

Introduction

A New Code of Law

Of all tyrannies, a tyranny sincerely exercised for the good of its victims may be the most oppressive.

CS Lewis
God in the Dock

On the 11th of October 1936, the Reichsführer SS and Chief of German Police Heinrich Himmler sat at the head table in a Munich conference room filled with legal experts. A photographer waited at the edge of the packed meeting to immortalize his address to a gathering of notables at the Academy of German Law. Tables, polished to a mirror sheen, snaked along the walls of the narrow chamber with seating crowded around both sides to accommodate the assembly. Schnapps glasses and a large ink blotter had been laid out in anticipation of the signatures to come.¹

Himmler had been invited as the newly appointed head of the recently nationalized police services. His keynote address was to mark the inauguration of a new working group for police reform headed by his Leader of Administration and Law for the Secret State Police (Gestapo) Dr. Werner Best, who, after straightening his papers, eyed the group with hands neatly folded on his lap. Himmler's deputy Reinhard Heydrich, the Chief of Security Police and SS Security Service seated at his right hand, rested an elbow on the back of his chair as he impassively scanned the audience. Wilhelm Stuckart, coauthor of the infamous Nuremberg laws and department leader for constitutional matters at the Reich Ministry of the Interior, looked on with interest from his corner of the head table. Hans Frank, head of the institute and minister without portfolio, had just extended his welcome. Himmler stood, surveyed the crowded room, and began to speak.²

The Reichsführer SS felt he could finally take a position since "gathering all police under a single hand." He reminded his audience that "when we National Socialists came to power in 1933" the police had been "a blindly obedient instrument of power." The strictures of liberalism left it "a helpless institution, bound hand and foot ... while the criminals got away scot-free." Himmler remarked that National Socialists had set to work

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Figure 1 Hans Frank opens the “Basic Questions of the German Police” conference at the Academy of German Law. From left to right: Stuckart, Heydrich, Himmler, Frank, Best, Daluege, and Helldorf. Source: German Federal Archive (Bundesarchiv)



Figure 2 Heinrich Himmler’s keynote inaugurating Best’s Police Law Commission. Source: German Federal Archive (Bundesarchiv)

“not without justice ... but outside the law.” The new Chief of German Police had since reformed the system based on new principles:

In fulfilling my duties for the Führer and the people, I followed my conscience and common sense. During the months and years in which the life and death of the German people hung in the balance it was inconsequential if other people yammered about “violations of the law.”

As he explained, “they called it lawless because it did not correspond to their concept of law. In truth, our work laid the foundation of a new code of law.”³

The speech revealed the course that Himmler would set as Chief of German Police. A revised code of law never appeared. None was needed. The Gestapo had already laid the cornerstones for its own police justice (*Polizeijustiz*) independent of normal justice (*Justiz*) through the courts.⁴ New jurisprudence had already changed the objective of policing from protecting individual rights to upholding collective well-being. New laws had already redefined the parameters of citizenship and criminalized criticism. New directives had already delegated the Gestapo extrajudicial powers to detain and even torture suspects in the name of prevention. In the words of the secret police’s legal expert Dr. Werner Best, political policing already ensured “the principle of political totality in National Socialism that expresses the ideological principle of the organic and indivisible union of the people [which] tolerates no political will in its realm that does not integrate the collective will.”⁵ “Consequently,” as Heydrich put it, “we National Socialists only recognize enemies of the people (*Volksfeinde*).”⁶

Himmler, supported by Hitler and armed with a newly unified national political police, signaled that he intended to take greater control over enforcement with this unwritten code of police justice. The new Chief of German Police welcomed ideas for greater “cooperation” with the judiciary and suggestions that police should independently resolve “an abundance of crimes of everyday life it is not worth carrying through the whole cumbersome apparatus of the so-called proper criminal trial.”⁷ The system of selective enforcement that these men created to warn supporters and punish subversives would ultimately set down boundaries defining the relationship between state and society in Nazi Germany.

Four years after Himmler’s fateful speech, Anton brooded through the night in a foul mood over the state of the world. As the details reconstructed in his case file noted, at fifty-one years of age, he was no longer a young man. Decades ago, the down-on-his luck salesman had witnessed the carnage of the Great War shamble through the rear area military hospital where he had worked as a clerk. The renewed bloodshed in France distressed him greatly. His thoughts dwelled upon the government’s warmongering as the train bearing him to Vienna wended its way

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through the Bohemian foothills and onward into the Alps. Bored, robbed of distraction by the journey, he pulled a small notebook from his belongings and began to scribble. “An animalistic roar on the radio, the triumph of bestiality, that is the fate of the world today.”⁸

Anton’s mood did not improve as he walked the streets of Vienna during his business trip. It had been less than a week since the British had beat a pell mell retreat from the continent at Dunkirk. Italy had entered the war while he was still underway. Everywhere he turned, there seemed to be people celebrating as German tanks closed on Paris. As a devout Catholic from Austria who had made a home of the Rhineland, the jubilation stung his pacifist sensibilities. Out came the notebook. The conscription of younger men was “the lot and behaviour of the defeated” despite his acerbic observation that the regime wanted people to believe that “everything is 150%!” A few days later, dismay bursting into the margins between his meeting notes, he bemoaned that “as I went to the office, small children in their Sunday best sang bloodthirsty songs in the street.”⁹

Perhaps Anton was rushed for time as he crossed the checkered tiling of the Heiligenstadt train station later that week. His case file recorded that he had slipped into a phone booth amid the hustle and bustle to place a call. Pulling out the notebook, he scrawled a reminder to himself and set it down absentmindedly. After finishing his business, preoccupied for whatever reason, he left without retrieving it. A record of his innermost misgivings about Nazism now lay open to the world in a public place where it might be found by anyone.¹⁰

A soldier placed a call in the same phone booth a short time later. Seeing the notebook, he picked it up. It clearly belonged to a businessman, filled as it was with production orders mixed with diary entries. One can only imagine the soldier’s reaction as he paged through the recent entries. Selfish complaints about the price of food while good men were dying at the front? Bloodthirsty songs!?! The triumph of bestiality!?! This from a businessman who travelled widely and might spread his poisonous opinions in influential circles. Someone clearly needed to look into the matter.¹¹

The notebook was passed up the ranks in the offices of defence district XVII until it landed on the desk of military intelligence. From there, the investigation was handed over to the Vienna Gestapo. As the case involved a citizen of the Reich, a “racial comrade,” who had expressed subversive opinions in such a way that “the offender expected or must have expected that the statement would find its way to the public,” it fell under the Law against Malicious Gossip policed by the Gestapo.¹²

Depending on what the case officer uncovered about the author, comments such as these could qualify for a lengthy penitentiary sentence, maybe even execution, as Defeatism per the Wartime Special Penal Code or Conspiracy to Commit High Treason.¹³

A report marked secret arrived at the Düsseldorf Gestapo Regional Headquarters a few weeks later. Standing orders for the station meant that whoever was working that day in Department I – Administration found themselves sorting through piles of incoming post destined for Department II – Internal Political Policing. The usual blend of mail from cranks, busybodies, concerned citizens, and other officials no doubt awaited their attention. Much of the usual correspondence concerned fanciful accusations from anonymous denouncers. Everything would be reviewed, but the signed letter from a Labour Front shop steward about an old Communist in his factory making a mockery of the Führer by denigrating the “German greeting” of Heil Hitler would receive further attention.¹⁴ The administration officer reached for a pair of rubber stamps on his desk. He inked them in blue and thumped down the notice of receipt followed by the date before putting the report in the pile for the leader of desk II A – Communism and Marxism. The sorting continued. An outspoken old man spreading criticism of the government from a controversial sermon landed on the stack for II B – Religions, Emigrants, Freemasons, Jewry, and Pacifism.¹⁵ A sheaf of witness statements from a rural mayor asking for direction on how to proceed against a workplace argument about the war that had turned political went into a growing heap set aside for II C – Opposition.¹⁶

The work continued as correspondence that desk leaders selected for further attention was sent back up to administration for entry into the central records. The administration officer used a different stamp, a small square, with fields for the accession numbers of individual cases. Looking down the list of entries, he filled out a new line and crowded II C 3011/40 into the space provided by the stamp. The war was making 1940 a busy year for the opposition desk. Over 3,000 entries and it was still only July.¹⁷

The mound of incoming correspondence shrank. Reports from state prosecutors about the disposition of cases in process.¹⁸ Evaluations from district leaders of the Party commenting on the “political reliability” of different persons of interest.¹⁹ A suspect’s reply to a summons asking that the scheduled date for an interrogation be moved back due to a pressing engagement.²⁰ All destined to be sorted, stamped, and filed away in brown cardstock folders bearing the corresponding name

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in the registry. The collection was growing. Before the war was over, intimate details about the lives of more than 72,000 people would be meticulously organized into dossiers marked “files of the secret state police.”

The report about Anton emerged from the pile. Vienna Gestapo, Classified Item 11151, Counter-Intelligence, Soviet Desk, Secret. This required immediate attention. The duty officer pulled out a special diary to record receipt of secret documents and made an entry before the message was taken, as the alphabet soup of abbreviations commanded, “to the hand of the Senior Government Councillor Dr. Haselbacher or his deputy.” The enclosed report opened by drawing attention to the “exceptionally hostile criticism of the enthusiasm of the masses” and examples of “deep-rooted complainerdom” as cause for concern. Vienna had been busy. They had successfully identified Anton as the probable owner. Their enquiries, most likely at firms discerned from information in the notebook, had even managed to narrow down his profession. Anton “could be someone occupied with the manufacture of truck replacement parts or technical replacement parts in the manufacture industry.” He had supposedly lived for a month with his mother in Vienna earlier that year. Anton was meanwhile described as holding a “completely contradictory attitude toward the National Socialist state.” Vienna even had his personal details and a local address for Düsseldorf to follow up. But they had misspelled his last name.²¹

The break in the case came in mid-November when it appears someone in the Gestapo’s regional archive noticed Vienna’s error. By substituting one letter for another, desk II F – Central Card Index and Personal Files dug up an old entry from 1934. Anton had sent a letter to Austria critical of Nazism that had been seized in a random mail search. As he was a travelling businessman who might use that influence to sway the opinions of others against the state, the Gestapo had placed him under lengthy surveillance at the time. It was the same reason so much time and effort had just been expended to track him down again. But the old investigation had proved fruitless. Anton kept his thoughts to himself and never mentioned his opinions about the government or its policies in public. A search of his apartment had failed to turn up evidence of “subversive activity” and so the old case had been dropped.²² The notebook, however, was a different matter and the laws had since changed.

Armed with Anton’s last name, someone in the administration department pulled out a sheet of postcards for official use and tore one off along its perforated edge. Taking pen in hand, he neatly crossed out the words

“as a witness” and began filling out the fields below. Date. Time. Room number. Floor. Case reference number. The form already politely asked Anton to bring identification on the date in question and inform the Gestapo of any change in address. Folding it in half, stamping it with the station’s official seal, the administration officer filed it with the outgoing post. When opened, the contents read “Summons: To your interrogation – as witness – for explanation.”²³

On the 22nd of November 1940, nearly five months to the day since his train ride to Vienna, Anton walked through one of the roughly hewn stone arches of the Düsseldorf Gestapo Regional Headquarters on Prince Georg Street. Senior Criminal Secretary Johann Krülls awaited him in the interrogation room. Krülls was an old hand with twenty-one years of policing experience. As with so many of the desk leaders and senior case officers of the Gestapo, he had served in the First World War and joined the uniformed police during the turmoil of the immediate post-war era.²⁴ Many of his colleagues from the front generation born before the turn of the century had formed *Freikorps* militias when they returned from the war and coordinated with state authorities to crush revolutionary communist republics that had sprung up across Germany. When those same militias then tried to depose the democratic government, tens of thousands of workers had answered the call for a general strike and a “Red Army of the Ruhr” took up arms in the Rhineland.²⁵ The government had forced the right-wing militias to disband after the uprising was quashed, but the networks that had been forged putting down the insurrection allowed many former freebooters to find a new career with the police.²⁶ It was during those years, as one of Krülls’ colleagues in the archival section put it, that Gestapo officers of the front generation came to their views about communism and “the sub-humanity of the Spartacist hordes.”²⁷

Krülls had eventually found his way into the criminal police, the detective service in Germany, and became a Gestapo officer when the National Socialists broke off the department responsible for politically motivated crimes and renamed it the Secret State Police. His involvement in the crackdown on communists in Krefeld during the first years of the regime must have caught someone’s eye at the regional headquarters where he was transferred to be a case officer on the opposition desk. Today, likely due to his years of experience and Anton’s relative importance, he would be handling the interrogation.

The notebook awaited as Anton entered the room. Krülls had decided to put the pressure on immediately rather than follow the usual course of getting to know the suspect by addressing the formalities of paperwork before broaching the subject of allegations. He had the notebook. He had

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the previous letter. He had a window into the innermost thoughts of the suspect. There was no need to carefully sound out Anton and observe his character. The question was what had motivated him. Indeed, it was not unusual for old communists to take up jobs as travelling salesmen and agitate against the regime under the cover of their work.²⁸

Krülls showed Anton the notebook. The questioning began by establishing some basic facts. Was the notebook his? Did he write everything inside? How did he lose it? Where did he lose it? Did he try to recover it? What kinds of things did he write in the notebook? Krülls circled back to ensure that he had understood Anton correctly. Where did he lose it? What was he doing when he had lost it? What kinds of things did he write in the notebook? Now, Krülls pressed Anton on inconsistencies with a barrage of questions. If he only kept business notes, what prompted him to write the entries on pages thirty-seven to forty? What was he thinking when he wrote these entries? Why did he write down such derogatory and hateful statements? Was he rehearsing arguments for spreading subversive opinions? Krülls hammered the point. Why did he write down such derogatory and hateful statements? Anton began to speak about his motivations. Satisfied, Krülls listened apart from a few points of clarification and turned the conversation to the usual questions about Anton's personal and political background.

Afterward, either Krülls or a typist taking his dictation cranked a sheet of paper into a typewriter and recorded the interrogation as an official statement. The machine chattered away, transforming the exchange that had just occurred into the Gestapo's distinctive "bureaucratic language of prosecution."²⁹ The exact questions and answers were blended into a summary that at times reflected Anton's words and at other points substituted them for a familiar array of stock phrases that emphasized what Krülls considered the salient point.

The resulting statement recorded that "the notebook shown to me is my property and the notes made therein were all made by me." Anton could not recall how he had lost the notebook, but he "was already of the opinion that I left it in a public phonebooth." He had not concerned himself with its recovery. Krülls' voice intruded on the narrative to note that "it could be taken from this, that I no longer knew what was written in the book and that I could have written something in the book that could cause me trouble in the first place." Anton used his notebooks "exclusively for business notes" and had started another immediately. He was astounded it had been recovered. Anton could, as the interrogation circled back, "be clear that it is possible the book went missing in the city train station." He had written down something during a phone conversation and forgotten the notebook when he was done.

Krülls had sprung his trap on Anton at this point. The statement recorded that “the book, as I said before, only holds business notes. I do not know how I came to make the highlighted entries on pages 37 to 40.” He had made the notes while travelling to Vienna. Krülls’ voice controlled the statement as he hammered Anton about his motivations:

I can offer no other explanation today, other than that I made these entries out of boredom. I can also offer no other explanation for the notes about political events. I can give no reason for why I wrote about these events in a derogatory and hateful manner of speech. I made these entries unconsciously, but not to thereby make some kind of oppositional propaganda against National Socialism and the Third Reich. I also did not want to thereby make points of reference for propaganda of the word among my next of kin or acquaintances in Austria.

At this point, Anton must have realized he would have to explain his motivations to avoid being painted as a subversive. He suggested that his view of events was an “expression of my early pacifist upbringing.” A “strict religious” background from youth had imparted the idea “that war was to be uncompromisingly rejected and we were consequently opponents of all warlike behaviour.” Krülls’ prompting intruded once more to note that this opposition to war was categorical “even if it was absolutely necessary in the interest of defending the country and people.”³⁰

Anton insisted that he posed no threat to the National Socialist state. His convictions coexisted with a willingness to perform his duties as a citizen. Admittedly, he was ambivalent about the new war. He had become a soldier during the First World War “with no desire or love.” Anton told Krülls “I fulfilled my military duties, but due to my attitude, I had to reject war service.” Instead, he had worked in a hospital. Krülls recorded that Anton “would like to note once more that my notes pursued no subversive purpose.” As a result of his upbringing it was difficult to “orient myself with the situation in the Reich.” Nevertheless, “I am in no way active against the state and the Party and ask that the accusations of this hearing not be seen shortsightedly as they appear.” The notes were merely “a pastime during a long train ride.”³¹

Krülls spent the remainder of the interrogation on the details of Anton’s personal and political background. The statement structured the information as an autobiographical vita about employment history, income, religious affiliation, familial status, military service, and decorations. However, the most important perennial questions probed membership in political parties and associations as well as newspaper subscriptions and voting habits. Anton told Krülls that he had apprenticed as a salesman with a granite works in Vienna after finishing school.

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The First World War had interrupted and the firm folded. From there, he had joined a printing house where he rose to the position of director. The hyper-inflation had then struck and he once again lost his job. Anton had then come to Germany where he had run a firm under his own name and worked as director for a second company that produced fire extinguishers. He had been a member of the Austrian Peace Society for a year, but had never belonged to a political party and did not vote. With the interrogation concluded, Anton signed the statement with a steady hand that evinced no sign of physical abuse.

The protocolized statement went to Senior Criminal Secretary Erwin Fischer. As another old hand from the war generation, his distinctive initial “F” with a swooping top arm curling back upon itself was a common sight in the files. Fischer’s integral role at the regional headquarters, in what he coyly described after the war as “office work,” saw him rise to become the deputy leader of the desks responsible for all technical surveillance, station records, arrest records, detention records, concentration camp records, prisoner transport, and “politically colourless” opposition by unaffiliated suspects.³² His ubiquitous initial on the recommendations and requests of subordinate case officers on the opposition desk and colleagues from the communist desk sealed the fate of thousands.

But how to handle Anton?

The Gestapo could hold him in a prison under “provisional arrest” for up to twenty-one days. They could file a request for “protective custody” with the Reich Security Main Office in Berlin and detain him indefinitely in a concentration camp. They could even file a separate request for “special treatment,” an extrajudicial execution, and have him killed after the transfer. Fischer reviewed the interrogation, looked over evidence from the earlier investigation, considered his options, and drafted a secret report about how the case would be resolved.

Fischer opened by informing Vienna of their spelling error and noting that Anton employed nobody at his firm. The earlier letter containing “derogatory statements about National Socialism” had prompted lengthy surveillance. But neither observation nor a search of Anton’s apartment had uncovered evidence of “subversive activity.” No indications that he “spoke publicly in a spiteful or agitational way about National Socialism, about leading men of the state and the movement, or about the measures and institutions of the state and the movement.” A court punishment had not ensued. Fischer noted that Anton “is an avowed pacifist and cannot make peace with the situation in the Third Reich. He also makes no secret of this mindset.” The lack of evidence meant that “the initiation of criminal proceedings promises no