

Transcript

00:00:00 Speaker 1

Today is May 8th and it is the 80th anniversary of the end of the war in Europe. Soldiers of the Syrian regime that have been captured after a battle and that.

00:00:20 Speaker 1

They have been tried by a court of the Free Syrian Army on which sat a number of judges.

00:00:31 Speaker 1

Who had defected from the official judiciary of Syria to join the Free Syrian Army.

00:00:39 Speaker 1

And who had applied the Syrian Penal Code and the men were found to have committed murder and rape, and indeed to have documented some of their crimes on.

00:00:48 Speaker 1

Their own cell phones.

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That had been found on them when.

00:00:51 Speaker 1

They were captured.

00:00:54 Speaker 1

And so and the penalty for these crimes under the Syrian Pen Peel Code was capital punishment.

00:01:03 Speaker 1

Second was not there the the day of the trial he was on on assignment in another village, and when he came back, he was simply ordered to be part of an of a firing squad and told these men have been convicted by a court and have to be executed. And so he he did.

00:01:23 Speaker 1

And so he argued that he was, you know, just executing a sentence of a court and and ought not to be held responsible.

00:01:31

Help.

00:01:34 Speaker 1

The the Stockholm.

00:01:35 Speaker 1

District Court concluded that the court could be validly constituted and could exercise jurisdiction and apply this law.

00:01:47 Speaker 1

But that because there was only 24 hours elapsing between the capture of these government soldiers and their execution that the trial had been manifestly unfair and there and so. So the problem was the fairness of the trial. The problem was not.

00:02:07 Speaker 1

From the law nor.

00:02:09 Speaker 1

Jurisdiction. But how the trial played out?

00:02:15 Speaker 1

And for that reason, the the Court held second guilty of murder condemned him to life in prison for murder in the first degree in Sweden, and to this day he is in a high security prison.

00:02:35 Speaker 1

In Sweden.

00:02:38 Speaker 1

So.

00:02:39 Speaker 1

This is uh. You know, it's interesting and and we might think, OK, it's understandable because in that context the the non state armed group here, this is the Free Syrian Army is in control of territory over parts of Syria.

00:02:59 Speaker 1

It is exercising public governance in that part of Syria. It is sort of the state in that part of Syria because the Syrian state is not there, right? This area was no longer in control. So it is, you know.

00:03:16 Speaker 1

Just no state justice in lieu of state justice, one state justice isn't possible. It's not accessible. There were no here in state courts operating.

00:03:29 Speaker 1

In that part of Syria at the time, and in any case, there was no justice to be found in the courts of the government of Syria in in all cases.

00:03:40 Speaker 1

Now that was so in that case, you know, if you wanna read 500 pages about that, you can go look at the book that I read. And then there's all sorts of variations, you know, from the FARC to the Tamil Tigers that go in different directions and that are not quite the same.

00:03:59 Speaker 1

Yes, here.

00:04:01 Speaker 1

What we see is that this also can occur.

00:04:06 Speaker 1

In situation where the state is there and the state is fully.

00:04:12 Speaker 1

So that.

00:04:15 Speaker 1

Non state justice can happen despite the state as a challenge to state authority.

00:04:23 Speaker 1

And a another fascinating example that again nearly nothing on this and certainly not in in law, are the establishment of core.

00:04:38 Speaker 1

As in Jewish ghettos in territory occupied by Germany during World War 2, and this happened in Lords Vilna, Warsaw and other places, there's very little information about what happened in the ghetto.

00:04:59 Speaker 1

For obvious reasons. And so the very fragmentary.

00:05:06 Speaker 1

Information available now, so to get those were established by German authorities to gather Jews in territory that they occupied, and so they concentrated the Jews and concentration.

00:05:26 Speaker 1

These concentration camps, or initially in cities.

00:05:31 Speaker 1

And and the Germans created for each of these ghettos Judenrat so a Jewish Council, literally so that essentially the Jews could administer themselves, that the Germans didn't have to do it right. And so the Jews were in charge of.

00:05:50 Speaker 1

Distributing to food and and education.

00:05:55 Speaker 1

Healthcare in as much as there was any of these things actually available in the ghetto, some in some of the ghettos. This included a court that was at the court of the Act in the ghetto and and so some of these courses were established with the knowledge.

00:06:17 Speaker 1

And consent of German authorities.

00:06:21 Speaker 1

But even where such courses were created with the consent and knowledge of the German authorities, well, what I found is that they did stuff that they were allowed to do and.

00:06:33 Speaker 1

Then other things they.

00:06:34 Speaker 1

Weren't supposed to do right, and so it was used as as as a way to sidestep German authority.

00:06:41 Speaker 1

Even when it was a a recognise.

00:06:44 Speaker 1

Courts and in other ghettos the courts were established completely without the knowledge or consent of German authority so completely as a kind of ground up a Community Action to create law and order.

00:07:04 Speaker 1

In in the ghetto.

00:07:08 Speaker 1

And so one of the rare documents that we have access to that speaks to that is a a diary by a man named Herman Cook, who was in the Vilna Ghetto for several years.

00:07:28 Speaker 1

And he wrote a diary. And this.

00:07:33 Speaker 1

So this is actually amazingly.

00:07:36 Speaker 1

This is a photo of the page of the manuscript or or the the original of the diary that was recovered at the end of the war in 1945.

00:07:47 Speaker 1

And this is an expert that you can see where he talks about, of course. So for some time, the court has been functioning, you know, getting or carrying out, carrying on its work by authorization of the Union. So currently official one, of course, wherever there is a police with the criminal department or local.

00:08:06 Speaker 1

Which prison and secret police, etcetera, would also be in court? And of course, wherever there is a court, there must be a prosecutor.

00:08:13 Speaker 1

A judge, lawyer, secretary.

00:08:15 Speaker 1

The chief judge of the court is the hill attorney Solowitz. The judges are Arusha Schmick's, North Andover on Tuesday, February 2nd, 1942.

00:08:28 Speaker 1

Public trials failed, which had the genuine stamp of gangsterism. Hayman, faults and leisure on trial. All three hired lawyers remain, was found guilty and sentenced to six months in prison.

00:08:41 Speaker 1

Or 200 mark fire.

00:08:42 Speaker 1

Courts and Glaser, 3 months in prison.

00:08:45 Speaker 1

The pretrial conditions included, and they have the right to appeal to the youth.

00:08:51 Speaker 1

So I don't know about you, but.

00:08:54 Speaker 1

To me this sounds like a pretty ordinary.

00:08:57 Speaker 1

Like description of a court, a day in court, despite the circumstances that were extraordinary.

00:09:06 Speaker 1

Obviously, Jewish ghettos often have an overabundance of lawyers, and so there is no shortage of, you know, qualified juries to play a role in these.

00:09:18 Speaker 1

In these institutions and you know the the the Jewish population of territories occupied by the Germans was a population like any other population with Nice people and some less nice people. And so there were all sorts of anti social behaviour inside the ghettos of the kind that you find in every.

00:09:26

Eminence.

00:09:40 Speaker 1

In every place, and that every time. And so there was a need, indeed a demand by the population of the ghetto.

00:09:47 Speaker 1

For law and order.

00:09:48

Yeah.

00:09:49 Speaker 1

And so these courts handled everything from alimony to murder.

00:09:54 Speaker 1

And they sanctioned with everything from payments of, you know, 5 kilos of potatoes to death by Kenya. And capital punishment was imposed by Saudis, Ghetto courts on Jewish inhabitants of the ghettos.

00:10:07

OK.

00:10:15 Speaker 1

All serious drugs.

00:10:17 Speaker 1

Under what law are you? It's hazy. It's, it's seems to not have been altogether clear or or at least reading the information we have, it seems not to have been completely clear, but it begs the question, you know, what was the law like? What law?

00:10:37 Speaker 1

What? Who has jurisdiction? What about these judges? I mean, did they? Is that lawful? Did they?

00:10:44 Speaker 1

Commit a crime.

00:10:46 Speaker 1

We know that after the war, couples.

00:10:50 Speaker 1

From concentration camps were prosecuted where these were inmates that.

00:10:56 Speaker 1

You know, had authority position inside the camps. My knowledge no judge was ever prosecuted for presiding over putting, you know.

00:11:07 Speaker 1

Official murder of individuals.

00:11:11 Speaker 1

So it is, it is complicated. We we can make this complicated further and the connection is is to some extent to a different.

00:11:27 Speaker 1

Type of Jewish courts established in displaced persons camp after the end of the war displaced persons in Germany in 1945 were not Germans. Those were described as refugees, DPS were Jews or other kind of enemies.

00:11:47 Speaker 1

Of the lake.

00:11:48 Speaker 1

And they were placed in camps for their protection, and they were camps created specifically for Jews.

00:11:55 Speaker 1

Within the Allied zones control and in the American zone there it was discovered that the Jews had created their own courts. Presumably they probably.

00:12:09 Speaker 1

Were courts.

00:12:11 Speaker 1

The concentration gaps, but.

00:12:15 Speaker 1

I I this is I suppose there is. I have no evidence that there were, but if there were some in the ghettos and then some of the.

00:12:22 Speaker 1

GDP.

00:12:23 Speaker 1

Gaps. You know, it'd be surprising if there were none in the intermediate phase in the.

00:12:30 Speaker 1

Concentration or extermination camps and here. So the camps were created to prosecute Capitals initially who were discovered in the DP caps to avoid that this quote. This is from a report that I found about this.

00:12:49 Speaker 1

To avoid, you know, being lynched.

00:12:52 Speaker 1

Process.

00:12:53 Speaker 1

And from there these quotes.

00:12:57 Speaker 1

Acquire the general jurisdiction.

00:12:59 Speaker 1

And at some point, the Americans discovered this. When the wife of a capo who was convicted complained to the Americans. And then the Americans woke up to the fact that these courts had been operating in the camps and they tried to stop them. And they ordered that these courts stop operating. But they continue anyway despite American.

00:13:19 Speaker 1

That opposition.

00:13:21 Speaker 1

So all of this you know is.

00:13:28 Speaker 1

And then there.

00:13:29 Speaker 1

Was another bit here of the.

00:13:30 Speaker 1

Same document. So all of this.

00:13:33 Speaker 1

You know, begs a lot of questions as you know. What is the door here and how do we decide if we try to figure out, you know, what is the legal answer?

00:13:42 Speaker 1

To to this question, what is? What is the answer to be to be given?

00:13:49 Speaker 1

No jurisdiction is one of the devices that the law uses to settle those kinds of disputes. So to manage the multiplicity of laws, because there is always a lot of laws right, there are always contradictory.

00:14:08 Speaker 1

Legal orders from from different places, and so we're used to that. And so who has jurisdiction is one way to deal to deal with.

00:14:18 Speaker 1

And and and there are rules about time, place, action and actors that set settle who has jurisdiction or primary jurisdiction.

00:14:29 Speaker 1

The international law there is no there are no jurisdictional monopolies. Right? And so, because of equal sovereignty of our states, it's very, you know, it's it's hard to reconcile that with any absolute claims of monopoly. So overlapping jurisdictions in international law is the rule. It's been described as.

00:14:48 Speaker 1

With the right. That's why you can have multiple prosecutions for for the same event, right? Maybe it's in Eden only applies for the same jurisdiction and the same crime, not different jurisdictions. Double taxation isn't a problem right? In a different in a different field.

00:15:08 Speaker 1

Private international law is another area is another device to settle competing claims as to what is the applicable.

00:15:20 Speaker 1

Well, but private international law conflict of laws, as the Americans say, is really about coordinating unilateral recognition of foreign laws by local courts, rather than really coordinating which law.

00:15:40 Speaker 1

Regulates so both jurisdiction and private and national law are in stride in.

00:15:48 Speaker 1

A statist understanding of law that is connected to a positivist understanding of law, and this interesting quote.

00:15:57 Speaker 1

The the general counsel of the US Department of Defence, that international law that clearly affirms that so international law is made by state and is 4 steps, that certainly simplifies some of the stories that I've been talking about, but not not all of them, and my suggestion.

00:16:17 Speaker 1

Is that?

00:16:20 Speaker 1

Legal pluralism, as opposed to positivism, offers a richer understanding of law that allows us to speak more fully and deeply to the realities that have been describing than positivism. Because, as I say, and I won't go through it, because it's time for me.

00:16:39 Speaker 1

To stop talking.

00:16:41 Speaker 1

You know, positivism is is predicated on your modism centralism, positivism and prescriptivism as opposed to legal pluralism, whereby law is fragmented, so not necessarily coherent, decentralised, with many centres of creation application.

00:17:01 Speaker 1

Contingent, so legal norms, legal rules do not have a a priori content, right? They acquire content in interaction with some kind of setting, such that what in American law school.

00:17:17 Speaker 1

Or common law laws where they describe as Iraq issue rule application conclusion. This legal abomination as my students is because you know that doesn't make sense and always deliberate. So it's more of a way to talk to each other than.

00:17:37 Speaker 1

Kind of set of rules providing answer.

00:17:40 Speaker 1

So legal pluralism. So, you know, allows us to avoid a conclusion that positivism sort of mandates that these courts really are all vigilante courts or kangaroo courts or mob justice.

00:18:00 Speaker 1

Which is the way they tend to be described by whoever's in charge of the government in in the area that they relate to.

00:18:10 Speaker 1

So legal pluralism advises us to engage with a wider range of norms and practises as law and and that allows us to engage with, among other things, the fairness of the proceedings, because these are not. These are not, of course not, nor nor is it.

00:18:26 Speaker 1

Law.

00:18:27 Speaker 1

Then there's no way we could justify talking about the.

00:18:30 Speaker 1

Fairness of it.

00:18:30 Speaker 1

Because that only relates to quoted line law.

00:18:34 Speaker 1

And so you need to be, I think, a pluralist in order to to get there. It doesn't mean that everything becomes law, nor that law is reducible to power, to a claim of hierarchy, because power is never absolute.

00:18:54 Speaker 1

And for their Jews in ghettos is, you know, is there an image of a more disempowered individual than Jewish Jewish persons under Nazi authority, in a ghetto? And yet even then managed to have ages.

00:19:14 Speaker 1

So law is, you know, more than a.

00:19:18 Speaker 1

Set of rules.

00:19:19 Speaker 1

To to authorise or prohibit. And I leave you with these two quotes from from Robert
Katha in his wonderful article. No, most narrative who speak.

00:19:29

The.

00:19:32 Speaker 1

Serve the capacity to law to imbue action with significance is not limited to resistance
or disobedience, nor is a resource and signification that enables us to submit rejoice,
struggle, prefer more disgrace, humiliate or dignify, or with some humorous citing
myself.

00:19:53 Speaker 1

In a rebel court, so law stands not only as a system of rules, but also as a register of
meanings, a claim of identities and a mass manifesto of arbitrary.

00:20:06 Speaker 1

Have aspirations. So my argument is.

00:20:09 Speaker 1

That for us to be.

00:20:11 Speaker 1

Good lawyers, we have to tackle law in this much wider understanding rather than
narrow ourselves and say that other problems are politics or just, you know, ordinary
life.

00:20:26 Speaker 1

That no does not go.