THE SAVAGE OF NUREMBERG

By

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The old German city of Nuremberg was fittingly chosen as the site for the trials of the principal Nazi war criminals. This city had witnessed persecution against Jews as early as 1245. The Talmud, de Nuremberg, was published there, and it was there that the infamous Nuremberg race law was proclaimed. Two hundred and four years later, this was a symbolic choice, intended to demonstrate the international will to destroy the Reich the scene of its birth. It was to be the dividing landmark between the Third Reich and the New Germany.

All the Allies were in complete agreement as to the need to punish the criminals. Some of the Allied powers preferred to punish them without observance of legal proceedings. However, American Justice Robert H. Jackson declared that such administrative procedure "would not satisfy the American conscience or be remembered by our children with pride."

The American view prevailed. And in accordance with Justice Jackson's principle, the Allied Control Council in Germany promulgated a law permitting the various occupation powers to try additional criminals in the name of international law. Thus, at Nuremberg, American Tribunals judged 111 defendants in 10 cases.

It is worthwhile to describe the categories of these Nazi criminals. They were the commanders of special death units - the "Einsatzgruppen" which had killed almost six thousand innocent people in Russia. They were also responsible for the murder of Jews, the industrialists who used slave-labor, the physicians who tortured and murdered their patients and experimented upon them, the doctors who used prisoners in cruel experiments. They were those who had pledged allegiance to Hitler's decree and whose death sentences were carried out by the people. They were those who had killed millions in the proportion of one hundred to one for every German who fell, the cabinet ministers who had given legal form to the infamous order concerning the "Final Solution" of the Jewish problem - the description of the Gestapo to the local governments to deport their Jews to the death factories at Auschwitz and elsewhere.

The trials were more than trials of individuals; they were also an indictment of a system which had, for human beings, violated human rights, annihilated defenseless persons, distinguished slave peoples from the master race by race or political opinions. Every trial disproved the concerted activity of the Nazi State's numerous activities and demonstrated the criminal enterprise of high officials who were united by one political creed, by one prophet in the person of Adolf Hitler.

But, in spite of this ideological union and coordination of strategy, the tribunal did not condone that the defendants were bound by the conspiracy or that they were equally or jointly responsible for all the evil which was inflicted by the enormous machine called the Third Reich. On the contrary, the Tribunal stated in every case that the defendants were individually responsible only for their own acts and not for the acts committed by other persons in execution of a common plan.
These trials were not acts of vengeance. They were fair trials. The defendants and their attorneys made use of all the rights provided by law. The number of witnesses called and affidavits presented by the defense is eloquent proof of this.

Let the evidence show that these crimes were perpetrated in cold blood and were well planned in advance. The criminals carried out a program of annihilation with the thoroughness of a bookkeeper and the coldness of an automaton.

The crimes revealed the depths of Nazi cruelty that even some Germans were shocked. Dr. Hans Biebow, the Minister President of Bavaria, writes: "Every German must blush with shame when he is faced with irrefutable evidence of the cold brutality of an insane obsession which blotted the German name."

For their crimes the 397 defendants received the following punishments: twenty-four were sentenced to death, twenty to life imprisonment, three to 20 years, fourteen to 20 years, twelve to 15 years, three to 12 years, nineteen to 10 years, thirteen to various terms ranging from 3 to 20 years, and eighteen to terms varying from 10 to 5 years. Thirty-three persons were acquitted.

Some of the defendants had their sentences reduced for "good behavior" during their term of imprisonment. And, after the sentences were passed, the prisoners used all the rights provided in the law for appeal. However, all death sentences with the exception of one were quashed by the Military Governor. A committee named by the Congress of the United States to investigate the fairness of the trials concluded that all the defendants had been accorded a fair trial. Nevertheless, the defendants sentenced to death filed petitions for review of their cases with the U.S. Supreme Court, which later dismissed them. It seemed that all legal means of appeal were exhausted.

But some sectors of the German population, still imbued with the Nazi ideology, claimed that the "German honor," and particularly the honor of the German army, was hurt by the convictions of some generals. Failing to press their case, Mr. John J. McCloy, the American High Commissioner for Occupied Germany, decided to appoint a Clemency Board which had no particular basis in law.

What reasons could be found for extraordinary leniency in regard to these criminals? Did the Clemency Board of Mr. McCloy find that the crimes committed were not as heinous as had been stated by the Prosecutors? Did they find that the defendants had been chosen only as scapegoats?

On the contrary: in the introduction to the official Clemency Board report, we find a brilliant analysis not only of the criminal activities of each defendant whose case was reviewed but of the German philosophy of annihilation as well. This philosophy, the report said, was based on the concept that the Germans were a master race destined to conquer, subjugate and enslave the inferior races of the East and that all individuals (and to serve the State.

The defendants had contended that the inhuman activities were not criminal because they were part of the reign of "F' and because they were undertaken under orders. But, the report contended, their activities were criminal because "no law can be revised to protect the murder of Jews or gypsies, the maltreatment and accompanying cruel treatment of masses of people...Murder, pillage and enslavement are against the law everywhere and have been for at least the twentieth century."
The Clemency Board, following the precedent of the Nuremberg Judgment, did not recognize that the order of a superior can excuse anybody for criminal acts. It seemed strange to the Clemency Board that "in an entire nation of sixty million people there was only one man, or a very small group of men, responsible for every act and thing which happened, and that no one else was responsible for anything." The Board termed this explanation "a blind philosophy" because "individuals in a position of some authority must at least be held answerable for their acts.

Did the Board mean that the trials had not been fair enough and did it therefore recommend acts of grace to redress wrongs?

On the contrary, the Board agreed that justice had been done: that there was nothing ex-post facto about the law applied and that the deeds committed by the defendants were considered as others even in ancient times. The Board approved in general all the trials, stating:

"What Nuremberg means is that the law remains at all times over all people, including the leaders of a state and all who follow in their train, and that the individual will be held answerable to society."

Then, then, did the Board destroy this import of Nuremberg by its contradictory review?

Was it that the prison conditions of the defendants were so appalling that a reduction of the sentences seemed an imperative act of decency? No. The Board stated: "The sure, strictest and most rigid treatment is applied to the inmates, all that could be asked." Yes, finally, the moral stature of the defendants in high or their remorse so sincere that they deserve special clemency?

In the decision of the Board we read the following: "The majority of the defendants still seem to feel that what they did was right and that they were doing it under orders."

On the other hand, however, the Board found that "in several cases the defendants occupied subordinate positions with little authority," that they were "little more than common members of a criminal organization." Therefore "adjurations in sentences" must be made and the Board "has not hesitated to recommend slavish reductions in sentences." This set of recommendations was accepted by Mr. John E. McCloy, who made even sharper reductions in some cases.

Let us call attention to some of the more astounding decisions:

The Medical Case - The defendants were charged with having performed medical experiments on concentration camp inmates with unnecessary suffering and injury. The miserable victims experienced extreme pain and agony. The result of these so-called experiments was death or at best disability. Young girls were subjected to various experiments in sterilization.

Seven of the convicted defendants were hanged, seven were discharged. The others were sentenced to imprisonment ranging from 10 years to life. Their part in these scientific tortures was by no means negligible. The criminals were not men without authority. Ringfried Hildesheimer, for example, considered to life imprisonment, was the head of the Army Medical Service. The Court had found that there was no "modern" of primary responsibility for so he was convicted. Yet his sentence was commuted to 30 years, though Mr. McCloy himself stated concerning all the defendants
in this case that it was "difficult to find room for clemency."

To Gerhard Roes, a medical and dental official and the head of his camp for conducting medical experiments, extraordinary clemency was shown. His sentence was reduced from life imprisonment to 12 years. Karl Gunther, on 29 Jan who was in charge of the 3S Medical Service and carried out Himmler's orders on those experiments, clemency was granted in the same measure. One of the scientific experiment was to test a new drug; his 12 year sentence was commuted to time already served.

The Nuremberg - Field Marshal Erhard Milch, state Secretary of the Air Ministry, right-hand man of the Fuehrer, has been convicted to life imprisonment for advocating and exploiting slave labor. Mr. Milch characterized his activities as "almost diabolical advocacy of and pressure for slave labor and disregard for the life and health of workers." The sentence given for clemency was "the instableness of temperament due to nervous strain aggravated by a head injury." Could a common criminal be granted clemency because of "instableness of his temperament?"

The Nuremberg - The defendants were administrators of the concentration camps. They built the gas chambers, they were aware of what was happening in them, and they participated in the racial program. Mr. Milch rightly accused them of the liquidation of the Jews in the Auschwitz camp, the destruction of the Warsaw ghetto and the pillaging of the Jews in the East....were among the crimes chargeable to them.

Two defendants, Oswald Pohl and Franz Biehenschalka, were sentenced to death; eighteen others, to imprisonment ranging from 20 years to life. Oswald Pohl alone was not granted clemency by Mr. Milch. The sentences of all the others were commuted. The death sentence of Franz Biehenschalka, Pohl's right-hand man, was commuted to 9 years imprisonment.

The original Tribunal had stated that Biehenschalka held a high position and that he had actual knowledge of the "final solution" of the Jewish problem. His activities, the Tribunal pointed out, constituted a "material cog in the machinery necessary for the operation of the concentration camps."

The Tribunal, we read further in the judgment, did not find that he had played a minor role in the concentration camp activities, but that he had helped others in "operated and maintained the gigantic enterprises which resulted in the unlawful deaths of millions of slave laborers."

Mr. Milch explained that extraordinary clemency in these cases was due to the introduction of new evidence, but he did not disclose this evidence.

The Extermination Camps (KZs) - Thirteen of the 29 defendants were sentenced to death for the murder of 3,000,000 people. The Tribunal had called attention to these enormous figures and suggested that to make them more intelligible, one should "visualize not one million people but only two persons - men, women, children -falling before the executioner's guns. If one million is divided by ten, this scene must happen one hundred thousand times."

The defendants insisted that they had been carrying out the orders of their superiors because the defense of Germany required these measures. "The Military Tribunal asserted that "no distinction was made in the execution of the orders, "the task was to destroy in the camps at all costs.""
The High Commissioner confirmed this opinion, stating that the murder "here on such a large and vicious scale that the mind has difficulty in comprehending them."

Mr. Zezgari did not find any reason for leniency for four of those sentenced to death. But for the others he did. The remaining death sentences were commuted from life to 25, 15, and 10 years imprisonment, and in one case a 20-year prison sentence was reduced to 15 years already served.

What is the moral climate of the criminals in this category who were granted leniency?

Here are some examples:

**Klaus Hirt**: Doctor of Law, commander of a detachment which killed several thousand people. He did not deny his participation in mass murder, but he pleaded not guilty. Indeed the only guilt he admitted was that "as an individual he was not able... to carry out the Führer's orders," i.e., he had not killed more people. He made no attempt to conceal his worship of Hitler.

**Eugen Stiller**: A doctor in Sosnowoska. He changed his name when he voluntarily gave up his pastoral duties as a Lutheran minister and assumed those of a workman's executioner. He signed a report on the slaughter of 2,000 persons by his detachment. He personally witnessed the executions. When asked by the Tribunal why he, as a minister of the Gospel had permitted people to go to their death without religious admonitions, he replied, "I did not want to burst open the seals of the Führer's will."

**Wolfgang Kublatsch**: A well-known concert and opera singer. He was assigned to Einsatzgruppe B, which killed 65,000 persons. But his duties were not confined to translation work. He also assumed command of a detachment, and admitted having shot 30 Jews because they left a ghetto.

**Hans Schwenk**: A descendant of the famous composer, Franz Schubert. He stated that the excessive figures in his report on the number of executed persons were inaccurate.

**Franz Skal**: Professor of Political Science. He regarded the killing of male Jews as proper because they were "potential sources of arms." In a conference in April 1944, he expressed approval of the physical destruction of the East European Jews because it would deprive Germany of its biological reservoir.

Soon some of these men will be free.

The generals were charged with criminal disregard of civilized rules of warfare, particularly in respect to the treatment of hostages and the killing and mistreatment of prisoners of war.

The Clemency Board characterized the activities of the defendants as follows:

"Exposing enemy personnel under the laws of war, the South-East Army engaged in the murder of political leaders captured with troops, collected the civilian population and, after destroying their villages, held them as hostages to be shot together with the prisoners of war in arbitrary reprisal ratios as high as 100 to 1 for the death of a single German soldier."

The High Commissioner added that, in his opinion, "these highly responsible officers... passed far beyond the limits permitted by justifiable military considerations."
Nevertheless, clemency was granted to all but two of the defendants. No explanations have been given why, in one case, a 30-year sentence was reduced to 10 years, and in another to three years. The man now free was originally convicted of killing his grandmother. In 1943 (October, 1943) he ordered the shooting of 729 persons.

But if we can find no explanations either in his record or in the decision of the High Commissioner, perhaps his name will enlighten us. He is the brother of former Mrs. Herta (Mau), the former member of the West German Committee negotiating with the Allies about German rearmament.

The Leoness Case—Alfred Lipp, the head of the family of gun and munition makers, was found guilty of having made extensive use of slave labor and caused the death of countless workers. He was set free by Mr. McCloy. After his liberation he was greeted with flowers, and a banquet was given in his honor.

The computations of dozens of sentences and the liberation of some war criminals was a cause for rejoicing among Hitler's partisans and a day of sorrow for all decent Germans who desire the democratization of the homeland.

Protests were made by a variety of organizations. France and Great Britain indicated that they did not approve of these measures, and it would appear that they do not intend to follow the example of Mr. McCloy.

However, a new propaganda campaign has been launched to reconsider the remaining sentences of war criminals under American jurisdiction. Most observers expect further mitigative action.

The McCloy decision was dangerous not only because it liberated war criminals, but it established a precedent whereby other war criminals could and would be liberated, and greatly hurt the efforts to democratize Germany, but also because it challenged the validity of the Nuremberg principles through questionable legal steps.

First of all, no Board of Clemency is expected to act as a court. It is not the function of such a Board to examine new evidence. If such new evidence is available, a new trial should be held. Yet, in the case of the "Münsingen group," the report of the Clemency Board appointed by Mr. McCloy said that the review of sentences was "largely due to the introduction of new and persuasive evidence, which has recently been made available."

Secondly, no court accepts evidence in closed sessions, but it examined new documents and new evidence in open session. No bilateral circumstances were noted.

Thirdly, neither Control Council Law No.10 nor Instructions No.7 covering treatment of alleged war criminals provided for such an institution as a Clemency Board. They provided for the usual appeal procedure. That procedure had been exhausted before the Clemency Board was appointed.

It would appear, therefore, that the appointment of the Board and its subsequent decisions were based purely on political expediency. The danger in this is that it revives and strengthens the German claims that the decisions in the Nuremberg trials were influenced by desire for vengeance and not for justice.
the decisions were already reached immediately after the war when passions still ran high. The German allegations, of course, are not true. The first sentence—
that in the case of General Hitler was handed down on April 20, 1942, almost two years after the unconditional surrender of Germany to the Allies. One case—
that of the Klotharo and Diplomats—ended up almost four years after VE Day. But this constitutes the German example to forget these facts. They were provided with material for unscrupulous propaganda to glorify the

Thus, the entire validity of the Nuremberg Code has been challenged. It is ironical that at a time when the United States was endeavoring to the United Nations to accelerate the codification of the Nuremberg principles, and when a
total of 50 nations had ratified the Genocide Convention, clemency was granted
to criminals guilty of the worst genocidal acts in history.6)

6) This article dealt only with the sentences passed by the Military Tribunal
in Nuremberg established by Central Council Law No.10. It was not concerned
with the judgments of the regular American Military Tribunals, therefore no
analysis was made of the decisions of General Thomas E. Handy, who was guided
by the same considerations as the Board of Clemency.