



MEDICAL CASE—Former inmate shows scars from experiments made on her in concentration camp.



WOMEN DEFENDANTS—Herta Oberhauser (left), later convicted and sentenced to 20 years, discusses testimony with co-defendants in Medical Case. Inge Viermetz (right), later acquitted, pleads not guilty in RuSHA case.



KRUPP CASE—Alfried Krupp (left) and co-defendants discuss questions with their counsels shortly before the court reconvenes following noon-recess.



MINISTRIES CASE—Defendants' dock as accused listen to reading of charges. At left is Ernst von Weizsaecker, state secretary to the Foreign Office 1938-43.



POHL CASE—Delivering his final statement to the tribunal is Oswald Pohl, former high ranking SS official charged with crimes in operation of concentration camps.



MILCH CASE—Erhard Milch, former field marshal and the sole accused tried alone, confers with his brother, Dr. Werner Milch, associate defense counsel.

Nuremberg Trials

— — Synthesis and Projection

NUREMBERG has been hailed as a milestone in the evolution of international law and morality, and condemned as a wreaking of vengeance by the perversion of justice. The basic integrity of the proceedings has been impugned as an unworthy exercise of the victor's might — a "trial of the vanquished by the victors" — and several of the Nuremberg principles, notably the concept of the crime of aggressive warfare, have been challenged as legally invalid under the principle *nullum crimen nulla poena sine lege*. (No crime and no penalty without law.)

Profoundly important as these jurisprudential problems are, the question whether the Nuremberg trials should have taken place, or should have been different, has faced into the realm of the hypothetical. The Nuremberg record has been written and the judgments rendered. Some Germans, recently accused of murder and other heinous crimes, are free men today, acquitted of the charges. Others are serving long sentences; still others have been hanged.

For better or worse, Nuremberg is a *fait accompli* (accomplished fact). Rather than debate endlessly whether the trials should or should not have been held, we must now seek to grasp the practical significance of Nuremberg today and in time to come.

THE TRIALS were conducted by judges, and jurists will view them as the focus of many novel and difficult legal questions. But the trials cannot be appraised from a judicial point of view alone. For Nuremberg has a vital bearing — both immediate and long-term — on world affairs. The trials have been an integral part of American foreign policy, and a leading feature of the occupation of Germany. From a study of the trials and of German reaction to the trials, much insight may be gained which is necessary to the foresighted and imaginative conduct of international affairs.

Of the thirteen war crimes trials held at Nuremberg, the best known is the first, which was heard by a tribunal composed of judges from the

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The author presenting the opening statement for the prosecution in the Medical Case

four great powers — United States, United Kingdom, France and Soviet Union — charged with the occupation of Germany. This trial was held under the authority of an international agreement, known as the London Charter of Aug. 8, 1945, in which were set forth the principles of international law applied at Nuremberg. There are, I believe, three basic principles embodied in the London Charter and later confirmed by the judgment of the International Military Tribunal.

FIRST, there are certain standards of conduct, generally observed in civilized countries, which all men are bound as a matter of law to observe.

Second, men who violate these international standards are criminals and may be convicted and punished under international law by tribunals established to enforce that law.

Third, these standards prescribe and make criminal under international law (a) the deliberate planning and launching of an aggressive war, (b) violations of the laws and customs of war generally observed among belligerents, and (c) certain categories of inhumane persecutions of racial, religious, or other groups.

OF COURSE the legal and moral problems which derive from these very general principles are legion, and many are of profound and searching consequence. What if the very laws of a supposedly civilized state conflict with these principles? What weight shall be attached to the circumstance that the accused individual was acting under the pressure of orders from a superior, or the stress of fear? How should we define and delimit the area of personal criminal responsibility for wars and atrocities?

Some of these questions were dealt with in the first Nuremberg trial, and many more in the 12 which followed. The first trial was chiefly concerned with the deeds of the surviving top-most Nazis (Goering, Hess and Ribbentrop) and prominent Nazi administrators and officials (Sauckel, Speer, Frick and others). It did not furnish the basis for full inquiry into the degree of responsibility attributable to many others who were not "professional Nazis" but occupied key positions in the Third Reich, such as career diplomats, doctors, lawyers and judges, business men, and military leaders.

A few of the defendants in the first trial did, to be sure, fall in these categories; two generals (Keitel and Jodl) and two admirals (Raeder and Doenitz) were tried and all four were convicted; the professional diplomat von Neurath was also convicted but the elusive von Papen was acquitted, as was the government financier Schacht. Gustav Krupp was indicted, but could not be tried because of physical and mental infirmities.

THE 12 ensuing Nuremberg trials were also held under international authority, as embodied in an enactment, designated Control Council Law No. 10, promulgated in December 1945 by the Allied Control Council for Germany. Law No. 10 is based on the same general principles as the London Charter, and authorized the establishment of tribunals in each of the four zones of occupation, for the trial of war criminals and similar offenders.

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JUSTICE CASE—Franz Schlegelberger, former state secretary, pleads not guilty before tribunal.



HIGH COMMAND CASE—Some of defendants who commanded Hitler's armies, listen to their judgments.

In order to give effect to this law in the American zone, in October 1946 the Military Governor directed that "Military Tribunals" be established at Nuremberg. The tribunals in the American zone were composed of three members each, most of whom were professional judges of long experience.

In the 12 cases heard before these tribunals, 177 individuals were indicted and tried. Nearly half were defendants of the same general type that had filled the dock in the first trial—that is, they were SS leaders (Otto Ohlendorf, Oswald Pohl, Gottlob Berger and some 60 other SS officials) or high Nazi administrators and functionaries (Darré, Lammers, Dietrich, and others).

BUT OTHER defendants were not primarily politicians and were not outstandingly "Nazi" in the narrow organizational sense—some were not even party members. For example, in the well-known "Medical case" the defendants—accused of performing atrocious medical experiments on unwilling concentration camp inmates—included not only such Nazis as Hitler's personal physician (Dr. Karl Brandt) and the chief surgeon of the SS (Dr. Karl Gebhardt), but also the internationally famous specialist in tropical medicine (Dr. Gerhard Rose). The well-known diplomat Ernst von Weizsaecker and other career members of the German Foreign Office shared the dock with Lammers and Darré.

Three cases were concerned with the responsibility for slave labor, economic plunder, and other crimes borne by prominent German industrialists, such as Alfred Krupp, Friedrich Flick, and the directors of

the gigantic I.G. Farben chemicals combine. In two other cases some 20 field marshals and generals were convicted of wholesale violations of the laws of war. Professional judges were tried in the so-called "Justice Case," along with the prominent German jurist Franz Schlegelberger, who had served as acting reich-minister of justice during the war.

To summarize, about 200 individuals were tried in the 13 Nuremberg cases, of whom 38 were acquitted, nearly the same number condemned to death, and the remainder sentenced to prison terms of varying duration (18 months to life). In addition to the top Nazi party leaders, the defendants included prominent industrialists, military leaders, civil servants and professional men who were personally involved in the conquests and atrocities of the Third Reich.

THUS NUREMBERG has been an enterprise of large dimensions, both physically and conceptually, and cannot be appraised from the judicial angle alone. But we will view it first as a lawyer might, before sketching its interest to scholars and its broad political significance.

The legal profession, of course, will debate the pros and cons of the Nuremberg principles and procedures for years to come. Especially in Germany, where nationalism and national pride may be expected to sharpen the critical edge, attacks on the fairness of the proceedings will continue, and we will hear many jurisdictional and other objections to the trials.

The legal procedures at Nuremberg were largely the product of

evolution based on actual experience there. Certainly some difficult and unusual problems arose out of the mixture of different legal systems, and there is room for honest differences of opinion on a number of points. But the fundamental fairness of the trials was patent to the observer and will, I believe, be apparent to anyone who examines the record of the proceedings.

Looking forward instead of backward, legal analysis of the Nuremberg process will, I believe, be chiefly concerned with two basic problems. First, what are the metes and bounds of the crimes themselves? Second, what is the area of individual criminal responsibility?

Clearly, each of these topics offers ample scope for many books, and today I can do no more than sketch them. For example, the laws and usages of war, as found in the Hague and Geneva Conventions and other sources, have been interpreted and applied in all the Nuremberg judgments. The analysis of such topics as reprisals, hostages, economic plunder, deportation, forced labor, partisans and guerillas, and the definition of crimes related to these topics, can and should now be approached in the light of this wealth of new material, for the laws of war are in sad need of restatement.

FAR MORE important, however, is the question of the extent to which atrocities committed in peacetime, by or with the approval of a government, against a racial, religious or other group of its own inhabitants are to be regarded as crimes under international law. Here we must resolve the conflict between national sovereignty and world-wide law; the

path to an intelligent and workable solution is fraught with grave difficulties, but the outcome will have immediate and vital bearing on the preservation of world peace, to which these atrocities and persecutions are a constant and terrible menace.

Marking out the area of individual responsibility for these crimes is as searching a task as defining the crimes themselves. How close must the defendant's personal relation to the crime be, and what is the legal effect of extenuating circumstances, such as superior orders or fear of the Gestapo?

As to the first question, for example, all the directors of I.G. Farben were charged with complicity in the Auschwitz concentration camp atrocities, and it was proved at the trial that I.G. Farben had constructed a synthetic rubber plant adjacent to Auschwitz with the deliberate intention of utilizing the inmates as forced labor, and that working conditions on the Farben factory site were cruel and inhumane and many inmates died there. Although the entire Farben directorate had approved the Auschwitz factory project, the Nuremberg Tribunal held that only those few (four directors out of 20) who are personally and closely involved in its planning and execution were criminally responsible; the other directors were acquitted of the charge.

ONE MEMBER of the Nuremberg Tribunal, following Anglo-Saxon judicial practice, wrote a strong dissenting opinion, in which he declared that all the Farben directors

knowingly participated in the shaping of the corporate policy and "must share the responsibility."

AS TO THE question of fear and duress, we may take as a good illustration the charge brought against Krupp and Flick that they had knowingly employed in their plants thousands of Frenchmen and Poles and others who had been forcefully deported from their homelands, and that Krupp and Flick were therefore guilty of enslaving these deportees, as well as mistreating many of them. The industrialists answered that the use of forced foreign labor in German plants was an official government policy, and that they would have been subjected to severe punishment—confiscation of property or imprisonment—had they refused to use the labor.

The legal question, of fundamental importance in international penal law, raised by this defense is: what are the limits of personal guilt for crimes committed by private individuals in line with the policies of a dictatorial, tyrannical government? A passage from the Nuremberg judgment in the Krupp case may well stand as an influential precedent for years to come. The Tribunal said:

"... the question from the standpoint of the individual defendants resolves itself into this proposition: To avoid losing my job or the control of my property, I am warranted in employing thousands of civilian deportees, prisoners of war, and concentration camp inmates, keeping them in a state of involuntary servitude; exposing them daily to death or great bodily harm, under con-

ditions which did in fact result in the deaths of many of them; and working them in an undernourished condition in the production of armament intended for use against the... people of their homelands.

"If we may assume that as a result of opposition to Reich policies, Krupp would have lost control of his plant and the officials their positions, it is difficult to conclude that the law of necessity justified a choice favorable to themselves and against the unfortunate victims who had no choice at all in the matter...

"But the extreme possibility hinted at was that Gustav Krupp and his officials would not only have lost control of the plant but would have been put in a concentration camp had they refused to adopt the illegal measures necessary to meet the productions quotas.

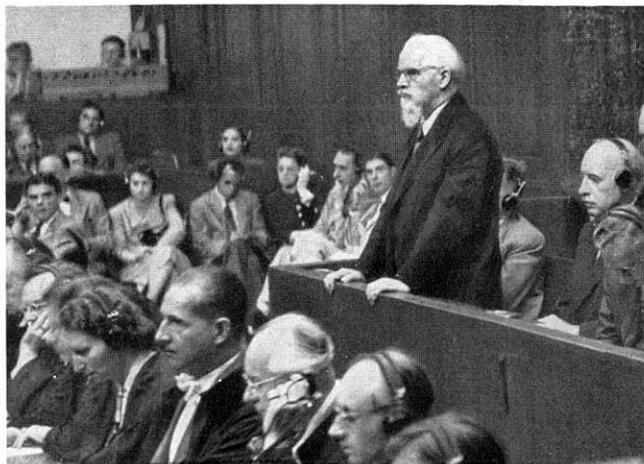
"... in all fairness it must be said that in any view of the evidence the defendants, in a concentration camp, would not have been in a worse plight than the thousands of helpless victims whom they daily exposed to danger of death and great bodily harm... The disparity in the number of the actual and potential victims is also thought-provoking."

THE FOREGOING is the merest sketch of two of the major topics arising out of the Nuremberg trials which will draw the attention of lawyers the world over. While I would like to say much more on these and other legal questions, there are other equally important features of the trials, and I will turn now to the value of the Nuremberg records

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FLICK CASE—Friedrich Flick (second from left) and co-defendants read details of indictment filed against them.



FARBEN CASE—Hermann Schmitz listens to sentence for participating in plundering industries in occupied countries.

in history, political science, and other fields of learning.

When I speak of the importance of Nuremberg in this connection, I am speaking not so much of the trials as such, but of the many documents of great historical importance which were brought to light, as well as of the testimony given in the course of the proceedings by diplomats, military leaders and other prominent individuals.

These constitute the "Nuremberg Record", and in numerous branches of science and culture the record of one or more of the Nuremberg cases will be found of especial interest. The well-known "Medical Case," for example, has attracted much attention among physicians and scientists. Even the trials of SS leaders have revealed much more than the appalling record of atrocities; ethnologists, sociologists and psychiatrists may profitably study the documents and testimony in the case involving the "Race and Resettlement Office" of the SS, which concerned itself chiefly with the selection of so-called "racially valuable" foreign children for "Germanization," and the transfer of populations in order to resettle desirable regions with so-called "ethnic Germans."

BUT IT IS to the historian and the political scientist that the trials have most to offer. No well-rounded study of German or European affairs

from 1920 to 1945 can now be made without taking account of the revealing and profuse documentation offered in the trials of diplomats, industrialists and military leaders.

A wide selection of documents from the German Foreign Office archives has shed new light on many subjects, including especially the "Anschluss," the Munich crisis, and the relations between the Third Reich and the Vichy government. The story of German rearmament is to be found in the records of the Krupp and I. G. Farben trials, and from these and the military cases can be learned the true nature of the relations between Hitler and the German generals and industrial leaders.

The diaries of General Jodl and Halder are documents of prime historical importance for the years from 1937 to 1942; the Blomberg-Fritsch crisis, the decision not to attempt an invasion of England in 1940, and the strategy which led to and guided the invasion of Soviet Russia are among the historical topics greatly illuminated by these amazing documents.

For the political scientist, the rise and fall of the Third Reich provides a sort of laboratory in which he can dissect a dictatorship and examine its structure and internal functioning. This study is no academic essay; dictatorship is still playing a leading role on the world stage, and the

analysis of its strengths and weaknesses is vital to military and political planning for peace or war alike. Furthermore, even on this side of the iron curtain there is a feeling in some quarters that perhaps dictatorship is efficient, and therefore not so bad under certain circumstances. If there is any one lesson above all others to be drawn from the Nuremberg trials, it is that this notion of the "efficiency" of the Nazi dictatorship is 99 percent myth.

THE TEACHING of this lesson can help to strengthen democracy everywhere, but nowhere is there more urgent need that it be learned than in Germany at this very time. In meeting this most vital need of the times, the Nuremberg record is an indispensable tool. I do not mean that the Germans will endorse the Nuremberg principles and procedures uncritically, or accept the judgments unquestioningly. Here again, it is not the verdict but the record of documents and testimony that is more important.

Nowhere can these records be put to more immediate or better use than in German schools and universities, and in German books and magazines. Nowhere have historians and political scientists and educators so tremendous an opportunity to grasp or so grave a responsibility to discharge as irrigating the cultural and intellectual desert which the Third Reich made of Germany.

This brings us back to the thought which I sought to emphasize at the outset—that Nuremberg is an integral part of current world affairs. The ultimate objective of American foreign policy is to bring about a stable and enduring world peace and free intercourse among nations. Dictatorship, with suppressions of liberty and the interchange of ideas, is one of the greatest obstacles to the success of that policy, and if our principal positive aim with respect to the Soviet dictatorship is to lift the iron curtain, our chief purpose in Germany must be to irrigate the desert and fill the vacuum.

AND NOW is the time. Germany is shaking off its postwar intellectual apathy, and there is a noticeable revival of the life of the mind. Unfortunately, this revival has been accompanied by a resurgence of militant nationalism. If this were merely a renewed feeling of national

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Summary of Verdicts — OMGUS Military Tribunals

	indicted	acquitted	released from trial	death by hanging	life	prison sentences	released with time served
Case 1 (Medical)	23	7	0	7	5	4	0
Case 2 (Milch)	1	0	0	0	1	0	0
Case 3 (Justice)	16	4	2 ¹	0	4	6	0
Case 4 ² (Pohl)	18	3	0	3	3	9	0
Case 5 (Flick)	6	3	0	0	0	3	0
Case 6 (Farben)	24	10	1 ³	0	0	11	2
Case 7 (Hostage)	12	2	2 ⁴	0	2	6	0
Case 8 (RuSHA)	14	1	0	0	1	7	5
Case 9 (Einsatz)	24	0	2 ⁵	14	2	5	1
Case 10 ⁶ (Krupp)	12	1	0	0	0	10	1
Case 11 (Ministries)	21	2	0	0	0	18	1 ⁷
Case 12 (High Command)	14	2	1 ⁸	0	2	8	1
Totals	185	35	8	24	20	87	11

¹ Karl Engert (Case 3) released from trial because of illness, Carl Westphal committed suicide before case went to trial.

² Figures (Case 4) include revised decision of Aug. 11, 1948.

³ Max Brueggemann (Case 6) released from trial because of illness.

⁴ Franz Boehme (Case 7) committed suicide May 29, 1948; Maximilian von Weichs released from trial because of illness and old age.

⁵ Emil Hausmann (Case 9) committed suicide July 31, 1947; Otto Rasch released from trial because of illness.

⁶ Sentence of Alfried Krupp (Case 10) included forfeiture of all real and personal property.

⁷ Wilhelm Stuckart (Case 11) released with time served because of illness.

⁸ Johannes Blaskowitz (Case 12) committed suicide Feb. 5, 1948.