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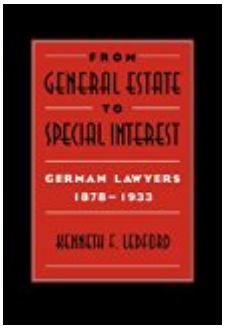
Kenneth F. Ledford. *From General Estate to Special Interest: German Lawyers 1878-1933.* Cambridge: Cambridge University Press, 1996. Ppp. xxv + 351. $49.95 (cloth), ISBN 978-0-521-56031-3.



Reviewed by Jeremy Telman
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K. F. Ledford: From General Estate to Special Interest

Conceptually rich and overflowing with factual detail, Professor Ledford's book provides a sophisticated and exhaustive history of the development of the modern German legal profession. Ledford's lengthy preface situates the book as part of an historiographical movement that has attempted to repair a glaring gap in historical scholarship by investigating the social history of the *Buergertum*. Such scholarship attempts to account for (or dispute) the historical failure that the *Sonderweg* thesis has attributed to that social stratum. While the *Buergertum* no longer can lay claim to the status of a neglected historical subject, Ledford's book sheds new light on this now- familiar subject by highlighting the interaction of legal reasoning – with its focus on procedural fairness – with liberalism in the period from unification to the advent of the Third Reich.

The book's title introduces one of its main themes. Beginning in the mid- nineteenth century, lawyers called for the creation of an independent profession of legal practitioners. Rudolf Gneist's *Freie Advokatur* issued the call for a legal profession free from state control, one that could act as a general estate, protecting the interests of diverse citizens. Not surprisingly the neo-absolutist German territories resisted lawyers' attempts at self-regulation. The legal profession was thus not quickly unified under a single umbrella professional organization. Rather, lawyers joined voluntary bar associations that pursued the *Honoratiorenpolitik* associated with liberal parties and middle-class associations generally. As new social groups joined the legal profession, tensions grew between the rank and file of the profession and the notables who claimed to represent them.

Ledford's second main theme, already indicated in the argument regarding *Honoratiorenpolitik*, links the fate of the legal profession to the fate of liberalism. Lawyers and liberals shared a commitment to procedural fairness, that is, to a body of law that was "general and autonomous, public and positive, aiming at generality in legislation and uniformity in adjudication...." (8). According to Ledford, this "proceduralism" left liberals and lawyers paralyzed when they confronted rivals who had more substantive views of justice. Ledford proposes that liberals generally should draw a lesson from this sad history regarding "the efficacy of procedurally focused liberalism in time of crisis" (xxx).

Between 1877 and 1879, the imperial government promulgated four statutes, to which Ledford collectively refers as the "Imperial Justice Laws." These laws accorded attorneys the independence they sought, enabling every university- trained lawyer who passed the bar exam to join the profession. The result was not, however, the transformation that Gneist had envisioned of the legal profession into the general estate.

Ledford masterfully presents what, given the complexities of pre-unification Germany, could have been a dizzying web of distinctions among different professional or paraprofessional groupings. Ultimately we learn that the profession that aspired to become the general estate was itself divided into factions with disparate interests

and was additionally engaged in the prototypical struggle of professionals aiming to distinguish themselves from competitors who lacked the appropriate credentials.

The most important differentiation among practicing lawyers in the late nineteenth century became the one separating lawyers registered with the district courts from those registered with the superior courts. The former faced increasing competition when the Imperial Justice Laws in 1879 abandoned the numerus clausus. Because litigants did not require representation of counsel in the district courts, lawyers who practiced there were subject to the humiliation of having to argue in court against people representing themselves or against the lay practitioners to whom the lawyers referred as "shysters" (80). Lawyers registered with the superior courts, on the other hand, tended to be members of the socio-economic elite. Although the lawyers of the superior courts dominated professional organizations, they showed little concerned for the economic pressures and social indignities their legal brethren were confronting down below.

Ledford's analysis of his demographic data for Hannoverian lawyers demonstrates why these distinctions between district court and superior court lawyers were so destructive to the legal profession's claims to being a general representative estate. As the profession expanded and careers were opened up to the meritorious sons of industrialists, merchants, and investors, the district court lawyers became a much more geographically and sociologically diverse group. The superior courts, on the other hand, continued to provide home-grown elites a stable income and a relatively impregnable guarantee of power and status. The upwardly mobile district court lawyers begrudged superior court lawyers the deference that the latter had come to expect.

During the Weimar Republic, as liberal *Honoratiorenpolitik* gave way to mass politics, liberals and lawyers suffered numerous political defeats. For lawyers the defeat was both practical and structural. First, as political parties grew increasingly hostile to the liberal elites, lawyers could no longer protect their economic interests with the help of state regulatory systems designed to enhance their power and prestige. Second, the clarity of the lawyers' interests that came under attack resolved any lingering doubts that they might constitute a general estate. Ledford describes the lawyers' defeats in the Weimar years as a product of substantive claims of justice winning out over the lawyers' commitment to proceduralism. The legal profession did not collapse in the face of Nazism because of moral or ethical weakness. Rather, its proceduralism, coupled with its inability to act as a general estate, muffled the legal profession's political voice and exhausted its political power.

Ledford presents compelling and original arguments for the elective affinities between lawyers and liberals and for the common causes of their political defeats. I raise a few questions, however, concerning some of his other claims. I am not persuaded that the legal profession ever appealed to very many people as a possible candidate for the status of general estate. Hostility to lawyers predates the twentieth century. Ledford's statistics on the frequency with which clients lodged official complaints against their lawyers make this clear. Ledford's history of the legal profession also illustrates that divisions within the legal profession did not suddenly arise in the nineteenth century. Ledford's discussions of the non-lawyers who competed with district court lawyers for clients also suggest that there were groups in German society who felt their own interests at odds with those of university-trained lawyers. Certainly lawyers constituted a special interest during the Weimar Republic, but was that really the reason they were unable to mount a unified opposition to Nazism? Were they any less of a special interest during the *Kaiserreich*?

Ledford's analysis is indebted to the *Sonderweg* thesis, and yet his references (always in scare quotes) to the various " 'failures' of liberalism" indicates his ambivalence. Was there really a failure of the procedural model? Was there an alternative model of professional organization that was even conceivable at the time and would have averted this failure? Ledford's suggestion that liberal proceduralism is inadequate in times of political crisis could generate fruitful discussions among those committed to a Rawlsean theory of justice, but the failure of German lawyers to resist Nazism hardly seems attributable to their commitment to a sense of justice, procedural or otherwise.

I register these doubts, yet I do not want to give the impression that the success of Ledford's book hinges on his ability to address them. His book is a pleasure to read. He presents with great clarity and elegance a surprising and provocative argument linking the fate of the legal profession to that of liberalism. In doing so, he has successfully contributed to our knowledge of the history of the *Buergertum* and of its political and professional organization.

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