

(Lt. H. V. Atherton)

B. CONTROL ACQUIRED

1. On 30 January 1933, Hitler became Chancellor of the German Republic.
2. After the Reichstag fire of 28 February 1933, clauses of the Weimar Constitution guaranteeing personal liberty, freedom of speech, of the press, of association and assembly, were suspended.

The Weimar Constitution contained certain guarantees as to personal freedom (Article 114), as to inviolability of the home (Article 115), and as to the secrecy of letters and other communications (Article 117). It also had provisions dealing with freedom of speech and of the press (Article 118) and of assembly (Article 123) and of association. ^(Article 124) The Reich President may "if public safety and order in the German Reich are considerably disturbed or endangered" take steps to suspend "the Fundamental Rights" established in Articles 114, 115, 117, 118, 123, 124 and 153. (Article 48 (2)).

2050-PS. Die Verfassung des Deutschen Reichs
(The Constitution of the German Reich) of 11
 August 1919, 1919 Reichsgesetzblatt, Part I,
 p. 1383.

On 28 February 1933, a Decree of the Reich President was promulgated, signed by the Reich President, Hindenberg, the Reich Chancellor, Hitler, the Reich Minister of the Interior, the defendant Frick, and the Reich Minister of Justice, Guertner. This decree, which purported to rest on Section 48 (2) of the Constitution, provided in part:

"Sections 114, 115, 117, 118, 123, 124, and 153 of the Constitution of the German Reich are suspended until further notice. Thus, restrictions on personal liberty, on the right of free expression of opinion, including freedom of the press, on the right of assembly and the right of association, and violations of the privacy of postal, telegraphic, and telephonic communications, and warrants for house-searches, orders for confiscations as well as restrictions on property, are also permissible beyond the legal limits otherwise prescribed".

1390-PS. Verordnung des Reichspräsidenten zum Schutz von Volk und Staat (Decree of the Reich President for the Protection of the People and State), 28 February 1933. 1933 Reichsgesetzblatt, Part I, p. 83.

3. The Nazi conspirators secured the passage by the Reichstag of a "Law for the Protection of the People and the Reich", giving Hitler and the members of his then Cabinet plenary powers of legislation.

The minutes of the first session of Hitler's Cabinet show discussion of the possibilities of securing passage of an Enabling Law (Ermächtigungsgesetz) through the Reichstag.

351-PS. Minutes of first meeting of Cabinet of Hitler, 30 January 1933.

Since such a law involved a change in the Constitution, it was governed by Article 76 of the Weimar Constitution which provided: "The Constitution may be amended by law. The acts of the Reichstag amending the Constitution can only take effect if two-thirds of the regular number of members are present and at least two-thirds of those present consent."

2050-PS. Die Verfassung des Deutschen Reichs (The Constitution of the German Reich) of 11 August 1919, 1919 Reichsgesetzblatt, Part I, p. 1383.

In an effort to secure the requisite majority, the Nazi conspirators caused new elections for the Reichstag to be held 5 March 1933, at which 288 Nazis were elected out of 647 members.

2514-PS. Statistisches Jahrbuch für das Deutsche Reich (Statistical Yearbook for the German Reich) 1933 4.539.

Taking advantage of the Presidential decree of 28 February 1933, suspending constitutional guarantees of freedom, the defendant Goering and other Nazi conspirators immediately caused a large number of Communists, including party officials and Reichstag deputies, and a smaller number of Social Democratic officials and deputies to be placed in "protective custody".

2324-PS. Goering, Aufbau Einer Nation (Rise of a Nation) p. 92.

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2573-PS. Frankfurter Zeitung, 1 March 1933
(Announcement of Official Prussian Press Office).

L-83. Affidavit Gerhart H. Seger. 21 July 1945. p. 9.

Thus all Communist deputies and a number of Social Democratic deputies were prevented from attending the new session of the Reichstag. As cynically stated by the defendant Frick:

"When the Reichstag meets the 21st of March, the Communists will be prevented by urgent labor elsewhere from participating in the session. In concentration camps they will be re-educated for productive work. We will know how to render harmless permanently sub-humans who don't want to be re-educated".

2651-PS. "Völkischer Beobachter, 14 March 1933.

On 23 March, Hitler spoke in favor of an Enabling Law proposed by the Nazi conspirators and in the course of the debate said:

"The Government insists on the approval of this law. It expects a clear decision in any case. It offers to all the Parties in the Reichstag the possibility of a peaceful development and a possible conciliation in the future. But it is also determined to consider a disapproval of this law as a declaration of resistance. It is up to you, gentlemen, to make the decision now. It will be either peace or war".

2652-PS. "Völkischer Beobachter, 24 March 1933, p. 2

Thus subject to the full weight of Nazi pressure and terror, the Reichstag passed the proposed law, 441 deputies voting in its favor, and 94 Social Democrats being opposed.

2579-PS. The Frankfurter Zeitung, 24 March 1933, .
p. 1.

The following day, the law was promulgated. It provided:

"The Reichstag has resolved the following law, which is, with the approval of the Reichsrat, herewith promulgated, after it has been established that the requirements have been satisfied for legislation altering the Constitution.

ARTICLE 1. Reich laws can be enacted by the Reich Cabinet as well as in accordance with the procedure established in the Constitution. This applies also to the laws referred to in article 85, paragraph 2, and in article 87 of the Constitution.

ARTICLE 2. The national laws enacted by the Reich Cabinet may deviate from the Constitution so far

as they do not affect the position of the Reichstag and the Reichsrat. The powers of the President remain undisturbed.

ARTICLE 3. The national laws enacted by the Reich Cabinet are prepared by the Chancellor and published in the Reichsgesetzblatt. They come into effect, unless otherwise specified, upon the day following their publication. Articles 68 to 77 of the Constitution do not apply to the laws enacted by the Reich Cabinet.

ARTICLE 4. Treaties of the Reich with foreign states which concern matters of national legislation do not require the consent of the bodies participating in legislation. The Reich Cabinet is empowered to issue the necessary provisions for the execution of these treaties.

ARTICLE 5. This law becomes effective on the day of its publication. It becomes invalid on April 1, 1937; it further becomes invalid when the present Reich Cabinet is replaced by another."

2001-PS. Gesetz zur Behebung der Not von Volk und Reich (Law to Remove the Distress of People and State) 24 March 1933, 1933 Reichsgesetzblatt, Part I, p. 141.

The time limit in the law was twice extended by action of the Reichstag and once by Decree of Hitler.

2047-PS. Gesetz zur Verlängerung des Gesetzes zur Behebung der Not von Volk und Reich (Law for the Extension of the Law to Remove the Distress of People and State) 30 January 1937, 1937 Reichsgesetzblatt, Part I, p. 105.

2048-PS. Gesetz zur Verlängerung des Gesetzes zur Behebung der Not von Volk und Reich (Law for the Extension of the Law to Remove the Distress of People and State) 30 January 1939, 1939 Reichsgesetzblatt, Part I, p. 95.

2103-PS. Erlass des Führers über die Regierungsgesetzgebung (Decree of the Fuehrer on Cabinet Legislation) 10 May 1943, 1943 Reichsgesetzblatt, Part I, p. 295.

On 29 June 1933, Dr. Hugenberg resigned as Reich Minister of Economy and as Reich Minister for Food and Agriculture.

351-PS. Der Mitglieder der Reichsregierung Seit 30 January 1933. (List of members of Reich Cabinet since 30 January 1933.)

Thereafter, other members of the Cabinet resigned from time to time, and in a similar way new members were added. The Reich Cabinet

continued to exercise the plenary powers conferred on it by the law of 24 March 1933 numerous times.

See trial brief in support of that Section of Appendix B of the indictment dealing with the Reich Cabinet.

4. The Nazi conspirators caused all political parties, except the Nazi Party, to be prohibited.

After the Reichstag fire of 27 February 1933, the organization of the Communist Party was destroyed. On 9 March 1933, the Reich Minister of the Interior, the defendant Frick, announced that at the opening of the Reichstag on 21 March 1933, the Communists would be prevented from taking part in this parliamentary meeting because of their seditious activity. On 26 May 1933, a law was promulgated, signed by Hitler and the defendant Frick, providing for the confiscation of Communist property.

2403-PS. Dokumente der Deutschen Politik (Documents of German Politics) Vol. I, p. 55.

1396-PS. Gesetz "über die Einziehung Kommunistischen Vermögens (Law Concerning the Confiscation of Communist Property) 26 May 1933, 1933 Reichsgesetzblatt, Part I, p. 293.

The Nazi conspirators began to weaken the Social Democratic Party by arrest of its leaders immediately after the promulgation of the Decree of the Reich President of 28 February 1933, referred to above. They further weakened the Party by their attacks on independent trade unions. On 22 June 1933, the Social Democratic Party was suppressed in Prussia.

2403-PS. Dokumente der Deutschen Politik (Documents of German Politics) Vol. I, p. 55.

On 7 July 1933 a Reich decree eliminated Social Democrats from the Reichstag and from the governing bodies of Provinces and Municipalities.

2058-PS. Verordnung zur Sicherung der Staatsführung (Ordinance to insure State leadership) 7 July 1933, 1933 Reichsgesetzblatt, Part I, p. 462.

A law of 14 July 1933 provided for confiscation of property of Social Democrats.

1388-PS. Gesetz über die Einziehung volks- und Staatsfeindlichen Vermögens (Law Confiscating Property Subversive to People and State) 14 July 1933. 1933 Reichsgesetzblatt, Part I, p. 479.

Faced with similar pressure, the other German Parties either dissolved or combined with the Nazis.

2403-PS. Dokumente der Deutschen Politik (Documents of German Politics) Vol. I, p. 55.

On 14 July 1933, the following law was promulgated, signed by Hitler, the defendant Frick and Guertner:

"Art. 1

The National Socialist German Worker's Party (Nationalsozialistische Deutsche Arbeiterpartei) constitutes the only political party in Germany.

Art. 2

Whoever undertakes to maintain the organizational structure of another political party or to form a new political party will be punished with penal servitude up to three years or with imprisonment of from six months to three years, if the deed is not subject to a greater penalty according to other regulations."

1388-PS. Gesetz Gegen die Neubildung von Parteien (Law Against the Establishment of Parties) 14 July 1933, 1933 Reichsgesetzblatt, Part I, p. 479.

In a speech on 6 July 1933, Hitler stated:

"The political parties have at last been set aside. This is a historical occurrence, the meaning and implication of which one cannot yet be fully conscious of. Now, we must set aside the last vestige of democracy, particularly the methods of voting and making majority decisions which today are used in local government in economic organization and in labor elections; in its place we must validate the responsibility of the individual. The achievement of external power must follow the inter-education of the people * * *".

Later in the same speech, Hitler said:

"The Party has become the State. All power lies with the Reich authorities".

2632-PS. Die Nationalsozialistische Revolution 1933 (The National Socialist Revolution 1933) p 53.

5. The Nazi conspirators caused the Nazi Party to be established as a para-governmental organization with extensive and extraordinary privileges.

On 1 December 1933, the Reich Cabinet promulgated a law for the "Securing the Unity of Party and State". It was signed by Hitler and the defendant Frick. The law provided:

"Art. 1

- 1) After the victory of the National Socialistic Revolution, the National Socialistic German Labor Party is the bearer of the concept of the German State and is inseparably the state.
- 2) It will be a part of the public law. Its organization will be determined by the Fuehrer.

Art. 2

The deputy of the Fuehrer and the Chief of Staff of the SA will become members of the Reichs government in order to insure close cooperation of the offices of the party and SA with the public authorities.

Art. 3

The members of the National Socialistic German Labor Party and the SA (including their subordinate organizations as the leading and driving force of the National Socialist State will bear greater responsibility toward Fuehrer, people and state.

2) In case they violate these duties, they will be subject to special jurisdiction by party and state.

3) The Fuehrer may extend these regulations in order to include members of other organizations.

Art. 4

Every action or neglect on the part of members of the SA (including their subordinate organizations) attacking or endangering the existence, organization, activity or reputation of the National Socialistic German Labor Party, in particular any infraction against discipline and order, will be regarded as a violation of duty.

Art. 5

Custody and arrest may be inflicted in addition to the usual penalties.

Art. 6

The public authorities have to grant legal and administrative assistance to the offices of the Party and the SA which are entrusted with the execution of the jurisdiction of the Party and SA.

Art. 7

The law regarding the authority to inflict penalties on members of the SA and SS, of the 28 April 1933 (RGBl p. 230) will be invalidated.

Art. 8.

The Reichs Chancellor, as Fuehrer of the National Socialistic German Labor Party and as the supreme commander of SA will issue the regulation necessary for the execution and augmentation of this law, particularly with respect to the organization and procedure of the jurisdiction of the Party and SA. He will determine the time at which the regulations concerning this jurisdiction will be effective."

1395-PS. Gesetz zur Sicherung der Einheit von Partei und Staat. (Law to Insure the Unity of Party and State.) 1 December 1933,
1933 Reichsgesetzblatt, Part I, p. 1016.

Thus the Nazi Party became a para-governmental organization in Germany.

See paragraph II C (1) (h) of this brief for further evidence of the growth of the dual features of Party and State.

The Nazi conspirators granted the Nazi Party and its components extensive and extraordinary privileges. On 19 May 1933, they passed a law to protect and insure respect for Party symbols.

2759-PS. Gesetz zum Schutze der Nationalen Symbole (Law for the Protection of Nationalist Symbols) 19 May 1933, 1933 Reichsgesetzblatt,
Part I, p. 285.

On 20 December 1934, the Nazi conspirators caused a law to be promulgated, signed by Hitler, Guertner, and the defendants Hess and Frick, making it a crime to make false or grievous statements to injure the prestige of the Government of the Reich, the NSDAP, or its agencies. This law also declared it to be a crime to wear the uniform or the insignia of the NSDAP without authority to do so, and controlled the manufacture and sale of Party uniforms, flags and insignia.

1393-PS. Gesetz gegen heimtückische Angriffe auf Staat und Partei und zum Schutz der Parteiuniformen. (Law against Treacherous Attacks on State and Party and for the Protection of Party Uniforms) 20 December 1934, 1934 Reichsgesetzblatt, Part I, p. 1269.