

The Nuremberg Courtroom: The Triumph of the Rule of Law

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When the Lithuanian Jews of the Kovno Ghetto were ordered by the Germans to bring their dogs and cats to the synagogue on Veliuonos Street in 1942, they were desperately afraid for their pets. But refusal could mean death, so they brought them. Horrified, they watched as their beloved animals were shot by the Germans, shrieking in pain from their wounds until, finally, the silence was deafening. Not only had they lost their pets, but their synagogue, so central to their faith, had been desecrated and could no longer be used as a place of worship. This was only one of the many dehumanizing horrors of the Kovno Ghetto and others like it.

We began this article as a tribute to the reconstructed Nuremberg Courtroom in the Virginia Holocaust Museum, the only full-sized replica of that courtroom in existence. More than 6,000,000 Jews died as a result of the Nazi atrocities. They were not alone – Hitler had a long list of “useless eaters,” which included Gypsies, homosexuals, career criminals and others. But it was the Jews that Hitler and his henchman particularly wanted exterminated.



Replica of the Nuremberg courtroom at the Virginia Holocaust Museum in Richmond, Virginia

Hitler cheated the hangman by committing suicide. He left behind the men who masterminded and executed his “final solution,” among them Herman Goering, Rudolf Hess, Joachim von Ribbentrop, and many more. In all, there would be 13 Nuremberg trials, but none would approach in public interest and legal significance the first trial. It almost did not occur.

Churchill and Roosevelt believed that the Nazis did not deserve a fair trial after the commission of such dreadful atrocities. They worried that a trial would only give the defendants the chance to spout more Nazi propaganda. In their view, which was widely held, the defendants deserved no more than a summary hearing, after which they should face a firing squad. It almost happened just that way.

Secretary of War Henry Stimson fought a lonely, hard fight against this outcome. Not to give these men a fair trial, he argued, would be a “crime against civilization.” He said that a fair trial would establish American’s place as a moral leader in the world and

would also establish a full record of the Nazi atrocities. In a private meeting, Roosevelt finally listened and abandoned the idea of summary executions.

What Roosevelt might have done thereafter is somewhat uncertain, but his death in April of 1945 left the matter in the hands of Harry Truman. Truman had no doubts – he wanted a fair trial. Truman heard a speech by Robert Jackson, an associate justice of the Supreme Court, in which Jackson said forcefully, “You must put no man on trial under forms of a judicial proceeding if you are not willing to see him freed if not proven guilty . . . the world yields no respect for courts that are organized merely to convict.”



Robert Jackson, associate justice of the Supreme Court, so impressed Truman that he was named chief prosecutor in the Nuremberg trials.

Truman was so impressed that three weeks later he named Jackson the chief prosecutor of the first international war crimes trial in history. On May 8, 1945, World War II ended in Europe - in June, Jackson took his staff to meet with the Allies on the nature of the trial.

There was nothing simple about the meeting. There was no law, no court, and no procedures for an international criminal trial. Jackson had in mind a joint tribunal of the Allies that would bring the Nazis to justice using the rule of law,

earning the respect of the world for the Allied commitment to due process. Among many other challenges, the men that gathered in London had to write laws to define “war crimes,” and the “conspiracy to wage aggressive war.”

This was going to be tough – none of the other allies were familiar with conspiracy theories under their laws and they had not been sold on the concept of a fair trial with due process. In their view, the Nazis were guilty and they had only to measure the degree of guilt and determine the penalties.

In the end, Jackson’s stubbornness, passion and vision carried the day. For the first time in history, defendants from a defeated nation would be given a full and fair trial. In the past, such defendants had been dealt with by executive order. This was nothing short of a revolution in international law.

Jackson fully understood that this had to be a final trial, without appeal. The public would not stand for years of appeals – it wanted justice after years of suffering and mass murder. Therefore, Article 26 of the London Charter (officially known as the Charter of the International Military Tribunal) said that the judgment of the tribunal as to guilt or innocence “shall be final and not subject to review.”

The four charges at the trial were to be:

1. Conspiracy to Wage Aggressive War
2. Crimes Against Peace
3. War Crimes (violations of the rules and customs of war, such as mistreatment of prisoners)
4. Crimes Against Humanity (including the torture and slaughter of millions on racial grounds)

The Americans were to handle count one, the British count two and the French and Russians would handle counts three and four.

Finally, they decided on a location for the trial. The International Military Tribunal (IMT) would convene in Nuremberg, Germany, the ceremonial birthplace of the Nazi Party. The courthouse was largely undamaged and spacious, but required some reconstruction and the courtroom itself needed to be enlarged. Conveniently, a prison was a part of the complex. In the meantime, investigators were dispatched throughout Europe to collect evidence for the trial. They were fighting time – the agreement to go forward with the trial took place in August 1945 and the trial was to begin in November 1945.

Jackson brought to Nuremberg the new IBM simultaneous translation system, which meant that the trial could be conducted simultaneously in English, Russian, French and German. This speeded up the process considerably. Everyone in the courtroom wore headphones. A flick of the switch on the switchbox at the side of the seat would allow you to select any of the four languages. For its time, this was a technological marvel.

On the right side of the courtroom was a high bench where eight judges sat, two from each of the four powers, facing the defendants' dock. One judge from each country had voting powers – the other was an alternate. Six of the judges wore a black robe – the two judges from Russia insisted on wearing military uniforms. On the left side of the courtroom, the 21 defendants sat in two rows in a dock. The room was packed with lawyers, reporters and interpreters. At the back wall, opposite the press and visitors' gallery, was the witness stand. All of this is accurately replicated in the Nuremberg Courtroom in The Virginia Holocaust Museum.

One of the great opening statements of all time was delivered by Jackson, who said in part:

“The privilege of opening the first trial in history for crimes against the peace of the world imposes a grave responsibility.

The wrongs which we seek to condemn and punish have been so calculated, so malignant, and so devastating that civilization cannot tolerate their being ignored because it cannot survive their being repeated. That four great nations, flushed with victory and stung with injury, stay the hand of vengeance and voluntarily

submit their captive enemies to the judgment of the law is one of the most significant tributes that power has ever paid to reason.”

Normally, it is a defense attorney who pleads for fairness. Here, remarkably, it was the chief prosecutor who made the plea. Though many in the courtroom were eager for vengeance, Jackson reminded them of their duty when he said, “We must never forget that the record on which history will judge these defendants today is the record on which history will judge us tomorrow.” And in a stirring admonition to be fair, Jackson said, “To pass these defendants a poisoned chalice is to put it to our own lips as well.”

The American press hailed the opening statement and said it presaged the “Nuremberg legacy,” as indeed it proved to do. That these men, whose evil deeds were known to the world, should be given a presumption of innocence was striking to one and all. The law would rule and justice would be the goal of the trial.

Jackson’s plan for presenting the evidence confused many. He chose not to call live witnesses with all the high drama that would ensue. To his mind, if the evidence consisted of documents signed by the defendants themselves, that record would have greater strength. And of course, no one could cross-examine a record. Though authenticity could be challenged, he correctly surmised that any challenges would be weak. Moreover, the tactic would shorten the trial and avoid the possibility of witnesses breaking down or perjuring themselves in their quest for vengeance.

Jackson was prescient. One of the most damning pieces of evidence was the so-called Hossbach memorandum. These notes were made by Hitler’s adjutant, Colonel Hossbach, during a Berlin conference in 1937. The notes outlined Hitler’s plan for gaining Lebensraum (living space) through the use of force against other countries. This was a key document in proving charges one and two – conspiracy to wage aggressive war and the waging of aggressive war.

The documents just kept on coming. As Jackson himself said, “I did not think men would ever be so foolish as to put in writing some of the things the Germans did. The stupidity of it and brutality of it would simply appall you.”

Records and films documented the never-ending horrors in the concentration camps and the number of executions. Authenticated documents included memorandums documenting mass murder after mass murder of Jews, Eichmann’s account of Himmler’s dissatisfaction with the fact that “only” 6 million executions had taken place, Himmler’s grotesque addresses to SS leaders and many documents ordering the looting of Jewish homes and the killing of Jews, including the disposition of their valuables,



Himmler and Hoess in uniform

the pulling of gold from their teeth after death, the collection and the disposition of their clothes, glasses and jewelry.

The German lawyers worked hard to come up to speed. They were unused to the notion of cross-examining witnesses and far more accustomed to having the judges take an active role. Though the Allies made the rules, there is no record that any defendant was compelled to testify unwillingly. They were allowed to make an unsworn statement at the end of the trial without cross-examination and many did so.

Not everything went as it should have. For the first month of the trial, in spite of Jackson's plea for fairness, defense attorneys were denied access to prosecution documents. The judges admonished the prosecution and the problem was finally straightened out. The prosecutors themselves were not happy with their team, feeling that they had badly miscalculated the work required to sort through bushels of documents and get them to the defendant's counsel in a timely manner. Nonetheless, the scope of discovery given to defense counsel exceeded anything given to defendants in American criminal trials at that point in history.

Such problems notwithstanding, the defendants' counsel had very little with which to defend against the charges. The defendants had been very efficient in providing proof of their guilt through voluminous documents and meticulously kept records of horrifying deeds.



Rudolf Hoess

Rudolph Hoess provided testimony that his affidavit was accurate. He showed no emotion or remorse when he confirmed his written statement that, at the Auschwitz concentration camp, at least 2,500,000 victims were killed by gassing and burning, with a further half million dying of starvation and illness. The statement talks about the death chambers and how Hoess made the killings more efficient, initiating the use of Zyklon B, a crystallized hydrocyanic acid: "I used Zyklon B. which was a crystallized prussic acid which we dropped into the death chamber from a small opening. It took from 3 to 15 minutes to kill the people in the death chamber, depending upon climatic conditions. We knew when the people were dead because their screaming stopped. We usually waited about one half hour before we opened the doors and removed the bodies. After the bodies were removed our special Kommandos took off the rings and extracted the gold from the teeth of the corpses."

Hoess also "improved" the executions, noting that "Another improvement we made over Treblinka was that we built our gas chamber to accommodate 2,000 people at one time whereas at Treblinka their 10 gas chambers only accommodated 200 people each."

He described the chilling manner by which victims were chosen for death: "We had two SS doctors on duty at Auschwitz to examine the incoming transports of prisoners . . . Those who were fit for work were sent into the camp. Others were sent immediately to the extermination plants. Children of tender years were invariably exterminated since by reason of their youth they were unable to work. Still another improvement we made over Treblinka was that at Treblinka the victims almost always knew that they were to be exterminated and at Auschwitz we endeavored to fool the victims into thinking that they were to go through a delousing process. Of course, frequently they realized our true intentions and we sometimes had riots and difficulties due to that fact. Very frequently women would hide their children under the clothes, but of course when we found them we would send the children in to be exterminated. We were required to carry out these exterminations in secrecy but of course the foul and nauseating stench from the continuous burning of bodies permeated the entire area and all of the people living in the surrounding communities knew that exterminations were going on at Auschwitz."

At the conclusion of reading the statement, the prosecution asked:

"Is this all true and correct?" Hoess replied simply: "Yes."

Hoess was, unbelievably enough, a witness for the defense. The Americans were overjoyed when he was called to the stand and thus open to cross-examination, which elicited the affidavit. Hoess was later tried and convicted by a Polish military tribunal and hanged, very fittingly, at Auschwitz in April of 1947.

One troubling argument raised by the defendants was that they were simply obeying the orders of superiors. However, Jackson noted that the German soldiers' paybook contained a commandment that no soldier should obey an illegal order. In the end, no doubt troubled by the fact that refusal to carry out an order could have meant death, a compromise was reached – the "obedience to orders" defense could be used for mitigation of a sentence but it was not to be relevant to guilt or innocence.

The examinations of the defendants were long and grueling, none more so than the examination of Hermann Goering, which began on March 13, 1946. Goering had founded the Gestapo and initiated the formation of concentration camps. On July 31, 1941, Goering, as Hitler's second-in-command, ordered Reinhard Heydrich, head of the Security Service, to begin the extermination of the Jews.

Though Jackson sought yes or no answers, Goering insisted on explaining everything, droning on and on. Jackson, exhausted and exasperated, lost his patience with both the witness and the court as the court adjourned for the day. While the examination was not his finest hour, Jackson came back the next day, recharged, and lured Goering into trap after trap. Goering would deny doing anything criminal time after time, only to be rebutted by the damning orders bearing his signature.

Though the defense called witnesses, they were largely ineffectual against the backdrop of the documents. Jackson had accurately foreseen their power. In the case of Goering, Nazi State Secretary Paul Koerner tried to paint a picture of Goering as a man moderate in his attitude toward the Jews and the last great man of the Renaissance, but he had earlier acknowledged in his interrogation that Goering had given him the biggest job of his life and that it would be disloyal to testify against him. His testimony simply did not appear credible to the judges. And once again, the orders spoke volumes – and showed nary a sign of “moderate attitude” toward the Jews.

In his closing argument, Jackson took on the testimony of the defense witnesses when he said:

“It is against such a background that these defendants now ask this Tribunal to say that they are not guilty of planning, executing, or conspiring to commit this long list of crimes and wrongs. They stand before the record of this trial, as bloodstained Gloucester stood by the body of his slain king.

He begged the widow, as they beg of you: ‘Say I slew them not.’

And the Queen replied, ‘Then say they were not slain, but dead they are.’

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

The New Yorker called Jackson’s speech “a masterpiece.”

Starting on June 21, 1946, the four judges and their alternates (who could not vote but could participate in the deliberations) deliberated for three months. A verdict required three votes. A tie meant acquittal. After the trial had concluded, it was later revealed by Judge Biddle that the Russians acted on orders from Moscow and voted every defendant guilty as charged.

On August 31, 1946, the tribunal heard the final pleas from the defendants, who spoke from 3-20 minutes without being sworn. All spoke with dignity – there were no disruptive scenes.

The verdicts were announced on September 30, 1946. Three of the 21 defendants were acquitted. The others were found guilty of at least one count. Twelve were sentenced to death by hanging, the remainder to various prison terms.

Goering was sentenced to death, having been found guilty on all four counts, but cheated the hangman by ingesting a cyanide capsule before the hanging could take place. Not until 2005 did the world learn that he had been given the pill by a 19 year-old Army private named Herbert Lee Stivers. Once he was sure the statute of limitations had run out and he could not be charged for his actions, he revealed that he had hidden the pill in

a pen at the request of his a German girlfriend who told him Goering was sick and needed the medicine. Stivers said he never intended to help Goering “cheat the gallows.”

In the end, no one could truly claim that the trial was wholly impartial – after all, it was a court which consisted of the victors. Historians have lamented Jackson’s gross breach of ethics in having ex parte contacts with the judges. But despite all the trial’s imperfections, the judgment of historians on both sides has been that the trial was essentially fair. Astonishingly, three quarters of the German people, polled after the trial, said that the trial was just and fair. Even the majority of the defense attorneys considered the trial relatively fair and the verdicts reasonable.

Twelve other Nuremberg trials, mostly of lesser Nazis, followed. They were eclipsed in large part by the first Nuremberg trial which had caught and held the world’s collective attention. They were fascinating in and of themselves – there was the “Medical Case” which charged 23 German doctors with performing ghoulish experiments on concentration camp inmates. There was the “Justice Case” which charged 16 lawyers and judges with the perversion of the German justice system, using the legal system for “enslavement and extermination on a vast scale.”

Each trial was given a popular name, one for the SS and police, one for the industrialists, one for the military, one for government ministers, etc. All thirteen of the Nuremberg trials came to an end in the spring of 1949.

In the end, the trials represented the triumph of the rule of law, perhaps not in shining perfection, but as a rough hewn and noble first attempt to mete out justice at the conclusion of a war. The trials also provided a permanent, authoritative and horrifying record of the Holocaust and the depths to which “civilized” humanity could plunge. The Nuremberg trial – and the recreation of the Nuremberg Courtroom at the Virginia Holocaust Museum – have much to teach future generations about the importance of following the rule of law and the true meaning of justice.

For more information about the Virginia Holocaust Museum and its mission of tolerance through education, visit its website at <http://www.va-holocaust.com/>

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