Nurnberg 1946--The Trial

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In January, 1947, the Notre Dame Lawyer published the first English translation of "The Significance of the Nurnberg Trials for Germany and the World," by the German philosopher Karl Jaspers. With the permission of the editor of La Vie Intellectuelle we publish here a French view of the trials by Paul Reuter.1—Editor.

During the war, the Allies had been led to an increasingly precise and concurring position on the procedures which they intended to use against German war criminals after the victory. Several solemn declarations followed one another: those on January 12, 1942, December 12, 1942 (issued simultaneously in London, Washington, and Moscow), and the Moscow Declaration of October 30, 1943. From October 20, 1943 the United Nations Commission on War Crimes, an organization for research and information combining the western Allies, functioned in London. The Potsdam Agreement of 1945 laid down the general principles of trial; the war criminals were to be tried according to the law and by the courts of each accusing country. For the major criminals, whose crimes could not be geographically localized, an international military tribunal was to be formed.

The London Agreement of August 8, 1945 carried out this directive by establishing the tribunal; to the four great nations were to be added twenty other powers who could take part in the deliberations which made up the international public organization.

Not without difficulty, the Allies succeeded in agreeing on a list of twenty-four names, and Nürnberg was selected as the seat of the tribunal. The charges were issued jointly in Berlin, October 18, 1945; the trial opened on November 20, 1945, and closed on October 1, 1946, after four hundred four sessions. The Inter-allied Control Council of Berlin carried out the sentences, particularly the executions.

1 Reuter, Nuremberg 1946—Le Proces, (France; 1946) La Vie Intellectuelle, December, 1946.
The first trial may be followed by a number of similar trials, providing the Allies agree on the criminals to be called before the tribunal. For political reasons it seems likely that these other trials, particularly of the German industrialists and of Schacht, acquitted by the Nürnberg court, will be heard before courts established in each zone of occupation by its occupying authority.

But this first trial, unique of its kind, is in itself an important event. Students of history and of law will delve not only into the monumental opinion (published in extenso in a voluminous pamphlet by the Journal officiel) but also into the hundreds of thousands of documents, speeches by prosecution and defense, evidence of all sorts, whose quantity presents difficult problems of classification and preservation. But this affair is not the property of technicians alone. It touches all those who have lived through the tense years; it will probably weigh heavily, for good or for evil, on all who are destined to witness the days to come, days which will, alas, be no less tragic, according to all indications.

How Is This Trial To Be Judged?

What point of view should one take in order to give to this trial its exact significance?

That is indeed the key question which determines both the critical evaluation and the choice of facts and essential elements which one plans to stress.

Should one evoke the memory of the deaths and infinite suffering of five years of misery? Should one take the impossible wager of examining consciences and of guessing the judgment of God? Should one examine in the light of the opinion the requirements of human legal institutions and the real developments in international law? Should one measure the political effects of such an affair?

It is our own opinion that the first two questions ought not hold our attention for long; but it is highly important not to
confuse these four methods, which are those of human emotions, of divine justice, of law and of politics.

We will be pardoned for insisting in this article on these points which seem self-evident. But the trial has been interpreted by a press which with rare exceptions, has displayed the sorry limitations of a more than ordinary mediocrity. During ten long months of proceedings public interest waned, and in a trial which owed it to itself to be sensational the lengthy examinations and cross-examinations, made according to Anglo-Saxon trial procedure, often obscured the main question and led to dullness which discouraged the average public. Thus it happened that fateful incidents and moments passed unnoticed or nearly so. So it was that the French press failed to seize upon the matter of the secret protocol in the Russo-German Pact of 1939 which almost upset the very existence of the tribunal. Then when the verdict was announced acquitting Papen, Schacht and Fritsche and failing to condemn the Supreme Command and the S. A., the press let itself go over the scandal and gave free rein to a passion which recalled the recent years when one of the future victors declared, "The only good Germans are dead ones." It is evident that on the ground of retaliation there was no reason for any acquittal; that was moreover the feeling of Goering himself who had little love for judicial procedure. In fact he let it be understood in the course of the trial that he did not understand why they were making so much ceremony about putting him to death.

The solution consisting of executing criminals after having simply identified them definitely (obligation cleared after having exposed the corpse to public view) would have presented a technical difficulty because in accordance with the retaliation principle several millions of Germans would have had to be massacred.

Enough irony: it is unbecoming. It will always be to the credit of the Allies that they judged the authors of the well-known and monstrous crimes, that they did so according to
traditional rules, public argument and cross-examination, free defense, etc. This judicial procedure clearly carries with it a major result: the possibility of an acquittal. Many of our contemporaries are unaware of this fundamental rule of legal trials. If one wishes—and it can be one—to discuss an acquittal, one must place himself on the same ground on which the judge is placed, on legal ground.

In an entirely opposite sense, we can not examine the judgment of God. Only two of the accused, Franck and von Schirach, the first condemned to death and executed, the second punished with twenty years at hard labor, only these two showed any repentance and were converted after the collapse of Naziism. The others more or less clearly pleaded not guilty. A basic corruption of conscience, which does not preclude complete good faith, was apparent in many of the replies and statements; aberrations as radical as Naziism poison body and soul and destroy the very foundations of morality. The arguments bore striking testimony to this fact. That does not authorize us to reckon the divine judgment.

The Essential Questions

Finally two questions remain essential, and concerning them we should like to offer a few brief remarks. First of all: what are the characteristics of the Nürnberg verdict from a judicial point of view? It is on this basis, where it was placed, that this affair must be examined. Second: what are the effects of this verdict on the future of peace? In reality, every legal punishment follows complex goals. This is true even of the correction of the least infraction of civil law. Faced with such great crimes the attainment of these goals assumes an exceptional importance; the return of those horrors must be prevented and peace must be assured. The punishment must then produce a healthy fear in the public mind; it must also—and this is the attitude of modern penal law—bring about an improvement in the guilty one, cure
him of his vicious tendencies. It will be proper to fit the Nürnberg verdict into the framework of international politics, particularly where they concern peace and the treatment of Germany, and to consider it in the light of German opinions.

I. The Judicial Aspects of the Nürnberg Decision

This is the first time in history that an international penal tribunal has functioned, since the attempt to judge the war criminals of 1914-1918, as prescribed in Articles 227 and following of the Versailles Treaty, remained a dead letter. The originality of this body explains the objections raised against it.

A Truly International Tribunal

The tribunal would not be a truly international tribunal in the technical sense of the word. This purely legal objection often is expressed in a simpler form: the Nürnberg court would not offer the guarantees of an authentically international tribunal. No one dared condemn the cumbersome but impartial procedure of cross-examination or a defense conducted by German lawyers several of whom were notorious Nazis. But the composition of the court was attacked: four main judges and four supplementary judges named by the original signatories. Would it not have been more equitable to entrust the judgment of the accused to a tribunal composed of a majority of neutrals?

To that, one must answer in the affirmative. It would have been preferable, for example, to establish a penal court near the International Court of Justice at the Hague. This institution, in danger of dying of starvation like its predecessor, would thus have been reinforced and the force of the verdict would doubtless have been strengthened, particularly in German eyes. But, according to the legal arrangements, it is certain that each of the Allies could try a German war criminal, after seizing him, before its national courts. Con-
sequently, there was no mistake in turning the accused over to the military tribunal at Nürnberg. But one must go further. This court is something different and bigger than a joint tribunal of the four great powers more or less cloaked in the guise of an inter-allied organization for Germany. In reality the sentence was given in the name of the following countries which adhered to the London treaty: Greece, Denmark, Jugoslavia, Holland, Czechoslovakia, Poland, Belgium, Ethiopia, Australia, Honduras, Norway, Panama, Luxembourg, Haiti, New Zealand, India, Venezuela, Uruguay, and Paraguay. If this list does not include all civilized nations, it establishes the incontestably international character of the institution.

An Independent Tribunal

As for the way in which the tribunal was able to defend and maintain its independence, to assume the prominent and difficult role which was given to it, to act, in a word, as an international body, one can only express a favorable general opinion. The effect produced on the German lawyers on the reading of the verdict was noticed by all spectators, and one of the lawyers later declared: “In so far as a human sentence can be called just, this one is.” The court forbade debate on only two questions, that of the fairness of the Treaty of Versailles and that of Russia’s conduct in the war since 1939. As a matter of fact the German lawyers had often tried to extend already endless discussions by introducing points borrowed from these two subjects, entirely foreign to the problems in question, at least judicially.

In matters of evidence the court showed a meticulousness which some may think extreme. No aspect of the vast problem submitted to it was neglected. It realized fully the anarchistic and arbitrary nature of the general trial of war crimes and Naziism, and it did not hesitate, following typically international precedents, to issue to the governments recommendations which one must applaud.
The verdict, though firm and clear, is quite varied; a remarkable effort at analysis and discrimination of responsibilities was applied to each defendant. Thus the guilt of Admiral Doenitz involved all rules of naval warfare. The court, half of whose judges were Anglo-Saxons, did not hesitate to censure the orders of the British Admiralty and the procedure of the American Navy. It is in fact because of the Allied tactics that the court refused to condemn in its entirety the German submarine campaign.

**The Legal Rules Applied**

It is in a study of the legal rules applied by the tribunal that its role appears in a clear light.

The agreement of August 8, 1945, and its amendments, following a procedure justified often by the very uncertainty of international law, specified the rules according to which the court was to adjudicate. Fundamentally it foresaw the following charges (Art. 6 of the Statute):

(a) *Crimes against peace*: that is to say the direction, preparation, launching or pursuit of a war of aggression or of a war in violation of international treaties, guarantees, or agreements, or participation in a concerted plan or plot for the accomplishment of any of the preceding acts.

(b) *War crimes*: that is to say violations of rules and customs of warfare. These violations include, but are not limited to murder, inhumane treatment of or deportation for forced labor or any other purpose of civilian populations in occupied territory; murder or inhumane treatment of prisoners of war or persons taken at sea; the execution of hostages, the pillage of public or private possessions; needless destruction of cities and villages or devastation not justified by military requirements.

(c) *Crimes against humanity*: that is to say murder, extermination, enslavement, deportation or any other inhumane act against all civilian populations before or during the war; or also persecution for religious or racial or political reasons committed in connection with any crime within the jurisdiction of the international tribunal or attached thereto, whether or not these persecutions constituted a violation of the internal laws of the country in which they were perpetrated.
Their Application

Guided by these provisions (completed by a few others) the tribunal had two paths open before it: either to apply them as simply as possible without going outside the founding charter of the court, or to interpret them freely, to place them in the evolutionary development of international law, to indicate their bases as well as their precise meaning. The first solution, the simpler one, exposed the flank to a serious attack on principles. The defense did not fail to develop the attack. The accused were to be judged according to principles arbitrarily established in August, 1945, for crimes which did not exist as such at the time the deeds were committed. This would be a perfect appeal for arbitration and the violation of a principle which has always been imposed on lawmakers, at least morally: the non-retroactive nature of penal laws, *nulla crimen sine lege*. They could argue in this manner.

The court chose the second solution, which obviates these objections, and endeavored to prove that the provisions of the code were only a statement of the universal international law in force before hostilities. The results of this stand are of prime importance. The code no longer appears as an arbitrary act of the conquerors; general principles are formulated which permit both restricted and extensive interpretation. In return the court's task becomes more difficult and also in a way more lofty. It is in reality obliged to define its conception of general international law and by the same token to indicate its bases.

That is what it did with a precision which makes its decision one of history's most important judicial documents.

Law Above the State

It had to choose between two fundamental theories of international law. One of them, which has in fact prevailed in many countries, notably modern Germany, based law solely
on the will of the state, the only “person” recognized by international law. A state is bound only by the treaties which it has signed and ratified. Custom drops into the background; to satisfy logic it was defined as a tacit treaty binding only those states which gave unquestionable signs of recognizing it. The state moreover covers all activities: at the top, the men who make decisions in its name cannot be held personally responsible, they are protected by the immunity of heads of states; at the base, citizens and workers are forced by the theory of passive obedience to bow to the modern Leviathan. The idolatry built on these judicial maxims is clearly seen: it is the cult of the state, the only law, the only goal, the only being. This is the modern form of paganism.

Opposed to this, radically different theories are defined. First of all, the doctrine of natural law. This doctrine reached its greatest force in the writings of Francisco de Vitoria (1480-1546), the culmination of a long series of canonical and scholastic works. He bases international law on the intelligent and free nature of individuals so naturally inclined to social relations that they form for him a fundamental law, that of relationships *inter gentes*. Another school, very different in its origins but not in its conclusions, is sustained by the French sociological group. Denying the personality of the state, it sees the source of law in a condition entirely constant in the social group; the individual has the right to extend his social life indefinitely and participates freely in all the international groups he pleases. The only subject of law, he is sovereignly responsible.

The tribunal rejected without argument the theory which makes the will of the state the only basis for law. All legal structures on which the court rests have a foundation in custom. All the treaties which it retains as sources of international law are so, less because they are treaties than because they are precedents indicating progress, at first uncertain and obscure, then manifest, of a searching by human
minds which leads to the clarification of a principle of law. For example, after a long historical study, the court concluded:

The condemnation of a war of aggression as demanded by world conscience finds its model in the series of pacts and treaties which have just been cited.

This leads the court on to declare binding for states treaties which they did not sign; this is true if these treaties are only the codification of custom. Russian soldiers would benefit from the Hague Conventions, even though Russia had no formal part in their ratification, for their content, as certain high German officers recognized, is customary. These same Conventions were applied to the present war in spite of a clause expressly stating that they would govern no conflict all of whose belligerents had not ratified the provisions.

It is useless to add examples. The basic position is the essential point. Let us remark only that it was made almost inevitable by the declaration of the individual international responsibility of the Reich leaders. Recognition of this fact was the main object of the trial; provisions of the London agreement made clear moreover that the rules of diplomatic immunity would not protect the leaders of the German state, and that in no case would orders from a superior excuse from responsibility, but would at the most be an extenuating circumstance. Thus at the outset in its most characteristic consequences the conception of law built on the sovereign will of the state was rejected. The court on these points strengthened the stand of the code by recognizing in the principles a customary character superior to and older than the London Agreement.

**Examination of the Accusations**

We have now sketched the general legal tenor of the court's proceedings; it dominates the interpretation of the three accusations reproduced above. We shall examine them beginning with those offering least difficulty.
As far as the war crimes in the strict sense of the term, that is, crimes in the conduct of war are concerned, they are essentially established by the Hague Conventions. The crimes were numerous and legally simple but they were difficult to prove. The accused were important personages in the government; they had committed none of the crimes with their own hands; they had provoked or ordered them. But it is evident that it was sometimes difficult to prove. Over certain typical crimes, such as the order to execute all Russian political commissars captured, or the order to shoot aviators and escaped prisoners, etc., quite heated discussion developed. The court recognized the existence of this point in the accusation against nearly all the criminals.

The crimes against humanity presented both more novelty and more interest. The editors of the code doubtless had in view acts of destruction carried out against entire groups, apparently without relationship to the pursuit of the war. The clearest case is furnished by the anti-semitic persecutions. It was a question of crimes against men as such; they admitted then that man possessed inviolate and universal rights. Thus crimes committed against certain Germans in 1934 by the Nazi government, for example, would be crimes against humanity. If these latter had been defined as such, the protection of the international rights of man would have been established. This question was debated even before the war on a theoretical level; a strong intellectual movement fostering this theory is developing today in the U. N. O. But positive law is far removed from it and the inhumanity of a state permits free action against appellants so long as the latter do not belong to a protected international minority. The code itself makes no radical innovations here. According to Article 6 (previously cited), a crime against humanity does not fall within the jurisdiction of the court unless it be tied to another crime, one of aggression or war, which the court must consider. The tribunal interpreted this clause strictly, in this way restricting its jurisdiction
over crimes against humanity. Here again is apparent its wish to assimilate the clauses of the code to common international law. A crime against humanity, if it must be connected to the war in order to be judged by the tribunal, loses some of its identity: in fact it will almost always involve a group protected by the Hague Conventions and therefore will constitute a war crime \textit{stricto sensu}. In reality all of the accused were considered guilty of this crime except a few like Admiral Raeder and Hess whose actions had been very special and their roles more limited. It was the only crime held against Streicher, condemned to death for his antisemitic inciting, and against von Schirach, condemned to twenty years in prison for his Austrian activities. On the other hand all crimes against humanity prior to September 1, 1939 are outside the court's jurisdiction. We shall see in this connection that the tribunal refuses to condemn the S. A. organization for the basic reason that all its activity took place prior to the opening of hostilities and without direct connection with the war of aggression.

Finally the \textit{crime of aggression} showed itself to be the most delicate and the most important. In the words of the court,

to declare a war of aggression is not merely an international crime, it is the supreme international crime, differing from the other war crimes only in the fact that it contains them all.

The tribunal faced two tasks. In order to remain within the limits of its general principles, it had to prove that a war of aggression was a crime even before its code so defined it. Then it had to outline precisely the individual responsibility incurred in the launching of a war of aggression.

The court issued an analysis of the long series of pacts, bilateral agreements, and declarations which, in the years from 1919 to 1939, condemned wars of aggression. In this group, the Pact of Paris of 1928, called the Kellogg-Briand Pact, because of its solemnity rather than its technical aspects, holds a special place. Whether it is a question of this
pact or of the others, all had been laughed out of court by the strong opposing minds of the period’s pact-haters. The tribunal’s judgment recognizes in all these documents the evidences of a fundamental requirement of human conscience and modern society. It sees in them formative precedents for custom and it revalidates in this way these legal pacts.

By affirming the customary and hence universal nature of the condemnation of wars of aggression the court easily refuted various judicial arguments designed to prove that such and such a treaty or declaration was not binding on Germany. On the other hand various difficulties persisted. The practical as well as the theoretical aspects of these treaties faltered often in the years 1919-1939 over the concrete procedure for determining aggression. But one principle is definite: not the parties involved but a third shall determine the legality, and in this trial the court will be that third party. It declares:

> If international law is ever to become a reality, the question of knowing whether an act undertaken on the pretext of legitimate defense was aggressive or really offensive must be the object of a proper study and of arbitration.

The court had no difficulty in fact in determining the aggressor; let us point out merely that the appendix to the charges listed twenty-six treaties in defiance of which Germany had made war.

*Individual Responsibility in a War of Aggression*

But how is individual responsibility in a war of aggression to be determined? Here is where the most serious confusion could arise in opinions. The argument of the defense will illustrate the difficulty: the supreme leader, Hitler, is the only responsible person. Any other position leads simply to the collective condemnation of the whole German people. And there is the very serious problem which weighed so heavily in the international relations of the years 1919-1939: the responsibility of a whole nation.
If one wants a minimum of clearness in the problem, one has only to establish from the outset a distinction between moral, civil and penal responsibilities. That the German people is morally responsible for the war is indubitable. It repeatedly called Naziism to power; it had read and approved Mein Kampf in which moreover it found the principles by which it has been moulded since Frederick II. Except for a very small minority of persecuted people, the Germans rallied to the German foreign policy and its methods. For this moral responsibility the entire German nation must pay the consequences; it is normal that Germany be given a moral re-education, that she be made to furnish long-term guarantees in one form or another by which the community of nations has the right to protect itself against her offensive deeds. This moral responsibility is also the foundation of civil responsibility; it is just that all the Germans be responsible for war reparations after all have profited from depredations. As for penal responsibility, whose penalty may even be death, it could not according to the concepts of civilized nations be settled in collective form. It brings into play elements of intelligence, volition and liberty whose stage is personal conscience. It is therefore basically individual. Undoubtedly other concepts not monopolized by Nazism would admit the destruction or enslavement or ruin of entire classes of individuals collectively defined. They are not amenable to what France, up to now, has considered civilization. It was no more a question therefore of condemning all Germans to death than it was of determining a category of Germans, however few, to be condemned automatically. But how was the guilt of aggression to be determined?

Article 6 of the code which we cited was very vague; it condemned the direction of, preparation of, waging of and, "participation in a concerted plan or plot for any one of the preceding deeds."
Doesn’t a German participate in a war of aggression by belonging to the Nazi Party? Just as a soldier participates in waging it? Isn’t the industrialist who makes shells one of the authors of the plot?

The court tried to define these vague thoughts in order to make them legally usable. In its eyes, the general program outlined in Mein Kampf is not a plot. To form the latter one must have a concrete war plan with a criminal goal and “be close to decision and action.” There were in fact “concerted and successive plans.” The acts of aggression were decided upon in the course of secret conversations each one of which is a plot; so it is with the famous meetings of November 5, 1937, of May 23, 1939, of August 22, 1939, and of November 23, 1939. All those who took part in these meetings are guilty of the crime of plotting for aggression: Goering, Ribbentrop, Keitel, Jodl, Rosenberg, von Neurath, Raeder, Hess. Equally guilty outside the plot are those who participated in the accomplishment of an act of aggression in high position carrying a minimum of political autonomy, which made the office holder an advisor of the supreme head. Funk participated in an exceptionally important manner in the economic preparation of certain aggressive operations. Seyss-Inquart was chief administrator of territories conquered by aggression.

This decision bears with it a certain inevitable arbitrariness; a general judicial theory, that of the accessory, would have permitted an extension of the group of condemned persons. In this light one can question the acquittals of Fritsche, von Papen and particularly of Schacht. In reality, although he was partially in disgrace after the adoption of the four year plan and totally so at the war’s end, he had been the grand master of the rearmament of the Reich. The court decided that rearmament was not participation in a plot for aggression. In our estimation it was wrong² be-

² The Soviet justices took advantage of the Anglo-Saxon procedure, shown to them by the American representative, of issuing a dissenting opinion, a particularly
cause during its labors the disarmament conference quite clearly proposed to make rearmament a specific case of aggression under certain conditions.

However that may be, the judicial make-up of the court reunites the proposals uttered in the 16th century by the great predecessor Francisco de Vitoria in his *De Jure Belli*. He not only proposed the most finished theory of illegal warfare, but concerning the right and duty of examining the legality of a war he laid down principles fundamentally identical with those of the verdict of Nürnberg.³ Thus is brought together again a grand tradition which only the deification of the modern state had tried to interrupt.

**Collective Guilt**

The safety of the principle of individual penal responsibility was affirmed by the tribunal in relation to another question, less spectacular than the trial of the big Nazi leaders but perhaps more serious: that of collective organizations. The court was in fact authorized by the terms of its statute to declare organizations criminal. A single result followed this declaration: during subsequent trials before other courts—national, German, military occupation—this criminal character could no longer be questioned. This declaration was really extremely serious. What consequences wouldn’t such national legislation attach to membership in an organization declared criminal? If it were admitted that this membership brought *automatic* guilt, *ipsa facta* collective

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³ Here is the most characteristic passage: "Legislators, the prince, and in general all those who are admitted into the councils of state or that of the prince, whether they be called to them or whether they be free to come of their own accord, have the obligation and the duty of deliberating the cause of an unjust war. The lower classes who are not admitted or heard in either the council of state or the councils of the prince are not obliged to study the causes of the war; but they are permitted to fight because they have confidence in their leaders. Nevertheless, there might be such apparent signs and such indications of the injustice of the war that ignorance would be no excuse for subjects of this category who took part in it."
tive guilt was reintroduced. This fear was not a vain one: the Inter-allied Control Council of Berlin promulgated a law which punished mere membership in an organization declared criminal by the court, with penalties ranging from death to the loss of political rights! This law is indeed a legal monstrosity and constitutes only one of the elements of lack of cohesion which obtains in the repression of Naziism in Germany.

The tribunal condemned the automatic element and collective criminality; its power

    must be exercised in conformity with admitted legal principles,
    one of the most important of which is that of individual guilt,
    which excludes collective penalties.

To be criminals, then, the members of groups must have belonged freely and must have been aware of their criminal activities. These facts will constantly be the object of individual examination by the courts. In fact the tribunal condemned the Gestapo, the Sicherheitsdienst, the S. S. and the corps of leaders of the Nazi Party. Though pronouncing a severe moral condemnation of German officers, it acquitted the General Staff and the High Command (OKW), as well as the cabinet of the Reich, because these groups did not constitute organizations in the technical sense of the term. Similarly it did not condemn the S. A. whose activity was essentially prior to September 1, 1939.

The verdict of the court indicates numerous distinctions, therefore; the scale of penalties pronounced bears witness to a marked care for nuances and gradations. Undoubtedly, certain parts of the judgment can be questioned, but the construction of the whole is solid and attached to the most ancient and lofty traditions.

Does that mean that the Nürnberg court attains all the goals which can be assigned to it? That is a political question which must be separated from the preceding discussion and to which we shall devote a few brief observations.
II. THE NURNBERG VERDICT AND THE FUTURE OF PEACE

The ashes of the chief criminals have been scattered to the winds and a shameless press was able to print the photograph of the bodies. And so justice is done. Is that all?

A trial of this nature must permit one to maintain the reasonable hope that the abominable crimes it condemned will not reappear. To the extent that it is a work of truth, it must also help in the correction of the guilty parties. Now if the guilty persons have nearly all been executed, the German people remain, morally guilty. How can one isolate the facts of this simultaneously exemplary and medicinal punishment?

In order to do it we must place the Nürnberg trial first in the general frame-work of the repression of war crimes, then in that of international organization, and finally place it before the facts of German psychology.

*In the General Framework of War Crimes*

The Nürnberg verdict is of great importance, certainly, but it constitutes only the culmination of a vast undertaking of justice. Other criminals are and will be judged by national military tribunals or by occupation authority courts organized in each zone. It is impossible to give a figure, but the criminal organizations condemned at Nürnberg alone involve about 700,000 persons. This action of justice strikes more closely at the German populace than does the trial of the leaders responsible for the disasters. This repressive operation must be undertaken in a just, uniform and relatively moderate fashion. We are far from such a procedure, alas! Dissension among the Allies, political reservations, the impenetrability of the eastern zones have so far raised obstacles to it. The Allies, at Berlin and often in their own zones, have issued most severe directives—which are not always applied. Hence a diverging legal procedure, an unequal and irregular repression. Justice for the “little
man" is no longer anything but the bearer of a political attitude in which the eventuality of a future conflict, the preparation of partisan groups as well as the making of secret weapons, are more important than the law.

In this respect the court formulated "recommendations" from which the student gleans technical points which have no place here, but which the French government had adopted long ago. If German affairs were to remain long what they are now, the Nürnberg verdict would soon appear as the fruit of a lofty doctrine certain omissions of which the Allies sanction strongly, but which is far from presenting the qualities of universality and restraining power which are in its essence, since the conquerors hold it rather cheaply. It will be easy for German lawyers to gather inadequate and contradictory judicial decisions and to judge the conqueror in the light of his own principles.

In the Framework of International Organization

In a more general way, the Nürnberg court must be placed in the framework of the evolution of international institutions. Its work in this respect depends essentially on the future, from which it will receive definitive meaning and interpretation. Will it appear ten years from now as one of the vital links in the long chain of achievements which leads to the organization of an international community? Or will it be an effort with no consequences? In this last case, it would lose even the just and impartial character which it presents today to all observers of good faith. It would appear as the work of an idealism not only vain but interested, imposed on the conquered by the conquerors in order to gratify their passions or to serve their interests. It is tragic to think that even today, in spite of the enormity of the crimes which it condemns, this judgment cannot yet have indisputable authority. If, on the contrary, the efforts of governments progress unceasingly in spite of obstacles and checks, if humanity achieves its destiny, then the significance
of this trial will be complete, and it will be so much more willingly forgotten that not all the conquerors were above reproach.

Analogous to these thoughts are those which the great journalist, Walter Lippmann, proposed to the American public; they are those of enlightened Germans of good faith. One cannot see in them, however, the expression of German public opinion.

In the Light of German Psychology

It must first be admitted that most Germans are awaking from a dark and terrible dream and are wholly absorbed in material difficulties and the struggle to keep from dying of hunger. The Berlin demonstrations against the acquittals are an example of a political minority acting toward exact goals. The majority of the Germans are not at this time convinced in any way of the existence of the crimes established by the Nürnberg trial, except perhaps of the horrors of concentration camps. Still they do not speak out too loudly against the punishments in which they see the exercise of a conqueror’s natural rights rather than an expression of justice.

Nevertheless a few apparently general reactions may be noted. Goering’s swaggering and the courageous assurance with which he underwent the trial won even more sympathy for him from his compatriots since he had lost favor in the last years of the Nazi regime. The average German moreover feels himself quite a part of the Wehrmacht; he accepts nothing which might taint the honor of the Army; the condemnation of Keitel and Jodl, their behavior at the scaffold, the degrading death inflicted upon them, all these made vivid impressions upon German public opinion. When Field Marshal von Paulus was called as a witness at Nürnberg, his meeting with his fellow citizens allowed the defense to seize a moral advantage, for its clients were innocent of one crime at least—treason. That was the immediate impression of
several members of the public administration not suspected of being favorable to the German cause. One cannot expect the Germans accustomed for centuries to passive obedience to established powers to raise themselves at once to the level of the eminently lofty civilization of the Nürnberg trial.

In our opinion there is no doubt but that at the moment this trial has a negative effect on German opinion. In order for it to assist in the future in a benevolent re-education of Germany, German politics and international organization must develop profoundly from now on in the direction we indicated above. But that will still not suffice. When we speak of German opinion, we always forget a capital fact, that in peoples as in individuals there exists a vast section of psychic life which is unconscious, in which may occur wounds and in which psychoses may develop. In the German, this collective unconsciousness is highly developed and terribly bruised. It is no mere chance that the most vital formulae of psychoanalysis appeared in German studies.

Perhaps it is in this light that we can find an answer to a question which occurred to us while we looked at this remarkable gang embarked on its last adventure in the courtroom in Nürnberg. Neon tubes shed an artificial light so well diffused that it looked like daylight; the enameled white helmets of the military police, among which the green helmet of Colonel Andrus introduced a pastoral note, held the eye at first; only later did one catch an over-all glimpse of that group of men, somewhat pale, already collected behind solemn and frank M. P.'s, like dead leaves behind the fences of a park in autumn. These faces and attitudes were so ordinary and easy to identify in any German group that they might have climbed down from a third class compartment of a German train chosen at random. This observation is frightening, for it seems on one hand that Germany may indefinitely give rebirth to a group of this kind, and on the other hand we wonder how this compliant German
which they represent so well, could have committed these monstrous crimes.

In our opinion the cause must in part be sought in these psychoses whose cure we must hasten and whose renewal we must prevent. The actions of the great nations toward Germany should also take into consideration the conditions of the German psychology. This is not the place to sketch these problems. But the German mind is fearfully oppressed by an inferiority complex, and it is known that cruelty nearly always has its origin in fear. But why does Germany feel herself inferior and why is she afraid? These questions should be attacked from a medical point of view. They determine an important aspect of the re-education of Germany and of her real liberation.

Why must it be that the simple announcement of these problems appears today almost peculiar, if not laughable?

In the stadium of Nürnberg one feels perhaps better the vast danger which threatens us. Peaceful tennis players and carefree sport enthusiasts play there where legions used to mill, eager to set out on the conquest of the world. The seats are empty and part of the mob which howled there now lies under the rubble of destroyed cities. The magnificent stone monument is but a witness to the weakness of empires. Merely by the strength of its simple architecture it accuses the silence and emptiness. Will the civilization which conquered barbarity be able to people this solitude? Will it have the youth and confident energy which will unite nations in enthusiasm for the triumphs of peace?

Paul Reuter.

Translated from the French by Robert D. Nuné