Mystery Solved: Harvard Prof. of Jewish Descent Shaped Nazis' Legal Ideology

Who was Josef Redlich, and what exactly did he say in a 1932 meeting with the Nazis' leading jurist, who would later construct Nazi legal theory?

Members of the Hitler Youth marching in 1938. Carl Schmitt used the group as an example for Nazi legal theory. Credit: Associated Press

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In 1932, a few months before the Nazis took control of Germany, Carl Schmitt – who would later become the Third Reich's crown jurist – met with a colleague. This meeting, Schmitt would later write, drove him to adopt National Socialist legal ideology. Schmitt never identified the man, but did note that he was "a world-famous, world traveled, experienced scholar of more than 70 years of age from the United States."

Nearly 90 years have passed since that meeting, but research failed to uncover the identity of the scholar who influenced the jurist who constructed Nazi legal theory.

Until now. Or Bassok, a lecturer in constitutional law at the University of Nottingham, England, recently solved the quandary – and the solution surprised him. Bassok discovered that the scholar was Josef Redlich, who was born to a Jewish family in Goeding, Moravia. "This is a mysterious and odd story," Bassok told Haaretz.

How did Bassok discover Redlich's identity, which Schmitt had tried to conceal? The answer was hidden in plain sight. Bassok examined Schmitt's diaries and found quotes from conversations Schmitt had conducted with Redlich in Berlin in May 1931, and also

Schmitt had conducted with Redlich in Berlin in May 1931, and also entries mentioning two other encounters the two had: one encounter a few days after their first encounter, and another in September 1932. Bassok also found that the two scholars exchanged letters.

Bassok compared these quotes to Schmitt's 1934 article called "The Legal Theory of National Socialism," which was published in the journal German Law. In it, Schmitt wrote for the first time about the scholar in the United States who drove him to National Socialism, without mentioning the academic's name.

The comparison of the quotes from the article to those in Schmitt's diary showed that Redlich's quotes and the quotes of the mystery scholar were identical. At the time, Redlich was a professor at Harvard University and a well-known scholar, thus fitting Schmitt's description.

But how could it be that Schmitt was driven to Nazi ideology following a conversation with a Jewish jurist? In trying to answer this question, some details on Schmitt would be helpful. He was an influential German political theorist and jurist who was born at the end of the 19th century and died toward the end of the 20th century. His legal and political theory is continuously studied and quoted today.

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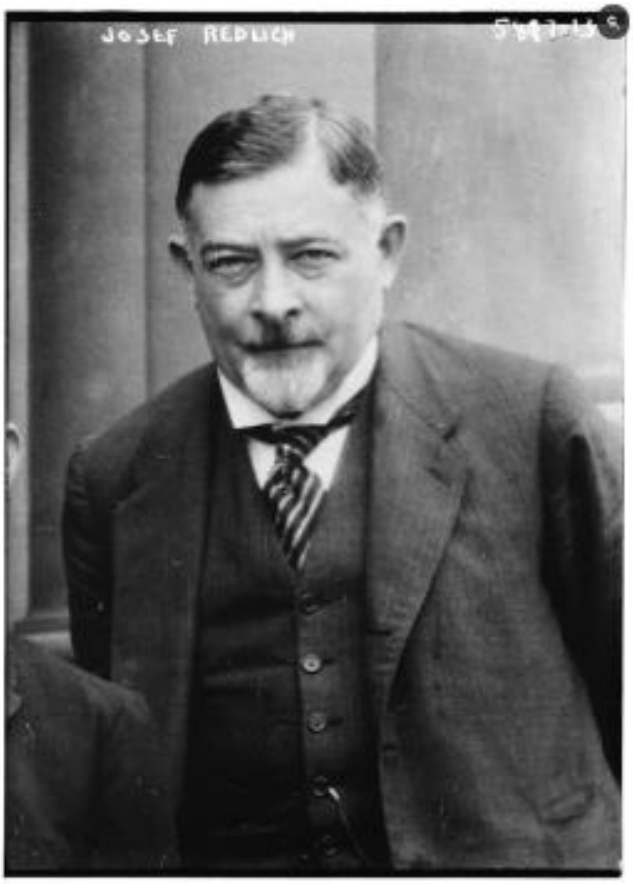
Schmitt, who was one of the most important jurists of the Weimar Republic (1918–1933), joined the Nazi Party in 1933 and was considered the crown jurist of the Third Reich. Like the German philosopher Martin Heidegger, who was one of the most influential intellectuals of the 20th century, Schmitt also became a highly controversial figure in modern thinking due to his dubious past.



Josef Redlich. His secret meetings with Carl Schmitt inspired the jurist, who joined the Nazi Party in 1933. Credit: Library of Congress

Members of the Nazi regime, though, criticized Schmitt in part because he only joined the party in April 1933, after the party already had some 2 million members. Veteran party members saw him as an opportunist and not a "pure" Nazi, since he only signed up after the March 1933 election triumph.

"Schmitt was well aware of this flaw in his biography. For this reason, he had a clear interest to present himself as if he adopted National Socialism ideology earlier," said Bassok, whose article on the matter is forthcoming in the International Journal of Constitutional Law, published by Oxford University Press and edited by Gráinne de Búrca and Joseph Weiler.

Is it possible that Schmitt fabricated the story of this mysterious meeting with the foreign academic in an attempt to present himself as a true Nazi prior to 1933? Did he do so only to "prove" that his support of the Nazi Party had begun before it won the election? Unlikely. After all, Schmitt could have fabricated a meeting that never happened, yet he chose to attribute his change of heart to a real meeting with a professor who had Jewish roots.

Bassok said that "senior members of the SS who were suspicious of Schmitt's motives could have raise doubts and demanded to know the identity of the scholar, who, according to Schmitt, drove him to National Socialism." He added that, of course, "the Nazis would not be happy to discover that the origins of their legal theory came from a scholar of Jewish descent."

Bassok's research also revealed that Schmitt repeated the story of his meetings with the mysterious scholar in a 1936 lecture in Milan, during a visit to Italy that included a meeting with Mussolini. Later, in 1962, Schmitt wrote of his two "decisive" meetings with Redlich in 1931 and 1932, in a letter to an editor working on a book of Redlich's correspondence.

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Carl Schmitt. Credit: Library of Congress

'To fight until death'

At this point, a few words on Redlich's biography are also warranted. He was born in Moravia (now part of the Czech Republic) in 1869, to an assimilated Jewish family. In his professional life, he flitted between a career as a jurist and a politician, and his books are still cited in legal writings today. He converted to Christianity as a young adult.

Bassok noted that Redlich "became critical of Jews and even adopted ideas with an antisemitic undertone." For the Nazis, obviously, this would not have been an issue if he had been exposed as the scholar who had driven Schmitt to Nazi ideology.

Redlich was a candidate for several ministerial positions during the time of the Austro-Hungarian Empire, but the emperor refused to appoint him due to his Jewish roots. He was elected to the lower house of the Austrian parliament, and served in this role between 1907 and 1918. In the last days of the empire, he was finally named finance minister, but he held this position for just 18

A few years before its collapse, Redlich was a visiting professor at Harvard and was asked to write a report on American legal education. The document he wrote in 1914 is still considered a stepstone on legal education in the United States. In 1926, he received a permanent position at Harvard and three years later was named Fairchild Professor of Comparative Public Law. His second wife, who did not adjust to life in America, returned to Vienna with their two daughters. For this reason, Redlich frequently returned to Europe.

Under these circumstances, he met Schmitt in Berlin in the early 1930s. In 1935, he retired from Harvard and returned to Vienna. From his last writings, it is clear he understood what the future held for Austria following the rise of the Nazis.

The conversation that, according to Schmitt, led him to Nazism focused on two philosophical issues. First, nihilism – the negation of all ideologies. Schmitt's work was concerned with the weakness of liberal democracy in the face of competing ideologies at that time: fascism and communism. He claimed that the liberal state did not speak in the name of any value, but rather exhibited neutrality toward its citizens' way of life. For this reason, it would fail to get people to fight for it against ideologies that did speak in the name of particular values.

Bassok said that Schmitt "was fearful that the core of the Weimar Constitution was empty, that it was neutral and did not speak in the name of any value. He believed that the most important test for a theory was whether it offered a meaning for which one was willing to fight until death. For Schmitt, liberal democracy did not offer such a meaning, and for this reason no one would die for it in war."

Schmitt's biggest fear was that Weimar's empty core would be captured by an ideology that did offer meaning – communism, for example.

In this context, Redlich presented Schmitt with a much more disturbing picture. He claimed that the danger facing the Weimar Republic was not from a competing ideology, but from the bankruptcy of all ideologies, including the idea that a "state" has any meaning.

Bassok said that "this picture shocked Schmitt. Redlich presented him with a picture akin to John Lennon's song 'Imagine': a world with nothing to kill or die for. For Schmitt, such a world lacked meaning. If there was nothing to die for, there was also nothing to live for."

From this point, Schmitt made his way to Nazism. "In view of the threat of the disappearance of all existential meanings that Redlich revealed, National Socialist ideology offered Schmitt a way

to close the void by a connection to the concrete, to the state and the Volk [people]," Bassok said.

Regulating reality

The second topic Schmitt and Redlich discussed was indeterminacy difficulties. "This is a philosophical problem that centers on the gap between words and things – in this case, between the law and reality," Bassok said. "The world does not 'speak' to us. Rather, we inflict language on the world. In law, the aim is to regulate reality by inflicting the words of the law on the world. The problem is especially acute, and it bothered Schmitt from his early days as a constitutional theorist."

Schmitt concluded from his conversations with Redlich that the solution to the problem was to focus on the concrete facts of each case, rather than by analyzing abstract norms.

As an example, Schmitt's article cited the story of a group of boys in the Hitler Youth who are blamed for stealing the flag of another youth group. According to the abstract norm, this is a simple example of property theft – a piece of cloth that was attached to a pole. But this analysis does not take into account the concrete circumstances of the event and, for this reason, Schmitt believed that such an analysis missed an important aspect of the concrete facts. In this instance, according to the Nazi perspective, the members of the Hitler Youth were conducting an important activity. Through looking at the concrete facts, it becomes evident, according to Schmitt, that no crime was in fact committed.

Bassok added that "Schmitt connected this analysis to the difference he perceived between the German people that returned to its concrete roots in its homeland, and the Jewish people that lacked a land and roots, and whose entire existence was rooted in abstract norms."

According to Bassok, "Redlich exposed to Schmitt the potential of the National Socialist theory as a theory connected to the concrete rather than the abstract."

Schmitt ultimately acknowledged that, thanks to his meetings with Redlich, he adopted insights on the "bankruptcy" of all ideologies, and also on the way one needs to analyze law – in connection to the concrete reality rather than being detached from it. Redlich's Jewish roots, which for Schmitt represented an existence that was completely based on law, may have emphasized

for him the "value" of National Socialist theory.

Bassok stressed, however, that Redlich was not a Nazi supporter. While he expressed ideas that had an authoritarian orientation – such as the idea that even democratic regimes have necessarily dictatorial elements – Redlich was not a nationalist, and instead supported the establishment of a multinational United States of Europe.

After he joined the Nazi Party, Schmitt rose quickly in its ranks and became one of its most senior jurists. He received a position he coveted at the University of Berlin, where he taught his theories as endowing legal and philosophical bases for the Nazi regime. He presented antisemitic ideas in various arenas, most famously in a 1936 event he organized titled "Conference on Judaism in Jurisprudence." Schmitt demanded that German law rid itself of the Jewish spirit, and that references to Jewish authors be omitted from academic publications (except when a writer was attempting to demonstrate their "foul" Jewish qualities). This is somewhat ironic given what we now know of Redlich's influence on him.

However, that same year, Schmitt lost his status in the Third Reich: SS members pressed their accusations that he was an opportunist, and he was forced to withdraw from his role.

The Allied forces considered putting Schmitt in the dock as part of the postwar Nuremberg trials, but in the end he evaded the fate of many other Nazi Party members. However, he was excluded from academic institutions after the war and, Bassok said, "he never apologized for his role in the Nazi regime." As opposed to Redlich, who died in November 1936, Schmitt lived a long life and died at age 96 in 1985.

Tags: Nazis