

REPRESSION AND POWER

Portrayals of Hitler's rule in the years following the demise of the Nazi regime focused heavily upon extreme terror and repression as its chief characteristics. From within Germany, the claim was frequently heard that any opposition was futile in such a repressive totalitarian state. And from those who had grievously suffered under Nazism and those who had barely escaped the clutches of the regime through emigration there were depictions in graphic and moving terms of the exposure of the individual to brutal terror. A further strand of the same emphasis was added by scholarly analyses of totalitarianism produced under the impact of the Cold War and of revelations about the brutalities of Stalinism as well as of the Nazi regime. Hitler's power, from contrasting perspectives, apparently needed no further explanation than that of the coercive force of the totalitarian police state.

Post-war generations which mercifully have not had to suffer such barbarities as occurred under Hitler need a due sense of humility in attempting to qualify such an emphasis. Indeed, any explanation of the character and extent of Hitler's power which did not lay stress upon Nazi coercion and repression would be seriously flawed. Nevertheless, some points of qualification are necessary at the outset, which will at the same time help to define the contours of our enquiry.

To suggest that Hitler's power rested on 'totalitarian terror' — leaving aside difficulties with the concept of 'totalitarianism' — is to state only a partial truth. If we confine our attention to Germany itself and bracket out of consideration here the untrammelled terror unleashed in the wartime occupied territories (especially in Poland and the Soviet Union), terror

and repression were highly selective in their application. Workers associated with left-wing parties were thrown into concentration camps in their thousands, especially during the initial onslaught of the new regime in 1933. Industrialists, landowners (apart from those suspected of implication in the 1944 bomb plot) and bankers were left untouched. Jews, an unloved tiny minority, were terrorised. Gypsies, homosexuals, beggars and other 'anti-social elements' also fell under the lash of Nazi oppression. But no German Catholic bishop, despite the 'church struggle', found himself incarcerated in a concentration camp. Police harassment was far more prevalent in working-class than middle-class areas of big cities. There was no assault on the farming and small property-holding population of the countryside. There was no army purge other than the actions connected with the removal of Blomberg and Fritsch in 1938 and the vengeful acts against those involved in the 1944 bomb plot. Most of the 'intelligentsia, apart from the minority of intellectuals forced into emigration, needed no terror to make them fall in line with Nazi '*Gleichschaltung*' (or 'coordination'). Indeed, 'self-coordination' applied to many sections of society which willingly cooperated in the early Nazification of their professional and representative bodies.

Generally, then, repression was aimed at the powerless and unpopular sections of society. Little or nothing was done against the 'big battalions', especially in the early years of the regime. Nor was repression a constant over time. After the early 'settling of scores' as tens of thousands of the political enemies of the Nazis were subjected to the frenzied retaliation of the Nazi hordes, there was a decline for some years in the levels of repression, reflected in the drop in the number of cases brought before the newly instituted 'special courts' (set up to deal speedily with relatively minor political 'offences') and in the falling numbers of inmates in concentration camps. The numbers started to rise again in the two years leading up to the outbreak of the war. The beginning of the war was accompanied by an extended range of offences and draconian punishment against anyone seeming to undermine or threaten the war effort. But the worst of the repression within Germany was now borne above all by racial 'undesirables' — especially Jews (before their deportation) and the swelling numbers of 'foreign

workers' sustaining the war economy. When the war turned sour, repression soared to new heights as the regime struck out wildly at all forms of real or presumed oppositional behaviour. Outside Germany, Nazi terror had by this time blown into a whirlwind of annihilation.

As these remarks have already intimated, the coercive force which lay behind Hitler's power is inseparable from the consensus in broad swathes of German society with much of what was happening in Hitler's name. Coercion and consent were two sides of the same coin — twin props of Hitler's power.

Still, it is important even so not to lose sight of the fact that Hitler's power after 1933 rested first and foremost upon his control of the instruments of domination and coercive apparatus of the state. In modern, stable capitalist democracies the power of the state might be said to reside in the capacity of the state to penetrate intermediary organisations of civil society and thereby implement political decisions through this mediated cooperation and consent. Where this capacity is so weakened that pluralist structures break down and democracy collapses, the resort is to what might be called 'despotic power' — actions of the state leadership carried out less by negotiation with intermediary groups in civil society than by force directed from above.¹

This stage had certainly been reached in Germany by 1933. The collapse of Weimar democracy since 1930 — the fragmentation then polarisation of civil society leading to circumstances approaching those which bring about civil war, and the ensuing vacuum of central state power — provided the framework within which the power of the German state was reconstituted on 'despotic' lines. The extreme levels of conflict in civil society prompted extreme levels of coercion under the new Nazi regime — coupled, of course, with unprecedented attempts by propaganda to 'manufacture' the consensus which had been so patently missing before 1933.

The organisational structures of the instruments of domination have been thoroughly analysed and require no further examination here. The emphasis in what follows is rather upon the ways in which the atomisation of opposition and the erosion of legality through police executive action contributed to Hitler's accumulation of power. This process had

less to do with Hitler's own actions than with the forces in the state, in the Nazi Movement and in German society which were, from whatever motives, objectively 'working towards the Führer'.

THE ATOMISATION OF OPPOSITION

It took Mussolini around three years to establish fully-fledged dictatorial rule in Italy. In some ways the process of fascist monopolisation of power in Italy was never fully completed. In Germany, organisational forms of political opposition were destroyed within six months. Within another six months, lingering remnants of regional autonomy — already effectively smashed within weeks of Hitler becoming Chancellor — had gone. And in the third period of six months the potential threat looming from within Hitler's own Movement was brutally eliminated.

Meanwhile, the only major societal institutions other than the army which had not been 'coordinated' (or Nazified) — the Christian churches — had been pushed on to the defensive, adopting reactive and inward-looking stances in which political compromise went hand in hand with a tenacious struggle to fend off Nazi inroads where church practices and institutions were concerned.

Already by mid 1934 a perceptive report from the exiled social democratic organisation was pointing out that 'the weakness of the opposition is the strength of the regime'. Nazi opponents were ideologically and organisationally weak, the analysis continued — 'ideologically weak because the great mass are only discontented, merely grumblers, and 'organisationally weak because it is of the essence of a fascist system that it does not allow its opponents to organise collectively'.²

The complete demolition of political opposition within such a short time scarcely seemed likely in January 1933. Its attainment owed more to the dynamic forces unleashed by the total discrediting of parliamentary democratic forms of rule since 1930, to the inherent weakness of opposition on all sides of the political spectrum, and to Hitler's readiness to

exploit to the full and with utter ruthlessness any opportunity which arose, than it did to any Nazi blueprints for stages of take-over and consolidation of power.

Though only two Nazis (Göring and Frick) sat alongside Hitler in a cabinet dominated by conservatives, the key position besides that of Hitler was unquestionably Göring's, who as Commissary Prussian Minister of the Interior was placed in control of the police in Germany's biggest and most important state. Moreover, Hitler held the aces from the outset in his relations with his conservative partners. They were united in the aim of destroying Marxism once and for all; but only Hitler presided over the mass political army which could ensure control of the streets. With the huge, if potentially unstable, Nazi Movement at his bidding, and with the important added personal bonus of never having sullied his hands with participation in the Weimar system, Hitler's position on assuming power was, if seemingly precarious, actually, therefore, one of considerable strength in the Nazi-Nationalist coalition.

The coalition partners were agreed on 30 January 1933 on two essentials: the need to put an end to parliamentarism in Germany, and the need to wipe out Marxism for good. On how to attain these ends opinion was divided. Hugenberg, the new Minister of Economics, wanted an immediate ban on the Communist Party. Hitler demurred. This could spur a Communist rising and bring the Reichswehr into a civil war – something which the army leadership were most anxious to avoid, and which the new War Minister von Blomberg had already regarded as best prevented by giving the Nazis a free hand politically in return for benefits to the army through massive rearmament. Papen suggested going for an enabling act. But an immediate move for an enabling act would have made the coalition dependent upon the support of the Catholic Centre Party. Hitler preferred first to push for new elections.³ This amounted to practically his only opening gambit.

All that was at stake in such elections from the point of view of the governing parties was plebiscitary backing, since Hitler gave the assurance that these would be the last elections for a very long time, and that the composition of the cabinet would be unchanged whatever the outcome. This was sufficient to persuade the conservative members of the cabinet to concur

in an immediate dissolution of the Reichstag and setting of new elections.

In the campaign which followed, the conservative anxiety to smash the Left again played wholly into Hitler's hands by supporting the legal framework within which violent repression could take place. In the weeks preceding and then following the election of 5 March 1933, this indirectly strengthened the position of the Nazi Movement at the expense of the remaining non-Nazi parties. The smashing of the Left at the behest not simply of the Nazi leadership but also of conservative elites was the first stage of a two-fold process of the atomisation of opposition in 1933, culminating in the dissolution of the bourgeois parties and the establishment of one-party rule by 14 July 1933.

The existing machinery of the presidential decree sufficed to provide, on 4 February 1933, for a ban on newspapers and public meetings attacking the new state. Such provisions had in fact been drafted by civil servants before Hitler took power. Full use was made of these powers, particularly against the Communists, in the 1933 election campaign. In mid February Göring ordered the Prussian police to support the Nazi paramilitary forces and invited, with his full backing, the ready use of firearms to crush 'subversive organisations'.⁴ The licence for an orgy of violence from stormtroopers against Communists and Socialists was given further sanction when 50,000 men from the 'national associations' of SA, SS and Stahlhelm were officially deployed as auxiliary police in Prussia. In response to appeals from the Centre Party to Hindenburg, to put an end to 'the unbelievable conditions', Hitler and Göring called for discipline.⁵

Hitler was careful in these weeks to do nothing to disturb the cooperation with his conservative partners. But the burning down of the Reichstag on the night of 27 February 1933 now gave him the opportunity to weaken their position still further and significantly tighten his own hold on power. Believing the Reichstag Fire – started by a young former Dutch Communist Marinus van der Lubbe as his own form of protest against the capitalist system and the government of 'national concentration' – to be the signal for the expected Communist uprising, Hitler and Göring reacted with near hysterical fury. Hitler apparently demanded the hanging of every Communist deputy that very night.⁶ Though matters

did not quite go that far, Göring issued a string of breathless orders for mass arrests of Communists.

By the time the cabinet met the following day, Hitler had calmed down. He explained that the 'psychologically correct moment for the showdown [with the KPD] had arrived', a struggle which must not be constrained by juridical considerations.⁷ The last item on the agenda was an emergency decree rapidly drafted by Frick, using Article 48 of the Weimar Constitution, to suspend indefinitely all personal rights and freedoms, including freedom of speech, of association and of the press. Under its provisions, political prisoners could now be held for unlimited periods without having to be brought before a court.⁸ By April there were around 25,000 of them in 'protective custody' in Prussia alone.⁹ The Reichstag Fire Decree inaugurated, therefore, a 'state of emergency', which in practice lasted as long as the Hitler regime itself. It was a crucial prop in the consolidation of Hitler's power.

The next weeks were decisive in the elimination of organised left-wing opposition and the submission of remaining non-Nazi political organisations. Following the election of 5 March 1933 (in which the NSDAP gained 43.9 per cent of the vote and its Nationalist partners a further 8 per cent), the Nazi seizure of power in the Länder brought a drastic escalation of violence in the states which had not previously been under Nazi control. Tortures, beatings and murders of countless political opponents took place in hastily devised prisons and camps run by the SA. Though, to appease conservative sentiment at home and abroad, Hitler publicly appealed to the SA to end the molesting of individuals and the disturbance of business life, he still openly encouraged the 'extermination of Marxism', and behind the scenes reacted to weak conservative protests at the violence with scorn and anger.¹⁰

On 20 March the Munich Police President Himmler announced the establishment of the first concentration camp near Dachau. Similar camps sprang up in numerous parts of Germany for the detention of political prisoners – for the most part Communists and Socialists. By the time of the Reichstag assembly on 23 March at which, with the support of the Catholic Centre Party and with only the SPD offering courageous opposition, Hitler was duly given his

Enabling Act (allowing the government to pass legislation without consulting the Reichstag and without the necessity of obtaining decrees from the Reich President), Communist deputies were all interned or had fled, and the KPD had been forced into underground opposition. No law formally banning the Communist Party was ever passed; it would have been irrelevant.

The KPD had grossly underestimated Hitler and the Nazis from the beginning. Notions of open defiance of the new regime through a general strike rapidly proved futile. And, despite preparations for underground resistance, the party was caught completely off guard by the speed and ferocity of Nazi repression following the Reichstag Fire. Though the courage and commitment of those involved in resistance work saw to it that, despite brutal repression, underground opposition was never totally eradicated, as a political force and genuine threat to Nazi power the Communist Party was effectively destroyed in February and March 1933.

Meanwhile, despite its brave last flourish of resistance to the passing of the Enabling Act, the once-mighty SPD was also finished. The SPD, the massive *Reichsbanner* (its paramilitary arm) and the trades unions had acted with extreme caution during the first weeks of Hitler's Chancellorship in order to offer no provocation. But it was all to no avail. The *Reichsbanner* was forced into dissolution during March and April. The trades unions, despite announcing in March their willingness to break the bonds with the SPD and to work loyally with the new government, were dissolved on 2 May. The SPD itself lasted officially until a ban imposed on 22 June 1933. But for many members the game was already up in March and April. Party branches closed down, leaders of the Party went into exile, many activists were arrested, countless others sought to keep a low profile. Fear, confusion, dismay and deep disillusionment with social democracy dominated.

As with the Communists, underground work never ceased, though the main concern was less to challenge the might of the regime through continued agitation than to retain and bolster solidarity among socialist comrades. Visions of illegality had largely been preshaped by the experience of the ban under Bismarck's anti-socialist legislation. But as one former SPD functionary pointed out in 1935, compared with

Hitler's, Bismarck's Reich had been a 'heaven of freedom'.¹¹

With the destruction of the Left, a common aim uniting the Nazis with the conservative Right had been achieved. But in the process, far from 'boxing in' Hitler, the conservatives had found themselves increasingly outflanked, their political organisations exposed to a triumphant Nazi Movement swelling daily through the influx of new members, predominantly from the middle classes, determined to jump on the bandwagon. Towards the 'bourgeois' parties, relatively little Nazi coercion was needed. Certainly, the seizure of power in the Länder had seen scores settled with political opponents not just from left-wing parties. But the main effect of the terror of the early months had been to point up the futility of organised resistance — unthinkable in any case from the small 'bourgeois' parties which far from disapproved of all of the political objectives of the Nazis.

The former liberal parties (DDP/*Staatspartei* and DVP) dissolved themselves in late June. The Nationalist coalition partners, increasingly under pressure since the March election, gave up their independent organisation around the same time. The Catholic Centre Party and its Bavarian wing, the BVP, held out until early July. By the end of June they had lost their links with the clergy since the Vatican, in its Concordat negotiations, had agreed that Catholic clergy must take part in no political activities. Short-term arrests of Party functionaries in late June provided the final touch. The Catholic parties, the last autonomous political entities, dissolved themselves. Little more than a week later, on 14 July 1933, the NSDAP was officially declared to be the only legal political party in Germany.

Hitler's authority was by now unchallengeable by any organised opposition external to the regime itself. Interest groups, professional bodies, guilds, clubs, associations of the most harmless kind had in the meantime Nazified their forms and leadership personnel. The civil service had been purged of all adherents of the former left-wing parties, as well as of Jews (except those with a war record). In local government, mayors and other representative figures not sympathetic to the regime had been displaced. Outside Prussia, which had already come under Reich control at the time of the Papen coup of 20 July 1932, the problem of potential opposition to Reich directives had been effectively

solved by the Nazi takeover of state governments in March and by the imposition of Reich Governors (in most cases Gauleiter of the Nazi Party) to ensure adherence to the Berlin line. Legal sovereignty of the states was finally abolished in January 1934, leaving Länder administrations in place, though deprived of any independent power. A further act the same month confirmed the subordination of workers to bosses and established the legal framework for the reordered industrial relations, dominated now, in the absence of trades unions and workers' political parties, by triumphantly aggressive management backed by state coercion.

By mid 1933, the 'organisational space' which any effective political opposition needs had been removed. Despite Nazi myths of a 'legal revolution', this had been done with a level of force, repression and brutality which had far exceeded the measures undertaken in consolidating Mussolini's rule in fascist Italy. The violence had destroyed the Left, and had impressed the ruthlessness of the new regime on the rest of society. It had been carried out with Hitler's sanction, but without any need for close direction of the cascades of vengeful terror actions unleashed by the Nazi hordes. As long as these were aimed at the Left and helpless minorities such as Jews, there was little opposition — and that only feeble.

The Christian churches retained some independent 'organisational space'. Attempts to 'coordinate' the fragmented Protestant Church — an amalgam of state churches with varying doctrinal emphases and organisational structures, some intensely jealous of their traditional autonomy — were eventually abandoned. Not even an attempt was made to destroy the organisational framework of the Catholic Church, however much the Nazis tried to break down and interfere with the institutional hold over the Catholic population through youth groups, schools, festivals and symbols. Both Churches were reluctantly brought into conflict with the Nazi state. But both Churches confined their opposition as institutions largely to fending off attacks on Christian beliefs and their organisational forms.

The most powerful institution which remained intact was the army. No purge, no assault, no interference was attempted here in 1933. This was an institution of which Hitler had to be wary, particularly as long as Reich President

Hindenburg posed a possible alternative source of army loyalty. Some form of army take-over and establishment of a military dictatorship, or even of a restoration of the monarchy, could not be ruled out. Hitler needed the army's backing more than that of any other body in the state. It is not surprising, therefore, that, when the military leadership began to be worried about the possible subordination of the army to a future dominant militia formed by the SA (by early 1934 some 2,500,000 men strong), Hitler showed himself prepared in June 1934 to act with utter ruthlessness against a part of his own Movement.

A showdown with the SA leadership had been brewing for some considerable time before the 'Night of the Long Knives' on 30 June 1934. Some type of clash was practically inevitable. At times, the SA had been difficult to hold in check even before 1933. But the nearing target of attaining power just about kept the stormtroopers in line. They had most strongly represented the 'putschist' approach within the Nazi Movement before 1933, and in the 'seizure of power' phase their style of open terroristic violence had been decisive in establishing Nazi rule so quickly. But the crudity of their 'politics' became counter-productive as soon as the target shifted from the 'enemies of the state' to the very pillars of state power — the civil service bureaucracy, the police executive and the army.

The SA leaders had no clear alternative vision of the future to offer. But as soon as the dust began to settle on the Nazi revolution, they found that it had been only half a revolution, and that the 'old guard' still controlled the real avenues of power, while few 'jobs for the boys' (or, perhaps better, 'jobs for the jobs') had opened up. The wild utterances of Ernst Rohm about a 'second revolution' and the arbitrary interference of SA bosses in local government stirred up fear as well as enormous antagonism among conservatives — and among outright Nazis — who wanted an ordered authoritarian state, not the disruptive 'political hooliganism'¹² of the SA.

By June 1934 the seriousness of the disquiet now being openly voiced in conservative circles and the tension between the army and the SA was such that Hitler's own position could easily have become endangered, particularly after the death — to be expected within the near future — of the

ailing Reich President Hindenburg. Once, from within the top Nazi leadership and for power-political reasons of their own, Göring and Himmler had shown themselves prepared to act together to remove Röhm, deploying the SS for the purpose, the fate of the SA leaders was sealed. Hitler was now persuaded to sanction the move against the SA. In a swift and dramatic strike on 30 June, numerous SA leaders — on the pretext that they were involved in the preparation of a coup against the government — were arrested by the Gestapo and SS and immediately shot. Hitler himself flew to Bavaria and personally supervised the arrest of Ernst Röhm, who was subsequently shot in prison in Munich. The opportunity was also taken to settle scores with some old enemies, among them Gregor Strasser and General von Schleicher. The 'Night of the Long Knives' claimed in all around eighty-five victims.

The bloody repression of part of his own Movement was a critical moment in the consolidation of Hitler's power. In the first instance, it removed the one force within the regime potentially capable of offering serious opposition from within or, more likely, of prompting opposition from other sources (especially the army) which could have toppled Hitler. After 30 June 1934, the SA amounted to no more than a useful but wholly loyal activist agency which, as in the 1938 pogrom, expended its violent energies in attacks on helpless minorities rather than tackling the wielders of state power. From the SA's loss of power, the main profit went to the SS — Hitler's pretorian guard, and unlike his mass army, an utterly loyal force. The power-shift within the regime had, in other words, notably enhanced Hitler's own position.

This was further consolidated in that the elimination of the detested and troublesome SA leadership bound the conservative power-groups more tightly to Hitler, and to the concept of the 'Führer state'. The mutual dependence of the traditional elites and the Nazi leader was reinforced. The conservative Justice Minister, Görtner, gave retrospective legal sanctions to the murderous actions as extraordinary measures necessary to protect the interests of state. And despite anger within the officer corps at the news that two former generals (von Bredow and von Schleicher) were among the SS's victims, Blomberg ensured that the army publicly thanked Hitler for his action.¹³ A few weeks later,

following Hindenburg's death, all soldiers swore a solemn oath of loyalty to Hitler personally. Given the code of ethics in the German armed forces, the significance of this oath can scarcely be overestimated. A similar oath of loyalty to the person of the Führer (and not to Hitler in his capacity as head of state) was sworn by all civil servants.¹⁴

The acclamation and massive popular esteem gained through his destruction of the generally hated SA was a further boost to Hitler's power. Hindenburg's own vote of thanks to Hitler for having 'saved the German nation' provided legitimisation from the head of state.¹⁵ The Chancellor's popular standing had never been higher.

Last, but not least, the episode showed once more to all would-be opponents that the regime would be absolutely ruthless in its use of force whenever its interests were threatened.

The unrestrained brutality with which Hitler disposed of a part of his own Movement at the end of June 1934 provides a further pointer to the truth in Mao's dictum that 'political power grows out of the barrel of a gun'. Faced with such unscrupulous deployment of the might of the state, it was scarcely surprising if most individuals, deprived by now of any alternative forms of political organisation, felt a sense of helplessness. From 1934 onwards, the effective possibilities of removing Hitler from within were confined to those with direct access to the arsenals and coercive capacities of the Nazi state: the army and the SS.

Both had already benefited greatly from the establishment of the Nazi regime before they joined forces to crush the SA. Both continued to be favoured disproportionately by the advances of the regime throughout the 1930s. Though some army leaders, worried at the dangers of the accelerating course of German aggression, were by 1938 engaging in the embryonic thoughts of resistance which would culminate in the attempted putsch of 1944, the great majority of the generals were more than ready to offer their full collaboration to the Nazi regime. A coup from such quarters was unlikely as long as the going was good. This was even truer of the SS, pillar of the regime, an organisation imbued with Nazi doctrine, and the executive agency of Hitler's ideology.

Outside these key coercive forces, hopes of overthrowing Hitler from within were futile. Resistance from groups hostile to the regime never ceased. Thousands of ordinary

citizens from all walks of life suffered persecution, incarceration, and not infrequently death for defying the regime. The Communist Party membership in particular suffered grievously, with an estimated 150,000 persons – roughly half of its membership on the eve of Nazi rule – subjected to imprisonment or worse during the Third Reich. Some 12,000 Germans were convicted of high treason between 1933 and 1939. And during the war, when the number of offences punishable by death rose from three to forty-six, German civilian courts handed out about 15,000 death sentences.¹⁶

Resistance was inevitably, however, fragmented, atomised and isolated from any possibility of growing mass support. This was ensured by the scale and intensity of repression after 1933, though the ground had been prepared by divisions, distrust and lack of common purpose before the Nazi take-over of power. An analysis in 1939 by the exiled Social Democrat leadership, based on regular reports from the underground resistance in Germany, aptly summarised the impact of Nazi repression: 'Those who used to think, still think today, and those who did not then think, think now even less. Only that the thinkers are today no longer able to lead the non-thinkers.'¹⁷ This is another way of indicating that the massive extension of Hitler's power was possible in the first instance because opposition – real and potential – was crushed, broken, cowed and neutralised through the unprecedented and unmitigated level of repression by the Nazi state.

A high degree of repression of former political opponents is a normal feature of authoritarian regimes in the 'take-over' phase of power. But frequently such repression settles down after the initial blood-letting into an unattractive but largely negative control upon those groups regarded as capable of posing a serious challenge to the regime. Even in fascist or quasi-fascist regimes such as those of Mussolini or Franco this was the pattern. Though the early violence was far more draconian in the upheaval in Germany in 1933–34, here too there was some apparent 'settling down'. While almost 27,000 persons had been taken into 'protective custody' by 31 July 1933, the number in concentration camps by the winter of 1936–37 had fallen to around 7,500 inmates – the lowest total throughout the Third Reich.¹⁸ But already there were

HITLER

plans for an extension of the camps, and for new categories of prisoner.

As this suggests, in Nazi Germany repression was not static, but dynamic. A key to this process of dynamic radicalisation is to be found in the inexorable erosion of legality under the pressure of a police state, in which the conventional repressive character of political policing was blended with the ideological drive of the Party's elite organisation, the SS. Since, in turn, this organisation was the one which was closest in ethos to Hitler's own ideological imperatives and saw itself as providing the executive implementation of the Führer's idea, the growth of the power of the SS, merging the state repressive apparatus and Party ideological dynamism in an agency committed more than any other to 'working towards the Führer', provides a central part of the explanation of the character and expansion of Hitler's power. We need at this stage briefly to consider the unfolding of this process.

THE SUBJUGATION OF LEGALITY IN THE FÜHRER STATE

Though Germany in 1933 had only a short, chequered history of democracy behind it, the tradition of constitutional rule based upon positivist legal principles was a far stronger one. It was a tradition which, in stages but inexorably, was broken in the Nazi state. It was not that Hitler's regime replaced one code of law by a new, Nazified code. A new penal code, it is true, was in an advanced stage of preparation by 1935, based upon the principle of punishment for the intention to commit a crime. But even this was felt to place restrictions upon the demands of the regime, and the proposal was aborted.

The Party Programme of 1920 had spoken of the need to base society on the foundations of Germanic law. But any such hopes cherished by legal pundits within the Movement such as the Party's leading lawyer, Hans Frank, were soon to be proved illusory. The regime's approach to the law was, in fact, wholly characteristic. Few changes were made to civil law. The key area was criminal law. And here the regime was ruthlessly exploitative, opportunistic and unprincipled.

REPRESSION AND POWER

Where legal norms suited the purposes of the leadership, they were deployed. Where they provided obstacles, they were by-passed, ignored or simply dumped.

As has long been recognised, Nazi Germany provided the terrain for a conflict between legal norms and arbitrary executive police action. It was from the start an uneven contest. And as the climate in which a semblance of legality could be retained sharply deteriorated during the war, the erosion of legal norms turned into a complete capitulation by the exponents of the judicial system to the demands of police executive power.

Most German judges and lawyers had been hostile to the Weimar Republic, which they had seen as threatening their judicial independence and damaging their material interests and social standing. They tended to be national-conservative rather than outrightly Nazi in their political preference, but generally welcomed the new regime in 1933 for its promise of a restoration of an authoritarian state, bringing with it an enhanced authority of those responsible for upholding 'law and order'.

A prime example of such views could be found in the Reich Justice Minister himself, Franz Gürtner, a conservative not a Nazi, but anxious to establish stable authoritarian rule supported by a legal system which rejected the fundamental liberal tenet of law – protection of the individual against the state. Gürtner was prepared to sanction the blatant illegalities perpetrated in the 'take-over' phase in 1933–34 as necessary in extraordinary (and thus 'extra-legal') circumstances. He accepted the retrospective imposition of the death penalty on van der Lubbe for setting fire to the Reichstag, even though the death penalty for arson had not existed at the time of the offence. And following the massacre of the SA leadership in June 1934, he gave legal sanction to the action on the grounds that measures of self-defence taken before the imminent occurrence of a treasonable action should be considered not only legal but the duty of a statesman.¹⁹ Gürtner was concerned to uphold the legal system and to keep separate the roles of judiciary and police. But his philosophy and his actions demonstrated how open his position was to exploitation by those forces in the regime – starting with Hitler – which were wholly unscrupulous in their approach to principles of legal rectitude.

The hopelessness of the legalists' position resided ultimately in their willing acceptance of the unique nature and unlimited power of the Führer — a principle which in essence contradicted entirely the premiss of rule on the basis of legal norms.

According to the head of the Nazi Lawyers' Association, Hans Frank, constitutional law in the Third Reich represented no more than 'the legal formulation of the historic will of the Führer'.²⁰ Such sentiments amounted, using Max Weber's terminology, to the subjugation of legal-rational authority to charismatic authority. 'Will', based on 'outstanding achievements', had replaced abstract and impersonal legal precepts as the fundamental premiss of the law.

Such a view was formulated not only by a high Nazi like Hans Frank, but also by the most prominent authorities on legal theory in Germany, who tortuously attempted to square the circle by rationalising Hitler's authority in legal terms. The leading constitutional expert, Ernst Rudolf Huber, for example, spoke of the law as 'nothing other than the expression of the communal order in which the people live and which derives from the Führer'. It was consequently 'impossible to measure the laws of the Führer against a higher concept of law because every Führer law is a direct expression of this *völkisch* concept of the law'.²¹

Explaining that the office of Führer was in origin not a state office, but one which had grown out of the Movement, Huber deduced that it was correct to speak not of 'state power' but of 'Führer power', which was personalised political power 'given to the Führer as the executor of the nation's common will'. In his understanding, 'Führer power' was 'comprehensive and total', unrestricted by any controls, 'free and independent, exclusive and unlimited'.²²

Such interpretations by highly regarded legal theorists were of inestimable value in legitimating a form of domination which, whatever the mystical theorising, effectively undermined the rule of law in favour of arbitrary exercise of political will.

The willingness of lawyers and judges to accommodate themselves to the most draconian demands of the regime in the vain attempt to preserve their own authority and monopoly of dispensation of 'justice' was not matched by any recognition on the part of the Nazi leadership of their

service to the Nazi state. On the contrary, the more arrogantly the judges tried to serve their Nazi masters, the greater, it seemed, was the contempt and abuse which they encountered.

Hitler's own contempt was unbridled. His view was that 'every jurist was defective by nature, or would become so in time'.²³ It was not merely a matter of personal vituperation. He hated the 'artificial notion of law',²⁴ whose function it was merely to use whatever means were necessary to maintain public order, but which was not an end in itself.²⁵ Law could by definition never provide the 'will' which was a Nazi prerequisite for action. It was reactive, not active. It categorised, provided regulations, and was thereby an unacceptable constraint. However harsh, it could never fully reflect the 'healthy sentiments of the people'. Above all, the prospect of any limitation in theory or in practice on the exercise of Führer power was unthinkable.

The law was consequently something which could never be more than partially satisfactory from a Nazi viewpoint, something to be used and exploited, but ignored if it hindered the greater needs of the state, the Movement, the 'idea', and the Führer. The clash between 'legal' authority and 'charismatic' Führer power was, therefore, intrinsic to the very essence of Nazism.

Both through an increasing number of personal, arbitrary interventions in the legal process and through his support for police executive autonomy at the expense of judicial control, Hitler himself shaped the framework for the complete erosion of legality in the Third Reich. However hard the lawyers 'worked towards the Führer', the instrument for the implementation of the Führer's will could not be confined by legal norms, but had to enjoy full autonomy from the law. The corollary to the decline in the conventional force of law was, therefore, the massive expansion in the power of the merged police and SS — the main executive agent of Führer power.

During the winter of 1933-34, the head of the SS, Heinrich Himmler, together with his sidekick Reinhard Heydrich, who ran the Party's intelligence service (the SD), had secured control over the political police in all the states outside the biggest one, that of Prussia. Though Göring, in his capacity as Minister President of Prussia, attempted to retain his hold

on the Prussian Gestapo, he was unable to head off the growing challenge of Himmler. In April 1934 Himmler was made 'Inspector of the Gestapo', nominally under Göring as Minister President, with Heydrich as Chief of the Prussian Secret Police Office in Berlin. Himmler's pressure became irresistible after the decisive role which his SS played in the massacre of the SA leadership in June 1934, and by the autumn Göring, unable to retain any practical control in Gestapo affairs, conceded all effective powers to the SS leader.

One area in which Himmler had been able to build an expanding arena of power outside the normal judicial controls and with unrestricted autonomy was in the domain of the concentration camps. By spring 1934, most of the 'wild' concentration camps which had marked the 'seizure of power' phase had been disbanded. And following the crushing of the SA, undisputed control over all the camps passed to the SS, with the organisation of the first camp, Dachau, as the model. The legal basis for the extension of power through the concentration camp build-up had been provided by the Reichstag Fire decree of 28 February 1933, which allowed for police 'protective custody' without any judicial sentence. The camps were thus technically the province of the state police, though given the successful take-over of the police by Himmler and Heydrich, they were run by a Party affiliation, the SS.

Despite the attempts by the justice authorities and by Reich Minister of the Interior Frick to curtail or even end the 'protective custody' system which functioned outside their control, the autonomy of the SS-Gestapo in the sphere of the camps and 'protective custody' was reaffirmed rather than diminished, and this was achieved with Hitler's express support.

Though in April 1934 Frick had produced guidelines on the limited scope of 'protective custody', which Hitler had publicly endorsed after the 'Röhm affair', Himmler's police could in practice reckon with Hitler's backing in the frequent cases where serious infringements of Frick's regulations took place. Thus, when the Reich Minister of Justice made representations to Himmler in 1935 about the number of deaths occurring in the concentration camps and requested the presence of lawyers when persons were

taken into 'protective custody', Himmler took the issues to Hitler and came back with the support he had wanted: 'In view of the conscientious direction of the camps, special measures are not considered necessary'; and 'The Führer has prohibited the consultation of lawyers.'²⁶

The Reich Ministry of the Interior, still vainly hoping to gain control over policing, protested at the abuses of 'protective custody' and the ensuing 'lack of legal security' in a lengthy memorandum written in 1935.²⁷ But Frick's hopes of success against the expanding Gestapo-SS machine under Himmler, and backed in all essential matters by Hitler, were faint. Nominal concessions were made by Himmler in a new Prussian Gestapo Law of 10 February 1936, though ambiguity in the wording could not conceal the fact that the autonomy of the Gestapo was left intact. In the Gestapo's own interpretation, the law sealed the distinction between the Gestapo, which operated 'according to special principles', and the administration, with its 'general and regularly legalised rules'.²⁸

With Hitler's decree of 17 June 1936, creating a new state office of Chief of the German Police but amalgamating this with the Party post of Reichsführer of the SS, Himmler's victory over Frick was complete. Though still, as Chief of Police, nominally subordinate to Frick, as head of the SS Himmler was personally subordinate only to Hitler. Little more than a week later, the merging of the political and criminal police in a new entity, the 'security police' under Heydrich's command, rounded off the process of creation of a massive sphere of autonomy, influence and policy formulation. With this step, conventional 'criminal' actions too were brought under the aegis of the political police, now an immensely powerful apparatus functioning outside orthodox governmental control as the direct executive organ of the 'Führer's will'. A further notable step was the amalgamation of the Security Police with the Party's Security Service (the SD) in 1939, to form the Reich Security Head Office (RSHA). Compared with the magnitude of the changes of 1936, however, this was an organisational reshuffle rather than a shift of substance.

The changes in the relationship of the law and the police which took place between 1933 and 1936 – further shifts during the remainder of the Third Reich were in essence

a consequence of this early transformation — were of fundamental importance to the character and extent of Hitler's power. Hitler had supported on all significant occasions the extra-legal power of the police. By 1936 the police was institutionally amalgamated with the most ideologically dynamic Party affiliation, the SS. The judicial authorities were in every respect on the defensive. They accepted Hitler's supreme power in and over the law, and that this power had origins lying outside those of conventional state office. They compromised on illegalities. They could not penetrate the police domain of 'protective custody' and the concentration camps. In a grotesque parody of legality, defence lawyers sometimes felt compelled, by the later 1930s, to demand unduly stiff sentences for their clients in the hope that they would at least be confined in state prisons and not in concentration camps. This did not prevent prisoners on release being taken into police custody, nor the removal into 'protective custody' of persons whose sentences were regarded by the police as too lenient or even those found not guilty by the courts.

When, a week after the outbreak of the war, the Reich Justice Minister Görtner enquired with astonishment at the authority behind Himmler's press announcement that he had ordered the execution of a number of persons for offences for which they had not stood trial, he was informed that Hitler had personally authorised the shootings.²⁹ Hitler's personal arbitrary interventions in judicial proceedings increased in number during the war. And once the arch-Nazi Thierack was appointed as Görtner's successor in 1942, the total capitulation of the judiciary to police executive power was rapidly completed. By then, the last ever assembly of the Reichstag, meeting on 26 April 1942, had formally acknowledged Hitler's position as supreme head of justice bound by no formal law.³⁰

It is not necessary here to detail the vast expansion of the SS-police domain which occurred during the war. It needs only to be noted that with that expansion came the pinnacle of Hitler's personal power and the implementation of the ideological goals which in general rather than specific terms he had held to since the early 1920s. With the erosion of law and the build-up of a political police imbued with the ethos of Nazi ideology, the climate was provided and the instrument forged for the full enhancement of Hitler's

power and with that the realisation of the central facets of his *Welanschauung*.

On the day of his appointment as Chief of German Police, Himmler had announced his aim as being to 'build up the police, welded into the SS order, as a force for the internal defence of the people' in 'one of the great struggles of human history' against 'the universally destructive force of Bolshevism'.³¹

In the same year, 1936, Heydrich's deputy in the Secret State Police Office, Dr Werner Best, described the task of the political police as supervising the 'political health' of the nation and rooting out all symptoms of disease and germs of destruction. For this task, the police needed 'an authority which is derived solely from the new conception of the State and one which requires no special legal legitimisation'. Hence, a new concept of the political police had developed, that of a 'unique body for the protection of the State whose members . . . regarded themselves as belonging to a fighting formation'.³²

Infused with this doctrine, and given the autonomy with which to develop it, the political police were able to expand their activities in precisely those areas which 'worked towards the Führer' by persecuting those almost unlimited 'enemies of State and people' — Jews, Communists (and other Marxists), Freemasons, 'politically active' church representatives, Jehovah's Witnesses, homosexuals, gypsies, 'anti-socials', 'habitual criminals' — who formed target groups in Hitler's personal ideology. The screw of discrimination was thus kept turning.

The creation of a repressive organisation with a dynamic ideological aim closely tied to the 'charismatic' mission of the Führer is of decisive importance for the exercise of Hitler's power. We began this chapter, however, by pointing out how mistaken it would be to dissociate repression from consensus, and to presuppose a population subjugated against its will to the might and tyranny of the Gestapo. Although in the final stages of the war, with consensus undermined, the escalating level of repression was crucial in preventing an internal collapse as had taken place in 1917–18, for much of the Third Reich not only Hitler personally but also the police apparatus which provided such a crucial prop to his power had widespread support.

In fact, without such support within the population, the repressive capacity of the political police, which in its early

stages after 1933 was far from massive in numbers or comprehensive in its surveillance possibilities, would have been greatly diminished. As late as 1937, there were only 126 Gestapo officers in Düsseldorf for a population of around half a million, 43 in Essen for a population of 650,000, and 22 in Würzburg to cover the whole population of Lower Franconia of 840,000 persons.³³ The greatest single proportion of cases dealt with by the Gestapo followed denunciations by ordinary members of the population.

The 'Malicious Practices Act' of 21 March 1933, banning offensive or subversive remarks about the state and its leadership, opened the door to a massive wave of denunciations which often combined political with personal motives. Social 'outsiders' were particular targets for denunciation, often in the workplace, the tenement block or the pub. The result was usually that the denounced person was taken into 'protective custody' or came before the 'Special Courts' which had been set up in 1933 for speedy judgement in political cases.

The surviving files of the Munich 'Special Court' number about 10,000 cases between 1933 and 1945 and there is nothing to suggest that Munich was unusual among German judicial districts, each of which was provided with a 'Special Court'. The extant files of the Gestapo itself, for its office in Würzburg, total some 19,000 individual cases, most involving 'protective custody' and heavily reliant for their information on denunciations from the public.³⁴ The personal files which survive from the Gestapo office in Düsseldorf (reckoned to be about 70 per cent of the original total) come to a staggering 72,000 cases.³⁵ Without the 'snoopers' and denouncers, prepared to do their usually self-serving part in 'working towards the Führer' by handing over fellow citizens from whatever motives to the tender mercies of the Gestapo, such a system based upon an all-pervasive fear and anxiety could not remotely have functioned with such efficiency.

NOTES AND REFERENCES

1. Michael Mann, 'The Autonomous Power of the State: its origins, mechanisms, and results', *Archives européennes de Sociologie*, 25 (1984), pp. 188-90.

2. DBS, 26 June 1934, pp. B22-3; trans. N&P, ii, 579-80.
3. *Acten der Reichskanzlei. Die Regierung Hitler, Teil I: 1933/34*, Boppard, 1983, pp. 1-10.
4. N&P, i, 136.
5. Martin Broszat, *Der Staat Hitlers*, Munich, 1969, p. 95.
6. Rudolf Diels, *Lucifer ante Portas*, Stuttgart, 1950, p. 194; and see Hans Mommsen, 'Der Reichstagsbrand und seine politischen Folgen', *Vierteljahrshefte für Zeitgeschichte*, 12 (1964), p. 385 and n. 143.
7. *Acten der Reichskanzlei. Regierung Hitler*, p. 128.
8. *Reichsgesetzblatt*, 1933, Pt I, p. 83; trans. N&P, i, 142.
9. Hans Buchheim *et al.*, *Anatomie des SS-Staates*, 2 vols, Ollen/Freiburg im Breisgau, 1965, ii, 20.
10. Walther Hofer, *Der Nationalsozialismus. Dokumente 1933-1945*, Frankfurt am Main, 1957 (1982 edn), pp. 56-7 (trans. N&P, i, 150); Broszat, *Staat*, pp. 110-11.
11. Archiv der Sozialen Demokratie, Bonn, Bestand Emigration Sopade, M32, report of the Border Secretary of Northern Bavaria, Hans Dill, of 18 Nov. 1935.
12. For the term 'politics of hoodiganism', see Richard Bessel, *Political Violence and the Rise of Nazism*, New Haven/London, 1984, p. 152.
13. For the actions of Gürtner and Blomberg, see N&P, i, 182.
14. For army and civil service cathcs, see N&P, i, 185-6.
15. N&P, i, 182.
16. For the above figures, see Richard Löwenthal and Patrick von Zur Mühlen, *Widerstand und Verzweigung in Deutschland 1933 bis 1945*, Bonn, 1984, p. 83; and Hedley Bull (ed.), *The Challenge of the Third Reich*, Oxford, 1986, p. 93.
17. DBS, 12 July 1939, pp. A83-4.
18. *Anatomie des SS-Staates*, ii, 25-6, 75.
19. N&P, i, 182.
20. Frank, pp. 466-7; trans. N&P, ii, 200.
21. N&P, ii, 476.
22. Ernst Rudolf Huber, *Verfassungsrecht des Großdeutschen Reiches*, Hamburg, 1939, p. 230; trans. N&P, ii, 199.
23. Picker, *Tischgespräche*, 2nd edn, p. 225.
24. Werner Jochmann (ed.), *Adolf Hitler. Monologe im Führerhauptquartier*, Hamburg, 1980, p. 59; trans. *Hitler's Table Talk* (introd. H.R. Trevor-Roper), London, 1953, p. 30.