

Supreme Courts under Nazi Occupation

Edited by Derk Venema. Amsterdam: Amsterdam University Press, 2022. Pp. 340. Cloth €128.00. ISBN: 978-9463720496.

Peter M. R. Stirk

Independent Researcher

Despite the daunting size of the literature on Nazi occupations, comparative studies of those occupations are relatively rare, and comparative studies of the legal dimension of those occupations rarer still. This volume is to be welcomed as a contribution to remedying this relative neglect. The choice of focus – supreme courts in societies that could claim to be characterized by the democratic rule of law prior to Nazi occupation – is justified by suggesting that, while indigenous legislative and executive authority had either been set aside or, so far as it persisted, had to be shared with the occupier, supreme courts were seen as having a key role in providing guidance and moral support. That is, in fact, an empirical claim that does not receive any sustained substantiation and may well be very difficult to substantiate. It is interesting that Derk Venema makes several references to the “mayor in wartime” dilemma in order to illustrate the problem supreme court judges faced. This implicitly raises the question of whether lower-level instances of residual indigenous authority played a larger role in the minds of the occupied populations than the more distant supreme courts. However one assesses that issue, study of supreme courts is worthwhile in its own right.

The selection of case studies is largely self-evident, though there are some anomalies. The selection of the Belgian Court of Cassation in the First World War, possibly the most extensively discussed court in the wider literature, does not fit in with the chronological focus or Nazi occupation. Chapters on the *Reichsgericht* in Germany between 1933 and 1945 and the Italian Supreme Court between 1943 and 1945 are also problematic in this sense. The supreme courts of Denmark, Norway, Belgium in the Second World War, the Netherlands, and Luxembourg receive separate consideration. The chapter on the Protectorate of Bohemia and Moravia deals with three courts: the Constitutional Court, the Supreme Administrative Court, and a separate Supreme Court, while the French *Cour de Cassation* and the *Conseil d'État* are considered in separate chapters. Venema in his study of the Netherlands and Jaromír Tauchen on the Protectorate of Bohemia and Moravia both note the extension of elements of the German civil legal structure into those occupations, further illustrating the complexity of legal structures under occupation.

Venema provides an extensive introduction and conclusion. The former sets out the role of courts in the “democratic rule of law state” (15), German strategies of occupation, the legal context provided by the Hague Regulations, and some approaches to the study of occupation. This is a lot to fit into an introduction but provides some useful reference points for readers familiar with one or two of these themes but not all three. The conclusion notes the difficulty of comparison, given the diversity of occupation regimes, but it suggests that some broad patterns can be discerned, which are organized firstly from the perspective of Nazi occupation strategy and then from the perspective of the supreme courts. One pattern was simply the fact that the courts were left in place. German interest in functioning judicial systems rather than any sense of the limits appropriate to an occupier were the key factor, though the introduction of Nazi courts of one form or another weakened the position of indigenous courts, as did Nazi manipulation of what Venema call the “symbols of power and loyalty,” for example oaths extracted from the judges (281). Another lever, “personnel policy,” was constrained by the difficulty in finding pro-Nazi personnel with the necessary skills to serve as judges. On balance, Venema, not surprisingly, emphasizes the fading ability of the courts to maintain much defense of the rule-of-law model. In considering the

response of those courts, especially in terms of the competing pressures of, on the one hand, the desire to maintain moral integrity and, on the other hand, the interest in remaining in office in order to mitigate the impact of the occupation, Venema concludes that these were “irreconcilable demands” (308). Interestingly, he notes that, in the only case of collective resignation, the Norwegian Supreme Court called on judges in lower instances to remain in office.

These themes and others do indeed appear in the chapters devoted to specific occupations and courts. The dilemma emphasized by Venema finds expression in Mélanie Bost’s discussion of the occupation of Belgium in the First World War, notably given Prosecutor General Georges Terlinden’s influential view that “patriotism is *not* insurrection” (48), which also forms a nice contrast to the dominant historiographical stress on the heroic nature of the judicial strike of 1918. The following chapters suggest that, even where judges and courts did not come in for severe criticism, they did not enjoy the reputational success of their Belgian precursors. Indeed, in Ditlev Tamm’s study of the Danish Supreme Court, there seems to have been no such ambition. This supreme court saw itself, rather, as part of the government system oriented to the maintenance of order and the accommodation of German interests. Tamm concludes that the judges “behaved more like loyal civil servants than as protectors of basic legal principles” (91).

The position of French judges was complicated by the fact that they served a French state that elevated collaboration into a policy. In his critical review of the role of the *Conseil d’État*, Marc Olivier Baruch notes not only that the court shared the views of the Vichy regime but that it proved reluctant to acknowledge let alone apologize for its complicity in some of the worst actions of the regime. Indeed, Baruch holds that this is still an unfinished task. If Clément Millon’s judgement of the *Cour de Cassation* is somewhat less harsh, this is because the court was kept in a peripheral position by the regime and dealt primarily with matters dating from before the war.

The collective resignation of the Norwegian court is presented by Hans Petter Graver primarily as a reaction against Norwegian collaborators, especially the minister of justice. As Graver turns to consider the new court, staffed with more reliable personnel, however, he points to the relative continuity of its judgements with prewar cases, concluding that this demonstrates that “institutions are greater than men” (148). If at least some Norwegian judges can be seen as worthy imitators of the reputation of the Belgian court in 1918, their fellow nationals in the Second World War fare less well in the judgement of Françoise Muller and Kirsten Peters, who describe how the Belgian Court of Cassation “yielded to the occupier’s demands” in the key crisis (177). Yet they also stress the pressures to remain in office and warn against an unqualified contrast with 1918. Consistently with his general conclusion, Venema’s study of the Dutch court emphasizes the competing pressures, showing how these emerged in specific cases and how they were embodied in different members of the wider judicial establishment.

While the Belgian, Norwegian, and Dutch courts had sufficient room for maneuver to be faced with the dilemma, the courts of the Protectorate of Bohemia and Moravia were much more constricted. The Constitutional Court was systematically sidelined and effectively ceased to function at all in 1941. The remit of the Supreme Administrative Court was severely restricted by the peculiar structure of the Protectorate. While Jaromír Tauchen states that this was less so for the Supreme Court, his rather brief account of it does not suggest great activism. Vincent Artuso’s study of the Luxembourg *Cour Supérieure de Justice* is dominated by the development of the *de facto* annexation of Luxembourg. One of the many interesting points in this brief assessment is the lack of any collective strategy and the explicit invocation of individual and personal considerations to justify their action by judges in the postwar period. Both individual motives and the phenomenon of state collapse are also prominent in Antonio Grilli’s brief account of the *Corte di cassazione* in the Salò Republic.

If it is possible to identify common themes, if only in the prevalence of the “mayor in wartime” dilemma and the interest of the occupier in retaining some level of indigenous

judicial activity, the diversity of conditions and the range of factors affecting judicial behavior also stand out. The structure of the occupation, the policy of occupiers and collaborators, judicial traditions, personal and collective strategies, and the power of institutions have to be taken into account if the choices judges made are to be understood and, in their turn, subject to moral judgement. Derk Venema and the other contributors deserve considerable praise for bringing out these complexities in a pioneering comparative study.

doi:10.1017/S0008938924000748

German Blood, Slavic Soil: How Nazi Königsberg Became Soviet Kaliningrad

By Nicole Eaton. Ithaca: Cornell University Press, 2023. Pp. xiii + 315. Cloth \$35.95. ISBN: 978-1501767364.

Robert L. Nelson

University of Windsor

The victims on the ground most likely do not really care much about the ideological differentiation between one group of oppressors and the next. Those in the “Bloodlands” of East Europe who were impoverished, starved, displaced, or murdered surely did not spend much time wondering whether they were subjects of a race-based or class-based totalitarianism. This is the primary achievement of this fascinating work by Nicole Eaton, which uses an important borderlands location, Königsberg/Kaliningrad, as a laboratory to compare and contrast life under each of the two regimes that battled for supremacy in East-Central Europe. Many of us were educated with the idea that there was an easy binary in defining why the Nazis killed people and why the Soviets displaced and/or murdered people, one for their blood, one for class allegiance. Yet in Eaton’s microhistorical investigation, which details the lives of the people who endured both regimes, such easy binaries quickly fall apart. When politically convenient, local Nazis happily ignored the Polish blood of pro-Reich Masurians, while the working-class status of a postwar German in Kaliningrad meant nothing when a Russian needed his apartment. I have already alluded to the obvious comparator, Timothy Snyder’s *Bloodlands* (2010), with its bold argument that any attempt to rank Soviet occupiers as somehow not as bad as the Nazis becomes deeply problematic when one analyzes the experience of the people of East Europe. Both regimes were terrible and made each other worse in their constant interaction and friction across this space. Eaton’s is a deeply researched, well-written, seminal contribution to the growing body of literature in the wake of *Bloodlands*, one that only deepens the argument.

Beyond the straightforward comparison of the two regimes, the study stands as an excellent example of the increasingly prominent area of border studies by focusing on a city that has long been a meeting point of West (or at least Central) Europe and East Europe. In describing the point of view of both Berlin and Moscow, Eaton writes, Königsberg/Kaliningrad was “a bridge to civilization and a bulwark against the barbarians” (252). The narrative begins with the Prussian history of Königsberg, its crucial position for east-west trade, and its eventual unique place within the Third Reich during the 1930s. As an outpost, cut off from Germany proper by the “Polish Corridor” created at Versailles, East Prussia was largely left alone by Berlin, and its Gauleiter, Erich Koch, was able to rule it as an almost autonomous Nazi fiefdom. Koch’s approach to race in his province is yet another example