

**Ethics and Responsibility: During the Holocaust and  
for the Future**

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## I. Introduction

For one weekend during the fall semester of my second year of law school I took a one credit class entitled: Professional Ethics and The Holocaust. That class dramatically changed how I view my future professional role as an attorney in America. For as Mark Twain once said, “History does not repeat itself but it often rhymes.”<sup>1</sup>

Through the 1930s, Germany used politics, professionals, propaganda, and dehumanization, to systemically and gradually discriminate against Jews, until it eventually led to a genocide.<sup>2</sup> The Nazis relied on the systematic failure of everyday people to take responsibility or accountability for the part they were playing in the dehumanization of Jews and to turn a blind eye to their ethics.<sup>3</sup> As a citizen of planet earth, we all have a certain level of responsibility to one another, as our mothers say, “treat people the way you would want to be treated.” However, that level of responsibility is even further magnified when you work as a professional, specifically a lawyer. I would boldly proclaim that I believe every law student should have to take this class, as they do contracts or torts and be asked to face the reality of what can and has happened when those ethical and professional responsibilities are abandoned.

This reflection will examine the obligation young lawyers have to educate themselves and examine the horrific repercussions of surrendering professional ethics and personal responsibility. First it will review how the Nazis were able to seemingly eliminate people’s feeling of responsibility and ethics, and use that to their advantage in the systematic mass killings of Jews.<sup>4</sup> Second it will evaluate the responsibility of people living within a country conducting a

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<sup>1</sup> Joseph Campbell, Getting It Wrong: Debunking the Greatest Myths in American Journalism, 309 (2016) (noting that Mark Twain is falsely attributed to have said the cited quote, though there is no evidence to verify this assertion).

<sup>2</sup> Paula Jacobs, Lecture for Professional Ethics in the Holocaust (Oct. 24, 2020).

<sup>3</sup> Id.

<sup>4</sup> See discussion infra Part II.

genocide and people witnessing a genocide from another country, during and after the fact.<sup>5</sup>

Finally, it will discuss the responsibility we have to recognize a genocide before it occurs and to conduct our personal and professional lives in a moral and ethical way.<sup>6</sup>

## **II. The Slippery Slope: How Nazis were able to turn a democratic state into an authoritarian state.**

Future lawyers should examine the downfall of the Weimar and the rise of the Nazi power to understand how the surrendering of professional ethics and personal responsibility can lead to horrific repercussions. Turning a democratic nation into a dictatorship does not happen in one fell swoop. In Germany, it took nearly a decade from the 1930 elections, in which the Nazis and Communists made great political strides, to 1939 when World War II eventually broke out.<sup>7</sup> The Nazis were able to slowly evolve Germany into a dictatorship through politics, legalizing lawlessness, legitimizing their beliefs through well-respected professionals, propaganda, and a slow rise in threat to Jews.

### *A. Politics*

One of the most compelling things about Hitler as a dictator was that he gained power peacefully. He was voted into power by the Germans and through a democratic system. You must look at Germany's political state as a nation after World War I to understand how this happened.

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<sup>5</sup> See discussion *infra* Part III.

<sup>6</sup> See discussion *infra* Part IV.

<sup>7</sup> Paula Jacobs, Lecture for Professional Ethics in the Holocaust (Oct. 24, 2020).

On November 11, at 11 o'clock in 1918, World War I ended in an Armistice. Although neither side technically surrendered and there was a mutual agreement to end the fighting, it was the Germans who requested the Armistice and who had to agree to harsh terms, with a depleted army and little leverage left.<sup>8</sup> Before the War, Germany was considered a powerful nation. The terms of the Armistice left the Germans humiliated and economically destroyed.<sup>9</sup> In 1919 the Weimar Constitution was born, and the Germans installed democracy in Germany.<sup>10</sup> However, this democracy would be relatively short lived.

In 1929, the American stock market crashed. The Great Depression further exasperated Europe's fragile economy. The Nazis found themselves presented with a unique opportunity to gain power through unifying the German people. Although Nationalist Socialists never got a majority of the votes, Hitler was appointed as Chancellor on January 30, 1933, and famously shook hands with President Paul von Hindenburg in a plain black suit while bowing his head in respect to the President.<sup>11</sup> It is hard to look at the photograph of this moment without thinking, how could this man have ever seemed like a threat. After all, he is notably bowing to the democratic process that has given him power. Nevertheless, the consolidation of Nazi power and the downfall of democracy rapidly followed.<sup>12</sup>

On February 27, 1933, the Reichstag building caught fire and became the "canary in the political coal mine."<sup>13</sup> Hitler used conspiracy theories to selfishly play up the public's fears and

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<sup>8</sup> Patrick J. Kiger, Why World War I Ended With an Armistice Instead of a Surrender, **History** (Nov. 8, 2018), <https://www.history.com/news/world-war-i-armistice-germany-allies>.

<sup>9</sup> Id.

<sup>10</sup> Lorraine Boissoneault, The True Story of the Reichstag Fire and the Rise to Power, **Smithsonian Magazine** (Feb. 21, 2017), <https://www.smithsonianmag.com/history/true-story-reichstag-fire-and-nazis-rise-power-180962240/>.

<sup>11</sup> Paula Jacobs, Lecture for Professional Ethics in the Holocaust (Oct. 24, 2020).

<sup>12</sup> Id.

<sup>13</sup> Id.

blame the fire on the Communists.<sup>14</sup> Hitler claimed that this required a public state of emergency to be called. Not even 24 hours later, on February 28, 1933, President Paul von Hindenburg invoked Article 48, essentially enforcing martial law in Germany and eliminating due process of law.<sup>15</sup>

### *B. Legalizing Lawlessness*

The enforcement of Article 48 gave legal rights to the Nazis to implement new laws and not technically violate democratic laws, as the country was in a national emergency and had suspended due process of law.<sup>16</sup> It is through this reduction in the check on power that Hitler was able to round up ‘enemies of the state’ and hold them for indefinite periods.<sup>17</sup> In 1934, shortly after the death of President Paul von Hindenburg, Hitler became Reich Chancellor and Führer.<sup>18</sup> He then required that the oath taken by state officials pledging loyalty to the German Constitution to be altered so they would now pledge their allegiance to Hitler himself.<sup>19</sup> The new oath led to an apparent conflict of interest for Judicial professionals, who were also required to take an oath of allegiance to the German Constitution.<sup>20</sup> Eventually and most noticeably, the enforcement of Article 48 led to the enactment of the Nuremberg Laws that famously defined who a Jew was.<sup>21</sup>

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<sup>14</sup> Lorraine Boissoneault, [The True Story of the Reichstag Fire and the Rise to Power](https://www.smithsonianmag.com/history/true-story-reichstag-fire-and-nazis-rise-power-180962240/), **Smithsonian Magazine** (Feb. 21, 2017), <https://www.smithsonianmag.com/history/true-story-reichstag-fire-and-nazis-rise-power-180962240/> (quoting Adolf Hitler, “If this fire, as I believe, is the work of the Communists, then we must crush out this murderous pest with an iron fist.”).

<sup>15</sup> Paula Jacobs, Lecture for Professional Ethics in the Holocaust (Oct. 24, 2020).

<sup>16</sup> Lorraine Boissoneault, [The True Story of the Reichstag Fire and the Rise to Power](https://www.smithsonianmag.com/history/true-story-reichstag-fire-and-nazis-rise-power-180962240/), **Smithsonian Magazine** (Feb. 21, 2017), <https://www.smithsonianmag.com/history/true-story-reichstag-fire-and-nazis-rise-power-180962240/>.

<sup>17</sup> Paula Jacobs, Lecture for Professional Ethics in the Holocaust (Oct. 24, 2020).

<sup>18</sup> [Id.](#)

<sup>19</sup> United States Holocaust Memorial Museum, [Oaths of Loyalty for All State Officials](https://encyclopedia.ushmm.org/content/en/article/oaths-of-loyalty-for-all-state-officials), **Holocaust Encyclopedia** (last visited Nov. 19, 2020), <https://encyclopedia.ushmm.org/content/en/article/oaths-of-loyalty-for-all-state-officials>.

<sup>20</sup> Will Meineck, Lecture for Professional Ethics in the Holocaust (Oct. 25, 2020).

<sup>21</sup> [Id.](#)

The Nuremberg laws specifically exemplify the Nazis legalized lawlessness.<sup>22</sup> These laws were contrary to natural law and not based on precedent.<sup>23</sup> The Wiesbaden Municipal Court published a decision that read, “the laws which declared the property of Jews forfeit to the state would be contrary to natural law, and decrees based on them would already have been null and void at the time they were decreed.”<sup>24</sup>

The Nuremberg laws had one unifying purpose, and that was to distinguish between Germans and outsiders.<sup>25</sup> The first law took citizenship away from Jews and further removed them from society.<sup>26</sup> The second law made antisemitism a race or biological difference as opposed to a religion.<sup>27</sup> The third law legislated the definitions of mixed-race.<sup>28</sup>

*C. Legitimizing their beliefs through well respected Professionals*

The Nazis used scientists, doctors, lawyers, judges, police, and politicians to legitimize their antisemitic views.<sup>29</sup> Scientists and doctors were used to administer the T4 Program, which intended to remove people with disabilities from the general population.<sup>30</sup> People were reported to the program through their doctors and then removed from their homes and taken to a “hospital” to have tests run on them.<sup>31</sup> Victims were then either starved and left to die or actively killed.<sup>32</sup> The German government justified the T4 Program by arguing that precious government

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<sup>22</sup> Gustav Radbruch, Legalized Lawlessness and Extralegal Law (1946).

<sup>23</sup> Id.

<sup>24</sup> Id.

<sup>25</sup> Paula Jacobs, Lecture for Professional Ethics in the Holocaust (Oct. 24, 2020).

<sup>26</sup> Id.

<sup>27</sup> Id.

<sup>28</sup> Id.

<sup>29</sup> Paula Jacobs, Lecture for Professional Ethics in the Holocaust (Oct. 24, 2020).

<sup>30</sup> United States Holocaust Memorial Museum, Euthanasia Program, **Holocaust Encyclopedia** (last visited Nov. 19, 2020), <https://encyclopedia.ushmm.org/content/en/article/euthanasia-program>.

<sup>31</sup> Id.

<sup>32</sup> Id.

resources could not support people with disabilities, which were ultimately diluting the gene pool.<sup>33</sup> Scientists were also used to develop ‘The Science of Race,’ which, through eugenics, argued that particular genetics were more desirable than others.<sup>34</sup> It went as far as to use genetic traits to define who was considered to be Jewish, which, as we know, was not a race but a religion.<sup>35</sup>

Through the enactment and use of the Nuremberg laws, lawyers and judges legitimized the Nazi control.<sup>36</sup> Despite the laws not being founded in natural law, professionals still abided by the laws and enforced them through the Judiciary.<sup>37</sup> Gustav Radbruch aptly refers to this a legalizing lawlessness.<sup>38</sup> Furthermore, the immunity bestowed upon the police, SS, and SA, allowed for horrific human rights crimes to be conducted against the Jewish people without any legal repercussions.<sup>39</sup>

Politics was the most obvious profession that legitimized the Nazi regime.<sup>40</sup> Germany democratically voted in members of the Nazi party.<sup>41</sup> The fact that there was never a clash or blatant taking of power through force by the Nazis enabled them to take power and perpetuate their racist views under the guise of public opinion.<sup>42</sup>

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<sup>33</sup> Id.

<sup>34</sup> See Paula Jacobs, Lecture for Professional Ethics in the Holocaust (Oct. 24, 2020); United States Holocaust Memorial Museum, Nazi Racial Science, **Bibliographies** (last visited Nov. 19, 2020), <https://www.ushmm.org/collections/bibliography/nazi-racial-science>.

<sup>35</sup> United States Holocaust Memorial Museum, Nazi Racial Science, **Bibliographies** (last visited Nov. 19, 2020), <https://www.ushmm.org/collections/bibliography/nazi-racial-science>.

<sup>36</sup> Will Meineck, Lecture for Professional Ethics in the Holocaust (Oct. 25, 2020).

<sup>37</sup> Gustav Radbruch, Legalized Lawlessness and Extralegal Law (1946).

<sup>38</sup> Id.

<sup>39</sup> Will Meineck, Lecture for Professional Ethics in the Holocaust (Oct. 25, 2020).

<sup>40</sup> Paula Jacobs, Lecture for Professional Ethics in the Holocaust (Oct. 24, 2020).

<sup>41</sup> Id.

<sup>42</sup> Id.



#### D. *Propaganda*

Nazi propaganda used many techniques to effectively nationalize the country and paint Hitler as the savior of Germany.<sup>43</sup> They built the autobahn as a visual representation of how united the country was, both metaphorically and literally.<sup>44</sup> Most German homes did not have a radio, so the Nazis produced cheap, mini radios with two stations that played Nazi Propaganda.<sup>45</sup> The SS and SA created a sense of belonging, and similarly, the Nazi Youth Camps, also known as ‘Hitler Youth’ was created to unify children and brainwash them with Nazi ideals from a young age.<sup>46</sup> In 1933, Hitler Youth had 50,000 members.<sup>47</sup> However, the propaganda aimed at children started even earlier. The Poisonous Mushroom, a popular Kindergarten book, talked about how in a field of mushrooms, one can kill you.<sup>48</sup> The poisonous mushroom was a metaphor for Jews.<sup>49</sup>

The Nazis did everything to create a sense of belonging in a community and unify the German people under common ideals.<sup>50</sup> However, as people were united, others became outsiders, most notably the Jews.<sup>51</sup> The propaganda against the Jews did not initially persuade the German people.<sup>52</sup> In March of 1933, Nazis called for a five-day boycott of businesses owned

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<sup>43</sup> Id.

<sup>44</sup> Id.

<sup>45</sup> Id.

<sup>46</sup> Erin Blakemore, How the Hitler Youth Turned a Generation of Kids into Nazis, **History** (Aug. 29, 2018), <https://www.history.com/news/how-the-hitler-youth-turned-a-generation-of-kids-into-nazis>.

<sup>47</sup> Id.

<sup>48</sup> United States Holocaust Memorial Museum, Cover of an antisemitic schoolbook titled Der Giftpilz (The Poisonous Mushroom), **Propaganda** (last visited Nov. 19, 2020), <https://www.ushmm.org/propaganda/archive/cover-poisonous-mushroom/>.

<sup>49</sup> See United States Holocaust Memorial Museum, Cover of an antisemitic schoolbook titled Der Giftpilz (The Poisonous Mushroom), **Propaganda** (last visited Nov. 19, 2020), <https://www.ushmm.org/propaganda/archive/cover-poisonous-mushroom/> (showing the cover of the book, which features a mushroom with a Star of David).

<sup>50</sup> Paula Jacobs, Lecture for Professional Ethics in the Holocaust (Oct. 24, 2020).

<sup>51</sup> Id.

<sup>52</sup> Id.

by Jews.<sup>53</sup> It was not well received and the Nazis called it off after one day.<sup>54</sup> The Nazis' ability to recognize the push back from the German people was one of their greatest strengths.<sup>55</sup> The threat to Jews did not develop overnight but was a gradual distrust that ultimately led to, arguably, the most famous genocide in history.

*E. A Slow Rise in Threat*

Under the Weimar in 1924, the life of Jews varied dramatically depending on where they lived.<sup>56</sup> As Germany came into the age of enlightenment, while discrimination against Jews did occur, Jews were reasonably integrated into German society. Less than 1% of Germany's population of 60 million people were Jewish.<sup>57</sup> Furthermore, the rate of marriages between Jews and marriages between Jews and other faiths was the same.<sup>58</sup> In 1932 violence in the streets began to break out, and police tended to be more lenient to the political right than the political left.<sup>59</sup> After the Reichstag building burned down in February of 1933, and Hitler blamed it on the Communists, less than a month later, in March, the rally calling for a five-day boycott of Jewish owned businesses was called for.<sup>60</sup> While the boycott only lasted a day before being called off,

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<sup>53</sup> See generally Paula Jacobs, Lecture for Professional Ethics in the Holocaust (Oct. 24, 2020); United States Holocaust Memorial Museum, [Timeline of Events, Learn About The Holocaust](https://www.ushmm.org/learn/timeline-of-events/1933-1938/anti-jewish-boycott) (last visited Nov. 19, 2020), <https://www.ushmm.org/learn/timeline-of-events/1933-1938/anti-jewish-boycott>.

<sup>54</sup> Id.

<sup>55</sup> Paula Jacobs, Lecture for Professional Ethics in the Holocaust (Oct. 24, 2020).

<sup>56</sup> Id.

<sup>57</sup> Id.

<sup>58</sup> Id.

<sup>59</sup> Id.

<sup>60</sup> See generally Paula Jacobs, Lecture for Professional Ethics in the Holocaust (Oct. 24, 2020); United States Holocaust Memorial Museum, [Timeline of Events, Learn About The Holocaust](https://www.ushmm.org/learn/timeline-of-events/1933-1938/anti-jewish-boycott) (last visited Nov. 19, 2020), <https://www.ushmm.org/learn/timeline-of-events/1933-1938/anti-jewish-boycott>; Lorraine Boissoneault, [The True Story of the Reichstag Fire and the Rise to Power, Smithsonian Magazine](https://www.smithsonianmag.com/history/true-story-reichstag-fire-and-nazis-rise-power-180962240/) (Feb. 21, 2017), <https://www.smithsonianmag.com/history/true-story-reichstag-fire-and-nazis-rise-power-180962240/>.

there was considerable damage to Jewish businesses, and mass impunity was given to those who had caused the damage.<sup>61</sup>

The threat to Jews only intensified from thereon. Fraternities and Professors organized book burnings of Jewish books and books promoting what the Nazis believed to be the wrong ideals.<sup>62</sup> The authors targeted included Hemingway, Freud, Einstein, and Mark Twain. In 1935, the Nuremberg Laws, which distinguished Jews from other Germans, were enacted.<sup>63</sup> The Laws began by removing German citizenship from Jews and then advanced to legislating the definition of a Jew.<sup>64</sup> However, the threat to Jewish lives first became glaringly evident on the night of November 9, 1938.<sup>65</sup> The ‘Night of Broken Glass’ as it is commonly referred to in America or ‘Kristallnacht’ as it is called in Germany, was a pogrom.<sup>66</sup> German officials justified the violence as a response to the assassination of Ernst vom Rath (a German diplomat).<sup>67</sup> However, the violence was a blatant attack on Jews; Synagogues were set alight, Jewish businesses attacked, Jews themselves brazenly murdered in the streets.<sup>68</sup> All the while, German authorities, and firefighters watched on as violence was conducted against Jews. Authorities only intervened when a German building or person was affected.<sup>69</sup> Following Kristallnacht, approximately

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<sup>61</sup> Lorraine Boissoneault, [The True Story of the Reichstag Fire and the Rise to Power](https://www.smithsonianmag.com/history/true-story-reichstag-fire-and-nazis-rise-power-180962240/), **Smithsonian Magazine** (Feb. 21, 2017), <https://www.smithsonianmag.com/history/true-story-reichstag-fire-and-nazis-rise-power-180962240/>.

<sup>62</sup> United States Holocaust Memorial Museum, [Book Burnings](https://encyclopedia.ushmm.org/content/en/article/book-burning), **Holocaust Encyclopedia** (last visited Nov. 19, 2020), <https://encyclopedia.ushmm.org/content/en/article/book-burning>.

<sup>63</sup> [Id.](#)

<sup>64</sup> Paula Jacobs, Lecture for Professional Ethics in the Holocaust (Oct. 24, 2020).

<sup>65</sup> United States Holocaust Memorial Museum, [Kristallnacht](https://encyclopedia.ushmm.org/content/en/article/kristallnacht), **Holocaust Encyclopedia** (last visited Nov. 19, 2020), <https://encyclopedia.ushmm.org/content/en/article/kristallnacht>.

<sup>66</sup> [Id.](#)

<sup>67</sup> [Id.](#)

<sup>68</sup> [Id.](#)

<sup>69</sup> [Id.](#)

30,000 Jewish men were found and forcibly sent to concentration camps.<sup>70</sup> The message in Germany now was that Jewish lives were being persecuted and in danger of physical harm.

In 1939 the second World War began with Germany invading Poland. The Germans realized early that there is a much higher Jewish population in Poland and that removing them from general society would mean physically ostracizing them.<sup>71</sup> They created ghettos and moved the Jewish population to them.<sup>72</sup> The ghettos were cramped, dirty, illness ran rampant, and forced labor occurred. Under the Warsaw ghetto, milk cans were buried as time capsules and provided historians with a fuller picture of the horrors endured by the victims.<sup>73</sup> Not only did the ghettos dehumanize the Jewish people, but they also made it so general civilians could “ignore” the way Jews were being treated.<sup>74</sup> By removing Jews from society, the general German population no longer saw their children at school with Jewish children, had Jewish neighbors, or bought from Jewish shops.

In 1941, Hitler attempted to invade the Soviet Union in a three-pronged attack.<sup>75</sup> This was a massive miscalculation on Hitler’s part and is commonly regarded to be the beginning of the end of the Nazis’ reign of terror.<sup>76</sup> As Nazi armies moved east, killing squads followed behind and killed Jews hiding in the cities after the armies left.<sup>77</sup> This led to many mass graves of murdered men, women, and children. In a mass grave outside of Kiev 33,000 bodies were

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<sup>70</sup> See Paula Jacobs, Lecture for Professional Ethics in the Holocaust (Oct. 24, 2020); United States Holocaust Memorial Museum, [Kristallnacht](https://encyclopedia.ushmm.org/content/en/article/kristallnacht), **Holocaust Encyclopedia** (last visited Nov. 19, 2020), <https://encyclopedia.ushmm.org/content/en/article/kristallnacht>.

<sup>71</sup> See Paula Jacobs, Lecture for Professional Ethics in the Holocaust (Oct. 24, 2020).

<sup>72</sup> Id.

<sup>73</sup> See generally Paula Jacobs, Lecture for Professional Ethics in the Holocaust (Oct. 24, 2020); United States Holocaust Memorial Museum, [One of the three milk cans used by Warsaw ghetto historian Emanuel Ringelblum to store and preserve the secret “Oneg Shabbat” ghetto archives](https://collections.ushmm.org/search/catalog/pa1091138), **Collections** (last visited Nov. 19, 2020), <https://collections.ushmm.org/search/catalog/pa1091138>.

<sup>74</sup> Paula Jacobs, Lecture for Professional Ethics in the Holocaust (Oct. 24, 2020).

<sup>75</sup> Id.

<sup>76</sup> Id.

<sup>77</sup> Id.

found.<sup>78</sup> From 1942-1944 mass deportations occurred, and men, women, and children were moved to concentration camps.<sup>79</sup> At the concentration camps, people were either murdered, starved, or forced into labor.<sup>80</sup>

The gradual increase in violence against Jewish people was one of the Nazi's most dangerous weapons. The Nazis were able to turn a democratically appointed man into a dictator who began a World War and committed a genocide. The slippery slope is more drastic and dangerous than you could ever imagine.

### **III. Responsibility During and After a Genocide**

Young lawyers must examine the ways in which humans have historically reacted to genocides to better understand the dangers of abandoning their ethics and personal responsibilities. Genocides rely on many people doing morally reprehensible things simultaneously, and that people become cogs in a machine. So how do you hold an entire machine, an entire system, legally accountable? It is nearly impossible to prosecute an entire nation of individuals for each of their roles in a genocide.<sup>81</sup> Much like Tort law, the question becomes, how far removed must you be from the atrocity to avoid liability? The Nuremberg lawyers were faced with this very question.

It is easy, and dare I say naïve, to argue that every person who did even the slightest thing that assisted the Nazis should be held legally accountable for their role in the Holocaust. While in a perfect world, this would happen, in a world made up of humans with human flaws, who are slaves to the pressures of society, it is easy to see how a genocide might occur. I must stress that

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<sup>78</sup> Id.

<sup>79</sup> Id.

<sup>80</sup> Id.

<sup>81</sup> Hannah Arendt, Responsibility and Judgment 1, 30-32 (Jerome Kohn 2003).

I do not wish to purge and cleanse the souls of people who assisted in the mass murder of many Jewish men, women, and children. However, I think it is important to examine the facts and try to dissect how this occurred so that future lawyers can best avoid atrocities like these from ever occurring again.

*A. When you live in the country responsible for the genocide - Germany*

In *Responsibility and Judgement*, Hannah Arendt discusses how people react to a totalitarian government and the options people have when faced with a government they do not wish to live under or agree with.<sup>82</sup> I would argue there are four distinct ways in which citizens can react when they live in a country responsible for a genocide. Citizens can 1) withdraw from public life, 2) actively and vocally speak out against the government, 3) comply, or 4) attempt to dismantle the government from inside the system.

1. Withdraw from Public Life

Hannah Arendt discusses how this option is one of the only ways to escape full legal liability. In a totalitarian society, every aspect of life is infected with the ideology it perpetuates.<sup>83</sup> To wash your hands of any moral responsibility, one would have to completely remove themselves from society.<sup>84</sup> Benefiting, in any way, would be a form of compliance in a totalitarian society.<sup>85</sup> This very point makes this option unrealistic, or at best, only an option for wealthy citizens. How would a family economically support themselves if they completely removed themselves from public life? They would be unable to work within, buy goods from, or

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<sup>82</sup> Hannah Arendt, *Responsibility and Judgment* (Jerome Kohn 2003).

<sup>83</sup> Hannah Arendt, *Responsibility and Judgment* 1, 33 (Jerome Kohn 2003).

<sup>84</sup> Hannah Arendt, *Responsibility and Judgment* 1, 34 (Jerome Kohn 2003).

<sup>85</sup> *Id.*

seek medical help from, the society. The only option then becomes emigrating to another country. Rebecca Erbelding spoke of a particular case study that exemplifies this option. A German Jewish girl married an American man and moved to New York City.<sup>86</sup> Her father came to New York to visit her and then worked from America to help his wife emigrate to America.<sup>87</sup> The option available to this family relied entirely on their daughter's marriage to an American. This was not an option for every family living in Germany who did not wish to comply with the Nazi government.

While withdrawing from a totalitarian system in its entirety purifies your soul, it is not the moral high ground it initially appears to be. People who refused to pick the lesser of two evil have been criticized and called 'germ-proof moralists' who avoid moral responsibility by removing themselves from the conundrum.<sup>88</sup> I suggest that the witnessing of evil and choosing not to partake is not admirable at all. It is, in fact, cowardly. A modern-day analogy would be citizens who contend that the American political system is broken and, as a response, refuse to partake in voting. While theoretically, one should not partake in a system they believe to be morally corrupt; silence is unlikely to make a difference unless everyone was to withdraw from public life at the exact same moment. Arguably what this option lacks is organization.

## 2. Actively and Vocally Speak Out Against the Government

While actively and vocally speaking out against the government is the bravest option, it is usually the least picked option. Unlike withdrawing from public life, this option joins the

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<sup>86</sup> Rebecca Erbelding, Lecture for Professional Ethics in the Holocaust (Oct. 25, 2020).

<sup>87</sup> Id.

<sup>88</sup> Hannah Arendt, Responsibility and Judgment 1, 36 (Jerome Kohn 2003).

removal of legal liability and compliance with action. For this reason, it has a better chance of working.

As many social psychology experiments have shown us, it is easier to walk with a herd than alone. In a famous experiment named ‘Face the Rear,’ Solomon Asch, a scholar and social psychologist, conducted an experiment in which an unsuspecting person would enter an elevator with others and find that all the other passengers would face the back wall.<sup>89</sup> Slowly the unsuspecting person would turn to the back wall and conform with the group.<sup>90</sup> However, James Surowiecki highlighted that the famed experiment also exemplified how quickly a person could be ‘snapped out’ of the pressure to conform if just one other person displayed confusion or defied the crowd and validated the unsuspecting participant’s views. ‘Face the Rear’, demonstrated how just one person defying authority could validate the discontent of others and permit them to defy authority as well.<sup>91</sup>

In history, we have often witnessed massive socialist movements that have caused political evolution for the better. The Suffragettes marched for the right to vote and, through public pressure, eventually got the 19th Amendment enacted.<sup>92</sup> Martin Luther King and many other civil rights activists mobilized the African American community in America and assisted in abolishing segregation.<sup>93</sup> Gandhi used nonviolent resistance to gain India’s independence from British rule successfully.<sup>94</sup> However, acts of defiance take an unprecedented amount of bravery.

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<sup>89</sup> Maria Popova, [Elevator Groupthink: An Ingenious 1962 Psychology Experiment in Conformity](https://www.brainpickings.org/2012/01/13/asch-elevator-experiment/), **Brain Pickings** (last visited Nov. 19, 2020), <https://www.brainpickings.org/2012/01/13/asch-elevator-experiment/>.

<sup>90</sup> [Id.](#)

<sup>91</sup> [Id.](#)

<sup>92</sup> History.com Editors, [Women’s Suffrage](https://www.history.com/topics/womens-history/the-fight-for-womens-suffrage), **History** (Aug. 3, 2020), <https://www.history.com/topics/womens-history/the-fight-for-womens-suffrage>.

<sup>93</sup> History.com Editors, [Martin Luther King, Jr.](https://www.history.com/topics/black-history/martin-luther-king-jr), **History** (Feb. 21, 2020), <https://www.history.com/topics/black-history/martin-luther-king-jr>.

<sup>94</sup> History.com Editors, [Mahatma Gandhi](https://www.history.com/topics/india/mahatma-gandhi), **History** (June 6, 2019), <https://www.history.com/topics/india/mahatma-gandhi>.



The obvious danger in speaking out against a government is retaliation. However, as many of the defense attorneys at Nuremberg discovered, this was not empirical. Not one defense attorney could find an example of a person suffering consequences for refusing to kill unarmed civilians.<sup>95</sup> Arguably this may have been because people who did not comply were quickly killed and removed along with any evidence. However, it is hard to believe not one defense attorney could find one example of this happening. It seems that the fear of retribution was more a rumor than a reality, which again could have been as scary as actually knowing what form retaliation would take.

Furthermore, defying the Nazis and speaking out may well have worked. As we know, in March of 1933, there was a rally held and a five-day boycott of Jewish businesses proposed, which was ultimately unsuccessful and only lasted a day due to the German population's negative perception of the boycott.<sup>96</sup> The Nazis were very conscious of public opinion and knew their power initially relied on positive public opinion.<sup>97</sup> However, this did not happen, and many people complied with the Nazi regime.

### 3. Comply

In hindsight, we can tell that many German citizens chose this option during the Holocaust. Why would they all choose to comply? Are they simply all bad people? No. Some of

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<sup>95</sup> Christopher R. Browning, Revisiting the Holocaust Perpetrators. Why Did They Kill, The Raul Hilberg Mem'l Lecture 1, 4 (2011), [https://bhecinfo.org/wp-content/uploads/Revisiting-the-Holocaust-Perpetrators\\_Why-Did-They-Kill.pdf](https://bhecinfo.org/wp-content/uploads/Revisiting-the-Holocaust-Perpetrators_Why-Did-They-Kill.pdf).

<sup>96</sup> See generally Paula Jacobs, Lecture for Professional Ethics in the Holocaust (Oct. 24, 2020); United States Holocaust Memorial Museum, Timeline of Events, Learn About The Holocaust (last visited Nov. 19, 2020), <https://www.ushmm.org/learn/timeline-of-events/1933-1938/anti-jewish-boycott>; Lorraine Boissoneault, The True Story of the Reichstag Fire and the Rise to Power, **Smithsonian Magazine** (Feb. 21, 2017), <https://www.smithsonianmag.com/history/true-story-reichstag-fire-and-nazis-rise-power-180962240/>.

<sup>97</sup> Paula Jacobs, Lecture for Professional Ethics in the Holocaust (Oct. 24, 2020).

them were inherently evil, but not all of them. Social psychology explains how a person could be pressured into complying.

In Stanley Milgram Obedience to Authority Experiment, a psychologist at Yale University tested human obedience using a fake system of electric shocks on a fake victim.<sup>98</sup> Volunteers were asked to assist a scientist in a learning experiment, in which the volunteer would be instructed to apply shocks to a victim (that the volunteer could not see) when the victim answered a question wrong.<sup>99</sup> The shocks ranged in severity and were labeled XXX at the most severe end of the scale.<sup>100</sup> Under instruction from someone they believed to be an authority, many people inflicted greater shocks than even they could have predicted they would. The experiment proved that people could be forced to do things they never imagined when a “legitimate authority” instructs them to do so.<sup>101</sup>

In the Stanford Prison Experiment, Philip Zimbardo divided volunteers into two groups, prisoners and guards, and placed them in a simulated prison.<sup>102</sup> It took little time for the guards to start treating the prisoners in dehumanizing and humiliating ways.<sup>103</sup> The treatment of the prisoners got so out of hand that the experiment had to be called off early.<sup>104</sup>

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<sup>98</sup> Christopher R. Browning, Revisiting the Holocaust Perpetrators. Why Did They Kill, The Raul Hilberg Mem’l Lecture 1, 6 (2011), [https://bheinfo.org/wp-content/uploads/Revisiting-the-Holocaust-Perpetrators\\_Why-Did-They-Kill.pdf](https://bheinfo.org/wp-content/uploads/Revisiting-the-Holocaust-Perpetrators_Why-Did-They-Kill.pdf).

<sup>99</sup> Id.

<sup>100</sup> Id.

<sup>101</sup> Id.

<sup>102</sup> Craig Haney et. al., Interpersonal Dynamics in a Simulated Prison, Int’l J. of Criminology and Penology, 1, 69-97 (1973), <http://pdf.prisonexp.org/ijcp1973.pdf>; Christopher R. Browning, Revisiting the Holocaust Perpetrators. Why Did They Kill, The Raul Hilberg Mem’l Lecture 1, 7 (2011), [https://bheinfo.org/wp-content/uploads/Revisiting-the-Holocaust-Perpetrators\\_Why-Did-They-Kill.pdf](https://bheinfo.org/wp-content/uploads/Revisiting-the-Holocaust-Perpetrators_Why-Did-They-Kill.pdf).

<sup>103</sup> Id.

<sup>104</sup> Id.

Christopher Browning used four different explanations as to why ordinary men kill, coercion/duress, authoritarian personality, cultural explanation, and social psychology.<sup>105</sup> However, even Browning quite quickly dispenses of the first three explanations and focuses on social psychology.<sup>106</sup> Leonard Newman discusses the idea of “cognitive dissonance,” which emerges when people have to reconcile their actions with their morals.<sup>107</sup> He states that when peoples’ actions are not complying with their internal beliefs and morals, it is easiest to simply adapt our internal beliefs and that they are not as closely held as we believe them to be.<sup>108</sup> As David Luban discusses in “Integrity: Its Causes and Cures,” it is much harder to hold steadfast to your beliefs because it requires you to do things you may not want to do, for example, quit your job, or disagree with people in power.<sup>109</sup>

Many people critique social psychologist views on compliance, most notably making the argument that if most people did not honestly believe in the ideals of the Nazis, then a majority of disbelievers would have stood up.<sup>110</sup> This phenomenon has been explained by “pluralistic ignorance,” where people operate under a misconception that the majority believe in a particular ideal.<sup>111</sup> Again, some critics argue that using social psychology to explain compliance in the Holocaust is morally dubious and relieves the perpetrators of guilt by offering an explanation for

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<sup>105</sup> Christopher R. Browning, Revisiting the Holocaust Perpetrators. Why Did They Kill, The Raul Hilberg Mem’l Lecture, (2011), [https://bhecinfo.org/wp-content/uploads/Revisiting-the-Holocaust-Perpetrators\\_Why-Did-They-Kill.pdf](https://bhecinfo.org/wp-content/uploads/Revisiting-the-Holocaust-Perpetrators_Why-Did-They-Kill.pdf).

<sup>106</sup> Christopher R. Browning, Revisiting the Holocaust Perpetrators. Why Did They Kill, The Raul Hilberg Mem’l Lecture, 1, 6 (2011), [https://bhecinfo.org/wp-content/uploads/Revisiting-the-Holocaust-Perpetrators\\_Why-Did-They-Kill.pdf](https://bhecinfo.org/wp-content/uploads/Revisiting-the-Holocaust-Perpetrators_Why-Did-They-Kill.pdf).

<sup>107</sup> Leonard Newman, What is a ‘Social-Psychological’ Account of Perpetrator Behavior, 1, 60-61 (2016), [https://www.researchgate.net/publication/288741641\\_What\\_Is\\_a\\_Social-Psychological\\_Account\\_of\\_Perpetrator\\_Behavior\\_The\\_Person\\_Versus\\_the\\_Situation\\_in\\_Goldhagen%27s\\_Hitler%27s\\_Willing\\_Executioners](https://www.researchgate.net/publication/288741641_What_Is_a_Social-Psychological_Account_of_Perpetrator_Behavior_The_Person_Versus_the_Situation_in_Goldhagen%27s_Hitler%27s_Willing_Executioners).

<sup>108</sup> *Id.*

<sup>109</sup> David Luban, Integrity: Its Causes and Cures, 72 *Fordham L. Rev.* 279, 279-280 (2003).

<sup>110</sup> Christopher R. Browning, Revisiting the Holocaust Perpetrators. Why Did They Kill, The Raul Hilberg Mem’l Lecture, 1, 9 (2011), [https://bhecinfo.org/wp-content/uploads/Revisiting-the-Holocaust-Perpetrators\\_Why-Did-They-Kill.pdf](https://bhecinfo.org/wp-content/uploads/Revisiting-the-Holocaust-Perpetrators_Why-Did-They-Kill.pdf).

<sup>111</sup> *Id.*

which they cannot be held responsible.<sup>112</sup> While this may be true it is still vitally important for future lawyers to understand, when examining how genocides can occur.

#### 4. Attempt to Dismantle the Government from the Inside the System

This option is the most divisive. While in my mind, it seems the most realistic choice, it has also been widely criticized. After the War, many people used the idea that they had stayed quiet and continued to work within the Nazi regime to help Jews from a place of power as a defense. Two notable case studies exemplify the complex issues this defense raises.

The first is Hans Calmeyer, a legal advisor to the head of the civil branch of the occupation authority in Holland.<sup>113</sup> In January 1941, Jews who resided in Holland were ordered to fill out registration forms, which were then marked with a letter “J” and later used to send deportation orders.<sup>114</sup> Calmeyer’s position required him to help with the organization and completion of the registration forms.<sup>115</sup> However, in five distinct ways, Calmeyer used his position to assist some of the Jews. Firstly, in cases where forms were incomplete, Calmeyer was supposed to resolve the empty fields against the applicant.<sup>116</sup> Instead, Calmeyer would request an affidavit from applicants who would include a sworn statement from a local official in their hometown, testifying that the applicant did not have a Jewish grandparent/was fully Jewish and that the explanation was credible.<sup>117</sup> Secondly, if someone wished to revise their registration, Calmeyer would allow it so long as the person could show “persuasive contrary evidence” to the

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<sup>112</sup> *Id.*

<sup>113</sup> Hans Calmeyer: “Righteous Among the Nations?” Or Cog in a Machine?, Fellowship at Aushwitz for the Study of Professional Ethics, 1, 2 (last visited Nov. 19, 2020).

<sup>114</sup> Hans Calmeyer: “Righteous Among the Nations?” Or Cog in a Machine?, Fellowship at Aushwitz for the Study of Professional Ethics 1, 3 (last visited Nov. 19, 2020).

<sup>115</sup> *Id.*

<sup>116</sup> Hans Calmeyer: “Righteous Among the Nations?” Or Cog in a Machine?, Fellowship at Aushwitz for the Study of Professional Ethics 1, 4 (last visited Nov. 19, 2020).

<sup>117</sup> *Id.*

statements they had made initially in filling out the form.<sup>118</sup> Calmeyer was strongly criticized by the SS but insisted that membership fees to a Jewish community were not ironclad proof that someone belonged to the Jewish religion and instead found it to be questionable evidence.<sup>119</sup> Thirdly, and maybe most admirably, in cases that involved ‘Minor Mischlings’ (children), Calmeyer refused to apply German law and instead would apply Dutch, stating that underaged people lacked the capacity to be a part of the Jewish community on their own.<sup>120</sup> Fourthly, in cases where Jews alleged that one of their parents had had an affair with an Aryan and that they, therefore, had at maximum two Jewish grandparents, Calmeyer was lenient.<sup>121</sup> He even notably told Camilla Spira what to say so she could allege she was the product of an affair. Finally, in cases where deportation was unavoidable, Calmeyer’s office reached out to applicants directly before telling the SS.<sup>122</sup> This head start gave people time to go underground and avoid capture. Calmeyer’s biographer, Mathias Middlberg stated that Calmeyer “deserved remembering not because he was superman but because he remained human in a time where that alone was an achievement.”<sup>123</sup>

Bernhard Loesener, on the other hand, worked in the Third Reich’s Ministry of the Interior as the Jewish expert, working on answering the ‘Jewish Question.’<sup>124</sup> In Loesener’s memoirs, he alleges that he ended up working on this project by complete accident but then used

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<sup>118</sup> Hans Calmeyer: “Righteous Among the Nations?” Or Cog in a Machine?, **Fellowship at Aushwitz for the Study of Professional Ethics** 1, 5 (last visited Nov. 19, 2020).

<sup>119</sup> Hans Calmeyer: “Righteous Among the Nations?” Or Cog in a Machine?, **Fellowship at Aushwitz for the Study of Professional Ethics** 1, 6 (last visited Nov. 19, 2020).

<sup>120</sup> *Id.*

<sup>121</sup> *Id.*

<sup>122</sup> Hans Calmeyer: “Righteous Among the Nations?” Or Cog in a Machine?, **Fellowship at Aushwitz for the Study of Professional Ethics** 1, 7 (last visited Nov. 19, 2020).

<sup>123</sup> Hans Calmeyer: “Righteous Among the Nations?” Or Cog in a Machine?, **Fellowship at Aushwitz for the Study of Professional Ethics** 1, 8 (last visited Nov. 19, 2020).

<sup>124</sup> Bernhard Loesener, Legislating the Holocaust: The Bernhard Loesener Memoirs and Supporting Documents 3, 3-4 (Karl Schleunes 2001).

his position to try and positively drafts of law that were to be used to determine who was Jewish.<sup>125</sup> He contends that in drafting the laws presented at the Reichstag sessions, he wrote four but wanted the least severe one to be chosen and that he was never in favor of the “one drop of Jewish blood” principle.<sup>126</sup> However, he later explains why he was never in favor of that principle, revealing that it was not so much a moral issue he had with the principle but rather that it would badly affect the economy and amount of people eligible to join the army.<sup>127</sup> In the end, Loesener contends that he left the Nazi Regime after he was made aware of the mass-murdering of Jews that was occurring in 1941.<sup>128</sup>

In class, we discussed why these two case studies are different. The primary difference is Loesener’s case study is a memoir and, therefore, should be viewed in a more critical light, whereas a biographer wrote Calmeyer’s story. Secondly, Loesener does not seem adequately repulsed by the work he was doing. If anything, he was responsible for defining a Jew and then dared to assert that he only became aware of the mass killings in 1941. Alternatively, Calmeyer, in some cases, refused to implement German law and took active and brave steps to assist people, even going as far as to warn people when he could help them no more. But do either of these men deserve to be remembered as a hero or even in a positive light? After all, they were responsible for assisting the Nazis.

The beauty of hindsight is that we can assert what we would do if we had lived in this time with these problems and then, with no fear of repercussions, proudly proclaim that we would have done this differently. To me, proclaiming you would not have kowtowed to the fear

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<sup>125</sup> Bernhard Loesener, Legislating the Holocaust: The Bernhard Loesener Memoirs and Supporting Documents 3, 12-13 (Karl Schleunes 2001).

<sup>126</sup> Id.

<sup>127</sup> Bernhard Loesener, Legislating the Holocaust: The Bernhard Loesener Memoirs and Supporting Documents 3, 9 (Karl Schleunes 2001).

<sup>128</sup> Bernhard Loesener, Legislating the Holocaust: The Bernhard Loesener Memoirs and Supporting Documents 3, 99 (Karl Schleunes 2001).

is ludicrous. Before class, we were asked to put ourselves in the shoes of lawyers practicing under German occupation and write a memorandum to our boss regarding the race of two people. Some of my peers were very passionate about the fact that they would never partake in such a horrendous situation, and I applaud them for the strength of their moral convictions. I and others took the approach to complete the assignment but use either the law or persuasion to convince our boss not to designate these people as Jewish. One of my peers was particularly original and attempted to persuade the boss not to partake in the new laws through a religious argument.

There is no right answer. There were undoubtedly people like Eichmann who asserted they had merely been a “small cog” in a big machine when they certainly were not working within the machine to help dismantle it.<sup>129</sup> In fact, Hannah Arendt asserts that this defense was not possible during the Nuremberg trial as there was never even an attempt to overthrow the Hitler regime.<sup>130</sup> Nevertheless, that does not mean that some people, like Calmeyer, did not do what they could to remain “human” and help those they felt they could.

*B. When you live in a country witnessing a genocide – America*

While those who live in a country whose government is actively committing genocide have a responsibility for the way they react and their actions, there is also a level of responsibility owed by citizens in other countries who are witnessing a genocide. In the 1930s, many countries witnessed the human rights atrocities, and blatant massacre of the Holocaust but not every country reacted in the same way. America’s reaction is particularly important because they did not necessarily need or want to get involved.

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<sup>129</sup> Hannah Arendt, *Responsibility and Judgment* 1, 31-34 (Jerome Kohn 2003).

<sup>130</sup> Hannah Arendt, *Responsibility and Judgment* 1, 34 (Jerome Kohn 2003).

## 1. What America Did

Although America was part of World War I for one year, after the war America became extremely isolationist. The Spanish Flu killed 600,000 Americans from 1918-1920, in the mid-1920s, the KKK resurfaced, and 10% of Americans were card carriers, and then in 1929, the Great Depression plummeted America's economy.<sup>131</sup> However, regarding the Holocaust, America's enactment of the 1924 Johnson Reed Immigration Act was the most significant moment of the 1920s.

The Johnson Reed Immigration Act ended the traditional idea of immigrating to America by landing on Ellis Island and being welcomed with open arms.<sup>132</sup> The Act established a 150,000 immigrant a year cap on immigration.<sup>133</sup> It further regulated who was immigrating to America by placing percentage caps on individual continents and a cap on the number of visas allocated to individual countries.<sup>134</sup> The eugenics motive becomes apparent when you look at the percentages allowed from each continent. 85.6% could come from Northern and Western Europe, 12.4% could come from Southern and Eastern Europe, and 1.8% could come from Asia/Pacific/Africa/Pacific Islands so long as they were Caucasian or Black, and not Asian.<sup>135</sup> The racist and xenophobic motivation of the Johnson Reed Immigration Act enactment could not have been more apparent. The Act further required that immigrants had a visa before they arrived in America and provided no refugees' provisions.<sup>136</sup> After the Great Depression hit in 1929,

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<sup>131</sup> Rebecca Erbelding, Lecture for Professional Ethics in the Holocaust (Oct. 25, 2020).

<sup>132</sup> *Id.*

<sup>133</sup> *Id.*

<sup>134</sup> *Id.*

<sup>135</sup> United States Holocaust Memorial Museum, How Many Refugees Came to the United States from 1933-1945, Americans and the Holocaust (last visited Nov. 19, 2020), <https://exhibitions.ushmm.org/americans-and-the-holocaust/how-many-refugees-came-to-the-united-states-from-1933-1945>.

<sup>136</sup> Rebecca Erbelding, Lecture for Professional Ethics in the Holocaust (Oct. 25, 2020).



President Hoover further restricted immigration by remanding the 1917 provision that required immigrants not to burden the state.<sup>137</sup>

When the Second World War broke out, Americans were desperate to stay out of the war.<sup>138</sup> When President Roosevelt was sworn into office in 1933, it was just four years into the Great Depression.<sup>139</sup> He famously said, “The only thing we have to fear is fear itself.”<sup>140</sup> While Americans supported the President, they were still very concerned for the future.<sup>141</sup>

As millions protested unemployment in America, they also protested the antisemitism they were witnessing in Germany.<sup>142</sup> In April of 1933, in Dallas, Texas, Americans protested antisemitic advertisements in Germany.<sup>143</sup> On May 10, 1933, Americans protested the book burnings that were taking place in Germany.<sup>144</sup> However, there is an evident discontent in America when citizens were polled and asked if they would want to get involved in the war, the national support was low, and most Americans still wished to stay out of the war.<sup>145</sup> Furthermore, eugenics had gained popularity, believed to be based in science; the anti-immigration lobbyists were using it to their utmost advantage.<sup>146</sup>

In 1933, Adolf Hitler was appointed as Chancellor, and of the 25,957 visa quota for people born in Germany, only 1,241 visas were distributed.<sup>147</sup> From 1934-1937 there was an

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<sup>137</sup> *Id.*

<sup>138</sup> *Id.*

<sup>139</sup> History.com Editors, FDR Inaugurated, **History** (Nov. 24, 2009) <https://www.history.com/this-day-in-history/fdr-inaugurated>.

<sup>140</sup> History.com Editors, FDR Inaugurated, **History** (Nov. 24, 2009) <https://www.history.com/this-day-in-history/fdr-inaugurated> (noting FDR’s famous quote).

<sup>141</sup> Rebecca Erbelding, Lecture for Professional Ethics in the Holocaust (Oct. 25, 2020).

<sup>142</sup> *Id.*

<sup>143</sup> *Id.*

<sup>144</sup> *Id.*

<sup>145</sup> *Id.*

<sup>146</sup> *Id.*

<sup>147</sup> United States Holocaust Memorial Museum, How Many Refugees Came to the United States from 1933-1945, Americans and the Holocaust (last visited Nov. 19, 2020), <https://exhibitions.ushmm.org/americans-and-the-holocaust/how-many-refugees-came-to-the-united-states-from-1933-1945>.

average of 88,714 Germans on the waiting list for a visa, and only approximately 7,053 visas of the 25,957 quota, were distributed.<sup>148</sup> In 1938, President Roosevelt combined the German and Austrian quotas, so there were 27,370 visas available for citizens of both former countries, now all considered German.<sup>149</sup> Again, the USA State Department did not distribute all available visas, and 7,818 visas went unused despite 139,163 Germans being held on the waiting list.<sup>150</sup> Finally, in 1939 the US State Department filled the quota of German visas.<sup>151</sup> Almost again, in 1940, only 15 visas for the German quota went unused (this is deemed to be an administrative error).<sup>152</sup> However, in 1939 there were still 240,748 Germans on the waiting list, and that number grew higher still in 1940 to 301,935.<sup>153</sup>

While America did technically offer immigration, the process was not easy, especially for people who were being persecuted and were living in great fear and hardship. To immigrate to America, an applicant must complete seven steps.<sup>154</sup> First, an applicant would have to register for a waiting list.<sup>155</sup> While on the waiting list, an applicant would then have to gather the following documents, (1) visa application, (2) birth certificate, (3) tax document, (4) medical clearance, (5) police certificate, (6) military discharge (7) inventory list (used by Germans to impose taxes on those immigrating).<sup>156</sup> Immigrants would then have to obtain an American Financial Sponsor to

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<sup>148</sup> *Id.*

<sup>149</sup> *Id.*

<sup>150</sup> *Id.*

<sup>151</sup> *Id.*

<sup>152</sup> *Id.*

<sup>153</sup> *Id.*

<sup>154</sup> See generally Rebecca Erbelding, Lecture for Professional Ethics in the Holocaust (Oct. 25, 2020); United States Holocaust Memorial Museum, What did Refugees Need to Obtain a US Visa in the 1930's, **Americans and the Holocaust** (last visited Nov. 19, 2020), <https://exhibitions.ushmm.org/americans-and-the-holocaust/what-did-refugees-need-to-obtain-a-us-visa-in-the-1930s>.

<sup>155</sup> United States Holocaust Memorial Museum, What did Refugees Need to Obtain a US Visa in the 1930's, **Americans and the Holocaust** (last visited Nov. 19, 2020), <https://exhibitions.ushmm.org/americans-and-the-holocaust/what-did-refugees-need-to-obtain-a-us-visa-in-the-1930s>.

<sup>156</sup> *Id.*

assure the US Government you would not be a burden on the state.<sup>157</sup> Step four would be to buy a ship ticket, which would not be cheap and was increasingly hard to do once ports began to close after German submarines attacked ships in the Atlantic.<sup>158</sup> Then an immigrant had to obtain transit visas from all the countries they would have to travel through to get to the port the ship was departing from.<sup>159</sup> After all these steps were complete, immigrants would get an interview at the American Consulate.<sup>160</sup> If the applicant was deemed financially stable and had all the correct paperwork, they would finally receive an American Visa and be allowed to travel to the United States.<sup>161</sup> For some people desperately fleeing, these bureaucratic requirements were impossible to comply with.

## 2. What America Should have Done

America could have and should have done so much more. As a great country founded on immigrants who escaped persecution, it is America's responsibility to help those who seek to do the same, nay it is their legacy.

Jews in Germany, and as the war progressed all across Europe, were attempting to escape genocide. The Nazis did not merely want to commit mass murder; they wanted to obliterate and wipe an entire ethnic group from the face of the earth. America's refusal to aid those seeking refuge due to purely administrative errors is reprehensible. Rebecca Erbelding, who helped curate the Americans and the Holocaust Exhibit at the Holocaust Museum in DC, explained that some people were unable to immigrate merely because a stamp for a visa was stamped out of

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<sup>157</sup> *Id.*

<sup>158</sup> *Id.*

<sup>159</sup> *Id.*

<sup>160</sup> *Id.*

<sup>161</sup> *Id.*

order or because one document had expired while waiting for an interview with the American Embassy.<sup>162</sup> It was an almost impossible system for those who struggled financially as so many steps required money, specifically securing a ship ticket to America.<sup>163</sup> Many Jews lost their incomes and found that they were being forced out of society. The immigration process was not designed to work and was purposefully difficult. However, maybe that was America's aim.

I would argue that it was irrelevant what Americans had wanted at the time. The situation was so dire that it required fewer politics and more human empathy from President Roosevelt. However, while Presidents do not have a duty of care to German or European citizens, they do have a duty to American citizens. As the American public did not wish to get involved in the War or to open their borders to more refugees (as we know from polling public opinion at this time), was it the President's prerogative to do so? What were the ethical responsibilities of young lawyers in America who witnessed the Holocaust?

#### **IV. Responsibility Before a Genocide Occurs**

While there are ethical responsibilities imposed on lawyers during a genocide there is also an obligation on lawyers to do what they can to prevent atrocities from occurring in the future. The Holocaust is one of the most horrific genocides in our history. It was organized, and in some ways, the dangers of a previously democratic country falling into an authoritarian state were recognizable. The individual responsibilities and ethical questions presented to those living through a genocide are just as important as the responsibility to recognize the warning signs of genocide before it occurs and to prevent it.

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<sup>162</sup> Rebecca Erbelding, Lecture for Professional Ethics in the Holocaust (Oct. 25, 2020).

<sup>163</sup> Id.

A. *The Seven Stages of Genocide*

Gregory H. Stanton lays out the seven stages of genocide into a logical progression that shows how a government or party can gradually dehumanize a group of people.<sup>164</sup> Stage one is classification.<sup>165</sup> In Germany, Jews were classified in several ways, most notably by the Nuremberg Laws, which defined people as Jew by using their grandparents' religion. Next is Symbolization, in which an attribute or symbol is given to signify the classification.<sup>166</sup> Stanton notes that genocidal governments require classified groups actually to wear a symbol.<sup>167</sup> Many Jews were symbolized by the letter 'J' on their identification card but more obviously by the yellow 'Star of David' they were required to sew on their clothes.<sup>168</sup> The third stage is Dehumanization, where the classified and symbolized group is treated as less than human.<sup>169</sup> The Nazis did this in many ways by calling Jews "rats" and "vermin" in their advertisements, removing Jews' sources of income, and revoking their German citizenship.<sup>170</sup> After a group has been dehumanized, stage four is Organization, in which groups coordinate the killings of the classified group.<sup>171</sup> The Nazis did this through the killing squads that followed their armies east and through their concentration camps.<sup>172</sup> After killings begin, the center can no longer hold, and those that were moderates or not wholly on board with the extremists must be removed. This

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<sup>164</sup> Gregory H. Stanton, *The Seven Stages of Genocide*, Yale Ctr. for Int'l and Area Stud. Working Series: Working Paper GS 01, 1, 2-4 (1998), <https://www.files.ethz.ch/isn/46570/GS01.pdf>.

<sup>165</sup> Gregory H. Stanton, *The Seven Stages of Genocide*, Yale Ctr. for Int'l and Area Stud. Working Series: Working Paper GS 01, 1, 2 (1998), <https://www.files.ethz.ch/isn/46570/GS01.pdf>.

<sup>166</sup> Gregory H. Stanton, *The Seven Stages of Genocide*, Yale Ctr. for Int'l and Area Stud. Working Series: Working Paper GS 01, 1, 3 (1998), <https://www.files.ethz.ch/isn/46570/GS01.pdf>.

<sup>167</sup> *Id.*

<sup>168</sup> Paula Jacobs, Lecture for Professional Ethics in the Holocaust (Oct. 24, 2020).

<sup>169</sup> Gregory H. Stanton, *The Seven Stages of Genocide*, Yale Ctr. for Int'l and Area Stud. Working Series: Working Paper GS 01, 1, 3 (1998), <https://www.files.ethz.ch/isn/46570/GS01.pdf>.

<sup>170</sup> Paula Jacobs, Lecture for Professional Ethics in the Holocaust (Oct. 24, 2020).

<sup>171</sup> Gregory H. Stanton, *The Seven Stages of Genocide*, Yale Ctr. for Int'l and Area Stud. Working Series: Working Paper GS 01, 1, 3 (1998), <https://www.files.ethz.ch/isn/46570/GS01.pdf>.

<sup>172</sup> Paula Jacobs, Lecture for Professional Ethics in the Holocaust (Oct. 24, 2020).

stage is Polarization.<sup>173</sup> After the moderates are removed, and it is no longer possible to slow the threat to the classified group, Identification begins.<sup>174</sup> Stage six, Identification, occurs by identifying all remaining parts of the targeted group through lists of people's names or places they reside.<sup>175</sup> The final stage is Extermination. In the final stage, everyone in the classified group, men, women, and children, are killed.<sup>176</sup>

### *B. Responsibility to Prevent a Genocide*

Many genocides have occurred since the Holocaust, including Rwanda, Darfur, and the Rohingyas.<sup>177</sup> Each is as significant and as important as the Holocaust. With the downfall of globalization and the western world becoming increasingly isolationist through their politics, even countries like America are worryingly exhibiting some early warning signs of genocide.

Donald Trump ran a campaign for the Presidency in 2016 on a platform of hate and fear. He classified people into groups he could place blame on. According to Donald Trump, all Mexicans were stealing American's jobs, all Muslims were terrorists, women were merely objects of sexual pleasure or "pigs" when they rejected him publicly, people with disabilities were a laughingstock, and the News was all fake.<sup>178</sup> Not dissimilar to stage 3 of the Seven Stages

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<sup>173</sup> Gregory H. Stanton, *The Seven Stages of Genocide*, Yale Ctr. for Int'l and Area Stud. Working Series: Working Paper GS 01, 1, 4 (1998), <https://www.files.ethz.ch/isn/46570/GS01.pdf>.

<sup>174</sup> *Id.*

<sup>175</sup> *Id.*

<sup>176</sup> *Id.*

<sup>177</sup> Bennett Sherry, *Why Does Genocide Still Happen*, **Khan Academy** (last visited Nov. 19, 2020), <https://www.khanacademy.org/humanities/whp-origins/era-7-the-great-convergence-and-divergence-1880-ce-to-the-future/76-yeah-but-beta/a/read-why-does-genocide-still-happen-beta>.

<sup>178</sup> See Josh Boak, *Associated Press Fact Check: Trump plays on immigration myths*, **PBS** (Feb. 8, 2019), <https://www.pbs.org/newshour/politics/ap-fact-check-trump-plays-on-immigration-myths>; Jenna Johnson & Abigail Hauslohner, *'I think Islam hates us': A timeline of Trump's comments about Islam and Muslims*, **The Washington Post** (May 20, 2017), <http://www.washingtonpost.com/news/post-politics/wp/2017/05/20/i-think-islam-hates-us-a-timeline-of-trumps-comments-about-islam-and-muslims/%3foutputType=amp>; John Walsh, *11 insults Trump has hurled at Women*, **Business Insider** (Oct. 17, 2018), <https://www.businessinsider.com/trumps-worst-insults-toward-women-2018-10>; Irin Carmon, *Donald Trump's Worst Offense? Mocking Disabled Reporter, Poll Finds*, **NBC**

of Genocide, Donald Trump dehumanized the people he did not like. He called for a wall to be built on the Mexican border and banned some Muslims from traveling into the country.<sup>179</sup> He referred to the American federal government as a Swamp that needs to be drained and famously boasted while speaking about women that he could just “grab ’em by the pussy.”<sup>180</sup> The list goes on and on. Similarly, to stage 4 of Stanton’s stages, Donald Trump organized to separate refugee children from their parents at the American border and then locked these children up in cages.<sup>181</sup> Maybe most dangerously, Donald Trump polarized a nation. By backing dangerous national terrorist groups like the Proud Boys and vilifying the free press, Donald Trump polarized the nation to such a point that Americans cannot even agree on what is true.<sup>182</sup> After losing the 2020 Presidential election to Joe Biden, Donald Trump dangerously and negligently spread claims of fraud that he knew to be unfounded.<sup>183</sup> He brought many frivolous legal claims of voter fraud that were rejected and thrown out for lack of evidence.<sup>184</sup> With this final dangerous blow to American democracy, Donald Trump exhibited many worrying attributes of a man reaching for an authoritarian ruler’s power instead of a Democratic President’s power.

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**News** (Aug. 10, 2016), <https://www.nbcnews.com/politics/2016-election/trump-s-worst-offense-mocking-disabled-reporter-poll-finds-n627736>.

<sup>179</sup> See Exec. Order No. 13769, 82 FR 8977 (2017); Mia Jankowicz, A timeline of unfulfilled promises Trump made about his border wall, a cornerstone of his 2016 campaign which has faded from view in 2020, **Business Insider** (Sep. 6, 2020), <https://www.businessinsider.com/timeline-of-president-trumps-unfulfilled-border-wall-promises-2020-9>.

<sup>180</sup> See Rebecca Harrington, Here's what Trump means when he says 'drain the swamp' — even though it's not an accurate metaphor, **Business Insider** (Nov. 11, 2016), <https://www.businessinsider.com/what-does-drain-the-swamp-mean-was-dc-built-on-a-swamp-2016-11>; Bess Levin, Donald “Grab ’em by the Pussy” Trump thinks People should be Fired for Disrespecting Women, **Vanity Fair** (Sep. 2, 2020), <https://www.vanityfair.com/news/2020/09/donald-trump-sexual-harassment-chris-cuomo>.

<sup>181</sup> Trump migrant separation policy: Children 'in cages' in Texas, **BBC News** (June 18, 2018), <https://www.bbc.com/news/world-us-canada-44518942>.

<sup>182</sup> Trump condemns all white supremacists after Proud Boys row, **BBC News** (Oct. 2, 2020), <https://www.bbc.com/news/election-us-2020-54381500>.

<sup>183</sup> Daniel Dale, Fact Check: Trump lies a lot about the election, **CNN Politics** (Nov. 16, 2020), <https://www.cnn.com/2020/11/16/politics/fact-check-trump-rigged-election-dominion-georgia-pennsylvania/index.html>.

<sup>184</sup> Byron Tau & Sara Randazzo, Trump Cries Voter Fraud. In Court, His Lawyers Don’t, **The Wall Street Journal** (Nov. 13, 2020), <https://www.wsj.com/articles/trump-cries-election-fraud-in-court-his-lawyers-dont-11605271267>.

So, what is our responsibility? As future lawyers in America, I believe that my peers and I have a heightened level of responsibility to America and the World. On my first day of Orientation at American University Washington College of Law, the Dean expressed how a lawyer's words carry weight and, therefore, great responsibility. There are three specific things I believe we can do to make sure we prioritize our ethics and act responsibly in a very influential profession.

The first is to be comfortable speaking up when we think something is wrong. As exemplified by the 'Face the Rear' social psychology experiment, people are more comfortable speaking out when another person has already done so.<sup>185</sup> When we see injustice, we must take it upon ourselves to express our disapproval and encourage others to speak out. Secondly, I believe it is important to remember that we are people before we are lawyers and that when we become a lawyer, we do not lose our morals or ideals. If something is inherently wrong or corrupt, we should prioritize calling that out over the law. While people who believe in the amoral conception like Stephen Pepper may disagree and argue that a lawyer should leave their personal convictions and morals at the door to best advocate for their client, I would argue that blindly following laws without evaluation is how legal lawlessness took hold of Nazi Germany.<sup>186</sup> Finally, I think young lawyers should educate themselves and be forced to examine times in history when evil prevailed, and personal responsibilities and ethics were abandoned. As Mark Twain said, "History does not repeat itself but it often rhymes."<sup>187</sup>

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<sup>185</sup> Maria Popova, [Elevator Groupthink: An Ingenious 1962 Psychology Experiment in Conformity](https://www.brainpickings.org/2012/01/13/asch-elevator-experiment/), **Brain Pickings** (last visited Nov. 19, 2020), <https://www.brainpickings.org/2012/01/13/asch-elevator-experiment/>.

<sup>186</sup> Stephen L. Pepper, [The Lawyer's Amoral Ethical Role: A Defense, A Problem, And Some Possibilities](#), 613 *Am. Bar Found. Res. J.* (1986).

<sup>187</sup> Joseph Campbell, [Getting It Wrong: Debunking the Greatest Myths in American Journalism](#), 309 (2016) (noting that Mark Twain is falsely attributed to have said the cited quote, though there is no evidence to verify this assertion).



## **V. Conclusion**

Professional Ethics and The Holocaust profoundly impacted me and changed how I view my future professional role as an attorney in America. Through the 1930s, Germany used politics, professionals, propaganda, and dehumanization to systemically and gradually discriminated against Jews, until it eventually led to genocide. The Nazis relied on the systematic failure of everyday people to take responsibility or accountability for the part they were playing in the dehumanization of Jews and to turn a blind eye to their ethics. As a citizen of planet earth, we all have a certain level of responsibility to one another. However, that level of responsibility is even further magnified when you practice the law. I believe every law student should have to take this class, as they do contracts or torts, and be asked to face the reality of what can and has happened when those ethical and professional responsibilities are abandoned.