

Reply to a Review on *Empire of Law*



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I do not normally respond to reviews, but when I do, I try to make it at least somewhat interesting. I know that responding and responses are supposed to be the way that scientific inquiry progresses, but the reality is very different. Malicious reviews tend to be written by either of two kinds of people; bitter emeritus professors vainly attempting to promote a long-dead research approach or ambitious young doctoral students desperately trying to make themselves and their theses relevant by trashing real or imagined competition. In either case, they are less interested in real scientific dialogue than your average internet troll.

As I said, I am making an exception here, because the reviewer has actually touched upon an interesting point but I will not go through the twenty pages of minor issues that were paraded before a no doubt increasingly bored reader. For the record, some of them I happily concede to be accurate, such as that there should be more references to post-WWII German literature or the instances where Wieacker uses racist terminology or overlooks Jewish victimhood. In other cases, such as excusing or minimizing the Holocaust, their claims are nonsensical.

What I would like to address here are two main issues, the very serious accusation of there being Nazi sympathies and the related issue of intellectual development and the transmission of ideas through extreme circumstances.

The reviewer makes a very direct accusation that the book is representative of the normalization of Nazi ideology and an apology of the Nazis themselves, using the notion of Hi Hitler! narrative to discuss this. This is consistent with their general attempt at provocation through the use of straw men argumentation. For those unfamiliar with this term, arguing against straw men means misconstruing your opponent's argument as a grotesque version of itself, an argument that fails by its own internal logic like a sand castle. A good example of a straw man article is the claim that I would have claimed that exile is "a gratifying and rejuvenating experience"! I am writing consistently about exile and depict it as a tragic and traumatic experience, not akin to a visit to the spa.

The evoking of this so-called Hi Hitler! narrative in this case is both ethically and morally dubious, a banalization of the events leading to the Holocaust. The reviewer is actually misrepresenting Gavriel

D. Rosenfeld's astute work, turning its main message on its head. Allow me to elaborate; Rosenfeld analyzes how, through instruments such as memes and comedy, the Nazis are humanized and their ideas given air time and how they are disconnected from the atrocities of the Holocaust.

What the reviewer is actually doing is making another misrepresentation; the removal of Nazis from the realm of man and turning them into space monsters. This 'monsterization' has a rich history, beginning with post-war Germans themselves, who placed culpability at the feet of the leading Nazis, especially Hitler himself, and presented themselves as victims. This tactic was used in a similar fashion by Nazi allies and collaborators abroad who sought to erase the fact that they were, in fact, willing collaborators and sought to benefit from Nazi Germany and its policies.

What this 'monsterization' obscures is that while there were truly monstrous characters, the very enemies of the human species, quite often there was a Jekyll and Hyde kind of quality to them. Rather than tormented beasts, they appeared to be surprisingly normal, kind to small animals and devoted family men. That

Therein lies the rub. Should we believe that many of the Germans who were enthralled by the promise of the Nazi revolution were inherently good people who believed the ideas of the unity of the people and were later horrified of the turn towards mass killings and the Holocaust, or was the evil of Nazism in plain sight and those who followed it were themselves equally bad? This was, of course, the problem that Allied officials were faced with in the post-war denazification process. For reasons that had to do more with the sheer amount of people and the need to isolate and punish what they thought were the worst offenders, they chose the first option. The reviewer, seeing only black and white, is clearly opting for the inherent evil.

However, for historians, this is a false dichotomy. There is no analytical value in it. For us, the later observers, the interesting and consequential issue is that which made the Nazi ideology appealing and what legacies, intended or unintended, it has. This is also the issue that has real relevance today with the rise of various alt-right movements and populism; ideologies that utilize variants of the same strands of thought that formed the Nazi ideology.



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these same people were also capable of indescribable cruelties and genocidal violence has prompted a veritable torrent of literature, beginning with contributions by the likes of Arendt, who memorably termed it the banality of evil.

For the apologists, most of the perpetrators of the Holocaust were simply following orders given by monstrous individuals and were thus free of blame. However, as recent studies have illustrated, there was significant leeway allowed, for instance to the people in the *Einsatzgruppe*, to not participate in the killings of women and children. For reasons that are not always clear but have to do with the social psychology of groups, most participated anyway.

As James Whitman has demonstrated in his book on the linkages between Nazi thought and practices and the American racial or Jim Crow policies, ideas are not born in a vacuum. The practice of taking thoughts and concepts and twisting them to new, nefarious ends was the way Nazi thought operated. This linking of generally accepted conservative aims with more radical ideas was how oppression, separation, exclusion and, eventually, extermination of the other was sold to the Germans.

But understanding is the road to normalization and acceptance, the reviewer argues. This is another false claim. It does not distinguish between the internet trolls' practice of 'whataboutism' and analyzing his-

torical development. The practice of ‘whataboutism’ is an argumentation tactic employed to draw attention away from something by pointing to another alarming case. Thus, if you are accused of a crime, instead of defending yourself you point to the crimes of your accusers. How this works in historical discussions can be illustrated by the use of the Armenian genocide in relation to the Holocaust. The ‘whataboutist’ claim would be to say that the Armenian genocide illustrates how massacres and bad things happen and thus Holocaust was not that noteworthy. The analytical historical argument of linking the two would be to demonstrate how observation of the Armenian genocide and its use as ethnic cleansing were one of the historical examples which informed the planners of the Holocaust.

as for instance Wieacker did, from that of a traditionalist conservative to a radical Nazi reformer and back while all the time being convinced of one’s own moral rectitude.

But, you ask, a Nazi is a Nazi, so what difference does it make? The damage painting almost all of German academia with the same brush does is that it allows truly nasty creatures such as Carl Schmitt, an unrepentant Nazi and a fierce anti-Semite, to escape within the crowd. Due to the continuing appeal of his ideas, especially his criticism of liberalism, Schmitt has gained an unprecedented following which repeatedly presents apologies and minimizations of his involvement in the Nazi movement and ideology. While Schmitt was ostracized from academia, it did not mean the end of his influence, as his students continued to occupy



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If we fail to analyse and to recognize the roots of Nazi legal thought and the way it combined elements from various sources, we are vulnerable to the way that similar ideas are being peddled under the guise of populism. Whether we like it or not, Nazi ideology had genuine appeal to the people not only of Germany but also elsewhere in Europe. The extremely disturbing fact that similar ideas are increasingly being presented today makes understanding this appeal relevant and, in fact, blaming the monstrous acts of the Nazis to the very monstrosity of Germans obscures the point that figures both on the political Right and Left are peddling – with great success – racist and xenophobic ideas that perpetuate the Nazi ideas of ethnicity and exclusion. It is through the exceptionalism of the Nazis, and the ‘spacemonsterization’ of perpetrators, that we are able to maintain the balance between good and evil in our worldview.

In this case, my aim has been to illustrate that it is entirely possible to make the intellectual passage,

important positions. In fact, as I write, only very few Nazi scholars suffered any real consequences between 1945 and 1968.

What I am arguing is that due to this continuity, there is a distinct danger in simply and lazily (and incorrectly) slapping a label on the period of 1933–1945 which says “Nazis! Do not open!”. The danger is such because ideas created in response to Nazi ideology did not go away and neither did the people who created them; there is a resurgence.

We shall now go to my second point, the transmission and change of ideas and the impact of trauma. The learned reviewer raises numerous times the notion that the scholars are misrepresented. For the reviewer, Schulz and Pringsheim are apolitical scholars focused on the dogmatic study of Roman law, while Wieacker is a Nazi from head to toe and Koschaker is a German nationalist nostalgic of old empires. They are what they are, with little or no change. They are also all qualitatively different from “political scholars” such as Arendt

and Neumann. This notion of the eternal qualities of scholars in that their permanent essence is locked in their biographies, coherent and unchanging, is the second most troubling idea of the review.

This conviction of the essential unchanging qualities explains the incredulity that the reviewer has for the need to work through the traumatic experiences, and the wholesale rejection of the idea that strong personal experiences find expression in works of scholarship.



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For those who have yet to read the book, the main underlying idea was that certain ideas such as the shared European legal tradition have their roots in scholarship during the Nazi years both by persons such as Schulz and Pringsheim, who were exiled, and Koschaker, Wieacker and Coing, who stayed in Germany and with varying degrees participated in the Nazi regime. I trace the beginnings of this tradition to a couple of atypical works by Schulz and Pringsheim. They are enigmatic mixtures of old and new and their interpretation has troubled both contemporaries and the later world. What the reviewer claims is that these works are simply aberrations that have little significance, because they do not fit the profile that they have been given in the German legal tradition. This atypical nature is the point. Schulz and Pringsheim's are works that explain and explore the significance not only of the Nazi challenge but also the ramifications that it would have in the German and wider European legal tradition. Theirs were also some of the last works to be published in the brief window of time between the Nazi takeover of power and the silencing of authors of Jewish heritage in 1935 and the purge of scientific publications.

This is inconsequential for the reviewer: these are not their 'genuine' achievements as noted in obituaries. Even worse, there are inconsistencies in their examples, where some statements are not consistent of the idea of a liberal hero protagonist that the reviewer imagines the book represents. Hence, the absurd claims about Schulz's discussions on possible Oriental influence as Nazi propaganda reflect the reviewer's point of view. I wonder whether Schulz's rejection of Greek influences

or rhetoric would be similarly construed as Nazi ideas. Similar strangeness ensues with Koschaker and his ideas about Eastern Europe, discussions which reflect contemporary concerns of the reviewer rather than the German-centred viewpoint of Koschaker himself. In all of these contemplations there is a strange notion that the reviewer interprets the opinions of the people I research; Schulz, Pringsheim et al. as my own opinions and convictions or is even a sign that I personally would accept and endorse them (such as the idea of the universal worth and validity of Roman law as a yardstick to which all legal systems should be measured against or the casual racism). That is not how historical writing works. My point is to understand the convoluted logic behind the emergence of one of legal history's most cherished myths and that requires understanding the logic of its creators.

All in all, the book attempts to explore the continuities and changes in the works of these authors, raising parallels and points of contention. What the reviewer would have wanted was an unambiguous narrative with a beginning and an end, with characters that suit the part they are assumed to have with no inconsistencies and human flaws. As such, I am afraid that no such clean narrative is there to be found.