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Cabinet Discussion of the Reichstag Fire and Necessary Changes in the Law (March 7, 1933)

On March 7, 1933, two days after the elections, the new cabinet discussed the fate of the arsonist Marinus van der Lubbe. The following excerpt reveals the general contempt that the new government felt for the constitutional state [*Rechtsstaat*]. But it also shows how limited Hitler's power still was at this point. At his later trial, van der Lubbe was sentenced to death for treason and arson.

Minutes of the Conference of Ministers on March 7, 1933

[. . .]

The Reich Minister of the Interior [Frick] spoke about the Reichstag fire and the punishment of the culprits, and stated that it was urgently necessary to hang van der Lubbe at once, and that this needed to happen on Königsplatz at that. To be sure, the law that currently applied to arson only provided for a prison sentence, but it had to be possible to impose the penalty of death by hanging for such a heinous crime and to apply it retroactively. The principle of *nulla poena sine lege* should not be applied without restriction. Professor Dr. Nagler (Breslau), Professor Dr. von Weber (Jena), and Professor Dr. Öttler (Würzburg) had rendered opinions to this effect.

The Reich Minister of the Interior then reported on the substance of the opinions as enclosed.

The Chancellor stressed the fact that, in his opinion also, it was urgently necessary to hang van der Lubbe. The German public absolutely expected this. He could not recognize the doctrine of "the law must be observed," if the entire national life had to perish as a result.

Reich Minister Göring stated that the Reichstag fire had been previously announced at four different places. Whether the person arrested at the Belgian border had any connection with the deed was still uncertain. In the meantime, however, it had become known that van der Lubbe had already been summoned to court three times in Holland.

He [Göring] had seized the Karl Liebknecht House. A special commission for the struggle against the German Communist party was to be installed there.

The attempt planned on the life of the Chancellor in Königsberg was serious. It had been carefully prepared. Three persons had also been arrested. It was necessary to await the results of the investigation.

The Reich Chancellor stated that, as far as his person was concerned, he had no fears of assassination. The consequences of a successful attempt would, however, be terrible for the public. In that event, 100,000 Communists would probably be killed.

State Secretary Dr. Schlegelberger stated that he agreed entirely with the view of the Reich Chancellor that the law had to be adjusted to the circumstances.

A preliminary investigation of van der Lubbe had opened today (March 7) on grounds of high treason and arson.

He had to refer very emphatically to the doctrine of *nulla poena sine lege*. Only in Russia, China, and some small Cantons of Switzerland did this doctrine not apply. He would again study carefully the opinion mentioned by the Reich Minister of the Interior. The Reich Ministry of Justice would then, for its part, prepare an opinion and send both opinions to the Reich Ministers for their information.

State Secretary Dr. Meissner said that the statements of the Chancellor were entirely correct from a political perspective. The public was right in demanding a severe punishment for van der Lubbe.

The Reich President [Hindenburg], however, might twice suffer severe qualms of conscience, namely, if he were to sign an order prescribing the death penalty, etc., and then again if he were to decide later on to pardon the condemned man. He asked that the Reich Chancellor, the Reich Minister of the Interior, and the Reich Minister of Justice [Gürtner] submit the matter to the President before there was a final decision by the Cabinet.

Reich Commissar Dr. Popitz stated that he was afraid that the Reich Supreme Court [*Reichsgericht*] would not recognize the validity of a retroactive order prescribing the death penalty.

The Chancellor stated that he would get in touch with the President of the Reich Supreme Court about this.

It was expected that the Chancellor would first speak alone with the President concerning the matter.

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Source of English translation: Minutes of the Conference of Ministers on March 7, 1933. In United States Department of State, *Documents on German Foreign Policy: From the Archives of the German Foreign Ministry*. Washington, DC: United States Government Printing Office, 1957-1964. Series C (1933-1937), *The Third Reich: First Phase*, Volume 1: January 30 – October 14, 1933. Document Number 54, pp. 113-19. (English translation attributed to the U.S. Department of State Division of Language Services and edited by the GHI staff.)

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