

The Nurnberg Case (Book Review)

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Recommended Citation

Re, Edward D. (1947) "The Nurnberg Case (Book Review)," *St. John's Law Review*: Vol. 21 : No. 2 , Article 23.
Available at: <https://scholarship.law.stjohns.edu/lawreview/vol21/iss2/23>

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Three years later when the panic of 1837 stimulated demands that the government come to the assistance of the financial community, President Van Buren rebuked such suggestions with an excellent statement of the conception of governmental functions which underlay the Constitution of Rights.

"All communities (said he) are apt to look to government for too much. . . . The Framers of our excellent Constitution and the people who approved it acted with calm and sagacious deliberation at the time on a sounder principle. They wisely judged that the less government interferes with private pursuits the better the general prosperity."⁴

No review could be complete which omits the author's summary.

"For good or ill we have chosen to 'walk the hot plowshares of international politics,' we have invented the atomic bomb and used it against civilian populations, thereby creating a great new problem not only of international security, but of security for our own people; we have legislated into existence nation-wide labor combinations that are able to subject great communities to a state of siege for indefinite periods; our public men from President down have repeatedly held forth the notion that 'economic independence and security' for everybody are within the competence of government to provide; on the plea of war necessity we have assembled the most numerous bureaucracy since the Roman Empire, and now that the war is over, appear to be unable or unwilling to reduce it materially. We have contracted a national debt that approaches, if it does not overtop, the entire expenditures of all governmental units in the United States prior to World War II."⁵

Professor Corwin's book is an accurate analysis of the most important problem confronting our country today. No attempt is made to solve it. Perhaps he leaves the solution to the political party and its Presidential candidate who seeks our support one year from this fall. Before we can decide we, too, should understand the problem. No better investment could be made by the voter than studying these lectures.

WILLIAM TAPLEY.*

THE NURNBERG CASE. By Robert H. Jackson. New York: Alfred A. Knopf, 1947. Pp. xviii, 269.

This handsome little book, in appearance similar to a popular novelette, deals with a subject that might well be regarded as the most important single event of modern history bearing upon the development of an International Criminal Law.

⁴ Pp. 171 and 172.

⁵ P. 181.

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Although largely a compilation of material already published, it makes available to all, an authentic orientation concerning history's most dreadful crimes—a nightmarish regime of murder and plunder desecrating all principles of humanity.

The following invaluable documents are found in this volume:

1. The Report of Justice Jackson, Chief Counsel for the United States, to the President of the United States (released for publication June 7, 1945);¹
2. The Agreement by the Government of the United States of America, The Provisional Government of the French Republic, The Government of the United Kingdom, and the Soviet Union, for the prosecution and punishment of the major war criminals of the European Axis, declaring that there shall be established an International Military Tribunal;²
3. The Charter of the International Military Tribunal;³
4. The Opening Statement for the United States of America, by Robert H. Jackson, Chief Counsel for the United States (November 21, 1945);⁴
5. The Closing Address, delivered by Robert H. Jackson, Chief Counsel for the United States (July 26, 1946).⁵

The book also contains an enlightening Preface,⁶ "The Law Under Which Nazi Organizations Are Accused of Being Criminal, Argument by Robert H. Jackson, February 28, 1946,"⁷ and excerpts from the cross-examination of Hermann Göring, the second in command of the Nazi regime, Hjalmar Schacht, the Reich Minister of Economics and President of the Reichsbank, Albert Speer, Reich Minister for Armament and Munitions, and Erhard Milch, General Inspector in the Luftwaffe, who was called as a witness on behalf of Hermann Göring.⁸

The record shows how meticulously the international crime may be planned, how vicious its perpetrators may be, how diabolic the method and vast its scope.

This book acquaints the reader with those events which implemented an entire nation for crimes whose magnitude has never been surpassed. It deals with principles that condemn as criminals heads of state who plotted world aggression.

The author succeeds in the purpose of this book, "to make conveniently . . . available fundamental information about the world's first international

¹ Pp. 3-18.

² Pp. 19-21.

³ Pp. 21-29.

⁴ Pp. 30-94.

⁵ Pp. 120-183. The Closing Address contains 172 notes that are printed on pages 163 to 183.

⁶ Pp. v-xviii.

⁷ Pp. 95-119.

⁸ The excerpts from cross-examination are found on pages 184 through 269.

criminal assizes."⁹ "The object is not to convince the reader, but to let him learn something of the Nazi philosophy, which has made so much trouble for the world, from the lips of its champions, and to catch some of the atmosphere of the trial. . . . And the underlying philosophy of the whole Nazi movement—that the end justified the means—is nowhere better exposed than by Schacht, whose acquittal was one of the disappointments of the judgment."¹⁰

In spite of the differences in the various systems of jurisprudence,¹¹ language, procedures, and the thousands of documents that had to be selected for introduction into evidence,¹² the trial occupied only 216 days of trial time. The Tribunal found 19 of the 22 defendants guilty of one or more of the counts in the Indictment,¹³ and acquitted three of them, Schacht, Von Papen, and Fritzsche.

Justice Jackson is not disturbed by the lack of precedent for the trials held at Nürnberg. Since no international legislature exists, international law "is not capable of development by legislation,"¹⁴ hence modifications are brought about by acts of governments to meet new circumstances. The Nürnberg trials are the culmination of a series of international conventions that renounced war as an instrument of national policy.¹⁵ "It is high time that

⁹ Preface, p. v.

¹⁰ Preface, p. x.

¹¹ On page vi of the Preface, Justice Jackson states, "It was something of a shock to me to hear the Russian delegation object to our Anglo-American practice as not fair to the defendant. The point of the observation was this: We indict merely by charging the crime in general terms and then we produce the evidence at the trial. Their method requires that the defendant be given, as part of the indictment, all evidence to be used against him—both documents and the statements of witnesses." However, in an address delivered before the French Bar Association, Justice Jackson cautioned against the exaggeration of differences in legal philosophy. Jackson, *The Trials of War Criminals* (1946) 32 A. B. A. J. 319, 320.

¹² A problem confronting the prosecution was whether the case was to be proven by documentary evidence or oral testimony. Although both forms of evidence were used, chief reliance was placed upon documents for it was felt that such a trial would possess a more authentic historical basis. Of 100,000 captured documents, about 4,000 were translated and used as evidence. P. viii of the Preface.

¹³ The indictment under which these defendants were brought to trial is not contained in this book, but has been included in JACKSON, *THE CASE AGAINST THE NAZI WAR CRIMINALS* (1945). For a treatment of the juridical basis for these trials, see Glueck, *The Nuremberg Trial and Aggressive War* (1946) 59 HARV. L. REV. 396. Generally, see MYERSON, *GERMANY'S WAR CRIMES AND PUNISHMENT* (1944); LACHS, *WAR CRIMES* (1945); Kelsen, *Collective and Individual Responsibility in International Law with Particular Regard to the Punishment of War Criminals* (1943) 31 CALIF. L. REV. 530.

¹⁴ P. 14. Cf. 1 HUDSON, *INTERNATIONAL LEGISLATION* § 2 (1931), "The term international legislation would seem to describe quite usefully both the process and the product of the conscious effort to make additions to, or changes in, the law of nations." See Keen, *International Legislation* (1945) 27 J. COMP. LEG. & INT. L. 78.

¹⁵ Pp. 14-16. Reference is made to the international conventions that outlawed war by quoting passages from the Fourth Hague Convention of 1907, the Geneva Protocol of 1924, Resolution of the Eighth Assembly of the League of Nations in 1927, the Sixth Pan-American Conference of 1928, and the

we act on the juridical principle that aggressive war-making is illegal and criminal."¹⁶

The Nürnberg trials doubtlessly represent a ". . . venture in international legal understanding and an experiment in international legal cooperation, the success of which will give real hope that common ideas of legal right and wrong may yet unite the civilized peoples of the earth."¹⁷

The *Nürnberg Case* is a definite contribution to the understanding of the Nürnberg trials, not because it supplies hitherto unavailable material, but because it offers the citizen essential information. It is a terse authentic portrayal of a phase of history that mankind can never forget.

The trial of these defendants stands as a warning to the would-be tyrant and oppressor—an effective international law has been brought squarely on the side of peace.¹⁸

EDWARD D. RE.*

Briand-Kellogg Pact of 1928. It is interesting to note that Article 4 of the Weimar Constitution provided that "the generally accepted rules of International Law are to be considered as binding integral parts of the law of the German Reich." P. 84.

¹⁶ P. 15.

¹⁷ Jackson, *The Trials of War Criminals* (1946) 32 A. B. A. J. 319.

¹⁸ See Jackson, *The Rule of Law Among Nations* (1945) 31 A. B. A. J. 290; Lang, *A Significant Development in International Law* (1945) 23 CAN. B. REV. 754.

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