

Julia Hörath, »Asoziale« und »Berufsverbrecher« in den Konzentrationslagern 1933 bis 1938, Vandenhoeck & Ruprecht Verlag, Göttingen 2017, 387 pp., Hardcover, 65,00 €.

In this excellent new study, Julia Hörath joins a number of other scholars – some of them, like her, former members of Nikolaus Wachsmann’s research team of doctoral students at Birkbeck College, University of London – in placing the pre-war history of the Nazi concentration camps under the microscope.¹ Hörath’s interest is in two groups whose presence in the early camps has been largely overlooked, at least for the period before 1937/38, namely »asocials« and »professional criminals«. However, her findings are not just restricted to these particular categories of prisoner. Rather, her book has profound implications both for our understanding of the origins and early development of the KZ system, and for related forms of social-racial persecution in the pre-1939 era, including compulsory sterilisations, punitive welfare measures, forcible assignment in workhouses, and last but not least, the »legal terror« practised through the Third Reich’s judicial system and its brutal enforcement of the Reich penal code.²

In place of the previous *Stufenmodell* for understanding the move from the first concentrations camps in 1933 to genocide after 1941/42, which identifies certain key »steps« that had to be taken in order to expand the range of previously unthinkable (and unthinkable violent) »solutions« to imagined racial-biological threats, Hörath offers a broader chronological reading of the persecution of social outsiders, with origins going back well before the early 1930s. Phase one, from the 1880s through to 1933, constitutes the »period of conceptual experimentation«, when ideas about hereditary criminality, preventative policing and the need to »solve« the inherent security challenge posed by »non-settled«, »degenerate« and »work-shy« persons first began to take shape. Phase two, which is the focus of her study, was the »period of practical experimentation«, from 1933 to 1937/38, when the numbers of »asocials« and »professional criminals« incarcerated in camps were already high enough that the basic ideological contours of Nazi policy towards these two groups were clear to see. Phase three, from 1937/38 to the outbreak of the Second World War, forms the »period of centralisation, systematisation and expansion of numbers«, when significant institutional innovation, but not ideological change, took place.

Underpinning this model is Hörath’s application of the exiled German jurist Ernst Fraenkel’s famous theory of the »Dual State«, whereby, under the political system established by the Nazis, responsibility for upholding certain judicial norms lay in the hands of the »normative state«, while the »prerogative state« was able to act beyond such norms in order to meet the »higher« imperative of safeguarding, without legal restraint, the future of the German race and people.³ Almost all office holders in the »Third Reich« accepted the principle of duality, but disputed where the line between the *Normenstaat* and *Maßnahmenstaat* should be drawn. This means that for Hörath, Fraenkel’s »Dual State« should not be seen as a description of empirical reality but as a Weberian »ideal type«, against which different political actors sought to impose their own agendas – with some preferring to use *maßnahmenstaatliche* measures against political suspects only, and others wishing to expand this to include certain categories of social outsider.

¹ Alongside his own magnum opus, *Nikolaus Wachsmann*, KL. A History of the Nazi Concentration Camps, London 2015, and a number of edited collections, three other members of the group have produced specialist monographs – see *Christopher Dillon*, Dachau and the SS. A Schooling in Violence, Oxford/New York etc. 2015; *Kim Wünschmann*, Before Auschwitz. Jewish Prisoners in the Prewar Concentration Camps, Cambridge/London 2015; *Paul Moore*, The View from Outside. The Nazi Concentration Camps and the German Public, 1933–1945, Oxford/New York etc. 2018 (forthcoming).

² »Legal terror« was the subject of an earlier work: *Nikolaus Wachsmann*, Hitler’s Prisons. Legal Terror in Nazi Germany, New Haven/London 2004.

³ *Ernst Fraenkel*, The Dual State. A Contribution to the Theory of Dictatorship, New York 1941.

Of course, in the Weimar period various demands had been made for harsher penalties against repeat criminal offenders, the willfully unemployed, and alcoholic or »work-shy« men who failed to support their families. However, the key difference between the situation before and after 1933 is that under the Nazis neither the courts and the judiciary, nor elected parliamentary deputies, had any influence over how policy choices in the increasingly related areas of medicine, social welfare and criminal policing were made. Rather, the criteria for what belonged to the *Normenstaat* and what to the *Maßnahmenstaat* was now decided purely on the basis of political or economic convenience. This might come from the top, for instance when Propaganda Minister Joseph Goebbels used the *Bettlerrazzia* (police-led round-up of beggars) in September 1933 to launch the first Winter Aid Relief campaign since the Nazis came to power, thereby attempting to harmonise popular notions of what constituted moral and immoral forms of social behaviour with the new *Leistungsprinzip* that underlay the regime's *völkisch* welfare policies. But it might come from lower down too, among local and regional officials who were also interested in seeing an end to the *Rechtsstaat* and/or universal welfare provision, and the use of more opportune measures, including extra-legal detention, against those deemed a public nuisance, »asocial« or genetically-inclined towards criminality.

Two key instruments of the security state furthered this process: *Schutzhaft* (»protective custody«) and *Vorbeugungshaft* (»preventative custody«), both of which had their origins in nineteenth-century Prussian laws and forms of extra-judicial incarceration. *Schutzhaft* was especially controversial because of its extensive use during the First World War under the state-of-siege legislation, and again during the military state of emergency declared by President Friedrich Ebert in 1923/24, when the main targets were communists. Yet Hörath also shows how both instruments were expanded in the immediate period after the Nazis came to power (1933/34) through the efforts of the *Landesregierungen* and a variety of other local and regional actors, including private and state welfare agencies, medical centres, directors of workhouses and various branches of the criminal and political police as well as the NSDAP, SA and the SS, all of which were determined to work outside the rule of law and beyond any democratic oversight or constitutional restrictions.

The police, the welfare authorities and other non-judicial bodies in the two largest German states, Prussia and Bavaria, were successful from as early as 1933/4 in getting some »professional criminals« and social »deviants« or »delinquents« admitted to state-run camps on the basis of a mixture of *Vorbeugungshaft* and *Schutzhaft* orders, with Prussia showing a preference for the former and Bavaria for the latter. The situation in Baden and Thuringia – the two other states that Hörath examines in detail – was even more complex. In Baden, for instance, the erstwhile correctional facility at Kislau remained for many years after 1933 a hybrid form of workhouse-cum-concentration camp, with the director glad to have a steady supply of both types of inmate. In the Landesheilanstalt in Stadtroda, Thuringia, a special section was set up by the state authorities for the extra-legal detention of »asocials carrying sexually transmitted diseases«. Individual women could be sent there without their consent from other establishments, not for treatment of their condition, or even as a means of infection control, but – as the director of the university clinic in Jena put it in relation to one of his female patients – in order to protect the wider »moral sensitivities [*Moralauffassung*] of the population« (p. 268). Only after 1934 were significant moves made towards greater centralisation, with the SS increasingly taking the lead and exerting a growing influence on the terminology used by provincial actors. Even so, local variations and »grey zones« were retained after 1934 and even beyond 1937/38.

Hörath's study confirms, and substantially builds on, the ideas of Michael Wildt concerning the *Volksgemeinschaft* as »call to action« and means of individual and collective »self-empowerment«. ⁴ It also draws attention to the work of Jane Caplan, who in an essay published some years ago already began to raise important questions about the complex early origins of extra-judicial political detention under the Nazis, and to challenge the conventional picture of a binary split between SA »wild« camps and the initially more »restrained« state-run camps. ⁵ It offers some fascinating detail on particular

⁴ Michael Wildt, *Hitler's Volksgemeinschaft and the Dynamics of Racial Exclusion. Violence against Jews in Provincial Germany, 1919–1939*, New York, 2012 (first published in German 2007), pp. 38, 278–281.

⁵ Jane Caplan, *Political Detention and the Origin of the Concentration Camps in Nazi Germany, 1933–1935/6*, in: Neil Gregor (ed.), *Nazism, War and Genocide. Essays in Honour of Jeremy Noakes*, Exeter 2005, pp. 22–41, here p. 29.

institutions, such as the former workhouse at Moringen in the Prussian province of Hanover (today Lower Saxony), and makes a convincing case for focusing on the *Bettlerrazzia* of September 1933 as a key moment in the persecution of »asocials« at regional and national level. Coming under the new state of emergency established under the Reichstag Fire Decree, it differed little in aim, scope and intensity to the more well-known national round-ups of 1937 and 1938, with the only proviso that in 1933 the direct link between the imprisonment of »asocials« and sterilisation measures as part of the same programme for social-racial »purification« had not yet been made. Preventative policing methods indeed continued to be an important factor right up to the launch of the first stage of »Aktion Arbeitsscheu Reich« (»Operation Work-Shy Reich«) in April 1938, although Hörath admittedly sees a clearer move towards plugging gaps in the labour market in the second, and more extensive, round of arrests in June 1938.

Overall, Hörath's conclusions are convincing and help to reframe our understanding not only of the early camps, but of the complex interactions, sometimes hostile but at other times mutually reinforcing, between key institutions like the Gestapo and the Kripo. There is one partial blind spot in her approach, however. In her discussion of historiography, Hörath correctly identifies a marked reluctance among scholars until the 1990s to examine the early history of the camps. She attributes this to the fear that such an approach might be misinterpreted as an attempt to »trivialise« the mass genocide of the war years. Yet she herself seems to be wary of drawing too much attention to regional exceptionalism lest this trivialises the role of the SS in centralising the KZ system, from the creation of the Inspectorate of Concentration Camps (IKL) by Theodor Eicke in May 1934 through to the establishment of the two key instruments of the Holocaust and wartime forced labour system: the Reich Security Main Office in 1939 and the SS Main Economic and Administrative Office in 1942. In particular she repeatedly asserts that before the establishment of the IKL, Bavaria was no »special case«, even if it stood out, then and later, as a part of Germany with an especially high number of *Schutzhaftlinge*. Different regions were working independently, but all towards the same increasingly violent and racist goals, she contends, and were all equally empowered to act outside the law by the Reichstag Fire Decree.

Yet an argument might still be made for Bavarian exceptionalism. Hörath acknowledges that *Schutzhaft* was a favoured tool there during the Nazi takeover of power in 1933/34, but does not recognise that one of the reasons for this was the irony that Bavaria, alone of the German states, had not been able to use this instrument during the First World War because the 1851 Prussian state-of-siege law did not apply there.⁶ The practice of *Schutzhaft* in fact first came to Bavaria immediately after the crushing of the Munich Soviet in May 1919, when emergency powers invested in the new office of Reich President (and later confirmed through § 48 of the new Reich constitution) were extended to this particular state as a means of combatting what was seen as an ongoing threat of communist insurgency.

More to the point, the Munich police authority used the new possibilities represented by (post-1918) *Schutzhaft* to apply for the imprisonment without charge and without judicial review not only of political suspects – as the military commanders responsible for seeing off the »red threat« wanted – but individuals singled out from arrest records as belonging to the »big city scum« (*Großstadtgesindel*). Although there were no concentration camps in Bavaria at this time, places such as the women's correctional facility at Aichach near Augsburg were used to house female prisoners explicitly identified as *Schutzhaftlinge*. Their male counterparts were sent to the former POW camp at Puchheim. The overall aim was to turn Bavaria into an *Ordnungszelle*,⁷ in other words an alternative, illiberal model of policing, welfare provision and state governance which would cancel out the democratic achievements (or, from the point of view of its opponents, the »chaos«) of the November revolution. This does not on the whole invalidate Hörath's very well-made argument for seeing the Reichstag Fire Decree of February 1933 (issued by a different Reich President, Paul von Hindenburg, but under the same § 48)

⁶ See *Christian Schudnagies*, *Der Kriegs- und Belagerungszustand im Deutschen Reich während des Ersten Weltkrieges: Eine Studie zur Entwicklung und Handhabung des deutschen Ausnahmestandsrechts bis 1918*, Frankfurt am Main 1994, pp. 48-50.

⁷ *Michael H. Geyer*, *Verkehrte Welt: Revolution, Inflation und Moderne. München 1914-1924*, Göttingen 1998, pp. 112-117, 277.

as a major turning point in the use and development of *Schutzhaft* for purposes of mass terror and the social-biological re-ordering of society. But it does qualify it in a limited and regionally-specific sense, not least because it suggests more of an overlap between the periods of »conceptual« and »practical experimentation« than her three-stage chronological model allows for.

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