Nuremberg: Trial of the Century
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World War II plunged the entire world into one of the bloodiest wars of all time. Much like World War I, not only the nations of Europe were affected but battles were fought all over the globe. As the war progressed the leaders of the Allied powers came together and discussed how these powers would hold those responsible for the war guilt and the atrocities they committed. However, the idea of holding large numbers of individuals responsible was something that had never done before, no precedent then existed regarding how to administer justice for war crimes on a large scale. At the end of the war, the Allied powers came together and instituted war crimes tribunals, which would hear evidence against the accused, and allow for testimony in a fair and impartial hearing. There would be those who would condemn the trials as "victors' justice" and those who condemned the trials as a waste of time and effort on hearings where the evidence was clear. Conversely, there were many who supported the Allied war crimes tribunals as necessary to avoid any appearance of partiality and objectivity. This paper will argue that in fact these trials were held objectively and fairly in order to bring those responsible for war crimes to justice.

Prior to the end of World War II, there had not been any system in place to deal with war crimes that had been committed on such a scale as those that had occurred in the European theatre. The Allied powers felt it necessary to create a system that could potentially prevent any more large-scale atrocities in the future. As news of atrocities attributed to Nazi Germany began to circulate throughout the world early in the war, public opinion in the Allied nations became outraged. President Franklin D. Roosevelt warned that, "atrocities committed against hostages in France would only breed hatred."[1] British Prime Minister Winston Churchill then issued a stern warning that "punishment of these crimes should now be counted among the major goals of the war."[2] Later Roosevelt would emphasize the importance of justice being handed down to the Axis powers. "When victory has been achieved," Roosevelt declared in London in 1942,

> it is the purpose of the government of the United States, as I know it is the purpose of each United Nations, to make appropriate use of the information and evidence in respect to these barbaric crimes of the invaders in Europe and in Asia…It seems only fair that they should have this warning that the time will come when they shall have to stand in courts of law in the very countries which they are now oppressing and answer their acts.[3]

The four Allied powers signed the London Agreement, which in turn created the United Nations War Crimes Commission. The commission would compile a list of criminals and their acts in preparation for trial after the war. The signing of this agreement began the conversation about

[1] Whitney R. Harris, *Tyranny on Trial : The Evidence at Nuremberg*, (New York : Barnes & Noble, 1995).
[2] Ibid
[3] Ibid, 4.

how to handle those who would be defendants and what steps could be taken to bring them to justice. The four Allied powers disagreed on how to handle this situation. Many American officials felt that the crimes of the Nazis were such that they had forfeited the right to a fair trial and that, once apprehended, the Nazi defendants should be shot on sight. According to Norbert Ehrenfreund, who covered the trials as a reporter, states in his book *The Nuremberg Legacy* that, "Churchill said the Nazis did not deserve a trial; a trial would only give them a chance to spout their Nazi propaganda…after a summary hearing they should be taken out in the yard and shot by a firing squad."[4] Further opposition to fair trials for the war crimes suspects would come from Soviet Major General Ion Nikitchenko who felt that the "Nazi leaders guilt had already been decided and there was no reason to waste time on that question."[5] However, other American officials believed that executing Nazis without a trial would only bring about another world war. They felt that due process was needed to maintain the rule of law in international affairs. Finally, shortly after Roosevelt's death, his successor as president, Harry S. Truman, would ask Robert H. Jackson[6] to devise a "plan for preparing and prosecuting charges of atrocities and war crimes."[7] Jackson felt it was his mission to ensure crimes like these were never committed again, and wanted to send a message to every nation that there would be severe consequences for those who would engage in those types of crimes again. Jackson and his associates devised a four category system for indicting potential defendants: crimes against peace, crimes against humanity, war crimes, and conspiracy to commit crimes. Jackson felt this was the best method to determine the guilt or innocence of the defendants, and this system would also serve as a basis for new international law. The tribunals remained unpopular among segments of public opinion both in the United States and abroad, but Jackson remained firm in his belief that these trials were necessary, and that the system that had been devised was the best way possible of ensuring that justice was served.

There was wide speculation amongst Germans that these trials would be little more than show trials, an exercise in "victors' justice" regardless of Allied claims of fairness and impartiality. According to Ehrenfruend, the armed forces newspaper *Stars and Stripes* had conducted a survey of Germans and how they viewed the war crimes tribunal. Many Germans believed that "all defendants would be executed after only a brief hearing."[8] Despite the revelations of the atrocities committed by the Nazis, a significant portion of the German population felt that those accused would not receive a fair hearing.

There was a general feeling in the immediate postwar months that some form of due process and accountability for the outrages of the war was necessary. The *New York Times* spoke for many when it said "by setting up the principle that leaders of a robber nation can be treated as international criminals who are individually accountable for their actions; it gave new substance to the theory of international law."[9]

However, according to researcher Erich Hula, global public opinion was still conflicted on what to do with the war crimes defendants. Conflict is particularly apparent when he states that "the very fact that American opinion, the opinion of the legal profession as well as the laymen, is divided over the best way of coping with the Axis criminals, clearly indicates that things are not in fact as

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[4] Norbert Ehrenfreund, *The Nuremberg Legacy : How the Nazi War Crimes Trials Changed the Course of History,* (New York : Palgrave Macmillan, 2007), 7.
[5] Ibid, 12.
[6] Associate Justice of the Supreme Court of the United States from 1941 to 1954.
[7] Harris, *Tyranny on Trial : The Evidence at Nuremberg*, 11.
[8] Ehrenfreund, *The Nuremberg Legacy : How the Nazi War Crimes Trials Changed the Course of History*, 19.
[9] U.S. Signal Corps, "We Accuse--': The Four Counts in the Indictment of German War Criminals," *New York Times*, October 21, 1945, sec. The Week In Review, http://search.proquest.com.proxy1.library.eiu.edu:2048/hnpnewyorktimes/docview/107213341/abstract/7576A36C452E442EPQ/12?accountid=10705. Accessed on October 19th 2014

simple as they look at first sight."[10] There is no doubt that citizens of countries ravaged by Germany during the war, especially the Soviet Union, France, and Poland, demanded justice. Many, no doubt, demanded revenge against the Nazi war crimes defendants. However, Hula notes that "the current proceedings are the result of painstaking negotiations among governments and legal experts of the United Nations, negotiations that dragged on through practically the whole war." "A common decision was essential" in order to assure that justice was served.[11] There were still doubts: for instance, Senator Robert A. Taft[12] believed these trials would "be a blot on the American record which we shall long regret."[13] Taft argued that "our whole attitude in the world, for a year after V-E Day, seemed to me a departure from the principles of fair and equal treatment which has made America respected throughout the world before this Second World War."[14] It can be argued however, that without a precedent already in place on how to treat criminals of this nature, the ability to treat these trials and the defendants with fairness is not defined.

Dr. August von Knieriem, a German businessmanduring the war, was arrested on suspicion of slave labor and providing assistance to the Nazi party. Knieriem's arrest was due primarily to his position in a successful company that provided assistance to the Nazis. Later found innocent of the charges laid against him, von Knieriem explained his thoughts on the trials. According to Nicholas Doman, a lawyer on Robert Jackson's staff, von Knieriem felt that the German defendants bore a responsibility to answer for their crimes and felt that Germany itself was a criminal state for its actions in the later periods of the war. However, despite his willingness that justice be served, von Knierem is clear that he did not "[approve] the particular law applied, the procedure of the trials or the evidentiary rules."[15] Von Knieriem describes how he felt the trials should have been handled to bring about a fair trial and justice on the defendants:

> (1) there was no law in force in Germany, international or otherwise, penalizing many of the acts charged the German defendants at the time these acts were committed. (2) persons charged with war crimes should have been tried under their national law. (3) Individuals are not subject to international law and may not be punished thereunder for any crime by any international tribunal. (4) an order from a superior authority may confer immunity on the actor.[16]

The difficulty with von Knieriem's logic is if there was no law present in Germany at the time, the chance for justice would not exist; trials for German defendants by German authorities, if they happened at all, would be rife with bias and corruption, and justice would not be served. von Knieriem's opinion would be expected, given that he was a German who had been arrested by the Allies. Lastly, according to Ehrenfreund, one other problem with the trials was that "the Allies made all the rules."[17] This is true but at the time Germans could not be expected to judge their former rulerswithout bias and partiality. The legal practices that the Allies incorporated the in the prosecution were new ideas to German lawyers, and they would have to scramble "to learn the

[10] Erich Hula, "Punishment For War Crimes," *Social Research* 13, no. 1 (March 1, 1946), 1.
[11] Ibid, 2.
[12] Republican senator from Ohio, candidate for the Republican presidential nomination in 1940, 1944, and 1952. Widely known for his isolationist foreign policy.
[13] Robert A. Taft, *The Papers of Robert A. Taft*. (Kent, Ohio : Kent State University Press, c1997-c2006.), 200.
[14] Ibid.
[15] Nicholas R. Doman, "The Nuremberg Trials Revisited," *American Bar Association Journal* 47, no. 3 (March 1, 1961): 260.
[16] Nicholas R. Doman, "The Nuremberg Trials Revisited," *American Bar Association Journal,* 47, no. 3 (March 1, 1961): 261-2.
[17] Ehrenfreund, 37.

American adversary procedure, which was vastly different from their own continental or inquisitorial system."[18]

However, despite the opposition from many corners, there is a great deal of evidence that points to the impartiality of these trials and their importance. Unlike Taft who condemned the trials as only victors' justice, Hanson Baldwin, military editor for the *New York Times* claimed that the Nuremberg trials were not merely a "mock trial, no forgone verdict; the justice was military and severe, but it was justice."[19]

In the face of such opposition, Robert Jackson knew that a fair trial would be necessary to ensure faith in the process of justice, and enable future generations to look back with pride on what was done. Jackson argued that "to free them without a trial would mock the dead and make cynics of the living….but undiscriminating executions or punishments without definite findings of guilt, fairly arrived at, would violate pledges repeatedly given, and would not sit easily on the American conscience or be remembered by our children with pride."[20] Jackson was all too aware of the burden of history which accompanied his task. "Never before in legal history has an effort been made to bring within the scope of a single litigation the developments of a decade, covering a whole continent, and involving a score of nations, countless individuals, and innumerable events."[21]

The evidence shows that these trials were not a rushed, unorganized event, but instead well thought through, and planned by the Allies. One could argue that these trials had no legal basis and was merely victors' justice, however, Jackson and his colleagues were navigating uncharted territory, and had to establish new legal precedent. Justice for the oppressed was their primary objective. American attorney Telford Taylor, part of Jackson's prosecution team, stated after the trial began his belief that "these defendants may be hard pressed but they are not ill-used…if these men are the first war leaders of a defeated nation to be prosecuted in the name of the law, they are also the first to be a given a chance to plead for their lives in the name of the law."[22] Taylor goes on later to say that

> they…have a fair opportunity to defend themselves—a favor which these men, when in power, rarely extended to their countrymen. Despite the fact that public opinion already condemns their acts, we agree that here they must be given a presumption of innocence, and we accept the burden of proving criminal acts and the responsibility of these defendants for their commission.[23]

These are not words of a group that is just out for vengeance, this is proof that the Allies, no matter how different their legal system may have been or their feelings towards the criminals, were willing to attain justice in as fair and impartial a way as possible and treat these criminals as innocent until proven guilty. A German defendant who was charged with crimes claimed that there was no law in place, so there were no legal grounds for trying him. Jackson ably replied to this, stating "our case rest squarely on the provisions of the charter based on international law that empowers this

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[18] Ibid.
[19] Hanson W. Baldwin, "Nuremberg Trial Upholds Our Justice: Court's Proceedings and Acquittals Are Declared to Enhance the Prestige of Anglo-U.S. Legal System Yamashita Trial Contrasted Rules Called Extraordinary," *New York Times*, October 2, 1946, http://search.proquest.com.proxy1.library.eiu.edu:2048/hnpnewyorktimes/docview/107584105/abstract/4FCDA65DA4B9489CPQ/3?accountid=10705. Accessed on October 21st 2014.
[20] Telford Taylor, "The Nuremberg Trials," *Columbia Law Review* 55, no. 4 (April 1, 1955): 497.
[21] Michael Biddiss, "The Nuremberg Trial: Two Exercises in Judgment," *Journal of Contemporary History* 16, no. 3 (July 1, 1981), 598.
[22] Taylor, 505.
[23] Ibid.

tribunal to define crimes and empowers the court to impose sentences."[24] Jackson went on to argue that international law had been in place since the 1907 Hague Convention. [25]

Sir Norman Birkett,[26] one of the alternative judges from the United Kingdom, who sat in at the trials, gave his opinion that "it was wise and right and expedient and indeed essential that the Trial should be held."[27] Birkett firmly insists that "history would have passed a very adverse verdict upon any country that had taken people and shot them without trial."[28] The defendants would have preferred to meet a quick and an honorable end confronted with a firing squad rather than the ignominy of the hangman's noose. The Soviets and the French would have preferred the speed of this punishment as well. Knowing that the mindset was set on revenge and quick justice, the British and American jurists warned against this kind of operation. Taking justice into their own hands like this would degrade the Allies and their cause in the eyes of the world.

Birkett appealed to the ancient traditions of English common law. "After all," argued Birkett, "the principle law of England is that a man is presumed to be innocent until he found guilty." The notion of summary executions appalled him, and would render the Allies no better than the genocidal totalitarians they fought against. "The view that men could be shot without trial, whatever their alleged crimes might have been, would, in my opinion savor far too much of the Nazi doctrine itself to have any wide commendation to reasonable people."[29] Birkett notes that the German defendants had every opportunity to review the charges laid against them, reading indictments written in German, thirty days before trial[30] "The tribunal arranged for the best German counsel to defend" those charged, rather than afford them little chance with inexperienced or foreign advocates.[31] The tribunal went to great lengths to secure witnesses that the defendants claim could help prove their case, locate them and bring them to Nuremberg. "The whole trial," explained Lord Birkett, "proceeded upon that footing that they should have the fullest opportunity of making their defense— and, indeed, they did."[32]

Francis Biddle,[33] the main American judge at the Nuremberg trials, described in a letter to President Harry S. Truman his view of the accomplishment of the trials. Not only did the trials bring war criminals to justice, Biddle informs President Truman, "but of greater importance for a world that longs for peace is this: the judgment has formulated, judicially for the first time, the proposition that aggressive war is criminal and will be so treated."[34] Robert Jackson adds in his letter to President Truman that "the nations have given the example of leaving punishment of individuals to the determination of independent judges, guided by the principles of law, after hearing all of the evidence for the defense as well as the prosecution. It is not too much to hope that this example of

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[24] "Jackson Declares War Charge Legal: Says Charter Setting Up Court Provided for Retroactive Law After Ley Protests Ridicules Ley's Stand Cites Hague Convention Von Schroeder Arrested," *New York Times*, October 21, 1945. http://search.proquest.com.proxy1.library.eiu.edu:2048/hnpnewyorktimes/docview/107195328/abstract/7576A36C452E442EPQ/2?accountid=10705. Accessed on October 20th, 2014

[25] For short description of Hague convention visit, "Hague Convention (1899, 1907)," *Encyclopedia Britannica*, accessed November 17, 2014, http://www.britannica.com/EBchecked/topic/251644/Hague-Convention.

[26] Judge of the High Court of Justice of England and Wales.

[27] Sir Norman Birkett, "International Legal Theories Evolved at Nuremberg," *International Affairs (Royal Institute of International Affairs 1944-)* 23, no. 3 (July 1, 1947): 319 doi:10.2307/3017222.

[28] Ibid.

[29] Ibid.

[30] Birkett, 321.

[31] Ibid.

[32] Ibid.

[33] United States Attorney General from 1941 to 1945, appointed by President Franklin D. Roosevelt.

[34] "Text of Biddle's Report on Nuremberg and Truman's Reply: Sees Unity Realized Cites Ban on Interviews Accomplishments Listed The President's Reply," *New York Times*, November 13, 1946, http://search.proquest.com.proxy1.library.eiu.edu:2048/hnpnewyorktimes/docview/107307185/abstract/4FCDA65DA4B9489CPQ/12?accountid=10705. Accessed on October 20th 2014.

full and fair hearings and tranquil and discriminating judgment will do something toward strengthening the processes of justice in many countries."[35]

Without a precedent to follow, the Allies had no way of knowing the proper way of exacting justice upon the Nazi regime, but with the Nuremberg trials they were able to establish such precedents and principles necessary to prevent future crimes and to judge war crimes fairly and without prejudice or partiality. The Allies were committed to adhering to principles of international law, and, working together despite differing legal backgrounds, brought to justice those who had committed unprecedented and unspeakable atrocities, the like and scale of which the world had never before and, it is to be fervently hoped, never will see again.

[35] "Text of Justice Jackson's Report to President on the Nuremberg Trial: Statistics on Trial Points to Speed of Trial Method Still Unsettled Prefers Separate Actions Precedent Established Example to World No Bar to Future War," *New York Times*, October 16, 1946.