

The German Courtroom Film During the Nazi Period: Ideology, Aesthetics, Historical Context

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This essay examines the films of the Nazi period concerned with questions of justice and the administration of the law. It traces the ways in which law films developed prior to the Nazi era. It notes the apparent paradox of the Nazi obsession with questions of justice, law, and legality which are found in their strictly controlled film output. The use of film as a mass propaganda weapon affected legal subjects and this can be seen as a means of creating consensus. This centred on the role of the state in creating a system which allowed the individual to be integrated into the mythical folk community. Those who threatened this social cohesion were depicted as threats to the common sense of ordinary people and this stretched from propaganda films into comedies.

INTRODUCTION

The Nazi period offers a rich field for a study of the representation of law in film. Between 1933 and 1945 about 1,100 feature films were released, and a substantial number of these are more or less explicitly concerned with questions of justice and the administration of the law. But this is a problematic which has attracted little critical interest from both law and film historians.

I was first confronted with this issue a few years ago, while collecting material for a paper on German *Gerichtsfilm* (courtroom film) 1930–1960 that had been commissioned for a conference.¹ I was surprised to find that there existed no critical study on the subject. More irritatingly, the German

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1 P. Drexler, 'Der deutsche Gerichtsfilm 1930–1960. Annäherungen an eine problematische Tradition' ('German courtroom film 1930–1960: an approach to a problematic tradition') in *Verbrechen – Justiz – Medien. Konstellationen in Deutschland von 1900 bis zur Gegenwart (Crime – justice – media. Constellations in Germany from 1900 to the present)*, eds J. Linder and C.M. Orth (1999).

word *Gerichtsfilm*, as it occasionally cropped up in manuals and film histories, appeared to be an extremely elusive and fuzzy term, with no precise definition and with no clear demarcation from related terms such as *Kriminalfilm*, *Detektivfilm* or *Gerichtsmilieu*film (films with a legal setting), and often subsumed under other categories such as *Propagandafilm*, *Problemfilm*, or *Tendenzfilm*; in short: nothing to pin it down as an identifiable genre with a history and a canon of established texts. The reasons for this critical neglect and terminological confusion, as I found out, are quite complex.

Everyday use of the word *Gerichtsfilm* seems to raise no serious problems. When you confront colleagues or students with the term, they will tell you that this is a type of film which is mainly set in a courtroom and predominantly concerned with legal procedure. They invariably come up with titles of American feature films such as *Witness for the Prosecution*, *Twelve Angry Men*, or *Judgment at Nuremberg* or of popular American and German TV courtroom series, the latter often oriented towards American models.²

Much of this attraction derives from elements of American legal procedure that have become staple features of the American courtroom film: spirited exchanges between the prosecution and the defence, aggressive cross-examination of witnesses, trial by jury, the role of the judge as a kind of referee in a match between contending parties, the examination of evidence in the courtroom, and other 'dramatic' elements which have ensured the lasting popularity of this film genre.

The 'undramatic' character of German legal procedure, which is inquisitorial rather than adversarial and therefore cinematically less attractive, may account for the low generic profile of German courtroom film from its beginnings in the 1920s. Even films which can serve as key examples to establish a German tradition of this genre, such as Richard Oswald's *Dreyfus* (1930), Wolfgang Liebeneiner's *Ich klage an* (*I Accuse*, 1941), Erich Engel's *Die Affäre Blum* (*The Blum Affair*, 1948), Wolfgang Staudte's *Rosen für den Staatsanwalt* (*Roses for the Prosecutor*, 1959) and *Der letzte Zeuge* (*The Last Witness*, 1960), Hark Bohm's *Der Fall Bachmeier – Keine Zeit für Tränen* (*The Bachmeier Case – No Time for Tears*, 1984), Roland Suso Richter's *Nichts als die Wahrheit* (*After the Truth*, 1999), cannot be termed courtroom films in the American sense because in many of these films the courtroom is not the main locus of action and conflict, but usually provides the setting for one or several climactic scenes in a narrative which is otherwise concerned with various aspects of

2 This is a point which has recently been made by S. Machura and S. Ulbrich, who argue that German cinema and television audiences in their viewing habits as well as in their everyday perception and knowledge of the law and of courtroom procedure are deeply influenced by U.S. productions: 'Recht im Film: Abbild juristischer Wirklichkeit oder filmische Selbstreferenz?' ('Law in film: realistic representation of the law or filmic self-reference?') (1999) 20 *Zeitschrift für Rechtssoziologie* 168.

legal procedure and criminal investigation. 'Legal film', then, would seem to be a more appropriate term for this German variant of courtroom film, but I shall stick to the latter term because it has become common usage.³

THE EMERGING PARADIGM OF GERMAN COURTROOM FILM: THE LESSONS OF THE WEIMAR PERIOD

To understand the ideology and the aesthetics of the courtroom film during the Nazi period, and further, to understand the obsession with questions of justice, law, and legality which permeates Nazi film as a whole, we must examine its historical antecedents: film culture and film politics of the late 1920s and the early 1930s. Weimar film, in particular during the years immediately preceding the Nazi takeover, reflects the social conflicts and political upheavals of the time in a wide spectrum of *Tendenzfilme* that seek to solicit support for a variety of causes. In many of these films the law figures as a symptom or as a symbolic representation of a corrupt state of society. This is most obvious in films with a communist background such as Fjodor Ozep's *Der lebende Leichnam* (*The Living Corpse*, 1929), Slatan Dudow's *Kuhle Wampe* (1932), Hans Tintner's *Cyankali* (1930), or Piel Jutzi's *Mutter Krausens Fahrt ins Glück* (*Mother Krause's Trip to Happiness*, 1929), which contain dramatic courtroom scenes, in which the law is represented as an instrument of class justice and social oppression.

Some of the most famous films of the late Weimar period, Fritz Lang's *M* (1931), Richard Oswald's *Dreyfus* (1930), and Hans Behrendt's *Danton* (1931), offer interesting examples of a close interrelation of political and legal discourses, which can be read as ominous signs of the times, that is, approaching fascism. All of these films evoked highly controversial responses because of the issues they addressed and the cinematic means they employed, and this becomes particularly evident in their highly effective use of courtroom scenes.

Oswald's film reconstructs the famous case of the Jewish captain Alfred Dreyfus who was sentenced to lifelong deportation for high treason in 1894 and acquitted eleven years later, after a bitter political and legal struggle that deeply divided France. Reviving this notorious case of a political miscarriage of justice in the politically charged climate of the early 1930s was clearly a signal, a plea for the republic, against militarism,

3 Another reason for the obscurity and critical neglect of German courtroom film is that German film historians, unlike their British and American colleagues, shun the category of genre, which they associate with the standardizing tendencies of Hollywood film. See, for example, J. Schweinitz, "'Genre" und lebendiges Genrebewußtsein. Geschichte eines Begriffs und Probleme seiner Konzeptualisierung in der Filmwissenschaft' ("Genre" and concrete awareness of genre. On the history of a term and its conceptualisation in film studies') (1994) 3 *montage/av. Zeitschrift für Theorie & Geschichte audiovisueller Kommunikation* 99.

totalitarianism, and anti-Semitism, and the parallels to the then current political situation were unmistakable.⁴ Oswald conceived the film as a theatrically 'staged' historical document, designed to bring the past back to life and call it to account before the 'judgment seat of the present',⁵ arranged in a series of miniature scenes and large historical tableaux. The latter are remarkable especially for their extended courtroom scenes, which carry the political message of the film. The most impressive and pathetic of these is the trial against Émile Zola, after his famous 'J'accuse' article in the journal *L'Aurore*. The French novelist is played by Heinrich George, a prominent actor with communist sympathies, who later played equally prominent roles in films of the Nazi period (including courtroom films!). He has the most memorable appearance when he defends himself against the accusation of libel and turns the courtroom into a tribunal of a higher justice which will one day prove him right: 'Condemn me, gentlemen. One day, the Republic will thank me for defending its honour.'

In a similar fashion *Danton* expresses a political message for the present in the confrontation of two conflicting attitudes toward the revolution: that of Danton and his adversary, Robespierre, (that is, humane, democratic versus totalitarian, terrorist) in a series of theatrical tableaux, from the storming of the Bastille to Danton's execution, and again, the political message is effectively expressed in two long courtroom scenes (the trial of Louis XVI and that of Danton).

In comparison with these historical films Fritz Lang's *M* contains a far less direct and tangible reference to contemporary issues, even though in the film's conception Lang had been inspired by famous contemporary murder cases (Haarmann, Kürten) and despite the 'humane' concern for the sex offender in the famous underworld tribunal scene by his 'defence' who argues for his diminished responsibility (s. 51 of the German penal code) and ensures that he is tried before a regular court. What is remarkable about *M* is the ambivalence of its legal, and implicitly political discourse. In its sympathies the film oscillates throughout between the forces of order and those of anarchy. The most obvious instance is the hunting down of the murderer by the combined efforts of the police and the criminals. The use of parallel editing gives this sequence an air of complicity. This ambiguity is also intensified with the abrupt transition from the underworld tribunal to the courtroom in the final scene, where the judge prepares to read the verdict to an audience of women mourning their dead children. With this open ending, *M* points to a corruption of values, which throws a sombre light on Germany on the eve of fascism.

4 For the highly emotional and controversial reception of this film, see H. Korte, *Der Spielfilm und das Ende der Weimarer Republik (Feature film and the end of the Weimar Republic)* (1998) 267–78.

5 G. Dahlke and G. Karl (eds.), *Deutsche Spielfilme von den Anfängen bis 1933 (German feature films from the beginnings to 1933)* (1988) 227.

I have singled out these films because they indicate an extraordinary awareness of the narrative potential of legal procedure for cinematic representation. This applies above all to their use of the courtroom as a locus of dramatic confrontation and conflict to make a political statement or expose a critical state of society. Can we though call them courtroom films?

Contemporary reception appears to have focused on other – more obvious – thematic aspects.⁶ From the evidence of these and other *Tendenzfilme* of the period, then, we must conclude that legal procedure and courtroom scenes are not elements defining a film genre but rather transgeneric categories which represent the law as a thematic complex at the interface of political culture, social debate, and civil society, which is regularly invoked or questioned as a symbolic agency of order and legitimacy.

There are, however, other films during the late Weimar period with a more specific legal focus; and they constitute the matrix of an emerging genre of courtroom film. A comparatively large group of these is directed towards specific reforms of the penal code or of legal practice, for example, incest: § 173 *Blutschande* (s. 173 *Incest*, James Bauer, 1929); perjury (s. 154): *Meineid* (*Perjury*, Georg Jacoby, 1929); abortion (s. 218): *Das Recht der Ungeborenen* (*The Right of the Unborn*, Adolf Trotz, 1929); circumstantial evidence: *Voruntersuchung* (*Examination of Prisoners*, Robert Siodmak, 1931); prison reform: *Geschlecht in Fesseln* (*Sex in Fetters*, Wilhelm Dieterle, 1928). Other films are based on spectacular court cases, for example, the Scheller-Krantz-case of 1927/1928: *Jugendsünden* (*Sins of Youth*, Carl Heinz Wolff, 1929); *Jugendtragödie* (*Youth Tragedy*, Adolf Trotz, 1929), and *Verirrte Jugend* (*Lost Youth*, Richard Löwenbein, 1929).

To assess the scope and generic character of this large body of films would require massive research. Histories of Weimar cinema, which are mostly concerned with the ‘canonical’ films of the period, are quite unhelpful on this subject.⁷ For an assessment of the enormous bulk and variety of German film production during these years Gero Gandert’s work is relevant. The first volume of his manual *Der Film der Weimarer Republik* (1993), designed to document the annual production and reception of German film between 1919 and 1933, focuses on the momentous year 1929, which also marks the transition from silent to sound film. Of the 219 German feature films released during that year, there are more than thirty with a marked legal content. Judging from the critical reception as documented by Gandert, most of these films can be dismissed as banal, melodramatic, or sensational, designed to exploit a popular interest in contested legal issues or

6 In the case of *Dreyfus*, for instance, the ‘espionage’ and ‘documentary’ aspects were used as generic terms. See Korte, op. cit., n. 4, pp. 267, 273; in the case of *Danton*, the term ‘historical film’ was used (Korte, id., p. 294).

7 S. Kracauer, for instance, in his famous history of Weimar film, *From Caligari to Hitler: A Psychological History of the German Film* (1947) ch. 12, has only a few dismissive remarks on these films, which he thought only served as a kind of ‘safety valve’ for social discontent.

in contemporary *causes célèbres*, but their very bulk and the regularity with which they feature courtroom scenes and elements of legal procedure indicate that by the end of the 1920s there existed a large matrix of feature films, in which the law and its administration figures as a critical focus of political, legal, sensational, and melodramatic discourses.

The advent of sound film is another factor that may help to explain the popularity of courtroom subjects during these years. In his comprehensive history of film Jerzy Toeplitz has an instructive chapter on the use of theatrical models in the early 'talkies'.⁸ He singles out crime stories and courtroom scenes as ideal vehicles for the creation of suspense and dramatic effects through concentration on dialogue and on single, isolated settings. This vogue was also supported by the existence of courtroom plays, which easily lent themselves to adaptation. This temporary return to theatrical models led to an early vogue of 'talkie trials' in the United States of America, which mark the origins of the popular genre of American courtroom film. Toeplitz briefly discusses parallel developments in German film of the late 1920s and early 1930s, concentrating on the criticism of 'photocopied theatre' in Oswald's *Dreyfus*, which he interprets as typical of German criticism of 'theatricality' in early sound film. Siegfried Kracauer, the acutest film critic of the Weimar period, is a case in point. Examining his reviews from 1929 to 1932, when sound film made its breakthrough in Germany, one notes that his most scathing criticism was reserved for the 'stageyness' of many productions making use of the new technology,⁹ notably those dealing with crime or courtroom subjects.¹⁰ Two reviews, in particular, deserve attention because they contain the gist of his critical argument and a rudimentary recognition of the generic character of courtroom film. In his review of Gustav Ucicky's legal comedy *Hokuspokus* (1930), which was based on a play by Curt Goetz, he takes issue with the closeness of the filmscript to the dramatic original, and with the courtroom setting of most of the action, which he denounces as 'theatre dragged onto the screen'.¹¹ In contrast, Fjodor Ozep's *Der Mörder Dimitri Karamasoff* (*The Murderer Dimitri Karamasov*, 1931) is praised as the first German sound film which can bear critical comparison with the masterpieces of silent film because the literary subject – the crime story and legal plot of the novel – has been adequately translated into filmic language and dialogue has been subordinated to visual expression.¹²

8 J. Toeplitz, *Geschichte des Films (History of Film)* (1987, reprint) ch. 38.

9 Reprinted in appendix 2 of the German translation of *From Caligari to Hitler, Von Caligari zu Hitler. Eine psychologische Geschichte des deutschen Films* (1979) 409–567.

10 See, especially, *id.*, pp. 437–42, 464, 480–3, 498–500.

11 *id.*, p. 438.

12 *id.*, pp. 480–3. It is noteworthy that Kracauer in this review singles out the prototype of American courtroom film, *The Trial of Mary Dugan* (1928) as a negative example, because of its reliance on dialogue and its exclusive setting in a courtroom.

Weimar film, it can be said in conclusion, in many ways prepared the ground for the courtroom films made in the Nazi period, cinematically, by providing narrative models and generic conventions of representing the law, and thematically, by focusing on issues which lent themselves to a variety of political, sensational, and satiric uses.

PROPAGANDA AND ENTERTAINMENT: REPRESENTATIONS OF THE LAW IN NAZI FILM

The Nazi takeover of 1933 marks a decisive break in German film culture as far as total political control of the whole process of film-making is concerned. This is a well known story, often recounted, from Gerd Albrecht's positivistic account *Nationalsozialistische Filmpolitik* (1969) to Eric Rentschler's lucid study *The Ministry of Illusion: Nazi Cinema and Its Afterlife* (1996). 'Film played a central role in the operations of the Ministry of Propaganda,' Rentschler argues:

serving as a mass mobilizer and an ideological weapon. The NSDAP sought to permeate all sectors of daily life. It 'coordinated' institutions and organizations, purging the film world of Jews, socialists, Communists, and anyone else it deemed objectionable or untrustworthy. The Ministry of Propaganda evaluated film scripts, oversaw activities in the various studios, checking each finished production carefully, determining how films were to be advertised and reviewed, deciding which works warranted official recognition. Almost every feature made during the period must therefore be understood as the reflection of party structures and strategic priorities.¹³

This break, however, did not entail a radical change in film aesthetics and subject matter. More recent studies have stressed the aspect of continuity between Weimar and Nazi cinemas,¹⁴ pointing to the fact that the vast majority of films released between 1933 and 1945 were 'unpolitical' generic productions, following established formulas, almost half of them comedies and musicals, and only about 100 of them manifest propaganda films. But it is precisely in the deceptively 'unpolitical' character of this massive output of entertaining, escapist films, as more recent studies on the aesthetics of Nazi film have shown, that the main political essence and ideological thrust of Nazi film is to be located.¹⁵

13 E. Rentschler, *The Ministry of Illusion: Nazi Cinema and Its Afterlife* (1996) 8.

14 Apart from Rentschler's study, see, especially, Korte, op. cit., n. 4, and K. Kreimeier, 'Von Henny Porten zu Zarah Leander. Filmgenres und Genrefilm in der Weimarer Republik und im Nationalsozialismus' ('From Henny Porten to Zarah Leander. Film genres and genre film in the Weimar Republic and in National Socialism') (1994) 3 *montage/av. Zeitschrift für Theorie & Geschichte und audiovisueller Kommunikation* 41.

15 Again, Rentschler's study must be mentioned. See, further, S. Lowry, *Pathos and Politik. Ideologie in den Spielfilmen des Nationalsozialismus (Pathos and politics. Ideology in the feature films of National Socialism)* (1991) and K. Witte, *Lachende*

Representations of the law in these films, as we shall see, have an important function of creating consensus, both in 'unpolitical' and in propaganda films. Generally, many films of the Nazi period bespeak an immense preoccupation, in fact obsession, with questions of justice and legitimacy, and in this they mirror the perverted Nazi habit of justifying and legitimating the most monstrous political measures, from the *Ermächtigungsgesetz* (law of emergency) of 1933 to the *Sonderstrafrechte gegen Fremdvölkische* (special laws against aliens) and *Reichsbürgerrechte* (citizenship laws) of the 1940s, which prepared the way for the murder of the Jews.

Representation of the law in film, as we have seen in the case of Weimar cinema, is rarely concerned with a realistic depiction of legal procedure or with a serious critique of existing laws. This is even more so with Nazi film, which uses the law in various functions: to demonstrate the 'humane' and 'benevolent' character of the political system, or to lead the erring individual back into the *Volksgemeinschaft* (folk community), to propagate the efficiency and security of the law system, thus glossing over the actually existing perversion of the law, or, by contrast, to denounce foreign law systems for propagandistic purposes.

Film historians have neglected this important field of ideological conditioning, partly because the representation of law in many films is quite imperceptibly interwoven with other issues, partly because – for example, in the case of openly propagandist films – the political issues addressed have been the central focus of critical attention. Above all, the legal problematic in most of these films has not been considered worth separate consideration, let alone reflection of their generic status.¹⁶

Alfred Bauer's manual, *Deutscher Spielfilm Almanach 1929–1950* (1950) lists a growing number of *Gerichtsmilieu*-films during the period under consideration. Whereas from 1933 to 1937 only about one film a year came under that category, in the years 1938 to 1945 some four to five films were listed annually. However vague that category may seem, it indicates a growing attention on the part of the Ministry of Propaganda to the ideological uses of legal subjects in feature films. This is certainly the case with the production of crime films, as Drewniak points out (who makes no distinction between crime and courtroom films).¹⁷ After 1938 this took the form of an increasing political control of the production of crime films,

Erben, Toller Tag. Filmkomödie im Dritten Reich (Laughing Heirs, Wonderful Day. Film Comedy during the Third Reich) (1995).

16 G. Albrecht in his *Nationalsozialistische Filmpolitik. Eine soziologische Untersuchung über die Spielfilme des Dritten Reichs (National Socialist film politics. A sociological survey)* (1969) 164 ff., lumps together films dealing with '*Rechtspflege und Kriminalität*' (crime and the administration of the law). B. Drewniak in *Der deutsche Film 1938–1945. Ein Gesamtüberblick (German film 1938–1945. A survey)* (1987) 423–32, uses the term 'Kriminalfilm' to cover the entire field. Rentschler, op. cit., n. 13, p. 7 only mentions 'detective films and adventure epics'.

17 Drewniak, id.

which were supposed to foreground the investigatory function of the police in their 'service for the people'. Frequently, this required the consultation of police authorities in the production of crime films. This growing concern may also account for the increased focus on legal subjects and legal procedures in crime films, which were to emphasize the model function of the Nazi system of criminal justice and hence came under the influence of the Ministry of Justice. From 1943 onward, according to Drewniak:

every film script which had been submitted to a production company had to be sent to the press officer of the *Reichsjustizministerium* for inspection, if it was concerned in any respect with questions of the law and its administration.¹⁸

It can be inferred from such measures that the increase of *Gerichtsmilieu*-films after 1938 indicates a growing need to legitimate and stabilize the system through films.

The *Gerichtsmilieu*-films of that period can be roughly categorised as follows:

- (i) legal comedies, for example, *Der Maulkorb* (*The Muzzle*, Erich Engel, 1938); *Kleines Bezirksgericht* (*Little District Court*, Alwin Elling, 1938); *Das Ekel* (*The Creep*, Hans Deppe, 1939); *Der Gasmann* (Carl Froelich, 1941); *Venus vor Gericht* (*Venus in the Dock*, Hans H. Zerlett, 1941), and *Ich bitte um Vollmacht* (*I Request Power of Attorney*, Karl Leiter, 1944);
- (ii) hybrid films containing both elements of crime investigation and courtroom procedure, such as *Der Fall Deruga* (*The Deruga Case*, Fritz Peter Buch, 1938); *Dr. Crippen an Bord* (*Dr Crippen on Board*, Erich Engel, 1941); *Der grosse Preis* (*Grand Prix*, Karl Anton, 1944), and *Der Verteidiger hat das Wort* (*The Counsel for the Defence's Address*, Werner Klingler, 1944);
- (iii) legal melodramas such as, for example, *Ich verweigere die Aussage* (*I Refuse to Give Evidence*, Otto Linnekogel, 1939); *Roman eines Arztes* (*A Doctor's Story*, Jürgen von Alten, 1939), and *Die schwarze Robe* (*The Black Robe*, Fritz Peter Buch, 1944);
- (iv) 'problem' (that is, propaganda) films with courtroom scenes such as *Jud Süß* (*Jew Süß*, Veit Harlan, 1940) and *Ich klage an* (*I Accuse*, Wolfgang Liebeneiner, 1941); and
- (v) a singular instance of an American-type courtroom film, *Sensationsprozess Casilla* (*Sensation Trial Casilla*, Eduard von Borsody, 1939).

This wide spectrum of films focusing on legal subjects and courtroom procedure indicates an acute awareness of the propagandistic potential of the law, and this applies to both openly propagandistic and to 'innocuous' and merely 'entertaining' films.

18 id., p. 429.

PROPAGANDA AND THE LAW

One of the most effective measures of exerting political control over the production and reception of film was a highly differentiated rating system,¹⁹ and the rating '*staatspolitisch besonders wertvoll*' (politically especially worthwhile) would suggest that films which were distinguished as such, were films with a political tendency and singled out to convey an 'educational' message in confirmation of the Nazi *weltanschauung*. In many cases these films were produced, and this applies above all to the initial phase of the Third Reich, when the regime needed to stabilize itself, to support and explain the necessity of a number of new laws and regulations: for example, the *Reichsarbeitsdienstgesetz* (law introducing compulsory labour service for young men), the *Gesetz für den Aufbau der Wehrmacht* (law introducing general conscription), and the *Gesetz zum Schutze des deutschen Blutes und der deutschen Ehre* (law for the protection of German blood and honour, that is, the Nuremberg Race Laws), all passed in 1935. According to Klaus Kanzog, the following films were made in support of these laws: *Ich für dich – Du für mich* (*I for You – You for Me*, Carl Froelich, 1934), *Hermine und die sieben Aufrechten* (*Hermine and the Seven Upright Men*, Frank Wysbar, 1935), *Der höhere Befehl* (*The Higher Command*, Gerhard Lamprecht, 1935), *Pour le Mérite* (Karl Ritter, 1938), *D III 88* (Herbert Maisch, 1939), and *Jud Süß* (*Jew Süß*, Veit Harlan, 1941).²⁰ What is remarkable about these openly propagandist films is that in a substantial number of them the law is invoked as an authority or tribunal to arbitrate the contending norms and ethical positions they thematize in the framework of Nazi legal ideology. Quite often this takes the form of highly dramatic courtroom encounters in which the political message of these films finds its clearest articulation.²¹

One film, which deliberately was not given the rating 'politically especially worthwhile' but 'only' that of 'artistically especially worthwhile' ('*künstlerisch besonders wertvoll*') in order to camouflage its propagandistic

19 See K. Kanzog, '*Staatspolitisch besonders wertvoll*'. *Ein Handbuch zu 30 deutschen Spielfilmen der Jahre 1934 bis 1945* ('*Politically especially worthwhile*'. *A handbook of 30 German feature films of the years 1934 to 1945*) (1994) and U. von der Osten, *NS-Filme im Kontext sehen!* '*Staatspolitisch besonders wertvolle*' *Filme der Jahre 1934–1938* (*Looking at NS-films in context. 'politically especially worthwhile' films of the years 1934–1938*) (1998).

20 Kanzog, id., p. 33. Kanzog mentions a number of other films which were made to support administrative and political measures, for example, *Verräter* (*Traitors*, Karl Ritter, 1936), which supported the founding of the *Volksgerichtshof* (People's Court) in 1934 as a special court dealing with political offences.

21 See, for instance, *Der alte und der junge König* (*The Old and the Young King*, Hans Steinhoff, 1935), *Das Mädchen Johanna* (*The Girl Johanna*, Gustav Ucicky, 1935), *Wenn wir alle Engel wären* (*If We All Were Angels*, Carl Froelich, 1936), *Patrioten* (*Patriots*, Karl Ritter, 1937), and the already mentioned *Verräter*, *Pour le Mérite*, and *Jud Süß*.

message, was Wolfgang Liebeneiner's *Ich klage an* (*I Accuse*, 1941). This film had been commissioned by the government with the intention of soliciting acceptance in the population for a law regulating 'euthanasia' and thus legalizing the ongoing practice of exterminating those 'unfit to live', that is, people suffering from mental illnesses.²² In the 'euthanasia' bill the legalization of the offence '*Tötung auf Verlangen*' (mercy killing) had been coupled with that of the elimination of the mentally ill. This double objective is subtly woven into the propagandist argument and into the plot of the film. *Ich klage an* is about a young woman, Hanna Heydt, who is suffering from multiple sclerosis. In the terminal stage of her illness, she entreats two doctors to give her a lethal injection: the family doctor, Dr Lang, who refuses, and her husband, who finally complies with her wish. Dr Lang, whose decision is based on ethical and legal considerations, it turns out, has for the same reasons saved the life of a child suffering from meningitis who is now reduced to an existence of vegetating 'blind, deaf, and idiotic' in an asylum. Shaken by the consequences of his 'failure' after a visit to the asylum and the confrontation with the child's despondent parents, Dr Lang undergoes a dramatic change of heart. Professor Heydt, Hanna's husband, now faces a charge of murder. At the trial several witnesses are examined, but no light is shed on the deed of Professor Heydt, who remains silent about his motives. Dr Lang makes a belated appearance in the witness stand, still shocked by the consequences of his treatment of the child whom he has 'saved'. He confesses his double moral 'guilt' in that case and in the case of Hanna Heydt. This statement clears the accused of the charge of murder and opens the way for a commutation of the charge of murder into that of a mercy killing (s. 216 of the penal code). Professor Heydt, however, now gives up his reticence and turns the court into a tribunal against the existing state of legislation by delivering a passionate address to the court:

I accuse a statute which prevents doctors and judges from fulfilling their duties towards the people. For that reason I do not wish that my case be hushed up. I want my verdict. It will be a signal, it will be a clarion call.

Here the film ends, leaving the audience to ponder about the existing state of the law. This is a very effective finale to a film which skilfully orchestrates the audience's sympathies from the very beginning. The open ending in the manner of Fritz Lang's *M* and the rhetoric of the accused who turns the tables on the court with his 'I accuse' in the manner of Zola's famous harangue in Oswald's *Dreyfus* show that Liebeneiner has learned the lesson of Weimar film.

22 See the documentation of the genesis of this film in D. Traudisch, *Mutterschaft mit Zuckerguß? Frauenfeindliche Propaganda im NS-Spielfilm (Sugar-coated motherhood? Misogynist propaganda in NS-feature film)* (1993) 102–6.

TWO VERSIONS OF JUSTICE: *SENSATIONSPROZESS CASILLA* AND
DER VERTEIDIGER HAT DAS WORT

This applies not only to Weimar models but also to other traditions. Eduard von Borsody's *Sensationsprozeß Casilla* is a singular case in the history of Nazi film because it perfectly imitates and parodies the genre of American courtroom film, which by the 1930s had become established as a popular genre.²³ Released during the last weeks before the outbreak of World War II, the film is an interesting document of Goebbels's culture war against Hollywood.²⁴ Heinrich George, who had eloquently argued the cause of liberty and democracy as Émile Zola in Oswald's *Dreyfus*, now plays a cunning American attorney, Vandergrift, who defends a German citizen in a United States court against the charges of kidnapping a child. Witnesses who are either unreliable or bribed, an ambitious and corrupt prosecutor, an overbearing, erratic judge, a gullible jury, aggressive and unfair cross-examinations of witnesses, fabrication of evidence, and a sensational coverage of the case in the media – all this adds up to a devastating panorama of American society, where public opinion is made by the press and the law degenerates to a marketable commodity, which is only accessible to those who can pay for it. This is the gist of the defendant's final address to the court, which nearly seals his fate. It is only through a retrial that the clever attorney can save him from the death penalty.

Sensationsprozeß Casilla is also remarkable for its intimate knowledge of American law and courtroom procedure, and its ability to exploit those elements of the American system that would make it appear most vulnerable and alien to a German audience: the 'negotiable' character of justice, the adversarial character of legal procedure, and the power of the media in shaping public opinion.²⁵

In 1944 Heinrich George again played the role of a lawyer, this time a German lawyer, Justizrat Jordan, in Werner Klingler's *Der Verteidiger hat das Wort*. The subject of this film is the murder of a woman, as it turns out the divorced wife of Justizrat Jordan's prospective son-in-law, the accused. The professional ethics of the German lawyer contrasts strongly with that of his unscrupulous American counterpart in *Sensationsprozess Casilla*. He only takes up a case when he is convinced of the innocence of the accused.

23 M. Kuzina, *Der amerikanische Gerichtsfilm. Justiz, Ideologie, Dramatik (American courtroom film. Law, ideology, drama)* (2000) 16.

24 See M. Spieker, *Hollywood unterm Hakenkreuz. Der amerikanische Spielfilm im Dritten Reich (Hollywood under the swastika. The American feature film during the Third Reich)* (1999).

25 There are other films of the period, where foreign law systems are criticized, for example, *Dr Crippen an Bord (Dr Crippen on Board)*, Erich Engels, (1942), *Der Kaiser von Kalifornien (The Emperor of California)*, Luis Trenker, (1936), *Zu neuen Ufern (To New Shores)*, Detlef Sierck, (1937), *Der Fuchs von Glenarvon (The Fox of Glenarvon)*, Max W. Kimmich, (1940).

'Justice and law' he considers to be something 'holy', a 'service for the community'. The trial itself, as it unfolds in the final scenes of *Der Verteidiger hat das Wort*, with its sober dignity and static calm, contrasts sharply with the hectic atmosphere in the American courtroom of *Sensationsprozess Casilla*. The judge, a humane, almost fatherly figure, who has a firm grasp of the proceedings, a prosecutor who is persistent but fair, a brilliant counsel for the defence, whose summing-up of the case leaves no doubt about the innocence of his client and convicts the real murderer. All this presents an entirely falsified state of criminal justice under National Socialism, which is in sharp contrast to the grim reality during the last years of the war. At this time, tens of thousands were convicted and executed under the jurisdiction of *Sondergerichte* (special courts) under the statutes of an increasingly dehumanized criminal law.

MUZZLED LAUGHTER: THE USES OF LEGAL COMEDY

Is there any government in the world which rewards those who teach people to laugh and present them with a smile? ... Three years ago, many people in Germany thought that now they had no more reason to laugh. They were right! ... The humour of these times [i.e. the Weimar years] was artificial, the jokes were obscene, the merriment full of innuendo. In our new Germany you can have a real laugh.

This is a passage from a review of Carl Froelich's popular legal comedy, *Wenn wir alle Engel wären* in the *Lichtbild-Bühne* of 19 October 1936.²⁶ It is quite revealing because it offers a good description of the function of laughter in the innumerable film comedies made during the Third Reich. The laughter evoked through these films is very much a controlled reaction, a 'muzzled' laughter, to borrow the title of one of the most popular comedies of these times, *Der Maulkorb* (*The Muzzle*). Laughter, thus understood, means a temporary loosening of control, which can be the source of various complications, pranks, and misdemeanours, to let off steam, as it were, but finally, the lid is firmly placed on the kettle again and order restored. Legal comedy is the ideal medium to produce this sort of laughter.

The typical heroes of Nazi legal comedy are ordinary people who, through foolishness, ignorance, or carelessness, get into conflict with the law. Invariably, they end up in a courtroom, where justice is administered leniently, and punishment takes the form of ridicule and correction. Carl Froelich's *Der Gasmann* is a good example. In this film Heinz Rühmann, one of the most popular comedians of the time, is cast as a minor official who inadvertently finds himself in possession of a large sum of money. He fails though to report this to the authorities and subsequently plunges into a

26 Quoted by F. Courtade and P. Cadars, *Geschichte des Films im Dritten Reich* (*History of Film in the Third Reich*) (1975) 268.

series of amorous and financial adventures, which terminate in a law court. It turns out, however, that he has, mainly through foolishness and timidity, committed no actual crime, and he is cleared when like a *dea ex machina* a mysterious lady appears in the witness stand, the mistress of the owner of the money, who wants to stay anonymous, to give evidence. This clears the accused, and the case dissolves in general laughter. Nevertheless there is a constant threat of punishment, which permeates the whole film, and this also applies to the representation of the law. The initial strictness of the judge and the prosecutor during the trial gradually give way to good humour and leniency, thus indicating that the law with all its severity is a just and humane institution, which can distinguish between human weakness and criminal behaviour.

There are several other legal comedies which conform to this pattern. Erich Engels's *Der Maulkorb* is about an over-solicitous prosecutor who investigates an offence which he himself has committed while in his cups and has entirely forgotten: he has put his dog's muzzle on the head of a statue of his sovereign after a convivial evening with his friends. In court, when the truth comes out, he is saved, however, by a series of accidents and legal tricks. Carl Froelich's *Wenn wir alle Engel wären* again features Heinz Rühmann as a minor civil servant who through his own carelessness and ignorance faces a charge of theft and is saved in the nick of time by the sudden appearance of a witness who exonerates him. There are rare cases when somebody does receive a sentence in a legal comedy. This though usually takes the form of a mild punishment, designed to correct and 'educate' the culprit, as in Hans Deppe's *Der Ekel*. In this film a notorious grumbler is charged with insulting an official and sentenced to a short term in prison, which will give him time to think over his role in the community.

SOME CONCLUSIONS

Legal comedies of the Third Reich show us the discrepancy between the reality of the law and its presentation in film at its most glaring because they suggest a 'normality' and ordered state of society which is regulated by transparent and humane administrative acts and procedures. They acknowledge the potential of chaos and anarchy in everyday life and its laughable and ridiculous aspects. They allow escapades or subversive fantasies of wish-fulfilment, but only to the point where such behaviour becomes a danger to the supposed interests of the community. It is this double character of the law, the humane and reassuring presence of order, and the constant threat of the power to control and punish, that makes legal comedy so effective as a medium of ideological control. In a general sense, this applies to the whole spectrum of films with legal subjects that were made during the Third Reich. The ubiquity of the law and its agents in Nazi

films²⁷ conveys an idea of its presence in everyday life, which appears to be self-evident and suggests a 'natural' state of things. In this function, these films present anything but a realistic or documentary evidence of the actual state of the law during the Third Reich, but a perverted image and a camouflage of its reality.

To get a glimpse of this reality we must turn to other films, for instance *Verräter vor dem Volksgerichtshof* (*Traitors before the People's Court*), a documentary of the trial of the officers and civilians involved in the attempt on Hitler's life on 20 July 1944. At Hitler's order, this film was to be shown in all German cinemas, in order to deter, intimidate, and morally destroy the opposition. This, however, proved impossible because of the psychopathic, farcically authoritarian conduct of the trial by the president of the Volksgerichtshof, Roland Freisler, who from the beginning gave the accused no chance to defend themselves and left no doubt about the death sentences they would receive. Since this would not have deceived even the most gullible and uncritical audience about the true character of this trial, the film was declared a '*Geheime Reichssache*' (Official Secret) and only given screenings to selected circles of party officials.²⁸

It is this discrepancy between the reality of the law and its representation in film which makes it necessary to study the courtroom films of the period because it helps to understand the nature of Nazi rule and its fascination for many, a power which was not just the cynical and brutal exercise of force and terror, but one that was assisted and made possible by the power of images.

27 I suspect that there are hundreds of films of various genres made during the Third Reich that feature elements of legal procedure or contain courtroom scenes. Here is a random selection of three films from my own recent viewing. *Der Fuchs von Glenarvon* (*The Fox of Glenarvon*, Max W. Kimmich, 1940), a historical propaganda film set in Ireland, contains a highly dramatic scene of 'popular' justice, in which a traitorous English Justice of the Peace is condemned to death by the Irish peasants he has betrayed. *Paradies der Junggesellen* (*Bachelors' Paradise*, Karl Hoffmann, 1939), a musical comedy in praise of marriage, begins and ends with a courtroom scene. *Zu neuen Ufern* (*To New Shores*, Detlef Sierck, 1937), a melodrama set in Australia, has the heroine in the dock of an English law court in an early scene of the film, facing a charge of forgery, which she has not committed.

28 H. Kramer, '*Filme zur NS-Justiz*' ('*Films about the NS system of justice*') (1984) 17 *Kritische Justiz* 301–3. It is interesting that this article, written by a jurist, only covers documentary films and feature films about the state of the law during the Third Reich that were made after 1945.