

Upcoming Events

- February 21** "Wister & More" presents Claire Huangci, piano
- March 5** Spring Clean Up, 10:00am
- March 6** Gentle Yoga, 11:00am
- March 9** Konversationsabend, An Evening with writer/ philosopher Richard David Precht, 6:00pm
- March 19** Buchclub, *Heimsuchung* by Jenny Erpenbeck, 1:30pm
- March 18** Friday Film Fest, *Das geheime Leben der Bäume*, 6:30pm
- March 19** Wandern at the Willows, 11:00am
- March 19** Library Treasure Tour—"Wonderful and Weird: The Fairy Tales Found in the Horner Memorial Library," 2:00pm
- March 20** "Wister & More" presents Trio Montage, 3:00pm
- March 22** KA EXTRA: Germany's New Government and the Stability of Democracy, 7:00pm
- April 3** Gentle Yoga, 11:00am
- April 3** Bösendorfer Youth Music Festival Concert, 3:00pm
- April 9** Buchclub: Hotel Berlin by Vicki Baum, 1:30pm
- April 13** Konversationsabend, The 251st anniversary of Beethoven's birthday, 6:00pm
- April 15** Friday Film Fest, *Duell der Brüder*, 6:30pm
- April 16** Wandern at the Willows, 11:00am
- April 23** Library Treasure Tour—"Home Life, City Life and the Nation: Encountering the German Ethnic Experience in the Horner Memorial Library"

THE GERMAN SOCIETY OF PENNSYLVANIA *Friday Film Fest Series*



Der Fall Collini

Directed by Marco Kreuzpaintner

February 18, 2022

• 6:30 PM •

Film, Food & Discussion

The German Society of Pennsylvania

611 Spring Garden St.

Philadelphia, PA 19123

Support provided in part by the
Philadelphia Cultural Fund.



Der Fall Collini (2018)

Director: Marco Kreuzpaintner
Screenplay: Christian Zübert, Robert Gold, Jens-Frederik Otto
Production: Marcel Hartges, Christoph Müller, Kerstin Schmidbauer
Camera: Jakub Bejnarowicz
Editor: Johannes Hubrich
Length: 129 min.
Cast: **Elyas M'Barek** as Caspar Leinen
Heiner Lauterbach as Richard Mattinger
Alexandra Maria Lara as Johanna
Franco Nero as Fabrizio Collini
Stefano Cassetti as Nicola Collini
Rainer Bock as Oberstaatsanwalt Reimers
Catrin Striebeck as Vorsitzende Richterin
Manfred Zapatka as alter Hans Meyer
Jannis Niewöhner as junger Hans Meyer



Based on the novel, "Der Fall Collini," (2022) by Ferdinand v. Schirach

Commentary by Karl Moehlmann

Die Verjährungsdebatten

Since the main theme of this story centers on the *Verjährungsskandal* of 1968/69 in West-Germany, it behooves us to take a brief look at the history of this statute. *Verjährung* means that a punishable act or offence cannot be prosecuted after a certain time period has passed. Based on German criminal law since 1871, the *Verfolgungsverjährung* is linked to the amount of the punishment. In the case of first degree murder or other felonies that result in a life-long incarceration, the statute of limitation was set at twenty years. Based on this timetable and starting on May 8, 1945, the murders and atrocities of the Nazi era that had not been prosecuted by the end of 1965 would no longer be subject to prosecution.

The great "*Verjährungsdebatte*" in the Bundestag of 1965 extended this timetable to the end of 1969 by setting the starting point to December 31, 1949. With the end of 1969 approaching, the Bundestag passed the next statute of limitation bill and extended the time for another 10 years until the end of 1979. The third and final debate on this issue took place on July 3, 1979 when the Bundestag narrowly decided (255 to 222 votes) to abolish the statute of limitations altogether, thus making it possible to bring charges of war crimes in the future without any time restrictions.

Der Verjährungsskandal von 1968/69

Throughout the process of extending the statute of limitations in the 60s, CDU and FDP politicians had pressed for amnesty for lower level actors (SS-men and other enlisted men or civil servants) in the NS administration who were not or could not be accused of murder but only as accessories to murder (*Beihilfe zum Mord*). According to existing criminal law, accessory to murder was punishable with the same lifelong incarceration as murder itself and therefore was also subject to the same statute of limitation, namely 20 years.

Since the SPD had joined the CDU to form the first *Große Koalition* in 1966 under Kanzler Georg Kiesinger, the justice department was led by SPD minister Gustav Heinemann, and he vetoed all attempts to enact such an amnesty. The only way, therefore, to achieve a de facto amnesty for *Beihilfe* was to decouple this category of culpability from murder per se in the criminal code. To effectuate this, it was thus necessary to sentence those guilty of *Beihilfe* not with lifelong incarceration or even twenty years, but with a shorter sentence, given that the statute of limitations was linked to the length of the sentence.

In the 1960s, a reform of the law of administrative offenses was being prepared which was primarily concerned with the decriminalization of traffic violators and other "*Bagatelldelictbestände*". The head of this committee was **Dr. Eduard Dreher**. In 1968 Dr. Dreher extracted a seemingly inconspicuous clause of the overall decriminalization bill (which was called "*Einführungsgesetz zum Gesetz über Ordnungswidrigkeiten*") and presented this specific stipulation to the Bundestag. In this proposal he had included a paragraph that changed Article 50/2 of the criminal law as follows:

"Fehlen besondere persönliche Eigenschaften, Verhältnisse oder Umstände (besondere persönliche Merkmale), welche die Strafbarkeit des Täters begründen, beim Teilnehmer, so ist dessen Strafe nach den Vorschriften über die Bestrafung des Versuchs zu mildern."

The net effect was that if it were impossible to prove racist motives ("*niedrige Beweggründe wie ein Handeln aus Rassenhass*") in the actions of an accessory to a murder, then the defendant's sentence had to be reduced. Instead of lifelong incarceration, a sentence of only 15 years could be applied, which meant that the statute of limitations also had to be reduced to 15 years. Thus, the amendment claimed that the statute of limitations covering accessories to murder should have expired already in 1960. If the felony happened during the Nazi era, then several NS-trials already

in progress or pending had to be stopped, because the statute of limitations had expired.

On October 1, 1968, the Bundestag passed this new law (containing the amendment in question) without much debate or deliberation. It is doubtful whether most members of parliament noticed, much less understood the consequences of this obscure amendment. Dr. Dreher himself failed to inform the head of the justice department, Gustav Heinemann, of the political dangers of this change in law, although he had received several reminders to that effect. It was left to the media to bring attention to this situation. *Bild am Sonntag* reported on the story in December 1968, and *Der Spiegel* published a commentary in January 1969 entitled “*Kalte Verjährung*”. The headline implied that the amendment was a stealth means of achieving a partial amnesty for accessories to murder.

As Mr. Rücken, head of the Ludwigsburg Center of Prosecution of Nazi Atrocities noted:

“The little ones who pulled the trigger will be accountable because of their malice and cruelty, but the big ones who didn’t commit the murders by themselves can only be prosecuted on the basis of accessory to murder with “base motives”. But since you hardly can prove these motives today they are the ones who benefit the most.”

The negative reactions in Germany and the world, especially from Jewish organizations, were swift:

“Das ist unfassbar;”, said Oskar Karbach from the World Jewish Congress

“Ziemlich entsetzt” - Hans Steinitz of the Jewish newspaper *Aufbau*

“Schauerhaft” according to the Jewish organization of the Defense of Human Rights

“Judicially and morally regrettable”, - Dr. Silberman, president of the American Federation of Jews from Central Europe

“Ein ganz schwerer Knüppel zwischen die Beine der Staatsanwälte” – Robert Kempner, former US assistant prosecutor at Nürnberg

“Grobe Versäumnisse” – *Stuttgarter Zeitung*

“Eine Panne” - *die Welt*

“Bonn ermöglicht Straffreiheit für KZ-Aufseher” – *die Wahrheit*

Was this legal legerdemain merely a *Panne*, ein folgenschweres Versehen,

the provenance of which ultimately lay with SPD justice minister Gustav Heinemann who failed to notice the consequences of the “*Dreher-Gesetz*”? It seems helpful to go back to the origins of this bill. Its author was the very same Dr. Dreher who had been the head public prosecutor in Innsbruck during the Nazi era and acquired a reputation for handing down harsh sentences for minor offenses, like the death penalty for stealing food. In the early 1950s he had been responsible for questions of amnesty.

Now Dreher was the head of the criminal law department in the justice department. It turns out that all along he had been in cahoots with **Ernst Achenbach and Werner Best**. **Achenbach** who had joined the Nazi Party in 1937, served as diplomat in the German embassy during the Nazi occupation of France, and was a member of the Bundestag for the FDP from 1957-1976. **Werner Best**, a jurist, who became a police chief and deputy to *SS-Obergruppenführer* Reinhard Heydrich, also served in the German military occupation administration of France and then became the civilian administrator of occupied Denmark.

Convicted of war crimes, Best was released in 1951 as part of the Danish amnesty program for Nazi war criminals, although he had been originally sentenced to death. Achenbach and Best were part of a lobby group in the 1950s who had advocated for the amnesty of German war criminals. In 1964, when the bills for the reform of the criminal law and the new law of administrative offenses (“*Ordnungswidrigkeiten-gesetz*”) were being coordinated in the justice department, Dr. Dreher was present at the meeting (although documentation for this decisive meeting has not yet been found). “*Die Akten wurden vermutlich gesäubert*”, opined Michael Greve (Amnestierung von NS-Gehilfen – Eine Panne? 2003). And according to Ulrich Herbert, who wrote the biography of Werner Best, the amnesty was initiated by Achenbach and Best and executed by Dreher. The thesis that the law was deliberately written in the interests of Nazi perpetrators and purposely and secretly included in an inconspicuous bill therefore seems a reasonable conclusion.

In May of 1969 all eyes were upon the German Supreme Court under the leadership of Werner Sarstedt, who was responsible for a ruling in this matter. On May 20, 1969, the *5. Strafsenat des Bundesgerichtshofes* confirmed the ruling that the statute of limitations for accessory to murder



Ernst Achenbach



Werner Best

under the new version of article 50/2 of the criminal law had expired on May 8, 1960. This decision led directly to the stay of proceedings against personnel of the *NS-Reichssicherheitshauptamt* (Reich Security Main Office) which had been prepared in Berlin and ultimately to the end of many potential trials against Nazi perpetrators.

It is of small consolation that the CDU and FDP were willing to support the ten year extension of the statute of limitations in the 1969 debate only after this ruling of the court. It is also of little consolation that the 4th criminal court of the Supreme Court opined on March 4, 1971 that it was enough for the accessory of murder to have known of the cruelty of the main perpetrator, thus negating the statute of limitations for such a defendant. John Demjanjuk in 2011 and Oskar Gröning in 2015 were convicted on the basis of this ruling. It was certainly no consolation for Fabrizio Collini, whose act of vengeance was ignited by the unjust statute of limitations ruling and scandal of 1968/69.

Geschichtliches Vorbild

The victim of this vigilante justice in the movie is the 85-year-old Hans Meyer, an industrialist with a dark past. He was the SS-commander in Northern Italy who ordered the killing of 20 civilians in a village in Tuscany in retribution for the killing of two German soldiers by Italian partisans. Among the executed villagers was the father of Fabrizio Collini. Meyer forces the son to witness the brutal killing of his father. Later, after he had moved to Germany as a young *"Gastarbeiter"* and after his mother had died, Fabrizio files a law suit against Meyer in a German court. The timing of the lawsuit comes just months after the *"Dreher-Gesetz"* had been confirmed by the Supreme Court in the spring of 1969. Therefore his lawsuit is dismissed on the basis of the expiration of the statute of limitations. Hans Meyer remains a free man, setting the stage for Collini's compensatory retaliation.

The historical basis of this fictional plot is as follows: German war crimes in Italy were committed between September 8, 1943, when Italy left the German coalition, and May 2, 1945, when the German troops in Italy surrendered. In the massacre at the Turchino pass northwest of Genoa, 59 political prisoners were killed as retribution for an attack on a movie theater in Genoa by an Italian partisan where six German soldiers died. The execution was ordered by Friedrich Engel, the SS-police chief in Genoa. It was common for German troops to use a *Repressalquote* of 10 to 1 in response to partisan attacks. In 2002, Engel was tried and originally sentenced to a seven year prison term for his order, but the German Supreme Court repealed the sentence because the *"Mordmerkmal"* of his personal cruelty could not be proven sufficiently. He was judged as an accessory to

murder and thus freed because the statute of limitations had expired. He died of natural causes in 2006 at the age of 97.

Totschlag vs Beihilfe zum Mord

In a critical article from May 25, 2019, Prof. Dr. Ingeborg Puppe, a former Professor of Criminal Law at the University of Bonn, sees several inaccuracies in Schirach's portrait of the failure of West Germany's justice system dealing with the judicial handling of war crimes. Besides her criticism of the procedural inaccuracies in the court proceedings she points out that Schirach, the grandson of Baldur von Schirach (the convicted war criminal at the Nuremberg Trials) misrepresents the Dreher law in both the book and the movie.

When Caspar Leinen, the young defense attorney played by Elyas M'Barek, calls on Richard Mattinger, the attorney of the co-plaintiff, as an expert on the origin and nature of the Dreher law, Mattinger explains this law by saying that *"bestimmte Mordhilfen nur wie Totschläger, aber nicht wie Mörder zu behandeln waren"*. But if a crime is judged as manslaughter and not murder, the statute of limitations had expired.



Ferdinand v. Schirach and Elyas M'Barek

In Prof. Puppe's opinion, such a law never existed and is a misrepresentation of what the Dreher amendment contained. She argues that Ferdinand von Schirach, a lawyer himself, who tackles difficult law questions in all his novels, should have known better. Dramatic license cum dramatic distortion, emotional scenes crafted to score ideological points, stereotypically Americanized court procedures and, most importantly, promulgation of historical judicial inaccuracies are not helpful in the critical review of Germany's post war history. Perhaps Schirach should be indicted on charges of spicing up history for the sake of book sales and box office tickets. You be the judge.