

Civilization Opens Its Case at Nuremberg

*John Q. Barrett**

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At 10:00 a.m. on Tuesday, November 20, 1945, Lord Geoffrey Lawrence of the United Kingdom, president judge of the International Military Tribunal (IMT), commenced its trial of the principal Nazi war criminals. The trial occurred in Courtroom 600 in the Palace of Justice in Nuremberg, in the United States occupation zone of the former Nazi Germany.

The World War II Allied nations—the U.S.A., the United Kingdom of Great Britain and Northern Ireland, the government of the Union of Soviet Socialist Republics, and the Provisional Government of the French Republic—had created the IMT in their August 8, 1945, London Agreement.

In October 1945, prosecutors from the Allied nations filed with the IMT an indictment charging twenty-four Nazi prisoners and six Nazi organizations with four international crimes: common plan, agreement and conspiracy; waging aggressive war; committing war crimes; and committing crimes against humanity.

The trial opened on November 20 with prosecutors reading the extensive Indictment. French assistant prosecutor Pierre Mounier read a portion of Count Three, charging defendants with committing particular War Crimes in France. The charge included—Mounier stated in court—the word “genocide.” This was the first official public utterance of a new word, which had been coined by Polish lawyer Raphael Lemkin and, at his urging, added by the Americans as they finished drafting the Indictment.

Seventy-five years ago today, on November 21, 1945, twenty individual defendants—Hermann Goering, Rudolf Hess, Joachim von Ribbentrop, Wilhelm Keitel, Alfred Rosenberg, Hans Frank, Wilhelm Frick,

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Julius Streicher, Walter Funk, Hjalmar Schacht, Karl Doenitz, Erich Raeder, Baldur von Schirach, Fritz Sauckel, Alfred Jodl, Franz von Papen, Arthur Seyss-Inquart, Albert Speer, Constantin von Neurath and Hans Fritzsche—announced to the IMT their pleas of not guilty. The four other defendants were not present—Ernst Kaltenbrunner was absent due to illness, Martin Bormann was being tried in *absentia*, Gustav Krupp von Bohlen und Halbach had been declared incompetent to stand trial, and Robert Ley had committed suicide. The IMT permitted no defendant to make a speech; the USSR had agreed to begin the trial only on that condition because its chief prosecutor, General Roman Rudenko, had not yet arrived in Nuremberg.



Justice Robert H. Jackson, U.S. Chief of Counsel, then delivered his opening statement, which he had been writing and honing for over a month. The first five paragraphs, here as he spoke them, explained the entirety of the Nuremberg trial undertaking:

The privilege of opening the first trial in history for crimes against the peace of the world imposes a grave responsibility. 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. 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.

This Tribunal, while it is novel and experimental, is not the product of abstract speculations, nor is it created to vindicate legalistic theories. This inquest represents the practical effort of four of the most mighty of nations, with the support of fifteen more, to utilize international law to meet the greatest menace of our times: aggressive war. The common sense of mankind demands that law shall not stop with the punishment of petty crimes by little people. It must also reach men who possess themselves of great power and make deliberate and concerted use of it to set in motion evils which leave no home in the world untouched. It is a cause of that magnitude that the united nations will lay before Your Honors.

In the prisoners' dock sit twenty-odd broken men. Reproached by the humiliation of those they have led almost as bitterly as by the desolation of those they have attacked, their personal capacity for evil is forever past. It is hard now to perceive in these men as captives the power which as Nazi leaders they once dominated most of the world and terrified most of it. Merely as individuals their fate is of little consequence to the world.

What makes this inquest significant is that these prisoners represent sinister influences that will lurk in the world long after their bodies have returned to dust. We will show them to be the living symbols of racial hatreds, terrorism, and of violence, and of the arrogance and cruelty of power. They are symbols of fierce nationalisms and militarism, of intrigue and war-making which have embroiled Europe generation after generation, crushing its manhood, destroying its homes, and impoverishing its life. They have so identified themselves with the philosophies they conceived and with the forces they have directed that any tenderness to them is a victory and an encouragement to all the evils which are attached to their names. Civilization can afford no compromise with the social forces that would gain renewed

strength if we deal ambiguously or indecisively with the men in whom these forces now precariously survive.

What these men stand for we will patiently and temperately disclose. We will give you undeniable proofs of incredible events. The catalog of crimes will omit nothing that could be conceived by a pathological pride, cruelty, and lust for power. These men created in Germany, under the *Führerprinzip*, a National Socialist despotism equaled only in the dynasties of the ancient East. They took from the German people all those dignities and freedoms that we hold natural and inalienable rights in every human being. The people were compensated by inflaming and gratifying hatreds towards those who were marked as scapegoats. Against their opponents, including Jews, Catholics, and free labor, the Nazis directed such a campaign of arrogance, and brutality, and annihilation as the world has not witnessed since the pre-Christian era. They excited the German ambition to be a master race, which of course implies serfdom for others. They led their people on a mad gamble for domination. They diverted social energies and resources to the creation of what they thought to be an invincible war machine. They overran their neighbors. To sustain the master race in their war-making, they enslaved millions of human beings and brought them into Germany, where these hapless creatures now wander as displaced persons. At length bestiality and bad faith reached such excess that they aroused the sleeping strength of imperiled civilization. Its united efforts have ground the German war machine to fragments. But the struggle has left Europe a liberated yet prostrate land where a demoralized society struggles to survive. These are the fruits of the sinister forces that sit with these defendants in the prisoners' dock.

Jackson's opening statement was lengthy. On the podium before him, it was 61 pages in typescript. His presentation, which included numerous extemporaneous inserts, amendments and cuts, lasted until late afternoon. It previewed and summarized the evidence to come, including:

- Nazism as systematically planned and criminal;

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- the lawless Nazi path to consolidated power in Germany;
- its expansion through aggressive war;
- horrific Nazi war crimes across Europe; and
- Nazi Germany's persecution and murder of Jews—Jackson stated that “5,700,000 Jews are missing from the countries in which they formerly lived,” and that “History does not record a crime ever perpetrated against so many victims or one ever carried out with such calculated cruelty.”

Jackson also offered a specific and candid explanation of the Allied theory that it was lawful to prosecute individuals, including national, military, and other leaders up to the level of the head of state, for international crimes including war-making:

Any resort to war—to any kind of a war—is a resort to means that are inherently criminal. War inevitably is a course of killings, assaults, deprivations of liberty, and destruction of property. An honestly defensive war is, of course, legal and saves those lawfully conducting it from criminality. But inherently criminal acts cannot be defended by showing that those who committed them were engaged in a war, when war itself is illegal. The very minimum legal consequence of the treaties making aggressive wars illegal is to strip those who incite or wage them of every defense the law ever gave, and to leave war-makers subject to judgment by the usually accepted principles of the law of crimes.

But if it be thought that the [London] Charter, whose declarations concededly bind us all, does contain new law, I still do not shrink from demanding its strict application by this Tribunal. The rule of law in the world, flouted by the lawlessness incited by these defendants, had to be restored at the cost to my country of over a million casualties, not to mention those of other nations. I cannot subscribe to the perverted reasoning that society may advance and strengthen the rule of law by the expenditure of morally innocent lives

but that progress in the law may never be made at the price of morally guilty lives.

It is true, of course, that we have no judicial precedent for the Charter. But international law is more than a scholarly collection of abstract and immutable principles. It is an outgrowth of treaties and agreements between nations and of accepted customs. Yet every custom has its origin in some single act, and every agreement has to be initiated by the action of some state. Unless we are prepared to abandon every principle of growth for international law, we cannot deny that our own day has the right to institute customs and to conclude agreements that will themselves become sources of a newer and strengthened international law. International law is not capable of development by the normal processes of legislation, for there is no continuing international legislative authority. Innovations and revisions in international law are brought about by the action of governments such as those I have cited, designed to meet a change in circumstances. It grows, as did the common law, through decisions reached from time to time in adapting settled principles to new situations. The fact is that when the law evolves by the case method, as did the common law and as international law must do if it is to advance at all, it advances at the expense of those who wrongly guessed the law and learned too late their error. The law, so far as international law can be decreed, had been clearly pronounced when these acts took place. Hence, I am not disturbed by the lack of judicial precedent for the inquiry it is proposed to conduct.

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Justice Jackson's opening statement at Nuremberg is rightly remembered as one of the most powerful, eloquent and important speeches in human history.

You can read all of it in many places and publications, including here:

<http://avalon.law.yale.edu/imt/11-21-45.asp>.

Some film excerpts of Jackson's opening are here:

www.youtube.com/watch?v=L50OZSeDXeA.

The entire audio recording of Jackson's opening statement is here in two parts:

<https://www.youtube.com/watch?v=JBwutHKoFhM&t=240s>

<https://www.youtube.com/watch?v=YUEuvT8hxcQ>