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Legalizing Hate: The Significance of the Nuremberg Laws and The Post-War Nuremberg Trials

RICHARD D. HEIDEMAN*

I. INTRODUCTION

The establishment of the Nuremberg Laws was a defining moment in history, as the embodiment of state-sponsored, sanctioned and enforced hate, religious discrimination, economic boycotts, and persecution of Jews in Germany reached epidemic proportions. While some believe the implementation of the Nuremberg Laws occurred overnight, the process in fact, although relatively brief, was gradual, beginning in the earliest phases of Nazi activities. Even prior to the 1933 election of Adolf Hitler as Chancellor, and the official onset of the National Socialist German Workers' Party (NSDAP) as the national ruling government organization, concerted efforts had already been initiated to delegitimize the very existence of the Jewish people in Germany and eventually throughout Europe.

The progressive strength of these social endeavors paved the way for governmental sanctions that would effectively serve as the first anti-Semitic decrees, among which were the Nuremberg Laws. These laws solidified the political position as it related to the Jewish citizens of Germany, drawn from the ideology laid out in the Nazis' twenty-five-point plan of 1920.

A study of state-sanctioned hate is essential to understanding the wide-ranging and devastating impact of the Nuremberg Race Laws. The Nuremberg Laws and decrees highlight the tremendous power and horrendous misuse of popular government in hijacking and corrupting the rule of law. It is inconceivable to the modern mind that a democratic

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government could be seized and used to implement laws so perverse that they rejected, denied, and derogated an entire people's right to live free, respected, and enabled in an educated, cultured, and modern society. These laws emboldened an entire nation to turn against their fellow citizens, neighbors, colleagues, and friends, many of whom had fought alongside them in the First World War, and subjected the Jewish people to social, economic, and political isolation, ultimately culminating in the attempted mass extermination and genocide of an entire people and other minorities.

The laws of the Nazi government made the Holocaust possible. They permeated all aspects of daily life in German society, stoked national Anti-Semitism, and enabled, influenced, and emboldened the police and German judiciary to act with complete disregard for the inalienable rights of people to be safe and free. This article addresses a myriad of ways in which radical Nazi ideology took root, shaped public opinion, and transformed the rule of law into the ultimate weapon of terror.

II. THE NUREMBERG LAWS: ENACTMENT, IMPLEMENTATION AND DEVASTATION

Immediately after the Nazis took power in 1933, Jews were faced with government-enforced discrimination. Nearly two years before the Nuremberg Laws were enacted, the behavior of the bodies and forces involved in both government and society reflected the blatant hatred toward its Jewish citizens.

In March 1933, Storm Troopers (SA) raided Jewish-owned stores throughout Germany in order to segregate Jews from Germans. The SA dragged Jewish workers into the streets, where they proceeded to humiliate and degrade them by forcing them to march in public carrying signs that identified them as "Jewish swine," alongside Germans who employed or engaged socially with Jews. Almost immediately, the campaign to promote boycotting Jewish establishments took root, urging the citizenry to buy their goods only from Aryan, German businesses.¹ Less than a month later, Jews became barred from holding public office, were banned from certain forms of employment such as academia, media, banking, farming, and public cultural appearances; Jewish employees in Christian homes were fired, for fear of their influence on Aryan children; Jewish immigrants were denaturalized and sent to refugee

1. *The Boycott of Jewish Businesses*, U.S. HOLOCAUST MEM'L MUSEUM, <https://www.ushmm.org/outreach/en/article.php?ModuleId=10007693> (last visited Jan. 13, 2017).

camps on the border of Poland;² and Jewish lawyers were banned from practicing in German courts. The entire society was transformed in the image of the exemplary Nazi and Aryan ideal.

The Nazis actively abused their power in an effort to change the way the general public saw Jews. Signs began to appear in shops and other windows that said, “Jews Not Welcome,”³ and communities even began posting placards and banners with the same message. The fact that these actions were not imposed by the government, but rather by the local population itself speaks volumes regarding the impact of the governmental incitement and endorsement.

The largest action took place on April 1, 1933, with a daylong nationwide boycott of Jewish businesses. Members of the SA and Gestapo (SS) were stationed in front of stores and offices to inform passersby that these shops had Jewish proprietors, discouraging them from entering or purchasing. Many store windows had the German word “Jude” (Jew) written across them, or a large Star of David painted across the door. Nazi rhetoric had long proclaimed the Jews as evil aggressors who sought to destroy Germany and the German way of life. In front of a store in Berlin, official SA forces held a sign that said, “Germans! Defend Yourself! Don’t buy from Jews!”⁴ In some towns anti-Jewish violence erupted and, despite the official boycott ending at midnight, local boycotts continued in subsequent years.⁵

A week after the national boycott, a law was passed restricting employment in the civil service to “Aryans,” causing Jewish government workers, including teachers, to be fired based entirely on their religion and heritage. In the following weeks, laws targeting other Jewish professionals, such as lawyers and doctors, were passed by the Nazi state.⁶ Today in Schöneberg, a district in Berlin, there are signs citing the various four hundred laws or decrees that forcefully excluded Jews from society:

“Jews in Berlin may only buy food between four and five o’clock in the afternoon.” “Jews are not allowed to have pets.” “Jewish Veteri-

2. Greg Bradsher, *The Nuremberg Laws: Archives Receives Original Nazi Documents that ‘Legalized’ Persecution of Jews*, 42 PROLOGUE, no. 4, Winter 2010, <https://www.archives.gov/publications/prologue/2010/winter/nuremberg.html>.

3. *This day in History – September 15, 1935: Nuremberg Race Laws Imposed*, HISTORY.COM, <http://www.history.com/this-day-in-history/nuremberg-race-laws-imposed> (last visited Jan. 13, 2017).

4. *Photograph*, U.S. HOLOCAUST MEM’L MUSEUM, https://www.ushmm.org/outreach/en/media_ph.php?MediaId=2672 (last visited Jan. 13, 2017).

5. *Jews in Prewar Germany*, U.S. HOLOCAUST MEM’L MUSEUM, <https://www.ushmm.org/outreach/en/article.php?ModuleId=10007687> (last visited Jan. 13, 2017).

6. *Id.*

narians may not open practices.” “General employment ban.” “Jews aren’t allowed to leave home after 8PM.”⁷

The laws went far beyond inhibiting only economic activity. The Nazis attempted to isolate Jews by controlling their economic, social, religious, family, and private lives through a series of oppressive laws designed to segregate, ostracize, and destroy the sanctity of home and community, resulting in the burning of books, destruction of culture and religious institutions, and leading to both the ghettoization of the Jewish communities and the deportation of millions of people whose lives and families were ultimately destroyed.

In doing so, the Nazis effectively segregated the Jewish community in its entirety, dictated what they were allowed to do, when they were allowed to do it, and forced them to live as second-class citizens. Designed to impoverish the Jews and create uninhabitable conditions, the Nuremberg Laws fostered the belief that Jews were evil and Germany would only be successful again if there were no Jews to weaken, poison, or sabotage their purity as a nation.

In addition to the anti-Jewish legislation and laws, the Nazi regime sought to alter the way Germans thought and acted in their daily lives. The resulting “groupthink mentality” helped the Nazis achieve multiple goals: on the one hand, fostering an oppressed, ostracized, punished Jewry, and on the other, creating a society that enabled and supported torture, murder, and subsequently, full-scale extermination.

In the Weimar Republic, civil servants were deemed politically neutral in order to prevent them from enforcing one party’s agenda over others, regardless of who was in power. Under the Nazis, however, laws “redefined [civil servants] as ‘inherently political’” in an effort to turn the entire political system against Jews.⁸ Civil servants had to vote along Nazi party lines, live their lives in accordance with Adolf Hitler’s views, and were barred from filing complaints against superiors even if they disagreed with the morality or legality of an order.⁹ Nonpolitical entities were thus coerced or corrupted so that they would become tools of the Nazi Party. The courts were similarly infected with radicalism as

7. Ian Johnson, *Jews Aren’t Allowed to Use Phones’: Berlin’s Most Unsettling Memorial*, NEW YORK REVIEW, <http://www.nybooks.com/daily/2013/06/15/jews-arent-allowed-use-telephones-berlin-memorial/> (last visited Jan. 13, 2017). For a larger sampling of the over four hundred anti-Semitic Nazi decrees, see *Antisemitic Legislation 1933–1939*, U.S. HOLOCAUST MEM’L MUSEUM, <https://www.ushmm.org/wlc/en/article.php?ModuleId=10007901>, where twenty-nine of them are listed and briefly explained.

8. INGO MULLER, *HITLER’S JUSTICE: THE COURTS OF THE THIRD REICH* 82 (Deborah Lucas Schneider trans., Harv. Univ. Press 1991).

9. *Id.* at 82–83.

German law professors were conscripted to write defenses of clearly discriminatory and blatantly illegal, yet seemingly binding, laws.

Academia was also infected with the venom of Nazi ideology. Professors wrote indefensible and absurd arguments that justified or considered radical laws “‘advisable’ from a legal point of view” so as to further the Nazi agenda.¹⁰ There was no one to argue against the party’s changes as Hitler and the Nazis proceeded to dismiss “120 of the 378 scholars who had been teaching at German law schools in 1932.”¹¹

It was through this unique campaign of persecution and terror that the Nazis eliminated their political enemies, resulting in the eventuality that essentially left no one who was willing to challenge Nazi laws that simultaneously crippled the Jews’ and non-Nazi Germans’ ability to counter the onslaught of their ideology of hate. Justice gave way to radicalism as the court system became a Nazi propaganda tool that was more concerned with promoting the party’s ideology than protecting the country’s citizens. It supported insidious laws with ludicrous explanations that based right and wrong on medieval values such as duty and honor in service to the Nazi government and Aryan race.¹² It was simple for Third Reich courts to continue supporting the Nazi laws after creating early precedents in 1933 that took away political rights from anyone who opposed the NSDAP. After taking away their opponents’ political rights, it was easy for them to justify stripping other liberties from German Jews, inhibiting their ability to thrive economically, socially, religiously, or humanly, now considered official enemies of the state.

The growing momentum of these laws came to a head when, on September 15, 1935, the Nazi Party revealed and instituted the Nuremberg Race Laws at their annual party rally. Hitler did not simply issue a dictatorial decree establishing his new laws; instead, he requested that the Jewish expert at the Interior Ministry, Bernhard Lösener, help draft laws that would achieve his goals. Lösener was unable to capture Hitler’s ideas in legitimate laws, so eventually Hitler told him to “simply draw up something that corresponded with a certain passage from his book *Mein Kampf*.”¹³ Additionally, to utilize the full force of law and to ensure that his new race laws were universally accepted, Hitler read them to the German Parliament, which proceeded to vote on and approve the laws. The representatives of the people applauded Hitler’s

10. *Id.* at 68.

11. *Id.* at 68–69.

12. *Id.* at 77.

13. Nathan Stoltzfus, *Societal Influences on the Promulgation and Enforcement of the Nuremberg Laws*, 94 *SOUNDINGS*, no. 3/4, Fall/Winter 2011, at 378.

new laws and disseminated support for the legalized Nazi ideology to their constituencies. In this way, Hitler and the Nazi Party were able to adhere to valued German traditions by respecting the separate powers of government and representation of the people, while simultaneously stripping a section of the population of their citizenship.

Much like the restrictions imposed in the first years of the Nazi regime, this new set of laws identified Jews as low-class citizens, stripped Jews of their German citizenship, prohibited them from marrying or engaging in sexual relations with Aryan Germans, and classified them as foreign nationals no longer entitled to the protections and rights of German citizens under the law.¹⁴

The Nuremberg legislation became the cornerstone for legalized persecution against former German citizens.¹⁵ Unlike any other laws in history, these laws directly targeted German citizens with the intention of formalizing a statewide campaign towards their “*entfernung*,” or their elimination. The Reichstag (Germany’s Parliament) and German judiciary adopted and upheld the laws as valid legal doctrine that they knew would have significant adverse effects on what became former-citizens. The laws classified hundreds of thousands of people as Jews based on whether they had the blood of three or four Jewish grandparents. The Nazis were hesitant to label those who were half-Aryan and half-Jewish as Jews because they did not want to alienate such a large portion of the population. Extremists such as Dr. Gerhard Wagner argued that “partial Jews were more dangerous than full Jews because their mix of German and Jewish blood would enable them to lead the state’s enemies with the skill of Aryans.”¹⁶ Nonetheless, countless individuals from intermarried families found themselves swept up in the reign of terror and cornered into a Jewish identity they had never possessed. Even more than formalizing a code of laws to target Jews, the Nuremberg Laws encouraged a new code of conduct for the German people which forced and enabled them to turn against their neighbors, colleagues, former friends, and even distant family members. With the laws, institutions, and people of Germany against them, there was no hope for Jews to have a decent life or to be safe in their homes, communities, religious institutions, businesses, schools, or chosen professions.

Some of the best examples of how the race laws affected people can be identified through an examination of the ways in which peoples’

14. *The Nuremberg Laws: Background & Overview*, JEWISH VIRTUAL LIBR. (2016), <http://www.jewishvirtuallibrary.org/jsource/Holocaust/nurlaws.html>.

15. Bradsher, *supra* note 2.

16. *The Nuremberg Laws: Background & Overview*, *supra* note 14.

attitudes changed toward “mixed race” couples of Germans and Jews. The Nazis referred to the mixing of races as “race defilement” and convinced the German people that the “German *Volk*” (or what the Nazis termed Aryans) would only survive if there was a system in place to ensure Germans had only pure Aryan children.¹⁷ Thousands of Germans were either brought to trial for the crime of race defilement or investigated but not charged. Mixed couples grew weary of the “condemnation and harassment they faced on a near daily basis” from the rest of their community.¹⁸ In small towns, such as Ramscheid, Jews in mixed couples were arrested due to “community outrage” over incidents such as a Jewish man and his girlfriend having a child out of wedlock, despite their marriage having been delayed twice due to anti-Jewish discrimination and violence.¹⁹ While Ramscheid officials probably exaggerated the community outrage, children and adults alike talked about the couple as a serious scandal.²⁰

Smaller happenings, such as harassing couples until they stopped going to riverfronts and beaches together in their bathing suits, occurred regularly. Some confrontations turned violent as Jewish men and their non-Jewish girlfriends were assaulted in the street and paraded around town, announcing their crime of having social and sexual relations with someone of a different race.²¹ The communal disapproval began even before the Nuremberg Laws were enacted; due to their passage, many mixed couples simply decided that it was better to split when their relationship became a burden and source of danger.

Aryan men and women alike ended their relationships with Jews “in order to spare [themselves] further trouble and inconvenience” despite potentially never previously facing harassment.²² The constant threat of arrest, humiliation, and being categorized with Jews was enough to make most Aryan Germans reconsider and put an end to their sexual and social involvement with Jews. In 1932, just before the Nazis came to power, 65.1% of Jews in Germany were marrying someone not racially considered Jewish. However, by 1939 that number had plummeted down to 20.6% of Jews involved in new marriages.²³ The towns

17. Patricia Szobar, *Telling Sexual Stories in the Nazi Courts of Law: Race Defilement in Germany, 1933 to 1945*, 11 J. HIST. OF SEXUALITY (SPECIAL ISSUE) 131, 131–32 (2002).

18. *Id.* at 135.

19. *Id.* at 136.

20. *Id.*

21. *Id.*

22. *Id.* at 137.

23. Nico Voigtländer and Hans-Joachim Voth, *Married to Intolerance: Attitudes toward Intermarriage in Germany, 1900–2006*, 103 AM. ECON. REV. 79, 80 (2013).

that showed the biggest decrease in approval of mixed marriages between 1932 and 1939 are reportedly among the least tolerant today.²⁴

In the early years of the blood purity laws, Jews were sentenced to short jail sentences ranging from three months to one year. However, the Ministry of Justice decided a longer punishment was necessary, and many Jews perished during their multi-year incarcerations due to harsh conditions.²⁵ Jewish women could not be charged or sentenced for race defilement, though they could be charged as witnesses and were often held in custody during the investigation and sometimes for months after the trial ended. By the 1940s all Jewish men and women involved in race-defilement cases were turned over to the secret state police, as official policy mandated.²⁶

Anti-Semitism of the Nazi Party represents a complex ideological conspiracy through the blending of acts committed under the “authority” of government and the willing conduct of citizens, demonstrating evil intent, design, and an enterprise committed to disenfranchisement, destruction, and death. Moreover, it successfully fostered negative perceptions and animosity toward Germans of Jewish descent, which were wholly based upon the fallacious assertion of “purity of race,” an issue that easily garnered and emboldened hatred. The true objective, as some historians claim, was the obliteration of people born into, and practicing, their religion, beliefs, and way of life—totally disregarding the sanctity of life, right of expression, and the rich contribution the Jewish people had made to the culture, education, and society of German civilization.

Attacks upon Jewish institutions increased, and the infamous *Kristallnacht*—the Night of Broken Glass—in November 1938, saw the convergence of state and individual actors burning synagogues throughout Germany.²⁷ The full power of the government, combined with the activated and legitimized hatred of the citizens, sanctified destruction, hate, and murder. The violence and murder, however, must be viewed in the context of the government initiated and encouraged policies and practices of defilement.

Without the German people’s consent and approval, it would have been impossible for the Nazis to enforce their inhumane laws. By first convincing the average German that the loss of the First World War and

24. *Id.* at 81.

25. Szobar, *supra* note 17, at 139.

26. *Id.* at 139–40.

27. *Kristallnacht*, U.S. HOLOCAUST MEM’L MUSEUM, <https://www.ushmm.org/wlc/en/article.php?ModuleId=10005201> (last visited Jan. 13, 2017).

the economic hardship that followed was all because of the Jews, and subsequently identifying the dangers they represented to every man, woman, and child, the Nazis made the Jew the common enemy of every German and the Reich as a whole. Hence, while the Nuremberg Laws may have, in one sense, been in line with the emergence of a body of self-justified public opinion, these concepts created and promulgated by the Nazis were borne from the long history of anti-Jewish sentiment in German society.²⁸ The laws made it legally acceptable for people to condemn and attack Jews—a significant step beyond making it simply socially acceptable to lash out at them. The Nuremberg Laws also permitted and encouraged the German people to become more suspicious of the private lives of people with whom they had been friendly for years. Court cases relied heavily on witness testimonies, drawing the German population into the process of determining who was a Jew and who was not. Family members were compelled to testify before the court and asked to explain their relative's ancestry and racial descent.²⁹

Not everyone could identify a Jew by sight or name because of the generations of mixed couples and the misassumptions about “Jewish characteristics.” To counteract this, courts and police instructed people on ways to distinguish between Jewish and Aryan women. On an institutional level, the government attempted to teach German citizens how to separate themselves from the undesirable Jews based solely on looks, physical characteristics, and social interactions.

Organizations, such as the police force, promoted discriminatory practices on their own, without direct orders from the Nazi government. They explained different ways to determine if someone was Jewish, such as: if she used Jewish expressions; portrayed “characteristically Jewish traits;” her appearance; the fact that she had Jewish acquaintances; and racial-appearing physical characteristics beyond hair and eye color.³⁰ Courts also pointed to pictures of Jewish women to show features that could be seen hidden behind blonde hair and blue eyes. The race laws and the institutions that promulgated them encouraged the average German to pay extra attention to the people with whom they and their neighbors interacted. Even when Jews tried to follow the law by engaging in sexual relations only with people they believed to be Jewish, they could be punished. Before the Stettin County Court, for example, a Jewish man pleaded that he asked his partner if she was Jewish

28. DANIEL JONAH GOLDHAGEN, *HITLER'S WILLING EXECUTIONERS: ORDINARY GERMANS AND THE HOLOCAUST* 32 (Vintage Books 1997).

29. Szobar, *supra* note 17, at 146.

30. *Id.*

and that the woman assured him that her mother was Jewish.³¹ While he initially won the case, on appeal at the Supreme Court it was decided that Jews had the legal obligation to check official documents and that he had failed to do so; therefore, he violated the Law for the Protection of German Blood and German Honor. When Jews attempted to comply with the law, the courts found ways to ignore the facts and condemn the Jews to concentration camps, even including determining that official documents were not enough to prove a person's nationality.³²

Court decisions included language that supported the Nazi myth that Jews were fundamentally different from Germans. They claimed that Jewish women were sexual deviants, while the men were animalistic "pimps, pornographers, and 'white slave traders' whose sole desire was to sexually exploit 'German Women.'"³³ As to be expected, Germans found these to be horrifying violations of acceptable social behaviors and were encouraged to avoid interactions with Jews who intended to "spread syphilis and other sexual diseases . . . in a plot to undermine the Aryan race."³⁴ The elite, and the members of society responsible for determining and enforcing acts for the good of the nation, further promoted the separation of races by infecting the average German with hateful lies that served to create a larger divide between what it meant to be German and what it meant to be Jewish.

Following the implementation of discriminatory laws, there was a widespread movement against Jewish life that influenced everyone from children to community officials. After the assassination of Ernst vom Rath, a German embassy official in Paris, by a Jewish teenager, chief Nazi leaders decided there should be a night of violent raids against Jews since "World Jewry" was responsible for the murder.³⁵ Rather than make it an official attack, the Nazis used local leaders and the Hitler Youth units throughout Germany to destroy Jewish-owned homes and businesses in a night of "spontaneous" riots designed to further divide German civilians from the Jewish population. The tragic events of *Kristallnacht*—twenty-four hours of devastation of synagogues, religious institutions, and Jewish businesses—largely destroyed the fiber and fabric of the Jewish communities and Jewish life. The effects of Nazi law and ideology were evident as young Germans were rallied to violence, while German police arrested as many Jews as possible, specifically

31. MULLER, *supra* note 8, at 105–06.

32. *Id.* at 106.

33. Szobar, *supra* note 17, at 147.

34. *Id.*

35. *Kristallnacht*, *supra* note 27.

targeting young, healthy men.³⁶ Police recorded incidents of rape, murder, and suicide during and after *Kristallnacht*, but they only arrested Jewish men, not the German perpetrators.

Out of fear that German insurance companies would lose money fixing the damaged buildings, shattered windows, and other evidence of destruction, the Nazi government passed legislation forcing the Jewish community to pay one billion Reichsmarks (US \$400 million at 1938 rates), and transferred Jewish-owned businesses to Aryans for a fraction of the value.³⁷ Jews had two options: comply with the law or be arrested and possibly transported to some of the first concentration camps that formed before and after *Kristallnacht*. These post-*Kristallnacht* laws aimed to further remove Jews from social life and eventually resulted in the expulsion of Jewish children from schools, as well as a ban preventing Jews from being admitted to German public places such as theaters and concert halls.³⁸

Germans banded together, closing their ranks, and their increased ridicule and repression of Jewish life snowballed into massive support for the government in its efforts to “protect” the German people from outsiders. It became so extreme that the courts decided that “dishonor to the race . . . can also be committed without physical contact” or intentional sexual situations.³⁹ Despite the court’s clear knowledge of how interrogations were performed coercively in order to extract a confession from Jews, they convicted Jews of violating the Blood Laws.⁴⁰ Courts allowed any means necessary in order to “protect” German blood. After the Nazis removed any jurists willing to fight for true justice, legal institutions realized it was better to conform to the Party’s ideas of defending the Aryan race.

The Nuremberg Laws did as much damage to Jewish life as the Nazi violence. Gradually removed from public life and anti-Semitism being codified into law, the ideology of persecution became the accepted norm among German citizens and, subsequently, the nations occupied by Nazi Germany. The outburst of anti-Semitic violence was a signal to the Nazi elite that anti-Jewish measures would be welcomed and an increase in radicalism would not be met with any resistance.

As World War II raged on into the 1940s, the Nazis decided that they needed a better system for distinguishing between Jews and Ger-

36. *Id.*

37. *Id.*

38. *Id.*

39. MULLER *supra* note 8, at 102.

40. *Id.* at 102–13.

mans, reviving the medieval practice of the “Jew badge” used in various countries throughout Europe.⁴¹ Almost immediately following the invasion of Poland on September 1, 1939, Jews were forced to wear a yellow Star of David or a white armband with a blue Star of David (depending on their location) whenever they went out in public, but on September 6, 1941, the Nazis decreed that all German Jews had to wear armbands beginning September 19th so that everyone could see who was a Jew.⁴² This was detrimental to the ability of Jews to go out in public without facing some sort of embarrassment or harassment, also preventing escape from the persecutions and tortures imposed on them.

The Nazis corrupted a system of justice and turned it into a weapon of terror, hate and a false justification for acts against Jewish people, their businesses and their very existence. By twisting the law to attack their own citizens, the Nazis were able to use government systems and independent institutions, such as the police and judiciary, to enforce radical ideas of racial superiority and to launch repeated persecutions against the Jewish people. This false predicate served as a foundation for the determination and decision that the only answer was extermination as the final solution to the “Jewish Question”—the problem of what to do with the Jews. The Nazis managed to influence a majority of the German population through various deceptions and propaganda that led to a widespread belief that it was necessary to segregate and eventually remove all of the Jews in Germany. The Nazi ideology became so ingrained in people that organizations began to take it upon themselves to find ways to further the Nazi goal of ridding Germany of every Jew, leading to an aggressive campaign of segregation, deportation, concentration and annihilation—all under the seeming color of law.

Six million Jews, and millions of other minorities, were massacred in the Holocaust; humans were beaten, shot, burned, and gassed through a systematic effort aimed at annihilation committed under the watchful and blind eye of whole societies. The systematic murder of innocent people was and remains beyond comprehension as acts of both the government in power and of ordinary people, behaving within and empowered by the scope of law, in the belief that state-sanctioned conduct toward the Jews, no matter how heinous, was somehow justifiable, acceptable conduct. There was no justice, only death, destruction, degradation, dehumanization, and depravation—under the deceptive color

41. ROBERT S. WISTRICH, *ANTISEMITISM: THE LONGEST HATRED* 26 (Pantheon Books 1991).

42. Martha Jelenko, *Germany*, 44 *AM. JEWISH Y.B.* 185 (American Jewish Committee 2008).

of law.

III. THE NUREMBERG TRIALS: IMPERFECT JUSTICE

Nuremberg will always be remembered for the perversion of law that occurred in the Nazi era; but, in an ironic twist of history, it also is enshrined, as a result of the Nuremberg Trials, as the place where hate was put on trial and justice was enacted. These trials, although imperfect, prevailed in creating a new era of international norms.

As the war, and the Holocaust, came to an end and in the aftermath of the murder and genocide against the Jewish people and other minorities, it became increasingly clear that accountability for the horrendous and heinous crimes that had been perpetrated by Germany, the SS, and the collaborators was essential. Lord Justice Sir Geoffrey Lawrence, who served as president of the 1945–1946 International Military Tribunal at Nuremberg (“IMT”), wrote later that there had been three possibilities: let the atrocities go unpunished, put the Germans “to death or punish them by executive action; or to try them.”⁴³ Justice Robert Jackson echoed this sentiment in his June 1945 report to President Truman in which he wrote, “we could set [the Nazi prisoners] at large without a hearing . . . we could execute or otherwise punish them without a hearing . . .” so, therefore, “the only other course is to determine the innocence or guilt of the accused after a hearing” so that there will be a clear record of the United States’ motives.⁴⁴ After World War I, the alleged criminals were tried in German courts with few convictions with the rest receiving minimal sentences for their crimes. However, in the aftermath of World War II and the shocking reality of the Holocaust, the Allies created the Nuremberg Trials, an IMT, held in front of Allied judges instead of relying on a single nation’s judges to ensure that justice reached the clear perpetrators of what came to be established as war crimes by the Geneva Conventions. Although it was a joint effort between the victorious Allied nations, there is no doubt that Nuremberg was an American creation,⁴⁵ as evidenced by the subsequent twelve US military tribunals that were held without the other Allies.

Had it been left up to Winston Churchill or Joseph Stalin, some

43. The Right Honourable Lord Justice Lawrence, *The Nuremberg Trial*, 23 INT’L AFF. (ROYAL INST. OF INT’L AFF. 1944–), Apr. 1947, at 152–53.

44. Justice Robert Jackson, Report to the President on Atrocities and War Crimes, June 7, 1945, AVALON PROJECT, http://avalon.law.yale.edu/imt/imt_jack01.asp (last visited Jan. 13, 2017).

45. Henry T. King, *American Bar Association’s Commemoration of the 60th Anniversary of the Nuremberg Trials, November 11, 2005*, *Georgetown School of Law, Washington, DC*, 40 INT’L LAWYER, no. 1, 2006, at 3.

number of Nazi leaders might have faced a firing squad, perhaps without trials or after show trials, and that would have been the end of it. However, in order to promote fairness over vengeance, it was necessary to find a fair way to punish any state and its actors.⁴⁶ Rather than merely penalize the losers, America argued that it was necessary to create a uniform code that could apply to the vanquished and victors alike, so that in the future there could be no doubt as to the principles that would be established through the trials. The only way that this legal precedent could be seen as legitimate and produce lasting results, was if all states—particularly the victorious states responsible for the trials—were willing to submit to the future international laws that were established.⁴⁷ What can now only be described as a victory for justice in the place where the Nazis perverted law to attack their own citizens, the Nuremberg Trials' use of witnesses and physical evidence established precedent for the way trials operate nationally and internationally in modern courts.

Despite this, most Nazis escaped being brought to justice. The trials were limited in number and selective in their attempt to hold the most visible perpetrators accountable. Over time, there have been trials held in various venues, including recently in German state courts. However, the Nuremberg Trials truly set the standard for the world to mete out justice where no complete justice was achievable. The full effects of the Trials were not seen in the international community until after the Cold War ended due to conflict between the world's two superpowers. Even inside a divided Germany, it took decades to achieve a more complete assessment of what had happened. Nazi-era jurists categorically denied any participation in the injustices perpetrated by Hitler and the Nazis; instead they blamed the lawmakers and claimed that they did their job as judges by ruling based on the laws with which they were provided and which were in effect at the time.⁴⁸ However, even if true that the judges simply followed the letter of the law as it was written, that alone demonstrates a major deviation from the application and implementation of the lofty concepts of the rule of law and the basic inalienable rights of the victim and their entitlement to protection from persecution by the state.

The Cold War is also partially responsible for the imperfect justice that was achieved through the Nuremberg Trials. For nearly twenty

46. *Id.* at 5.

47. See F. B. Schickm, *The Nuremberg Trial and the International Law of the Future*, 41 AM. J. INT'L L. 770, 772 (1947).

48. MULLER, *supra* note 8, at 219.

years the West German Judiciary continued to be dominated by former Nazi judges. By 1945, “at least 80 percent of all serving German judges, prosecutors, and legal bureaucrats . . . had become party members,” making it impossible to create a judicial system without former Nazis because it would leave the system with too few experienced judges and attorneys.⁴⁹ Karl Loewenstein, a German who fled the Nazis by coming to the United States and was one of the Americans responsible for recreating the German judiciary, struggled separating the jurists who joined the Nazi party as opportunists and those who were true believers. To him, both were “equally culpable” in the desecration of the rule of law and “unfit for the practice of law in a democracy.” However, before he was able to recommend his plan to Charles Fahy, Legal Advisor of the Department of State and Allied head of the de-Nazification of the German legal department, Fahy began turning de-Nazification over to the Germans.⁵⁰ Within three years Germany was responsible for its own de-Nazification and the German jurists, who did not feel guilty or responsible for the Nuremberg Laws or the Holocaust, held farcical tribunals that granted amnesty for the majority of Nazis resulting in judgeships being filled with former Nazis.⁵¹ More recently, the German courts themselves have sought to hold Nazi perpetrators, albeit at a lower level, responsible through ongoing trials, seemingly in a quest to achieve a measure of justice during the lifetimes of both survivors and perpetrators.

It is the duty of government and courts to protect the people from cruel and discriminatory laws. With regard to those working for the legal profession, it was as equally wrong to be complicit with and enforce the Nuremberg Laws as it was to participate in them. By allowing the government to make and enforce laws that systematically oppressed Jewish Germans, the Nazi-era courts failed in their duty to uphold legitimate laws and strike down tyrannical ones.

The Nuremberg Trials are considered a major step forward toward the establishment of international law; they directly led to the United Nations Genocide Convention (1948), Universal Declaration of Human Rights (1948), and the Geneva Convention on the Laws and Customs of War (1949).⁵² Prior to the IMT there was little precedent of international

49. R.W. Kostal, *The Alchemy of Occupation: Karl Loewenstein and the Legal Reconstruction of Nazi Germany, 1945–1946*, 29 L. & HIST. REV. 23 (2011).

50. *Id.* at 24–25.

51. William E. Griffith, *Denazification in the United States Zone of Germany*, 267 ANNALS AM. ACAD. POL. & SOC. SCI., Jan. 1950, at 72–74.

52. *The Nuremberg Trials*, HISTORY.COM, <http://www.history.com/topics/world-war-ii/nuremberg-trials> (last visited Jan. 13, 2017).

law enforcement. The tribunal completed the shift, begun in the period between the First and Second World Wars, away from seeing war as a common and useful tool of foreign policy to the modern system of international law and accountability as a deterrent force against tyranny. Planning or executing a war was no longer a conflict between two nations and their allies; the IMT proclaimed war as a violation against all of humanity and that it is in every nation's interest to avoid senseless violence that could potentially kill entire generations.⁵³ The impact of the Nuremberg Trials goes well beyond war, as they also established other valuable principles that have guided subsequent international trials and hearings. One important example of the lasting effects of the Trials is the tribunals created in the 1990s for war crimes and crimes against humanity that were committed in Yugoslavia and Rwanda.

While the Nuremberg Trials certainly fulfilled a preliminary obligation of seeking justice for the nearly six million Jews and reportedly ten million other people killed in the Holocaust—including Soviet civilians, Soviet prisoners of war, non-Jewish Polish civilians, Serb civilians, people with disabilities, Gypsies, Jehovah's Witnesses, repeat criminal offenders and so called asocials, German political opponents and resistance activists in Nazi-held territories, and homosexuals, as reported by the United States Holocaust Memorial Museum⁵⁴—and the tens of millions more casualties from the Second World War, the true legacy of Nuremberg is the principles that were established and the precedent of using international law to establish accountability in the world's most troubled places. The Nuremberg Trials established genocide and aggression as international crimes and rejected proposed defenses such as head-of-state immunity and the following-orders argument.⁵⁵ These principles have enabled the world to have the legal ability to deter and punish perpetrators for acts of hatred, genocide, and attempted annihilation.

There was no question that what Hitler and Germany did were crimes against humanity and that they started a war of aggression. In 1945 and 1946, US Supreme Court Justice Robert Jackson felt that aggression was the most important crime discussed at Nuremberg. He led the fight to establish the highest standards for The Nuremberg Trials,

53. George A. Finch, *The Nuremberg Trial and International Law*, 41 AM. J. INT'L L. 20, 30 (1947).

54. See *Documenting Numbers of Victims of the Holocaust and Nazi Persecution*, U.S. HOLOCAUST MEM'L MUSEUM, <https://www.ushmm.org/wlc/en/article.php?ModuleId=10008193> (last visited October 26, 2016).

55. James Podgers, *As Time Goes by: Nuremberg Trials Offer Precedent for Using International Law in World's Trouble Spots*, 92 ABA J., Jan. 2006, at 63.

leading to a verdict that has been heralded as an example of seeming world accountability for atrocities of unimaginable proportions. During his closing argument, Justice Jackson emphasized the significance of The Nuremberg Trials when he said:

If we cannot eliminate the causes and prevent the repetition of these barbaric events, it is not an irresponsible prophecy to say that this twentieth century may yet succeed in bringing the doom of civilization . . .

. . . .

. . . [The Nazis] have been given the kind of Trial which they, in the days of their pomp and power, never gave to any man. But fairness is not weakness. The extraordinary fairness of these hearings is an attribute of our strength.⁵⁶

While the world may not have liked giving the Nazis a chance to explain themselves and attempt to prove their innocence, notwithstanding how the Nazis silenced their victims, The Nuremberg Trials were a broad demonstration of the power of democracy and the rule of law, based upon the principles of fundamental fairness, presumption of innocence, and the right of the accused to receive a just and fair trial and punishment. However, Jackson believed the application of those principles gave the trials such strength and importance and that they could serve as a benchmark in history for when the victors were fair and kind to the defeated so that future generations will have an example to follow when they resolve even devastating conflicts. Without these trials, Jackson foresaw the end of civilization because mankind would surely have been doomed to repeat the same mistakes as after the First World War. The cycle of war, indiscriminate punishment, and then another war would assuredly result in the complete destruction of mankind.

The Judgment from the International Military Tribunal at Nuremberg found that most of the defendants were overwhelmingly guilty of war crimes for their culpability in World War II and in having planned and executed the Holocaust. Notably, not every defendant faced the same fate. Hans Fritzsche, Hjalmar Schacht, and Franz von Papen were acquitted, seven former Nazis received sentences between ten years and life imprisonment, while twelve of the twenty-two, including Hans Frank and Hermann Goering were given the death penalty during the main Nuremberg Trail.⁵⁷

56. *One Hundred and Eighty-Seventh Day, Friday, 26 July 1946*, XIX TRIAL OF THE MAJOR WAR CRIMINALS BEFORE THE INTERNATIONAL MILITARY TRIBUNAL, NUREMBERG, 14 NOVEMBER 1945–1 OCTOBER 1946, at 397–99 (Nuremberg, 1947).

57. Ben S. Austin, *The Nuremberg Trails: Brief Overview of Defendants & Verdicts*, JEWISH

IV. THE NUREMBERG LAWS AND THE NUREMBERG TRIALS: FROM HATE TO JUSTICE

The convergence between the Nuremberg Laws and the Nuremberg Trials is perhaps best noted in the findings by the justices that:

In order to place the complete control of the machinery of Government in the hands of the Nazi leaders, a series of laws and decrees were passed which reduced the powers of regional and local governments throughout Germany, transforming them into subordinate divisions of the Government of the Reich. Representative assemblies in the Laender were abolished, and with them all local elections. The Government then proceeded to secure control of the Civil Service. This was achieved by a process of centralization, and by a careful sifting of the whole Civil Service administration. By a law of 7 April it was provided that officials "who were of non-Aryan descent" should be retired; and it was also decreed that "officials who because of their previous political activity cannot be guaranteed to exert themselves for the national state without reservation shall be discharged." The law of 11 April, 1933, provided for the discharge of "all Civil Servants who belong to the Communist Party." Similarly, the judiciary was subjected to control. Judges were removed from the Bench for political or racial reasons. . . . Special courts were set up to try political crimes and only party members were appointed as judges. Persons were arrested by the SS for political reasons, and detained in prisons and concentration camps; and the judges were without power to intervene in any way. Pardons were granted to members of the Party who had been sentenced by the judges for proved offences. . . . In 1942 "judges' letters" were sent to all German judges by the Government, instructing them as to the "general lines" that they must follow."⁵⁸

The Nazis were found guilty of promulgating racism and violence in order to establish complete control of the government and judiciary so that they could initiate an aggressive war and with justification commit numerous crimes against humanity. Individually, however, each instance was considered and weighed to determine each prosecution's sentence separately. The unfortunate reality is that a large number of perpetrators, ranging from top-level officers to the *Einsatzgruppen* (Special Mobile Killing Squads), and even common foot soldiers, remain unpunished to

VIRTUAL LIBR., <http://www.jewishvirtuallibrary.org/jsource/Holocaust/verdicts.html> (last visited Jan. 13, 2017).

58. *Judgement, I TRIAL OF THE MAJOR WAR CRIMINALS BEFORE THE INTERNATIONAL MILITARY TRIBUNAL, NUREMBERG, 14 NOVEMBER 1945–1 OCTOBER 1946*, at 178–79 (Nuremberg, 1947).

this day for their crimes.⁵⁹

The Nuremberg Trials were far from complete or perfect, and despite the many important lessons scholars may take from them, they do not provide the answer to many of today's questions. An important issue arising out of the Trials is the interaction between two controversial principles: international jurisdiction and national sovereignty. The Trials also did not adequately provide a way to solve political disputes between states.⁶⁰

The methods, manner, and massive proportions which the perpetrators exercised in their attempt to achieve the death and annihilation of the Jewish people during the Holocaust are indeed beyond all comprehension. The extraordinary challenge of seeking accountability and rendering justice was a task of insurmountable proportions. To those who were committed to achieving justice, as were Justice Jackson and the others who were prosecutors and judges at Nuremberg, the world owes a debt of gratitude for their determination, perseverance and commitment to seeking, telling and preserving the records of the truth, and in attempting to establish principles and practices designed to avoid ever again the committing of such barbarity and heinous crimes against the Jewish people and all of mankind.

V. CLOSING NOTE

Eighty years have passed since the enactment of the Nuremberg Laws and seventy years have passed since the start of the Nuremberg Trials. International law continues to evolve and adapt to the reality of the modern world. Despite the differences between then and now, it is critical that we continue to adhere to many of the essential values that were agreed upon at Nuremberg after the war. The Nuremberg Laws are an example of how dangerous the abuse of the rule of law can be when there is no system of justice protecting all people. The Trials represent a shift in world ideology as nations agreed to outlaw war, to stand firmly against genocide and attempted annihilation, while still providing the right to legitimate trials even for the worst criminals. The importance of the Nuremberg Trials cannot be overstated, as in many respects they are the foundation upon which the international community now rests.

The Nuremberg Symposium, held in Krakow, Poland in May

59. The complete Judgment and other documents from the IMT can be accessed online through the Library of Congress, https://www.loc.gov/rr/frd/Military_Law/NT_major-war-criminals.html, and *The Avalon Project* created by Yale Law School.

60. William Eldred Jackson, *Putting the Nuremberg Law to Work*, 25 FOREIGN AFF., Jul. 1947, at 560.

2016, was sponsored by March of the Living International, the Holocaust education organization that has brought more than 250,000 people to Auschwitz and Birkenau over the past twenty-eight years for the most powerful experience of learning the lessons of hate through the study of the Holocaust. The Symposium was cosponsored by Jagiellonian University, with appreciation and thanks to Dr. Jolanta Ambrosewicz-Jacobs, and the Raoul Wallenberg Centre for Human Rights. Special tribute is due to Professor Alan Dershowitz and Professor Irwin Cotler, Co-Chairs of The Nuremberg Symposium, and to each of the scholars and justices who presented at the Symposium and whose remarks are included within this important publication of *Loyola of Los Angeles International and Comparative Law Review*. Special thanks to Dr. Shmuel Rosenman, Chairman, Aharon Tamir, Director-General, Dr. David Machlis, Vice Chairman, Eli Rubenstein, Director of Education and Ariana Heideman Tipograph, Program Coordinator of The Nuremberg Symposium, of March of the Living International. Sincere appreciation to Ben Alkon, Legal Intern, Heideman Nudelman & Kalik, P.C., for his research contribution, to Dr. Elana Heideman for her substantive review and input, and to Mary Beth Warner for her editing contributions to this article. Special tribute is paid to Cameron Schlagel, Editor-in-Chief, Loyola Law School Los Angeles *International and Comparative Law Review*, for his vision and commitment to excellence in undertaking the publication of this Special Edition on *The Nuremberg Laws and The Nuremberg Trials: From Hate to Justice*.

The Nuremberg Symposium was convened to examine how a modern state could create and twist laws to self-justify and enable the Nazi state and its citizenry to commit unconscionable and heinous crimes; to honor and remember the millions of lives taken during the Holocaust; and to examine and recognize the essential power of the use of a specially created international court in seeking justice and accountability; and in providing a path forward for understanding the incomprehensible.