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BOOK REVIEW: THE MARKS OF FRANKFURT

*Detlev F. Vagts**

GESTAPO V-LEUTE: Tatsachen und Theorie des Geheimdienstes — Untersuchungen zur Geheimen Staatspolizei während der nationalsozialistischen Herrschaft. By Walter Otto Weyrauch. Frankfurt am Main, Vittorio Klosterman, 1989. Pp. xi, 140. One volume, DM 60.

Professor Weyrauch's exploration of the tenebrous world of underground police informants proceeds at two levels.¹ At one level it explores the ramifications of his discovery, forty-five years ago, of data concerning police informants in the files of the German secret police in Frankfurt am Main. At the other level it examines the morality of acting as an informant in universal terms, including operating in modern American society. At both levels, the book is grimly fascinating and deserves the attention of the reader — either in this version for those who can read German or in a briefer version published in English.²

The reportorial part of the book is somewhat tantalizing and frustrating. The 130,000 cards are now locked up in the National Archives and classified as "secret." Thus, the author must rely on two reports that he wrote when he was examining the files in 1945 on behalf of the newly arrived American military government. It is therefore not possible to attempt statistical analyses of the approximately 1200 cards,³ which related to informants, to see potential correlations between being an informant and this or that item of status or background. Weyrauch discusses several groups of persons who were particularly vulnerable to being enlisted as informants: nationals of neutral countries, enemy nationals, the politically persecuted, and both the racially and religiously persecuted. He also lists some categories of people not generally suitable for such work: convinced Nazis, Jehovah's WITNES-

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1. W. WEYRAUCH, *GESTAPO V-LEUTE: TATSACHEN UND DES GEHEIMDIENSTES — UNTERSUCHUNGEN ZUR GEHEIMEN STAATSPOLIZEI WÄHREND DER NATIONALSOZIALISTISCHEN HERRSCHAFT* (1989).

2. Weyrauch, *Gestapo Informants: Facts and Theory of Undercover Operations*, 24 COLUM. J. TRANS. L. 553 (1986) covers substantially the same ground as the book under review but is condensed into 43 pages.

3. W. WEYRAUCH, *supra* note 1, at 12.

ses, and gypsies.⁴ But the state of the record permits only vague references — Swiss nationals are “often” mentioned in the files,⁵ cases of Catholic clergymen are “isolated.”⁶ The same limitation in the availability of the files makes it more or less impossible to reconstruct in detail individual cases of informants, to examine what pressures or lures brought them into this line of activity, or to determine how much damage they caused and to whom.

The losses thus imposed by the secrecy policy of the National Archives are particularly painful because of the special character of the individuals concerned. Here we are dealing with persons who are engaged by the police to conduct more or less long-term informing activities. They are thus distinguishable from ordinary informers — that is, people who, for reasons of their own, once (or occasionally more often) denounced somebody to the Nazi authorities on their own initiative. We know something about these people on an anecdotal basis. Some of them figure in post-1945 cases when they were prosecuted for having caused death or other grievous harm to the targets of their informing.⁷ A book titled *Judas Women*⁸ relates the stories of ten German women who denounced individuals to the Nazi state. We also know something about the way in which the external branch of the Gestapo used informants to penetrate groups of exiles working against Nazism abroad. In some of those cases, the Gestapo brought pressure on targets by holding family members hostage.⁹ Those cases that we know about in some detail usually involved personal motives that very diverse people would agree were base: jealousy, a desire for freedom from an unwanted mate, a yearning for publicity, and so forth. Such tale-bearing cases do not pose complex moral issues. But enthusiasts for the Nazi cause also denounced people that they regarded as traitors. Of course, we do not have a large and sophisticated

4. *Id.* at 36-71.

5. *Id.* at 37.

6. *Id.* at 56.

7. A number of cases of prosecutions of informers during the Nazi period are discussed in I. MÜLLER, *HITLER'S JUSTICE: THE COURTS OF THE THIRD REICH* 274-75 (D. Schneider trans. 1990). The problems of dealing with such cases *ex post facto* were explored in famous jurisprudential articles in the Anglo-American world. See Hart, *Positivism and the Separation of Law and Morals*, 71 HARV. L. REV. 593 (1958); Fuller, *Positivism and Fidelity to Law — A Reply to Professor Hart*, 71 HARV. L. REV. 630 (1958).

8. H. SCHUBERT, *JUDASFRAUEN: ZEHN FALLGESCHICHTE WEIBLICHER DENUNZIATION IM DRITTEN REICH* (1990).

9. See H. TUTAS, *NATIONALSOZIALISMUS UND EXIL: DIE POLITIK DES DRITTEN REICHES GEGENÜBER DER DEUTSCHEN POLITISCHEN EMIGRATION 1933-1939*, at 90 (1975).

statistical base to serve as a source for comparisons between idealistic and non-idealistic informers or between informers and the general population.

The more generalized level of Weyrauch's study involves probing into the moral questions posed by becoming a police informer. As we have seen, these questions are more puzzling than the questions involved in an unsolicited one-time denunciation. The confidential informants in the Frankfurt Gestapo files may well have been recruited for their work. Weyrauch speculates that the position of power enjoyed by the police in relation to these vulnerable classes of people resulted in successful recruitments, although the card indices did not give the sort of details that would have enabled one to balance precisely the morality of the occasion. As Weyrauch indicates,¹⁰ the exertion of great pressure would not be inconsistent with a complete void of information in the files or even with the absence of an informant's ability to testify as to having been overtly coerced.

How much coercion should an individual be expected to endure before agreeing to act as an informant? How much menace aimed at other parties is enough to justify informing on targets? Here we come into the realm of moral problems where Weyrauch follows the path of moral analysis pointed out by the distinguished scholar of talmudic and Roman law, David Daube.¹¹ Daube's work primarily relates to cases, occurring both during the Roman occupation of Israel and the German occupation of Europe, in which the occupier told the oppressed populations to surrender one or more of their number or suffer the deaths of more members of the community, perhaps even the entire community. Note that only a few — if any — of the cases that Weyrauch relates could have posed such dilemmas. The threats that induced informants to act as such must have been directed mostly at the informants themselves, a difference of very considerable importance for the morality of acquiescence.

The morality of informants becomes an even shadowier issue when one attempts to consider it cross-culturally. Acting as a confidential agent appears differently situated in the moral universe if one serves a totalitarian, racist regime than it does if one serves the agencies of a democratic, peaceful regime. As Weyrauch notes,¹² expenditures in the United States for paying informants have grown steeply over the years, and presumably so has the frequency of their use. But if these

10. W. WEYRAUCH, *supra* note 1, at 26-29.

11. *Id.* at 1-2.

12. *Id.* at 3.

people are hired to inform the authorities about organized crime, particularly dealings in narcotics, how does one compare such activity on a moral scale with working for the Gestapo in the bad years? And where does one locate a person who, at the request of the American authorities, infiltrates an espionage team operating for the Soviet Union? The popular American judgment of such an action presumably would be favorable, particularly in those times when fear of Stalinism made us willing to let go of libertarian traditions that seemed to interfere with our self-defense. But by this point, one is coming closer in moral terms to the case of dedicated Nazis who sought to serve their cause by infiltrating a group that they saw as serving the evil cause of Communism. Finally, the use of informants by a government has special aspects if it rises to such a degree that fear of denunciation pervades a society and individuals become afraid of being open with acquaintances, friends, and even family. This is an essential element of societies that we consider to be totalitarian.¹³ We are just beginning to get a picture of the use of informants in East Germany that seems to have out done the Nazis.

To carry forward one of Weyrauch's metaphors,¹⁴ this book adds to the mosaic laid down by David Daube, in which many pieces are missing. There are still gaps in the whole mosaic and the author rightly challenges readers to work out the moral issues for themselves.

13. For a view of how informing fitted into the scheme of Nazi control of life in Germany, see D. PEUKERT, *INSIDE NAZI GERMANY: CONFORMITY, OPPOSITION AND RACISM IN EVERYDAY LIFE* (R. Deveson trans. 1987), especially at pages 238-39. Reference there is made to Gestapo files in Düsseldorf somewhat like those Weyrauch discusses.

14. W. WEYRAUCH, *supra* note 1, at 2.