

Schmitt's Justification Of Hitler's Blood Purge

On the night of June 30, 1934—the “Night of the Long Knives”—Chancellor Adolf Hitler ordered the murders of many tens (perhaps hundreds) of his political opponents. Among them were Gen. Kurt von Schleicher, who had preceded Hitler as Chancellor; von Schleicher’s wife; and Gen. Ferdinand von Bredow, von Schleicher’s long-time aide-de-camp; as well as many leaders and associates of the SA Brownshirts of Ernst Röhm, including Röhm himself. The murders were perpetrated by death squads that were handpicked from the ranks of Herman Göring’s Gestapo and Heinrich Himmler’s SS.

The savagery with which they were carried out almost defies description. General von Schleicher and his wife answered a knock at their door, only to be shot dead on the spot. General von Bredow met a similar fate. Gustav von Kahr, the man who had successfully suppressed Hitler’s Munich Beer Hall Putsch attempt in 1923, and who had long since retired from politics, was found in a swamp near Dachau, having been hacked to death with pickaxes.

Loyal associates were executed, because “they knew too much.” Father Bernhard Stempfle, who had helped edit Hitler’s book *Mein Kampf*, but who had spoken too loosely about the circumstances surrounding the suicide of Hitler’s former girlfriend, Geli Raubal, was found in a forest near Munich with his neck broken and three gunshots through the heart. Karl Ernst, the SA man who was deployed by Göring to set fire to the Reichstag on Feb. 27, 1933, was dispatched to Berlin for execution. Three other members of his Reichstag arson team met the same fate.

There was no hint of “legal justification” for this purge, before the fact. Hitler simply wanted to eliminate leading elements of his real, imagined, and potential opposition, so as to terrorize all others into submitting to his dictatorship. He commenced his efforts to veil his mass murder with a veneer of legality on July 3, when he submitted a draft law for the Emergency Defense of the State to his Cabinet, which stated simply, “The measures taken on 30 June and 1 and 2 July for the suppression of high treasonable and state treasonable attacks are, as emergency defense of the state, legal.” Minister of Justice Franz Gürtner declared that Hitler’s draft did not create new law, but merely confirmed pre-existing law. The Cabinet then unanimously adopted Hitler’s bill.

Ten days later, Hitler made a two-hour speech to the Reichstag (13 of whose members had been executed on June 30) and the nation, brazenly justifying his actions. “Mutinies are broken according to eternal, iron laws,” he said. “If I am reproached with not turning to the law courts for sentence, I can only say: In this hour I was responsible for the fate of the German nation, and thereby the supreme judge of the German people. . . . I gave the order to shoot those most guilty of this treason, and I gave the order to burn out, down to the raw flesh, the ulcers of our internal well-poisoning and the poisoning from abroad!”

It then fell to Carl Schmitt—the man who is the inspiration and “legal” godfather of the Federalist Society of Judge Samuel Alito—to present an elaborated legal justification of Hitler’s actions, in the August 1934 edition of the *Journal of German Lawyers*. Schmitt had already been providing legal cover for Hitler’s drive toward dictatorship during the prior 18 months. In an article entitled “The Leader Protects the Law,” Schmitt claimed that every murderous and criminal act ordered to be carried out during the bloodbath of June 30 and its aftermath, was both legal and courageous. Schmitt asserted that the Leader/Dictator,

acting in a time of crisis, by definition *both is and creates* the law. The action of the Dictator is not subordinate to justice; it is, itself, the “highest justice.” Furthermore, the greater the crisis, and the more “exceptional the action or deed of the Leader/Dictator, the greater the purity/essence of the law so created. . . .

“The Leader protects the law from the worst abuse, when he, at the moment of danger, by virtue of his leadership as the supreme judge, directly creates the law. ‘In this hour, I was responsible for the fate of the German nation, and as such [I became] the supreme judge of the German people. . . .’ [said Hitler to the Reichstag]. The true Leader is always also judge. From the realm of the Leader, flows the realm of the Law. . . . In reality, the act of the Leader was the true authority. The deed is not subordinate to justice; it is, in fact, the highest justice. It was not the action of a republican dictator, who, in a legal vacuum, while the law momentarily turns a blind eye, creates *faits accomplis*, and thereby, on the basis of such newly created facts, perpetuates the fiction of a seamless, continuing legality. The power of the Leader as judge springs from the same fount of law, from which spring the rights of the people. In times of the greatest emergency, the supreme law proves itself worthy, and only in such great crises, does there appear, to the highest degree, the juridical, vengeful realization of this law. All law is derived from the people’s right to existence. Every state law, every judgment of the courts, contains only so much justice, as it derives from this source. . . . The content and the scope of his action, is determined only by the Leader himself.”

Thus, in a continuing or permanent state of emergency, the Leader continuously creates “new law,” with each new “exceptional deed.” And, after Sept. 11, 2001, just like after Feb. 27, 1933, all such exceptional deeds are justified in the name of “defending the existence of the people.”

—Steve Douglas