

## Serene justitia and the passions of the public sphere

*Warren Rosenblum*

»Tear away the false blindfold from this figure of Justice! We no longer have any justice.«

——Kurt Tucholsky, »Prozess Harden« (1922)<sup>1</sup>

In 1907, the German Ministry of Justice decreed that Justitia—the allegorical representation of justice—should no longer be blindfolded. The order applied to statues and reliefs of the goddess that decorated new courthouses. The Ministry offered no explanation. While most Germans probably never heard of this decree, they almost certainly observed its effects. In the Wilhelmine era, Germany was in the midst of a courthouse building spree. In Berlin alone, nine court buildings were completed between 1901 and 1907, many adorned with a blindfolded Justitia. Construction continued apace in other Prussian cities after 1907. For the editors of the *Deutsche Juristenzeitung* (DJZ)—whose masthead featured the goddess—the Ministry’s decision was distressing. »What is next?« asked the author of a regular legal news column. »Will they take away her sword and scales, or perhaps ban her altogether from the courts?« (Stranz 1907, 1130). Clearly, something larger was at stake than just a question of decorative style.

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Why was Justitia blind? Art historians note that the first appearance of a blindfold on Justitia was almost certainly intended to satirize the courts. Blindness in the Renaissance was a disability associated with moral turpitude. It was only in modern times that the blindfold took on positive connotations. According to Martin Jay, the origins of this »dramatic reversal« in the valence of blind justice lay in the Reformation, when Europeans increasingly denigrated the role of vision and, correspondingly, valorized language as the foundation of sound judgment. Virtue demanded that one resist the »lust of the eyes.« Justice was blindfolded, Jay writes, to »avoid the seduction of images and achieve the dispassionate distance necessary to render verdicts impartially.« There would be no locking of eyes with the contesting parties, the perpetrators or the victims, and thus no focus on their individuality. Justice would not be swayed by sympathy, anger, fear or disgust, but rather by universal truths applied to a disembodied, disembedded, decontextualized subject (Jay 1999, 29; Resnik and Dennis 2011).

That Justitia was a woman made the wearing of the blindfold still more important. (And no matter how stern and sharply drawn her visage, Justitia *was* a woman.) As Ute Frevert notes, women have historically been perceived as »the sensitive sex [...] highly impressionable and affected by all kinds of sentiments.« The great liberal reforms of the nineteenth and early twentieth century opened the judiciary to new classes of men, but continued to exclude women, in large measure because of fears that women experienced an excess of empathy (Eich 1919, 627; Frevert 2011, 105). Such views were based not only upon sexism, but also upon the belief that women, for better or worse, made moral judgments differently than men. As recent feminists have argued, men have been conditioned to consider an abstract »generalized other,« while women have been taught to value »narrative uniqueness« and »specific context.« The blindfolding of Justitia was therefore, in Jay's words, not a »thwarting of the gaze per se, but of the specifically female gaze, or at least those qualities that have been associated with it in our culture.« Justitia's blindfold constrained the promise of empathy—of any emotional connection between the court

and its subjects—until reason had done its work (Gilligan 1982; Kyte 1996; Jay 1999, 29).

The ubiquitous presence of Justitia in the iconography of justice in Wilhelmine Germany reflected the prevalence of this ideal of rationality counterpoised to emotion. Legal associations, journals, book publishers, and cartoonists adapted Justitia to represent both the enterprise of law and the philosophical ideal of justice. Prussian state architects Rudolf Mönnich and Paul Thoemer used the allegorical figure to provide a common visual identity for the diverse array of courthouses they designed, together or independently, after 1894. A rather masculinized bust of Justitia glowered over the main portal of the neo-Gothic District Court (*Amtsgericht*) in Berlin-Neukölln and the neo-Baroque Criminal Court in Berlin-Moabit. A more overtly feminine goddess was enthroned with a law book on her lap before the Romanesque regional court (*Landgericht*) in Berlin-Charlottenburg (Kissel 1984; Kähne 1988, 40, 64–66). The values embodied in blind, dispassionate Justitia dovetailed with the positivist understanding of the judiciary as a priestly sect practicing a form of abstract reason that was indifferent to the political, social, and cultural currents swirling around them. As political theorist Nancy Rosenblum argues, the juxtaposition of reason and emotion was an essential part of liberal ideology. Liberals embraced »legalism« precisely in order to »protect political society from the intrusion of emotional inclinations« (Rosenblum 1997, 35; 1993). The independent, rule-bound, logical world of the courts was the ultimate tool for the legitimation of sovereignty as rational (Karstedt 2011, 2, 7; Ledford 1993).

This essay considers how the ideal of blind dispassionate justice became problematic in the late Wilhelmine era and a symbol of crisis during the Weimar Republic. The rise of the mass press, I argue, challenged the role of the court as a uniquely public and authoritative body to adjudicate truth. The new social sciences and the legal reform movements of the Wilhelmine era, moreover, questioned the effectiveness of a mode of reason that ignored experiential evidence and popular sentiment. Even as the Weimar Constitution enshrined the supremacy of law, the great palaces of justice lost their aura of legitimacy. Historians have frequently

described how »reactionary judges« in the Weimar Republic produced justice scandals that undermined public confidence in the legal system (Kuhn 1983; Siemens 2005). Here I focus on two such scandals; not, however, to retrace the familiar narratives of judicial bias, but to consider how these cases and the »sensations« surrounding them transformed the economy of emotion. In the wake of these scandals, a new style of political mobilization emerged among defenders of the Republic—concerned in good measure with rallying the public *against* the courts—while the conservative right repositioned itself as the defender of traditional legal reason.

### »Tear away the blindfold«: Justitia under fire

The ideal of blind, rational justice came under attack from two directions at the end of the nineteenth century. A highly politicized critique challenged the courts' claims to objectivity and dispassion. Critics accused judges and prosecutors of practicing »class justice«: protecting the propertied interests against workers and peasants. They pointed to the vigorous prosecution of left-wing journalists for libel and the harsher punishments meted out to lower-class offenders and those associated with the Social Democrats (Wilhelm 2010, 324–28, 437–53; Hall 1977, 72–88). Writing in the Austrian monthly *Der Kampf*, Richard Engländer argued that the ideal of blind justice was part of the »fundamental lie« (*Lebenslüge*) of the existing social order, an ideological smoke screen for class interest. (Engländer 1908, 552) Such views found enormous resonance among the socialist rank and file in Germany. »More than any other party slogan,« historian Alex Hall wrote, accusations of class justice were »stirring up popular emotion and releasing pent-up reserves of resentment and fury« (Hall 1977, 73).

While radicals argued that blind justice was a sham, more mainstream critics averred that the courts' promise to operate behind a veil of ignorance and with complete dispassion was largely fulfilled—and this was exactly the problem. The insularity of judges was itself a liability, they argued: judges were alienated from the people and ignorant of social and political realities (*weltfremd*). New schools of criminology and jurisprudence

insisted that justice must open itself up to the experiential sciences and create opportunities for lay participation. The Social-Democratic politician Edmund Fischer argued that judges in the future might no longer be jurists at all, but anthropologists and sociologists (Fischer 1906, 488). Reformers envisioned new roles for women as mediators between the courts and the social realm. Whether as volunteers or as professional staff, women were to help the courts interpret the emotions of defendants, plaintiffs, victims, and witnesses and to manage and normalize emotions for those under court supervision (Rosenblum 2009, 147–49; Ortmann 2014, 73–75).

For critics of German justice, the allegory of the blindfolded goddess was a natural target. »The most succinct definition of reform,« wrote Fischer, »would be [...] to remove the blindfold from justice, so that decisions are no longer made without consideration of the person« (Fischer 1906, 488). Psychiatrist August Forel, in a famous essay, called upon the goddess to, »open your eyes and look, so that you, with the help of the natural sciences and social investigations can hold your scales in true and just balance« (Forel 1905, 448). In all likelihood, it was in response to this growing spirit of reform that the Ministry of Justice decided in 1907 to strip Justitia of her blindfold. At the dedication of the Higher Appeals Court building in Cologne three years later, Governor Freiherr von Rheinbaben expressed thanks that its statue of Justitia did *not* have a blindfold, since justice »should not generally be blind. She should look people in the eye, recognize the human within humans, be a friend« (*Recht und Wirtschaft*, November 1911, 64). For Christian social reformers like Rheinbaben, the coercive power of the courts must be wedded to the healing power of private welfare associations. In the motto of one prison society: »*justitia et caritas osculantur*«—justice and charity kiss (Rosenblum 2008, 73).

### **The press and the crowd**

While reformers challenged the tenets of judicial practice, the press challenged the court's authority to adjudicate truth. The power of the court was bound up with its ability to create a dominant narrative that

brought closure to legal disputes. The »public« was represented by the courtroom audience, which was limited in scope, size, and character (Ortmann 2014, 166). Newspapers were a useful adjunct to the courts so long as they uncritically amplified these proceedings and affirmed their moral legitimacy (Siemens 2007, 62; Domeier 2010, 114). The press became a problem, however, when legal reporters moved beyond the courtroom drama to describe a richer context and »real human destinies« that were inaccessible or of no interest to the court. The great Weimar journalist Moritz Goldstein argued that the essential purpose of legal reporting was »to measure the law against our sense of justice (*Rechtsempfinden*)« and then push the law in that direction.<sup>2</sup> Reporters before 1918 were perhaps less grandiose and less combative, but already in the Wilhelmine era the press had emerged as a »fourth power« and the voice of an »increasingly unruly public sphere« (Domeier 2010, 111; Hett 2014, 106).

While Justitia was shielded from the seductive power of images and emotions, newspapers made seduction their stock and trade. To lure its readers, papers offered what historian Cory Ross calls »an exaggeration of reality« or what contemporary critics called »sensations« (Ross 2008, 16–20; Domeier 2010, 36–38). The concept of the sensation denoted a surge of collective emotions around an event or an occurrence. As the liberal politician and publicist Theodor Barth wrote, sensations had no »sustained justification« (Barth 1886). They were fleeting storms of feeling, whether pleasure, anger, anxiety, empathy or shame. For the press, sensationalism meant cherry-picking and framing information to not only provoke an emotional response, but to make readers identify with a larger community of feeling. Big city tabloids were accused of »cultivat[ing] sensation as a genre,« with screaming headlines about sordid or absurd affairs culled from everyday life (Fritzsche 1998, 179). At the same time, judges believed that even some of Germany's most respected publications were »flippantly« and »tendentiously« presenting certain details of court cases in »garish colors« in order to plant »mistrust and hatred« toward the

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2 *VZ*, September 11, 1928. Goldstein, writing as »Inquit,« replaced the legendary »Sling« as legal reporter for the *VZ*. See Siemens (2007, 70–71); also Ortmann (2014, 163–66).

judiciary (Warschauer 1909, 228–29). The concern with sensationalism in the Wilhelmine era echoed the fear of the crowd: the »nervous excitation,« in Georg Simmel’s words, which »overwhelms individuals« (Borch 2010, 8; Barrows 1981). What defense lawyer Erich Sello called the »excited opinion of the day« was, like the crowd itself, feminine, irrational, and driven by emotions (Sello 1908, 123).

A broad cross-section of jurists, state officials, and politicians in the Wilhelmine era were concerned that the emotional tumult and manipulations of the press threatened the integrity of the legal process. At one end of the spectrum was Kaiser Wilhelm II, accusing judges who ruled against the government of being unduly influenced by the press and the pressures of the crowd (Domeier 2010, 111). At the other extreme, ideologically speaking, were senior lawyers and strategists for the Social Democratic Party (SPD), who feared that any public discussion of ongoing cases upset the »apolitical sanctity of the courtroom« (Grunwald 2012a, 18, 37–42). Socialists and conservatives shared a faith in the legal process and fear about the consequences of mobilizing public emotions. Even liberal defense lawyers such as Max Alsberg and Johannes Werthauer, who were known for their savvy use of the press, fretted that public hysteria and superstition corrupted the orderly operations of the legal system (Hett 2014, 145–71). »Woe for our criminal justice,« wrote lawyer Erich Sello, »when the Judges make decisions [...] based on uncontrollable and momentary moods and feelings« (Sello 1908, 125).

Tensions between justice and the press were exacerbated in the Weimar Republic. Newspapers became increasingly political after 1918, as they were forced to differentiate themselves within a more crowded field of publications (Siemens 2007, 66). They were also—it was said—more »sensational« (Ross 2008, 142). A series of political cases, in which judges gave harsh sentences to communists and pacifists and treated conservative offenders with special lenience, provided fodder for left-wing writers (Kuttner 1921; Gumbel 1922; Morris 2005). The lifting of censorship and the end of unique protections for the honor of civil servants emboldened journalists of all political stripes to attack their enemies with special vigor. Judges were both the targets of press attacks and adjudicators in a

new flood of libel disputes (Goldberg 2010, 194–200). Many judges saw the press as unprecedentedly powerful, ill-informed, and dangerous. The feeling was often mutual (Wagner 1921).

### **Ebert's quest: Searching for reason in a landscape of emotion**

More than any other Weimar leader, Reich President Friedrich Ebert faced slanders and insults throughout his tenure in government. Many on the right saw Ebert's Party, the SPD, as inherently treasonous. Critics on the left were incensed that Ebert had »set loose the bloodhounds« of the right-wing militias against working class revolutionaries in 1919. Still, the unconstrained aggressiveness, of rightists in particular, in articles attacking the President was something of a shock. Right-wing critics derided Ebert's masculinity, his patriotism, and his decency. It was a campaign of shaming and humiliation that was intended to besmirch his honor as a German and a statesman. (Mühlhausen 2008, 101–9; Albrecht 2002, 122–76).

For Ebert, an especially galling accusation was that he had encouraged strikes and protests by industrial workers in order to undermine the German home front during the Great War. In 1924, Emil Gansser, a Nazi agitator in Munich, wrote that Ebert committed treason by joining the executive committee of a munitions strike in Berlin. In truth, Ebert had worked with the Berlin strike committee in order to end the work-stoppage and minimize damage to the war effort. Ebert accused Gansser of insult, but withdrew the charges after he was advised of the widespread anti-government sentiment in Munich. When a small right-wing publication in a town near Magdeburg reprinted Gansser's article, Ebert saw an opportunity to take action and sued the young editor, Erwin Rothardt (Jasper 1971, 111–21; Mühlhausen 2006, 936–66).

Why did the president of the republic prosecute the obscure editor of a tiny publication? Ebert had already pursued over a hundred libel cases in a seemingly hopeless effort to contain the mayhem in the press (Mühlhausen 2006, 952). He had both personal and political reasons for these actions. The accusations of treason caused particular distress. Ebert had supported the war unequivocally until the bitter end, watching his

party split in two and, more tragically, losing two sons at the front. It was painful for the president to see these sacrifices denied. He could have published a rejoinder to the accusations, but it would have lacked the imprimatur of a trial: public testimony given under oath, formal rules of evidence, and a professionally trained and objective judge. Defamation suits in Germany, in contrast to the Anglo-American system, were criminal prosecutions. A libel case aimed not just to establish the truth, but to bring retribution and thus a sense of emotional closure. By deterring future libels, prosecution supposedly closed public debate as well. Ebert believed that libel suits were necessary to protect the honor of his office. He had, in essence, inherited the old regime's assumption that, »a libel left unprosecuted [...] would signal its truth to the German people and/or the weakness of the government« (Goldberg 2010, 96). The reining in of overzealous, hurtful speech was a tool of national policy.

Ebert's faith in the courts as both an arbiter of truth and a means of repression was especially notable given the recent history of defamation suits (Mühlhausen 2006, 941). The prewar SPD had frequently provoked insult prosecutions in order to publicly embarrass state officials and challenge their credibility. By European standards, defendants in German libel cases had enormous scope to introduce evidence for the truth of their accusations, largely because of battles fought and won by Socialist and Liberal legislators in the Imperial era (Goldberg 2010, 87–96, 144–48). The experience of pro-Republican leaders since 1918 underscored the risks of bringing slanderers before Weimar courts. Mathias Erzberger's attempt to halt personal and anti-Republican attacks through defamation suits ended in disaster. Erzberger's opponents turned the tables on him, making the trial less about the alleged slander than about his own wartime actions. In the end, the Center Party leader lost his suit and resigned in humiliation (Fulda 2009, 55–58).

Ebert too was to be gravely disappointed in the courts. Because Gansser's article did not explicitly declare why serving on a strike committee was treasonous, the trial in Magdeburg had an especially diffuse and open-ended quality. The presiding judge, Gustav Bewersdorff, allowed the defense to introduce any scrap of information that suggested disloyalty on

Ebert's part. A parade of accusers testified that Ebert had expressed support for the work-stoppage and encouraged civil disobedience, even to the point of telling workers to resist military enlistment. Witnesses for the prosecution spoke passionately about Ebert's patriotism and his support of the war. The judge rarely excluded testimony or adequately challenged witness accounts (Bremmer 1925, 31–102). Far from quelling or containing emotions, the trial stirred up more anger, new insults, and new humiliations.

A nervous gloom settled over the left-wing press, while right-wing papers luxuriated in the shaming of the Social Democrats. Still, the court's ruling, which affirmed the accusation of treason against Ebert, was a surprise to both sides. The tone of Bewersdorff's decision was pompous, pedantic, and absurdly formal—even by the standards of German courts. The judge declared it was not his task to evaluate whether Ebert's role in the strike was morally, politically, or historically justifiable. The only valid question was whether Ebert had violated the letter of the law. For Bewersdorff, the answer was clear. By joining the leadership committee of an illegal wartime strike, Ebert had committed treason. His intentions were irrelevant (Brammer 1925, 122–27). This conclusion, which was supported by a panel of professional and lay judges, offered significant protection for the young Magdeburg editor. The court sentenced Rothardt to a short prison term for the insulting nature of his rhetoric, while offering journalists across Germany a measure of impunity to publicly attack the president.

Bewersdorff's decision, through its appeal to formalism, embodied what historian Henning Grunwald called »the performance of impartiality« (Grunwald 2012b, 64). It delighted high-minded conservative journalists, who distanced themselves from Rothardt's gutter journalism and even offered a measure of sympathy for Ebert, while still condemning his alleged capitulation to the anti-war, anti-German elements of his own party. They assumed that Ebert would have to resign; David had defeated Goliath while the authority of law and the independence of the courts had been affirmed. The *Münchener Zeitung* called Bewersdorff's decision a »sensation«—and apologized for the use of this »foreign term.« The

editors predicted the judgment would »excite attention« and »produce emotional responses (*Gefühlsbewegungen*)«, but the paper, like the Magdeburg court, sought to position itself above the fray. The editors felt no animosity toward Ebert, they insisted. He was a tragic figure, a decent man ensnared by his ideological commitments.<sup>3</sup>

Even many of Judge Bewersdorff's sharpest critics took his formalist reasoning at face value, refusing to question his impartiality or good faith. The left-liberal law scholar Moritz Liepmann argued that the problem with the decision was its slavish adherence to legal formulas (Brammer 1925, 190–92). In a similar vein, many liberal scholars suggested that the decision was legally sound, but lacking in »common sense« (*gesunder Menschenverstand*). It was, in other words, a manifestation of the flaws inherent in German justice. Law professor Alexander Graf zu Dohna wrote that the decision, for all its errors, contained solely »pure juridical considerations« (Graf zu Dohna 1925, 146). Eugen Schiffer, a former judge in Magdeburg and Minister of Justice after the Great War, methodically refuted Bewersdorff's reasoning. It was illogical to exclude moral and political definitions of treason, Schiffer argued, given that the ultimate purpose of Gansser's article was to attack Ebert's *moral* character and his *political* intentions. While calling the decision a miscarriage of justice, Schiffer never mentioned Bewersdorff by name nor questioned the judge's integrity (Brammer 1925, 162–66). He summed up the lessons of the trial in the most banal and apolitical fashion possible: judges were out of touch with lived experience (*weltfremd*), the people were ignorant of the law (*rechtsfremd*), and Germany must do better at educating and selecting judges (Brammer 1925, 167).

The left-wing press, by contrast, freely expressed its anger and disgust at the judge. *Montag-Morgen* denounced Bewersdorff's »self-deluding arrogance«, and accused him of acting as a »corrector of world history.« The usually restrained liberal newspaper *Die Vossische Zeitung* published two articles by members of the Republican Judges Association which pulsed with anger. Wilhelm Kroner, the chairman of the association, called

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3 *Münchener Zeitung*, December 12, 1924.

the Magdeburg decision »a mournful, shameless, cowardly, despicable argument against the bearers of Germany's dignity.« His fellow judge Franz Brodauf accused the Magdeburg judges of letting their hatred for the republic trump legal concerns.<sup>4</sup>

Kroner's outburst created its own shockwaves. The leading juridical publications were dismayed that a Prussian judge would publicly comment on a colleague's »ongoing« case (since Ebert would presumably appeal) and state such emphatic opinions although he had no direct knowledge of the files. The editor of the *DJZ*, Otto Liebmann, accused Kroner of a lapse in professional ethics and charged the Republican Judges Association with willfully undermining trust in the courts. The Prussian Judges Association expelled Kroner for his »temperamental remarks.« Right-wing political organizations and newspapers echoed the jurists' indignation. At the 50,000-strong national meeting of the Stahlhelm in Magdeburg, a resolution was passed to condemn the alleged assault on judicial independence.<sup>5</sup>

While Kroner's intervention infuriated his fellow judges, it thrilled the courts' sharpest critics and inspired more attacks. In an open letter to Otto Liebmann, legal scholar Gustav Radbruch confessed that his initial response to Kroner's tirade was »joy over the outbreak of a lively and healthy sense of justice (*Rechtsgefühl*) against an infuriating miscarriage of justice.« Radbruch, who fought for the reform of legal procedure and the admission of women to the judiciary during his short tenure as Reich Justice Minister, expressed frustration with the suppression of emotion in legal discourse. Kroner's »impassioned free speech seemed [...] more valuable and more sympathetic to me than the serene tranquility which the *DJZ* maintains in the face of the courts' mistakes« (Radbruch 1925, 193–97). Radbruch longed to see German intellectuals respond to miscarriages of justice in the manner of French intellectuals during the Dreyfus affair (Radbruch 1992–1993a, 13, 242; Radbruch 1995, 95).

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4 *MM*, December 22, 1924; *VZ*, December 24, 1924 and December 27, 1924.

5 »Entschliessung des VI. Frontsoldatentages in Magdeburg.« Landeshaupstaatsarchiv Sachsen-Anhalt (LHSA), MD Rep C20 I lb, no. 1991.

Months before the Ebert trial, he joined the leadership committee of the Reichsbanner Black-Red-Gold, an organization that mobilized popular support for the Republic. In his speeches at Reichsbanner rallies, Radbruch employed a passionate rhetoric that departed radically from the high philosophical tone of his academic work and the measured pronouncements of his time as a government minister (Achilles 2010, 670, 678). At a torchlight parade celebrating his professorship in Kiel, Radbruch even seemed to question the liberal ideal of a Republic founded upon reason and law. The German Republic, he told his Reichsbanner comrades, was like the spirits who came to Odysseus on his visit to the underworld. It »takes shape only gradually, after nourishing itself from the blood of its noblest followers« (Radbruch 1992–1993c, 82–83). The constitution, in other words, was a mere abstraction or, at best, a frame or vessel. The Republic came alive only after sacrifice and suffering.

The most effective and unapologetically emotional critic of the Ebert decision was Radbruch's Reichsbanner colleague Otto Hörsing. Hörsing was the national Chairman of the Reichsbanner, Governor of the Prussian Province of Saxony (whose capital was Magdeburg), and a delegate to the Prussian Parliament. As a high Prussian official and popular politician, Hörsing's criticism of local judges carried special weight. The rank and file of the Reichsbanner treasured Hörsing's earthy demeanor, disdain for elites, and frank, impulsive manner. Harry Graf Kessler described the governor as »no educated man, but *a man* [...] energetic as a bull and goal-driven [...] a coarse klutz with a sense of humor and a rough fist« (Kessler 1961, 598). Responding to the Stahlhelm's support for the Ebert decision, Hörsing organized the first national Reichsbanner Congress for February 22 in Magdeburg, less than one week after the scheduled start of the appeals proceedings. The prospect of a massive public rally to condemn the Magdeburg decision and pressure the appeals court appalled SPD leaders in Berlin. The powerful Minister of the Interior Carl Severing was altogether skeptical of the Reichsbanner, and worried that Hörsing would somehow undermine the government's authority. In a personal letter, President Ebert himself urged the governor

to postpone the congress or at least avoid any mention of his defamation case during the event.<sup>6</sup>

The Reichsbanner Congress, however, proceeded as planned. As one colleague wrote, Hörsing had little patience with juridical process. »Rather than trip over legal threads, he preferred to slice right through them.«<sup>7</sup> Hörsing basked in the growing press attention and stoked the passions of growing crowds. At the opening speech for the Congress, before 100,000 cheering followers, Hörsing alluded to Judge Bewersdorff's decision as an attack on all supporters of the republic. »Insults [...] and slanders have been pouring upon us,« he told the throng. This would persist so long as »monarchists« were sitting on the bench and in the administration. To what the *Vossische Zeitung* called »stormy applause,« Hörsing cried that »the Republic can and must be led only by Republicans.«<sup>8</sup>

The Magdeburg rally launched Hörsing into a campaign of speeches and articles expressing his disgust at the judiciary. Severing warned him that he was violating the Disciplinary Law of 1852 which required civil servants to show »restraint« both inside and outside fulfillment of their official responsibilities. Minister President Braun likewise admonished Hörsing for his lack of self-control. Prussian Ministers tried repeatedly to get Hörsing to stop speaking with the press about judicial decisions that he believed were politically biased, corrupt, or simply wrong-headed. They were particularly embarrassed when Hörsing, speaking at a Constitution Day celebration in Berlin, prophesized that the so-called »irremovability of judges [...] will, thanks to the energetic contributions of the monarchist elements, burst and sink into the abyss much faster than these people believe.«<sup>9</sup> Hörsing's crowd appeal, his staging of »sensations,« and his

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6 FES, Nachlass Osterroth, no. 163, Reichspraes. Ebert to Otto Hörsing, January 23, 1925. On Severing's skepticism toward the Reichsbanner, see Rohe (1966, 39–40).

7 FES, Nachlass Osterroth, no. 1, Erinnerungen I, 185.

8 *VZ*, February 2, 1925.

9 FES, Nachlass Hörsing, Severing to Hörsing, April 1, 1925 and July 30, 1925; Minister President Braun to Hörsing, May 25, 1926; Prussian

close ties to the tabloid press marked a radical shift in style within the governing classes in Prussia, particularly when deployed against the courts. To the judges, Hörsing symbolized the politicization and sensationalizing of justice: an intrusion of unbridled emotion into the controlled domain of the courts. Hörsing and the Reichsbanner were not just an annoyance to the judges, but, in their view, a threat to judicial independence.

Historians have frequently depicted the Friedrich Ebert trial as a great blow to the Republic, but the evidence for this is thin at best (Mühlhausen 2006, 958–66; Winkler 2002). The oft-repeated claim that Ebert died because the trial caused him to neglect an otherwise treatable case of appendicitis is simply false (Evans 200, 81; citing H. A. Winkler 1985).<sup>10</sup> The picture of Ebert as mentally stricken, »bleeding to death from the slanders« in Philipp Scheidemann's words, is grossly exaggerated (Mühlhausen 2006, 967). In any case, the gleeful response by right-wing newspapers to Bewersdorff's decision hardly marked a substantive change in Weimar political discourse. It is doubtful whether the slanderous attacks on the president would have abated if the prosecution of Rothhardt had been successful. Did erstwhile supporters of the president become disillusioned with the Republic because a local court in Magdeburg declared him, by the most »exacting legal standard,« guilty of treason? That seems improbable.

What is clear is that Ebert's defeat in Magdeburg created a new rallying point for pro-Republican forces. The Reichsbanner grew dramatically in the middle years of the Weimar Republic, driven in large part by anger at »privileged« judges and excitement over a less »restrained,« more emotional style of politics. Hörsing and his followers sought to make the Constitution into a totem, a revered symbol of love for the republic, but they identified little with the ideals of judicial process and judicial

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Judges Association Charlottenburg to Prussian Minister of Justice, August 26, 1925.

10 According to Ebert's biographer, he became ill *after* the trial. His rapid demise was partly due to his doctor's misdiagnosis of his condition (Mühlhausen 2006, 967).

independence that were part of its foundational principles (Achillees 2010). The new politics of emotion had little in common with the old ideal of an austere, rational, blind form of justice.

### **Emotional rescue: The Haas-Helling affair**

It did not take long for Hörsing's growing prominence and the new style in democratic politics to demonstrate an effect. In the summer of 1926, a second justice scandal in Magdeburg—the Haas-Helling affair—pitted Reichsbanner leaders against another intransigent judge. Numerous threads connected this new Magdeburg scandal to the Ebert trial. The Chief Prosecuting Attorney, Friedrich Rasmus, who had fought energetically on Ebert's behalf, initiated the prosecution of a Jewish businessman, Rudolf Haas, whose brother-in-law was Hörsing's closest adviser. The Governor took an unprecedented role in the affair by not only criticizing the court's investigation, but actively working for the exoneration of the accused. Hörsing succeeded not through the legal process but by channeling information to the press and mobilizing popular anger at the court and popular sympathy for Haas. After initial hesitation, the SPD-led Prussian state government supported Hörsing's efforts. For the judges, the case of Rudolf Haas became a stunning example of how the emotionally charged interventions of the press, the state, and the crowd were challenging the authority of the courts.

Rudolf Haas had been accused of arranging to murder his former accountant, Hermann Helling, in order to stop him from testifying in a tax fraud investigation. Most of the evidence was circumstantial. Helling disappeared on the day that he was scheduled to meet with the state tax investigator. Former Haas employees depicted their boss as ruthless and clever and obsessed with his firm's advancement. They claimed that Helling had been one of the few employees who understood how the company moved money between its various affiliates and was therefore a threat to Haas. The key »breakthrough« in the case, however, came when Richard Schroeder, a young ex-convict, was arrested with checks belonging to the missing accountant. Schroeder claimed that a stranger had given him the checks in exchange for running errands around Magde-

burg. After weeks of police interrogations, Schroeder identified Rudolf Haas as the stranger (Kuhn 1983; Kölling 1988; Braun 1928).

Rasmus, the prosecutor, then handed the case to Johannes Kölling, the Magdeburg District Court judge responsible for pre-trial investigations. It is not clear whether Kölling knew that Haas was a Jew or that Haas's brother-in-law Paul Crohn was a co-founder of the Reichsbanner and Hörsing's lieutenant. It is certain, however, that Kölling was nervous about the political implications of this case and the possibility that a vast and powerful conspiracy underlay the accountant's disappearance. Kölling went out of his way to choose as his lead investigator a young, untested police detective, Wilhelm Tenholt, who had a reputation as an outsider. With a solemn handshake, Kölling made Tenholt promise not to share the details of the investigation with anyone, even his own superiors. He explained that the success of the case rested upon getting Richard Schroeder to provide further details about his relationship with Haas and the fate of the accountant. Kölling advised Tenholt to treat Schroeder delicately in order to elicit the truth.<sup>11</sup>

The conspiratorial atmosphere and the pre-emptive suspicions against a wealthy Jewish businessman led to a series of mistakes on the part of investigators. Kölling and Tenholt largely ignored signs that Schroeder's entire story was concocted and never confronted him with the inconsistencies in his narrative. They never properly searched his home or interrogated his friends and family. Still, a three-judge appeals panel approved Haas's detention. Even Rasmus, the liberal prosecutor, defended the investigation, accepting the argument that Richard Schroeder was »a very sensitive person« and that a preponderance of evidence pointed to Haas's role in the affair. Most observers expected that Kölling would soon indict Rudolf Haas and send the case to trial.<sup>12</sup>

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11 LHS A C20 I, Ib no. 1918, Report by Councilor Hirschberg, September 27, 1926; GStA 57525, transcript, disciplinary proceedings, October 6, 1926.

12 GStA no. 57524, Notes, undated (presumably September 1926, disciplinary proceedings).

Hörsing, however, fought the judge with his characteristic impatience for legal niceties. Though he had no official authority in the case, he arranged for a celebrated Berlin detective to conduct a parallel investigation into the accountant's disappearance. This detective reported to Hörsing, rather than to Kölling, and carried out his investigations with abandon—searching homes, confiscating evidence, and arresting suspects. Such steps contradicted the principle in German law that the investigating magistrate is »lord of the pre-trial investigation.«<sup>13</sup> The unorthodox and essentially illegal methods, however, bore fruit. In a remarkably short time, the Berlin policeman had fingered Richard Schroeder as the lone killer and exonerated Rudolf Haas of all responsibility.

None of this evidence was accepted into the official case file assembled by Judge Kölling, but all of it was incorporated into the daily press. Frequently the discovery of new evidence appeared in the papers even before Kölling or the Magdeburg police had any knowledge of it.<sup>14</sup> In an otherwise quiet summer (swarms of mosquitos dominated the news on some days), the Haas affair became a prominent, sometimes preeminent, news story in dozens of papers. Hörsing's Reichsbanner associates turned a local real estate office into »a veritable press station« and drove journalists to important sites using Haas company cars.<sup>15</sup> Hörsing himself entertained reporters around his Stammtisch at the Hotel Weissen Bär, a favorite Reichsbanner gathering place. Reporters followed the principal investigators around town, even hanging around the public pool in hopes of interviewing the Magdeburg detective between his laps.<sup>16</sup>

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13 The phrase was used frequently both by the press and in internal correspondence. See, for example, GStA 57524, Dahm, Travel Report, September 1, 1926. See also Löwe (1922).

14 LHSA, C 29 Anh I Pa 36/1, statements by editors Dyck and Pinthus (undated); and Rep. C20 I, Ib no. 1918, Prussian Minister of Justice Fritze to Prussian Minister of Interior Severing, September 2, 1926 and September 3, 1926.

15 GStA 57549, States Attorney to Prussian Minister of Justice, August 6, 1927.

16 LHSA, Rep. C 29, Anh. I Pa 36/1, Tenholt Interrogation, August 12, 1926.

According to leftist and liberal papers, the Magdeburg affair represented a fight for the soul of the Republic. Using Hörsing as an anonymous source, they claimed, falsely, that the Magdeburg detective was a »Stahlhelm man« and that a cabal of reactionary judges was controlling the investigating magistrate. They accused the authorities of leaking information to Richard Schroeder so that he could doctor his testimony to incriminate Rudolf Haas. Resuscitating Bewersdorff as a symbol of judicial malfeasance, the press also insinuated his presence into the Haas case. Hörsing half-humorously referred to Magdeburg as »Bewersburg.«<sup>17</sup>

The Hörsing-authored melodrama that played out in the national press angered judges, yet Prussian officials refused to rein him in. The Prussian Interior Ministry instead helped Hörsing arrange for police assistance from Berlin. Police Vice-President Bernhard Weiss came to monitor the situation and admonish the local police. Another Prussian official commissioned the popular crime journalist and novelist Hans Hyan to file a statement on the situation in Magdeburg. Hyan, the author of a revolutionary pamphlet on the justice system, reported of shadowy figures and far-flung networks that suggested a right-wing conspiracy in Magdeburg.<sup>18</sup> Weiss, according to a justice official, constantly fed information about his investigations to the tabloid press.<sup>19</sup> In essence, the state was using the newspapers to shape public opinion, discredit the investigating magistrate, and pressure the judiciary and the Ministry of Justice to control or replace the investigating magistrate.

The relentless high-pitched attention from the press both politicized and emotionalized the Magdeburg affair. Pressure on the Prussian government forced the Ministry of the Interior to remove Tenholt from the case. The young detective went to Judge Kölling's apartment in tears to inform him of the decision. When Kölling sought to engage another detective from the Magdeburg force, the Ministry transferred that officer to another

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17 *Magdeburger Volkstimme*, August 11, 1926.

18 GStA 57524, Hans Hyan to State Secretary Abegg, July 20, 1926 and Memorandum.

19 GStA 57524, Dahm, Travel Report, September 2, 1926.

region with less than a day's notice. Kölling was forced to work with two seasoned investigators from Berlin chosen by the Ministry. In the face of this pressure, the judge became deeply depressed and incapable of working. Finally, he published an open letter to Prussian officials in the conservative daily paper in Magdeburg. The letter accused Hörsing and Berlin officials of sabotaging the Haas investigation, besmirching the judge's reputation, and violating basic principles of criminal procedure.<sup>20</sup> The letter, which was reprinted in its entirety by papers around the country, was an extraordinary step for a judge in the middle of a pretrial investigation. Even many of the court's sympathizers condemned the letter as unprofessional. The Chief Justice of the Appeals Court in Naumburg called it a »derailment.«<sup>21</sup> Reprimanded by his superior, Kölling complained of nervous exhaustion and pleaded that publishing his letter had been necessary to stop the press from »ripping [him] to pieces.«<sup>22</sup> A judge's honor was at stake, Kölling charged, and no one was ready to protect him.

The Interior Ministry responded to Kölling's provocation by demanding that the Justice Ministry remove him. A plot was hatched to press Kölling into taking a long-planned vacation just when a more sympathetic and pliable judge would be filling in as investigating magistrate. In a meeting with Kölling, the Chief Justice in Naumburg offered »fatherly advice,« expressing sympathy »as a colleague, not a superior.« The Chief Justice believed Kölling's unfortunate letter to the press was excusable given the systematic attacks by the administration and the leftist press. He was busily looking through newspapers to see who should be prosecuted for insult. It was clear to him that there should also be charges against Hörsing. In the meantime, however, in the interest of bringing the legal process back on to »orderly, peaceful tracks,« the Chief Justice urged

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20 GStA 57525, Kölling, Statement of September 28, 1926.

21 GStA 57524, Notes, Kölling, meeting with Chief Justice of the Superior Court Werner.

22 GStA 57525, Kölling, Statement of September 28, 1926.

Kölling to take his vacation.<sup>23</sup> Kölling acceded, a new judge took over, and Rudolf Haas was finally released from confinement.

The aftermath brought a kind of emotional climax for the democratic left. Photos of a liberated and smiling Rudolf Haas with his Reichsbanner lawyer and his stylish wife were featured on the front page of a number of papers. The *Vossische Zeitung* published Haas's prison diary, presenting him as a proud combat veteran, an apolitical husband and father, and an honorable employer. The pathos of his strange ordeal was underscored by his description of reading Arthur Schnitzler's popular *Dream Story* in his cell. The story of a respectable doctor plunged into a surreal and terrifying underworld in prewar Vienna made Haas »completely crazy.« He wondered if he himself might be a »double-being« (*Doppelwesen*).<sup>24</sup> Hörsing refused to celebrate this victory, but called upon his followers to press on in their fight against the judiciary. »Justice is lost,« he said in a press statement. »We German republicans are the most law-deprived people in the world. The restoration of justice can only be achieved by getting rid of judicial privileges.«<sup>25</sup> The subsequent trial of Richard Schroeder for murder recapitulated the failings of the justice system, as much as it laid the case for Schroeder's guilt.<sup>26</sup> In the wake of the trial, disciplinary proceedings were held for Judge Kölling and detective Tenholt.

Hörsing emerged from the affair the preeminent symbol of combative republicanism. He was an impresario of emotion, the Republican id, a foil to the restrained, bland, »rational republicans« (*Vernunftrepublikaner*) who otherwise seemed to be running the country.<sup>27</sup> His own account of

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23 GSTA 57524, Chief Justice Werner to Prussian Minister of Justice Fritze, August 2, 1926.

24 VZ August 10, 1926 and August 11, 1926.

25 VZ, August 11, 1926.

26 *Magdeburger Zeitung*, September 18, 1926 and September 19, 1926.

27 Paul Löbe, President of the Reichstag, praising Hörsing. VZ, August 15, 1926; FES, Nachlass Hoersing, no. 18, Republican Judges Association to

the Magdeburg affair was published under the provocative title, »My Justice Scandal.«<sup>28</sup> While the essay's point was to document the errors of the Magdeburg investigators, the title coyly suggested an acknowledgement of his role in creating a »scandal.« Certainly, Hörsing felt no shame in scandalizing the legal establishment and disrupting the judicial process in pursuit of a greater truth. As Hörsing knew, creating a scandal was one sure means of making a sensation. If he had awakened a righteous passion, what Radbruch called »the German feeling for justice,« this was, for Hörsing, far more important than the personal victory of one Jewish businessman (Radbruch 1992).

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Hörsing, May 30, 1927, and no. 23, Wolfgang Heine to Hörsing, July 25, 1927; on »Vernunftrepublikaner,« see Gay (2001, 23–25).

28 *VZ*, August 11, 1926; *Berliner Tageblatt* August 10, 1926; and *Magdeburger Volkstimme*, August 11, 1926.

### Conclusion

In 1928, the liberal law scholar and former government minister Eugen Schiffer decried the »transformation of the mood« in Germany regarding the courts. In the immediate postwar period, he argued, the republican left showed great reverence for the courts. Otto Landsberg, Minister of Justice in 1919 who later represented Friedrich Ebert in the Magdeburg trial, had promised to resign his position within a minute, according to Schiffer, if judicial independence were threatened from any side. »How the times have changed!« Schiffer wrote. Many people now saw »judicial independence not as a bulwark of justice, but rather as a wall that protected injustice.« Other old school liberal jurists were similarly dismayed by the popular »crisis of trust« in the courts. Jurists such as Max Hachenburg and Alexander Graf zu Dohna had no doubt that Rudolf Haas was innocent and Erwin Rothardt was guilty: They conceded that judges in Magdeburg had made terrible mistakes. Nevertheless they blamed state officials and the press for emotionalizing and politicizing these cases. The Haas case, Hachenburg argued, could have been resolved with »cool calm [...] tact and wisdom.« The intervention by outsiders simply riled »easily excitable heads« (*leicht reizbare Köpfe*), leading to more mistakes. The true challenge for Germany, Hachenburg believed, was not the bias of »reactionary judges,« but popular attacks on the very edifice of legal reason and procedure.<sup>29</sup>

For the history of emotion in German politics and society, the Ebert and Haas cases were turning points. Government officials, the press, and even German judges challenged traditional norms of »restraint,« by expressing their own anger and openly appealing to the people's »sense of justice.« It was not just that these critics questioned judicial decisions, but that they interpreted bad decisions as symptoms of a broader failure in the system. They suggested that a better, more direct path to justice could come through political mobilizations, state intervention, and the rallying

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29 Hachenburg (1926); Schiffer (1928, 7, 12, 19–21); Graf zu Dohna, in *Frankfurter Zeitung*, September 12, 1926.

of public opinion. The left's romance with legal reason seemed to be ending; its dalliance with the politics of emotion was heating up.

Justitia, in this environment, was no longer a figure of inspiration but the symbol of a faded ideal. In a caricature in the left-leaning tabloid newspaper *8-Uhr Abendblatt*, a gaunt and flat-chested Justitia lies stricken in a hospital bed, sword beside her, her blindfold reminiscent of a wounded soldier's bandage. Otto Hörsing is the strong-willed nurse, stirring medicine for the helpless and forlorn patient. Thus the nurturing Republic, its masculine vitality playfully dressed up in feminine accoutrements, was now the active force: the only possible source for some kind of revival of justice.



As Hachenburg noted, an odd twist of the Haas affair was that while the left lined up behind its traditional *bête noire*, administrative police power, the right repositioned itself as the defender of the courts. In the right-wing iconography of the Weimar era, Justitia was vibrant and strong, but under attack and bound in chains, betrayed by the very forces that had sworn to defend her. In a caricature from the magazine of the *Stabhelm*, Justitia cries out for assistance, her scales held aloft, her blindfold gone. Citizen Hörsing oafishly stuffs her in a chest, as he proudly upholds the law of the Republic. »Who gets justice in Germany?« the heading asks.



The right's passionate support for judicial independence, legal reason, and proceduralism, however disingenuous, helped right-wing parties mobilize their supporters and win over liberals disappointed with the Republic. It was one reason that jurists quickly accepted the Nazis' »coordination« or *Gleichschaltung* of legal organizations in 1933 (Ledford 1995, 317–20; Bozi 1933).

The Nazi regime benefitted from both the popular crisis of trust in the courts and the right's fetishization of the independent judiciary. Nazi ideology proposed an ideal judge, unfettered by gratuitous rules and procedures, who independently embodied the »healthy sensibilities of the *Volk*.« In this way, the Nazis resolved a contradiction in Weimar politics. The courts could be seen as unique realms, structured by their own special rituals and yet responsive to the emotional needs of the people. The allegory of Justitia—with or without her blindfold—stayed on as an aging piece of kitsch.

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### Abbreviations

DJZ	Deutsche Juristenzeitung
FES	Friedrich Ebert Stiftung
GStA	Geheimes Staatsarchiv Preussischer Kulturbesitz. Rep 84a
LHSA	Landeshauptarchiv Sachsen-Anhalt, Abt. Magdeburg
MM	Montag-Morgen
MZ	Münchener Zeitung
VZ	Vossische Zeitung

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Warren Rosenblum is professor of history and chair of the Department of History, Politics, and International Relations at Webster University, St. Louis, MO (USA): wrosenbl@webster.edu.