

The Shadow of Speer and Vichy on European Laws

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Darker Legacies of Law in Europe: The Shadow of National Socialism and Fascism over Europe and its Legal Traditions. Edited by Christian Joerges and Navraj Singh Ghaleigh with a prologue by Michael Stolleis and an epilogue by JHH Weiler. Hart Publishing, 2003. ISBN 1-84113-310-8. BP 55/\$ 116.

A.**

The subject of the essays collected in *Darker Legacies* selects from models still used today in order to legitimate the new supranational European 'governance'. To date, publications dealing with European integration have lead us down a tranquil path; however, a renewed awareness of the past leads one to questions regarding the role and importance of the most embarrassing periods in European history, particularly since it is in this period in which we find the first theories on the modern European political space. Among these, one must begin with Carl Schmitt, who posed the question of European identity as a "self-consciously different community" on the geopolitical scene.

Here we find the definition of Europe as *Großraum*, a large area of influence, and as *Nomos*, a territorial sphere capable of giving rise to the proper geopolitical order to ensure world peace. It is not difficult to note the relevance of these observations, the context of which is embarrassing, to say the least. While Schmitt's reconstituted Christian conception of Europe was taken and built upon by Adenauer, Monnet, Schuman, and De Gasperi, Schmitt's references to technology are often used still today to distinguish the European position vis-à-vis that of other areas around the world.

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B.

The authors analyze how various components of fascist law are the same as those still used in democratic and liberal systems. In particular, fascist contract law, vital to the market, is identical to its liberal bourgeois equivalent. The aim of *Darker Legacies* is, in effect, to go beyond an academic understanding of the past and to examine the models, which have been employed in the framework used today to legitimate the new European structures of supranational governance. That is to say, its aim is to indicate how individual components and ideas may endure dramatic historical change.

According to Joerges, in the German juridical tradition, there is a clear legacy which has deep roots in the delicate equilibrium constituted by the Weimar Republic. This legacy is German Ordo-liberalism: the theory according to which the institutions have the task of creating a legal and social context in which the economic conditions which would prevail under natural circumstances are protected: only the establishment of a complete institutional setting can direct this concrete economic order towards the ideal order. This is a singular legacy which passes from Albert Speer's defense of private property (!), through to the process of integration of the European "economic community" with much of the phraseology intact. In the same manner, much of the same "Europeanist" phraseology, from Vichy to the present, has remained intact. Claude Chabrol's documentary on Vichy (1993) is instructive in this regard.

Here we pose a cryptic question: were Nazi politics perhaps the (path)ological development of ideas that are in fact much more "permanent"? Did Nazism have the "effrontery" of its convictions which others shared? *Darker Legacies* goes beyond the common beliefs that allow bourgeois souls to rest untroubled, having cordoned off Nazism as a "disagreeable parenthesis." Instead, one must recognize the past in order to understand the potential for domination, with no Hollywood ending.