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## Who Was Ludwig Frege?

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## Who Was Ludwig Frege?\*

Ludwig Frege, a Prussian judge who eventually became the first President of the Federal Administrative Court in 1952, almost left no traces. Even when he visited a dear friend in the tumultuous summer of 1932, he would simply sign his name into the guestbook. »Less would have been nothing«, Johanna Rakebrand notes in her excellent biography of Frege, »but more would probably have been superfluous; thusly, the rational purpose of the guest book was fulfilled« (11). This made Frege a *Rechtsmensch* par excellence. Writing on the »psychology of the *Rechtsmensch*«, Gustav Radbruch had argued that such men were defined by a »trinity of justice, functionality and legal certainty«. In their extremes, they were either obsessed with bureaucratic order, or they became, like Robespierre, »fanatics of justice« (tellingly, this is also how SS-judge Konrad Weil would later describe himself). Moreover, *Rechtsmenschen* had their own way of looking at individual biographies. Rather than showing any interest in the rich tapestry of life, jurists would put on the »glasses of universal legal concepts«. It is precisely because Rakebrand intertwines her careful reconstruction of Frege's life and work with a sophisticated reflection on the concept of the *Rechtsmensch* that her book deserves a wide readership. Not only does she provide the first comprehensive biography of an undeservedly neglected figure, but she also contributes to our understanding of the relationship between the justice system and its individual actors.

In many ways, Frege's life was that of a typical German jurist in the first half of the 20th century. Born in Berlin on 28 August 1884, Frege's family was Protestant, Prussian and appropriately loyal to the German state. Frege followed the footsteps of his father, a jurist in the Prussian administration, and studied law at Heidelberg, Berlin, and Breslau (41–54). In 1912, Frege graduated with excellent grades. He had steadily built up his social and academic capital by joining a student fraternity,

writing a PhD and performing military service at an elite cavalry regiment (55–84), which eased his way into the legal profession. Between 1914 to 1918, however, Frege served at the Western and Eastern fronts and was wounded, but he also met his future wife, Eva Reitzenstein. Despite the dearth of source material, it becomes clear that Frege seems to have managed the transition into the republic better than many of his colleagues, joining the national-liberal DVP of Gustav Stresemann (157). Even though Rakebrand's conjectures are always plausible and backed by appropriate comparisons with other lawyers, it becomes clear how limited our knowledge of Frege actually is. By his own volition, his first proper position was in the Prussian province of Silesia, where he worked as a judge adjudicating civil law cases (114–157). In 1932, Frege moved to Berlin, where he acquired a senior position at the Prussian Supreme Administrative Court (PrOVG) based on the highest recommendations (157). Considered an expert in property law and land register law, even the Nazi seizure of power seemingly did not constitute a major break in his career (173). However, Frege's relationship to those colleagues who weathered the Nazi purge of the judiciary is strained, partially because partisanship and boozing now trumped competency (179–194). Frege did not join the NSDAP, but he became a member of the BNSDJ, the Nazi law association (199) as well as the NS Public Welfare Organisation (NSV) and the Air Raid Protection League (RLB).

The key chapters of Rakebrand's dissertation seek to reconstruct Frege's »balance sheet«, despite incomplete and lost files that barely survived the end of the Second World War. »Whoever consults these files today works in a ruined city full of rubble, in which for over a hundred years planned and arbitrary demolition work has been carried out, and where the weather (loss by war, accident) has transfigured individual buildings, and sometimes entire streets,« Rakebrand writes in a fluid,

\* JOHANNA RAKEBRAND, *Der Rechtsmensch Ludwig Frege (1884–1964)*. Eine Biografie wissenschaftlich erzählt, Bielefeld: transcript 2019, 336 p., ISBN 978-3-8376-4875-1;

the review expresses the author's personal opinion and not the views of the Friedrich-Naumann-Stiftung für die Freiheit, Berlin.

almost literary, prose (204). Several of Rakebrand's most important sources are the verdicts of the PrOVG, some of which Frege himself edited in the 1950s. Frege portrayed the PrOVG as a »guardian of the rule of law«, which was »driven by a strong sense of justice« (205). By providing a careful discussion of the history of administrative courts in the »Third Reich«, Rakebrand adds nuance to his assessment.

In contrast to Frege's self-confident portrayal of the PrOVG as a bulwark against Nazi capriciousness, Rakebrand points out that the history of administrative law in the Nazi dictatorship was a »history of decay« (206). While it was true that, in some cases, legal positivism could provide a basis for obstructing or even forestalling certain Nazi injustices, the role of the PrOVG was overall somewhat »ambivalent«. The PrOVG, for instance, acquiesced to the wide-ranging provisions of the Reichstag Fire Decree (212). Fortunately, Rakebrand eschews any moral bookkeeping and is instead concerned with carefully reconstructing the decision-making processes behind particular verdicts. The court documents, Rakebrand concludes, demonstrate »a deep-seated insecurity and helplessness« amongst those judges, including Frege, who had to conduct the business of the law in a dictatorship marked by terror and lawlessness (214).

Frege was preoccupied with maintaining the reliable functioning of the judiciary, but he became increasingly gloomy, because executive acts continually overruled the proper working of the courts (217–219). A closer look at Frege's legal decisions, Rakebrand argues, display »conscientiousness, accuracy, rationality, closeness to life and, with regard to the legal consequences, judicial leniency«. Nonetheless, they also highlight »the limits of what can be said with a legal language« (221). In many cases, Frege's adherence to procedural correctness led to more lenient verdicts, but sometimes, his own conservative outlook »overlapped« with the National Socialist world-view (229). In retrospect, Frege sought to paint the picture of a steadfast judge, who had attempted to utilise the resources of administrative law for the protection of the persecuted. This self-image, as Rakebrand points out, depended on the conscious omission of those verdicts where he had ruled differently (236). »The state had supposedly left the balance beam in its suspension,« Rakebrand writes, »but the judges weighed with biased weights« (237). Nonetheless,

Rakebrand agrees with post-war assessments that Frege »abhorred National Socialism« (283), but she points out that moral categories rest uneasily with administrative practices. From 1940 onward, Frege's career ground to a halt, and in 1942 he was dismissed from his post. The administrative court fell prey to polycratic infighting, and his refusal to join the NSDAP antagonised the likes of Martin Bormann. Until the end of the war, Frege became »disassembled«. He was no longer the *Oberverwaltungsgerichtsrat* that his carefully crafted business card made him out to be, and his employment status remained undecided until he eventually joined a bank (239–260). His youngest son went missing-in-action on the Eastern Front, but the rest of his family survived the war.

As usual, little is known of his experience of the final months of the war and the immediate post-war period (261–278). In 1952, he joined the Christian Democratic Union and specifically gave the »moral failure« of the German people after 1933 as a reason (267, 287). Despite his age, Frege was determined to be reappointed as a judge, and after several setbacks, he was finally made the first President of the Federal Administrative Court, a post he would hold for only one-and-a-half years (290). Nonetheless, he oversaw several important verdicts, including the classification of the controversial movie »Die Sünderin« as a work of art. He also worked towards re-anchoring the notion of judicial independence in the German legal system, not least through a careful selection of new personnel, notably also including a woman (290–295).

The legacy of the *Rechtsmensch* continued in Frege's family. His son and one grandson became jurists as well. His other grandson, Andreas Frege, became a musician who frequently addressed the tension between individual agency and anonymous institutions: »In a world designed by the men in grey/Who decide how we live and breathe/ There's a masterplan for the company man/From the cradle to the company grave.« It is unclear whether Campino, as he is better known, has ever studied the personal file of his grandfather, but the final administrative note fits the lines of his song: »2) ZdA« – ad Acta (297). It is Johanna Rakebrand's achievement to have deconstructed this »life between paper pages«, and to have highlighted the legal, spatial and personal elements that constitute a *Rechtsmensch*.

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