

Organisational Model of the Nuremberg Trials: Between Law, History and Criminology

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ABSTRACT

This article analyses the Nuremberg Trials by examining their setting, processes, and legacy, with an emphasis on power, selective justice, and historical context. It interrogates the discriminatory characteristics of the trials and the intentions of the Allied powers. The critical criminology perspective highlights that the Nuremberg trials predominantly addressed the offences of the defeated Axis powers, neglecting possible transgressions by the Allied states. This selective prosecution calls into question the impartiality and universality of the justice which was administered in this case. The trials were executed by the triumphant Allied powers, prompting apprehensions over the impact of power and political interests on the judicial process. The trials may have served to validate the victors' acts and reinforce their post-war supremacy. The Nuremberg Trials are praised for instituting the principle of individual criminal responsibility for international offences; however, the text also explores the possible adverse effects of the trials, including the risk of victors' justice, the selective enforcement of international law and the whitewashing of the real culprit(s) of World War II.

Keywords: The Nuremberg Trials, Selective Justice, Critical Criminology

INTRODUCTION

Beyond the obvious significance of the subject matter, particularly in light of the current geopolitical situation, it is important to point out that state crimes remain an under-explored area within criminology (Watts et al 2008: 207). By going back to the roots of international criminal law, the article offers an innovative approach: it analyses the origins of the Nuremberg trials and various "behind-the-scenes games" that show that the rule of law in those trials was more conceptual than actual. Such attempts are relatively new in criminological thought: usually, articles of this kind are either relatively legalistic or overly theoretical. This text is one of the few attempts to combine law, history and critical criminology, providing a nuanced perspective on the issue at hand. One of the main criminological approaches employed in this article is Richard Quinney's social constructivism. According to this view, a crime is a certain type of human behaviour, and that behaviour is recognised as criminal by institutions with the appropriate authority in a politically organised society. Thus, crime is created/constructed. Moreover, criminal behaviour is "political" in the sense that those who commit crimes do not have sufficient power to define crimes (Quinney 2017: 32-34). In the authors' opinion, this approach is particularly suitable for the Nuremberg Trials, where it was necessary to create/define both the international crimes themselves and the judicial process by which the relevant definitions were incriminated against the perpetrators.

The Nuremberg Trials were trials which took place after World War II from 1945 to 1946 in the city of Nuremberg, Germany. During the Nuremberg Trials, 24 people were indicted, including high-ranking Nazi

leaders, generals, lawyers, and others. The Nuremberg Trials played an important role in establishing judicial accountability for Nazi crimes and in establishing the principles of international law governing the conduct of military conflicts and the protection of human rights (Barabash, Berchenko 2019). The Nuremberg judgement affirmed the capacity of individuals to commit crimes, most fundamentally, the distinction between the responsibility of states and the responsibility of individuals. Defendants argued that responsibility should be ascribed to the state, since international law is concerned with the actions of sovereign states, and provides no punishment for individuals. The Nuremberg judgment rejected the claim that individuals can hide behind the state, or other organisational structures. It held that crimes against international law are committed by people, not by abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced. This famous dictum affirmed that individuals are subjects, not only objects of international law (Stahn 2019: 119). In this regard, it is worth noting that SS men were trained precisely to become instruments of abstract reason, rather than thinking and feeling human beings. Polish lawyer and criminologist Stanislaw Batawia wrote that:

“The SS were prepared to obey orders blindly, especially those of Fuhrer, whose person and rightness they were taught to believe in uncritically. The primary role was played by the apotheosis of hatred and killing in oneself any compassion for the enemy. The training aimed at familiarising the SS men with cruelty and prepared them for active participation in acts of aggression (Batawia 2004).”

To comprehensively analyse the topic, the authors utilised the following strategies: the historical method enhanced the understanding of the “historical context,” origins, and initiation of the Nuremberg Trials; whereas the comparative method allowed for the evaluation of different alternatives for concluding World War II and sanctioning (or not) war criminals. In these ways, critical criminological theories naturally come into play, offering a broader interdisciplinary perspective and, in a sense, “lightening the burden of criticism” on the Nuremberg Trials because, as will be seen, the criticism can also be directed at other trial(s) and even at criminal justice system as a whole.

Choosing A Model for Ending World War II

While the Second World War was still going on, there was a debate on how to deal with war criminals (Priemel 2016: 60). There was disagreement on the form in which justice should be administered, and the disagreements were rooted in the specificities of international law. In an international law dominated by agreements, it is difficult to administer justice because its content is undefined and its enforcement unsanctioned.

As early as 1941, Roosevelt and Churchill had already assessed Germany’s actions against France and said that the main purpose of this war must be to punish the Germans for warmongering (A. Tusa, J. Tusa 2010: 23). The debate during the war on how to deal with Germany after the war was over was both academic and political. Scholars debated which measures to punish war criminals were legitimate and whether they even existed. However, until almost the end of the war, politicians focused more on the conduct of the war than on post-war realities (Priemel 2016: 60-69). As the issue of punishing war criminals became unavoidable at a certain stage, a diplomatic debate ensued.

In the fall of 1943, in a meeting in Moscow, the leaders of Britain, the US and the Soviet Union, through their foreign ministers, decided that Nazi crimes throughout Europe could not go unpunished. It was stressed that war criminals would have to be punished by courts organised by individual states, but it also identified a category of war crimes that had no geographical location and would be punished by agreement between the Allied Powers. Later in the fall of 1943, at the Tehran Conference, there were also discussions on what to do with war criminals. Churchill, in his speech, spoke out against the crackdown on the Nazis, saying that he would rather shoot himself than accept the mass execution of 50,000 Nazis (Marrus 1997: 20). Churchill then declared that the British government was against the execution and the crackdown on war criminals, although it is known that from 1942 onwards the British position was different. Britain’s position during the war was that Nazi Germany had to be dealt with swiftly, and that justice by the courts would take too long (Priemel 2016: 62).

On the other side of the Atlantic, the US politicians also debated the question. President Roosevelt usually refrained from commenting in detail on how Nazi leaders should be punished, but by 1943-1944 he could no longer avoid questions about the post-war period, which included the fate of war criminals. The President himself did not have a clear opinion, so this was analysed by members of his cabinet. Morgenthau, Secretary of the Treasury in Roosevelt’s administration, proposed a plan to turn the German nation into an agricultural land by destroying heavy industry. Morgenthau suggested that the main leaders of Nazi Germany should be removed quickly and surely (Marrus 1997: 23-25). This plan was later challenged and labelled a threat to peace. Morgenthau was dismissed from his post. A consensus grew within the Roosevelt administration that the Nazis should be punished by an international court.

In 1945, Roosevelt, Churchill and Stalin attended yet another conference, this one in Yalta (“The Yalta Conference”). They still disagreed on how to deal with war criminals. It was only after the death of President Roosevelt that a definitive US position on the need for a court to punish war criminals emerged. Truman, the new American president, formally declared that the Nazis must be charged and punished; he appointed the American lawyer and associate justice of the U.S. Supreme Court, Robert H. Jackson to serve as the chief U.S. prosecutor of the war criminals (Marrus 1997: 33).

In the debates that took place between the Allies during the Second World War, two main positions emerged: on the one hand, whether war criminals should simply be dealt with, thus ending the war; or, on the other hand, whether the war criminals should be rehabilitated and thus, to prevent future wars and tragedies. Even after the diplomatic breakthrough and the agreement that war criminals should be prosecuted by a military tribunal, a number of problems remained, mainly due to the lack of precedent for such a case but also due to the four major powers' different attitudes to justice (Priemel 2016: 63).

In this sense, the emergence of the Nuremberg trials is a striking example illustrating one of the critical criminological theories—social constructivism. Like US lawyer Roscoe Pound, who applied interest theory to law, social constructivism theorist Richard Quinney understood law and its application as a dynamic power that is constantly being created and interpreted (Quinney 2017:10). Laws and their application help to control interests, but at the same time they are a product of interests. Furthermore, criminal definitions are applied by the segments of society that have power to shape the enforcement and administration of criminal law. The powerful interests get involved in all stages in which criminal definitions are made. Since interests cannot be effectively protected by merely formulating criminal law, enforcement and administration of the law are required. The interests of the powerful, therefore, operate in applying criminal definitions. Consequently, crime is political behaviour and the criminal becomes basically a member of a minority group without sufficient public support to dominate the control of the police power of the state. Hence, the probability that criminal definitions will be applied varies according to the extent to the behaviours of the powerless conflict with the goals of the power segments (Quinney 2017:10).

Therefore, criminal prosecution for political crimes (and Quinney's distinctive feature and academic courage lie in the fact that he extends this insight to all crimes, not just political ones) and, accordingly, recognition of the fact of victimisation are far from being self-evident practices. Sometimes pragmatic considerations complicate the investigation of similar acts, as illustrated, among other things, by the controversial case(s) of Nobel Peace Prize (!) laureate Henry Kissinger. According to political crime investigators, the extent to which H. Kissinger was directly or indirectly responsible for the deaths of René Schneider, Salvador Allende, Orlando Letelier, and Elias Demetracopoulos – whether by instigating, planning, or supporting these actions—should best (or should have been) decided through criminal proceedings. The fact that the Chilean and Greek governments did not seek this remedy in US courts or request Kissinger's extradition to stand trial in their own countries shows that political agendas sometimes take precedence over legal or moral ones (Jacobs, 2004: 217).

Another recent example revealing the selectivity of criminal proceedings in the context of political crimes is the Lithuanian case of “Bloody Sunday,” which took place on January 13, 1991. In these proceedings, the Republic of Lithuania punished former Soviet soldiers and other responsible persons for the deaths and injuries of civilians who peacefully defended the recently declared independence of Lithuania. Metaphorically referred to as the Nuremberg Trials for the crimes of communism, this process is undoubtedly very significant and, from a panoramic perspective, can be viewed positively. However, certain minor details reveal that the process was not entirely flawless. One of the most notable details is the issue of the responsibility of the commander-in-chief of the armed forces, which the Republic of Lithuania has failed to address. In other words, the Lithuanian courts rightly punished Mikhail Gorbachev's subordinates, whose actions led to the deaths of civilians defending Lithuania's freedom, but the question of their superior's responsibility was left unresolved (Zaksaitė 2023).

Going back to Nuremberg trials themselves, it appears clear from the analysis of the material examined that the entire organisation of the Nuremberg trial was riddled with politics and compromises. At the Yalta Conference held in February 1945, Churchill asked Stalin whether he thought a trial was necessary before the Nazi leaders could be shot. The question meant that there were two choices: a) end the war by legal procedures or b) by political action (Marrus 1997: 33). At the San Francisco Conference of April 1945, the idea of an international tribunal was presented to the foreign ministers of the Soviet Union and the United Kingdom; they basically agreed upon that structure. By the beginning of May, a consensus had emerged amongst all countries that the Nazis should be brought to an international tribunal. The idea of a legal process was given priority over the possibility of a political crackdown on Germany which had lost the war.

The historiography reflects the prominent role of diplomacy in finding ways to punish war criminals, and the fact that the major powers of the world were able to agree on the organisation of a tribunal has been hailed as a major diplomatic achievement (Ehrenfreund 2007:10). The divergent positions on the form and means by which justice was to be delivered and served are testimony to the fact that the organisation of such a trial was a political and diplomatic challenge rather than a legal one. Although there was debate among international law specialists at an academic level, the creation of Nuremberg was not driven by legal arguments but by political decisions and agreements. Nevertheless, law was chosen as the means to end World War II. On a political level, it was decided that war criminals would be punished through legal proceedings in accordance with legal provisions. In assessing the organisational model of the Nuremberg Military Tribunal, one cannot ignore the circumstances that determined its form and operating principles. The form of the legal process was chosen by the victorious parties of the war to

bring the conflict to an end; however, the circumstances of the creation of Nuremberg also reveal the other (non-legal) objectives pursued by the victorious states in this process.

Preparing for the Trial: The Debate Between Politics and Law

Once the Allies had agreed that the Nazi regime should be evaluated and punished by an international military tribunal, the problems of organising the process did not end. Even greater challenges arose as four states (the United Kingdom, France, the USA and the USSR) had to agree on the form in which the unprecedented trial would take place. Organising a legal process for states with different legal traditions is extremely difficult. The Anglo-Saxon legal tradition (as represented by the UK and the US), versus the continental approach (represented by France and the USSR) became glaringly apparent in the organisation of the Nuremberg Military Tribunal (Ehrenfreund 2007:10).

Robert H. Jackson, the American lawyer who served as the chief U.S. prosecutor of the war criminals, published a paper in London in 1945 which discussed in detail the debate in the summer of that year on how war criminals should be punished (Jackson 1949: 30). Much of the debate concerned the different legal traditions and the objectives that different governments ascribed to the emerging judicial process. The author identifies the uniqueness of the USSR's position and the reasons why it was difficult to find uniform solutions on certain issues. It is not only the difference between the legal systems represented by the USA and the United Kingdom that stands out, but also the differences between the legal traditions of the USSR and France (Kirchheimer 1961: 324). The USSR's approach to international and criminal law was not identical to that of other countries. The Soviets perceived the judicial process as a tool used by the government to protect its interests (Jackson 1949: 12). As early as 1947, R. H. Jackson attributed this position of the USSR to differences between legal traditions. This American jurist had only a fragmentary acquaintance with the continental legal tradition, and one of his aims was to make the process as "Anglo-Saxon" as possible (Kirchheimer 1961: 347). But the fact is clear: the repressive policies and specific legal ideology of the USSR were not understandable or recognizable to the West.

Nonetheless the Soviet Union's policies and objectives differed from those of the other allied countries in a significant way. The difficulty of finding a common narrative in organizing the process and defining the details led to a search for compromises and this led to a certain amount of chaos. The Soviets agreed to hold the trial in Nuremberg and by doing so, they conceded to the Americans, although they wanted to hold it in Berlin, a part of the city that belonged to them; the Americans in turn conceded to the Soviets by allowing their representatives to wear military uniforms during the trial (Hirsch 2008).

Compromises were inevitable in the organisation of this process, and all things considered, it has been the subject of much criticism for its controversial nature (Kirchheimer 1961: 341). However, given the fact that the process was organised by four states with different legal traditions, this was natural. There were, of course, disagreements on legal issues. Disagreements about the need to have closing and opening speeches, the order of the examination of witnesses, etc. are not surprising and could hardly have been otherwise. However, the examples cited above – the location of the tribunal, whether to wear military uniforms in the courtroom – show that it was not only legal issues that were debated.

The representatives of the Western powers made some concessions to the Soviet Union in order to ensure that justice was done. The Indictment included the "Katyn massacre". From the outset, the Soviet Union denied responsibility for the killings and instead blamed Nazi Germany, which had uncovered the mass graves in 1943. Although the Western powers generally believed that the Soviet authorities were responsible, they ultimately made concessions for political reasons. The killing of 925 Polish officers was initially included in the Indictment. After the Allied Powers signed the Indictment, the Soviets demanded that the figure be amended to 11,000 instead of 925 (Marrus 1997: 57). Ultimately, the Indictment stated: "*In September 1941, 11,000 Polish officers, prisoners of war, were killed in the Katyn woods near Smolensk*" (Nuremberg Trial Proceedings, 1 July 1946, Morning Session). However, this allegation was ultimately not reflected in the Tribunal's final judgment, which did not uphold Katyn as a proven German crime.

The Soviet Union also requested that the Baltic Republics be considered Soviet Socialist Republics and it was granted. This request, despite being listed as an "undesirable topic" for the upcoming tribunal, was made in order to prevent the defense attorneys from criticizing the actions of the victorious states (Šepetyš 2006: 52-53). However, the American representatives pointed out that they had no diplomatic authority to sign such requests and that this was not an official expression of the United States' position (The Letter of Reservation 1945). Other (no less spicy) points on the list of "undesirable topics" included: 1. The Soviet Union's attitude to the Versailles Treaty. 2. The August 23, 1939, Non-Aggression Pact between the Soviet Union and Germany and all issues related to it. 3. Molotov's visit to Berlin as well as Ribbentrop's visits to Moscow. 4. Issues related to the socio-political system of the Soviet Union. 5. The USSR-Germany agreement on the transfer of ethnic Germans from Latvia, Lithuania, and Estonia to Germany. 6. Foreign policy of the Soviet Union, specifically the issue of the Straits and the alleged territorial claims of the Soviet Union. 7. The Balkan question. 8. Soviet-Polish relations – the problems of Western Ukraine and Western Belarus (Besymenski 1991).

Thus, the involvement of the Soviet Union in the proceedings meant that compromises had to be sought not only in determining how the tribunal would be organised, but also on issues relating to the Soviet Union's internal policies and ideological positions. Shortly before the Tribunal began, all the Allied Powers agreed that the defendants would not be allowed to accuse the Allied Powers or make political accusations against them during the proceedings (Hirsch 2008). The Soviet Union was well aware that a process defined in this way was suitable for the development of their objectives and ideology. The Soviet Union and the other Allied Powers knew or suspected that the defendants' counsel would refer to events before and during the war and use the Allies' roles in them as a defense. Preparations for the trial were therefore mainly a political rather than a legal dispute.

The London Conference, held from 26 June to 2 August 1945, which excluded journalists, became a purely diplomatic debate. The Conference revealed the shape of an unparalleled legal process. Some of the discussions concerned legal issues, but the main disagreements were on political rather than legal issues (Jackson 1949: 13). All the discussions took place in the direct presence of the permanent representatives of the governments (with lawyers only acting as intermediaries), therefore, despite the preparation for a legal process, in reality the Allied Powers' main focus was on political objectives. The Soviet Union's objectives were the most pronounced, but other states also followed the instructions of their governments (Hirsch 2008). In spite of everything, the four Allied Powers agreed on one common goal: to organise a public trial for the Nazi leaders.

Admittedly, some attention was also paid to legal issues during the preparations, with the American representatives putting forward their positions on how witnesses were to be questioned, whether the prosecution's opening and closing statements were necessary, the way evidence would be presented, the role of the judges, the powers of the defense and the latitude in their defenses, the formulation of the text of the Nuremberg Statute, and so on (Jackson 1949: 21). These issues had been debated, and R. H. Jackson, the American prosecutor, had even gone so far as to say that he did not see the possibility of a joint trial and that there was no fault in this – there was simply too great a difference of views (Marrus 1997: 48). However, politics played a key role in the organisation of the legal process, and the specificities and fears of individual states had the greatest influence on the search for compromises.

It is important to note that, conceptually speaking, the Nuremberg Tribunal placed all the blame for the outbreak of World War II on Germany. This hardly corresponds to the historical truth. Certain opinions argued that the main scenario of World War II was devised by Stalin, who remained on the sidelines, and that the Soviet Union, led by Stalin, retained complete freedom of action, intervention, withdrawal, and coalition-building in early September 1939 (Šepetyš 2006: 115, 208). In this regard, there are intriguing metaphors describing the roles of both Stalin and Hitler in World War II. Hitler is depicted as a card player who, due to his "bare" illusions and reckless desire to conquer Europe, became engaged in World War II in a rather adventurous manner, without considering the potential risks. Stalin, in contrast, is depicted as a chess player who exercised greater caution in his strategy selection, foresight, and decision-making. Ultimately, the outcome of the "game" of World War II proved to be much more favourable and beneficial to Stalin (Topitsch 1998: 21-30, 26). Perhaps this insight partly explains why the Soviet Union's position differed from the Allies and the reason why it made the demands listed above. In this regard, it should be noted that (as already mentioned when discussing the above-mentioned "list of undesirable topics") the Indictment and subsequently the Verdicts diminished the importance of the secret protocol of the Molotov-Ribbentrop Pact. Nowadays, the Molotov-Ribbentrop Pact and the secret protocol are regarded as having facilitated the onset of World War II and the subsequent Soviet Union's occupation of parts of Eastern Europe. When discussing the historical context and the origins of the document in question, it is important to note that, the Molotov-Ribbentrop Pact, which was signed on August 23, 1939, between Nazi Germany and the Soviet Union, was publicly declared as a non-aggression treaty that guaranteed peace between two ideologically hostile regimes. Nevertheless, this accord contained a secret protocol that sneakily divided Eastern Europe into spheres of influence, thereby facilitating the partition of Poland and the onset of World War II. This covert agreement allowed Germany and the Soviet Union to pursue their territorial ambitions without imminent conflict, thereby reshaping the geopolitical landscape in a manner that would have catastrophic repercussions. The historical evaluation of the Pact or secret protocols throughout the entire epoch of the Cold War depended on the political conjuncture and one's world outlook: can or cannot communism be equalled to national-socialism. The question about the effect of the Pact on sovietisation of the Baltic States in 1940 acquired a real historical and political significance only in the epoch of the downfall of the USSR. This effect was underlined in societies of the liberating Baltic States and was fiercely denied by the USSR authorities (Roth 2019; Šepetyš 2006: 324-325). Consequently, it was official Soviet policy for many years to declare that the secret protocol to the Nazi-Soviet Pact did not exist. Alexander Yakovlev, a Soviet and Russian politician, diplomat, and historian, was asked by Mikhail Gorbachev to lead a commission that looked into whether such a protocol existed. In December 1989, Yakovlev came to the conclusion that the protocol had been real and told the Soviet Parliament what he had found. Accordingly, the Congress of Soviets passed a resolution that acknowledged the presence of the secret protocols, condemning and denouncing them (Borejsza, Ziemiński, Hulas 2006: 521).

Given the above, it is not surprising that the Nuremberg Tribunal's Indictment emphasised only one side of the Molotov-Ribbentrop Pact – that Germany violated this “Non-Aggression ” Pact, “unexpectedly” betrayed the Soviet Union (which in this context is “only” a victim and in no way a perpetrator), and thus began its aggression against the Soviet Union. As stated in the first charge:

“On 22 June 1941 the Nazi conspirators deceitfully denounced the Non-Aggression Pact between Germany and the U.S.S.R. and without any declaration of war invaded Soviet territory thereby beginning a War of Aggression against the U.S.S.R.”

The reality, however, was much more complicated – the Soviet Union, led by Stalin, clearly foresaw that World War II was inevitable, and by signing the Pact (and the deceitful secret protocol) it sought to gain time before the decisive battles for control of Europe and the world. In this respect, the Nuremberg Trials had little to do with reality – they represented postulated criminals, not real ones, and subsequently punished them. This topic is discussed in the next section.

The “Ideal Criminal”

In this section, we will attempt to reveal how and to what extent the concepts of the “ideal victim” and the “ideal criminal” introduced by Norwegian criminologist Nils Christie are suitable for explaining and illustrating the Indictment of the Nuremberg Trials. For the sake of objectivity, it should be noted that the word “ideal” in the context under discussion has little to do with the positive characteristics of the victim or the criminal themselves. In the present case, “ideal” refers more to a scientific construct, a kind of instrumental typology, similar to the ideal types that Max Weber distinguished to simplify reality (Norkus 1990).

According to Christine Schwöbel-Patel, N. Christie's theory is suitable for analysing not only the construction of victims of ordinary crimes, but also of international crimes. In her work, the author provides an example of how N. Christie's concept of the “ideal victim” is revealed in the construction of victims in the International Criminal Court. She notes that the ideal victim is characterised by such traits as passivity, femininity, and grotesqueness. Grotesqueness in this context is understood as the exaggeration and emphasis of physical features that reveal the victim's status: for example, photographs emphasise the scars and wounds left by the victim's trauma. Deformed and mutilated bodies are often depicted (Schwöbel-Patel 2018). With some reservations (since tragic grotesqueness was indeed characteristic of Nazi crimes), a similar insight applies to the Nuremberg Trials. For example, the third count in the Indictment charges that:

“Methods used for the work of extermination in concentration camps were: Bad treatment, pseudo-scientific experiments (sterilization of women at Auschwitz and at Ravensbruck, study of the evolution of cancer of the womb at Auschwitz, of typhus at Buchenwald, anatomical research at Natzweiler, heart injections at Buchenwald, bone grafting and muscular excisions at Ravensbruck, etc.), gas chambers, gas wagons, and crematory ovens.”

Furthermore, the image of the ideal victim is linked to the role of the ideal criminal, and one cannot exist without the other: it is impossible to separate the construct of the victim from that of the perpetrator. These roles reinforce each other; ideal victims need ideal criminals (Schwöbel-Patel 2018). Therefore, the ideal criminal is the opposite of the ideal victim: strong, masculine, proactive, and dangerous. He is also independent, cunning and politicised. He does not (should not) have the aforementioned grotesque traits that generate empathy. As stated in the first count of the Indictment:

“After having denounced the German-Polish Pact of 1934 on false grounds, the Nazi conspirators proceeded to stir up the Danzig issue, to prepare frontier “incidents” to “justify” the attack, and to make demands for the cession of Polish territory. Upon refusal by Poland to yield, they caused German armed forces to invade Poland on 1 September 1939, thus precipitating war also with the United Kingdom and France.”

The ideal criminal is simply “ugly” and portrayed in an unattractive way. In addition, the criminal is “evil”, and his “evil” encourages both the legal community and society to distance themselves from him and identify with the victim. N. Christie's insights are relevant to war crimes and crimes against humanity (in particular) in that they reveal that the ideal criminal archetype can be used to appease a troubled conscience – that the criminal is somehow different, alien, necessarily devious, necessarily terrible. In reality, however, he may be an average person, “one of us.” N. Christie wrote about the banality of evil as early as 1952-1953, describing how guards in prisoner-of-war camps in northern Norway treated prisoners with extreme cruelty, considering them inferior to other people:

“I once made a study of guards in concentration camps. But I did not study the guards of the enemy, I did not study German SS troops in Buchenwald or Sachsenhausen. I studied Norwegian guards, working for the Germans, but killing and torturing in Norway. I will not report the findings, but only the reactions to the findings. In great oversimplification, I found that the killers and torturers were quite ordinary Norwegians. They were like us, and we would have behaved as they did had we, with their age and educational background, been placed into their situation. The reaction to this finding was a nonreaction. No denial, but neither were there any comments. My article was published in a journal which was usually heavily quoted in the mass media. But not in this case. Twenty years later I was asked to publish the total manuscript as a book, and so I did. This time the findings were received with some attention. My interpretation is that the first reports in 1952 and 1953 appeared too close to the war. It was just too much – it became unbearable – to see the worst of the enemies, the torturers and killers, as people like ourselves. In the public mind they were Quislings, traitors, psychopaths, mad, evil. To survive in an occupied country, we need a de-humanized picture of the enemy, a real and distant offender. In 1972 new generations of readers had arrived. Their need for understanding was greater than their need for ideal offenders” (Christie 1986).

The aforementioned quotation evokes considerations of social distancing and the handling of total evil. One can see that the concept of the “ideal offender” is closely related to the concept of othering – a conservative demonisation which projects negative attributes on the other and thereby grants positive attributes to oneself. “Conservative othering” involves the notion of suggesting that the deviant is alien – an inversion of “our” values; consequently, this type of othering focus on policies which are punitive and/or exclusionary (Young 2007; 5-6). It is understandable that such a strategy of demonising enemies is not entirely realistic, and even less so entirely honest – it speaks more about the need for security and survival of the punishers (i. e. the constructors of criminal policy) themselves rather than about the ambiguous social reality.

CONCLUSIONS

In conclusion, the organisation of the Nuremberg Trials was mainly a political rather than a legal endeavour, with the law being chosen as the means of achieving such an end. The mere fact that political agreements decided that the legality of the actions of the victorious states during the war would not be judged during the proceedings suggests a departure from one of the fundamental requirements of the Western legal tradition, which is that politics is subordinate to law (and not the other way around). Therefore, although the Nuremberg Trials are lauded for establishing the principle of individual criminal responsibility for international crimes, they can also be criticised for the possible adverse effects of the Trials, including the risk of victors’ justice, the selective enforcement of international law and the obfuscation of the real ideator(s) of World War II.

It is worth noting that such criticism of the Nuremberg Trials in the spirit of critical criminology can be “turned around” and applied to (international) criminal law as a whole. The critical perspective does not draw a sharp distinction between law and politics, arguing that crime is not an ontological reality but a product of criminal policy. Thus, “*the construction of reality as it is pursued in criminal justice will practically never coincide with the dynamics of the construction of reality of (those directly) involved*” (Hulsman 1986). Furthermore, the criminal process itself is also inevitably political, because the court often “appropriates” the conflict between the victim and the wrongdoer and, instead of seeking peace between these primary parties, engages in a rather demonstrative and often selective punishment of perpetrators (Christie 1977). In addition, regarding the Nuremberg Trials, it is noticeable that the portrayal of victims and perpetrators was simplified and excessively emotional, thereby embodying stereotypical rather than authentic representations of these roles.

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