

**NUREMBERG;
THAT TANGLED WEB**

BARBARA CAMP THOMPSON

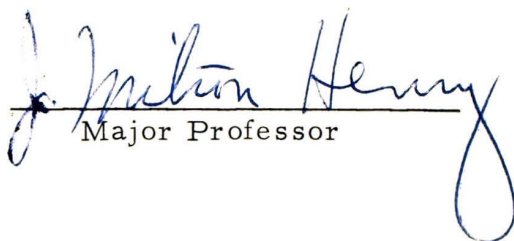
NUREMBERG: THAT TANGLED WEB

"Ev'n victors are by victories
undone" -

Dryden

To the Graduate Council:

I am submitting herewith a Thesis written by Barbara Camp Thompson entitled "Nuremberg: That Tangled Web." I recommend that it be accepted in partial fulfillment of the requirements for the degree of Master of Arts in History.

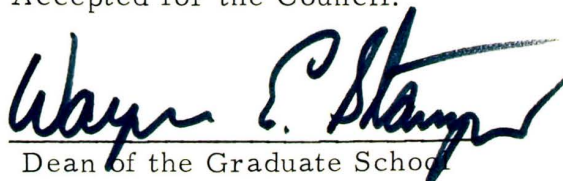

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NUREMBERG: THAT TANGLED WEB

An Abstract

Presented to

the Graduate Council of

Austin Peay State University

In Partial Fulfillment

of the Requirements for the Degree

Master of History

by

Barbara Camp Thompson

August, 1969

ABSTRACT

Since World War II there has been a great deal of discussion concerning the Nuremberg Trial and its procedure. However, very little material can be found which deals objectively with the trial. The bulk of the material on the Trial is argumentive. It is written to convict the reader for or against.

After studying the various arguments offered concerning the Nuremberg Trial this investigator has drawn the conclusion that there are indeed several weaknesses in the trial and its procedure.

However, when all the alternatives are considered, Nuremberg seems to be a step which history made in the right direction even if the move was filled with solecism. Nuremberg happened and what its future implications will be only the historian will record. Let the world hope that Nuremberg was a good beginning even if somewhat bungled.

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CHAPTER I

INTRODUCTION

Since World War II American, British, and French courts have been busy with the prosecution of Nazi War Criminals. By the year 1964, 5,025 Germans had been sentenced by the Allies. Of this number, 806 were sentenced to death of whom 486 were executed. In Russia 24,000 Germans were tried; 16,819 in Poland; 16,000 in Czechoslovakia; and 6,115 in the courts of the German Federal Republic which is not allowed to give the death penalty and has been scrupulous in not doing so. This gives an approximate total of 80,000 Germans sentenced for crimes committed in the Hitler Reich. In addition there were 13,892 suspects arrested who are still waiting trial.¹

The Allies followed a "due process of law" procedure to gain convictions against the suspects. Of all the German trials the Auschwitz trial was the longest. It began on December 20, 1963 and lasted nearly five years. Held in Frankfurt, Germany,

¹Heinrich Fraenkel, "No Rest for Nazis," New Statesman, Vol. 69, March 19, 1965, p. 430. Also see, "The Unknown Murderers," The Economist, Vol. 213, December 19, 1964, p. 1337. There is some discrepancy in the figures given in the two accounts. This is probably due to the dates when each account was written.

it involved 359 witnesses of whom 212 were Auschwitz survivors who arrived from fourteen different countries to tell their stories.² By 1965, however, time was running out for the prosecution. A one hundred year old statute read that twenty years after committing a crime a man could not be tried.

In Germany this touched off a debate in the Bundestag over whether to change the statute so that prosecution could extend past the twenty year deadline. One of the arguments advanced against change was that Germany would be bowing to world opinion. In answer it was insisted that the pressure for change was not from the world but from their own consciences. A second argument against changing the law was that this would be an instance of manipulating the law to suit the needs of the moment. It was called to the attention of the Bundestag that this was the course followed by dictators in all ages and a German one in very recent times. Those in favor of change felt this argument was unrealistic political doctrine, particularly in the face of such a "unique problem of unique dimensions."³

Regardless of popular opinion in Germany, which was against the trials continuing, the statute was changed so that

²"The Remorse is Genuine," The Economist, Vol. 216, August 21, 1965, p. 683.

³"Living With Murderers," The Economist, Vol. 214, March 13, 1965, p. 1121.

prosecution of the war criminals could be continued. In 1965 the polls showed that sixty-three percent of German men and seventy-six percent of the women were against extending the statute of limitations.⁴ Nevertheless prosecution against war criminals proceeded though the German people found it objectionable and the world was bored with it all.

An event at midnight, September 30, 1966 was little noticed by the world in general. That night from Spandau prison two men were released, Albert Speer and Baldur von Schirach. Speer, 61, a husband and father of six children, planned to again be an architect in Heidelberg. Herr Schirach, 59, and divorced in 1959, father of three sons, planned to live in Bavaria. Both of these men had contracted for handsome fees to tell their story in writing. Herr Brandt was criticized when he sent flowers, on the eve of Speer's release, to his daughter who had worked tirelessly for her father's release.⁵

Who were these men whose names the public did not recognize? They were two of those sentenced at the most famous of all the war trials, the major offenders trial at Nuremberg. There were only

⁴Fraenkel, op. cit., p. 432.

⁵"Bravish New World," The Economist, Vol. 221, October 8, 1966, pp. 140-43.

three who were not sentenced to hang, the two mentioned above and Rudolph Hess. Hess still remains in Spandau prison in Berlin.

This prison was built in 1876 specifically to house French prisoners after the Franco-German war. It is rather massive and old.

Surprisingly enough it stands empty except for this one surviving prisoner who is guarded by the United States, the Soviet Union, Great Britain and France. All the other prisoners have been released but Russia refuses to allow the prisoner to be transferred to any other institution.⁶

Hess, the lone survivor of Nuremberg, is a reminder of the one trial which symbolized the Allied effort to arrive at some solution to the problem of the Axis leadership. Regardless of the length of the other trials or how many more will be held, Nuremberg is the symbol of court trial for war criminals.

⁶Drew Pearson and Jack Anderson, Clarksville Leaf-Chronicle, October 20, 1968, p. 4.

CHAPTER II

HOW NUREMBERG CAME ABOUT

Early in World War II there was talk concerning what must be done with those waging war in Germany. At a White House dinner given by President Franklin D. Roosevelt the matter was discussed by Harry Hopkins, special advisor to the President; Howard Fast, a writer of "socialist" bent; Winston Churchill and Mrs. Eleanor Roosevelt. A notation concerning the talks was later transmitted to Stalin.⁷ Later Harry Hopkins and Judge Samuel I. Rosenman talked informally with the President about the punishment to be used against the war criminals. They favored a big show - one which, they said, should be remembered.⁸

On November 1, 1943, the Big Three - Roosevelt, Stalin, and Churchill - pledged themselves to punish war criminals. This communique stated that, "lesser criminals . . . will be tried in the countries in which their abominable deeds were done."⁹ The

⁷James Wakefield Burke, "Nuremberg for the Major Offenders," Mankind, Vol. I, No. 3, p. 7.

⁸Ernest O. Hauser, "The Backstage Battle at Nuremberg," The Saturday Evening Post, Vol. 218, January 19, 1946, p. 18.

⁹Murray C. Bernays, "The Legal Basis of the Nuremberg Trials," Reader's Digest, Vol. 48, February, 1946, p. 59.

statement further declared that the major criminals were to be tried "by joint decision of the Allies."¹⁰

Following this announcement the United Nation's¹¹ War Crimes Commission, which Russia never joined, began to collect data and compile black lists. The first actual suggestion for setting up the international machinery to punish war criminals was written by Judge Rosenman. This was done on Roosevelt's request and forwarded to London.¹²

During the Teheran Conference, November, 1943, Stalin knowing of President Roosevelt's attitude toward the Nazis¹³ proposed that when victory was achieved, ". . . 50,000 German officers and technicians should be rounded up and shot." Churchill alone was filled with anger. "The British people," he declared, "will never stand for mass murder." Roosevelt, however, amusedly felt the indignation of his British ally unwarranted. Stalin seemed highly pleased at the contention between his two colleagues. Roosevelt suggested that perhaps a compromise could be reached.

¹⁰Ibid.

¹¹Although a charter was not adopted until April, 1945, the United Nations was established by the First Washington conference January, 1942.

¹²Hauser, op. cit., pp. 18-19.

¹³Ibid. Roosevelt at this time personally was in favor of the "executive" way of dealing with the German Criminals - meaning punishment without trial.

He proposed that the number to be massacred should be reduced from 50,000 to 45,000. Churchill rose in anger. "I would rather be taken out into the garden and be shot here and now," he said, "than sully my own or my country's honor by such infamy."¹⁴

By the time of the Quebec Conference, October, 1944, United States Secretary of Treasury Morgenthau had worked out his now famous Morgenthau Plan which provided for the pastoralization of Germany after her defeat. Not as well known is the plan's section which deals with Nazi War Criminals. The plan recommended that the war criminals be listed by the Allies. This list should consist of "German arch-criminals - men whose obvious guilt was generally recognized by the United Nations - who upon capture and identification would be shot at once."¹⁵

During the Quebec Conference attended by the Jewish-American Secretary Morgenthau both Roosevelt and Churchill, under protest, initialed the plan. However, when this memorandum was presented at a cabinet meeting, even with the President's initials, it was not very well received. Secretary of War Stimson and Secretary of State Hull rejected the Morgenthau Plan for the pastoralization of

¹⁴Burke, op. cit., p. 9.

¹⁵Ibid. A copy of the plan as it was later presented to Churchill may be found in Henry Morgenthau's book, Germany Is Our Problem, (New York: Harper & Bros., 1945), pp. 1-4.

Germany and also his plan for the War Criminals. Both men felt that it was ". . . just such a crime as the Germans themselves hoped to perpetrate upon their victims. . ."¹⁶

From these discussions came the London Conference which was a four-power meeting taking place at Church House in London, June 26, 1945. Gathered together were four nations: the Union of the Soviet Socialistic Republic, the United States, the United Kingdom, and the provisional government of France. At this meeting the lead was taken by the Americans. As Ernest Hauser reports:

From the very beginning . . . the United States carried the ball . . . Nuremberg is 100 percent American concern. It was American initiative, American persistence and American idealism that produced the final result . . .¹⁷

When the four nations met in London there were more questions concerning the trials than answers. The British had previously met with the American delegates on June 24, 1945 and had given assurance to the Americans that they were prepared to go along with the idea. However, Britain was unsure that it would sign an indictment charging the Nazis with conspiracy to wage aggressive war. The British also planned for a trial of about ten Nazi criminals which should last approximately a fortnight. The Americans replied that their concept

¹⁶Ibid.

¹⁷Hauser, op. cit., p. 18.

was "a little broader."¹⁸ It should be pointed out though, that both England and America were fearful of what might come to light if a thorough airing of international affairs were made known during the period of German rearmament prior to World War II.¹⁹

The Russian delegation was not at all sure it would even support the venture. It was felt that a trial was nothing more than a formality. The Russians felt that in realistic terms the trial was only a sentencing procedure; hence, why go through such a lengthy procedure to establish guilt which history itself had already established?²⁰ The Russians were also uneasy that the trial would permit the Nazis to use the courtroom for propaganda purposes. The American delegation replied that the defendants would be admonished to speak to the point. The Russians then asked if this would not look as though the court was muzzling the defendants. The Russians could not understand how a trial could try an organization such as the Gestapo and the SS. The Russian delegation asked, "How can you try organizations already dissolved?"²¹

The discussions by this time had reached an impasse. The meetings were adjourned for an indefinite readjournment date. The

¹⁸Ibid., p. 19.

¹⁹Ibid., p. 137.

²⁰Ibid., p. 19.

²¹Ibid.

Americans, determined not to be defeated, on July 6 invited the Russians to dinner at Claridge's. During dinner there was a generous serving of wine, vodka, and brandy. The Americans felt encouraged because one of the delegates reported that Nikitchenko (chairman of the Russian delegation) smiled - not once but several times.²²

Head of the American delegation and chief of counsel was Associate Justice Robert H. Jackson who had been appointed by President Truman on May 2, 1945. With the negotiations so hopelessly bogged down, Jackson took a plane to Potsdam. Truman was then attending the Potsdam conference. There he poured out all his troubles to President Truman and Secretary of State Byrnes who had accompanied Truman. When Jackson returned to London he took a much sterner approach. The gist of his argument to the other delegates was that the Americans had captured the German criminals as well as the incriminating evidence. The implication was that the Americans could proceed without the aid of the other powers.

This approach had its effect for on August 8, 1945, the London Agreement was signed by the four powers. The London Agreement provided for the establishment of a court for the trial of war criminals and defined its jurisdiction, functions, and powers

²²
Ibid.

and prescribed the procedures to be followed by it. Each signing nation was allowed one judge and one alternating judge.²³ The London Agreement provided also for the designation of four chief prosecutors to present and prosecute the charges before the tribunal. Since the prosecutors were finding it difficult to agree upon the various counts, it was Sidney S. Alderman, of the American delegation, who suggested that each nation pursue that which interested it the most.²⁴ They all agreed.

With the signing of the London Agreement, Jackson immediately flew to Germany to search for a suitable place to hold the trials. Nuremberg was considered because it had been comparatively unhurt by the bombing. Its courtroom was being used by an American Ordinance Company for a recreation center. The usual soft drinks, etc. were offered and a piano was near the judge's bench. Jackson tried the acoustics by walking around the room yelling. Satisfied that this was the place he returned to London with the job of convincing the other powers of the same thing.

The Americans arranged for an inspection trip to Nuremberg. Britain and France were unconvinced that the trials should be held in the American part of zoned Germany. To help sway the British and French views, Colonel Robert J. Gill, Jackson's "wise and witty"

²³For America, President Truman appointed Francis Biddle and John Johnston Parker to serve as judge and alternate, respectively.

²⁴Hauser, op. cit., p. 138.

executive officer, entertained at the Nuremberg's only slightly damaged Grand Hotel. At dinner the delegates feasted on chicken and when the meal was finished an entire carton of cigarettes was given to each one present. From that dinner on the American site was in the bag. All the delegates present wanted to vote to hold the trials in Nuremberg. After their return the Russians grumpily complained that they had understood the trials were to be held by rotation in all the zones. However, this suggestion was voted down by a united front.²⁵

Jackson then went house hunting in Nuremberg. It was suggested that he take quarters in the pencil-manufacturing Faber family castle. Jackson replied, "The press would criticize me for living in such splendor." Instead he found more modest quarters. It was the Press that found lodging in the Faber Castle.²⁶

²⁵Ibid., p. 137.

²⁶Ibid.

CHAPTER III

THOSE PRESENT AT NUREMBERG:

THE ALLIED CHARGES AND THEIR LAWYERS

The Nuremberg Trial began on November 20, 1945. As the event got under way, Francois de Menthon:

. . . a mild-looking law professor with a scraggly mustache and professorially stooped shoulders, who had been a member of the French underground and was now chief French prosecutor at Nuremberg, asked for the death penalty.²⁷

The Americans had the most difficult job in the trial. They were responsible for Count I which was:

- 1) to establish in the eyes of the world the legitimacy of the trial as based on the tribunal's charter and international law.
- 2) to establish the legitimacy and admissibility of the new charge of a common plan or conspiracy and furnish watertight evidence thereof.²⁸

Robert H. Jackson, head of the American group, was a man

²⁷"Vengeance, French," Time, January 28, 1946, p. 26. A copy of the United Nations Indictment of the Nazi War Criminals which was published on October 18, 1945, may be read in Current History, Vol. 9, December, 1945, p. 552. The New York Times, October 19, 1945, pp. 11-14, printed the same document.

A printing of the opening statement of the Nuremberg Trial can be found in Current History, Vol. 10, January, 1946, p. 64.

²⁸Peter De Mendelsshon, "America's Case at Nuremberg," The Nation, Vol. 161, December 15, 1945, p. 652.

of high intelligence. He was also an American liberal and he was convinced it was the United States duty to uplift the world. Whether he knew it or not he was also a Puritan for he felt good should be rewarded and evil should be punished. A second American Lawyer was Thomas Dodd, who though a good lawyer was not as familiar with European or German history as he should have been and thus was unequal to his task. Major Wallis, a Boston attorney, presented the financial conspiracy evidence and seemed to be unsure of his ground. Sidney Alderman, who had resigned his post as General Counsel for the Southern Railway, was not well prepared. As an example, Alderman gave a long account of Germany's aggression against Czechoslovakia but when questioned was unable to give the date of the Munich agreement.²⁹

What was even worse, American prosecutors presented documents which were mimeographed so that they were difficult to read. Many times the papers were untranslated; some would be missing; and most of the time they were without cross-references.³⁰

²⁹Mendelssohn, op. cit., p. 654. However, Ernest O. Hauser disagrees with Mendelssohn's evaluation of Alderman. Hauser calls him the brightest light in the American delegation. Hauser points out that as a young lawyer, Alderman wrote a thesis on the legal status of cats and finding the books full of cases concerning dogs but not concerning felines, had to arrive at his deductions largely through analogy. This was Alderman's strong forte. According to Alderman this is the way that international law must develop. Hauser, op. cit., p. 138.

³⁰"Civilization vs Twenty," Newsweek, Vol. 26, December 3, 1945, p. 53.

The British were responsible for Count II. This consisted of crimes against the peace. In effect this meant breaches and violations of international treaties, obligations, or assurances. In charge of the British delegation was Sir Hartley Shawcross.³¹ Of the British delegation the one who made the best impression was Sir David Maxwell-Fyfffa. He seemed to have the best personality and the greater amount of experience. However, his task was somewhat easier than that which was assumed by the Americans.³²

Counts III and IV were shared alike by the French and the Russians. Count III was labeled "War Crimes." Count IV was described as "Crimes against Humanity." This consisted of the accusations against the Germans for ignoring the rules of war and committing acts of inhumanity, deportations, arbitrary lootings, killings, etc. All of these actions were considered unnecessary to the conduct of the war.³³

THE DEFENSE LAWYERS

Those who made up the Defense Counsel subscribed to a hodgepodge of varying political philosophies. There were some

³¹Mendelssohn, op. cit., p. 652.

³²Raymond Moley, "Making History at Nuremberg," Newsweek, Vol. 28, September 30, 1946, p. 96.

³³Mendelssohn, op. cit., p. 652.

whose world had died with the late Kaiser. Some had felt toleration for the Hitler Regime. A few of them were on the Nazi fringe-- those who either were or should have been Nazis. Dr. Fritz Sauter made no attempt to mask his arrogance nor his intense German nationalism at the trial. Captain Franz von Papen, very refined and suave, looked and thought like the father he defended. The clown of the group was Hans Marx. He was the counsel for the Jew-baiter, Julius Streicher. To American reporters he admitted that he was a Nuremberg ambulance chaser.³⁴ Probably the best known of all the defense lawyers was Dr. Laternser, who was "glacially handsome and fluent" and was the special defense for Keitel.³⁵

The defense based its case upon three major points. There was no conspiracy involving aggressive war because 1, none of the Nazis wanted war; 2, rearmament was only intended to provide the strength to make Germany's voice heard in the family of nations; and 3, the wars were not in fact aggressive wars but were defensive against a "Bolshevik menace."³⁶

³⁴"Civilization vs Twenty," op. cit., p. 53.

³⁵Corinna Adam, "The Men of Auschwitz," New Statesman, Vol. 67, January 24, 1964, p. 108.

³⁶Robert H. Jackson, "Trial of Axis War Criminals," Vital Speeches, Vol. 12, September 15, 1946, p. 713.

JUDGES

The proceedings were translated into four languages for the convenience of all participants which included four judges from the Big Four Powers. Sitting for the United States was Francis Biddle, for Great Britain, Lord Justice Lawrence, for France, Henri Donnedieu de Vabres, and for Russia, General I. T. Nikitchenko.³⁷ All except Nikitchenko wore robes.³⁸

The judges were faced with a number of problems of their own. The Anglo-Saxon jurists were accustomed to jury trials where the prisoner is presumed innocent until he is proven guilty. The French judge was accustomed to trying cases based on legal customs much sterner than those of the Anglo-Saxons since French law is based on Roman Code law. The Russians practiced an even sterner totalitarian jurisprudence.³⁹ The miracle at Nuremberg was not that justice was being attempted but that these four nations were sitting together in a common endeavor.

³⁷Heinz Eulau, "The Nuremberg War-Crimes Trial," The New Republic, Vol. 113, November 12, 1945, p. 625.

³⁸"Civilization vs Twenty," op. cit., p. 50.

³⁹"West of the Pecos," Time, Vol. 46, November 26, 1945, p. 28.

THE PRISONERS

Of the twenty men who sat in the dock the leader and star performer was Hermann Goering, Commander-in-Chief of the German Luftwaffe and successor designate to Hitler. During the trial Goering wore one of his old fancy uniforms but without any medals. It had been cut down in size since he had lost much of his previous weight. American G.I.s had presented him with some "civies" which he had refused to wear. Pinned to the offered suit was this note, "Dear Hermann, if you lose, please return the suit."⁴⁰

Goering faced the trial with bravado, even smiling. He was determined to be a martyr for Nazism. His defense was that he never once waged aggressive war, that he did not know about the terrible things which had been presented during the trial and that his only sin was his love of Germany.⁴¹

He was found guilty by the tribunal and sentenced to hang but cheated the gallows by taking poison.

Two hours before he was to lead the others through the trapdoor, he bit into a cyanide capsule, which he had successfully concealed

⁴⁰"The Fallen Eagles," Time, Vol. 46, December 3, 1945, p. 29.

⁴¹New York Times, December 2, 1945, p. 31.

from his prison guards. He died rather comfortably on his prison bed clad in silk pajamas. He left three letters, the contents of which have never been made public. One was addressed to Colonel Burton Andrus, the prison commandant. In this letter he may have told how he concealed the lethal capsule during frequent and unexpected searches of his naked person. It is assumed that he hid it in different places: in the toilet bowl of his cell; in his enormous navel; about his anus.⁴²

Rudolf Hess, Hitler's shadow, joined the Nazi Party as early as 1920. He was also imprisoned with Hitler at Landsburg, Bavaria where most of Main Kampf was dictated by Hitler to Hess. During Hitler's incarceration, he and his followers were allowed to gather in an anteroom adjoining Hitler's cell. Generally speaking, they had a good time.

Upon their release Hess became Hitler's trouble shooter in party matters. So it is not surprising that Hess was unpopular with the other Party members. They called Hess der hinterhaeltige Aegypter ("the treacherous Egyptain"). Hess had been born in Egypt of German parents.

Ironically, it was his job to open the Party convention each year in Nuremberg.⁴³ At the same Nuremberg but this time a prisoner, Hess pretended to be insane though his psychiatrist,

⁴²"Vengeance, French," op. cit., p. 26.

⁴³Joseph Goebbels, The Goebbels Diaries, trans. Louis P. Lochner (New York: Popular Library, 1948), p. 76.

Major Douglas Kelly of San Francisco, California, disagreed.⁴⁴ At the trial Hess looked hollow-eyed and sat with arms folded or read fairy tales. One reporter made the comment, I wouldn't be surprised to find him dead and nobody had noticed it.⁴⁵ By the end of November, Hess stopped reading fairy tales and stopped the fairy tale of his amnesia and began to take copious notes.⁴⁶ On November 30, 1945, Hess said, "As of now my memory is again in order." And grinning like a small boy, Hess sat down.⁴⁷

During the trial Goering told that the purpose of Hess's flight to England was to take King George VI back to Berlin for a peace conference. Goering said that when Hitler heard of this he was speechless for the first time in his life.⁴⁸ Hess's trip caused Hitler many moments of anxiety. He felt that the English could have exploited the incident and made Germany's Allies distrustful. Hitler felt with this occasion the English missed their greatest diplomatic chance of the war.⁴⁹

⁴⁴New York Times, December 1, 1945, p. 6.

⁴⁵Peter De Mendelssohn, "The Two Nurembergs," The Nation, Vol. 161, December 1, 1945, p. 570.

⁴⁶"Nuremberg: No Afterthought," Newsweek, Vol. 26, December 17, 1945, p. 46.

⁴⁷"The Nuremberg Show," Newsweek, Vol. 26, December 10, 1945, p. 51.

⁴⁸Ibid.

⁴⁹Goebbels, op. cit., p. 542.

When the time came for Hess to give his defense he summed up his feelings by saying that Hitler was the greatest German in the last one thousand years.⁵⁰ This was probably the truth as Hess saw it. Hess was sentenced to life imprisonment and is the only prisoner in the Nuremberg dock who is serving his time today.

Joachim von Ribbentrop was appointed by Hitler as Foreign Minister on February 2, 1938. Previously he had served the Nazis as ambassador at large; then he had become ambassador to Britain from 1936 to 1938. Ribbentrop had been a former champagne merchant and the title of nobility (von) was obtained rather irregularly. When the Nazis first came to power they courted those connected with the nobility but as they overcame their inferiority complex they were eager to get rid of the nobility, as the blue bloods for the most part had a better education and better manners than the typical Nazi.⁵¹

Ribbentrop was the chief architect of the system of alliances between Germany, Italy, and Japan known as the Rome-Berlin-Tokyo Axis. He also helped plan and execute the German program of expansion which led to the annexation of Austria and Czechoslovakia. Ribbentrop was the designer of the greatest diplomatic bombshell of

⁵⁰"Trials: Theme and Variations," Newsweek, September 9, 1946, Vol. 28, p. 52.

⁵¹Goebbels, op. cit., p. 415.

the twentieth century. On August 23, 1939 the Nazis and the Soviets announced that they had settled all their differences. They would live in peace with one another. Ribbentrop and Molotov had talked as one realist to another and it was not hard for them to agree to carve the spoils of Poland between the two countries.

At Nuremberg Ribbentrop was one of the select few who was allowed to share Friendship with Goering and Hess during the trial. These three held themselves aloof from the other prisoners. At the time of the trial Ribbentrop was frail, thin and gray.

In his defense, Ribbentrop said that he was only a diplomat who tried to serve his country and that the German was was not an international crime. However, he was sentenced to hang along with the others on October 15, 1946.

Dr. Robert Ley had been head of the German Labor Front. In May, 1933 he engineered a coup d'etat against the German trade unions which at that time were still a power. While Hitler was haranguing the Union members on Tempelhof Field, Berlin, and other workers were assembled at demonstration centers to listen to the broadcast of the speech, Ley and the SA invaded trade-union headquarters everywhere and took over, taking buildings, books, and funds. This wrote "finis to the German organized labor movement."⁵² Ley was then put in charge of the Labor Front which all German workers

⁵²Ibid., p. 104.

and employers were compelled to join.

During this term of service for Hitler, Ley constantly was demanding more responsibility. Goebbels remarked after Hitler had given Ley a big assignment:

In the past he has always been concerned about being clothed with authority. He fought energetically for authority. Once obtained, however, he would fail to use it, but start another fight for new authority.⁵³

Hitler's hesitancy in appointing Ley can be easily understood since he was a notorious drunkard.⁵⁴

Ley managed to hang himself in his cell while awaiting trial. A postmortem examination of his brain disclosed that he was suffering from a serious brain malady.

Field Marshal Wilhelm Keitel was born in 1882. During World War I he became an officer. By World War II he held the impressive title, Chief of the Supreme Command of the German Armed Forces. However, in reality he was nothing but a rubber-stamp to Hitler's grandiose plans.

Keitel was not well thought of by his contemporaries. Goebbels thought he was ". . . an absolute zero. He is a locomotive that has run out of fuel, puffs out the last steam, and then suddenly stands

⁵³Ibid., p. 515.

⁵⁴Ibid., p. 413.

still.⁵⁵ Goering also felt that Keitel was without leadership.⁵⁶ Even Hitler had little respect for the man.⁵⁷ Desmond Young evaluated Keitel by saying he was "prepared to sacrifice his professional integrity for promotion." But added, "He might have hesitated if he had known that the day would soon come when Hitler would treat him as an uniformed office-boy."⁵⁸

In his own defense, Keitel said that he was ignorant of Hitler's plans. He summarized his contribution to the Third Reich as that of a loyal soldier. Keitel was sentenced to hang.

Ernest Kaltenbrunner succeeded Reinhard Heydrich as chief of the Security Service. Kaltenbrunner was born in 1901 in Austria. He was active in the Nazi movement in Austria until the Anschluss in 1938. Hitler then appointed him the SS leader for the Ostmark, as Austria was then called.

During the Nuremberg proceedings he was hospitalized by a second cranial hemorrhage and was not present during part of the

⁵⁵Ibid., p. 353.

⁵⁶Ibid., p. 305, Goering felt that he need not be taken seriously.

⁵⁷Ibid., p. 332. Goebbels says, "About Keitel the Fuehrer can only laugh."

⁵⁸Desmond Young, Rommel: The Desert Fox, (New York: Berkley Publishing Co., 1950), pp. 40-41.

trial.⁵⁹ Kaltenbrunner was also hanged.

Alfred Rosenberg was born in the Baltic States and educated in the University of Riga. What he contributed during World War I is still a mystery. By 1921 he had joined the Nazi Party and was appointed editor of the official party newspaper, Volkischer Beobachter (Racist Observer). He was one of Hitler's earliest followers and became the leading Nazi theoretician. In the party he was also in charge of the ideological indoctrination. He propounded the anti-Semitic racial doctrines which formed a primary tenet of Nazi propaganda.

After the German armies had swept over much of Russia, Hitler appointed Rosenberg Reich Minister for the Eastern Occupied Areas. The appointment was made purely from personal loyalty because Rosenberg was notoriously ill equipped to handle administrative problems. Goebbels says, "A good theoritician but no practitioner."⁶⁰ However, he did have the added advantage of being able to speak Russian.

Of all those at Nuremberg he was the bitterest opponent of Christianity and had worked for its complete abolition in Germany.⁶¹

⁵⁹"The Grim Reapers," Newsweek, Vol. 27, January 14, 1946, p. 39.

⁶⁰Goebbels, op. cit., p. 105.

⁶¹Ibid., p. 71.

Should the Nazis have won they would have tried to eliminate Christianity from Germany. Rosenberg had already prepared a decree which was awaiting Hitler's signature that would cause even the most menial worker to lose his job if he were a member of a church.⁶²

Rosenberg's defense at Nuremberg was that he was only a quiet philosopher and hence had no reason for being there. Nevertheless, Rosenberg was sentenced to hang.

Hanns Frank, Governor General of Occupied Poland, was another of Hitler's earliest adherents. It was Frank who defended Hitler in the numerous political trials brought against him during the Weimar Republic. Yet, by 1943 Frank had fallen out of Hitler's good graces according to Goebbels. One of the causes for the discord was the desire of Frank to gain a divorce from his wife. This Hitler refused to let him have.⁶³

On the surface Frank was one of the more presentable Nazis and was chosen on several occasions to represent the Fuehrer and his government.⁶⁴ Notwithstanding, Frank as Governor General of

⁶²Ibid., p. 274.

⁶³Ibid., p. 326.

⁶⁴Ivone Kirkpatrick, Mussolini: A Study in Power, (New York:

Poland acted like an oriental potentate. While in Poland he wrote some sixty volumes of diaries which proved to be his downfall at Nuremberg. He was sentenced to hang for his atrocities committed on the Polish Jews.⁶⁵

Frank was the only one at Nuremberg who when questioned admitted he was guilty. He went so far as to renounce Hitler and the Nazi creed.⁶⁶ But for Frank this recognition of wrong came too late and the four judges were unimpressed.

Wilhelm Frick was the first Nazi to attain a high political office in pre-Nazi Germany. He was appointed Minister of the Interior which gave him the opportunity to become the floor leader of the Nazis in the Reichstag. When Hitler assumed power in 1933 the first official announcements concerning the Hitler cabinet named only Goering and Wilhelm Frick as cabinet members.⁶⁷ He had been named Minister of the Interior. Hitler on August 24, 1943 relieved Frick of his position and named Heinrich Himmler in his place.

During the war years there was a bitter feud between Frick and Goebbels. Though the two were opposites in personality their quarrel stemmed from a cultural jealousy.

⁶⁵Goebbels, op. cit., p. 216.

⁶⁶"Nazi Leaders Sing Their Swan Song," Life, September 16, 1946, p. 40.

⁶⁷Goebbels, op. cit., p. 22.

Goebbels as Minister of Propaganda was also president of the Reich Culture Chamber and as such controlled the cultural and artistic life of the nation. He therefore resented it very much that Frick from time to time invited friends and associates to an evening of music in his home. Both Frick and his wife were very fond of the fine arts. Goebbels did not like this "competition."⁶⁸

As he sat through the trial a reporter described Frick as looking like a dismissed school teacher.⁶⁹ Along with the others he was sentenced to hang.

Julius Streicher was the Editor-in-Chief of the pornographic anti-Semitic weekly newspaper Der Stuermer (The Stormer or Attacher). German parents protested vigorously over the posting of the paper in glass-covered bulletin boards. They objected to their children reading the filthy and sexy material and seeing the pornographic cartoons.⁷⁰

Streicher was one of the oldest members of the Nazi Party. He participated in the "putsch" in Munich in 1923. In the years which followed he waged an unceasing campaign for the total extermination of the Jews. Though Streicher had turned out more Nazi propaganda than any of the other prisoners he was the most difficult to prosecute. Even though he was "physically revolting,

⁶⁸Ibid., p. 97.

⁶⁹Mendelssohn, "The Two Nurembergs," p. 570.

⁷⁰Goebbels, op. cit., p. 70.

pornographic in print, and fanatically anti-Semitic at all time," he had never had the power to commit crimes except through his pen.⁷¹

Even Streicher winced when his abnormal sex practices were described in the Court. His defense was that he claimed to be only a plain newspaper editor. It might be interesting to note that his I. Q. was the lowest of all the prisoners - 106 but still average.⁷² The Court sentenced him to hang.

Walter Funk, born in 1890, was Nazi Minister of Economics and President of the Reichsbank. He rose from an obscure journalist to a member of Hitler's cabinet. However, at the trial he looked more like a traveling salesman fallen on hard times.⁷³ Funk and Hitler were on good terms for it was his job to give Hitler a daily review of press commentary.⁷⁴ Funk was sentenced to life imprisonment.

Hjalmar Schacht was the Reich Minister of Economics. During the trial Schacht sat apart, indicating he was there by mistake.⁷⁵ Many of the Nazis including Goebbels held Schacht in contempt since they felt he was not a dyed-in-the-wool Nazi.⁷⁶ At Nuremberg Schacht vacillated

⁷¹"Nuremberg: Private Guilt," Newsweek, Vol. 27, January 21, 1946, p. 47.

⁷²New York Times, December 4, 1945, p. 13.

⁷³Mendelssohn, "The Two Nurembergs," p. 570.

⁷⁴Goebbels, op. cit., p. 102.

⁷⁵Mendelssohn, "The Two Nurembergs," p. 570.

⁷⁶Goebbels, op. cit., p. 333.

between cool logic and then tantrums.⁷⁷ Of all those on trial Schacht's I.Q. was the highest - 143.⁷⁸ The Court found that Schacht had helped Hitler to power by financial assistance but had deserted Hitler when he realized his true aims. Schacht was acquitted.

Hans Fritzsche became Head of the Radio Division of the Propaganda Department of the Party and Goebbels' top radio commentator. Since the Propaganda Minister had committed suicide in the Fuehrerbunker during the fall of Berlin to the Red Army, Fritzsche found himself filling Goebbels' place in the dock at Nuremberg. He was acquitted. The court believed him when he testified that he only learned the truth from Admiral Raeder while they both were in prison. When both Schacht and Fritzsche were released from prison American Police had to take them from the German Police who were trying to arrest them the second time. The Americans felt compelled to do this on the "Anglo-Saxon legal principle which protects an acquitted man from 'double jeopardy'". . . .⁷⁹ However, the Germans eventually had their way and rearrested Fritzsche and tried him under the

⁷⁷"Day of Judgment," Time, Vol. 46, December 10, 1945, p. 25.

⁷⁸New York Times, December 4, 1945, p. 13.

⁷⁹"Morning After Judgment Day," Time, Vol. 48, October 14, 1946, p. 32.

de-Nazification Law. The German court condemned him to nine years' imprisonment.⁸⁰

Karl Doenitz, an ardent Nazi, succeeded Grand Admiral Erich Raeder in 1943 as Commander in Chief of the German Navy. Just before committing suicide in April, 1945, Hitler appointed Doenitz as Reich President to succeed himself as chief executive of Germany. Goering by this time had fallen out of the good graces of Hitler. However, Goebbels in his Diary commented that Doenitz enjoyed his (Hitler's) complete confidence.⁸¹ Doenitz was the first in a radio broadcast to announce to the German people Germany's unconditional surrender.⁸² In the I.Q. tests given at Nuremberg Doenitz tied with Goering for third place. Theirs was a score of 138 each.⁸³ His sentence was ten years in prison.

Erich Raeder, former Commander-in-Chief of the Navy, was a tar of the old school. He never favored Goebbels' publicity methods. In return Goebbels poked fun at Raeder's Christianity. In April, 1942, Goebbels comments that ". . . the leadership of the German Navy isn't what it ought to be. There is too much praying going on there

⁸⁰Goebbels, op. cit., p. 112

⁸¹Ibid., p. 328.

⁸²Ibid., p. 278.

⁸³New York Times, December 4, 1945, p. 13.

and too little work."⁸⁴ In March, 1943 Goebbels and Hitler entertained themselves with "funny stories" about Raeder's Christian beliefs.⁸⁵ However, the United States Army Chaplain Henry F. Gerecke, who visited the Protestants among the defendants at Nuremberg daily, felt that Raeder was the best lay Bible student he had ever encountered.⁸⁶

One who saw Raeder and Doenitz at Nuremberg reported that they looked like a couple of discharged streetcar conductors on the dole. Seeing them this way it was unbelievable that those two miserable people could have known the first thing about naval strategy.⁸⁷

The Court gave Raeder a life prison sentence. Admiral Raeder then requested that he be shot instead of imprisoned for life. This was denied.⁸⁸

Baldur von Schirach was Hitler's Third Reich Youth leader. In 1942 Schirach was replaced as Youth leader by Arthur Axmann. Schirach was then appointed Gauleiter for Vienna. Goebbels accused him of becoming "Viennaed." He further states that he is no grown-up

⁸⁴Goebbels, op. cit., p. 216.

⁸⁵Ibid., p. 329.

⁸⁶Ibid.

⁸⁷Mendelssohn, "The Two Nurembergs," p. 570.

⁸⁸"Reich: Until Dead," Newsweek, Vol. 28, October 21, 1946, p. 54.

Nazi, that he speaks German with an American accent rolling his "rs," and that he consorted with artists too much.⁸⁹

Schirach was sentenced to twenty years in prison. These twenty years have been served and he is now a free man.

Fritz Sauckel was considered one of the toughest of the Old Guard Nazis. His title was the Plenipotentiary for the Employment of Labor which loosely translated means that he was in charge of all the forced labor.

During the war, Sauckel had the sarcophagi of Goethe and Schiller taken from their resting place at Weimar and taken to Jena. He then gave the order that if the Americans advanced into the area the bodies were to be blown to bits. Those who knew of the plan in Jena thought this a sacrilege and hid the two coffins. Later they informed Major William M. Brown, American military governor of Weimar, of what had been done and Brown ceremoniously brought the remains back to Weimar. Here they were restored to their original resting place.⁹⁰ Sauckel was sentenced by the Court at Nuremberg to hang and the sentence was carried out.

Alfred Jodl was the Chief of Operations Staff of the High Command of the Armed Forces. Jodl served Hitler from a deep

⁸⁹Goebbels, op. cit., p. 414.

⁹⁰Ibid., p. 178.

personal devotion. He was so completely sold out to Hitler that he was prepared to transmit, even if he did not approve, Hitler's most outrageous orders.⁹¹ When Jodl was apprehended at Flensburg in May, 1945, he was carefully carrying the last top-secret military orders of Adolf Hitler in his brief case. His reason for this was so that they might be preserved for all of posterity.⁹²

During the trial Jodl tried to ignore the entire proceedings. He disregarded the rule against covering the hands under a blanket in the cell and hid his entire head during the night under his blankets.⁹³ Jodl was sentenced to hang.

Franz von Papen served in Hitler's early cabinet as Vice Chancellor. After hearing the testimony the Court acquitted Papen. As in the case of Schacht the tribunal found that von Papen had played an active part in helping Hitler to power diplomatically. It was von Papen who persuaded the aging President Hindenburg to appoint Hitler as Chancellor and so aided his rapid take over. Papen also arranged for a meeting of Hitler with the big industrialists of the Rhine and Ruhr when the Nazi party began to run out of funds. They met at the home

⁹¹Young, op. cit., p. 127.

⁹²Goebbels, op. cit., p. 223.

⁹³"Day of Judgment," Time, p. 25.

of Baron von Schroeder in Cologne.⁹⁴ The Court believed von Papen to have deserted Hitler when his aims were made clear.

Konstantin von Neurath originally served Hitler as Foreign Minister in his first coalition cabinet; later, he was made Reich Protector for Occupied Czechoslovakia. On August 13, 1932 Hitler and Roehm visited President Paul von Hindenburg and demanded that he turn the entire government over to the Nazis. Hindenburg virtually threw them out. Later, Hitler was appointed Chancellor of Germany on January 30, 1933 with the stipulation that von Neurath be retained as Foreign Minister. In 1938 Hitler relieved him of his duties and replaced him with the more robust and unscrupulous von Ribbentrop.

Soon after this he was given an appointment as head of Czechoslovakia. In this position he proved to be too old and easy-going to suit Hitler. He was persuaded to resign for reasons of "health" and was replaced by Reinhard Heydrich, "The Hangman."⁹⁵

Goebbels makes the notation in April, 1942 that Neurath visited him and at the meeting told him that he felt as though he had been shelved. Goebbels further states that Neurath had never been guilty of disloyalty toward the Fuehrer and that he intended to tell the Fuehrer of this.⁹⁶

⁹⁴Goebbels, op. cit., p. 122.

⁹⁵Ibid., p. 110.

⁹⁶Ibid., p. 201.

Von Neurath and Von Papen were the most healthy looking of all the prisoners. Both were white haired and tanned; both seemed to conceive of themselves as the gentlemen of the Nazi party.⁹⁷ Neurath was sentenced to fifteen years in prison.

Artur Seyss-Inquart, more than any other Austrian, was responsible for the collapse of Austria.⁹⁸ Because of his personal friendship with Chancellor Kurt von Schuschnigg of Austria, he was appointed Minister of the Interior and Security in February, 1938. As an ardent Nazi he was then in control of the police and of Austrian officialdom. While reassuring Schuschnigg that he would be loyal to the Austrian constitution he was all the while preparing for the Nazi coup which followed a month later. In 1939, after the outbreak of World War II, Hitler appointed him deputy governor of occupied Poland. The following year, 1940, he was appointed Reich Commissioner for the Netherlands.⁹⁹

Seyss-Inquart was successful in keeping the Dutch population in line. Goebbels observed that he was ". . . a master in the art of alternating gingerbread with whippings, and of putting severe measures through with a light touch."¹⁰⁰

⁹⁷Mendolssohn, "The Two Nurembergs," p. 570.

⁹⁸Goebbels, op. cit., p. 70.

⁹⁹Ibid.

¹⁰⁰Ibid., p. 485.

At Nuremberg he was snubbed by the other prisoners. As he sat in the dock he looked the part of the second-rate lawyer that he was.¹⁰¹ He was sentenced to hang.

Albert Speer, born in 1904, was an architect by profession. In 1942 he was appointed Plenipotentiary for Armaments. His job was performed so well that Hitler gradually heaped other duties upon him. He became Director of War Production, Director of Roads, Water and Power, and Plenary General for the Supervision and Reconstruction of Bombed Cities.¹⁰²

In his final plea at Nuremberg he made an interesting comment on the the Trial. He said:

Should there arise yet another state which will use a modern technique to support a dictatorship and conquest, then the world must go under. This trial should therefore serve as a means of finding a method for cooperation between human beings.¹⁰³

Speer was sentenced to twenty years in prison which he has served and is now a free man.

Gustav Krupp von Bohlen und Halback was born Gustav von Bohlen und Halbach. When Gustav married Bertha Krupp, who was the only heir of Alfred Krupp, he had his name changed with Kaiser

¹⁰¹Mendelssohn, "The Two Nurembergs," p. 570.

¹⁰²Goebbels, op. cit., p. 125.

¹⁰³Felix E. Hirsch, "Lessons of Nuremberg," Current History, Vol. 11, October, 1946, p. 318.

Wilhelm II's permission to Krupp von Bohlen und Halbach. Thus the name of Krupp was perpetuated.¹⁰⁴

Gustav was never brought to trial. He was senile, because of an advanced stage of arteriosclerosis, and was unable to leave his cot in Austria. The Allies considered bringing Bertha Krupp to trial since there was still much feeling against the large German Bertha guns. However, it was decided that this would not serve justice. It was also felt that public opinion would be against such an approach since Bertha was a woman and since she was advanced in age.

However, Gustav's son Alfred and eleven fellow Krupp directors were tried. They were acquitted but the tribunal did not say why. Time magazine with tongue-in-cheek drew the conclusion, ". . . apparently the tribunal thought that businessmen could not be blamed for carrying out orders from political leaders."¹⁰⁵

Martin Bormann became Rudolf Hess's successor as Hitler's Head of the Party Chancery after Hess's sensational flight to England. He was one of the most radical and uncompromising Nazis. The church in Germany became one of his most hated objects. He was tried in absentia. No definite proof was found of his death though he was known

¹⁰⁴Goebbels, op. cit., p. 371.

¹⁰⁵"What's a Criminal," Time, April 19, 1948, p. 87.

to be with Hitler in his bunker almost to the last.¹⁰⁶

Of all these on trial¹⁰⁷ Goering was the star as he and the world knew he would be. Goering had been on dope but during his imprisonment waiting for the trial he had regained his keen mind. Up until this point none of the Allies had realized that Goering possessed almost total recall. He could remember the documents practically word for word and all the details. Many times this ability proved disconcerting to the leading American prosecutor Jackson.¹⁰⁸

Jackson, in his summation, said:

If you were to say of these men that they are not guilty, it would be as true to say that there has been no war,¹⁰⁹ there are no slain, there has been no crime.

DEATH

The morning after the Nuremberg sentences had been pronounced, October 16, 1946, in East London there was a sixty year old cockney

¹⁰⁶Goebbels, op. cit., p. 104.

¹⁰⁷For further information on the defendendants see, "Verdicts of the Nuremberg Trial," Current History, Vol. II, November, 1946, pp. 410-427. See also New York Times, October 2, 1946, pp. 22-24. Also of interest is "Thumbnail Description of Twenty Sentenced," Newsweek, Vol. 28, October 7, 1947, p. 49.

¹⁰⁸Burke, op. cit., pp. 14-17.

¹⁰⁹"Nazi Leaders Sing Their Swan Song," Life, p. 40.

craftsman named Harry Moaks who had been given a special commission. He was the producer of the most finely woven, chamois-covered, grade-A hemp nooses that could be had.¹¹⁰ But instead of the traditional hangman's knot, a brass eyelet was to be used. The rope was to be long, American style, which breaks the neck at the fall instead of a short rope, European style, which kills by strangulation.¹¹¹

¹¹⁰"Morning After Judgment Day," Time, p. 32.

¹¹¹"Reich: Until Dead," Newsweek, p. 54.

CHAPTER IV

ARGUMENTS ABOUT NUREMBERG

The task of bringing justice to the Nazis was a difficult one. This was illustrated by the fact that the entire nation and the Reich were so interwoven. During the trial, the Americans arrested the German courthouse janitor. He had been a member of the SS and also a member of the Nazi party since 1933.¹¹² What about this effort put forth at Nuremberg? Was the trial worth the travail? What did it accomplish or what did it fail to accomplish?

First, the question might be asked as to what could have been done in place of Nuremberg? World opinion demanded action of some kind. It was more than the people of the world would accept that the war's end the leaders of the Axis powers would be given a clean slate and told to go and sin no more. Chief Justice Jackson's reply to this concept was, "to free them without a trial would mock the dead and make cynics of the living."¹¹³

¹¹²"Nuremberg: No Afterthought," Newsweek, Vol. 26, December 17, 1945, p. 46.

¹¹³Heinz Eulau, op. cit. p. 625.

Yet, the Allied powers could have freed the top Nazi criminals on the ground that the heads of a sovereign state are not personally responsible to other nations for their official acts. However, even ancient Roman law had not recognized that a "society" could commit crimes.¹¹⁴ Then who was responsible? If not the leaders then surely the society, if not the society then who? Chief Prosecutor for the United States, Jackson said:

. . . the idea that a state commits crimes is a fiction. Crimes are always committed only by individuals. This trial represents mankind's desperate effort to apply the discipline of law to statesmen who have used their powers of state to attack the foundations of world peace; it is a juridical action of the kind to insure that those who start war will pay for it personally.¹¹⁵

If society cannot commit crimes, only the leaders, then it follows that the Nuremberg tribunal would not allow justification on the grounds of obeying orders to be an admissible defense. Prosecutor Jackson felt that "there is more than a suspicion that this idea is a relic of the doctrine of the divine right of kings."¹¹⁶

This was one of the basic principles to be established out of the Nuremberg trial - that ". . . national sovereignty is no longer

¹¹⁴Rusten Vambrey, "Law & Legalism," The Nation, Vol. 161, December 1, 1945, p. 574.

¹¹⁵Peter de Mendelssohn, "America's Case at Nuremberg," The Nation, Vol. 161, December 15, 1945, p. 653.

¹¹⁶"Policies and Principles," Time, June 18, 1945, p. 29.

a shield behind which aggressors may take refuge."¹¹⁷ Wary of this principle the military of the United States was strongly against the trying of the German leaders for they insisted that if such a precedent were established then in the future all military leaders might be subject to just such trials as Nuremberg for fighting in behalf of or defending their land. The Stars and Stripes wrote critically about the trial procedures. In reply Jackson stated there was a vast difference between carrying on duties for which none at Nuremberg were accused and those that actually pushed for conquest.¹¹⁸ The military have a strong argument. For this difference of which Jackson speaks is a very fine line indeed. It may someday prove to be so fine that other nations cannot see it.

That the military was right to fear the Nuremberg trial and its results has been justified since Viet Nam. It was on the basis of this established Nuremberg principle, - that each individual bears his own responsibility, - that David Mitchell, Howard Levy, and the Fort Hood Three¹¹⁹ brought suits against the United States Government. In their separate cases they tried to prove by the Nuremberg Charter

¹¹⁷Thomas L. Karsten and James H. Mathias, "The Judgment at Nuremberg," The New Republic, Vol. 115, October 21, 1946, p. 512.

¹¹⁸New York Times, December 5, 1945, p. 3.

¹¹⁹The Fort Hood Three were three Army privates who had refused to board a plane bound for Viet Nam. They were Dennis Mora, David Samas, and James Johnson.

that the United States is guilty of: crimes against peace, war crimes, and crimes against humanity.

Since Nuremberg established the fact that individuals have international duties which transcend the national obligations of obedience imposed by the individual state then there must be a force stronger than the national government to give aid and protection to the individual within his own national state. This has become the cry of the modern day dissents.¹²⁰

Because of "Nuremberg Principles" Supreme Court Justice Douglas in a recent dissent - written for the case of O'Brien v. U. S. - questioned whether the constitutionality of conscription is in all cases beyond question.¹²¹

The second course of action which the Allies could have pursued in place of Nuremberg was summary punishment by decree, without hearings.¹²² This was the procedure used by the British against Napoleon when he was sentenced in 1814 to Elba. This procedure certainly had an established precedent and did not run into as many

¹²⁰For the dissenters contemporary view of Nuremberg see Beverly Woodward, "Nuremberg Law and United States Courts," Dissent, March-April 1969, pp. 128-136. Beverly Woodward teaches philosophy and political science at Southeastern Massachusetts Technological Institute. See also "Nuremberg, U.S.A.," Economist, Vol. 223, May 27, 1967, p. 916.

¹²¹Ibid., p. 132.

¹²²Eulau, "The Nuremberg War-Crimes Trial," p. 625.

difficulties as the Trial which tried to place the responsibility.

Roosevelt, as well as Churchill, had originally felt this the best policy. In fact, this was also the opinion of Russia when its delegates arrived in London for the Conference concerning the German leaders. But even this procedure offered a great problem. Who was to make the list of those to be sentenced by decree? An editorial in the Saturday Evening Post stated, "There is no need for a long, drawn out trial as these men are the names associated with the crimes of the Nazi regime."¹²³ However, it should be pointed out that a person is not convicted in an Anglo-Saxon Court because of his reputation. Little research would be required to show that the public has been mistaken in its thinking many times. Our culture has endeavored to impress upon its society the need for due process of law. Indeed, if guilt because of association had been declared, then a precedent might have been established which could have proved more dangerous than personal responsibility.

In fact, in an Anglo-Saxon court, an indictment does not automatically indicate a sentencing. The United Nations were under the impression that the United Nations had fought a war for due process

¹²³"Will Nuremberg Stop New Aggressors?" (editorial), Saturday Evening Post, Vol. 219, November 2, 1946, p. 164.

of law. The United Nations felt that abject lawlessness had brought on the terrible conflict.¹²⁴

HISTORICAL RECORD

Since neither of these courses of action seemed plausible it was decided that the Trial be held. What can be said in favor of the trial? Possibly one of the strongest arguments for Nuremberg is a simple one. The argument is one of record. If the war criminals had not been held responsible or if they had not been sentenced then there would not have been an established record. This record would be available for all the world to examine when the memory began to dim. It serves to keep the facts straight and Germany cannot later say that what had happened in her land was foreign propaganda. The record was established, with the opportunity for the defense to clear or deny the accusations, and is available for all the people, even those yet unborn, to read and ponder.

Sir David Maxwell-Fyfe, solicitor-general in Churchill's government and head of the British delegation, was a strong supporter of the Nuremberg trial. He gave the following as his reason for supporting the trial.

¹²⁴Quincy Wright, (Chicago International Lawyer), "Defense of Nuremberg Trial," Changing World, March, 1946. Found in Appendix United States Congressional Record, A1741, and introduced by Representative Adolph J. Sabath of Illinois, March 28, 1946.

As memories grow dim sentimentalists everywhere begin to discount war crimes as propaganda. The danger period usually sets in after the first shock - someday soon, perhaps, Pamela (seventeen year old daughter) who is just now trying to get into Oxford, will tell me that the misdeed of Nazism were so much British propaganda. But no - I'll be able to say, 'Look at what I produced at the Nuremberg trial!' As for little Miranda (six year old daughter), her generation might be exposed to a long-term effort on the part of the German people to white-wash Hitler, just as they previously whitewashed Bismarck and the Kaiser. Well, the Nazis have their opportunity to clear themselves right here, and whatever critics of the trial may have to say, future generations cannot ignore the record.¹²⁵

Because of the material and the record of events established at Nuremberg the German people have a clearer idea of what happened and how it happened. Karl S. Bader, professor of jurisprudence at the University of Mainz, feels that the great worth of Nuremberg is its wealth of information. He said:

Nobody who considers the years 1933 to 1945 will in future times be able to pass by this material, which is tremendous in its extent and tremendous in its value for the perception of the errors of men. When the Tribunal decided to make all the material of the trial accessible to the world, and above all again to the German people, we do not want to and must not put this off with a disdainful gesture as "counterpropaganda."¹²⁶

¹²⁵Hauser, op. cit., p. 137 (Parenthesis mine)

¹²⁶Karl S. Bader, "Review," Nuremberg-German Views of the War Trials, ed. Wilbourn E. Benton & George Grimm (Dallas: Southern Methodist University Press, 1955), p. 155. Karl S. Bader is editor of the Deutsche Rechts-Leitschrift, in Tübingen, and professor of jurisprudence at the University of Mainz, specializing in history of German jurisprudence and law, and penal law: he was formerly professor of law at Freiburg and state attorney-general at the Freiburg Oberlandesgericht.

FAIRNESS OF THE TRIAL

Out of the trial came a number of factors. It was made clear that the German plans for aggression consisted of consolidating their power, developing a vast program of rearmament and eventually attacking Austria, Czechoslovakia, Poland, Denmark, Norway, Belgium, the Netherlands, Luxembourg, Yugoslavia, Greece and Russia in succession and finally joining Japan in war against the United States. In a memorandum from Hitler's Office, October 29, 1940:

The Fuehrer is at present occupied with the question of the occupation of the Atlantic islands, with a view to the prosecution of the war against America at a later date. Deliberations on this subject are being embarked on here.¹²⁷

Germany was also found guilty of conspiracy, war crimes, crimes against humanity, and criminal organizations such as the Elite Guards, and the Gestapo.¹²⁸ When this much guilt is heaped up the world might be tempted to ask, could it be? Jackson says:

Of one thing we may be sure. The future will never have to ask, with misgiving 'What could the Nazis have said in their favor?' History will know that whatever could be said they were allowed to say. They have been given the kind of a trial

¹²⁷"Settling The Issue of War Guilt," United States News, Vol. 21, October 11, 1946, p. 24.

¹²⁸Ibid.

which they, in the days of their pomp and power,
never gave to any man.¹²⁹

And speak they did. Sir Norman Birkett, alternate English Judge, wrote on March 18 in his notes:

Goering has now taken complete control and dominates the whole proceedings Goering reveals himself as a very able man who perceives the intention of every question almost as soon as it is framed and uttered. He has considerable knowledge, too, and has an advantage over the Prosecution in this respect, for he is always on familiar ground he has therefore quite maintained his ground . . .¹³⁰

The record, therefore, stands unquestioned. As far as procedure is concerned the trial meets all the requirements for fairness. Rusten Vambery, Hungarian lawyer and critic of Nuremberg, admits:

. . . we have to admit the procedure was fair, and that with respect to the observance of legal formalities, the piling up of an unprecedented amount of evidence, and dignified conduct, it was unimpeachable.¹³¹

Herman Phleger, an American observer at Nuremberg, writes in the Atlantic that ". . . from what I saw and heard I am convinced

¹²⁹Robert H. Jackson, op. cit., p. 710.

¹³⁰Burke, op. cit., p. 16.

¹³¹Rusten Vambery, "Law of the Tribunal," The Nation, Vol. 163, October 12, 1946, p. 401.

that the proceeding is one of which we can be proud."¹³² The basis for Phleger's judgment is as follows. First, the defendants were fully informed of the law which they were charged with violating. Second, they were served with the charges well in advance of the trial. Third, they were represented by council acceptable to them. Fourth, they had the right to introduce evidence, cross-examine witnesses, testify, and address the court. Fifth, the proceedings were in a language or translated and understood by the defendants. Sixth, the proceedings were public. Seventh, the press of the world was present. Eighth, the proceedings were dignified and ordered.

Hence, we may assume that the record is a clear and honest one which was not tainted with concealed information or muzzled defendants. The record will stand for all to read, not propaganda but truth, fitted together day by weary day.

PROPAGANDA

Another reason for the trial might have been for propaganda purposes though this was never voiced by its proponents. For the Americans tried to avoid any tinge of propaganda at Nuremberg and according to Felix E. Hirsch missed a great opportunity.¹³³

¹³²Herman Phleger, "Nuremberg - A Fair Trial," Atlantic Monthly, Vol. 77, April, 1946, p. 61.

¹³³Felix E. Hirsch, op. cit., p. 155.

The American Cartoonist David Low drew a cartoon picturing the Nazi War Criminals in the dock looking dejected and Goering waves his hand and says, "No drums, no trumpets, no banners - pah! How much better we could have done it!"¹³⁴

Since propaganda was never publicly considered then no real provisions were made for using the trial for that purpose. For one thing the length of the trial killed its propaganda possibility. Even at Nuremberg boredom spread through the court. Correspondents moved on to fresher news centers.¹³⁵ Hence, the trials were not given a dramatic play and thus were not brought to the attention of the peoples of the world as they might have been. Bader says of the Germans - certainly those most affected - that ". . . the trial lasted a long time; with the short memory peculiar to us, we nearly forgot the premises."¹³⁶ What was true of the Germans was also true of the other nations.

Not only was the trial too time consuming to be used as a propaganda or educational device but it lacked impact because our political ideas changed over that period of time. On August 8, 1945,

¹³⁴A picture of the Low Cartoon may be seen in the New York Times Magazine, December 2, 1945, p. 5.

¹³⁵"Nuremberg: Private Guilt," op. cit., p. 47.

¹³⁶Bader, op. cit., p. 155.

the agreement was reached to prosecute the criminals. Then in September 1946, before the Nuremberg court arrived at its verdict the United States Secretary of State Byrnes made the statement that, "The United States wants to see Germany rise again as a peaceful, centralized nation."¹³⁷ This made it difficult for the world observers to keep from becoming confused. With one policy Germany was being prosecuted and with another it was being helped to its feet with a philosophy of let bygones be bygones.

In a fast moving society one problem is soon replaced with another. As Russia began to be of prime concern after World War II, America's interest began to slip into cynicism. The idea began to be advanced that we had mistaken our foe. The question was seriously asked should we have appeased Germany even more to keep her as a fortress of the West against Communistic Russia?¹³⁸ There are many who disagree with this idea. They feel that to seriously question our rightness in World War II is to ignore Hitler's acknowledged plans for conquering the world and to say that man was pursuing a phantom and that millions of lives were wasted in a terrible delusion.¹³⁹

¹³⁷Hirsch, op. cit., pp. 312-318. Mr. Hirsch is professor of European History and Librarian at Bard College: former political editor of the Berliner Tageblatt.

¹³⁸Raymond Moley, op. cit., p. 96.

¹³⁹Ibid.

Thus, a propaganda impact upon the world was lost because of a lack of purpose and well planned direction. The Trial's effect was deadened by its longevity. Then with the changing policies of the United States any concentrated effort to mold public opinion was sacrificed. Though Nuremberg may have been one big publicity stunt it lost its impact and fizzled like a wet firecracker.

GERMAN RE-EDUCATION

Since the trials were not seized upon for propaganda purposes then were they used as a re-education media for Germany? Even during the time when the Trial was being held there was general consensus that the Trial was making little impression upon the German population. A reporter writing for the New York Times made this observation as to why Germany cared so little. He concluded that the German mind lacked the ability to know that what had happened was in itself evil and wrong. In other words, the Germans might acknowledge that what was brought out in the trial was true but they could not find it in their being to say that it was terrible or immoral. By accusing and then forcing admissions America assumed that the Germans would then know the depth of their error. This was not the case since they used a different set of values in making their judgments. This reporter went on to say:

The only thing that keeps the German from following the dictates of his heart and persecuting Jews and invading neighboring countries and spitting on the rights of lesser folk is his own impotence at the moment.¹⁴⁰

Perhaps to us over twenty years later this is put rather strongly but that the German attitude was unchanged was testified to over and over. One reason may have been because the surviving German managed to disassociate himself from the government. He felt that the events of which Nuremberg was a culmination were not something to which he had in any way contributed.

As an example consider the well-known pastor, Martin Neimoller, though a captive of the Nazis said:

If there is a war a German doesn't ask if it is just or unjust, but he feels bound to join the ranks . . . You are mistaken if you think any honest person in Germany will feel personally responsible for things like Dachau, Belsen, and Buchenwald.¹⁴¹

Austria's betrayed and long imprisoned ex-Chancellor Kurt von Schuschnigg said, "I am convinced that the great majority of the German people hated war . . . I believe Hitler caused the war and Hitler alone."¹⁴² Karl Jasper, German philosopher, feels that

¹⁴⁰Raymond Daniel, New York Times Magazine, December 2, 1945, p. 5.

¹⁴¹Time, June 18, 1945, p. 26.

¹⁴²Ibid., p. 27.

the German public continues to lie to itself. They lull themselves into believing, according to Jasper,

. . . that the Germans were never really Nazis. That an incomprehensible fate delivered them into the hands of a wicked criminal. That at bottom, though terror may have beclouded their thinking at times (which is only human), they always remained as decent, peace-loving, and truthful as they had been previously and are today. ¹⁴³

The average German also regretted that the trial was being held and judged by the victors. This seemed to cancel out in his mind the facts as they were revealed. Using this resentment as a crutch, he made excuses for his former behavior. ¹⁴⁴

Perhaps the truth lies in a Newsweek quotation which said, " . . . a court can condemn a Goering . . . to die but cannot make him admit that he should never have lived. ¹⁴⁵ And what is true concerning Goering is even truer concerning an entire nation. A Nazi Germany was not to be any more but the Allies found that they could not make it say it should have never been.

This attitude has not softened readily in the years which have followed. In 1965 when the discussion for change in the Twenty-Year Statute was being discussed the arguments used to support no

¹⁴³Karl Jasper, The Future of Germany, Trans. & Ed. E. B. Ashton (Chicago & London: University of Chicago Press, 1967) p. 9.

¹⁴⁴Hirsch, "Lessons of Nuremberg," pp. 313-314.

¹⁴⁵Joseph B. Phillips, "No Magic Word," Newsweek, Vol. 28, September 9, 1946, p. 56.

change showed little real concern for bringing guilty Nazis to justice. The argument against change was the desire to sweep the entire shameful business from the present scene. The people were tired of it all. The Germans also asked, "Why only call us to account?" Also there was the feeling that a man could change after twenty years. But in most of the arguments against change, it was not mentioned that people must pay for a crime committed. In other words there was no voice to condemn.¹⁴⁶

In the intervening years between Nuremberg and today those Nazis who have been brought to trial have invariably either denied the charges or claimed to have acted under orders.¹⁴⁷ This has been the common and in many instances the accepted defense. In Germany and Austria sympathetic juries are not unusual. As an example, Franz Novak, Adolf Eichmann's chief transport officer, dispatched 1,700,000 Jews to the gas chambers. In October, 1966, an Austrian jury in Vienna acquitted him on the ground that he was only obeying orders.¹⁴⁸

¹⁴⁶"The Unknown Murderers," The Economist, Vol. 213, December 19, 1964, p. 1336.

¹⁴⁷Heinrich Fraenkel, op. cit., p. 432.

¹⁴⁸"Who Speaks for the Murdered?" The Economist, Vol. 221, November 5, 1966, p. 567.

VICTORS VS VANQUISHED

What about the resentment that the Germans felt against the victors judging them? This is indeed a weak point in the Nuremberg Trial. In the first place, victors in a war can never be looked upon as impartial judges. There is entirely too much emotionalism at a war's end. In the second place, the victors who sat in the judge's chair were not entirely free of the same guilt of which the vanquished were convicted.¹⁴⁹

It can be noted that the United States was careful to maintain diplomatic relations with Germany until Pearl Harbor. Not only did we recognize Germany and participate in trade relations with her but our financiers as well as those of England's and France's were permitted to aid Hitler's rearmament program. The United States did not prevent the execution of the Nazi Master Plan; in fact, if anything the U. S. helped to build and strengthen it.¹⁵⁰

Today there is much sympathy for the Jews and their suffering under Hitler's rule. However, when Hitler offered to allow them to leave the country the United States closed the immigration doors. Neither did Uncle Sam help in any Jewish

¹⁴⁹Montgomery Belgion, Victors' Justice, (Hinsdale, Ill: Henry Regnery Co., 1949), p. 18.

¹⁵⁰Rusten Vambery, "Law and Legalism," The Nation, Vol. 161, December 1, 1945, p. 574.

relocation program. America explains this lack of concern by recalling that it was then the 1930s and it had problems of its own.

Even today in the face of all of America's self-righteousness concerning the evil of Nazism and Fascism we recognize Franco and his Fascist Government as part of the "free" world. We sign alliances with the Spanish Government, build bases there, and align ourselves with it. Yet, Franco is a product of Fascism and does not claim to be anything different from Hitler and Mussolini. Does this not seem ironic and somewhat less than consistent?

Even more questionable was Russia's right to be seated on the Judge's bench. On November 30, 1939 Russia declared war on and invaded Finland. This war initiated by Russia was so aggressive that Russia was expelled from the League of Nations because of it.¹⁵¹ Later when the International Military Tribunal handed down its judgment it said:

The tribunal is fully satisfied by the evidence that the war initiated by Germany against Poland on the 1st of September, 1939 was most plainly an aggressive war.¹⁵²

There can be no argument that this statement is true. But one must consider that on September 17, 1939 Russia too invaded and promptly occupied half of Poland. One can easily see that the Russian

¹⁵¹Belgion, op. cit., p. 20.

¹⁵²Ibid., p. 22.

Government had apparently done exactly what the German Government had done. But the one difference between the two was that Russia was seated on the bench while the Germans were in the dock.¹⁵³

Then, in June, 1940, Russia invaded the Baltic States of Estonia, Latvia, and Lithuania - with which Russia was at peace. By August 3, 1940 those same states were incorporated into the Russian Soviet Union.¹⁵⁴

The controversy over the Polish officers killed in the Katyn Forest near Smolensk must not be forgotten. The Germans discovered the bodies and accused the Russians of their deaths, while later, the Russians placed the blame on the Germans. However, at Nuremberg the Soviets did not again repeat this contention, and subsequent evidence indicates that they were indeed the executioners. This at least is History's conclusion at this time. Also Russia refused to give any information of the whereabouts of fifteen thousand Poles which the Soviets had interned at the time of its invasion of Poland in 1939.

One might question the right of a government to sit on judgment of another government when eight million of its own people had died

¹⁵³Ibid.

¹⁵⁴Ibid., p. 20.

as the result of the government's action as was the case with the Russian peasants. After all Hitler only killed six million Jews and they were not his own countrymen as in the case of the Russian peasants. How very important the question becomes, "Can . . . an apparent confederate . . . sit in judgment on an alleged criminal?"¹⁵⁵

The London Economist commenting on the Nuremberg verdict takes note of this extraordinary situation.

The result of the Nuremberg trial has been a well-deserved fate for a group of evil men Yet the force of the condemnation is not unaffected by the fact that the nations sitting in judgment have so clearly proclaimed themselves exempt from the law which they have administered.¹⁵⁶

There are those who answer this charge by asserting that the rightness or wrongness of the situation lies in the charged and not those that judge. It was not the nation of Germany, or its form of Government on trial at Nuremberg. Chief Justice Jackson made this very clear. It was the men who had waged aggressive war and it was these men who were guilty. Therefore the judges as individuals were not guilty of the same crimes as those being judged.

In a regular courtroom the prosecuting lawyer and the judge do not hold themselves aloft as shining examples free from any taint

¹⁵⁵Charles E. Wyzanski, Jr., "Nuremberg in Retrospect," Atlantic Monthly, Vol. 178, December, 1946, p. 58.

¹⁵⁶"Forgive Us Our Sins," Time, Vol. 48, October 21, 1946, p. 23.

of wrong. No, the court only recognizes that they are not guilty of the crime for which the accused is being tried. This is the same situation at Nuremberg. The governments of each judge's country were not perfect but this was not the question being settled. The question being settled was the guilt of the individuals in the dock.

PRECEDENT

Another complaint one hears concerning Nuremberg is that there was no precedent for it. In fact this is considered one of the main purposes for Nuremberg, to establish a precedent.¹⁵⁷ Belgium states there can only be two justifications for the Trial. One, hopefully it will contribute to the future respect of peace and second, to assist to broaden and spread the rule of law. "For this reason the Trial must be regarded as profoundly significant."¹⁵⁸

This is not a very hardy argument for in the beginning of the practice of law there were no precedents. All beginnings must start somewhere. International law is in its very formative period and there will probably be other cases which will deal with precedent or the lack of it.

¹⁵⁷Mendelssohn, "America's Case at Nuremberg," p. 654.

¹⁵⁸Belgion, op. cit., p. 16.

. . . in the formative period of international law it is just for a representative group of powers retroactively to label as criminal, conduct which, when it occurred, was universally regarded as a serious violation of generally accepted international standards and treaties.¹⁵⁹

A precedent of sorts may be found in the trial of Captain Henry Wirtz. Captain Wirtz, a former Confederate officer, was tried and convicted by a Federal Military tribunal after the Civil War in the United States. He was executed for murdering and conspiring to abuse Federal prisoners at the Andersonville, Georgia, prison-of-war camp. He was tried for war crimes - crimes against humanity - not for being a rebel. He was sentenced to hang.¹⁶⁰

EX-POST-FACTO LAW

The most vehement argument centering around the Nuremberg Trial is whether the criminals were actually tried under ex-post-facto law. Many have felt that the ". . . judges at Nuremberg were admittedly writing ex-post-facto law, making a crime of something which was not universally admitted to be a crime when the deed was done" ¹⁶¹ In answering the charge of ex-post-facto

¹⁵⁹Wyzanski, "Nuremberg in Retrospect," p. 57.

¹⁶⁰Burke, op. cit., p. 18.

¹⁶¹"The Results at Nuremberg," The New Republic, Vol. 115, October 14, 1946, p. 468.

Chief Justice Jackson admits that, "If there is no law now under which to try these people, it is about time the human race made some."¹⁶² Again on the same issue Jackson said:

These men are lucky to be given a trial at all. We are trying them to sentence them to death - that would be an easy matter to do on any one of the thousands of atrocity charges - but because they present us with the first opportunity to formulate and lay down a law which the world must hold to if it is to survive.¹⁶³

There are others who take issue with the statement that the criminals were tried under ex-post-facto law. Two of these are Thomas L. Karsten and James H. Mathias who both served on Jackson's staff. Their opinion is:

Is the trial ex-post-facto, as charged by some and for this reason vengeance rather than justice? Those who say that no law prohibited the acts of the defendants when committed overlook the nature of international law. The law of nations derives from treaty and custom rather than from the acts of legislatures, and only rarely from decisions of courts. In the years following 1919 there developed the rule that a war of aggression was illegal.¹⁶⁴

Bernays, another member of the Jackson team, defends the Nuremberg Trial. He feels that since world opinion was so

¹⁶²"Forgive Us Our Sins," op. cit. p. 32.

¹⁶³Mendelssohn, "America's Case at Nuremberg," p. 653.

¹⁶⁴Thomas L. Karsten and James H. Mathias, op. cit., p. 512. Karsten was a former Executive Assistant to Undersecretary of the Interior, Abe Fortas.

overwhelming in favor of this method of justice that this was reason enough for the trial. Lined up with the Big Four were Belgium, Netherlands, Denmark, Norway, Czechoslovakia, Luxemburg, Poland, Greece, Yugoslavia, Ethiopia, Australia, Haiti, Honduras and Panama - all of which adhered to the Big Four London Agreement.¹⁶⁵ It is in united community action that early law is formed. Thus, early international law was being formed within the international community.

The feeling generally prevailed that if this so-called new law had taken the German prisoners by surprise - it was surprise that law of any type still existed.¹⁶⁶ For a law to be ex-post-facto, the criminal must be innocent of the knowledge that his actions are criminal when they were committed. So the question is, were the Germans unknowledgable?

In answer to this we might point out that in the Treaty of Versailles the Kaizer was saved from a trial only by the failure of the Netherland's government to surrender his person. Also, in the Treaty of Locarno which the German Nation signed - it agreed to " . . . in no case invade or resort to war against each other." The League of Nations which included Germany until 1937 agreed through

¹⁶⁵Bernays, op. cit. p. 57. Bernays is a member of the New York Bar, was assigned to duty as military adviser to Justice Jackson. Bernays was awarded the Legion of Merit for his work in the War Crime Trials. See also Sheldon Glueck, War Criminals - Their Prosecution and Punishment, (New York: Alfred A. Knopf, 1944) p. 185.

¹⁶⁶Mendelssohn, "America's Case at Nuremberg," p. 653.

their representatives that a war of aggression constitutes an international crime. The Briand-Kellogg Pact, 1928, agreed to renounce war as an instrument of national policy and to settle disputes by pacific means. Germany never repudiated her adherence to this pact.¹⁶⁷ Could Germany then be all this innocent of her crime?

Still, the question remains could Germany be sentenced because of aggression and this aggression be termed criminal? Bernays states that Hitler made war through aggression and treachery. This, he says, is simple brigandage. Because of this circumstance Germany was not a country at war but was an armed robber at large.¹⁶⁸ As such, the law of the agreed nations could bring the German leaders to justice.

There are those who disagree. Rusten Vambéry, Professor of Criminal Law and former Dean of the Law School at the University of Budapest, states that it was a mistake to hold a trial using questionable ex-post-facto law. He refutes the argument that society has the right to form law by saying:

Since no law had been passed prior to Hitler's crime - since no punishment had been decided

¹⁶⁷ Herman Phleger, op. cit., p. 63.

¹⁶⁸ Bernays, op. cit., p. 62.

upon prior to Hitler's than Hitler's war courts, where the judge passed sentence according to the 'sound sense of the people.' 169

Again Vambery asks a penetrating question:

We want to reestablish pre-Hitlerian law and morality. Can we do it by arranging . . . trials whose procedure would disregard the elementary principles of the very law which we want to restore? 170

Vambery does not argue that the Nazi and Fascist leaders should not have been brought to justice or that killing them was wrong in itself. He feels that such action should have been taken within accepted channels and not under the disguise of law and order using a trial which convicted with ex-post-facto law.

In America one of the most outspoken critics of the Nuremberg Trial was Senator Taft from Ohio. On October 5, 1946, Taft made a speech at Kenyon College in Gambier, Ohio. In this speech Taft asserted that the Trial was violating the fundamentals of law. He stated ". . . that a man cannot be tried under an ex-post-facto statute . . . The hanging of eleven men convicted at Nuremberg will be a blot on the American record that we shall long regret." 171

¹⁶⁹Vambery, "Law and Legalism," p. 574.

¹⁷⁰Rusten Vambery, "Criminals and War Criminals," The Nation, Vol. 160, May 19, 1945, p. 568.

¹⁷¹"Trial Rhetoric," Newsweek, October 14, 1946, Vol. 48, p. 58.

However, even Taft was fuzzy in his thinking for he went on to add that life terms would have been sufficient punishment. Professor Harold J. Laski, a British Laborite, retorted that if a "man can be sentenced to life under ex-post-facto laws he could also be sentenced to death."¹⁷²

¹⁷²Ibid.

CHAPTER V

CONCLUSION

NUREMBERG ACCOMPLISHMENTS

Nuremberg did establish the principle that waging and planning wars of aggression is the greatest crime known to mankind and that those guilty of perpetrating it shall be punished. Secondly, Nuremberg established the fact that national sovereignty is no longer a shield behind which aggressors may take refuge.¹⁷³ The accusation of aggressive warfare played such an important role in the Trial that this was the reason given for the acquittal of Schacht, von Papen and Fritzsche.¹⁷⁴ Commenting on the accomplishments of the Nuremberg Trial Henry Stimson made this statement:

With the judgment of Nuremberg we at last reach to the very core of international strife, and we set a penalty not merely for war crimes, but for the very act of war itself, except in self-defense. . . In the judgment of Nuremberg there is affirmed the central principle of peace - that the man who makes

¹⁷³Karsten and Mathias, op. cit., p. 512.

¹⁷⁴"The Results at Nuremberg," The New Republic, Vol. 115, October 14, 1946, p. 467.

or plans to make aggressive war is a criminal.¹⁷⁵

However, the community of lawyers might assess Nuremberg in the mind of the general public its accomplishments were not so clear. Time magazine pointed out that:

. . . the world public would be content to see the Nuremberg criminals die, but it had not got around to distinguishing between criminal and legal war. Until the world public - or a considerable part of it - did that, Nuremberg convictions would be a function of victory rather than law.¹⁷⁶

PERORATION

Nuremberg is still an ambiguous event in history. There are many who feel that international law made a giant step forward at Nuremberg. As has been seen there are just as many, with just as strong arguments, who feel that Nuremberg is a carefully disguised noose. When all the facts are studied Nuremberg can only be justified if it serves the purpose of deterring other persons or nations from inciting war. So the question before us is, will punishment of the Nazis restrain future aggression?¹⁷⁷

¹⁷⁵Henry L. Stimson, "The Nuremberg Trial: Landmark in Law," Foreign Affairs, XXV, No. 2, January, 1947, pp. 185-89.

¹⁷⁶"War Crimes," Time, August 5, 1946, p. 31.

¹⁷⁷Alexander H. Pekelis, "To The Nuremberg Court," The New Republic, Vol. 115, August 26, 1946, p. 232.

One only has to look at history to turn away sorrowfully aware that mankind is slow to learn from what has gone on before. There is always the individual as well as the nation which feels that it may get away with what another was unable to accomplish. In our own society it has been proved that fear of the death penalty does not always deter those who are bent on a criminal act. It is doubtful that enunciation of such a moral principle at Nuremberg will be adequate safe guard against the lawless use of atomic warfare. Needless to say with atomic warfare there can be very few trial runs.

Hence, the principle in itself will not deter. Therefore many believe that the principle must be implemented by the nations of the world acting "in concert under the aegis of a strong international organization having adequate power to deal with potential aggressors."¹⁷⁸ Who would have such power? Many have looked to the United Nations even hoping that it would ". . . do away with war in toto."¹⁷⁹

What is frightening is the thought of any organization having the power to deal so effectively with all the nations of the world. The question which then must be asked is who will govern and watch this aggrandized power? Who in turn will then guarantee that the world organization will never make aggressive war? The proverbial

¹⁷⁸Karsten and Mathias, op. cit., p. 512.

¹⁷⁹"The Results at Nuremberg," op. cit. p. 468.

saying, "The cure is worse than the disease" could apply to this situation.

The justification of Nuremberg is even more difficult in the light of the ex-post-facto question. What is even more disturbing are the remarks of responsible people such as Chief Justice Jackson when he felt that if there was no such law there should have been; in other words, the absence of a law was of no concern, just make one. This is nothing more than casuistry - the belief that the end justifies the means. This has been a principle to which man has fallen victim in all too many cases.

It does not take a historical scholar soon to recognize the wrongs which have been committed all because of the firm belief that what was being accomplished justified the procedure. This was one of the cardinal mistakes made by Christendom. Under this guise the Inquisition was inaugurated and the murder of thousands of people such as the Albigensians who could not bring themselves to accept what Rome proclaimed. The list of such mistakes is a long one.

Stalin used the same reasoning to justify his deeds in Russia. Because of the doctrine of casuistry he could murder eight million peasants with a clear conscience for wasn't it necessary for the good of the state?

Hitler used the same principle. He was able to say that all that was done was done for the strengthening of Germany and this need justified the inconvenience of others.

When we look at Nuremberg and see that once more nations were unscrupulous about the methods used, we shudder. The guilt of the criminals is not seriously contended. This is not the point of controversy. There would have been no doubt of conviction on Counts II, III, and IV. The problem was trying a person on charges simply because there was a need to establish a precedent. Here was the vital danger spot.

The American inherited from his Puritan forefathers a strong sense of what should be right and wrong. He look at world situations, judge them, and whole-heartedly believe that our judgments are infallible. We know that our society is the best, our God is the only one, and our way of thinking is unquestionably free of error. Hence, we know we are right. This part of the American personality ruled once more at Nuremberg since Nuremberg was basically an American effort. America is concerned with right, and should be, but it is how this rightness is implemented that I feel we must watch. The American is similar to the Saxon in Kimpling's poem, "Norman & Saxon, A. D. 1100."

The Saxon is not like us Normans
His manners are not so polite
But he never means anything serious
Till he talks about justice and right.¹⁸⁰

Nuremberg was a struggle in law. A civilized world must be a law-ordered world. In fact, life upon this planet will not survive except by justice made sure through law. Nuremberg, then, was a step; a step in the wrong direction? Perhaps so. But in reality the law has always been imperfect, nevertheless man must have it to continue to exist. Nuremberg, imperfect though it was, was a search in the right direction.

¹⁸⁰Vambery, "Law and Legalism," p. 575.

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