

I. The Theory of the Case.

"The breakdown of the trade unions" by the Nazis is one of the main offenses specifically mentioned by Mr. Justice Jackson in his report on prosecution of war criminals to President Truman, 7 June 1945. This basic offense has two distinct aspects: first, the destruction of the free trade unions in Germany as a major feature in liquidating the Nazi opposition and in building the totalitarian social system within Germany itself; second, the successive destruction or limitation of the free trade unions in the countries occupied by Germany.

The breakdown in Germany was accomplished by a few ruthless and well organized strokes between late April and late June 1933. In time it stands as one of the central links in the coordinated chain of highly successful Nazi activity in 1933. This chain can be said to have begun with the storm troop reign of terror shortly after Hitler became Chancellor (30 January 1933) and reached a zenith in December 1933 in the "Law to safeguard the unity of party and state". This Hitler decree implies that unity between state and the Nazi party already exists and speaks further of the "victory of the National Socialist Revolution". ^{1/} The breakdown of the free trade unions was a cardinal point in the Nazi "Gleichschaltung" ("coordination") strategy: integrating all social factors into the Nazi dominated state; rooting out all the points of opposition to Nazi ambitions; preparing for total and aggressive war. Without breaking the trade unions, with their close connections to those parties which did not support the Nazi-Nationalist coalition party, the Nazis were not free and unhampered in advancing their totalitarian purposes. The breakdown of the trade unions was part of the Nazis' "grand, concerted plan" of dominating, first Germany, then Europe, and finally the world. Acts in support of this breakdown were therefore on behalf of an illegal end and hence are illegal in entirety, quite independent of the fact that many of the acts involved murder, terror, assaults, illegal confinement, and the wholesale confiscation of the property of free associations. While such acts, to use Mr. Justice Jackson's phrase, "have been regarded as criminal since the time of Cain and have been so written in every civilized code", still the internationally overriding consideration is that all the acts were on behalf of the illegal end of acquiring "Lebensraum" by aggressive war. The liquidation or limitation of the unions in the occupied countries is merely an extension of this illegality into a second stage of the master plan of world domination.

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II. Applicable Rules of Law.

It may not be necessary to cite specific points of German law or the law of occupied or other countries to establish the criminality of such acts as murder, assault, confinement, and wholesale confiscations. Concerning the criminality of such acts the Tribunal can be asked to take judicial notice. The only real problem of law is the precedent upon which the basic jurisdiction of the Tribunal must rest, i.e., that when such acts are a part of a plan to make aggressive war and dominate other nations, they are punishable before an international tribunal, and it is immaterial whether or not the immediate victims were nationals or free associations of the same nation as the offenders.

Since the breaking up of the trade unions was a major and well known part of the master plan ^{2/}, all the major Nazi leaders (including all Gauleiters) can be held criminally liable under the conventional rule of criminal conspiracies mentioned by Mr. Justice Jackson in the last paragraph of Section III of his report to President Truman. Adequate SS and SA personnel was put at the disposal of the special action committee spearheading the seizures of the trade unions and their top leaders. This is important in demonstrating the criminality of these Nazi terror organizations.

^{1/} This and other decrees discussed under III, infra.

^{2/} Discussion and sources outlined under IV, infra.

III. Background History of Nazification of Germany Related to the Breakdown of the Free Trade Unions.

Some dozen laws and decrees 3/ passed and issued in 1933 after Hindenberg appointed Hitler Chancellor must be laid before the Tribunal in proving the main outlines of the general Nazi subversion of the German state and its people. Ordinarily the Nazis attempted during this period to give their acts the appearance of legality. The Tribunal should be asked to take judicial notice of these decrees or laws as background for understanding the proof on the Nazi breakdown of trade unions. The main decrees were:

1. Decree of the Reich President for the Protection of People and State, 28 February 1933 4/.

This decree "suspended" in full "until further notice" the civil rights guarantees of the Weimar Constitution and gave some window dressing to reign of terror already progressing. Although purporting in its Preamble to be directed only "against Communist acts of violence, endangering the State", its punitive provisions extended to "Whoever provokes or incites an act contrary to public welfare", a broad enough phrase, indeed, when interpreted by the Reichschancellor, the Nazi Minister of Interior, and their party henchmen.

2. Decree of the Reich President for Protection Against Malicious Attacks on the Government of the Nationalist Movement, 22 March 1933. 5/

This went so far as to make illegal any statement "which is apt seriously to harm the welfare of the Reich or of a state government or of the parties or organizations supporting these governments". (Section 3 (3))

3. Law for the Restoration of the Professional Civil Service, 7 April 1933. 6/

This law set up the outward justification for the purge of Nazi opposition from the civil service. "Section 4. Officials who because of their previous political activity do not offer security that they will exert themselves for the national state without reservations, may be discharged". The Third Regulations for administering the "restoration" civil service law 7/ shows the true object of this "restoration":

"The suppositions for Section 4, sentence 1 are especially fulfilled, if an official has opposed the national movement by speech, writing or by other hateful conduct, has insulted its leaders or has used his official position to persecute, demote, or otherwise harm officials who hold national opinions".

4. Law Regarding Admission to the Bar, 7 April 1933. 8/

This law placed limitations on non-Aryans to practice law.

3/ Most of these decrees can be found translated in "The Hitler Decrees", by J. K. Pollock and H. J. Heneman, (George Wahr, Publisher, Ann Arbor, Michigan, 1934).

4/ "Verordnung des Reichspräsidenten zum Schutz von Volk und Staat", 1933 Reichsgesetzblatt, I 83 (Hereinafter the official legal publication "Reichsgesetzblatt" is abbreviated "RGBl." as in official German).

5/ "Verordnung des Reichspräsidenten zum Abwehr heimtueckischer Angriffe gegen die Regierung der Nationalen Erhebung", RGBl., I 135.

6/ "Gesetz zur Wiederherstellung des Berufsbeamtentums", 1933 RGBl. 175. Amended on 20 July 1933, 1933 RGBl. 518.

7/ "Dritten Verordnung zur Durchfuehrung des Gesetz Zur Wiederherstellung des Berufsbeamtentums", 1933 RGBl. I 245.

8/ "Gesetz ueber die Zulassung zur Rechtsanwaltschaft", 1933 RGBl. I 188.

5. Law Against Overcrowding of German Schools, 25 April 1933. 9/

This prescribed the number of "non-Aryan Germans" admissible to schools.

(NOTE: The free trade unions, excluding the Catholic unions, were seized on 2 May 1933. The Catholic trade unions were seized on 24 June 1933. These events are discussed in IV, below).

6. Law Confiscating Communist Property, 26 May 1933. 10/

7. Law Confiscating Property Subversive to People and State, 14 July 1933. 11/

This extended the provisions of the law confiscating Communist property to the Social Democratic Party and to all "assets or interests which are used or destined to promote Marxist or other activities found by the Reichminister of the Interior to be subversive to people and state".

8. Law Changing the Regulations in Regard to Public Officers, 30 June 1933. 12/

By this decree persons of "non-Aryan descent" and those married to persons of "non-Aryan descent" were ordered discharged; limitations were placed upon women holding official office; and appointments generally limited to those "who guarantee that they will support the Reich at all times without reservation".

9. Law against the new Establishment of Parties, 14 July 1933. 13/

By this time all the parties with the exception of the NSDAP (National Socialist German Workers' Party) were in fact dissolved or inactive. This demise included even the Hugenberg Nationalists whose coalition with the Nazis created the necessary majority to bring Hitler to power as Reichschancellor. This condition was now "legalized" indefinitely:

"Section 1. The National Socialist German Workers' Party constitutes the only political party in Germany.

Section 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..."

10. Law Guaranteeing Public Peace, 13 October 1933. 14/

This law increased the penal measures for anyone in anyway involved in the killing "for political reasons or on account of their official positions" specified types of officials. The SA (storm-troopers) of the Nazi party were included within the specially protected types of officials.

9/ "Gesetz gegen die Ueberfuellung deutscher Schulen und Hochschulen", 1933 RGBL. 225.

10/ "Gesetz ueber die Einziehung Communistischen Vermoegens", 1933 RGBL. I 293.

11/ "Gesetz ueber die Einziehung volks- und staatsfeindlichen Vermoegens", 1933 RGBL. I 479.

12/ Gesetz zur Aenderung von Vorschriften auf dem Gebiete des allgemeiner Beamten des Besoldungs- und der Versorgungsrechts", 1933 RGBL. I 433.

13/ "Gesetz Gegen die Neubildung von Parteien", 1933 RGBL. I 479.

14/ "Gesetz zur Gewährleistung des Rechtsfriedens", 1933 RGBL. I 723.

11. Law to Safeguard the Unity of Party and State, 1 December 1933. 15/

"Section 1. (1) After the victory of the National Socialist revolution, the NSDAP is the bearer of the German state-idea and indissolubly joined to the state. (2) It is a corporation in public law. The Fuehrer determines its statutes.

Section 2. In order to guarantee the closest cooperation of the party and the SA with the public officials, the Fuehrer's Deputy and the Chief of Staff of the SA are made members of the Cabinet. (Hess and Roehm).

Section 3. (1) The members of the NSDAP or the SA, including its subordinate formations, as the leading and animating forces of the National Socialist state, have increased obligations toward the Fuehrer, people and state. (2) For violation of these obligations they are subject to a special party and SA jurisdiction. (3) The Fuehrer can extend these regulations to the members of other organizations".

This law was an unmistakable attempt to give "legal" backing to a condition which in effect placed Nazi party members and storm troopers beyond the competence of the ordinary law enforcement officials, the justification being the "increased obligations" of the Nazi organizations. This statute signals the point when Hitler was willing to declare to Germany that the Nazis had in fact concluded the establishment of the Nazi dominated "German state-idea". This, then, is the end of a major phase in the development of the totalitarian Germany that was six years later to adopt aggressive war on behalf of the Nazi idea of "Lebensraum". The destruction of the trade unions is an indissoluble part of this phase.

IV. Nature of the Proof of the Nazi Breakdown of the Free Trade Unions.

Hitler's feelings toward free trade unions was early declared in terms of the usual Nazi shibboleths, class war, ruination of German economy, the Jews, Marxism and international finance 16/:

Not the union as such is directed toward class war, but Marxism has made of it an instrument of its class war. It uses the economic weapons which the international world-Jew uses for the ruination of the economic bases of free independent national states, for the annihilation of national industry and trade, and therewith for the enslavement of free people in the service of the super-governmental Jewish world-finance.

This animus against free trade unionism took concrete form in their seizure of the three associations of trade unions in May and June 1933. The two larger associations, the ADGB and the AFA, 17/ were seized on 2 May 1933. The Christian trade unions were granted a short span of restricted life thereafter until 24 June 1933 when they, too, were liquidated.

15/ Gesetz zur Sicherung der Einheit von Partei und Staat", 1933 RGBl. I 1016.

16/ Mein Kampf, pp. 674-5.

17/ ADGB, "Allgemeinen Deutschen Gewerkschaftsbund", contained 28 affiliated unions; AFA, "Allgemeinen Freien Angestelltenbund", had 13 affiliated unions. In 1932 these two unions together had a membership of over 4,500,000. The Christian trade unions at this time had a membership of over 1,250,000.

On 21 April 1933, Dr. Robert Ley, chief of staff of the chief directorate of the Nazi party organization, issued a circular 18/ from Nazi headquarters in Munich directing the seizure on 2 May 1933 of the ADGB and the AFA and the arrest of their principal leaders. This was a party action and not an act of government. The plan was skillfully organized. Eight Nazis were appointed to an "Aktionskomitee" to direct the seizure and arrests. The action, however, was to be carried out as the official action of the Nationalsozialistische Betriebszellenorganisation (NSBO), the official cell organization of the Nazi Party within the free trade unions. The party Gauleiters in each Gau (party provinces) were held answerable for the successful accomplishment of the action in their respective provinces. It was specifically directed that the SA and SS were to be used ("einzusetzen") for the occupation of the union offices and for the arrest of the leading unionists. The union leaders marked for "custody" ("In Schutzhaft werden genommen") were all union chairmen, all district union secretaries, and the leaders of the branches of the union-owned bank. It was directed that upon seizure of union finances immediate arrangements be made for the subsequent payment of union benefits so that the ordinary members would not become restive. Lesser union officials and offices employees were to be encouraged to remain at their jobs under NSBO supervision. As soon as possible meetings of union members were to be held to explain to them that the action was not against the members but against an overaged "system" contrary to the interests of the German nation ("dass diese Aktion sich nicht gegen ihn, sondern gegen ein ueberaltertes und mit den Interessen der deutschen Nation nicht uebereinstimmendes System richtet").

The seizure and arrests were in fact carried out with the same thoroughness as the ingenious circular directing the action. Dr. Ley announced the Nazi assimilation of the unions in the German newspapers as follows: 19/

"We have never destroyed anything which had any kind of value for our nation No, workers, your institutions are sacred and inviolable to us Nationalsocialists.... It is better that we should give Marxism a last shot to finish it off than that we should ever allow it to rise again. The Leiparts and the Grassmans (leaders of the ADGB) may hypocritically declare their devotion to Hitler as much as they like - but it is better that they should be in prison. Thereby we deprive the Marxist ruffians of their chief weapon and of the last possibility of strengthening themselves afresh."

On 5 May 1933, Dr. Ley thanked the "Aktionskomitee" for its exemplary execution of its task and announced that he would assume on 10 May 1933 the leadership of a new organization, the Deutschen Arbeitsfront (DAF) which Hitler had already agreed to sponsor at the First German Workers Congress to be held on that date. 20/. Hitler personally addressed this Congress, using the following double talk to justify the seizures: 21/

18/ The heading and preamble of this circular in the German follows: "Die Oberste Leitung der PO. Der Stabsleiter. Muenchen, den 21.4. 1933. Rundschreiben Nr. 6/33. Dienstag, den 2. Mai 1933, vormittags 10 Uhr, beginnt die Gleichschaltungsaktion gegen die Freien Gewerkschaften". Translated to English: "The chief directorate of the political organization of the Nazi Party. The chief of staff. Munich, 21 April 1933. Circular No. 6/33. Tuesday, the 2 May 1933, forenoon at 10 o'clock, will begin the coordination-action against the free trade unions". This circular is set forth in full, with the exception of the listing of the names of certain free unions and the names of certain Nazi appointed commissars, in "Das sociale Leben im neuem Deutschland unter besonderer Beruecksichtigung der Deutschen Arbeitsfront", by Prof. Dr. Willy Mueller (Verlag E. S. Mittler & Sohn. Berlin. 1938).

19/ Manifesto of 2 May 1933. Quoted by Prof. Dr. Mueller's book. See footnote 18.

20/ Mueller, p. 64.

21/ Set forth in Pollock and Heneman, "The Hitler Decrees", pp.74-6, as an "authorized translation of the official text".

"I must now speak of another measure, the freeing of the present unions from the influence of those men who believe that they possess in those unions a last line of defense. Let them have no illusions as to this. What they built up we hold for wrong. We see however that the German genius, working against the will of the founders of these unions, gradually awoke in millions of individuals a feeling which found its outward expression in mighty organizations. Those men would have destroyed those organizations. We are taking them over, not to preserve everything in the same form for the future but to save for the German workingman all that he had put by in these organizations in the way of savings and, furthermore, in order that the German worker might cooperate in the building of the new state, to enable him to do this on a basis of equality. We are not erecting a state against him; no, with him must the new state be built up....The German worker must show the others that he no longer stands outside the German nation and its rebirth."

Over three years later a decree was issued by Hitler with the sometimes misleading title "Law Granting Compensation in Connection with Confiscated or Transferred Property" 22/. Under "Title III, Property of the Former Employers' and Employees' Associations", the property custodian of the DAF was "entrusted with the property of the former employers' and employees' associations, inclusive of their benefit and insurance property administrations, pension funds, or property." Section 24(3) contains a pathetic admission:

"In so far as the property of a former employers' or employees' association has already been liquidated by orderly procedure or otherwise, no change shall be made".

It is unnecessary to describe this as a belated attempt to give a legal veil to the lawless seizure and confiscation of a free association's property.

After the seizure of the two largest associations of unions in May 1933, Dr. Ley made an attempt to represent the German regime and the Christian trade unions at the International Labor Congress in Geneva on 8 June 1933. His reception was anything but warm and he was not admitted to the Congress. As Prof. Dr. Mueller comments 23/:

The Geneva atmosphere did not remain without the influence of the Christian trade unions.

Immediately thereafter Dr. Ley decided the proper time had come for the liquidation of the Christian trade unions. This was accomplished by a party order 24/ on 24 June 1934 directing that Nationalsocialists were to occupy them and that they were to be assimilated into the DAF. It is interesting to observe the justifications noted in the directive itself: The newly created DAF was not merely formed to end Marxist influence but to terminate the unfortunate divisions among the German workers; Hitler no longer desires that any organization whatsoever be permitted existence

22/ "Gesetz ueber die Gewaehung von Entschaedigungen bei der Einziehung oder dem Uebergang von Vermoegen", 1937 RGBl. 1333.

23/ Mueller, p. 54.

24/ Mueller, p. 54. Some important extracts in German follow: "Nicht allein sollte damit (the creation of the Nazi DAF) der letzte Unterschlupf des Marximus getroffen werden, sondern sollte damit letzte Zerklueftung der deutschen Arbeitsmenschen behoben werden Er ist der Wille des Fuehrers, dass ausser der Deutschen Arbeitsfront Keinerlei Organisationen mehr, weder der Arbeitnehmer noch der Arbeitgeber, existieren....Hinzukommt, dass sich in den vorstehenden Verbaenden bezueglich der Kassen-und Wirtschaftangelegenheiten groeszte Korruption herausgestellt hat".

outside the DAF; the Christian trade unions had been ungrateful and disloyal in answering the Nazi's charity in permitting them to retain independence; the union officials were guilty of great embezzlement of union funds.

Thus, during the same short period when the political opposition and the political parties were liquidated in progressive stages, the free trade unions were eliminated as independent associations. Their properties were confiscated and surrendered to the DAF, an organization which engaged in no collective bargaining, and which also incorporated employer associations. Its main functions were the support of the "Strength through Joy" movement and dissemination of Nazi propaganda to workers.

V. Securing additionally needed evidence on crimes associated to the breakdown of the unions.

The process of breaking up the trade unions was accompanied by confinement, maltreatment and sometimes murder of the union leaders. So far as is known, no one has yet collected comprehensive evidence or compiled an analysis of just what happened to all the principal leaders of the unions since Hitler came to power. The best qualified evidence, supported by signed statements and documentation if possible, should be gathered rapidly concerning such things as the following: The nature and extent of the arrests and confinement of particular trade union leaders; assaults upon or other maltreatment of trade union leaders or their families; the murders, "suicides" after arrest, and "killings while trying to escape" cases involving union leaders. Clear evidence in a few cases will go far in explaining the bulk of "disappearances" about which the complete truth may never be known.

The same type of proof is desired concerning the treatment of trade union leaders of the unions during the liquidation of the unions in the occupied countries.

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