

Wolf Kaiser: Paving the way to the Holocaust. Fundamental rights violations during the first phase of Nazi rule



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In this presentation I will explore the role of fundamental rights violations in the process of the establishment of Nazi dictatorship in Germany. The emergence of the dictatorship was a process driven by political decisions and legislative measures, but also by massive violence. With the establishment of a full-fledged dictatorship, no political organisation or societal institution remained in Germany that was willing and able to prevent the regime from committing genocide and crimes against humanity.

Focusing on fundamental-rights violations in the first phase of the Nazi rule, I will not try to give a comprehensive overview and deal with all steps in this process. I'd like to mention, however, that the Nazi leaders were not the only ones who bear the blame. All those who voted for Hitler or supported his ambitions in different ways could know what kind of regime they could expect.

Hitler in "Mein Kampf" on "human rights"

Let me just mention one example that is relevant in our context: Hitler referred to the discourse on human rights in the second part of his book "My Struggle" (first published in 1926). He mentioned them in the context of his polemics against so-called "racial defilement" and the alleged decline through "bastardization", demanding that the "Germanic states" should strictly prohibit the "mixture of races". Hitler wrote:

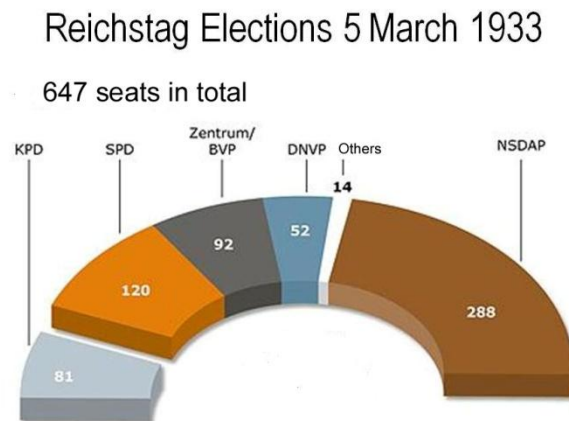
"The generation of our present notorious weaklings will obviously cry out against this, and moan and complain about assaults on the holiest human rights. No, there is only one holiest human right, and this right is at the same time the holiest obligation, to wit: to see to it that the blood is preserved pure and, by preserving the best humanity, to create the possibility of a nobler development of these beings."

Hitler understood very well that his ideology, Nazi racism as expressed in these lines, is the very opposite to the belief in the intrinsic value of every human individual, in equality before the law and in non-discrimination.

It is often said that Hitler assumed power in a legal way. Looking at this procedure superficially, we might concede that the Nazi Fuehrer was appointed Chancellor by due process.

Article 53 of the Weimar constitution says: “The Reich Chancellor [...] is appointed [...] by the Reich President.” Article 54 however reads: “The Reich Chancellor and the Reich Ministers, in order to exercise their mandates, require the confidence of the Reichstag.”¹ Hitler never intended to govern the country as a parliamentary democracy and therefore did not even try to

obtain the support of the German Parliament. Instead, he urged Hindenburg to dissolve the Reichstag immediately, hoping that the Nazi party would acquire an absolute majority in elections under Nazi rule. The elections on 5 March 1933 did not fulfil this hope though the Nazis won more votes than before and had a clear majority together with the also anti-democratic right-wing German Nationalist People's Party.



There was a second issue, more important than this disrespect of the constitution and parliamentary rules. Democracy had already been undermined before through the putsch of conservative anti-democrats under Reich Chancellor von Papen's leadership in the federal State of Prussia in 1932. Instead of the democratically-elected state-government, Reich Commissioners now ruled Prussia and systematically began to occupy key-positions in the civil-service. In particular, democratic police officers were arrested and removed from office. Since two-thirds of Germany belonged to Prussia, this Putsch had been an enormous blow to

democracy. On the very day when Hitler assumed the Chancellorship, he appointed Hermann Göring as Reich Commissioner for Internal Affairs, thus bringing the Prussian Police under his command.

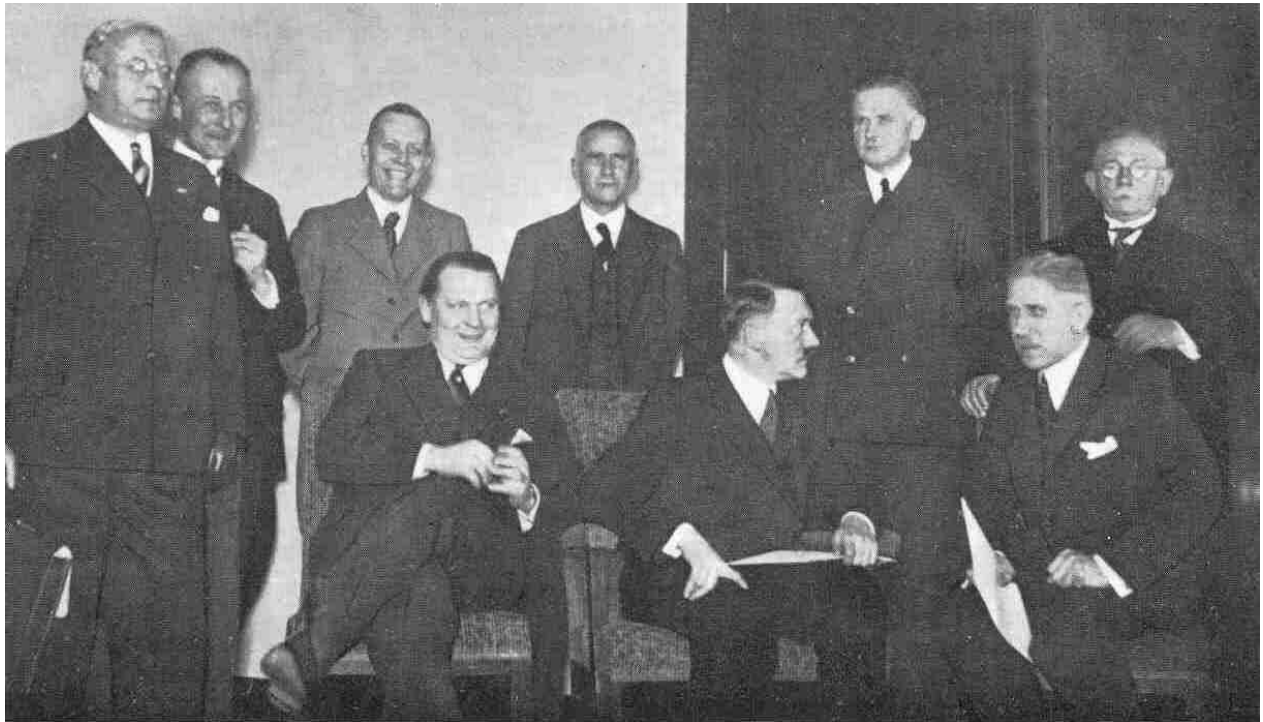
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Hindenburg's declaration of martial law in Prussia, Source: Bundesarchiv.

¹ http://www.zum.de/psm/weimar/weimar_vve.php#Third Chapter

Nevertheless, Hitler seemed to be a long way from absolute power when he was appointed Chancellor. Only three Nazis belonged to his cabinet: he himself, Hermann Göring as Minister without Portfolio, and Wilhelm Frick, Minister of the Interior. But they held key positions and were resolved not to share their power. Nevertheless, the conservative ministers believed that Hitler was “well-framed” and could not act without them since he was a novice in government affairs. Many observers expected that he would soon be „politically bankrupt“, and party leaders even believed that this would enhance their political power. They very soon suffered a rude awakening from their dreams.



Hitler's first cabinet, 30 January 1933. Source: Bundesarchiv.

In the following, I'd like to explain, how Hitler, who was nothing more than the leader of a political movement and a Chancellor with limited power, within eighteen month became a dictator with almost unlimited power who could have been stopped only by assassination. To establish dictatorship, Hitler had to remove all political organizations and societal institutions which potentially limited his exercise of power:

- Anti-Nazi parties (Communists, Social Democrats, Centre Party)
- Opposition in Parliament
- Independent Judiciary
- Trade Unions
- Governments and police of the Federal States
- Reichswehr (army)
- The position of power of the president.

I'll focus on the removal of the first four organisations and institutions as they were destroyed by massive violation of human rights and aimed at the destruction of constitutional democracy.

Before Hitler implemented his racist ideology through laws, he suppressed all political opponents with ruthless brutality. The most important instrument was the Reichstag Fire Decree.

On 27 February 1933 the Reichstag building, the German House of Parliament, burnt down, a case of arson that would nowadays be called a terrorist attack. The Nazis blamed the Communists for this act and took it as a pretext for suspending fundamental rights. They urged President Hindenburg to issue the "Emergency Decree for the Protection of the People and the State", the so-called Reichstag Fire Decree. Referring to this decree, the Gestapo – the Secret State Police – could take any citizen into "protective custody".



The Reichstag on fire, 27 February 1933. Source: Imago.

It is worthwhile to analyze this pivotal event in the process leading to a totalitarian dictatorship. The decree referred to article 48 of the constitution that authorised the President to take the measures necessary to re-establish law and order, if need be using the armed forces and to suspend the fundamental rights. The original intention of the constitutional assembly had been that the article should enable the state to function in times of uprising or civil war. It had been used in times of crisis in the founding years of the Weimar Republic and after 1930. Now it was used to abolish permanently fundamental rights.

Let me quote from the decree:

"On the basis of Article 48 paragraph 2 of the Constitution of the German Reich, the following is ordered in defence against Communist state-endangering acts of violence:

§ 1. Articles 114, 115, 117, 118, 123, 124 and 153 of the Constitution of the German Reich are suspended until further notice. It is therefore permissible to restrict the rights of personal freedom, freedom of opinion, including the freedom of the press, the freedom to organize and assemble, the privacy of postal, telegraphic and telephonic communications, and warrants for house searches, orders for confiscations as well as restrictions on property, are also permissible beyond the legal limits otherwise prescribed."

In the following paragraphs the government was authorized to take all necessary measures to restore public security and order. Anyone who contravened orders given by the government would be very severely punished, in certain cases even with the death penalty.

The decree was immediately used to crush political opposition. About 40,000 political opponents fled to neighbouring countries, thousands were imprisoned and tortured by Storm Troopers, more than 45,000 were taken to concentration camps (in 1933 altogether: 80,000). The section of the camps where the prisoners lived, was not by chance called “camp for protective custody”; according to the decree “the People and the State” were protected, not the prisoners.

The consequences of the decree went far beyond affecting the original target group. They demonstrate the possible dynamics of human rights violations. We can see how the deprivation of rights for one group under certain conditions undermines the rights of many others, finally of almost everybody. People who believed in 1933 that “the communists deserved it” could find themselves later in the same concentration camp. In other words: people learned that tolerating the discrimination and persecution of others paved the way for the loss of their own rights.



Prisoners in the SA prison Papestrasse in Berlin, 6 March 1933, source: Bundesarchiv.

“Protective custody” (Schutzhaft)

Nr. 7608 L.

BEZIRKSAMT FRANKENTHAL. Frankenthal, den 2. September 1935.

Betreff: Schutzhaft.

Schutzhaftbefehl.

Auf Grund des § 1 der VO. des Reichspräsidenten zum Schutze von Volk und Staat vom 28.2.1933 (RGBl. I S. 83, u. ME. vom 2.5.1934) wird in Schutzhaft genommen:

Vor- und Zuname: *Johannes Langmantl*,
Geburtsort u. Geburtszeit: München 10.5.1903
Familienstand u. Beruf: Arbeiter, verheiratet,
Wohnort und Wohnung: Grünstadt, Schillerplatz 8
Staatsangehörigkeit: Deutsch
Religion: Katholisch.

Gegen die Verhängung der Schutzhaft steht dem Verhafteten kein Beschwerderecht zu.

Gründe: Johannes Langmantl ist ein Marxist und hat bis heute seine staatsfeindliche Gesinnung in keiner Weise geändert. Dies bringt er bei jeder Gelegenheit zum Ausdruck. Er und seine Ehefrau kaufen bewusst nur in jüdischen Geschäften und stellen sich damit in den Gegensatz zum nationalsozialistischen Willen. Langmantl gefährdet durch sein Verhalten die öffentliche Sicherheit und Ordnung unmittelbar und war daher in Schutzhaft zu nehmen.

Langmantl

The first “protective custody” orders (“Schutzhaftbefehle”) were quite informal; they did not even mention the reasons for the incarceration. Later, they stated the charges and we can see how more and more individuals and groups were deprived of their freedom.

Originally, this instrument of terror was meant to intimidate political opponents and suppress all forms of opposition. Showing sympathy for Jews was also understood as a symptom of political opposition as this order against the 32-year-old Catholic labourer Johannes Langmantl of September 1935 demonstrates. It reads:

“The arrested person has no right of appeal. Reasons: Johannes Langmantl is a Marxist [the Nazi term for Social Democrat] and till this day in no way changed his hostile attitude towards the state. He expresses these views at every opportunity. He and his wife deliberately only buy in Jewish shops and thus oppose the National Socialist will. Through this behaviour, Langmantl endangers the public security and order and therefore has to be taken into protective custody.”

You will have realized that this person is taken into “protective custody” for an unlimited time.

“Protective custody” orders were soon also used for other reasons. Take for example this order against a 33-year-old tailor who did not show the required respect for members of Nazi organizations when he visited the marksmen’s festival in a village called Wewelsburg in 1937, where the SS had established a cult centre in an old castle and the Niederhagen concentration camp.

“During the marksmen’s festival in Wewelsburg you have insulted and threatened SS-leaders and SS-men by shouting at them. You have endangered public security and order through your behaviour so that it is necessary to take you into protective custody in order to prevent further disorders.”

Racist ideology is clearly the motivation in the following case: In August 1941, the 17-year-old domestic help Erna Brehm was publicly pilloried on the market place of Calw and her hair was cut, because she had had a love affair with a Polish “foreign labourer”. These photos show a similar case in Altenburg in February 1941. Erna Brehm was put on trial afterwards and imprisoned for a year. When released from prison in April 1942, she was sent to the concentration camp of Ravensbrück. The reasons given in the “protective custody” order were that she *“lacked the natural reservation towards a member of an enemy nation and thus grossly violated the healthy disposition of the people”*. The camp ruined her health so that she died prematurely in 1951 at the age of 27.

Geheime Staatspolizei
Staatspolizeistelle Bielefeld
B.-Nr. II - 5016/37

Bielefeld, den 18. Juni 1937

Schutzhaftbefehl

Auf Grund des § 1 der Verordnung des Reichspräsidenten zum Schutz von Volk und Staat vom 28. Februar 1933 (RGBl. I S. 83) wird in Schutzhaft genommen:

Der- und Juname:	Linold L e n i g e r
Geburtsort und -Ort:	30.4.1904 in Wewelsburg
Beruf:	Schneider
Familienstand:	ledig
Staatsangehörigkeit:	L.H.
Religion:	Katholisch
Wohnort und Wohnung:	Wewelsburg Nr. 64.

Gründe:

Sie haben anlässlich des Schützenfestes in Wewelsburg SS-Führer und SS-Männer der Burg Wewelsburg durch Zurufe beleidigt und bedroht.

Durch Ihr Verhalten haben Sie die öffentliche Ordnung und Sicherheit gefährdet, so dass Ihre Inhaftnahme zur Vermeidung weiterer Störungen erforderlich ist.

W. Müller



Finally, I show an example demonstrating that “Aryan” German citizens could end up in a concentration camp simply because of loving the ‘wrong’ music. In January 1943, the 17-year-old Günter Discher, who was to become Germany’s most famous post-war jazz historian, was imprisoned in the Moringen youth concentration camp because of collecting and selling jazz records.

Schutzhaftbefehl

Nach- und Vorname: Günter Leonhard Johannes Discher

Geburtsort und -ort: 20.1.25 in Hamburg,

Beruf: Kfm. Lehrling,

Familienstand: ledig,

Staatsangehörigkeit: Deutsches Reich,

Religion: ev. luth.,

Kaffe (bei Nichtangeben ausgeben):

Wohnort und Wohnung: Hamburg 19, Charlottenstr. 21,
wird in Schutzhaft genommen.

Gründe:

Er ist ... gefährdet nach dem Ergebnis der staatspolizeilichen Feststellungen durch sein ... Verhalten den Bestand und die Sicherheit des Volkes und Staates, indem er ... durch sein ... Treiben erhebliche Schäden in die Bevölkerung trägt.

gezi: 3 0 1 1 e r

Beglaubigt:

[Signature]
 Kriminalrat

“According to the findings of the Secret State Police he endangers the existence and security of the people and the state by causing considerable turmoil in the population through his behaviour that is subversive and derogatory to the state”.

The Ordinance against treachery (Heimtückeverordnung)

The “Decree of the President for the Protection of the People and the State” was not the only legal basis for establishing Nazi dictatorship. The official title of the ordinance sounds quite ridiculous when translated into English: “Ordinance of the Reich President for the Defence against Treacherous Attacks on the Government of National Exaltation”. But it had

very serious consequences. Using the ordinance and the related law that followed in December 1934, courts could hand down severe sentences for every critical remark about government or party leaders; having served their sentence in prison or jail, convicted critics were often taken to concentration camps. Whoever expressed opposition to the regime risked his or her freedom and physical well being. During the war, the Ordinance against treachery was also applied to Germans who expressed pity when their Jewish neighbours were deported. In May 1943 the Special Court of Würzburg sentenced a woman to six months in prison because she had cried and shown compassion when she observed the deportation of the Jews from the station of her hometown.

According to the court, she had undermined the trust of the people in the political leaders.



3rd deportation from Würzburg, 25 April 1942. Source: Staatsarchiv Würzburg

Such special courts had already been introduced in 1933 together with the Ordinance against Treachery. They were charged with the enforcement of the Reichstag Fire Decree and the Ordinance against Treachery. Appeals against sentences of the special courts were explicitly ruled out in § 16. This was the beginning of the end of an independent judiciary.

Three days after these ordinances had been issued, politically organized opposition was practically eliminated.

On 24 March 1933 the Parliament passed the Enabling Act under pressure from Hitler's Storm Troopers. This law though formally issued for a period of four years was in fact the definitive abolition of the parliamentary system: from now on the government could make laws without agreement of the parliament. Most factions, including the catholic Centre Party, committed suicide in fear of death and agreed to be toppled from all power; only the Social Democrats voted against the law, although they were threatened by Storm Troopers standing in front of the building, whereas the Communist MPs had already been arrested.

The law for the restoration of the professional civil service

The Nazis wanted to make sure that all members of the civil service would execute their policy-measures without hesitation. On 7 April they issued the Law for the Restoration of the Professional Civil Service. § 4 of this law stated: "Civil servants whose former political activity affords no guarantee that they will act in the interest of the national state at all times and without reservation can be dismissed from service." According to § 3 "Civil servants of non-Aryan descent" were to be retired. Thus, this law not only deprived political opponents of their rights and intimidated potential critics, but abolished equality before the law in order to implement the racist antisemitic policy of the regime.

With the Reichstag Fire Decree and the following persecution, many activists of the workers movement were arrested or forced to go underground, but the trade unions still existed in the spring of 1933, and Hitler felt that the majority of the capital's population, Berlin's workers, were against him. The Nazi Party did not get more than 31.3 % in Berlin in the March elections, as opposed to the national average of 43,9 %. Hitler therefore pursued a double strategy: The declared the First of May, traditionally a day of workers' rallies, to be an official holiday called "Day of the German Labour", and organized huge demonstrations and celebrations. At the same time, he commanded the Storm Troopers to occupy all offices of the trade unions the following day. Their leaders were taken to concentrations camps and their property was confiscated.



Storm Troopers occupying an office of trade unions in Berlin, 2 May 1933. Source: Bildarchiv Preußischer Kulturbesitz

The “German Labour Front”, a Nazi organisation that comprised employers and employees, thus symbolizing the “deutsche Volksgemeinschaft”, the ‘German national or ethnic community’, replaced the trade unions. Members of the trade unions automatically became members of this organisation, which financed propaganda programs using the property of the trade unions.

After political opposition had been violently suppressed, Hitler was still concerned about malcontent members of the Nazi movement. Already in 1934, he did not shy away from mass murder. On 30 June 1934, SS-units following Hitler’s orders killed the leader of the Storm Troopers Ernst Röhm and about 200 other persons, including Hitler’s predecessor as Reich Chancellor, Kurt von Schleicher, and his wife. This Night of the Long Knives was officially justified and retroactively legalised through the Law Regarding Measures of State Self-Defence, issued on the 3 July 1934.



Adolf Hitler and Ernst Röhm, August 1933. Source: Bundesarchiv.

My summary of events has emphasized the shrewd and ruthless tactics of the Nazis. But this is only one side of the coin. On the other side we see the helplessness, conformism and conversion of most Germans. The majority of Germans were not followers of the Nazis in January 1933, but the democratic parties that had got more than three quarters of the vote in 1919, had lost the majority under the influence of the economic crisis already in 1930. Once Hitler had begun to establish his dictatorship, only few showed resilience and engaged in resistance under rapidly-deteriorating conditions and growing threats to their freedom and their lives. The consolidation of power cannot be understood as a merely political process. It was also a radical social change. One factor in this process was admission to the Nazi Party. Between January and the end of April 1933 the Nazi Party grew from 850.000 to 2.5 million members. Then admission was stopped and only in 1937 gradually re-opened because those who had joined the party before it could provide access to all kinds of positions and jobs were afraid of too many opportunists competing in the race for the jobs from which political opponents and Jews had been excluded. The rapidly-growing number of party members is already quite remarkable. The social relevance of membership and participation in Nazi Party activities becomes even more visible if we look at the numerous sub- und satellite-organizations.

Sub- and satellite-organizations

2/3 of Germans members, 20 % functionaries

- SA (*Sturmabteilung*): "Storm Division"
- SS (*Schutzstaffel*): "Protection Squadron"
- BDM (*Bund Deutscher Mädel*): League of German Girls
- HJ (*Hitlerjugend*): Hitler Youth
- NSDStB: NS German League of University Students
- NSDDB (*Nationalsozialistischer Deutscher Dozentenbund*): NS German League of Lecturers
- NSKK (*Nationalsozialistisches Kraftfahrerkorps*): "National Socialist Motor Corps"
- NSF (*Nationalsozialistische Frauenschaft*): NS Women's League
- NSDAP/AO (*Auslandsorganisation*): NSDAP in Foreign Countries
- DAF (*Deutsche Arbeitsfront*): German Labor Front
- NSDÄB (*Nationalsozialistischer Deutscher Ärztebund*): National Socialist German Physicians' League
- NSRB (*Nationalsozialistischer Rechtswahrerbund*): National Socialist League for the Maintenance of the Law
- NSLB (*Nationalsozialistischer Lehrerbund*): National Socialist Teachers' League
- NSV (*Nationalsozialistische Volkswohlfahrt*): National Socialist People's Welfare
- RAD (*Reichsarbeitsdienst*): Reich Labor Service
- RKB (*Reichskolonialbund*): Reich Colonial League

Before the Second World War began, about two-thirds of the German population were members of one or more organizations of the Nazi Party apparatus. About 20 % of these members had an active role either as a professional with salary, pension etc., or in an honorary capacity. There were various motivations to join the Nazi party organizations – from enthusiasm to fear of being fired or not getting a job without membership. We can assume that many of those who joined the party under pressure were then consciously or subconsciously looking for “positive reasons” for their membership. Beyond the impact on attitude and opinions, Nazi Party organizations had considerable influence on the social institutions to which they were linked, for example the National Socialist Teachers’ Organization on schools, the National Socialist People's Welfare on the social welfare and health systems, the National Socialist League for the Maintenance of the Law) on the judiciary, etc.

In most social organizations the *Gleichschaltung* (the enforced conformity) was executed within the first months of the regime’s existence, very often by decisions of the leaders of the respective organizations themselves. To give an example: On 27 April the leader of the veterans’ organization *Stahlhelm*, League of Frontline Soldiers, Franz Seldte, declared that he assigned himself and his organization with its 500,000 members to the Fuehrer; in consequence, *Stahlhelm*-units were integrated into the SA. *Gleichschaltung* was effective with all organisations that were not forbidden, though only partially so with the churches. Although the Nazi affiliated German Christians achieved a remarkable victory in elections within the Protestant Church in 1933, Reich Bishop Ludwig Mueller was not very successful in the long run. Therefore, the regime decided on a different method of control by founding the Reich Ministry for Matters of the Churches. The churches were by no means bastions of resistance, but they remained the only great organizations that maintained some sort of independence.

I think we must pay attention to the social process of *Gleichschaltung* in all its dimensions if we want to understand why the Nazi regime became so quickly unassailable and why it could mobilize the nation to such a degree and in such dimensions that it became a serious threat to the rest of world.

My overview has not comprehensively explained why the Nazis and their collaborators committed the genocide of the European Jews and why this was tolerated if not supported by most Germans. This cannot be done without in-depth analysis of anti-Semitism and the radicalisation process before and during the war. But I hope that my remarks shed some light on the preconditions for this development.