Law and History Review (2025), 1–23
doi:10.1017/S0738248025000082

ORIGINAL ARTICLE

"The Problem Can Be Solved Only by Those Imbued with a Socialist Sense of Justice!": Social Conflict and the Lower Courts in the German Democratic Republic

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Abstract

The article concentrates on the massive project of popularizing the court system and penal practice in the German Democratic Republic (GDR) in the 1960s. From then on, the GDR transferred a considerable amount of jurisdiction to collectives, which were further assigned the task of adjudicating "close to the people" within and alongside the existing legal system. We will analyze how the government, with this project, managed to translate the ideological task of sanctioning the inner-state enemy into existing legal concepts and how it used law as a means to advance its political aims. By focusing on the judicialization of politics in the GDR, the article examines the legal history of the GDR as an important example in the broader and pressing phenomenon of the relationship between law and authoritarian politics.

In 1955, the German Democratic Republic (GDR) Minister of Justice, Hilde Benjamin, wrote in the East German legal journal *Staat und Recht*:

> [I]n our system there is no longer any contradiction between legal views and moral views. There is no gap between law and morality here [.][1]

This excerpt reflects a common trait of any authoritarian regime, where the political control of a dictatorship is claimed to overcome the perennial contradictions that characterize societies built on the ideal of the freedom of

[1] Hilde Benjamin, "Recht und Rechtsbewusstsein," *Staat und Recht* 4 (1955): 240.

citizens. In this sense, the GDR was no exception among dictatorships. Benjamin's comment also highlights how pivotal the idea and reality of social conflict were to the GDR. The GDR claimed it was born out of social conflict—through the rise of the working classes against capitalist oppression—and it justified its legal policy on the grounds of that alleged social conflict, that is, the struggle against the internal class enemy.[2] However, the *actual*, and for the government, troubling social conflict in the GDR was between the ruling communist party SED (*Sozialistische Einheitspartei Deutschland*) and various social groups that resisted, allegedly or in actuality, SED's policies.

Our article shows that in its attempts to control the social conflict between the SED and dissident groups (real or imagined), the GDR government took a path similar to many other authoritarian regimes: it turned to law and the administration of justice to implement its political goals in practice.[3] In the GDR, however, the effect of the legal reform was complicated and unexpected. The trajectory of the GDR legal policy does not follow the familiar patterns of change in social conflict provided by classic political theories: the juridification of social conflict did not bring about de-politicization,[4] and the politicization of law did not escalate the social conflict, nor did it result in a legal order collapsing into rule by diktat.[5]

In what follows, we will focus on the large-scale public projects "Education through Law" and "Democratized Justice," through which the SED sought to use the administration of justice to litigate social conflicts in socialist East Germany. Furthermore, we will use the case of the GDR to illuminate how law functions in dictatorships and how—counterintuitively—a legitimate legal system is often a necessity for authoritarian regimes and their oppressive politics.[6]

Like the other socialist dictatorships that emerged after World War II, the SED faced persistent and fundamental challenges to its authoritarian rule in the late 1950s. The society of the GDR had to be transformed from Stalinist emergency conditions to a community of laws that would allow for increased economic productivity without undoing the freedoms that the political revolution had given to the dictatorial parties. In other words, the GDR had to

[2] For example, Hilde Benjamin,"Grundsätzliches zur Methode und zum Inhalt der Rechtsprechung," *Neue Justiz* 5 (1951): 150.

[3] Cf. Chinese "turn against the law" for mitigating the possibly escalating social conflict in the 2010s, Carl F. Minzner, "China's Turn Against Law," *American Journal of Comparative Law* 59, no. 4 (2011): 938–939.

[4] Gunther Teubner, "Juridification – Concepts, Aspects, Limits, Solutions," in *Juridification of Social Spheres: A Comparative Analysis in the Areas of Labor, Corporate, Antitrust and Social Welfare Law*, ed. Gunther Teubner (Berlin/New York: Walter de Gruyter, 1987) 3–48.

[5] Cf. Friedrich A. Hayek, *Law, Legislation and Liberty. A New Statement of the Liberal Principles of Justice and Political Economy* (London & New York: Routledge, 2013), 136, 502.

[6] Cf. Weitseng Chen and Hualing Fu, "Authoritarian Legality, the Rule of Law, and Democracy," in *Authoritarian Legality in Asia: Formation, Development and Transition*, eds. Weitseng Chen and Hualing Fu (Cambridge, Cambridge University Press, 2020) 1–14; Mark Tushnet, "Authoritarian Constitutionalism. Some Conceptual Issues," in *Constitutions in Authoritarian Regimes*, eds. Tom Ginsburg and Alberto Simpser (Cambridge: Cambridge University Press, 2014), 36–49.

https://doi.org/10.1017/S0738248025000082 Published online by Cambridge University Press

find a way from "revolutionary legality" to "socialist legality."[7] In addition to de-Stalinization, socialist dictatorships and authoritarian regimes in general were united by a fear of social conflict: those in power had to take into account the perceptions of right, wrong, and the true communality of the citizens under their power. Inga Markovits has shown how ordinary citizens in socialist dictatorships adhered to their own ideas of law, society, and justice—an unofficial, implicitly recognized "second legality" that allowed people to live with, evade, and abuse the harsh norms of state control.[8] Rather than outright attacking this common legal consciousness, the post-Stalinist political projects for creating "socialist legality" aimed to align people's "second legality" with their renewed legal systems. After all, according to socialist classics, the power of political revolution emerged directly from the masses.[9] However, change was not unidirectional, identical, or simultaneous in all socialist countries (or even within individual states), nor was it unanimously implemented by the ruling elite. Likewise in the GDR, there was a significant power struggle inside the SED up until the early 1960s that had to do with the mode of socialism that the GDR should choose; the various forms of rule by law each had their own supporters, and who was in the driver's seat changed depending on the broader geopolitical or domestic situation.[10]

This transition from "revolutionary" to "socialist" legality, overshadowed by the "second legality," gave rise to the massive project for popularizing the court system and penal practice in the GDR after 1960.[11] This project was the

[7] On the GDR's historical transition from the German legal tradition to socialist legality, and how the particular form of socialist legality chosen by the SED also served the GDR in its legal battle against West Germany, see Sebastian Gehrig, *Legal Entanglements. Law, Rights and the Battle for Legitimacy in Divided Germany, 1945–1989* (New York and Oxford: Berghahn Books, 2021) 96, 265. On the shift from "revolutionary legality" to "socialist legality" in the Eastern Bloc in general, see Yoram Gorlizki, "After the XXth Congress: Liberalization and the Problem of Social Control," in *Social Control under Stalin and Khrushchev. The Phantom of a Well-ordered State*, eds. Immo Rebitschek & Aaron B. Retish (Toronto: Toronto University Press, 2023), 237–241.

[8] Inga Markovits, "Law or Order – Constitutionalism and Legality in Eastern Europe," *Stanford Law Review* 34, no. 3 (1982): 513–614; Yoram Gorlizki shows how the failure to understand people's grievances and current problems became the undoing of Nikita Khrushchev's reign. Yoram Gorlizki, "After the XXth Congress," 252–253.

[9] See, for example, Jennifer Altehenger, *Legal Lessons. Popularizing Laws in the People's Republic of China, 1949–1989* (Cambridge and London: Harvard University Press, 2018), 213–214, 257; Dina Moyal, "Social Control in Post-Stalinist Courts: Housing Disputes and Citizen Demand of Legality," in *Social Control under Stalin and Khrushchev. The Phantom of a Well-ordered State*, eds. Immo Rebitschek & Aaron B. Retish (Toronto: Toronto University Press, 2023), 301–302.

[10] Peter C. Caldwell, *Dictatorship, State Planning, and Social Theory in the German Democratic Republic* (Cambridge: Cambridge University Press, 2003), 57–96; Friedrich-Christian Schroeder, "The rise and fall of the criminal law of the German Democratic Republic," *Criminal Law Forum* 2 (1991); Gehrig, *Legal Entanglements*, 88–92.

[11] In line with many socio-legal scholars before us, we label the socialist legal system with increased lay participation in adjudication, in legal proceedings, and in penal practice as "popular," but in order to highlight its close connection to social conflict and social historical trajectory, that is, changing historical circumstances, we will in this article use the term "popularized justice." See, for example, Sally E. Merry, "Popular Justice and the Ideology of Social Transformation," *Social & Legal Studies* 1, no. 2 (1992): 161–176.

https://doi.org/10.1017/S0738248025000082 Published online by Cambridge University Press

centerpiece of the SED's decades-long attempt to transform the law into an instrument of socialist governance—an attempt that ranged from the involvement of socialist citizens in the administration of justice in the early 1960s to the crafting of a new constitution, new legal codes, and massive state propaganda to popularize socialist legality in the 1970s. The slogans "Education through law" and "Democratized justice" signified a campaign in which a considerable amount of jurisdiction was transferred to collectives, which were further assigned the task of adjudicating "close to the people" within and alongside the existing legal system.[12] We will analyze how the government managed to translate the ideological task of sanctioning the inner-state enemy into existing legal concepts and how it used the law as a means to advance its political aims. Moreover, we will address the results of the campaign for popularized justice. What changed and why? What does the GDR case have to say about the relation between law and authoritarian politics and justice and social conflict in general?

The legal historical accounts that attempt to make sense of the essence of the GDR legal order have largely centered around the notion of *Rechtsstaat*: did the legality prevailing in the GDR relate to the liberal concept of the "state under law" (Was the GDR an *Unrechtsstaat*?), or should the justice that ordered the East German legal system be labeled a separate form of the rule of law ("socialist justice")? Scholars who support the former option concentrate on the various ways that the SED intervened with legal processes and distorted the principles of equality before the law, predictability of due process, and independence of legal institutes.[13] In other words, the focus is on the *politicization of law* and the inability of GDR legality to achieve liberal legal ideals. The proponents of the "socialist justice" paradigm point out that the legal system of the GDR was never meant to meet Western ideals, and it did not adhere to the traditional European values of law's embeddedness in societies.[14]

[12] A key text of the reform is Karl Polak, "Über die weitere Entwicklung der Rechtspflege in der DDR," *Staat und Recht* 10 (1961): 607–657. On why it was Polak and his understanding of the "socialist legality" that prevailed in the power struggle, see Marcus Howe, *Karl Polak: Parteijurist unter Ulbricht* (Frankfurt a/m: Vittorio Klostermann, 2002) 221–230. On the centrality of the institutions of popular justice to the East German legal system, see Paul Betts, "Private Property and Public Culture: A Forgotten Chapter of East European Communist Life," *Histoire@Politique* 7 (2009): 1, 8. On how different traditions of legal rights played out in the post-Stalinist Soviet Union, see Benjamin Nathans, "Soviet Rights-Talk in the Post-Stalin Era," in *Human Rights in the Twentieth Century*, ed. Stefan-Ludwig Hoffmann (Cambridge: Cambridge University Press, 2011), 173–183.

[13] See, for example, Michael Stolleis, *Sozialistische Gesetzlichkeit. Staats- und Verwaltungsrechtswissenschaft in der DDR* (Berlin: J. H. Beck, 2009), 37–40; Rainer Schröder, Maren Bedau, and Caroline Dostal "Deutsche Demokratische Republik," in *Handwörterbuch zur Deutschen Rechtsgeschichte, Vol. 1.* (Berlin: Erich Schmidt Verlag, 2008), 957–971. On the uses of the *Unrechtsstaat*-concept, see Robert Hansack, R., *"Unrechtsstaat DDR". Zur Genesis des Terminus politicus "Unrechtsstaates" nach der Transformation 1989—Versuch einer historischen Bestandsaufnahme* (Berlin: Peter Lang, 2015).

[14] See, for example, Markovits, *Justice in Lüritz,* at 236–242; Uwe-Jens Heuer, "Recthsverständnis in der DDR," in *Die Rechtsordnung der DDR. Anspruch und Wirklichkeit*, ed. Uwe-Jens Heuer (Baden-Baden, Nomos Verlagsgesellschaft, 1995), 18–23; Volkmar Schöneburg, "Rechtsstaat versus Unrechtsstaat? Vier Argumente gegen eine Schwarz-Weiss-Klassifikation," in *Ansichten zur Geschichte der DDR, Vol. 5.*,

https://doi.org/10.1017/S0738248025000082 Published online by Cambridge University Press

Both perspectives, however, ignore the broader historical context in which the various combinations of law and (socialist) politics took place. After the arbitrary, draconian administration of justice and extrajudicial punishment practices of Stalinism, Eastern European dictatorships were forced to seek new ways to respond to specific national problems in ways that would ensure the continuation of their rule, all the while respecting the example and opinion of the Soviet Union.[15] Socialist justice was not a homogeneous and immutable dogma but an interplay between law and political coercion that took on different local manifestations, beginning (in the case of the GDR) in 1945 and ending with the fall of the Berlin Wall.[16]

Moreover, concentrating solely on the relation between GDR legality and the idea of *Rechtsstaat* hinders the possibility of scrutinizing the legal history of the GDR as an important example in the wider and pressing phenomenon of law's relation to authoritarian politics. The GDR's legal system was not a historical anomaly, nor was it a mere perversion of the traditional idea of the rule of law, but a peculiar example of how an authoritarian regime blurs the lines between law and politics in order to solidify its rule. Moreover, the narrow focus on the notion of (*Un*)*Rechtsstaat* obscures one of the central characteristics of the GDR system, the popularization and lay participation, and the congruence it might have with the development of other authoritative legal orders. Hence, rather than studying the politicization of law or the coherence of the GDR legal system, we will concentrate on the *judicialization of politics* in the GDR and seek to understand how the SED translated its political endeavors into the language of law in an attempt to integrate citizens into its project of constructing a socialist dictatorship.[17]

ed. Jochen Cerny, Dietmar Keller and Manfred Neuhaus (Eggersdorf: Verlag Matthias Kirchner, 1994), 149ff.

[15] Gehrig, *Legal Entanglements*, 97–98.

[16] One of the regional characteristics that affected the GDR project to popularize its legal system was, for example, the building of the Berlin Wall (Inga Markovits, *Justice in Lüritz: Experiencing Socialist Law in East Germany* [Princeton: Princeton University Press, 2010]), although in many areas the Wall's effect was not that significant (See Sagi Schaeffer, S. *States of Division: Border and Boundary Formation in Cold War Rural Germany* [New York and Oxford: Oxford University Press, 2014], 139, 154–156). For the GDR, the example of the Soviet Union and Nikita Khrushchev's revision of penal practice and criminal law were important (Schroeder, "The rise and fall of the criminal law"). Decriminalization and de-penalization were also global trends in 1960s criminal policy (Erich Buchholz, "Strafrecht," in *Die Rechtsordnung der DDR: Anspruch und Wirklichkeit*, ed. Uwe-Jens Heuer (Baden-Baden: Nomos Verlagsgesellschaft, 1995)). Yet, one should not ignore the solid belief that the GDR's political elite had in the socialist doctrine and especially in "education" (see Stefan Wolle, *The Ideal World of Dictatorship: Daily Life and Party Rule in the GDR, 1971–89* [Berlin: Ch. Links Verlag, 2019] 157–161).

[17] Torbjörn Vallinder explains *judicialization of politics* as "the spread of judicial decision-making methods outside the judicial province proper […] judicialization essentially involves turning something into a form of judicial process." Torbjörn Vallinder, "The Judicialization of Politics – A World-wide Phenomenon: Introduction," *International Political Science Review* 15, no. 2 (1994): 91. Tamir Moustafa and Tom Ginsburg use the concept in their excellent book on authoritarian regimes. See Tom Ginsburg and Tamir Moustafa, "Introduction: The Functions of Courts in Authoritarian Politics," in *Rule by Law: The Politics of Courts in Authoritarian Regimes*, eds. Tom Ginsburg and Tamir Moustafa (Cambridge: Cambridge University Press, 2008), 2.

https://doi.org/10.1017/S0738248025000082 Published online by Cambridge University Press

Our focus is on lay justice and the popularized forms of criminal legal proceedings and penal practice as implemented in accordance with the political projects of "Education through law" and "Democratized justice."[18] The article focuses on lower court records of criminal proceedings on common property, since the formative—actual—social conflict of GDR society became most evident in this context. In state-socialist dictatorships, the transformation of private property into common property epitomized the historical progress of socialist society.[19] Safeguarding the centralized system of production and keeping the amount of state-owned property inviolable was a major principle behind the everyday work of the criminal courts, long-term legal-political projects, and the penal policy of the GDR across four decades.[20]

To the SED, common property *was* socialism, whereas to the majority of people, common property was associated with the shortcomings of the socialist policies and the dismissal of their personal sacrifices. The GDR government was unable to provide for the basic needs of its citizens in the manner required by its propaganda of a socialist paradise, and, moreover, the gap between reality and the ideal promised by the regime was widening.[21] After the war and the harsh first years of "building socialism," citizens would have wanted their sacrifices to be recognized by the state, thus confirming their right to a relatively decent standard of living.[22] While the political elite, on the contrary, often showed indifference to the inviolability of people's private property, the circumstances were conducive to creating a culture in which the illegal acquisition of common property and its misuse constituted a massive shadow economy in socialist countries.[23] Furthermore, the focus on social conflict and common property explains our choice of concentrating on court records at the circuit of Erfurt in the region of Thuringia. For the SED, the collectivization of *agricultural* production was a priority from the beginning of the GDR. However,

[18] Previous research on GDR lay justice has mostly concentrated on the system of institutionalized lay tribunals and arbitration committees that was an important part of the GDR legality but was, nevertheless, only one part of the massive legal reform. See, for example, Paul Betts, *Within Walls: Private Life in the German Democratic Republic* (New York and Oxford: Oxford University Press, 2010), 148–172; László Boros, Ágnes Gyulavári, and Zoltán Fleck, "Die Beteiligung von Laien an der Rechtspflege im sozialistischen Ungarn," in *Recht im Sozialismus. Analysen zur Normdurchsetzung in osteuropäischen Nachkriegsgesellschaften (1944/45–1989). Band 2 Justizpolitik*, eds. Gerd Bender and Ulrich Falk (Frankfurt a/m: Vittorio Klostermann, 1999).

[19] Cf. Moritz Vormbaum, "Wirtschaftsstrafrecht in der DDR," in *Deutsche Diktatorische Rechtsgeschichten? Perspektiven auf die Rechtsgeschichte der DDR. Gedächtnissymposium für Rainer Schröder (1947–2016)*, eds. Hans-Peter Haferkamp, Jan Thiessen, Christian Waldhoff (Tübingen: Mohr Siebeck, 2018), 106–107; Felix Muhl, *"Volkseigentum ist unantastbar". Das Volkseigentumsschutzgesetz der DDR und der Bestimmtheitsgrundsatz* (Berlin: Erich Schmidt Verlag, 2011), 48. We have translated the German concept of *Volkseigentum* (or later *sozialistische Eigentum*) as "common property."

[20] For example, Hilde Benjamin, "Volkseigentum ist unantastbar!," *Neue Justiz* 7 (1953); also Vormbaum, "Wirtschaftsstrafrecht in der DDR," 93, 99.

[21] Richard Millington, "State Power and 'Everyday Criminality' in the German Democratic Republic, 1961–1989," *German History* 38, no. 3 (2020): 449–450, 459.

[22] Moyal, "Social Control in the Post-Stalinist Courts," 300–301.

[23] Richard Millington, "The 'People's Sport': Petty Theft in the German Democratic Republic, 1963–1985," *East Central Europe* 50, no. 1 (2023): 14–36; Markovits, "Law or Order," 597–599.

https://doi.org/10.1017/S0738248025000082 Published online by Cambridge University Press

the rural population, especially in the southern Catholic regions (like Erfurt), was particularly reluctant to agree to hand over their right to their own land to form farming cooperatives.[24]

In what follows, we will first frame our legal historical analysis by elaborating how the idea of an extensive system of lay justice emerged directly from the forced collectivization of GDR agriculture and further present the central instruments and institutions in popularized justice. Our depiction of the historical development of the GDR system of popular justice is backed by and explained through previously unused documents from the archives of the GDR Ministry of Justice in the *Bundesarchiv*, Berlin. We will then move on to analyze the trajectory of legal renewal in the 1960s and 1970s by close reading of the records of three legal common property cases found in the archives of the Erfurt circuit at the *Landesarchiv Thüringen—Hauptstaatsarchiv Weimar* in Weimar, Germany. We chose the three cases on the basis of their local impact. All three cases were complicated common property proceedings including extensive police work and a significant number of in-depth witness statements. In all of the cases, the Erfurt Court of Appeals commented on the ruling of the lower court, and in all of them, a collective was directly involved.

The article shows that, in the long run, the GDR, like many other dictatorial regimes, could not govern by mere political command. It had to pursue an image of legality, and it sought to use the legitimizing effect of the courts in judicializing its authoritarian politics. This meant, however, that in instances where there were irreconcilable contradictions between the SED and the people—as in regard to common property—the societal tensions were not resolved, but rather concealed. In the project of concealment, the system of popular justice and lay participation in legal proceedings was among the most important.

Forced Collectivization, "Education through Law," and "Democratized Justice"

In the late Fall of 1959, the SED activated the "second wave of the collectivization," or the "Socialist spring" as the more colloquial name for the 1959–1960 winter campaign went. The Socialist spring was a huge intimidation project, in which the government sent tens of thousands of SED *brigade* members, "enlighteners," and students to the countryside to force the remaining free peasants to incorporate their tenures into existing collectives.[25] The low level of participation in collectivized agriculture had been a constant headache for the SED since the emergence of the GDR, and various measures for accelerating the collectivization, from the draconian use of criminal law to

[24] Schaeffer, *States of Division*, 134–137. In the 1980s, there were fifteen circuits (*Bezirk*) in the GDR, and each of them had a Court of Appeals (*Bezirksgericht*) that oversaw the lower district courts in the circuit. The Erfurt circuit consisted of eight district courts (*Kreisgericht*): Sömmerda, Worbis, Erfurt-Süd, Eisenach, Arnstadt, Gotha, Apolda, and Weimar.

[25] Jens Schöne, J. *Frühling auf dem Lande. Die Kollektivierung der DDR-Landwirtschaft* (Berlin: Ch. Links Verlag, 2010), 180–234.

https://doi.org/10.1017/S0738248025000082 Published online by Cambridge University Press

directed and generous government subsidies, had failed. Hence, in 1959, the SED started a campaign in which independent farmers were ordered to join the collectives at gunpoint.[26] In this article, we argue that the particular forms that popularized justice in the GDR took were connected to the Socialist spring.

The Socialist spring appears as a dramatic rupture in comparison with the preceding policy of building a new property regime. Resorting to political violence seems to prove that the SED had no real need for any system of legality in ruling the GDR and that the law merely served as a façade for ruthless political control.[27] However, political violence and intimidation were useful tools only for the purpose of getting rid of independent farms. In order for collectivization to become a durable mode of production and to administer the increased amount of common property, the SED's political steering had to take a more justified and predictable form beyond mere violent bulldozing. Merely confiscating private property and ignoring the consequences would have greatly increased the risk of long-term social conflict and made a self-sustaining rural economy impossible.[28]

In the early months of the 1960s—at the very same time when SED *brigades* were intimidating and forcing independent farmers into collectives across the rural GDR—the GDR Ministry of Justice arranged a series of symposiums for the regional leaders of the country.[29] In these symposium meetings, the leading officials of each circuit of the GDR reported to the Ministry of Justice, in particular to the Minister of Justice, Hilde Benjamin, how the judicial system of their respective regions had managed to support the "economic transition"—also known as forced collectivization—and, further, how the circuits within the frames of jurisdiction purported to do their part in consolidating and securing the new circumstances. The high-ranking officials of each circuit were obliged to report "on the situation in his circuit and the status of the work of the judiciary" and present their solution on the question of "[how] to use the means of the judiciary to influence the socialist transformation in the countryside and the increase in market production, and what are the main tasks for them in the development of fully cooperative villages, counties, and circuits?"[30] The euphemism of "socialist transformation in the countryside and the increase in market production" meant forced collectivization, whereas "fully cooperative villages, counties, and circuits" stood for a state of affairs in which regional administrative bodies, manufacturing facilities, and collectivized agriculture

[26] George Last, *After the Socialist Spring. Collectivisation and Economic Transformation in the GDR* (New York and Oxford: Berghahn Books, 2009), 18–20.

[27] In general, see Stolleis, *Sozialistische Gesetzlichkeit*, 18–20, 28–35.

[28] Ultimately, the dictatorship of the SED was built on the promise of violence by the Red Army occupying the country. Although the Soviets did quell one uprising for the GDR government, the SED elite did not want to use that card again (Wolle, *The Ideal World of Dictatorship*, 108–113). In addition, every time the SED tried to tighten its grip on rural areas, thousands of people fled the country (Schaeffer, *States of Division*, 118–154).

[29] The archives of the German Democratic Republic and the Soviet zone of occupation (1945–1990), Bundesarchiv, Ministerium der Justiz (henceforth BArch), DP1/6176, Berlin-Lichterfelde, Germany.

[30] BArch DP 1/6176, p. 3

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would be subsumed under the leadership of the SED *brigades* to the fullest extent.[31]

The Socialist spring was very much in line with the GDR leader Walter Ulbricht's long-term plan to fortify the SED dictatorship by popularizing the instruments of state power.[32] It included educating cadres and *brigades* in order to create a closed corps of disciplined party activists centered around the leadership. The responsibility of this corps was to advance the socialist cause and fight the class enemy—as defined by the party leadership—at the grass-root level.[33] Now that the SED had completed the collectivization by using the violent potential of the *brigades*, it had to focus on maintaining the new property regime and making it a lasting and economically viable system. To achieve that, the SED needed to combine the mobilized mass movement with a system of property norms and the existing structures of law and litigation.

In the symposiums of winter 1959–1960, the leadership of all of the circuits presented the exact numbers of farmers now working in their collectives. Most of the leaders elaborated on the judicial measures their respective circuits had deployed for tackling the resisting mentality. As points of improvement for the upcoming years, the regional leaders emphasized the need to extend the jurisdiction of various arbitration bodies and conflict commissions and deplored the fact that so few judges had joined the *brigades*. In addition, most of the regional SED officials in their reports stressed the importance of coherent criminal jurisdiction in order to "consolidate the new circumstances."[34] The consequent projects of "Democratized justice" and "Education through law" were answers to the dilemma of "consolidating the circumstances," and their content followed very much what the regional leaders had suggested in the 1959 and 1960 symposiums.

With a variety of decrees in 1961, the SED increased the number of lay tribunals and arbitration committees in the country and also assigned these structures of collective jurisdiction more discretion in cases regarding minor offenses.[35] However, the renewals were not only restricted to establishing a

[31] For example, on Erfurt (BArch DP 1/6176, p. 21) "Die Berichte ergaben, dass die Leiter der Justizverwaltungen über die Entwicklung einen Überblick besitzen und die Anleitung der Justizorgane danach organisiert wird."

[32] Jens Schöne, *The GDR: A History of the "Workers' and Peasants' State"* (Berlin: Berlin Story Verlag, 2018), 85–98.

[33] The use of cadres was extended to all spheres of society, and they were never meant to serve as mere stormtroopers. Melvin Croan and Carl J. Friedrich, "The East German Regime and Soviet Policy in Germany," *The Journal of Politics* 20, no. 1 (1958): 55.

[34] Although there had been far less resistance to the "second wave" than the SED had anticipated, the new property regime was far from being a solid construction. See, for example, BArch DP 1/6176, 13–20.

[35] For the most part, in the GDR, the different social courts were responsible for the litigation in small civil and work law cases, whereas significant criminal law cases were left to the judiciary (Hans-Andreas Schönfeldt, "Gesellschaftliche Gerichte in der DDR," in *Recht im Sozialismus. Analysen zur Normdurchsetzung in osteuropäischen Nachkriegsgesellschaften (1944/45–1989). Band 2 Justizpolitik*, eds. Gerd Bender and Ulrich Falk (Frankfurt a/m: Vittorio Klostermann, 1999), 235; Peter.W. Sperlich, *The East German Social Courts: Law and Popular Justice in a Marxist-Leninist Society* (Westport: Praeger, 2007). The social court system, as implemented in the GDR, had its roots in the revolutionary era Soviet

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system of social courts alongside the traditional legal institutes. The SED also significantly revamped the process of criminal justice and the penal system. With regard to criminal justice, a significant structural rearrangement made it possible to give a probationary sentence. In line with the general idea of "Education through law," the collective was made both the source and supervisor of the re-education following an offense and the judgment.[36] The collective "guaranteed the citizenship" of offenders and provided them with a job in which they could prove in everyday work that their attitude toward the state (and toward the sanctity of common property) had indeed fundamentally changed. With this practice of "collective self-education," the collective received the authority to both give offenders a new chance as members of their old community and to evaluate whether the process of "collective self-education" had been successful.[37]

Criminal justice proceedings were popularized by including representatives of collectives as official members of the adjudication process.[38] The social prosecutors and advocates [*gesellschaftliche Ankläger*] were assigned the task of providing first-hand information to the criminal court on the "conscious relations" that the accused had with respect to work and common property. The remarks by the social prosecutors, social defenders, and miscellaneous representatives of the collective involved in the court proceedings provided the judiciary with information about the "socialist reality" that contextualized the actual deed, the legality of which the court was attempting to consider.[39] Although the witnesses at the proceedings still continued to report on the factual course of events and the harm and circumstances regarding the crime, the social prosecutors evaluated the accused's activity in the light of their education, diligence, involvement in common projects, socialist conviction, and personality.[40] In other words, social representatives evaluated whether the persons in question believed deep down that the social change in the GDR was for the better and that the social practices they were supposed to participate in

Union, where "comrade courts" were introduced in order to supplant the judiciary and the legal order that had been in the service of Imperial Russia. See, for example, Alexander N. Makarov, "Das Privat- und Wirtschaftsrecht der Sowjet-Union. Im Auftrag des Instituts," *Zeitschrift für ausländisches und internationales Privatrecht* 13, no. 5, (1940/41): 786; Hans-Andreas Schönfeldt, *Vom Schiedsmann zur Schiedskommission. Normdurchsetzung durch territoriale gesellschaftliche Gerichte in der DDR* (Frankfurt a/m:Vittorio Klostermann, 2002).

[36] Cf. Polak, "Über die weitere Entwicklung."

[37] Horst Luther, "Strafprozessrecht," in *Die Rechtsordnung der DDR. Anspruch und Wirklichkeit*, ed. Uwe-Jens Heuer (Baden-Baden: Nomos Verlagsgesellschaft, 1995) 372; Schönfeldt, "Gesellschaftliche Gerichte," 240.

[38] Luther, "Strafprozessrecht," 372.

[39] Polak, "Über die weitere Entwicklung," 648. In general, the socialist legal order was not interested in the reality of any action per se, but rather how it referred to the principles defining the socialist interpretation of the world. See, for example, Karl A. Mollnau, "Sozialistische Gesetzlichkeit in der DDR—Theoretische Grundlagen und Praxis," in *Recht im Sozialismus, Analysen zur Normdurchsetzung in osteuropäischen Nachkriegsgesellschaften (1944/45–1989). Band 3. Sozialistische Gesetzlichkeit*, ed. Gerd Bender and Ulrich Falk (Frankfurt a/m: Vittorio Klostermann, 1999), 76.

[40] Zdenek Kühn, *The Judiciary in Central and Eastern Europe: Mechanical Jurisprudence in Transformation* (Leiden: Brill, 2011).

https://doi.org/10.1017/S0738248025000082 Published online by Cambridge University Press

represented the ideal communality among men. According to this assessment, it was possible for the court to decide whether the deed of the accused was as a whole particularly dangerous for socialist society and was, further, an aggravated offense in the legal scale.

Law, Morals, and Re-Education

The "Education through law" and "Democratized justice" programs were not merely renewals of legal institutions and procedures. They introduced a new way of perceiving the relation between law and morals and translated the social conflict brought about by the Socialist spring into the language of law. The programs were in line with the global trend of decriminalization and de-penalization and were comparable to the measures taken in the Soviet Union to redefine the relationship between law and the socialist revolution under the banner of "socialist legality."[41] Yet, their implementation and aims in the GDR context were primarily about conciliating the social conflict that the Socialist spring had escalated and furthermore about establishing a coherent system for the administration of justice that would (a) help to secure the new property regime and (b) connect the traditional legal institutes with the mass power of the SED *brigades*.

In 1961, the district court of Worbis adjudicated an important case concerning the embezzlement and theft of scrap metal.[42] It appeared that a majority of the workers in a small state-owned scrapyard ("VHZ Metal") in Worbis had been involved in a complicated system of drawing personal benefit from collecting and reselling scrap metal. From the perspective of the legitimacy of the GDR regime, as it was ingrained in the notion of common property, scrap metal had a special significance. During the first years of the GDR, the claim of the socialist regime that it had a superior title to all property within its borders clashed with the people's standpoint that abandoned material like scrap metal was "no-one's property." Previously, many local people had adopted the custom of using or selling any waste metal found in abundance around war-destroyed infrastructure and deserted factories.[43]

Unsurprisingly, the courts took a harsh view of the offense. The VHZ Metal case, however, was different from an ordinary common property proceeding, since many of the accused had in the past been rewarded as exemplary builders

[41] Buchholz, "Strafrecht," 302; Gorlizki, "After the XXth Congress," 247–252.

[42] The archives of the Erfurt circuit, Landesarchiv Thüringen – Hauptstaatsarchiv Weimar (LATh – HstA Weimar), Staatsanwalt des Kreises Eisenach Nr. 218/1, p. 2v, Weimar, Germany. To protect the privacy of the individuals involved in these trials and their surviving family members, we have changed the names of all people, places, and companies as they appear in the trial transcripts.

[43] In his 1950 article in *Neue Justiz*, Walter Hoeniger—a senior official at the justice department of the state Brandenburg—conceptualized the dilemma as a controversy between the old "individualistic and liberal" "legal consciousness" and the "new" one, in which the "new [socialist] legal consciousness" was poised to "fight the enemies of the socialist social order and dangerous sentiments." Walter Hoeniger, "Buntmetallprozesse im Lande Brandenburg. Ein Beispiel für die Demokratisierung der Justiz," *Neue Justiz* 4 (1950): 204.

https://doi.org/10.1017/S0738248025000082 Published online by Cambridge University Press

of the socialist regime. Some of them had even been rewarded with the "golden needle" for their work in the "National Network for Construction" (*NAW*).[44] Moreover, their actions—as the accused also insisted in their defense—were anchored in a very common attitude among the people and did not stand out as exceptionally serious offenses.[45] In its decision, the district court of Worbis had to prove that the actions of the accused were particularly severe, although according to existing law, it was not clear at all that it was common property that the accused had taken, and the line between their deeds and the usual way of benefiting from scrap metal was not decisive.

In the administration of criminal justice in state-socialist dictatorships, an action was characterized as a crime only if it posed a threat to society, that is, to the community of citizens, its values, or its property.[46] However, up until 1968, the administration of criminal justice in the GDR was carried out within the framework provided by the 1871 Prussian criminal code. This constituted a practical obstacle for the government in its task of hunting down and punishing as severely as possible the class enemy within the population.[47] Since the existing legal codes did not articulate the concept of "social dangerousness," it was problematic for the government to distinguish a particularly dangerous action from a "normal crime" and deem "socially dangerous" crimes as aggravated violations of law.

The dilemma was solved with the help of the abstract ideal of the moral will of the working classes. Especially "dangerous" (and hence aggravated) crimes were morally reprehensible according to the "socialist legal consciousness" (*sozialistische Rechtsbewusstsein*).[48] Throughout the four decades of the GDR regime, socialist morals determined *de facto* the legal repercussions of illegal

[44] LATh – HstA Weimar 218/1, p. 206r.

[45] Individuals could in general collect and sell scrap metal in the GDR, and for many, it was a way to acquire some extra earnings (LATh – HstA Weimar 218/1, p. 195). In practice, the scrap metal business was about the gray economy. The government needed the metal and did not over-eagerly enforce the regulations in this field. It was in the government's interests to have people collect scrap metal, even though their financial gain would have been, if not illegal, at least ideologically heretical.

[46] See, for example, Hans Gerats, John Lekschas, and Joachim Renneberg, *Lehrbuch des Strafrechts der Deutschen Demokratischen Republik. Allgemeiner Teil* (Berlin: VEB Deutscher Zentralverlag, 1957), 266.

[47] Schroeder, "The Rise and Fall," 218.

[48] "*Sozialistische Rechtsbewusstsein*" was a great conceptual bridge between socialist morality and the legal code, because "*Rechtsbewusstsein*" was an old and established legal concept in the German legal tradition. On the other hand, its open character had contributed to the moralization of law already in Nazi Germany. Ville Erkkilä, *The Conceptual Change of Consciousness. Franz Wieacker and German Legal Historiography 1933–1968* (Tübingen: Mohr Siebeck, 2019), 65–85; On scholarly definitions of "*sozialistische Rechtsbewusstsein*," see, for example, Dieter Bohnfdorff, Hartmut Ratzel, and Gerwin Udke, "Sozialistisches Rechtsbewusstsein und rechtliche Motivation," *Neue Justiz* 23 (1969): 553–558; cf. Jan Schröder, *Rechtswissenschaft in Diktaturen. Die juristische Methodenlehre im NS-Staat und in der DDR* (Munich: C. H. Beck, 2016). Whether one used the term "legal consciousness" [*Rechtsbewusstsein*], "socialist consciousness" [*sozialistisches Bewusstsein*] or "awareness of responsibility [*Verantwortungsbewusstsein*] was determined by the true interpretation of the socialist classics at any given time and the contemporary instrumental importance of legal tradition in the state's governance. See, for example, Inga Markovits, "Civil Law in East Germany. Its Development and

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actions. For the first decade of the GDR, the SED labored to connect the concept of "socialist legal consciousness" to existing law. In the early 1950s, the SED presented "legal consciousness" as a skill and a craft of the judiciary, who interpreted and applied law and the resolutions of the party congresses while judging whether a particular action was a crime or not but also whether it was distinctively immoral from the perspective of working class morals.[49]

Along with initiating the programs of "Education through law" and "Democratized justice," the SED relocated the bastion of "socialist legal consciousness": the paragon of ideal legal consciousness was now to be found among the party cadres. Hence, the state prosecutor Ernst Melsheimer in his speech at a seminar for criminal judges and prosecutors announced:

> The question of strengthening the idea of education in criminal justice and the development of the people's democratic order through judiciary activities can only be solved by cadres [the leaders of SED *brigades*], who are imbued with the *socialist legal consciousness*, who are anchored in the people's democratic order, closely connected to the masses of workers and work enthusiastically on building Socialism, and moreover approach their work with higher expertise.[50]

The first, practical consequence of this jurisprudential turnaround was that the collectives—or to be more precise the commanding elite of SED *brigades* who led the local factories and farming collectives—were given the jurisdiction to decide whether a particular action was *morally* reprehensible and consequently an aggravated violation of law.

Second, with this reinterpretation of socialist dogma, the SED made sure that the law could be used as efficiently as possible in litigating the social conflict that was being accelerated by the Socialist spring.[51] For the dictatorship, the most dangerous action was the kind of behavior that was directed against the principles of the new property regime and the legality it entailed. Such antagonistic deeds, including the thinking behind the actions, had to be harshly punished as aggravated crimes and in a way that would be as legally consistent as possible. By connecting the "socialist legal consciousness" to communal and local leaders, the SED elevated the *brigade* leaders—the veterans of the polarized social conflict—into essential actors in the newly established structures of the administration of justice.

Thus, in the case of VHZ Metal, too, overcoming the difficult discrepancy between a politically dangerous act and the letter of the law was resolved by recourse to morality, in a manner familiar from the GDR of the 1960s. The

Relation to Soviet Legal History and Ideology," *The Yale Law Journal* 78, no. 1 (1968): 6–7; Kühn, *The Judiciary in Central and Eastern Europe*, 24–25, 28.

[49] Benjamin, "Recht und Rechtsbewusstsein," 236ff; cf. Schröder, *Rechtswissenschaft in Diktaturen*, 63–68.

[50] BArch DP 1/6176, p. 86. Emphasis ours.

[51] See, for example, the program for the training period of the *brigades* of Neubrandenburg for "securing order in society" in the fall of 1961, BArch DP 1/8702, p. 1–6.

https://doi.org/10.1017/S0738248025000082 Published online by Cambridge University Press

district court of Worbis emphasized the morally dubious personality of the accused. In its resolution, the district court filled many pages with statements by the local SED activists who had emphasized the excessive drinking habits of the accused, pointed out several occasions during the preceding years when some of the accused had expressed Nazi sympathies, and reported in detail the situations when the offenders had expressed disbelief about the social and political development of the GDR and disappointment in its political elite.[52] Like most criminal proceedings in the 1960s GDR, the sentencing of the eight accused in the VHZ Metal case for aggravated crimes against common property was a performative and "educational" event to reinforce the sanctity of common property and to highlight the moral sphere of the new "socialist legality."[53]

Those convicted appealed to the Court of Appeals in Erfurt. Two individuals in particular felt their punishments were overly harsh, since the men did not have anything to do with the actual dealing and did not benefit financially from working with the leaders of the network. In its resolution on July 12, 1962, the Erfurt Court of Appeals thanked the district court of Worbis for its diligent work and ruled that although the actions of the two men in question did not fulfill the requirements of an aggravated offense as explicated in the criminal code, the men had committed a *socially dangerous* crime. In the resolution, the CoA in Erfurt noted that in determining the social dangerousness of a violation, it was possible to consider the "overall circumstances" of the action and the "personality of the accused." Hence, the CoA sustained the sentence of an aggravated offense against the common property for all those convicted.[54]

What was striking about this case was not the way in which the moral assessment of the regional leaders and communal officials determined in practice that the sentence was for an aggravated crime, even if the wording of the law at the time would not have allowed it. The novel traits of the case resided in the punishments. In the end, all but two of the eight convicted served their sentences while working at VHZ Metal—at the same workplace in which they had participated in the embezzlement—although all of them had been convicted of an aggravated crime.

By the time of the Erfurt CoA resolution of July 12, 1962, almost all of the convicted were going through a re-educational program that consisted—in addition to basic manual labor at the collective—of lectures in socialist ideology, reading classics, and discussing world politics (the sins and mistakes of West Germany) and the historical causes of the working classes.[55] In late 1962, the prosecutor's office reported to the district court that the first convicted person had completed his probation and re-education period.

[52] See, for example, LATh – HstA Weimar 218/1, p. 174r–175v, 193r, 204r. In addition—and reflecting the wider "educational" task assigned to the courts—the court extoled in a lengthy manner the moral superiority of the socialist regime by praising the indisputable achievements of the GDR and the SED. LATh – HstA Weimar 218/1, p. 200r–201r.

[53] Copies of the resolution of the district court of Worbis were put on display in various places around the municipality (LATh – HstA Weimar 218/1, p. 208r).

[54] LATh – HstA Weimar 218/1, p. 210r.

[55] For example, LATh – HstA Weimar 218/1, p. 218r–219r.

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According to officials responsible for his rehabilitation, 65-year-old Klaus Mahler had "matured in his views and understood the harm of his previous actions to the community." This was reflected in his discussion with others, in his attitude toward work assignments, and in the way he completed his tasks as part of the everyday work of the collective. After the district court had confirmed that Mahler had indeed served his sentence, he continued to work at VHZ Metal.[56]

"Education through law" did not mean that the administration of justice in the GDR courts had become less arbitrary or less draconian. In cases that were important to the regime, like those having to do with common property, a full acquittal was very rare. In the end, the educational administration of criminal justice and penal practice was deployed because the party believed that these means would reinforce its dictatorship. The SED had learned from the 1953 uprising that social conflict could not be mitigated solely by means of harsh legal sanctions; indeed, quite the opposite was the case. In the "democratizing" of penal practice, the essential and ambiguous sphere of "education" in legal matters was to a large degree handed over to collectives—in practice working facilities run by accomplished members of SED *brigades*—and that gave them significant leeway for affecting especially the severity of sentences that the courts handed out.

The Collectives and the Courts: Struggle Over the Meaning of Legal Concepts

For a dictatorship, popularized justice was also a problematic thing: amid a revolution (like that in Russia in 1917–1918), various communal courts were useful in removing the administrative and moral legitimacy that conserved the authority of the preceding regime, but at the same time, they hampered attempts to use law as an effective instrument in creating the structures of the post-revolutionary state. Although "the people" in popularized "socialist legalities" across Eastern Europe watched over the judiciary and also helped the state to maintain social order, as adjudicators, they were beyond the reach of normal forms of surveillance developed to control the traditional judicial systems.[57] Providing the communal organs with judicial power could open a Pandora's box for the self-conscious and rights-demanding masses, and once established, the social courts were reluctant to hand over the power they had been granted.[58] Throughout the post-Second World War socialist era, state-socialist regimes balanced between the ideals of "democratization" and the

[56] Ibid., p. 225r.

[57] That is why, for example, in post-Stalinist Russia, many officials resisted initiatives to increase the jurisdiction of the structures of popular justice. Gorlizki, "After the XXth Congress," 243–244.

[58] Likewise, in revolutionary Russia, the experiment as a whole was rather quickly abandoned for the previously mentioned reasons, but the social court system remained, albeit in a more restrained and restricted role. Nancy T. Wolfe, "Social Courts in the GDR and Comrades' Courts in the Soviet Union: A Comparison," in *East Germany in Comparative Perspective*, eds. Thomas A. Baylis, David Childs, Erwin L. Collier, and Marilyn Rueschemeyer (London and New York: Routledge, 2005) 44–58; Also Dina Moyal, *Did Law Matter? Law, State and Individual in the USSR 1953–1982* (Stanford University: Dissertation, 2010), 25–37.

https://doi.org/10.1017/S0738248025000082 Published online by Cambridge University Press

swift, self-legitimate legal machinery in the service of the state in constructing communist societies.[59]

Sometimes the collectives, or more precisely their leaders with a SED background, bluntly rejected the possibility that they would "guarantee" a convicted person's "citizenship." In 1968, Viktor Haamann, who was convicted of an aggravated offense against common property, faced such a situation. As a procurement clerk in VEB Lime in Sömmerda, he had sold magnetic valves that had been removed from the collective's machinery to another collective and allegedly embezzled part of the revenue with false receipts. After Haamann had served his time in prison, the court requested that VEB Lime provide him with a job in which he could serve the remaining probation period. However, the head of VEB Lime replied that Haamann had caused "anxiety" in his workplace, and his relocation back to VEB Lime would "seriously harm the working environment." Hence the collective did not provide him with a chance to start over again at his old work and residence.[60]

Popularized judicial institutions were a two-edged sword for the GDR. By "democratizing" the courts, criminal justice, and penal policy, the SED installed a "control, steering, and intervention mechanism" into the legal order that provided it with an extralegal system to affect the administration of criminal justice.[61] The system was not about a "particular perception of justice,"[62] but a comprehensive arrangement in which the state abstained from regulating criminal justice by means of legal norms. The void in legal definitions was filled by lay assessments of the individual circumstances and personality of the offender. This in turn determined how "dangerous" a given violation was in relation to the inevitable progress of "social development."[63] The communal [*gesellschaftliche*] judicial institutions provided a doorway through which to introduce a source of law into legal proceedings that was not defined by and measured against traditional legal principles, without seemingly losing the authority of the legal order as a distinct system. At the same time, they significantly strengthened the self-awareness of various communities, who received a good amount of jurisdiction in internal matters but also in relation to traditional, public legal institutes.

Viktor Haamann's case, even before he was denied the chance of serving his probation at this own collective, shows how the power of the collective to determine the moral quality of legal offenses overshadowed the word of law

[59] Cf. Boros et al., "Die Beteiligung von Laien," 183–185.

[60] The archives of the district of Erfurt, Landesarchiv Thüringen – Hauptstaatsarchiv Weimar, Staatsanwalt des Kreises Arnstadt Nr. 36/1, p. 66–72, Weimar, Germany. For Haamann and his family, the decision meant that he was forced to accept another job in another part of the country as an outcast of the system.

[61] Mollnau, "Sozialistische Gesetzlichkeit," 76; Cf. the parallel development in building Soviet post-Stalinist "socialist legality," Moyal, "Social Control in Post-Stalinist Courts," 314–315.

[62] See, for example, Markovits, *Justice in Lüritz*, 171, 173–181.

[63] Or, in other words: the social prosecutors or civilian probation officers evaluated the actions and motivations of the accused and prisoners in the light of "egoism," "eagerness," and "isolationism/participation," and that evaluation was then used by the courts in their legal assessment of possible "aggravation" or "adversity." Cf. Kühn, *The Judiciary in Central and Eastern Europe*, 34–36.

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and the penal code in a way that had clear repercussions for the convicted in late 1960s East Germany. Haamann had clearly violated the national guidelines regarding the use of common property in collectives, but it was not beyond dispute that his offense fulfilled the requirements of an aggravated, "socially dangerous" crime.[64] Yet, by referring to the statements of the social prosecutors and to the protocols of a workers-meeting at VEB Lime,[65] the district court in Sömmerda ruled that Haamann was indeed guilty of an aggravated, socially dangerous embezzlement of common property, and sentenced him to prison for two and a half years.

Haamann disagreed, and in his appeal to the Erfurt Court of Appeals, he argued that in the judgment of the Sömmerda district court, the calculated monetary harm of his actions included "intended fraud"—in other words, he was being punished for an offense that had not taken place. According to Haamann, the district court in Sömmerda had decided that Haamann was motivated by malevolent goals and that Haamann would have embezzled more money had he been given the chance. The evaluation of Haamann's moral deficiency was due to the social prosecutor's claim at the original trial in the Sömmerda district court (representing VEB Lime) that Haamann had a "yearning for material things."[66] Hence, the district court had added the monetary value of the "intended fraud" to the sum lost by the collective. Bizarrely enough, the high amount set for the financial loss then became another argument in favor of a harsher indictment. In his appeal, Haamann pleaded for a milder sentence, since—according to him—his offense could not be regarded as "socially dangerous" and aggravated, and further pleaded that his sentence be converted to probation.[67]

The Court of Appeals in Erfurt sustained Haamann's plea. Remarkably, it criticized the Sömmerda district court for work that was not considered "legally convincing" and ordered the district court to reassess the potential "social dangerousness" of Haamann's offense. The Court of Appeals reminded the lower court that:

> [T]he fact, rightly emphasized by the social prosecutor, that the accused was placed in a position of significant trust by the collective and that he grossly violated this through his criminal conduct, *is not to be equated with the position of trust mentioned in the law*.[68]

[64] §30, para. 2 of the 1957 amendment on crimes against common property (StEG). It was difficult to verify the real economic harm suffered by the collective or whether it involved "serious damage to common property" (§30, para. 2). Nor was it easy to show that Haamann had committed a "gross violation of the duties resulting from a responsible position" (§30, para. 2, point (b)).

[65] LATh – HstA Weimar Nr. 36, p. 65–66: "On June 19, 1968, a collective consultation was held in the department of material procurement for the VEB. Those present unanimously assessed that the accused's actions constituted a very serious breach of trust."

[66] Ibid., p. 75: "[H]e has a tendency to make material considerations the leitmotif of his actions."

[67] StBG §30, para. 3. "A serious case does not exist if the requirements of paragraph 2 are met, but taking into account all the circumstances, there is no increased harm to the collective's property."

[68] LATh – HstA Weimar Nr. 36/1, p. 24–30, esp. 30, emphasis ours.

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The district court was compelled to arrange a second hearing, but it did not back down. It restated that the embezzlement had reflected Haamann's personal and perennial attitude and that his distorted morals were the root cause of his criminal acts. In striving for "personal enrichment," Haamann showed "disrespect" for common property and betrayed the trust of the collective. Hence, his offense was "socially dangerous."[69]

In its second verdict, the CoA in Erfurt took into account both the renewed judgment of the district court and Haamann's repeated plea.[70] From the perspective of the Court of Appeals, nothing had changed. The reasoning of the district court of Sömmerda was—still—fundamentally flawed: According to law, Haamann's "betrayal of the trust of the collective" was not enough for adjudicating his offense as "socially dangerous." However, and as if showing some kind of battle fatigue, the Court of Appeals consented that Haamann's offense could be assessed as "socially dangerous" "in its totality," and adjudicated him guilty of an aggravated crime against common property—in accordance with the judgment of the district court of Sömmerda.[71]

Haamann's case shows that the GDR legal order at least tried to uphold a consistent, predictable culture of administering justice defined by the word of law, but it had to balance the state's political coordination with the growing power of the local communities. Haamann's case is also a clear example of a situation that in the latter decades of the GDR was called an "insufficient guidance."[72] It meant that despite the best efforts of the state, the legal institutes and the structures of popularized justice continued to function with two different sets of internal logic and values.

The Waning of Popularized Justice and the Conflict Between the State and the Collectives

From the early 1970s onward, the government tried to bind the various lay tribunals more closely to its direct steering, and a decree in 1974 emphasized their educational and crime-preventive significance at the expense of the former emphasis on litigation and arbitration.[73] With Erich Honecker's accession to power in 1971, the SED struggled to reformulate the core values of state-socialism, the GDR, and society as a whole. Without endangering its dictatorship, the government tried to reconceptualize the "social contract" between the party and the masses. The SED did not trust the uncompromising loyalty of the collectives and working communities, and one of the symptoms was massive public projects that characterized the last decades of the GDR. It

[69] Ibid., p. 62, 26: "However, there were always situations where Haamann placed material things in the foreground. Those present [at the meeting of the collective] also see this as the reason for his crimes."

[70] Ibid., p. 76: "There is no such thing as 'partly intended embezzlement'!"

[71] Ibid., p. 95.

[72] LATh – HstA Weimar Nr 1276, p. 124.

[73] Schönfeldt, "Gesellschaftliche Gerichte," 248–249.

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was with these projects that the SED endeavored to educate the "legal consciousnesses" of the people in general and SED members in particular.[74]

The political elite was correct in guessing that the collectives had changed from whole-hearted "educational centers" into communities that valued their own particular independence. Confiscating private property and administering it as "common" in vast facilities, collectives, and centralized super companies brought about equally gigantic investment, renovation, and construction projects. In a country with a stiff bureaucracy and chronic incompatibility between supply and demand, the circumstances would have generated a culture where resources were inefficiently used even without corruption and occasional pursuits of personal gain. That the SED—for the purpose of solidifying its own power—decided to leave the legal regulation blurry and insufficient with regard to ownership and property, made the situation even worse.[75] The structures of popularized justice provided a framework that produced continuity and an integrative moral code, but the moral code of the collectives was not automatically congruent with the intentions of the state—despite vigorous, unceasing, and persistent "education."

On October 12, 1971, in the district court of Eisenach, six people were sentenced for violating the laws on common property in a complicated case regarding the renovation of facilities in state-owned companies and collectives in Eisenach. At the center of the proceedings was the task of repairing the water supply network of the gigantic potash mine named "Friedrich Engels" in Arnstadt and the costs of the job.[76] In the 1970s, the deteriorating basic infrastructure started to cause increasing problems across the nation, which was awkward for the SED since the GDR did not have enough building material and skilled manpower to fix the decaying sewage systems, roads, and building stocks. The government solved the problem by encouraging people to participate in "after-work *brigades*" (*Feierabendbrigade*). In addition to their official (and mandatory) day job, people could take an assignment to fix a certain piece of infrastructure or work on an hourly-based contract at the reconstruction sites wherever there was a need for hands-on construction, demolition, or renovation.[77]

In general, the work at the "after-work *brigades*" was paid more generously than normal work, and some people were able to use the system to gain significant financial benefit, at least in the GDR context, where production and the economy were built on the principle of extreme equality. This also applied to the primary accused in the "Friedrich Engels" case. Franz Schmidt was a miner who worked at a potash mine and held an unofficial position as the leader and principal organizer of the "after-work *brigades*" in the western counties of the Erfurt circuit.[78] For more than a decade, Schmidt and his group carried out

[74] Millington, "State Power and 'Everyday Criminality'" ; Harry Dettenborn, H. and Karl A. Mollnau, *Rechtsbewusstsein und Rechtserziehung* (Berlin: Staatsverlag der Deutschen Demokratischen Republik, 1976), 7–12.

[75] Mollnau, "Sozialistische Gesetzlichkeit," 79.

[76] The archives of the district of Erfurt, Landesarchiv Thüringen – Hauptstaatsarchiv Weimar, Staatsanwalt des Bezirkes Erfurt Nr. 888, p. 1r–29r, Weimar, Germany.

[77] See, for example, Andrew Demshuk, "The People's Bowling Palace: Building Underground in Late Communist Leipzig," *Contemporary European History* 29, no. 3 (2020): 339–355.

[78] LATh – HstA Weimar Nr.888, p. 6r, 11r.

https://doi.org/10.1017/S0738248025000082 Published online by Cambridge University Press

numerous tasks, of which many required a high level of skill and an understanding of technical details. Whether it was a dislocated high-pressure gas line, constructing a new warehouse, or repairing a dysfunctional water supply system, Schmidt was the man the directorate of the collectives turned to. The arrangement was an accepted one, as no other companies or skilled craftsmen were available.[79]

However, over time Schmidt invoiced increasingly larger sums from the collectives, and his unofficial position, influence, and the financial gain he received from the renovation projects became an issue among many in the region. After receiving a request from the directorate of the state-owned energy company VEB Eisenach, the prosecutor's office opened an investigation into Schmidt's "business." According to the pretrial investigation, Schmidt had charged for hours during which he had not worked at the construction site, and the wage per hour for some of the assignments was too high. Hence, the prosecutor demanded a sentence for Schmidt for aggravated embezzlement of common property, and for the five upper-level leaders of the state-owned companies and collectives who had accepted Schmidt's invoices, he demanded convictions for the misuse of common property.[80]

The legal regulation regarding "after-work *brigades*" was blurry. Initially, the "after-work *brigades*" were yet another means for the SED to conciliate the social conflict: it was not possible for the government to admit that the sad state of the national infrastructure derived from gross political mistakes. Rather, in practice, the SED again compromised its ideologically dogmatic policy on production and the national economy by allowing some part of the population to benefit financially from the maintenance of common property. It was clear that in a large-scale trial like the "Friedrich Engels" case, someone had to be convicted—but with what kind of a sentence, and how should the "collaborators" be judged? As usual, the adjudication was based on the assessment of the socialist morals of the accused.

In the proceedings of the district court of Eisenach, the social representatives primarily defended the good name of the collectives involved in the case, including "Friedrich Engels" as well as the other state-owned companies.[81] All of the other accused, except Franz Schmidt, were praised for their moral qualities, work ethic, socialist conviction, and their work in achieving the goals of the five-year plan. The collectives "guaranteed the citizenship" of the accused and provided detailed plans of their re-education while serving their sentences as workers in the communities.[82] The collectives even subtly criticized the regime for the situation: in many places, the crumbling infrastructure posed a direct hazard to the workers, yet the public administration did nothing to improve the situation, and when the collectives tried to fix things themselves, they were indicted.[83]

[79] *Ibid.*, p. 11r, 12r, 24r, 26r, 28r.
[80] LATh – HstA Weimar Nr.888, p. 1r–5r.
[81] LATh – HstA Weimar Nr.886, p. 32r–33r, 35r–36r.
[82] LATh – HstA Weimar Nr.889, p. 41r; Nr.886, p. 20r, 25r.
[83] LATh – HstA Weimar Nr.886, p. 26; Nr 888, p. 28r–29, 236r.

https://doi.org/10.1017/S0738248025000082 Published online by Cambridge University Press

"Education through law" and "Democratized justice" created a distinct dynamic in the administration of justice in criminal proceedings. After having been granted a significant amount of jurisdiction over their internal affairs, the collectives were poised to protect their self-determination against state dictation. They safeguarded the property of the collective and its right to decide on the use of resources. In the GDR, where reputation became the decisive factor in legal affairs, the social representatives vehemently defended the good name of the collective and its members and hence shielded the individual workers of the collective from further ideologically driven, "educational" legal consequences. In practice, in large-scale trials regarding fraud or the embezzlement of common property, the social representatives tended to choose one scapegoat and negotiated milder sentences for the collaborators, which usually consisted of "self-education" in the collective.

Franz Schmidt's treatment was not as gentle as that of the other five people on trial. The initial reason that the prosecutor's office started its investigation was Schmidt's invoices, and the other indictments were more or less collateral damage. As one might have guessed, Schmidt's morals were questioned both by the prosecutor and the social representatives, and his moral deficiencies were portrayed as the sole reason for the temporary lack of discernment that the other accused had displayed.[84] In this way, the prosecutor could have an easy victory by settling an uneasy case with an undisputed offender and a harsh sentence, and the collectives could negotiate milder sentences for the collaborators and keep their own reputation intact. The fact that large-scale cases concerning property like "Friedrich Engels" had a distinct aspect of envy, power struggle, and social control where the collectives were concerned was no rarity. For example, in his testimony on Franz Schmidt's moral qualities, the social prosecutor stated that Schmidt's own collective had no provisions for judging Schmidt except one: the collective wanted Schmidt's new car and spacious apartment.[85]

Conclusions

In this article, we have taken an alternative perspective in comparison with the majority of scholarly contributions when analyzing the GDR's *Unrechtsstaat* or "socialist justice." We have studied the "socialist justice" of the GDR from the perspective of the judicialization of authoritarian politics, which provides a possibility for future analytically insightful comparisons between the GDR and other dictatorships across space and time. In our approach, we have paid special attention to the traits existing in any authoritarian regime, namely the relation between social conflict (real or alleged) and law, and the complexity of

[84] For example, LATh – HstA Weimar Nr.888, p. 225r–226r, 227r: "[H]e behaved like a capitalist. He thought that he could cash in on the specific challenges the development of our society encounters, betraying the state and his community of workers." LATh—HstA Weimar Nr.889, p. 39r: "Over time, however, negative traits of behavior have developed in him. He primarily saw after-work hours as a cheap way to earn a lot of money."

[85] LATh – HstA Weimar Nr.886, p. 229r: "The workers at our plant and the residents of Eisenach also expect that the stolen assets will be confiscated. This also includes—in our opinion—that the "little house" built by Schmidt from illegally acquired funds is withdrawn from the use of the accused and handed over to the state institutions for use."

https://doi.org/10.1017/S0738248025000082 Published online by Cambridge University Press

integrating law and politics. In addition, this approach enabled us to scrutinize the surprising successes of GDR legal reform.[86] Our intention is not to explain away the oppressive and illegitimate sides of socialist legality nor to deny the blatant injustices it administered. Rather, we have tried to illuminate how the legal sphere contributed to the surprising and undisputed stability of GDR society in comparison with other dictatorial regimes in East Central Europe.

From the early 1960s, the SED steered the GDR as it joined the other state-socialist countries in transitioning from Stalinism to a redefined reconciliation of socialism and law—to a "socialist legality." The de facto reorganization of the court system, the legal process, and criminal practice were the SED's response to acute questions about what socialist law should be, what kind of legality it should create, and who should be involved in this process. The SED's judicial reform was in line with socialist dogma, but nowhere in socialist Central Eastern Europe was "popularized justice" put into practice on such a large scale as in the GDR.[87] The new orientation was actualized in the context of the "Socialist Spring" and as a response to the need for a new kind of legally binding matrix of "common" (i.e., socialist) morality. In the winter of 1959–1960, the SED elite, in cooperation with the SED *brigades* at the local level, designed the "Education through Law" and "Democratized Justice" campaigns, which transferred a considerable amount of jurisdiction and legal obligations to the collectives. Moreover, by slightly adjusting the interpretation of socialist dogma, the SED proclaimed that the "socialist sense of justice" and the capacity for "legal consciousness" were now in the sole possession of the SED cadres: in other words, those loyal comrades who ran the collectives and state-owned enterprises. By using the concept of "legal consciousness," the SED found a way to consolidate socialist moral principles with the wording of existing legal codes. As a result, the moralization of law, as well as the practice of referring to moral principles and personal reputation in lower court criminal proceedings, became a central characteristic of GDR legal culture.[88] In this article, we have tried to show that this moralization resulted from a deliberate void in legal regulation that the SED filled with an idea of socialist morals and then handed over the capability of interpreting and using socialist morals (socialist legal consciousness) to SED functionaries at the local level. This enabled the government to fiercely guard the sanctity of common property, especially during a time when there was a high risk that social conflict would escalate.

With regard to the societal results of the project of popularized justice, the GDR presents an interesting case of how law functions in dictatorial societies. Consolidating law with morals provides a possibility for a strong and indirect political steering of the administration of justice, but at the same time, it runs the risk of handing over too much power to the people.[89] The trajectory of the

[86] For earlier reports on the unexpected success of popularized justice, see, for example, Schroeder, "The Rise and Fall," 223.

[87] Sperlich, *The East German Social Courts.*

[88] Cf. Betts, "Private Property and Public Culture," 14–15.

[89] Cf. The struggles of the 20th century socialist dictatorships to mobilize people's "emotional engagement and active participation in living the law" to support the regimes with the help of extensive legal education. Altehenger, *Legal Lessons*, 246, also, 166–167, 216, 243–245.

https://doi.org/10.1017/S0738248025000082 Published online by Cambridge University Press

dynamics between the administration of justice, morals, and everyday legality in the GDR shows why it is often in the interest of dictatorships to harness the understanding of "justice" to back up their regime and policy. The unorthodox intertwinement of legalities, power, and popular political support in authoritarian regimes usually evades the classic categorizations of political theory but becomes understandable from the perspective of how the judicialization of politics is used to introduce a binding legality in an authoritarian regime.

Acknowledgments. Anna Pischulti and Lena Wage participated in the archival work that resulted in this article. We are very grateful for their help! Karolina Stenlund, Tuuli Talvinko, Kaius Tuori, and Zoë Jay commented on an earlier version of this article, and their comments helped to improve our text considerably. The research leading to this article was funded by the Research Council of Finland's Centre of Excellence in Law, Identity and the European Narratives, funding decision number 353107.

Cite this article: Ville Erkkilä and Luisa Gries, ""The Problem Can Be Solved Only by Those Imbued with a Socialist Sense of Justice!": Social Conflict and the Lower Courts in the German Democratic Republic," *Law and History Review* (2025): 1–23. https://doi.org/10.1017/S0738248025000082