



5-1-1948

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Recommended Citation

Ferdinand A. Hermens, *Collective Guilt*, 23 Notre Dame L. Rev. 431 (1948).

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NOTRE DAME LAWYER

A Quarterly Law Review

VOL. XXIII

MAY, 1948

No. 4

COLLECTIVE GUILT

FEW problems are beset by so many complications as that of collective guilt. It raises issues in the social sciences, as well as in social ethics. A volume on political ethics, which in turn would have to be based on a discussion of the major problems of current politics, would be needed in order to provide an adequate framework for a discussion of collective guilt. This article, must, of necessity, limit itself to a few major aspects of the problem, and this creates the danger that not all of the remarks which follow may be understood as intended. The practical implications of a policy based upon the assumption of collective guilt are, however, so important that an attempt to analyze the problem might seem justified if not all pertinent issues are properly discussed—even if some conclusions are tentative, or do not rest upon as large a body of evidence as would be desirable.

An examination of what has been said on our problem in recent years shows on the one hand that those whose task it was to guard the moral law against the influences with which wartime psychology always threaten it, have, for the most part taken a negative stand. Thus the Bishops of the Administrative Board of National Catholic Welfare Conference in their statement entitled *War and Peace* (issued under the date of November 17, 1945) said: "Justice demands the punishment of the guilty, and reasonable reparations for

damage done. But we cannot forget, or allow our representatives to forget that our traditional system of punitive justice is anchored to the concept of individual responsibility." Similar remarks were made by Pope Pius XII on several occasions. In his Christmas allocution of 1944, he stated:

No one certainly thinks of disarming justice in its relations to those who have exploited the war situation in order to commit real and proved crimes against the common law, and for whom supposed military necessity could at most have offered a pretext, but never a justification.¹

But if justice presumed to judge and punish not merely individuals but even whole communities together, who could not see in such a procedure a violation of the norms which guide every human trial.

In his allocution to the College of Cardinals on February 20, 1946, the Pope said:

Erroneous doctrines are current in the world, which declare a man culpable and responsible merely because he is a member or part of a determined country, without taking the trouble to seek or examine whether on his part there has been any personal sin of deed or omission.²

That such views are not limited to Catholics, or in fact, to Christians, becomes readily apparent from the views which Mr. Victor Gollancz expressed in these words:

Can you read the various stages of the argument I have tried to set out, and still believe that *all* Germans are guilty? Surely it is not possible. What, then, do these writers mean when they say that "The Germans must be made to realize that they are *collectively guilty*"? If they do not mean, as they cannot mean that *every* German, including those whose ashes we are finding, is in any ordinary sense "guilty", they must mean that there is an entity namely "the Germans" which is something other than the mere sum total of the German individuals who compose it; that this entity is guilty; and that *though* this entity is something other than the sure

¹ New York Times, Dec. 25, 1944.

² New York Times, February 21, 1946.

sum total of the German individuals who compose it, nevertheless, and paradoxically, just because every German "belongs to" it every German including those whose ashes we are finding, is "guilty".

I believe that this is precisely what these writers mean. It is a foul conception and indicates how very rapidly that de-personalization which is the greatest of all our modern evils, is proceeding. Stemming from Hegel, this idea of "collective guilt" is a throw-back, as fascism is a throw-back, to pre-Christian barbarism; and that decent and intelligent men should be solemnly discussing it is a measure of our corruption by the thing we have been fighting. What is it that, in the final analysis, makes it utterly impossible for the Judaeo-Christian tradition ever to compromise with fascism? Simply this: that for the one the ultimate reality is the human soul individual, unique, responsible to God and man, while for the other the ultimate reality is some abstraction—a State, Folk or Collective which men have created out of nothing, and which has no existence except in their own vain imagination. For primitive man to think in terms of the collective was natural; for the fascists it is artificial; that is the only difference between them.³

It is difficult to find statements of the opposite point of view based on similar authority, or for that matter, developed with similarly detailed reasoning. When looking for those who embrace the doctrine of collective guilt without qualifications—and without any attempt to conceal its practical implications—we must, indeed, turn to the journalist and the pamphleteer, who from time immemorial, have been more interested in psychological rather than logical proof. Typical of the first group is Mr. William L. Shirer, who expressed his views on the subject entitled: "They're All Guilty—Punish Them."⁴ In the body of the article, the reader will look in vain for any argument which adds to the contention contained in the title. Or take Lord Vansittart. On one occasion he seems close to facing the problem. He began by quoting Edmund Burke's famous dictum: "I do not know the meth-

³ WHAT BUCHENWALD REALLY MEANS, London, 1945 pp. 14-15.

⁴ Originally published in *Look* magazine; reprinted in "News from Belgium" of January 23, 1943.

od of drawing up an indictment against a whole people", and emphasized that Burke protested against the absence of a method,⁵ and that if a suitable method were found, Burke might agree to a collective indictment. Vansittart himself, however, does not attempt to demonstrate the existence of a suitable method. He continues by simply restating his thesis:

There is no use in twisting Burke to evade the truth. You not only *can* indict a nation; you cannot escape from doing so. The appalling cruelty of the German nation, and its calculated causes, will be remembered as long as men go upright.⁶

When Lord Vansittart first published the booklet in which the above passage appears, the *New York Times*, on Dec. 12, 1940, took issue with him in an editorial significantly entitled "Indicting a Race".

Thus the opinions of those who affirm, and those who deny the possibility of a collective indictment are diametrically opposed to each other. Yet, this is not one of the cases where different opinions are a matter of taste. If the proponents of the doctrine of collective guilt do not want to forfeit their claim, they must prove that their contentions are compatible with basic legal notions developed within the confines of Christian civilization. There is, therefore, a common standard, by which, in the end, the issue must be judged.

If we examine the problem from this point of view, it would seem that according to criminal justice, as western civilization has developed it, punishment⁷ presupposes suc-

⁵ The context of Burke's speech, incidentally, would seem to indicate that Burke confined himself to the emphasis on method because it seemed that this was enough to dispose of the issue. See E. Burke *Conciliation with the American Colonies*, ed. C. W. French New York 1900 p. 64.

⁶ LORD VANSITTART, *ROOTS OF THE TROUBLE AND THE BLACK RECORD OF GERMANY*, New York, 1944, p. 159.

⁷ Punishment is, of course, the logical corollary of guilt; when the comprehensive analysis of wartime psychology during World War II is made which some time ought to be made, it may well result that the desire for collective punishment—so hard to distinguish from a demand for revenge—preceded the assertion of collective guilt.

cessive proof of two facts: first, responsibility, and second, guilt. Responsibility means, in the first place, that a certain act could not have taken place without the defendant's playing a part: the result can be "imputed" to him. Responsibility further implies a measure at least of freedom. Where there is no freedom, there is no responsibility;⁸ where freedom is lessened, responsibility is lessened.

When we progress from the notion of responsibility to the notion of guilt, we make two further assumptions. The act in question must have violated accepted moral standards;⁹ and the person who commits it must have a reasonable measure of foreknowledge of the practical consequences, and moral implications, of his act.

These are the conditions underlying the applications of punitive justice so far as the incriminated person is concerned. It is hardly necessary to state the conditions with which those must comply who fulfill the functions of judges: They must be reasonably certain to know the pertinent facts, and they must be impartial. To ensure the facts being brought to light, rules of procedure have been developed which give full freedom of action to the defense. If the impartiality of a judge is in doubt he is expected to disqualify himself; also, the defense is given the opportunity to seek a change of venue.

Proceeding from individuals to groups let us concentrate, in the main, on the notions of responsibility and guilt, and ask how they can be applied to groups. To clarify the issue

⁸ This issue was treated by ARISTOTLE, *NICHOMACHEAN ETHICS*, Bk. V Ch. 7 (R. McKeon, *THE BASIC WORKS OF ARISTOTLE*, New York 1941, p. 1015) in these terms: "Acts just and unjust being as we have described them, a man acts unjustly or justly whenever he does such acts voluntarily; when involuntarily he acts neither unjustly nor justly except in an incidental way; for he does things which happen to be just, or unjust. Whether an act is or is not one of injustice (or of justice) is determined by its voluntariness or involuntariness . . ."—The reader will be interested in the entire discussion on pp. 1015-16.

⁹ Here the legal positivist might disagree. To this writer, as to others, it has always seemed, however, that notions such as guilt have their origins in religious conceptions, and that any attempt to separate them from this basis leads to contradiction and confusion.

we may distinguish between what, for lack of a better name, we might call voluntary and involuntary groups. The former partake, to a large extent, in the characteristics of the individual. An example is provided by a criminal gang. Its members are responsible for their membership, because it is voluntary by definition, and we feel justified in assuming that the mere act of joining the group indicated a willingness to commit crime, and that continued membership in the group helped in the commission of the crimes of the gang, whether there was any direct participation or not.¹⁰ A careful judge will, however, pay attention to the fact that membership in the gang may not be as voluntary in fact as it is in theory, the existence of slums, for example, may ultimately be responsible for the existence of the gang.

Altogether different considerations apply to members of involuntary groups, examples for which can be found in national and racial groups. Whether a person is born white or negro does not depend upon his choice, but it has a great influence upon his subsequent life. Similar consequences follow from birth in a certain nation, such as the United States, or England, or Germany, or France or any other country. Generations ago Goethe said: "*Amerika, du hast es besser*"—"America, thou art better off." He meant to say that living in America provided opportunities not given to others, and likewise excluded dangers rather close to the nationals of other countries. A few people may, through migration, change the results, as far as they are concerned, of having been born in a certain nation. The number is limited through circumstances, however, and has been more limited during the past generation than ever before; the refugees from the Bolshevik revolution in Russia were the last ones who did not meet with the legal restrictions which kept subsequent political emigration down to comparatively small numbers.

¹⁰ In this connection, there arise, of course, the juridical problems of "conspiracy" which, however, are more complex, and more delicate, than was assumed by the prosecution during the war crimes trials.

In this connection there arises a question which is of decisive importance for the subject of this discussion. There will be agreement upon the point that when we are dealing with involuntary groups, there is no basis for the claim that one is intrinsically superior or inferior to the other. In fact, we have no choice but to assume that such groups will invariably "consist of all sorts and conditions of men", with the same basic distribution of moral and intellectual aptitudes. But must we not also conclude that if there is a marked difference in group behavior it is bound to have been created by a difference in environment, in the shaping of which the present members of the group may have had little part if any at all?

When such arguments and their practical implications are taken up, we should be careful to avoid in our thinking, any turn which may have been brought about by the influence of wartime psychology. Therefore, in what follows this writer feels obliged to argue along exactly the same lines which he followed before the war. To him the problem seems in its basic elements, identical with the one presented to him by anti-Semites first in Germany, then in France, England and the United States. In practically all cases I found myself confronted with statistics purporting to show that the behavior of the Jews was different from that of their fellow-citizen. Such figures should always be carefully analyzed before one accepts them even in part, but my answer was invariably independent of any detail. It ran along these lines: Suppose your figures are correct. What do they prove? Those who, in the course of history, accepted the Mosaic religion (so many of whom are not descendants of Biblical Jews) were, for that reason alone, placed in a social environment different from that of their fellowmen. The limitation in the choice of occupation, coupled with the privilege of lending money at interest, was bound, in many cases, to lead to a behavior which the rest of the people resented without

being aware of the fact that they themselves had created the background which would inevitably lead to such behavior. Certainly such differences as did develop had nothing to do either with religion or with nationality. There is the interesting case of the so-called Cahorsines i. e. Christians supposedly coming from the French city of Cahors, who were granted the privilege of moneylending, and who were accused of the same acts laid to the Jews. Dante puts them into his *inferno* together with the inhabitants of Sodom and Gomorrha. Thus, when two entirely different groups of people were placed in the same environment, both behaved the same way and were judged the same way. Is not the result—and the “responsibility”—to be attributed to circumstances, rather than to men? It is quite likely that in such conditions a number of individual members of such a group will do what they ought to know is wrong, and what they could have avoided doing even under unfavorable circumstances. In such cases there is guilt and there should be punishment. Even then, some of us can hardly avoid the conclusion: “There, but for the grace of God, go I.” Speaking for the group as a whole, what reason do we have to assume that our own group, if placed in the same environment, would have acted differently?

Certainly whenever the forms of individual indictments are transferred to groups one should bear in mind that a social problem is involved. *The impartial judge will always examine the “quaestio facti”, as well as the “quaestio juris”, the question of fact as well as the question of law. The fact involved in a collective indictment is a social fact, and it is necessary to investigate the particular forms of social association involved in order to see whether the dual assumptions of responsibility and guilt are warranted.*

What then are the social facts which stand behind what we call “the German problem”? Evidently, the nature of the problem calls for an investigation of what Max Weber

called "*Realfaktoren*". Under the influences of Marxist thinking our generation is unwilling to see any environmental factors except the class structure, and it will be well to turn to pre-Marxian thought. In the United States we have only to recall the great contribution to realistic political analysis made by that classic of political science, the Federalist papers. In numbers 5-8 Hamilton and Jay investigated the relation between geography, militarism, and war. They were concerned with the possibility that the new constitution might be rejected, in which case the thirteen states would either become independent, or group themselves in regional federations. Jay emphasized (No. 5) that in such a case "like most *bordering* nations, they would either be involved in disputes and war, or live in the constant apprehension of them." Hamilton, in No. 8 added that such conditions would lead to the development of standing armies:

Frequent war and constant preparation, will infallibly produce them (standing armies). The weaker states or confederacies would first have recourse to them, to put themselves upon an equality with their more potent neighbors. They would endeavor to supply the inferiority of population and resources by a more regular and effective system of defense, by disciplined troops, and by fortifications. They would, at the same time, be necessitated to strengthen the executive arm of government, in doing which their constitutions would acquire a progressive direction toward monarchy. It is of the nature of war to increase the executive at the expense of the legislative authority.

Hamilton's explanation could not have been different had it been provided for the very purpose of explaining the history of Brandenburg-Prussia. The standing army, and with it the militarism of that country originated as a result of the Thirty Years' War. Frederic William, "The Great Elector" at the end of that war kept some of the regiments hired by his father during the war, and built them into an army which already during his life time served as a tool for the destruction of the constitutional liberties of the people. Furthermore, the ancestors of what later came to be called

the "Prussian Junkers" fought this development¹¹ for the same reasons for which the noblemen of England and of France fought monarchs trying to establish absolutism in their respective countries: they defended their own privileges. The English nobility, not confronted with a standing army (unnecessary due to the insular character of the country) was victorious; their French and German counterparts lost. Ultimately, the losers were bought off; as officers and bureaucrats, they became identified with the new order to such an extent that it began to appear, to themselves as well as to their present day critics, as their own. If we consider the facts involved in such a social process from the point of view of collective indictment, the count against the military would be arrogance, and against the people at large, subservience. Speaking of the military men, Montesquieu had this to say:

It is natural for mankind to set a higher value upon courage than timidity, on activity than prudence, on strength than counsel. Hence the army will ever despise a Senate, and respect their own officers. They will naturally slight the orders sent them by a body of men whom they look upon as cowards, and therefrom unworthy to command them.¹²

Turning to the people, Hamilton in No. 8 expressed himself in these words:

The perpetual menacings of danger oblige the government to be always prepared to repel it; its armies must be numerous enough for instant defense. The continual necessity for their services enhances the importance of the soldier, and proportionately degrades the condition of the citizen. The military state becomes elevated above the civil. The inhabitants of territories, often the theatre of war, are unavoidably subjected to frequent infringements on their rights, which serve to weaken their sense of those rights; and by degrees the people are brought to consider the soldiery not only as their protectors but as their superiors. The transition from this disposition to that of considering them masters, is neither re-

¹¹ For some details see E. Hubrich, *DEUTSCHES FUENDTENTUM UND DEUTSCHES VERFASSUNGSWESEN*, Leipzig 1905, pp. 46-51.

¹² *SPIRIT OF THE LAWS*, here quoted from F. W. COKER, *READINGS IN POLITICAL PHILOSOPHY* New York 1938 p. 627.

mote nor difficult; but it is very difficult to prevail upon a people under such impressions, to make bold or effectual resistance to usurpations supported by the military power.

Militarism, then, was, for Hamilton, not a result of sin, but a social disease, which would break out wherever its causes were allowed to develop. It is one of the advantages of a sociological explanation of such phenomena that, with the roots of the evil it also uncovers the remedy: not persecution of those who have been the exponents of militarism¹³ (which is the way certain Allied representatives in Germany seemed to interpret "demilitarization"), but elimination of the social causes which brought about the social result. In the America of 1787 this meant establishment of the Federal Union. In the Europe, and the world, of 1919 (bearing in mind that a discussion of militarism in regard to Germany is much more pertinent to the period of the first than that of the second world war) it should have meant emphasis on as much European unity as was attainable, and, in view of the global character of the conflict, an effective organization for enforcement of world peace. Of the leading statesmen of the world, several are of the opinion that the job could have been done; Sumner Welles¹⁴ as well as Winston Churchill,¹⁵ have emphasized that the League of Nations could have been made to work, and thus World War II avoided. If we accept this view, its implications are obvious. While the remedy was available, it was not within the power on one country alone to apply it. The cooperation of several of the more powerful nations was needed; it was not forthcoming; all of them have their share of responsibility in the omissions that followed, and in their consequences. The fact that negligence and ignorance rather than ill will

¹³ They should, of course, be punished for any personal misdeeds of which they might be guilty.

¹⁴ SUMNER WELLES, *THE TIME FOR DECISION*, New York 1944, treats the subject in the first chapter, entitled *It Might Have Been*.

¹⁵ Mr. Churchill has expressed this view frequently; the most recent case is his War Memoirs, of which Life magazine of April 19, 1948 published the first installment.

brought about these decisions serves to illustrate the nature of the problem: The new war was not simply due to evil men and their plots, but in the first place to the omissions of the "good" men, which set the stage on which the commissions of the "bad" men could take place. Furthermore, if we want to consider the distribution of responsibility (as distinguished from "guilt") among the countries involved, we must apportion it in accordance with their power to act. Mr. Churchill, in his memoirs, emphasizes that this power was concentrated in the hands of the victors, who, in his opinion, by their failure to use it incurred the major responsibility for permitting the "unnecessary war" to become possible.

The peculiar characteristic of World War II was, however, tyranny rather than militarism. Both President Roosevelt and Prime Minister Churchill often referred to tyranny as the enemy. The President, as he explained in one of his news conferences favored the suggestion that the war be called "The Tyrant War." The *New York Times* commented: "The world is at war because of a new brand of tyrants who plotted to use the instruments of the Twentieth Century to conquer continents and reduce nations to servitude."¹⁶

The problem of tyranny is even more beset with complications than that of militarism, and we can do no more than to concentrate on a few of them, in the hope that they will be sufficient to illustrate the nature of the approach required. We may divide the issues involved into two broad groups: The responsibility for the origin of Nazi tyranny and the responsibility for the crimes committed after its establishment.

The reasons for the rise of Nazism are seen differently by different writers. Yet, there are some factors on which there is a measure of agreement. The first concerns the effects of the world economic crisis. The Nazi vote in Germany varied,

¹⁶ Editorial entitled *The Tyrant's War* issue of June 4, 1944.

from the outset, in inverse relation to the prosperity of the country. During the run-away stage of the German inflation, in 1923, the Nazi strength reached its first peak; it declined immediately with stabilization and consolidation. Hitler's next chance came with the world economic crisis. In the elections of September 1930 his voting strength increased to such an extent that, combined with the Communist group in the Reichstag, which also increased sharply, and on which he was always able to rely in his parliamentary fight against the moderate government of Dr. Bruening, he could make the normal functioning of democratic government impossible. From that time onwards, all depended upon the effectiveness of the measures taken to stem the onrush of the depression. When we judge such matters, we must bear in mind Professor Brecht's fundamental distinction between "error, guilt, and reasonable choice."¹⁷ Nobody, except the Nazis and the Communists, wanted the intensification of the depression. Among those in power in the countries which might have acted in the proper manner there was, for that reason, no "guilt" — they committed some errors in the sense that better counsel would have advised them against certain policies from the outset, and they exercised a "reasonable choice" in regard to measures which appeared reasonable at the time, even if they did not work as expected. On the German side, freedom of action, was limited; although there was some leeway.¹⁸ The country which, at that particular time possessed the greatest freedom of action — because it disposed of the largest amounts of liquid funds, with which alone the fires of the panic could have been extinguished — was France. The French financial policy of the late 1920's and the early 1930's has been severely criticized by some writers: Paul Einzig,¹⁹ the most popular financial writer of the period, threatened France with "defeat" unless she abandoned her "aggressive

¹⁷ A. BRECHT, *PRELUDE TO SILENCE*, New York 1944 p. 34.

¹⁸ F. A. HERMENS, *DER STAAT UND DIE WELTWIRTSCHAFTSKRISE*, Vienna 1936.

¹⁹ P. EINZIG, *FINANCE AND POLITICS*, London 1932 pp. 138-39.

policy." Pierre van Paassen has given the following account of the experiences of Dr. Bruening, who came to ask the then French foreign minister, Pierre Laval, for financial assistance.

He (Bruening) warned of an economic debacle which might, through its repercussions, drag other countries, France herself, into a chaotic whirlpool. He named "the sinister forces" that were waiting to take over the reins in Germany if he should fail.

Laval shook his head. He would not even place Bruening's request for a loan, or a moratorium, before his colleagues in the cabinet. He refused to hold out the least strand of hope. He led the German chancellor to the door with a polite expression of adieu.

It was a sunny day in Paris when Pierre Laval signed the death warrant of the German Republic.²⁰

It is possible to be less dramatic about this matter than Mr. Van Paassen, and to refer to other acts of omission or commission during that period each of which formed a link in the chain which was to lead to disaster within a few years. The point to be made in this connection is that people did many things the results of which they did not foresee, errors on one side²¹ led to errors on their other, and aggravated their effects. So far as France is concerned, it must be added that her constitutional position was all but hopeless; hardly any French government could provide the leadership without which it was impossible to do what the true interests of France herself as well as of her neighbors required.²²

²⁰ P. VAN PAASSEN, *DAYS OF OUR YEARS*, New York 1940 p. 130.

²¹ French public opinion, was in 1931, very agitated over the proposed customs union between Germany and Austria. From the point of view of the two countries concerned—Austria had taken the initiative—the plan had many advantages, but, as long as it was a cardinal point of German foreign policy to have good relations in France, French objections should have been considered. Had Stresemann lived, he would have given due attention to such "imponderables"; his successor Curtius was a well meaning man, but basically a bureaucrat, without political understanding.

²² I was in Paris throughout this period, and while I did not ignore the financial mistakes and their consequences—*DER STAAT UND WELTWIRTSCHAFTSKRISE ops cit. Supra* n. 18 pp. 82-8—I reached the conclusion that it was best to concentrate on the constitutional background of this policy. See my article *Parlement und Aussenpolitik in Frankreich*, Hochland, December 1931.

From the deflationary effects on world prices which the French policy of this period was certain to produce, no country was to suffer more cruelly than France herself.

If we look at the events preceding Hitler's rise to power from the point of view of developments within Germany, attention must be drawn to the constitutional weaknesses of the Weimar Republic, which did so much to facilitate Hitler's "Trojan Horse" tactics. Professor Hearnshaw says about the Weimar constitution that it was

eloquent of the political incapacity of the German people. it was . . . above all cursed by the principle of proportional representation, which is the devil's own device for rendering democracy unworkable.²³

Not a few writers have expressed themselves critically on the effects of proportional representation in Germany,²⁴ and there is indeed reason to believe that if the majority system of voting had been used in Germany the National Socialist party would have died of the anemia induced by repeated and disastrous defeats²⁵ long before the world economic crisis gave Hitler his second chance. P. R. was, and is, however, advocated sincerely as a means of strengthening, not of weakening democracy. A number of countries not ordinarily charged with political immaturity, have adopted or re-adopted it in recent years, and in Western Germany this was done, to the satisfaction of Mr. Molotov, who during

²³ F. J. C. Hearnshaw, *GERMANY THE AGGRESSOR THROUGHOUT THE AGES*, New York 1942, p. 260. Other weaknesses of the Weimar constitution have been dealt with by Brecht *op. cit. Supra* note 17.

²⁴ C. J. FRIEDRICH, *CONSTITUTIONAL GOVERNMENT AND DEMOCRACY*, Boston 1941, pp. 286 ff. A BRECHT, *op. cit. Supra*, note 17, pp. 47 ff.; K. LOWENSTEIN, *POLITICAL RECONSTRUCTION*, New York 1940, p. 120; G. H. SEGER and S. K. MARCK, *GERMANY: TO BE OR NOT TO BE*, New York 1943, pp. 41-2; G. BRIEFS, *THE PROLETARIAT*, New York 1937, p. 293; H. VON BECKERATH, *IN DEFENCE OF THE WEST*, Durham, 1942, p. 252; H. FINER, *THE CASE AGAINST PROPORTIONAL REPRESENTATION*, London 1935, pp. 11-17; H. HAZLITT, *A NEW CONSTITUTION NOW*, New York 1942, pp. 69-73; E. KOCH-WESER, *HITLER AND BEYOND*, New York 1945, p. 39. D. Sternberger, *Ueber die Wahl, das Wahlen und das Wahlverfahren*, Die Wandlung, October 1946; G. Willms, *Die Deutschen Laenderverfassungen*, Frankfurter Hefte, August 1946, p. 23.

²⁵ For the details see F. A. HERMENS, *DEMOCRACY OR ANARCHY?* Notre Dame 1941, pp. 214 ff.

the Moscow conference had demanded P. R. for all German elections, under the eyes of the military government. Representative Case expressed himself on the matter in these words:

The War Department sets up Military Government. Military Government acquiesced in the decision, if it did not encourage it — and I am inclined to think that they encouraged it — that they should use proportional representation in electing members of the Landtag and setting up the ministries in the various Laender, which certainly means that you will have Communists in government, if they get a minimum percentage of votes of the entire whole.²⁶

There is a third group of factors to be considered in the origin of the Third Reich: The intrigues of certain people which; on account of their melodramatic character, all but monopolized the attention of writers aiming at the popular market. The importance of the factor is real enough; it clinched victory for Hitler at a time when one of the social factors sharing in his success, the depression, showed signs of abating with the result that the party had begun to disintegrate. The different groups of men involved acted differently at different times; General von Schleicher, for example, and the army men supporting him, first played a decisive part in the intrigues leading to the overthrow of Dr. Bruening and then did all they could to prevent the appointment of Hitler. Two men without whom Hitler could not have been appointed, are Von Papen and Dr. Schacht. It is interesting to note that the Nuremberg tribunal trying to assess the guilt for "aggressive war", found itself unable to convict these men. Yet, it would be difficult to find any other two men who did as much to bring the Nazi regime to power, — and by this time most of us agree that Nazism meant war. The Nuremberg tribunal was tangled up because it attempted to apply the ordinary notions of guilt and punishment to a nexus of social events which obeyed

²⁶ *Hearings before the Subcommittee of the Committee on Appropriations, House of Representatives, 80th Cong. 1st Sess. on the Third Supplemental Appropriation Bill for 1948, Washington 1947 p. 74.*

laws of quite a different nature. Von Papen and Schacht were indeed "not guilty" of having promoted direct means for bringing about aggressive war, but were they not more "responsible" than perhaps any other two men for assisting a political system to power which was bound to go its own evil ways? They did not foresee the future, of course; they hoped to use Hitler for their own ends and discard him afterwards. Yet, they helped to create a chain of circumstances, and as a result of what they did, uncounted thousands found themselves in subsequent years in a position where they were not strong enough — and where many of us might not have been strong enough — to avoid "guilt".²⁷ Konrad Heiden, for example, concludes: "Hitler came to power because he seemed the only man who could restore Germany to a parliamentary government such as (President Paul von) Hindenburg had demanded in August, and even more in November."²⁸

The atrocities committed during the Nazi tyranny have caught the public imagination more than the complicated social facts which led to its rise; in the indictment of the people of Germany the atrocities constitute, in fact, the major item. Few would want to deny the beastly character of these atrocities, nor the need for stern punishment of those found guilty of participating in them. Such punishment, indeed, is necessary if the notions of right and wrong — the only basis upon which civilized society can exist — are to be vindicated. Our task is, however, not completed unless we give our attention to the social system which formed the background of these atrocities. If Germany did live under a tyranny during the Nazi period, did not this fact entail the same set of consequences which tyranny has pro-

²⁷ The different groups of factors which we have been discussing are not unrelated. The intrigues of the men in question—and of others, such as Oscar von Hindenburg were possible only because the situation, and in particular the constitutional situation, was so confused.

²⁸ DER FUHRER, Boston 1944 pp. 539-40, H. ROMMEN, THE STATE IN CATHOLIC THOUGHT, St. Louis (19) p.

duced whenever it existed? We must rid our mind of the notion that what happened in Germany was unprecedented. The laws of tyranny have, in fact, been analyzed in political theory for more than two thousand years. Plato, in the eight and ninth books of his Republic, broke the ground; a number of others followed among whom St. Thomas might, in recent discussions of this matter by moralists, well have been given special attention. What these writers had to say,²⁹ they took from the evidence of contemporary experience; if this should not be enough to persuade us that what happened in Germany was, in its basic features, not unprecedented, we might do well to reflect upon what is happening in Russia, and in all of the countries east of the Iron Curtain, at this very time.

Atrocities will, in short, develop under a tyranny because they are necessary to its survival. Torture is an element of terror; fright is to be stricken into the hearts of the family, the friends, and the neighbors of the victim. In Germany, the concentration camps opened their gates right after the establishment of the Nazi system in 1933. Of the tens of thousands who were imprisoned in the early years, hardly more than ten percent were Jewish; the remainder were non-Jewish Germans whom the Nazis feared. All were equally subjected to torture and deprivation.

Instead of attempting to discuss the moral implications of the atrocities committed under a tyranny in greater detail, let us quote a passage from an article by Albert J. Guérard, who expresses opinions on the youth of France which, on the whole, are favorable, but adds:

This is not to say, however, that whole sections of French youth were not corrupted. Darnand's young militiamen have been shot or have fled, leaving only their sinister blue uniforms behind — those criminals who exceeded the Gestapo in the ingenuity and variety of their torture chambers, and who fittingly concluded their activities in France with the as-

²⁹ For a summary see the chapter entitled *The Pattern of Tyranny in my* book *THE TYRANT'S WAR AND THE PEOPLE'S PEACE*, Chicago 1944 pp. 129 ff.

sassination of Georges Mandel. *But they are not peculiarly French; no country, given the occasion, would fail to produce its Darnand militia.*³⁰

The italics are mine; the general implications of the last sentence contain the major thesis of this article.

A few considerations remain to be added. When the issue of collective guilt is raised, questions arise concerning the judge as well as the defendant. Where is the impartial court which rule on the guilt of whole peoples? So far, at any rate, as the prospect of punishment is concerned, only the vanquished can appear in the role of the defendants, and only the victors in the role of prosecutor and judge. In the victorious countries, the trial is left to, or influenced by, public opinion which, in the course of a major war, is bound to be deeply affected by the sorrow and anger caused by huge sacrifices of blood and treasure. Furthermore, the public obtains, as a result of official and unofficial censorship, only a part of the facts upon which its verdict ought to be based. Facts have, in any war, been treated in a cavalier fashion, and the latest is no exception. To give but one example: Dr. Marshall Knappen, who served with the American military government in Germany, informs us of his efforts to induce a correspondent to send his paper a balanced account of conditions in Germany; he obtained this reply:

"I have a cable from the home office," he said. It ends: "This is the way the German situation looks in New York and we hope it looks the same to you." "What do you expect me to do?" Dr. Knappen continues:

It was widely reported that a prominent correspondent of a large news agency received a cable from his office in New York asking him to recheck his copy in the light of his organization's policy not to start a sympathy campaign for Germany. In other words, the supposedly objective enlighteners of public opinion were given a prescription to which dispatches must conform. It was another example of the problem, as old as Plato, of how to guard the guards.³¹

³⁰ "The Tough Young Men of France," Harper's Magazine, April 1945. p. 468.

³¹ MARSHALL KNAPPEN, AND CALL IT PEACE, Chicago: University of Chicago Press, 1947, pp. 191-2.

Dr. Knappen estimates that only about one-third of the correspondents were properly qualified for their tasks, and of this third he says:

Many of the important stories for which they gathered materials — such as some on the treatment of German prisoners of war and internees in our stockades — they never published, explaining that as yet public opinion at home was not ready for such unpleasant facts.³²

One cannot avoid the conclusion that, had the pertinent facts been known, our public opinion might have been less ready to support the verdict of collective guilt than some of its sectors were on the basis of available information.

It is a further requirement of a just verdict that the danger of setting up a double standard be seen and be guarded against; the decision rendered must be such that it can stand comparison with the treatment of similar cases in the past, the present and, presumably, the future. History seems to suggest that the accusation of an entire people is the natural concomitant of any war, and appears in aggravated form when the factor of tyranny is present. Thomas Jefferson, for example, in a letter to Albert Gallatin had this to say on the people of France after the termination of Napoleon's rule:

I grieve for France; although it cannot be denied that by the afflictions with which she wantonly and wickedly overwhelmed other nations, she has merited severe reprisals. For it is no excuse to lay the enormities to the wretch who led them, and who has been the author of more misery and suffering to the world, than any being who ever lived before him.³³

Jefferson's opinion — shared by many others — was disregarded by the peacemakers of the Congress of Vienna; instead the view developed by Talleyrand, according to which Napoleon's system of tyranny, rather than the people of

³² *Ibid.* pp. 192-3—For a discussion of other influences, which had similar results, see F. A. HERMENS, *The Danger of Stereotypes in Viewing Germany*, THE PUBLIC OPINION QUARTERLY, Winter 1945-6.

³³ THE COMPLETE JEFFERSON, edited by S. K. Padover, New York 1943, p. 919.

France, were to be blamed, was accepted. There was no collective condemnation; the peace drafted was a must in the interest of the French nation as of the victors, and it was a peace that pacified. In retrospect, who would want to side with Jefferson?

So far as recent events are concerned, the charge of collective guilt has been made against all of the axis powers as much as against Germany. What Greeks or Yugoslavs had to say against Bulgarians or Italians was almost word for word identical with what was said about Germany in the Western countries. Charges against Italy were also made, rather frequently, in England. *The Economist*, ordinarily a model of levelheadedness, had this to say in an editorial published on November 28, 1942, under the title: "From Strength":

The people who remember that the Italians, like so many Germans, are nice folk . . . forget for instance, that the prototype of all that the Nazis have done by way of personal brutality in their political career, in their Brown Houses and their concentration camps, was the brutality of Italian Fascism, which began its progress towards popular infamy twenty years ago. . . . They forget, in short, that it was Mussolini, not Hitler, who began it all, and that, whatever the Italians may feel now when retribution is at hand, Mussolini was given their backing when he was more successful. It is entirely wrongheaded to sympathize with the Italians because they have proved so much less efficient in battle than the Germans, or to wish to treat the first saboteurs of European decency and peace as merely misguided and misled, simply because some of them before the war sold ice-cream, ground organs, waited at table, kept hotels or gave lovely parties. If the people of Germany are responsible for Hitler's deeds because they have given his support and backing for one decade, as indeed they are, the people of Italy are responsible for the support they have given to Mussolini for two.

To quote this passage in 1948 suffices to demonstrate its absurdity. The editors of *The Economist*, when they judged the Italians the same way as the Germans, did, however, at least have the advantage of consistency.

A final point must be made: A policy based upon the assumption of collective guilt is sterile. It is negative, and, if carried to its logical conclusions, it deprives the victors of any partner among the vanquished with whom they could deal for purposes of reconstruction. This was clearly stated in the first discussion of the merits of a policy based upon the assumption of collective guilt of which history records. According to Thucydides, when in 427 B.C. the Mytilenians, who had revolted against Athenian rule, surrendered to their former allies, Cleon demanded, and at first obtained, a decision in the Athenian popular assembly, that all the men among the Mytilenians be killed, and the women and children sold into slavery. Diodotus took the opposite view, and insisted that a distinction be made between the common people and their leaders. He added: "Even if they were guilty, you ought to seem not to notice it, in order to avoid alienating the only class friendly to us."³⁴ Diodotus succeeded in having the earlier decision reversed, and thus there remained a group among the vanquished with whom the Athenians could deal.

Allied policy towards Germany during the second world war was to provide the proof for the unwisdom of the opposite policy. The policy of "unconditional surrender" — opposed, as we now know, by General Eisenhower, by Secretary of State Cordell Hull, and the British Foreign Office — could in spite of its defects have been interpreted in such a sense that would have been acceptable to the anti-Nazis in Germany. Efforts in this direction were made, and they had the support of Pius XII, who, in His allocution of June 3, 1944,³⁵ referred to those who were promoting a policy of vengeance, and insisted that to those who were soon bound to be the vanquished, there be given "a well founded expectation of honorable solutions." The advice was disre-

³⁴ The entire debate has a modern ring. See Thucydides, *THE HISTORY OF THE PELOPONNESIAN WAR*, Everman's Library edition, pp. 192-203.

³⁵ *The New York Times* of June 3, 1944.

garded, and the war went on to the bitter end. When Germany was occupied, all Germans were, in the words of an American officer, treated "as minor war criminals." Thus there was no friendly contact with any group, and genuine reconstruction became impossible.

The doctrine of collective guilt has guided our German policy in more important matters. Former Secretary of State Cordell Hull³⁶ has rightly said of the Morgenthau plan that "it would punish all of them (the Germans) and future generations too for the crimes of a portion of them." Also, while in the words of Dr. George Pattee, of the staff of the House Foreign Affairs Committee, recent "policy documents make a pretense of differing from the Morgenthau plan," essential parts of Mr. Morgenthau's proposals have entered official policy, and, as Dr. Pattee shows, have not even now been fully eliminated.³⁷

In addition, there are such matters as the expulsion of fifteen million people of German descent from various areas, which is as clearly based on the doctrine of collective guilt as are the economic provisions of the Morgenthau plan. But what has been the result of such measures? Germany was made into the most gigantic vacuum of history, into which now the victors find themselves drawn from all sides, and the relations among them are now quite generally described as "the cold war." A positive policy towards Germany, based upon a clear realization of the part played by the system of tyranny in Hitler's war, and the willingness to give to the anti-Nazi Germans an honorable share in the reconstruction of Europe, might have presented difficulties of detail; it could never have led to as complete a failure as did our

³⁶ See the installment of his memoirs published in *The New York Times* of March 2, 1948.

³⁷ *Report on Germany*, By the Subcommittee on Germany of the House Select Committee on Foreign Aid (Herter Committee, appendix, pp. 29-38.) Dr. Pattee's summary of the development of American policy in regard to Germany, while presented in outline form, is a most, if not *the* most, intelligent discussion of the entire subject known to this writer.

actual policy, based as it was upon the assumption that if only the Germans were effectively punished everything else would take care of itself. To quote again Dr. Pattee:

“The consequences of this bankruptcy of American policy are immense. Among the minor byproducts are the necessity for unilateral action in Greece and Turkey and the bankruptcy of the British loan.”

The very fact that a policy based upon the doctrine of collective guilt³⁸ has made another war a distinct possibility — makes it imperative that we discard it from our thinking, and keep its implications from influencing future actions. Let us turn away from shallow moralizing, and find the way to real political morality. The right way to this goal was indicated by Pope Pius XII who, in his address to the newly-created Cardinals, quoted above, after he had rejected the idea of collective guilt as one of the “erroneous doctrines” of our time, continued in these words:

We may add that especially the complications of the economic and military order have made of society a huge machine, of which man is no longer master, of which, indeed, he is afraid. . . .

The present is for many only the disordered rush of a torrent which carries man like fish on its headlong course towards the night of the future in which they will lose themselves in the force that moves them on.

³⁸ The term used in the pertinent documents, such as the original Morgenthau plan, directive JCS1067, and the Potsdam declarations, is “responsibility” rather than “guilt”, but the intended implications were the same.

A number of Protestant, and some Catholic writers, have sincerely, and at times very ably, tried to speak of “responsibility” in a sense different from “guilt”. (Their practical proposals were entirely constructive.) Considerations of space do not permit a discussion of their arguments; suffice it to say that a time when the term “responsibility” is being used by others to justify measures to which these writers would object strenuously, it would seem preferable not to use the term. Besides, the arguments of Mr. Gollancz, quoted at the beginning of this article, are as difficult to answer from the point of view of collective “responsibility” as from that of collective “guilt”.

The reader of this article may, however, want to refer to Karl Jasper's *THE QUESTION OF GERMAN GUILT*, New York 1947, and Max Pribilla's articles: *Das Schweigen des deutschen Volkes*, *Stimmen der Zeit*, October 1946, and “*Wie war es moeglich?*” November 1946. Some very discerning remarks are contained in the article by Johann B. Schuster, “*Kollektivschuld*”, *Stimmen der Zeit*, November 1946. I hope to evaluate the views of these writers on another occasion.

The Holy Father, it would seem, intended to draw us away from mere accusations and to direct our attention to the social forces which govern the world of today. Certainly, he is not a determinist. He knows that the task of regaining the mastery of our world is not hopeless, and that, in fact, by studying the social forces which are shaping our destiny we may learn to direct them. "Social control" in the proper sense of the word is the need; it means that after we have ascertained the consequences which certain political³⁹ or economic decisions are likely to entail, we concentrate our efforts on promoting the success of those which have desirable consequences, and try to block the others. If there is a collective responsibility, it consists in our obligation to marshal our strength for this task. If we fail, the blind forces now raging in such a large part of the world under a tyranny of a different color will engulf more countries as time goes on. Wherever such a system prevails it will, for the single reason that not all human beings are either heroes or saints, make criminals of many people who under ordinary circumstances might have been good citizens. These people would then be entitled to say with Goethe: "You let the poor fellow become guilty, and then you abandon him to pain."⁴⁰

Ferdinand A. Hermens.

³⁹ Explicit reference to political systems was made by the Holy Father in his famous Christmas message of 1944, in which he emphasized that World War II, begun by dictatorships, would have been unlikely had the will of the people been freely expressed, as is the case in an orderly democracy.

⁴⁰ *"Ihr lasst den Armen schuldig werden, und überlasst ihn dann der Pein."*