CHAPTER 15

Political Justice in the Netherlands: The Instrumentalization of the Judicial System during the German Occupation, 1940–1945

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Introduction

Before the German attack on the Netherlands on May 10, 1940, the judicial system in the Netherlands had been a perfect example of how a system should be within a modern, democratic, liberal constitution: Montesquieu’s notion of the separation of powers, trias politica, had been evident. The Dutch judiciary performed the duty of a controller of the executive. The other organs of this judicial system—police and public prosecutor—were supervised by the minister of justice.

There had not been much judicial repression in the prewar Netherlands. Strict rules applied to investigation and prosecution: The use of coercion or physical violence during interrogation, for instance, was strictly forbidden. Legal assistance was provided for all and at all stages of the legal procedure. Also, the death penalty had been banned from the Dutch penal code. As social tensions were almost absent and severe social disturbances were quite uncommon, the social climate could be defined as mild.

Hitler’s Machtübernahme in Germany, in January 1933, did not affect the Dutch situation. Only a few Dutch lawyers sympathized with the ideology of the new German regime and the way its policy changed the German legal profession. The outbreak of the war in Europe in September 1939 caused a rise in the number of convictions in the Netherlands, but this had been due largely to the growing number of violations of new legislation on the matter of rationing. As a result of limited trade since September, some foods, like sugar, had become scarce in the Netherlands. Therefore, the Dutch state had started a policy of rationing. A
growing number of foods could be bought and sold only as rationed. Buying and selling without coupons had become penal offenses. The scarcity that emerged, however, also had given rise to breaches of these new regulations. The perpetrators were sentenced by the Dutch courts.2

Thus, with the exception of black market-related offenses, the crime rate remained low. Serious criminal acts, disturbances of the public order, and political revolts seldom occurred. Clashes between political groups, as there had been in Germany in the beginning of the 1930s, did not take place. A special apparatus for oppressing and punishing political opposition—such as the German Geheime Staatspolizei (Gestapo) or special German courts like the Volksgerichtshof and the Sondergerichte—did not exist in the prewar Netherlands. Although both the public prosecutor and the police were controlled and to some extent directed by the government (via the minister of justice), the Dutch judicial system as a whole remained politically neutral.

How did this situation change after the German attack? How did the German occupation affect the Dutch judicial system, and how did this system change? Was there a radical break in comparison with the prewar years?

In this article I intend to show that the Dutch judicial system was transformed profoundly during the years of occupation. On the one hand, the existing Dutch system lost much of its sovereignty vis-à-vis the German regime. On the other hand, a new German judicial system, set up by this same regime, started to work alongside the existing Dutch system. This German system became a most effective tool of repression. How this situation came into existence and how it evolved during the occupation are the two main questions to be answered in this article.

The First Nine Months: The Introduction of New Rules and New Courts

In the nine months that followed the German attack on the Netherlands, the Dutch were confronted by some minor, yet telling, changes in the area of justice. First, the Dutch got acquainted with new German agencies and authorities. The Gestapo, for example, started to arrest Dutch citizens almost immediately. During the summer of 1940, dozens of men and women who had allegedly displayed anti-German behavior prior to May 10, 1940 were arrested and transported across the border. Once in Germany, some of them were tried before German courts.3

At the same time, as had happened in other occupied parts of Europe,4 the highest German military command issued an order whereby a German penal code and German military courts (Feldgerichte) were introduced.5 The jurisdiction of these Feldgerichte was wide as a variety of acts became punishable from
May 10, 1940 onward, ranging from insulting a German soldier and listening to foreign radio broadcasts to espionage, high treason, and other acts in support of the enemy. These military courts could punish suspects severely. The death penalty was reintroduced.

In fact, already during the summer and early autumn of 1940, some hundreds of Dutch citizens had been sentenced by a Feldgericht. Some were convicted because they had tried to flee to England. Others were sentenced for having cut telephone lines and electricity cables that were used by German agencies. Most of the suspects, though, were punished because they had insulted a German. Penalties were harsh, sometimes totally out of proportion by Dutch standards. Thus, for example, a young man who had used an elastic band to shoot a small needle in the direction of a German soldier was sentenced to prison for two months.

More would change after the appointment of Arthur Seyss-Inquart as Reichskommissar for the occupied Netherlands. Seyss-Inquart was a lawyer and Nazi Party dignitary who had played a prominent role in the Austrian Anschluss in 1938, in particular by providing a semilegal basis for the Anschluss. He also had experience with governing in occupied territory as he had worked with Hans Frank in the occupied zone of Poland called the Generalgouvernment. As soon as he arrived in the Netherlands it became clear that Seyss-Inquart had a special interest in justice: In contrast to his colleagues abroad like Reichskommissar Josef Terboven in Norway, he rearranged things in this field at once. His aims were evident: on the one hand, a continuation of the Dutch administration of justice on the condition that this administration be supervised by German authorities; on the other hand, the creation of a German apparatus that would protect the German supremacy in the Netherlands by hunting down and punishing those who opposed the occupation.

To that end, first, restraints were put on the “old” Dutch judicial system. Seyss-Inquart’s first order (May 29, 1940) made clear that he expected Dutch judges to follow his legislation to the letter. He also prohibited the administration of justice “in the name of the Queen.” Henceforth, justice had to be rendered “in the name of the law.” In the fall Jews were banned from the legal profession. At the same time three non-Jewish attorneys general, the highest authorities of the Dutch Department of Prosecution, were replaced by members of the Dutch Nazi Party. Furthermore, Seyss-Inquart stated that Dutch judgments in certain cases would need to be confirmed by him before they could be executed. And finally, he restricted the scope of the jurisdiction of Dutch courts: Offenses committed by or directed against a German citizen could no longer be investigated by Dutch policemen or tried by Dutch judges.

These cases had to be handed over to the Gestapo. New German nonmilitary courts were set up to try these cases: Landesgerichte and Obergerichte, two courts that also had jurisdiction over Dutch citizens who acted against the Greater German Reich (Großdeutsches Reich), the German people, the Nazi Party, or German
citizens. The same applied to those accused of crimes that were considered a “threat to the common good” (gemeingefährlich) by which was also meant deeds that had a negative effect on the Dutch economy.

It was to be expected that these two German courts in particular were to become instruments of political oppression. Until the public revolt of February 1941, however, their work was marginal. The first cases were tried in August 1940. One of the suspects was a Dutch drunkard who had insulted the Wehrmacht by suggesting that the attack on the Netherlands was a criminal act. The Landesgericht sentenced him to prison for two and a half years. In the remaining months of 1940, the Landesgericht issued judgments in approximately one hundred cases; the Obergericht in not more than seven cases.

The Strike in Amsterdam and Its Aftermath: The Birth of Political Justice, 1941–1943

Even though the number of cases tried by these two German courts was still small, the judicial system in the Netherlands had started to change within a few months after the attack. The Dutch judiciary lost its independence, or at least some of it. At the same time, political opposition was criminalized, and to investigate and punish these new crimes, German organs of police and justice were introduced.

This process of alteration was accelerated by two extremely violent days in early 1941, when popular discontent with the new situation was shown in both a clear and violent way. The German police and military used a heavy hand to end the revolt. After that short period of unrest the German coercion grew. Two specific groups of the Dutch population became the main targets of German aggression during the next two years: Jews and, since the German attack on the Soviet Union in June 1941, Dutch Communists.

In these two years the Dutch judicial system had to put up with new German interferences. For example, a new type of Dutch court was set up by the German regime: the so-called courts of peace. A Dutch citizen accused of having insulted or attacked a Dutch Nazi could be brought before this new type of Dutch court. Although the Dutch legal profession protested, it could not prevent the arrival of these new courts.

During the same period the two already mentioned German courts came into their own. Cases against Dutch civilians increased rapidly. In 1942, for example, the Landesgericht tried more than 2,800 cases; the Obergericht about 250. The procedure in these cases could differ. Asked about their impression of the German courts, some Dutch people stated after the war that their treatment had been quite normal, as it would have been in cases tried by a Dutch court. Others,
though, said they had never seen a lawyer and had been maltreated during their interrogation and during their time in prison.17

The sentences varied too. The Landesgericht tried the most cases, but these cases were also less serious. This is reflected in the sentences. Most suspects in Landesgericht cases were sentenced to prison.18 The Obergericht dealt with the more serious cases. This court also sentenced convicts to death.19 As a part of German policy, these more severe cases and sentences were often published. The Dutch press received strict orders from the German authorities on which cases should be reported and which sentences should be made publicly known. Clearly the intention was to deter other Dutch citizens from criminal and political acts.

Hundreds of verdicts of the Obergericht have been preserved. An analysis of the motivation of this court’s verdicts demonstrates how the judges, or at least the Nazified ones, thought. Predominant is the idea of society (Volksgemeinschaft) prevailing over individuals. In short, those among the accused whom the court regarded as threatening to the political regime and the Volksgemeinschaft were to be eliminated (ausgemerzt). In one case, for example, three burglars were condemned to death. The German court supported its decision by pointing out that these three were antisocial citizens (asoziale Elemente) who had never been of any use to the Volksgemeinschaft. Such people, the court concluded, had no right to exist (keine Existenzberechtigung).20

It is remarkable that these courts hardly played a role in the German racial policy. Cases against Jews or those married to Jews were rare. The persecution of Jews in the Netherlands seems to have been an exclusive matter of the German police.21

Nevertheless, the role of these two German courts in fighting political opposition was in some ways limited. The severe cases against members of the resistance were outnumbered by cases dealing with more modest crimes like stealing from a German soldier or insulting a German citizen. Moreover, these two courts did not have a monopoly in punishing opponents of the regime. Political cases were also brought before the German military courts (the already mentioned Feldgerichte) since these courts were entitled to sentence acts “in favor of the enemy” (Feindbegünstigung), which could be interpreted as almost anything.

Even more important is that the Gestapo also had quasi-judicial powers. The Gestapo could simply refuse to bring a suspect before a court. In that case, the suspect stayed in the hands of the Gestapo and received what could be called quasi-judicial punishment. In practice, this often meant that he was sent off “until further notice” (bis auf Weiteres) to concentration camps under protective custody (Schutzhaft).

The Gestapo gained more and more power after the spring of 1941, and its predominance in the field of repression grew stronger. As was already stated, the persecution of Jews in the Netherlands was directed and executed by the Gestapo. The same could be said about the tracking down of Dutch Communists.
and other “enemies” of the political regime. The methods of the Gestapo (the use of coercion, violence, and spies) were to become notorious. However, it should be stressed that, at least during the first part of the German occupation, the Gestapo could count on some assistance from Dutch authorities and individuals. Based on the files of about two hundred cases that were brought before the Obergericht, it can be stated that in most of the more severe political cases, in particular cases against Communists, denunciation and spying by Dutch citizens had led to the tracking down of suspects and the breaking up of resistance groups. Some of these Dutch “assistants” were professionals (Vertrauensmänner) and were employed by the Gestapo. Others were motivated by various reasons. Some saw it as their duty as good citizens or good servants to inform the police. Others hoped to profit financially: Denunciation could be attractive as the Gestapo frequently rewarded the denouncers.22

Personal resentment and frustration could also play a part. In one case, for instance, a father wanted to teach his obstinate son a lesson by telling the German police of his son’s political activities. He had hoped a week or so in a German jail would discipline his disobedient son. But things got totally out of his control once the Gestapo started the investigation. Repeatedly, the father tried to get his son set free; without success, however. On top of the months in custody, the son was sentenced by the German Obergericht to prison for two years.23

Of great importance too was the willingness, especially initially, of the Dutch administration to cooperate. This is particularly the case with regard to the Secretary-General. As the stand-in for the minister, his task was to direct and to supervise the Dutch police and the Public Department of Prosecution. During the first nine months after the German attack, this position was held by J. C. Tenkink. Although not sympathizing with the Nazi ideology, Tenkink accepted German rule and instructed his civil servants accordingly because he feared that, if the Dutch did not cooperate but instead fought German rule, the influence of the Dutch authorities would only diminish in favor of German power and even more would change. In the spring of 1941, however, Tenkink could no longer cope with German policies and resigned. J. J. Schrieke, a prominent Dutch Nazi, was appointed by Seyss-Inquart. From then on the German regime had a very compliant authority as its Dutch counterpart.24


During the two years that followed the revolt in February 1941, the German regime strengthened its grip on the Dutch judicial system. At the same time, a German judicial system, which had already been set up in 1940, showed its
political might in these two years, by implementing the German policy of oppression and by fighting and punishing those who opposed the new order. Although the leading role was played by German organs (Gestapo and German courts), there was some assistance by Dutch authorities, agencies, and citizens.

The relatively compliant attitude of the Dutch diminished, however, as German coercion grew. This became evident in 1943. Faced with enormous losses on the eastern front and shortages of manpower in German industry, Berlin decided to bring in foreign workers on a much larger scale. In this year the regime in the Netherlands, being instructed accordingly, started to force Dutch men to work in Germany (*Arbeitseinsatz*). The Arbeitseinsatz in the Netherlands was not restricted to specific groups as had been the case with the persecution of Jews and Communists. Quite the contrary, the Arbeitseinsatz affected almost every Dutch family. Ordinary citizens began to suffer from the German coercion. As a result of this, the willingness to cooperate also decreased drastically.²⁵

One event in the beginning of May 1943 illustrated this development. A German order to all members of the disbanded Dutch army to report for internment as prisoners of war was linked by the Dutch population with the policy of Arbeitseinsatz. Thousands laid down their work in protest at this measure.²⁶ The strikes were isolated and therefore relatively easy to fight. Again, the judicial system was adapted to the new situation. Seyss-Inquart introduced a new kind of court: the *Polizeistandgericht* (Summary Police Court). In May 1943 this German court tried offenses that breached summary law. In theory, anyone who breached the public order was to face the death penalty. The justice administered by this Summary Police Court was, in part, the justice of laymen, for the tribunal consisted of a presiding SS judge and two accompanying SS officers. A great many people were brought before this new type of court, and the death sentence was passed on a little over one hundred Dutch people as a result. Nearly all the death sentences were carried out immediately.

Within two weeks, the strikes had been broken. The number of victims who fell in this short period was high: Dozens of people had been shot down in the streets, hundreds had been arrested, and nearly all the people who had been sentenced to death by a Summary Police Court had been shot by firing squad.

Tranquility did not, however, return after this bloody episode—quite the contrary. Increasingly, Dutch citizens failed to comply with German orders and commands. Numerous people began to help the “disobedients” (especially young men who refused to work in Germany). The provision of organized help to those who chose to go into hiding got well under way in the months that followed the strikes of May 1943. Also, the resistance began to use violence more often. Raids on banks, stores, prisons, and buildings of the Dutch administration became part of the everyday reality of the occupation over the course of time. Assassination attempts on those who supported or worked for the German occupiers also took place more frequently.
This change of scene, again, had consequences for the judicial system. As to the Dutch system, German pressure increased. From May 1943 onward the Gestapo operated even more harshly and started to intervene with the Dutch administration of law. Complete groups of suspects, like those charged with having violated the rationing laws, were now removed from the jurisdiction of the Dutch courts. The Gestapo and the German courts took over these cases. In general this meant that these suspects were sentenced to severe sentences. At the same time, Dutch judges whose light sentences had come to the attention of the German authorities ran the risk of being dismissed. Sentences already handed down that the German authorities deemed too lenient were simply “supplemented” by the Gestapo. Several Dutch men, who had served out their sentences imposed by a Dutch court, were arrested again and imprisoned by the Gestapo.

There were also changes in the German judicial system after the strikes of May 1943. First, the Feldgerichte were freed of work: From 1943, cases of minor significance were more frequently handed over to other German courts, like the Landesgericht. As a consequence, the importance of the latter court was marginalized, as from May onward this court dealt merely with petty crimes, like theft from Germans, the possession of pigeons, and some trivial acts of political disobedience, such as the possession of a radio. The Landesgericht was overloaded by these cases. Until the early summer of 1944, the Landesgericht dealt with an average of more than two hundred cases monthly.

Compared to the Landesgericht, the Obergericht never had a busy schedule. This remained the same from May 1943 until September 1944. Just a few hundred cases were brought before this court. The performance of other organizations could be considered an important explanation for the relatively low number of cases brought before the Obergericht. The Gestapo and its quasi-judicial powers have been mentioned before. But in September 1943, Seyss-Inquart also decided that the Summary Police Court could administer justice in “normal” times (i.e., without a state of summary police law being declared first). From that point onward, political opponents were often brought before this court.27 The Summary Police Court tried its first case in the third week of September 1943; the last one followed in July 1944. In the intervening period the Summary Police Court is estimated to have sentenced to death more than two hundred members of the Dutch resistance. The accuseds’ positions before this court were weak, and the proceedings themselves were exceptionally short in duration. In a great many cases, judgment and sentence would be handed down within a few hours of the case having begun, and the sentence carried out within a few hours.

Thus, this new court took over some of the work of the Obergericht. Of importance too had been the growth, both in severity and number, of punishments without recourse to the courts. Burning down houses, hostage taking, executing citizens who had not been condemned to death by a judge became new ways in which the German authorities responded to Dutch acts of resistance. These
extrajudicial measures were not always directed against suspects. An example of this was “operation spruce” (*Silbertanne-Aktion*, after the metaphor of chopping trees as killing innocent people, used by the head of the Gestapo), initiated in the fall of 1943: Attacks on people who worked for, or sympathized with, the German regime were avenged by reprisals on innocent civilians.  

This operation spruce signified that the German regime was shifting from the policy of punishing the culprits to one of taking revenge on innocents for anti-German activities. The Gestapo was the main executor of this and other similar measures. Courts, Dutch and German alike, did not participate in this policy.

**Months of Terror: The Judicial System during the Last Phase of the German Occupation**

From the late summer of 1944, citizens who allegedly acted against the German regime were only rarely brought before a court. The Landesgericht was the first to stop trying cases. It seems as if the German regime, having looked at the reality of the occupation, gradually began to have their doubts about the relevance of trying these less severe cases. In the course of 1944, the number of minor cases that were tried dropped sharply. With regard to the other German courts, the general trend was the same: Only occasionally did a court take on cases in this final period of the occupation.

The Gestapo, during that time, gained an almost untouchable position. On the one hand, this organ used such extrajudicial methods as were mentioned above. On the other hand, the Gestapo achieved just about a monopoly in terms of tracking down, persecuting, and punishing suspects. Since September 1944, the fate of the arrested suspects was in the hands of the Gestapo. Those who were involved in serious political cases feared for their lives. In the occupied Netherlands it became the custom to delay execution until an act of resistance was committed in the vicinity, so that the execution by firing squad could serve as an act of reprisal. For purposes of general intimidation, this would be communicated to the Dutch public at large. Hundreds of Dutch civilians fell victim to these executions.

**Some Conclusions**

It is precisely this last period of the occupation that determines the postwar view on the judicial system during the occupation. In this view there is no place for normalcy or continuity. The break with the prewar years was complete and radical.
As has been demonstrated, this is in fact true: During the German occupation the judicial system changed drastically. The politically independent system was transformed into a political system, an instrument of the German regime. On the one hand, the existing Dutch system lost its political neutrality and autonomy as it became subjected to German supervision (and, eventually, intervention). On the other hand, the organs of the new German system—police, public prosecutor, and judiciary—acquired political tasks as they started to chase, persecute, and punish those citizens who were regarded as enemies of this regime.

However, it should be emphasized that, first, the break did not occur at once, but bit by bit, crack by crack. The transformation into a political apparatus was a gradual process that should be seen in a much broader context: Developments inside, and outside, Dutch society influenced the judicial system constantly. One could consider this instrumentalization of the judicial system a reflection of the worsening relationship between occupier and suppressed population. This relationship became especially critical at three specific moments: February 1941, when street fights in Amsterdam resulted in a general strike; May 1943, when Dutch citizens went on strike as a reaction to the German policy of forcing Dutch men to work in Germany; September 1944, when allied troops invaded the Netherlands and liberated parts of it. These three episodes also marked drastic changes in the judicial system.

Second, one should keep in mind that the Gestapo, although powerful from the start, was not always the only organ of this system. There was some cooperation by Dutch citizens and authorities alike. Until late summer 1944 various courts were set up to try those accused of opposing German rule. More than twelve thousand cases were brought before the Landesgericht and Obergericht, for example. Besides these German courts, the Dutch courts continued the administration of law, although under the supervision of German authorities.

As German coercion became less selective and more people suffered from this, the initial cooperation of the Dutch diminished rapidly. From then on, the German regime relied more and more on the Gestapo as its organ of repression. The German supervision of Dutch courts changed into intervention. Fewer cases were brought before the German courts. Other, extrajudicial methods were tried to fight resistance and social disobedience. Gradually, terror became a part of daily life in the Netherlands. By then the break with the prewar years was complete.

Notes

2. Centraal Bureau voor de Statistiek, ed., *Criminele Statistiek*.
3. Netherlands Institute of War Documentation (NIOD), arch.215, ds.15, 1 J 217/40, 9 J 292/41g; ds.16, 2 J 318/40g; ds.18, 2 J 333/40g; 1 J 129/40g, 1 J 192/40g; ds.19B, 1 J 185/40g, 10 J 239/40; ds.20B, 9 J 237/40, 1 J 128/40g; arch.206, ds.7, doc.1361–1–1500 (2 J 333/40g); ds.8, doc.1361–1-5425 (1 J 252/40g); ds.8, doc.1361–1-6320 (2 J 319/40g).


7. De Telegraaf (3 September 1940).


13. For an overall view of the number of cases that were dealt with by *Landesgericht* and *Obergericht*, see the annual registers of the German courts (L-Register, O-Register, Ns-Register) and the German public prosecutor (StA-Register, VR-Register). These registers are at the NIOD. The statements on the German administration of law are based on data derived from the archives of the NIOD, especially arch. 34–37 and coll. 214.

14. About the strike, see Meershoek, *Dienaren van het Gezag*; Pelt, *Vrede door Revolutie*; Reuter, *De Communistische Partij van Nederland*; Roest, *Oorlog in de Stad*; Sijes, *De Februaristaking*.

15. For more information on these courts of peace, see Geus, "Vrederechtspraak," 48–86.


19. Ibid., 332–33. These numbers are related to the period of occupation as a whole (that is, from May 1940 to May 1945).

20. SG 34/42. NIOD, arch.35, ds.21.


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23. SG 43/42. NIOD, arch. 35, ds. 22.

25. In this respect, from 1943 the situation in the Netherlands started to differ drastically from that in Germany, as outlined by the American historian Eric Johnson in his book *Nazi Terror*. As more people suffered from coercion in the Netherlands since the forced labor policy started, one could say that, contrary to the German situation, the Nazi terror in the Netherlands had become less selective and exclusive.

26. For further information about this strike in 1943, see Bouman, *De April Meistakingen*.

27. The *Reichskommissar* later extended its jurisdiction to encompass people who had allegedly been involved in burglary raids on government institutions and agencies.


29. The instructions given to German police officers about passing only serious cases on to the courts in future should be seen in the context of these doubts. Telex Deppner to all Außenstellen (7 June 1944). Bundesarchiv Berlin, R 70 NL/16.
