



Diemut Majer. *"Non-Germans" under the Third Reich: The Nazi Judicial and Administrative System in Germany and Occupied Eastern Europe, with Special Regard to Occupied Poland, 1939-1945.* Baltimore: Johns Hopkins University Press, 2003. xlii + 1033 pp. \$149.95 (cloth), ISBN 978-0-8018-6493-3.



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Volkisch Inequality and the German *Beamter*

In *"Non-Germans under the Third Reich"*, Diemut Majer demonstrates with thorough research and in painstaking detail the legal means by which nationality, race, and the National Socialist ideal were integrated into the structure of German society and law. "This transition ... occurred almost without a hitch since ... National Socialism's entire thinking and mode of expression ... was aimed at depicting itself as guardian and conservator of [the] German legal tradition" (p. 531). Special law allowed for flexibility, and thus could be applied either strictly to Jews, or, as became evident as the regime expanded, to other groups (p. 533). Thus, the use of special law transcended its initial racial context and became, in essence, a general tool for totalitarianism. The original version of *"Non-Germans under the Third Reich"* was published in 1981 as a *Habilitation* in law for the University of Bern, and was later published as part of the *Schriften des Bundesarchivs* (Annals of the Federal Archives). Author Diemut Majer is a lecturer in the Zentrum für Angewandte Kulturwissenschaft und Studium Generale at the Universität Karlsruhe (TH) and as might be expected, professor of law at Bern. She comes to the topic with experience

on the bench and from the Constitutional Court of Germany (BRD) in Karlsruhe. She has published works on law in the Nazi regime, international law, constitutional history, and environmental law. The collapse of Communism in Eastern Europe and the Soviet Union contributed to the impetus for the 1993 edition. It was hoped that its treatment of law in a totalitarian/authoritarian context would provide a useful model for analyzing the Cold War experience in Eastern Europe (p. ixxiv). It continues to be a valuable asset ten years since, as scholars seek to understand how nations make the transition out of dictatorship.

The book is divided into two parts and has a substantial introduction outlining the principles of Nazi law. Each part analyzes law in the *Altreich*, in the annexed territories, and in occupied Poland. The first part of the book deals with "special law" and non-Germans in public law, including citizenship, labor, and commercial law. The section on citizenship in the annexed territories is particularly interesting, explaining the means by which Nazi law alienated and excluded non-Germans whenever

possible. Racial laws were first applied to Jews, and then later to Slavs. As is evident from the title, the Polish case is the primary study in this work. The vocabulary of the law reveals the extent to which Jews and Slavs ceased to be human beings and were transformed into slave workers, even vermin. Oftentimes, the annexed territories served as testing grounds for policies later applied throughout Germany, especially in the areas of religion and culture. Educational opportunities were either closed to Poles or rendered intentionally sub-standard. Even in schools in which German was imposed as the official language, poorly trained teachers were provided, since all Polish children needed to learn were the basics of following directions and personal hygiene, to prepare them for work as manual laborers (p. 225). Specific racial laws enforced in occupied Poland invaded the most private of affairs. In her analysis of marriage laws in the annexed territory, Majer reveals the extent to which the Nazis feared Polish nationalism and Polish culture. Fear of Polish fertility resulted in prohibitions, not just against Polish-German mixed marriages, but against marriages between Poles. When this was challenged, the marriageable age was raised from twenty-one to twenty-eight for Polish men and to twenty-five for Polish women (p. 247). "These measures not only reflect[ed] the erroneous belief of the racial fanatics that by such means they would achieve the 'choking off of the foreign *Volkstum*'; the measures also cast a distinctive light on the simple-minded methods with which the local population was ruled" (p. 248). Majer notes wryly that the marriage ban did not affect the Polish birth rate, although a rise in illegitimate births did occur. No comparison is made here between marriage rates or birthrates or laws in other areas, but the point is to demonstrate the problems facing authorities bent on applying racial law.

At the end of the first section, a series of photographs and document reproductions is offered. Portraits of Gau leaders and ministers are alternated with scenes of executions. A photo of justices displaying their new swastika pins is particularly chilling. One fascinating document from a Gau press agency marked "strictly confidential" warned that, as late as March 1942, the population of Germans in Wartheland who grew up among Poles had to be brought to understand that no relationship with Poles would be tolerated, and gave the poignant example of a Hitler Jugend member who loaned his papers to a Polish friend so that this friend could go to the movies. The young Pole was later caught using the papers to purchase cigarettes and was sentenced to 18 months in prison.

The second half of Majer's book addresses "special

law" and Non-Germans in the field of justice. In this section, Majer discusses how National Socialism, in broadening police jurisdiction, avoided having to revolutionize certain sectors of the judiciary. The relationship of the police to party officials, and of both to the judiciary, was made all the more opaque in occupied territories when the police were given the right to send offenders to prison camps without going through the courts. Since those oppressed, in this case Poles, Jews, or Ukrainians, had no recourse, a misdemeanor could result in a fine of thousands of Reichsmarks or worse. The police gained considerable independence over time, and ultimately greater control for both the SS and police organs over non-Germans. The result was the blurring of "the borders between criminal offenses and political offenses," a goal facilitated by decree in late 1943 (p. 466). As Majer notes, "[t]he political jurisdiction of the Security Policy in the treatment of 'non-Germans' was ... now [by 1943] actually without limit, since there were no misdemeanors by a 'non-German' that were not inherently political or criminal ... in areas where the 'ethnic struggle' was being waged" (p. 467). Thus, through a series of decrees and with the cooperation of local police and party officials, the judiciary was cut out of the process almost completely, as far as traditional court proceedings were concerned.

According to Majer, the Nazi revolution forced out "the normality of everyday law," but could not overpower, eliminate or destroy the "essential structures" of those systems which defined and administered the law (p. 3). The impression that *Gleichschaltung* devoured and dismantled the traditional civil service is therefore overtly contradicted by Majer. Instead, the power of longevity, tradition, and organization persisted, as did the bureaucracy. By arguing against the idea of immediate revolution in the law and for the idea that the transition to "special law" was called upon German legal tradition, the author contributes to the discussion of Holocaust culpability, although that does not seem to be her intent. Even the term *Sonderrecht*, or "special law," upon which the work pivots, calls to mind the *Sonderweg*, or "special path," leading one to conclude that there might be something unique about German law that allowed for "special law" to be applied with relative ease during the Nazi years.

For those scholars who would seek to use Majer for comparative studies of totalitarian systems, several key points emerge, such as the question of how the revolutionary character of any movement that finds itself burdened with a rigid administration and obliged to produce or invent a legitimate legal structure emerges. If

a revolutionary administration intends to replace a traditional, effective, existing structure, it will soon realize why a civil service evolves from within and perpetuates itself, because bureaucracies require specialized knowledge. Inexperience and ineptitude “rendered [the Nazi leadership] incapable of establishing a new, exclusively National Socialist administration,” Majer writes (p. 4). Thus, they were required to make use of the existing structure, or eliminate it altogether, or circumvent it. Majer describes a confluence of all of these methods.

Majer makes the argument that while the *Fhrerprinzip* might seem to limit the power of the civil service, it instead “reflected the glory of the power of the *Fhrer* upon anyone occupying a position of authority” (p. 4). In fact, the concentration of power into the hands of one leader and the dissolution of the Reichstag meant that the bureaucracy actually expanded its power. Within this system, the famous German *Beamter* was given the freedom to apply politics to any situation, with very few limitations. The bureaucracy, once the bastion of stability in German culture, became a bastion of arbitrary power (p. 5). Since there was no longer a legislative check on the law, there was no legal check on the *Fhrer*. Majer contradicts the premise, then, that the Nazi state was in constant flux, but also refutes the idea that the law was implemented by a faceless bureaucracy. Instead, she characterizes the dynamic between the administration and political powers as “compounded of collaboration and antagonism,” including what she terms “bureaucratic sabotage” (p. 7). How, one wonders, could a traditional legal system and civil service continue in the face of profound ideological change, especially in the realm of racial policy? The answer is: new definitions, revised guidelines, rule by decree, and underneath it all, the loyalty of upper officials and elites to the regime in the name of German pride.

Majer leaves it to future historians to determine whether the idea of “special law” was itself responsible for the Holocaust, or, as she puts it “the raging tide of annihilation of which Auschwitz is the symbol” (p. 534). Her study demonstrates a link between the systematic discrimination against non-German elements of society and an aim at the complete physical annihilation of the same through starvation, poor living conditions, resettlements, and harsh punishments, although the specific instances of labor or death camps are not addressed. The methods civil servants themselves used to shape the rules governing non-Germans are the most fascinating element of Majer’s work, and for most scholars probably the least familiar material. Majer states with utter frank-

ness that Weimar civil servants who had sworn loyalty to the Weimar Constitution were “perfectly happy to put into practice the exact opposite” under the Nazi regime (p. 536). Flexibility in legal interpretation was more easily pursued at the local level in the occupied territories, precisely because, she maintains, the question of precedent was less pressing, the population more vulnerable, and *völkisch* ideology most applicable. She does not accuse all participants, however, pointing out that the existing bureaucracy did at times slow down the pace of racial and social oppression through law. Administrators objected, for instance, to the wholesale resettlement of Poles out of annexed territory and into the General Government, for economic reasons. In the end, however, the exceptional powers of the Nazis were applied when reason and law could not be. Thus, the use of violence fell to the Party and to the SS. This division, Majer claims, was intentional. Law might be used to enforce the political, economic, and cultural disfranchisement of a population, while deportation and expulsion fell to the Security Police. A study on this division and further investigation into why civil servants cooperated in some instances and not in others would be very worthwhile. Majer has provided a legal foundation for understanding this social phenomenon.

Majer demonstrates the permutations undertaken to weave racial ideology into law in the same way that it was woven into social and educational institutions in Nazi Germany. In her discussion of race, and the vocabulary used to define it, Majer notes that the term “German race” was prohibited precisely because it was so hard to define, Germanness itself being described as a blend of the Nordic, Dinaric, Alpine, and other groups. Thus, instead of “race” administrators used the concept of “equality of type” or “same blood” or a “community of blood” to describe unity (*Blutgemeinschaft*) (p. 39). Racial policy in the occupied territories essentially consisted of legalizing the “arbitrary practices of Himmler’s departments,” dividing into groups those considered a threat and those who had demonstrated their loyalty to *Deutschtum* before being invaded (p. 239). Some Poles and other non-German ethnic groups (e.g. Kashubians) were deemed “capable of Germanization” and could apply to also be German “subjects.” This is a fascinating word choice, distinguishing “citizen” from “subject” indicating the colonial character of such policies (p. 239). All other former state subjects (citizens) of Poland or Danzig (Free City of Danzig) were “protected subjects,” but racially rejected groups such as Jews or Gypsies had no status whatsoever, echoing the Reich policies of eliminating citizenship

and thus excluding unwanted groups from legal recourse or civil rights. The implementation of such decrees and categories was undertaken by the SS, which prepared checklists for selection, a *Reichskommissar* responsible for “Strengthening of German Nationhood,” and finally, the Minister of the Interior. This organization, Majer argues, demonstrates a reversal of institutional responsibility, essentially turning the civil service on its head, and outmaneuvering the law.

The term “Aryan,” Majer notes, was used less often after 1935, and is intentionally left vague, so that race in law is interpreted according to *vlkisch* ideology. The author is obviously frustrated by this inexact idiom, but the mythology of the Aryan race is part of the National Socialist claim to legitimacy, and cannot be dismissed. The very imprecision of it made it more convenient to apply. Having established a flexible idea, it could then be used to describe “*vlkisch* law” or a “*vlkisch* constitution.” The Nazi Regime, argues Majer, was built upon a racial community that presumed a profound ethnic threat from the Slavic peoples. This anti-Slavic attitude was rolled together with the fear of Bolshevism, itself linked by the National Socialists to a Jewish threat to German culture. Poles were initially left out of anti-Slavic rants because of the 1934 Non-Aggression Pact but quickly became the primary Slavic enemy because they defended their own national identity so firmly. As might be expected, an anti-Polish racial vocabulary emerged after the invasion in September, 1939. The racialist vocabulary against Slavs then subsided around 1943 in order to rally support against the political enemy represented by Bolshevism and the USSR.

One of the premises of Majer’s work is that the civil service did not need much convincing to cooperate with National Socialist interpretations of the law and administration of that law. Except for the dismissal of any individual considered inappropriate whether for political or racial reasons, described as “national unreliability,” the civil service remained intact (p. 87). It is one thing to make the claim that the civil service tended to be of nationalistic or conservative leanings, but another to presume that a reduced sense of morality stemmed from the “considerable loss of moral fiber and religious teaching that followed ... World War One” (p. 532). Her argument is that old values remained, but could be redefined by National Socialists because the population was no longer rooted in the principles that formed those values. This is an example of Majer straying from a strict investigation of legal history into intellectual and social history. This type of analysis makes her work interesting, and

even valuable, but also vexing in its contradictions, and its seeming desire to rescue the essential *vlkisch* ideology of the nineteenth century from its fate at the hands of the Nazis is a bit unnerving. How can *Beamter* be “non-partisan and neutral” and also distrustful of the Weimar Constitution and also nationalist in temperament (p. 84)? Thus, the question of complicity with the National Socialist state is unavoidable, yet incompletely addressed.

Majer’s book is not simply a study of bureaucratic function. It is a thorough and precise reading of those regulations that defined and interpreted the relationship between the individual and the state, especially as applied to racial theory. The transition from a democracy to a totalitarian state was effected in part by the “wholesale rejection of the liberal legal system [which resulted] simultaneously in the rejection of all rights of liberty and equality in the Nazi state” (p. 45). The Constitution and all constitutional rights lost its meaning for the Nazi State after the Decree for the Protection of People and State on February 28, 1933, in which the validity of the Weimar constitution was negated whenever it conflicted with the National Socialist concept or perception of the state. The question was left open to a certain extent, although according to Majer, from 1935 onward courts tended to treat the Weimar Constitution as invalid and the civil rights granted in it were gradually replaced by a series of regulations. These regulations ranged from redefining treason to restricting religious freedoms. The Nuremberg Laws of 1935 are a familiar example of this tendency.

It was, according to Majer, necessary to replace certain articles in the Weimar Constitution like the equality clause, with statements calling on a “frank recognition” of the condition of “organic inequality” allowing exceptions for “aliens” or those defined as “racially foreign.” Essentially, racial self-preservation trumped civil rights (p. 52). This state of affairs was primarily achieved in the realm of legal application, through which it was presumed that it was inherent in all laws that Jews (and later Slavs, specifically those living in occupied Poland, as well as Gypsies, individuals of African decent living in the *Reich*, and some other groups) would not benefit from the protection of law. Only on the eve of the “Final Solution” was citizenship itself stripped from groups and any possible legal protections with it. Thus, Majer argues German nationalism was manipulated and the traditional order which undergirded the state became complicit with the National Socialist dictatorship.

One could not expect legal definitions and interpretations to be changed without question overnight, how-

ever. As was true throughout German society, the educational system became the means by which dogma was disseminated, and it was upon this dogma that judicial changes were based. By retooling the vocabulary of conservative jurists with a largely German Nationalist mindset, the Nazis invoked tradition in implementing a legal revolution (p. 9). The legal standards of the Weimar Constitution were left in place, giving the impression that they were still valid, but the underpinning values of the constitution were themselves ignored or contradicted. A remarkably quick indoctrination of the legal system and civil service was due in part to the ingenious use of racial and national ideologies as a means of establishing legitimacy. Many aspects of Nazi indoctrination, be it social programs, political life, or foreign policy of rejecting Weimar (and with it the *Diktat* of the Versailles Treaty) used the twin tactics of setting the Nazi State up as both the conservative protector of tradition and declaring itself revolutionary. As Majer demonstrates, a similar approach was taken toward the law (p. 531).

Impeccably organized and argued, this thorough work has much to offer researchers. It processes an enormous amount of raw data, from rates of retirement among civil servants of various *Länder* to an in-depth analysis of specific racial policies and laws with titles like "Decree on the German Ethnic Classification List and German Citizenship in the Annexed Eastern Territory, March 4, 1941" (p. 92). The bibliography is divided into several categories. The first is titled "unpublished sources," primarily German and Polish archives, with notations about which collections have been moved or undergone name changes since 1981/1989. The rest of the bibliography reflects the conscientiousness with which the author and translators have approached this edition, dividing it into "Sources published before 1981" and "Additions to the bibliography (1993)." Four full pages list the archival, unpublished sources, giving the reader an idea of the thoroughness of the research. Of particular relevance is the balance between Polish and German collections. There's no indication that the political changes which took place between the first German edition and this English edition had an effect on source availability. The only alterations as noted above are the location of collections moved from Koblenz and Bonn to Berlin and the renaming of a Polish collection. The price, content, and size of this volume all mark it as a worthy addition to university library collections, especially at institutions offering courses on Nazi Germany, Eastern Europe, or legal history.

Given its origins as both a German and a legal

work, Majer's book is conscientiously, one might say exquisitely, formal in its organization, with no fewer than twelve pages listing the contents, and notes stretching from page 583 to 932. It includes a very useful glossary of legal terms, which alone justifies investing in the book—I intend myself to take it along during archival visits to Berlin. The bibliography is admirably updated and the index thorough. The tome itself reaches 1035 pages, 547 pages of which is text, and includes features ranging from the minutes of the Wannsee Conference to maps to photographs and documents. Such extras call to mind descriptions like "indispensable."

Majer's strengths in interpretation come out of her particular familiarity with law and the language of the law. She makes pithy observations such as the link between Teutonic law and the oft-used term *chtung* (translated as "outlawry" or "ostracism") in the National Socialist lexicon. At other junctures, historical leaps or errors in convention make the work less credible. Small things, such as a reference to "Houston Chamberlain" instead of the more typically rendered "Houston Stewart Chamberlain," or the translation of *Reichspräsident* to "Reich president." This choice is awkward. It ought to be either left in the original or rendered simply as "President." These are historical conventions. Other odd choices with regard to translation are reflected in the text. Universal terms such as *Volksgemeinschaft* remain, but seldom is a German term given for the various administrative units or legal concepts, too seldom, and the particularity of the work is lost in this. In some instances the word appears in parentheses, but this style does not seem to have been applied consistently throughout. One wonders if such variances are the result of teamwork in translating? It isn't clear. The readership for this book is not general, and so it seems a little strange to compromise one of the most useful elements of the work, the distillation of intricate German legal and bureaucratic structures, by forcing the reader to double-translate material, hunting for original German terms. One would prefer to make a note of the German title, and look it up later. This style would allow the book to be used for the purpose it most suits—as a reference work.

Despite these issues, the specialized nature of the vocabulary and content of this work is unmistakable. English-speaking scholars, even those most fluent in German, ought to be grateful that it has appeared in translation. That it is so vast, and so thorough, reflects the sheer immensity of the original materials. It won't be found on many "required reading" lists for undergraduate or graduate seminars, but it ought to be placed in the

collections of research libraries, law libraries, and individuals specializing in German history, modern Poland, or law. Scholars should thank Diemut Majer for her dutiful work, and the translating team of Hill, Humphrey, and Levin for taking on the daunting task of making this work available to Anglo-American researchers and students.

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