



**Douglas G. Morris.** *Justice Imperiled: The Anti-Nazi Lawyer Max Hirschberg in Weimar Germany.* Social History, Popular Culture, and Politics in Germany Series. Ann Arbor: University of Michigan Press, 2005. xii + 443 pp. Illustration, notes, bibliography, index. \$35.00 (cloth), ISBN 0-472-11476-X.

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## Exploring the Limits of the Rule of Law in Weimar Germany

Douglas G. Morris's excellent book poses a broad question: what happened to the rule of law in Germany after 1919? How severe was the collapse of judicial impartiality and competence? Can one doubt whether the Weimar Republic ever qualified as a republic, "if a necessary part of a republic is a judiciary committed to democratic ideals and impartial justice" (p. 1)?

That there was a collapse in judicial impartiality is hardly in doubt. As early as 1922, Emil Julius Gumbel provided statistical proof: between late 1918 and summer 1922, a total of 354 political murders committed by perpetrators affiliated with the political right had been punished with one life sentence plus 90 years and 2 months imprisonment; in 326 cases, there had been no punishment at all. By contrast, the 22 murders committed by left-wing sympathizers in the same period had been punished with 10 death sentences, 3 life sentences and 248 years and 9 months imprisonment; only 4 perpetrators escaped (p. 1). To be sure, this statistic may indicate more about the political leanings of police officials and prosecutors investigating cases than of judges who rule on the evidence put before them, but the divergence in sentencing remains remarkable. Morris reformulates this insight to ask how Germany's judges, trained to apply the law in an impartial and technically correct manner, could become raving political partisans willing to twist the law in favor of a particular political position. He does not seek to provide a comprehensive answer, but focuses on cases which involved Max Hirschberg, a Jewish attorney who practiced in Munich from 1911 to 1934, when he escaped to Italy. Hirschberg moved on to the United States in 1939, where he died in 1964. Hirschberg was not only involved in the major political trials of the day

in 1920s and early 1930s Munich, but also developed a systematic interest in judicial error, which culminated in a major work on *Das Fehlurteil im Strafprozeß*, published in 1960.

Morris is interested primarily in how trials were conducted. This in-depth analysis is divided into three blocks: political trials in 1922 and 1925, when Germany's war guilt and the causes of defeat were treated in libel suits and criminal prosecutions; non-political cases in which Hirschberg succeeded in having judicial errors reversed; finally, political cases linked with the rise of the Nazi party from 1926. In each case, Morris offers a clear exposition of the facts and substantial as well as legal issues in the case, a step-by-step analysis of trials and appeals processes, and an evaluation of the outcome. The main lines of argument which emerge from these analyses are, first, that some problems were peculiar to Bavaria. The main issue was the existence of people's courts, introduced during Bavaria's brief socialist phase to provide swift justice. The people's courts did not just increase judges' freedom of action by abolishing procedural safeguards, but also protected judges from professional scrutiny and criticism because there were to be no appeals. One of Hirschberg's major victories in the cases of the early 1920s was successful lobbying for their reintroduction. Second, Munich's judges may have been particularly traumatized by the brief revolutionary episode (and by the political preferences of Bavaria's ministries, which were systematically anti-Republican); moreover, they were called upon to decide a stream of political trials, some of which--notably libel trials--effectively sought the impossible, namely a definitive judicial ruling on the validity of a certain interpretation of history or a personal political

position. Third, in spite of significant personal variations in style and substance, even after the reintroduction of appeals judges tended to use their freedom of maneuver in an anti-left-wing (which implicitly meant pro-National Socialist) sense. However, until 1933, this state of affairs did not challenge the ties which bound the profession. The Bavarian ministry of justice failed in its attempts to have Hirschberg disbarred in the early 1920s. Even when Hirschberg was released from so-called protective custody in 1934, most of his colleagues rallied round the decorated war veteran, allowing him to retain an access to the court building that was denied most Jewish attorneys. Finally, the problems of the justice system affected non-political cases as well, which may have deepened distrust of Republican institutions.

The meticulously researched book benefits immensely from its author's experience as a practicing attorney familiar with courtroom drama and legal technicalities, which are vividly recreated and succinctly explained. The focus on Hirschberg illustrates both the immense obstacles a defense attorney faced and the victories an exceptionally gifted attorney could still win. Even though the courtroom perspective disregards some of the motivations which have their roots outside court--be it the social structure of and career perspectives in Munich's legal profession or political pressures on judges--these are not the main focus of Morris's research. Finally, one could argue about the optimistic portrayal of pre-1918 German justice in politically sensitive cases.

The clear focus on Weimar trials ensures that the book is no biography. Although Morris includes brief chapters on Hirschberg's youth and his years in exile, not much information is offered on Hirschberg's private life, the economics of his legal practice or his time in exile. But this decision does not diminish Morris's achievement in providing a fascinating insight into the workings of Weimar justice.

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