

Title: HANS FRANK'S OPPOSITION TO THE SS: SOCIAL BEHAVIOUR,
CONSISTENCY AND THE POWER OF THE SITUATION

Name: Martyn Housden

Affiliation: DEPARTMENT OF SOCIAL SCIENCES AND HUMANITIES,
UNIVERSITY OF BRADFORD, ENGLAND.

Address: Department of Social Sciences and Humanities, University of Bradford,
Bradford. BD7 1DP. England.

E-Mail: v.m.housden@bradford.ac.uk

Abstract:

There is mutual interest between Historians and Social Psychologists. Christopher Browning drew on the work of Zimbardo and Milgram to help explain why '*Ordinary Men*' participated in the Holocaust. Social Psychologists have looked to historical examples to explain why some individuals fail to conform to orders which others obey. This paper considers whether Social Psychologists have got the balance right about the potential power of situations (as opposed to personality) when it comes to determining social behaviour.

Hans Frank was a senior figure in the Third Reich and a key member of the Nazi occupation administration in southern Poland, 1939-45. He was involved in all manner of war crimes and crimes against humanity which led to him being arrested by the US army and hanged at Nuremberg in 1946. His personality typically has been described as conflicted and vacillating. Remarkably, in 1942, this vain and self-serving man did something little known and less well understood. He delivered high-profile lectures at major seats of learning in Berlin, Vienna, Heidelberg and Munich where he criticised the SS publicly. As a result, Hitler deprived him of all his offices in the Nazi Party. Actually these lectures were linked to prior actions. In 1933 Frank had investigated and complained about allegations of torture by Nazi paramilitaries and murders at Dachau concentration camp. He also objected to the murders of the Röhm Putsch.

Through a discussion of Walter Mischel's theorising and that of Ross and Nisbett, this paper considers the grounds for consistency and inconsistency in social behaviour. The case in question is all the more fascinating because the area where a mercurial individual showed most consistency (i.e. opposing the SS and some kinds of political murder) put him in the greatest personal jeopardy.

Hans Frank's Opposition to the SS:
Social Behaviour, Consistency and the Power of the Situation

by

Martyn Housden

University of Bradford, Great Britain.

Hans Frank was not one of History's good guys. He was hanged at Nuremberg in 1946 as a major war criminal. He was linked to the Nazi Party from its earliest days in Munich after the First World War and soon became active on its behalf, particularly in connection with legal affairs. During his career, he had acted as Hitler's personal defence lawyer, Bavarian Justice Minister and as a commissioner for Law in Germany. He was also Reich Minister without Portfolio and, between 1939 and 1945, Governor General of occupied southern Poland. In the latter capacity, he supported both the attempted genocide of the Polish nation and the Holocaust. Hans Frank even made a specific proposal to Hitler about the best way to eliminate Jews. In July 1941, shortly after the launching of Operation Barbarossa against the Soviet Union, he recommended that the Pripet marshes be attached to his territory, the Government General, and that the three million or so Jews living under his rule be worked to death draining the land and undertaking new construction projects there.

In this light, when we say that Hans Frank was involved in 'opposition' to the politics of the Third Reich, in particular the SS, we are using the word in a specific sense. Ian Kershaw says 'opposition' involves:

"... many forms of action with partial and limited aims, not directed against Nazism as a system and in fact sometimes stemming from individuals or groups broadly sympathetic towards the regime and its ideology."

Kershaw distinguishes this form of political dissatisfaction from 'resistance', which he takes to be organised efforts directed against a regime in a fundamental way. These may subvert the regime or plan for the time of its demise. When Hans Frank 'opposed' some aspects of what was happening in Hitler's Germany, he was not reacting against what Hitler offered in a fundamental way. He was acting as a loyalist generally bound in to the system who was giving vent to annoyance and frustration which could run its course within the existing state structures. None the less, his story is an unusual one.

The high point of Hans Frank's opposition to the SS and police in the Third Reich came in Summer 1942. It was a tense time. Action Reinhardt was in full swing in central Poland, that is to say the death camps of Treblinka, Belzec and Sobibor (to name but three) were liquidating the ghettos there. By the same token, the German military was at full stretch. It was desperately trying to break Russian resolve along the eastern front, from Leningrad, through Stalingrad, to the Transcaucasus. Within Germany itself, police control of society was well established. At this point Frank delivered four incendiary public lectures. They were at Friedrich Wilhelm University in Berlin on 9 June, the Academy of Sciences in Vienna on 1 July, the Technical High School, Munich on 20 July and finally the New University, Heidelberg on 21 July. The venues all spoke of scholarly credibility and the audiences were made up of academics, students and professional lawyers. Frank was pitching his ideas at middle class members of the educated elite, exactly the sort of people who, one day, might come to wield influence in the state.

What did he say? Hans Frank was speaking in a terroristic dictatorship and so chose his words carefully. In Berlin he talked about the need to harmonise Germany's

legal system with the inner feelings of the nation and, most importantly, emphasised that even an authoritarian political system should in no way be at odds with the preservation of an independent judiciary. Judges should be controlled neither by police nor politicians. In Vienna, he argued that Germany could never build a satisfactory empire unless the structure was founded on solid legal foundations. Even in an authoritarian state, he emphasised, judges should not be criticised unjustly. He said it was unacceptable for "the ideals of the police state" to become "distinct National Socialist ideals". He concluded that "The more humane a state, the more German it is, - the more just a state, the more indestructible it is." In Munich he said there could be no society without effective law because ordinary people could only live in peace if they could rely on being treated justly. Even if lawyers and judges made occasional mistakes, a system based on their efforts was "still better than any kind of police state". His comments were met, apparently, with stormy applause. In Heidelberg, he said that to get rid of judges would be to set back Germany's History by 1,400 years. He said, "...there may never be a police state, never! I reject that completely!" He went on, "Europe will be humane... it is not necessary always and constantly to use only the death penalty."

Hans Frank's comments amounted to a sustained denunciation of the SS. They had been delivered from public platforms in a way which was unique in the Third Reich. People had been put in prison and concentration camps for saying less in their own homes. Adverse consequences were not long in coming. On 20 August 1942, Hitler issued a notification to all senior figures in the Nazi Party saying that Frank had requested he be relieved of all his Party offices to concentrate more fully on the post of Governor General. At the time, Frank made a rather different record of events. He said he tendered a general resignation to Hitler who rejected it. Frank was to be left as Governor General, but he did have all his legal and party offices withdrawn. Hence he was deprived of his leadership of the National Socialist Guardians of the Law, his post of President of the Academy of German Law and his position as leader of the NSDAP's

legal office. In many respects, he was lucky to escape with his life. Had the situation facing Germany been any less dramatic, Frank may well have been less 'lucky' during that Summer. But with the war effort at a critical point, Hitler could neither sack nor execute a high profile political figure. That would have damaged morale.

What stood behind the outbursts of 1942? Eventually this paper to apply Hans Frank's case to Social Psychological literature's debate about consistency of behaviour. Does consistency owe more to given personality traits or uniform situational characteristics? But before we can discuss this, of course, we have to recognise that the lecture tour was actually the most obvious side of an opposition to the SS and police (personified in the figure of *Reichsführer-SS* Heinrich Himmler) which was remarkably unchanging across the years.

After the 'seizure of power', in 1933 and 1934 Hans Frank was Bavarian Justice Minister. During the same period, Heinrich Himmler, head of the Party's SS and the SD, was commander of the political police in Bavaria. In March 1933, the Gauleiter of Upper Bavaria, Adolf Wager, complained that the region's Communists had not been persecuted with sufficient thoroughness. As a result, on 20 March, Himmler ordered a camp be set up on the site of a former gunpowder factory at Dachau. It was to house suspected political opponents. Within weeks, the public prosecutor for Dachau area was, however, informing Frank that serious crimes were being committed in the camp. For instance, a lawyer called Strauss was shot whilst in protective custody. An SS guard called Kantschuster admitted shooting him from a distance of about 8 m as he tried to escape. In fact, the lawyer had two bullet holes in the back of his head and expert medical opinion suggested he had been shot from just 1 m, maybe even 30 cm. There was also a report about a certain Louis Schloss who was found hanged in Dachau. The public prosecutor doubted that this had been suicide. Sebastian Nefzger was found with cut wrists, but an autopsy discovered he had actually been strangled. The prosecutor recommended that charges be pressed against the SS men who apparently had been

involved in the incident, plus the camp commandant, doctor and secretary. Reports were also made about the killing of Hugo Hanschuh in August 1933.

Rather than sweep these events under the carpet, Hans Frank (acting as Bavarian Justice Minister) actually ordered an investigation into what was going on in Dachau camp. In November 1933 he sent a representative, Dr. Steppe, to the Bavarian Interior Ministry where he made a complaint. A memo from the Bavarian Interior Ministry dated 29 November, however, noted that an application had been lodged to stop any investigation. Later in life, Frank said he believed Himmler had asked Hitler direct to deal with the matter. All the same, on 5 December 1933, at a meeting of Bavaria's Council of Ministers, Frank stated his intention to pursue 'with determination the criminal proceedings arising from the events in Dachau concentration camp' and to prevent possible cover ups. With that, senior Nazis closed ranks against him. In Himmler's presence, head of the SA and friend of Hitler, Ernst Röhm, told Frank that what happened in Dachau was a matter of politics and could not be handled by a judicial department. There were to be no prosecutions of Dachau's over-zealous guards during the life of the Third Reich. But the tension between Frank and the police did not go away.

Actually Röhm soon had reason to regret siding with Himmler against Frank: in late June and early July 1934, there was the Night of the Long Knives. On 30 June 1934, Hans Frank (still Bavarian Justice Minister) was informed that over 100 SA men had been rounded up by the SS. That afternoon he went to Stadelheim prison where he found 200 SA men in the cells. These included Röhm himself. They had all been interned 'on Hitler's orders', and in the fear that the SA was planning a revolt against the government. That night, two SS men (Sepp Dietrich and Prince Waldeck) arrived with an order to shoot 110 of the detained SA men. Frank refused to let this happen. He said they were in the judiciary's territory, and everyone had to act accordingly. There followed a dramatic telephone conversation with Hitler, during which the Führer demanded that the internees be handed over for execution at once. At one point, Hitler began threatening Frank's own

life. Eventually the Führer's Deputy, Rudolf Hess, came on the line and read the names of 19 individuals who really did have to be killed at once - i.e. without the application of due legal process. Finally Frank handed these over: the included Röhm himself. Once again, however, there had been a clear tension between the way Frank conceptualised due legal process and the police's expectations of how potential enemies should be dealt with inside the Third Reich.

In 1935, Hans Frank published some suggestive discussions of the Russian Bolshevik system of government. Bolshevism, of course, was completely anathema to National Socialists, so some of Frank's criticisms of Russia carried a message for developments within his own country. For example, he criticised the Bolsheviks for allowing the complete breakdown of criminal trial procedures. Rather than undertake due process, secret police units were simply liquidating people quietly behind the scenes. He emphasised that German people would not stand for 'Czecha' methods being used on their own soil. In case the parallel was being missed, at about this time, Frank's deputy in the Party's Law office wrote to the Reich Justice Ministry complaining that the increasingly frequent circumvention of trial procedures by the Gestapo amounted to a method likely to be used by the Russian secret police. Several months before, Frank himself had compared the SS to the Czecha. Some years later he outlined the main concerns he had about police usurpation in the legal process. At a legal conference in Leipzig held on 25 May 1939 Frank declared that: no one should be sentenced without having the chance to defend himself, a defendant should be able to choose his own counsel and no one should be found an enemy of the state without proof of guilt.

In other words, in the 1930s, Hans Frank consistently was against the short-circuiting of legal process by the application of direct police action. In his conception, National Socialism had to involve the application of appropriate laws through a Nazified court system presided over by sympathetic judges, not the direct action of a Nazified

police force. He wanted a Nazified judicial system led by Germany's lawyers, not one which spoke simply of direct police terrorism.

Soon after the outbreak of war in 1939, Hans Frank was appointed Governor General of the Government General (in southern Poland) and, as such, was subordinated only to Adolf Hitler. He interpreted his remit as involving complete control over every aspect of the administration of this territory: including the police institutions, how they functioned and the tasking asked of them. Naturally Heinrich Himmler remained head of the SS and by this point was in charge of all the police forces in Germany. In October 1939, Hitler had made him Reich Commissioner for the Strengthening of Germandom, and as such he claimed for himself control of massive projects for the restructuring of Europe's populations. The projects involved the resettling of Germans around eastern Europe and the pursuit of Jewish policy. Himmler believed he should control the police forces in the Government General without mediation through Frank and expected his representatives there to pursue massive population initiatives regardless of the semi-independent status of the territory and the expectations of the Governor General, Hans Frank.

What we saw in the Government General, then, was the playing out of internecine conflict between Frank and Himmler over a new set of issues. When, in late 1939 and early 1940, Himmler tried to deport Poles and Jews into the Government General, Frank objected. With Goering's support (and arguments that the population transfers were damaging the war economy), he managed to disrupt the project for some time. As Himmler tried to make Jewish policy his own during the start of the Holocaust in Summer 1941, Frank responded by proposing the Pripet project, which clearly he wanted to manage himself. When, in 1942, the SS and police leaders in the Government General hatched plans for major projects to restructure the population in Lublin district, Hans Frank tried to seize the initiative from them. He also pursued a number of strategies designed to 'put the police' in their place in his territory. For instance, the Senior SS and

Police Leader for the Government General, Wilhelm Krüger, was subordinated to Frank's own deputy in the command and control system of the administration; and Frank established an organisation called the *Sonderdienst* (literally 'special service'). This was an ersatz police force which was supposed to owe allegiance to regional administrators direct and not to any established police offices. It was Frank's own, personal police force which was supposed to compete with Himmler's institution.

In other words, as Governor General, Frank embarked on an aggressive initiative to break the command and control system of the SS and render them a compliant organisation which would fulfil his particular bidding in his given territory. He, and his administrators, would pressure them in every way imaginable to ensure they fell in with an agenda he controlled on Hitler's behalf. He intended to see that the SS became a tool for the Government General, not a cynical state within a state.

Himmler and his men were not quitters. They responded with an all out attempt to discredit Frank personally. In December 1941, Himmler was informed that one of Frank's administrators, Lorenz Löv (incidentally, also an SS man) was under investigation for corruption. The case was so serious, that it threatened to incriminate Frank's own family. At stake were warehouses full of luxury goods kept in the Government General, which Frank's family allegedly used for personal profit. The stocks of goods apparently had been developed by Löv in part through trade with the Jews of the Warsaw ghetto. To make matters worse, on 24 January 1942, a long standing colleague of Frank, Karl Lasch, was arrested by the SS - also for corruption. It was alleged he had been smuggling art treasures and luxury cars from Western Europe into the Government General and misappropriating state funds.

On 5 March 1942, Hans Frank came to a meeting on Himmler's private train where he met the head of the SS (Heinrich Himmler), head of Hitler's Reich Chancellery (Heinrich Lammers) and head of the Party Chancellery (Martin Bormann). Himmler threatened to lay the whole corruption issue before Hitler and demanded that the

Sonderdienst be handed over to the police, that the SS be granted greater power in Lublin, and that Wilhelm Krüger be granted the status of a full State Secretary in Frank's administration. Frank more or less agreed to everything.

In June 1942, however, Frank's friend, Lasch shot himself in prison - presumably the SS gave him this as an option rather than to stand trial. Thereupon Frank made his public speeches denouncing the rise of the police state in Germany.

Here, then we have an example of a particular deeply entrenched and bitter rivalry between two significant historical players. We can try to explain it in a number of ways. There is the level of belief. On the one hand, Frank favoured a National Socialist state in which Nazi principles were enforced through Nazified legislation executed by sympathetic professional legal apparachiks. Obviously such a view fitted well with his own personal background. He was a trained lawyer. But this also leads to another level of explanation. As a figurehead leader of Germany's lawyers, Frank also had to think about a particular institutional powerbase. He had made his career in the Nazi Party through legal work and by turning himself into one of the country's stellar lawyers. To retain national importance as a lawyer, Frank had to champion the interests of those involved in legal professions across the country in the face of any competing institution - in this case the police. Himmler stood for a different set of ideas and interests. He pioneered unadulterated Nazi revolutionism. He wanted the police to mete out justice in the most direct way possible and exercised his own authority through the SS's secretive and efficient institutional systems. He surrounded himself with a number of unscrupulous, tough and dedicatedly racist paladins (such as Reinhard Heydrich and Odilo Globocnik) who had high expectations of his leadership. When Frank and Himmler clashed, there was a clash of both ideologies and of institutional powerbases. Naturally we could ask which side of the equation was actually more important: idea or institutional imperative? But interesting here is also to notice that this sort of traditional historical debate finds a parallel in Social Psychology. Namely, which factor is more

important when it comes to accounting for consistency in behaviour: situation or personality trait?

For a long time it was accepted that individuals had stable and enduring personality traits which exert generalised effects on behaviour across all manner of situations. In 1968, Walther Mischel published *Personality and Assessment* which dealt a hammer blow to this way of thinking. He argued that established wisdom about personality traits was just a cultural construct without a basis in reality. Referring to well established research, he argued that behavioural consistency owed less to any supposed trait than the nature of the situation facing given individuals. The line found wide acceptance in much social psychological literature. So, for instance, Ross and Nisbett have maintained that knowing about a person provides no real foundation from which to predict how he or she will behave in a new situation. If lay individuals hold beliefs to the contrary, this is based on a misconception rooted in day to day experiences of seeing the same people in very similar circumstances. These experiences lead us to infer incorrectly that there is something inside people which generates behavioural consistency. Ross and Nisbett proposed that extrinsic factors actually determine behaviour far more than intrinsic ones.

Hans Frank's behaviour certainly did show some situational consistency. There was consistently a situation of institutional conflict between organisations he led (first Germany's lawyers and then the administration of the Government General) and those who followed Himmler. Frank and Himmler competed over who should take precedence in meting out law and order in Germany 1933 to 1939 and then for precedence in key policy areas integral to Adolf Hitler's *Lebensraum* empire in the East 1939 to 1945. Hence Frank challenged Himmler over Dachau, Röhm, police short cuts to the legal process, ethnic resettlement and control of the Jewish Question. After Himmler hit back in a very personal way, Frank retaliated with the lecture tour.

The interesting thing to notice here, however, is that while there was a situational consistency which juxtaposed Frank and Himmler, first in Bavaria and later in the Government General, there was nothing intrinsic to the situation which dictated that Hans Frank adopt quite the position he did on the SS. Frank spent little time trying to establish a serious working relationship with the radical police force through finding a basis for co-operation and co-existence between equals. Rather he was interested in defining a position of personal superiority towards it. The pursuit of this line culminated in 1942 in a remarkable high risk strategy for dealing with perhaps the most dangerous institution in the Third Reich. Again, by this point no extrinsic factor could have compelled Frank to take specifically this line rather than, under threat of corruption allegations, deciding to swallow his pride and admit defeat. Even if we admit that Frank was deeply affected by the death of his friend Lasch, this is no way determined one strategy of behaviour over another. Even this event could have been construed either as a threat dictating silence or, as actually happened, grounds for accelerated confrontation.

There was a competitive situation between Frank and Himmler, but the situation itself cannot have determined how a person responded to it. Certainly the situation cannot have determined that an historical actor go a long way towards risking his life. This can only have been decided by the actor himself based on something internal to him. Something about Hans Frank determined how he perceived his difficult relationship with Himmler in the first place and then influenced the decisions he took about appropriate action. In the same situation, somebody with a different sort of personality would have made different perceptions and different evaluations leading to different courses of action.

Obviously this does mean we have to fall back on trait theory to explain what was happening with Hans Frank. De Waele and Harre, for instance, have described personality in a much more flexible and dynamic way. For them, an individual's behaviour reflects the exercise of the "competences or powers" which are grounded in his

or her nature. The authors define personality as all the resources and qualities available to a person which make social interaction possible. The capacities have to be discovered and developed by the self. They provide the foundations on which individuals build for themselves culturally-appropriate personas which they apply as they intervene in the world. Hans Frank constructed a persona dictating conflict not compromise.

As mentioned at the outset of this paper, Hans Frank was hanged at Nuremberg as a war criminal. This fact can give us an additional insight about what was going on with him as he jostled with the *Reichsführer-SS*. Just as trait theory seems to have been discredited, so attempts to define a specifically criminal personality have failed too. And yet in the work of Jack Katz there is an astute dissection of the personal experience which goes along with crime. He identifies a "sensual dynamics" around wrong-doing. It brings a magical, sneaky thrill of being seduced into doing something that you know you should not do. It allows a person to discover about themselves facets and potentials which were unknown beforehand. Hans Frank enjoyed and was seduced by the sneaky thrill of existing at the head of the Third Reich. He enjoyed being Bavarian Justice Minister, Germany's senior lawyer and then the Governor General responsible for the life or death of millions. As Governor General, he was desperate to write his name into the History books of the world. This thrill of perverse political power explains why he remained committed to a political system which posed so many serious difficulties for him. He was flattered by what it had to offer. He craved the 'rush' that participation in the creation of a visionary political order brought with it. This sensation buoyed him up to challenge Himmler repeatedly and in ever more drastic and dangerous ways. It ruled compromise out of the equation. It also provided Frank's ultimate Achilles heel. The money that went with his position, the self-importance, the grandiosity, the luxury - all of these characteristics tipped too easily into excess and corruption. They were part of his thrill, but were self-defeating too.

This analysis provides information about the nature of Hans Frank's criminality. A long time ago Hannah Arendt described Adolf Eichmann as a cog in the Nazi machine who embodied 'the banality of evil'. His was unthinking wrong-doing. Hans Frank was not an unthinking cog. Quite the reverse, he was seduced and thrilled into expecting a great deal for himself from the Third Reich, regardless of the cost to others. This was a bad blemish in the psychological constitution of a man who came to be in charge of millions of lives. In his case, the issue was not to do with 'the banality of evil'; notwithstanding the deficiencies of trait theory of personality, Hans Frank suffered from something we should call 'the vanity of evil'.

Bibliography

H.Arendt, *Eichmann in Jerusalem. A Report on the Banality of Evil*. London: Penguin. 1994.

De Waele and R.Harre, J-P. de Waele and R.Harré, 'The Personality of Individuals' in R.Harré (ed.), *Personality*. Oxford: Blackwell. 1976.

M.Housden, *Hans Frank. Lebensraum and Final Solution*. Basingstoke: Macmillan. In press.

J.Katz, *Seductions of Crime. Moral and Sensual Attractions in Doing Evil*. New York: Basic Books. 1988.

W.Mischel, *Personality and Assessment*. New York: John Wiley. 1968.

L.Ross and R.E.Nisbett, *The Person and the Situation. Perspectives of Social Psychology*. New York: McGraw-Hill. 1991.