

THE LEGAL PATH TO JUDEOCIDE

by
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"The worst crimes were dared by a few, willed by more, and tolerated by all." Tacitus, Roman historian.

The destruction of European Jewry was a gradual, well-organized legal process. The Nazi party and the Reichstag codified a racist legal system to exclude, disenfranchise and murder Jews. The system was upheld and enforced by the German judiciary. This pattern was followed to varying degrees in occupied territories and by sympathetic regimes in Italy, Bohemia-Moravia, Slovakia, France, the Netherlands, Norway, Denmark, Belgium, Luxembourg, Hungary, Rumania, Greece and Poland. This is, indeed, ironic since Western government rests on the precept that civil authority is necessary to protect us against evil.

The environment that made the Holocaust possible was aided by prewar European apathy as well as a concerted effort by the Allies to restrict Jewish immigration below legal quota limits. The ultimate Catch-22 for German Jews is that they were not considered German citizens by the Nazis (Nuremberg Laws, 1935), yet the Americans still classified them as citizens of the Reich and maintained their annual immigration quota at 25,000.

Adolf Hitler invented nothing new. He successfully tapped into centuries of anti-Semitism in Europe. Martin Luther's ninety-page tract written in 1543, "On the Jews and Their Lies," assured a continuity between Catholic and Protestant anti-Semitism. The Jew as the perennial "outsider" was created and perpetrated by binding religious edicts, anti-Jewish liturgy and governmental mandates.

A new variant of anti-Semitism developed in the late nineteenth century with the advent of eugenics and social Darwinism. Solving Germany's Jewish problem by genocide was first proposed by Eugene During of Berlin University in "The Value of Life." The term anti-Semitism followed soon after, coined by Wilhelm Marr in 1879 and based on racial hatred of Jews. The Nazis viewed the Jew as a dangerous, foreign bacteria that was infecting the superior Aryan race. The Nazis were engaged in a Volkerchaos for the survival of German blood purity and believed that there was a sacred covenant between "blood and soil." Conversion, to avoid persecution, was not an option. On October 4, 1936, the Reich Ministry decided conversion had no relevance concerning racial matters.

Hitler came to power in January 1933 and, by April, the gradual, legal separation of Jews from German society began. On April 1, 1933, a boycott of Jewish businesses was initiated; a week later the forced "retirement" of all civil servants "who were not of Aryan descent" was mandated. In March, Dachau, the model concentration camp, was opened. By 1935 there were seven concentration camps operating within Germany. In October, all

hospitals were declared "free" of Jewish doctors. That same year Thuringa became the first province to eliminate Jews from official and professional posts. For example, on March 2, 1933, the local government declared that it "will only consider Christians for public contracts." Also, in 1933, the Nazis banned the activities of Jehovah's Witnesses.

The first Nazi challenge to the clergy was the boycott of Jewish businesses on April 1, 1933. The boycott was announced by Joseph Goebbels and enforced by Julius Streicher in response to the anti-German boycott rally organized by the American Jewish Congress on March 27, 1933 in New York City. The Catholic and Protestant churches were silent. The Bishops of Munich, Berlin and Breslau were mute for two reasons: 1) They believed Jews could take care of themselves; and, 2) They didn't want to provoke the Nazi regime. On July 23, 1933 the Vatican and the Nazis signed a Concordant disbanding the Catholic Centrist Party. The Vatican succumbed to the Nazi representation that Germany would recognize the sacredness of the church and its property.

From 1933 to 1935, the exclusion of non-Aryans and their spouses from the clergy or church offices was instigated through the "Aryan Paragraph." Aryan status was developed under the Civil Service Law of 1933 which stipulated that a German was an Aryan if all four grandparents were Christian. Most churches routinely supplied the baptismal records. This Paragraph became moot with the passage of the Nuremberg Laws, but clearly signaled there would be little or no opposition from the Christian hierarchy to Nazi legislative initiatives.

The road to the Final Solution was paved with German Christian blood. On July 14, 1933, the Nazis passed the law for the Prevention of Progeny of Sufferers from Hereditary Diseases. The law was enacted six months later and formed the groundwork for the Euthanasia Program (T-4) which began in force after the invasion of Poland. The T-4 program was responsible for the sterilization of 200,000 - 350,000 "hereditary diseased," "habitual criminals" and "unproductive eaters." The program also let to the murderer of eighty-thousand German citizens in one-and-a-half years before Hitler outwardly appeared to yield to clerical opposition. The Fuehrer suspended Gnadentod ("mercy death") on August 24, 1941. However, Hitler issued a secret directive to continue the program and euthanasia to the East, i.e., concentration and death camps, from December 10, 1941 through 1945. Mercy killing after August 1941 was referred to as "wilde Euthanasia" and afforded physicians more freedom in selecting their victims.

The use of the gas chambers as a means of achieving large scale murder was pioneered through the Euthanasia Program as were two other practices: financing murder by plundering the victims' resources and printing a legal and official death certificate for each victim. Never underestimate the power of paper in German society. The Nazis were scrupulous record keepers and obediently adhered to details. "Bureaucratic organization, for example, can distance most persons from the killing, and routinize the tasks that facilitate genocide, dampening moral awareness." In Germany, as Raul Hilberg points out, most bureaucrats "composed memoranda, drew up blue prints, signed correspondence, talked on the telephone, and participated in conferences.' Yet they could sit at their desks and destroy a whole people." (1)

The Night of the Long Knives that began on June 30 and ended on July 2, 1934 emasculated the SA and catapulted the SS to primacy as the foremost police agency in Germany. The federal police were soon integrated into the SS who could now operate with a legal mandate. Obedience to, and the primacy of, the state have been theorized and practiced since Kant and Hegel. These concepts were adroitly manipulated by the Nazis during the implementation of the Final Solution.

Consider the following exchange between the court psychologist at Nuremberg, G. M. Gilbert, and Wilhelm Frick, lawyer and Reich Minister of the Interior, in Frick's cell:

Frick: "Well, what do you expect a man to do when he has orders to carry out?"

Gilbert: "If it is a question of one man's will against the lives of millions of people, I would say that one is morally obligated to kill the dictator rather than carry out such orders, if that is the only way out."

Frick: "A moral obligation to murder? - That is a very peculiar obligation. That is a crime against social convention, you know."

Gilbert: "I see. Killing a murderous dictator is a crime against social convention, but war and extermination were quite legal in Nazi Germany."

Frick: "Oh, that is another matter." (2)

In a separate interview, Gilbert asked Hermann Goering:

"What about killing the man who ordered the mass murder?"

Goering: "Oh, that is easily said, but you cannot do that sort of thing. What kind of a system would that be if anybody could kill the commanding officer if he didn't like his orders? You have got to have obedience in a military system." (3)

Gilbert asked General Alfred Jodl:

"The killing of the escaped prisoners and the assassination plot against Giraud seem to disturb the military men more than the whole murder program that exterminated millions of Jews and other ideological opponents."

Jodl: "Yes, of course - that concerns our honor vitally. We had nothing to do with the other thing. It will be shown conclusively that we had nothing to do with that."(4)

The Nuremberg Laws passed on September 15, 1935 legally separated Jews from the rest of society by denying them German citizenship and preventing intermarriage. The Reich Citizenship Law mandated that only Germans could be citizens of the Reich and Jews, who became state subjects, consequently lost their political rights. The Law for the

Protection of German Blood and Honor prohibited intermarriage and Rassenschande (sexual contact) between Aryans and Jews .

The judiciary was composed of conservative, anti-republic judges during the Weimar period. For the Nazis, "In truth, the action of the Fuehrer was pure justice. It is not subject to the law; instead, it was the highest law." (5) The People's Court, under the leadership of Dr. Roland Freisler (1942-1945), enforced racist legislation passed by the Reichstag and turned thousands of German citizens over to the SS for "protective custody." The court sentenced and authorized executions for thousands of Germans accused of "racial defilement," "defeatism" and opposition to Hitler.

The courts reinforced the concept of Ordnung which "meant that law had to be applied in fact and spirit, that every paper for every 'case,' had to be filled out, stamped, signed by all parties, including the damned, and placed in the correct file." (6) In Germany, "The judge is a direct servant of the state." (7) Examples of typical sentences follow:

Kaufman, Julius, born 5/30/1897 in Vienna, full Jew, sentenced on 8/5/1939 to two years and six months penitentiary for dishonor of the race. After serving sentence, released to custody of Gestapo Frankfurt. Neumark, Markus, born 4/9/1884 in Gross-Steinheimnr. Offenbach, full Jew, sentenced (10/39) to 2 years and three months penitentiary for dishonor of the race. After serving sentence, taken into preventive detention. (8)

In 1936, Jewish students were expelled from high school and Jewish professors were prohibited from instructing Aryan students. This was merely an extension of an age-old European tradition of minimizing the number of Jewish students enrolled in universities through numerical quotas affixed to percentages, i.e., Numerus Clausus .

This was also the year that American domestic politics dovetailed with Nazi racial policies. The 1936 Olympics gave a boost to Hitler's international credibility and signified a tacit endorsement of Nazi racial laws. Avery Brundridge of the United States Olympic Committee successfully argued for American participation in Berlin claiming boycott efforts were led by Jewish "special interests."

Legality, as a means of isolating Jews, gained widespread international support in 1938. The Anschluss with Austria, on March 13, 1938 added 185,000 Jews under Nazi jurisdiction. Anti-semitic racial laws quickly followed. On March 31, 1938, the Polish government enacted the Denial of Citizenship Bill revoking citizenship to anyone living outside of its borders for more than five years. This bill clearly was aimed at Jews and had the potential to strand 70,000 Jews in the Reich. The Germans retaliated by rounding up and dumping 18,000 Jews on the Polish border from October 28-29, 1938. The Citizenship Bill was not revoked until November 28, 1941.

Earlier in the year, from July 6-15, 1938, an international conference was convened in Evian, a southern French resort town, to deal with the German Jewish immigration "problem." Out of the 33 nations invited, only Italy refused to participate. The gathering

was prompted by the suggestion of Franklin Delano Roosevelt. Barriers to liberalized immigration policies were not loosened and most nations, including America and Britain, failed to meet their legal immigration quotas during the war. The most generous offer came from the dictator of the Dominican Republic, Rafael Trujillo, who offered a safe haven for Jews. Hitler was convinced that he alone would have to solve the "Jewish problem" (Judenfrage). One month later, on August 17, 1938, legislation authored by Dr. Hans Globke forced German Jews to adopt the middle name of either "Israel" or "Sarah" if the bearer did not already have a very distinct Jewish name.

Encouraged by Western apathy and his success in Austria, Hitler demanded, and was awarded, the Sudetenland (Czechoslovakia) by a binding, legal arrangement negotiated September 29-30, 1938 - the Munich Agreement.

As the screws were tightened in Germany, Jews became more desperate and sought refuge in Switzerland in greater numbers. Dr. Heinrich Rothmund, Chief of the Swiss Police, "suggested" the German government mark Jewish passports with a red "J" so they could be more easily identified. Germany responded by ordering Jews to surrender their passports and have "J" marked on their new IDs. On September 29, 1938, a treaty between Switzerland and Germany was codified and the measure was implemented a week later.

On November 9-10, 1938, Kristallnacht, the first organized pogrom in Germany since the Middle Ages took place. This party-sanctioned pogrom destroyed 7,700 stores, warehouses and homes; 280 Jewish synagogues and communal institutions were razed or demolished; approximately 250 Jews died during the rampage an additional 2,500 would die by spring 1939; and for the first time, Jews (20,000 to 30,000 men) were taken to concentration camps solely on the basis of their religion. The violence and organized looting was paid for by Jews who were assessed a Jewish Atonement Fine of roughly \$400 million for instigating the pogrom. Earlier in the year, April 26, 1938, Hermann Goering ordered Jews to declare the value of their domestic and foreign property holdings. The Nazis forced insurers to respect their legal obligation to reimburse Jewish losses, then confiscated the proceeds. In addition, to forestall any financial disruption, bond dealings were suspended for several days as Jews scrambled to pay the fine. Goering commented to Reinhard

Heydrich, "I wish you had killed 200 Jews and not destroyed such valuable property." (9).

Kristallnacht expedited Jewish immigration attempts and facilitated the looting of Jewish resources. Walther Funk, Minister of the Economy, drew up laws in 1938, expelling Jews from German economic life. Jews no longer were allowed to be members of corporations effective December 31, 1938 and by the following day, they were prohibited from being the head of an enterprise "for the organization of national labor." (10) At the Nuremberg trial, Funk, Minister of Economics and President of the Reichsbank, continued to justify the Aryanization or Nazi expropriation of Jewish property and businesses in occupied Europe. There was little or no compensation for this

"legal" theft of Jewish assets, and rarely was Aryanization overturned or rectified after the war.

In late May 1939, the St. Louis, a ship carrying 936 European refugees, of which 900 were Jewish, was denied access to Cuba. The Cuban government asked for a "\$500,000 entry fee." The boat lingered off the shores of the United States from June 4-6, 1939. The Coast Guard prevented the passengers from disembarking despite the fact 734 refugees had valid, American quota numbers. Roosevelt was silent. The ship returned to Antwerp on June 17, 1939, and most of the Jews perished in the Holocaust.

The Nazis were still far from their goal of solving the "Jewish Problem." From 1933-1941, 250,000 of the 525,000 Jews living in Germany emigrated or escaped. Yet, after Kristallnacht, Heydrich estimated it would take an additional eight to ten years to rid the Reich of Jews. As Germans conquered territories in the East, millions of Jews were put under their domain. The plan to relocate Jews to Madagascar became impossible to implement by June 1941.

In May 1939, the British promulgated the White Paper to appease Arab interests in the Middle East. This foreign policy position restricted Jewish immigration to Palestine to 15,000 Jews per year for five years. The White Paper was a violation of the British Mandate as charged by the League of Nations. The British committed substantial naval resources to enforce the policy and, in effect, trapped European Jews three months before the outbreak of World War II.

The invasion of Poland on September 1, 1939 precipitated World War II and fast-forwarded the war against the Jews. Two years to the day, the Yellow Badge was introduced in Germany. This was not a Nazi innovation, but a replication of the badges introduced by Pope Innocent III in 1215 to single out the Jews by their dress. Later in the year, Jews were "forbidden" to leave the "Greater Reich."

The Wannsee Conference, held on January 20, 1942, was the Nazi blueprint for the Final Solution. In 90 minutes, Nazi officials agreed to convert several concentration and labor camps into institutions of slave labor and systematic, industrialized mass murder. As a follow up to the conference, Walther Funk cut a deal with Heinrich Himmler to launder the booty from the camps through the Reichsbank. Additionally,

Otto Thierack, former President of the People's Court and Reich Minister of Justice, signed the "Destruction Through Work" Agreement with Himmler on September 18, 1942. This pact was designed especially for inmates in the "Night and Fog" (Nacht und Nebel) program.

The Germans created 400 ghettos from 1939-1942, mostly in Eastern Europe, to restrict and physically isolate Jews. This concept, together with book burning, had its roots in fifteenth and sixteenth century Germany and Italy. By the summer of 1942, two million Jews and 8,000 Roma were trapped in medieval ghettos. (11) Judenraete, composed of Jewish elders, were empowered to pass legislation that would bleed and

squeeze their own people. As Adolf Eichmann and Alois Brunner discovered in Vienna, Jews were law abiding and well organized. The Judenraete assisted Nazis in restricting food, stripping Jews of privileges, maintaining police, supplying slave labor and organizing deportations. All actions connected with ghettoization and "resettlement" of Jews was sanctioned by Berlin.

During this period, Breckinridge Long, Undersecretary of State for European Affairs, orchestrated American foreign policy to prevent Jews from immigrating. He felt Jews would become spies and saboteurs and urged foreign consuls to use any means necessary to frustrate Jewish sanctuary. Long circulated a memo to foreign embassies in 1939 asking them to erect barriers to Jewish immigration. That same year a special bill was proposed in Congress asking for sanctuary for 10,000 children outside of the quota system. The bill died in Committee. Six months later, legislation was overwhelmingly approved to allow 15,000 children from war-torn England to emigrate. In 1941, the State Department issued a directive that paperwork associated with immigration had to be filled out in Washington, D.C., rather than European embassies. At the Bermuda Conference, (April 1943), Long successfully argued against making concessions to Jews. On November 26, 1943, the Undersecretary intentionally misled Congress to abandon legislation that would have set up a special commission to deal with the rescue of Jews. In late 1943, the Treasury Department documented that the State Department advised the Swiss delegation not to accept data from private organizations about extermination camps. The War Refugee Board, which rescued approximately 200,000 Jews and other victims of Nazi persecution, was not established until January 22, 1944.

Back in Germany, the Nazis were still cranking out anti-Jewish legislation. As late as 1944, Dr. Hans Globke authored legislation to expropriate property from Jews sent to concentration camps. On January 13, 1945, the Central Office for Reich Security decreed that all "stateless" Jews and those married to Aryans who were capable of work must be transported to Theresienstadt. Two weeks later, the Soviets arrived at Auschwitz.

The Fuehrer, Reichstag and German Judiciary created, perpetrated and sanctioned the legal framework for the mass murder of Jews. However, all segments of German society were involved in the industry of genocide: The Reichsbahn, received payment for transports to camps; gold fillings, watches, bank notes, jewels, even the gold from eyeglasses of gassed victims, was stored in the Reichsbank and Berlin Pawn Shops; IG Farben contracted with the SS to provide Zyklon-B for the gas chambers; human hair was sent to the Alex Zink factory in Nuremberg; and, German corporations exploited Jewish slave labor with the cooperation and authorization of the WVHA (SS Economic and Administrative Office.) All of these arrangements were legal transactions. The German political system had no built in fail-safe to check genocidal impulses. Obedience to the law of the state prevailed over modern conventions of human decency.

END NOTES

1 Roger W. Smith, "Holocaust and Genocide Studies," Volume 8 Number 3, Winter 1994, 329.

2 G. M. Gilbert, *Nuremberg Diary*. York, Pa.: Farrar, Straus and Company, 1947, 328.

3 Gilbert, 252.

4 Gilbert, 247.

5 Carl Schmidt, *Hamburg*, 1940.

6 Peter Wyden, *Stella*. New York: Anchor Books, 1993, 188.

7 Ingo, Mueller, ; trans. Deborah Lucas Schneider. *Hitler's Justice: The Courts of the Third Reich*. Cambridge: Harvard University Press, 73.

8 Mueller, 115.

9 Anthony Read and David Fisher, *Kristallnacht: The Nazi Night of Terror*. New York: Random House, 1989, 145.

10 Read and Fisher, 147.

11 United States Holocaust Memorial Museum, Washington, D.C.