

11 Victors' Justice?

It has often been claimed that the trials and executions of Axis war criminals after World War II were simply "victors' justice". German and Austrian right-wing exponents, especially, have used this buzzword to denigrate the trials of the Major War Criminals and of the murderers of Allied airmen and prisoners of war.

The allegations of "victors' justice" stem principally from three arguments:

(a) That a victorious nation may be tempted to punish her defeated foes not because she seeks justice but because she seeks revenge for the distress she suffered.

(b) That it is wrong to subject someone to the application of a law which is not his, and which follows a different concept of justice.

(c) That no members of the Allied forces were tried for war crimes.

In the case of the war crimes committed during World War II, it must be remembered that there was indeed a set of rules of warfare, agreed upon in international treaties, to which Germany was a party. However there was no agreement about what the punishment for contravention would be, and who was entitled to enforce it. Of course in 1945 it was too late to seek such an agreement by treaty. And if the victors had not taken the task upon themselves, no one else would have had the power and the moral authority to do it. But justice needed to be done!

Nevertheless: No German government, from the foundation of the Federal Republic of Germany in 1949 to this day, has ever acknowledged the Nuremberg sentences as being effective in law.

The reasons are open to conjecture.

Maybe it was the continental European legal system which does not recognize Common Law and sticks to codified law no matter what, refusing punishment if the act was not defined as punishable before it was committed ("nulla poena sine lege").

Maybe it was a matter of political expediency to avoid steps which would hurt the former soldiers and enrage the right fringe of the political spectrum.

Maybe it was just comfortable for the Germans to wash their hands of the matter. If anybody asked, they might have said: "The Four Powers took this out of German hands, settled it before this state was established, and made provisions that we cannot legally overturn this judgment now. So what's the point in commenting on it either way?"

The Nuremberg Tribunal in its Judgment said:

Crimes against international law are committed by men, not by abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced.

Justice Robert Jackson, US Supreme Court Justice and the main architect of the Nuremberg Tribunals, said in the opening statement of the Trial of the Major War Criminals:

The wrongs which we seek to condemn and punish have been so calculated, so malignant, and so devastating, that civilization cannot tolerate their being ignored, because it cannot survive their being repeated.

He further declared:

That four great nations, flushed with victory and stung with injury, stay the hand of vengeance and voluntarily submit their captive enemies to the judgment of the law is one of the most significant tributes that Power has ever paid to Reason.

There are no truly definitive statistics for the number of trials, death sentences, prison sentences and acquittals. We can offer definitive statistics for hangings in the British and American zones, but there were also executions by firing squad and guillotine in the French zone.

According to the Jewish Virtual Library 5,025 people were convicted in the American, British and French occupation zones between 1945 and 1949. A total of 806 defendants were sentenced to death of whom 486 were subsequently executed. 320 had their sentence commuted to prison terms of varying lengths and in many cases they were released early.

The American Military tried 1,941 defendants at Dachau, Nuremberg and Ludwigsburg and other locations, of whom 1,517 were convicted and 424 acquitted. 324 death sentences were passed. A total of 282 were subsequently carried out, 16 at Rheinbach and Bruchsal, 10 at Nuremberg and 256 at Landsberg.

In the British Occupation Zone, 1,085 defendants were tried before military tribunals at Lüneburg, Hamburg, Wuppertal and some 20 other locations, resulting in 240 death sentences for war crimes. 159 of these persons were hanged, all at Hameln.

The United Nations War Crimes Commission gives different figures:

Great Britain: 274 cases, 909 defendants, 214 death sentences, 437 prison terms, 258 acquittals.

USA: 489 cases, 1,672 defendants, 426 death sentences, 990 prison terms, 256 acquittals.

France: 117 cases, 427 defendants, 151 death sentences, 234 prison terms and 42 acquittals.

The International Research and Documentation Centre for War Crimes Trials data base lists 1,883 individuals tried by the US, each with their trial location and outcome. It gives 341 acquittals, 216 sentences of life in prison, 826 lesser prison sentences and 304 death sentences. In some cases the outcome is shown as “unknown” and in others the proceedings were stayed and not restarted.

So do the overall outcomes of the trials fit that claim of “victors’ justice”?

All the trials and reviews of sentences that we have been able to examine seem to show a genuine desire to be fair and to follow the law, even if it would lead to acquittal.

Three examples for this have already been named (the US cases of Friedrich Scheilz and of Franz Umstatter, and the British case of Heinrich Kreß, see above, chapter 6).

Another is the outcome of a little known war crimes trial which was held in Hamburg before a British military court. The former commandant of Groß Rosen concentration camp, SS Sturmbannführer (MAJ) Johannes Hassebroek and two of his staff were accused of the killing of ten SOE agents who had been shot by an SS firing squad sometime in late July/early August 1944. On 22 October, 1948 all three accused were sentenced to death, but upon advice of the Judge Advocate, Lord Russell of Liverpool, the British Commander in Chief of the British Army of the Rhine commuted Hassebroek's sentence to life in prison (later reduced to 15 years), and set the two others free. Lord Russell felt that it was doubtful whether the defendants necessarily must have known that the execution was unlawful i.e. that there had been no trial. The benefit of the doubt...

Fairness not only showed in sentencing or acquitting, but also in the conduct of the trial. Two examples for this can be found in the proceedings of the Tilburg case (see above, chapter 6) tried at Essen in Germany in June 1946. On the first day of the trial one defence counsel, Dr. Lietzmann requested a ten minute adjournment to discuss evidence with his clients that had only arrived the previous day. The Judge Advocate, Wing Commander O. C. Barnett conferred with the members of the court, and the court granted the adjournment without setting a time limit of ten minutes.

Later on the same day, through an oversight the defendants were not given any food at lunchtime. The prosecutor, Captain Dromgoole considered it his duty to inform the Judge Advocate as soon as the proceedings resumed, and asked for an adjournment. The Judge Advocate got rather angry and interrogated in open court two soldiers of the guard detachment why this had happened. After just 35 minutes into the afternoon proceedings, the Judge Advocate said that “this court ... will not tolerate the continuance of this trial unless and until they are satisfied that all proper arrangements are made both for the food and accommodation of the accused...”, and the court adjourned to the next day.

To the average person it may seem curious that the court should be so strict about an apparently small issue, and even discuss it in open court so that questions and answers became part of the verbatim trial

transcript. The reason seems to be that it touched the question whether the defendants were at all times in a state fit to stand trial, and the court did not want to have legal doubts raised about that. In Canadian cases, the transcripts of the trial proceedings among the appendices even include medical certificates proving the fact that the accused were examined every day to check their health.

If some sentences were too severe in 1945/46, they became almost ridiculously lenient later. The death penalty was by no means awarded indiscriminately. In fact less than 10% of the defendants tried in three Western occupation zones were actually executed.

It is important to remember that in this period, under British law, the death sentence was mandatory for murder, and those convicted and whose appeal failed would either suffer death by hanging or have their sentence commuted to life in prison, there being no other alternatives. In most states of the USA, those convicted of first degree murder were sentenced to death, although again the sentence could be reduced on appeal or commuted by state governors. The death penalty for murder, to be executed by beheading with the guillotine, was also part of the German penal code at this time. (It was not abolished until, in May 1949, Germany adopted a new, democratic constitution, the Basic Law.)

During the following decades it became apparent that those to whom it concerned, politicians and soldiers, had not yet learnt the lesson. Time and again, the world was horrified by news of appalling war crimes. The standards of International Law as developed and established in the post-war period have not yet become an effective tool to prevent inhumanity in warfare.

In this respect, the Hangmen At War have failed.

Appendices

British Table of Drops, 1913 issue

Together with other relevant government pamphlets (e.g. a "Memorandum of Instruction for Carrying out the Details of an Execution") the Home Office issued a Table of Drops to sheriffs and executioners.

There were basically three versions of it, with different degrees of compulsion. The table which was relevant for the period 1945ff was the one from October 1913. However, from 1939, it was customary to add 9 inches to the drop length taken from this table, and new executioner trainees were taught to do it by their instructor.

The drop tables can be found [here](#).

Hangings at Hameln (British)

For technical reasons, we preferred to publish this list [here](#).

Hangings under US jurisdiction

For technical reasons, we preferred to publish this list [here](#).

Victims' List

There were far more Allied airmen murdered while prisoners of war than are mentioned in the "Allied Airmen" chapter. For a database of all cases known to us, see <http://aircrewremembered.com/VitzArchive/>