

Rechtsgeschichte Legal History

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<http://www.rg-rechtsgeschichte.de/rg28>

Zitiervorschlag: Rechtsgeschichte – Legal History Rg 28 (2020)

<http://dx.doi.org/10.12946/rg28/360-361>

Rg **28** 2020 360–361

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Norwegian Judges during the Second World War and Their Shortcomings

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political scientists agree or disagree with Twomey's assessment in *The Veiled Sceptre*, there is little doubt that her interpretation will be the starting point of these discussions in the future.

As a tome of nearly 900 pages, it is difficult to do justice to *The Veiled Sceptre*. Encyclopedic in scope and ambition, the book sets a new standard for

comparative studies of heads of state in the Westminster tradition. As importantly, it is a contribution that is likely to inform future decisions by heads of state, while being the book of record for those of the past. ■

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Norwegian Judges during the Second World War and Their Shortcomings*

Legal scholar Hans Petter Graver is fascinated by judges who undermine the rule of law by serving an authoritarian regime. Five years ago, he delved into this subject in his book *Judges against Justice. When the Rule of Law is under Attack*. Also in 2015, Graver published a study on the legal history of his native Norway during the Second World War. This book has now been translated into German, offering international readers the opportunity to acquire knowledge on this interesting example of how the National Socialist occupying forces and collaborationist leaders aspired to instrumentalise local judicial procedure and the judiciary during the Second World War – and how judges reacted to this.

The Norwegian case study forms both an addition and a sequel to Graver's previous work on judges. On the one hand, it adds depth to his more general reflections on the paradox of judges serving authoritarian regimes by exploring the case of Norway under German occupation. On the other hand, he places this case study in the context of judges' faults or shortcomings (»Richterversagen«) in National Socialist and other authoritarian regimes.

Graver paints a detailed picture of various aspects of legal life and practice in occupied Nor-

way. Led by *Reichskommissar* Josef Terboven (and, from 1942 onwards, prime minister and collaborationist *Nasjonal Samling* leader Vidkun Quisling), the Norwegian state was placed under National Socialist rule. This had far-reaching consequences for judicial organisation and criminal proceedings on all levels of the Norwegian *Rechtsstaat*.

Graver's first focus is on the Supreme Court (*Høyesterett*). When the collaborationist Minister of Justice, Sverre Riisnæs, introduced measures in order to reform judicial procedures in the autumn of 1940, the Supreme Court pointed out that these actions lay outside the minister's competence. This response was inspired by the ambition to protect judicial independence, but had a much larger effect. In reaction, the regime forbade the Supreme Court to review the legality of measures taken by the occupying forces or the Norwegian puppet government. Moreover, the Supreme Court's members were punished by forced retirement from the age of 65 and up. This caused the entire body of judges to resign and paved the way for members of the *Nasjonal Samling* to take their places. The newly appointed judges were both more loyal to the regime and less qualified than their predecessors. They accepted their appointment either out of a sense of duty to serve their

* HANS PETTER GRAVER, *Der Krieg der Richter. Die deutsche Besatzung 1940–1945 und der norwegische Rechtsstaat*, transl. by MELANIE HACK, Baden-Baden: Nomos 2019, 337 p., ISBN 978-3-8487-5475-5

country, were motivated by ideology and their support for the *Nasjonal Samling*, or more or less forced to join by Riisnæs. In spite of the regime's intention to form a loyal Supreme Court, Graver concludes that the »new« *Høyesterett* did not serve as a political tool for the National Socialist regime and was able to exercise its duties independently.

This was not the case, however, for the people's court (*Volksgerichtshof*) and special courts (*Sondergerichte*). The newly established people's court was a political court and aimed at crushing any opposition to the occupying regime and its collaborators. During its existence, the people's court dealt with 111 cases of (verbal) abuse of members of the *Nasjonal Samling*, the production and distribution of clandestine newspapers, and »bagatelles« such as publicly expressed support for the Norwegian monarchy in exile. The three special courts were established in 1943 and also served the purpose of political persecution. They dealt with more severe cases concerning the maintenance of public order and could impose the death penalty. Graver places these courts in the context of the increasing polarisation of the last war years and describes some of the cases against members of resistance groups. He also mentions a number of non-politically motivated cases of theft committed by civilians in crisis situations following the explosions of an ammunition store in Oslo (1943) and of a ship carrying explosives in Bergen (1944). In these cases, the special courts imposed severe punishments as a means to warn the population against large-scale (petty) crime.

In his analysis of the functioning of »ordinary« Norwegian courts, Graver states that these were largely not involved in political matters and therefore not of much interest to the German and collaborationist authorities. These courts dealt mostly with »ordinary« crime, which was in itself quite a challenge because of the considerable rise of criminal acts during the occupation. Graver attributes this to the emergence of new criminal acts relating to the war situation, such as the embezzlement and theft of food rationing cards, the forgery of identity cards and the black market. These examples raise the questions whether it was always possible to make a distinction between »normal« criminal acts and politically motivated crimes perpetrated by members of resistance groups, and how

the German and local authorities dealt with this distinction. If crimes at the expense of the occupying forces were dealt with by German courts, what exactly happened to the undoubtedly numerous forgers and black market dealers who served the resistance, but also made profits for themselves?

Because of Graver's broad view of the subject of courts and judges in occupied Norway, it is not surprising that he cannot examine such questions in depth. The strength of this book lies exactly in this broad view and the fact that the author succeeds in giving a general impression of the various judicial levels that were touched or severely affected by the National Socialist regime.

Although this generalist approach forms a strength, it does become slightly too prominent in the final chapter of the book. In this chapter, Graver provides a number of interesting explanations for the question why courts and judges – both in 1940s Norway and in other instances – have failed to resist and counter authoritarian rule. He rightly points out that judges who stay in office do not necessarily support the regime. They might be afraid of the consequences of their resignation for their personal situation, or believe that they can temper the effects of certain measures by staying put. Graver also points out that governments have authority and judges tend to be obedient to the powers that be and legitimise the status quo by exercising their duties. Furthermore, Graver reminds us of the strong hierarchical order that members of the judiciary are subjected to. These explanations are fascinating and plausible, but would be even more convincing if substantiated by examples from the Norwegian case study central to this book. Instead, in this final chapter, Graver leans heavily on examples from Nazi Germany and only briefly refers to the Norwegian judges he has so extensively studied in the preceding pages.

Der Krieg der Richter is a very interesting book. Therefore, this German translation is a welcome addition to the slowly growing corpus of academic knowledge on the attitude of European judges and other magistrates faced with National Socialist rule during the Second World War and can provide more material for future comparative research on this subject.

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