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Judging the Past

The Use of the Trials against the Members of the Gestapo in Belgium as a Source for Historical Research

Abstract

Academic historians have an ambiguous relationship with the use of documents produced in the context of criminal investigations. On the one hand, these documents provide an avalanche of information, often giving a voice to historical actors that would otherwise stay hidden in classical top-down history. On the other hand, academics denounce such documents as inherently biased and thus unfit for use in an “objective” reconstruction of the past. This problem’s urgency increases in the context of a politically tense period such as the immediate aftermath of the Second World War. In post-war Belgium, military courts were responsible for bringing to justice both German officials and Belgian collaborators. This paper identifies the methodological possibilities and problems associated with the use of the documents these courts amassed to this end with regard to research on the Holocaust and the German occupation of Belgium and to history-writing in general. Among others, elements such as the influence of the internal workings of the military court and the legal framework in which it had to operate, the similarities and differences in how historians and prosecutors go about their research, and how defence strategies employed by suspects/perpetrators as well as witnesses/victims twisted their hearings and testimonies, are addressed. The paper concludes that although judicial sources come with inherent limitations, they can be employed in academic history as long as attention is paid to the specific context in which they were produced and they are subjected to proper critical reading.

Historical research and criminal investigations have often benefited from each other. From *Montaillou*, Emmanuel Le Roy Ladurie’s famous reconstruction of everyday life in a French medieval village, to *Ordinary Men*, Christopher Browning’s assessment of the motivation of a grassroots German execution squad during the Holocaust, historians have used the documents produced during criminal investigations to study the past in the context of a range of time periods and methodologies.¹ Reversely, historians have often been asked to serve as experts in legal proceedings, for example in the trial between David Irving and Deborah Lipstadt. Irving’s claim for libel against Lipstadt for calling him a Holocaust denier was refuted using testimonies by a wide range of academic specialists of the field, an effort that was coordinated by Cambridge historian Richard J. Evans.² More rarely, there are prosecutors who have the intention to shape historical narrative. This was the case, for example, at the International Military Tribunal at Nuremberg. The proceedings there not only produced a substantial amount of documentation on the internal workings of the Third Reich but also influenced historiography for several decades with its interpretation of Nazi Germany as a plutocratic, organised chaos. The prosecution, especially Telford Taylor, wanted to openly confront the German public and force them to accept the necessary

1 Emmanuel Le Roy Ladurie, *Montaillou. The World-Famous Portrait of Life in a Medieval Village*, Middlesex 1980; Christopher R. Browning, *Ordinary Men. Reserve Police Battalion 101 and the Final Solution in Poland*, London 2001.

2 David Irving v. Penguin Books and Lipstat (High Court of Justice Queen’s Bench Division 2000).

historical and moral lessons.³ In this paper, I will look at the methodological pitfalls when using documents formed in criminal investigations and court proceedings for carrying out historical research. I will use as an example my own research into the activities of the Gestapo in Belgium during the Second World War.⁴ This research is mostly based on the post-war trials that were brought against Belgian collaborators and German war criminals between 1944 and 1949. The problems I address stem from four elements: the similarities and dissimilarities between historians and judicial magistrates, the influence of the workings of the post-war military court system on the interpretation of the documents, the influence of the legal logic of the court, and finally the inherent value of the amassed documentation.

Criminal law and history

Several historians have already discussed the intricate interplay between criminal law investigations and academic history, and the methodological repercussions of the use of the documents produced by the former for scientific research.⁵ These authors all agree to a large extent that the work of a historian and that of a prosecutor are similar. Both start from a hypothesis about a past event. Both set out to find evidence and arguments to prove or disprove this theory. In both cases some sort of judgement concludes the research: a verdict in the case of court proceedings, an answer to the hypothesis in the case of historical research. This abstract level is where similarities end. In practice a historian has more liberty to define the boundaries of these three elements. A prosecutor is restricted by the limits posed by the law: he can only investigate whether an action in the past is punishable under the criminal law effective at the time (*nullum crimen, nulla poena sine lege*), in his research he is limited by the restrictions posed by criminal procedure, and the judgement is restricted to formulating an answer to the question of guilt.⁶ These two elements, the legal restrictions and the necessity of formulating a verdict of guilt, predetermine the research and its outcome from an early stage of the investigation. A historian can work more freely in all three elements. With an event or person situated in the past, the subject matter remains the same. In posing questions to the subject, finding information, and formulating conclusions, a historian is only limited by his or her own

3 Donald Bloxham, *Genocide on Trial. War Crimes Trials and the Formation of Holocaust History and Memory*, Oxford 2001, 222.

4 For preliminary findings dealing with the Gestapo in Antwerp, see: Robby Van Eetvelde, *De Sicherheitspolizei und Sicherheitsdienst (Sipo-SD) Aussendienststelle Antwerpen. Het politionele repertoire van een lokale Duitse politiedienst in bezet België*, in: *Bijdragen tot de Eigentijdse Geschiedenis* 15 (2008) 19, 135-179; Robby Van Eetvelde, *De weg van Vlaamse 'daders' naar de Gestapo: de tolken van de Antwerpse Sipo-SD*, in: *Bijdragen en Mededelingen betreffende de Geschiedenis der Nederlanden* 124 (2009) 3, 349-367; Robby Van Eetvelde, *La police allemande dans la ville de l'Escaut. L'activité de la Gestapo à Anvers*, in: Daniel Weyssow (ed.), *Les caves de la Gestapo. Reconnaissance et conservation*, trans. Marie Mariani, *Entre histoire et mémoire* 6, Paris: Kimé/Fondation Auschwitz, 2013, 36-53.

5 Michael Wildt, *Differierende Wahrheiten. Historiker und Staatsanwälte als Ermittler von NS-Verbrechen*, in: Norbert Frei/Dirk Van Laak/Michael Stolleis, *Geschichte vor Gericht. Historiker, Richter und die Suche nach Gerechtigkeit*, München 2000, 46-59; Michael Stolleis, *Der Historiker als Richter – der Richter als Historiker*, in: Wolfgang Benz/Bernhard Diestelkamp/Michael Stolleis (Hg.), *Justizalltag im Dritten Reich*, Frankfurt a. M. 1988, 173-182; Henry Rouso, *Justiz, Geschichte und Erinnerung in Frankreich. Überlegungen zum Papon-Prozess*, in: Norbert Frei/Dirk Van Laak/Michael Stolleis (Hg.), *Geschichte vor Gericht: Historiker, Richter und die Suche nach Gerechtigkeit*, München 2000, 141-163; Johannes C. Blom, *Historische en strafrechtelijke 'ordering van de chaos'*, in: Mark Spiering et al. (ed.), *De weerspanning van de feiten. Opstellen over geschiedenis, politiek, recht en literatuur. Aangeboden aan W.H. Roobol, Hilversum 2000*, 23-32.

6 The use of male pronouns and possessive forms to denote individuals in their function was chosen to improve the readability of the text, they do not constitute a value judgement and are used in a gender-neutral manner.

imagination, by whatever taboo society imposes on research topics, and by the limitations posed by the requirements of the academic historical profession. The latter includes a proper critical treatment of the source material and the possibility of verification by peers, for example by using footnotes.

As a general rule, historians prefer to work with documentation formed as close as possible to the historical event they are investigating. These documents are given the merit of more credibility and objectivity, since they are not yet distorted by the bias of fading memory, by *Hineininterpretierung*, or by defence strategies. But what should a historian do if such sources are not, or not widely enough, available? This is the case for my own research, dealing with the activity of the infamous German secret police, the Gestapo, in Belgium during the Second World War. The German occupiers could anticipate the advance of the allied armies. The SS police destroyed most of its institutional documentation in the bonfires accompanying the German retreat.⁷ As a result, historians looking at the activity of the German police need to find alternative sources.

Post-war Belgian “repression”

This alternative can be found in the post-war trials, which were brought against collaborators and German war criminals. The Belgian government in exile prepared its comeback in a timely fashion. A swift punishment of collaborators was part of a deliberate policy of quickly re-establishing state authority. The government in London had initially intended this process to be largely symbolic, focusing on the most prominent collaborators. The mounting German repression at the end of the occupation and the subsequent resentment and popular fury among the population made this option an impossibility. The purpose of this operation went further than the desire to avoid the mob’s revenge against collaborators and to keep the monopoly on violence in the hands of the legitimate government. The resistance’s claim to power and the pre-war challenges brought against the political state of affairs by the collaborating parties VNV and Rex also had to be eliminated.⁸ As such, as Martin Conway has argued, the post-war repression became more a tool of political and economical reconstruction than a means of challenging the status-quo.⁹

The uncertainty of how easily the Belgian territory would be liberated inspired the decision to give responsibility for the post-war “repression” not to civilian criminal courts, but to military courts. These would be able to operate in wartime conditions, their civilian counterparts would not. This decision had an important procedural consequence. In a civil court, a researching magistrate, a *juge d’instruction*, would carry out an investigation *à charge* and *à décharge*, meaning finding all elements which incriminate and exonerate a suspect, before passing on the collected material to the prosecution and defence. Obviously, such a researching magistrate should be completely objective and impartial. In a military court, a military magistrate combined the function of researching magistrate and prosecutor. This carried the risk of affecting impartiality. Would the military magistrate already think as a prosecutor

7 PV relatant à l’action 118, April 11, 1947, Gestapo Liège, Documentation Générale 4, 192, 4, Archives Military Court (AMC).

8 Kris Hoflack/Luc Huyse, De afrekening met de vrienden van de vijand, in: Luc Huyse and Kris Hoflack (ed.), De democratie heruitgevonden. Oud en nieuw in politiek België, 1944–1950, Leuven 1995, 27–30.

9 Martin Conway, Justice in Post-War Belgium. Popular Passions and Political Realities, in: Bijdragen tot de Eigentijdse Geschiedenis 4 (1997) 2, 24.

during his supposed impartial research, steering it in a certain direction?¹⁰ Combined with the suggestion that the military court recruited young, inexperienced, and politically motivated men as magistrates, this led to the conviction among certain circles that the post-war “repression” had a political aim, namely to once and for all silence political Flemish nationalism. This was consequently debunked by historical research.¹¹ Under the authority of *Auditeur Général* Walter Ganshof van der Meersch, 405,067 files were built against suspected collaborators between 1944 and 1949. In 57,000 cases this led to court proceedings. 53,000 individuals were actually convicted.¹² In other words, the potential material for historians to work with is enormous.

For a long time the policy of access to the case files for researchers was quite liberal. This changed in the late 1980's: from then on, only the files of actually convicted collaborators could be looked into. This meant that investigations which did not produce enough material to warrant court proceedings, so-called *non-lieux*, as well as the files against individuals who at a later stage had been pardoned for their offences, could no longer be investigated. The Belgian archival law was not of much help, since this restricted access to files from less than one hundred years ago.¹³ The logic of the legal system limited academic research. Legally, guilt is not or no longer an uncontested, objective fact in the aforementioned restricted cases. This, however, does not mean that the documentation these files contain no longer has any relevance from an academic point of view. In some instances the logic of the law lead to absurd restrictions. For example, information on the activity of the German leaders of the anti-Jewish sections of the Gestapo offices is in my opinion rather indispensable when researching the persecution of the local Jewish population. Yet, the German *Judenberater* were not brought to trial either in Antwerp or in Liège, the two instances of my own research. They had either escaped arrest or were assumed to be deceased. In both cases, the judicial research ended and was classified as a *non-lieux*. This classification barred the files from further research, even though the men would almost certainly have been convicted if only they had been arrested, especially given their perpetrated crimes.

The fact that the local *Judenberater* was not brought to trial is especially striking in the case of Antwerp, which housed forty-five percent of Belgium's Jewish population and is the only case where the city police provided extensive assistance in round-ups. Erich Holm, head of the anti-Jewish section in Antwerp during the entire course of the occupation, managed to escape arrest. He was first taken prisoner by the Canadian army in 1945, but managed to escape to South-Africa, where he was not further disturbed.¹⁴ The case file against his counterpart in Liège, Wilhelm Stade, known for his brutality and corruption, was wafer-thin.¹⁵ After the retreat from Belgian soil he was supposedly transferred for military duty to the Eastern front as a disciplinary

10 Stanislas Horvat, Het verloop van de incivismeprocessen voor de militaire rechtbanken in 1944–1949, Dirk Luyten/ Chantal Kesteloot (ed.), *Repressie en gerechtelijke archieven: problemen en perspectieven*. Dossier bij het SOMA Berichtenblad no. 38 (2003), 3–23.

11 Dirk Luyten and Michel Magits, Aspecten van de werking van de krijgsauditoraten en de rekrutering van militaire parketmagistraten na de Tweede Wereldoorlog, in: *Belgische Tijdschrift voor Nieuwste Geschiedenis* 28 (1998) 1-2, 203–226; Koen Aerts, De bestraffing van de collaboratie in België na de Tweede Wereldoorlog. Beeldvorming en onderzoek, in: *Bijdragen tot de Eigentijdse Geschiedenis* 16 (2009) 21, 55–92.

12 Hoflack and Huyse, *De afrekening met de vrienden van de vijand*, 30.

13 Bruno De Wever, Laat nu ook de geschiedenis oordelen, Dirk Luyten/Chantal Kesteloot (ed.), *Repressie en gerechtelijke archieven: problemen en perspectieven*, in: Dossier bij het SOMA Berichtenblad no. 38 (2003), 28–33.

14 Nico Wouters, De Jodenvervolgving voor de Belgische rechters, 1944–1951, in Rudi Van Doorslaer (ed.), *Gewillig België. Overheid en Jodenvervolgving tijdens de Tweede Wereldoorlog*. Antwerpen/Amsterdam/Brussel: Meulenhoff/Manteau, 2007, 932–933.

15 *Ibid.*, 931.

measure, where he was rumoured to have fallen in battle.¹⁶ As a result, the military court considered it futile to build a case file against them. Both in Antwerp and Liège, the local implementation of the Final Solution was reconstructed in the case files against the collaborators with the anti-Jewish section of the German police. In contrast to their immediate superiors, they did stand trial for their wartime actions. Bringing the immediate collaborators to justice instead of their German superiors bore an additional advantage. During the interwar period the Belgian legislator had neglected to modernise its penal code to include war crimes. And although according to article 46 of the Hague Convention religious persecution was forbidden, it was much easier to use the traditional criminal laws which punished collaboration with the enemy (articles 115, 118bis, and 121bis) to bring suspects to trial.¹⁷ These laws could not be used for the persecution of German perpetrators of the Holocaust in Belgium. The German perpetrators were difficult to identify, locate, and extradite. A law that allowed Belgian courts to bring war crimes committed by non-nationals to trial was only passed in June 1947.¹⁸ By then, the nascent Cold War climate, in which rapprochement with West-Germany had a foremost role, further complicated matters. In March 1948, the US and UK decided to no longer extradite German suspects. Within three years, the window of opportunity to bring suspected German war criminals into Belgian jails had shut.¹⁹

At the beginning of the new millennium, restrictions for accessing the files for academic research were lifted to a large extent. The logic of the legal system was exchanged for one which took into consideration the logic of historical research and the expectations of the public at large. Almost seventy years after the fact, this public is still exceedingly concerned with the history of National Socialism and the legacy of the Second World War, no doubt largely due to the influence this legacy had on political divisions in present-day Belgium.²⁰ However, in the current age of austerity the previous legal restrictions were traded for practical ones. In June 2013, four Belgian scholars criticise the long waiting periods for gaining access to files, which made it difficult for history students and academic historians alike to carry out research in a realistic amount of time.²¹

The search for an ideal and unbiased source

In Antwerp, the suspects brought to trial for their contribution to the Holocaust were Felix Lauterborn and his gang of so-called Jew-hunters, infamous for hunting down Jews who had gone into hiding after the summer of 1942.²² In Liège, judgment was passed against Auguste Voss, Oscar Evrard, and Pierre Telgmann, who had not only assisted Stade in implementing the Final Solution in Liège, but also in the surveillance of other religions, among others the Catholic Church. Evrard had been

16 Extrait du PV 835, November 8, 1945, Gestapo Liège, Documentation Générale 4, AMC; PV 5487, July 28, 1945, Nossent-Gruslin (NG), I, IV, 5, AMC.

17 Wouters, *De Jodenvervolging*, 822-823.

18 Lieven Saerens, *Van vergeten naar gegeerd. Dossin en de Joodse herinnering*, in: *Journal of Belgian History* 42 (2012) 2, 140.

19 Wouters, *De Jodenvervolging*, 925.

20 Rudi Van Doorslaer, *Gebruikt verleden. De politieke nalatenschap van de Tweede Wereldoorlog in België, 1945-2000*, in: Bruno De Wever/ Gita Deneckere (ed.), *Geschiedenis maken. Liber amicorum Herman Baltazar*, Gent: Tijdsbeeld/Vakgroep Nieuwste Geschiedenis Universiteit Gent/Amsab, 2003, 227-266.

21 Bruno De Wever et al., *Oorlogstrauma's Achter Slot En Grendel*, in: *De Standaard*, 26.6.2013.

22 Lieven Saerens, *De Jodenjagers van de Vlaamse SS*, Tielt, Lannoo, 2007.

particularly useful for the latter purpose, having previously been a seminarian.²³ The amassing of documentation was in other words also influenced by the court's decision which suspects to try together. Research into the activity of the anti-Jewish section of the Gestapo in Antwerp and Liège was disjointed from research of the sections fighting the resistance. Individuals who had carried out crimes together were also tried together. For the Gestapo in Antwerp, this logic was also followed in other cases. The activities of German officers active in fighting the communist or right-wing resistance were investigated together with those of their Belgian collaborators. This fragmentation meant that the research could go into great detail, but it also led to the loss of an overview of the Gestapo activities. For example, it is difficult to establish whether there was a correlation between a rise in the activities of the resistance with subsequent mounting German repression and a rise in anti-Semitic actions, or the extent to which collaborators with other sections were involved in large-scale round-ups of Jews. On the other hand, the activities of the Sipo-SD in Liège were investigated in four separate cases: against the German officers, against their Belgian collaborators, against the Belgian collaborators with the anti-Jewish section, and against the Belgian collaborators working for the institutional *Sicherheitsdienst*, the actual SS intelligence service. The case file against the Belgian collaborators was not only the most extensive, but also went into most detail regarding day-to-day activities and tactics of repression. The trial against the suspected German officers was special. It did not limit itself to the German officers active with the Sipo-SD in Liège, but extended its reach to members of the outpost in the nearby city of Arlon, as well as Germans active with the occupation administration in that city. This heterogeneous cohort meant this research was more focused on political issues, the responsibility for ordering decrees, and shifting blame, among others for the execution of hostages and prisoners. In historical "reality", however, policing and political matters were intertwined and hard to separate. Separating them not only led to substantial lacunas in interrogations and reconstructions, but also often entailed twice the work for the investigating magistrate. In some cases the extensive work put into amassing the material proved to be superfluous. In the case brought against the Gestapo in Liège, the court decided to base its case for a large part on the interrogations of one man only, the Belgian collaborator Maurice Krier, although a huge array of material had been built up. While Krier appears to have been gifted with an amazing memory and an eye for detail, relying so heavily on his point of view obviously biased the judicial research, a circumstance that was challenged by other Belgian collaborators on the stand.²⁴ Krier's statements were bound into a two-hundred page booklet and were used at length by other historians who dealt with the Gestapo in Belgium. To my surprise, I also came across a copy in the Antwerp city archive.²⁵ Does this mean that the testimony of one man not only directed the interpretation of the courts in Liège, but also in Antwerp, and perhaps in other parts of Belgium as well?

For historians, however, the extensive preliminary work makes the case files themselves a true treasure trove. The nature of the collected material is very diverse. It consists of interrogations of suspects, statements by witnesses, surviving original

23 PV relatant à l'action 14bis, May 10, 1947, Gestapo Liège, Documentation Générale 1, 32, 1, AMC.

24 Déposition de témoin, June 28, 1947, Gestapo Liège, 4A, 7, AMC.

25 Eddy De Bruyne, *La Sipo-SD à Liège, 1940–1944. Composantes et lignes de force*, Housse, Eddy De Bruyne, 1998; Eddy De Bruyne, *La Sipo-SD à Liège, 1940–1944*, in: *Bulletin d'Information du Centre Liégeois d'Histoire et d'Archéologie Militaires* 9, no. 1 (2004), 27-48; Eric Paquet, *Sicherheitspolizei – Sicherheitsdienst Lüttich et organisation policière allemande à Liège (1940–1944)*, MA, Université de Liège, 1985; SA (City archive Antwerp), MA 34183, 11.

documentation, pictures, and so forth. The personal nature of most of the documents almost bring the historical actors to life. How did these documents come about? The researching magistrate gave the orders to collect the documentation, to question the suspects and witnesses, confronted them with each other, weeded out inconsistencies in their argumentation, and the like. This task description closely resembles that of a positivist, Rankean historian. Both try to reconstruct history “as it actually happened”, as “objectively” as possible. In the case of the military magistrate, reconstructing events truthfully is not a philosophical choice but a necessary requirement. The quality of the reconstruction was decisive for a potential conviction and punishment of a suspect. Although the researching magistrate’s complete formal objectivity can never be guaranteed, it is my opinion that the historian using the material collected in the course of the investigation should acknowledge and profit from the zeal that went into the research, instead of dismissing its value *a priori*.

In order to interpret the material correctly, the first important element that has to be taken into account is the specific context in which the documents were compiled. This context is different for the suspect, the victim, and the interrogator. Suspects, living in the shadow of the death penalty or of an extensive imprisonment, wanted to minimise their individual responsibility. Informal contacts between collaborators under arrest meant that false stories could be harmonised.²⁶ Deceased former colleagues or suspects still on the run were easy scapegoats. Eduard Strauch, as *Kommandeur der Sicherheitspolizei* (KdS) in Wallonia partly responsible for the radicalisation of the German repression during the last months of the occupation, complained in an interrogation that he was being used as a scapegoat due to his illness (an advanced form of epilepsy) and his extensive absence from the proceedings.²⁷ As a former member of *Einsatzgruppe A*, the mobile killing unit active in the Baltic countries, and as KdS of the Sipo-SD in Minsk responsible for the brutal death of thousands of Jews, he stood trial in the so-called *Einsatzgruppen*-trial, one of the subsidiary trials held in the context of the *International Military Tribunal* in Nuremberg.²⁸ He was extradited to stand trial for his crimes committed in Belgium only after he had received his death penalty there.²⁹ This had provided his colleagues and subordinates with ample time to shift as much responsibility for excessive crimes as possible onto his shoulders; they expected him to accept this responsibility because of his confused mental state. Strauch threatened to expose the crimes of these men as a form of retaliation, but did not “want to take upon himself the responsibility of talking”.³⁰ This statement probably indicates his frustration with the defence strategy chosen by his former subordinates and a vain attempt to implicate them in a similar fashion. Other suspects were unashamed in letting their wartime convictions bias their post-war statements. Was the aforementioned Felix Lauterboren affirming a personal anti-Semitic stereotype or telling the truth when implicating a young girl of having denounced her parents of hiding two Jews because she was forced to “share a bed” with one of them? Were the vigorous denials of this accusation by the girl in question perhaps an attempt to protect her post-war reputation?³¹ This example shows how testimonies by victims can also not be taken at face value. Some had un-

26 Déposition de témoin, August 9, 1946, Evrard –Telgmann–Voss (ETV), Auguste Voss (AV), 2, AMC; Déposition de témoin, February 4, 1947, Gestapo Liège, 7, 1, 3, AMC.

27 PV d’interrogatoire, June 20, 1950, Strauch et autres (STRAU), 3, 31, AMC.

28 Durchschlag für SS-Personalhauptamt, March 22, 1944, SS-Führer Personalakten (SSO), 066, Bundesarchiv Berlin (BArchB); Hilary Earl, *The Nuremberg SS-Einsatzgruppen Trial, 1945–1958*, New York 2009, 240.

29 Earl, *Nuremberg SS-Einsatzgruppen Trial*, 239.

30 PV d’interrogatoire, June 20, 1950, STRAU, 3, 31, AMC.

31 PV 11194, October 16, 1945, Case against Felix Lauterboren et. al. (LAU), LA, XIII, B10, AMC.

dergone gruesome torture and probably wanted to reverse the balance of power and exercise some kind of revenge, if only by making sure their former torturers got the sentence they undoubtedly felt they deserved. Several had succumbed under torture and wanted to conceal the fact that they had given up brothers in arms to the German police. The post-war statements of German Gestapo officer in Antwerp Herman Veit and an arrested leading resistance member, who would become the post-war symbol of resistance in Flanders, could not be more different from each other: While the former claimed to have received names and documentation without submitting the arrestee to a form of “sharp interrogation”, i.e., torture, the latter declared that he had been brutalised so extensively he “could no longer remember what had happened”.³² Still other witnesses came forward in an effort to turn the dire circumstances of the post-war period into a personal profit, claiming for example to have helped Jews in hiding.³³ Finally, the interrogators themselves steered the testimonies into a certain direction. This was partly due to their legal logic. Even though witnesses and suspects often gave elaborate descriptions, the interrogators remained primarily interested in identifying acts punishable under the legal framework at their disposal. These acts were often highlighted in the individual affidavit, which meant that other elements, which may often have been interesting for social historians, were largely overlooked. A second aspect influencing the interrogations were the intellectual capacities and education of some of the German defendants. The aforementioned Strauch held a PhD in law from the university of Königsberg, present-day Kaliningrad.³⁴ Constantin Canaris, nephew of *Abwehr* chief Wilhelm Canaris, and head of the Sipo-SD in Belgium and northern France between 13th of September 1940 and 26th of November 1941 and again between 1st of February 1944 and 1st of August 1944, also held a doctoral title in law. Doubtlessly, these men knew international law regarding armed conflict better than their interrogators did. These were men who could pull the wool over their interrogator’s eyes, knew what facts to emphasise and when to keep silent. The execution of a high-ranking member of the Belgian communist party, who had been arrested in May 1944 for his involvement with the armed resistance, serves as an example: Strauch first denied any knowledge of personal involvement, subsequently tried to shift the blame to the German military administration in Liège and Brussels, and finally admitted having given the authorisation for the execution, “not realising what he had signed, his mind being clouded by personal problems”.³⁵ The employment of such intricate and evolving defence strategies by the suspects further complicated the courts’ efforts to achieve an objective reconstruction. The same problems of course challenge historians using this material.

Documents were also drafted in a very specific language. One element is the use of legal terms which require a certain amount of background knowledge by the researcher to correctly assess the information, e.g., the linguistic difference between the “hearing” of a witness and the “interrogation” of a suspect.³⁶ Another element to

32 PV 9813, August 2, 1948, Case against Herman Veit (HV), 10, AMC; PV Verhoor, June 30, 1949, HV, 10, AMC.

33 Robby Van Eetvelde, *The Motivation and Fate of Arrested Shelterers of Jews in German Occupied Antwerp during World War II* (presented at the International Conference on Hiding, Sheltering and Borrowing Identities, Yad Vashem, Jerusalem, December 19, 2010); Lieven Saerens, *Vreemdelingen in een wereldstad. Een geschiedenis van Antwerpen en zijn Joodse bevolking (1880–1944)*, Tielt, Lannoo, 2000, 728-732.

34 Lebenslauf, November 25, 1934, SSO, 075B, BArchB.

35 PV 9, January 4, 1947, STRAU, 1, STRA, 2, AMC; Déposition de témoin, January 6, 1947, STRAU, 1, STRA, 3, AMC; Rapport de Strauch, January 26, 1947, STRAU, 1, LUC, 3, AMC; Déposition de témoin, April 28, 1947, Gestapo Liège, 9, 37, AMC.

36 The specific terms used are Déposition de témoin and PV d’interrogatoire.

consider is the fact that individual affidavits are almost recorded as a monologue, as if the private stream of consciousness of the witness or the suspect was transcribed onto a piece of paper. In reality, questions asked by the inquiring magistrate or policeman steer the interview in a certain direction, but are rarely mentioned in the document.³⁷

The aforementioned problems should always be considered when using these sources to construct a historical narrative. However, I don't consider them fundamental enough to completely disregard these sources for historical research. As Christopher Browning has correctly pointed out:

"If historians cannot find 'smoking pistol' documents, they must look for pattern and fit among the evidence that is available [...] a historian must make critical judgments about the use of sources depending upon the questions that are being asked and the varying capacity of the available source [...] to provide reliable information relevant to those questions."³⁸

Judging the Holocaust

It is often asserted that too little attention was paid to the persecution of the Jewish population in Belgium in the post-war trials. In the post-war phase of reconstruction, an emphasis on the suffering of the country's own population was considered more important than the suffering of a religious minority ninety percent of whom had been foreigners. Recent research has both affirmed and negated this point of view. The German repression of the resistance and the deportation of political prisoners undoubtedly received more attention. This was partly due to the larger survival rate among this group than among the group of deported Jews. Moreover, a legal structure was available which could be used to bring the responsible figures to justice. This is not to say that the court deliberately neglected the persecution of the Jews. The inherent lower survival rate of the extermination camps meant fewer witnesses could identify their hangmen. It was difficult for the court to identify and arrest the guilty men. The legal framework was moreover unprepared to properly judge the perpetrated crimes. By the time preparations had been completed, in the late 1940's, too much time had passed to have a realistic expectation of both witnesses and perpetrators to give reliable testimonies. In the emerging Cold War climate, the punishment of German war criminals had become a less urgent matter.³⁹ Despite this, judging by my own research into the activity of the Gestapo in Liège, it is quite obvious that the persecution of the Jews received less attention than the fight against the resistance. The German leader in charge of the anti-Jewish section was not brought to trial. The trial against his collaborators was carried out with less rigour and depth than the trial against Belgian collaborators with other sections. An example of neglect is Eduard Strauch, in whom the court had on the stand one of the main perpetrators of the Holocaust in all of Europe. Not only was he not questioned about his involvement with the Final Solution, he was even allowed to euphemistically call his genocidal activity in eastern Europe "fighting the partisans" without being corrected.⁴⁰ It would have been easy to reprimand him since the statement in question

37 Marijn Van Nooten, *Proces-verbaal tot bewijs van het tegendeel*, in: *Jura Falconis* 39, 3 (2002–2003), 337–377.

38 Christopher R. Browning, *Collected Memories. Holocaust History and Postwar Testimony*, George L. Mosse Series in Modern European Cultural and Intellectual History, Madison 2003, 36, 42.

39 Wouters, *De Jodenvervolging*.

40 *Déposition de témoin*, January 6, 1947.

was given when the truth of his gruesome activity was widely known. In Antwerp, the military court research into the activities of wartime mayor Leon Delwaide did not go into the involvement of the city police in assisting their German counterparts in three round-ups in the city's Jewish quarters: The research was considered to be too sensitive.⁴¹ Only in 2000 would the contribution of the Antwerp city police to the implementation of the Final Solution be brought to the attention of both the academic establishment and the public at large with the publication of Lieven Saerens' doctoral dissertation. Delwaide's son, who was also politically active as alderman for the harbour of Antwerp, threatened to press charges against the historian, aiming to clear his father's good name and reputation.⁴² The controversy eventually led to a government-funded research project to assess the full involvement of the Belgian state with the persecution of its Jewish community. The study, published in 2007 as a monograph, aptly titled *Gewillig België – Willing Belgium*, and counting over a thousand pages, relied heavily on the archives of the military court. The investigation not only confirmed Saerens' findings, but also pointed out in great detail other areas in which the Belgian state was implicated in the Final Solution. This participation was inspired by a wide ranging "policy of lesser evil", which can be summed up as a maximal accommodation to German wishes in order to avoid the destructions suffered during the previous World War, which was still fresh in everyone's memory.⁴³

Conclusion

Despite the above-mentioned limitations, I still consider the documentation collected for the post-war trials against collaborators and German war criminals a viable and even crucial source for studying the Gestapo and the Holocaust in Belgium. The described limitations are due to the post-war political climate, the difficulty of correctly interpreting post-factum statements, and the methodological difference between a prosecutor and a historian. I described the public prosecutor as the "perfect Rankean historian": this is undoubtedly a caricature, but one with a kernel of truth. A conviction beyond reasonable doubt requires an objective reconstruction of the past "as it actually happened". Shades of grey do not exist. What does exist in legal matters is black or white, punishable by law or not, guilty or not guilty. The historian, looking at the same documentation with more sensitivity for both social realities and narratives, can only profit from the work done by the court to weed out inconsistencies in statements, to confront conflicting witnesses with each other, and so forth. These preparatory efforts and reconstructions by the court can be critically reinterpreted by historians. The most important pitfall lies in the adaptation of the sources' inherent legal logic. The former lies in the pre-defined outcome of the proceedings, i.e., a verdict of guilt or innocence. When writing my narrative, I had to remind myself not to put too much emphasis on questions of culpability and responsibility. Instead, the defined research hypothesis should remain the main focus.

To conclude, historians should always remain critical of their source material. But this criticism should not mean the automatic discarding as biased of the extensive preparatory work done by the researching magistrate. Every source has inherent problems, including even any sources originating as closely as possible to the studied

41 Saerens, *Vreemdelingen in een wereldstad*, 752; Wouters, *De Jodenvervolging*, 924.

42 Frank van Vree, *Joden Hadden Weinig Vrienden in Antwerpen*, in: *Volkskrant*, 18.5.2001.

43 Rudi Van Doorslaer (ed.), *Gewillig België. Overheid en Jodenvervolging tijdens de Tweede Wereldoorlog*, Antwerpen/Amsterdam/Brussel, Meulenhoff/Manteau, 2007.

events. This should not, however, lead to self-censorship by historians in the questions they ask of the past. Just like critical historians can use the work carried out by their (neo)positivist peers to build their own narrative, historians, however epistemologically inclined, should use every opportunity, including the work of the post-war courts, to recreate historical “reality”. The alternative to this stance would mean no history-writing at all, something everyone should consider a sad prospect.

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