	0.0270	0.160
Judge Catholic	-0.849	-1.442	-9.400	-1.436	-0.757	-1.360
<i>Alter Kampfer</i>	0.328**	2.026	3.638**	1.989	0.325**	2.002
Constant	-16.59***	-4.894			-15.88***	-4.803
Observations	3,506	3,506	3,506	3,506	3,506	3,506
Time Fixed Effects	Yes				Yes	
Location Fixed Effects	Yes				Yes	
Log Likelihood	-1368.009					
Pseudo R2	.371					

Notes: See notes to Table 4

Table A2.2 *Alte Kämpfer* interacted with political status of the defendant

VARIABLES	(1) Marginal Effects x 100	(2) z-statistic
<i>Alte Kämpfer</i>	19.93***	4.445
Comintern Communist	6.863***	2.799
Social Democratic	-8.600	-1.222
Other left wing	1.101	0.332
Right wing	-8.685***	-2.581
<i>Alte Kämpfer</i> x Comintern Communist	-17.17***	-3.929
<i>Alte Kämpfer</i> x Social Democratic	-17.97*	-1.723
<i>Alte Kämpfer</i> x Other left wing	-24.77***	-4.135
<i>Alte Kämpfer</i> x Right wing	-19.16***	-3.556
Observations	3,506	3,506
All other controls	Yes	
Time and Location Fixed Effects	Yes	
Log Likelihood	-1355.85	
Pseudo R2	.377	

Notes: See notes to Table 4.

Table A2.3 *Alte Kämpfer* interacted with whether the defendant engaged in violent resistance

VARIABLES	(1) Marginal Effects x 100	(2) z-statistic
<i>Alte Kämpfer</i>	3.137*	1.704
Violence	9.475***	2.915
<i>Alte Kämpfer</i> x Violence	8.630*	1.942
Observations	3,506	3,506
All other controls	Yes	
Time and Location Fixed Effects	Yes	
Log Likelihood	-1366.037	
Pseudo R2	.372	

Notes: See notes to Table 4.

Table A2.4 *Alte Kämpfer* interacted with whether the defendant was unemployed

VARIABLES	(1) Marginal Effects x 100	(2) z-statistic
Unemployed	-15.95	-1.419
<i>Alte Kämpfer</i>	3.425*	1.894
<i>Alte Kämpfer</i> x Unemployed	13.57	0.974
Observations	3,506	3,506
All other controls	Yes	
Time and Location Fixed Effects	Yes	
Log Likelihood	-1367.508	
Pseudo R2	.372	

Notes: See notes to Table 4.

Table A2.5 *Alte Kämpfer* interacted with whether the defendant was of partial Jewish ancestry

VARIABLES	(1) Marginal Effects x 100	(2) z-statistic
Partial Jewish ancestry	-9.325**	-2.187
<i>Alte Kämpfer</i>	3.194*	1.744
<i>Alte Kämpfer</i> x Partial Jewish ancestry	12.71**	2.088
Observations	3,506	3,506
All other controls	Yes	
Time and Location Fixed Effects	Yes	
Log Likelihood	-1365.71	
Pseudo R2	.372	

Notes: See notes to Table 4.

Table A2.6 *Alte Kämpfer* interacted with whether the defendant was a foreigner

VARIABLES	(1) Marginal Effects x 100	(2) z-statistic
Foreigner	-13.17**	-2.449
<i>Alte Kämpfer</i>	3.088*	1.680
<i>Alte Kämpfer</i> x Foreigner	16.83**	2.193
Observations	3,506	3,506
All other controls	Yes	
Time and Location Fixed Effects	Yes	
Log Likelihood	-1365.388	
Pseudo R2	.373	

Notes: See notes to Table 4.

Table A2.7 *Alte Kämpfer* interacted with whether the defendant was a juvenile

VARIABLES	(1) Marginal Effects x 100	(2) z-statistic
Juvenile	-33.62***	-3.501
<i>Alte Kämpfer</i>	3.396*	1.861
<i>Alte Kämpfer</i> x Juvenile	19.61*	1.850
Observations	3,506	3,506
All other controls	Yes	
Time and Location Fixed Effects	Yes	
Log Likelihood	-1365.997	
Pseudo R2	.372	

Notes: See notes to Table 4.

Table A2.8 *Alte Kämpfer* interacted with whether the defendant was devoutly Roman Catholic

VARIABLES	(1) Marginal Effects x 100	(2) z-statistic
Catholic	-1.931	-0.620
<i>Alte Kämpfer</i>	3.169*	1.727
<i>Alte Kämpfer</i> x Catholic	8.202**	2.001
Observations	3,506	3,506
All other controls	Yes	
Time and Location Fixed Effects	Yes	
Log Likelihood	-1365.902	
Pseudo R2	.372	

Notes: See notes to Table 4.

Appendix 3: Results removing defendants sentenced by Roland Freisler

Table A3.1 Logit and RElogit for death sentence

VARIABLES	Logit Coefficients	z-statistic	Marginal Effects x 100	z-statistic	ReLogit Coefficients	z-statistic
Age	0.0373	1.188	0.353	1.179	0.0357	1.235
Age-Squared	-0.000354	-0.951	-0.00335	-0.946	-0.000338	-0.987
Education	0.474***	2.881	4.484***	2.766	0.461***	2.929
Male	1.119***	6.863	10.58***	5.591	1.092***	6.890
Unemployed	-0.948	-1.642	-8.970*	-1.667	-0.816	-1.586
Partial Jewish ancestry	-0.268	-0.915	-2.538	-0.911	-0.254	-0.887
Foreigner	-0.661*	-1.869	-6.249*	-1.831	-0.651	-1.567
Juvenile	-1.807***	-3.979	-17.10***	-3.688	-1.752***	-3.772
Catholic	-0.0305	-0.136	-0.288	-0.136	-0.0314	-0.148
Treason only	3.953***	3.376	37.39***	3.713	3.525***	3.025
Major high treason only	3.280***	3.229	31.03***	3.620	2.756***	2.793
Multiple offences	5.033***	4.968	47.61***	5.645	4.470***	4.528
Violence	1.225***	5.194	11.58***	4.588	1.185***	5.059
Pre. maj. Political	0.489***	2.673	4.628***	2.590	0.477**	2.503
Pre. min. political	0.330**	2.046	3.117**	1.996	0.327*	1.939
Pre non-political	0.0615	0.400	0.582	0.400	0.0549	0.346
Comintern Communist	0.258	1.348	2.438	1.336	0.261	1.220
Social Democratic	-1.327**	-2.464	-12.55**	-2.438	-1.213**	-2.260
Other left wing	-0.558**	-2.184	-5.274**	-2.135	-0.534*	-1.898
Right wing	-1.012***	-3.786	-9.575***	-3.540	-0.979***	-3.466
Judge Age	0.233**	2.009	2.204*	1.955	0.231**	2.032
Judge Age-Squared	-0.00212**	-2.035	-0.0201**	-1.980	-0.00211**	-2.066
Judge Weimar	-0.157	-0.870	-1.484	-0.865	-0.151	-0.838
Judge Catholic	-0.710	-1.216	-6.716	-1.214	-0.613	-1.146
<i>Alte Kämpfer</i>	0.318*	1.944	3.008*	1.900	0.311*	1.905
Constant	-13.93***	-4.024			-13.22***	-3.982
Observations	3,380	3,380	3,380	3,380	3,380	3,380
Time Fixed Effects	Yes				Yes	
Location Fixed Effects	Yes				Yes	
Log Likelihood	-1254.276					
Pseudo R2	.381					

Notes: See notes to Table 4.

Table A3.2 *Alte Kämpfer* interacted with political status of the defendant

VARIABLES	(1) Marginal Effects x 100	(2) z-statistic
<i>Alte Kämpfer</i>	14.42***	3.486
Comintern Communist	5.431**	2.573
Social Democratic	-7.343	-1.219
Other left wing	0.424	0.149
Right wing	-6.426**	-2.226
<i>Alte Kämpfer</i> x Comintern Communist	-11.80***	-2.881
<i>Alte Kämpfer</i> x Social Democratic	-19.13*	-1.814
<i>Alte Kämpfer</i> x Other left wing	-18.78***	-3.395
<i>Alte Kämpfer</i> x Right wing	-13.20**	-2.476
Observations	3,380	3,380
All other controls	Yes	
Time and Location Fixed Effects	Yes	
Log Likelihood	-1246.895	
Pseudo R2	.385	

Notes: See notes to Table 4.

Table A3.3 *Alte Kämpfer* interacted with whether the defendant engaged in violent resistance

VARIABLES	(1) Marginal Effects x 100	(2) z-statistic
<i>Alte Kämpfer</i>	2.464	1.544
Violence	8.538***	3.017
<i>Alte Kämpfer</i> x Violence	9.147*	1.898
Observations	3,380	3,380
All other controls	Yes	
Time and Location Fixed Effects	Yes	
Log Likelihood	-1252.355	
Pseudo R2	.382	

Notes: See notes to Table 4.

Table A3.4 *Alte Kämpfer* interacted with whether the defendant was unemployed

VARIABLES	(1) Marginal Effects x 100	(2) z-statistic
Unemployed	-16.56*	-1.822
<i>Alte Kämpfer</i>	2.723*	1.756
<i>Alte Kämpfer</i> x Unemployed	14.47	1.263
Observations	3,380	3,380
All other controls	Yes	
Time and Location Fixed Effects	Yes	
Log Likelihood	-1253.441	
Pseudo R2	.382	

Notes: See notes to Table 4.

Table A3.5 *Alte Kämpfer* interacted with whether the defendant was of partial Jewish ancestry

VARIABLES	(1) Marginal Effects x 100	(2) z-statistic
Partial Jewish ancestry	-6.948*	-1.898
<i>Alte Kämpfer</i>	2.619*	1.652
<i>Alte Kämpfer</i> x Partial Jewish ancestry	10.46**	1.962
Observations	3,380	3,380
All other controls	Yes	
Time and Location Fixed Effects	Yes	
Log Likelihood	-1252.244	
Pseudo R2	.382	

Notes: See notes to Table 4.

Table A3.6 *Alte Kämpfer* interacted with whether the defendant was a foreigner

VARIABLES	(1) Marginal Effects x 100	(2) z-statistic
Foreigner	-11.34**	-2.425
<i>Alte Kämpfer</i>	2.614	1.644
<i>Alte Kämpfer</i> x Foreigner	12.70*	1.809
Observations	3,380	3,380
All other controls	Yes	
Time and Location Fixed Effects	Yes	
Log Likelihood	-1252.541	
Pseudo R2	.382	

Notes: See notes to Table 4.

Table A3.7 *Alte Kämpfer* interacted with whether the defendant was a juvenile

VARIABLES	(1) Marginal Effects x 100	(2) z-statistic
Juvenile	-29.40***	-3.513
<i>Alte Kämpfer</i>	2.748*	1.742
<i>Alte Kämpfer</i> x Juvenile	19.45**	2.102
Observations	3,380	3,380
All other controls	Yes	
Time and Location Fixed Effects	Yes	
Log Likelihood	-1251.592	
Pseudo R2	.383	

Notes: See notes to Table 4.

Table A3.8 *Alte Kämpfer* interacted with whether the defendant was devoutly Roman Catholic

VARIABLES	(1) Marginal Effects x 100	(2) z-statistic
Catholic	-2.237	-0.833
<i>Alte Kämpfer</i>	2.705*	1.695
<i>Alte Kämpfer</i> x Catholic	4.738	1.222
Observations	3,380	3,380
All other controls	Yes	
Time and Location Fixed Effects	Yes	
Log Likelihood	-1253.519	
Pseudo R2	.382	

Notes: See notes to Table 4.

Appendix 4: Results restricted to defendants sentenced in World War II (1940-1945)

Table A4.1 Logit and RElogit for death sentence

VARIABLES	Logit Coefficients	z-statistic	Marginal Effects x 100	z-statistic	ReLogit Coefficients	z-statistic
Age	0.0401	1.366	0.925	1.366	0.0390	1.425
Age-Squared	-0.000402	-1.172	-0.00928	-1.172	-0.000392	-1.228
Education	0.594***	3.734	13.71***	3.732	0.577***	3.796
Male	0.964***	6.385	22.25***	6.382	0.940***	6.452
Unemployed	0.0260	0.0327	0.600	0.0327	0.0999	0.181
Partial Jewish ancestry	-0.359	-1.240	-8.285	-1.240	-0.345	-1.215
Foreigner	-0.475	-1.427	-10.97	-1.427	-0.468	-1.256
Juvenile	-1.926***	-4.317	-44.46***	-4.317	-1.868***	-4.217
Catholic	0.204	0.990	4.702	0.990	0.193	0.993
Treason only	5.147***	4.880	118.8***	5.184	4.561***	4.370
Major high treason only	3.281***	3.221	75.71***	3.354	2.746***	2.783
Multiple offences	4.934***	4.864	113.9***	5.176	4.363***	4.425
Violence	1.245***	5.643	28.74***	5.628	1.204***	5.447
Pre. maj. Political	0.514***	2.811	11.87***	2.808	0.500***	2.676
Pre. min. political	0.324**	1.969	7.482**	1.967	0.319*	1.878
Pre non-political	0.0471	0.302	1.086	0.302	0.0379	0.243
Comintern Communist	0.199	1.065	4.581	1.065	0.197	0.953
Social Democratic	-0.989*	-1.766	-22.82*	-1.766	-0.932*	-1.697
Other left wing	-0.570**	-2.259	-13.16**	-2.259	-0.549**	-1.984
Right wing	-1.277***	-5.057	-29.48***	-5.074	-1.243***	-4.626
Judge Age	0.285**	2.443	6.568**	2.441	0.283**	2.468
Judge Age-Squared	-0.00276***	-2.667	-0.0637***	-2.665	-0.00274***	-2.701
Judge Weimar	0.0907	0.523	2.093	0.523	0.0895	0.519
Judge Catholic	-0.550	-0.839	-12.70	-0.839	-0.494	-0.778
<i>Alte Kämpfer</i>	0.202	1.189	4.669	1.189	0.200	1.173
Constant	-14.46***	-4.119			-13.78***	-4.048
Observations	2,502	2,502	2,502	2,502	2,502	2,502
Time Fixed Effects	Yes				Yes	
Location Fixed Effects	Yes				Yes	
Log Likelihood	-1297.907					
Pseudo R2	.241					

Notes: See notes to Table 4.

Table A4.2 *Alte Kämpfer* interacted with political status of the defendant

VARIABLES	(1) Marginal Effects x 100	(2) z-statistic
<i>Alte Kämpfer</i>	40.18***	4.557
Comintern Communist	16.71***	3.257
Social Democratic	-12.21	-0.646
Other left wing	4.733	0.659
Right wing	-17.00**	-2.410
<i>Alte Kämpfer</i> x Comintern Communist	-37.92***	-4.303
<i>Alte Kämpfer</i> x Social Democratic	-35.23	-1.383
<i>Alte Kämpfer</i> x Other left wing	-52.99***	-4.327
<i>Alte Kämpfer</i> x Right wing	-41.65***	-3.764
Observations	2,502	2,502
All other controls	Yes	
Time and Location Fixed Effects	Yes	
Log Likelihood	-1285.57	
Pseudo R2	.248	

Notes: See notes to Table 4.

Table A4.3 *Alte Kämpfer* interacted with whether the defendant engaged in violent resistance

VARIABLES	(1) Marginal Effects x 100	(2) z-statistic
<i>Alte Kämpfer</i>	3.711	0.935
Violence	20.90***	3.089
<i>Alte Kämpfer</i> x Violence	15.87*	1.691
Observations	2,502	2,502
All other controls	Yes	
Time and Location Fixed Effects	Yes	
Log Likelihood	-1296.472	
Pseudo R2	.242	

Notes: See notes to Table 4.

Table A4.4 *Alte Kämpfer* interacted with whether the defendant was unemployed

VARIABLES	(1) Marginal Effects x 100	(2) z-statistic
Unemployed	-11.34	-0.395
<i>Alte Kämpfer</i>	4.561	1.160
<i>Alte Kämpfer</i> x Unemployed	22.13	0.584
Observations	2,502	2,502
All other controls	Yes	
Time and Location Fixed Effects	Yes	
Log Likelihood	-1297.731	
Pseudo R2	.241	

Notes: See notes to Table 4.

Table A4.5 *Alte Kämpfer* interacted with whether the defendant was of partial Jewish ancestry

VARIABLES	(1) Marginal Effects x 100	(2) z-statistic
Partial Jewish ancestry	-20.28**	-2.305
<i>Alte Kämpfer</i>	3.631	0.917
<i>Alte Kämpfer</i> x Partial Jewish ancestry	27.49**	2.165
Observations	2,502	2,502
All other controls	Yes	
Time and Location Fixed Effects	Yes	
Log Likelihood	-1295.513	
Pseudo R2	.242	

Notes: See notes to Table 4.

Table A4.6 *Alte Kämpfer* interacted with whether the defendant was a foreigner

VARIABLES	(1) Marginal Effects x 100	(2) z-statistic
Foreigner	-27.37**	-2.510
<i>Alte Kämpfer</i>	3.317	0.836
<i>Alte Kämpfer</i> x Foreigner	36.29**	2.304
Observations	2,502	2,502
All other controls	Yes	
Time and Location Fixed Effects	Yes	
Log Likelihood	-1295.133	
Pseudo R2	.242	

Notes: See notes to Table 4.

Table A4.7 *Alte Kämpfer* interacted with whether the defendant was a juvenile

VARIABLES	(1) Marginal Effects x 100	(2) z-statistic
Juvenile	-72.55***	-3.809
<i>Alte Kämpfer</i>	4.071	1.035
<i>Alte Kämpfer</i> x Juvenile	43.16**	1.980
Observations	2,502	2,502
All other controls	Yes	
Time and Location Fixed Effects	Yes	
Log Likelihood	-1295.651	
Pseudo R2	.242	

Notes: See notes to Table 4.

Table A4.8 *Alte Kämpfer* interacted with whether the defendant was devoutly Roman Catholic

VARIABLES	(1) Marginal Effects x 100	(2) z-statistic
Catholic	-5.082	-0.775
<i>Alte Kämpfer</i>	3.541	0.894
<i>Alte Kämpfer</i> x Catholic	19.22**	2.241
Observations	2,502	2,502
All other controls	Yes	
Time and Location Fixed Effects	Yes	
Log Likelihood	-1295.349	
Pseudo R2	.242	

Notes: See notes to Table 4.

Appendix 5: Results in which ideological commitment is defined as *Alte Kämpfer* who joined the Party before September 1930.

Table A5.1 Logit and RElogit for death sentence

VARIABLES	Logit Coefficients	z-statistic	Marginal Effects x 100	z-statistic	ReLogit Coefficients	z-statistic
Age	0.0539*	1.852	0.558*	1.825	0.0522*	1.943
Age-Squared	-0.000541	-1.579	-0.00560	-1.562	-0.000524*	-1.665
Education	0.516***	3.360	5.351***	3.205	0.502***	3.401
Male	0.989***	6.573	10.25***	5.542	0.966***	6.619
Unemployed	-0.857	-1.492	-8.882	-1.514	-0.727	-1.443
Partial Jewish Ancestry	-0.180	-0.630	-1.865	-0.629	-0.169	-0.589
Foreigner	-0.503	-1.520	-5.216	-1.502	-0.503	-1.334
Juvenile	-1.865***	-4.217	-19.33***	-3.917	-1.811***	-4.113
Catholic	0.207	1.022	2.141	1.018	0.199	1.028
Treason only	4.970***	4.732	51.52***	5.412	4.405***	4.253
Major high treason only	3.403***	3.354	35.27***	3.778	2.869***	2.914
Multiple offences	5.104***	5.048	52.90***	5.808	4.536***	4.613
Violence	1.185***	5.637	12.28***	4.960	1.149***	5.529
Pre. maj. Political	0.539***	3.010	5.585***	2.909	0.526***	2.854
Pre. min. political	0.346**	2.178	3.590**	2.127	0.343**	2.054
Pre non-political	0.0295	0.195	0.306	0.195	0.0238	0.153
Comintern Communist	0.186	1.017	1.933	1.013	0.190	0.920
Social Democratic	-1.297***	-2.667	-13.44***	-2.629	-1.212**	-2.542
Other left wing	-0.697***	-2.820	-7.222***	-2.731	-0.671**	-2.466
Right wing	-1.372***	-5.532	-14.22***	-4.934	-1.336***	-5.004
Judge Age	0.268**	2.502	2.777**	2.419	0.265**	2.546
Judge Age-Squared	-0.00265***	-2.715	-0.0275***	-2.611	-0.00262***	-2.754
Judge Weimar	0.0175	0.139	0.181	0.139	0.0196	0.158
Judge Catholic	-1.017*	-1.799	-10.54*	-1.792	-0.922*	-1.753
<i>Alte Kämpfer</i>	0.797***	4.722	8.266***	4.295	0.778***	4.595
Constant	-14.55***	-4.608			-13.82***	-4.627
Observations	3,579	3,579	3,579	3,579	3,579	3,579
Time Fixed Effects	Yes				Yes	
Location Fixed Effects	Yes				Yes	
Log Likelihood	-1360.775					
Pseudo R2	.382					

Notes: See notes to Table 4.

Table A5.2 *Alte Kämpfer* interacted with political status of the defendant

VARIABLES	Marginal Effects x 100	z-statistic
Alte Kämpfer	9.862***	4.653
Comintern Communist	3.141	1.514
Social Democratic	-11.23*	-1.696
Other left wing	-2.545	-0.842
Right wing	-11.17***	-3.513
Alte Kämpfer x Comintern Communist	-2.175	-1.206
Alte Kämpfer x Social Democratic	-5.973	-0.652
Alte Kämpfer x Other left wing	-11.20***	-2.608
Alte Kämpfer x Right wing	-6.729*	-1.781
Observations	3,579	3,579
All other controls	Yes	
Time and Location Fixed Effects	Yes	
Log Likelihood	-1356.094	
Pseudo R2	.384	

Notes: See notes to Table 4.

Table A5.3 *Alte Kämpfer* interacted with whether the defendant engaged in violent resistance

VARIABLES	Marginal Effects x 100	z-statistic
Alte Kämpfer	7.849***	4.077
Violence	8.987***	2.941
Alte Kämpfer x Violence	6.711	1.619
Observations	3,579	3,579
All other controls	Yes	
Time and Location Fixed Effects	Yes	
Log Likelihood	-1359.418	
Pseudo R2	.383	

Notes: See notes to Table 4.

Table A5.4 *Alte Kämpfer* interacted with whether the defendant was unemployed

VARIABLES	Marginal Effects x 100	z-statistic
Unemployed	-7.902	-1.156
Alte Kämpfer	8.317***	4.289
Alte Kämpfer x Unemployed	-3.566	-0.262
Observations	3,579	3,579
All other controls	Yes	
Time and Location Fixed Effects	Yes	
Log Likelihood	-1360.739	
Pseudo R2	.382	

Notes: See notes to Table 4.

Table A5.5 *Alte Kämpfer* interacted with whether the defendant was of partial Jewish ancestry

VARIABLES	Marginal Effects x 100	z-statistic
Partial Jewish ancesry	-3.543	-1.148
Alte Kämpfer	7.928***	4.149
Alte Kämpfer x Partial Jewish ancestry	19.49**	2.100
Observations	3,579	3,579
All other controls	Yes	
Time and Location Fixed Effects	Yes	
Log Likelihood	-1358.748	
Pseudo R2	.383	

Notes: See notes to Table 4.

Table A5.6 *Alte Kämpfer* interacted with whether the defendant was a foreigner

VARIABLES	Marginal Effects x 100	z-statistic
Foreigner	-5.853	-1.495
Alte Kämpfer	8.157***	4.199
Alte Kämpfer x Foreigner	2.893	0.361
Observations	3,579	3,579
All other controls	Yes	
Time and Location Fixed Effects	Yes	
Log Likelihood	-1360.709	
Pseudo R2	.382	

Notes: See notes to Table 4.

Table A5.7 *Alte Kämpfer* interacted with whether the defendant was a juvenile

VARIABLES	Marginal Effects x 100	z-statistic
Juvenile	-19.95***	-3.579
Alte Kämpfer	8.204***	4.235
Alte Kämpfer x Juvenile	2.268	0.246
Observations	3,579	3,579
All other controls	Yes	
Time and Location Fixed Effects	Yes	
Log Likelihood	-1360.744	
Pseudo R2	.382	

Notes: See notes to Table 4.

Table A5.8 *Alte Kämpfer* interacted with whether the defendant was devoutly Roman Catholic

VARIABLES	Marginal Effects x 100	z-statistic
Catholic	0.614	0.256
<i>Alte Kämpfer</i>	7.671***	3.937
<i>Alte Kämpfer</i> x Catholic	5.943	1.355
Observations	3,579	3,579
All other controls	Yes	
Time and Location Fixed Effects	Yes	
Log Likelihood	-1359.825	
Pseudo R2	.383	

Notes: See notes to Table 4.