Douglas C. Morris, *Justice Imperiled: The Anti-Nazi Lawyer Max Hirschberg in Weimar Germany,* Ann Arbor: University of Michigan Press, 2005. Pp. xiv + 443. $35 (ISBN 0-472-1146-X).

The story of Max Hirschberg and his courtroom battles in Weimar Germany from 1922 to the advent of Hitler is an absorbing one. Passions ran high in this period and violence was always just around the corner. The author focuses on two protracted pieces of litigation with political overtones. The first involved accusations against a leftist for having furnished the French with copies of German documents tending to support the theory that Germany was guilty of starting World War I. This act was characterized as treason for its supposed harm to German foreign relations. The Allies had imposed as part of the Treaty of Versailles a confession of Germany's guilt that was bitterly resented in nationalist circles. The exclusivity of Germany's responsibility has continued to engage historians, with the current consensus heavily against Germany.

The other marathon litigation involved the end of World War I, the question of whether the Kaiser's armies had been defeated in the field or had been stabbed in the back by the leftists who brought down the regime in 1918. German militarists and their allies were unable to accept the idea that the German army could not prevail against the masses of Allied armies. Although Hirschberg lost both causes in Bavarian courts that were heavily tilted toward the right, his battles nudged the German legal system towards reform. Hirschberg was also active in cases involving the Nazi party, including brawls with opponents on the left and libel litigation, in one of which Hitler was an active participant. When the Nazis came to power in 1933 Hirschberg as a Jew and political opponent was forced to emigrate, first to Italy and then to the United States.

Morris also considers some non-political cases in which Hirschberg discovered flaws in the work of the police, the prosecution, and the courts that led to erroneous convictions. It is a particular value of the book that it explores the situation in Bavaria, at the time a particular rightist stronghold, which has received less attention than Berlin. One of the book's surprises for the reviewer was the degree of independence with which the Bavarian court system operated in the early 1920s.

For one without an acquaintance with German court procedure the book is not always easy reading. Many Americans come to the topic with no more equipment than some hazy conception of "adversarial" versus "inquisitorial" procedures. The book deals with various differences as they arise in particular cases. These include the function of the oath (218–19, 229), the role of experts (80–81, 121), the free acceptance of evidence unhampered by formal rules such as the hearsay exclusion (184–85), the roles of the prosecutor, investigating magistrate, and trial judge (113, 115, 205), and the scope of appeals (113, 235). It might have been easier going if some pages had been devoted early on to explaining them. The reader cannot evaluate Hirschberg's courtroom performance without understanding this environment.

The book sheds light on several general questions about German justice under Weimar. Does civil law procedure make it easier for a politically biased judiciary

to impose its views at trial than would be the case in an American courtroom? The more umpire-like American judge could not charge ahead into diatribes as do the judges here depicted. Were conservative German jurists right in claiming that all they did before and during Nazism was act as positivist expounders of the law that they found on the books? That claim is undermined by much of the evidence here. Perhaps no judicial decision has had such disastrous consequences as the refusal of a Bavarian judge to carry out the clear statutory mandate that Hitler after his conviction for the 1923 coup in Munich be deported as an undesirable alien (127–28).

The quantity of archival and secondary research embodied in this book is impressive, particularly when one considers that the author was engaged in active courtroom practice during much of the time. Overall, another run through an editorial process might have produced a somewhat less repetitious, smoother reading text. This is after all a doctoral thesis and accessibility to the public may not have been a primary concern during that process.

Detlev F. Vagts
Harvard Law School

David A. Weir, *Early New England: A Covenanted Society,* Grand Rapids: William B. Eerdmans Publishing Company, 2005. Pp. 478. $34 (ISBN 0-8028-1352-6).

The title of this book is misleading. Rather than a survey of early New England society, Weir has tracked down what might be all the surviving foundational documents in church and civic government in New England to 1708 and analyzed their contents. Weir calls these documents covenants because they involved obligations to God as well as among people. He tells us that he pursued two "fundamental questions" in his analysis: "were the . . . civil covenants primarily theocentric, christocentric, or secular" and "how do the covenants, both church and civil, relate to [Perry Miller's account of covenant theology]?" (2).

Neither of these two fundamental questions brings path-breaking results. It is not startling to hear that the Connecticut Fundamental Orders displayed a "broad Christian vision" (87), nor that the Providence Plantation civil compact of the late 1630s was "secularized" (103), nor that the 1641 Articles of Confederation of New England "asserted a Christocentric vision for all of New England," (i.e., the document gave Christianity as the reason for the region's European settlement) (108). Calling New England a covenanted society does not in itself say much, except that it was officially religious; Weir states that covenanting could facilitate individualism or communalism, archaic restorationism or modernization, separation of church and state or their intertwining, and democracy or despotism, among other dichotomies (222–24). He concludes that "the flexibility of covenant theory and practice can explain . . . the various highways and byways that the covenant concept and the various forms of Puritanism took in both Old and New England" (223). Puritanism and covenantalism were flexible, in other words, because they