wide-ranging polemics with major German-language scholars and commentators on sexuality and feminism, including Marieluise Jurreit, Volkmar Sigusch, and Rotraud Perner. Borneman perceived himself as an advocate for women and for non-violent “reciprocity” in sexual relations (264). Feminists did not always return his professed admiration, especially when he advocated, in his 1975 book *Das Patriarchat* (never translated into English), a future decline and even medically induced elimination of gender–sexual dimorphism. Feminists reasonably saw this as patriarchal thinking in the service of a claim to its opposite. This section of Siegfried’s narrative contains, despite its focus on German-language debates and sources, revealing reflections on the transatlantic flow of ideas.

Siegfried’s fine writing (and the generally fluid and elegant translation) allows the theoretical scaffold to emerge subtly but clearly. One additional interdisciplinary moment perhaps could have enriched Siegfried’s account without weighing it down unnecessarily: more attention to recent work on the history and practices of the body from foundational North American scholars of gender, sexuality, and queer theory like Judith Butler, Donna Haraway, and Eve Kosofsky Sedgwick. Siegfried also might have focused more on the consequences of Borneman’s own self-fashioning as a kind of gender-performed correlative of his interpretive approach to cultural life and the politics of bodily practice, than on the narrative of “imagined communities.” But asking that would require a brilliant Continental work of history also to be a North American-style work of theory. That this reviewer can conclude that this would be unnecessary is testament enough to the lasting interdisciplinary and international importance of Siegfried’s achievement—and to the justification for theoretically informed biographical methods like these.

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**Legal Sabotage: Ernst Fraenkel in Hitler’s Germany**

By Douglas G. Morris. Cambridge: Cambridge University Press, 2020. Pp. xv + 285. Cloth $110.00. ISBN 978-1108835008.

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Ernst Fraenkel is best known as a postwar German political scientist and the author of the 1941 book, *The Dual State*. Douglas Morris pieces together Fraenkel’s career as a lawyer and opposition essayist during the first five years of the Nazi regime. A labor lawyer during the Weimar years, Fraenkel was doubly targeted by the regime, both as a social democrat and as a Jew. Yet despite his marginalized status, Fraenkel not only continued representing and consulting with clients accused of political crimes, he also engaged in active resistance in the form of essay writing. Morris seeks to understand Fraenkel both as a defense lawyer working within an increasingly lawless system and as a political theorist seeking to justify his own opposition to Nazism. In this sense, the legal sabotage in the book’s title has a double meaning: it describes Fraenkel’s efforts to thwart the regime from within the legal system, and it describes Fraenkel’s efforts to find a legitimate ground for resistance.

Little documentation on Fraenkel’s legal defense work remains, and so Morris relies on “scattered documents, occasional memories, and reasonable inferences” (46), some of which he draws from Fraenkel’s associates, his wife, Hannah, and other lawyers who were
active at the time. Perhaps Morris’s most important source is the 1938 manuscript of *The Dual State*, which Morris uses as the version most proximate to Fraenkel’s first-hand observations of the Nazi regime. Indeed, this proximity, Morris argues, makes Fraenkel a more useful theorist than Fraenkel’s colleague and associate, Franz Neumann, who developed his theory in exile. Fraenkel described a regime comprised of two interlocking manifestations of power: the normative state and the prerogative state. The normative state was not identical to the *Rechtsstaat*, but instead referred to the administrative operation of the state; it maintained order through procedure rather than enforcement of the rule of law. The prerogative state exercised pure arbitrary power over citizens who had no recourse to law or legal procedure. Focusing on this legal aspect of Fraenkel’s work—rather than the Marxist part of Fraenkel’s analysis that interprets Nazism as an expression of late-stage monopoly capitalism—Morris both explains the development of Fraenkel’s dual state theory and uses it as theoretical framework for interpreting Fraenkel’s oppositional lawyering and his efforts to justify resistance.

One of the questions Morris asks is how Fraenkel managed to survive and resist as long as he did. Part of the explanation is in the first chapter, in which Morris establishes the conditions for Jewish lawyers in the first five years of Hitler’s regime and draws comparisons between Fraenkel and his professional counterparts. Because the Nazis were more concerned about the judiciary than the bar at this time, a surprising number of Jewish lawyers retained their membership in the bar, though their client base shrank considerably and some were forced out of lawyering or into exile for financial reasons.

According to Morris, Fraenkel managed to continue his oppositional lawyering, sometimes with surprising boldness and at other times with considerable caution, in part because of his personal “self-control, discretion, and sangfroid” (59). Fraenkel also committed himself to keeping his clients out of the hands of the prerogative state that was embodied by the Gestapo and the concentration camp system. Morris provides an example of a client whom Fraenkel advised to plead guilty to a political crime, despite demonstrable innocence, simply to evade almost certain detainment by the Gestapo upon acquittal (70). Morris applies Fraenkel’s analysis of the dual state to establish the ethics of such counsel by explaining that, since the courts of the normative state did not function to protect the rights of clients, “lawyers, like Fraenkel, exploit[ed] legal procedures on their clients’ behalf” (104).

In the second half of the book, Morris turns to Fraenkel’s writing as both an act of resistance and as a reflection on resistance. Fraenkel wrote five political essays between 1934 and 1938. Through these essays and his dual state theory, Fraenkel grappled with two dilemmas. The first was how to defy the state without reference to *Rechtsstaat* doctrine, since the normative state no longer adhered to the rule of law. Fraenkel’s second dilemma was how to find solidarity with other resisters who were not Marxists. Fraenkel’s solution to these dilemmas was “rational natural law” (125), which “provided a universal standard and a minimum morality for all humanity, and it was the opposite of everything that Nazism stood for” (129). An eclectic—or perhaps pragmatic—thinker, Fraenkel sought a universally applicable answer that could unite all opponents of the regime, not just social democrats. For example, he drew inspiration from Ernst Troeltsch, Immanuel Kant, and Jehovah’s Witnesses who, Fraenkel argued, adhered to an absolute natural law.

In the final chapter, Morris places Fraenkel’s legal justifications for resistance in conversation with those of his associates and fellow theorists Hermann Brill, Martin Gauger, and Franz Neumann. Morris devotes the most space to contrasting Neumann’s and Fraenkel’s thoughts on the relationship between natural law, positive law, and state power. Morris argues that though their theories diverged in the postwar period, they each found justifications for resistance in natural law.

Douglas Morris’s book is full of interesting insights from the perspective of a scholar who is both a practicing attorney and a specialist in German history. In his conclusion, Morris
reflects on what Fraenkel’s story tells us about the Nazi regime and the possibilities of resistance. “Perhaps,” Morris speculates, “Fraenkel was able to survive only because he was one of a kind” (209). But it is precisely because he was an outlier that Fraenkel offers such an important perspective on the nature of the regime and the law under Nazism. Morris has offered us a close and sensitive reading of Fraenkel’s remarkable years under Nazism, one that deepens our understanding of Fraenkel and of the Nazi criminal justice system in those first five years, but one that also invites reflection on what it means to pursue justice when the system no longer delivers justice.

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Justifying Injustice: Legal Theory in Nazi Germany
By Herlinde Pauer-Studer. Cambridge: Cambridge University Press, 2020. Pp. vii + 269. Cloth $110.00. ISBN 978-1107159303.

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“With their seemingly innocent call for the unification of morality and law, NS jurists supported a major normative transgression: the state’s deliberate demand upon its subjects’ ethical self-obligation. NS legal theory required an individual not only to comply with legal norms, but to abide by the state’s orders and legal rules out of inner ethical commitment” (213). This is the central finding of Herlinde Pauer-Studer’s recent book, which is nothing less than a discourse history of the National Socialist conception and interpretation of the law.

The book sheds light on the sometimes bitter debates between contemporary legal theorists on the nature and legitimacy of the National Socialist regime and on the transformation of law and justice into its compliant instrument—debates that have received little attention in research to date. In doing so, the book’s focus on the ethicization of law constructed by Nazi legal scholars, which in effect enabled state access to the most intimate private spheres, promises a new perspective on an old topic. The study is divided into eight chapters and builds on a publication of original documents and texts edited by Pauer-Studer and Julian Fink in 2014 (Rechtfertigungen des Unrechts. Das Rechtsdenken im Nationalsozialismus in Originaltexten).

After an introductory crash course on the basics of Nazi law and its theoretical masterminds, such as the founder and president of the Academy of German Law Hans Frank, the constitutional lawyer Ernst Rudolf Huber, and the legal philosopher Karl Larenz, Pauer-Studer proceeds chronologically. In chapter 2, she examines the transformation of legal concepts and interpretation in the Weimar Republic away from constitutional principles and toward the legitimization of the authoritarian state. This transformation was driven by university professors and constitutional lawyers such as Otto Koellreutter, Erich Forsthoft, and Carl Schmitt, all of whom rejected parliamentary democracy and incorporated völkisch ideas into their legal doctrine as early as the 1920s. Moreover, the crises of the republic and the following controversial debates over the powers of the Reich President (Article 48 of the Weimar Constitution) gave the enemies of the liberal constitutional state impetus and reach, thus paving the way for dictatorship in terms of arguments as well.