A Culture on Trial

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The Nuremberg trials were a vast and variegated undertaking. In the popular imagination, the initial International Military Tribunal (IMT) at Nuremberg is often conflated with the twelve subsequent American Military Tribunals (NMT), which also sat in judgment in the Palace of Justice at Nuremberg. The two trial programs shared much in common: the charges were the same, though their legislative foundation was not; some of the prosecutors and many of the defense attorneys worked in both programs; above all, of course, both the IMT and NMT concerned German mass crimes during the Third Reich. Yet there were crucial differences as well, the most important being that the IMT was an international undertaking, based on an international agreement (the London Charter) and staffed not just by Americans, but also British, French and Russian prosecutors and judges. The NMT, meanwhile, were a wholly American run affair.

Moreover, the IMT was a trial of the top leadership of the Third Reich, at least those who could be found alive. While the twenty-two defendants did represent a range of institutions, the IMT did not and was not supposed to put on trial representatives of the full range of Nazi institutions. The NMT was in this respect quite different. Telford Taylor, chief prosecutor, saw the successor trials as an opportunity to redeem what he saw as the unredeemed promise of the IMT to portray the full range of Nazi criminality and the broad complicity of German institutions. Consequently, the NMT prosecuted cases against a wide range of functional elites from across German institutional life.

Because several of the defendants at the IMT were household names (Göring most obviously), because it was the first trial, because it involved all the victors, and because it seemed so definitive, it tended at the time and has tended ever since to greatly overshadow the successor trials. Countless books, ranging from memoirs by participants to popular accounts by journalists and historians to dry academic tomes, have been written about the IMT. The NMT, by contrast, have enjoyed far less notoriety, though the popular usage “Nuremberg Trials” tends to lump them in with the IMT. It is only in recent years that the NMT have begun to receive much serious scholarly attention, in the form of several excellent case studies of individual NMT proceedings and one magisterial legal
analysis of their jurisprudence. What no scholar has previously dared undertake, however, is the daunting, seemingly insurmountable challenge of writing a joint history of the IMT and NMT together, tracing their shared genealogy and legal, moral and historical concerns, while also detailing their differences in scope, intent, and execution. This is the task that Kim Christian Priemel sets himself in *The Betrayal*, and the result is deeply impressive.

Priemel’s research is prodigious, involving not on the many thousands of pages of the official records of the IMT and NMT, but research in more than three dozen archives in Europe and the United States, as well as the voluminous memoir literature and contemporaneous press accounts of the trials. Across ten substantial chapters, Priemel paints the background to the trials and analyzes the conduct of the IMT and all of the successor trials. For good measure, he offers short excurses on French and British military trials related to the successor trials as well. Rather than simply offering portraits of each of the successor trials individually, Priemel groups them into three broad categories: economic cases dealing with German businesses, bureaucratic cases dealing with various professional and functional elites (doctors, jurists, the civil and diplomatic services, and the SS), and military trials dealing with war crimes by the Wehrmacht.

With such a vast topic before him, Priemel clearly needed to find an analytical through-line to connect the various cases, especially since his typological account of the NMT largely eschews a straightforward chronological approach. One obvious option would have been to focus on the development and application of the law in the Nuremberg trials, and Priemel indeed offers an account the legal categories at play, but in comparison to other accounts, the law itself takes something of a backseat in Priemel’s account. His attention focuses rather on the other great bugbear present in the Nuremberg courtrooms: history.

Drawing on recent postcolonial literature in the history of international law, Priemel argues that by its nature, international law constructs an “other” which lies outside the law, the barbarian or savage, as opposed to the “civilized” who embody the law. (It is worth noting as an aside that Raphael Lemkin, who coined the term genocide in 1943, had previously wanted to call the eradication of whole peoples both “barbarism” [for killing people] and “vandalism” [for killing their culture]). In contrast to the Nineteenth Century tradition in which this distinction was worked out largely in a colonial context, where the “other” was readily identified as non-western and subordinate, putting Germans on trial for “barbarism” posed a serious challenge. After all, the Germans had at one point unambiguously counted among the “civilized.”

The solution, Priemel argues was to deploy what soon came to be called the Sonderweg (special path) theory of German history, in which it was argued that at some point in the past, Germany had deviated in key respects from the path of civilized, “Western” modernization and had instead traveled down a dark path to regression and pathology. While the first inklings of this analysis can be traced back to World War I, Priemel argues it was mainly wartime analysts, especially German emigres working for British and American intelligence, who formulated this theory in ways that would directly influence the Nuremberg trials.

The Nuremberg trials served a dual function. On the one hand, they were intended to punish Nazi crimes. On the other, they were didactic exercises intended to demonstrate the superiority and desirability of “Western” democracy and thus help “reorient” Germans going forward. “History was expected to justify the Allies’ trial programme by proving Nazi
criminality beyond a doubt and to showcase the rule of law which a future German democracy should aspire to. In effect, it would substantiate the claim to superiority underlying both tenets. The language in which this claim was formulated was that of the West” (pp. 14-15). The allegation that Germany had “fatefully deviated from a common trajectory of Western civilization with its liberal market economies, pluralist democracies, individualist concepts of man, and the rule of law” undergirded this project (p. 57).

The didactic dimensions of this dual project were significantly hampered in the IMT by the participation of the Soviets, who were neither democratic nor “Western” in the sense intended by the proponents of the Sonderweg theory. Indeed, because it was a multi-party trial, the IMT prosecution was struggled to come up with any coherent theory of the case. The Americans wanted to focus on criminalizing aggressive war. The British wanted to safeguard “the proceedings jurisprudential soundness” (p. 405). The Soviets hoped to use the trial to rewrite history of the Second World War to cover up their complicity in abetting Nazi aggression in Poland. Only the French pursued anything like a didactic historical strategy in the IMT, articulating an “unadulterated special-path interpretation of National Socialism’s roots” (p. 405). However, because of this lack of coherence among the prosecution teams and because of the notoriety of many of the defendants, what actually emerged in the IMT, according to Priemel, were simplistic “psychopathological explanations,” which in fact largely exonerated the vast majority of Germans. As the French prosecutor Edgar Faure put it, “their conviction is your acquittal” (p. 149).

If the historical narrative in the IMT thus fragmented into individual psychology, in the NMT the Sonderweg interpretation blossomed. To a significant degree, this was because of the chief prosecutor Telford Taylor’s objectives for the trials were didactic. He intended to demonstrate the complicity of broad strata of Germany’s elites in Nazi criminality. The Sonderweg theory of the case also offered a way of connecting the disparate areas of concern in the NMT, to show that for all the differences between, say, Nazi doctors, SS killers in the Soviet Union, industrial magnates in Krupp and IG Farben, and urbane diplomats and civil servants, they were all part of one criminal enterprise deeply rooted in German history.

There were two problems with this theory of the case. First, the Sonderweg interpretation of German criminality was more plausible for some cases than others. According to Priemel, it worked best in the economic cases, but hardly worked at all for the military cases. Second, by putting German history on trial, and not just individual Germans accused of specific crimes, the historical approach raised the stakes for the defense counsel, since they were defending not only their clients but also their nation. This actually created opportunities for the defense, since it created openings for tu quoque (“you too”) arguments that might not have applied to specific defendants, but which were apropos for historical interpretation more generally. After all, it was far from clear that Germany was quite as deviant as the prosecution claimed.

In some cases—the economic cases in particular—it was possible to construct a reasonably plausible account of long-term historical difference between Germany and “the West.” The Americans were convinced that German industrialists bore substantial responsibility, both for the rise of the Nazis and for sustaining the horrors of German aggression. Initially, specific crimes against humanity—the use of slave labor or complicity in genocide—figured less prominently in the economic cases, even if in the final judgments these charges emerged as the most consequential. The problem with this interpretation, of course, was that
the United States itself had large industrial corporations that had made major contributions to the American war effort. So what was the difference? The solution was to argue that “German ‘organized’ economy [was] the distorted mirror image of their own ‘free’ market order,” one in which cartels distorted the market and led to a pathological entanglement of business and state interests (p. 198). Dating to the nineteenth century, German business had forged a fatal alliance with the authoritarian state, underwriting the state’s military aggressiveness in turn form restrictions economic policies that protected them from competition. On this account, free markets were linked to democracy, while cartels and organized capitalism were inherently anti-democratic.

If the economic Sonderweg interpretation had a certain plausibility and, moreover, played to the prejudices of the American judges, the situation was different in the military cases, where the prosecution had a harder time pointing to long-term historical trends differentiating the German military form its western counterparts, where the defense was able to repeatedly score points on tu quoque grounds. “The more intensely the trials focused on the rules of war the less clear-cut any differentiation between one side and the other became. Apart from the hostage issue, on which the German record indeed stood out, there were few fields in which the defence was unable to find pertinent examples of identical or similar transgressions on the Allies’ part” (p. 350). It was, Priemel points out, no coincidence that the Americans eschewed any prosecution of German aerial bombardment of cities.

Alongside the analytical through-line focusing on the use (and abuse) of history in the Nuremberg courtrooms, Priemel’s volume is full of new information and keen insights into individual moments in the trial. His meticulous research means that there is hardly any aspect of the trials where he merely accepts the conventional wisdom without deep empirical investigation of his own.

The Betrayal is in many ways magisterial. It will almost certainly become the standard work on the Nuremberg trials for the foreseeable future. That said, it is not always a particularly easy book to read. The sheer volume of information, the vast cast of characters, many of whom appear merely in cameo, can make it difficult to follow the text. Priemel’s decision to forego a chronological presentation of the successor trials means he often jumps back and forth between different cases risking further confusion. So while this book tells us more about the Nuremberg trials than any previous book, it is probably most accessible to readers who are already fairly familiar with the trials. Yet if it is a book that requires substantial care to read well, it is also a book that consistently repays that effort.

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