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Confronting “Crimes Against Humanity”, from Leipzig to the Nuremberg Trials

In 1945, an International Military Tribunal began indicting Nazi war criminals. Information about Nazi atrocities had been available throughout World War II. However, the occurrence of such abominable acts had all too often been discounted or flatly dismissed as no more than wartime propaganda that was too exaggerated to be believed. When in 1943 Jan Karski, a leader of the exiled Polish government in London, who had twice risked his life entering into the Warsaw ghetto came to the United States, he met at the Polish Embassy in Washington D.C. a Justice Felix Frankfurter of the U.S. Supreme Court. Justice Frankfurter was a prominent Jew and personal confidante of the President of the United States Franklin D. Roosevelt. Karski recounted during his meeting with Frankfurter what he had seen in Warsaw, to which Justice Frankfurter replied, “Mr. Karski, a man like me talking to a man like you, I want to be totally frank – I am unable to believe you.” Also present was the U.S. Ambassador to the exiled Polish government, who cautioned his learned colleague: “Felix, you don’t mean it. You cannot say such a thing. You cannot call him a liar.” “I did not say he is lying,” responded Justice Frankfurter. “I am just unable to believe what he told me.” Eventually Jan Karski would meet Franklin D. Roosevelt on July 28, 1943. Yet it would not be until once the Allied forces entered the extermination camps some 1½ years later, the all too tragically unreal became the all too horribly real.

After the trials began in Nuremberg on November 20, 1945, few people were of the belief that sufficient evidence existed to charge surviving Nazi leaders with crimes involving the commission of conspiracy, crimes against the peace, war crimes, and ‘crimes against humanity’ (involving persecution, mass deportation, and extermination on political, racial, or religious grounds). In opening the first trials in history for crimes against the peace, Allied leaders took on the grave responsibility of holding other former leaders and military officials responsible as individuals for crimes against humanity. “The wrongs which we seek to condemn and punish,” declared Justice Robert Jackson in his opening statement, “have been so calculated, so malignant, and so devastating, that civilization cannot tolerate their being ignored, because it cannot survive their being repeated.” History, he argued, had never recorded a crime perpetrated against so many victims “or one ever carried out with such calculated cruelty” against the ‘inalienable rights’ of all human beings.” “Our proof,” he predicted without exaggeration, “will be disgusting.”

And indeed, it was. Massive amounts of meticulously-kept records revealed the names and numbers of exterminated men, women and children. The annihilation of tens of thousands of civilians was not singular in comparison to similar horrific crimes. However, it is singular insofar as Nazism succeeded

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1 http://www.remember.org/educate/hrintrvu.html, interview with Jan Karski, 9. February 1995. See Arthur D. Morse, While Six Million Died: A Chronicle of American Apathy (New York, 1998). A shocking detailed account of President Franklin D. Roosevelt’s acquiescence, and that of his top staff, in the genocide of Jews and other victims. Rudolf Vrba, “Die missachtete Warnung. Betrachtungen über den Auschwitz-Bericht 1944,” in: Dietrich Bracher et. al (eds.), Vierteljahrshefte für Zeitgeschichte. Heft 1 (München, 1996), 1-24; Yehuda Bauer, ‘Anmerkungen zum „Auschwitz Bericht“ von Rudolf Vrba,” in: Dietrich Bracher et. al (eds.), Vierteljahrshefte für Zeitgeschichte. Heft 2 (München, 1997), 297-307; Ruth Linn, Escaping Auschwitz. A Culture of Forgetting (Ithaca, 2004). This is about Alfred Weczler and Rudolf Vrba, two Slovakian Jews who had escaped from Auschwitz on April 7, 1944, and found refuge in Bratislava. Rabbi of the community, Rabbi Weissmandel, wrote a report based on their eyewitness account of Auschwitz known as the Vrba-Wetzler report, which was the first document about the Auschwitz death-camp to reach the free world and to be accepted as credible. Its authenticity broke the barrier of skepticism and apathy that had existed up to that point. However, though their critical and alarming assessment was in the hands of Hungarian Jewish leaders by April 28 or early May 1944, it is doubtful that the information it contained reached more than just a small part of the prospective victims – during May and June 1944, about 437,000 Hungarian Jews boarded, in good faith, the “resettlement” trains that were to carry them off to Auschwitz, where most of them were gassed on arrival.


3 Ibid., Section 118.

4 Ibid., Section 129.
in the industrial-scale killing of Jews and other unacceptable groups of people. We observe that the ideology of hate, the teaching of contempt, and the demonizing of the “other” continue to kindle the fires of crimes against humanity. Witnessing genocide in Europe, Africa and Asia in the last few years, we recognize that previous lessons – even those exposing the evils of state-orchestrated incitements to ethnic cleansing and genocide – have not been learned. We are witnesses even today to a growing trafficking in hate; Bosnia, Kosovo, Rwanda and Sudan are but a few of many examples.

So why did the Holocaust occur? Why is genocide perpetrated even today? How shall we confront crimes against humanity? Who are the people behind such crimes? Why is there so much indifference still today in regard to ideology of hate against Jews? During a gala event in Paris in January 2004 young French Muslims sitting in the first rows interrupted the performance by a French singer with shouts of “dirty Jew”, “death to the Jews”, and “we’ll kill you” while all attending the event including public figures remained silent with no one condemning the blatant anti-Semitism. In Ingo Müller’s book on “Hitler’s Justice”, we read of the complicity and criminality of judges and lawyers. Robert Jan van Pelt’s highly acclaimed books expose Auschwitz as a site at which architects and engineers were closely involved in the day-to-day minutia of designing death camps. Many purport to answer these questions; scholars such as Daniel Goldhagen and Christopher Browning have asserted that Nazism almost succeeded in achieving its ‘final solution’. The answer for ordinary Germans supporting the killing of Jews was associated supposedly with Nazi bureaucracy as Robert Lifton and Erik Markussen cite Raul Hilberg in their book pointing out “careerism could be exploited to harness ordinary people in the service of mass murder,” while technical achievements within careerism fed competition to design and develop the most effective killing agent and gas chamber “to achieve the highest totals of mass murder.” The social dynamics of supporting anti-Semitism and the Nuremberg Race Laws demonstrated the complicity of the German elites – physicians, church leaders, judges, lawyers, engineers, architects, educators, and the like – who ultimately helped buttress the Nazi regime and their killings fields. However, this obsession to achieve the “Final Solution” according to Goldhagen and Browning is rooted much deeper in an internalized legacy of religious and racial discrimination. This ingrained culture of racism and anti-Semitism is expressed by Johann Gottfried Fichte, a moral and metaphysical philosopher at the turn of the 19th century.

Although Fichte was perceived as an agitator by most Germans and had few admirers at first, his writings would make him later into a national hero. He wrote about the inner spirit of the individual to create its own moral universe, which was much admired by such American transcendental philosophers like Ralph Emerson. However, following the occupation of Prussia and other German states by the French Napoleon Forces in the early 1800s, Fichte became intensively and self consciously German. He saw the idea of the Volkgeist (the peoples’ spirit): no longer only in terms of the individual spirit creating its own moral universe, but the spirit of a people creating a kind of moral universe as well, manifested in its customs, language, arts, institutions and ideas. Fichte had declared that there was an ineradicable German spirit, a primordial and immutable national character, more noble than that of

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other peoples, to be kept pure from Jews, foreigners etc. at all costs from all outside influence.12 The movement of thought perpetuated by Fichte centered round a dream of a great united and awakened Germany of the future, a sentiment, which influenced, indirectly, a rising up against the ruling dynasties of the Fatherland in whole of Europe in the 19th century.

Indeed racism and anti-Semitism were anchored in the theory and practice of German nationalism but also in the Nuremberg Race Laws, which contributed in turning ‘ordinary loyal and law abiding Germans’, into ‘Hitler’s willing executioners’. If this be true of Germans, is it not true of others? Irwin Cotler raised this identical question almost five years ago at the Stockholm International Forum on the Holocaust in 2000.13 Not only had ordinary Germans become executioners in the Baltics and Balkans but also helpers’ helpers in Holland, Norway, and Vichy France in deporting their own Jewish population to Auschwitz and other death camps. Culture did not exclude people from torturing and committing mass murder and it proved ironically that a person can both appreciate love poems and kill children.

So while forms of nationalism emerged as an ideological doctrine at the end of the 19th century presupposing that humanity was divided into nations characterized as individuals with their own culture and history where freedom and personal wealth could be achieved by identifying with a nation, anti-Semitism still flourished. The rhetoric of nationalism relied upon the idea that peace and security is a result of the freedom and security of every nation as member of the family of nations. As the great family of nations proclaimed constitutional principles of religious tolerance based on expanded civil liberties at the Congress of Vienna during 1814 and 1815 much optimism was shed recalling the Age of Enlightenment. While the beginnings of an international right of religious freedom began to be acknowledged as it became evident that religious intolerance had the greatest potential of jeopardizing international security and peace, different forms of anti-Semitism continued to be displayed. European nations like Belgium14 and Switzerland15 pledged themselves to maintain religious equality and assure equal protection and favor to every sect to guarantee without any distinction of religion the same political and civil rights, which are enjoyed by other inhabitants. Germany committed that “an amelioration in the civil state of those who profess the Jewish religion in Germany, by paying ‘particular attention to the measures by which the enjoyment of civil rights shall be secured and guaranteed to them’.16 These provisions occurred as an integral part of multilateral treaties, established the principle and practice of international guarantees to protect such rights and entailed the implication that any failure by the responsible government to abide by these conditions due to religious or ethnic persecution could result in international enforcement.

Treaties like those of 1856 in Paris and 1878 in Berlin addressing the rights and security of persons living under the rule of a foreign sovereign in time of peace; or the innovative multilateral treaty Geneva Convention for the Amelioration of the Condition of the Wounded in Armies in the Field of 1864, the first designed to protect the individual in time of war; or the 1899 and 1907 Hague Peace Conferences about humanitarian law in armed conflicts were all global efforts to establish laws of humanity.17 At the core of this 19th century system of international justice were undercurrents of prevailing contrary guidelines arising from nationalism, imperial conquests, racism, anti-Semitism, laissez-faire etc. While at the time war was very much seen as a totally normal tool of international policy (Clausewitz), international law was paradoxically supposed to reduce and deter international violence. As the Great Powers demonstrated their willingness to intervene on behalf of the persecuted to

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13 http://www.holocaustforum.gov.se/conference/official_documents/abstracts/cotler.htm
14 Ibid., 255.
15 Ibid., 205.
16 Ibid., 205.
protect their rights in the Ottoman Empire, the very same nations prosecuted and discriminated against indigenous peoples within their own territorial possessions. It became evident that the principles of humanity and human rights had become a pretext to serve national interests. In President Woodrow Wilson’s view the crisis of the First World War was due to the 19th-century diplomacy in achieving peace and security by holding dear to a ‘balance of power policy’. This should be replaced by a “community of power” by doing away with the nationalistic cabinet-room intrigues drawing on a spirit of international cooperation. Yet nationalism imbued by racism and anti-Semitism would continue.

Great hope and dramatic expectations unfolded as the Allied representatives arrived in Paris at the conclusion of World War I what became known as the ‘war to end all wars’. There were crucial differences among the leaders about the function and objectives of international law in international relations and the objectives of peace. However, they had a one thing in common. They wanted that the silenced guns of World War I would pay tribute to the millions who had fallen by drafting a treaty that would make sure that they had not died in vain. The negotiations in Paris provided an opportunity to discuss different proposals that would change the political map of Europe and attempt to make the world a safer place for democracy.

The Paris Peace Conference was about punitive justice against Germany and a new world order. The Germans hoped for a just postwar settlement based on Wilson’s Fourteen Points at the Paris Peace Conference, which officially convened on January 18, 1919, would succeed against the ancient policy of punitive justice and demand for massive reparations.

At the first meeting the punishment of war criminals was the first item on the agenda at the Paris Peace Conference. Although there were other nations that had clearly committed war crimes, Germany was practically the only nation on trial. The Austrian-Hungarian Empire whose Emperor Franz-Josef had died during the war and was succeeded by the ex-Emperor Karl at the time of the Paris Peace Conference, could not be held accountable by the Allies. The war crimes committed by Austrian-Hungarian armies in fighting the Russians were ignored because the Bolshevik government in Russia (the Soviet Union) was absent from the Peace Conference and the widely-shared apprehension that the new successor states arrest soldiers of the Austrian-Hungarian forces that had been composed of many populations, which lived in territory taken over by new successor states be required to turn over newly acquired citizens to the Allies as war criminals would be deemed infeasible and pose domestic and international instability. The peacemakers did not have a major invested interest in exploring evidence and handling of what is referred to as the Turkish genocide of the Armenians since according to The Hague conventions Turkish treatment against their own Armenian citizens was an internal matter and not subject to the jurisdiction of another government. Not until 1948, would genocide be clearly defined by treaty as an international crime, and in 1919 adherence to time-honored-notions of sovereignty placed limitations upon the scope of the traditional laws and customs of war. It was this reasoning that laid the foundation for Hitler’s deputy German Göring to declare at the Nuremberg Trial: “But that was our right! We were a sovereign State and that was strictly our business.” Although the British among the Allies were very interested in bringing criminal charges against Turks outside of Germany because of neglect and brutality towards British prisoners of war that led to the deaths of half of the 13,000 soldiers captured at Kut-el-Amara, political circumstances prevented Britain from

18 Michael Walzer, Just and Unjust Wars (New York, 1992), 101-104.
19 Committee on Public Information of the United States (ed.), Die Reden Woodrow Wilson’s (Bern, 1919), 9.
20 Foreign Relations of the United States, (FRUS), Paris Peace Conference, 1919 Council of Ten meeting, 17 January 1919 at 3:00 p.m., 606-607; Preliminary Peace Conference, Protocol No. 1, Session of 18 January 1919, 169.
21 James F. Willis, Prologue to Nuremberg. The Politics and Diplomacy of Punishing War Criminals of the First World War (Westport, 1982), 150.
22 Conference titled “Ottoman Armenians During the Decline of the Empire: Issues of Scientific Responsibility and Democracy” was held at the Bigli University, Turkey, end of September 2005, contributing to the discussion of the Armenian issue of “genocide” in Turkish society.
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bringing these criminals to justice. As the Council of Four permitted Turkey’s arch enemy Greece to send soldiers to occupy Smyrna (Izmir) to support the Sultan’s attempt to fulfill demands made by the Allies to try war criminals while the country was in the midst of a civil war, the move was interpreted to be that the Allies were possibly thinking of annexing a part of Turkey by their old enemy. When Greek forces landed at Smyrna on May 15, 1919 hostilities emerged with the Greeks committing flagrant atrocities in their occupation, which for the most part went unpunished, thus making the Allies appear hypocritical and raising objections “in holding Turkey to a double standard of conduct.” Thus, Germany remained the only nation on trial.

These failures to extend the policy of punitive justice elsewhere only intensified the perception that Germany was a scapegoat and a proving ground of Wilson’s new vision of international justice. Feelings of outrage over Germany were beyond dispute. The French President Raymond Poincaré expressed the sentiments of many Allied leaders and their peoples in a speech held a few weeks after the outbreak of World War I. He accused the Germans of being guilty of a “brutal and premeditated aggression which is an insolent defiance of the law of nations.” In August-October 1914, some 6,500 Belgian and French civilians were massacred by German soldiers, over twenty thousand buildings were deliberately destroyed by arson and artillery fire, civilians were widely used as ‘human shields’ by German troops advancing into battle, and tens of thousands of inhabitants of the invasion zone were deported to Germany where they were interned. In the most notorious incidents, the historic university library of Louvain was destroyed while much of Dinant was razed.... These were some of the German war crimes along with using poisonous gas, deporting French and Belgium civilians to labor force camps and launching zeppelins over London, which also caused the British as early as 1915 to make war crimes trials part of its stated war aims. The Paris Peace Conference created a Commission on the Responsibility of the Authors of the War and on Enforcement of Penalties to study “German atrocities”. The Report of that Commission called for necessary action “to try all persons, including heads of state, accused of ordering or failing to prevent, violations of the laws and customs of war and laws of humanity.” In the case of the Kaiser of Germany, a special tribunal was supposed to try him, which the Americans rejected by proclaiming a sovereign’s immunity from a foreign state’s jurisdiction, for to do otherwise was to deny “the very conception of sovereignty.” Efforts to establish an international “high tribunal” were quickly rejected by the Americans because there was, “no precedent, precept, practice, or procedure.” But the drafted Treaty of Versailles contained provisions that was drafted to contain provisions for the trial by the Allies of Germans who were alleged to have committed violations of the law of war during the course of the then recently concluded World War I.

According to Article 228:

The German Government recognizes the right of the Allied and Associated Powers to bring before military tribunals persons accused of having committed acts in violation of the laws and customs of law....The German Government shall hand over to the Allied and Associated Powers...all persons accused of having committed an act in violation of the laws and customs of war....

According to Article 229:

25 Ibid., 155.
26 Ibid., 8.
29 Ibid., 79.
30 Ibid., 60.
31 James F. Willis, Prologue to Nuremberg. The Politics and Diplomacy of Punishing War Criminals of the First World War (Westport, 1982), 75.
32 Ibid., 76.
33 Ibid.
Persons guilty of criminal acts against nationals of one of the Allied and Associated Powers will be brought before the military tribunals of that Power.\(^{35}\)

Furthermore, Article 330 called for:
The German Government undertakes to furnish all documents and information of every kind, the production of which may be considered necessary to ensure the full knowledge of the incriminating acts, the discovery of offenders and the just appreciation of responsibility.\(^{36}\)

These demands caused political outcry on the part of the Germans, which resented the Allied related to war crime demands. The German Army warned it would not turn over Kaiser Wilhelm II. The compromise solution was that Germans were to try their own nationals. There was a good deal of wrangling among the Allies about the number and composition of suspects to be tried; the first combined list included some 3,000 names, reflecting a “kind of rough mathematical ratio of wartime suffering” by each country involved.\(^{37}\) Such an amount was quickly dismissed as unwieldy and unwise, given its likely reception in Germany. By the end of 1919 the Allies handed German delegates dossiers on 890 suspected “war criminals” with instructions to press for prosecution; the listed included such notables as Generals Ludendorff, von Gallwitz, von Bülow, Field Marshall Hindenburg, Reich’s Chancellor Bethmann-Hollweg and Admiral von Tirpitz.\(^{38}\) After stiff German protest and delicate diplomatic negotiations, the Allied submitted a sample “abridged list” of 45 Germans to be arraigned before the German Supreme Court in Leipzig in 1921. Of the 45 submitted cases, merely 12 were tried by the German court, and of these only six were convicted. Of the almost 900 arrangements in Leipzig during the interwar years, almost all of the accused were acquitted. Several of the dozen or so found guilty were allowed to escape with the help of prison guards, who “were publicly congratulated for assisting”\(^{39}\)

In a recent study by Gerd Hankel \textit{Die Leipziger Prozesse. Deutsche Kriegsverbrechen und ihre strafrechtliche Verfolgung nach dem Ersten Weltkrieg}, there were in fact some 1,700 different forms of trials held in Leipzig between 1921 and 1927 dealing with murder, torture, mistreatment of Prisoner’s of War (POWs), forced labor, submarine and air warfare.\(^{40}\) The prosecution at the Leipziger Trials was undermined by the constant poorly defined concepts like “war crimes” and enforceable international norms. The trials provided a venue for the legitimization of concepts that justified atrocious acts in war by referring to such terminology as “Kriegsnotwendigkeit” (necessity of war), “Kriegsbrauch” (custom of war), and “Handeln auf Befehl” (responding to orders by superiors). These words illustrated concepts that allowed judges to accept that the accused could not have been acting criminally as long as their atrocities were not the intended goal of their actions but the consequence of pursuing a legitimate military goal, which diluted the whole concept of war crimes in the course of the trials as to become meaningless.\(^{41}\)

One case in particular provides insight into the types of cases actually tried and decided by the German Court not only in terms of its findings but also the continuity it reveals in terms of arguments raised to justify brutal atrocities in World War I and later in World War II. The case against General Karl Stenger, who was tried on the charge of having ordered his men to give no quarter and to shoot all prisoners of war, is exemplary. Despite substantial evidence that such an order had been given and had

\(^{35}\) Ibid.
\(^{36}\) Ibid.
\(^{38}\) Gerd Hankel, \textit{Die Leipziger Prozesse. Deutsche Kriegsverbrechen und ihre strafrechtliche Verfolgung nach dem Ersten Weltkrieg} (Hamburg, 2003), 40-41. Sometimes in the literature reference is made to 901 arrangements in Leipzig. This is due to duplication of the names of the accused.
\(^{41}\) Ibid., 256.
been compiled (evidence which included the testimony of fellow accused, the staff Major to whom the order was given; and, that of another office who testified to seeing prisoners of war shot in Stenger’s presence; and, that several German enlisted men who testified to having shot prisoners of war in the General’s presence), he was acquitted by the Court, apparently on the premise that no Prussian general officer would have issued such an order. His co-accused was found guilty of ‘killing through negligence’. There can be no logical explanation for Stenger’s acquittal of the charge with respect to the shooting of prisoners of war in view of testimony of the two German officers and the enlisted men. At the very least, he should have been found guilty of having permitted his men to commit a flagrant war crime in his presence and of having taken no action either to terminate it or punish the actual perpetrators.\textsuperscript{42} Needless to say, the Allies were outraged. So incensed were the French and Belgians that they tried and convicted hundreds of accused Germans in absentia in their own national courts, and even attempted to use the war crimes issue to force compliance on reparations.

Conclusion

There are similarities between the arguments put forth at both the Nuremberg and Leipzig trials. The permissive attitude toward violence argued at the Leipzig trials was an ideological platform for the Nazi regime. Although there are major differences between Nuremberg and Leipzig, the legal-theoretical grounds of legitimization as set forth in the rulings made by the judges at the Leipzig trials against the accused in regard to war crimes exemplify the legal reasoning that continued to be used to defend atrocious German conduct in both World War I and II.

The Versailles Treaty was extremely severe because the Allies held Germany to “be responsible for the war and for the ‘savage and inhumane manner in which it was conducted,’ had committed ‘the greatest crime against humanity and the freedom of peoples that any nation, calling itself civilized, has ever consciously committed’. Seven million dead lie buried in Europe, more than twenty million bear wounds and sufferings ‘because Germany saw fit to gratify her lust for tyranny by resort to war’.”\textsuperscript{43}

It was less than ten years after the Treaty of Versailles that an extraordinary amount of political and academic energy on the part of German politicians, historians, and publicists had been devoted during the interwar years to refute the war guilt clause in order to rehabilitate Germany similar to what occurred after Nuremberg and the early release of Nazi war criminals. They reveal yet another facet of the Weimar and Federal Republic of Germany judiciary’s permissive attitude toward violence imbued with nationalism causing a nation to lack the willingness to seriously prosecute ‘their own’ for crimes committed in violation of international laws.

In these last two centuries, nationalism has harnessed peoples’ imagination to achieve unbelievable results transforming the love for their country into blind loyalty. Xenophobia and total isolation from the outside world were the by-products of such fear. In the name of ones country, men and women have lost their lives because of so-called potential dangers from outside by endangering the existence of other nations. The Leipzig and Nuremberg Trial are crossroads in a testimonial struggle between justice and political expediency. It is more than just about seeking justice for human frailty. It is about a paradox in which nationalism is an idea that emphasizes the bonding of citizens into what is called ‘a nation’ while citizenship touches upon the rights and duties of individuals providing for a greater range of humanitarianism. The rhetoric of nationalism relies upon the idea that the peace and security of the world is the result of the freedom and security of every nation as a member of the world’s great family of nations. Can the limitations of humanity be only overcome by nations or will the citizenship of individuals bring to life what nations fear so much is criticism by their bonding population. What will the crossroad of Leipzig and Nuremberg in the 21\textsuperscript{st} Century be?


