

Nicholas Richey

Dr. Morris

HIST 461

5/9/17

The Nuremberg Trials as a Form of Transitional Justice

At the 1943 Tehran Conference between the “Big Three” Allied leaders, Franklin D. Roosevelt, Winston Churchill, and Joseph Stalin, the latter declared that 50,000 German General Staff officers should be executed.¹ Although Stalin made this appalling statement in a half-joking fashion, it must be recognized that at that time there were several countries and millions of people that were being massacred by the German military. As the war progressed and military momentum shifted in favor of the Allies in 1944, the question became ever more pressing as to how the victorious nations should plan to respond to war crimes and other human rights violations committed by the Nazi regime. This debate became a center point for the infamous World War II conferences between the Allied leaders. The conferences were not only significant in creating a more unified Allied military coalition, but ultimately in the development of international law as well.

In a speech given by Lord Justice Lawrence, the chief British judge representative at Nuremberg reasoned that there were three possible courses of action: execution, not punishing criminals, or having a trial.² Heated debate ensued between the British, Soviet Union, and the United States over which of these three courses to follow. Considerable support was actually lent to the idea of mass executions. While the British had favored an aggressive war crimes trial approach at the conclusion of World War I, they substantially reversed their position during

¹ Telford Taylor, *The Anatomy of the Nuremberg Trials: A Personal Memoir* (New York: Skyhorse Publishing Inc., 1993), 43.

² Geoffrey Lawrence, “The Nuremberg Trial,” *International Affairs*, Vol. 23, No. 2 (1947), 153.

World War II and pressed the Soviet Union and the United States to avoid judicial proceedings in favor of executions once it could be determined who the most appropriate candidates were.³ Within the American government, press, and populace the question of how to deal with Nazi war crimes was equally controversial. Only after a torturous series of negotiations between the Allied powers was the question resolved in favor of a series of formal trials, and codified in the so-called London Charter on August 8, 1945 and the subsequent Nuremberg Trials which followed for the next three years.

Historiographical research into the Nuremberg Trials has typically focused on whether the proceedings were legally justified under international law. Among the most influential literature regarding the Nuremberg Trials was written by American and British lawyers, many of whom were active participants in the proceedings. Not surprisingly these writers tend to conclude that the trials were in fact fair, just, and legally sound. However, the focus in this research will instead examine the Nuremberg Trials from the perspective of the proceedings' effectiveness as a form of transitional justice. This paper will attempt to demonstrate that the Nuremberg Trials assisted Germany in establishing conditions which allowed it to peacefully rejoin the international community. This perspective is one which has received little attention by historians. This is unfortunate because by understanding how features of the Nuremberg Trials contributed effectively as transitional justice, certain implications can be drawn which can illuminate principles which can be applied to other international conflicts as well as to conflicts within nations.

Central to the argument advanced in this paper is the concept of transitional justice. This concept has been developed since the late 1980's, and in this paper is applied retroactively to the Nuremberg Trials. Transitional justice refers to responses made by nations or groups of nations

³ Taylor, *The Anatomy of the Nuremberg Trials*, 32.

to respond to massive or systematic violations of human rights. Transitional justice may involve formalized judicial proceedings, but may also include a variety of other responses, such as truth commissions, reparations programs, memorialization efforts, and security system reforms, among other programs. Most frequently transitional justice procedures are implemented following conflicts between or within nations. In addition to securing an improved situation with respect to human rights, transitional justice initiatives aim to further peace and democratic governance.⁴ An additional example of transitional justice in practice would include the post-conflict nation building that occurred in South Africa after the collapse of the system of Apartheid.

In this paper the significance of the Nuremberg Trials will be examined by contrasting the conditions in Germany after World War II with the conditions prevailing in Germany between the two world wars, following a much different way of resolving a major conflict, namely the Treaty of Versailles. Following World War I the victorious nations pursued a very different way of dealing with Germany and the issue of war crimes. At that point alleged German war criminals were turned over to German courts to be tried, leading to no meaningful sanctions being imposed. Social, political, and economic conditions leading up to the ascendancy of Hitler resulted in the adoption by the German people of Nazi ideology. The peculiar nature of this ideology as described by Jonathan Glover in *Humanity*, as well as other sources, was effectively counteracted by aspects of the Nuremberg Trials which served to free the German people from the legacy of Nazi cultural assumptions.

⁴ Sonali Chakravarti, "More Than Cheap Sentimentality," *Constellations*, Vol. 15, No. 2 (2008), 223.

There are several sources which substantiate that the Nuremberg Trials were on balance legally sound.⁵ Some of the most significant works on the Nuremberg Trials originate from lawyers and representatives who were directly involved in the development and enforcement of international law at Nuremberg. Telford Taylor, a lawyer and advisor at Nuremberg, provides a wealth of documentation on the trials' legal basis and possible significance for future trials. In his book, *The Anatomy of the Nuremberg Trials: A Personal Memoir*, Taylor argues that the International Military Tribunal established standards of conduct for nations which applied to all individuals as a function of international law.⁶ Another significant work by a representative of the trials was Lord Justice Lawrence, the chief British judge. His Chatham House speech given in London shortly after the trials ended illustrated the importance of legal precedents and international jurisdiction in conducting a fair and public trial.⁷ This was critical to the trials' effectiveness as a form of transitional justice. Had the trials not been perceived by the German people and the international community as fair and just, the allegiance of the German people to the Nazi regime might have been left unbroken, thus undermining the effectiveness of the trials as transitional justice. However, the various critiques of the proceedings should nevertheless be taken seriously. While it can be argued that the prosecutors made great efforts to proceed fairly, the charges against the defendants were based on new international law and relied not only on legal precedent but upon moral evaluations of Nazi behavior as well. While the trials helped the German people to overcome identification with Nazi ideology, there were many other factors involved in Germans turning away from the Nazi legacy as well, such as the devastation of

⁵ Nicholas R. Doman, "The Nuremberg Trials Revisited," *American Bar Association Journal*, Vol. 47, No. 3 (1961), 264.

⁶ Taylor, *The Anatomy of the Nuremberg Trials*, 41.

⁷ Lawrence, "The Nuremberg Trial," 152.

German cities, the severe living conditions imposed by Allied occupation, and international outrage over Nazi atrocities.

Although many sources have said that the trials were fair and just, other authors have criticized the legal basis for certain aspects of the trials. For example, Charles E. Egan described conflicts between the U.S. and the Soviet Union, specifically Robert Jackson's insistence on defining aggressive war as a war crime.⁸ The Soviets were not keen on agreeing to this idea in light of their invasion of Finland in the first year of WWII. While indicting German leaders for war crimes due to initiating an aggressive war was legally sound, the fact that the Soviets were not held to the same legal standard could be construed as victors' justice. This kind of compromise can be viewed as a legitimate weakness of the trial, but only by proceeding with the Soviets were the Allies able to make the tribunal truly international.

There are many lessons which can be drawn from the Nuremberg Trials as a form of transitional justice. The trials may have been especially successful in part because of the concerted attempt to be fair, just, and thorough, so that the proceedings were not seen by most people in Germany or in the international community as victors' justice. More importantly the trials assisted Germany to become a peaceful nation through its neutralization of key aspects of Nazi ideology. In particular the careful documentation and publication of information regarding atrocities committed by the Nazi regime was a critical element in negating the myth of German racial superiority. Holocaust denial and admiration of Nazi culture by fringe groups has been an unfortunate occurrence in the years since World War II, but the massive information about German war crimes publicized by the trials helped to limit the extent of Holocaust denial and Nazi admiration. All of these elements can be examined and applied to other situations in which war crimes or human rights violations have occurred. It is imperative to understand those factors

⁸ Charles E. Egan, "Code Defining War Crimes to Include Aggressive War," *The New York Times* (1945), 63.

which may limit the effectiveness of transitional justice efforts, such as isolationist political policies that may cause nations not to subscribe to an international criminal court. This paper proposes that the Nuremberg Trials were highly successful as an early model of transitional justice because of the fair and principled quality of the legal procedures, and because they served to undermine the belief system of the Nazi regime among the German people. The trials were basically fair and legally principled. The charges levied were based on established international law for the most part, and the evidence presented was based upon thorough documentation. The defendants were accorded legal rights similar to those provided in British and American courts. The judgments rendered considered factors specific to individual cases, with some defendants exonerated. The trials involved an international array of jurists, attorneys, media, and spectators, assuring transparency and the broadest possible global awareness of the proceedings. The Nuremberg Trials were particularly successful in moving the German populace from the grip of Nazi ideology to an appreciation of the horrific nature of the war crimes which had been perpetrated upon millions of civilians and military personnel during World War II.

What is Transitional Justice?

The application of the concept of transitional justice to the Nuremberg Trials has been suggested by some sources, but is in some ways odd because this concept is relatively new, having been developed around 1990, many years after the Nuremberg Trials took place.⁹ Transitional justice refers to both legal and non-legal procedures, typically occurring around major transitions for a society, such as cessation of a conflict in which a new government attempts to come to terms with the human rights violations of the previous regime. Transitional justice seeks to identify and redress massive human rights violations. The forms these efforts may take are varied and dependent on the context of the society involved. In addition to

⁹ Chakravarti, "More Than Cheap Sentimentality," 223.

addressing rights violations transitional justice may attempt to effect reconciliation, assist in establishing a durable resolution to a conflict, and to establish or restore institutions such as police and court systems. Assuring that marginalized populations have access to justice is a frequent aim. Forms that transitional justice efforts may take include criminal prosecutions, fact-finding with regards to rights violations, reparations for victims, and institutional reforms. Examples of transitional justice efforts include those involving the states comprising the former Yugoslavia, Sierra Leone, South Yemen, Ivory Coast, Kenya, Chile, Argentina, Colombia, Guatemala, El Salvador, Congo, Liberia, South Africa, Peru, and Tunisia.

As applied to the Nuremberg Trials transitional justice concerns prosecution of Nazi party members as well as those who collaborated with the Nazi regime in the commission of war crimes. One of the major contributions of the trials was the fact-finding, documentation, and publicizing of war crimes. Of interest in this paper is the way in which the Nuremberg Trials as an early example of transitional justice contributed to sustained peace between Germany and its European neighbors. The transition away from the Nazi regime after World War II involved a fair and principled war crimes prosecution which can be seen as a radical departure from examples of transitions such as the Treaty of Versailles. While the actions of some countries after winning a major war may involve expropriating territory, extracting extreme reparations, and exploiting the population of the defeated opponent, the Nuremberg Trials featured a radically different approach which instead relied on justice and the application of international law. The justice in this case emphasized targeted prosecutions of those directly responsible for committing war crimes.

One article which describes the Nuremberg Trials in the context of transitional justice was written by Sonali Chakravarti. Chakravarti posits that the Nuremberg Trials were “the most

influential trials of post-war justice in the 20th century,” as they established the principle that war criminals could be held legally responsible and punished for war crimes.¹⁰ Critically the Allies were concerned that treatment of Nazi leaders would not be viewed by the German people and the international community as a form of “victor’s justice” in which punishment would be imposed arbitrarily without legal principles and impartial judgment. Chakravarti observes that American leadership in the trials was appropriate since the United States did not suffer as directly the consequences of Nazi atrocities, thus enabling trials to be conducted fairly rather than as an act of vengeance. She contrasts the Nuremberg Trials with so-called “truth commissions” in avoiding use of victim testimony. While this form of testimony would have assisted emotional appreciation of the horrific nature of Nazi war crimes by the international community, Justice Jackson and the Allies instead decided upon use of documentary evidence to assure that the trials were seen as fair and impartial.

Chakravati’s argument is critical to the thesis of the project because it places the Nuremberg Trials in the larger context of international war crimes prosecutions and because it focuses on the central concept of transitional justice. Chakravati contends that the Nuremberg Trials neglected victim testimony and other sources of evidence which could have helped all parties appreciate the emotional impact on victims. This view may not be so relevant because the horrific nature of the war crimes involved inevitably evoked the emotional impact Chakravati insists is necessary to transitional justice. Ultimately the concept of transitional justice provides a conceptual framework for describing how the Nuremberg Trials helped the German disassociate from Nazi ideology, and related sociopolitical factors justifying World War II, to a new perspective including renewed moral identity and commitment to peace.

Legal Strengths of the Nuremberg Trials

¹⁰ Chakravarti, “More Than Cheap Sentimentality,” 224.

For the Nuremberg Trials to succeed as a form of transitional justice the planners of the proceedings needed to convince the international community and the German people that the trials were fair, legally sound, and based upon international law. Otherwise the trials would have been perceived as “victors’ justice” motivated by a desire for vengeance and self-interest on the part of the Allies. In his extensive history of the Nuremberg Trials Telford Taylor provides a wealth of detail and first-hand observation which supports the contention that the trials were based upon precedents in international law. Taylor argues that the principles of the Nuremberg trials were derived from a long history of concerns regarding the protection of civilians and standards of behavior by warring militaries. Such concerns can be traced from Enlightenment thinkers such as Voltaire and Rousseau, who proposed that wars between nation states could only be morally justified in cases of defense against an unprovoked attack. Beginning efforts at establishing international legal codes occurred in the United States during the Civil War, but became slightly more specific in 1907 at the Hague Convention with prohibition of some forms of poison gas, but tellingly neither France nor Germany signed on to this treaty. With World War I the history of international law becomes more relevant to the Nuremberg trials, but efforts to sanction German leaders, particularly the Kaiser, were unsuccessful due to American resistance. This resistance stemmed from President Woodrow Wilson’s desire to form the League of Nations and have a democratic government in Germany, which might be more difficult to achieve if war crimes trials were conducted. A good deal of international resentment developed due to the lack of meaningful punishment of alleged war crimes committed by German political and military leaders during World War I by the German courts to which jurisdiction had been transferred. However, the period immediately after the end of World War I featured international agreements which provided much of the legal basis for the London Charter and the Nuremberg

Trials, including especially the Kellogg-Briand Pact of 1928. This agreement had remarkably condemned war as a means of settling international controversies or resorting to war as an instrument of national policy. Beyond the general statements regarding aggressive war, however, no mechanisms for trials or punishment were included in the Kellogg-Briand Pact.

The ideas which culminated in the London Charter and the Nuremberg Trials were developed on the American side with several New York attorneys with whom Taylor was well acquainted. The positions taken emerged out of much conflict within the United States and between the U.S., Great Britain, and the Soviet Union. The issues at stake were momentous. Would 50,000 of the worst war criminals be summarily shot as had jokingly (perhaps) been proposed at Yalta? Churchill actually supported executions, but was troubled by how the appropriate candidates for such punishment would be identified.¹¹ Another course involving military executions, expropriation of territory, and dismemberment of Germany was favored by the U.S. Treasury Secretary Henry Morgenthau. Morgenthau's plan was so punitive that Secretary of State Cordell Hull was horrified and speculated that the plan would lead to mass starvation in Germany.¹² Secretary of War Henry Stimson sided with Hull, and instead advocated for fair trials for alleged Nazi war criminals. The debate over matters related to the treatment of war criminals was affected by domestic U.S. politics which favored trials because of the opportunity to publicize atrocities committed in concentration camps. This led many to favor establishing conspiracy to plan an aggressive war as a crime under international law. Through that mechanism the murder of Jews, gypsies, and others by the Nazis prior to the start of the war could be included in war crimes trials. Apparently Justice Jackson and President Truman

¹¹ Taylor, *The Anatomy of the Nuremberg Trials*, 32.

¹² Taylor, 34.

vigorously favored conducting fair trials of Nazis, along with the provision to include conspiracy and initiating aggressive war.

By documenting the legal and historical precedents for the Nuremberg Trials in international law, Taylor supports the contention that the trials were legally principled. As opposed to the settlement of World War I involving the Treaty of Versailles, the Nuremberg Trials served successfully as an early form of transitional justice. Rather than instilling in the German population in general a sense of collective victimization at the hands of the victors, the trials indicted only those leaders who were identified as legally responsible for the commission of war crimes. This facilitated a process by which Nazi leaders could be seen not as supermen, martyrs, or tribal leaders, but as criminals. In this way many of the German people could be convinced to no longer identify with the Nazi cause and come to regard other European countries as potential allies rather than mortal enemies.

While some historians viewed the Nuremberg Trials as part of an evolution in international law, other sources described how specific legal procedures were scrupulously fair. Willis Smith, who was president of the American Bar Association, wrote a description of the central features of the Nuremberg Trials and a defense of its approach to post-war justice. Smith observed the first of the Nuremberg Trials and viewed first-hand concentration camps as well as some of the various instruments employed by the Nazis for mass murder.¹³ He goes on to describe the importance of the principled trials which took place as opposed to the summary executions which have occurred following a prolonged war. Smith describes the types of crimes that were judged, including crimes against peace, war crimes, and crimes against humanity. The rationale for indictments based upon conspiracy to commit any of these crimes was defended as was the issue of criminalizing the initiation of an “aggressive war.” The historical agreements

¹³ Willis Smith, “The Nuremberg Trials,” *American Bar Association Journal*, Vol. 32, No. 7 (1946), 391.

servicing as the legal precedents for the trials including the Treaty of Locarno of 1925, the League of Nations pronouncement of 1927, and the Kellogg-Briand Pact of 1928 were discussed briefly. Smith contends that the legal basis for the Nuremberg Trials was thus both fair and legally sound. Smith argues that the trials prevented Nazi leaders from being perceived in defeat as national symbols of glory and pride, but rather as war criminals justly punished for mass murder. This supports the view that the Nuremberg Trials served as a model for transitional justice which facilitated a just and lasting peace between former belligerents. Because the trials were apparently fair and just, the revelations regarding Nazi war crimes could not be discounted as merely Allied propaganda and an exercise in victors' justice, but rather as evidence of Nazi atrocities.

A.L. Goodhart, an American attorney and jurist, concurs with Smith in supporting the view that the Nuremberg Trials were fair and legally sound.¹⁴ He first addresses the question of whether the trials' prosecution of waging an aggressive war will be effective in preventing future wars. He admits that such a result would be too much to hope for, but that the threat of punishment should over time decrease all but the most adventurous warmongers from initiating conflicts. Goodhart proposes that the idea of a glorious war fought for some sort of glorious purpose would be revealed instead for the brutality and destructiveness which actually characterizes war. He attempts to dispose of the objection to Nuremberg that neutral judges should have been used, insisting that the trials were regarded as fair by virtually all in the international community. He further argues that spies are not judged by neutral parties, so the expectation that Nazi defendants would be tried by neutral judges is unreasonable. The critique of the trials as using *ex post facto* indictments is countered by arguing that only aggressive war

¹⁴ A.L. Goodhart, "Questions and Answers Concerning the Nuremberg Trials," *The International Law Quarterly*, Vol. 1, No. 4 (1947), 526.

could be viewed as not legally codified internationally, and that traditional war crimes were sufficient to render the verdicts issued without these other charges being considered. In any case, the precedent of Kellogg-Briand Pact of 1928 and the awareness of what would be seen as contrary to the spirit of international law should have deterred Nazi leaders from initiating the war.

Goodhart goes on to address the complaint that defendants should have been executed without trial. He argues that it was important for the international community to see just procedures being carried out, and that the facts of Nazi atrocities needed to be made known to all, including future historians. He discusses the criticism that the trials did not consider the defense of defendants following superior orders, but argues that they should have refused illegal orders which constituted war crimes, and that mitigation in sentencing was provided according to individual circumstances. Goodhart concludes that the trials were important in bringing war criminals to justice and establishing a record of the crimes which were committed.¹⁵ He expresses perhaps too much optimism about the legal precedents power in preventing aggressive wars in the future. He also supports the importance of documenting and publicizing the nature of war crimes committed, but he seems to believe that this will have less power in preventing future conflicts than the deterrent value of punishing the defendants. He is less optimistic that the trials could influence German public opinion. This could be due to the fact that Goodhart was focusing on former Nazi party members. Additionally the paper was written quite soon after the end of World War II in 1947, so that the impact of the trials in alienating the German public from Nazi ideology may have been insufficiently appreciated.

Quincy Wright, professor of international law at the University of Chicago, was a technical advisor for the American judge at Nuremberg, Francis Biddle, and concurs with Smith

¹⁵ Goodhart, "Questions and Answers Concerning the Nuremberg Trials," 529.

and Goodhart concerning the principled legal basis for the trials. Wright provides a unique perspective as he was with the judges in private sessions when they were “making rules and deciding the many points which a court, under such novel conditions, has to decide.”¹⁶ The rules of the trials such as allowing the defendants to select the lawyers of their choice, assisting them in finding witnesses and documents, and giving the defense time and access to original documents were significant for demonstrating the fairness of the trials to the world and especially to the German people. The legality of the trials stemmed from the mandates of the Charter, namely: crimes against peace, war crimes, crimes against humanity, and conspiracy to commit any of these offenses. The Charter was not only supported by the United Nations and the sovereignty of the Allies over Germany, but also from pre-existing international law. One example of such international law was the Kellogg-Briand Pact of 1928 in which Germany, as well as many other nations, agreed not to resort to war to advance national goals. Wright’s main argument centers on the legality and fairness of the trial so that, “In the future the historians will be able to present a story which is unimpeachable.”¹⁷

The establishment of pre-existing international law is significant in not only proving the legality but also the fairness of the trials. The defendants could not argue successfully that *ex post facto* laws were used or international laws were illegal or unprecedented. The trials were also unique in the creation of the International Military Tribunal and in the prosecution of specific criminals rather than the German nation as a whole. The establishment of the International Military Tribunal signaled the departure from ineffective post-WWI policies to a comprehensive program of transitional justice. Through the specificity of the charges against major war criminals, rather than all of Germany, the defendants properly assumed the burden of

¹⁶ Quincy Wright, “The Nuremberg Trial,” *The Annals of the American Academy of Political and Social Science*, Vol. 246 (1946), 74.

¹⁷ Wright, 75.

guilt and spared their nation from becoming an international pariah after the war. Although many Germans were aware of the atrocities their nation had committed, the trials and the ensuing condemnation from the international community allowed Germans to disassociate themselves from the Nazis' actions. After the war older Germans tried to ignore or sweep under the rug, the horrific revelations exposed by the Nuremberg Trials. By the 1960s younger Germans were able to examine German acquiescence to Nazi policies, and confront without denial the brutality of Nazis war crimes.¹⁸ The trials were an effective example of transitional justice in that the German people were eventually able to disassociate from Nazi ideology and regain their moral identity. As a result, Germany was able to rejoin the international community as a trusted state and to then enjoy a period of sustained peace.

One legal argument which was prevalent among some German intellectuals who opposed the Nuremberg Trials was discussed in an article written by Nicholas R. Doman. Doman, who was a lawyer and was assigned to the legal staff of Robert H. Jackson, the United States' chief prosecutor at Nuremberg, addresses arguments contained in a book that was written by one of the Nuremberg defendants. One defendant, Dr. August von Knieriem, had been charged on various crimes including the criminal use of slave labor and complicity in wars of aggression. Although he was found innocent of all charges, he admitted German responsibility for the war crimes charged in the Nuremberg Trials. This admission by Dr. von Knieriem was significant because he did not argue the defense of the following of orders of a superior to excuse criminal conduct. Furthermore, Dr. von Knieriem regarded Germany as a criminal state during the war. His argument involved the jurisdiction of the Charter and the Allied Control Council. That is, he was recommending that the defendants be tried in German courts. The fiasco of the trials after WWI is a revealing example of allowing a country to conduct a sham trial of leaders of their own

¹⁸ Michael Sontheimer, "Why Germans Can Never Escape Hitler's Shadow," *Spiegel Online* (2005), 2.

country. In congruence with Doman's thesis, "Much of the challenge against the Nuremberg Trials was of a negative, fault-finding nature; the critics seldom came forward with feasible alternatives."¹⁹

Dr. von Knieriem's argument for the application of German national law is problematic for various reasons. There were several legal attributes that not only made this pursuit unreasonable, but also not feasible. Pre-existing international law, such as the Kellogg-Briand Pact of 1928, which condemned the use of aggressive warfare was among the first violations of international law by the German government. The Potsdam Agreement of 1945 deemed that the German government and its power and authority had ceased to exist. All governmental powers and authority were assumed by the Allied Powers. Furthermore, it was under the German government's leadership that wars and terrible acts of genocide were committed. If there was ever a time to apply international law instead of national law, then the Allies' sovereignty in Nuremberg was the most crucial hour in which to dissolve and punish the German leadership that allowed such atrocities to occur. In addition to pre-existing international law violated by Germany, Doman refers to the responsibility of individuals under international law where the "International Military Tribunal cites *Ex Parte Quirin*, 317 U. S. 1 (1942)."²⁰ The case of German saboteurs ruled that individuals who commit crimes against international law could be lawfully punished even though there was no existing German statute. Doman's position on the international law used in the Nuremberg Trials is congruent with the existing scholarship on the use of international law in prosecuting war criminals in Nuremberg.

A novel element of the Nuremberg Trials was identifying Germany's persecution of its own citizens as a war crime. In a 1945 newspaper article John MacCormac reported that the

¹⁹ Doman, "The Nuremberg Trials Revisited," 260.

²⁰ Doman, 262.

United Nations War Crimes Commission would not give up in its efforts to bring war criminals to trial despite conflict between the United States and British governments. In the article it was noted that the British House of Commons decided on a change of policy to ensure that war crimes committed by the Nazi regime against its own people because of race, religion would be prosecuted as well as specific war crimes.²¹ While the British government continued to emphasize that crimes committed by the German government against its own citizens were in a different category than war crimes, the British representative stated that the government would do its utmost to ensure that prosecutions would go forward. This decision was something the United States had proposed for some time, but the British foreign office had refused to approve. The conflict between British and American representatives to the United Nations War Crimes Commission signified a change of policy on the part of the British to agree that war criminals would be punished by a court of law as opposed to summary military punishment without trials.

McCormac indicates that the United States government was attempting to assure that punishment of war crimes would occur in the context of a principled judicial process as opposed to the mere imposition of power by the victors to exact retribution. Such an approach to transitional justice arguably yielded a more positive outcome in terms of relations between victorious and defeated parties after World War II. Conflict between the British and American governments as to the necessity of prosecuting Nazi officials for human rights violations against its own people was resolved so that these crimes would be prosecuted as well. It is probable that pressure brought by the Roosevelt administration helped push this through to address the concern of American domestic political constituencies. The decision to go through with such prosecutions indicated that persecution of minority groups within nations could also be subject to international law and war crimes prosecution.

²¹ John McCormac, "War Crimes Board Pledges No Let-up," *New York Times*, (1945), 1.

One of the most audacious features of the Nuremberg Trials was its inclusion of initiating an aggressive war as one of the charges with which some of the defendants were indicted. In essence the trials held that it was illegal to settle disputes with other nations by starting a war. It was a controversial step for the Allies to take with respect to international law. The debate between the Allies leading up to this determination was reported in an article in the *New York Times* by Charles Egan. Egan described contentious negotiations between France, Great Britain, the United States, and the Soviet Union to determine the procedures to be used in the Nuremberg Trials which would soon follow. The article quotes an unnamed Allied attaché who predicted that most of the defendants would be in their graves well before Christmas of that year, reflecting the anger at Nazis felt by representatives of the four Allied nations involved.²² Supreme Court Justice Robert Jackson, the chief U.S. representative to the negotiations, was reportedly at odds with other nations' representatives, particularly the Soviets, over Jackson's insistence that waging an aggressive war needed to be defined and established as a war crime. The Soviets were apparently not keen to agree to that in light of their invasion of Finland in 1939-1940. Jackson threatened to break off negotiations if the American position was not adopted, which was apparently supported by President Truman. Had the negotiations failed at this conference it could have resulted in separate trials by each of the Allied nations which would not have been truly international in scope, thus weakening its authority with the German people as well as the international community.

Beyond this issue the conferees determined that only Nazi leaders would be indicted for war crimes as opposed to a large number of Nazi party members. The plan for the trials that only major Nazi leaders were to be tried broke with the precedent of the Versailles Treaty of holding the German nation at large responsible for the conflict. The approach of Versailles can be

²² Egan, "Code Defining War Crimes to Include Aggressive War," 63.

considered as a form of collective punishment for those Germans who suffered from the harsh reparations which had been imposed after World War I, but who had no real power in the decision to go to war. Collective punishment in this case resulted in the German population feeling great resentment at its European neighbors, which in turn enabled the rise of the Nazi Party. The punishment of Nazi leaders as opposed to a larger number of Nazi Party functionaries arguably undercut the leaders' authority with the population, which was particularly important in German culture where the power of those in authority traditionally held great power. Subjecting leaders to a trial defined them as criminals rather than as martyred war heroes had they been summarily executed. Defining aggressive war as a crime under international law helped establish the Nuremberg Trials as a milestone in terms of international law.

Most but not all sources regarding the Nuremberg Trials written by American attorneys focused on the fairness and legal justifications for the proceedings. However, there is a substantial body of literature which identifies various weaknesses in the trials. Like other articles analyzing the legal basis for the Nuremberg Trials, one written by George Finch was apparently intended for an audience of fellow American attorneys. Finch criticizes some assumptions which he believes will undercut the trials' significance as a precedent for future cases in international law.²³ The author agrees that prosecuting Nazi leaders for war crimes and crimes against humanity is legally justifiable with existing precedents given the legal standing of the International Military Tribunal as the existing legal authority after the defeat of the German government. He also endorses the basic fairness of the trials. What Finch does criticize is the more legally ambitious indictment of waging an aggressive war on the part of German leaders. He notes that in international law that such a charge is a new concept that leans heavily the Pact of Paris for the Renunciation of War in 1928, also known the Kellogg-Briand Treaty. The

²³ George A. Finch, "The Significance of the Nuremberg Trials," *American Bar Association*, (1946), 26.

problem arises, Finch argues because of the attitude and actions of the prosecuting governments, specifically the U.S. and the Soviets, as Germany annexed Austria. Since the U.S. maintained neutrality and did not object at the time of Germany's supposed illegal behavior, subsequent indictments at Nuremberg constitutes prosecution after the fact for a law which did not exist at the time, the so-called *ex post facto* objection. Worse still was the Soviets' criminal participation in 1939 with Germany in the partition of Poland. Finch concludes that the world cannot take the prohibition against aggressive war seriously in the future unless international law is strengthened and international criminal prosecution is codified through the United Nations.

The point made by Finch does not totally undercut the contention that the Nuremberg Trials were fair and just, at least in terms of the prosecution of war crimes and crimes against humanity is concerned. Thus the effectiveness of the trials as transitional justice can still be maintained. What Finch does provide some evidence for, however, is the need to have strengthened international law and institutions to prevent aggressive war in the future. That aggressive wars have continued to occur since World War II without immediate and coordinated international condemnation must be admitted. One could argue that Europe itself was basically free of aggressive war within its own territory for decades after World War II, but this could be attributed to many factors of factors such as the precedents established by the Nuremberg Trials as well as the new threat posed to all nations by possible nuclear war.

One of the legacies of the Nuremberg Trials was the apprehension, trial, and execution of Adolf Eichmann in 1962, some 17 years after the conclusion of World War II. David Lippert argues that Israel's apprehension and trial were lawful under the Charter of the International Military Tribunal under which the Nuremberg Trials were conducted.²⁴ Lippert further contends

²⁴ David I. Lippert, "The Eichmann Case and the Nuremberg Trials," *American Bar Association Journal*, Vol. 48, No. 8 (1962), 738.

that the proposition that Eichmann had been singled out and punished as a scapegoat in an unjust prosecution is totally without foundation. Eichmann was, according to documentation presented at Nuremberg, responsible for carrying out mass executions of Jewish people in concentration camps. This was at the core of the “final solution” to the so-called Jewish question as the prime example of Nazi war crimes. The article addresses specific objections to Eichmann’s trial, almost all of which were argued before and during the Nuremberg Trials. The issues of alleged *ex post facto* prosecution, Lippert argues, was rendered moot by the international agreements to which Germany had agreed prior to World War II banning aggressive war and various war crimes. The argument that Eichmann was merely following orders from a superior was similarly dispatched by noting that defendants should have refused to obey orders of a criminal nature and that mitigation in sentencing was available in such cases. Lippert argues that the apprehension of Eichmann to Israel without formal extradition was justified by the precedent set by the Allies in apprehending Nazi war criminals and transporting them without formal procedures. He also noted that Argentina had signed onto legally binding agreements not to harbor war criminals. Lippert’s argument bolsters the thesis of the project that the Nuremberg Trials created a legacy of international law precedents to pursue perpetrators without regard to the passage of time or national boundaries. Thus the trials set forth standards of law that were both enduring and international in their application.

Supporting the importance of the legacy of the Nuremberg Trials was an article written by Brigadier General Telford Taylor, Chief Counsel for War Crimes for the United States. Written in April, 1949, immediately after the thirteenth and last Nuremberg trial, Taylor notes criticisms of the trials’ legal basis, but argues for the significance of the trials for as a precedent

for future international law.²⁵ Besides the wealth of documentation uncovered regarding war crimes available to future historians, Taylor believes the trials would have a vital effect on the course of world affairs and public opinion within Germany. He proposes that the International Military Tribunal established standards of conduct for civilized countries which applied to all individuals as a function of international law. The international legal standards included deliberate planning and launching of aggressive war, violating the laws and customs of war, inhumane actions against particular racial, religious, ethnic and other groups, and conspiracy to commit war crimes. The 13 Nuremberg trials were all held under Control Council Law number 10 which was based upon general principles established by the London Charter. Nazi leaders, high-ranking officers of the SS, financiers, industrial leaders, and some German judges were indicted, along with a few doctors who were indicted for horrific medical experimentation on unwilling concentration camp inmates. In all 200 individuals were tried, of whom 38 were acquitted, about the same number of people were sentenced to death, while the remainder were sentenced to prison terms ranging from 18 months to life in prison. Taylor ponders whether international tribunals will be established in the future to address war crimes. He explores the issue of criminal responsibility in the Nuremberg trials, emphasizing that only those individuals who were involved in the highest levels of planning and implementation were held criminally liable. One of the most difficult issues involved in the proceedings involved the defense of necessity or duress, in which officials claimed to have been at risk of severe punishment had they refused official government orders. These types of extenuating circumstances were dealt with according to the degree of coercion involved, with those who only faced monetary or career loss

²⁵ Telford Taylor, "The Nuremberg War Crimes Trials: An Appraisal," *The Academy of Political Science*, Vol. 23, No. 3 (1949), 19.

subject to harsher penalties than those who might have been sent to a concentration camp had they not complied with official policy.

Taylor suggests that the documentation created by the Nuremberg Trials could be used in German schools and universities to more fully apprise young Germans of the nature of the Nazi war crimes committed leading up to and during World War II. He speculates that without such information that the German population might fall under the influence of political movements which could again disturb the peace of Europe. While he believes that it is vital to the future of world peace to establish international tribunals to enforce laws against human rights violations, he expresses concern that critics of international law will make the realization of such tribunals difficult. Taylor's description of the scrupulous legal proceedings of the trials suggested a level of fairness which was a critical factor in making the proceedings appear legitimate to the German people as well as the international community. The fact that many indicted individuals were exonerated or given light sentences while others were sentenced to death or life in prison attests to the fact the trials were relatively fair and not "show trials" or an arbitrary exercise in victors' justice.

A critical feature of the Nuremberg Trials which served to enhance its effectiveness as a form of transitional justice was its reliance on international participation in all aspects of design and implementation. Utilizing judges and prosecutors from different countries and translating the proceedings into a wide range of languages in real time was instrumental in publicizing the nature and extent of Nazi war crimes and the attempt at principled judicial response of the military tribunal. Allowing the world's people to be aware of the nature and extent of Nazi war crimes simultaneously was a critical element in its effectiveness as a form of transitional justice.

Overcoming German Support for Nazi Ideology

Prevention of a future conflict after the conclusion of a war is one of the central aims of transitional justice programs. One of the greatest challenges facing the planners of the Nuremberg Trials was how to address the history of Nazi war crimes in such a way as to minimize the probability that a new war would at some point be instigated by Germany against its European neighbors. Had it been the case that the German people were unaware of the war crimes committed, or if they had not willingly supported the Nazi leadership in their activities, the task of transitioning German society to a lasting peace might have been relatively straightforward. Achieve military victory then deactivate Nazi leadership and the task of transitional justice could then proceed smoothly. However, Robert Gellately argues that the German people were in fact relatively aware and supportive of what Nazi leadership was up to, although the extent of distortion of that information through sophisticated propaganda must be taken into account.²⁶ He argues that much information regarding police and Gestapo raids was well publicized in popular newspapers which were widely read in Germany before and during the war. These newspapers colluded with Hitler, although there was often subtle as well as overt pressure applied to editors to conform to a positive treatment of the ruling party. Nazi propaganda made no secret of concentration camps within Germany and occupied countries, but early on described them as if they were benign summer camps which attempted to humanely rehabilitate common criminals. Rather than relying on coercion to intimidate the masses, Nazi forces used terror tactics selectively against groups of people who were easy to stigmatize, such as Communists and Jews. Gellately contends that anti-Semitism was widespread in Germany in the 1930s, but was not as intensely embraced by Germans in general than was the case for Hitler and his circle of most trusted supporters. Most of the efforts at information management in

²⁶ Robert Gellately, *Backing Hitler: Consent and Coercion in Nazi Germany* (New York: Oxford University Press, 2002), 14.

Germany were used not so much to intimidate the population, although that certainly occurred, but to gradually harden existing attitudes against Jews, Communists, and other individuals who were targeted by law enforcement and the Gestapo. The popular support enjoyed by Hitler, the Nazi party, and their policies is emphasized by Gellately, but he makes many qualifications to that assertion, often having to do with the selfish gain German individuals realized for informing on a neighbor, for instance, as opposed to genuine enthusiasm for all Nazi policies.

The popular support in Germany for Hitler personally is more directly examined by Ian Kershaw, who identifies various factors contributing to extremely strong backing from the German people.²⁷ Building on the referendum of August 19, 1934, Hitler developed an extremely strong cult following based upon many factors including great reductions in unemployment and improved standards of living, reductions in crime, and a restoration of social order. Importantly Hitler was able to achieve massively strengthened national standing and increased military potency by rejecting the Treaty of Versailles, re-militarization of the Rhineland, annexation of Austria, and absorption of the Sudetenland, all of which were accomplished without shedding any blood. All of these objective developments were effectively maximized by brilliant propaganda strategies devised by Goebbels, resulting in the rise of the “Führer cult.”²⁸ His massive popularity led to narcissistic excesses and resulting errors in judgment for Hitler regarding military unrealistic aspirations that eventually eroded some of his support. However, at the war’s end he still remained hugely popular among the German people who were old enough to be influenced by propaganda despite the enormous costs of the war.

If Gellately and Kershaw are correct a significant proportion of the German people in fact supported Hitler willingly and believed in Nazi ideology up until the end of the war. Thus any

²⁷ Ian Kershaw, “How Hitler Won Over Germany,” *Spiegel Online* (2008), 1.

²⁸ Kershaw, 1.

attempt at achieving lasting peace and cooperation between Germany and the international community after the war would require counteracting Germans' adherence to the Nazi world view. Neo-Nazi political activity and friction between Germany and its European neighbors would be more probable if a large segment of German society continued to believe this ideology. Whether consciously intended or not the Nuremberg Trials contained approaches to transitional justice that may well have served to counteract the adherence of the German populace to Nazi ideology, although this has not apparently been widely recognized in the historical literature on the subject.

A thorough examination of Nazi ideology is explored in Jonathan Glover's *Humanity*. Glover maintains that the peculiar Nazi belief system arose at least in part as a result of the national humiliation and resentment among the German people due to the loss of World War I, the harsh economic conditions imposed on the country through the Treaty of Versailles, and economic hardship from the global depression of the late 1920s and 1930s.²⁹ The defeat and subsequent harsh settlement imposed on the German nation by the victors of World War I led to collective hatred and resentment that motivated many Germans to seek revenge upon European rivals. This cultural state of resentment left the German people vulnerable to the appeal of the Nazi movement with its message of extreme nationalism, glory, hatred for non-Germans, and a desire for revenge. As opposed to the various nationalities that were mixed in the international community, the German people adopted the idea of the "tribal nation-state" which owed its special character to the forest.³⁰ Out of the humiliation of World War I a sense of special German character arose which viewed itself as warlike as well as separate from and superior to other nationalities.

²⁹ Jonathan Glover, *Humanity: Moral History of the Twentieth Century* (New Haven: Yale University Press, 2001), 318.

³⁰ Glover, 319.

Glover describes the Nazi belief system as dependent on a pseudo-scientific concept of racial hygiene in which the supposedly superior Aryan genetic lineage needed to remain pure from adulteration by lesser beings who by comparison had various forms of genetic defects. According to this set of ideas, genetic characteristics were paramount and cultural transmission was temporary and insignificant. Because of the easy conditions of modern civilization inferior genetic stock had survived and would continue to do so to contribute to the gene pool and dilute the quality of humanity. It was regarded as inevitable and desirable, according to this theory, that stronger people would drive out, rule over, or eliminate weaker peoples. Improvement of the species could be accomplished through euthanasia and other eugenic procedures. Inferior people should be eliminated from the gene pool and preservation of racial purity was regarded as a necessity.

Nazi ideology adopted a variant of Nietzsche philosophy shaped by Nietzsche's sister with some aspects literally interpreted. This reinforced the racial hygiene preoccupation. All life was viewed as a struggle in which the strong imposed their will on the weak. Compassion as a Judeo-Christian value was regarded as a form of weakness which had to be extinguished in favor of a kind of hardness towards oneself and others. Hitler interpreted Nietzsche's writings in viewing humanitarian morality as a form of intolerable weakness.³¹

At the same time that Germans viewed themselves as specially endowed compared to other ethnic groups, Nazi ideology identified Jews in particular as the source of national problems over the past several years. Jews were used as scapegoats as the cause of both World War I and the subsequent economic decline through their connection with roles in international financial institutions. Jews were regarded as aliens who threatened German racial purity. Eventually Jews and other victims of Nazi war crimes were viewed as not human and outside of

³¹ Glover, *Humanity: Moral History of the Twentieth Century*, 326.

the protection of moral boundaries which could afford them protection. As Jews were publicly mistreated and humiliated, their status as beings unworthy of sympathy or protection was continually reconfirmed.

Connected to these ideas was the notion of overcoming traditional morality through total belief, obedience, and conformity that expressed “the will to make mankind anew.”³² Glover maintains that the duty to conform was deeply internalized and reinforced by propaganda. He describes authoritarian personalities, obedience and conformity as typical byproducts of German family life prior to World War II. It in fact played out in an extreme fashion in Hitler’s own upbringing. Glover posits that unquestioning obedience is common for people generally, citing the psychological research of Stanley Milgram, but exaggerated in German society prior to the war. These strict lines of authority were greatly reinforced by Hitler’s own image within Nazi Germany. These aspects of Nazi ideology combined to facilitate the horrific genocide of the Holocaust that was prosecuted as a war crime in the Nuremberg Trials.

Given the hold that Hitler and Nazi ideology had on the German populace before and during the war, how did the Nuremberg Trials serve to counteract this ideology? This is a question that has apparently not been explored much at all by historians, but there were several aspects of the trials which can be identified that served to counteract Nazi ideology and thereby facilitate peaceful relations between Germany and its neighbors. As opposed to the conclusion of World War I Nazi leaders responsible for war crimes were identified and prosecuted in the Nuremberg Trials rather than allowed to go on with their lives without punishment. Individuals directly responsible for war crimes were held accountable. Had this not occurred these war crimes would have been tacitly treated by the international as morally acceptable and thus repeatable in the future with impunity.

³² Glover, *Humanity: Moral History of the Twentieth Century*, 327.

Of singular importance is the fact that attempts were made to conduct war crimes trials in a fair and legally principled manner, judged on the basis of documented evidence under legal tenets consistent with existing international law. Many defendants were exonerated. Although there were complaints about the trials as a form of victors' justice that overlooked war crimes committed by the Allies, there was little question that the defendants were afforded the opportunity for a fair trial. If the Allies had resorted to summary executions as suggested by Stalin the German people could have regarded the executed leaders as martyrs and supermen rather than morally flawed war criminals. The status of Nazi leaders as convicted war criminals effectively neutralized their image as possessors of some form of racial superiority. Conformity and obedience to convicted war criminals is evidently less palatable than if the leaders were instead regarded as mythic supermen, which would have been the case if they were executed without a fair trial.

Given the wealth of documented evidence of horrific war crimes committed by some of the defendants, the revered and mythical status of Nazi leadership was to some extent undermined in the eyes of the German people. Because of the international character of the trials, the full extent of the atrocities was publicized to the global community. This confronted the German public with the choice to disassociate from the Nazi leadership or appear complicit in the commission of massive war crimes. No longer could ignorance of what had occurred in the concentration camps be used as an excuse for indifference. The scapegoating and subsequent dehumanization which was used to facilitate maltreatment and eventual mass slaughter of Jews and other Nazi victims was difficult to sustain in the face of the exhaustive documentation of atrocities committed against the Jewish people. As Chakravati indicates, the failure of the Nuremberg Trials to include evidence in the form of surviving Jewish witnesses' testimony may

have undercut the trials' value to the victims in terms of their experience of moral retribution.³³ However, considering the anti-Semitism present in Germany at the time, the exhaustive documentation might have been more effective in modifying German public opinion without including Jewish victim testimony.

After World War I the entire German populace suffered national humiliation and severe economic hardship due to reparations as part of the Treaty of Versailles. As noted by Glover, this resulted in a resentful nationalism shared by the German people generally. Importantly the Nuremberg Trials indicted only the leadership and those directly responsible for war crimes as opposed to subjecting the German people as a whole to collective punishment. Had the conclusion of the war been followed by something like the Morgenthau Plan, massive reparations would have been levied, territory ceded, and German industrial capacity would have been dismantled. Essentially the German people would have been subjected to collective punishment which would have probably led to the sort of economic depression and resentful nationalism that propelled the Nazi party into power in 1933. Resorting to a principled trial of Nazi leadership instead of something like the Morgenthau Plan was apparently a much more effective strategy for helping transition Germany into a reliably peaceful ally.

Conclusion

One of the major challenges confronting the Allies at the conclusion of World War II involved how to deal with German leaders responsible for war crimes. One major goal shared by Allied leaders was the prevention of resurgent German military adventures after the war which could threaten the peace in post-war Europe. Making this goal more complicated to achieve was the extreme nature of Nazi ideology and the hold of this ideology on a significant segment of the German population. The objective of sustained peace in Europe required the Allies to adopt

³³ Chakravarti, "More Than Cheap Sentimentality," 225.

measures at the conclusion of the war which would weaken the hold of Nazi ideology on the German populace. To accomplish this the Allies needed to decide between various options, one of which was the Morgenthau Plan, involving the permanent partitioning and expropriation of territory, deindustrialization, and massive reparations from Germany to the Allied nations. Such a course may have been viewed by German as similar to the Treaty of Versailles, only perhaps with harsher terms. If the Morgenthau Plan was followed it might have resulted in economic deprivation followed by resentful nationalism of the sort characterizing the ascendancy of the Nazi party. Stalin's proposal for summary execution At the conclusion of World War I the victorious Allies responded to alleged war crimes by allowing them to be tried in German courts, resulting in very lenient treatment. The lesson of German aggression was that war criminals would enjoy impunity.

Ultimately through the dogged insistence of Justice Jackson and other Americans, the approach to transitional justice of the Nuremberg Trials was ultimately adopted.³⁴ Was this course successful? At the simplest level it was apparently quite successful to the extent that Germany has lived in peace with its European neighbors and the rest of the world for over 70 years. West Germany and the unified German state have been democratically governed and quite economically prosperous over the intervening decades since the war. While individuals who have described themselves as neo-Nazis have been and continue to be present in Germany, their numbers have been relatively small. The NPD party which represents the neo-Nazi political faction in Germany has about 6,000 members and was considered to be a fringe party with little hope of being represented in the German parliament.³⁵ With European nations currently immersed in controversy regarding a huge influx of Muslim refugees, Germany has stood as one

³⁴ Taylor, *The Anatomy of the Nuremberg Trials: A Personal Memoir*, 34.

³⁵ Lucian Kim, "Hands Off Germany's Neo-Nazi Party," *New York Times* (2012), 1.

of the most welcoming and open nations, although they have stepped back somewhat more recently in the face of terrorist activity in Europe and internal political pressure.

All that said, the Nuremberg Trials were quite unpopular with Germans in the late 1940s, and as of 1966 Germany's war crimes files contained the names of 90,000 alleged Nazi war criminals, few of whom were ever indicted.³⁶ Still Evans notes that the trials were extremely influential with Germans born after 1940 who were not directly exposed much or at all to Hitler and Nazi propaganda. After 1968 Germany engaged in renewed investigations and prosecutions of former Nazi war criminals. The process was depicted in the critically acclaimed 2014 film "Labyrinth of Lies," which made it clear how resistant some in Germany were to exposing previously unindicted Nazis and how poorly informed many younger Germans were regarding the country's history of war crimes prior to 1968.³⁷

Whatever role the Nuremberg Trials had in assisting Germany into transitioning into a peaceful, democratic state, many other factors certainly came into play. The Allies, particularly the United States, demonstrated overwhelming military strength which served to discourage the Axis powers from continued resistance. The profound losses sustained by Germany obviously left it in no position to mount any sort of military program for many years apart from any restrictions placed on Germany by occupying forces and the German government itself. The country was devastated and the populace was deeply demoralized. There was no appetite for military activity for many years after the war due to the realization of the total defeat of World War II, not to mention the widespread lack of food and the destruction of major cities such as Dresden. West German, British, American, and French concerns revolved more around Soviet expansion than any military rebuilding on the part of Germany, so that Cold War tensions should

³⁶ Richard J. Evans, *The Third Reich at War* (New York: Penguin Books, 2008), 756.

³⁷ Giulio Ricciarelli, *Labyrinth of Lies* (2014).

be seen as a motivating factor for West German friendship with the U.S. and western Europe.³⁸

One possible factor worthy of consideration in the growing alliance between West Germany and the Allies after the war was the effect of the Marshall Plan which helped to rejuvenate economies through western Europe and draw those nations closer together politically.

While various factors contributed to amicable relations between Germany and western Europe after the war, the Nuremberg Trials undoubtedly were a positive factor in that respect. Through its reliance on precedents in international law, emphasis on fairness and principled legal procedures, exhaustive documentation and publication of Nazi war crimes, counteracting of Nazi ideology, and avoidance of punitive “victors’ justice,” the trials should be regarded as a highly successful model of transitional justice. Development of concepts such as criminalization of waging aggressive war and crimes against humanity constituted a major development in international law and human rights. Many criticisms can be lodged against certain aspects of the Nuremberg Trials. The Allies, particularly the Soviets, committed acts during the war which might be classified as war crimes. The arguments that some of the indictments were based on *ex post facto* law and that the defendants were held responsible for committing war crimes that they were ordered to carry out by superiors were two particularly thorny issues which architects of the trials wrestled with. That said, the Nuremberg Trials should be regarded as a tremendous advance in terms of international law and the manner in which nations deal with defeated enemies upon the conclusion of hostilities.

³⁸ Richard J. Evans, *The Third Reich at War*, 40.

Bibliography

- Borgwardt, Elizabeth. "A New Deal for the Nuremberg Trial: The Limits of Law in Generating Human Rights Norms." *Law and History Review*, Vol. 26, No. 3 (2008): 679-705.
- Burt, Robert A. "The Suppressed Legacy of Nuremberg." *The Hastings Center Report*, Vol. 26, No. 5 (1996): 30-33.
- Bush, Jonathan A. "'The Supreme...Crime' and Its Origins: The Lost Legislative History of the Crime of Aggressive War." *Columbia Law Review*, Vol. 102, No. 8 (2002): 2324-2424.
- Chakravarti, Sonali. "More than 'Cheap Sentimentality': Victim Testimony at Nuremberg, the Eichmann Trial, and Truth Commissions." *Constellations*, Vol. 15, No. 2 (2008): 223-235.
- Doman, Nicholas R. "The Nuremberg Trials Revisited." *American Bar Association Journal*, Vol. 47, No. 3 (1961): 260-264.
- Egan, Charles E. "Code Defining War Crimes to Include Aggressive War." *New York Times*, April 5, 1945.
- Evans, Richard J. *The Third Reich at War*. New York: Penguin Books, 2008.
- Fichtelberg, Aaron. "Fair Trials and International Courts: A Critical Evaluation of the Nuremberg Legacy." *Criminal Justice Ethics*, Vol. 28, No. 1 (2009): 5-24.
- Finch, George A. "The Significance of the Nuremberg Trials." *American Bar Association* (1946): 22-28.

- Gellately, Robert. *Backing Hitler: Consent and Coercion in Nazi Germany*. New York: Oxford University Press, 2002.
- Glover, Jonathan. *Humanity: Moral History of the Twentieth Century*. New Haven: Yale University Press, 2001.
- Goldensohn, Leon. *The Nuremberg Interviews: An American Psychiatrist's Conversations with the Defendants and the Witnesses*. New York: Random House Inc., 2004.
- Goodhart, A. L. "Questions and Answers concerning the Nuremberg Trials." *The International Law Quarterly*, Vol. 1, No. 4 (1947): 525-531.
- Kershaw, Ian. "How Hitler Won over the German People." *Spiegel Online* (2008): 1-11.
- Kim, Lucian. "Hands off Germany's Neo-Nazi Party." *New York Times*, 2012.
- King, Daniel P. "Review: The Anatomy of the Nuremberg Trials." *The Comparative and International Law*, Vol. 26, No. 2 (1993): 300-302.
- Lawrence, Geoffrey. "The Nuremberg Trial." *International Affairs*, Vol. 23, No. 2 (1947): 151-159.
- Lippert, David I. "The Eichmann Case and the Nuremberg Trials." *American Bar Association Journal*, Vol. 48, No. 8 (1962): 738-741.
- Luban, David. "The Legacies of Nuremberg." *Social Research*, Vol. 54, No. 4 (1987): 779-829.
- MacCormac, John "War Crimes Board Pledges No Let-up." *New York Times*, January 31, 1945.
- Mallard, William D. "Nuremberg – A Step Forward?" *The International Lawyer*, Vol. 4, No. 4 (1970): 673-681.
- Ricciarelli, Giulio. *Labyrinth of Lies*. Sony Pictures, 2014.
- Smith, Willis. "The Nuremberg Trials." *American Bar Association Journal*, Vol. 32, No. 7

(1946): 390-396.

Sontheimer, Michael. "Why Germans Can Never Escape Hitler's Shadow." *Spiegel Online*

(2005): 1-5.

Taylor, Telford. *The Anatomy of the Nuremberg Trials: A Personal Memoir*. New York:

Skyhorse Publishing Inc., 1993.

Taylor, Telford. "The Nuremberg War Crimes Trials: An Appraisal." *The Academy of Political*

Science, Vol. 23, No. 3 (1949): 19-34.

Wechsler, Herbert. "The Issues of the Nuremberg Trial." *Political Science Quarterly*, Vol. 62,

No. 1 (1947): 11-26.

Wright, Quincy. "The Nuremberg Trial." *The Annals of the American Academy of Political and*

Social Science, Vol. 246 (1946): 72-80.