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Nazi Justiz: Law of the Holocaust

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Book Notes

MILLER, RICHARD, NAZI JUSTIZ: LAW OF THE HOLOCAUST, Greenwood Publishing (1995). (\$39.95); ISBN 0-275-94912-5; 248pp. (hardcover).

Over fifty years after the world's realization of the true nature of the atrocities that occurred in the concentration camps of Nazi Europe, most scholars have chosen only to examine the horror of that time from the perspective of statistical analysis and first-hand descriptions from concentration camp survivors. While this kind of examination may be essential in trying to understand the amount and kind of destruction inflicted on the European jew, it is not helpful in understanding why this atrocity was able to take place.

Richard Miller's *Nazi Justiz* attempts to do just this. In analyzing the Nazi legal system, the author sets up the framework on which the Nazi policies of genocide and mass murder were carried out. The events of World War II were neither static nor isolated from the social conditions that led up to the war years. The legal system set up by Adolf Hitler shortly after his rise to power, while from the outset discriminatory to jews, took many years to develop into the system which openly exterminated those which it opposed. Above all else, it should be remembered that the Nazi legal system played an essential role in promulgating genocide, enabling mass extermination in an organized and non-disruptive manner. The evolution took place in five distinct, yet overlapping, areas. These include: identification, ostracism, confiscation, concentration, and annihilation.

Central to the Nazi's persecution of jews was their need to define what a jew was. Despite the racial determinist theories of the time, the jewish population was not different enough in appearance to simply separate them from the population as a whole. Under the legal system of Nazi Germany, judaism was not a question of culture, but one of blood and ancestry. This mix of biological and cultural characteristics, while by today's standards impossible to comprehend, created a class of undesirable despite their outward appearance or actions. Many persons who believed themselves to be "Aryan" and actively participated in Nazi activity, only later found, to their chagrin, that they were jewish because of some distant relative's blood.

Once a defining characteristic could determine a Jew from an "Aryan", it was possible to ostracize those considered undesirable by the state. This, as the first active step towards discrimination, was one which, above all else, brought racism to a bureaucratic, democratic level. No longer was anti-Jewish sentiment left to the whims of vigilante mobs, but was now mandated by law and party policy. This took several forms in ostracism. The first was that of economic boycott, and represented the fundamental principle of Nazi policy to remove Jews from all areas of the national economy. Not only, then, were German employers prohibited from hiring Jews, but Jews were also banned from buying or selling even the most essential commodities, such as food and clothing. Thus, not only were Jews deprived of a means of income, but even if they had some money, they were not allowed to purchase anything. Beyond this fundamental deprivation also entailed their revocation of legal rights. In this case, Jews were deprived access to laws and police protection, making them an easy target for private hostility and government discrimination alike. Like Blacks in the American South during the first half of the Twentieth Century, Jews were also prohibited from all essential and recreational activities of social life that involved their contact with "Aryan" citizens.

The second step Nazis utilized in Jewish extermination was the confiscation of property owned by Jews. So what started as denying Jewish people an income evolved into a system which "Aryanized" Jewish property without any compensation to former owners. The logic of the time dictated that in order to protect the economic value of the business, it was essential to confiscate this property from Jews and run it by Aryan owners.

The penultimate step to mass extermination was that of concentration, a relatively easy step in the process since by this time nearly all Jews still in Germany had been deprived of their jobs and property. This phase represents the time in which Jews, now isolated in regions of the city, are scrutinized by the government officials and ignored by the population in general. This process began by excluding Jews from rural areas in Germany, and once migration to the cities was complete, they were concentrated even further into blocks and neighborhoods of entirely Jewish population. This step related directly as a continuation of the policy set forth with identification, ostracism, and confiscation, since concentration not only told Jews where they had to live, thus taking away their right to movement, but also was a method of facilitating the destruction process which was to follow.

The final, and most commonly examined, aspect of the extermination of the Jews, was the process of forced birth prevention and infliction of torture and death which comprised the fundamental goal of Nazi policy up until that time. Direct limitations on marriages, as well as the indirect limitations on employment and health standards, undermined the Jewish culture's ability to procreate and thus pass on

their culture to their offspring. However, as if to say that this policy was not efficient or fast enough to accomplish the goals of the state, the official party attitude to the "useless lives" of non-aryans, combined with the growing bureaucratic stake in promoting policies which would eliminate the "criminal jew", mass extermination and genocide were close on the heels.

Nazi Justiz, in providing a legal history of the holocaust, is important for two reasons in understanding international legal regimes of today. First, it offers a model of explanation for what was the most tragic chapter in human history. With this understanding, it is possible to comprehend how an entire nation can condone such atrocities. Secondly, underlying this analysis is the fundamental notion that any government, particularly one bent on the destruction of a portion of its own population, must resort to laws in order to prevent chaos from ensuing. Without the legal definition of what constituted a jew in Nazi Germany, mass hysteria, revenge killings, and unlawful confiscations would have abounded, thus forming the destruction of the German state. The very fact that the elimination of millions of people could occur without the disruption of one of the most powerful countries of the time is a testament to the necessity of these laws. However brutal the fascist rule of Hitler was, a failure to recognize that law existed and guided policy at the time would be to painfully misinterpret and underestimate the Nazi regime. For the sake of preventing future atrocities, this should never be done.

Thomas F. Muther, Jr.

JEAN SALMON, MANUEL DE DROIT DIPLOMATIQUE, Précis de la Faculté de Droit de Université, Établissements Émile Bruylant, Brussels, (1994). (\$); ISBN 2-8027-0900-3; 678 pp. (pbk)

More than a "manual", Salmon's book is in part a systematic articulation of "black letter" principles, part analysis of the development in (and continuing questions arising out of) those principles, part bibliography and decision overview. The first part gives a broad overview of the sources and general historical development of diplomatic law, followed by an examination of traditional bilateral diplomatic relations, approaching the subject from numerous directions such as the organization of diplomatic services and of individual missions and accreditation process. Salmon focuses in on the role of the Chief of Mission and the scope of his official and unofficial relationship with the accredited State. Also analyzed is the array of quasi-diplomatic missions, including those operating as intermediaries between States themselves lacking formal relations.

A section on diplomatic privileges and immunities look both at established and inconsistent practices in diplomatic treatment, in particular