
Burleigh, M and Wippermann, W, *The Racial State — Germany 1933–1945*, Cambridge University Press, Cambridge, 1991

“In a land without history the person who can replenish memory, shape concepts and interpret the past is the one who wins over the future”. Thus, Habermas quotes one of the historians whom he takes to task for apologetic tendencies and embarking on a self-professed “balancing act between creation of meaning and demythologisation”.¹ Recognising the crucial relevance of how our understanding and interpretation of the past shapes the future, the authors of *The Racial State* also warn of perils and they identify relativisation as the most dangerous of mischievous methods. In fact, the stated object of this book is precisely “to counteract relativisation attempts” which try to argue that “there is no moral difference between Auschwitz, the Soviet Gulags, and Hiroshima.”²

In order to understand history, questions have to be asked. But a question is determined by the underlying interest and the very question already embodies a partial interpretation. Placing totalitarianism, for instance, as the central aspect of the general history of fascism, indeed of the Third Reich, warn the authors, allows comparison with Stalin’s regime and leads to the relativisation of the Holocaust. The authors note that: “shortly after conservative historians rediscovered ... rather sterile if perversely formulated questions there was a marked revival of the electoral fortunes of the German radical right”.³

The central questions of the book mirror past and present controversies. Was Nazism an accident that happened on the way? Was the possibility of the Holocaust rooted in certain universal features of modern civilisation? Was Nazi ideology a special development within Germany, growing out of a specifically German reality, linked inextricably to German society, and as such a ‘one off’ phenomenon? Was National Socialism the right-wing twin of Soviet communism? Searching for answers, Burleigh and Wippermann “deliberately opted for an approach which includes the perspective of the regime’s many victims”.⁴ The authors use the centrality of racial ideology in Nazi social policies as their main tenet. They view Nazi racial and social policy as an “indivisible whole”.⁵ The treatment of Jews and homosexuals, of Gypsies and the disabled, of women and trendy youth is seen and presented by the authors as different aspects of a social policy based on racism. Viewing Nazi social racial policy as

1 Habermas, J, A kind of indemnification: the tendencies toward apologia in German research on current history, in: XIX *JVS*, at 79, translated from *Eine Art Schadensabwicklung* (1987).

2 Burleigh and Wippermann at 2.

3 Above n2 at 20. The authors refer to the 1986 elections following the *Historikerstreit*, (Historians’ debate) at the heart of which were some German historians’ insinuations that the Gulags predated the Nazi state, that Auschwitz was but an imitation and that Hitler acted against the Jews in retaliatory fear of Bolshevik “asiatic deeds”, thus the Holocaust was not so singular after all. Another theory compared the fate of the Jews with the fate of the German soldiers at the Eastern front and put forward the argument that the destruction of European Jewry was an answer by the Germans to the Allies wanting to dismantle the Reich. Recognising the dangerous path, many scholars fought these conjectures, of whom Habermas was one.

4 Id at 3.

5 At 4.

“simultaneously modern and profoundly anti-modern”, the authors stress the comprehensiveness of racial policy, which, according to them, made the Third Reich different from other totalitarian regimes. They see these policies based upon “plans for a new global, racially based social order.”⁶ The book examines relevant ideas and institutions and describes how the barbarous racial utopia, the basis of Nazi state policy, affected various groups of people.

In Part I, the authors examine the history of racial ideologies in Germany and the emergence of racism as state policy. In Part II, trying to demonstrate the comprehensive character of Nazi racism, the authors use the perspective of all victims of the regime as a common denominator and examine the “fate of all those whose lives or reproductive capacity were ended”: the Jews, the Sinti and the Roma, and the hereditary ill, the “asocial” and homosexuals. Finally, in Part III the authors examine the formation of the “national community”, that is the policies concerning German youth, women and men and their racial purity, biological health and socio-economic performance.

In trying to formulate a general theory concerning the criminal deeds of the Third Reich, the authors use the victim as the common denominator.⁷ But on another interpretation some were to be eradicated, (Jews) others kept as slaves, (Slavs) some “cured” (homosexuals), others kept in their place (women). Victims both — one of discrimination, the other of a crime, the demeaning experience of German Aryan women being banished to the kitchen cannot be explained the same way as the torturous horrid murder of Jewish women. Comparing these fates unavoidably leads to trivialisation. Jews were to be killed for being Jews; Gypsies, Aryans themselves, for being *asocial*.⁸ The crimes of the Third Reich were many, ranging from discriminatory social policies and political persecution to retaliatory massacres (Lidice), mass-murder(Soviet POW's), genocides (Polish intelligentsia) and the Holocaust — with different underlying motivations. Lumping the crimes together leads to a false picture. Each has to be examined separately.

The fate of victims also changed with time.⁹ The Final Solution, the culminating development of a political system in which mass-killing was a state policy, as Christopher Browning has pointed out, did not emerge in a vacuum.¹⁰ There were at least two, maybe

6 At 4.

7 In a much more sinister and extreme form, this was the concept underlying the Bitburg incident. In 1985 President Reagan visited the military cemetery at Bitburg, paying homage to the fallen of the war including that of the *Waffen SS*. “To the victims of wars and despotism” this inscription on the monument ... demands that the observer make a powerful abstraction”, says Habermas (above n1 at 75). The SS man murdering the Jewish baby and the child were both presented as victims — victims of the war, of Nazism.

8 This was reflected in the fact, that institutionally, Gypsies were persecuted by the *Criminal police* (co-ordinated by the Reich Central Office for the Combating of the Gypsy Nuisance with the Reich Central Office for Combating of Homosexuality and Abortion as the parallel organisation). Burleigh et al, id at 64.

9 The treatment of Gypsies, for instance, was inconsistent and haphazard. Gypsies who settled down weren't targeted. There were Gypsies in the SS till 1943. Gypsies were murdered for being “a-social” wonderers. Yehuda Bauer, *Whose Holocaust? 26 Midstream*, 1980, at 45.

10 There were two turning points in time when Nazi policies were radicalised, both connected with the war. From 1939 the Reich was a state that accepted and practiced mass murder. With the campaign against Poland, the year 1939 saw the elimination of “life not worthy of living” in the planned killings in the

three different discernible periods in Nazi practice. Between 1933 and 1939 with the legislative definitions of the Nuremberg laws and the social, political and economic segregation, marginalisation of Jews in the Reich still can be explained or defined as social policy. After the outbreak of the war, with ghettoisation, despite murderous living conditions and sporadic killings, there was no systematic wholesale murder. That came sometime during the planning of the Barbarossa campaign, the war against the Soviet Union. The first *Einsatzgruppen* killings started in the summer of 1941 and death-camps started to operate from January 1942. Thus the experience of a German Jew in 1936 for instance was different to that of a Polish Jew in the Warsaw ghetto, and horror compounded even further at the “*l’univers concentrationnaire*” when the deportations started.

What about the underlying ideology of what the authors call the “Racial State”? Racism, as the authors analyse and prove, was widespread and racial solutions were not unique to Nazi Germany. The racial aspect of Nazi Germany had its ideological and existential roots in the pre-Nazi era. In 1929 an International Congress of Eugenics was held in Rome. In the United States castration and sterilisation of criminals was legal. In Germany racial hygiene institutions proliferated from 1904.¹¹ Racial anthropology and racial hygienics (eugenics) were accepted legitimate scholarly scientific subjects well before National Socialism became state-ideology, and for these

disciplines the advent of the Nazi regime was coterminous with the onset of ‘boom’ conditions. No one asked or compelled these academics and scientists actively to work on the regime’s behalf. Most of them could have said no. In fact, the files of the regime’s many agencies bulge with their unsolicited recommendations.¹²

Racism, “respectable” and widely believed, served to rationalise Nazi anti-Jewish policies. Mirroring the German obsession with *das Blut*, the definition of “Reich citizen” was based on blood, but the definition of Jews used religion as well. An Aryan can become a Jew, in spite of “blood”, by converting to Judaism or marrying a Jew.¹³ Religion was extremely important not only at the definition stage, but also in persecution: the practice of Jewish religion was banned, Hitler frothed about “Judaism” which he used in the sense of ideology (evil, of course), or even conspiracy, Torah scrolls were destroyed, synagogues burnt. The definition of the Jew was ultimately based on religion. The definition of the Aryan was also elastic and, with the glib usage of the word “honorary”, allowed non-Aryans to be equals: as in the case of the Japanese and the

Euthanasia program, the murder of three and a half million in the genocide the Polish intelligentsia and random massacres against Jews. The opening of the Eastern Front in 1941 “coincided” with the mobile killing operations, (*Einsatzgruppen* shootings and gas-vans) and a few months later the development of the deathcamps. Browning, C, *Fateful Months, Essays on the Emergence of the Final Solution* (1985).

- 11 In 1920 a German lawyer and a psychiatrist published the book *The Sanctioning of the Destruction of Lives Unworthy of Living (Lebensunwerten Leben)*. There were many racial associations. The most important institute was the Kaiser Wilhelm Institute for Anthropology, Heredity and Eugenics, established in 1928. See Burleigh et al 52 at 141.
- 12 Above n2 at 51. Pre-Nazi German biomedical vision viewed Jews as a biologically determined race.
- 13 First Regulation to the Reich Citizenship Law, November 14, 1935: includes in the definition: a) who was a member of the Jewish religious community at the time of of the promulgation of this law, or was admitted to it subsequently; b) who was married to a Jew. Arad, Y, et al (eds), *Documents of the Holocaust* (1981) at 80.

Arabs.¹⁴ Non-Aryan Polish children were kidnapped — provided they were blond and blue-eyed, in other words if they *looked* Aryan — and raised as Aryan Germans.¹⁵ So the racism of Nazi policies was extraordinarily inconsistent. Everything becomes clearer however, if we diagnose Nazism as the underlying ideology behind the crimes of the Third Reich.

Habermas, perceiving clearly the inherent danger, passionately argues against the historical perspective which tries to prove that “the murder of the Jews was exclusively a consequence of the radical doctrine of race”.¹⁶ To understand how the treatment of Jews differed we have to understand Nazi antisemitism. “The Jew served as the focal point around which Nazism turned and on which the structural process of value-transformation and reversal of meanings took place.”¹⁷ Anti-Jewish “solutions” represented a unique, *sui generis* ideology, which had its antecedents in Christian Jew-hatred. The fusion of religious, political and racial antisemitism explains the quasi-religious fervour of Nazi antisemitism. Racial-hygienic legislation against “elements of lesser racial value” on the other hand, was more a manifestation of the absolute power the Nazi state vindicated than an ideological imperative.¹⁸ The lack of systematic approaches toward the mentally ill, homosexuals and Gypsies is explained by the recognition that there was *no ideological imperative* concerning the fate of these groups, “just” the arrogant barbarism of a corrupt and violent state.

The fate of the victims was different; the crimes committed against them were different; and even concerning the same group, there were differences in the context of time. Although the Third Reich used racism as an organising principle, the *ideology* of the Reich was National Socialism. The two in many ways overlapped, for Nazism had its roots in and utilised racism.

Actual Nazi policy concerning the Jews passed through changes. The persecution of Jews until 1938 could be viewed as a social policy. But from 1939, and unmistakably from 1941, policies concerning the Jews were decided by an ideological imperative. The Nazi state abandoned the Euthanasia program because it was unpopular, did not have a consistent policy regarding Gypsies, women could and did join Nazi organisations,¹⁹ but

14 Delegations of Syrians and Iraqis attended the Nuremberg rallies, in accord concerning their common enemies; the Grand Mufti of Jerusalem, was for long periods the Fuhrer's honoured guest and toured Nazidom; there were Arab volunteers in Germany, wearing the German uniform, with an armband: “*Frei Arabien*”. Pryce Jones, D, *The Closed Circle* (1989) at 205.

15 “According to reliable estimates a total of 200,000 children were abducted in Eastern Europe ...” Above n2 at 72.

16 Above n1.

17 Tal, U, “On Structures of Political Theology and Myth in Germany”, in: Bauer, Y and Rotenstreich, N (eds), *The Holocaust as Historical Experience* (1981) at 43–74. Tal shows how Nazi ideology was elevated into state religion complete with symbolism and spirituality, with God (Hitler), Evil (Jews) and priesthood (SS).

18 Similar to the function of concepts used by Stalin used such as “class-struggle” and “enemy of the people” rationalising the purges, the killing of millions.

19 Koonz, C, *Mothers in the Fatherland: Women, the Family and Nazi Politics* (1987). Koonz suggests that the apparent traditionalism of Nazi family policy helped mask the radicalism of other policies. Koonz also demonstrates that Nazi women not only supported but even were responsible for substantial brutality themselves.

no economic or war-effort²⁰ considerations interfered with the killing of the Jews: even when trains were needed for the soldiers fighting on the front the continuing deportations were more important. Dawidowicz presents the argument that the killing of all Jews was the ideological heart of Nazism.²¹ The murder of the Jews was, said Himmler, “a page of glory in our history”.²² The destruction of the Jews was National Socialism’s “gift to the world”. Hitler in the last days of the Reich, and indeed of his life in his last message, his testament to his people, used the words of “historic mission” concerning the Jews.²³ Considering Auschwitz as the paradigmatic expression of Nazi criminality, Habermas stresses specificity and incommensurability:

Something took place here, [in Auschwitz] which up until that time no one had even thought might be possible ... despite all the natural bestialities of world history ... Auschwitz has altered the conditions of continuity of historical life connections — not only in Germany.²⁴

There is a politeness throughout this book in both pictures and description, as if not to upset the reader. The tame picture of the bench, marked *Not for Jews*, does not betray the quantum leap in terror and torture, which was an integral part of the annihilation drive in the racial-ideological war against the Jews.

The problem with this book is that it ends up distorting and diminishing issues. The quest for a generalised, holistic theory concerning murderous Nazi policies, leads to the very *relativisation* the authors set out to counteract.

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Doyle, M W and Hodge, W C, *Criminal Procedure in New Zealand* (3rd ed), Law Book Company, 1991.

The third edition of Doyle and Hodge, *Criminal Procedure in New Zealand*, is a welcome addition to the extensive bibliography of material concerned with the practice and procedure of the criminal law in New Zealand. It complements the more detailed Adams on Criminal Law and Practice in New Zealand, being a relatively up to date practical ready reckoner of the criminal law in that country as at 1 December 1990.

Although it is a relatively short work providing an overview of the subject matter, it is extensive in its coverage, cram packed with summaries of relevant statutory provisions and case law, dealing with a range of topics from the jurisdictional basis for criminal prosecutions through arrest, charging, pre-trial applications, the trial process, sentencing

20 Military setbacks made the deportations even more frantic. Dawidowicz, L, *The war against the Jews* (1977) at 183; Gilbert, M, *The Holocaust* (1988) at 527.

21 Dawidowicz, above n19.

22 Himmler’s Poznan speech to senior SS officers. Quoted by Martin Gilbert, above n19 at 616.

23 Marrus, M, *The Holocaust in History* (1987) at 38.

24 Above n1 at 163.

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