

Christmas Celebration, Nuremberg, 1945

*John Q. Barrett**

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When the International Military Tribunal recessed for the holidays on Thursday, December 20, 1945, United States chief prosecutor Robert H. Jackson had work to complete before departing the next morning on a trip around the Mediterranean.

Justice Jackson, speaking over a direct wire from the Palace of Justice in Nuremberg to New York, first recorded a speech that would be broadcast on radio throughout the United States on Christmas Eve. Jackson explained in the speech (see text below) what he and his allied colleagues were standing for and accomplishing in the Nuremberg trial. After the recording transmission concluded, New York telephoned back to Jackson that its reception had been surprisingly good and that it would, at his request, send a copy of the speech to his wife Irene Jackson at their home near Washington, D.C.

Jackson then met in his office with his staff. At that moment, many of the younger prosecutors were preparing evidence against individual defendants that they would be presenting in court in the new year. Jackson encouraged the lawyers to make their oral presentations brief and non-repetitive, to refrain from arguing and making summations, to cite documents in evidence but not to read them, to avoid epithets and to be dispassionate—to get the evidence in. In each of these particulars, Justice Jackson was addressing the Tribunal's impatience while also cautioning against repetitions of some attorney bobbles and excesses in the presentations to date. He told his team that the Tribunal had been, in his view, interrupting evidentiary presentations too often to voice concerns about perceived cumulateness, but Jackson added, optimistically, that he believed the Tribunal was laying a basis on which to stop defendants, when their turns came, from introducing cumulative evidence.

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Late that rainy afternoon, Jackson wrote a long letter to his wife, daughter and daughter-in-law, all living in the Washington area and away from their husbands (Jackson and his son William at Nuremberg, and Jackson's son-in-law Dr. Thomas Loftus in military service in the Pacific). He then drove, with his son Bill, secretary Elsie Douglas and bodyguard Moritz Fuchs, to the requisitioned billet that they shared, a large, private home at Lindenstrasse 33 in Fürth, a few miles from the Palace of Justice.

That night, the eve of Jackson's Mediterranean trip with his core team, was supposed to be a quiet one. The previous evening, Jackson had hosted at his home a dinner (turkey with all the fixings) for his large staff. After that dinner, they exchanged toasts for an hour. Jackson toasted the six colleagues who had been with him since they left the United States for Europe in June 1945. Gordon Dean, a senior attorney and close Jackson adviser who handled (among many other responsibilities) press relations, quoted a Jackson toast from their first day together on this venture—at a meal during a transatlantic airplane refueling stop in Labrador, Jackson had wished for them all, “May this end as successfully as it has begun.”—and Dean asked all to drink a toast to the man who was responsible for their being there. (This prompted Jackson to joke that Dean was toasting Hitler.) After coffee around the living room Christmas tree, all gathered in the piano room to sing carols as Mrs. Douglas played. As the Jackson party was breaking up, they received an impromptu invitation to a reporters' party at the Faber-Castell Castle in nearby Stein, which was the billet for dozens of reporters. And so they went, Jackson himself tromping in to the crowd's surprise, and listened to the music of a “colored” orchestra.

Holiday celebrating, however, soon also invaded the evening of December 20th. Colonel Burton Andrus, who was in charge of the Nuremberg prison, set out with a group of his security men, the prison chaplain and Alma Soller, a secretary who was part of the core Jackson group, to sing Christmas carols at all the “ranking houses.” American judges Francis Biddle and John Parker invited the carolers in to their house but were not insistent, so they stayed outside to sing, forcing Biddle and Parker to don raincoats and join them. At the home of Soviet judge Iona Nikitchenko, an interpreter was immediately sent out to bring everyone inside, where the hosts served vodka, caviar, and spam and cheese sandwiches and many toasts were exchanged. Next door, Soviet prosecutors invited the carolers in for hot dogs, cokes spiked with vodka, and beer. At the French judges' house, the carolers learned that the judges were not home but stayed to sing one song for the guards. And when the

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carolers reached Lindenstraße 33, Jackson wandered out wearing a baggy old sweater and then made the whole group (of which he knew only Col. Andrus and Miss Soller) come in. They sang around the piano as Elsie Douglas played and drank Scotch before calling it a night.

In this holiday season, I hope that you and yours get to reflect on high principles, great achievements, progress and challenges, to gather with friends, to welcome unexpected guests, to wear your baggy sweaters, and to sing.

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Address recorded December 20, 1945, at the
Palace of Justice, Nuremberg, Germany, for
United States radio broadcast, December 24, 1945

by Justice Robert H. Jackson

This is the first Christmas in many years which does not find the world engaged in a major war. Christmas should bring home to all peoples, regardless of race, creed or nationality, what it really means to the world that this year marks the conquest of the Nazi-Fascist-Japanese drive to dominate the world. We who are here in Nürnberg, far from home but close to the scenes of the war, have thrust upon us a new appreciation of the significance of Christmas.

Twenty centuries ago, there was laid in the manger at Bethlehem the Great Witness to the eternal truth that Might does not make Right. Christ taught that there is a right and a wrong in human conduct which in no way depends on physical strength. This belief has been summarized in the familiar sentence that “Thrice armed is he whose cause is Just.”¹ The

¹ Cf. King Henry VI, in WILLIAM SHAKESPEARE, KING HENRY VI, part 2, act 3, scene 2:
What stronger breastplate than a heart untainted!
Thrice is he armed that hath his quarrel just,
And he but naked, though lock'd up in steel
Whose conscience with injustice is corrupted.

Jackson, a serious, longtime student of Shakespeare's works, probably drew his version of King Henry's line from fallible memory.

Nazi-Fascist-Japanese alliance tried to establish a regime based on exactly the opposite philosophy of life.

Just before the great war, Adolf Hitler had a meeting of the officers of his High Command. We have captured the minutes of that meeting and put them in evidence at Nürnberg. He said to his generals:

I shall give a propagandist cause for starting the war, never mind whether it be true or not. The victor shall not be asked later on whether we tell the truth or not. In starting and making a war, not the right is what matters but victory – the strongest has the right.

Over and over again the Nazi leaders reiterated this foul philosophy.

We may rejoice at this Christmas season that once again it has been demonstrated that cruelty, oppression and false dealing will disintegrate the strongest power and will at the same time arouse moral forces in opposition that will certainly, though perhaps slowly prevail. No more dramatic vindication of the truth that power does not make right has been seen by the world than in the last two years.

In the early years of the war, Germany had every physical superiority. She had unity, the Allies lacked cohesion; she had a plan—the Allies had only confusion; she had preparation, armament, air power—the Allies had neglected their military forces; she had victory—they had a long series of defeats that were so great as to be disasters. Two years ago it really looked possible that the peoples who believed in moral and spiritual forces would go down under the crushing weight of Nazi physical force.

Today we see those who relied on strength alone, who despised right and scoffed at wrong facing an accounting. We are seeing their acts held up for reexamination in the light of moral principles and legal precepts.

Sir Hartley Shawcross, Attorney General of England, in his great opening address at the Nürnberg trials said:

The British Empire has twice been victorious in wars which have been forced upon it within the space of one generation but it is precisely because we realize that victory is not enough; that might is not necessarily right; that lasting peace and the rule of

International Law is not to be achieved by the strong arm alone, that the British Nation is taking part in this trial.[²]

Like all human efforts, the attempt to measure the conduct of the defeated by moral standards is an imperfect one—I have no disposition to claim it faultless. But I do say that the utter and irreparable collapse of the doctrine that might makes right is the most significant feature of the Nürnberg trials. Whatever other shortcomings we representing the victors may have—and they are numerous—we do not adhere to the doctrine that because we have power we can do no wrong. If we did, there would be no trial. We are patiently—too patiently, many think—examining the acts of the Nazi leaders. We are trying dispassionately—too dispassionately, many think—to test those acts by the principles which must prevail in a sound and peaceful international order, principles by which hereafter the conduct of the victors, no less than of the vanquished, will be tested by world opinion.

Once again, the world is proceeding on a basis that power and might are subject to moral responsibility. There may be—there are—many deviations from the principle and many failures to live up to the ideal. But at least the teaching of our times has returned to the Christian ideal that the strong, no less than the weak, must answer to the moral forces of the world and again demonstrate that right will generate the might to vindicate itself.

² This Shawcross passage appears in slightly different form in the official Nuremberg trial transcript: “The British Empire with its Allies has twice, within the space of 25 years, been victorious in wars which have been forced upon it, but it is precisely because we realize that victory is not enough, that might is not necessarily right, that lasting peace and the rule of international law is not to be secured by the strong arm alone, that the British nation is taking part in this Trial.” III TRIAL OF THE MAJOR WAR CRIMINALS BEFORE THE INTERNATIONAL MILITARY TRIBUNAL, NUREMBERG, 14 NOVEMBER 1945 - 1 OCTOBER 1946 (“The Blue Set”) at 91 (proceedings of Dec. 4, 1945). I assume that Jackson took his quotation from a version that Shawcross had prepared and disseminated in advance of his opening statement.