

The Darwinian roots of the Nazi legal system

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This article is focused on the Darwinian roots of the Nazi legal system. It contends that Darwinism underpinned the most basic features of Nazi legal order and theory. The Nazis developed a ‘progressive’ theory of law in which ‘law’ was interpreted as a result of force and social struggle. According to the Nazi legal theory, the legal system should not contain fixed rules of law but evolve in continuous flow as a ‘living law’. Because the Nazis were Darwinists who believed that human beings were descended from the animal kingdom, they did not accept the idea of God-ordained human rights, but rather that the ‘stronger’ would have the ‘right’ to dispossess and destroy the ‘weaker’. During that time, most German judges and lawyers were legal positivists who rejected the concept of God-given rights as defined by the Holy Scriptures and classical natural-law theory. As a result, a ‘master morality’ was developed, and it became meaningless to appeal to any higher law above the oppressive commands of the Nazi State.

Darwinism underpinned the most basic features of Nazi theory and practice. While Darwinism is not the sole explanation for National Socialism, it is nonetheless an essential one. The Nazis strongly believed they were acting on behalf of evolutionary ‘science’, reason and progress. They saw themselves as progressive people, who in their impatience merely wished to hasten evolution’s laggard pace by giving a helping hand to its guiding principle, ‘survival of the fittest’.

This article is focused on the evolutionary roots of the Nazi legal system. It explains why the Nazi legal system cannot be isolated from the Darwinian viewpoints of Nazi Germany’s juridical elite. During the period in question, most German judges and lawyers were legal positivists who supported a legal system that rejected any idea of a higher law overseeing the state. Instead, evolutionary thinking, as it had been developed since Darwin, made the Nazi state the means by which ‘evolution’ would be advanced; by tweaking its ‘survival of the fittest’ mechanism to add to its propulsion.

Nazism and Darwinism

Since Charles Darwin (1809–1882) believed that humans evolved from animals by means of a blind process of natural selection, three chapters of his *The Descent of Man* are devoted to the theory that the mental and moral faculties of human beings originate from the same fount as that of animals. Deeply fallacious and racist as they are, these arguments made a profound impact upon social-science disciplines such as psychology, anthropology and law. According to law professor Phillip E. Johnson:

‘Because Darwin was determined to establish human continuity with animals, he frequently wrote of “savages and lower races” as intermediate between animals and civilized people. Thanks to Darwin’s acceptance of the idea of hierarchy among

human societies ... the spread and endurance of a racist form of social Darwinism owes more to Charles Darwin than to Herbert Spencer.’¹

Neo-atheists sometimes try to suggest that the Nazi leader Adolf Hitler (1889–1945) was a religious person. Although Hitler grew up a nominal Roman Catholic, he rejected from an early age Catholic teaching, regarding Christianity as a religion fit only for slaves.² According to the late British biologist Sir Arthur Keith (1866–1955), at one time a leading evolutionist in Great Britain, the German *Führer* was an ardent ‘evolutionist ... that consciously sought to make the practice of Germany conform to the theory of evolution.’³

Darwinism underpinned the most distinctive and essential features of National Socialism. Indeed, Nazism would not have existed without Darwinism. While Darwinism is not the only explanation for Nazism, it is nonetheless an essential one. The Nazis believed they were progressives who were advancing ‘evolution’ by conferring on the blind forces of nature the perfect sight of the Aryan, the better for its guiding principle of ‘survival of the fittest’ to see where to go. There is very much a correlation between the Darwinian worldview of the Nazis and the policies they implemented. This is a worldview in which race occupies a central role, and the struggle for survival is the *sine qua non* of life.⁴

While it is true that Hitler sometimes referred to ‘God’ or ‘Providence’ in political writings and speeches, he was not appealing to the Christian deity. Rather, he equated ‘natural law’ with the ‘survival of the fittest’, and God with ‘the unknown, or Nature, or whatever name one chooses’.⁵ For Hitler, the two basic dynamics of life were hunger (which promoted self-preservation) and love (which preserved the species).⁶ He argued that the natural conditions in which these two instincts are satisfied are limited, such that organisms have to struggle for space and resources. It is out of this primordial struggle that Hitler

saw ‘evolution’ taking place through the mechanism of ‘survival of the fittest’.⁷

Hitler drew from a bountiful fund of social-Darwinist thought to construct his racist philosophy.⁸ In one of his tirades, on the ‘virtues’ of vegetarianism, he contended that ‘the monkeys, our ancestors of prehistoric times, are strictly vegetarian’.⁹ In October 1941, he said: ‘There have been human beings, in the baboon category, for at least three hundred thousand years. There is less distance between the man-ape and the ordinary modern man than there is between the ordinary modern man and a man like Schopenhauer.’⁹ As for educating Africans to become lawyers and teachers, he rejected it as impracticable, saying it was ‘a criminal lunacy ... to keep on drilling a born half-ape until people think they have made a lawyer out of him ... For this is training exactly like of a poodle.’¹⁰

Nazism and religion

Hitler believed that the ramparts of religious belief had been overrun by the swift rush of science. He saw evolutionary ‘science’ as a vital element in the task of discrediting Christianity.¹¹ Thus, according to historian Richard Evans, ‘the Nazis regarded the churches as the

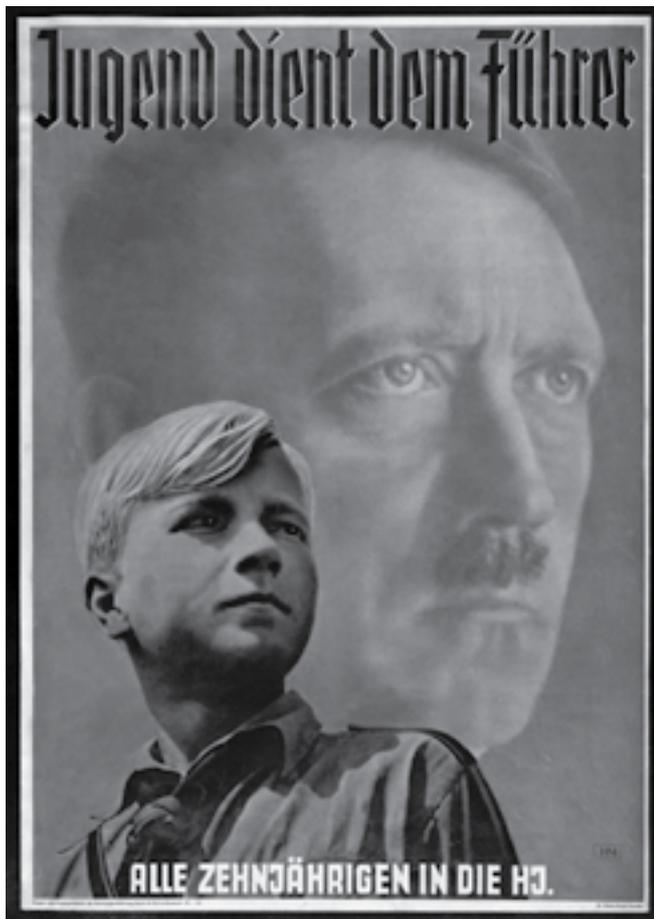
strongest and toughest reservoirs of ideological opposition.’¹² In a conversation which took place just one year after the Nazi seizure of power, in 1933, Hitler stated (also noting how liberal churchians could be ‘useful idiots’):

‘The religions are all alike, no matter what they call themselves. They have no future—certainly none for the Germans. Fascism, if it likes, may come to terms with the Church. So shall I. Why not? That will not prevent me from tearing up Christianity root and branch, and annihilating it in Germany ... But for our people it is decisive whether to acknowledge the Jewish Christ-creed with its effeminate pity-ethics, or a strong, heroic belief in God in Nature, God in our own people, in our destiny, in our own blood ... Leave the hair-splitting to others. Whether it’s the Old Testament or the New, or simply the sayings of Jesus ... it’s all the same old Jewish swindle. It will not make us free. A German Church, a German Christianity, is a distortion. One is either a German or a Christian. You cannot be both. You can throw the epileptic Paul out—others have done so before us. You can make Christ into a noble human being, and deny his role as a saviour. People have been doing it for centuries. I believe there are such Christians to-day in England and America ... We need free men who feel and know that God is in themselves.’¹³

Hitler was of the opinion that ‘the heaviest blow that ever struck humanity was the coming of Christianity’.¹⁴ He ordered the Germans to stop celebrating Christmas, and forced children from the Hitler Youth to recite a daily prayer to him for all their ‘blessings’ (figure 1). Not surprisingly, he blamed the Jews for having invented Christianity,¹⁵ thus requiring as a remedy that Germans be ‘immunised against this disease’.¹⁶ According to US Justice Robert Jackson (1892–1954), the chief prosecutor at the main Nuremberg Trial, the Nazis carried out ‘a systematic and relentless repression of all Christian sects and churches’.¹⁷ Hitler had indeed also created a final solution for the ‘problem’ of Christianity, again invoking liberal theologians as useful idiots:

‘What is to be done, you say? I will tell you: We must prevent the churches from doing anything but what they are doing now, that is, losing ground day by day. Do you really believe the masses will ever be Christian again? Nonsense! Never again. That tale is finished. No one will listen to it again. But we can hasten matters. The parsons will be made to dig their own graves. They will betray their God to us. They will betray anything for the sake of their miserable little jobs and incomes.

‘What we can do? Just what the Catholic Church did when it forced its beliefs on the heathen: preserve what can be preserved, and change its meaning. We shall take the road back: Easter is no longer resurrection, but the eternal renewal of our



Poster of Hitler Youth; Source: <wikipedia>

Figure 1. Children from the Hitler Youth had to recite a daily prayer to the Führer.



Figure 2. The so-called ‘German Christian Movement’ desired to achieve absolute organizational and ideological conformity between the Protestant church and the National Socialist state. The banner reads: The German Christian reads the ‘Gospel in the Third Reich’.

people. Christmas is the birth of *our* saviour: the spirit of heroism and the freedom of our people. Do you think these liberal priests, who have no longer a belief, only an office, will refuse to preach *our God* in their churches? I can guarantee that, just as they have made Haeckel and Darwin, Goethe and Stefan George the prophets of their “Christianity”, so they will replace the cross with our swastika [figure 2]. Instead of worshiping the blood of their quondam saviour, they will worship the pure blood of our people. They will receive the fruits of the German soil as a divine gift, and will eat it as a symbol of the eternal communion of the people, as they have hitherto eaten the body of their God. And when we have reached that point ... the churches will be crowded again. If we wish it, then it will be so—when it is *our* religion that is preached there. We need not hurry the process.¹⁸

Because the most radical and influential leaders of the Nazi movement explicitly objected to Christianity in its very essence, they wished to replace it with a German national religion that was intended to supersede the Christian religion and its ideas of sin, penitence and grace.¹⁹ The German people would adore a man-god in the place of the God of the Bible; and abide by the paganism of nature-worship as a substitute for the ‘Jewish bondage of law’.²⁰ According to Professor Ernst Bergmann, a Nazi intellectual,²¹ the Germans should follow the ideals of ‘honour’, not compassion; of ‘eternal struggle’, not peace.²²

In his opinion, the most important thing was to give up the ‘superstition’ that people are sinful, and instead develop a new faith ‘in which we are ourselves Christ’. Influenced by the ‘forces of evolution’, the new ‘Christ’ would be ‘re-born in the womb of Mother-earth’; but not to be the Redeemer of the world, ‘for the world is in no need of redemption’.²³ Said Bergmann: ‘Destroy the legend of God become man and man himself shall rise up as God, as Christ; he shall become conscious of himself as such, and his essence shall take on the divine form.’²⁴

Paganised Christianity

It is a sad truth that many Germans who professed to be Christians made efforts to compromise with Nazism (figure 2). Needless to say, these ‘German Christians’ were determined to confer an opposite meaning to authentic Christianity. As such, they

rejected all Jewish aspects of Christianity, particularly the Old Testament, and interpreted ‘God’ as some kind of super-Hitler on an extended scale. Finally, they elevated the leaders of Nazism to the position of final interpreters of the divine will. Naturally, this sort of ‘Christianity’ had absolutely nothing to do with biblical teaching, but was rather a product of liberal Protestant theology. According to the Professor Emeritus of History at the University of British Columbia, J.S. Conway:

‘The leaders of the [German Christian] movement, Pastors Julius Leutheuser, Joachim Hossenfelder and Siegfried Leffler, strove to convince their fellow clergy that only a completely new interpretation of Christianity ... could meet the needs of the new age. They sought to rid the Church of its ‘pre-scientific’ mentality and its archaic liturgies, and to substitute a new revelation as found in Adolf Hitler. The essential was not Christian orthodoxy but Christian activism that would follow the example of the ‘heroic’ Jesus ... In the new creation of the Nazi Party, they saw a vehicle for their programme that offered fellowship which they believe to be characteristic of true Christianity. If Hitler could perform what they called Christian deeds, then orthodoxy could be abandoned.’²⁵

As for the numerous attacks levelled against Christianity by Nazi leaders, these ‘German Christians’ consoled themselves with the fact that such hostility emanated only from individual representatives of the

Party. Thus, in April 1937, a Rhenish group of ‘German Christians’ published a resolution which substituted Hitler’s authority for that of the Bible. The resolution stated: ‘Hitler’s word is God’s law; the decrees and laws which represent it possess divine authority. The *Führer* being the only *hundred per cent* National Socialist, he alone fulfils the law. All others are to be regarded as guilty before the divine law.’²⁶

Those ‘Christians’ had embraced a paganised form of ‘Christianity’ that freed them from any moral implications of the Christian faith. They practised a form of pagan amorality that was based on the worship of Power and Self under a more or less transparent ‘Christian’ cover.²⁷ They postulated that Christ had not come to reconcile everyone to the God of Creation and the Moral Law but rather ‘to rescue them from the pressure of His demands and pretensions’.²⁸ Therefore any attempt to overcome ‘the evil in us’ was deemed out of question, because the pursuit of ‘righteousness’ was interpreted as being incompatible with the sinful condition of human beings. According to the ‘German Christian’ Wilhelm Stapel, a prolific German theologian who thought each nation was entitled to possess its ‘own ethics’:

‘Redemption has as little to do with moral elevation as it has with worldly wisdom ... The Christian knows it is strictly impossible for him to ‘live’ except in sin; that he can form no decision without falling into unrighteousness; that he cannot do good unless doing evil by it at the same time ... God has made this world perishable, it is doomed to destruction. May it, then, go to the dogs according to its destiny! Men who imagine themselves capable of bettering it, who want to create a higher morality, are starting a ridiculous petty revolt against God.’²⁹

The Nazi legal system

The idea that human law was to be subject to God’s law began to be more deeply challenged in the 19th century, when Charles Darwin’s theory of evolution was interpreted as an attempt to promote a worldview that is based on the non-existence of God. But whenever the value of law is entwined in such belief in ‘evolution’, law automatically loses its transcendent dignity, and the whole idea of government under law loses its most important philosophical foundation. Whereas Christianity sees God’s laws as a manifestation of divine reason and justice,



Photo from <wikipedia>

Figure 3. Leading Nazi lawyer Hans Frank advocated that Hitler should stand above the law. He was Reich Minister without portfolio, Head of the National Socialist Bar Association (1933–1942), member of the Reichstag, President of the International Chamber of Law (1941–42) and of the Academy of German Law, and Governor General of the occupied Polish Territories October 1939–1945.

Darwinism provides no transcendent basis for law, such that legality is seen to be no more than the prosaic codification of a government’s policies. As such, the idea of law is reduced to a managerial skill employed in the service of social engineering, the dominant view in the legal profession today.³⁰

In this sense, legal positivists developed a theory that ‘law’ is a mere product of human will, essentially a result of force and social struggle.³¹ To strict legal positivists, any law which in procedural terms can be properly enacted by the state must not be disobeyed or rendered invalid on account of its immorality.³² Thus, a legal theory was developed; one which may be defined in terms of ‘a philosophy without metaphysics, an epistemology without certainty of truth, or a jurisprudence without an idea of right.’³³

The Austrian jurist Hans Kelsen (1881–1973), a famous legal positivist in the early twentieth century, explained that legal positivism confines itself to a theory of positive law and to its interpretation. Accordingly, legal positivism is anxious to maintain the difference, even the contrast, between *just* and *legal*. But as Kelsen also explained, this sharp separation of jurisprudence from legal science did not exist until the beginning of the nineteenth century. Before the rise of the German historical school of law, ‘the question of justice was considered its fundamental problem by juridical science.’³⁴

Kelsen contended that legal norms are not valid by virtue of their substantive content, but rather only as a positive law enacted by the proper legal authority. As such, any content of law might be valid, because, in his opinion, ‘there is no human behaviour which could not function as the content of a legal norm. A norm becomes law only because it has been constituted in a particular fashion, born of a definite procedure and a definite rule.’³⁵ Such ‘pure’ theory of the positive law is concerned to reveal the law of the state as it stands, ‘without legitimising it as just, or disqualifying it as unjust; it seeks the real, the positive law, not the right law’.³⁶ In other words, he developed a legal theory which refused to evaluate the content of positive laws.

When the Nazis came to power in 1933, Kelsen, who was Jewish, was forced out of his post as Dean of the Law Faculty at the University of Cologne.³⁷ Nevertheless, in the years following the Second World War, it was alleged that Kelsen’s legal positivism offered no legal resource which could be used to resist the Nazi regime. Instead, such doctrines of legal positivism would have provided a certain degree of validity to the evil laws of Hitler’s Third

Reich. According to the American law professor and Catholic apologist Charles Edward Rice (b. 1931), ‘when the Nazis moved against the Jews, German lawyers were disarmed ... by legal positivism.’³⁸ Rice also says that this would not have been the case had most of the German legal profession not fully embraced legal positivism but had instead responded to the early Nazi injustices with a sound and ‘principled denunciation’ rooted in traditional principles of natural law.

In this sense the Nazi legal system cannot be isolated, like some sort of accident, from the viewpoints of the powerful legal elite in Germany. Though Germany in 1933 had a constitutional order, the tradition of constitutional law was solely based on positivist legal principles. Most German judges and lawyers were anxious to establish an authoritarian rule that was supported by a legal system which rejected any protection of the individual against the state. Such lawyers had been hostile to the Weimar Republic, and they generally welcomed the Nazi regime in 1933.³⁹

One of the Nazi Party’s leading lawyers, Hans Frank (1900–1946; hanged at Nuremberg), in this sense advocated for the need to base German society on the foundations of a legal system which suited the purposes of charismatic leadership.⁴⁰ He wished to legally legitimise the idea of a ‘strong ruler’ who could directly appeal to the masses. The *Führer* should stand above the law, because an ‘efficient’ government is more important than constitutionalism.

Similarly, Ernst Rudolf Huber (1903–1990), who was at that time a prominent constitutional law professor at the University of Kiel, thought it was ‘impossible to measure the laws of the *Führer* against a higher concept of law’, because ‘in the *Führer* the essential principles of the Volk come into manifestation’.⁴¹ As ‘the executor of the nation’s common will’, Huber contended that the power of the *Führer* should be ‘comprehensive and total’, because such a power was a personalised political power that should remain ‘free and independent, exclusive and unlimited’.⁴²

In conformity to the *Volks-Nomos* theory developed during the Nazi regime, the Nazi jurists denied the existence of any individual right against the power of the state. In the Nazi legal view, Aurel Kolnai explains, law was not a safeguard the citizen held against violence and oppression ‘but another means of securing omnipotence for the Lords of the State ... In a word, the object of law was no longer to check but rather to encourage arbitrary exertion of public power.’⁴³ Naturally, ‘such interpretations by highly regarded legal theorists were of inestimable value in legitimating a form of domination which ... effectively undermined the rule of law in favour of arbitrary exercise of political will.’⁴⁴

Curiously, the more the legal community made efforts to legitimise the Nazi regime, the greater was the abuse and contempt with which it was greeted by it. Hitler considered lawyers ‘defective by nature’, and was of the opinion that the foundations of the Nazi law lay wheresoever the *Volk*

life or the present time was stirring. Thus, the permanent source and principle of Nazi law became living law, which in practice materialised from the arbitrary decisions (‘decisionism’) of the holders of power. In the Nazi system of domination, law was understood in terms of a progressive order of community life and social progress, which was not rigid but rather evolved in continuous flow.

Conclusion

Reflections on the Nazi legal system help us to understand why the idea of ‘the god that is ourselves’ is so dangerous for the attainment of human freedom and happiness. For it is the acceptance of God’s higher laws that better enables civil societies to cast down their tyrants; whereas the idea of people being gods unto themselves only serves to divinize political rulers, helping them to ignore higher principles of justice and morality against which their evil actions would be measured.

Adolf Hitler and the Nazi regime are the perfect illustration of what might occur when a civil government declares itself to be completely independent of God’s law. The Nazis believed that humans were not created by God but rather descended from the animal kingdom, an idea they adopted from Darwin. They believed that ‘superior’ humans had the ‘right’ to eliminate the ‘inferior’ ones, for the same reasons that lions eat antelopes. A ‘master morality’ therefore prevailed, and it became meaningless to appeal to any higher law as a defence against such brutal tyranny. For to do so would be, in the Nazis’ naturalistic worldview, akin to telling lions that they should stop being lions.⁴⁵

Acknowledgment

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39. For instance, Carl Schmitt (1888–1985), the famous constitutional law professor at the University of Berlin, supported the emergence of the Nazi power structures because he thought the institutional practices of parliamentary government in the Weimar Republic did not provide for a strong and stable government, and that they were unconvincingly justified by a mere faith in rational discussion and openness. Schmitt, who developed a conception of law in which law and morality are the mere products of a battle for political supremacy between hostile groups, joined the Nazi Party in May 1933. Between 1933 and 1936 Schmitt produced several essays in support of the Nazi regime’s most brutal policies.
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