



Tuesday » October
31 » 2006

Lawyers without rights

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Given lawyers' current powerful status in the West, the phrase "lawyers without rights" may sound strange. But that is precisely what occurred in Nazi Germany.

It has been said that one of the hallmarks of a democracy is "the rule of law." The rights of citizens, restraints upon unreasonable government actions and the impartiality of the courts are all seen as being essential underpinnings of our way of life. The judiciary is often portrayed as the last bastion of our collective freedoms, as the defender of our individual liberties and as a bulwark against governmental and legislative excesses.

Unfortunately, such ideals are not often reflective of reality. Courts and justice systems are just as susceptible to the machinations and extremism of political and social ideologies as any other entities.

In January, 1932, following the democratic election of the Nazis as the largest political block, and the democratic appointment of Hitler as German Chancellor, there was a campaign to restrict Jewish participation in various professions, especially within the judicial system. Jewish lawyers and judges became targets of discrimination within the campaign to delegitimize Jews. By Sept. 30, 1933, all Jewish lawyers were expelled from the Civil Service. As of Nov. 30, 1938, Jews were banned from practicing law.

"Lawyers Without Rights" is a collaborative exhibit put on by the Israeli and Federal German Bars and Friends of Simon Wiesenthal Center For Holocaust Studies to commemorate the lawyers who were persecuted and to describe the consequences of their accompanying isolation and murder. All lost their profession, most lost their country and many lost their lives. Through biographical portraits, the viewer gains new insights into the historical and legal events.

One of the more interesting focuses of the exhibit is how non-Jewish lawyers, judges and legislators strove to ensure that the five-year process of excluding Jewish lawyers, judges, court officials and law professors was carried out "legally."

Definitions of what it meant to be "Jewish" had to be drafted. Doctors and scientists were consulted about how much "blood" it took to be a Jew. Racial purity proponents met in committee, and staffers re-wrote the proposed laws until all were satisfied.

At the January, 1942, Wannsee Conference where the "Final Solution" was finalized, the bureaucrats present undertook to amend the prior legislation defining a Jew in order to clarify that no amount of "Jewish blood" would now be tolerated.

At the time, international outcries were generally muted and ignored. Given the general acceptance of anti-Semitism as a then valid political philosophy and the restrictive and discriminatory immigration policies of most of the nations of the world, it was not surprising that the Nazis could afford to shrug off any criticism that did make its way to Germany.

While passing the laws may not have posed much of a hurdle, the real issue was what the courts would do. Would prosecutors, lawyers, the Bar and, most important, the

judges, allow such draconian legislation to stand? The short answer is that, not only was there virtually no opposition, but the profession enthusiastically welcomed these laws. As for the Constitution of the Weimar Republic which was in force until the Reichstag fire of Feb. 27, 1933, it was conveniently disregarded.

Lessons from this history resonate today.

Racism, bigotry, anti-Semitism and prejudice are still prevalent and still know no cultural or educational bounds. The possibility of the general public happily endorsing discriminatory laws is still there.

Living in a world dominated by acts of terror, we must cope with the realization that governments are caught up in the tension between security of the public and the preservation of the integrity of personal rights. Even in today's democracies, public perceptions may lead to the call for the implementation of draconian laws.

Equally, we should recognize that constitutions and noble-sounding charters or bills of rights are absolutely no bar to the trampling of the very freedoms enumerated therein.

There is a special need for the legal profession to instill a fearlessness within all advocates so that they will never again allow laws such as those of the Nazi-era to exist. However, ultimately, it will take the courage of all of us to stand up to the excesses and the demagoguery of those who seek to shut down our freedoms "for the betterment of society." Only we can prevent future lawyers -- and others -- from being stripped of their rights.

- Leo Adler is director of national affairs, Friends of Simon Wiesenthal Center For Holocaust Studies, in Toronto. The exhibit *Lawyers Without Rights: The Fate of Jewish Lawyers in Germany After 1933*, opens in Toronto on Nov. 1 at the Beth Tzedec Congregation and will open in Ottawa on Nov. 16 at Ottawa City Hall. For more information go to www.fswc.ca

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