

### LAW REFORM IN GERMANY.

The practical assumption of complete executive and administrative power by the National Socialist party in Germany has lent fresh impetus to the demand for a thorough overhauling of the entire German legal system. This work is now being carried out with the somewhat headlong energy characteristic of the new regime. The effects of the proposed reforms are of vital concern to all students of comparative law, and, indeed, to all practising lawyers and students of world affairs. Under these circumstances, the recent official outline of the general scheme, released by Dr. Frank, the Justizkommissar of the German Reich, to the German press on October 26th, is of especial interest.

Dr. Frank announced the formation of several committees, whose task is to prepare a survey preliminary to the actual work of constructive reform. The first committee, which is studying the criminal law, is headed by Dr. Freisler, state secretary in the Prussian ministry of justice. At the head of the second committee, which deals with the law of civil procedure, is Dr. Wilhelm Kisch, a professor of the University of Munich. The third committee is to make a survey of the entire civil law; in view of the magnitude of this task it will be necessary to appoint a number of sub-committees, but the leaders of these have not as yet been chosen. The fourth committee will study the laws relating to trade and industry.

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Dr. Frank's approach to the criminal law exemplifies the characteristic National Socialist viewpoint. The significant figure in the new criminal law is not the unworthy member of society, but society itself. The criminal law is to be built up on broad lines of defence of the strong and proved and capable element of the German people as against the morally ill and unworthy elements of social decadence. The identity of law and morals must be restored, that is, it must replace the un-German contrast between morality on the one hand and the feeling for law on the other. The wrongdoer in a criminal sense must be the wrongdoer in a social sense. In particular, factors of social security must be built up: society must not any longer wait to act until an unworthy member of its group has begun a wrongful act; the dangerous element in society must, as early as possible, be forestalled by preventive measures. The idea of racial security must be made operative. One practical application of this idea is found

in what already has in part been secured by statute,—the sterilization of wrongdoers.

An essential characteristic of the new philosophy of criminal law is the rigour of its action with regard to offences against public order, internal and external. In particular, treason stands at the peak of all conceivable crimes. The characteristic puritanism of the Nazi party finds expression in Dr. Frank's announcement that war will be declared against "immorality," and he declares that "the right-living man shall be protected against attempts to cram the Germans with immoral ideas that are not in accord with the soul of the German nation."

Dr. Frank expressed the hope that it would be possible, through intensive work, to complete the new Criminal Code in five months. Dr. Freisler is now undertaking the definitive constitution of the commission for this reform work.

Civil procedure has up to the present been that part of the law which has least exhibited a typically German character. The new order, it is claimed, will regard civil procedure not merely as an affair for theoretical jurists to fashion, but as a way of law and life. The chief aims of the new system will be to achieve legal security and the ready accessibility of legal remedies, and this will imply freedom of the legal profession, the independence of the bench, freedom of declaration of claims by litigants, and the eradication of all superfluous formalistic elements.

The civil law, so Dr. Frank announces, is to undergo a searching examination in order to discover its harmony with or divergence from the essential ideals of National Socialism. Whatever in the existing system ministers to the common good and furthers social solidarity will be retained, and an assurance is given that no step will be taken which is not based upon mature reflection. Objectivity is to be regarded as the keynote; and emphasis is placed on duties, not upon rights.

The reform of the laws relating to trade and industry will proceed along the lines indicated by Chancellor Hitler in several recent addresses. In this field, also, no precipitate steps are to be feared. In every step taken, the necessities of German social and economic life will be considered. One point is specially stressed by Dr. Frank: the National Socialist state will not tolerate an irresponsible anonymity in business enterprises, i.e., the actual trader cannot shield

himself with the device of the corporation. The state will seek, by all means at its disposal, to make the personal responsibility of traders the central principle of its business law.

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Finally, Dr. Frank claims that through the identity of the *Reich-justizkommissar* and the leader of the Law Division of the National Socialist Party there is a unity between the party and its aims, and the official law administration. This will facilitate the further task of law reform in the re-shaping of the bench, the bar, and the notarial profession. This work has been undertaken by a conference of the Ministry of Justice, and is also the task of the new Academy of German Law (*Akademie für Deutsches Recht*).

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The Academy, which was inaugurated at the *Juristentag* celebrations at Leipzig in the first week of October last, began its working sessions on November 5th at Berlin.

The main topic for discussion was "The Legal Basis of the German Government's Action in Relation to Equality of Rights and Disarmament." Discussion was inaugurated by the reading of a paper on the subject by Dr. Bruns, Professor of International Law at the University of Berlin, and a member of the International Court of Justice at The Hague. Discourses were also delivered by Dr. Goebbels and Dr. Frank.

Various other matters were scheduled for discussion, including the repeal of certain provisions of the Emergency Decree of 14 June, 1932, which had restricted the right of appeal to the Supreme Court, the extension of facilities for poor litigants, the restriction of the right to insist on arbitration under arbitration clauses in agreements, and the regulation of compulsory hypothec.

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The new Academy is avowedly iconoclastic, and it may be confidently expected that the proposed reforms will meet with much covert, if not openly avowed opposition. Yet the main lines of development, especially as those were laid down in an address delivered at Leipzig on the 9th of May last by Dr. Heinrich Lange,<sup>1</sup> deserve earnest consideration by all students of comparative legislation. Dr. Lange's *confessio fidei* finds an echo in the opinions of many lawyers on this continent: "The *coup d'état* of this year is real revolution: it not only changed the leadership of the state, but it established in the place of liberalism a new state sentiment. This

<sup>1</sup> *Liberalismus, Nationalsozialismus und Bürgerliches Recht*. By Heinrich Lange. Tübingen: J. C. B. Mohr (Paul Siebeck). 1933.

bases itself upon the ideas of duty and common weal. The individual is significant not for himself but for his position in the commonwealth. In place of the struggle of all against all, there emerges an intelligent co-operation of the individual members of the social organism; in place of right, duty comes into the foreground. The nation comes before the individual. But the nation is more than the arbitrary sum of individuals in a given territory; it is . . . an intimately knit together collectivity. 'The need of all before the need of one' is the battle-cry of the state."

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