

WORKSHOP

COLLECTIVE DECISION-MAKING AND THE RULE OF LAW

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Transitional justice and the rule of law: Tainted judges and accountability for Nazi crimes in West Germany

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Abstract

Despite a concerted effort at denazification following the defeat of Nazi Germany, a substantial proportion of judges tainted by close association with the national socialist (NS) regime found employment in the post-war West German judiciary. Using an original dataset on more than 500 accused Nazi criminals in West German courts between 1952 and 1964, we demonstrate that this NS legacy had a profound impact on accountability for Nazi crimes: Accused Nazi criminals who found themselves in courts staffed with a greater proportion of tainted judges had substantially higher odds of escaping conviction. These findings have direct implications for the connection between transitional justice and the rule of law, and for trade-offs involved in retaining officials and collaborators of an authoritarian regime in the wake of a democratic transition.