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THE NAZI PENAL SYSTEM—II

Frederick Hoefler

In our preceding number we published an article on The Nazi Penal System by the author of the following. It covered Penal Legislation and Judicial Administration.—EDITOR.

Both under the Hohenzollern Empire and the Weimar Republic, public safety was almost exclusively a matter of state and municipal administration. The German states maintained highly efficient, technically trained police forces; especially the police of Prussia was well known for its clean, intelligent administration. Through its very efficiency, it constituted a potential menace to political freedom, but a system of administrative courts protected the individual citizen against abuses of governmental power; moreover, the regular courts of justice had jurisdiction over violations of civil and criminal law committed by public officials.

When the National Socialist party came into power, its leaders immediately made plans to obtain absolute control of the police system and to mold it into an instrument of political oppression and terror. For this purpose they removed the existing constitutional guarantees of freedom. This, however, was not sufficient; for they had to overcome the attitude of the police forces that had been trained under liberal government to use intelligent methods rather than brutality; these policemen were largely indifferent or even hostile to the Nazi state.¹

Accordingly, the government started a "purge" of the police forces, eliminating all non-Aryans, former liberals and other "politically unreliable" elements; measures similar to those described in the chapter on judicial administration were applied. Since even this "purge" was not sufficient to bring about the desired changes, a special political police organization had to be created that would be absolutely ruthless and entirely loyal to the Nazi government.

This was done by Goering, the new *Ministerpraesident* of Prussia, who established the *Geheime Staatspolizei* (secret state police; abbreviated Gestapo) by a decree of April 26, 1933.² Another decree³ of November 30, 1933 made it an independent branch of government, separate from the regular

¹ This was frequently acknowledged by political prisoners from 1933 to 1938. See Gerhard Seger, Oranienburg, etc., 1934, p. 13; Engl. ed. "A Nation Terrorized", 1935, p. 26. Clara Leiser, "Refugee", p. 98. Papers concerning the treatment of German Nationals in Germany 1938-1939, presented by the Secretary of State for Foreign Affairs to Parliament by Command of His Majesty, London, 1939, Cmd. 6120, p. 36.

² *Preuss. Gesetzsammlung*, 1933, 122.

³ *Preuss. Gesetzsammlung*, 1933, 413.

police and solely responsible to the Ministerpraesident himself. It was exempted from the control of regular or administrative courts.⁴ Its function was to hunt down and crush every form of opposition to the government. For this purpose it had unlimited powers⁵ to arrest, imprison, and kill political suspects and to search and confiscate their property. Its victims had no right to a judicial hearing and were completely at its mercy.

After having assisted Hitler and Goering in the blood purge of June 30, 1934, the powers of the Gestapo were increased and its organization became more elaborate. Officially it remained a branch of the Prussian government, responsible to Goering, but actually it began to function as a federal agency when Himmler, Reich leader of the "S.S." (elite guard), was put in charge in 1934.⁶ Himmler combined the forces of the S.S. and the secret police so that Gestapo officers were given high rank in the S.S. force while every soldier in the S.S. was also a potential agent of the Gestapo. In other words, the Gestapo officers were the "brains" of this combined organization while S.S. guardsmen acted as their subordinates.⁷ They had to do the actual man-hunting, killing, and torturing of prisoners; the S.S. was also left in charge of the concentration camps for political prisoners. The Gestapo was officially responsible for these matters but more or less limited itself to giving the orders and supervising these activities.

The status of the Gestapo as a government agency was officially defined and its powers were further enlarged by decrees of the Reich and Prussia in 1936.

Two Prussian decrees of Feb. 10, 1936,⁸ maintained the formal status of the Gestapo as a state agency. Its official task was the repression of all subversive activities, investigation of all matters of political importance, and the giving of information and recommendations to the state government. Its central bureau was the state secret police office in Berlin. Its official chief was the *Ministerpraesident* Goering, but its deputy chief, Himmler, was the actual man in command. Under this central bureau, thirty-five Gestapo bureaus were functioning in

⁴ As to administrative courts, this was formally sanctioned in the Decree of February 10, 1936, *Gesetzsammlung* 9.21. Regular courts of Law never interfere with political measures of the Nazi government. Ebenstein, pp. 75-80.

⁵ See above, on the abolition of the Bill of Rights in 1933.

⁶ Meissner und Kaisenberg, *Staats-und Verwaltungsrecht im dritten Reich*, 1935, p. 170.—Schuman, *The Nazi Dictatorship*, pp. 299-300.—Loewenstein, *Hitler's Germany*, pp. 93-97.

⁷ Loewenstein, *loc. cit.*

⁸ *Gesetzsammlung*, p. 21 and p. 22.

conjunction with the regular administrative district authorities of the state.

The Gestapo was authorized to "take measures" for the entire territory of Prussia, to give orders to all state and municipal authorities, and to request information from all these. Apart from those requests, all state and local police authorities had to report automatically all matters of political interest to the Gestapo.

The Reich's decree of June 17, 1936,⁹ went even further. The federalization of state police forces which had actually begun in 1934, was now officially sanctioned by creating the new office of a Chief of Police for all Germany. This office was combined with that of the Chief of Police of Prussia, Deputy Chief of the Gestapo, and Reich's leader of the S.S. Needless to say, all of these offices were combined in the person of Himmler. While officially subordinate to the governments of the Reich and Prussia, he was made actually independent and omnipotent; he became directly and solely responsible to the *Fuehrer*.

This decree completed the centralization of the German police forces, thus creating what is probably the most powerful instrument of political oppression in the history of Europe. It has operated with the most refined scientific methods as well as with the utmost brutality. Until now it has efficiently checked every bit of opposition inside Germany. It also kept under control the population of all territories conquered since 1939. The highest Nazi party leaders and Army generals have to fear the Gestapo as much as the humble citizen.

Political Trials

Although the Gestapo is authorized and able to do away quickly with every political opponent, the Nazi government still maintains its political tribunals, the People's Court and the already described Special Courts. It even stages political trials sometimes in the regular criminal courts. This is done solely for purposes of propaganda.¹⁰ Action by the Gestapo is necessarily secret. Therefore the Government has to resort to a public trial whenever it desires to give a particular impression to public opinion. Cases that are to serve this purpose are carefully selected and prepared by the Ministry of Justice under specific instructions from the Propaganda Ministry, and all newspaper reporting on these matters is super-

⁹ RGB1 1936 I 487.

¹⁰ Ebenstein, pp. 91-92; Roper-Leiser, pp. 96 ff., pp. 134 ff., pp. 141 ff.

vised by the Propaganda Ministry and by the Press Bureau in the Ministry of Justice. Vice versa, all trials that might reflect unfavorably on the government or the Nazi party, are held in absolute secrecy.

One of the more interesting political cases was the trial against Pastor Niemoeller, the head of the Protestant Confessional Church which refused to submit to government dictation in matters of religious doctrine. Hitler himself had ordered his arrest and trial and personally demanded that the pastor be severely punished.¹¹ Niemoeller, however, had been very careful in avoiding direct criticism of the government. When speaking from the pulpit, he had given accurate reports on the arrest and imprisonment of Protestant clergymen by the Gestapo and on other matters important to the Church. Thus, for instance, in February, 1937, he had discussed the death of an imprisoned clergyman, officially described as suicide; he avoided raising the question whether the government had committed murder.¹² Accordingly, it was difficult to find a legal pretext for a trial and sentence. As he defended himself skilfully and the case was beginning to arouse more sympathy for the victim than the government desired, the order for a public trial was cancelled and a trial, lasting only a few hours, was held in secrecy on March 1st, 1938. The Special Court in Berlin found Niemoeller guilty of violating the *Heimtueckegesetz* and of incitement from the pulpit. He was sentenced to seven months' imprisonment. The Court considered this sentence as served by more than seven months' detention awaiting trial, and ordered the discharge of the prisoner. However, before leaving the courtroom, Niemoeller was seized by the Gestapo and taken to a concentration camp. He has never been released. According to Edith Roper,¹³ the Gestapo asked Niemoeller to sign a statement acknowledging his guilt and voluntarily relinquishing his pulpit. If he had signed it, this statement would have been given the widest publicity, thus making up for the lost publicity effect of the trial. The pastor, however, refused to give his signature and therefore had to remain a prisoner.

¹¹ Letters of Sir Neville Henderson to Viscount Halifax, dated March 3 and March 7, 1938, in Papers Concerning the Treatment of German Nationals in Germany 1938-39, pp. 5-6.

¹² Roper-Leiser, pp. 115 ff., giving a very detailed description of the procedure. On the Niemoeller trial see also Ebenstein, pp. 210 ff.; Loewenstein, *Hitler's Germany*, pp. 161-162; Martha Dodd, *Through Embassy Eyes*, pp. 282-283.

¹³ *Loc. cit.*, p. 123.

Prisons

Prison administration under the Weimar Republic was that of a civilized, progressive country, somewhat handicapped by legal and financial problems. All prisons belonged to the several states, and most of them were under the state ministries of justice, thus having the advantage of centralized administrative control.

Prussia, the largest state,¹⁴ had, in 1928, forty-five state prisons for convicted criminals, each with a capacity for several hundred inmates; it had three large institutions exclusively for detention awaiting trial; there were about nine hundred local jails, most of which would not admit more than fifty inmates; these figures do not include mere police lockups. The size and distribution of the greater state prisons was favorable for good administration; they were large enough to warrant the employment of professional personnel, but not too large for individualized treatment of inmates. The local jails were inferior as might be expected, but the supervision of the state authorities prevented the worst of those evils that are commonly found in a decentralized administration.

State ministries of justice mostly exercised their control through district prison boards (*Strafvollzugsamter*)¹⁵ which were coordinated with the district courts of appeal in each state. Prussia had thirteen districts of this nature.

The administration of the state prisons was conducted in a progressive spirit, under the Federal Prison Rules of 1923¹⁶ which stressed the social rehabilitation of offenders. The poor economic situation of the post-war years did not permit large-scale reforms of all institutions, but the governments of most states did as much as they were able to do. Some remarkable experimental institutions were conducted in Prussia, Thuringia, Hamburg, and elsewhere.

The fundamental problem of prison personnel¹⁷ was attacked in a courageous spirit. Prison wardens were usually appointed from the ranks of lawyers, judges, physicians, clergymen or administrative sub-officials. The more important states, including Prussia and Bavaria, provided for a training period through probationary appointments or appointments in an assistant capacity. The custodial force mostly came from the ranks of discharged military personnel. Considerable ef-

¹⁴ Hasse, in Bumke, *Deutsches Gefaengniswesen*, pp. 40 ff.

¹⁵ *Ibid.* pp. 37-40.

¹⁶ RGB1 1923 II 263 ff.

¹⁷ *Weissenrieder in Bumke*, pp. 71 ff., 77, 84 ff. Sellin, *Journal of Criminal Law*, etc., 23, pp. 102-104 (1932).

forts were made to educate custodial officers through in-service training; here, too, probationary appointments were made, and the permanent civil service appointments were given after successful training.

The professional personnel consisted traditionally of physicians, clergymen and teachers. The more progressive states under the Republic modernized this branch by adding psychiatrists and social case workers; Saxony and Thuringia were leading in this introduction of prison social work.¹⁸

The Federal Prison Rules of 1923 introduced a progressive grade system. Prisoners earned their promotion to higher grades and increased privileges through good conduct. Several fine experiments in prison self-government were made in Prussia¹⁹ and Thuringia.²⁰

There were numerous private social agencies for the aid of released prisoners.²¹

In 1933 these promising developments were abruptly stopped by the National Socialist government. Rehabilitation was no longer favored; intelligent understanding of the individual prisoner was replaced by severe, repressive methods of mass treatment.²²

The ranks of prison personnel were "purged" as in all other branches of the government; the most important prison reformers, such as Gentz in Prussia, Frede and Krebs in Thuringia, and Koch in Hamburg, were removed. All experiments in prisoners' self-government were immediately abandoned; social work was reduced to insignificance, and about six hundred private prisoners' aid societies were disbanded. Prison education and recreational activities were mostly given up. They were replaced by goose-stepping and pseudo-military drill, even in women's prisons.²³ The prisoners' privileges, such as receiving visitors, writing letters, or making complaints were reduced to an absolute minimum. Some of the old prison wardens who had kept their positions tried to escape the extremes of the new regime by remaining personally fair to their inmates. They were able to prevent that extreme cruelty which characterized the Gestapo's concentration camps. But

¹⁸ Weissenrieder, *loc. cit.* pp. 70, 90; Beck, *Journal of Criminal Law*, etc. 23, pp. 1026-1029 (1933); Cantor, *ibid.*, 25, pp. 721 ff.

¹⁹ Gentz, *Journal of Criminal Law* 22, pp. 873 ff. (1932).

²⁰ Cantor, *loc. cit.*

²¹ Seyfarth in Bumke, pp. 434-454.

²² Decrees: RGB1 1933 I 232; 1934 I 383; *Preuss. Gesetzsammlung* 1933, 293. Articles in *Blaetter fuer Gefaengniskunde* 67, pp. 166-170, 268-278, 371-373; 69, pp. 186-197, 202-206; 70, pp. 3-14, 48-55, 209-220. Leiser, A Director of a Nazi Prison Speaks Out: *Journal of Criminal Law* 29, pp. 345-352 (1938). Cantor, *ibid.* 25, pp. 84-90 (1934).

²³ *Blaetter fuer Gefaengniskunde* 67, pp. 166-170 (1936); 268-278 (1937); 69, pp. 202-206 (1938); 70, 209-220 (1939).

they were effectively prevented from continuing any constructive efforts.

While the treatment became generally more severe, it should be noted that many victims of political and religious persecution were incarcerated in the regular prisons. Political trials, including those against religious and racial minorities, usually ended with a stiff prison term, later to be followed by incarceration in concentration camps. One Protestant sect, the "Bible Researchers," was totally prohibited by the government and most of its members imprisoned.²⁴ Many fine, upright citizens were thus branded as criminals and languished in penal institutions.

Concentration Camps

Beside the regular prisons, the Hitler government maintains an independent system of institutions for political prisoners, members of religious and racial minorities, and other victims. These are the concentration camps. The first camps in 1933 were apparently run by the "S.A." (Storm Troopers).²⁵ Since 1934 the "S.S." (Elite Guard) has taken their place. The supervision of all camps is in the hands of the Gestapo, probably since 1934; officially, since 1936.²⁶

As to the number and size of existing camps and the number of their inmates, the Nazi government has carefully avoided publishing a detailed account. In 1933 the government admitted a "daily average" of 18,000 prisoners in concentration camps, but this figure was obviously too low. Private estimates went as high as 174,000 political prisoners for the first nine months of that year; the number of camps was said to be between 45 and 100.²⁷ In 1939, Loewenstein reported²⁸ that he knew at least eighteen camps in Germany proper and two in Austria, but he believed that many more were existing. The larger camps, according to the same writer, had a capacity up to 15,000; one in Sachsenhausen (Oranienburg) had 22,000. These figures seem to be in harmony with those stated in a British white paper of 1939.²⁹ Loewenstein estimated that there was a total of 1,500,000 prisoners in these camps.

²⁴ Leiser, *loc. cit.* *Brandstatter in Blaetter fuer Gefaengniskunde* 70, pp. 48-55 (1939).

²⁵ Seger, *Oranienburg, Erster authentischer Bericht eines aus dem Konzentrationslager Gefluchteten*. Karlsbad, 1934. Engl. translation: "A Nation Terrorized", Chicago, 1935. Leiser, *Refugee*, New York, 1940. pp. 132-158.

²⁶ Prussian decree of February 10, 1936, *Gesetzsammlung*, p. 22.

²⁷ Schuman, *The Nazi Dictatorship*, 2nd. ed., 1939, pp. 294-297.

²⁸ *Loc. cit.*, pp. 96-97.

²⁹ Papers concerning the Treatment of German Nationals in Germany, etc., pp. 15-26, containing official reports of British consuls in Cologne, Munich, Frankfurt, Dresden and Vienna.

Various procedures have been observed in the arrest and imprisonment of these victims. Political suspects have been arrested and questioned by the Gestapo; after suffering cruel physical tortures in connection with this "questioning", they were dispatched to concentration camps without trial. Others were sentenced by regular or special courts to certain prison terms and were taken to concentration camps as soon as the term of imprisonment had been served. Again others were thus imprisoned after having been acquitted in criminal courts. In 1938 and 1939, during the mass persecution of Jewish citizens, the victims were arrested wholesale on the street or in their homes, and were imprisoned without further formalities.³⁰

The duration of the incarceration is entirely indefinite, at the pleasure of the Gestapo. It ends either with the victim's death or with a conditional release which is always revocable.

The treatment suffered by the prisoners³¹ was and still probably is of the utmost cruelty. Long work hours in stone quarries, road building, cultivating wastelands and so forth, were supplemented by pseudo-military drill under the most sadistic drill-masters. While thus occupied, prisoners were kept with insufficient food and insufficient clothing, often without sanitary facilities, sometimes without drinking water. Their shelters were overcrowded and unsanitary. Medical attention was refused to most of them. Moreover, they were systematically flogged, beaten and tortured while the most ingenious methods of humiliation were used. It should be borne in mind that these prisoners included middle-aged and elderly individuals many of whom were totally unfamiliar with manual labor. Among the victims were some of the most prominent citizens; former liberal statesmen, members of parliament, writers, scholars, clergymen, physicians, attorneys and well-known businessmen. The death of prisoners from exhaustion, injuries, disease or suicide was a matter of routine, not to mention those who were shot, ostensibly "while trying to escape".

German newspapers were strictly forbidden to report any of these atrocities. All released prisoners were threatened with instant death in case they told anyone about the treatment they had received. Thus an element of mystery was added to that of organized terror.

³⁰ *Ibid.*

³¹ See the sources cited in previous footnotes under this sub-title; also articles in *The Spectator*, February 18, 1938. (Vol. 160, p. 270) and November 3, 1939 (Vol. 163, pp. 609-610); *The New Statesman and Nation*, March 19, 1938 (Vol. 15, p. 475).

The immediate responsibility for these conditions rests with Himmler and his Gestapo and S.S. henchmen. However, there is no doubt that Hitler himself and his friends such as Frick, Goering, Hess, Goebbels and others have been fully aware of what was going on and gave their approval.

Conclusions

All phases of penal administration in Germany have deteriorated under the totalitarian regime.

The great humanitarian and scientific ideas of the nineteenth and twentieth century as well as the penal philosophy of the enlightened age have been discarded; in her theories Germany has gone straight back to the seventeenth century. The same is true in the field of penal legislation. Penal law has regained the quality of utmost severity which it had three hundred years ago. Principles of political, racial, and religious persecution have been embodied in laws that can be compared only to corresponding laws of the seventeenth and earlier centuries. The barbarities of the Middle Ages and of the great religious wars have returned in these statutes.

In the administrative and judicial fields, one of the best modern civil service systems has been destroyed. All government personnel, including that of the judiciary, has become a mere tool of political oppression.

With hypocritical deference to the traditional German sense of law and justice, the government left certain outward forms of legal procedure intact. However, the existing legal agencies have been supplemented by others that are outside the law. Thus a system of "Star Chamber" tribunals has been added to the regular Courts of Law; both of these courts and the regular police have become subordinate to the Gestapo. Concentration camps have been added to the regular prisons. The government has thus constructed a dualistic system of legal and extra-legal institutions. Matters of the greatest importance, especially political matters, are handled by extra-legal agencies. The old, legal authorities have been maintained for propaganda purposes and for minor matters.

There is no doubt that this utterly unjust, tyrannical system of government is out of harmony with political and legal traditions which have previously existed for centuries in Germany as well as in other civilized countries. It is therefore highly probable that the new institutions of the totalitarian regime will not last any longer than the regime itself.

(The remaining portion of this article was deleted when permission was given for publication by the Bureau of Public Relations, War Department, by E. B. M., 20 March '44.)