

by Leah Goldstein

Marking 60 years since the Nuremberg Trials, the International Institute for Holocaust Research at Yad Vashem held an international scholarly conference on 19-21 December entitled, “Holocaust and Justice: Post-War Trials—Representation, Awareness, and Histiography.” Conference sessions featured wide-ranging subjects related to the topic, including the interaction between politics and punishment; justice via the media; trials of Jewish and non-Jewish *Kapos*; and the Nazis’ permissible and illicit use of law within the German legal system.

The latter subject was presented by Michael J. Bazylar, Professor of Law at Whittier Law School, California, and current postdoctoral research fellow at the Research Institute, during a session honoring Simon Wiesenthal, z”l.

In an interview conducted before the conference, Prof. Bazylar explained the importance of this subject, and its relevance to the challenges faced by world democracy today:

The “Nuremberg legacy” forms an important part of modern international law, and the trials are celebrated today as triumphs of justice. Imperfect as they were, the prosecutors and judges at Nuremberg appear to have done a fairly decent job of delivering justice towards the defendants at the dock.

Imperfect? What was lacking?

A critical component in the success of the Nuremberg trials was the independence of the American, British and French judges and prosecutors in handling the proceedings. The



Prof. Michael J. Bazylar: trying to reconcile “how the Holocaust could simultaneously have been both legal and criminal.”

Western prosecutors knew that they had to prove their case for each defendant, with no assurances that a verdict of guilty was a foregone conclusion; the Western judges, likewise, saw their role as impartial arbitrators. However, to the great chagrin of Chief Prosecutor Robert Jackson, Soviet judge Iona Timofeevich Nikitchenko announced before the start of the trials: “We are dealing here with the chief war criminals who have already been convicted and whose conviction has been already announced by both the Moscow and Crimea [Yalta] declarations.... The whole idea is to secure quick and just punishment for the crime.” He then famously added: “If... the judge is supposed to be impartial, it would only lead to unnecessary delays.”

In your research, you discuss a phenomenon known as “legal barbarism.” Can you explain?

A major goal of the Western prosecutors and judges at Nuremberg was to demonstrate their judicial independence, in contrast to the wholesale

corruption of the legal system in Germany during the Nazi era. The sad fact is that legal sophistication did not inoculate German law and legal actors—judges and other judicial officials, lawyers, and law professors—from actively participating in the perverse changes being made to the German legal system during the Nazi era, including the legal exclusion of Jews from the concept of “citizen,” and the Nuremberg Race Laws, which gradually transformed the non-citizen Jew into a subhuman not worthy of life. By the time the gas vans came and the human slaughter factories were built in Auschwitz and the other death camps, the murder of the six million Jews and other persecuted minorities had been engineered completely within the framework of German law through this system of “legal barbarism.”

At the so-called “Justice Trial” at Nuremberg in 1946, the defendants—German judges and justice ministry officials—offered as their lead defense the point that they were now being prosecuted for acts that were perfectly legal under German law. The American judges hearing the case rejected that argument, finding that Nazi Germany was a criminal state whose laws could not be given the label of legality.



Justice on Trial

the other hand, the internal threat in the United States, the United Kingdom, continental Europe, Israel and other liberal democracies throughout the world from both homegrown and foreign terrorists is real, and so legal measures must be taken to protect against this threat.

However, it is a well-known adage that democracies are precarious institutions, and that constant vigilance must be maintained to preserve such democracies from undue government encroachment. Remembering the sorry behavior of German judges and lawyers during the Nazi era can play an important role in ensuring that today’s democracies—faced with the threat of terrorism—do not transform themselves into legal tyrannies. With the threat of future 9/11-style terrorist attacks still looming large, a final evaluation cannot be made about whether legal actors in today’s liberal democracies will continue to handle themselves more responsibly than how German legal actors conducted themselves between 1933-45.

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