

CRIMINAL RESPONSIBILITIES IN CONNECTION WITH
THE PURGE OF 1934

THE NATURE OF THE PURGE. During the period from June 30 to July 2, 1934, a number of people were put to death without resort to normal forms of criminal procedure, by order of the National Socialist government. The number of dead officially announced in Hitler's Reichstag speech of July 13, 1934 was set at 76, but there is evidence for the death of many more.

HISTORICAL BACKGROUND. The purge was directed against three main groups: (1) SA-leaders. (2) Conservative and Catholic leaders. (3) Miscellaneous enemies of the Nazi Party, or of particular Nazi leaders. The historical background of the action must therefore be considered under three main headings.

A. SA-LEADERS. The purge of 1934 was due primarily to a crisis in the relations between the SA and the Reichswehr. The SA, on which Hitler had relied for the conquest of power, had by this time grown into a body of some 2,500,000 men, whose leaders, as part of the spoils of victory, were demanding that the SA be incorporated without loss of rank, into the forces of the Reichswehr. This demand was strenuously resisted by the Reichswehr, who doubted the military value of any outside organization, and feared that the activities of so large an armed militia, by attracting unfavorable attention abroad, would compromise their own more discreet rearmament efforts.

Hitler saw that national rearmament could not be accomplished without the cooperation of technically competent Reichswehr and industrialist circles. He therefore decided to appease them by ordering (June 7) that the entire SA should take a month's vacation, beginning July 1, during which time no uniforms (with a few unimportant exceptions) should be worn. Although Röhm, the SA Chief of Staff, accepted this decision, he made it clear, both in private conversations with Hitler and in a public statement (June 9) that he would stand firm against any permanent reduction of the numbers or status of the SA. This led Hitler to the conclusion that the best way of resolving the conflict with the Reichswehr would be to liquidate the top leadership of the SA.

B. CONSERVATIVE AND CATHOLIC LEADERS. The same period was also marked by increasing tension between the Nazi Party and the conservative non-Party forces which still

remained in existence. This was partly due to the conflict between the conservative Reichswehr and the radical SA. It was also due in part to the growing discontent of Christian circles with the religious policies of the regime. On June 17 Vice Chancellor von Papen tried to mobilize these conservative forces by giving a speech at Marburg, which repudiated the more extreme theses of National Socialism, and called for increased religious freedom. Although Papen was disappointed in his hope that conservative and church leaders, including the Catholic bishops then assembled at Fulda, would openly rally to his leadership, the episode caused considerable excitement in Germany. This led Hitler to the conclusion that the stabilization of his regime could best be insured by liquidating a number of conservative leaders, particularly those associated with the Marburg episode, thus discouraging the survivors from undertaking any sort of independent political initiative.

C. MISCELLANEOUS ENEMIES OF THE REGIME. In the course of the Party's rise to power many leading figures of the Nazi regime had made a number of enemies, both within and outside the Party, whom they feared either as potential rivals or as repositories of damaging information, or against whom they desired vengeance. The purge provided a convenient occasion for settling many such scores.

EVENTS OF THE PURGE. On the morning of June 30 a meeting of SA-leaders was scheduled to take place at the headquarters of the SA-Chief of Staff at Wiessee, with the purpose of discussing the future of the SA. This meeting was apparently called by authority and at the suggestion of Hitler, who was expected to arrive about noon. (Strasser, p. 97) Around midnight, June 29 Hitler, then in Godesberg, signed an order deposing Röhm as SA-Chief of Staff and naming Lutze as his successor. (Jean François, p. 137) He then telephoned Wagner in Munich and Göring in Berlin, ordering the action to begin. (Hitler. Reichstag Speech of July 13)

The next morning SA-leaders throughout Germany were rounded up by select police and SS formations, and placed under arrest. The operation was so well prepared and executed that nowhere, with the possible exception of Breslau, were the SA able to put up any sort of resistance. Large numbers of them were then shot, sometimes with and sometimes without the formality of summary trial by an improvised court martial. The principal places of execution were Lichterfelde in Berlin and Stadelheim in Munich.

At the same time other Party and non-Party figures were visited by SS and police squads, and variously dealt with.

The restoration of public order was officially announced on July 1, but there is some reason to believe that arrests and executions took place after that date. On July 3 there was issued a Gesetz über Massnahmen der Staatsnotwehr, purporting to justify all measures taken on June 30, July 1, and July 2 (RGBl., I. p. 529). An official account and justification of the purge was given by Hitler in a speech before the Reichstag on July 13.

OFFICIAL JUSTIFICATION FOR THE PURGE. In all official statements, complicity in a common plot for the forcible overthrow of the Nazi state was given as justification for the purge. The legal basis for action differed, however, as between Party and non-Party victims.

A. PARTY MEMBERS. The killing of SA-leaders and other Party members was a summary act of criminal justice, based on the Führer's right, not only as head of the state but also as head of the Party, to act as supreme judiciar (oberster Gerichtsherr) of offenses committed by Party members, whose breach of totalitarian party discipline constituted a particularly fundamental threat to the existence of a totalitarian regime. (See Carl Schmitt, "Der Führer schützt das Recht," Deutsche Juristen-Zeitung August 1, 1934 (p. 945-50) and Gottfried Neesse, Das Gesetz zur Sicherung der Einheit von Partei und Staat, Dresden, 1934)

B. NON-PARTY MEMBERS. The death of these people was a result either of suicide or of forcible resistance to legitimate arrest on suspicion of treason. (Evidence: In Hitler's Reichstag speech, the final authoritative Nazi version of the affair, all non-Party victims were placed in one or another of these two categories.) In theory it may have been felt that the Führer had a right to act as supreme justiciar with regard to all Germans, and not merely Party members. (This is the position of Schmitt, op. cit. But see contra Neesse, op. cit., p. 83. "General Schleicher, der nicht der Partei oder SA-Gerichtsbareit unterstand, wäre wohl erst nach ordnungsmässigem Prozesse zum Tode verurteilt worden, wenn er nicht durch seinen Unterfall auf die ihn verhaftenden Polizeibeamten seinen Leben zuvor ein Ende gesetzt hätte.")

But at no time was it officially claimed that this right had in fact been exercised in the case of any non-Party victim of the purge.

THE PROBLEM OF ASSIGNING CRIMINAL RESPONSIBILITY FOR ACTS TAKEN IN CONNECTION WITH THE PURGE. Because of the different legal position taken with regard to Party and non-Party victims, this problem must be considered under two headings.

A. RESPONSIBILITY IN CONNECTION WITH THE DEATH OF PARTY MEMBERS. The problem of assigning criminal responsibility in these cases is primarily legal. The fact that a number of SA-leaders and other Party members were executed without ordinary trial was officially admitted in repeated statements by Hitler and others. Since all Party victims were arrested before they had a chance to offer organized resistance (the only reported exception to this statement, namely the organized resistance of SA elements in Breslau, is officially denied by a DNB report of July 3) it is clear that these executions were not a legitimate exercise of emergency powers. ("Hitler war zu jeder Stunde so vollkommen Herr der Lage, dass der Staat gar nicht in eine Notlage geraten konnte." Neesse, op. cit., p. 83) The only justification for these admitted acts is that they were an exercise of the Führer's powers of summary jurisdiction, subsequently ratified "als Staatsnotwehr rechtens" by the law of July 3. Thus the question of criminal responsibility in connection with the death of Party members depends entirely on the legal question whether or not the powers claimed by the Führer, as subsequently ratified, were sufficient to justify the actions admittedly taken.

B. RESPONSIBILITY IN CONNECTION WITH THE DEATH OF NON-PARTY MEMBERS. The problem of assigning criminal responsibility in these cases is primarily a matter of factual proof. It is true that the Law of July 3 purported to ratify all "measures" taken on the preceding days, which might raise all the legal issues mentioned above. In the official report to the Reichstag on the measures-actually taken (Hitler's speech of July 13) there was no mention, however, of any non-Party victims having died otherwise than by suicide or by resistance to arrest. In spite of the Law of July 3 it was also admitted that punishable "excesses" might have taken place in the course of the purge. (See Göring's speech before

the General- und Oberstaatsanwälten Preussens, 12 July 1934: "Soweit allerdings Ausschreitungen vorgekommen sein sollten, sind sie als Verbrechen ohne Ansehen der Person zu ahnden.") Thus if it can be shown that non-Party members in fact died otherwise than by suicide or by resistance to arrest, it might be possible to establish criminal responsibility without challenging the validity of the Law of July 3. Cases which would best repay investigation in this connection are listed in Appendix A. (p 8-14)

THE ASSIGNMENT OF SPECIFIC RESPONSIBILITY IN CONNECTION WITH THE PURGE. As a major step in the consolidation of the National Socialist regime, the purge is a part of the responsibility of all those who participated in the Nazi scheme of world conquest. In the case of certain individuals and groups, however, it is possible to establish a more direct and immediate responsibility for the events of these three days. Responsibility for specific criminal episodes in connection with the purge may be proved for certain individuals and groups with reference to the cases presented in Appendix A. Responsibility for the purge as a whole may also be established with regard to the following individuals and organizations.

A. ORGANIZATIONS BEARING RESPONSIBILITY FOR THE PURGE AS A WHOLE. The following organizations were so intimately associated with the purge in all its phases that they may be said to bear a general responsibility for the whole affair.

I. THE SS. In all phases of the action, the SS were relied upon as the favorite executants of government policy. On 28 June all SS formations in Germany were alerted (placed in Alarmzustand), in preparation for the coming action. (See the Manchester Guardian in a series of articles published at the end of August, 1934, as quoted in the Weissbuch, p. 77). In the early hours of June 30, they were mobilized, and sent to occupy key positions in Berlin, Munich, and other cities (ibid, p. 78). The occupation of the headquarters of the SA-Gruppe Berlin-Brandenburg, Tiergartenstrasse, Berlin was effected by a force including a special SS-Standarte brought from Unterfranken a few days earlier especially for that purpose

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(Weissbuch, p. 71). All reports agree that the firing squads which executed the SA-leaders were composed of SS men. Reports on the death of non-Party figures (e.g. von Bose, Dr. Klausener, Forster) indicate that the SS was also active in this phase of the purge.

II. THE POLICE. The police were also freely used throughout the action. The peculiar importance of Goring and of Wagner lay in the fact that they were in control of the police of Prussia and of Bavaria respectively. In Berlin the force mainly relied upon was the Landespolizeigruppe General Goring whose barracks at the former Kadettenanstalt in Lichterfelde was the chief execution place in that region. A police general is said to have been one of the judges participating in the summary court set up in that place (New York Times, July 3, 1934). On July 7 Goring issued an order particularly congratulating all ranks of the Prussian Landespolizei for their perfect cooperation in the purge crisis (Frankfurter Zeitung July 8, 1934). The ashes of victims, both Party and non-Party, were returned to their families in urns bearing the name of the Geheime Staatspolizei. (Strasser, p. 46). Reports on the death of non-Party figures (e.g. Schleicher, Jung) indicate that the Gestapo at least were active in this phase of the purge.

III. THE REICHSWEHR. Although the Reichswehr played a less active role than the SS or the police, it stood in the background as a force constantly at the disposal of the Nazi authorities. On June 25 (three days earlier than the SS) all Reichswehr units in Germany were alerted (Alarmzustand) in preparation for the coming action (Manchester Guardian, as quoted in the Weissbuch, p. 77). This Alarmzustand was officially terminated on July 1 (Frankfurter Zeitung July 2). While remaining generally in reserve during the days of the purge, the Reichswehr also took some part in the proceedings. At 11 A.M. the SS guard before the Braun Haus, Munich was reinforced with 40 Reichswehr soldiers (Manchester Guardian, as cited in Weissbuch; pp. 77-8). A Reichswehr general is reported to have been one of the judges participating in the summary court at Lichterfelde (New York Times, July 3, 1934).

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There is no indication that members of the Reichswehr took any direct part in measures against non-Party victims of the purge. They stood behind the government throughout the action, however, and must therefore bear a share of the general responsibility.

B. INDIVIDUALS BEARING RESPONSIBILITY FOR THE PURGE AS A WHOLE. Certain individuals were so intimately associated with the planning and execution of the purge that they may be said to bear a general responsibility for the whole affair. Individuals whose activities would best repay investigation in this connection are listed in Appendix B. (pp. 15-21)

RECOMMENDATIONS. Because of the special protection afforded by the law of July 3, it may be more difficult to establish criminal responsibility in connection with the purge of 1934 than in connection with many other excesses of the Nazi regime. It is therefore recommended that the prosecution of war criminals be based, if possible, on other, less controversial issues. Reasons have been suggested above for maintaining, however, that the law of July 3 does not protect excesses committed in the course of the purge against non-Party victims. It is therefore recommended that, if the prosecution of war criminals is to be based on the events of June 30-July 2, evidence of criminal responsibility should be sought in connection with the death of non-Party victims, as listed in Appendix A, rather than in connection with the death of SA and other party victims of the purge.