



LEGISLATING THE HOLOCAUST: On September 15, 1935, Hermann Göring (center) stood in front of a special session of the Nazi Reichstag attended by Adolf Hitler (bottom right) to decree one of what came to be known as the Nuremberg laws.

## The Day Evil Became the Rule of Law

By HARRY REICHER

**S**eventy years ago this month, Hermann Göring stood up in front of a special Reichstag session in Nuremberg and read out the Law for the Protection of German Blood and Honor. The decree was one of what came to be known as the Nuremberg laws, which peremptorily and ruthlessly wrought fundamental changes to the place of Jews in German society and formed an important step on the way to the Holocaust.

Under the Nazis, law was debased beyond recognition. It became a tool of hatred and viciousness — the very antithesis of everything normally connoted by the notion of law: justice, goodness, fairness, due process, protection of the individual against the excesses of government, even morality.

Seven decades after the enactment of the Nuremberg laws, it is sobering to recall that legislation was exploited, side by side with force, to propel the German genocide machine.

The Law for the Protection of German Blood and Honor sought to effect a strict separation between Jews and Aryans by outlawing marriages between them, prohibiting extramarital relations and the employment by Jews of female Germans who are of childbearing age. At the same time, the Reich Citizenship Law stripped Jews of the right to citizenship and, with it, all the protections and political rights that accompany citizenship in a society — including the right to vote.

The legal schema formed by the Nuremberg laws was completed by the first ordinance to them, of November 14, 1935. The ordinance defined a Jew. The fulcrum around which the legal system revolved was constituted. A Jew was, first and foremost, someone who was descended from at least three grandparents who belonged to the Jewish religious community. Being dealt with in a definitional ordinance of this magnitude delivered a massive psychological blow to the Jewish community, by defining

them legally to be separate and inferior. All subsequent legislation dealing with Jews harked back to this definition.

The Nuremberg laws arose directly out of the two limbs to the Nazi racial ideology, so far as Jews were concerned. The primary obsession was with racial purity, and Jews were seen as the worst polluters of Aryan blood. Thus any contact that could lead to such pollution was outlawed. In addition, Jews were regarded as diabolically clever outsiders who insinuate themselves into a society, identify and take over the key levers of control and then steer the society toward Bolshevism. For that reason, their influence in society had to be extirpated, beginning with the fruits of citizenship.

The Nazis went to extraordinary lengths to “legalize” their massive assault on Jews. By legislative means — among others, of course — Nazi Germany discriminated against, ostracized and dehumanized the Jews. In the 12-year period of Nazi rule, something of the order of 2,000 laws was directed solely, specifically and directly at the Jews. The subjects covered by those laws were breathtaking: They ranged from depriving Jews of the right to work and earn a living, expropriating their property and throwing them out of the educational system, to absurd minutiae such as the ban on buying milk from a cow owned by a Jew.

In all this, the Nuremberg laws stood at the apex, as the implementation of the core of the regime’s ideology. The lessons to be learned from the Nazis’ ability to legislate evil resonate into the 21st century.

First, law is inherently neutral. Used with wisdom and compassion, it can accomplish the greatest good. But if a legal system falls into the wrong hands, it can become the instrument of the greatest barbarities.

Second, constitutional separation of powers is important. The Nazis were able to legislate with impunity because there was no institution in the governmental framework to scrutinize what

they were doing. The führer principle by which all legislative, executive and judicial power was aggregated in a small number of hands — and ultimately in one set of hands, Adolf Hitler’s — was the very antithesis of American-style separation of powers, with its built-in system of checks and balances. The strongest guarantee of individual freedoms is ultimately a diffusion of power.

Third, within the separation of powers, the there is a need for an independent judiciary. It is imperative that courts are capable of measuring legislative action against an objective constitutional standard and, if warranted, being prepared to tell the government that it has gone too far.

Fourth, there is the fragility of democracy itself. Hitler was elected lawfully and then proceeded to destroy the very system that brought him to power, using legislation as part of that process. Can the need for vigilance be more urgently underscored?

And lastly, the plans and the threats of despots and would-be despots must be believed, for only then is there a chance that preventative action will be taken. The Nazis made no secret of their plans. From the intention to work within the system in order to come to power so that they could overturn the system itself, to the use of poison gas to kill Jews, it was all there in explicit terms.

If one had been the legal counsel to the Nazi Party when it came to power in 1933, and had been given the task of preparing a legislative program to implement the party’s underlying ideology, a review of “Mein Kampf” would have yielded the very sort of legislation that was promulgated in the following years. That is why the Nuremberg laws were, in a sick, perverse way, so logical.

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