



Jews and the Courts in Weimar Germany

Author(s): Donald L. Niewyk

Source: *Jewish Social Studies*, Vol. 37, No. 2 (Spring, 1975), pp. 99-113

Published by: [Indiana University Press](#)

Stable URL: <http://www.jstor.org/stable/4466872>

Accessed: 04-03-2016 15:42 UTC

Your use of the JSTOR archive indicates your acceptance of the Terms & Conditions of Use, available at <http://www.jstor.org/page/info/about/policies/terms.jsp>

JSTOR is a not-for-profit service that helps scholars, researchers, and students discover, use, and build upon a wide range of content in a trusted digital archive. We use information technology and tools to increase productivity and facilitate new forms of scholarship. For more information about JSTOR, please contact support@jstor.org.



Indiana University Press is collaborating with JSTOR to digitize, preserve and extend access to *Jewish Social Studies*.

<http://www.jstor.org>

Jews and the Courts in Weimar Germany*

by Donald L. Niewyk

I

It is the year 1921. A teacher in the Lower Silesian community of Guhrau is being tried for having insulted the Hebrew religion by instructing members of a right-wing youth group to spit three times while passing a local Jewish cemetery. The court acquits him, accepting his explanation that he has nothing against Jews as a religious group and opposes them solely on racial grounds.¹

A few years later a young farm hand stands before a court in East Prussia, accused of having assaulted a Jewish fellow worker for refusing to leave a social affair sponsored by a Christian agricultural workers' union. The judge imposes the insignificant fine of twenty marks with the comment that the Jew had gotten precisely what he deserved. "What would happen if a Christian were to visit a Jewish festival? No Christian would try that sort of thing, but the Jew does."²

In 1924 a judge in the Saxon town of Wernigerode imposes the lightest possible fine on antisemites convicted of subverting the German Republic. To the verdict he appends a gratuitous opinion:

More and more the German nation is coming to realize that Jewry bears the most serious guilt for our misfortune. The rise of our nation will be unthinkable if we do not break Jewry's might . . . The thoughts expounded by the defendants present no danger to public tranquility; no, even the best of our people share this point of view.³

The existence of these and similar travesties of justice perpetrated by German courts during the Weimar years is fairly well known. A largely undocumented study by Duskow and Jacoby, written under the shadow of the Third Reich, ably summarizes the position of Jews before the law in pre-nazi Germany and delineates the problems sometimes encountered in prosecuting their opponents. More recently, Arnold Paucker has given further consideration to these

¹ Heinemann Stern, *Warum hassen sie uns eigentlich? Juedisches Leben zwischen den Kriegen* (Duesseldorf, 1970), p. 168; *Mitteilungen aus dem Verein zur Abwehr des Antisemitismus*, 9 May 1921, p. 68; 24 March 1922, p. 38.

² *Central-Verein Zeitung*, 21 May 1926, p. 284.

³ *Ibid.*, 3 April 1924, p. 158.

* The author gratefully acknowledges grants from the Penrose Fund of the American Philosophical Society and the Council of the Humanities, Southern Methodist University, which enabled him to complete the research on which this article is based.

matters in his valuable study of self-defense activities sponsored by the *Central Verein deutscher Staatsbuerger juedischen Glaubens* (Central Association of German Citizens of the Jewish Faith—hereinafter referred to as the C.V.), the leading secular organization of German Jews.⁴ These historians have shown that antisemitism may have penetrated the ranks of judges and public prosecutors about as much as it had the rest of the German civil service and that the result was occasional reluctance to prosecute Judeophobes, eagerness to view their deeds in a harmless light, and readiness to acquit them or to punish them with ludicrously small fines. However no one has yet attempted to put these incidents into perspective by assessing the frequency with which they occurred in comparison with less tolerant judgments of antisemites. Not only would such a quantified assessment permit the formation of a more balanced view of the legal problems of Weimar Jewry, but it would also provide some measure, however limited and imperfect, of the spread and intensity of antisemitism in Weimar Germany. Moreover, such an appraisal would help to identify any significant regional and chronological variations in the application of justice in cases involving Jews and antisemites. Finally, a broader examination of these matters would also help to determine the attitudes of German courts toward Jewish judges, Jewish defendants, and Jewish self-protection measures.

This study will attempt to provide that broader examination by analyzing information drawn from 336 court cases from the Weimar period. Most of this information was gleaned from the published records of the C.V. and the *Verein zur Abwehr des Antisemitismus* (League to Combat Anti-Semitism), a non-denominational organization that specialized in reporting on cases of antisemitism, including court trials. Additional material was obtained from the pages of *Der Israelit*, the leading orthodox Jewish weekly published in Frankfurt am Main, which regularly offered digests of significant material drawn from the local and regional Jewish press.⁵ No claim is made that this number represents all of the relevant proceedings, for a great many of the less sensational trials escaped national publicity. Nevertheless, it certainly includes the most important of them, for the

⁴ Ambrose Doskow and Sidney B. Jacoby, "Anti-Semitism and the Law in Pre-Nazi Germany," *Contemporary Jewish Record* (1940), 498-509; Arnold Paucker, *Der juedische Abwehrkampf gegen Antisemitismus und Nationalsozialismus in den letzten Jahren der Weimarer Republik* (Hamburg, 1968), pp. 74-84; Paucker, "Der juedische Abwehrkampf," in Werner E. Mosse (ed.), *Entscheidungsjahr 1932. Zur Judenfrage in der Endphase der Weimarer Republik* (Tuebingen, 1966), pp. 441-448. See also Heinrich Hannover and Elisabeth Hannover-Drueck, *Politische Justiz 1918-1933* (Frankfurt am Main, 1966), pp. 263-273; E. Hearst, "When Justice was not done. Judges in the Weimar Republic," *The Wiener Library Bulletin*, 14 (1960), 10-11; Donald L. Niewyk, *Socialist, Anti-Semite, and Jew: German Social Democracy Confronts the Problem of Anti-Semitism, 1918-1933* (Baton Rouge, 1971), pp. 86-90, 152-155.

⁵ The weekly *C. V. Zeitung* began publication in May 1922. Its predecessor, the monthly *Im deutschen Reich. Zeitschrift des Centralvereins deutscher Staatsbuerger juedischen Glaubens*, has been fully consulted for the period 1919-1922 although its much smaller format and deemphasis of immediate events make it a considerably less valuable source of information on the issues raised in this essay.

C.V. and the League to Combat Anti-Semitism in particular were thorough and persistent about informing their friends of significant incidents involving the defense of Jewish legal rights. Nor can it be denied that a fair number of suits never entered the courts in the first place. This was due in part to the Nazis' hit-and-run tactics which frequently made it difficult for the police to apprehend those responsible for anti-Jewish outrages. Also, antisemites within the police forces may occasionally have refused to take action against Judeophobes. Perhaps most significantly, some local prosecutors refused to proceed against Jew-baiters out of sympathy for their cause.⁶ While the importance of none of these points should be minimized, this essay is restricted to an analysis of actual court trials involving Jews and their opponents.

II

By far the great majority of the court cases—321 of the 336—involved the prosecution of antisemites for a variety of crimes against Jews and against public order. These crimes, in order of frequency, were criminal libel (both individual and collective), 163 cases; disturbing the peace, gross misconduct (*grober Unfug*), or incitement thereto, 55 cases; insulting the Hebrew religion, 40 cases; blackmail, robbery and/or physical assault, 42 cases; incitement to acts of class violence (Jews were regarded as a "class" for legal purposes by Prussian courts), 13 cases; and persistence in anti-Jewish boycotts, 8 cases. There were, in fact, many hundreds of court cases involving boycotts of Jewish business and professional men, but most were dealt with speedily and forthrightly by German courts, and only in extreme cases was special attention given to them.

A regional breakdown of the 321 cases reveals a few interesting variations.⁷ Clearly, Jews and public prosecutors in East Prussia, Bavaria, Mecklenburg, Anhalt, and Bremen found it necessary to prosecute antisemites in numbers disproportionate to both the Jewish and non-Jewish populations of those regions. On the other hand, the states of Baden, Wuerttemberg, Hesse, and the Prussian Rhineland Province reported significantly fewer such indictments compared to the national averages. No further assessment of these figures should be attempted without consideration of the kinds of judicial decisions that were reached.

How many of these cases resulted in miscarriages of justice of the kind alluded to above? A number of considerations complicate the search for an answer to this question. Of the 321 prosecutions of antisemites, 30, or nearly 10 percent,

⁶ *Mitteilungen aus dem Verein zur Abwehr des Antisemitismus*, 26 April 1922, p. 54; Paucker, *Der juedische Abwehrkampf*, pp. 77-78.

⁷ All population figures refer to the 1925 census. Figures for the Jewish populations include only those Jews who identified themselves as members of the Jewish religion. It should be borne in mind that most antisemites defined Jews in racial rather than religious terms. For statistics on the Jewish population of Weimar Germany, see Esra Bennathan, "Die demographische und wirtschaftliche Struktur der Juden," in Mosse, pp. 87-131.

State or Province	Number of Cases	Ratio of Cases to Jewish Population	Ratio of Cases to Total Population
Prussia	201	2,010	189,951
East Prussia	43	263	52,473
Berlin	32	5,397	125,759
Hesse-Nassau	28	1,886	87,599
Lower Silesia	20	1,500	156,610
Rhineland	17	3,424	428,471
Hanover	13	1,146	245,415
Brandenburg	11	764	235,660
Saxony	12	692	271,470
Westphalia	9	2,400	531,580
Pomerania	7	1,114	268,400
Others	9		
Bavaria	58	847	128,930
Saxony	18	1,294	277,330
Baden	8	3,013	289,000
Thuringia	7	514	229,900
Hamburg	9	2,222	128,110
Mecklenburg	3	400	157,860
Anhalt	3	267	117,020
Bremen	3	500	112,950
Hesse	2	10,200	643,640
Braunschweig	1	1,800	501,880
Wuerttemberg	1	10,800	2,580,240
Others	7		
Overall	321	1,758	194,430

ended in acquittals of the defendants, but not all of these can be attributed to biased courts. Jewish spokesmen themselves admitted that C. V. lawyers sometimes went into court with less than air-tight cases against their antagonists.⁸ Among the successful prosecutions, it is no easy matter to decide which ended in excessively light sentences. A fine of 100 marks assessed against an unemployed worker convicted of shouting an antisemitic slogan might have been entirely appropriate, while the same fine required of a racist thug found guilty of knifing a Jew would have been wholly inadequate.

Fortunately, spokesmen for the C.V. and the League to Combat Anti-Semitism partially solved the problem long ago by themselves labelling unfair acquittals and unacceptably mild sentences whenever they reported court cases to the public. Most conspicuously, lawyers involved in the legal defense activities of the C. V. were intimately familiar with each case; in order to alert their co-religionists

⁸ Bruno Weil, "Der politische Prozess," in *Deutsches Judentum und Rechtskrisis* (Berlin, 1927), pp. 81-91.

and non-Jewish allies to the threat posed by anti-Semitism in the courts they did not hesitate to denounce what they judged to be unfair verdicts. Indeed, this consideration may have led them and some other observers sympathetic to the Jewish cause to be somewhat excessively zealous in numbering marginal cases among the miscarriages of justice. Into this category they placed 38 court decisions, 13 of which were acquittals, the rest mild punishments. Two of the 13 acquittals were later successfully appealed, ending in suitable punishments, while 4 of the 25 verdicts identified as being too mild yielded significantly tougher sentences upon appeal. Other appeals that had every hope of yielding just punishments for Judeophobes had to be abandoned whenever one of the Republic's frequent amnesties intervened.⁹ Hence, of the 321 judgments on antisemites handed down by courts in the Weimar Republic, only 32 of the final verdicts, or roughly 10 percent of the total, were identified as objectionable by lawyers from the legal office of the C. V. and other responsible opponents of antisemitism.

Not only is this figure rather smaller than previous studies would lead one to believe, but further reflection on the 32 "objectionable" verdicts casts doubt on some of the reporters' categorizations. Not infrequently German judges offered persuasive justifications for their leniency. Their most common justification for mercy in cases of criminal libel was that the defendants were uninfluential political extremists upon whom stiff penalties would have not the slightest deterrent or curative effect. Fairly typical was the 1925 trial for libel of veteran Jew-baiter Theodor Fritsch who escaped having a 1,000 mark fine supplemented by a jail sentence; noting Fritsch's advanced age and the fact that he had been fined and jailed repeatedly in forty years of anti-Jewish agitation, the judge commented stoically that a tougher penalty would teach him nothing.¹⁰ In a similar libel case, a judge in Nuremberg chose to fine rather than to jail one of Julius Streicher's co-workers because, as he sneeringly put it, the man was so "mired in fanaticism" that no sane person would take him seriously.¹¹ In the unsettled early years of the Republic a Munich judge let a Judeophobe off with a light fine and the sorrowful observation that extremist rhetoric had become a general bad habit in those overheated times.¹²

The courts' sensitivity to the practical questions of deterrence and rehabilitation undoubtedly reflected concern that it was within their power to make martyrs out of anti-Semitic agitators. Anyone who witnessed the final session of the Nuremberg "Talmud Trial" on November 4, 1929, could not have misunderstood the dimensions of the problem. Julius Streicher and Karl Holz were on trial for blaspheming the Jewish religion. Their allegations that Hebrew holy writ encour-

⁹ See, for example, a case involving Karl Holz, the editor of Julius Streicher's semi-pornographic newspaper, *Der Stürmer*: *N.S.D.A.P. Hauptarchiv*, 1407.

¹⁰ *Central-Verein Zeitung*, 29 January 1926, p. 52.

¹¹ *Ibid.*, 30 October 1924, p. 666.

¹² *Ibid.*, 19 October 1922, p. 293. For similar cases see *ibid.*, 22 February 1923, p. 58; 16 August 1929, p. 434.

ages the deception, sexual misuse, and ritual murder of non-Jews earned them richly deserved jail sentences. And yet, as they emerged from the courtroom they were greeted by a great throng of tearful sympathizers shouting "Heil!", singing racist songs and carrying on so passionately that observers could only wonder whether the trial had not won new converts to the Nazi cause.¹³ Judicial reluctance to make martyrs out of racists may also have influenced occasional decisions to grant the requests of antisemites not to be tried by Jewish judges.¹⁴ Very early in the Weimar period C. V. syndic Alfred Wiener warned his co-religionists not to prosecute antisemites at every opportunity lest they be made to appear the victims of a Jewish conspiracy.¹⁵ Some Jewish plaintiffs later acted in this spirit when they asked judges in libel cases against antisemites to make no more than symbolic points with nominal fines.¹⁶

Not all German Jews chose to follow Wiener's advice, however. There is evidence to suggest that some of them prosecuted even in trifling cases. For example, in 1927 a C. V. member by chance overheard an anti-Jewish remark made by one stranger to another on a street in Halle and sued her for libel.¹⁷ On another occasion the C. V. sued a racist nonentity who had alleged that the Jewish organization "fought against all German sensibilities," only to learn by losing the case that "sensibilities" are made of highly subjective stuff.¹⁸ The very triviality of some cases brought before German courts may help to explain a few of the acquittals and inconsequential punishments handed down to Judeophobes; it may also account for some of the cases in which public prosecutors balked at initiating litigation against antisemites.¹⁹

Yet another source of juridical clemency for antisemites in Weimar Germany was the probably accurate impression that many of them were honorable men whose political opinions, no matter how odious they might appear to others, deserved the full protection guaranteed to all points of view by the democratic

¹³ Alfred Hirschberg, "Der Nuernberger Talmudprozess," *ibid.*, 1 November 1929, p. 587; Hirschberg, "Das Urteil von Nuernberg," *ibid.*, 8 November 1929, pp. 600-601.

¹⁴ Arthur Brandt, "Befangene Richter," *ibid.*, 17 September 1926, p. 500; Felix Naumann, "Der Richter," *ibid.*, 1 July 1927, p. 369-370; *ibid.*, 13 March 1931, p. 118. The German Supreme Court of Justice found such discrimination unlawful in cases involving challenges to judges of minority religions but there remained some question about the applicability of these rulings to challenges to Jewish judges on purely racial grounds, *ibid.*, 22 August 1930, p. 442; *ibid.*, 21 August 1931, p. 416.

¹⁵ Alfred Wiener, "Die Pogromhetze," *Im deutschen Reich*, (July/August 1919), 289-299.

¹⁶ *Central-Verein Zeitung*, 1 March 1929, p. 108; 13 March 1931, p. 121.

¹⁷ *Central-Vereins Dienst*, 17 November 1927, p. 106. For a similar case, see *Mitteilungen aus dem Verein zur Abwehr des Antisemitismus*, 21 October 1920, p. 139.

¹⁸ Weil, pp. 79-80.

¹⁹ In other cases, however, prosecuting attorneys revealed unmistakably anti-Jewish prejudices; see, for example, *Abwehr-Blaetter*, 15 January 1925, pp. 7-8; 19 March 1927, p. 33; *Central-Verein Zeitung*, 14 August 1924, p. 494; Ludwig Foerder, *Antisemitismus und Justiz* (Berlin, 1924), pp. 16-17. As early as September 1922, the problem of biased or indifferent prosecuting attorneys had grown severe enough for the Prussian Ministry of Justice to issue an administrative ordinance directing them to take speedy and vigorous action against racists. *Central-Verein Zeitung*, 9 November 1922, p. 314.

Weimar Constitution. In a 1922 case against a racist, Willibald von Zezschwitz who had been charged with libel for challenging the patriotism of German Jews, a Munich judge justified a light fine with these words:

The defendant is a thoroughly patriotic man. If he struggles against Jewry he does so because of honest convictions arrived at through study. Defamation is not his aim; on the contrary, he strives seriously to point out those matters that he regards as perilous for the German Fatherland. In this connection it is not [for the court] to decide whether or not these matters ought really to be so regarded or whether or not the broad masses so regard them, as the defendant assumes they do.²⁰

The issue of free speech impinged directly upon prosecutions of antisemites who used the term "Jewish Republic" to describe the Weimar system. Brought to trial under the terms of the "Law for the Protection of the Republic," they were exonerated whenever they could persuade the courts that their contention that Jews dominated the Republic was legitimate political criticism rather than subversive rhetoric.²¹ In cases such as these, Weimar jurists affirmed the healthy principle that courts ought not to endorse or condemn any political ideology.

Other cases of judicial leniency in dealing with anti-Semites were justified by reference to the racists' scanty years and/or financial resources. Often some of the rawest acts of vandalism perpetrated against Jewish cemeteries and synagogues were the work of extremely young first offenders whom the Nazis had inflamed to wild emotional excitement.²² Normally the courts subjected callow youths to stern warnings and moderate fines or jail sentences, but they were rarely as gentle on subsequent offenses.²³ Small fines were also assessed in a number of cases where men convicted of lesser offenses were identified as unemployed or otherwise impecunious.²⁴ Of course, it could be argued, and was, that court fines were often paid by the Nazi Party anyway and that jail sentences alone could perform a deterrent function.²⁵ The courts, however, could hardly allow their actions to be influenced by the possibility of unprovable outside sources of financial aid. Moreover, many small fines added up to a large drain on National Socialist Party coffers, and there is suggestive evidence that the effects of this drain were acutely felt in some Nazi circles.²⁶

²⁰ *N.S.D.A.P. Hauptarchiv*, 1602.

²¹ *Central-Verein Zeitung*, 20 May 1927, p. 284; 8 June 1928, p. 248; Hans Reichmann, "Herrscht jetzt Schimpffreiheit?," *ibid.*, 26 July 1929, p. 390.

²² *Der Israelit*, 9 February 1928, p. 5; 20 December 1928, p. 6; 4 July 1929, p. 7; 20 March 1930, p. 5; 27 August 1931, p. 5; *Central-Verein Zeitung*, 1 March 1929, p. 107; 18 April 1929, p. 203; 25 September 1931, p. 468; *Israelitisches Familienblatt*, 28 January 1932, p. 2.

²³ See, for example, *Central-Verein Zeitung*, 8 April 1926, p. 217; 29 August 1930, p. 458; 5 July 1929, p. 355; 7 February 1930, p. 64.

²⁴ For typical instances, see *ibid.*, 25 September 1924, p. 590; 12 November 1926, p. 598; 3 May 1929, p. 234.

²⁵ *Ibid.*, 15 August 1930, p. 435.

²⁶ *Mitteilung aus dem Verein zur Abwehr des Antisemitismus*, 10 March 1929, p. 46; see also the secret circular distributed among members of the Nuremberg C. V. in 1930: *Bundesarchiv Koblenz*,

Stripped of all instances in which reasonable doubt may be cast on the alleged partiality of Weimar courts in favor of antisemitic defendants, the number of cases in which clearly unjustifiable verdicts were reached shrinks still further. By this author's reckoning there were at most 21 such verdicts reached between 1919 and 1933, which amounts to less than 7 percent of all cases that were deemed worthy of special note by Jewish publications, the C. V., and the League to Combat Antisemitism. While these few legal actions deserve close and critical attention for the evidence they supply of antisemitic incursions into the German judiciary before 1933, the historical record does not benefit from excessive preoccupation with them. Jewish lawyers engaged in self-defense activities themselves acknowledged that miscarriages of justice, as lamentable and disquieting as they certainly were, were isolated occurrences that in no way typified the attitudes of German courts towards Judeophobes.²⁷ Their impression that most magistrates were as scandalized as anyone by the judgments of a few antisemitic colleagues was supported by a 1931 declaration of the Prussian Association of Judges. It labelled "extraordinarily deplorable" the acquittal of a Nazi on grounds that he had libelled a Jew solely to defend the "legitimate interests" of his movement.

The conclusion that one may consciously make untrue assertions insofar as they serve the interests of his own political party must be rejected in all cases The verdict is untenable, finds approval nowhere, and we hope that it will be quashed in appeal.²⁸

If there were relatively few lawsuits in which magistrates adopted an unjustly tolerant posture toward antisemitism, was there any tendency for their number to increase with the Nazi threat after 1929? The evidence suggests that there was a statistical upturn, with 7 objectionable verdicts having been reached during the three year period immediately preceding Hitler's takeover, or about double the frequency for the earlier years of the Republic. However, this increase mainly reflects the greater number of cases that came to trial during those difficult years. While there had been an annual average of 19 judicial proceedings against antisemites during the "good years" of the Republic from 1924 through 1929, the annual average during the subsequent period of decline was 35.3 cases. Therefore it does not appear that German courts were increasingly allowing themselves to be intimidated by the upswing in support for the political right or by the violence of Nazi goon squads, at least where the prosecution of antisemites was concerned.

Nachlass Julius Streicher, pp. 6, 38. Reproduced in Arnold Paucker, "Documents on the Fight of Jewish Organizations against Right-wing Extremism," *Michael*, 2 (1973), 235-236.

²⁷ Kurt Alexander, "Wir und die Justiz," *Central-Verein Zeitung*, 22 October 1926, pp. 557-558. Hans Reichmann, "Neue Faelle unserer Rechtsschutztaetigkeit," *ibid.*, 15 June 1928, pp. 337-339. *Ibid.*, 19 October 1928, p. 589; Erich Eyck, "Die Stellung der Rechtspflege zu Juden und Judentum," in *Deutsches Judentum und Rechtskrise*, p. 64.

²⁸ H[ans] L[azarus], "Preussischer Richterverein gegen Landgericht Glatz," *Central-Verein Zeitung*, 9 October 1931, p. 482; *ibid.*, 19 June 1931, p. 313.

The most significant variation in the record of objectionable verdicts was geographical rather than chronological. With only two exceptions,²⁹ all of these cases occurred in East Prussia, Lower Silesia, or Bavaria. East Prussia led the list with 7 cases, Bavaria had 5, while 4 were tried in Lower Silesia. Thus the greatest judicial tolerance for antisemites was to be found in the most “reactionary” sections of eastern and southern Germany.

While the few cases of court solicitude for Judeophobes in Weimar Germany have received considerable attention, the far greater number of more severe decisions against them has gone virtually without notice. Here, again, the definition of a “severe decision” must be somewhat arbitrary, and the problem is rendered more difficult in that C. V. spokesmen rarely identified such decisions; in their eyes an antisemitic offender could scarcely be punished too harshly.³⁰ For purposes of this study, a severe decision against a Jew-hater may be defined as one involving a fine of at least 1,000 marks (or the rough equivalent of that amount in the inflationary period before 1924) or a prison sentence of any length in minor cases such as criminal libel or “gross misconduct”; or, in more important cases such as physical assault or vandalism, a jail sentence of at least six months. There were no fewer than 87 such verdicts, or just over 27 percent of all known prosecutions of antisemites, and more than four times the number of objectionable verdicts.³¹

German courts were least likely to be tolerant of defendants convicted of vandalizing Jewish holy places. Sentences of 18 men found guilty of having desecrated Jewish cemeteries ranged from one month to 6 years and averaged 17½ months, a figure that would have been considerably higher had it not been for several relatively short prison terms assigned to youthful first offenders.³² Of 19 defendants convicted of profaning Jewish synagogues, verdicts extended from one month to 7 years and averaged nearly 22 months. The median figure of 6 months is more realistic in analyzing punishment for this crime, since the average figure is

²⁹ The five were in Berlin (two cases), Baden, Hesse-Nassau, and Saxony.

³⁰ For two cases in which the C. V. did congratulate the courts for stiff penalties, see *Central-Verein Zeitung*, 11 September 1924, p. 539; 1 July 1927, p. 376. Similarly the League to Combat Anti-Semitism expressed pleasure at appropriately severe sentences: *Mitteilungen aus dem Verein zur Abwehr des Antisemitismus*, 20 June 1921, p. 84; 5 June 1923, p. 22. See also the approving statement made by the Executive Committee of the Berlin Jewish Community on the five month jail terms given to each of five Nazis convicted of violating a Berlin synagogue: *Gemeindeblatt der Juedischen Gemeinde zu Berlin*, 20 (August 1930), 368.

³¹ There is suggestive evidence that the courts were somewhat harsher with defendants on the political left who were sued for having offended Germans' nationalistic sensibilities. Certainly there were at least as many excessively harsh verdicts against leftists, and especially against Communists, as there were mild verdicts against antisemites. However, the comparison is not really relevant to a definition of what constitutes a severe decision in suits brought against Judeophobes, since most Germans, including most German Jews, viewed the revolutionary left as a far greater threat to their liberties than antisemitism *per se*. Cf. Hannover, pp. 215-262.

³² For representative cases, see *ibid.*, 3 February 1928, p. 54; 11 July 1930, p. 370.

distorted by a remarkable case of 1924 in which a court in Leipzig sentenced four men convicted of plotting to blow up a local synagogue to a total of 25 years imprisonment.³³

Nor were German jurists often amused by criminals who had threatened Jewish lives or property. In cases ranging from petty theft to attempted murder, 142 defendants received prison sentences of anywhere from 2 weeks to 12 years. The average sentence was nearly 10½ months, while the median figure was 6 months.

Jewish self-defense efforts met their most consistent success in confronting the problem of economic boycotts. Although the C. V. itself could not afford to keep up with all the dozens of judicial proceedings in this connection, it supplied Jewish businessmen and their lawyers with information about securing injunctions against boycott.³⁴ German law was highly explicit about prohibiting such boycotts and, by mid-1932, at least 150 injunctions against them had been granted.³⁵ When the injunctions were ignored, as they frequently were, the courts responded at first with fines and ultimately with prison sentences.³⁶

The number of stiff penalties against Judeophobes increased with the upswing in litigation from 1930 on. A typical year before 1930 might produce 5 such verdicts, but the average annual figure for 1930-1932 was nine. Just as there was no relative increase in the number of objectionable verdicts, so there was no decrease in the relative figure for harsh penalties during the declining years of the Republic. Indeed, on the very eve of the Nazi seizure of power a court in Allenstein, East Prussia, sentenced each of several Nazis to 5 years in prison for having bombed a Jewish shop.³⁷

A regional breakdown of these harsh sentences shows a more varied pattern than does the regional analysis of objectionably light ones. And yet, once again it appears that courts in Bavaria and East Prussia, joined in this instance by Hesse-Nassau and Brandenburg, were significantly less stern with Judeophobes than courts elsewhere in Germany, while their counterparts in Berlin, Hamburg, and the Rhineland were notably more severe. Especially interesting are the figures for Lower Silesia, which show that antisemites there were castigated by the courts even more frequently than they were mollified by them.

III

As important as the punishment meted out to anti-Semites is to an assessment of the quality of justice extended to Jews in Weimar Germany, the treatment of

³³ *Ibid.*, 3 July 1924, p. 404.

³⁴ Hans Lazarus, "Boykott," *ibid.*, 23 October 1931, p. 501.

³⁵ Hans Lazarus, "150 Entscheidungen gegen den Wirtschaftsboykott," *ibid.*, 8 July 1932, pp. 287-288. See also Rudolf Callmann, *Zur Boykottfrage* (Berlin, 1932).

³⁶ See, for example, *Central-Verein Zeitung*, 20 June 1930, p. 331; Hans Lazarus, "In erfolgreichem Kampf gegen den Boykott," *ibid.*, 7 August 1931, p. 396; *ibid.*, 29 January 1932, p. 40.

³⁷ *Ibid.*, 5 January 1933, p. 5. For similar cases see *Der Israelit*, 7 July 1932, p. 6; *Israelitisches Familienblatt*, 3 January 1933, p. 4.

State or Province	Number of Harsh Penalties	Number of Harsh Penalties Expressed as % of All Prosecutions
Prussia	57	28%
Berlin	15	47%
East Prussia	8	19%
Rhineland	7	41%
Lower Silesia	7	35%
Hesse-Nassau	5	18%
Saxony	4	33%
Hanover	4	31%
Brandenburg	1	9%
Others	6	24%
Bavaria	11	19%
Saxony	5	28%
Hamburg	6	67%
Thuringia	2	29%
Others	6	30%
Overall	87	27%

Jewish defendants by German courts provides even more direct evidence on this subject. However, there are far fewer data available since only 15 cases were deemed sufficiently important to warrant public scrutiny. There almost certainly were others but the small number that has come to light reflects the law-abiding, bourgeois milieu of Germany's Jewish community as well as the unwillingness of the courts to allow antisemites to use them for purposes of harassing Jews. Six of the fifteen cases belong to the category of anti-Jewish harrassment; in all of them the courts acquitted Jews of charges ranging from criminal libel to murder.³⁸ In situations where Jews were tried for using arms in self-defense against Judeo-phobes, the courts either acquitted them or assessed insignificant fines for carrying unauthorized weapons.³⁹ The right of the Jewish veterans' organization, the *Reichsbund juedischer Frontsoldaten* (National Association of Jewish Front-line Soldiers), to assemble arms for self-protection was affirmed by Weimar courts after it had employed its arms caches during the anti-Jewish riots of November, 1923.⁴⁰ The courts also acquitted Jews who had torn down posters bearing the swastika on the grounds that destroying the racist symbol was a legitimate act of self-defense.⁴¹ On a less dramatic level, German judges stoutly defended the

³⁸ See, for example, *Central-Verein Zeitung*, 3 April 1925, p. 243; 30 January 1931, p. 48; *N.S.D.A.P. Hauptarchiv*, 1606.

³⁹ *Central-Verein Zeitung*, 26 December 1930, p. 672; 26 January 1933, p. 28.

⁴⁰ Walter Kochmann, "Notwehr," *ibid.*, 22 May 1924, pp. 306-307; *Mitteilungen aus dem Verein zur Abwehr des Antisemitismus*, 10 June 1924, p. 26.

⁴¹ Foerder, pp. 18-20.

rights of Jews to fire employees or evict tenants who flaunted antisemitic symbols or slogans in an offensive manner.⁴²

While there were not many Jewish law breakers in the Weimar years, the few who were convicted were treated sternly but fairly by the legal system. Two of Germany's most lurid scandals of governmental corruption involved families of Jews—the Barmats and the Sklareks—which had recently immigrated from Eastern Europe. The brothers Julius, Salomon and Henri Barmat were accused in 1925 of having obtained loans from the Prussian State Bank by bribing public officials. One of them was subsequently sentenced to prison. In 1929 Max, Leo and Willi Sklarek did the same thing with Berlin's municipal bank and two of them received four year sentences. German Jews alternately applauded stern measures against the malefactors and stressed that no *German Jew* had been involved in either case.⁴³ In yet another celebrated case, a Jewish cattle dealer in Paderborn, one Kurt Meyer, was sentenced in 1932 to fifteen years imprisonment for the death of his father's non-Jewish maid, pieces of whose body had been found scattered about the nearby countryside by hikers. Meyer confessed to having caused her death by attempting to perform an abortion on her. This lurid affair provided grist for the mills of nazi ritual murder allegations for years to come.⁴⁴

There was only one case against a Jewish defendant in which Weimar justice came close to miscarrying. In 1926 the murder of a Magdeburg accountant was attributed to his employer, a local Jewish manufacturer, Rudolf Haas. Although the accountant's body had been discovered in a house occupied by an unemployed Nazi, the local criminal inspector and the chief justice of Saxony's state court, neither of whom was a friend of the Jews, were convinced by evidence suggesting that Haas had murdered his employee to keep him from revealing crooked business practices. Only the vigorous intervention of two Social Democrats, Saxony's *Oberpraesident*, Otto Hoersing and the Prussian Minister of the Interior, Karl Severing, reopened the investigation and prolonged it until further evidence proved the guilt of the jobless Nazi.⁴⁵ Subsequently the two judges whose prejudice had stood in the way of Haas's acquittal were demoted to such insignificant posts that both resigned from government service.⁴⁶ Not long after Haas's release from prison, Erich Eyck expressed the hope that his case would alert apathetic jurists to the great danger presented by the willingness of some of their colleagues to assume the worst about Jewish defendants.⁴⁷ Perhaps it did have some influ-

⁴² W. R., "Judenfeindliche Beleidigung hebt den Untermietervertrag auf," *Central-Verein Zeitung*, 23 August 1929, p. 445; *ibid.*, 4 November 1932, p. 452.

⁴³ Alfred Wiener, "Muessen wir 'abruecken'?" *ibid.*, 7 February 1925, pp. 157-158; Otto Nuschke, "Das Untersuchungsergebnis des Barmat-Ausschusses," *ibid.*, 23 October 1925, pp. 693-694; Werner Rosenberg, "Der Schutzherr der Shlarets," *ibid.*, 15 November 1929, p. 613.

⁴⁴ *Frankfurter Zeitung*, 21 September 1932; *Abwehr-Blaetter*, December 1932, pp. 231-232.

⁴⁵ Heinz Braun, *Am Justizmord vorbei: Der Fall Koelling-Haas* (Magdeburg, 1928).

⁴⁶ *Abwehr-Blaetter*, 1 October 1929, p. 160.

⁴⁷ Eyck, pp. 35-36.

ence, for nothing remotely resembling the Haas case occurred during the subsequent years of the Weimar Republic.

Weimar courts were sufficiently hospitable to Jewish rights to permit their use in at least one important offensive action against a leading anti-Jewish agitator. The intended victim was Ludwig Muenchmeyer, an Evangelical pastor on the North Sea island of Borkum and the chief attraction at the island's antisemitic spa, the largest of its kind in Germany. Bruno Weil, a prominent figure in C. V. legal defense activities, was outraged that Muenchmeyer had succeeded in making Borkum into a kind of racist preserve where no Jew dared set foot, and he helped draw up plans to destroy the Jew-baiting cleric.⁴⁸ They involved the publication of a broadside exposing Muenchmeyer's loose morals and scandalous misconduct, a broadside couched in such extravagant terms that the pastor would be virtually obliged to bring legal action against its authors. That was precisely his reaction to the appearance late in 1925 of a pamphlet bearing the provocative title "The False Priest, or the Chief of the Cannibals of the North Sea Islanders." The Borkum court found its author and publisher guilty of libelling Muenchmeyer on two counts and fined each a mere 100 marks, but it also corroborated most of their allegations and expressed the opinion that the pastor had conducted himself in ways "unworthy of a clergyman." Muenchmeyer was ruined. Evangelical church authorities, already aware that something was amiss at Borkum, were prompted to defrock him. Thereafter both Muenchmeyer and the racist spa languished for lack of a following and he was later able to save himself from total oblivion only by throwing in his lot with the victorious Nazi movement.⁴⁹

IV

The record of German courts in prosecuting antisemites and Jews will not support the view that the Weimar years were ones "when justice was not done." Nor will it sustain the Hannovers' conclusion that by January, 1933, the Nazis' racist "perversion of justice had already triumphed from within" the judiciary.⁵⁰ The number of outrageously biased verdicts on Judeophobes is small, and none of the cases was of any major significance taken alone. Together the handful of unjust decisions demonstrates that there was some marginal penetration of anti-Jewish prejudice into the judiciary, mainly in those bastions of agrarian conservatism, Bavaria and East Prussia. But there can be no question that judicial sternness in

⁴⁸ Weil, p. 81; interview with Dr. Eva Reichmann, 26 August 1973.

⁴⁹ "Borkumer Beobachter," *Borkum. Veroeffentlichungen zum Muenchmeyer Prozess* (Borkum, 1926); Alfred Hirschberg, "Muenchmeyer—Prozess auf Borkum" *Central-Verein Zeitung*, 14 May 1926, pp. 271-272; Alfred Hirschberg, "Disziplinvfahren gegen Muenchmeyer?," *ibid.*, 21 May 1926, p. 283; Bruno Weil, "Borkum," *ibid.*, 28 May 1926, pp. 297-298; *ibid.*, 10 August 1928, p. 446; 8 March 1929, p. 120; A. W., "Nachklaenge zum Muenchmeyer-Prozess," *Central-Vereins Dienst*, 1 September 1926, pp. 43-44; *ibid.*, 17 November 1927, p. 101.

⁵⁰ Hannover, p. 273.

prosecuting Jew-haters was much more common and significant and that unexceptionably apposite judgments were typical in an overwhelming majority of the remaining cases. Nor has a single case of an unjust verdict being imposed on a Jewish defendant come to light.

These conclusions suggest that matters other than judicial bias were the major obstacles to justice in cases touching upon the legal defense of Jews. Prosecuting Judeophobes was frequently impeded by the essentially political issues of general amnesties for defendants and immunity for racist *Reichstag* and *Landtag* deputies.⁵¹ Equally troublesome were certain lacunae in the German legal code, inherited from the old *Kaiserreich* and retained throughout the Weimar period. In most respects it furnished an effective vehicle for the defense of Jewish interests, but in at least two it did not. First of all, it never provided a sufficiently broad definition of Jewish corporate identity before the law. That Jews constituted a religious body was uncontested, but were they also to be considered a class that could be protected under the terms of Section 130 of the Criminal Code, which outlawed incitement to class antagonism? In 1922 the Prussian Ministry of Justice stipulated that Jews were to be so regarded, citing a 1901 Supreme Court decision as a binding precedent. Elsewhere in Germany, however, the pre-war decision was not so regarded. Moreover, antisemites who slandered Jews on racial rather than religious grounds could not be convicted for breaking laws designed to protect the Israelite faith.⁵²

A second flaw in the German legal code was the absence of adequate provision for class action suits against Jew-baiters. Antisemites could be prosecuted for libel only when there was proof that a particular individual or a clearly identifiable group of individuals had been defamed. General attacks against Jews could be answered with nothing more than suits for the relatively minor offense of gross misconduct.⁵³ Had Germany's Jews succeeded in creating a unified national organization enjoying official recognition, they could have employed it to represent themselves in class action suits against collective libel. Unfortunately, in spite of repeated efforts to establish such a body, they were never able to overcome the deep religious, political, and regional differences that divided them throughout the Weimar years.⁵⁴

⁵¹ H[ans] R[eichmann], "Unsere Rechtsschutzarbeit," *Central-Verein Zeitung*, 27 January 1928, pp. 39-40; Reichmann, "Leistungen und Aufgaben," *ibid.*, 19 October 1928, p. 589; *ibid.*, 25 January 1929, p. 48; 26 June 1929, pp. 343-344. Certainly both factors helped keep several leading nazi spokesmen out of prison, although it is not true that Julius Streicher managed to escape incarceration altogether, as is alleged by Dосkow and Jacoby, p. 507. Cf. Louis W. Bondy, *Racketeers of Hatred: Julius Streicher and the Jew-Baiters' International* (London, s.d.), p. 20; Manfred Ruehl, "Der Stuermer" und sein Herausgeber (Diplom-Volkswirt, Hochschule fuer Wirtschafts- und Sozialwissenschaften in Nuernberg, 1960), p. 186.

⁵² Eyck, pp. 37-42; Foerder, pp. 8-11.

⁵³ Erich Eyck, "Um die Frage der Kollektivbeleidigung," *Central-Verein Zeitung*, 26 February 1926, pp. 101-102; *ibid.*, 7 January 1927, p. 4.

⁵⁴ [Ludwig] Foerder, "Zweierlei Mass in der Justiz?," *Israelitisches Familienblatt*, 31 March 1932, p. 9.

Plans to revise the criminal Code were actively discussed in the middle years of the Republic and C. V. lawyers made a number of concrete suggestions to improve the Jews' defensive position.⁵⁵ The fact that the reforms were far from nearing completion by the time Hitler became chancellor meant that Jewish legal defense activities during the Weimar period were impeded somewhat, but far from crippled. Given the virulence of racist propaganda against the Jews, the right-wing sympathies of many judges who were holdovers from Imperial Germany, and the brutality of nazi activities in the last years of the Republic, German courts achieved an uneven but generally positive record of sheltering Jews from their detractors.

⁵⁵ J. Picard, "Die Strafgesetzsreform," *ibid.*, 23 July 1926, pp. 393-395; Paucker, *Der juedische Abwehrkampf* pp. 79-80.