

The Fragility of the Rule of Law

Hitler Eroded It as an Early Step Toward Dictatorship; It Took a Brutal War and a Momentous Trial to Restore It

by Susan R. Blackman

President Eisenhower said, "The clearest way to show what the Rule of Law means to us in everyday life is to recall what has happened when there is no Rule of Law."

In 1932, Germany's Weimar Republic was a democratic parliamentary republic, ruled by a democratically elected president and parliament, with a chancellor selected by the parliament. The government had laws, courts of justice, and human rights protections.

The Weimar constitution held that every German was equal before the law, with voting rights for all German men and women over the age of 18. The constitution guaranteed freedom of religion, speech, and individual rights. It provided social and economic rights, including the right to acquire property and pursue a trade. It also provided for judicial independence, stating that judges were subject only to the law.

Individual liberties could be limited only on the basis of the law, according to the legal process. The legal profession was vibrant and diverse, and lawyers represented citizens in courts to protect their rights. In many German cities, a significant portion of the lawyers and judges were Jewish. On January 1, 1933, there were 3,400 lawyers of Jewish origin in Berlin alone, including some women lawyers.

Well before the Nazi SS enforcers sent 6 million Jews and 5 million other "non-Aryans" to concentration (death) camps, they seized Jewish citizens' property and stripped their livelihoods. Did the victims of property seizures seek

legal recourse in German courts? Did they hire Jewish lawyers to file claims over what was unfairly taken?

Adolf Hitler took measures that prevented those victims from engaging their brethren to seek restoration of their legal rights. In March of 1933, Hitler issued a decree barring Jewish lawyers and judges from German courts. Consequently, the legal experts who might have been most likely to protect the Jewish citizens who had their property and livelihoods taken were unable to do so.

How did Hitler manage to override the rights guaranteed in the Weimar constitution? In 1930, the Nazis won only 18 percent of the parliamentary seats, but that made it the second largest party in the Reichstag. Not content with second place, Hitler and the Nazi party worked on amassing their power, pursuing their agenda, and eliminating those who would try to stop them, even if it meant using means of violence and terror. They started by arguing that the Communists posed a serious threat to the security of the German people and needed to be eliminated.

One Jewish lawyer in Berlin had previously tried to challenge the Hitler-led assaults against Communists. In 1931, Hans Litten subpoenaed Hitler, as Nazi party leader, to testify in a case against four Nazis accused of killing Communists. Litten grilled Hitler for three hours, showing how the Nazis plotted revolution. Hitler defiantly testified that the Nazis were a peaceful democratic movement. His testimony could have left Hitler exposed to crimi-

nal charges for perjury. Instead, Litten was one of the first political opponents the Nazis rounded up for persecution. In 1933, the Nazis arrested Litten and sent him to a concentration camp. Despite his mother's appeals through her political connections, including to Prince Wilhelm of Prussia, she could not secure her son's freedom. He died in a concentration camp after five years of torture and interrogation.

In 1932, Hitler ran for president but came in second to Paul von Hindenburg. Hindenburg then succumbed to pressure to appoint Hitler as chancellor on January 30, 1933.

The February 27, 1933, fire in the Reichstag parliament building prompted Hindenburg to issue the Reichstag Fire Decree, at Hitler's urging, which suspended basic rights and allowed detention without trial. Hitler argued that the fire was a sign of a massive Communist plot and was just the start of what would be a series of terrorist attacks against Germans by Communists.

Hitler asserted that the Communist threat required emergency measures so that suspected Communists could be eliminated. On March 23, 1933, the Reichstag adopted the Enabling Act, through which it relegated full legislative power to Chancellor Hitler and his cabinet for four years.

Hitler broadened his attacks to target Jews, as well as any group that he thought might oppose his increasing powers, such as Freemasons. Even Rotary Club members were targeted. After Hitler issued the decree barring

Jewish lawyers and judges from German courts, the Nazis publicly warned people not to use Jewish lawyers. Hitler continued to manipulate the legal system to amass greater powers.

Anticipating Hindenburg's death, the Reichstag passed a law allowing Hitler to become Hindenburg's successor as president, while remaining chancellor. The next day, August 2, 1934, Hitler took both mantles and subsequently claimed the moniker "Führer." Later that month, he made all remaining judges and lawyers swear an oath of loyalty to the Führer. No longer could Germany hope to have an independent judiciary subject only to the law.

An extraordinary exhibit titled "*Lawyers without Rights: Jewish Lawyers under the Third Reich*" chronicles Jewish lawyers who were affected and the consequences of Hitler's erosive steps toward destruction of the Rule of Law. The exhibit was created by the German Federal Bar to teach the lessons learned from this era. It is touring the United States with support from the American Bar Association.

The exhibit contains pictures and descriptions of lawyers who were dispossessed, those who escaped, those who disappeared, and some who perished. The exhibit is on display at the Old Dominion University Perry Library through April 30 and will be in Virginia Beach for a Law Day celebration on May 2. Local organizations have joined forces to create special programs concerning this exhibit.

ODU hosted a reception and panel discussion on April 11, featuring former U.S. Congressman and World War II veteran G. William Whitehurst, PhD; the Honorable U.S. District Judge Mark S. Davis; and German Professor Frederick Lubich. The program was co-sponsored by the Norfolk & Portsmouth Bar Association Foundation, The Federal Bar

Association Hampton Roads Chapter, The Institute for Jewish Studies and Interfaith Understanding at ODU, the German Embassy in Washington, D.C., and the Holocaust Commission of the United Jewish Federation of Tidewater.

The Virginia Beach Law Day program takes place on May 2 at the Sandler Center in Virginia Beach and will feature the *Lawyers without Rights* Exhibit plus a showing of film footage from the Nuremberg Trials of war criminals following World War II. The event is sponsored by the Virginia Beach Bar Foundation, some member firms of the Virginia Beach Bar Association, and some of the organizations listed above that supported the Norfolk program. Following the exhibit and reception, the May 2 program will offer a panel discussion with U.S. Senior District Judge Henry Coke Morgan Jr. and Sandra Schulberg, a film producer whose father was hired by the U.S. War Department to create the film of the Nuremberg Trials.

The theme of the event will be that Hitler's decree against Jewish lawyers marked an early step in the decline from liberty to dictatorship, and the Nuremberg Trial represents the restoration of the Rule of Law after it had been totally obliterated. Schulberg will present *Nuremberg: Its Lesson for Today*, and the panelists will discuss the impact of the film and the great steps that are sometimes required to preserve the Rule of Law. The program will describe the key role played by Chief Prosecutor of the International Military Tribunal, U.S. Supreme Court Justice Robert H. Jackson, who made the bold decision to film the trials, feeling it was imperative for Germans and the world population to see that the Nuremberg defendants received fair trials.

Justice Jackson's approach fits the purpose of Law Day, which was declared



Justice Robert H. Jackson,
Chief U.S. Prosecutor at Nuremberg
Courtesy of Schulberg Productions

by President Dwight D. Eisenhower to recognize the importance the Rule of Law plays in preserving freedom, justice, and equality. The possibility of another display of the *Lawyers without Rights* Exhibit in another city in Virginia, such as Richmond, is currently under exploration. So far, the German Federal Bar has provided funding to transport the exhibit from one destination to the next. For more information about these programs, contact Farideh Goldin at fgoldin@odu.edu; or Bill Choyke at Bill.Choyke@americanbar.org.



Susan R. Blackman is a partner in the Willcox & Savage PC Labor and Employment Law Group and was moderator of the panel discussions. She serves as vice-president of the Federal Bar Association Hampton Roads Chapter, as treasurer of the Hampton Roads Chamber of Commerce, and as honorary consul of the Kingdom of Denmark. She can be reached at sblackman@wilsav.com.