



PART I:
**DOCUMENTS RELATING TO THE
TRANSITION FROM DEMOCRACY
TO DICTATORSHIP**

I. Decree of the Reich President for the Protection of the People and the State (Reichstag Fire Decree) February 28, 1933

On February 27, 1933, 24-year-old Dutch militant Marinus van der Lubbe set fire to the German parliament (Reichstag), causing extensive damage to the building that had long been the symbol of German unity. The government falsely portrayed the incident as part of a Communist plot to overthrow the state in response to Adolf Hitler's appointment as Reich Chancellor by President Paul von Hindenburg on January 30, 1933.

On February 4, Hitler's cabinet had restricted the press and authorized the police to ban political meetings and marches. Nazi leaders then exploited the Reichstag fire to gain President von Hindenburg's approval for a more extreme measure called the Decree for the Protection of the People and the State.

Popularly known as the Reichstag Fire Decree, the regulations suspended important provisions of the German constitution, especially those safeguarding individual rights and due process of law. The decree permitted the restriction of the right to assembly, freedom of speech, and freedom of the press, among other rights, and it removed all restraints on police investigations. With the decree in place, the regime was free to arrest and incarcerate political opponents without specific charge, dissolve political organizations, and suppress publications. It also gave the central government the authority to overrule state and local laws and overthrow state and local governments. This law became a permanent feature of the Nazi police state.



President Paul von Hindenburg greets Chancellor Adolf Hitler during state ceremonies. Potsdam, Germany, 1933. USHMM

Decree of the Reich President for the Protection of the People and the State of February 28, 1933¹

In virtue of Article 48(2) of the German Constitution, the following is decreed as a defensive measure against communist acts of violence endangering the state:

Article 1

Sections 114, 115, 117, 118, 123, 124, and 153 of the Constitution of the German Reich are suspended until further notice. Therefore, 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, warrants for house searches, orders for confiscations, as well as restrictions on property, are also permissible beyond the legal limits otherwise prescribed.

Article 2

If in a state the measures necessary for the restoration of public security and order are not taken, the Reich Government may temporarily take over the powers of the highest state authority.

Article 3

According to orders decreed on the basis of Article 2 by the Reich Government, the authorities of states and provinces, if concerned, have to abide thereby.

Article 4

Whoever provokes, or appeals for, or incites the disobedience of the orders given out by the supreme state authorities or the authorities subject to them for execution of this decree, or orders given by the Reich Government according to Article 2, is punishable—insofar as the deed is not covered by other decrees with more severe punishments—with imprisonment of not less than one month, or with a fine from 150 up to 15,000 reichsmarks.

Whoever endangers human life by violating Article 1 is to be punished by sentence to a penitentiary, under mitigating circumstances, with imprisonment of not less than six months and, when violation causes the death of a person, with death, under mitigating circumstances, with a penitentiary sentence of not less than two years. In addition the sentence may include confiscation of property.

Whoever provokes or incites an act contrary to public welfare is to be punished with a penitentiary sentence, under mitigating circumstances, with imprisonment of not less than three months.

Article 5

The crimes which under the Criminal Code are punishable with penitentiary for life are to be punished with death: i.e., in Paragraphs 81 (high treason), 229 (poisoning), 306 (arson), 311 (properties), and 324 (general poisoning).

Insofar as a more severe punishment has not been previously provided for, the following are punishable with death, life imprisonment, or imprisonment not to exceed 15 years:

1. Anyone who undertakes to kill the Reich President or a member or a commissioner of the Reich Government or of a state government, or provokes such a killing, or agrees to commit it, or accepts such an offer, or conspires with another for such a murder;

1. Translated from *Reichsgesetzblatt I*, 1933, p. 83.

2. Anyone who under Paragraph 115(2) of the Criminal Code (serious rioting) or under Paragraph 125(2) of the Criminal Code (serious disturbance of the peace) commits the act with arms or cooperates consciously and intentionally with an armed person;

3. Anyone who commits a kidnapping under Paragraph 239 of the Criminal Code with the intention of making use of the kidnapped person as a hostage in the political struggle.

This decree is in force from the day of its announcement.

Berlin, February 28, 1933

The Reich President von Hindenburg

The Reich Chancellor A Hitler

The Minister of Interior Frick

The Minister of Justice Dr. Gürtner

II. Arrests without Warrant or Judicial Review: Preventive Police Action in Nazi Germany as of February 28, 1933

The Nazis employed a comprehensive strategy to control all aspects of life under their regime. In tandem with a legislative agenda by which they unilaterally required or prohibited certain public and private behaviors, the Nazi leadership dramatically redefined the role of the police, giving them broad powers—independent of judicial review—to search, arrest, and incarcerate real or perceived state enemies and others they considered criminals.

The Supreme Court failed to challenge or protest the loss of judicial authority at this time. In general, it approved of the Nazi leadership's decisive action against left-wing radicals (e.g., communists) that seemed to be threatening the government's stability. Further, the Supreme Court had been the court of first instance for treason cases since the Imperial period but, by the 1930s, it was overburdened with such trials and had endured relentless criticism from all sides for the judgments it rendered. The court was ultimately relieved to have responsibility for political crimes removed from its jurisdiction.

The security police (not to be confused with paramilitary units such as the SS or the SA,² which also imposed public order) was composed of two primary arms: the Secret State Police (Gestapo), which investigated political opposition, and the Criminal Police (Kripo), which handled all other types of criminal activity. The Gestapo was empowered to use “protective custody” (*Schutzhaft*) to incarcerate indefinitely, without specific charge or trial, persons deemed to be potentially dangerous to the security of the Reich. Protective custody had been introduced in the German general law code before World War I to detain individuals for their own protection or to avert an immediate security threat if there were no other recourse. Now the Gestapo employed protective custody to arrest political opponents and, later, Jews, as well as Jehovah's Witnesses who, because of religious conviction, refused to swear an oath to the Nazi German state or to serve in the armed forces. Individuals detained under protective custody were incarcerated either in prisons or concentration camps; within two months of the Reichstag Fire Decree, the Gestapo had arrested and imprisoned more than 25,000 people in Prussia alone.



An SA man guards members of the German Communist party being held in the basement jail of SA barracks. Berlin, April 1, 1933. BAK Bild 102-02920A

The Kripo used a similar strategy called “preventive arrest” (*Vorbeugungshaft*) to seize any individuals determined to be a threat to public order. As the guidelines show, the Kripo was given limitless power for surveillance and was authorized to seize persons on the mere suspicion of criminal activity. As with those held by the Gestapo under protective custody, those held by the Kripo under preventive arrest had no right to appeal or access to a lawyer, and their arrests were not liable to judicial review. They were generally interned directly in a concentration camp for a period determined by the police alone. By the end of 1939, more than 12,000 preventive arrest prisoners were interned in concentration camps in Germany.

2. The SA (Sturmabteilung, or storm troopers), also known as the “Brown Shirts,” were a Nazi paramilitary formation. They served as the street fighters of the Nazi party before Hitler's rise to power in 1933.

Guidelines for Preventive Police Action against Crime:³

In the internal distribution of responsibilities of the police, prevention of “political crimes” is assigned to the Secret State Police [Gestapo]. In other cases the criminal police is responsible for the prevention of crime. The criminal police operates according to guidelines in the prevention of crime according to the following principles:

The tools used in the prevention of crime are systematic police surveillance and police preventive arrest.

Systematic police surveillance can be used against those professional criminals who live or have lived, entirely or in part, from the proceeds of their criminal acts and who have been convicted in court and sentenced at least three times to prison, or to jail terms of at least three months, for crimes from which they hoped to profit.

Further, habitual criminals are eligible if they commit crimes out of some criminal drive or tendency and have been sentenced three times to prison, or to jail terms of at least three months, for the same or similar criminal acts. The last criminal act must have been committed less than five years ago. The time the criminal spent in prison or on the run is not counted. New criminal acts that lead to additional convictions suspend this time limit.

All persons who are released from preventive police arrest must be placed under systematic police surveillance.

Finally, systematic police surveillance is to be ordered despite these regulations if it is necessary for the protection of the national community [*Volksgemeinschaft*⁴].

In the application of systematic police surveillance the police can attach conditions such as requiring the subject to stay in or avoid particular places, setting curfews, requiring the subject to report periodically, or forbidding the use of alcohol, or other activities; in fact, restrictions of any kind may be imposed on the subject as part of systematic police surveillance.

Systematic police surveillance lasts as long as is required to fulfill its purpose. At least once every year the police must reexamine whether the surveillance is still required.

Preventive police arrest can be used against the following:

Professional and habitual criminals who violate the conditions imposed on them during the systematic police surveillance of them or who commit additional criminal acts.

Professional criminals who live or have lived, entirely or in part, from the proceeds of their criminal acts and who have been convicted in court and sentenced at least three times to prison, or to jail terms of at least three months, for crimes from which they hoped to profit.

Habitual criminals if they have committed crimes out of some criminal drive or tendency and have been sentenced three times to prison, or to jail terms of at least three months, for the same or similar criminal acts.

3. Translated from Werner Best, *Der Deutsche Polizei* (Darmstadt: L.C. Wittich Verlag, 1940), pp. 31–33.

4. *Volksgemeinschaft* (literally, folk community) was a term used by the Nazis for the German people as a whole.

Persons who have committed a serious criminal offense and are likely to commit additional crimes and thereby constitute a public danger if they were to be released, or who have indicated a desire or intention of committing a serious criminal act even if the prerequisite of a previous criminal act is not established.

Persons who are not professional or habitual criminals but whose antisocial behavior constitutes a public danger.

Persons who refuse to identify, or falsely identify themselves, if it is concluded that they are trying to hide previous criminal acts or attempting to commit new criminal acts under a new name.

Normally, police preventive arrest is to be used against these persons if it is concluded that the more mild measure of systematic police surveillance will unlikely be successful.

III. Law to Remedy the Distress of the People and the Reich (The Enabling Act) March 24, 1933

The Law to Remedy the Distress of the People and the Reich, also known as the Enabling Act, became the cornerstone of Hitler's dictatorship by allowing him to enact laws, including ones that violated the Weimar constitution, without approval of either parliament or Reich President von Hindenburg.

Since the passage of this law depended upon a two-thirds majority vote in parliament, Hitler and the Nazi party ensured the outcome by intimidation and persecution. They prevented all 81 Communists and 26 of the 120 Social Democrats from taking their seats, detaining them in so-called protective detention in Nazi-controlled camps. In addition, they stationed SA and SS members in the chamber to intimidate the remaining representatives and guarantee their compliance. In the end, the law passed with more than the required two-thirds majority, with only Social Democrats voting against it.

The Supreme Court did nothing to challenge the legitimacy of this measure. Instead, it accepted the majority vote, overlooking the absence of the Communist delegates and the Social Democrats who were under arrest. In fact, most judges were convinced of the legitimacy of the process and did not understand why the Nazis proclaimed a "Nazi Revolution." Erich Schultze, one of the first Supreme Court judges to join the Nazi party, declared that the term "revolution" did not refer to an overthrow of the established order but rather to Hitler's radically different ideas. In the end, German judges—who were among the few who might have challenged Nazi objectives—viewed Hitler's government as legitimate and continued to regard themselves as state servants who owed him their allegiance and support.

Law to Remedy the Distress of the People and the Reich of March 24, 1933⁵

The Reichstag has enacted the following law, which has the agreement of the Reichsrat and meets the requirements for a constitutional amendment, which is hereby announced:

Article 1

In addition to the procedure prescribed by the Constitution, laws of the Reich may also be enacted by the Reich Government. This includes laws as referred to by Articles 85, Sentence 2, and Article 87 of the Constitution.

Article 2

Laws enacted by the Reich Government may deviate from the Constitution as long as they do not affect the institutions of the Reichstag and the Reichsrat. The rights of the President remain undisturbed.

Article 3

Laws enacted by the Reich Government shall be issued by the Chancellor and announced in the *Reichsgesetzblatt*. They shall take effect on the day following the announcement, unless they prescribe a different date. Articles 68 to 77 of the Constitution do not apply to laws enacted by the Reich Government.

Article 4

Reich treaties with foreign states that affect matters of Reich legislation shall not require the approval of the bodies concerned with legislation. The Reich Government shall issue the regulations required for the execution of such treaties.

Article 5

This law takes effect with the day of its proclamation. It loses force on April 1, 1937, or if the present Reich Government is replaced by another.

Berlin, March 24, 1933

The Reich President von Hindenburg
Reich Chancellor Adolf Hitler
Reich Minister of the Interior Frick
Reich Minister of Foreign Affairs Freiherr von Neurath
Reich Minister of Finance Graf Schwerin von Krosigk

5. Translated from *Reichsgesetzblatt I*, 1933, p. 141.

IV. Law for the Imposition and Implementation of the Death Penalty (Lex van der Lubbe) March 29, 1933

The Nazi state enacted the Law for the Imposition and Implementation of the Death Penalty on March 29, 1933, just a month after the Reichstag fire. Its first stipulation made a key article of the Reichstag Fire Decree—that which changed the punishment for certain crimes such as arson and high treason from life in prison to the death penalty—retroactive to the beginning of Hitler’s assumption of power, thus violating the *ex post facto* rule of law and ensuring that those who were accused of setting fire to the Reichstag would be executed if convicted. The second article allowed the execution itself to be carried out by hanging, considered a harsh and shameful mode of execution, in place of beheading.

In fact, Hitler pressed for this law, also known as Lex van der Lubbe, for purely political reasons. He insisted upon the death penalty to underscore the legitimacy of the regime’s claim that the fire had been an act of rebellion against the state. This was all the more important since Hitler had used the fire to declare a state of emergency. This in turn allowed him to abolish many longstanding constitutional guarantees. Working backward, the execution of the alleged perpetrators of the Reichstag arson would justify to the public the extreme measures that the Nazi regime had put into place.

The Supreme Court’s decision in the case reveals the ambivalence and complexity of its role in the new Nazi regime. On the one hand, the court found Marinus van der Lubbe guilty and permitted his hanging, accepting the unilateral changes to the constitution that Hitler’s government had enacted. On the other hand, it found van der Lubbe’s codefendants not guilty of the crime of arson, rejecting the notion of “political necessity” as an overriding factor in deciding the verdict. In this regard, the court declared that it would not be used to stage politically important show trials. An outraged Hitler removed jurisdiction for political crimes from the Supreme Court and established the so-called People’s Court (Volksgericht) in Berlin instead, appointing Nazi judges to the bench to ensure the outcome of such cases in the future.

Law for the Imposition and Implementation of the Death Penalty of March 29, 1933⁶

The Reich Government has decided the following law that is hereby proclaimed:

Article 1

Section 5 of the Decree of the Reich President for the Protection of the People and the State of February 28, 1933 (*RGBl I*, page 83) applies also to acts committed between January 31 and February 28, 1933.

Article 2

If someone should be sentenced to death due to conviction of a crime against public security, the Reich or state authority responsible for carrying out the sentence can order the sentence carried out by hanging.

Article 2 is a revision of Section 13 of the Criminal Code for the German Reich of May 15, 1871 (*RGBl I*, page 127), which determined that the death penalty is to be carried out through beheading.

Reich Chancellor: Adolf Hitler

For the Reich Minister of Justice: Deputy Reich Chancellor v. Papen

6. Translated from *Reichsgesetzblatt I*, 1933, Nr. 28, p. 151.

V. Law against the Founding of New Parties

July 14, 1933

In another pivotal step in the transformation of German society from a democracy to a dictatorship, the Nazi leadership passed the Law against the Founding of New Parties. With this law, all other political entities were disbanded or dissolved. As a consequence, some activists fled abroad while others prepared to work within an illegal party

framework. Some parties went underground and some simply dissolved from intimidation and pressure. Germany became a one-party dictatorship led by National Socialists, whom the law made the only legitimate political party in the country.

Law against the Founding of New Parties of July 14, 1933⁷

The Reich Government has decided on the following law and hereby proclaims it:

Article 1

The National Socialist German Workers Party is the only political party in Germany.

Article 2

The maintenance of the organizational cohesion of another political party or the founding of a new political party is punishable with prison of up to three years, or with jail from six months to three years, insofar as the act is not punishable with a higher penalty under other provisions of the law.

Berlin, July 14, 1933

Reich Chancellor Adolf Hitler
Reich Minister of the Interior Frick
Reich Minister of Justice Dr. Gürtner

7. Translated from *Reichsgesetzblatt I*, 1933, p. 479.

VI. Oaths of Loyalty for All State Officials August 20, 1934

Following the death of President von Hindenburg in August 1934, Hitler assumed power as Reich Chancellor and Führer. Shortly thereafter, the longstanding oath taken by state officials was changed so that they no longer swore loyalty to the German constitution but rather to Hitler as head of state. Although in retrospect this change seems to indicate another step in Hitler's consolidation of power, at the time many would have understood it differently. By replacing

"Constitution" with "Hitler," the oath was meant to convey that Hitler's will was the same as that of the nation and the people and that his will could not, by definition, contradict the imperative to "observe the law and conscientiously fulfill the duties" of office. In this way, the oath appeared to equate Hitler's authority with the constitution and to ensure that it would be limited by the primacy of law and duty in public office.



German judges take the oath of service to the Nazi state in the presence of Hitler in the State Opera House. Berlin, Germany, date uncertain. Corbis

Oaths of Loyalty for All State Officials

As of August 14, 1919:

“I swear loyalty to the Constitution, obedience to the law, and conscientious fulfillment of the duties of my office, so help me God.”⁸

As of August 20, 1934:

“I swear I will be true and obedient to the Führer of the German Reich and people, Adolf Hitler, observe the law, and conscientiously fulfill the duties of my office, so help me God.”⁹

8. Translated from *Reichsgesetzblatt I*, 1919, pp. 1419–1420.

9. Translated from *Reichsgesetzblatt I*, 1934, p. 785.