

The Present Status of Denazification (December 31, 1950)

Abstract

At the end of 1950, U.S. High Commissioner for Germany John J. McCloy wrote a positive review of the denazification process in the American zone. He pointed out that the initial goal had been to remove National Socialists from positions of leadership in society and to replace them with democrats. When it became clear, however, that continuing to discriminate against millions of people was not in the interest of stabilizing German society, the Americans initiated the second stage of denazification. This involved calling all adult Germans before German denazification courts [*Spruchkammern*]. McCloy conceded that these court proceedings suffered from numerous problems, but he assessed their results as positive overall. The chief goal of the denazification courts was two-fold: to force Germans to confront their conduct during the Third Reich and to reintegrate lesser offenders into German society.

Source

The Present Status of Denazification

From the outset the four Allied Powers responsible for the occupation and peaceful development of defeated Germany were determined that Germany should be purged of Nazism. To this end it was agreed that former Nazi party members and collaborators 'who were more than nominal participants in its activities' should be excluded from public and other influential posts and made subject to sanctions under law. To achieve these purposes the Allied Control Council issued two basic enactments: Directive No. 24 of January 12, 1946, concerning 'Removal from Office and from Positions of Responsibility of Nazis and of Persons Hostile to Allied Purposes', and Directive No. 38 of October 12, 1946, concerning 'The Arrest and Punishment of War Criminals, Nazis and Militarists and the Internment, Control and Surveillance of Potentially Dangerous Germans'. These directives were without legal effect until implemented by zonal laws or other enactments.

Responsibility for the implementation of the agreements and directives on denazification was assumed by the military and later by the Allied civilian authorities in their respective zones of Germany. In the U.S., British and French Zones procedures differed somewhat but in general kept closely to the spirit of the agreed directives. In the Soviet Zone the course of denazification was strongly influenced by the drive to communize the population. Many former Nazis, even though seriously incriminated, were acquitted of the charges against them and restored to influence on condition that they engage in active support of the Communist régime. However, the Soviets have never ceased to assert their continued determination to root Nazism out of the German system.

The objective of denazification was not the attainment of a final goal within a specified time, when it could be said: 'The job is done; Germany is now denazified.' It was rather to safeguard the new German democracy from Nazi influence and to make it possible for anti-Nazi, non-Nazi and outspoken democratic individuals to enter public life and replace the Nazi elements which had dominated all life in Germany from 1933 to 1945.

To accomplish this objective the Occupying Powers abolished the Nazi Party and its formations and affiliated organizations, outlawed them and removed the individuals who had been responsible for their operation from positions of influence in both public and private life. It was then possible for non-Nazi Germans to come into the many fields of communal, economic and political activities to rebuild German life on democratic lines. The initial steps in this program had been attained substantially by the summer

of 1946.

Once former Nazis had been removed from public life and to a certain extent from private enterprises, a paradoxical situation arose. In a sense the party had been reconstituted by creating a large group of 'ex-Nazis', which in the U.S. Zone alone would have numbered over 3,500,000 persons. They would have been tagged and labelled and largely excluded from civic life and professional activity. This large group, together with their families, relatives and friends, would have become a body of 'second-class citizens' within the state and a constant source of discontent and unrest.

In order to avoid this danger, insofar as it could be done without raising the specter of revived Nazism, and recognizing that not all ex-members of the party and its affiliates were equally guilty of the crimes of Nazism, it was decided in the U.S. Zone to proceed with the next phase of the program. Military Government had undertaken the task of stating who had been Nazis within the framework of Directive 24; it was to be the responsibility of the German authorities to decide to what extent each person had been an active Nazi and to what sanctions he should be subject under law, or whether he should be exonerated. To this end the German 'Law for Liberation from National Socialism and Militarism', drafted under the auspices of Military Government, was promulgated in March 1946 by the several states of the U.S. Zone. Though direct responsibility was transferred to the Germans under the terms of the law, Military Government actively supervised its enforcement until August 1948. All political parties then in existence supported this law.

The general principles of this law were stated to be as follows:

'(1) To liberate our people from National Socialism and Militarism, and to secure a lasting base for German democratic national life in peace with the world, all those who have actively supported the National Socialist tyranny, or are guilty of having violated the principles of justice and humanity, or of having selfishly exploited the conditions thus created, shall be excluded from influence in public, economic and cultural life and shall be bound to make reparations.

(2) Everyone who is responsible shall be called to account. At the same time he shall be afforded opportunity to vindicate himself.'

Every adult in the U.S. Zone was required to register and submit certain details about his or her past activities. On the basis of information thus submitted and available from other sources, each registrant was placed in one of the following categories:

I. Major Offender; II. Offender; III. Lesser Offender; IV. Follower; and V. Exonerated.

Classification was based on the position and rank of the person in the party hierarchy, individual incrimination as indicated in documents or in direct accusations, and upon results of investigations conducted by court officials. Nearly thirteen and a half million persons registered in the U.S. Zone, and of these nearly four million were found to be 'chargeable', that is, subject to classification in categories I through IV.

Trial tribunals (Spruchkammern) were set up in all urban and rural districts. Appellate tribunals were established for the review of decisions. Public prosecutors and assistants were assigned to each tribunal. Spruchkammern personnel were required to be persons who knew their locality and were known to be active opponents of National Socialism. It was the task of the tribunal to evaluate the evidence presented by the public prosecutor, and the defense offered by the defendant and his attorney, to find for or against the defendant and to assess the sanctions prescribed by the law for each of the five established categories. Some penalties were made mandatory under the law, others were optional with the tribunals.

Shortly after the law went into operation it became apparent that there would be such an immense number of persons chargeable (that is, found subject to the law by the prosecutor) that the German Courts would not be able to try all of the cases within a reasonable time. The law, by making chargeable all members of the Nazi party as well as its formations, affected over 27 per cent of the adult population of the U.S. Zone (3,669,239 persons). It was realized that among them were large numbers of persons who had not been active in furthering Nazi ideology. Consequently in August 1946, the Military Governor announced the Youth Amnesty which provided that all persons born after January 1st, 1919, would not be tried by a denazification tribunal unless they were incriminated and chargeable as major offenders or offenders. This amnesty was followed in December by another amnesty, known as the Christmas Amnesty, which provided that persons in low income groups, who had earned less than 3,600 RM per year in 1943–45, and who had less than 20,000 RM property on January 1st, 1945, and persons who were more than 50 percent physically disabled would not be tried unless they came within the categories of major offenders or offenders. By June 1, 1948, 2,373,115 persons had come within the terms of those amnesties. By that time, 865,808 trials had been completed, leaving a total of only 31,707 still to face formal trial. Since that date the trials have continued but new registrations, largely refugees and returning POWs, have made it impossible to complete the program. By September 30, 1950, a total of 13,416,000 persons had been registered; 958,071 trials had been held; and 2,777,444 amnestied, either by the prosecutor or after trial. There remained 1,740 cases to be disposed of.

The Law for Liberation also provided that criminal offenses by National Socialists or Militarists might be prosecuted outside its provisions. This applied particularly to war crimes and to offenses arising out of National Socialist tyranny. Thus, several hundred war criminals, many of whom were active leading Nazis, were dealt with and punished by Allied and German tribunals independently of the Law for Liberation. Likewise, other top Nazis were tried by the International Military Tribunal in 1946 and by the United States Tribunals which imposed death sentences and long terms of imprisonment on those found guilty of major crimes.

Under the various directives issued by the several state governments, the apprehension and prosecution of persons who had been individually involved in the acts of tyranny and terror which were part and parcel of the Nazi régime have been, and continue to be, undertaken with vigor. The extent to which the German communities have denounced their own members for participating in these acts is one indication of the measure of denazification attained by the German people.

The Law for Liberation operates extensively, and dealt with a problem that was without precedent in history. It was both drafted and implemented by persons who had no precedents and no experience on which to draw since nothing of this character had ever been attempted before. The task was done amid a ferment of emotions and during a period of instability and universal hardship and unrest.

The statistical table on the next page gives figures on the operation of the denazification program in the U.S. Zone from the promulgation of the Law for Liberation in 1946 to September 30, 1950. Not much change has taken place since that date, so that the figures with negligible modification can be accepted as correct as of December 31, 1950.

This was, perhaps, the most extensive legal procedure the world had ever witnessed. In the U.S. Zone alone more than 13 million persons had been involved, of whom over three and two-thirds million were found chargeable, and of these some 800,000 persons were made subject to penalty for their party affiliations or actions. All this was, of course, apart from the punishment of war criminals many of whom were high-ranking Nazis.

In fact, of the top Nazis who fell into Allied hands, all have been either tried or interned. Of the 24 most important and prominent Nazi Cabinet Ministers and Nazi leaders appointed to the highest party rank, that of 'Reichsleiter', six were executed, six are still serving sentences up to life, and eight have died or

committed suicide. The fate of one is obscure and three are at liberty. Of the 42 persons who held the next highest rank, that of 'Gauleiter' or regional party chief, eight were executed, ten committed suicide or have died; one was shot by his own comrades; eleven are still jailed or interned; while the fate of four is unknown. The eight today known to be at liberty have either completed their confinement or are fugitives.

DENAZIFICATION PROCEEDINGS

in the U.S. Zone

Total registrants		...	...	...	...	...	...	13,416,101
	Not chargeable cases			...	...	...	...	9,746,862
	Chargeable cases			...	...	...	...	3,669,239
Monthly average of new registrations during period							...	
		1 October 1949 to 30 September 1950					...	13,800*
Cases amnestied by Public Prosecutors' categorization								2,456,731
Otherwise quashed by Public Prosecutors							...	252,875
Classifications by Trial Tribunals:								
	Major Offenders			...	...	...	...	1,698
	Offenders	...		...	...	...	...	22,598
	Lesser Offenders			...	...	...	...	106,995
	Followers			...	...	...	...	487,996
	Exonerated			...	...	...	...	18,571
	Amnestied			...	...	...	...	320,713
Cases to be completed by Trial Tribunals							...	1,062
Cases to be completed by Appellate Tribunals							...	678
Inmates of internment camps					...	...	...	73
Persons permanently ineligible to hold public office							...	23,616
Persons restricted in employment						...	...	125,510
Subject to confiscation of property						...	...	27,587
Persons fined				...	...	...	...	572,993

Sentenced to Special Labor but
not imprisoned

... 30,781

*Returning POWs and returnees from the East.

It cannot be denied that some guilty persons have escaped detection and punishment. It was impossible in dealing with a régime so long existent and so widespread in its ramifications as National Socialism to bring to the bar of justice all who were guilty of participation or collaboration in the misdeeds of the Nazi régime. But a serious effort was made to ascertain guilt and to punish the guilty, while assuring that every individual charged would receive a fair trial in accordance with law.

By the end of 1950 the process of denazification within the Federal Republic was nearing its formal end. The German authorities had by then enacted measures modifying the provisions of the law to exclude from its application nominal Nazis, while leaving the law in operation with respect to active and criminal elements of the party. The various state parliaments had under consideration draft laws for terminating denazification procedures within the respective states. On December 15 the Lower House approved a resolution requesting that the Federal Government recommend to the states the adoption of uniform legislation governing the liquidation of the denazification program. This recommendation did not contemplate the annulment of all denazification decisions but suggested dates to be incorporated into state laws which would assure simultaneous action in the termination of proceedings. Specific criteria were set up to guide the actions of the states. In general, these involved a broad relaxation of restrictions, particularly as applied to categories III, IV, and V. The recommendation emphasizes, however, that prosecutions for any crime committed by Nazis are to be continued.

These recommendations, if carried into effect, would bring about the termination of virtually all denazification operations by April 1, 1951. It was proposed that the Federal Government and the states work out a plan to abandon Nazi classifications III, IV and V by January 1, 1951; to lift all reemployment restrictions, with the exception of those involving categories I and II, by March 31 and to lower all property barriers and restore election rights to all classifications by April 1. Thus it would appear that formal denazification will come to an end early in 1951.

Final evaluation of the denazification program is a task for the historian. It is even too soon to determine whether its implementation by the German authorities since it was turned over to them can be called a success or must be adjudged a failure.

In the operation of the law certain shortcomings have, it is true, become evident. It is generally conceded today, for instance, that it would have been wiser to have applied the penal aspects of the program more promptly and effectively to the real activists, while treating the great mass of lesser Nazis more leniently. As a matter of fact, it was soon recognized that the scope of the trials was too broad. The natural desire of the Germans was to raise the stigma from the innocent and the nominal ex-Nazis as soon as possible. This necessarily delayed the trials of the more serious offenders while, at the same time, the courts became bogged down in a mass of inconsequential cases. Realizing this, efforts were made to speed up the processing of the lesser cases. The amnesties extended in 1946 helped. A 'schnell' (fast) process, adopted in 1948 to dispose of the many cases of persons classified as followers, allowed the prosecutor to determine on the basis of written evidence whether or not the defendant actually was a follower, and if so to assess a fine and notify the accused without a public trial. If the accused was not satisfied he could appeal the decision. This allowed many of the minor cases to be disposed of rapidly, with the aim of devoting more attention to the involved and difficult cases of the major offenders. Despite these measures, the trial of many major Nazis was so long delayed that they benefited from the inevitable change of feeling among the people. It is literally true that by the time many of the more serious cases came up for trial the Germans were too tired of the whole business to care very much whether or not they received their due.

Another point on which critics often dwell is the alleged tendency of the denazification tribunals to exonerate 'big Nazis' while imposing severe penalties or disqualifications on some minor offenders. There were no doubt some instances of such discrimination. Yet this criticism represents only part of the truth.

The 'big Nazi' referred to was sometimes a man of influence, possibly a devoted Nazi, who made large contributions to the party and urged his employees to join. But he may have been a benevolent employer, and one who never persecuted anyone. So when he came before his peers and neighbors who sat on the courts, these people had no grievance against him. They did not judge him by his ideological beliefs but on his day-to-day activities which, from their point of view, were all in his favor. On the other hand the 'little Nazi', who may have been a cobbler, a postman, or a petty foreman, and who received severe sanctions and is often cited by the critics, may have been a fanatical Nazi. He may have denounced his neighbors to the Gestapo, belonged to the 'hoodlums' of the community, caused the arrest of his neighbors, their internment in concentration camps, or damage to their property. When such a 'little Nazi' came before the tribunal composed of his neighbors he was assessed a heavier penalty. It was too much to expect these farmers, artisans and work-a-day people to reason that had it not been for the benevolent 'big Nazi' with his big contributions to the party, hoodlums and Gestapo could not have prospered.

Criticism of the law today, however, is based on knowledge after the event. And in any case, this disadvantage of the law, if such it was, must be set off against the benefits derived from its having forced the local people, all over the Zone, to review actively what had taken place during the Nazi period.

Critics of the denazification program also point to the presence of former Nazis in important positions and in the public service generally. It is true that there are many former Nazis in public positions. Many are school teachers, mail carriers, policemen. Some few occupy higher positions, even in the state and Federal governments. Many business men holding important posts were once members of the Nazi party. Millions of former Nazis are re-employed, most of them in their former vocations. But these are, with few exceptions, persons who were found by the denazification tribunals to have been only nominal party members not personally implicated in the criminal activities of the party, or persons whose minor involvement in such activities has been expiated by legal process.

When exonerated Nazis with an active past seemed to have fared too well in getting cleared, and have been reinstated in responsible jobs, action has been taken. A case in point was that of the teachers reinstated in Wuerttemberg-Baden (U.S. Zone), who had held high positions during the Nazi régime. When the situation was disclosed earlier this year, U.S. officials urged the Minister of Education to re-examine it and to institute dismissals wherever the facts warranted. In the course of November, the U.S. High Commissioner emphasized the American position by declaring to the Ministers President of the U.S. Zone that enthusiastic propagandists of Nazi doctrines should not be permitted to teach the young generation of a democratic Germany. Although all the former Nazi functionaries who were re-appointed as teachers had been pardoned by the Minister President of Wuerttemberg-Baden, the High Commissioner continued to press for their ouster during the last quarter of the year. It remains, moreover, the prerogative of the Allied High Commission to intervene in cases of appointment to high office of persons dangerous to Allied objectives in Germany.

It was, in fact, one of the primary intentions of the Denazification Law to make possible the re-assimilation of the great mass of nominal and minor Nazis into German society at the earliest possible moment. It would have been unthinkable and indefensible to try to keep almost 8 million former members of the Nazi party proper—together with their dependants probably close to 30 million people—outside the community or outcasts from it. With very few exceptions the former Nazis who now occupy posts of any significance have been 'denazified'. In other words, they have been made eligible through legal procedure to hold their present offices. That it would be better if certain individuals were

to remain out of public life cannot be denied. Many Germans would rather not see them in the positions they now occupy. Sections of the democratic German press have spoken out unequivocally against certain appointments to public office. However, once such persons have been duly appointed, and in the absence of legal grounds for their removal, there is generally nothing that can or should be done except to rely upon the democratic system which has been constructed in Germany to deal with the problem. No democracy is perfect; a new one may perhaps be allowed more than its normal share of mistakes. To interfere with it from the outside will in many cases do more harm than good. In all cases, intervention must be carefully weighed, being offset against the obvious danger of undermining the system in the confidence of the people it serves.

There have been widely publicized instances of the return of former Nazis to office. But the converse is likewise true, as is illustrated by the case of a former official of a Federal Ministry. The Nazi past of this official had been given wide publicity and was exposed in detail in a pamphlet circulated by the German Trade Union Federation dealing with the return of ex-Nazis to office. The official resigned his post in order to seek an injunction against the circulation of this pamphlet, but his request was denied by the court. In this case German opinion forced a former Nazi out of office, an action far more salutary than the expulsion of such persons at the insistence of the occupation authorities. In the final analysis, Nazism will stay out of German life only if the German people reject it and continue to ban it even when the occupying powers are gone.

Allied policy at this stage is to repose trust in the German Federal Republic. The Federal Government has already assumed increased powers and will shortly be assigned further prerogatives. Germany is to be admitted eventually into full and equal partnership with the nations of the democratic community. It must be expected that those leaders who will be charged with these new responsibilities and powers will employ them for constructive and peaceful ends. They will also be entrusted with the responsibility of ensuring that the evil elements of the Nazi era do not re-emerge and exercise these powers to the detriment of Germany and of Europe.

The whole issue of denazification as it stands now on the eve of Germany's resumption of the status of a free nation may be simply stated. The occupying powers performed the major surgical operation to remove the evil of the Nazi régime from the German body. The patient must now bring into play his own recuperative powers.

The Office of the U.S. High Commissioner is, however, carrying out a broad program which in reality is an extension of the denazification policy in a positive field. This is the program of helping the Germans build a lasting democracy. In this connection, the difficulties encountered by former German denazification officials in their quest for employment should be noted. It is a situation which undoubtedly requires correction by a responsible and enlightened public opinion.

The success or failure of this effort rests, in the final analysis, on the Germans themselves. The regeneration of a people must come from within. There are in Germany today men and women of real stature, ability and courage who are devoting their energies to this task. There are such people in and outside the Government, in all walks of life. There is a free and democratic press. There are broadening contacts with the free world outside. There exists a deepening conviction among Germans everywhere that the interests of Germany will be best served not by the resurgence of a narrow and chauvinistic nationalism but by the close association of Germany with a free and integrated European community.

Source: John J. McCloy, "Present Status of Denazification," in Office of the U.S. High Commissioner for Germany, 5th *Quarterly Report on Germany*. October 1–December 31, 1950, pp. 46–55.

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