Introduction

As revolutionary trial lawyers we must strive not only to reduce sentences but also […] at all times to turn the courtroom into a revolutionary stage.

–Ernst Hegewisch to the central legal office of the German Communist Party, 1922

In July 1925, the State Court for the Protection of the Republic in Leipzig heard the case against Josef Gärtner, an unsuccessful playwright and minor Communist functionary accused of high treason. How had Josef Gärtner threatened the republican order? On the evening of 7 November 1924, as the 'artistic co-ordinator' of a 'revolutionary memorial celebration' in a Stuttgart beer cellar, Gärtner had conducted the performance of his play 'The 7000'. In song and declamatory recitals, the piece dramatizes the liberation of Communist political prisoners as a German storm on the Bastille.[1] Basically, Gärtner stood accused of having prepared an assault on the constitutional *Staatsordnung* by means of writing and directing a play. Found guilty, he was sentenced to fifteen months in prison for preparing high treason.

It is often said that the pen is mightier than the sword, but seldom are the strokes of the former deemed to be dangerous to the political order in the 'concrete and immediate' sense stipulated by the high treason norms of the German penal code. Nonetheless, this was the exact reasoning of the *Staatsgerichtshof*, the Leipzig high court for political offences, in cases against the writers and editors of Communist 'revolutionary literature' and even against the workers at the typesetting machines.

At this point, one might look at the questionable nature of the legal reasoning underlying these verdicts (which targeted a small number of National Socialist pamphleteers and printers, too), or at the outlook of the judges passing the sentences. To do so would locate my work in the long tradition of criticising Weimar judges and judicial practice, a tradition that originated in the Republic itself with Emil Julius Gumbel's statistics illustrating the lopsidedness of verdicts against left- and right-wing offenders. After a brief hiatus in the immediate aftermath of National Socialism, the criticism of Weimar justice as 'blind on the right eye' was vigorously taken up again in the 1960s. With arguments based on the judiciary's

[1] Gärtner also read poems by Ernst Mühsam and Georg Herwegh, while Johannes R. Becher's poem 'At Lenin's Grave' had served as the prologue. Becher was initially also accused, but the charges were later dropped.

privileged social provenance, on the well-documented anti-democratic stance of certain high-ranking judges ('All majesty has fallen, even the majesty of the law [...] the new law is the law of lies, party law, class law, bastard law', as the president of the German Judges Association Johannes Leeb memorably put it), and on the case statistics originally compiled by Gumbel and others, an orthodox interpretation was established.[2] Long lines of continuity were drawn linking Weimar to National Socialist to West German legal practice in the Federal Republic, an argument neatly summed up in Ingo Müller's phrase of the 'terrible jurists' (*furchtbare Juristen*). As Karl Dietrich Bracher put it: along with a reactionary civil service and a revisionist army, Weimar political justice was a 'wellspring of the Third Reich'.[3]

The orthodoxy has aged well. In 1991 and 1998, serious contributions to the debate still cited Heinrich Hannover and Elisabeth Hannover-Drück as the most influential scholars in the field—their *Politische Justiz 1918–1933* dates from 1966.[4] Even the most recent scholarship in German, Nikolaus Brauns' *Schafft Rote Hilfe!* (2003), while admirable in its empirical vigour, sees no reason at all to question the interpretative framework of the Hannovers. On the contrary, it is an emphatic reaffirmation. Brauns opens his concluding remarks with the 'wellspring of the Third Reich' quote from Bracher's preface to the Hannovers' book, cited just above.[5]

One might also opt, however, to look at Gärtner's trial, and at Weimar political justice generally, from a different perspective. This perspective shifts the focus from the judges to the lawyers, and broadens the scope of our vision to take in the entirety of proceedings and not just the verdict. It is my argument that an important group of ideologically committed lawyers on both sides of the political spectrum undertook a radical redefinition of the lawyers' role. This redefinition helped bring into existence a new paradigm for the conduct of political trials, one in which the legal outcome was subordinated to the propagandistic impact, and the interests of the individual defendants had to yield to those of the party they represented.

To illustrate what we may gain from this shift in perspective, consider this report on Gärtner's trial, submitted by Ferdinand Timpe to Wilhelm Pieck. Timpe was one of the leading lawyers on the staff of the Communist Party's central legal office, or *Juristische Zentralstelle* (JZ). Pieck was the head of the *Rote Hilfe* (Red Aid), a cross between a humanitarian relief and a legal aid organisation with a mass mem-

[2] Leeb, J., 'Dreierlei', *Deutsche Richterzeitung* Vol. 13 (1921) No. 5, Sp.129ff., here Sp.130f.

[3] Bracher, K.D., 'Einleitung' in Hannover, H./Hannover-Drück, E., *Politische Justiz 1918–1933*, Frankfurt a.M. 1966, p.12., Jasper, G., 'Justiz und Politik in der Weimarer Republik', pp.9–58 in 'Niedersächsische Landeszentrale für politische Bildung' (ed.), *Justiz und Nationalsozialismus*, Hannover 1985, (first published in *VfZ* 30 (1982), pp.167–92), Reifner, U., 'Juristen im Nationalsozialismus', *Zeitschrift für Rechtspolitik* 1983, pp.13–19.

[4] Nagel, I., *Fememorde und Fememordprozesse in der Weimarer Republik*, Köln 1991, p.15, Böttger, M., *Der Hochverrat in der höchstrichterlichen Rechtsprechung der Weimarer Republik. Ein Fall politischer Instrumentalisierung von Strafgesetzen?*, Frankfurt a.M 1998, p.235.

[5] Brauns, N., *Schafft Rote Hilfe! Geschichte und Aktivitäten der proletarischen Hilfsorganisation für politische Gefangene in Deutschland (1919–1938)*, Bonn 2003, p.309.

bership. Far from being downcast at the harsh punishment meted out to his comrade, Timpe had this to say on the trial and its outcome:

> The press box in Leipzig was packed, just like the courtroom itself, thanks to advance reporting in the papers. We can now say without a shadow of a doubt that we have been on the right path all along, because the *Staatsgerichtshof* swallowed our bait hook, line and sinker and has sentenced Gärtner to one year and three months.[6]

It was not to be bemoaned, but on the contrary to be celebrated that Gärtner had been convicted. Moreover, as the phrase 'swallowed our bait' (*auf den Leim gegangen*) implies, the verdict was, at least to Timpe's mind, the outcome of careful stage-management of the trial by the Communist Party. In fact, there had been scripted interventions by the party lawyers, both in court and at protest meetings, and elaborate measures to 'fill up the ranks with party comrades, distribute the necessary prompters for the applause among the audience etc'.[7] There were undercover payments to witnesses such as the head of the stage-actors' union, Rickelt, and bribes to at least one newspaper reporter. Echoing the predictable outrage in the party press, all liberal dailies of national importance had covered the trial with 'extraordinary dismay' (as Timpe was pleased to note). Even allowing for an element of self-congratulation, Timpe gave an accurate assessment of the trial's impact when he reported that the strategy to 'utilize this case for the broadest propaganda' had been vindicated and that the party had 'achieved this great corrosive success [*Zersetzungserfolg*] with comparatively small means'.[8]

In the trial of Josef Gärtner the KPD went to considerable lengths to generate publicity, dramatically emphasizing both the party's irreconcilable enmity to the existing political order and the injustice of its persecution. It did not go to any lengths at all, by contrast, to defending and safeguarding the interests of Josef Gärtner. On the contrary, Timpe was delighted precisely at the severity of his comrade's sentence, which would make subsequent agitation all the more persuasive. Gärtner was a (perfectly willing, in his case) sacrifice, his personal fate subordinated to the interest of the party in generating a performance of its ideology in court.

This 'utilization of judicial procedure for political ends', to paraphrase Otto Kirchheimer's famous definition of political justice, is emblematic for the conduct of political trials by extremist party lawyers. Gärtner's case opens my study precisely because the 'literary high treason' trials of the stability period best conform

[6] Bundeasarchiv (Berlin) (BA[B]) RY1/I2/711 Juristische Zentralstelle (JZ) der KPD Band 3, [5]f. Timpe to Pieck, Berlin 8.8.25). In a letter to KPD barrister Ernst Hegewisch (BA(B) RY1/I2/711 JZ Band 3, [101]–[103] Timpe to Hegewisch, Berlin 11.9.25), Timpe reiterated this same evaluation almost verbatim: 'In Leipzig, the *Staatsgerichtshof* really swallowed our bait, arrogantly dismissed Rickelt's expert opinion out of hand, ordered him back into the audience and sentenced Gärtner to 15 months'. Rickelt was the head of the union of stage actors and had been presented by the defence to testify to the artistic merit of 'The 7000'. The court ruled against hearing him.

[7] BA(B) RY1/I2/711 JZ Band 3, [101]–[103] Timpe to Hegewisch, Berlin 11.9.25, [102].

[8] BA(B) RY1/I2/711 JZ Band 3, [5]f. Timpe to Pieck, Berlin 8.8.25. See also BA(B) RY1/I2/711 JZ Band 3, [101]–[103] Timpe to Hegewisch, Berlin 11.9.25, here [101]: 'A great agitation in the entire bourgeois press, which regarded this verdict as a violation of the freedom of art and literature. From behind the scenes, we vigorously promoted this agitation'.

to the orthodoxy's 'blind on the right eye' paradigm. Even here, the Communist Party was hardly concerned with judges, and not at all with the negative impact of their verdicts on its day-to-day operations or party morale—on the contrary. This insight is an invitation to rethink Weimar political justice, and to reframe the debate about its impact on political culture. To focus exclusively or even just primarily on judges and verdicts misses the aspect of political trials that mattered most to extremist parties—their dramatic ideological appeal.

Party lawyers transformed dry legal proceedings into spectacular clashes of fundamentally opposed world-views. Supported by powerful party legal offices (which have hitherto escaped scholarly notice almost entirely), they developed a sophisticated repertoire of techniques at the intersection of criminal law and public relations. Defendants turned into martyrs, trials into performances of ideological self-sacrifice, and the courtroom 'into a revolutionary stage', as one of the lawyers portrayed in this study put it. It is this political justice as 'revolutionary stage' that most powerfully impacted Weimar political culture. Without taking it into account, our understanding of the role of political trials in the demise of the first German democracy must remain partial.

The courtroom was a privileged site of ideological combat. Carefully stage-managed by party lawyers, political trials allowed Weimar parties to present riveting spectacles of idealism, implacable conviction and heroic sacrifice—always playing off the staid and legalistic state authority embodied by the judges. Trials were compelling not just because they offered instruction about the revolutionary struggle, but because in a sense they *were* the revolutionary struggle, admittedly for the time being played out in the grit-your-teeth, clench-your-fist mode of the theatrical 'as if'. Overall, the message political justice transported was that the ideological struggle left no room for fairness, that there was no possibility of a 'neutral platform', in short, that justice was unattainable until the Republic was destroyed. This is how political justice contributed to the breakdown of political culture that ultimately paved the way for National Socialism. For the corrosive effect of political trials on political culture, the biased verdicts of a conservative judiciary may well have been a necessary condition, but they certainly were not a sufficient one.

HISTORIOGRAPHY

In 1985, Detlev Peukert's magisterial history of the Weimar Republic was a plea to free our gaze on Weimar from the double shadow of birth in failed revolution and demise in National Socialist catastrophe. Both the Republic's promise and its pitfalls deserved, he argued, to be considered on their own merits. In his 1996 survey of Weimar historiography, Peter Fritzsche echoed Peukert: Weimar was still viewed primarily as the prelude to catastrophe.[9] Nowhere is the over-determination of the Weimar past from the vantage point of 1933 more firmly entrenched than in the

[9] Fritzsche, P., 'Did Weimar Fail?', *The Journal of Modern History* 68 (September 1996), pp.629–56, p.632f.

historiography of its administration of justice. Since the sixties, we have looked at Weimar political trials primarily as harbingers of the disastrous shortsightedness of German conservative élites vis-à-vis the Nazi threat. This was undoubtedly a step forward from the apologias of the postwar period, when former judges like Hubert Schorn and Hermann Weinkauff cast the courts as principled opponents of the 'anti-legalistic' Nazi dictatorship.[10] Three ground-breaking studies overturned the apologists' interpretation. Friedrich Karl Kübler's 1962 study of 'German judges and democratic laws' suggested that the judges' 'apolitical' stance masked an inability to accept parliamentary legislation. Scepticism towards the content of laws vanished if those laws were passed by an authoritarian régime.[11] Bernd Rüthers' 1968 study of the subversion and redefinition of legal terms to legitimise and bolster Nazi legal practice also shed a disadvantageous light on the judiciary.[12] Judges were all too willing, Rüthers concluded, to accept National Socialist terminology such as 'healthy popular feeling' and incorporate them into their judgements.

Most influential, however, was *Politische Justiz 1918–1933* by Heinrich Hannover and Elisabeth Hannover-Drück, first published in 1966.[13] Heinrich Hannover, himself a trial lawyer active in political cases, and his wife drew on articles published in the left-liberal Weimar journal *Die Justiz* to issue a practically unqualified condemnation of the justice system. By being soft on the right and hard on the left, the judiciary had not only actively prepared the ground for the right-wing triumph over the Republic. It had moreover put into place, in at least embryonic form, everything necessary for the National Socialist abuse of the law: 'This judicial practice—we are reluctant to call it administration of justice—prepared the ground for the concentration camps of the National Socialists'.[14] Hannover later elaborated his view that 'between the political justice of the Weimar Republic and that of the fascist terror state', there was 'a quantitative, but no essential difference.' The Weimar administration of justice was an early incarnation of National Socialist injustice, just as the courts of the Federal Republic were its reincarnation.[15]

[10] Schorn was a judge at the Bonn court of appeal. His study (Schorn, H., *Der Richter im Dritten Reich, Geschichte und Dokumentation,* Frankfurt a.M. 1959) was originally intended to carry the subtitle 'The struggle of Judges and State Prosecutors against the Criminal Nazi Regime'. Wagner, A./Weinkauff, H., *Die deutsche Justiz und der Nationalsozialismus. Ein Überblick*, Stuttgart 1968. See also the discussion of the earlier scholarship in Angermund, R., *Deutsche Richterschaft 1919–1945*, Frankfurt a.M. 1991, pp.8–15.

[11] Kübler, F.K., 'Der deutsche Richter und das demokratische Gesetz', *Archiv für civilistische Praxis* 162 (1963), pp.104–28, here p.106. Other parts of his argument are less compelling. It appears questionable, for example, whether it is really helpful for an understanding of the Weimar administration of justice to think of 'the judge' as turning into a 'petty bourgeois', exhibiting the 'inimical position confronting the proletariat characteristic for him [i.e. the petty bourgeois] especially during the Weimar years' (ibid., p.113).

[12] Rüthers, B., *Die unbegrenzte Auslegung. Zum Wandel der Privatrechtsordnung im Nationalsozialismus*, Tübingen 1968.

[13] Hannover, H./Hannover-Drück, E., *Politische Justiz 1918–1933*, Frankfurt a.M. 1966.

[14] Hannover, H./Hannover-Drück, E., *Politische Justiz*, p.237.

[15] Hannover, H. 'Max Hirschberg (1883–1964) Der Kritiker des Fehlurteils', pp.165–79 in Redaktion *Kritische Justiz* (eds.), *Streitbare Juristen. Eine andere Tradition*, Baden-Baden 1988, p.174.

Like the Hannovers' work, Ralf Dahrendorf's *Lawyers of the Monopoly* trained the spotlight on judges and state prosecutors and set the tone for further inquiries into the supposed long-term continuities incriminating Weimar judicial practice as well as that of the Federal Republic.[16] Ingo Müller found his subjects quite simply 'terrible jurists', while Theo Rasehorn, in compiling the biographies of persecuted Jewish jurists, lamented the utter demise of German 'left-liberal culture'.[17] It did not help the cause of a balanced and dispassionate inquiry that scholars who protested the Hannovers' school's blinkers—like Hans Hattenhauer, who demonstrated that judges, far from eager to gallop onto politically fraught turf, vacillated when forced to adjudicate political matters—were apt to fall back into apologia.[18]

The orthodoxy attributed the corrosive effect of political trials on Weimar's political mores to the courts, and in any case exclusively to the right. Perhaps the most succinct statement of this position is Udo Reifner's, who argued in 1983 that 'judges and public prosecutors, lawyers in the administration, professors of law and (to a lesser extent) the *Anwaltschaft*, too, took part in building the "Third Reich", out of their own conviction and fully in line with their professional self-image, and for this purpose [...] abused the institutions of the legal system'.[19]

Since the late 1980s scholars have begun to move beyond the stark dichotomy of whitewashing or demonizing Weimar justice.[20] Christoph Gusy found in 1991 that legal norms for the protection of the Republic were not as ineffective or one-sided as routinely asserted. In Gusy's view, the administration of justice was deeply affected by the crisis of the political system, and contributed to, but also inhibited it.[21] Weimar parliamentary amnesties, examined in Jürgen Christoph's 1988 study, eroded the importance of the courts' sentencing.[22] Every two and a half years on average, there was a major political amnesty, while permanent parliamentary subcommittees annulled thousands of verdicts by way of clemency. Although the courts' politically biased sentencing promoted the perception of their necessity in the first place, political amnesties and the routine extension of clemency in turn frustrated the judiciary,

[16] Dahrendorf, R., *Society and Democracy in Germany*, London 1979, pp.221–35.

[17] Müller, I, *Furchtbare Juristen. Die unbewältigte Vergangenheit unserer Justiz*, München 1987, Rasehorn, T., *Der Untergang der deutschen linksbürgerlichen Kultur beschrieben nach den Lebensläufen jüdischer Juristen*, Baden-Baden 1988.

[18] Hattenhauer, H. 'Zur Lage der Justiz in der Weimarer Republik', pp.170–206 in Erdmann, K.D./Schulze, H. (eds.), *Weimar—Selbstpreisgabe einer Demokratie*, Düsseldorf 1980, for flirt with apologia see reading of Leeb quote above in idem.,Wandlungen des Richterleitbildes im 19. und 20. Jahrhundert', pp.9–33 in Dreier, R./Sellert, W. (eds.), *Recht und Justiz im ‚Dritten Reich*, Frankfurt a.M. 1989, esp. p.13ff. For an attack on Hattenhauer, see Jasper, G., 'Justiz und Politik in der Weimarer Republik', pp.9–58 in Niedersächsische Landeszentrale für politische Bildung (ed.), *Justiz und Nationalsozialismus*, Hannover 1985, (first published in *VfZ* 30 (1982), pp.167–92), here especially p.14f.

[19] Reifner, U., 'Juristen im Nationalsozialismus', *Zeitschrift für Rechtspolitik* 1983, pp.13–19.

[20] Aside from the work discussed in the text, see e.g. Schulz, B., *Der Republikanische Richterbund 1921–1933*, Frankfurt a.M. 1982 and Kuhn, R., *Die 'Vertrauenskrise der Justiz' (1926–1928). Der Kampf um die Republikanisierung der Rechtspflege in der Weimarer Zeit*, Köln 1983.

[21] Gusy, C., *Weimar—die wehrlose Republik? Verfassungsschutzrecht und Verfassungsschutz in der Weimarer Republik*, Tübingen 1991. See Böttger, M., *Hochverrat*, p.24 for a summary of arguments about Art.76 WRV and further references.

[22] Christoph, J., *Die Politischen Reichsamnestien 1918–1933*, Frankfurt a.M. 1988.

and certainly helped undermine the courts' credibility. Marcus Böttger concludes from his 1998 study of *Reichsgericht* sentencing for high treason that 'only limited areas of the criticism [of the Weimar judiciary] turned out to be correct, a large part of it [. . .] is obviously wrong'.[23] While acknowledging that the 'preparation of high treason' norms were 'over-stretched' to serve as a basis for the condemnation of left-wing artists, authors and publicists like Josef Gärtner, Böttger demonstrates that 'subsuming right-wing offenders under the high treason norms was incomparably more difficult than [subsuming] Communist offenders'.[24]

Thus, more recent scholarship has yielded a more complex picture. While rejecting simple continuities between the Weimar and National Socialist legal practice, it acknowledges at times excessive leniency towards right-wing political offenders. Moreover, the centrality of judges and verdicts has come under scrutiny. Gusy's and Martin Klemmer's studies show judges tried to avoid adjudicating essentially political questions.[25] Marcus Böttger has pointed to substantial legal factors, and not only judicial bias, in explaining the differential sentencing of left- and right-wing political crime. Jürgen Christoph's study of political amnesties, finally, has put into perspective the practical impact of the verdicts whose one-sidedness has preoccupied scholars since the Hannovers.

However, historians of Weimar political justice are still concerned primarily with National Socialism and focused almost exclusively on judges. Insofar as Weimar features at all, it does so as a prelude to Nazi rule—Ralph Angermund's 1991 study of the judiciary 1919–1945, for example, devotes just 25 of its 300 pages to the Weimar period.[26] Moreover, to this day the Hannovers' is still the most influential position. Irmela Nagel's 1991 study of the *Feme* killings and Böttger's 1998 study of high treason verdicts both state the Hannovers' dominance over the field outright. Nikolaus Brauns' portrait of the Red Aid, the mass membership Proletarian Aid organization dominated by the Communist Party, reaffirms their positions, sometimes verbatim.[27] Detlev Peukert argued that 'not primarily the blockade of processes of modernisation through the old élite's excessive attachment to tradition unsettled the Republic, but rather the especially crisis-prone dynamic of modernisation'.[28] Nonetheless, even Peukert's own discussion of the administra-

[23] Böttger, M., *Hochverrat*, p.276.

[24] Böttger, M., *Hochverrat*, pp.21–3, pp.154–224, p.275.

[25] Gusy pointed out, for example, that the judges consciously avoided evaluating the 1918 revolution under the high treason norms, because they rightly recognised that this was a political question (Gusy, C., *Weimar—wehrlose Republik?*, pp.109–13). Gusy concluded that the relationship between politics and the administration of justice was 'more complex' than suggested by the twin slogans of 'political justice' and 'enmity towards the Republic' (ibid., p.366). Martin Klemmer showed that the judges did not avail themselves of the theoretical positions of the contemporary *Freirecht* debate in order to legitimise encroaching upon the politicians' turf (Klemmer, M., *Gesetzesbindung und Richterfreiheit. Die Entscheidungen des Reichsgerichts in Zivilsachen während der Weimarer Republik und im späten Kaiserreich*, Baden-Baden 1996).

[26] Angermund, R., *Deutsche Richterschaft 1919–1945*, Frankfurt a.M. 1991.

[27] Nagel, I., *Fememorde und Fememordprozesse*, Köln 1991, p.15, Böttger, M., *Der Hochverrat*, Frankfurt a.M. 1998, p.235.

[28] Peukert, D.J.K., *Die Weimarer Republik. Krisenjahre der Klassischen Moderne*, Edition Suhrkamp Neue Folge 242, Frankfurt a.M. 1987, p.241.

tion of justice focuses almost exclusively on the judiciary.[29] A striking expression of the historiographical dominance of the traditional approach, as the judges manifestly stand for the 'old élite'. Studying party lawyers, on the other hand, promises to illustrate the 'especially crisis-prone dynamic of modernisation'.

By focusing on the reactionary elements in the judiciary, a generation of scholars actively sought to influence contemporary (West) German debates, from the first stirrings of *Vergangenheitsbewältigung* to the *Historikerstreit* in the mid-80s right up to the present day. Comparisons between the Weimar judiciary and the courts of the Federal Republic were readily drawn, frequently to the detriment of the latter.[30] This agenda lends the writing of the Hannovers' school its polemical edge. In retrospect, that commitment can make this body of work look steeped in moral-intellectual righteousness, or, put more bluntly, both partisan and dated.

Moreover, the orthodoxy draws heavily on Weimar polemics as source material. 'Our task', write the Hannovers in the introduction to *Politische Justiz*, is not 'to present hitherto unknown matters from the archives or from old files'. Rather, they aimed to reconstruct the image of politicised legal procedure 'as it must have appeared to the interested contemporary', i.e. the reader of 'the documentation and reports about political justice printed in small editions, especially *Die Justiz*'.[31] Hannover/Hannover-Drück's uncritical acceptance of Rudolf Olden's and Erich Kuttner's articles on the social origin of lay magistrates (*Schöffen*) illustrates the problems of this approach.[32]

Marcus Böttger recently urged that 'Weimar justice now be taken out of the shadow of National Socialism and the darkest phase of the German administration of justice associated with it and subjected to an unbiased analysis'.[33] Already in 1988 Wolfgang Schild, certainly no slouch when it comes to highlighting the nationalist sympathies of interwar judges, decried the poor empirical base on which sweeping judgements about the Weimar administration of justice were passed. He identified 'a need for many more studies [...] which take the individual case seriously and do not just regard it as an instance of a previously known pattern of general validity'. Observing that both left and right subjected the judiciary to relentless criticism, Schild concluded that 'it should be asked whether the judiciary did not pose an obstacle for all radical movements of the Weimar Republic, which had to be kept under fire incessantly'.[34] This my study sets out to do.

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[29] Peukert relies primarily on Gotthard Jasper (Peukert, D.J.K., *Die Weimarer Republik*, pp.218–21).

[30] Rasehorn, T., *Der Untergang*, p.40, Hannover H.,/Hannover-Drück, E., *Politische Justiz*, p.236.

[31] Hannover, H./Hannover-Drück, E., *Politische Justiz*, p.13.

[32] The issue of lay magistrates was problematical for left-wing critics of the administration of justice, because their function was to provide an element of popular control of the judiciary. The judges favoured the right because of the attitudes imbibed from their social peers, but what about the judgements passed by courts with a lay element? For Olden and Kuttner, and following them Hannover and Hannover-Drück, the explanation was to be sought in the judicial administration manipulating (or through bias skewing) the selection of lay magistrates. A random sample of court protocols consulted in the course of my own research, in contrast, yielded a much less dramatic underrepresentation of workers (29/100 lay magistrates) than asserted in the literature (see Appendix B).

[33] Böttger, M., *Hochverrat*, p.2.

[34] Schild, W., 'Berühmte Berliner Kriminalprozesse der Zwanziger Jahre', pp.121–92 in Ebel, F./Randelzhofer, A. (eds.), *Rechtsentwicklungen in Berlin*, Berlin 1988, p.124, p.127. Unless otherwise

It is symptomatic both of the priorities of the orthodoxy and its hold over the field that trial lawyers have only recently begun to attract attention, broadly speaking from three directions. First, the fate of Jewish lawyers—for whom the judicial bench was de facto closed—has been studied, e.g. by Tilmann Krach and Simone Ladwig-Winters.[35] This development formed part of the historical profession's increasing focus on the Shoah over the past thirty years—Saul Friedländer's *Nazi Germany and the Jews*, for example, discusses lawyers in some detail. However, as Krach himself acknowledges, the lawyers in question would scarcely have defined themselves by their Jewish origins. Many of them were atheists, non-practising, or converts. To treat them separately from their non-Jewish colleagues is thus in a sense to project the Nazi definitions backwards.

Secondly, historians of the professions such as Konrad Jarausch, Hannes Siegrist and Kenneth Ledford have over the past two decades looked at lawyers as instances of broader trends in social and economic history. They have found that the struggle for recognition, increasing specialization, and interest politics that accompany professionalization weakened the lawyers' commitment to liberalism, and made them susceptible to the lure of National Socialism.[36] While these studies contain a wealth of information and insights about the social composition, changing income patterns, religious affiliation, and even marriage preferences of Weimar lawyers, the kinds of questions professional histories ask do not speak to this study's objectives. As Siegrist himself points out, the role of 'politicising trial lawyers has been underestimated'.[37] Knowing how much lawyers earned on average and at what age they married does little to explain why a vocal and visible minority threw the iron principles of the bar—unconditional commitment to the client and independence from outside influence—overboard.

Most recently, individual lawyers have attracted scholarly attention, and it is under this viewpoint that political lawyers, too, have come under a modicum of scrutiny. Some have been singled out for criticism as particularly dark specimens (Ortner's biography of Roland Freisler, or Schenk's of Hans Frank), others held up as the exceptions that prove the rule. Douglas Morris' meticulously researched, exhaustively detailed book on Max Hirschberg is a recent (and fine) contribution in this mould.[38] Mostly, however, these individual biographies are interested in

stated, the addage 'Berlin' in works cited and published between 1947 and 1989 refers to the western part of the city.

[35] Krach, T., *Jüdische Rechtsanwälte in Preußen*, München 1991, Ladwig-Winters, S., Anwalt ohne Recht. Das Schicksal jüdischer Rechtsanwälte in Berlin nach 1933, Berlin 1998.

[36] Jarausch, K., *The Unfree Professions. German Lawyers, Teachers and Engineers 1900–1950*, Oxford 1990, Siegrist, H., *Advokat, Bürger, Staat. Sozialgeschichte der Rechtsanwälte in Deutschland, Italien und der Schweiz* (18.-20. Jhd.), Studien zur Europäischen Rechtsgeschichte 80, Frankfurt a.M. 1996, Ostler, F., *Die deutschen Rechtsanwälte*, 2.ed., Essen 1982, Ledford, K., *From General Estate to Special Interest. German lawyers 1878–1933*, Cambridge 1996. For a survey of professionalisation scholarship see Abel, L., *American Lawyers*, New York 1989, pp.14–39.

[37] Siegrist, H., *Advokat…*, vol.2, p.578f., cf. Ledford, K., *General Estate*, p.284, fn.34.

[38] Ortner, H., *Der Hinrichter*, Göttingen 1993, Schenk, D., *Hans Frank. Hitler's Kronjurist und General gouverneur*, Frankfurt a.M. 2006, Morris, D., *Justice Imperiled. The Anti-Nazi Lawyer Max Hirschberg in Weimar*, Ann Arbor 2005.

their subjects not so much for what they did in the courtroom (and how) as for their subsequent misdeeds as Nazi perpetrators or, alternatively, their credentials as democrats-despite-everything.

The exception to this rule is Benjamin Carter Hett's work, which in many ways prepares the ground for my argument. Hett's *Death in the Tiergarten* highlights changes in the legal culture of the late empire that mark one of the starting points to my argument about the politicization and dramatization of justice in the Weimar Republic. *Crossing Hitler*, meanwhile, focuses on a particularly high-profile set of trials and a fascinating lawyer, Hans Litten. While it avoids the pitfalls of other biographies, it still tends to portray Litten in isolation. This has to do both with the chosen form—a biography is a biography—and the chosen subject, like many of his Weimar peers a highly idiosyncratic lawyer.

Characterizing Litten, Hett hints at the difference between political and 'normal' lawyers: 'Litten [...] would be a new kind of lawyer. German trial lawyers in the early twentieth century were no different from lawyers in any other time and place in believing that their job mostly demanded the gentle art of persuasion'. Citing the prominent left-liberal journalist Rudolf Olden's reminiscences, the author continues: 'Hans Litten was never this kind of lawyer. His radicalism, according to Olden, was not a matter of form; it was a matter of substance: "Questions and requests for evidence [...] sometimes seemed to encompass remote subjects, even the whole structure of the state, when the case seemed to be only about a street brawl."' Hett's work, however, stays focused on Litten rather than following up on this new type of lawyer.[39] The handful of political barristers besides Litten whose prominence attracted individual biographical treatment have been discussed in similar isolation, mostly without attaining Hett's level of contextualization.[40]

Only the lawyers working on behalf of the Red Aid have attracted scholarly notice as a cohesive group. Petra Gängel's 1985 dissertation at the *Hochschule für Politik*, Potsdam, a German Democratic Republic cadre school, argued that Red Aid

[39] Hett, B.C., *Crossing Hitler. The Man who put the Nazis on the Witness Stand*, New York 2008, pp.52–53.

[40] Beradt, C., *Paul Levi. Ein demokratischer Sozialist in der Weimarer Republik*, Frankfurt a.M. 1969, Knobloch, M./Reifner, U., 'Der "kommunistische" Anwalt und die freie Advokatur—Zur Biographie von Ernst Hegewisch (1881–1952)', pp.23–35 in Fabricius-Brand, M., (ed.), *Rechtspolitik 'mit aufrechtem Gang': Werner Holtfort zum 70. Geburtstag*, Baden-Baden 1990, Trotnow, H., *Karl Liebknecht. Eine politische Biographie*, Köln 1980, esp. pp.56–72, Heid, L., '"Er ist ein Rätsel geblieben" Oscar Cohn—Politiker, Parlamentarier, Poale-Zionist', pp.25–48 in Benz, W. et al. (eds.), *Jüdisches Leben in der Weimarer Republik*, Schriftenreihe wissenschaftlicher Abhandlungen des Leo-Baeck-Instituts 57, Tübingen 1998. Bendix, R., *Von Berlin nach Berkeley*, Frankfurt a.M. 1985, contains valuable biographical information on his father, SPD lawyer Ludwig Bendix. Redaktion *Kritische Justiz* (eds.), *Streitbare Juristen* contains individual portraits of political lawyers Max Hirschberg, Hans Litten, Felix Halle, Rudolf Olden and Karl Liebknecht as well as other interesting biographical sketches such as Gerhard Jungfer's portrait of Max Alsberg.

Some NS lawyers have also attracted scholarly attention. They too, are portrayed in isolation from their peer group of party lawyers. (Schudnagies, C., *Hans Frank. Aufstieg und Fall des NS-*

barristers propped up democratic culture in the Weimar Republic against the excesses of 'reaction'. Communist Party barristers in particular formed the vanguard of democracy's defenders in Gängel's narrative, unsurprisingly given that her thesis was supervised by Hilde Benjamin. Nicknamed the 'Red Guillotine' because of her enthusiastic embrace of the death penalty, Benjamin was the first female Minister of Justice in the GDR and had been a Weimar party lawyer herself. Gängel's study omits key documents that throw light not just on the antidemocratic practice of the Communist party legal organization but also on bickering amidst its lawyers and their abuse of their (Communist) clients' trust. In addition, the author downplays the role of Social Democrat lawyers in the Red Aid, and totally discounts similarities between Communist barristers and their National Socialist colleagues.

While such ideological blinkers are no surprise in a product of official GDR history, similar constraints of vision also limit more recent work on Red Aid lawyer collectives. Erika and Josef Schwarz and Heinz Jürgen Schneider's collection of lawyer biographies and Nikolaus Brauns' study of the Red Aid, from 2002 and 2003, respectively, on the whole recount Gängel's narrative. Though more nuanced—Brauns, for example, discusses the Stalinist purge the Red Aid suffered in 1929, as well as a violent anti-Semitic attack on a party lawyer by a Communist functionary—in general they offer a celebration of left-wing barristers bordering on the hagiographic. While many Red Aid barristers really were courageous and far-sighted stewards of procedural guarantees and stalwarts in the struggle for democracy, many others, as we will see, were not. In particular, Communist barristers organized by the party legal office combated Weimar democracy just as fervently as their enemies on the nationalist right. The failure to appreciate this stems from a continued interest in operating the history of Weimar justice as a vehicle for lambasting Federal Republican political culture. In his foreword to the Schwarz's and Schneider's book, Heinrich Hannover writes that the Red Aid lawyers 'were the representatives of the other Germany, which the collectively guilty majority ought to have remembered during the time when its own history shamed it, or ought to have shamed it.' An opportunity wasted, and wasted for all the wrong reasons: in West Germany 'historical achievements of Communists could not possibly be admitted to be true, and continued to fall victim to the censorship of silence [*Verschweigen*]. To remember them would have been an obstacle to the renewed persecution of Communists, which continues to this day.' A victory of wilful neglect orchestrated by the 'historians of the powerful', in other words.[41]

Juristen und Generalgouverneurs, Rechtshistorische Reihe 67, Frankfurt a.M. 1989, Kleßmann, C., 'Hans Frank—Parteijurist und Generalgouverneur in Polen', pp.42–51 in Smelser, R./Zitelmann, R. (eds.), *Die Braune Elite I. 22 Biographische Skizzen*, 2.ed., Darmstadt 1990, Fest, J., 'Hans Frank. Kopie eines Gewaltmenschen' in *Das Gesicht des Dritten Reiches. Profile einer totalitären Herrschaft*, 4.ed, München 1975, Frank, N., *Der Vater. Eine Abrechnung*, München 1987, Ortner, H., *Der Hinrichter*, Göttingen 1993 (a biography of Roland Freisler), Heydeloff, R., 'Staranwalt der Rechtsextremisten. Walter Luetgebrune in der Weimarer Republik', *VfZ* 32 (1984), pp.373–421).

[41] Hannover, H., 'Vorwort', p.7–8 in Schwarz, E./Schwarz, J./ Schneider, H.-J., *Die Rechtsanwälte der Roten Hilfe Deutschlands. Politische Strafverteidiger in der Weimarer Republik. Geschichte und Biographien*, Bonn 2002.

RETHINKING WEIMAR POLITICAL JUSTICE

This book offers a rethink of the highly entrenched orthodox interpretation of Weimar political justice. I deliberately use the word 'rethink' rather than 'revision' because—methodological misgivings and question marks over partisan commitment notwithstanding—there is nothing wrong with the orthodoxy's basic empirical contention. Judges and state prosecutors indeed tended, for a whole host of reasons, to sympathize with the far right while victimizing left-wingers. My work does question, however, whether that sympathy explains as much as we are commonly asked to think, both about the course of trials and about these trials' collective impact on Weimar political culture.

More glaring an omission than the failure to honor Communist defendants from the Weimar years Heinrich Hannover bemoans is the absence of scholarship that considers Communist and Nationalist lawyers side by side. Quite apart from making accessible for the first time in English virtually all the scholarship referenced above, it is here that my study innovates most clearly. For the aggressive recasting of the trial lawyer's role and the propagandistic opportunities it offered Weimar extremist parties was a project the lawyers in this study pursued collectively (if not always collaboratively). Collectively, party lawyers fashioned a new ideal type and created a novel style of judicial polemics. This new style tended to undermine democracy both overtly and structurally, that is to say through the polemical content of the trials just as much as through eroding any notion of a neutral platform for arbitrating ideological disputes.

The impact of political justice on Weimar politics owed more to the barristers' presentation of trials as ideological clashes than to the direct incidence of verdicts. The lawyers' willingness to subordinate the interests of their clients to a dramatic representation of ideological implacability gave this new legal style extraordinary purchase on public opinion. By comparison, judges played a static and predictable role, while frequent political amnesties reduced or even annulled the consequences of their sentencing. We ought therefore to look not only at judges and verdicts, but at other participants in the legal process (and by no means only lawyers—court reporters, state prosecutors, expert witnesses are surely all worthy of consideration) and generally at the dynamics by which trials affected political culture.[42]

In Peukert's wake, and with Wirsching, Fritzsche and Thomas Mergel, my study is predicated on a reading of Weimar as essentially open-ended. In his recent study of Weimar parliamentary culture, Mergel privileges a close, 'anthropological' reading of the rhetoric, symbols, habitus and performative elements that structured and qualified interactions in the *Reichstag*. My study does the same with the courtroom, and like Mergel I have selected an empirical basis that holds out the possibility of bridging the historiographical gap between the study of society and culture and the study of politics. In 'contrast to social history or the history of mentalities, a certain teleological bend [*Finalismus*] seems to adhere to political history [...]

[42] Siemens, D., *A Popular Expression of Individuality. Kriminalität. Justiz und Gesellschaft in der Gerichtsberichterstattung von Tageszeitungen in Berlin, Paris und Chicago, 1919–1933* (Ph.D. Diss, Humboldt-Universität zu Berlin) 2005, Fulda, B., *Press and Politics in the Weimar Republic*, Oxford 2009.

Weimar history, in so far as it is written from the vantage point of 1933, is informed by a set of assumptions about politics which in principle repeat many of the charges already laid against Weimar politics by contemporaries', Mergel argues.[43]

In the study of political justice, an exclusive focus on reactionary judges and a preoccupation with number-crunching verdicts has obscured precisely that aspect which most affected contemporary observers: its drama. At the same time, the partisanship that continues to spill over from Weimar's ideological battles into contemporary historiography masks the extent to which the anti-Republicanism of left and right were interconnected, and often interdependent. In stressing the extremes' mutual imitation of legal techniques and the similarity of their personnel and strategies, my study applies recent insights from scholars such as Emilio Gentile and Andreas Wirsching to Weimar legal history. Wirsching stresses both the dynamism and the emotional appeal of Fascist and Communist community building. Being a member of either movement was not so much about a set of convictions and policies as it was about a sense of belonging, a collective way of life and participation in a political aesthetic.[44] My reading of Weimar political justice suggests that trials reinforced all three, and infused them with the emotional appeal of sacrifice during the 'vanguard' stage of battling the established order. In a similar vein, Hans Maier has suggested that Emilo Gentile's rethinking of Eric Voegelin's concept of political religion is so influential because it helps explain the 'tremendum and fascinosum' of totalitarian regimes.[45] As the exaltation of icons of anti-judicial propaganda of left and right like Josef Gärtner, Max Hölz and Paul Schulz will illustrate, building this fascination preceded victory and helps explain it.

DEFINITIONS AND SOURCES

At first sight, the strong distinction my argument makes between political and 'non-political' justice may appear exaggerated, even naïve. Is not the *modus operandi* of all judicial systems deeply political? Otto Kirchheimer's definition of 'political justice'—'the use of judicial procedure for political ends'—is the most frequently quoted.[46] It is usually ignored, however, that in defining political justice,

[43] Mergel, T., *Parlamentarische Kultur in der Weimarer Republik. Politische Kommunikation, symbolische Politik und Öffentlichkeit im Reichstag*, Beiträge zur Geschichte des Parlamentarismus und der politischen Parteien 135, Düsseldorf 2002, p.14.

[44] Wirsching, A., *Vom Weltkrieg zum Bürgerkrieg? Politischer Extremismus in Deutschland und Frankreich 1918–1933/39. Berlin und Paris im Vergleich,* München 1999.

[45] Gentile, E., *The Sacralization of Politics in Fascist Italy,* Cambridge, MA 2006, idem., Politics as Religion, Princeton 2006, Schönpflug, D., '*Histoires croisées*: François Furet, Ernst Nolte and a Comparative History of Totalitarian Movements', *European History Quarterly*, 37 (2007), No.2, pp.265–90, p.267.

[46] Heinrich Hannover and Elisabeth Hannover-Drück and Gotthard Jasper open their accounts with Kirchheimer (Hannover, H./Hannover-Drück, E., *Politische Justiz 1918–1933*, Frankfurt a.M. 1966, p.13; 'Justiz und Politik in der WR', pp.11–58 in Jasper, Gotthard et al., *Justiz und Nationalsozialismus*, p.11). Axel Görlitz regarded Kirchheimer's ideas as the starting point for the reworking of the definition which he proposed (Görlitz, A. (ed.), *Politische Justiz*, Schriften zur Rechtspolitologie 3, Baden-Baden 1996) and contributors to his collection of essays such as Manfred Walther engage with Kirchheimer's position as the dominant voice in the field.

Kirchheimer moved from a more rigid take focusing on types of offence to a more contextualized one. By the time he published his seminal *Political Justice*, the offence was only one feature that could make a trial political, next to the 'stature' of the persons or groups involved, the degree of public interest and the consequences of a trial.[47] Since Kirchheimer, theoreticians of political justice have sought to establish a 'scientifically grounded' dividing line between 'normal' and 'political' justice—largely in vain.[48]

My study proposes a pragmatic handling of the definition. During the Weimar Republic, contemporaries agreed that regardless of any 'normal' politicization of justice, the courts had become an ideological battleground. This perception of the 'hyper-politicization' of certain trials was tied to the involvement of political parties, to certain types of offences such as conspiracy to high treason, and, last but not least, also to certain barristers. 'Political justice' is what (a reasonable number of) contemporary commentators and a broader public saw as such. Analogous pragmatic definitions are used for 'political trial' and 'political' or 'party lawyer'.

Focusing on party barristers brings into view a number of archival sources hitherto either untapped or very unevenly mined, and almost entirely inaccessible to English readers. The files of the KPD legal organisation in the *Bundesarchiv* Berlin have only become freely available since re-unification. They highlight the degree of party control over lawyers and the political priorities governing their pleading. The files of the party legal organisations are complemented by the disciplinary files and personal papers of individual lawyers. For nationalist legal aid, Hans Frank's Munich practice is of special significance, as it was practically contiguous with the nascent National Socialist legal organisation between 1928 and 1931. Though incomplete, the record complements the files of the organisation itself, and the state prosecutors' files of the Berlin court of appeal in the Berlin *Landesarchiv* and *Geheimes Staatsarchiv Preußischer Kulturbesitz*. Memoirs and newspaper coverage of political trials provide additional information on party legal aid and on the barristers' self-consciously political re-interpretation of the trial lawyer role. Moreover, party lawyers wrote in the daily press, in professional journals, in pamphlets and monographs themselves, reflecting on their view of judicial procedure as part of

[47] Cf. Kirchheimer, O., 'Politische Justiz', *Sociologica* I 1955, reprinted in idem., *Politik und Verfassung*, 2.ed., Frankfurt a.m. 1981, pp.96–122, here especially pp.102–14 and Kirchheimer, O., *Politische Justiz: Verwendung juristischer Verfahrensmöglichkeiten zu politischen Zwecken*, Neuwied 1965, pp.80–90, especially pp.82–3.

[48] Hannover/Hannover-Drück 'understood the term "political justice" in the widest sense' and 'felt legitimised to take in everything which could throw light on the connection between politics and the administration of justice' (Hannover, H./Hannover-Drück, E., *Politische Justiz*, p.13). Later on, Heinrich Hannover defined the 'political dimension of the law' as the 'instrumentalisation of penal law as a political weapon of the ruling class' (Hannover, H. 'Max Hirschberg (1883–1964) Der Kritiker des Fehlurteils', pp.165–79 in Redaktion *Kritische Justiz* (eds.), *Streitbare Juristen. Eine andere Tradition*, Baden-Baden 1988, here p.178). Gotthard Jasper ('Justiz und Politik in der Weimarer Republik', pp.11–58 in Jasper, et al., *Justiz und Nationalsozialismus*, here pp.11–2) uses both Kirchheimer's and a wider Marxist definition. Axel Görlitz and Manfred Walther postulate the need for a 'scientifically grounded definition' but ultimately find none (Görlitz, A., 'Modelle politischer Justiz', pp.9–24 in Görlitz, A. (ed.), *Politische Justiz*, Schriften zur Rechtspolitologie 3, Baden-Baden 1996, pp.9–10., and Walther, M., 'Arenen politischer Justiz: Sondergerichtsbarkeit', ibid, pp.31–90).

the political struggle. Transcripts of parliamentary debates, the published reminiscences of non-political lawyers and the files of the Reich Commmissariat for the Protection of Public Order have also been consulted. Finally, the digests of verdicts passed by the disciplinary bodies of the bar throw light onto the (often fraught) relations of political barristers with their non-political peers.

CHAPTER STRUCTURE

This study is structured in five chapters, briefly outlined here. The nonchalance with which Ferdinand Timpe, himself a barrister, treated the sentencing of Josef Gärtner indicates a fundamental shift in the self-image of lawyers. Only where extremist party lawyers like Timpe no longer defined themselves as the uncompromising champions of their individual clients' interest was a 'defense' like Gärtner's possible. As well as providing an introduction to the German legal system via a short history of the legal profession after 1870, chapter one traces this shift to Rosa Luxemburg's 'militarism trial' on the eve of World War One. The trial, dramatic in itself, formed the backdrop to a heated dispute over legal strategy within the Social Democratic Party. A tightly knit group of ideologically committed and rhetorically savvy young lawyers around Paul Levi rejected the notion of the 'apolitical' sanctity of the courtroom outright. Procedural even-handedness to them was a myth, the court a political battlefield where class solidarity and sacrifice must override any 'legalistic' concern with an individual client's fate. The template for Weimar party lawyers of all stripes was fashioned in this controversy.

Chapter two introduces the protagonists of Weimar political defence work, based on ten political lawyers from across the ideological spectrum. As well as sketching their biographies, the chapter considers the lawyers' career patterns, their distinctive self-view, and highly politicized conception of judicial procedure. Relations with non-political peers were often tense, as were interactions within the group of party lawyers, inside and between political camps. And yet, I argue, carving out the niche of political specialists in the bar was their collective accomplishment. Their professional ethos, while contrasting starkly with received norms of lawyerly conduct, was in important ways shared across ideological boundaries. It rationalized their abrasive and at times flamboyant style of pleading as well as their subordination to party discipline. While highly individualistic, the barristers formed a distinctive group without whose contribution the politicization of Weimar justice is hard to account for.

Chapter three discusses the legal organization the Communist Party built up to administer and publicize political trials. Despite their professions of ideological discipline, harnessing the often volatile, headstrong and individualistic party lawyers to a coherent political strategy proved tricky. The Communist Party pioneered the standardization of legal aid and the propagandistic exploitation of trials by ingeniously combining both in one in-house law office. The highly innovative KPD party legal organization grew rapidly—eventually employing a full-time staff of fourteen handling tens of thousands of cases—and enjoyed a high visibility both

within the party and outside it. Its genesis and mode of operation are laid out using the celebrated trial and rehabilitation campaign of Max Hölz, the 'Communist Robin Hood', as a case study.

Even though the Communist Party legal organization attracted the wrath of its political opponents, these same opponents also grudgingly admired its success. Nationalist attempts at imitating it are discussed in chapter four. From 1922 onwards, right-wing organizations from the German Nationalist People's Party to the Patriotic Prisoners Aid (*Vaterländische Gefangenenhilfe*) tried to adapt the KPD's formula of combining legal aid and trial-based propaganda in cases like the so-called *Feme* murders. By and large, however, such attempts at imitation were unsuccessful until Hans Frank founded the Association of National Socialist German Lawyers in 1928. By 1930, more than 200 lawyers had joined Frank's organization, a success that prompted rival NS legal organizations to challenge Frank's exclusive claim to legally represent Hitler and the NSDAP, as the case of the 'Potempa Five' illustrates.

Chapter five argues for a re-conceptualization of Weimar political trials as the performance of ideology. Stressing the ritualistic nature of mass pageants, Erika Fischer-Lichte has recently argued that interwar theatrical innovations modernized and dramatized the notion of sacrifice as a catalyst for the construction of community.[49] The same is true of political trials, where a community of fundamental opposition to the Weimar political order was played out. In political trials, Weimar extremists styled themselves fiercely committed idealists who, in their sacrifice, foreshadowed the victorious ideological community of the future—with the inertia and legalism of the judges as foil. Courtroom performances of ideology moreover resonated with trends in contemporary theatre, where innovators like Brecht, Piscator, and the protagonists of agitprop were seeking to break down the boundaries between politics and art.

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[49] Fischer-Lichte, E. *Theater, Sacrifice, Ritual. Exploring Forms of Political Theatre*, New York 2005, pp.17–45.