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Human Rights Quarterly, Volume 22, Number 4, November 2000, pp.
1051-1059 (Article)

Published by Johns Hopkins University Press
DOI: 10.1353/hrq.2000.0052

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Human Rights Advocacy and National Identity in West Germany

*Lora Wildenthal**

In the 1990s, the language and institutions of human rights reach around the world. In the present era of political uncertainty, war, genocide, UN and NATO bombing, and the supposed “end of ideology,” the idea of human rights and organizations such as Amnesty International (AI) enjoy almost unrivalled credibility. Twice in the twentieth-century, events in Germany helped drive the proliferation of human rights advocacy. In 1989, the breaching of the Berlin Wall in the context of Soviet, Polish, and Hungarian reforms was the dramatic beginning of the end of the state socialist countries’ human rights violations. About forty years before that, the experience of Nazism, aggressive war, and the Holocaust was the common point of reference. Negotiations soon afterwards produced the UN 1948 Universal Declaration of Human Rights and the UNESCO tracts of the 1950s and 1960s that repudiated race as a scientific concept.¹ While basic rights, and the international human rights derived from them, have a long history, their symbolism and institutionalization in our century is very much a part of German history.

For the historian, it is noteworthy that abstract, universal imperatives of international human rights doctrine have been formulated with specific

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1. On Nazism and the Holocaust as a common point of reference in Universal Declaration discussions, see JOHANNES MORSINK, *THE UNIVERSAL DECLARATION OF HUMAN RIGHTS. ORIGINS, DRAFTING, AND INTENT* (1999). UNESCO, *THE RACE QUESTION IN MODERN SCIENCE: RACE AND SCIENCE* (1961). On negotiations about race at the level of the United Nations, see Paul Gordon Lauren, *Power and Prejudice: The Politics and Diplomacy of Racial Discrimination* (1996); see also ELAZAR BARKAN, *THE RETREAT OF SCIENTIFIC RACISM: CHANGING CONCEPTS OF RACE IN BRITAIN AND THE UNITED STATES BETWEEN THE WORLD WARS* (1992).

violations and violators in mind. For example, the drafters of the Universal Declaration of Human Rights were largely driven—though not only—by their recent memory of World War II and fascism. More recently, the Green politician and German Foreign Minister, Joschka Fischer, was converted to military intervention by Srebrenica and a meeting with Slobodan Milosevic. Yet once human rights doctrines are formulated, the tracks of the historically specific and particular are often erased with universalistic rhetoric intended to be binding for everyone everywhere. Indeed, the very attractiveness of human rights as a universal ethic is its resistance to historical, social, or economic contextualization. The power of human rights discourse rests, to some extent, on its ahistorical, even anti-historical formulation. For the historian, however, the formulation and invocation of human rights doctrine is ineluctably intertwined with the larger political, social, and cultural history, and with the very realms it is intended to supercede, the nation and the sovereign state.

West Germans who took up human rights work faced the question of how to position themselves vis-à-vis the Nazi Germany of the past, as a globally resonant human rights violator, and the Federal Republic of the present that enshrined rights of asylum, resistance, and basic rights in its Basic Law. What sense have they made of their national identity, so contradictory and inescapable in the context of their activism? Americans have often sought the supposed certainties of the Nuremberg and Tokyo Trials as they consider future human rights projects.² What stories do German human rights activists fall back on as they forge ahead into the genuinely new realm of international human rights and ponder limited state sovereignty, the status of individuals as subjects of international law, and postcommunist, postcolonial, and feminist formulations of rights? The stories are more divergent than one might think, encompassing a political range that will be illustrated here through just two figures: Carola Stern, who helped found the West German branch of Amnesty International, among other undertakings; and Otto Kimminich, an international law expert who wrote a number of authoritative, much-cited books on asylum, migration, and minority rights.

In 1961, the journalists Gerd Ruge, Carola Stern, and Felix Rexhausen founded the German chapter of Amnesty International, just weeks after Amnesty International founder Peter Benenson's initial appeal in England.³ Stern and the others—she points to middle-class housewives and activist Protestant men as key supporters in the early years—belonged to one of

2. See, e.g., Tina Rosenberg, *From Nuremberg to Bosnia*, *THE NATION*, 15 May 1996, at 688–92.

3. Carola Stern, ed. *Die Gründerjahre, in WER SCHWEIGT, WIRD MITSCHULDIG*, (1981).

three waves of human rights activism in the Federal Republic. The early 1960s saw not only the creation of West German AI, but also the foundation of the Humanistic Union (*Humanistische Union*, 1961). A common concern of these early activists was the conservative Adenauer "restoration," or limits placed on participatory democracy and economic redistribution. A second wave took place in the late 1960s, bringing forth groups such as the Society for Threatened Peoples (*Gesellschaft für bedrohte Völker*, 1970) and *Terres des hommes* (1967), which responded to the Vietnam War and Biafran secession. A third wave began in the Reagan and Kohl years, and saw the founding of groups such as *Terre des femmes* (1981) and *Pro Asyl* (1986). Since then, ever more groups have formed with the stated goal of protecting human rights in Germany and abroad. Human rights advocacy is a very important part of the German public scene today.

Stern has always made her personal history central to her activism, most explicitly through a memoir she published in 1986.⁴ Stern was born Eka Assmus in 1925, in Ahlbeck, a village on the Baltic Sea near Swinemünde. She was twenty when the Second World War ended, and twenty-four when her hometown became part of the new East German state. Soon after that, Stern took a teaching position at the Party School of the Socialist Unity Party (*Sozialistische Einheitspartei Deutschlands*, SED) in Kleinmachnow, near Berlin. In 1951, however, she left the German Democratic Republic (GDR). She spent the 1950s as a student of sociology and politics at the Free University of Berlin. During the 1960s, she worked as an editor at the publishing house of Kiepenheuer & Witsch in Cologne and as a freelance journalist. In the 1970s and early 1980s, she became a well-known media figure in West Germany, as both a writer and a radio commentator at West German Radio (*Westdeutscher Rundfunk*). In 1972, she received the Carl von Ossietzky Medal for her AI work, the first of several national prizes awarded her. She was also active in P.E.N., and together with Heinrich Böll and Günter Grass, she founded the literary journal *L 76* as a venue for East European dissident writers. She has spoken out for women's rights and for the peace movement in addition to her work for human rights and writers' freedom of expression. More recently, in December 1998, she was the keynote speaker at an AI congress in Frankfurt am Main, "A Future for Human Rights" ("Zukunft für die Menschenrechte"), which marked the fiftieth anniversary of the Universal Declaration of Human Rights.

In her 1986 autobiography, she returns to a period in her life before all that, before 1945. She examines alternately her own youth as a local *Bund Deutscher Mädel* (BDM) youth leader and daughter in a Nazi family, and her future husband Heinz Zöger's youth as a Communist typesetter

4. CAROLA STERN, IN *DEN NETZEN DER ERINNERUNG. LEBENSGESCHICHTEN ZWEIER MENSCHEN* (1986).

imprisoned twice under the Nazis. Stern's goal in the book was to examine why she had been attracted to and taken in by Nazism, and why the unfolding events of those years—race science instruction that sent fellow pupils anxiously tracing their profiles on paper, the mysterious death of a retarded neighbor, the burning of Swinemünde's synagogue, the exclusion of a Jewish classmate from school, the screams of detainees being tortured in the Gestapo offices just beneath her BDM office—why none of these or other events aroused doubts in her mind about the Nazi cause. She also asks why her husband and his Communist friends' faith was so little shaken by news of the show trials of the 1930s, the Hitler-Stalin Pact, and the Soviet invasion of Poland, even as she remarks on the irony and difficulty of a former Nazi youth activist attempting to understand the thoughts of the Third Reich's Communist victims. She is not interested in wallowing in self-hatred; at the book's conclusion, she concludes that it had not really been possible for her or her husband to have chosen other respective paths, at least over the short run, given family and social influences. She invokes the suffering of those years on all sides, quoting Zöeger: "'There is the ever-recurring memory of how politics stole the lives of many people. How many were sacrificed in our lifetimes. How many sacrificed themselves.'"⁵ At the same time, she leaves no doubt that she sees as the primary victims of Nazism Jews, the handicapped, political dissidents like her husband, and other people who were targeted by the fascist state—and not people like herself, who lived "among the persecutors."⁶ Her real regret, and the central question that she places before the reader, was not her or Zöger's complicity with the wrongs of Nazism or the GDR, but rather, as she puts it, "that no doubts came to them for such a long time."⁷

Stern offers up her life story as what taught her the hard-won lesson of the value of protecting human rights. She sees herself as a former perpetrator who has reached wisdom through self-examination and self-criticism. In the universalist language of her husband, whom Stern quotes as a conclusion to her book: "'If you ask me today for a criterion for political action, it is . . . respect for the human being. You can also say it using the Basic Law: the dignity of the person remains the prime commandment of all politics. Beyond that, barbarism begins.'"⁸

5. "Es gibt die immer wiederkehrende Erinnerung daran, wie viele Menschen durch die Politik um ihr Leben betrogen worden sind. Wie viele zu unseren Lebzeiten geopfert wurden. Wie viele sich geopfert haben." *Id.* at 256.

6. "[u]nter den Verfolgern" *Id.* at 105.

7. "[D]aß ihnen so lange keine Zweifel kamen." *Id.* at 254.

8. "Fragst du mich heute nach einem Maßstab für politisches Handeln, so ist es . . . die Achtung vor dem Menschen. Du kannst es auch mit dem Grundgesetz sagen: Die Würde des Menschen bleibt das erste Gebot aller Politik. Jenseits dessen beginnt die Barbarei." *Id.* at 256.

In her human rights work, Stern seeks to trigger in fellow Germans the kind of awareness she claims to have developed through examination of her own life. In her December 1998 address, she used phrases that echo longstanding debates over who knew what during the Nazi period:

Looking back at the founding decade [of Amnesty International in West Germany], I think that an important service consisted of this: at the end no citizen of the Federal Republic could any longer claim not to have known of torture, the death penalty, political persecution. We had, after all, made public the extent of human rights violations—in all political systems and recognizable for all. From now on one could say: “Whoever remains silent, becomes complicit in guilt.”⁹

For Stern, the specific German past of Nazism is a lesson, a strong one, that immunizes or ought to immunize her fellow Germans as well as people outside Germany against claiming ignorance and innocence. Her trope is that of the recovered sinner, through which she can reach those whom Nazi Germany abused and those who, like herself, experienced Nazi Germany however willingly as one of the “persecutors.”

Unlike Stern, the international law expert Otto Kimminich, who died in 1997, has apparently left no autobiographical account. Since he was a jurist, not a journalist or memoirist like Stern, his writings necessarily have a different quality. While Stern openly importunes her audience to draw moral conclusions, Kimminich takes as his task the explication of legal doctrine, showing its power and limits. He repeatedly states that moral or even historical judgments are not his task (though he manages to fit in a few). While a chronological narrative of international law can read like a history, Kimminich indicates to the reader at least as clearly as do other legal writers that legal language is a different rhetoric and on a different plane than historical narrative. Several of his books do not summon up any particular German or for that matter other national past. However, in several others, he does invoke the German past. Unlike Stern, for whom history offers a harsh personal moral lesson, Kimminich sees in the evocation of history a source of sustenance for his and other refugees’ identity.¹⁰ Unlike Stern, he depicts Germans generally not as sinners, but as those sinned

9. “Zurückblickend auf das Gründungsjahrzehnt [of AI] denke ich, ein wichtiges Verdienst bestand darin, daß am Ende kein Bundesbürger mehr behaupten konnte, von Folter, Todesstrafe, politischer Verfolgung nichts zu wissen. Wir hatten schließlich das Ausmaß von Menschenrechtsverletzungen—in allen politischen Systemen und für jeden erkennbar—öffentlich gemacht. Von nun an galt: ‘Wer schweigt, wird mitschuldig.’” *Rückblick, Ausblick und praktische Solidarität, 50 JAHRE ALLGEMEINE ERKLÄRUNG DER MENSCHENRECHTE IN DER FRANKFURTER PAULSKIRCHE*, at 1. Obtained from AI-Germany website (<<http://www.amnesty.de>>) (visited on 8 Aug. 1999).

10. OTTO KIMMINICH, *DIE SUDETENDEUTSCHE VOLKSGRUPPE—IHR NAME UND SELBSTVERSTÄNDNIS* 14 (1981).

against. Indeed, there is almost no overlap between the historical events mentioned by Stern as the backdrop to her human rights work and those mentioned by Kimminich.

Otto Kimminich was professor of international law at the University of Regensburg for most of his life. His prolific publications show his intense involvement with issues of asylum and refugee law, minority rights, religious freedom, multiethnic societies, humanitarian intervention in armed conflicts, the impact of nuclear warfare on international politics, and environmental law. He was one of the authors of the *Manifesto of the 60*, a petition of German intellectuals organized by historian Klaus Bade, which called for a immigration policy as the realistic and fair response to migration and which repudiated the conflation of the highly politicized asylum issue with immigration.¹¹

Born in 1932 in the Sudetenland, Kimminich was still a teenager in 1945. Immediately after the war, he was a forced laborer in Czechoslovakia, then was expelled from the country and settled in the Federal Republic.¹² He became a student at the University of Würzburg under Hermann Raschhofer, another Sudeten German who had worked during the Second World War as a professor at the German-controlled University at Prague, and was a strong exponent of the German imperial mission in Eastern Europe.¹³ Kimminich's work in the area of human rights, especially minority rights, is clearly rooted in his own and other East-Central European Germans' experiences of expropriation and expulsion during and after 1945. Many of his scholarly themes are already to be found, often word for word (such as "the right to a homeland," the title of a 1979 book), in the 1950 "Charter of the German Expellees."¹⁴ Several of his books appeared under the auspices of the League of Expellees (*Bund der Vertriebenen*).¹⁵ In

11. Klaus J. Bade, ed., *Das Manifest der 60. Deutschland und die Einwanderung* (1994).

12. Peter Badura, *Otto Kimminich* †, 122 *ARCHIV FÜR ÖFFENTLICHES RECHT* (1997).

13. Tauber reports that Raschhofer described himself as having a "'brief flirtation'" with Nazism before coming to oppose it. KURT P. TAUBER, *BEYOND EAGLE AND SWASTIKA: GERMAN NATIONALISM SINCE 1945* (1967).

14. OTTO KIMMINICH, *DAS RECHT AUF DIE HEIMAT* (2d ed. 1979). The "Charta der deutschen Heimatvertriebenen" is critically analyzed by Ralph Giordano in his article, *Apropos Charta der deutschen Heimatvertriebenen*. Überfälliges Nachwort zu einem verkannten Dokument," in idem, *DIE ZWEITE SCHULD ODER VON DER LAST DEUTSCHER ZU SEIN* (1987). Giordano notes that the Charta has often been lauded as a generous gesture by the expellees. He points out the Charta's invidious claims that expellees suffered more than any other group from the Second World War and its claims that they deserve gratitude for declaring that their political intentions are peaceful. Giordano also points out the peculiar fact that the condition of being an expellee was made inheritable by law in West Germany, in 1953.

15. The League of Expellees, founded in 1957–1958 from various existing groups, represents Germans deported from Central and Eastern Europe after the Second World War. See HANS W. SCHOENBERG, *GERMANS FROM THE EAST: A STUDY OF THEIR MIGRATION, RESETTLEMENT, AND*

1981, the same year in which Stern published a collection of essays, marking the twentieth anniversary of West German AI,¹⁶ Kimminich addressed the right-radical Witiko League (*Witiko-Bund*) on the future of the Sudeten Germans as an ethnic group.¹⁷

Kimminich's speech to the Witiko League, along with a 1990 book entitled *Human Rights in the Peace Settlement after the Second World War*, discuss the German past more explicitly than his many other juristic writings.¹⁸ The book was written in anticipation of the Treaty on the Final Settlement with Respect to Germany ("Two Plus Four Treaty") of September 1990, and its juristic argument is that international norms are needed to protect the rights of those defeated in war, since the moment of military defeat is one of extreme inequality of power.¹⁹ He argues that the lack of such protections led to the victimization of Germans after the First World War, and the post-Second World War settlement only perpetuated such wrongs. He cites as examples the "enemy state clauses" of the UN Charter, which allowed Allied member states to evade the Charter's own provisions with respect to their actions against Germany and Japan²⁰; the expulsion without compensation of Germans from the Sudetenland, Silesia, and elsewhere in East-Central Europe²¹; and the border agreements with Poland and Czechoslovakia.²² Indeed, the expulsions and the border agreements were, in his view, the major unresolved issues from the Second World War still facing newly-unified Germans in the 1990s.²³ (It is interesting to note that he does not include the Nuremberg Trials among wrongs done to Germans, but rather praises them as the only safeguard against the principle of collective guilt.)²⁴

Kimminich draws primarily on historical examples from the German-speaking Europe in his exposition of the history of human rights, while most

SUBSEQUENT GROUP HISTORY, SINCE 1945, 112 (1971); For a participant's account, see LINUS KATHER, *DIE ENTMACHTUNG DER VERTRIEBENEN*, 183–84, 176–208 (1964).

16. WER SCHWEIGT, WIRD MITSCHULDIG (Carola Stern ed., 1981).

17. Kimminich, *Die sudetendeutsche Volksgruppe*. On the Witiko-Bund. See TAUBER, *supra* note 13, at 926–34. Tauber notes that (at his time of writing) it was dominated by former Nazis.

18. Otto Kimminich, *DIE MENSCHENRECHTE IN DER FRIEDENSREGELUNG NACH DEM ZWEITEN WELTKRIEG* (1990).

19. *Id.* at 14.

20. *Id.* at 11.

21. See also SCHOENBERG, *op. cite*, *supra* note 15; ALFRED-MAURICE DE ZAYAS, *A TERRIBLE REVENGE: THE ETHNIC CLEANSING OF THE EAST EUROPEAN GERMANS, 1944–1950* (1994).

22. See also Dennis L. Bark & David R. Gress, *A History of West Germany*, 2 DEMOCRACY AND ITS DISCONTENTS 1963–1971, 171, 222–23, 722–23 (2d. 1993).

23. An obituary of Kimminich notes that revision of agreements with Poland and Czechoslovakia was a life goal of his and that he was indignant about the lack of "principles and the use of compromises" in the Federal Republic's agreements with Czechoslovakia and Poland. Badura, *supra* note 12, at 630.

24. Kimminich, *supra* note 18, at 90.

accounts of the development of human rights doctrine, by both German and American scholars, cite the Virginia Bill of Rights, the French Revolution, Hobbes, and Locke—in other words, a strictly Anglo-American-French tradition. One of the more surprising of his German-centered examples of the protection of minority rights is the Treaty of Brest-Litovsk with Soviet Russia, concluded in early 1918 and annulled after the defeat of Imperial Germany. This treaty detached from Russia “a quarter of Russia’s European territory, two-fifths of its population, [and] three-quarters of [its] iron and coal.”²⁵ Russia gave up part of Poland, Lithuania, the Ukraine, the Baltic provinces, and Transcaucasia. Under German sponsorship and with German armed assistance, independent states were established in Ukraine and Lithuania, and the Finnish civil war was decided in the anti-Bolsheviks’ favor. The Treaty of Brest-Litovsk has often been cited by non-German historians since the Great War, and by German historians since Fritz Fischer’s book on German war aims in 1961, as a key example of a “victors’ peace” in the First World War and as an indication of what German victory would have brought elsewhere in Europe.²⁶

To Kimminich, by contrast, the Treaty of Brest-Litovsk compares very favorably to the Treaty of Versailles, showing a spirit of fairness.²⁷ He even argues that the German leadership, and not Woodrow Wilson, pioneered the international application of the principle of national self-determination. His proof is its Articles 18, 19, 21, and 22, which provide for those moving out of Ukraine, for example, to be allowed to retain their movables and sell their immovables.²⁸ He restricts himself to the contents of the international law document, the treaty itself, and does not mention the context of expansionist war aims, the treaty’s effect within Germany of renewing militaristic refusal to negotiate a general peace, or the ensuing German occupation of the East, to name a few historical, if non-legal, factors. Apparently Kimminich knew that his interpretation of the Treaty of Brest-Litovsk was controversial, since in his 1994 contribution to the *Manifesto of the 60*, which covers the First World War, he does not mention it and, against his 1990 argument, credits Wilson with pioneering national self-determination in international law.²⁹

25. J.M. ROBERTS, *EUROPE 1880–1945: A GENERAL HISTORY OF EUROPE* 308 (2d ed. 1989). The specialized literature on the treaty includes FRITZ FISCHER, *GERMANY’S AIMS IN THE FIRST WORLD WAR* (1967); the memoir JOHN W. WHEELER-BENNETT, *BREST-LITOVSK: THE FORGOTTEN PEACE, MARCH 1918* (1938); WINFRIED BAUMGART, *DEUTSCHE OSTPOLITIK 1918: VON BREST-LITOWSK BIS ZUM ENDE DES ERSTEN WELTKRIEGES* (1966); PETER BOROWSKY, *DEUTSCHE UKRAINEPOLITIK 1918 UNTER BESONDERER BERÜCKSICHTIGUNG DER WIRTSCHAFTSFRAGEN* (1970); and OLEH S. FEDYSHYN, *GERMANY’S DRIVE TO THE EAST AND THE UKRAINIAN REVOLUTION, 1917–1918* (1971).

26. See *supra* note 25.

27. Kimminich, *supra* note 18, at 19–24.

28. The treaty is reproduced in WHEELER-BENNETT, *op. cit.*, *supra* note 25, at 379–84.

29. Bade, *ed.*, *supra* note 11, at 188.

Otto Kimminich chose, then, a different set of concrete historical examples than did Carola Stern on which to base his abstract, juristic formulations of human rights doctrine regarding, for example, minorities, refugees, and asylum. By holding open the question of Germany's "proper" borders, he placed himself on the right or even far-right wing in West Germany. At the same time, Kimminich developed in his writings, with clear and compelling logic, principled defenses of asylum-seekers, religious minorities, and environmentalists—all issues often identified with the Left in West and unified Germany. As the approbation of human rights activists and scholars across the political spectrum indicates, the significance of his work is by no means confined to the political organizations of expellees or even his own historical vision.

Both Kimminich and Stern have apparently turned to the language of human rights in order to avoid the pre-formed choices of Left or Right. Both advance compelling and articulate arguments about rights. Yet their writings show the difficulty of bringing together consciousness of historical responsibility and historical context (non-juristic concepts) and abstract universal human rights (which are amenable to juristic language). If historical events give rise to innovation in the abstract and logical realm of human rights law, is there any lasting importance to the law's connection to those specific historical events? One wonders after reading Kimminich's account of "human rights in the peace settlement after the Second World War," if dead people have rights, or ought to be accorded them in order to remain in the legal consciousness of the living. Jews do not figure in his book at all; the Holocaust is not mentioned, and Nazism only very briefly.³⁰ Does human rights scholarship tend to be bad history? Perhaps understandably, human rights activists do not spend a lot of time historicizing and relativizing the identities of those whose interests they seek to defend. Nevertheless, current cultural anthropology is very far from such rigid claims about distinct groups. While Stern is in many ways the more sympathetic figure in this discussion, it is also clear that her maxim "whoever remains silent, becomes complicit in guilt,"³¹ offers us flawed social theory. These questions challenge historians, who have lagged behind legal scholars, political scientists, anthropologists, and others in the field of human rights scholarship, to delve into the histories of human rights that have been or are being produced, and to ask what can make good history in the field of human rights.

30. In that otherwise carefully edited book, Kimminich even mistypes "American war criminals" in a sentence about the Tokyo trials. Kimminich, *supra* note 18, at 47.

31. See *supra* note 9. See also book title, *supra* note 16.