

Michigan Law Review

Volume 37 | Issue 5

1939

GERMAN SOCIAL HONOR COURTS

Harlow J. Heneman
University of Michigan

Follow this and additional works at: <https://repository.law.umich.edu/mlr>



Part of the [Comparative and Foreign Law Commons](#), and the [Labor and Employment Law Commons](#)

Recommended Citation

Harlow J. Heneman, *GERMAN SOCIAL HONOR COURTS*, 37 MICH. L. REV. 725 (1939).

Available at: <https://repository.law.umich.edu/mlr/vol37/iss5/3>

This Article is brought to you for free and open access by the Michigan Law Review at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Michigan Law Review by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact mlaw.repository@umich.edu.

GERMAN SOCIAL HONOR COURTS

*Harlow J. Heneman**

GERMANY'S National Socialist regime has prided itself on its ability to maintain peaceful employer-employee relations at a time when other countries of the world are seriously troubled by industrial disturbances. The German government has actively intervened to see that neither employers nor workers overstep bounds set for them by Nazi social and economic policies. Dr. Robert Ley, head of the German Labor Front, has said that the government owes its success in this field to measures that are a "healthy combination of freedom and compulsion."¹ Since Hitler's advent to power, the former organizations of both employers and employees have largely been supplanted by new institutions. The new structure can exist only so long as it is supported by the authority of the Nazi government. The transition to the present system has been brought about through the use of force and through alterations in the legal framework within which employer-employee relations have been carried on. In this "new deal" for German labor, the social honor courts assume a role of great significance.

National Socialist hatred of Marxism was largely responsible for the treatment accorded the labor unions from the moment when Hitler assumed office. Marxian doctrines of the class struggle were held to be the views of disruptive elements bent upon the destruction of the national state. Marxian socialism was called an "international Jewish disease." According to Hitler, such socialism as his regime would tolerate was a *national* socialism. The German proletariat, he said, was to further the aims not of the international class struggle, but those of the Fatherland. Accordingly, in 1933, the existing trade unions were abolished or Nazified and their assets were appropriated for the later use of the German Labor Front. The first of May was made a day when *German* workers would henceforth commemorate *national* labor. In the future, such organization of German labor as was permitted was to be under National Socialist leadership. On May 19, 1933, a law was enacted which provided that government officers

* A.B., Minnesota; A.M., California; Ph.D., University of London; Associate Professor of Political Science, University of Michigan. Author, *The Growth of Executive Power in Germany* (1934), and of numerous articles in the fields of comparative government and public law.—*Ed.*

¹ LEY, GERMANY SPEAKS 180 (1938).

should supplant such employer and employee agencies as had previously existed.² These officials, known as "labor trustees" (*Treuhänder der Arbeit*), were to be appointed by the national chancellor acting in cooperation with the state governments concerned. Among the duties with which the labor trustees were charged was that of maintaining peaceful employer-employee relations. The statute also requested them to aid in the preparation of a new social constitution for the Third Reich.

In 1934, provision was made to combine German employers and workers in one large organization. Accordingly the German Labor Front was formed.³ Business and labor were now united in a single unit under the control of a "leader." Membership in the Labor Front was ostensibly on a voluntary basis, but it soon became apparent that employers or employees who did not join might experience difficulties of various kinds. By 1937, the Labor Front could boast of more than 24,000,000 members. Dr. Ley, chief of the political organization of the National Socialist party and also head of the Labor Front, has said that this remarkable growth indicates clearly that the selfish class differences of economic groups have been subordinated to the common welfare.

The "new social constitution" referred to above was published on January 23, 1934.⁴ This "Law for the Regulation of National Labor" (AOG) and its subsequent amendments form the basis for a large part of present German labor law.⁵ Their provisions had been hailed as "the Magna Charta of Germany's social policy."⁶ This charter, if it can be called that, is little concerned with the rights of individual employers or workers. It is much more concerned with the duties they owe to the community (*Gemeinschaft*). The authority of the state

² Law of May 19, 1933, providing for *Treuhänder der Arbeit*. See REICHSGESETZBLATT (hereafter R. G. B.), 1933, I, No. 52.

³ The general purposes for which the German Labor Front was created are to be found in a decree of Oct. 24, 1934. See Cole, "The Evolution of the German Labor Front," 52 POL. SCI. Q. 532 (1937).

⁴ This was the *Gesetz zur Ordnung der nationalen Arbeit*, or Law for the Regulation of National Labor, enacted Jan. 20, 1934. See R. G. B., 1934, I, No. 7. This law is frequently referred to as the *Arbeit Ordnung Gesetz* and will be cited hereafter as AOG.

⁵ For a brief review of German labor law before 1933 and for an exposition of the principles of National Socialist policy, see Brauweiler, "Vom Arbeitsrecht zur Ordnung der nationalen Arbeit," 96 ZEITSCHRIFT FÜR DIE GESAMTE STAATSWISSENSCHAFT 149 ff. (1936). For a general outline of labor regulation since 1933, see Krohn, "Werden und Aufbau der deutschen Sozialverwaltung," 41 DEUTSCHE JURISTEN ZEITUNG I ff. (1936). See also Köttgen, "Vom Deutschen Staatsleben," 24 JAHRBUCH DES OEFFENTLICHEN RECHTS I at 44 ff., 138 (1937).

⁶ See LEY, GERMANY SPEAKS 160 (1938).

and of the National Socialist party is made available for those charged with the administration of the new social policy. It is the task of officialdom to prevent economic self-interest from assuming its former importance. The freedom of independent action is gone, along with other vestiges of "decadent democratic liberalism." The result has been an era of employer-employee relations bordering upon the ideal, according to Dr. Ley. The union of these two opposing economic groups has meant that "where there was hopelessness and despair, there is now faith, a joyful outlook on life, and renewed hope. Formerly, there was mutual enmity, jealousy, envy, and hatred, but today everybody tries to make himself useful to his fellows, to be their loyal comrade, and to render them some small service whenever he can."⁷

The main purpose of the Law for the Regulation of National Labor is to bring employers and employees together in a single code under the authority of the state and the party and to make these two groups feel that each is a part of a greater whole, the entire German social and economic community.⁸ Industry is no longer to be regarded as a field where workers and their employers meet only for purposes of class conflict. Rather, the basic unit of industrial production is said to be the *Betriebsgemeinschaft* or works community. Such a community is, in its function, bigger than either the interests of its owner or of its workers. It is a unit engaged in the production of goods for and owing responsibility to the whole German Reich. Just as the "leadership principle" (*Führer Prinzip*) is an essential part of German political rule, so this principle is applied in the relations of workers to their employers. Each *Betrieb* or place of employment has a leader.⁹ This leader is the owner or someone designated to serve for him. The employees are his followers. The relations between these two groups must

⁷ *Ibid.*, p. 182. Dr. Ley continues (*ibid.*, p. 188) by telling his readers that Germany's workers are now very happy because "they realize that Herr Hitler is fighting their own battle and that he—who has sprung from their own ranks—is indeed their Leader. They know that he concerns himself by day and night with the cares of every German." Needless to say, Dr. Ley is hardly an unbiased critic. His views do not reflect the true situation and are not accepted by competent foreign students of labor relations in Nazi Germany.

⁸ Law of Jan. 20, R. G. B., 1934, I, No. 7. Among the most important amendments to this law are those of March 1, 1934 (R. G. B. I, No. 25), March 10, 1934 (R. G. B. I, No. 28), March 28, 1934 (R. G. B. I, No. 35), Feb. 15, 1935 (R. G. B. I, No. 19), March 4, 1935 (R. G. B. I, No. 25), April 8, 1935 (R. G. B. I, No. 40), June 25, 1935 (R. G. B. I, No. 92), March 9, 1937 (R. G. B. I, No. 30), May 5, 1937 (R. G. B. I, No. 60), and Sept. 24, 1937 (R. G. B. I, No. 106).

⁹ AOG, §§ 1-17.

be on a basis that will serve the common good of nation and state.¹⁰ The leader is required to safeguard the welfare of his followers and the latter owe him loyalty and obedience. In certain places of employment workers are to be represented on a council (*Vertrauensrat* or confidential council) and may advise and be consulted by the employer or his agent. In each *Betrieb* a set of rules (*Betriebsordnung*) governing such matters as conditions of work, wages, hours, vacations, and discipline must be posted. To further governmental control, Germany is divided into fifteen economic districts, each under the jurisdiction of a labor trustee.¹¹ Labor trustees have the power to intervene in any of the places of employment in their district. They are regarded as representatives of the national government executing social and economic policies of the national cabinet.¹²

The statute also provides for social honor courts (*Soziallehengerichte*) to hear disputes arising out of the new code for employer-employee relations laid down by the national labor law. The law states (section 35) that all members of a works community are responsible for the fulfilment of the duties imposed upon them by virtue of their membership in the group. Leaders and followers are expected to put forth their best efforts and must subordinate self to the common good. Their function is an honorable one and members of a *Betriebsgemeinschaft* are to be treated with the utmost respect. Gross violations of any of the rights and duties growing out of a *Betriebsgemeinschaft* are regarded as violations of the social honor of the works community and are subject to the jurisdiction of the social honor courts. It is the function of these tribunals to punish and to educate in order that the principles of the National Socialist "social constitution" may better the relations of economic groups.

The social honor courts are an important National Socialist contribution to government intervention in employer-employee relations. It is true that German civil and criminal courts still have jurisdiction in certain types of industrial controversies. It is also true that the labor courts set up under the Weimar Republic continue to function, although their activities have been restricted. National Socialists have said, however, that the courts in existence when they took office concerned

¹⁰ Ibid. See also Westermann, "Zur Verwirkung im Arbeitsrecht," 40 DEUTSCHE JURISTEN-ZEITUNG 398 at 399 (1935): "from the follower is demanded individual and professional loyalty to his *Betriebsführer*, and upon the Leader is placed the entire responsibility for his shop and the care of the welfare of the followers (*Gefolgschaft*) according to old German principles."

¹¹ AOG, particularly §§ 18-32.

¹² Ibid.

themselves almost solely with the materialistic aspects of employer-employee relations. Those courts were said to be agencies enforcing a law based upon a recognition of the opposing interests of labor and capital. The social honor courts, on the other hand, are described as tribunals which have as their purpose the dissemination and enforcement of Nazi ideology of a community of interest. It is through them that the honor of employer, employee and works community can be protected. Minister of Labor Franz Seldte has said that the social honor courts are among the "most important creations in the sphere of national socialist controlled social life."¹³ Others have recognized that if a new spirit is to prevail in German industrial life much of it must be supplied through these courts. "The tribunals of social honor see to it that decency, comradeship and loyalty are more than mere words when applied to the private intercourse between all members of the works."¹⁴

I

Fifteen *Sozialehrengerichte* (social honor courts) and one *Reichsehrengerichtshof* (national honor supreme court) have been created.¹⁵ A social honor court is established, under the supervision of a labor trustee, in each of the economic districts, or in such places as may be determined by the minister of labor acting in conjunction with the minister of justice.¹⁶ The national court, which has appellate jurisdiction, is located in Berlin.¹⁷

The composition of each of the social honor courts is similar.¹⁸ Each of them consists of three persons acting in the capacity of judges. The chairman is a regular judicial officer of the government and is appointed by the minister of justice acting in cooperation with the

¹³ Speech before the *Reichsehrengerichtshof*, Feb. 5, 1935. See 40 DEUTSCHE JURISTEN-ZEITUNG 290 (1935).

¹⁴ LEY, GERMANY SPEAKS 164-165 (1938). For a discussion of the broad educational and social purposes of the social honor courts, see Brauer, "Sinn und Bedeutung der sozialen Ehrengerichtbarkeit," 2 ZEITSCHRIFT DER AKADEMIE FÜR DEUTSCHES RECHT 567 ff. (1935). See also Kreller, "Fürsorge- und Treupflicht in Arbeitsrecht," 5 *ibid.* 302 ff. (1938).

¹⁵ The fifteen social honor courts have their seats as follows: Königsberg, Breslau, Berlin, Stettin, Hamburg, Hannover, Essen, Köln, Frankfurt a.M., Magdeburg, Weimar, Dresden, Munich, Karlsruhe, and Saarbrücken. See the decree of March 1, 1934 (R. G. B. I, No. 25), § 2 and amendments of Feb. 15, 1935 (R. G. B. I, No. 19), March 28, 1935 (R. G. B. I, No. 39) and Sept. 24, 1937 (R. G. B. I, No. 106).

¹⁶ AOG, § 41, and decree of March 28, 1934 (R. G. B. I, No. 35), § 1.

¹⁷ AOG, § 50.

¹⁸ AOG, § 41, and decree of March 28, 1934, §§ 3-8, R. G. B. I, No. 35.

minister of labor. The associate justices are laymen. One of them must be the leader of a place of employment (*Betrieb*) and the other must be a member of a confidential council. They receive their appointments from a presiding judge who selects them from a panel submitted by the Labor Front.¹⁹ There is no sex qualification in the selection of associate justices. An appointee must be at least twenty-five years of age, a citizen of the Reich and a resident of the district in which he is to serve. For a period of one year prior to his appointment he must have been a leader, a deputy leader or a member of a following (*Gefolgschaft*). Persons who have been found guilty before an honor court of violating the Law for the Regulation of National Labor (AOG), or who are involved in legal difficulties, or who are ineligible for public office, and who have been denied the rights of citizenship are ineligible for office.²⁰ Unless otherwise indicated, the term of appointment is three years.²¹ Where there is a gross violation of his official duties by an associate justice he may be unseated. The national honor court decides such cases.²²

The *Reichsehrengerichtshof* is made up of five members, two of whom are judicial officials in the government service. The two professional judges are appointed by the minister of justice acting with the minister of labor. One of them serves as chairman of the national court.²³ One of the associates must be a leader of a *Betrieb* and one a member of a confidential council. They are chosen from a list submitted by the Labor Front as in the lower courts.²⁴ The fifth member of the court is chosen by the national cabinet.²⁵

The cost of maintaining the social honor courts is borne by the national government.²⁶ A part of the funds necessary to meet this

¹⁹ The chairman of the honor court indicates from what branches of industry he wishes his assistants selected. He is required to favor those industries that have been formed as estates or corporations (*Stände*). The Labor Front submits to the chairman of the court the names of three leaders and three councillors. Where *Stände* are concerned, the Labor Front must select persons only after consultation with the estate in question. In case the estate and the Labor Front disagree as to recommendations, the chairman of the honor court must endeavor to secure a meeting of the minds. Should he be unable to do so, the minister of labor may intervene. Decree of March 28, 1934, § 3, R. G. B. I, No. 35.

²⁰ *Ibid.*, § 5.

²¹ *Ibid.*, § 4.

²² *Ibid.*, § 7.

²³ AOG, § 50, and decree of March 28, 1934, § 2.

²⁴ *Ibid.*

²⁵ *Ibid.*

²⁶ AOG, § 55. See decree of March 28, 1934, § 10.

expense is derived from the assessment of costs upon those against whom a judgment has been rendered.

The social honor courts have jurisdiction only over those cases arising under the Law for the Regulation of National Labor. This statute states that violations of any of the rights and duties arising from membership in a place of employment (*Betriebsgemeinschaft*) are also violations of the social honor of the works community and therefore are subject to the jurisdiction of these courts.²⁷ The law specifies the type of act that may be construed as an offense against social honor.²⁸ An employer or his agent who willfully and malevolently abuses his position of trust and exploits or mistreats members of his following is said to violate the social honor of the works community. Among those who are guilty of a breach against the social honor of their establishment are followers who maliciously disturb the peace of a *Betriebsgemeinschaft* and confidential councillors who deliberately interfere with the conduct of business. Members of a confidential council who divulge important information coming to them because of their position are subject to the penalties of the law. Any member of a works community who makes repeated charges and frivolous complaints to the labor trustee without cause is also guilty of a violation of the law. One who stubbornly disregards or acts contrary to the written orders of a labor trustee likewise violates social honor, according to the statute.

Conflicts of jurisdiction between the social honor courts and the regular civil and criminal courts sometimes arise. Certain rules have been developed which apply in such instances.²⁹ If an action is brought by a regular prosecutor against a member of a works community, the action before the social honor court will be temporarily suspended. Criminal action is always given precedence over action before the honor courts. If a member of a works community is convicted in a criminal action, the president of the honor court must then decide whether the case against the defendant shall be tried in the honor court in so far as the latter has jurisdiction. If such a person be acquitted in a regular court, he may still be tried in an honor court for those of his acts over which that court has jurisdiction.

Decisions of the honor courts have helped to clarify the rules applicable in cases of dual jurisdiction. It has been held that the AOG applies everywhere except where the law itself specifically states that

²⁷ AOG, §§ 35, 36.

²⁸ *Ibid.*, § 36.

²⁹ *Ibid.*, § 39.

it does not.³⁰ The plea of a defendant who urged that an honor court had no jurisdiction over his acts because he was a member of the Reich culture chamber and subject to the disciplinary bodies created under the *Reichskulturkammergesetz* was not valid, since the AOG made no exceptions for members of the culture chamber.³¹ Upon several occasions social honor courts have punished offenders already tried in criminal courts.³¹ On the other hand, when honor courts have assessed punishment in cases where the AOG did not apply, the national honor court has reversed the lower court and has indicated to what court the case should go.³²

The statute creating the social honor courts makes provision for the penalties which they may assess.³³ The mildest of these is a warning or reprimand. Fines up to ten thousand marks may be levied. The courts may also withdraw the right of the guilty party to continue as the leader of a works community or as a member of a confidential council. The convicted person may also be banished from the works community for a varying length of time. Imprisonment is not included among the penalties at the disposal of these courts. Punishment for the violation of social honor must be meted out within one year of the day when violation of social honor is complained of.³⁴ Decisions of the courts are executed by the labor trustee.³⁵ The leader and national chancellor, in a decree of June 25, 1935, delegated the power to grant pardons in cases coming before the honor courts to the minister of labor acting in agreement with the minister of justice.³⁶ These two officers are given the power to delegate this authority to others.

³⁰ See a decision of a social honor court of Jan. 9, 1935, in 22 ARBEITSRECHTS-SAMMLUNG (hereafter cited A. R. S.) 196 (1935). Decisions of the social honor courts (*Sozialehrengerichte*) are reported in the second division of each volume of A. R. S., while decisions of the National Honor Supreme Court (*Reichsehrengerichtshof*) are reported in the first division. Unless otherwise indicated, the decisions cited are of the lower courts.

³¹ Decision of a social honor court, Feb. 27, 1935, 23 A. R. S. 248 (1935). See also 26 A. R. S. 92 (Sept. 6, 1935).

³² See the decision of the national honor court, April 16, 1935, in 24 A. R. S., pt. 1, 43 (1935). The court indicated here that only deliberate and malicious violations of a wage agreement by an employer constitute a case that involves a violation of social honor and therefore within the jurisdiction of the honor courts. Where a lower honor court had punished a defendant when there had been honest and legitimate differences over wages, the lower court was reversed. The national court said that such cases should go before the regular labor courts.

³³ AOG, § 38.

³⁴ *Ibid.*, § 37.

³⁵ *Ibid.*, § 54.

³⁶ R. G. B., 1935, I, No. 92.

In hearing disputes arising under Germany's social honor code the honor courts and their judges act in a dual capacity. They may serve as arbitrators in a preliminary hearing or as judicial tribunals. As arbitrators, judges may cooperate with labor trustees and representatives of the Labor Front in attempts to settle disputes outside of court.³⁷ The outcome of attempts at arbitration must be given to the court.³⁸

When acting as courts, the procedure before the social honor tribunals, unless otherwise specified, is similar to that used in criminal cases heard by the *Landgerichte*.³⁹ The prosecutors who act before the regular courts are not used in the honor courts. Cases are brought to these tribunals by the labor trustees. Charges are presented in writing by the labor trustee of the district in which the works community in question is located. Public charging or indictment of the defendant is not allowed, nor are arrest, temporary detention, seizure and search permissible. The defendant must be given an opportunity to reply to the motion submitted by the labor trustee. A defendant may be represented by an attorney instead of attending the trial in person. His attendance is necessary, however, if the court so orders. Should a defendant have no attorney, the chairman of the honor court is empowered to select one for him. Cases are tried orally and witnesses are examined under oath.⁴⁰ The labor trustee may attend the trial, but if not in attendance he has the right to acquaint himself with the testimony presented before the court. Should the chairman of the court so order, a trial can be conducted in secret. The labor trustee is given the unusual power to withdraw a case at any time before the decision is rendered.

Both the defendant and the labor trustee may appeal from the decision of a lower court to the national supreme honor court in Berlin.⁴¹ The convicted person may appeal only if the punishment assessed against him in the lower court consists of a fine of over one hundred marks, the withdrawal of his right to continue as a leader of a works

³⁷ The writer was informed in Berlin by the head of the legal aid bureau of the German Labor Front that it was the fervent desire of that organization to reduce drastically the controversies between employers and employees which were finding their way to courts. The writer was given figures which indicated that the number of cases each year since Hitler's advent to power were thousands fewer than in 1932.

³⁸ See AOG, §§ 43, 44, and decree of March 28, 1934, § 21.

³⁹ The provisions of the law dealing with procedure are to be found largely in AOG, § 40, 41, 43-48, 52, and in the decree of March 28, 1934, §§ 12-15, 18, 19, 21, 23.

⁴⁰ §§ 177-182 of the *Gerichtsverfassungsgesetzes* apply to oral procedure before the honor courts. See decree of March 28, 1934, p. 23 (R. G. B. I., No. 35).

⁴¹ AOG, § 49.

community or as a member of a confidential council, or if he is removed from his place of employment. The labor trustee may appeal any decision. All appeals must be taken within two weeks of the decision of the honor court.

II

Experience has shown that more than nine-tenths (90.6%) of the cases before social honor courts have been brought against employers or their agents.⁴² Most of these have not been large employers of labor. By far the most frequent penalties meted out by the honor courts are fines, withdrawal of the right to continue as the leader of a works community and banishment from a works community. Of the employees convicted, twenty per cent have been fined and forty per cent have been discharged from the place of employment. Of the employers convicted, forty-eight per cent have been fined and thirty-one per cent have been deprived of their position as the leader of a *Betriebsgemeinschaft*. The milder penalties available under the law have rarely been used.

It has already been pointed out that the Law for the Regulation of National Labor applies to all members of a works community within the meaning of the statute. This includes employees, employers, deputies or agents of employers, and those exercising supervisory functions (as *Aufsichtspersonen*) for owners or employers. Some difficulty has arisen in determining who is acting for an employer in a responsible capacity and therefore subject to provisions of the law. Several cases have arisen where defendants claimed they were not liable under the AOG. Decisions of the courts have helped to clarify the statute on this point. It is now quite clear that the wife,⁴³ son,⁴⁴ or daughter-in-law⁴⁵ of an owner or employer, providing they act in an official capacity in their relations with employees, are subject to the social honor code. The inspector of an estate acting for the owner⁴⁶ and an assistant to an employer,⁴⁷ if given official duties, also may be defendants in suits charging a violation of social honor. Nor are

⁴² These figures are based upon more than 200 representative cases coming before the social honor courts which have been studied by the writer.

⁴³ 22 A. R. S. 101 (Dec. 5, 1934); 23 A. R. S. 71 (Dec. 22, 1934).

⁴⁴ 22 A. R. S. 173 (Dec. 18, 1934); 23 A. R. S. 187 (Mar. 7, 1935); 23 A. R. S. 243 (Feb. 20, 1935); 25 A. R. S., pt. 1, 172 (Sept. 30, 1935), modifying 23 A. R. S. 180 (April 6, 1935).

⁴⁵ 22 A. R. S. 184 (Dec. 29, 1934).

⁴⁶ 22 A. R. S. 117 (Nov. 14, 1934).

⁴⁷ 26 A. R. S. 90 (Aug. 9, 1935).

foreign citizens engaged in business enterprises in Germany exempt from the AOG. It has been held that a French citizen might properly be a defendant in a social honor court.⁴⁸

An examination of the cases which have come before the social honor courts reveals a wide variety of ground for charging violations of the AOG. The courts have insisted, however, that before breaches of the social honor code may be punished it must be clearly established that the defendant has acted in bad faith, deliberately and malevolently violating his obligations under the law. Honest differences of opinion and deviations from the law in good faith are not punishable although they may be the subject for investigation by the Labor Front or by a labor trustee. The supreme honor court has said, for example, that a defendant may be excused one violation of the law if that incident arose from his ill health, provided there was but one such incident.⁴⁹ The same court has held that honest differences over wages must be the subject for litigation in the labor courts and not in the social honor courts.⁵⁰ Although an employer's treatment of his employees may not be beyond reproach, that does not constitute a violation of social honor. The supreme court has said that "all that is not good will is not ill will."⁵¹ Controversies between employers and employees arising out of the owner's utter incapacity for management have also been held not to be proper subjects for the honor courts.⁵²

The limits within which employees must act in order to avoid a violation of their obligations as members of a works community have been indicated by the honor courts. Dissatisfied workers who have sought to cause a strike have been held to violate their obligations under the AOG.⁵³ An attempt to undermine the position of the employer by destroying the confidence of his employees in his managerial skill constitutes a disturbance of the peace of the works community in

⁴⁸ The defendant operated a restaurant and used his position of authority to threaten dismissal of feminine employees unless they consented to his sexual advances. The court found this to be a violation of social honor and denied the defendant the right to continue as a *Betriebsführer*. 22 A. R. S. 221 (Dec. 17, 1934).

⁴⁹ 24 A. R. S., pt. 1, 277 (June 18, 1935).

⁵⁰ 24 A. R. S., pt. 1, 43 (Apr. 16, 1935).

⁵¹ 24 A. R. S., pt. 1, 197 (May 27, 1935).

⁵² 24 A. R. S., pt. 1, 38 (Apr. 16, 1935). In another case it was said: "Investigation has not shown that the defendant maliciously exploited the labor of the following; it has revealed instead the picture of a shop leader who in 1934 has tried to maintain the shop for the welfare of the following and, in the effort, has placed himself in unfavorable economic circumstances." 25 A. R. S., pt. 1, 159 at 172 (Aug. 5, 1935).

⁵³ 26 A. R. S. 193 (Nov. 19, 1935).

violation of the social honor code.⁵⁴ Failure to obey the request of a labor trustee has been held to be a serious offense.⁵⁵ The failure of an employee who is a member of a confidential council to observe the obligations imposed upon him is especially serious, the courts have pointed out. A confidential councillor who circulated false and malicious rumors concerning the racial purity of his employer was found guilty of disturbing the tranquillity of the *Betriebsgemeinschaft* and was discharged.⁵⁶ "As a confidential councillor the defendant [an employee] has special rights and also special duties," but the "duties" apparently outweigh the "rights." A worker who thought that membership in the confidential council gave him the right to interfere with the management of his works community was found to be a disturbing influence. He was reprimanded by the court and told that "in his capacity as a confidential councillor he must set a good example for the other members of the following (*Gefolgschaft*)."⁵⁷ It is apparent that the social honor code has made German labor "responsible."

Employers, too, have their obligations under the AOG, as an examination of cases brought against them as defendants discloses. The social honor courts have insisted that employers recognize the essentials of human consideration and decency in their treatment of employees. Provisions of the AOG have been amplified sufficiently by decisions of the honor courts to make the outlines of a code of conduct clearly discernible.

An employer who forces his employees to work overtime without giving them added compensation has been found guilty of violating the AOG, since his acts are deemed to be an exploitation of his followers and therefore contrary to their social honor.⁵⁸ The courts regard long hours of work for employees in the same light.⁵⁹ Irregular payment of wages has been held to be a disquieting factor which disturbs the peace

⁵⁴ AMTLICHE MITTEILUNGEN of the labor trustee for the economic district of Brandenburg, Nos. 30, 31 (1936): "The defendant wishes . . . to bring about the resistance of the following to the shop leader. Who does this, incites! Who incites a following endangers labor peace and disturbs the members of a works community. . . ." This is a mimeographed report on file in Berlin, hereafter cited simply AMTLICHE MITTEILUNGEN.

⁵⁵ 26 A. R. S. 193 (Nov. 19, 1935).

⁵⁶ 24 A. R. S. 111 (June 1, 1935).

⁵⁷ 23 A. R. S. 183 (Mar. 20, 1935).

⁵⁸ 22 A. R. S. 175 (Nov. 17, 1934); *ibid.*, 181 (Dec. 14, 1934); AMTLICHE MITTEILUNGEN, No. 7.

⁵⁹ 22 A. R. S. 89 (Nov. 20, 1934); *ibid.*, 101 (Dec. 5, 1934); 23 A. R. S. 171 (Jan. 5, 1935); *ibid.*, 248 (Feb. 7, 1935).

of the works community.⁶⁰ As a part of the new honor bestowed by the National Socialists upon German labor, employers are expected to provide ample and cleanly space to serve as rest rooms and recreational quarters. A lack of such quarters constitutes a violation of a leader's obligation to his followers.⁶¹ Employers are expected to provide vacations for their employees; a failure to do so is regarded as a violation of the AOG.⁶² Should an employer neglect to post a *Betriebsordnung* as required by the Law for the Regulation of National Labor, or should he disregard the provisions of one already posted, he is guilty of violating his position as the leader of a works community.⁶³

Honor courts have made it clear that the attempt to coerce employees with threats of dismissal are contrary to the social code.⁶⁴ Frequently employers or their agents have resorted to physical violence and other measures of intimidation in their treatment of labor. Such acts are regarded as grave offenses against the honor of German labor.⁶⁵ It is also clear from the many cases that have arisen on the subject that the use of foul and insulting language toward employees finds strong disfavor in the social honor courts. Such a practice is contrary to those principles which require that the members of a works community be treated with dignity and respect.⁶⁶ What the courts have held to be cruel and inhuman conduct in an employer's attitude toward an employee is punishable in the most severe fashion. An employer who refused to provide transportation for the seriously ill children of an employee so that they might be taken to a hospital was denied the right to continue as a *Betriebsführer* when his refusal may have been partially responsible for the death of the children which occurred shortly thereafter.⁶⁷

⁶⁰ 23 A. R. S. 71 (Dec. 22, 1934).

⁶¹ 23 A. R. S. 171 (Jan. 5, 1935); 25 A. R. S. 56 (July 24, 1935).

⁶² 22 A. R. S. 175 (Nov. 17, 1934).

⁶³ 22 A. R. S. 89 (Nov. 20, 1934); 23 A. R. S. 176 (Apr. 6, 1935); 24 A. R. S. 142 (July 22, 1935); 22 A. R. S. 140 (Dec. 17, 1934).

⁶⁴ 22 A. R. S. 133 (Dec. 17, 1934); *ibid.*, 221 (Dec. 17, 1934).

⁶⁵ 22 A. R. S. 173 (Dec. 18, 1934); *ibid.*, 184 (Dec. 29, 1934), *ibid.*, 188 (Jan. 15, 1935); *ibid.*, 196 (Jan. 9, 1935); 26 A. R. S. 92 (Sept. 6, 1935); *ibid.*, 185 (Dec. 7, 1935).

⁶⁶ 23 A. R. S. 187 (Mar. 7, 1935); 25 A. R. S. 56 (July 24, 1935); *ibid.*, 182 (June 6, 1935). The court said, 25 A. R. S. 56 at 57, that the insulting treatment of employees evidenced by the frequent use of oaths was a good example of a conduct which could no longer be tolerated. "The members of the following began and ended their work as 'damn people.' All of the witnesses testified that from early to late the defendant applied expressions damaging to the honor of all the followers. . . . Further, these insulting expressions toward her followers were used by the defendant in the presence of the clientele."

⁶⁷ 23 A. R. S. 239 (Mar. 11, 1935), *affd.* 24 A. R. S., pt. 1, 285 (June 8, 1935).

German employers must now provide adequate food and healthful living conditions for their employees. The courts have pointed out that food for workers should be in sufficient quantities and that it should be prepared in a cleanly fashion. An employer who served worm-infested meat was harshly punished, as were employers who provided stale and decayed foods.⁶⁸ Similarly, it is expected that when an employer must furnish living quarters for his employees these will meet a standard of adequacy in regard to the number of rooms in proportion to the size of the family, lighting, heating and ventilation. The courts have assessed penalties against employers who required their workers to live in rat-infested quarters, in houses badly in need of repair, and in surroundings where there was not sufficient privacy for men and women.⁶⁹ The courts have also made it plain that they expect the surroundings in which employees perform their duties to be healthful and not unsafe.⁷⁰

In a series of decisions the social honor courts have indicated they expect employers to be honest in dealing with their employees. Deception has no place in honorable employer-employee relations, and when deceit is practiced it has been held to be a violation of the social code. An employer was found to have violated the AOG who permitted a newly-hired worker to think he had a permanent position and then discharged him as soon as the holiday season rush of business had passed.⁷¹ An employer who neglected to pay into the social insurance fund the money deducted from his employees but used that money for himself was found guilty of having violated the honor of his workers by deceiving them.⁷² Similarly, employers who pay low wages on the ground that their business is poor and thereby cause their workers to live under conditions of hardship are violators of social honor if they take a disproportionate share of the profits for themselves so that they may live in luxury.⁷³ Apparently, the honor courts will decide in each case what this disproportionate share of profits may be. It has also been held that an employer acts contrary to the good will he is expected to show his employees when he pays them low wages, pays wages irregularly, or neglects to make payments to the insurance

⁶⁸ 22 A. R. S. 125 (Nov. 29, 1934); 23 A. R. S. 127 (Feb. 1, 1935); 25 A. R. S. 182 (June 6, 1935).

⁶⁹ 22 A. R. S. 128 (Nov. 14, 1934); *ibid.*, 216 (Jan. 8, 1935); 23 A. R. S. 127 (Feb. 1, 1935); 25 A. R. S. 182 (June 6, 1935).

⁷⁰ AMTLICHE MITTEILUNGEN, No. 32.

⁷¹ 25 A. R. S., pt. 1, 267 (Dec. 12, 1935).

⁷² 22 A. R. S. 135 (Nov. 22, 1934).

⁷³ 23 A. R. S. 49 (Dec. 18, 1934); *ibid.*, 127 (Feb. 1, 1935).

funds so that he may use a high proportion of the gross income from his business for foolish and over-optimistic expansions of his enterprise.⁷⁴

Where it has been shown that employers have been guilty of immoral advances toward their employees the honor courts have held that the AOG has been violated. A leader who makes such advances is said to violate the position of trust he possesses where his followers are concerned.⁷⁵ Punishment for this offense has been uneven. A citizen of France, employing German feminine labor in Germany, was denied the right to continue as a *Betriebsführer* because of attempted familiarity with several of his employees.⁷⁶ On the other hand, a German *Betriebsführer* who was successful in his advances was dismissed with a fine of one hundred marks.⁷⁷ Usually, the courts have been severe in their condemnation of this practice on the part of employers.

It has been made quite clear in the decisions of the social honor courts that one of the most serious offenses of which a German employer may be guilty is that of disregarding orders and communications from the labor trustee of his district. The labor trustee has a position of unusual power and his requests must be acknowledged and obeyed.⁷⁸ The courts have said that the labor trustee "is, in truth, in the new social law, the highest social-political representative of the national government. . . . One opposing the orders of the labor trustee . . . indirectly resists the orders of the national government and the *Führer*."⁷⁹ The authority of the labor trustee under the AOG is extended into each place of employment in his district. The courts have acted on the general assumption that an employer who fails to respect the orders of a labor trustee by that fact alone shows hostility toward the new German social honor code. Employers who fail to post a *Betriebsordnung*, if requested to do so by the labor trustee, or who neglect to keep a set of books in accordance with his repeated requests violate the AOG.⁸⁰ Employers are responsible for the nature of the correspondence exchanged between their agents and labor trustees even though they may be ignorant of the content of that correspondence.⁸¹

⁷⁴ 26 A. R. S., pt. 1, 67 (Dec. 12, 1935).

⁷⁵ 23 A. R. S. 132 (Feb. 1, 1935).

⁷⁶ 22 A. R. S. 221 (Dec. 17, 1934).

⁷⁷ 23 A. R. S. 53 (Dec. 15, 1934). The court explained the small fine by saying that the employer's nocturnal visits to her bedchamber were not displeasing to the employee.

⁷⁸ 23 A. R. S. 59 (Jan. 21, 1935); *ibid.*, 138 (Feb. 12, 1935).

⁷⁹ AMTLICHE MITTEILUNGEN, Nos. 33, 34.

⁸⁰ 23 A. R. S. 161 (Mar. 18, 1935).

⁸¹ 26 A. R. S. 90 (Aug. 9, 1935).

They cannot escape their responsibility to the labor trustee by pleading ignorance. The decisions of the honor courts have helped to establish the authority of the labor trustees on a very firm foundation.

Before passing on to other features of the work of the social honor courts, perhaps some pertinent facts concerning the role of the national supreme honor court should be mentioned. As a general rule, the appellate court has been very willing to alter decisions coming from below. In eighty per cent of the cases before the supreme court, changes of some kind were made in the decisions of lower courts. In those cases where the lower court was overruled, penalties were decreased in ninety per cent of them. The defendant in each of these cases was an employer or his agent. Of the cases before the supreme court studied by the writer, thirty-two per cent were dismissed. In only twenty per cent of the cases were the honor courts upheld. It would seem that an employer had less to fear by carrying his case to the supreme court than by accepting the decision of the trial court.

The national supreme honor court at Berlin has indicated that it believes the lower courts to be overly zealous in their interpretations of the law for the regulation of national labor. It has been said that lower courts sometimes assess penalties where they have no right to do so. The supreme court has repeatedly pointed out that there can be no punishment unless it is clearly shown that violations of the AOG are willful and malicious and that the employer is deliberately setting out to act contrary to the interests of his employees.⁸² The supreme court has also indicated that in its opinion the honor courts are prone to punish too severely.⁸³ This has been particularly true, the supreme court has said, in the case of the severest penalty at the disposal of the honor courts, that of banishment from the place of employment with the denial of the right to continue as a leader or member of a works community. It has been laid down by the supreme honor court that the denial of the right to continue as a *Betriebsführer* should be resorted to only "if other penalties do not correspond to the gravity of the offence or if the possibility of the employer altering his ways and his attitude toward his employees appears to be beyond realization."⁸⁴

The last portion of the sentence above ("or if the possibility of the employer altering his ways and his attitude toward his employees appears to be beyond realization") is of vital importance in under-

⁸² See, for example, 24 A. R. S. 38 (Jan. 17, 1935).

⁸³ In only four per cent of the cases before the supreme court studied by the writer were penalties of the lower courts increased.

⁸⁴ 24 A. R. S., pt. 1, 43 at 50 (Apr. 16, 1935).

standing the work of the social honor courts. In that passage is clearly implied the fact that these courts will, in addition to whatever else they do, exercise an educational function. It is their intention not only to mete out punishment to guilty employers and employees, but also to point the way toward correct conduct within the meaning of the AOG. It has been frequently said that the educational value of the honor courts is one of their most important attributes.

Judges have frequently declared that it is the duty of the honor courts to point the way toward a Germany where there will be no strikes, lockouts, industrial warfare or class hatred. It is their intention to aid in creating a country where the common good will be the primary object to be served.⁸⁵ It is the duty of employers to set examples for their employees.⁸⁶ Only when employers give strong indications of being unable to learn to mend their ways should they be unconditionally rejected by the courts.⁸⁷ Employees, too, must become aware of their obligations. The honor courts exist to teach them the virtues of cooperation with their leaders.⁸⁸ It is hoped that the result of the educational work of these tribunals will be the elimination of class conflict, hostility and suspicion.⁸⁹ Judges on the social honor courts have frequently said that if their tribunals fail to educate German employers and employees they will regard their work as a failure.

III

In Germany, an experiment in employer-employee relations is being conducted. This work is being carried on under the auspices of

⁸⁵ 26 A. R. S. 193 at 196 (Nov. 19, 1935). The following quotation from the decision is not without interest: "In the national socialist state labor difficulties such as strikes and lockouts are unthinkable. Although labor disputes are not expressly forbidden, this can be construed from paragraph one of the AOG according to which, in shops, the employer as leader of the shop and the following must work together to further the ends of the *Betrieb* and the common good of nation and state. The shop leaders and followers united in the German Labor Front no longer oppose each other in accordance with the principles of the class struggle, their interests lie much more in the direction of the highest principle 'common good goes before selfish interest. . . .'"

⁸⁶ 23 A. R. S. 53 (Dec. 15, 1934), and AMTLICHE MITTEILUNGEN, No. 7.

⁸⁷ 23 A. R. S. 127 at 131 (Feb. 1, 1935). The court here said: "The penalties of the AOG have chiefly an educational value. . . . Because of the nature of the defendant's relations with his entire following, the court has come to the conclusion that the defendant cannot be trained to become a *Betriebsführer* in the sense of the AOG. To the defendant, the National Socialist mode of thought, as founded in this law, is entirely foreign. . . . He does not comprehend the idea of a comrade-like relationship with his followers, whose cares are also his. He is obviously unwilling to abdicate from the position which the capitalist employer in the Marxist-liberal state assumes toward his workers."

⁸⁸ 24 A. R. S. 111 (June 1, 1935); AMTLICHE MITTEILUNGEN, Nos. 30, 31.

⁸⁹ 22 A. R. S. 119 (Nov. 12, 1934); *ibid.*, 140 (Dec. 17, 1934).

a state which is controlled by the dictatorship of a single political party. In view of these facts, it is quite in order to make one further inquiry. To what extent, if at all, do the social honor courts take cognizance of extraneous material in arriving at their decisions? More particularly, do connections with the National Socialist party assume significance in the cases that come before these tribunals? Fortunately, evidence on these matters is available in decisions of the courts.

It has been made abundantly clear that the courts will search for evidence of service to the state and will use demonstrations of patriotism to excuse misdeeds. Former soldiers, particularly those who served at the front, are often favored. This is especially true if, in the course of that service, the individual was wounded or decorated for bravery.⁹⁰ Without exception, the military record of a defendant has had no bearing on the merits of cases before the courts, yet where such a record was available attention has frequently been called to it. Other evidence of service to the national state or demonstrations of the acceptance of National Socialist ideology are frequently noted by the judges with satisfaction. A defendant who was guilty of serious violations of the AOG was dismissed with but a reprimand when it was revealed that notwithstanding bad business conditions he had always sought to employ as many workers as possible and that he had even hired additional employees, as desired by the government, in order to aid in reducing unemployment figures.⁹¹ Another defendant escaped more serious punishment when the court discovered he had a well-developed national socialist sense of self-denial and sacrifice as evidenced by his entertainment of his followers at a *Kameradschaftsabend*.⁹²

The honor courts have been equally diligent in their search for information that is regarded as detrimental. In cases where a violator of the AOG is also a non-aryan, this fact is carefully pointed out.⁹³ At times, judges, in their opinions, have gone to great lengths to bring in a non-aryan connection. In one case, a defendant was found to lack appreciation of the national socialist world outlook because he had a sister who was married to a non-aryan!⁹⁴

It has frequently been a decided advantage for a violator of the AOG to be a party member in good standing. A defendant who had very seriously acted contrary to the social honor code was discovered

⁹⁰ 24 A. R. S., pt. 1, 118 (Apr. 16, 1935); *ibid.*, 197 (May 27, 1935); 25 A. R. S., pt. 1, 259 (Jan. 8, 1935).

⁹¹ 23 A. R. S. 55 (1935).

⁹² 25 A. R. S., pt. 1, 87 (Sept. 30, 1935).

⁹³ 24 A. R. S. 142 (July 22, 1935); 25 A. R. S. 56 (July 24, 1935).

⁹⁴ AMTLICHE MITTEILUNGEN, Nos. 33, 34.

to have joined the National Socialist party in 1929 and to have become an official in the German Labor Front. The court said, "Considering the favorable testimony that was presented concerning the activity of the defendant in the Labor Front and in the party, the honor court has decreed a warning as sufficient punishment. . . ." ⁹⁵ A former *Sturmführer* of the S. A. (*Sturm Abteilung*) who was charged with making immoral advances to his female employees had his punishment made less severe by the supreme court when it was found that he had served the party well and that perhaps the testimony of the women involved was not trustworthy. ⁹⁶ A study of cases before the honor courts would seem to indicate that frequently the older the party membership the greater the amount of leniency that could be expected. Membership in the party in the period when it was fighting for power (*Kampfzeit*) is looked upon with particular favor. ⁹⁷

Upon at least one occasion the honor court has stepped aside and and has allowed a violator of the social honor code to be punished by the party's own courts. ⁹⁸ Because of membership in the party, the local party court (*Ortsgericht*) exercised its jurisdiction and warned the defendant concerning his conduct.

Party members who violate the Law for the Regulation of National Labor are not always favored, however, because of their affiliation with the country's dominant political party. While the honor courts give recognition to party service and regard it with favor, as has been pointed out, they also hold that party members must be aware of special obligations which that affiliation brings. This view is clearly expressed in the words of the court when it was said that the defendant "as a party member . . . must be conscious of a particular responsibility to conduct himself uprightly and set an example to his *Volksgenossen* in general and, as the leader of a *Betrieb*, to the members of his following in particular in order to win the respect and confidence of his followers as a National Socialist leader." ⁹⁹ Available evidence indicates, however, that the instances when honor courts favor party members greatly outnumber the occasions when National Socialists are punished in the same degree as non-Nazis guilty of the same offense.

In conclusion, it might be pointed out that the decisions of the honor courts give us a well-defined presentation of National Socialist

⁹⁵ 23 A. R. S. 55 at 59 (1935); 26 A. R. S. 193 (Nov. 19, 1935).

⁹⁶ 26 A. R. S., pt. 1, 314 (Nov. 26, 1935).

⁹⁷ 24 A. R. S., pt. 1, 118 (Dec. 19, 1934); *ibid.*, 197 (May 27, 1935).

⁹⁸ 24 A. R. S. 197 (May 27, 1935).

⁹⁹ 22 A. R. S. 208 at 215 (Dec. 18, 1934).

views of employer-employee relations. Employers are to feel that labor has been made "responsible." Certainly, labor no longer enjoys the freedom of action available in the democratic state. Employers, too, must accept those limitations which the state has chosen to impose. There are no phases of management that may not be reached by the ubiquitous arm of Nazi officialdom. If labor must obey and is made responsive to the needs of the totalitarian state, owners must not amass large profits at public expense. Each group of economic interests must recognize that social responsibility comes before private aggrandizement. No longer is there to be conflict between employers and employees organized on a nation-wide scale. The accepted view now is that the fundamental unit in the contemporary economic system is the *Betriebsgemeinschaft*. The maintenance of good labor relations between the leader and his following in the works community is therefore essential. If this goal can be achieved without excessive state control, the Nazis have said they will be satisfied. It is believed that frequent and direct action by the government and the party will not be necessary if the labor trustees and the social honor courts can succeed in obtaining the acceptance of the principles of a social constitution which rejects Marxian proletarianism and the individualism of liberal democracy. However, the National Socialists do not shrink from the prospect of drastic intervention by the state if leaders or followers are lax about complying with the provisions of the AOG. Nazi writers state the truth when they say that the state retains "the highest regulatory power. It indicates the purpose, it designates the goal and the meaning of the regulations, and it creates the guarantees which these regulations will enforce. The law regulating labor names the special organs of the state for these purposes: the labor trustees and the social honor courts."¹⁰⁰

It is largely through the decisions of the honor courts that the Nazis are endeavoring to disseminate a knowledge of and secure compliance with the principles of their social constitution. It is apparent that this "constitution" is more interested in stressing duties and obligations than it is in protecting rights. Where, as in Germany, the interests of a single political party and the state are considered to be of primary importance, little consideration for freedom of action can be expected. This is especially true if those who rule regard "liberty" and "irresponsibility" as synonyms.

¹⁰⁰ See Brauweiler, "Vom Arbeitsrecht zur Ordnung der nationalen Arbeit," 96 ZEITSCHRIFT FÜR DIE GESAMTE STAATSWISSENSCHAFT 149 at 164 (1936).