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**Public Holidays, Professional Licensing, Marriage Splitting: Where Nazi Law Continues to this Day**

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*At every German university, law students carry the surname of a National Socialist around with their Schönfelder law collection. © Photo: Sebastian Kahnert/dpa*

Even an unjust state needs laws. In order to control and terrorize the population, the Nazi government constantly adopted new regulations and adapted those already in force to its völkisch worldview. After the World War, Germany and its legal system lay in ruins. The occupying powers now had to get rid of the remnants of the regime.

On September 20, 1945, the Allied Control Council issued its first Control Council Act. It repealed Hitler's Enabling Act and all Nazi political regulations with immediate effect. Discrimination against people on the basis of their origin or faith was also prohibited from now on. This was followed by 61 other Control Council laws that were intended to denazify Germany and lay the foundation for a democratic constitutional state. However, the Allies were not able to eliminate all Nazi remnants.

**Nomen est omen**

Even legal publishing shows traces of the Nazi era. At every German university, law students carry the surname of a National Socialist around with their *Schönfelder law collection.* The former publisher Heinrich Schönfelder was a member of the NSDAP and a contributor to the Bund Nationalsozialistischer Deutscher Juristen until his death in 1944. He is still the namesake of the thick red book that is in every German courtroom. In the Schoenfelder's table of contents, numbers 1-19 are left blank. They once contained the party program of the NSDAP as well as the Nuremberg Laws.

The *Palandt*, a classic reference work for the German Civil Code, also has an NSDAP member as its name sponsor. Despite fierce criticism, for example by the initiative Palandt Umbennenen, the publisher C. H. Beck refrains from renaming the work. Whereas students of architecture are spared the need to prepare for the upcoming exam with the Albert Speer textbook for statics and stable building construction, lawyers must continue to work with *Palandt* and *Schönfelder.*

**What still applies today**

When the Basic Law came into force in 1949, Hitler's criminal regime had become a sovereign constitutional state. But not only convinced old Nazis were able to save themselves in the new Federal Republic; despite the Control Council laws, provisions of National Socialism had also survived. On the one hand, the Allies lacked the time to fundamentally rewrite the legal system; on the other hand, after 1949 regulations were reinstated with slight revisions. Some things are still in the law books today, rather than the history books.

**Holiday**

The holiday regulations of the federal states, for example, take up Nazi legislation. The First of May has been a day of rest since 1933, when it was still called National Labor Day. To distance itself from this, North Rhine-Westphalia has enshrined May Day in its constitution as a day of reconciliation among nations and human dignity.

**Professional licensing**

The Heilpraktikergesetz, which is still in force, was also enacted under Hitler. It dates back to 1939, but has been amended to the extent that it can no longer cause harm. Under National Socialism, doctors with a Jewish background, who had already been deprived of their license to practice medicine by the regime, were also prohibited from practicing as non-medical practitioners.

**Correction means**

The so-called "Zuchtmittel" (means of restraint) enshrined in the Juvenile Court Act are immediately recognizable for their National Socialist origins. In order to punish a criminal offense, the judge may deprive the juvenile of his or her liberty for up to four weeks. The law explicitly does not call detention a punishment, but understands it as an educational tool. Contrary to many criticisms, the means of restraint have remained in Section 13 of the Juvenile Court Act to this day. Not only is the wording out of date, but many educators also doubt the effectiveness of the measures involved.

**Marital splitting**

The Income Tax Act also contains a legacy of the dictatorship. For example, although the law on spousal splitting replaced its National Socialist predecessor in 1957, it remains in the tradition of Nazi family policy. The regime wanted to force women out of the workforce and tie them to the household through tax advantages. To this day, splitting ensures that many women are economically worse off until retirement age.

**Gesinnungsstrafrecht**

The best-known remnant of National Socialist legislation is the murder paragraph (Section 211 of the German Criminal Code). Although the death penalty was changed to mandatory life imprisonment, the other wording of the provision has remained unchanged to this day. The law does not fit into the system of German criminal law, which basically describes the act and not the perpetrator. Paragraph 211, on the other hand, formulates what a murderer's attitude is and characterizes him/her as someone who kills "from base motives". Such formulations offered Nazi jurisprudence leeway for its arbitrary sentences, but present today's jurists with the task of meeting the requirements of justice under the rule of law. A man who abuses his wife for years and finally kills her may be released after a few years as a so-called manslaughterer. However, a woman who can only defend herself against such a domestic bully by slaying him in his sleep faces a life sentence as an insidious murderer. In 2014, Justice Minister Maas sought to reform the paragraph. It failed due to opposition from the CDU/CSU, which wanted to retain the life sentence.

**"The dignity of man is inviolable".**

Article 1 of the Basic Law is both a commandment and a declaration of war. The constitution wants to ensure that Nazi barbarism will never be repeated. That is why the Federal Constitutional Court stamps out any law that violates the Basic Law. How was it possible for the Nazi regulations to survive?

This may be plausible in the case of laws that do not violate fundamental rights. If openly discriminatory clauses are deleted, there is no longer any threat of a constitutional violation. Even the wording of the marital splitting law does not explicitly discriminate against women, even though in practice they are often the ones who suffer as a result of the provision. But in the case of the murder paragraph, the question is more difficult to answer. Although it has been defused by the abolition of the death penalty, the mandatory life imprisonment and the vague wording in Nazi language are still difficult to reconcile with the Basic Law. Some lawyers consider the paragraph just barely compliant, others simply unconstitutional. A comprehensive rewording of the provision would resolve the conflict.

For the pragmatic person, simply defusing the Nazi laws is enough. But when it comes to sensitive issues, many people are not satisfied with that. For unlike a public holiday, criminal law, for example, can cause great harm. And if the law is spoken in the name of the people, then that very population will scrutinize the law particularly critically.