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THE SIGNIFICANCE OF THE NURNBERG TRIALS FOR GERMANY AND THE WORLD

An outstanding work on the question of German war guilt—the first, to the best of our knowledge, to have been published by any leading German thinker—has just appeared from the presses of Artemis-Verlag, Zurich, Switzerland.¹ A portion of the work has already appeared as an article in Neue Zürcher Zeitung,² whose editor in introducing the article, said: “Already a rapid perusal of the philosopher’s statement shows that this comprehensive, clear, and wholesome treatise can fittingly take its place beside the thorough and clear-sighted writings of Friedrich Meineke, Alfred Weber and Julius Ebbinghaus. In a special section Jaspers deals with the Nurnberg trials which were still far from being ended when the philosopher concluded his thoughts and drew them up in writing. Jaspers’ aim is to point out the importance of the Nurnberg trials in world history, as well as their legal newness, and to counteract with solid arguments the opposition existing in Germany to the trials.” It is with the permission of the editor of Neue Zürcher Zeitung and of Artemis-Verlag that the Notre Dame Lawyer publishes the first English translation of Dr. Jaspers’ work.

The Editor.

As contrasted with the First World War, after which we on the German side did not have to acknowledge specific crimes which only one side had seemingly committed (a fact of which the research of enemy historians took cognizance), today the crimes of the Nazi regime, which were committed before the war in Germany and then during the war everywhere, are evident beyond doubt.

As contrasted with the First World War, after which the war guilt question was not decided by the historians of all nations to the great disfavor of one side, this war was obviously started by Hitler Germany.

Finally, as contrasted with the First World War, this war really became a world war. It found the world in a different

¹ Jaspers, *Die Schuldfrage—ein Beitrag zur Deutschen Frage* (1946), Artemis-Verlag, Zürich, Switzerland, \$1.20.

² Zürich, Switzerland, October 4, 1946.

situation and mood. Its meaning, compared with that of former wars, has reached different dimensions.

Today we have something wholly new in world history. The victors constitute a court of justice. The Nürnberg trials deal with crime.

This brings a clear delineation in two respects:

- I. Not the German people as a whole, but individual Germans accused as criminals (on principle, however, all the leaders of the Nazi regime) stand here before the bar of justice. The representative and chief counsel for the United States made this distinction clear from the beginning. Jackson said in his opening statement: "We should like to make it clear that we do not accuse the whole German nation."
- II. The defendants are not indicted as a group, but rather on account of specific crimes. These crimes are clearly expressed by statute of the International Military Court of Justice.

We Germans are only spectators at this trial. ' We did not institute it. We do not conduct it, although the accused are men who have brought us into calamity. "Certainly the Germans — in no lessor degree than the rest of the world — have an account to settle with the defendants," said Jackson.

Many a German feels himself humiliated and offended by these trials. This feeling is understandable. It has the same basis as the indictment by allied circles of the whole German population for the Hitler regime and its deeds. Each citizen is bound up in that which his state does and suffers. He is answerable with it and harmed with it. A criminal state is a burden to the whole people. In the treatment that is given to his own national leaders, even if they are criminals, the citizen feels that he himself is being dealt with. With these leaders the whole people are condemned. Wherefore, the humiliation and disgrace which the national leaders have to undergo is felt by the people as their own humiliation and

disgrace. And that is why the people instinctively — and at the outset, thoughtlessly — repudiated the trial.

We must actually now face a painful political liability. We must endure the disgrace inasmuch as our political liability demands it. Therein we experience our complete political impotence and our elimination as a political factor.

Everything, however, now depends on how we comprehend, interpret, adopt as our own, and apply the instinctive feelings that we have.

We can, of course, unconditionally reject the disgrace thrown upon us. In that case we look for reasons by which we can challenge the whole trial, as to its lawfulness, sincerity, and real purpose. These reasons group themselves into five main classes.

I. The view is commonly taken that wars have been fought throughout all of history and will continue to be fought in the future. No single nation can be made responsible for war. The very nature of man and his universal culpability are the factors that lead to war. Only a superficial conscience can declare itself free of guilt. It is this self-righteousness, which in its present expression, promotes oncoming wars.

Against this view the following objection can be made: this time there is no room for doubt that Germany had systematically prepared the war and had begun it without provocation from the other side. This is a situation entirely different from 1914. To Germany is not attributed the guilt of war in general, but the guilt of this war. And this Second World War is itself something new and something different in a situation of world-historical import which has for the first time come about.

This objection to the Nürnberg trials also finds expression in the following form: there is something ineradicable in human nature which again and again urges men to decisions

by force. The urge seemingly comes as a "cry from Heaven." The soldier feels knightlike and he rightly considers himself offended when his is treated in an unchivalrous manner, even after being vanquished.

But against this it may be said: Germany has committed numerous deeds which (against all chivalry and human rights) led to the extermination of populations and other brutalities. Hitler's acts were from the beginning directed against every possibility of reconciliation. His acts permitted only victory or defeat. Now we have the consequences of defeat. Every claim of ours to chivalry is frail, because the Wehrmacht, as Hitler's organization, took it upon itself to carry out criminal orders. This is true, even though a great many individual soldiers and whole army units are guiltless and always behaved themselves in a chivalrous way. Where chivalry and generosity have been betrayed, one cannot afterwards lay claim to them in one's own behalf. This war did not spring from the fact that equally conditioned opponents could find no other way out and therefore in a chivalrous way had recourse to war. It was, both in its origin and in its execution, criminal malice and a deliberate completion of the will to destruction.

But even in war there is the possibility of exercising restraint. It was Kant who stated that, in war no acts should be permitted which plainly make a later reconciliation impossible. This statement has for the first time been systematically rejected in principle by Hitler Germany. Consequently power as such, whose nature has remained the same since primeval times, now is unrestrained in its destructive possibilities. These destructive possibilities are limited only by technology. In the world as it is today, to have started a war is monstrous.

II. It is also said that the trial is a national disgrace for all Germans. If there were at least some Germans on the court, then Germans would be tried by Germans.

Against this contention we must say that the national disgrace does not lie in the court itself, but in that which led to the formation of the court, namely, the Hitler regime and its deeds. It is inevitable that Germans feel conscious of the national disgrace. It is, however, wrong to attack the trial instead of the cause.

Furthermore, the possible appointment of a German court or assistant German judges by the victorious powers would change nothing at all. They would not sit in the court by virtue of the fact that Germans had liberated themselves from the Hitler regime, but by grace of the victors. The national dishonor would remain the same. The trial is the result of the fact that we did not liberate ourselves from the criminal regime, but were liberated from it by the Allies.

III. A third objection is put forward. It is asked: how can one speak of crimes in the sphere of political sovereignty? Were one to admit that that could be done, then the victor could declare the vanquished a criminal. That would mean the end of the meaning and the mystery of the authority which comes from God. Men whom the people obey — and among them we point to the former Kaiser, Wilhelm II, and the present day “Führer” — are considered sacrosanct.

As to this argument it can be said: this is a way of thinking arising out of the traditions of political life in Europe. This way of thinking has survived longest in Germany. But today the halo about the heads of political rulers has vanished. Today these rulers are regarded simply as men, and as men, answerable for their deeds. Since the time when European peoples tried their monarchs and beheaded them, it has been the duty of the people to keep their leaders under their own control. Political acts are at the same time personal acts. Men as individuals are responsible for their acts and must answer for them.

IV. From a juridical point of view the following objection is made: crime can only be measured by existing laws.

The violation of these laws is the crime. The crime must be precisely defined and unequivocally established as a fact. Particularly it should be remembered, "*nulla poena sine lege*" — that is to say, judgment can be passed only in accordance with a law which was already in existence prior to the commission of the act. In Nürnberg, however, the victors now pronounce judgment (with retroactive force) in accordance with laws which the victors themselves have drawn up.

In answer to this proposition it may be said that in the sense of humanity, of human rights, and of natural law, and in the sense of freedom and democracy as understood by the western powers, there were already laws in existence by which deliberate crimes could be determined.

Moreover there are treaties, which, if freely signed by both sides, set forth superordinate law such as can serve as a standard where treaties are broken.

Where, however, is the court of justice? In peacetime it is to be found in the courts of the land. After a war there can only be a court of the victors.

V. Hence the further objection: the might of the victors is not law. Success in war does not imply a tribunal for law and truth. Such a tribunal could not possibly objectively investigate and judge war guilt and war crimes. Such a court must necessarily be partisan. Also a court even of neutrals would be partial, since the neutrals are powerless and, in fact, in the party of the victors. Only a court backed by a power able to enforce the decision on both contending parties could judge impartially.

The objection to this trial as pseudo-justice continues: after every war the guilt of it is laid to the loser. He is forced to the admission of his guilt. The economic exploitation following the war is disguised as a reparation for guilt. Pillaging is falsely put forth as an act of justice. If there can be no impartial justice, then there might better be open force. That would be at least honest and also easier to bear.

Both sides can always mutually accuse each other of crimes, however only the victor can draw the consequences of that accusation — and he does so exclusively according to his own interests. Everything else is only a camouflage for what in reality are the brutal force and whims of him who has the power.

The pseudo-justice of the court, according to this objection, shows itself finally in the fact that the acts declared criminal are judged by the court only when they have been committed by the vanquished nations. These same acts committed by sovereign or victorious nations are passed over in silence and are not even discussed, let alone punished.

Against all this it should be said that might and brutal force are, as a matter of fact, a decisive reality in the world of men. However, they are not the sole decisive reality. The predominance of this reality abolishes every reliable relationship between men. As long as it predominates no agreement is possible. As Hitler has stated it: "Treaties last only as long as they correspond to self interest." And he has acted accordingly. But over against this stands the will, which despite the admission of the reality of might and that nihilistic concept, considers it something which should not exist and which must therefore be by all means opposed.

For in human affairs reality does not necessarily mean truth. To this reality a rather different reality is to be opposed. And whether this other reality is to be effected depends upon the will of men. Each one must honestly know where he stands and what he wishes.

From this point of view, it must then be said that the trial, as a new attempt to promote order in the world, does not lose its meaning even if it cannot yet base itself upon a legal world order, but is still necessarily handicapped by political considerations. It does not yet take place as does a court trial within an orderly state.

Hence Jackson's public statement that ". . . the trials, if the defence were permitted to digress from the strictly limited charge stated in the bill of indictment, would be prolonged and the court would become entangled in insolvable political controversy."

That is to say also that the defence, for instance, has for its task not to treat of historical suppositions concerning war guilt in general, but has only to deal with the question of who started *this* war. Furthermore the law does not extend to a consideration of, or judging of, other occurrences of similar crimes. Political necessities place a limitation upon the arguments. However, from that it does not follow that therewith everything would be lacking in veracity. On the contrary, the difficulties and objections are publicly, even if briefly, stated.

The basic fact that victory in war, not law alone, is the governing point of departure, is undeniable. In great affairs as well as in small affairs, what is ironically said concerning military offences is true: one is punished not because of the law but because he allows himself to be caught. However, this basic fact does not mean that after his victory man would not be able by virtue of his liberty to apply his might for the realization of right. And even if this does not fully happen, even if justice results only to a certain extent, nevertheless it means a great step forward on the path toward world order. Moderation, as such, creates an atmosphere of meditation and scrutiny, of clarity, and also a much more definite understanding of the permanent meaning of might as such.

For us Germans this trial has an advantage, in that it distinguishes between the definite crimes of the leaders and that it does not directly condemn the people as a whole.

But this trial has a much greater meaning. It purports for the first time in history and for all the future to interpret

a war as crime and to reveal the consequences of it. What began with the Kellogg Pact should for the first time realize itself. Neither the magnitude of the enterprise nor the good faith of many who work on it can be questioned. The undertaking may seem fantastic. But if we clearly understand what it is all about, we need not tremble at what is happening. It makes, however, quite a difference whether we Germans, in a nihilistic mood, triumphantly presume that the trial is merely a sham proceeding, or whether we ardently wish that it might be successful.

The great questions are how the trial will be carried out, what its fundamental practice, its results, and motivation will be, how the entire procedure, when viewed in retrospect, will turn out as a whole, the question of whether the world can acknowledge as truth and law what is done here — whether the conquered peoples, too, will perforce acknowledge it as such — whether history written later will see in it justice and truth.

All this, however will not be decided at Nürnberg. The essential consideration is whether the Nürnberg trial will form a link in the chain of logical and constructive political actions — no matter how often it may be thwarted by error, stupidity, brutality, and hatred — or whether the powers which are now holding forth a yardstick for humanity will be found wanting by the same measure. The powers which established the Nürnberg court therewith collectively demonstrated that they want a world court in which they will subject themselves to the new world order. They thus testify that, as a result of their victory, they really want to assume responsibility for mankind and not only for their own nations. Such a testimonial must not become a false testimonial.

If the world is inspired with a confidence that justice has been done at Nürnberg and a good foundation has been laid,

then the political trial will have become a legal trial, and justice will have been put upon a solid basis for this world we must rebuild. But if this fails to materialize, the disillusionment caused by this deceit would stir up a worse war-like spirit in the world. Nürnberg, then, would have become, instead of a blessing, a cause of doom. The world would then come to the conclusion that the trial was a mere sham and a spectacle. This must not happen.

In response to all the objections against the trial this can therefore be said: In Nürnberg we have something completely new. It cannot be denied that there is possible danger in all that has been mentioned in the objections to which we have referred. Those objections, however, which base a general rejection of the trial upon individual shortcomings, mistakes and irregularities are plainly false. The really important things are the purpose of the actions, the unswerving patience and the active responsibility of the great powers. The individual contradictions must be overcome by actions which, in the midst of confusion, point in the direction of a new world order. False, also, is that feeling of offended aggressiveness, which from the very beginning, says "No."

Many objections may yet be made to what is happening in Nürnberg. Nürnberg is, nevertheless, a herald — albeit still weak and somewhat doubtful — of the new world order of whose necessity man is now becoming aware. This is the wholly new situation. This new world order is, to be sure, not imminent — on the contrary, in the path of its realization stand gigantic conflicts and immeasurable dangers of war. But to thinking humanity it has appeared as something attainable, like the barely discernible light of the coming dawn upon the horizon.

The only hope and support of the powerless is a united world. In the crushing knowledge of their nothingness they

grasp for the new and the universal. Wherefore, Germans, above all, should realize the extraordinary meaning of this herald.

Our own welfare in the world depends on the new world order, which has not yet been established at Nürnberg but toward which Nürnberg clearly points.

Karl Jaspers.

Translated from the German by William B. Ball.