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The Bureaucracy of Nazi Germany (1933-1939): A Political and Legal Paradigm

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Abstract

The article is devoted to the analysis of the main legislative acts adopted in Nazi Germany between 1933 and 1939 that determined the legal status of civil servants in the Third Reich and regulated all aspects of their life and work. The main aspects of the problem are considered in terms of various approaches to the selection of criteria for legal progress, which actualizes the stated topic and allows considering the aspects of the legal life of the Third Reich previously neglected by researchers. The present work particularly focuses on the policy of Nazification of the public service sector, i.e. the racial component of the development strategy of Nazi bureaucratic law, in particular the discriminatory provisions of the Law on the Restoration of Professional Bureaucracy of 1933 and the Law on German Bureaucracy of 1937, on the basis of which access to the bureaucracy was closed to representatives of the "non-Aryan" population of Germany. Emphasis is put on the fact that, despite the dissatisfaction of part of the bureaucracy with their financial situation and lengthening of the working week, most public servants remained faithful to the regime throughout its existence, acting as a reliable support.

Keywords: Nazism, Law, Bureaucracy, Politics, Official appointment, Political loyalty, Career growth.

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Introduction

Legal phenomena arising in a particular historical continuum, of course, can and should be considered in different epistemological contexts in different dimensions. Only then these structures, phenomena, institutional formations can be comprehensively understood with a high level of objectivity. Here, absolute criticism and the same “absolute” recognition of various legal formations are unlikely to be justified. Actually, the scientific reading of the latter is a balanced approach, which implies the fundamental possibility of using verification and falsification procedures to verify the reliability of the results.

Regarding the understanding of the nature, focus, and significance of various kinds of legal phenomena, it is necessary to correlate them with the concept (or model) of the social order that has developed in a particular society, which, in turn, acts as the basis for constructing the legal order and approving the principles and requirements of the rule of law.

In addition, consideration of specific legal institutions and forms in the “progressive-regressive” dimension is of great heuristic value, which will undoubtedly provide an opportunity to determine their place and role in a changing or, conversely, stable national political and legal field in a certain historical time. The question, in this case, shall closely correlate with two points: the problem of the legitimacy of state power and the question of the criteria for legal progress.

The first clearly shows that the crisis of the legitimacy of legislation inevitably leads to a fall in the authority of state power institutions, including the authority of a national leader (leader or head of state), very quickly leads to significant deformations of the national political, legal, and spiritual field.

Regarding the question of the criteria for legal progress, the specialized literature provides no consensus, therefore, we will share our own view on the criteria for legal progress and identify as follows: the achievement and maintenance of an optimal balance in the development of public and private law institutions in terms of the historical and national type of legal system; the implementation of the principle of justice in lawmaking and law enforcement that meets social expectations; the ability of legislation to express the legal principles of society in a regulatory and power form as the most important property of its legal effectiveness; the creation of a mechanism to ensure the development of law in the interests of both the individual and society, which will ensure a balance between the ecocentric and socio-centric principles in legal life; preservation of the homogeneous integrity of the legal system, and hence the balance of the emergence and functioning of its institutions, ensuring the consistency of their content and goals in the mechanism of legal regulation, etc.

Both the first and second of the noted theoretical and methodological postulates make it possible to evaluate the content and vector of the development of law in terms of the level and dominant form of the legitimacy of the corresponding political regime, ideological and value characteristics of a particular society, and a separate individual.

This perspective is how we present the development of bureaucratic law in the early existence of Nazi Germany in, bearing in mind also that despite the fact that over the years that have passed

since the collapse of the Hitler regime, an extensive historiography has arisen devoted to various aspects of the history of the National Socialist movement and The Third Reich, the interest in the phenomenon of Nazism in the scientific community has not been lost, but, on the contrary, has a tendency to steady growth. The reasons for the latter are obvious. They are directly related to the well-known global challenges, in particular, in the field of migration, which seriously test democratic values in the most developed European countries, which are considered the stronghold of democracy. The inability of the authorities of these states, including Germany, to lead to a common denominator the interests of the indigenous population and immigrants, with the more defiant behavior of the latter, their desire to play a dominant role in the public life of the host countries, leads to a gradual strengthening of parties on the right flank of the political spectrum.

In this case, it should be borne in mind that it was the corps of German clerical officials together with the functionaries of the National Socialist German Labor Party (NSDAP) that acted as the main conductor of the Hitler regime's domestic and foreign policy, which is certainly important in terms of studying the functional side of the progressive (or regressive) assessments of this political and legal institute. The chronological framework of the article is due to the fact that it was during this period that the legal status of civil servants in the Third Reich underwent significant changes.

Methods

The study is based on the principles of objectivity, historicism, and consistency. The authors used problematic, chronological, historical-systemic, and dialectical methods. The main conclusions cover a wide cultural and hermeneutical context, within the framework of a civilizational approach to understanding the political and legal reality.

Discussion

Over the long period preceding Hitler's appointment as Chancellor, Germany went through a numerical increase in bureaucracy and other categories of employees. Their share increased from 10.8% in 1895 to 17.1% in 1933, reaching a population of 5,517,000 people (Caplan, 1981). This largely explains the fact that the most important measures taken during the initial period of Nazi rule include drastic steps by the National Socialists not only to ensure that the state apparatus is loyal to them but also to mobilize the latter to serve the new regime. Already in 1933, with the adoption of the "Law on the Restoration of Professional Bureaucracy" on April 7, the gradual process of its Nazification began, accompanied by an intensive purge of the public service from elements that for political or racial reasons had no place in the power structures of the Third Reich.

According to Section 2 of the Law, officials who took office after November 9, 1918, "having no special or ordinary education", and also inconsistent with other qualification requirements, were subject to dismissal from service. Within three months after the resignation, they received their previous salary in full (p.1) but at the same time, they were deprived of the right to receive pensions and cash benefits, including dependents in their families. In addition, such persons were prohibited to further use official rank, uniform, and insignia (p.2). At the same time, p.3 of the Law contained the following clause: "If necessary, pensions that can be canceled at any time, in an amount equivalent to

one third of the average basic salary that they received while occupying the last position, can be granted to them, especially in those cases when they take care of their dependent relatives". At the same time, it was emphasized that "no renewal of insurance will be provided, in accordance with the Imperial Law on Social Insurance" (Palamarchuk, 2005, pp.125-130).

Of particular importance was the third, "Aryan" paragraph, which prescribed the dismissal of all officials of "non-Aryan" origin, including honorary civil servants (p.1) (Noakes & Pridham, 1975, p.229). A temporary exception at the request of President Hindenburg, who was anxious about the idea of a "front-line brotherhood," was made for people "already in service on August 1, 1914,... fighting in the World War at the front for the German Reich, or... for its allies", as well as "those whose fathers or sons were killed in World War I" (p.2). (Thanks to this concession, in Prussia at the beginning of their posts only 38% of officials of Jewish origin lost their posts) (Carr, 1979, p.69). §4 allowed the authorities to dismiss civil servants whose "previous political activity" did not give reason to expect that "they would always and unconditionally act in the interests of the national state". The latter, like the category of officials mentioned in p.1 of §2 of this law, had to pay their previous salary in full within three months from the date of resignation, after which they would "receive three-quarters of their pension and similar allowances for dependents".

At the same time, §8 stipulated that a pension would not be awarded to officials dismissed in accordance with §§3 and 4 if their term of service was less than ten years, including cases in which, according to the current legislation, a pension was granted for a lesser length of service. In cases where the dismissal of officials was dictated by considerations of rationalization of management, their official positions were abolished and could not be occupied by anyone else (§6). An appeal against the decision of the supreme imperial or federal land institution that made the final decision "on dismissal from service, transfer to another post and retirement" was prohibited (§7, paragraph 1). As for the downgraded officials, their previous official rank and salary were preserved (§5, p.1).

Thus, the law was fixed in accordance with which the main criterion for the professional suitability of a particular civil servant, regardless of the rank of the latter, in addition to his "Aryan" origin, was officially recognized not his professionalism but loyalty to the Nazi leadership. Such an approach contrasted sharply with the period of the Weimar Republic when bureaucracy had to maintain political neutrality (Palamarchuk, 2012, pp.212-214).

Not without reason, fearing that the publication of the new law would provoke a negative reaction from officials, the authorities hastened to reassure the latter regarding the extent of the upcoming reductions. The State Secretary of the Reichsministry of the Interior G. Pfundtner, in his radio address to officials on April 12, 1933, trying to justify the "merciless purge" that awaited all the links of the state apparatus, said that this measure, which was designed for six months, was temporary.

He also emphasized the presence of clear awareness of Hitler and his government of the important role that the civil service was to play in the implementation of the tasks facing Germany (Caplan, 1981, p.179). At a meeting of prime ministers and interior ministers of the land, as well as heads of imperial departments on the practical application of the provisions of this law, on April 25,

Goering, without hiding his political motive, explained that those officials who had ever made a human error would not be subject to the sanctions provided for by the Law (Noakes, & Pridham, 1975, p.231).

Following the adoption of this law, a series of instructions on its implementation and laws on its amendment was published, which significantly expanded the interpretation of its definitions. The first of these regulations, published already on April 11, 1933, paid special attention to articles of the Law that contained legal grounds for purging state structures from opposition-minded officials and those who, for whatever reasons, was unpopular with the new authorities. Here, in particular, the following explanations were given: according to §2 of the Law, all members of the Communist Party of Germany were subject to dismissal (this provision was further enshrined in the "Second Law on Amendment of the Law on the Restoration of Professional Bureaucracy", which entered into force on July 20, 1933), prescribing the dismissal of all officials who were members of the Communist Party of Germany or an organization that promoted the goals of communism, Marxism, or social democracy); §3 covered not only Orthodox Jews, but also all descended "from non-Aryan, especially Jewish, parents, grandparents", even if only one of the parents and, accordingly, grandfather and grandmother from the same line, were not "Aryans" ; an expanded interpretation of the provisions of §4 of the Law prescribed to take into account all the political activities of the official, especially since November 9, 1919 (Muhl-Benninghaus, 1996, pp.33-41).

The Third regulation of May 6, 1933, included an expanded definition of the concept of bureaucracy, which went beyond the scope of public administration. Now, in fact, consolidating the earlier situation, it officially extended to school teachers and university teachers, including honorary, ordinary, and extraordinary professors suspended from their duties, military and police officials, former court officials and notaries. It also contained a new version of §2 of the Law of April 7, the meaning of which was to dismiss all those who were engaged in communist activities, even those who "no longer belong to the Communist Party..." However, according to the Law of July 20, 1933, exceptions to this rule could be made for those ex-communists who, before 1933, had transferred from the CPG to the NSDAP. At the same time, in violation of generally accepted legal principles, the "Third Law on Amending the Law on the Restoration of Professional Bureaucracy" of September 22, 1933, deprived the close relatives of those communist officials who had died before this law entered into force, the right to receive appropriate cash allowances.

At the same time, the circle of persons defined as "front-line soldier" was also clarified. These included those who, from August 1, 1914, to December 31, 1918, took part in hostilities, as well as those honored for being wounded. They were "participants in the fighting in the Baltic, in Upper Silesia, against the Spartacists and separatists, as well as against the enemies of national exaltation". However, those who were "not participating in battles with the enemy during the war, as a result of official duty, were detained in the territory of fighting," were excluded from this category. Moreover, all officials suspected of falling within the scope of §§2-4 of the Law had to fill out the appropriate questionnaires within three days, which then were provided to the competent minister who made the decision. Against those officials who knowingly reported false information about themselves, an official criminal process was to be instituted aimed at dismissing them from service (Muhl-Benninghaus, 1996, pp.33-

41). At the same time, the Reich Minister of the Interior, Frick, recommended special caution when checking denunciations of the unreliability of certain officials. Goering supported him. He spoke negatively of denunciations that gained spread among civil servants, and criticized "party book officialdom", referring to those civil servants who hastened to join the NSDAP after January 30, 1933.

If for the entire period of the Weimar Republic, a total of 44 thousand officials and 13 thousand teachers joined the NSDAP, then only in a short period of time - from January 30 to May 1, 1933, when admission to the party was suspended, it grew by 179 thousand officials and 71 thousand teachers with an eye to further career growth. At the same time, the Reichsmarschall emphasized that party affiliation, by itself, could not serve as a basis for promotion (Palamarchuk, 2012, pp.212-214).

In addition to these restrictions, the "First Law on Amending the Law on the Restoration of Professional Bureaucracy", adopted on June 23, 1933, expanded the interpretation of §6 of the Law of April 7, 1933, which now allowed retiring an official not only for the purposes of "simplification of management" but also "in the interests of service". The fundamental provision prohibiting the appointment of anyone to similarly vacated posts was repealed. According to the Sixth Law on Amendment, adopted in September 1934, the "Law on the Restoration of Professional Bureaucracy" was to remain in force until the adoption of the "New German Law on Officials" (Muhl-Benninghaus, 1996, pp.33-41).

Further unification of bureaucratic law was facilitated by the "Law on the Reich Reconstruction", adopted on January 30, 1934, and abolishing land self-government. From now on, the Reich was considered the sole holder of the rights of the highest state power, and officials of land governments were defined as "intermediate imperial officials". The prerogative of the appointment of the latter belonged to Hindenburg, who delegated this right to Hitler as Reichschancellor (Muhl-Benninghaus, 1996, pp.33-41).

The "Law on German Officials", adopted on January 26, 1937, was of particular importance for the final determination of the status of civil servants. Its preamble emphasized that "professional officialdom rooted in the German people, imbued with the national socialist worldview, is bound by loyalty to the Fuhrer of the German Reich and people - Adolf Hitler, forms the basis of the national socialist state" (1937, pp.40-44).

The first section, devoted to the general regulation of "bureaucratic relations", noted that only subject to "unconditional obedience and exclusive performance of duty" by an official who is "the executor of the will of the NSDAP-led state", the state "guarantees him... his life status" (§1). The second section, which recorded the duties of officials, emphasized the high degree of trust exerted by the political leadership of persons called up for public service. In turn, the official was to serve for all Volksgenossen as "a model of the conscientious performance of duties" and until his death to remain faithful to "the Fuhrer, who guarantees him his special protection" (§3, p.1). He was ordered to "at any time unconditionally advocate for a national socialist state..."; bring to the attention of his official boss information about the "processes" that pose a threat to the Reich or the NSDAP (§ 3, p.2); to be intolerant of dishonest acts, even if committed by members of his family (§3, p.3). However, during a

particular criminal process, the Law exempted the official from the need to perform official actions that could harm him or any of his relatives (§5, p.2). The question of attracting an official - an NSDAP member to the party court was decided personally by the Fuhrer and the Reichschancellor (§7, p.4).

An official could receive instructions only from his superior and should strictly follow them unless they came into conflict with the criminal law (§7, p.2-3). The law ordered a public servant, even after completing his bureaucratic career, to keep official secrets in cases provided for by law or official regulation (§8). The official was forbidden to testify if they could harm the Reich or hinder its public tasks (§9) (1937, pp.40-44). Moreover, the Ordinance to the "Law on German Officials" obliged civil servants to keep official secrecy also in relation to party functionaries and party courts, which, in order to obtain a relevant certificate, had to go to higher official bodies with respect to this official (Muhl-Benninghaus, 1996, pp.33-41).

Bureaucracy was put in a tight disciplinary framework. The official was ordered to work overtime "if required by the service relations" (§16, para. 2) and under the same conditions was forbidden even to leave his place of residence even in his spare time (§18). Even his immediate superior could take the initiative in selecting housing, considering the remoteness of the home from the duty station, up to the imposition of an official government apartment (§19).

An official who did not properly perform his official duties could be denied career advancement, and also delayed the salary increase due for years of service (§ 21). The law obliged the official to indemnify for damage resulting from a violation of his official duty (§23), which was qualified as an official crime. A retired official was also considered a criminal if he committed acts "hostile to the state, disclosed official secrets or breached a ban on receiving payment and gifts" (§22, p.2) (1937, pp.40-44).

The conditions for the appointment and official transfer of an official are set in Section Four of the Law. It states that the appointment is carried out "by the Fuhrer and the Reichschancellor... as long as the law does not prescribe anything else, or he transfers the exercise of this right to other services" (§24).

The law retained racial barriers that blocked access to the bureaucracy. The doors were open only for a person 1) of "German or kindred blood" who had a spouse or bride of "German or kindred blood" (as an exception allowed with the sanction of a "higher official institution", acting "in agreement with the Reich Minister of the Interior and Deputy Fuhrer" was allowed here), the latter could be "mestizos of the second degree" (§25); 2) who was a citizen of the Reich or who was not yet due to his/her age, which did not allow him to fulfill the relevant requirements, and provided "a guarantee that it is unconditional at any time he will advocate for the national socialist state" (§26, p.1, c.1).

An official was considered only a civil servant who received a certificate of appointment containing the words "when called up for bureaucratic association" (§27, p.1). For life-long officials (the corresponding mark "for the period of life" should have been made in the certificate (§28, p.1), the goal of bureaucratic relations was their unity with the state for life (§ 27, p.2). Subject to meeting

other conditions (probationary period, passing exams, or five years of service), the person received the certificate of a civil servant upon reaching the full 27 (for women - 35) years of life (§28, p.2).

The official should have indicated on the appointment certificate the time period he was appointed for (§29, p.2). Another category of civil servants were officials before the abolition, "who were not an official for life or for a while" as per the law (§30, p.1). A similar full-time official "after the trial period, which after reaching the full 27 years cannot exceed six years", became an official for the period of his life, "if this was not excluded by law" (§30, p.2).

An assignment was automatically deemed invalid in cases where it was contrary to §26 p.1, c.1 of this Law, or if the person at the time of his appointment was under guardianship or was deprived of the right to occupy the relevant position by virtue of a criminal court sentence. It could be declared invalid, "if 1. It was made by force, through intentional misrepresentation or a bribe. 2. It was not known that the appointee committed a crime or such misconduct that... makes him unworthy of being called up for bureaucratic association"... 3. It was not known that the appointee was excluded or expelled from the National Socialist German Labor Party", as well as in those cases when the appointment was made by an institution incompetent for this, or if after the appointment it turned out that already during the appointment there were grounds for recognizing the person as legally incompetent, or "it was known that the appointee was dismissed on the basis of §§2, 2a, 4 of the Law on recovery of the professional civil service or in the course of a criminal investigation dismissed from service or deprived of pensions" (§32). However, even if the appointment was invalidated, the actions of this official during the performance of his official duties were qualified as legal, and his salary could be reserved for him (§34).

In those cases when it came to officials who simultaneously were the NSDAP members - reichsleiter, gauleiter, kraisleiter, ortsruppenleiter, as well as the Fuhrer of the organizations of SA, SS, NSKK - they could be transferred to another place of service only with the consent of the deputy Fuhrer for the party (§35, p.3).

In the fifth section - "Securing the Legal Status of Officials" - the state provided them social security and protection in their official duties (§36).

The grounds for terminating bureaucratic relations, in addition to the death of an official, were the loss of imperial citizenship, a judicial sentence for a criminal offense, refusal to take the oath, racial mismatch of the official or his wife, retirement, etc. (§§50-78).

Conclusion

The significance of this Law, which entered into force on July 1, 1937, can hardly be overestimated in terms of further strengthening of the regime. Its adoption finally ensured the codification and unification of German bureaucratic law. Its provisions, extending to all categories of officials - imperial, land, communal, as well as serving in other corporations and public-law institutions, which are now called the same as "imperial officials" - consolidated both the personal and structural changes that the bureaucratic corps of Germany underwent (Reihsgesetzblatt, 1937) and, as was

emphasized in the Justification for the Law published already on January 28, 1937, "finally settled the legal relations between the bureaucracy and the national socialist state" (Begründung zum Deutschen Beamten-gesetz vom 26 January 1937). The freedom of action of officials was extremely limited, in particular, their possibility of making independent decisions. Instead, the main emphasis was on the responsibilities of public servants and tougher penalties for their violation.

In addition, the "Law on German Officials" further strengthened the influence of party authorities in the field of public administration. The Rationale for the Law explained that an official is not only a servant of the state and people, but he must "serve the national socialist idea, which carrier is the state, and the National Socialist German Labor Party, which forms a single whole with the state", as well as "imbued with the national socialist spirit". Moreover, according to the new law, the service of an official in the NSDAP and its divisions was equal in their main profession to public service and the time of such service could be counted as the length of service required for retirement (§85, p.1, c.1.5).

Another novelty, set in the Law (§6) and specifically noted in its justification, was that prior to its adoption "in imperial law... there was no legal order" for the forced removal of an official from service. More broadly, a number of provisions of the Law meant the unification of the right to official punishment.

Finishing the characterization of the political and legal situation of German officials in the pre-war period, we think it necessary to express a number of considerations. In our opinion, one cannot agree with the view of E. Fromm, according to which "representatives of the Nazi bureaucracy in the Third Reich gained wealth and prestige" (Fromm, 1971). Of course, the position of the bureaucratic elite in all respects, including in material terms, remained privileged. However, most officials received a salary, which amount was determined back in the crisis years. Other reasons for the dissatisfaction of a significant part of employees with their position were the lack of staff in state bureaucracy in the field and the increased length of the working day against the absence of appropriate monetary compensation.

However, this discontent neither acquired a political character and, moreover, nor turned into any organized protest. Despite all the above circumstances, the majority of German officials acted as reliable support for the Nazi regime, an indicator of its progressive development both in the pre-war period and during the Second World War.

In addition, consideration of specific legal institutions and forms in the "progressive-regressive" dimension is of great heuristic value, which will undoubtedly provide an opportunity to determine their place and role in a changing or, conversely, stable national political and legal field in a certain historical time. The question, in this case, shall closely correlate with two points: the problem of the legitimacy of state power and the question of the criteria for legal progress.

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