

Justice in Lüritz

Experiencing Socialist Law in East Germany

Inga Markovits



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JUSTICE IN LÜRITZ

Again, for Dick

*“Bei hellem Tageslichte
hab ich es anders gesehn.”
“Gewiss. Geschichten und Geschichte
wachsen und wechseln schon im Entstehn.”*

—THEODOR FONTANE

“In broad daylight
I have not seen it so.”
“I know. Stories and histories
shift and change as they grow.”

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I have spent an embarrassing amount of time and effort on this book and, in the process, relied on the help and advice of more people than I was entitled to expect. Supportive representatives of the East German Administration of Justice provided access to the Lüritz records. Experienced colleagues mediated during my negotiations with data protection officials. Patient archival staff fetched one bundle of files after the other from their cellars and deposits. At the Lüritz Magistrate Court and the Prosecutor's Office in Neuburg, I graciously was provided with the space, the explanations and the help I needed to find my footing in an unfamiliar work environment. The many partners to my interviews—above all, Frau Rüstig, Frau Walter, and Frau Neuman—described as honestly and as precisely as they could what it meant to be a judge, and to be judged, under Socialism. The German Volkswagen Foundation generously financed my many trips to Lüritz, to Neuburg, and to Potsdam. And my family, throughout all these years, bore up with loving equanimity under my many journeys to the sources.

If I misread my data, misunderstood my witnesses, or missed out on important aspects of my story, I have only myself to blame. I have tried hard to get things right. There were times when I thought that this book never would get done. Here it is.

JUSTICE IN LÜRITZ

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CHAPTER 1

THE FILES

There is no Lüritz. But the place hiding behind this name exists: a town of about 55,000 inhabitants in that northern part of Germany that not so very long ago belonged to the German Democratic Republic (GDR), now deceased. Lüritz is a pretty town with a big market square, two or three beautiful churches, the remnants of two city gates, a once busy port, a shipyard (now also much reduced in size and workforce), an engineering school, and a number of splendid Renaissance buildings in front of which the tourists study their travel guides. One of these buildings houses the city's magistrate court. Of its eight judges, seven are West Germans.

There always was a courthouse in this place: under the Archduke, the Weimar Republic, the Nazis, the Socialists, and now, finally, under the rule of law. Most of the times it was called, as it is today, the "magistrate court." Only under the Socialists it was a "district court," in which, during the last years of the GDR, a crew of five judges decided together about a thousand cases a year: a potpourri of civil litigation, labor and family law disputes, and criminal cases. Today, four of those judges are attorneys in town; only the fifth, still young and inexperienced when the Wall collapsed, was kept on the bench after what the Germans call "*die Wende*"—the Turnabout. In the court's archive, Socialist and rule-of-law case files are peacefully united on shiny metal shelves (the old wooden shelves, all solid oak, were thrown out soon after the reunification), and only the changing colors of the folders and their suddenly increasing bulk would tell a curious visitor that around the year 1990, the town's legal life must have experienced an important change.

It was no accident that I discovered the Lüritz courthouse. Soon after the demise of Socialism, an East German colleague had hinted at possible archival finds in the former GDR: there must be courthouses, he said, that had preserved almost their entire output, because the East German administration of justice was notoriously short of staff and would not have managed to always properly weed out its superannuated records, as the law required. With a little luck, I might find a court that had held onto most of its files since the early postwar years.

So I went on a search in Mecklenburg, that part of Germany where Bismarck had said he wanted to be when the world came to an end, because in Mecklenburg everything happened fifty years later than elsewhere. Hopefully, that would

include the cleansing of archives. Inquiries at twenty-four brand-new magistrate courts (erstwhile district courts) finally led me to Lüritz. I remember well how the sight of the Lüritz courthouse stirred my hopes: a grand affair with two broad wings, built more than four hundred years ago as a wedding present for the daughter of a duke and surely big enough to have had room to preserve the court files of four decades. And indeed: the shelves in the court's archive contained case law from the very beginnings of the GDR until its end—not without gaps, but complete enough to trace the life course of a legal system that started out with the hopes of a few believers and that collapsed under the suspicion and disappointment of so many.

As I left the Lüritz courthouse after that first visit, I noticed a little door in the curved wall of the circular staircase, too low for an adult to enter without stooping. “That is the wood cellar,” I was told. “That’s where we keep our waste paper.” After the Turnabout, the court had not yet found the money to hire a hauling company to carry off its waste. The wood cellar turned out to be a dark and chilly vault filled to shoulder height with the byproducts of forty years of judicial administration: registers and ledgers of all sorts, personnel files, search and arrest warrants, citizens’ letters and complaints, desk diaries, communications between the district court and the superior judicial bureaucracy, judges’ notebooks covering briefings and training courses, work plans—a veritable garbage pile of legal history and a gold mine for me. I asked for a delay in its disposal and returned during my spring break to spend a week under the dangling light bulb of the wood cellar, sorting with freezing fingers through the treasures. As a child, I had sometimes played with the idea of stealing the contents of a mailbox at a busy intersection in town and, by reading every letter in it, discovering what life was all about. Now I had found my mailbox.

This book is based on my Lüritz discovery and on conversations with many people in town who, in one way or another, came into contact with the law: judges and prosecutors; plaintiffs and defendants; party functionaries, city officials, *Stasi* collaborators. With the help of my files and interviews I want to reconstruct the rise and fall of a totalitarian legal system from the vantage point of ordinary citizens. I am not interested in the big and important happenings in East German legal history: the plenary sessions of the Central Committee, the pronouncements by the Party leadership, the major decisions of the Supreme Court. We know enough about those. Legal sociologists have often told us that even under the rule of law, there are wide gaps between the law on the books and the law as practiced or not practiced in real life. Under Socialism, too, the legal prescriptions of the powerful had to be obeyed and carried out by those at the bottom. What did law made in Berlin look like by the time it was applied in Lüritz? How did Lüritz notables and ordinary citizens deal with it? How did the law affect them, and how did they affect the law? The legal institutions of So-

cialism in the GDR are dead. But the past is still alive in the minds of those who lived it. It is their experiences that are the subject matter of this book.

It will not be easy to extract from my files and interviews what Leopold von Ranke optimistically described as “what really happened.” In Lüritz, too, there won’t be one but several pasts, the products of the convictions and the vantage points of their respective observers. Moreover, I am an outsider, accustomed to legal conventions that may lead me to misinterpret GDR events and the reports of my informants. And can I trust even the files? Can I trust the memories of my conversation partners? Do I have to worry about being lied to? Or will I rather be misled by being too suspicious? The past is an uncertain territory. Some readers may remember it differently from the way I will describe it. To not appear unduly confident of my own impressions, I will present not only the facts, as I see them, in this book, but also some of my doubts and the mistakes I made on my search for what Socialist justice meant in Lüritz. I hope that in this fashion my excursion into the past may appear credible even to those who have experienced it differently.

But legal history written “from the bottom,” as it is attempted in this book, is harder to justify than “top down” history that focuses on those canonical events and people on whose significance we all agree. My Lüritz story deals primarily with everyday events. It is true that the sky will be reflected even in a village pond, and I claim with this book that “justice in Lüritz” can also stand for “justice in the GDR” and, reaching even further, for “justice under Socialism” with all its failures and, who knows, successes. But I will persuade my readers of the justification of this claim only if I succeed in describing my protagonists in ways that not only depict their own everyday hopes and experiences with the law but that also show the imprint of the political system which gave rise to them. I must make visible the general underlying the specific. I must endow my Lüritz actors with the credibility of Socialist everymen and women. And I must put together the many parts of my historical puzzle in ways that produce a portrait consisting not only of many specks of color but also displaying the shades and contours of an image that allows us to recognize and, hopefully, to understand its sitter.

I am not worried whether Lüritz, as a law-town, can serve as a useful model of adjudication in the GDR in general. The economic make-up of the city, with its mixture of heavy machinery and service industries, communal administration, tourism, and an agricultural hinterland, showed enough variety to allow its legal disputes to stand for disputes litigated elsewhere in the GDR. Moreover, the East German administration insisted on the uniformity of Socialist justice and constantly compared the output of its trial courts, calling those courts to order whose arguments or sentencing habits deviated too much from the national mean. As a result, my Lüritz files will be more representative of the work of trial courts everywhere in the GDR than the files, say, of a Bavarian or Bremen magistrate

court might be of West German judicial practice. But the grand lines of my Lüritz portrait will be harder to draw than if I tried to paint a history “from above.” Seen from up high and at a distance, the directions of developments are easier to recognize than when blocked by the obstructions of the grassroots level. The big events that we all read and heard about seem to legitimate themselves: since they happened in this and in no other fashion, they appear endowed with a developmental logic that needs no further explanation. But the details of my Lüritz story will make historical sense only if I manage to arrange them in meaningful fashion. But how? It will not do to simply string them on a time line. Instead, like an archeologist assembling the shards of a shattered clay pot, I must move around the pieces of my puzzle, arranging them first in this way, then in that, in order to discover the fit that best reveals the former contours of the artifact.

I have other problems, too. This will be a book with few footnotes. Their absence is due to the facts that, in Germany, court files are not publicly accessible (I needed the permission of the state’s Minister of Justice to gain entry to the Lüritz archive) and that I do not want to identify by citations even those bits of information gained from books and public archives open to all, because I want to preserve the anonymity of my town and of my story’s protagonists. But footnotes make a text appear trustworthy by demonstrating outside support for the author’s statements. I must find other ways to convince my readers that my account is sticking to the truth as best it can. “How can she know that?” might be asked by someone who learns of decisions and events that people usually do not know about unless they were involved in their occurrence. That means I have to talk about my sources.

First, the files that are the main foundation of my story. GDR district court files looked very different from the output of West German magistrate courts. West German judicial records are produced by lawyers for lawyers. They focus only on those issues that are disputed between the opponents at a trial; discuss these issues not in plain German but in legalese punctuated by references to code sections or case law; give voice to laypeople only in their occasional and curtailed role as witnesses; ignore the human conflict underlying a dispute and illuminate only that specific point at which a complex web of social relationships has torn apart. Since all the legally nonessential pieces of a human puzzle are lacking, it often is difficult to compose from the remaining pieces the picture of an everyday event. What actually happened? The reader, looking up from her lecture of the transcript, rarely has seen enough of the protagonists to feel sympathy with one or the other side. A West German court record is uninterested in the human dimensions of a legal conflict. What matters is who is in the right.

GDR court files tell a story. They begin at the beginning and often do not even stop at the end, perhaps because the judge may have to help solve some

remaining problems of a party (such as finding a job for someone who was fired) or because a criminal sentence is discussed (“*auswerten*” it was called: “evaluated” or, in literal translation, “made use of”) in the defendant’s work collective. Because it was the court’s task to resolve not only individual disputes but also the collective tensions that had caused them, others than the immediate participants were given voice in the proceedings. Neighbors commented on the pedagogic talents of both parents in a custody dispute; co-workers assessed the work ethics of a criminal defendant; court-appointed “social defenders” or “accusers” described the collective’s sympathy for or anger at a delinquent’s deed. Trials were conducted not in experts’ legal Mandarin but in workaday German. GDR judges were expected to instill respect for state and law in every person present in the courtroom and therefore had to be intelligible to all. Given the few attorneys and the many laypeople who participated in the process, East German court language was largely de-professionalized. What it gained in comprehensibility it lost in legal precision.

But to a reader of these files, their language is more colorful and humanly more informative than the professional lingo of West German records. In civil litigation, many parties to a dispute wrote their own briefs, and their outraged descriptions of why they were right and their opponents wrong help me to understand what mattered to Socialist citizens and what they expected from the law. The judges’ admonitions and objections reflect the obsessive pedagogic urges of this legal system. The questionnaires that husbands and wives had to fill out in every divorce suit demonstrate the planners’ belief in social management and provide me with information I would otherwise have missed, such as the division of household tasks in Socialist marriages or the differences in education and income between men and women in the GDR.

Even the paper used in the Lüritz records tells a story. In the immediate post-war years, when new paper was not to be had for love or money, the Lüritzers would use whatever could be squeezed into a typewriter or written on to compose their briefs, and if I turn around an early page, I might find a decision from the Weimar years or the clenched fist of a Socialist poster hero, now cut down to page size. No text from the Nazi years, though—after Germany’s collapse, the Lüritz archive must have been well swept. With the gradual establishment of the new regime, civic order returned to Lüritz, and paper became again available. Already now, the stationery that Lüritz citizens selected for their missives to the court reflected something of their strangely trusting dependence on a state that did not like to see a lawyer step between it and its children. Early briefs usually are handwritten and look more like family letters than like business mail. Polite petitioners send best birthday stationery, filled in Sunday script and with a picture of a flower in the corner; obstreperous ones send a few pages torn from notebooks, hastily covered in pencil scratch. The tone is human rather than official.

By the 1970s and 1980s, however, most of the briefs in the Lüritz archives are typed. Now I can tell by the quality of their paper which rank the senders hold in this society. The paper used by legal actors in the Socialist economy is smooth and firm. Communications sent by city administrators or other representatives of state officialdom look a little grainier and yellowed but still reasonably smooth. The letters coming from the Socialist judiciary are typed on miserable stock: thin and porous, in a smudgy beige. Occasionally I detect a few snow-white sheets among all the poor man's gray. They tell me that a West German attorney must have played a role in the proceedings.

I have spent so much time describing the Lüritz files because I want to show how much life may be hidden under the dust of long forgotten paper mountains. Besides the Lüritz archive, I have used other depositories of East German records: the Federal Archives (formerly in Potsdam, now in Berlin, which hold the files of the GDR Ministry of Justice and the Supreme Court, many of which contain reports on the country's district courts); the State Archive in Gronau (which keeps the records of the Lüritz District Leadership of the Socialist Unity Party [SED]); the *Stasi* Archive (for reasons that need no further explanation); the Lüritz City Archive (which holds a complete collection of the local newspaper—the *Lüritz Sentinel*—since 1947 that can tell me how the weather changes in East German politics affected my town). Now that the book is written, I find it difficult to leave the romance of the archives for everyday life at a university. Archives offer more sensual experiences than those provided by law libraries or search engines on computer screens: the rustling of brittle papers as you carefully loosen the string that bundles them together; their slightly musty smell of mushrooms and raked leaves; the golden shimmer on the ink of signatures that have dried long ago. Research becomes adventure. Like the discoverer of a city long lost under sand dunes or volcano ashes and now finally dug out again, I look for footprints of its citizens; try to guess from the objects that they left behind what might have happened in their daily life; rejoice if some unexpected find (the police photo of a fugitive, a newspaper clipping that somebody forgot among the pages) shines some extra light into a corner.

Because this legal system only recently was buried under the rubble of the ages, I have an advantage over the archeologist: I can test the information gathered from the files by way of interviews with the former inhabitants of my Atlantis. Since unemployment, the fear of an unknown Federal Republic, and sometimes even surprising success under the new system kept most of them at home after the Turnabout, I have been able to find eyewitnesses to events that happened many years, sometimes even decades, ago. Their reports will not always coincide with the information that I gather from the files. The files are more precise: their data on things that actually happened (such as the severity of penalties or the percentage of defendants represented by a lawyer) will be more

reliable than the accounts of those immediately involved in the proceedings, whose memories may be refracted in the prism of the political changes they have since experienced. But my conversation partners may be able to explain the human implications of a dispute; they can talk about their hopes and worries at the time, throw light on everyday practices that might mystify me, provide me with biographical information, and in many other ways infuse the sometimes cryptic summaries of Socialist court reporters with sense and life. One of my witnesses has even taken me along to visit the Socialist corner of the city's cemetery: once a resting place of honor, now dusty and overgrown with weeds. On a few gravestones I recognize the names of early postwar judges from my Lüritz courthouse. Only an occasional bunch of recently cut flowers reveals that one or another of the dead assembled here must still have relatives in town.

So these are the materials that went into the construction of this book. It is very likely that another author would have used the same sources I read to compose a very different tale. History is made not only by those who live it but also by those who, with their very own expectations, sensibilities, and limits, write about it. I catch myself continuously talking about "my town," "my courthouse," and "my judges." They are mine: I discovered them, I saved them from oblivion, I decide in which way to arrange my data to give their story meaning and direction. I will try to exercise the power of the narrator as honestly and as precisely as I can. Apart from the names of persons and of places, nothing in this book has been made up. If I often write "it seems" or "I assume" it is because I often am not fully confident of a particular interpretation. All sentences contained within quotation marks have been said or written just the way I cite them. I cannot claim to offer the only truth about what justice meant in Lüritz. Nevertheless, this is a true story, or at least one among several true stories. Was it worth all the effort? This book deals with a small section of life in a small town in a small country that you can't even find any longer on the map. And yet: justice and injustice under Socialism have affected the lives and minds of millions of men and women and have left their mark on peoples' expectations, reflexes, and memories for many years to come. I know no better place to gain access to the daily life that formed these habits and beliefs than the Lüritz archive.

THE BEGINNING

Where shall I start? Why, at the beginning, which in this case also means the end or, as the Germans called it in these years, “the zero hour.” But I could find no evidence as to the very first postwar months of my Lüritz story. The earliest case record in the Lüritz archive comes not from Lüritz but from Dorndorf, a little town in the vicinity, in which in August 1945, three-and-a-half months after Germany’s unconditional surrender, a “people’s court” of unknown provenance resolves two farmers’ dispute over the use of a meadow with a sound talking-to and a resulting settlement. Nothing besides the court’s unusual name hints at the confusion of the war and postwar years. In fact, Lüritz and its surrounding areas have been under Soviet military administration only since July 1, 1945, when the Western Allies, who arrived here first, agreed with the Russians on the final delineation of their Occupation Zones. The Lüritz museum holds a photograph in which a little girl hands a gigantic bunch of flowers to a Soviet soldier who with a friendly smile bends down to her. The idyll is not persuasive. Everyday postwar life in Lüritz must have looked different. More like this:

The city is overrun by treks of refugees who on their westward flight are looking for food and shelter. A quarter of all living accommodations in Lüritz is destroyed by bombs, another quarter is damaged. The stream of refugees does not flow only from East to West: the city bursts under the back and forth of people who on the other side of their respective border are looking for family members or some other foothold after their world collapsed. Sanitary conditions are faltering: in 1945 and 1946, Lüritz counts 1678 cases of typhoid. In 1947, more than a third of the town’s inhabitants are “migrants,” most coming from the former Eastern provinces of Germany. The Russians, terrifyingly strange, undisciplined, and unpredictable, are in control. It is hard to imagine how law and the courts might restore order in this chaos.

What law? What courts? On September 4, 1945, the Soviet Military Administration in Germany (SMAD) had ordered the dismissal of all Nazi judges and the reconstruction of the judicial system in its zone, four months before the Allied Control Council decreed a similar policy for all of Germany. But unlike the Western Occupation Forces, the SMAD actually carried out the goal of excluding all former members of the Nazi Party (NSDAP) from the judiciary. For the Russians, the radical cleansing of the courts could serve a double purpose: it