DISCRIMINATION, PERSECUTION, THEFT, AND MURDER UNDER COLOR OF LAW: THE TOTALITARIAN CORRUPTION OF THE GERMAN LEGAL SYSTEM, 1933-1945

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The German dictatorship did not materialize quite as suddenly as Pallas Athena, who sprang fully armed from the forehead of Zeus. The Third Reich, something the German resistance fighter Ernst Niekisch called the "realm of the lower demons," had numerous links with the past.

SOCIAL ORIGINS OF THE GERMAN DICTATORSHIP

The anti-Semitic rabble-rousers of imperial Vienna kindled Adolf Hitler's murderous hatred of the Jews. "Then I came to Vienna," he wrote in his political autobiography Mein Kampf, as he set out to explain the origin of his anti-Semitism. The chief designer of the National Socialist death machine was never in the mood for hiding his megalomania: "So I believe today that I am acting in the spirit of the Almighty Creator," Hitler raved. "By struggling against the Jew I am fighting for the Lord's work." When the Austrian moved across the northern border he joined the strident chorus of German anti-Semites.

World War I and its aftermath influenced the political drift toward authoritarian regimes in Germany. When Hitler entered the political scene in Weimar Germany, he promised to restore the power of the military and garnered support among the warlords. When the ex-corporal promised to "tear up" the Treaty of Versailles, he won over many nationalistic and conservative voters. When Hitler echoed the "Dolchstoss" legend he appealed to chauvinists and militarists who
peddled the fantasy that radical Social Democrats, pacifists, and Jews in Berlin had plunged a dagger into the back of the victorious army.  

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The Nazi party, however, was not the movement of a single class. All strata of German society contributed to the growth of the Nazi vote and the buildup of the NSDAP. The National Socialist program offered something to some Germans in every segment of society—with the exception of the German Jews.  

FREE CORPS ACTIVITIES AND VEHMIC TRIALS  

Apart from the wider connections between the Nazi phenomenon and the German past, there are two developments which directly influenced the course of events leading to the totalitarian corruption of the legal system.  

The first development began in World War I, when German Army commanders built up Storm Troops (Sturmbataillone). These highly trained "princes of the trenches" had a special mission. They were to tear apart the unity of the enemy's defenses and open the way for the regular infantry attack. According to G. S. Graber, the storm battalions of World War I were the forerunners of the SS or Schutzstaffel (Protective Squad). They anticipated the Nazi SS as regards recruitment and the relationship between the men and their leader. The storm battalions also left their imprint on the SS in other ways: in the creation of an elitist self-image and in the practice of a "blind savagery which was taken over from the heightened conditions of war into peacetime bourgeois life."  

Unwilling to lay down their weapons after the war, many members of storm battalions enthusiastically supported the formation of the Free Corps (Freikorps). These paramilitary volunteer units brutally went to war against the German Communists and against the Poles, Latvians, and Russians on the country's eastern borders. Freikorps soldiers used the German salute (Heil!), the brown shirt, and the swastika. When the government disbanded the volunteer units in 1921, thousands of Freikorps fighters joined the SA and the SS.  

The second development which is especially important for the corruption of the law began after World War I with a series of illegal Vehmic trials—imitations of secret medieval blood trials or Vehmegerichte.
In 1920, ex-Frei Korps leader Hermann Ehrhardt founded a secret society in Munich: Organisation Consul. This organization of right-wing conspirators held Vehmic trials of postwar political leaders and others who were condemned to death as traitors.

On August 26, 1921, two members of Organisation Consul killed Matthias Erzberger, Catholic Center politician and chief signer of the armistice. Another famous victim of the Vehmic trials was the Jewish industrialist and German foreign minister Walther Rathenau; members of Organisation Consul murdered him on June 24, 1922. In 1922 and 1923, Major Buchrucker's nationalistic Schwarze Reichswehr or Black Army conducted Vehmic trials of so-called traitors which resulted in numerous brutal murders.

Ehrhardt's and Buchrucker's roles were not limited to the sphere of Vehmic murder (Fememord). Both men were involved in attempts to overthrow governments which the German people had elected.

The German judicial system treated the right-wing extremists who had participated in Vehmic murders and political insurrections with great leniency. The legal liquidations of political insurrections such as the Kapp, Küstrin, and Hitler putsch created a pattern that became typical for the treatment of right-wing offenders: law breakers were allowed to flee the country or go into hiding; highly placed offenders were never brought before a court; cases against defendants were dropped; convicted criminals received light sentences; prisoners only served a fraction of their time. After the Beer Hall putsch, Hitler was sentenced to serve five years at Festung Landsberg; he was paroled after a few months. In the preface to Mein Kampf, he described his comfortable stay at Landsberg prison as a chance to relax and start work on his autobiography.

While the courts treated right-wing extremists very leniently, they handed out severe—often unjustified—sentences to left-wing Germans. The operation of this double standard revealed the fatal flaw of the entire judicial system: tacit approval of Fascist and anti-Semitic terrorism. Over the years most jurists proved to be disloyal to the Weimar Republic. The same lack of loyalty characterized the behavior of many civil servants, administrators, and military officers who had sworn to uphold the republic.

BATTLE LAW AND SECRET POLICE TERROR

The National Socialists knew that they could count on the cooperation of most established jurists and civil servants when they set out to create law in their own image. The totalitarian corruption of the German legal system began as soon as the NSDAP came to power on January 30, 1933. The Vehmic courts provided a murky background as Nazi jurists began to demolish the existing legal system. The National Socialists
called their new law *Kampfrecht*, or battle law.

"*Heil, Comrade jurists!*" wrote Hans Frank, the *Führer* of the German Law Front (*Deutsche Rechtsfront*), ushering in the year of the bloody Röhm Purge, "you are gathering around the flag of Adolf Hitler . . . you have committed your entire being . . . to the battle against the enemies of our State and Community."25

In 1935, Frank told a meeting (*Gautagung*) of the National Socialist Jurists League: "There is only one source of law . . . the sovereign National Socialist people, and there is only one center of will for Reich and people and the Movement, and that is the *Führer*."26

In this roundabout way German jurists were ordered to accept blindly the will of Hitler as the only legitimizing principle. Now one man's pathological hatred and thirst for revenge came to determine what was considered justice in Germany. The National Socialists transformed the German legal profession into an army of soldiers taking its orders from Hitler, the supreme commander. On January 30, 1934, Roland Freisler wrote: "So we also have our task. We, the soldiers of law . . . We must create a law, a German, a National Socialist law . . . Therefore criminal law must be combat law . . . like the weapon's tip which in battle is pointed at the enemy . . . it must view the lawbreaking will of the . . . antisocial and antinational . . . individual as the object of . . . destruction."27

Nazi battle law changed all parts of Germany's legal system; the transformation was most lethal in the area of criminal law. The National Socialists invented a plethora of nebulous new crimes such as "insulting the people," "affront to the folk tradition," "economic treason," and "assaults upon the racial continuance of the German people."28 The National Socialists also escalated the severity of punishment—death penalties became as common as fines for littering.

With unprecedented ruthlessness and brutality, the dictator and his henchmen used all the levers of power to transform Germany into the monstrous thing Hitler liked to call the "total state." Battle law served the purposes of the new rulers well—but they wanted more. Therefore the Nazis accepted *SS-Gruppenführer* Reinhard Heydrich's idea to institutionalize protective custody (*Schutzhaft*): a dreadful penal twilight zone supervised by the SS Main Security Office (*Sicherheits-Hauptamt*). Now official pseudo-law was linked with the naked terror of secret police activity. Graber has described the sequence of events. Under the guise of *Schutzhaft* any local Gestapo official could suddenly arrest anybody he viewed as an "enemy of the state." The victims of protective custody were never brought to trial: without ever finding out what crimes they were charged with they languished in police prisons until they were herded into cattle cars and transported to concentration camps.29

Among the first victims of protective custody were the leaders and
members of Germany's workers' mass movements and so-called pacifists. On March 9, 1933, the Nazi Minister of the Interior, Wilhelm Frick, proclaimed gleefully that Communists and Social Democrats were being sent to concentration camps. On March 20, 1933, Reichsführer-SS Heinrich Himmler announced the opening of Dachau concentration camp during a news conference in Munich.

The destruction of the workers' movement entailed the arrest, torture, and murder of proletarian leaders and activist workers, the theft of all properties and funds belonging to trade unions, workers' organizations, the German Communist Party (KPD), and the Social Democratic Party (SPD), and the prohibition of all working-class activities. On March 31, 1933, the National Socialist government decreed that "crimes against public safety" were punishable with death by hanging. The last blow fell on June 22, 1933, when the Nazis used Article 48 of the Weimar Constitution to outlaw the SPD. With the "voluntary" dissolution of the Catholic Center Party on July 5, 1933, all political parties—with the exception of the NSDAP—ceased to exist.

The Nazi leaders used battle law and secret police terror to destroy their opponents, to cow the people, and to accelerate the establishment of a totalitarian social system. Nazi totalitarianism was a reign of terror benefiting only a few: Hitler, the National Socialist leadership, high-ranking military officers, large landowners, the big capitalists, and the top civil servants. The rest of humanity paid an exorbitant price for the twelve-year rule of the Nazi mass murderers. When World War II ended, 50 million people had been killed, 30 million were crippled, and half of Europe lay in ruins.

THE ASSAULT ON GERMAN JEｗRY

When the destruction of the workers' movement and the demolition of the democratic political structure were in their final phase, the Nazis intensified their official assault on the German Jews. On March 28, 1933, the leadership of the NSDAP organized the nationwide Judenboycott, centered around the long-standing Nazi slogans "Don't buy from the Jews" and "The Jews are our misfortune." The boycott took place on April 11, 1933. This anti-Jewish action unleashed members of the SA and SS who terrorized Jewish retail merchants, physicians, professors, lawyers, and their clients. Uniformed Nazis also prevented Jews from entering universities, libraries, and law courts. During the boycott many Jewish merchants and professionals were taken into "protective custody" and sent to concentration camps.

The continued oppression and persecution of the German Jews deepened the corruption of the legal system. During the period 1933-1939, the National Socialists created a huge body of anti-Jewish law—their
Judengesetzgebung, which they published in its entirety in 1939. As Joseph Walk and his co-workers have shown in their recent collection of anti-Jewish laws, decrees, ordinances, secret orders, etc., the legal transformations took place during the entire Nazi period, continuing until the last year of World War II. The fate of the roughly 565,000 German Jews—eventually shared by the other victims of the Holocaust throughout Nazi-ruled and Nazi-occupied Europe—indicates that modern large-scale genocide must be prepared for. And among the prerequisites of genocide, the corruption of the law occupies a prominent place.

THE FIRST PHASE OF ANTI-JEWISH LEGISLATION

The first phase of the Nazi anti-Jewish legislation began on January 30, 1933, with the National Socialist seizure of power, and ended on September 15, 1935, with the enactment of the "Nuremberg Laws." The anti-Jewish measures belong to a body of laws made possible by actions of the Reichstag which met for one day on March 23, 1933. The Nazi-dominated legislative body suspended all constitutional provisions protecting the political and civil equality of all German citizens. On the same day, the Reichstag transferred its legislative powers to the cabinet, thereby giving the Hitler government unquestioned authority to issue any kind of dictatorial edict. The enabling law (Ermächtigungsgesetz), which empowered the government to enact laws deviating from the constitution, provided the legal smoke screen for this drift into totalitarianism. By a vote of 441 the Reichstag adopted the law—a creation of the NSDAP and the Deutschnationale Volkspartei. Only the Social Democrats cast their 94 votes against the enabling law. The KPD had already been forced to leave the Reichstag on March 8, 1933.

The drift into extraconstitutionality which began in the final phase of the Weimar Republic had been speeded up by the Reich President's Emergency Decree on the Protection of People and State of February 28, 1933. The provisions of Paul von Hindenburg's decree included the revocation of the citizens' basic constitutional rights. With the subsequent enabling law of March 24, 1933, the extraconstitutional power passed into the hands of Hitler.

During the first phase of the anti-Jewish drive, German government authorities enacted numerous laws and issued many decrees, regulations, ordinances, directions, and explanations. In keeping with the Party Program of the NSDAP this "legal" onslaught was designed to publicly humiliate Jews, baptized Jews, non-Jews of Jewish descent, non-Jewish spouses of Jews, and persons of "doubtful Aryan descent." The term "Aryan" formerly designated groups of languages. The Nazis arbitrarily used the term in their crackpot racial theory claiming that "non-
Aryans" were inferior to "Aryans." Nazi agitation and legislation was programmed to brand all "non-Aryans" as pariahs.

The National Socialists combined the public humiliation of the Jews with their campaign of discrimination and persecution. On April 7, 1933, shortly after the boycott of Jewish business, Reich Chancellor Hitler, Reich Minister of the Interior Wilhelm Frick, and Reich Minister of Finances Count Schwerin von Krosigk promulgated the Law for the Restoration of the Professional Civil Service. Paragraph three of the law, the so-called Aryan paragraph, began with the statement, "Civil servants who are not of Aryan descent are to be retired; honorary officials are to be dismissed from office." Many Germans of Jewish descent were deprived of their jobs by a stroke of the dictator's pen.

On April 11, 1933, the Minister of the Interior and the Minister of Finances promulgated the First Decree to the Law for the Restoration of the Professional Civil Service. The second paragraph of this decree extended the expulsion to civil servants with only one Jewish grandparent. The decree also appointed an "expert on racial research" (Sachverständiger für Rassenforschung) in the Ministry of the Interior to whom persons of "doubtful Aryan descent" had to apply for an opinion. Paragraph one of the decree ordered the dismissal of all civil servants with Communist affiliations of any kind—an afterthought in view of the earlier mass arrests of German Communists and Socialists.

The Second Decree to the Law for the Restoration of the Professional Civil Service of May 4, 1933, annulled all service contracts of "non-Aryan" clerks and workers in civil service organizations such as health insurance and social work.

On May 6, 1933, the Third Decree to the Law caused the dismissal of "non-Aryan" judges, notaries, public school teachers, and salaried and unsalaried university teachers.

The National Socialists deployed the "Aryan paragraph" as a major "legal" weapon in their offensive against the economic underpinnings of the Jewish community: a tidal wave of discriminatory legislation followed the attack on Jewish civil servants.

When the Nazis enacted the Law on Patent Lawyers on September 28, 1933, they completed a series of laws which excluded Jews from all forms of legal practice and all positions in the judiciary.

The beneficiaries of this campaign quickly responded with a public display of their servile obedience to the Nazi rulers. On October 1, 1933, the judges of the Reich donned their blood-red robes and assembled in front of the law court in Leipzig. There the judges and other jurists swore an oath of loyalty to Nazi battle law.

The arbitrary and inhuman expulsions of Jews from the civil service, education, and law were coordinated with other ousters to bring about the blighting effect upon Jewry which the Nazis had been planning from the start.
Other laws which the Nazis enacted to surround their illegitimate campaign of Jewish annihilation with the mantle of legality removed and excluded Jews from tax assessment and tax consultancy. The anti-Semitic legislation destroyed the likelihood of Jewish physicians, dentists, and dental technicians working with social health plans which covered almost the entire population. Other laws removed and excluded Jews from journalism, literature, the film industry, the theatre, broadcasting, music, the plastic arts, the ownership of hereditary rural homesteads, public orders and contracts, the stock exchange, the produce exchange, and executive positions in trade unions.52

On July 14, 1933, the cabinet passed the Law Regarding the Seizure of Anti-folkish and Subversive Assets, which was aimed at Marxist organizations. However, the Nazis also used this law to steal Jewish property; later they promulgated specific anti-Semitic laws designed to rob Jews of their possessions.53

The Nazis used boycotts, forced sales, and terror to oust Jews from commerce and trade. The Law Concerning the Ordering of National Labor of January 20, 1934, intensified the process of excluding Jews from executive positions in the German economy.54

During the Party Day rally of September 1935 (Parteitag der Freiheit), Hitler ordered officials of the Ministry of the Interior to Nuremberg, where they had to draft legislation which became known as the "Nuremberg laws." On September 15, 1935, the Nuremberg law on citizenship (Reichsbürgergesetz) officially transformed Jews into second-class citizens. Unlike "Aryans," Jews were not allowed to attain the new status of "citizen of the Reich" (Reichsbürger) and consequently lost all political rights.55 The blood protection law (Blutschutzgesetz) of September 15, 1935, prohibited marriages and extramarital relations between Jews and "citizens of German or kindred blood." Jews were not allowed to employ "Aryan" females below the age of forty-five in their households, and they could not display the German flags.56

THE ROAD TO GENOCIDE

The second phase of anti-Jewish legislation began on September 15, 1935, with the Nuremberg laws and ended on November 9, 1938, with the start of the officially prompted pogrom which the Nazis dubbed the night of crystal (Kristallnacht).

During this period the Nazis intensified the anti-Jewish drive by using the weapon of prohibition of profession (Berufsverbot). The ousters devastated additional occupational groups such as construction engineers, cattle dealers, auctioneers, arms dealers, realtors, nurses, etc.57

The Nazis continued to expropriate Jewish companies and enacted oppressive measures which excluded Jews from doctoral examinations;
imprisoned Jewish violators of racial laws and returning emigrants in concentration camps; prohibited changes of Jewish names; enforced the registration of Jewish businesses, assets, and persons; and ordered Jews to carry special identity cards and to use the middle names Sarah or Israel.

After the annexation of Austria, the Nazis disenfranchised the Austrian Jews on March 16, 1938. On October 5, 1938, the German government seized all Jewish passports. The Minister of the Interior also limited the issuance of new passports, which had to be marked with the letter J. On October 26, 1938, Himmler ordered the deportation of all Polish Jews. Two days later the Gestapo arrested these Jews and transported them to the border, where SS officials brutally forced them into an inhospitable Poland.

The third phase of anti-Jewish legislation extends from the pogrom night of November 9-10, 1938, to the start of World War II on September 1, 1939. During the November pogrom Hitler unleashed hordes of sadistic SA and SS hooligans who murdered Jews, burned down their synagogues, demolished their stores and apartments, and carried out mass arrests.

A wave of legislation followed the pogrom which accelerated the isolation and impoverishment of the Jews. On November 11, 1938, Jews had to surrender all weapons in their possession to the police. On November 12, 1938, Hermann Göring signed three decrees in his capacity as plenipotentiary for the (economic) Four-Year Plan. The first decree and subsequent legislation levied a punitive payment in the amount of 1 billion marks upon all Jews. The second decree excluded Jews from cooperatives and forbade them to engage in business, artisanry, or management. The third decree forced Jews to pay for the enormous damages which Nazi hoodlums had inflicted upon Jewish property during the November pogrom and to surrender all insurance claims to the Third Reich.

The discriminatory legislation of the third phase sharpened the isolation and confinement of the Jews. On November 12, 1938, the president of the Reich Chamber of Culture, Joseph Goebbels, issued an order barring Jews from theatres, movie houses, concerts, exhibitions, etc. Subsequent legislation forbade Jewish children to attend public schools, subjected Jews to curfews, limited their freedom of movement, invalidated their driver's licenses and automobile registrations, expelled them from non-Jewish apartments and houses, and forced them to move into buildings occupied solely by Jews. On July 4, 1939, the Minister of the Interior, Wilhelm Frick, established the SS-controlled Reich Association of Jews in Germany and decreed that all Jews inside Nazi territory had to belong to the association.

The fourth phase of anti-Jewish legislation and activity extends from the start of World War II to the destruction of the Jews in Nazi-domi-
nated Europe and covers the period September 1, 1939 to May 8, 1945.

The legislation of this phase aimed at the complete impoverishment and isolation of the Jews and their physical destruction. On September 12, 1939, Heydrich issued an edict which limited the access of Jews to food stores and subjected their apartments to police searches. Other measures forbade Jews to do the following: leave their apartments after eight in the evening; own radios; buy clothes; have telephones; use public transportation without restrictions; move without permission; write checks; own typewriters, bicycles, cameras, binoculars, etc.; use public telephones; keep pets; subscribe to newspapers and magazines; receive an education; purchase meat, meat products, eggs, milk, and books; send letters abroad. These measures and others of similar nature dissolved the everyday world of Jews.

Behind this nightmarish scene smoldered the Polish horizon; there the SS was herding Jews into city ghettos. By December 1939, Poles and Jews were pouring into Nazi-dominated Poland, where the SS was carrying out executions of hundreds of thousands.

On March 4, 1941, the Nazis subjected German Jews to forced labor; on September 1, 1941, they ordered them to wear a yellow Star of David; on October 23, 1941, they forbade them to emigrate; on November 4, 1941, the transportation (Abschiebung) of Jews to Nazi-occupied Eastern Europe went into high gear and the Minister of Finances, Schwerin von Krosigk, organized the seizure of the deportees' assets.

On July 31, 1941, Goring, as head of the Four-Year Plan, charged the chief of the Security Police and the Security Service (SD), SS-Gruppenführer Heydrich, with the preparation of the Final Solution of the so-called Jewish question. On January 20, 1942, Heydrich summoned top officials of all ministries and offices involved in anti-Jewish activities to a villa in Wannsee, a swank Berlin suburb. Under SS direction the assembled civil servants developed a plan for the Final Solution. Authorized by Hitler and supported by the Nazi leadership, the Wannsee planners developed a detailed schedule for the destruction of Europe's 11 million Jews.

After the Wannsee Conference Nazi legislation and policy operated in support of genocide. The consequences were horrendous and bestial: Jews became the slave workers of German corporations, which profited enormously from their misery; Jews were systematically worked to death by the SS; Jews were murdered in the torture chambers and gas chambers of the concentration camps.

The Nazi program of large-scale genocide, resulting in the death of 6 million Jews and millions of Poles, Russians, and other non-Jews, conjured up a final wave of legislation. On April 25, 1943, the Minister of the Interior cynically decreed that Jews and Gypsies—who were continually being destroyed in Nazi death factories—could not become German citizens. On June 9 and 10, 1943, the Nazis dissolved the
Reich Association of Jews in Germany and seized the assets of the organization. On July 1, 1943, Jews officially lost all legal protection and were subjected to the power of the police and Gestapo. In the event of death, Jewish assets were seized by the Reich.

And so the Nazi death machine rattled on. The horrifying operation of the machine of mass extermination was supervised by brutal SS hordes and accompanied by the dry pronouncements of miserable bureaucrats. These debased representatives of a perverted legal and administrative system continued their lethal labor to the last moments of the Hitler regime—down to that Runderlass of the Minister for Economics, Walther Funk. The minister's circular of February 16, 1945, ordered the destruction of all files containing references to anti-Jewish activities in order to prevent the capture of these documents.

The Nazi technicians of hell tried to shroud the scenes of mechanized mass murder with an impenetrable veil of secrecy. Against concealment, ignorance, and indifference a united humanity must set the watchword of the Italian anti-Fascists: Non dimenticare! Don't forget!

NOTES

1. See Ernst Niekisch, Das Reich der niederen Dämonen (Hamburg: Rowohlt, 1953). In 1937, Niekisch was sentenced to lifelong imprisonment. He left the penitentiary in 1945 as a cripple. He was not alone. In April 1939, Nazi concentration camps were filled with more than 300,000 Germans. Approximately 35,000 non-Jewish Germans left the country as émigrés between 1933 and 1941. The figures are cited in David Schoenbaum, Hitler's Social Revolution: Class and Status in Nazi Germany, 1933-1939 (New York: Doubleday, 1966), p. xiii.


6. See Hitler, *Mein Kampf*, pp. 216-25. In reality sailors of the imperial battle fleet at Kiel started the German revolution. Rebellious soldiers joined the navy mutineers in early November 1918. The military revolt made possible the formation of the armed Workers' and Soldiers' Soviets that supported Friedrich Ebert's "social republic." For the chronicle of these events see Cuno Horkenbach, ed., *Das Deutsche Reich von 1918 bis Heute* (Berlin: Verlag für Presse, Wirtschaft und Politik, 1930), pp. 27-35.


13. Ibid., p. 25.


15. Ibid., p. 30. SA or *Sturmabteilung* means Storm Detachment. See also Robert G.L. Waite, *Vanguard of Nazism: The Free Corps Movement in Post-War Germany, 1918-1923* (Cambridge, Mass.: Harvard University Press, 1952). On November 8, 1933, delegations of the Free Corps handed over their flags to the SA in Munich's Königsplatz. The ceremony and the speech of SA Stabschef Röhm are reported in Cuno Horkenbach, ed., *Das

16. The modern German word for Vehme is Feme.


19. Captain Ehrhardt's brigade supported the Kapp Putsch in March 1920; Ehrhardt also assisted Hitler's Munich Beer Hall Putsch of November 8, 1923. Major Buchrucker was guilty of the Küstrin Putsch of October 1, 1923. For these events see Eyck, A History of the Weimar Republic, Vol. 11, pp. 147, 263, 272.

20. Ibid., pp. 160, 263.


23. For the problems of German interwar society see Gunter W. Remmling, "Prologue: Weimar Society in Retrospect," in Dobkowski and Wallimann, Towards the Holocaust, pp. 3-14.


25. Hans Frank, "Deutsche Juristen," Deutsches Recht 4, no. 1 (January 1934), p. 1 (my translation). The old system of law, Frank gloated, has been replaced by the "crystalline hardness of the decision-making power of National Socialist fighters." For this statement see Frank, "Das ewige deutsche Recht ist unser Ziel," Deutsches Recht 4, no. 11 (June 1934), p. 250. In this speech a power-drunk Frank frequently refers to battle law and the role of jurists as servants of Hitler and the NSDAP. In another speech Frank referred to Hitler as "our highest leader who is also our highest judge (Gerichtsherr)." For this statement and other comments on the subordination of the Nazi legal system under Hitler's will, see Frank, "Aufgabe des Rechtslebens nicht die Sicherung der Paragraphenanwendung, sondern vor allem Sicherung des Volkslebens," Deutsches Recht 4, no. 18 (September 1934), p. 427 (my translation). In 1933, Frank became a Reichsminister and Reichsleiter. He was also Reichsjuristenführer and leader of the League of National Socialist German Jurists, which had replaced the German Bar Association. He directed the "coordination" of the legal system as Reichskommissar für die Gleichschaltung der Justiz. The Nazis quickly formed their own organizations and outlawed all other associations of the legal profession. From 1939 to 1945, Frank was overlord of the General Government of
Poland, where he dedicated himself to the eradication of the Jews. Convicted by the International Military Tribunal, he was executed in 1946.


27. Roland Freisler, "Deutsches Strafrecht, Vermächtnis und Aufgabe," Deutsches Strafrecht, Neue Folge, 1, no. 1 (January/February 1934), pp. 2, 5 (my translation). Freisler achieved notoriety as the Nazi judge presiding over the bloody People's Court which "tried" many German army officers and civilians accused of involvement in the attempt on Hitler's life of July 20, 1944. For the development of the totalitarian legal system in Nazi Germany, see the following legal periodicals: Die Juristische Wochenschrift; Zeitschrift der Akademie für Deutsches Recht; Schriften Der Akademie für Deutsches Recht; Das Recht der Nationalen Revolution; Deutsches Recht; Jahrbuch der Akademie für Deutsches Recht. See also Ernst Brandis, Die Ehegesetze von 1935 (Berlin: Verlag für Standesamtwesen, 1936); Hans Frank, Nationalsozialistisches Handbuch für Recht und Gesetzgebung, 2nd ed. (Munich: Zentralverlag der NSDAP, 1935); Hans Frank, Nationalsozialistische Strafrechtspolitik (Munich: Zentralverlag der NSDAP, 1938); Hans Frank, Rechtsgrundlegung des nationalsozialistischen Führerstaates, 2nd ed. (Munich: Zentraverlag der NSDAP, 1938); C. Haidn and L. Fischer, Das Recht der NSDAP (Munich: Zentralverlag der NSDAP, 1936); Ernst Rudolf Huber, Verfassungsrecht des Grossdeutschen Reiches (Hamburg: Hanseatisehe Verlagsanstalt, 1937-1939); Otto Meissner and Georg Kaisenberg, Staats- und Verwaltungsrecht im Dritten Reich (Berlin: Verlag für Sozialpolitik, Wirtschaft und Statistik, 1935); Karl-Friedrich Schrieber, ed., Das Recht der Reichskulturkammer (Berlin: Junker and Dünhaupt Verlag, 1935); E. Volkmar, A. Elster, and g. Küchenhoff, eds., Die Rechtsentwicklung der Jahre 1933 bis 1935/36 (Berlin: Walter de Gruyter, 1937); Wissenschaftliche Abteilung des NS.-Rechtswahrerbundes, ed., Der Deutsche Rechtsstand (Berlin: Deutscher Rechtsverlag, 1939). For a recent analysis of the Nazi judicial system see Ilse Staff, ed., Justiz im Dritten Reich (Frankfurt: Fischer-Taschenbuch-Verlag, 1978).

28. See Hans Frank, "Zur Strafrechtsreform," Deutsches Recht 4, no. 3 (February 1934), p. 49. Writing in his capacity as Reichsjustizkommissar, Frank demanded the "severest punishments" for the perpetrators of these "terrible crimes."

29. See Graber, History of the SS, pp. 88-95.

30. Reich, p. 106.

31. Ibid., p. 123. Oranienburg concentration camp opened on March 21, 1933.


33. See Reinhard Kühnl, Faschismustheorien: Ein Leitfaden (Hamburg: Rowohlt, 1979), p. 209. For the names of the top civil servants, bankers, and industrialists closely linked with the Nazi leadership, see Reich, p. 439. On totalitarianism see Hannah Arendt, Elements and Origins of Totalitarian
34. See Kühnl, *Faschismustheorien*, p. 9.


39. See American Jewish Committee, *The Jews in Nazi Germany: A Handbook of Facts Regarding Their Present Situation*, reprint (hereafter cited as *Jews*) (New York: Howard Fertig, 1982), p. 3. *Jews* was first published in 1935. The official census of June 1925 indicated that the Jews in Germany numbered 564,379 or 0.9 percent of the total population. The census of June 16, 1933, revealed that the number of Jews had dropped to 499,682 or 0.77 percent of the total population. In 1933, about 60,000 Jews emigrated from Germany. In 1934, Jewish emigrants numbered approximately 23,000; in 1935, they numbered about 21,000; in 1936, about 25,000; in 1937, about 23,000. Between January 1, 1938, and the start of World War II on September 1, 1939, about 157,000 Jews emigrated from Germany. By May 17, 1939, forced confiscatory emigration, deportation, and murder had reduced the Jewish population in Germany to 213,930. On May 8, 1945, there were about 15,000 German Jews who had survived the Holocaust in Nazi-ruled and Nazi-occupied Europe. In Europe the Nazis had murdered about 6 million Jews. These statistics are cited in *Jews*, pp. 3, 116, and in Eschwege, *Kennzeichen J.*, pp. 349, 350, 351, 354, 355, 363.

40. For the distinction of the different phases of the Nazi anti-Jewish legislation I am indebted to Eschwege and Walk. See Eschwege, *Kennzeichen J.*, p. 5, and *Sonderrecht*, p. xi.

41. See *Jews*, p. 75; *Reich*, pp. 106, 140.

42. The decree of February 28, 1933, based on Article 48, paragraph 2 of the Weimar Constitution (*Reichsverfassung*), was the fundament of the Nazis' totalitarian police state. See *Verordnung des Reichspräsidenten zum Schutze von Volk und Staat, Reichsgesetzblatt* (hereafter cited as RGB1) I, 1933, p. 83.

43. *Gesetz zur Behebung der Not von Volk und Reich (Ermächtigungsgesetz)*, RGB1 I, 1933, p. 141. Article 3 of this enabling law empowered the
chancellor, i.e., Reichskanzler Hitler, to engross and promulgate the laws of the Reich.

44. Points four and five of the Party Program of February 24, 1920, declared that Jews could not be German citizens and that they should be subject to alien legislation. Cited in Sonderrecht, p. 3.

45. The American Jewish Committee uses the concept non-Jews of Jewish descent. See Jews, p. 76. The Nazis publicized their intention to cause "the humiliation of the Jews of Germany." See Völkischer Beobachter, April 3, 1933.

46. For the "Aryan paragraph" and its consequences see Gesetz zur Wiederherstellung des Berufsbeamtenums, RGB1 I, 1933, pp. 175-77. See also Jews, pp. 123-29. Exceptions concerning Jewish war veterans and their families were rendered nugatory in practice.

47. Erste Verordnung zur Durchführung des Gesetzes zur Wiederherstellung des Berufsbeamtenums, RGB1 I, 1933, p. 195. Paragraph 2 of this decree defined as "non-Aryan" anybody "who is descended from non-Aryan, in particular Jewish parents or grandparents. It is sufficient that one parent or one grandparent is non-Aryan. This shall be deemed to be so, in particular, if one parent or one grandparent belonged to the Jewish religion."

48. Zweite Verordnung zur Durchführung des Gesetzes zur Wiederherstellung des Berufsbeamtenums, RGB1 I, 1933, pp. 233-35. In contrast to many other countries, health insurance and social work are civil service organizations in Germany.

49. Dritte Verordnung zur Durchführung des Gesetzes zur Wiederherstellung des Berufsbeamtenums, RGB1 I, 1933, pp. 245-46. In Germany judges, notaries, public school teachers, and university professors are civil servants. See also Hans Mommsen, Beamtentum im Dritten Reich (Stuttgart: Deutsche Verlagsanstalt, 1966).

50. The restrictive laws excluded Jews from admittance to the profession of law, juries, commercial judgeships, labor and arbitration courts, the lawyers' and patent lawyers' association, etc. See RGB1 I, 1933, pp. 188-89, 217-18, 522-23, 669-77. See also Jews, pp. 139-48.

51. See Reich, pp. 436-37.

52. These discriminatory laws, decrees, ordinances, orders, instructions, and rulings were promulgated in 1933. For the text of this legislation see Jews, pp. 149-77. Subsequent legislation increased the severity of these measures and extended their range to all other professional activities.

53. See RGB1 I, 1933, pp. 479-80. For subsequent legislation see RGB1 I, 1937, p. 1161; RGB1 I, 1938, pp. 404, 414-16, 973, 1579-81, 1638-40, 1709; RGB1 I, 1939, pp. 282-86. See also Sonderrecht, p. 233, No. 503; p. 263, Nos. 52, 53; p. 264, No. 57.

54. See Reichsarbeitsblatt I, 1934, pp. 45-56.

55. See RGB1 I, 1935, p. 1146.
56. For the Law for the Protection of German Blood and German Honor (Gesetz zum Schutze des deutschen Blutes und der deutschen Ehre) see RGB1 I, 1935, pp. 1146-47.


60. See RGB1 I, 1938, pp. 1573, 1579-81, 1638; Reichsteuerblatt, 1938, pp. 1073-75. See also Adam, Judenpolitik im Dritten Reich, pp. 211-12.

61. See Sonderrecht, p. 255, No. 12; p. 256, No. 17; p. 260, Nos. 34, 37; p. 262, No. 47; p. 292, No. 190; p. 293, No. 192.

62. See RGB1 I, 1939, pp. 1097-98. The Reichsvereinigung der Juden in Deutschland was controlled by Heydrich, chief of the SS Main Security Office. In 1938 and 1939, the Nuremberg laws were extended to Nazi-dominated Czechoslovakia.

63. See Sonderrecht, p. 304, No. 10.


68. Ibid., p. 228.

69. See RGB1 I, 1943, pp. 268-69.

70. See Sonderrecht, p. 398, No. 485; p. 399, No. 487.

71. See RGB1 I, 1943, p. 372.