

No Poisoned Chalice

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On November 21, 1945, Justice Robert H. Jackson delivered his opening statement at Nuremberg. His speech, regarded as one of history's most eloquent and significant, began the international prosecution of the principal Nazi criminals who survived World War II.

Justice Jackson's speech filled most of that day's proceedings before the International Military Tribunal, the first international criminal court. In the speech, Jackson articulated his sense of prosecutorial responsibility and proper restraint. He explained in practical terms the leading objective of the prosecution: holding leaders responsible for the calamitous crime of aggressive war-making. He also previewed and summarized the horrifying evidence that the prosecutors would present, including of Nazi planning and aggression, war crimes, and crimes against humanity.

Justice Jackson also addressed some of the many reasons why people were skeptical about the Nuremberg trial undertaking. Early in the opening statement, for example, he addressed the reality that these prosecutions were being brought by war-winners against their defeated enemies. The Nuremberg trial of 22 individuals plus six organizations was an exercise of the absolute Allied power and military occupation that followed Nazi Germany's unconditional surrender. The trial thus had, undeniably, the potential to be merely vengeance, legally illegitimate, and historically embarrassing. As Jackson put it,

[t]he former high station of these defendants, the notoriety of their acts, and the [aptness] of their conduct to provoke retaliation make it hard to distinguish between the demand

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for a just and measured retribution and the unthinking cry for vengeance which arises from the anguish of war.¹

Justice Jackson's main reply to this concern about so-called "victors' justice" was that the prosecutors' and the Tribunal's work would be visible, and thus that it would be open to scrutiny each day by the public and the press, and also to assessment in history. "We must never forget," we recall Jackson saying,

that the record on which we judge these defendants today is the record on which history will judge us tomorrow. To pass these defendants a poisoned chalice is to put it to our own lips as well.

* * *

Justice Jackson delivered his Nuremberg opening statement, which he had written during the preceding month, from a typescript—it rested in front of him on the podium. Jackson's script also had been mimeographed and distributed in advance to at least a few of his colleagues. As he spoke, they thus "read along."

One of these readers was Jackson's executive assistant (and his son), Lieutenant (junior grade) William E. Jackson (United States Navy Reserve). As Justice Jackson delivered his opening statement, Bill Jackson obviously read along, for he noted on his copy, in pencil, each of his father's digressions from the script. These included his ad libbed additions, his slight variations in wording, and his on-the-spot omissions.

In the passage where Justice Jackson addressed concerns that the trial would be "victors' justice," Bill Jackson drew a circle around this colorful sentence that his father had carried to the podium: "To pass these defendants a poisoned chalice is to put it to our own lips as well."

The "poisoned chalice" sentence has been much published as part of Jackson's Nuremberg opening, and as a result it has been much quoted ever since.² Bill Jackson's circle indicates, however, that Justice Jackson did not speak these words at Nuremberg.³

¹ The material quoted here is Jackson's exact words, as audio-recorded.

² Interestingly, the line seems to be attributed today to Justice Jackson much more often than it is to an earlier writer, one whose work Jackson studied closely, beginning when he was seventeen

I do not know why Justice Jackson did not speak this sentence—I have located no written evidence that sheds any light on this. Maybe he just overlooked it, although that seems unlikely—Bill Jackson’s notes show that, throughout the opening statement, his father skipped no other entire sentence that was not a quotation from a German document. More likely Justice Jackson cut it intentionally. Perhaps he decided on the spot not to utter a too-familiar line—U.S. newspapers show numerous political speakers, going back to the early 19th century, cautioning against someone taking some action that could be viewed as drinking from a “poisoned chalice.” Perhaps Jackson decided, as a speaker gauging his audience and his own sense of presentation momentum, that the line would not “sound” as well as it had “written.”

It does seem clear that Justice Jackson did not duck the “poisoned chalice” test. He did speak, on November 21, 1945, the very next sentence in his script, which states the same idea in entirely original language:

We must summon such detachment and intellectual integrity to our task that this trial will commend itself to posterity as fulfilling humanity's aspirations to do justice.

And Justice Jackson did publish, first in a book released as the trial was ongoing,⁴ and later in a post trial book⁵ and in the official trial transcript,⁶ his opening statement with the “poisoned chalice” line restored.

And Justice Jackson did, in his years following Nuremberg, look back on this work—the entire trial, including the IMT’s judgment—with pride. He never felt that he or his country was poisoned by Nuremberg. And the better of historical analysis, and the better of our modern

years old, and quoted often across his life (including during the Nuremberg trial). See WILLIAM SHAKESPEARE, *MACBETH*, Act 1, Scene 7:

But in these cases
We still have judgment here, that we but teach
Bloody instructions, which, being taught, return
To plague th' inventor: this even-handed justice
Commends the ingredients of our poisoned chalice
To our own lips.

³ Credit for this discovery goes to Ullabritt Horn, who noticed, listening to the audio recording of Jackson’s opening statement, that he did not speak his famous “poisoned chalice” sentence.

⁴ See ROBERT H. JACKSON, *THE CASE AGAINST THE NAZI WAR CRIMINALS* at 7 (1946).

⁵ See ROBERT H. JACKSON, *THE NÜRNBERG CASE* at 34 (1947).

⁶ See II *TRIAL OF THE MAJOR WAR CRIMINALS BEFORE THE INTERNATIONAL MILITARY TRIBUNAL, NUREMBERG, 14 NOVEMBER 1945 - 1 OCTOBER 1946* (“The Blue Series”) at 101.

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international law and justice undertakings, join with him in drawing *health* from Nuremberg's chalice.