

4 Perpetrators? Political civil servants in the Third Reich

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Introduction

Despite our ever-increasing interest in Nazi perpetrators, we still lack a precise definition of the term. Indeed, although much literature examines various persons and groups as perpetrators, few scholars have focused on what it is that makes them perpetrators. Instead, it is merely accepted that the subjects of perpetrator research – *Täterforschung* in German – are such, as scholars look to explain how and why they participate in acts of mass violence (Paul 2002). So in order to answer the question – whether state bureaucrats can be accurately described as perpetrators – we first need look at the dominant images that emerge in perpetrator research to see if they conform to what is there.

By and large, historians have taken either a broad or narrow view of perpetration (Longerich 2009). Saul Friedlander and Raul Hilberg, for example, – the latter being among the first to use the term in a historical context – have both advocated a broader understanding of the term, viewing as perpetrators anyone involved in the persecution and murder of the Jews (Friedlander 2009; Hilberg 2006). In one of its earliest manifestations, therefore, the term ‘perpetrator’ was Holocaust-specific. Defining perpetration solely in terms of the Nazis’ ‘Final Solution’ to the Jewish Question, however, can be problematic for a number of reasons. For one, it is well known that the Jews were just one of a number of victim groups persecuted and even murdered during the Third Reich. Although finding a solution to the Jewish ‘problem’ was undoubtedly among the most pressing concerns for the Nazi leadership, and was different in terms of the underlying motivations behind it (Evans 2014: 24), the eventual fate of others such as the Sinti and Roma or the ‘hereditarily ill,’ to take but two examples, was largely the same (Bastian 2001; Klee 2009).

Another problem with Holocaust-specific definitions of perpetration is that they can also give rise to questions concerning the precise timeframe in which perpetration occurs. For in describing as perpetrators “all people who played a specific role in the formulation or implementation of anti-Jewish measures” (Hilberg 2006: ix), be it during or before the Second World War, one is forced to ask, at what point does perpetration begin? Or, to put it differently, when does a perpetrator become a perpetrator? This point becomes particularly acute

when considering that many of the regime's early discriminatory measures, aimed at Jews and other minorities, had been drafted long before 1933. Consider Christopher Browning's point concerning the Nazi regime's first significant piece of racial legislation, the Law for the Restoration of a Professional Civil Service (RGBl 1933: 377), as an example. "Even before Hitler's assumption of power," he argues, "schemes were being hatched in the Interior Ministry to purge the Civil Service, end the naturalization of *Ostjuden* (Eastern European Jews), and prohibit the changing of names to disguise Jewish identity" (Browning 1983: 145). In other words, the basic outline of this law was drafted during the Weimar Republic and merely implemented after Hitler became chancellor. However, if we accept that mass violence was in fact an outgrowth of these policies, and would hardly have been possible without them, then it might be argued that perpetration actually predated the Third Reich. One of the biggest problems with broader definitions of perpetration, therefore, is one of periodization.

Narrower definitions of Nazi perpetrators, on the other hand, have a far more clearly defined timeframe. Indeed, since its emergence as a field of study in its own right, *Täterforschung* has focused almost exclusively on the SS and police battalions that participated, either directly or indirectly, in the atrocities committed during the Second World War (Mallmann and Paul 2014). Thus, we are no longer talking about participation in the Holocaust *per se*, but rather mass violence in all its forms. Yet, even here the term 'perpetrator' is nowhere expressly defined. Instead, given their proximity to the killing, and the fact that they represent the regime that is driving the violence, it is merely assumed that they are perpetrators, as historians look to explore the apparatus and membership of these organizations, the relationship between center (Berlin) and periphery (the occupied territories), as well as the complex and varying motivations of the actors involved (Longerich 2010: 2–4). Just like broader understandings of the term, however, atrocity-centric understandings of perpetration can be problematic. For one, they fail to recognize that violence was just one form of persecution in Nazi Germany; a manifestation, in fact, of the broader structural conditions that facilitated and encouraged persecution in all its forms, and without which the atrocities would never have materialized. Secondly, the overwhelming focus, particularly in German language research, on the 'policing' organizations criminalized after the war underlines the extent to which legal terminology and scholarly research have almost become intertwined. Indeed, in his own survey of perpetrator research Stefan Kühl has shown how "there appears to be a broad consensus in scholarship that everyone who took part in the Holocaust – regardless of whether they were convicted by a court – are best described by using criminal categories" (Kühl 2014: 257–8).

The fact remains, however, that there were some SS and police functionaries who were not involved in planning or implementing Nazi atrocities, and many non-members – including some civil servants – who actually were. Finally, by focusing solely on wartime atrocities, we risk losing sight of the complex division of labor that characterized even the Nazi murder apparatus. The actions of perpetrators on the ground were many, and not all of them led directly to the gas chambers. The recently convicted SS-*Unterscharführer* and Auschwitz bookkeeper,

Oskar Gröning, is a case in point. In July 2015, a Lüneburg court found Gröning guilty of being an accessory to the murder of 300,000 Hungarian Jews and sentenced him to four years in prison. According to the findings of the court, his role consisted primarily of counting the money of the deportees and sending it on to SS headquarters in Berlin. Therefore, although Gröning was an important cog in the machinery of destruction, he did not, as far as we know, physically murder anybody. Instead, his and others' roles within the system were in fact a by-product of the decision to kill millions of people.

Thus, both broad and narrow definitions of Nazi perpetrators exhibit certain limitations. Whereas the former provides for an almost limitless application of the term, the latter's emphasis on atrocity can lose sight of the fact that Babi Yar and Auschwitz were but manifestations of a system that promoted and legitimized persecution in many forms. Many of these problems stem from our inability to provide a single, overarching definition of the term. And for good reason; there is no single definition of perpetration. Perpetration, rather, varies according to context and, as the scope of this present volume shows, cannot be limited to one time, place or group. That said, it is still incumbent on historians who engage in perpetrator research to provide a definition of perpetration that reflect the historical circumstances in which it occurs. For before we can determine who the perpetrators are, we first need to define what perpetration is. And to achieve this, historians should focus on the different *acts* that make perpetrators what they are (Mallmann and Paul 2014: 23).

During the Third Reich at least, it is abundantly clear that perpetration involved more than the mere act of killing, just as being a victim was about more than being killed. "Perpetration", rather, according to Mary Fulbrook, "was also possible through administration, 'Germanization', stigmatization, camps, ghettos etc" (Fulbrook 2012). Although perpetrators in the narrow sense were also engaged in acts such as these, they usually belonged to the SS and police units active in the occupied eastern territories, and it is their roles as killers, along with their motivations for killing, that interests historians the most (Wildt 2003). But if we accept that these acts also constitute perpetration, then it becomes clear that it was not limited to the SS and police battalions in the East, and was just as visible in Germany prior to and during the Second World War. In fact, all but one of the acts perpetrated in the East – that of mass murder – were replicated by senior civil servants over the course of the Third Reich. After all, with its innumerable laws and decrees, it was the bureaucracy who brought about the "civic and social death" of the German Jews, "thus delivering them into the hands of the SS" (Browning 1983: 146). Thus considered, it can be reasonably assumed that much civil service behavior back in Berlin – which basically involved legislating for the identification, disenfranchisement and sometimes even death of the regime's victims – was, indeed, tantamount to perpetration, and that broader definitions of Nazi perpetrators, despite their obvious flaws, are just as valid as those that appear in *Täterforschung*.

In what follows, then, I will further elucidate the nature of civil service perpetration by showing how the actions of senior civil servants facilitated persecution

and, in some cases, even murder in Nazi Germany. Rather than treating the bureaucracy as a whole, however, I will examine four different, high-ranking civil servants – Friedrich-Wilhelm Kritzinger, Franz Schlegelberger, Johannes Krohn and Wilhelm Stuckart. For, as Richard Overy has argued, each case needs to be treated on its own merits, because even within each historical situation there are often different forms of perpetration (Overy 2009). Taking Overy's point to its logical conclusion, however, the concluding section then examines other aspects of civil servants' behavior, showing that other acts in other situations were not, in fact, tantamount to perpetration. Indeed, sometimes civil servants actively worked against the stated aims of the regime. Focusing on the Janus-faced nature of their conduct, therefore, it will be shown that although perpetration was indeed a widespread phenomenon in the German bureaucracy under Nazism, the singular term 'perpetrator' can sometimes fail to capture the complexity of civil servants' behavior. Thus, perpetration in Nazi Germany will be examined as a context-specific phenomenon, meaning that it was possible to be a perpetrator in one context, and not in another.

Civil servants being perpetrators

Like all modern bureaucracies, the German administration under Nazism was characterized by a highly complex division of labor. Hence, it is unsurprising that some government departments were more directly concerned with persecution than others. That said, because persecution was a matter of administration, and therefore a concern for the civil service, practically everyone who chose to serve the state in Nazi Germany helped to decide the fate of its victims. The Justice Ministry's Franz Schlegelberger is a case in point. One of the few secretaries of state to serve both the Weimar and National Socialist governments, Schlegelberger oversaw the slow but deadly evolution of legal policy in Germany and the annexed eastern territories. Like many bureaucrats of his rank, Schlegelberger worked tirelessly to align the aims of the new leadership and the interests of the civil service early on. So it should come as no surprise that he, too, helped give legal expression to many of the regime's primary ideological objectives. During the first few months of Hitler's rule, in fact, he helped resuscitate the Law for the Restoration of a Professional Civil Service (BBG) – the first drafts of which had been prepared during the Weimar period – , which provided the legal basis for purging racially and politically undesirable officials from state employment (Adam 2003: 47–8). Perhaps the first significant piece of racial legislation introduced by the regime, the BBG also provided the framework for the further removal of Jews and other 'non Germans' (Majer 2003) from other spheres of public life, and by 1934, Schlegelberger issued further directives to the courts banning the appointment of Jewish lawyers in cases where legal aid was required. Of course, such efforts need to be seen as part of the regime's overall attempt to 'cleanse' German society of Jewish influence. And it is widely accepted that Schlegelberger and the Justice Ministry were responding, at least in part, to pressure from Nazi party radicals, who were already pushing policy in this direction

(Nathans 1990: 45–6). Whether he was the driving force or not, however, it has long been accepted that motivations play no part in determining who the perpetrators are (Browning 1998). All that mattered was compliance, which Schlegelberger duly provided. This willingness to cooperate was also on display when it came to removing Jews from the legal profession outright. Indeed, Schlegelberger was one of the key figures behind the implementation of the Fifth Decree to the Reich Citizenship Law, which again revoked the right of Jews to practice law in Germany and the incorporated Austrian territories (RGBl 1938: 1146). Act-ing on behalf of lawyers who were ‘German,’ he first suggested the measure in mid-1938, whereupon the law was enacted the following September (BArch B R 43-II/1535). Schlegelberger also personally dictated some of the law’s more detailed provisions, particularly those relating to the legal representation of Jews themselves. Where this was required, he insisted, they should be represented by other Jews conditionally licensed by the judicial administration. Rather than call-ing them lawyers, however, he suggested they be referred to as ‘legal advisors’ (BArch B R 3001/20253).

As we can see, Schlegelberger played an active role in the identification and progressive disenfranchisement of minorities before 1939, many of whom would later be killed by the National Socialist regime. But it was during the war that he made his most radical contribution to the regime’s persecutory agenda. With the invasion of Poland, persecution came to include state-sponsored occupation, ethnic cleansing, forced labor and mass murder. All these were matters of administration and therefore required the complicity of senior bureaucrats like Schlegelberger. With areas such as the Sudetenland and Western Poland now incorporated into ‘Greater Germany,’ German courts were instilled in areas where there lived significant numbers of Czechs, Poles and, of course, Jews. His role in the persecution of the Jews before the war proved his readiness to execute the regime’s will. During the war, however, he looked to fend off SS attacks on his administrative competence by calling for even harsher treatment of ‘non-Germans.’ In 1941, for example, he complained “that the administration of Justice showed an incomprehensibly considerate attitude towards the Polish people, who are irreconcilably hostile to us.” Presenting them as a danger to public safety, he expressed the hope that from now on “the heaviest punishments [would] be inflicted on Polish criminals” (Majer 2003: 336). Similarly, Schlegelberger ordered the courts to administer “exemplary punishments to Jews in 1942.” Referring specifically to the lenient treatment of a Jew who sold a bottle of brandy, and Jews who used the Hitler salute in Moscow, he ordered that in future such cases should be treated as treason (Majer 2003: 341). At the time, convicted acts of treason carried the death penalty.

Such calls for the harsher treatment of Poles and Jews found their ultimate expression in the Decree Concerning Criminal Justice in the Incorporated East-ern Territories (RGBl 1941: 759). According to the decree, ‘non-Germans’ were to be subject to special law in the incorporated territories. Going forward, Jews and Poles were to be sentenced to death if they, for example, committed acts of violence against Germans or even uttered anti-German remarks. To be sure, much

of the law's content reflected the wishes of Hitler, Himmler and Martin Bormann, with Schlegelberger even managing to thwart the latter's attempts to introduce corporal punishment (Neliba 2005: 20). However, it was the Justice Secretary who completed the final draft, adding the caveat that neither Poles nor Jews were entitled to legal representation, and it was he who signed an appendage the following month ordering the new law to be applied even in cases heard before it was introduced (von Alten 2009: 68–9).

These are just some of Schlegelberger's acts that were tantamount to perpetration. Like him, the Reich Chancellery's Friedrich-Wilhelm Kritzinger was another high-ranking bureaucrat who perpetrated through administration; in other words, by helping to formulate and implement a range of discriminatory policies. Unlike Schlegelberger, however, whose administrative mandate was largely limited to matters of jurisprudence, practically all laws enacted during the Third Reich landed on Kritzinger's desk because of the Chancellery's role as a coordinating office between senior government agencies and as their main point of contact with Hitler (Rebentisch 1989: 69–71). Thus, whereas other ministries only became involved in the political process when it concerned them, the Chancellery coordinated discussions and perfected legislative drafts on issues ranging from the euthanasia program to the persecution of the Jews (Mommsen 1966a: 272). Kritzinger's own department within the Chancellery was directly responsible for processing and transferring the legislative initiatives of and between the Interior and Justice ministries; the Supreme Command of the Armed Forces; the Finance, Labor and Economics ministries; as well as the German railway and postal services. Following his appointment in 1938, therefore, he communicated with the Reich's most important agencies about a wide range of discriminatory policies. For example, documents concerning the persecution of the clergy and the murder of 'hereditarily ill' – the so-called euthanasia program – carry his signature. By and large, these were merely passed on to the relevant departments (Mommsen 1966a: 378–9).

As with most civil servants, however, Kritzinger played a far more active role in the promulgation of anti-Jewish legislation. Like most administrative agencies in the Third Reich, the Chancellery had an office that dealt exclusively with Jewish affairs. Aptly named "Jews and Half-Jew Matters," Kritzinger was its chief from 1940 (Mommsen 1966a: 370). This helps explain why he was invited to the now infamous Wannsee conference in 1942, a meeting convened by the leader of the Reich Security Main Office (RSHA), Reinhard Heydrich, to coordinate a 'Final Solution' to the Jewish Question. Beyond the fact that he was present, the only surviving evidence of the meeting reveals nothing of Kritzinger's reaction to what was discussed (PAAA R 100857). Nevertheless, his mere presence suggests that Heydrich expected the Chancellery's full cooperation in the endeavor. In the months preceding the conference, moreover, Kritzinger was also involved in discussions concerning contentious position of half and quarter Jews, Jews in mixed marriages, as well as those pertaining to the Eleventh Decree to the Reich Citizenship Law (RGBI 1941: 1146). With a view to legalizing the deportations that were already taking place, an Interior Ministry draft law stipulated that all Jews in Germany be made stateless and their property transferred to the Reich,

a move which Kritzinger agreed with in principle. However, in light of the massive legal difficulties such a move would entail, and because there would soon be no Jews left in Germany, he argued that Jews should only be made stateless once they crossed the German border, more often than not in trains bound for the East. With the help of his direct superior, Hans-Heinrich Lammers, Kritzinger was able to ensure that the final draft of the law reflected his wishes. Following Hitler's approval, it was passed in November 1941. And although it failed to create a semi-legal basis for the deportations themselves, it did essentially sanction the consequences of deportation, such as the loss of property and rights that were attached to citizenship (Mommsen 1966a: 388). Like the aforementioned SS Bookkeeper and Perpetrator, Oskar Gröning, therefore, Kritzinger was not complicit in mass murder *per se* but rather in acts that came about as a result of the regime's genocidal practices.

Kritzinger's stint in the Reich Chancellery spanned the years 1938 to 1945, a period that witnessed the deadly evolution of Nazi racial policy. The Labor Ministry's Johannes Krohn, conversely, was forced out of office in 1939 following a years-long turf war with the leader of the German Labor Front, Robert Ley, who set his organization up as a kind of shadow Labor Ministry that progressively usurped the administrative mandate of the actual Labor Ministry (BAK N 1430 and Rüdiger Hachtmann 2011). Having been relieved of his duties, therefore, Krohn was not in a position to assist the regime in its wartime excesses in a way similar to Schlegelberger and Kritzinger, at least not in his capacity as Labor Secretary. Indeed, it fell to his successor, Friedrich Syrup, to help oversee the regime's forced labor program during the war (NMT XIV: 827–32); a slice of luck that arguably helped save his reputation after 1945 (Rohrbeck 1954). This does not mean, however, that Krohn did not commit acts of perpetration. As we saw earlier, perpetration was also possible through administration, even before the war. And during his time in the Labor Ministry, he too played his part in identifying and disenfranchising the regime's victims. Although the Labor Ministry's involvement in the legislative process was limited to areas that concerned it, whilst in office Krohn and his Minister, Franz Seldte, were largely able to defend its position as the Reich's foremost authority on social, labor and health policies (Süß 2003: 51). Furthermore, considering Seldte's disinterest in social matters, along with Krohn's expertise in this area (Krohn 1926, 1938), it is unsurprising that the Labor Secretary would help formulate a raft of discriminatory social legislation. The Law Concerning Tenancy Arrangements for Jews (RGBI 1939: 864), for example, signed by Krohn in April 1939, provided for the eviction of Jews from their homes if their landlord was German, and insisted that the resultant homeless families be accepted by other Jews still in possession of their apartments. "Eventually, these *Judenhäuser* [Jewish Houses] were filled from floor to ceiling" (Hilberg 2003: 170).

To be sure, we know that neither Krohn nor the Labor Ministry was the original source of this initiative. It was in fact a compromise measure between Hermann Göring and Heydrich (Heim 2009: 242). However, the documents sent the Chancellery for final approval in March 1939, stated that all participants, Krohn included, agreed with the draft proposal to remove the Jews from German

“residential space” (BArch B R 43-II/1171a). Similarly, Krohn was also involved in the development of discriminatory healthcare policies in the Third Reich. Because there was no actual Health Ministry in Nazi Germany, the administration of healthcare was shared among different departments. The Labor Ministry, therefore, was able to exert influence in this area because statutory health provision was a matter of social insurance (Süß 2003: 51). Winfried Süß maintains that the Labor Ministry’s approach to healthcare policy was “conservative in a narrow sense, and merely concerned with the maintenance of the status quo” (ibid.). However, given the speed with which things developed in the Third Reich, it could be argued that even the status quo was constantly in flux. In this area, too, Seldte was a disinterested observer, and he ceded responsibility to Krohn and his successors. This explains why it was Krohn and not his minister, who signed some of the Third Reich’s most discriminatory health legislation. For example, the Third Decree Concerning the Implementation of the Law for the Prevention of Genetically Diseased Offspring, signed by Krohn in February 1935, ensured that state health insurance funds would cover the costs of sterilizing those judged to be incurably ill, whereas a Decree Concerning the Participation of Jews in State Health Insurance Funds, signed by Krohn in October 1938, severely inhibited Jews’ ability to practice medicine by refusing Jewish doctors the right to claim costs from state health insurance funds (RGI 1938: 367).

These are just some of the discriminatory laws and decrees Krohn helped formulate during his time in the Labor Ministry. As with Schlegelberger and Kritzinger, there is little in the archives to suggest he was the driving force behind these policies. Like them, in fact, there is much to suggest that he too was responding to the radical demands of the new regime, at least in part. As with perpetrators in other contexts, however, personal motivations have no bearing on their status as perpetrators. People were persecuted and even killed despite the varying motivations of the actors involved. What mattered most was compliance with the general program, which Krohn duly provided.

Another person who acted in this manner was Wilhelm Stuckart. The only member of the group without a departmental portfolio before Hitler took power, Stuckart entered the Education Ministry – first as department head, then as State Secretary – in June 1933, not because of his expertise in this field but because of his long-standing ties to the Nazi Party (BArch SSO 167B). Appointed two months after the enactment of the BBG, one of his first tasks as leader of the ministry’s education department was to help purge schools and universities of their politically and racially undesirable teachers and professors, whereupon “by March 1934, German universities had lost numerous world-renowned scholars thanks to the work of Stuckart and his colleagues” (Jasch 2012: 79). Despite his obvious willingness to assist the regime in pursuit of its ideological goals, however, he was soon removed from office by his minister, Bernhard Rust, for allegedly challenging the latter’s authority, and was forced to spend a short period on the margins of power before his eventual transfer to the Interior Ministry in 1935. In light of his previous fall from grace, Stuckart obviously had something to prove in his new post, not only to the Interior Minister – the long-time Nazi

Wilhelm Frick – but also to “Hitler himself, who intervened to prevent Stuckart from being consigned to provincial oblivion” (Caplan 1980: 44). And whereas the enactment of the BBG allowed Stuckart to prove his worth to the Nazi education administration, the passing of the Nuremberg Laws would provide him with ample opportunity to do so in the Interior Ministry. Indeed, as head of the Department for Constitutional and Legislative Matters (BArch R 601/1817), in autumn 1935 Stuckart was at the forefront of the regime’s efforts to rob Jews of their full citizenship, make it illegal for Jews to have sex with non-Jews, and everything else that the Nuremberg Laws entailed (Kershaw 2010 : 345). He even wrote the official commentary to the laws with Hans Globke the following year (Stuckart and Globke 1936).

Having remained in office after 1939, moreover, Stuckart was also involved in a variety of measures that either led to, or were the result of, the regime’s murderous excesses during the war. For example, it was he who signed a secret decree in 1939 calling for the forced registration of ‘deformed’ babies and small children in preparation for the euphemistically labeled child ‘euthanasia’ program, which in fact amounted to the systematic mass murder of apparently handicapped children (Jasch 2012: 287). Like his colleagues, moreover, he too was involved in discussions concerning the Final Solution to the Jewish Question. As we have just seen, Stuckart had helped pave the way for the mass murder of the Jews before the war by promulgating laws that both identified and disenfranchised the proposed victim group, “thus delivering them into the hands of the SS” (Browning 1983: 146). But even after the regime’s conception of the Final Solution shifted from a ‘territorial solution’ to one based on murder, the complicity of civil servants was still required, be it in providing a ‘legal’ safeguard for the deportations themselves or in defining who was to be murdered (Jasch 2012: 290). So it should come as no surprise that Stuckart, too, was involved in debates concerning the position of quarter and half Jews – the so-called *Mischlinge* –, as well those relating to Jews in mixed marriages (*Mischehen*); issues that dominated the aforementioned Wannsee Conference. Although it is still being debated whether the wholesale destruction of all Jews was discussed at the conference, the fact that it was even called suggests that their deportation to the East had already been decided upon. Who ‘they’ were, however, was not. Just as in Germany before the war, despite the best efforts of the regime it was not always clear who the Jews were, and who, consequently, was to be subjected to discriminatory measures; a particularly vex-ing question in light of the ongoing deportations. Like Kritzinger, who was invited to represent the Reich Chancellery, Stuckart was present as the Interior Ministry’s representative. But whereas little is known about the former’s reaction to what was being discussed, the only surviving document from the meeting suggests that the latter was one of its most vocal participants. Like most of his colleagues at the meeting, it appears that Stuckart had nothing against the deportations in principal; a position supported by his previous contributions to the regime’s discriminatory agenda. In relation to the *Mischlinge* and *Mischehen* living in Germany, however, he argued against their deportation for largely the same reasons that Kritzinger rejected Stuckart’s proposal to make them stateless; the endless administrative

difficulties. That said, so as to not hinder the regime's efforts to 'solve' the Jewish problem, Stuckart suggested – ultimately in vain – that those Jews who were not deported should be forcibly sterilized (PAAA R 100857).

These are just some of the ways political civil servants in the Third Reich perpetrated through administration. Such acts may not have led directly to, and were always far removed from, mass violence. But they were part of the broad web of persecution that either led to, or emerged from Nazi atrocities. Indeed, through their innumerable laws and decrees it was men like Schlegelberger, Kritzinger, Krohn and Stuckart who first helped define the objects of Nazi persecution – the victims – before implementing a program of political, social and economic disenfranchisement that threatened the already fragile existence of various minority groups in Hitler's Germany. Once that country was at war, moreover, at a time when persecution came to include occupation, ethnic cleansing, forced labor and mass murder, those who remained in office invariably helped facilitate these acts because they, too, were matters of administration that required the legal know-how and technical expertise these men possessed. They may not have been the driving forces behind these policies. In some instances, in fact, civil servants even spoke out against the regime's excesses. As was mentioned earlier, however, motivations carry little weight in determining who the perpetrators were. The only thing required was compliance, which each of the men surveyed here duly provided. Thus, in the sense that they legislated for the identification, disenfranchisement and, indirectly, sometimes even murder – acts which, in and of themselves, comply with Fulbrook's broader definition of perpetration through administration – , it is fair to conclude that Schlegelberger, Kritzinger, Krohn and Stuckart were perpetrators.

But if we accept the points made earlier, that perpetration was both context-specific and defined by the acts themselves, how then do we define other acts in other contexts? And how does an analysis of the broad spectrum of civil service behavior affect our understanding of these men as perpetrators? In the following section, then, I will explore the margins of the term perpetrator by examining some civil servants' acts that were not, in fact, tantamount to perpetration. Indeed, as will be shown below, Schlegelberger, Kritzinger, Krohn and Stuckart occasionally worked against the stated aims of the regime in ways that appear to contradict their singular definition as perpetrators. Taken together with the previous section, therefore, it will be shown that perpetration was a context-specific phenomenon, meaning that it was possible to be a perpetrator in one context and not in another.

Civil servants not being perpetrators

Schlegelberger and Kritzinger, for example, were part of a group of civil servants that provided assistance to the former Minister of Justice from the Weimar period, Curt Joël, under whom both men had served before Hitler took power. Defined as a full Jew according to the Nuremberg Laws of 1935 – drafts of which Schlegelberger and Kritzinger, who both worked in the Justice Ministry at the time, would have helped shape – Joël should have been subjected to the full gamut

of restrictions these laws embodied. Thanks to the intervention of his former col-leagues, however, he managed to evade some of the harsher measures that came about as a result of his loss of citizenship. Indeed, thanks in no small part to Kritzinger's personal intervention, Joël's successor as Justice Minister, Franz Gürtner, promised to stick up for Joël should his existence be threatened by these mea-sures. Such assistance took shape in a number of different ways. In the aftermath of the Night of the Broken Glass, for example, he was exempted from a special tax ordering Jews to pay for the damages, mostly to their own property, inflicted by Nazi thugs during the pogrom. And whereas other Justice Ministry officials inter-vened to ensure that Joël received the same food rations as a full German citizen (*Reichsbürger*), it was Schlegelberger who obtained him German's clothing card, which exempted him from the restrictions placed on Jews obtaining clothes dur-ing the war (Godau-Schüttke 1981: 221–7). When Joël became sick, moreover, Kritzinger intervened personally to ensure that his former boss was sent to one of Berlin's best hospitals instead of the vastly under-provided-for hospitals that had been set up specifically to treat Jews. And when he or his family members were threatened with deportation, Kritzinger was among those who helped ensure this never happened (FUA E7/2276).

As with most civil servants who stood trial after the war, such acts were presented to the courts as evidence of the defendants' 'resistance' to the Nazi regime. Unlike most, however, Schlegelberger's and Kritzinger's claims were actually backed up by the Joël family. The same was also true of Schlegelberger's efforts to save former colleagues from the judiciary from losing their jobs and, later on, from being deported. According to his biographer Eli Nathans, in fact, Schlegelberger worked to delay the deportation of his former colleague and childhood friend – a Jewish Supreme Court judge named Alexander Cohn – “and once this was no longer possible, he ensured that Cohn and his wife were sent to Theresienstadt, the least murderous of all the Nazi concentration camps.” Similarly, he is known to have helped former colleagues classified as *Mischlinge* by the regime, with one district court judge confirming that Schlegelberger helped him transfer to a small Prussian town where it was easier to hide his identity, whilst the wife of another, Johannes Koffka, told the courts that Schlegelberger helped Koffka remain in office until 1942 (Nathans 1990: 42–4). The irony behind these acts is that Schlegelberger, as we saw earlier, was at the forefront of efforts to remove Jews from the German legal profession in their entirety. Therefore, isolated acts such as these should in no way obscure the ways these men facilitated persecution and even murder during the Third Reich. In themselves, however, they do highlight the limits of the term perpetrator as a tool of historical analysis, underlining the extent to which it can sometimes fail to capture the complexity of human behavior. For although people became perpetrators in one situation, this was not always the case in others.

Stuckart, similarly, was part of a group of intellectuals who became quite criti-cal of Nazi occupation policies during World War Two; policies which, originally, Stuckart helped to formulate. Set up in 1939 to discuss the urgent the questions sur-rounding the domination, organization and administration of German-dominated

Europe, the group looked to posit an alternative model of 'rational' domination based on radical ethnic principles (Herbert 1996: 278–9). Arguing in favor of a European community of nations separated strictly along racial lines – and led, of course, by the continent's dominant race; the Germans – , the group wrote a number of articles lamenting the regime's excessive and indiscriminate use of force. In stark contrast to the denationalizing policies being pursued by Hitler and others, Stuckart even argued that "German hegemony should not mean denationalization and repression. National Socialism, rather, by virtue of its own explicit nationalism, respected national differences and would offer freedom from domination . . . with each 'worthy' group being allowed to develop independently and enjoy its own living space" (cited in Mazower 2008: 246–7).

Even within this critique, it should be noted that Stuckart's blatant racism is clearly on display. Indeed, the group's blueprint for the racial reordering of Europe was to follow a strict racial hierarchy. Whereas some groups were to be treated in a conciliatory manner, toughness was required with the most primitive, inferior or racially poisonous peoples. The basic point, however, made in another article, was that "the Germans had become indiscriminately and excessively violent; one could not expect to expel or annihilate all other people on the continent since that defeated the purpose of establishing German hegemony in the first place" (Mazower 2008: 232–47). So although their message was abstruse and couched in a virulent racism, the group nevertheless offered, "elliptically but unmistakably, a new direction for German rule" (Mazower 2008: 232–47). Why did Stuckart – a man who had and would continue to do so much to assist the regime in the realm of racial policy – speak out against the murderous course taken by the regime during the war? Although it cannot be proven, it is certainly possible that it offended his sense of moral decency on some level. Indeed, Kritzinger, who also assisted the regime in this area, is known to have been disgusted by the occupations policies practiced in Poland (Mommsen 1966a: 397). What is known, is that Stuckart was frustrated by the fact that his original blueprint for occupation was not being followed, and that his ministry – and therefore he himself – was dwindling in significance as a result of the proliferation of extra- or quasi-state institutions which were progressively eroding the Interior Ministry's administrative mandate (Rebentisch 1991: 477). So his attempts to influence occupation policy in this direction need to be seen, at least in part, as a response to his own loss of power, as an *attempt*, indeed, to remain significant.

The same might also be said of Krohn's efforts to ensure that Jews who fought in World War One were not removed from the legal profession. In the eyes of the law, though not always in practice, this group was originally protected against some anti-Semitic measures because of their previous sacrifices for Germany. By 1938, however, conservative elements within the regime – some of whom supported the Jewish war veterans' cause – were either on the defensive or in decline, whereas more radical elements within the regime were growing in confidence and stature. As always, this latter group favored the broadest possible definition of who the Jews were, and therefore wanted all of them – whether full, half or quarter, veteran or non-veteran – removed from the legal and other professions. As

Secretary of State in Germany's foremost social policy ministry (the Labor Ministry), and therefore responsible for considering how these Jews should survive or be provided for in light of losing their livelihoods, Krohn's office was asked to clarify its position on the matter in early summer 1938. In response, the Justice Ministry's proposal to revoke the special position of Jewish war veterans, Krohn's office issued an impassioned plea to respect those Jews who had sacrificed so much for German and allow them to continue serving at the bar. "I feel compelled to make these deliberations" it was argued, "so that the necessary special position of the wartime injured and war participants in the Third Reich, including the Jewish war veterans who are lawyers, does not go unnoticed in relation to important matters of state policy," by which was meant the progressive attack on the economic position of the Jews. In conclusion, however, the letter stated that "even if they cannot be exempted from economic constraints or suppression, this should not lead to a devaluing of soldierly worth in the eyes of the public" (BArch B R 3001/20253). On some level, at least, there can be little doubt that Krohn identified with the proposed victims; he too had fought and was severely injured during the First World War. But, very much like Stuckart, there was also another, more strategic element to his protests. After 1933, it had become part of the Labor Ministry's administrative mandate to treat the cases of injured Jewish war veterans who, despite their special status, were nevertheless subjected to the regime's discriminatory measures, which essentially meant trying to ensure that the 'non-Aryan' war wounded received the same benefits, pensions and employment protection as their 'Aryan' counterparts (Geheren 2016). Had Krohn simply conceded to the demands of the radicals – whose position would eventually win the day anyway – , it would have meant losing more administrative authority to the German Labor Front, which, as we saw earlier, had set itself up as a kind of shadow Labor Ministry. Thus, it is partly against the backdrop of the internecine power struggles that defined the Third Reich that Stuckart's and Krohn's protests need to be seen.

Conclusions

By focusing on the actions of Franz Schlegelberger, Friedrich-Wilhelm Kritzinger, Wilhelm Stuckart and Johannes Krohn, the preceding analysis has shown that it was possible for a person to be a perpetrator in one situation and not in another. Perpetration in the Third Reich involved far more than the act of killing. It also included legislating for the persecution and sometimes even murder of the regime's victims; a phenomenon Mary Fulbrook has referred to as "perpetration through administration" (Fullbrook 2012). Therefore, in the situations where they acted in ways that facilitated these ends, these men can be considered as perpetrators. At the same time, however, it has also been shown that not all civil service behavior was tantamount to perpetration. In some instances, in fact, civil servants actually worked against the stated aims of the regime, either by helping, or attempting to help, individual or groups of Jews, or by trying to change the course of Nazi occupation policy during World War Two.

How, then, does this affect our understanding of these men as perpetrators? Most importantly, it shows that perpetration was a context-specific phenomenon. Although I have examined only the most extreme examples at opposite ends of the behavioral spectrum, so much of what people did in Nazi Germany had no bearing on the fate of the regime's victims and therefore cannot be considered as typical perpetrator behavior. Because perpetration was situational, historians need to focus how people interact with these situations, not as perpetrators *a priori* but as complex individuals acting in complex historical circumstances; an approach that will also benefit the analysis of behavior that was not tantamount to perpetration. For if historians focus on individual actors solely as perpetrators, they will only end up examining those aspects of their behavior that makes them perpetrators, failing to comprehend that the complexity of human behavior defies overtly simplistic, and essentially legal definitions like perpetrator, bystander, sometimes even victim, as recent studies of rape during the Holocaust have controversially shown (Hedgepeth and Saidel 2010). During the course of this, or any historical period, the fine margins between these categories were often in flux, meaning that it was possible for a person to be many or all of these things over time. With regards to Schlegelberger, Kritzinger, Stuckart and Krohn, these men were both critical of the regime and yet actively complicit in its crimes; something we risk losing sight of when referring to them merely as perpetrators.

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