

# The Nuremberg Trial: A Beautiful Idea Murdered by Ugly Facts?

Written by Clare Santry

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CLARE SANTRY, AUG 19 2013

### **'The Nuremberg Trial Was a Beautiful Idea Murdered by a Gang of Ugly Facts.' Discuss.**

It was Persico who referred to Nuremberg as “a beautiful idea murdered by a gang of ugly facts” (1994: 443) in the conclusion of his colourful reconstruction of the Trial. The metaphor sits somewhat uneasily with the example of Nuremberg, partly because the words “beautiful” and “murdered” seem incongruous. However, examining the sentiment of the statement does give one something to work with. Essentially it asserts that the Nuremberg trial had lofty intentions and aims, but that these ambitions failed to come to fruition, or fell foul of a number of problems when put to the test. In this essay, I will examine the ideas behind the creation of the International Military Tribunal (IMT) at Nuremberg. I will then explore the key legal aspects of the Trial and assess their relative success or failure. In the last section, I will consider the practicalities of the Nuremberg trial and the benchmarks by which its legacy is measured.

Overall, I believe that the quote in the title of this essay is inaccurate. Persico used artistic licence in borrowing the quote from the biologist, Thomas Henry Huxley, who actually coined the phrase in reference to science[1]. It seems misleading to equate justice with science. Justice is in the eye of the beholder and is far more subjective than science. Also, justice can never be entirely pure because human flaws will always taint it. Thus, the Nuremberg trial should not be simply reduced to a successful or unsuccessful undertaking, or a right or wrong idea. There were a number of different intentions and aims behind Nuremberg's creation, not just one “beautiful idea.” Despite a number of valid criticisms, especially regarding the interpretation of the Law, the Nuremberg trial was deemed a success and few would agree that it was “murdered.”

### **The “Idea” Behind Nuremberg**

The establishment of the IMT at Nuremberg in November 1945 is assumed these days to have been an obvious choice for the post-WWII international community. But at the time, it was far from clear how best to deal with the surviving Nazi leaders. Bass (2000) describes how among the Allied leaders, the appetite for summary execution of the Nazis was high. Prime Minister Churchill firmly favoured executing the top level of the Nazi echelon, as did President Roosevelt on the advice of his Treasury Secretary, Morgenthau. The Soviets seemed happy to mix mass executions with a few quick show trials. The general public in the Allied countries also staunchly supported executions, less than 10% favoured trials, roughly the same number who favoured slow torture (Bass, 2000: 160).

One of the key reasons that people supported the idea of executions was that “honest vengeance was purer and preferable to rickety legality” (Persico, 1994: XI). This reason for backing executions can also be interpreted as a criticism of the legal solution. The war was political and so the solution should be political. It is better to keep revenge as a political act than sully the hands of justice with a show trial. As Buruma says, “why drag the law into it? Why not take a political decision to punish?” (1995: 144).

In any case, it was thought that public opinion would view a trial as a put-up job, and nothing more than a display of victors' justice. Many did indeed perceive the subsequent establishment of the IMT as a farcical exercise, certainly not motivated by lofty ambitions. The Chief Justice on the US Supreme Court, Harlan Fiske Stone, famously

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described Nuremberg as a “high-grade lynching affair” (cited in Douglas, 2001: 49). The defendant Goering also challenged the impetus behind the Trial when he wrote on his indictment “the victor will always be the judge and the vanquished the accused” (cited in Persico, 1994: 83). Similarly, the author Overy claims that the Trial was unquestionably “a political act, agreed at the level of diplomacy, and motivated by political interests” (2003: 29).

Confusion over the idea behind Nuremberg is exemplified by the attitude of the Soviets to the IMT. The Soviets always assumed that the Trial was a propaganda exercise and that the defendants were guilty *a priori*. One week before the Trial started, the Soviet Deputy Foreign Minister, Andre Vyshinsky, infamously made a toast to the defendants with the words “may their paths lead straight from the courthouse to the grave” (Taylor, 1993: 211). The Soviets never altered their perception of Nuremberg as a show trial and were deeply critical of the subsequent acquittal of three of the defendants and the seven defendants who received prison sentences instead of the death penalty (Bass, 2000: 203).

There are a number of other ways to perceive the intentions of those who created Nuremberg. The first motivation that I want to discuss could certainly be interpreted as a “beautiful idea.” It is the noble concept of reason triumphing over power—of impartial justice conquering partisanship. Chief Justice Robert Jackson articulated this concept in his opening address at the Trial:

That four great nations, flushed with victory and stung with injury stay the hand of vengeance and voluntarily submit their enemies to the judgement of the law is one of the most significant tributes that Power has ever paid to Reason (cited in Marrus, 1997: 79).

The key American legal minds behind Nuremberg’s creation envisaged a “spectacle of legality” (Douglas, 2001: 41), whereby the strength and neutrality of the law would be demonstrated to the world. To some extent, the integrity of the Law would be on trial, with the aim of proving “the power of the law to submit the most horrific outrages to its sober ministrations” (Douglas, 2011: 41).

Another idea behind the creation of the Tribunal is less of a lofty ambition and more of a practical solution to a problem. The Anglo-American “liberal scruples” (Bass, 2000: 190) eventually ruled out executions and made the prospect of show trials abhorrent. But leaving the Germans to administer their own justice was seen as highly unsatisfactory. Hanging over the Allies was the spectre of the failed national trials following WWI and the subsequent German nationalist resurgence. As Teitel says, the WWI historical precedent “throws into clear relief the justice policy at Nuremberg” (2000: 31). Plus, the complete breakdown of Germany meant domestic jurisdiction was largely irrelevant. Thus, it appeared logical and correct that the four Powers should assume shared sovereignty over administering justice (Schwarzenberger, 2008: 174). In fact Moghalu goes as far as to say: “it was of course perfectly legitimate, in the historical context of the time, where a state has waged aggressive war and lost, for the prerogatives of victory to go to the victor” (2006: 30).

There is a groundswell of academic and political opinion that believes the purpose of the Nuremberg trial was to provide a history lesson to educate people, especially the German population, about the Nazis’ crimes. This point of view is summed up by Robert Kempner, a junior prosecutor at Nuremberg, when he described the Trial as “the greatest history seminar ever held in the history of the world” (cited in Douglas, 2001: 2). The Trial aimed to expose the aggression of the Nazis and the atrocities committed by the regime, consequently shaming the German people and curtailing any martyring of the Nazi leaders. In this sense, the Trial was also designed to be a deterrent against future belligerence. Henry Stimson, one of the architects of Nuremberg and the US Secretary of War in 1944, explained that the IMT should be established “for the purpose of prevention and not for vengeance” (cited in Bass, 2000: 157).

Buruma describes the pedagogic intentions of Nuremberg as a “morality play” (1995: 145) that mixed law, politics, and religion. Thus, the line becomes blurred between Nuremberg as a factual history lesson and Nuremberg as a subjective morality lesson. Nuremberg could be perceived as “a contest between good and pure evil” (Moghalu, 2006: 33) resulting in the triumph of civilisation and humanity, the demolition of Nazi ideology, and the severing of Germany from its vicious past. Teitel describes the important transitional role of Nuremberg as a means of

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“delegitimizing the predecessor regime, and legitimizing its successor” (2000: 29). Similarly, Hazan says that the Trial “embodied the passage from one political organisation of the world to another” (2007: 14). But the ideological aspect of this motivation should not be overlooked. Clearly the new world order that was to be established at Nuremberg would be based on Anglo-American liberal values and the political supremacy of the Allies.

The establishment of Nuremberg for extra-legal reasons is criticised by some as being very far from “a beautiful idea.” Arendt is one critic who firmly believes that “the purpose of a trial is to render justice and nothing else” (1963: 233). This anti-Nuremberg view has two distinct angles: firstly, that historical inquiry undermines the judicial procedure, and secondly that historical trials of mass crimes will inevitably fail due to the limits of the legal process. To administer “symbolic punishment” (Buruma, 1995: 145) is seen by some to be a perversion of the legal system. Equally, the likes of Arendt claim that the Law is simply not equipped to deal with extreme criminality. For example, she said that the crimes of the Nazis “explode the limits of the law... For these crimes, no punishment is severe enough” (cited in Douglas, 2001: 39). This raises the interesting argument that there are some crimes that are beyond jurisprudence and that a criminal trial is the incorrect tool or response to cases of collective trauma. Although Douglas does not subscribe to this viewpoint himself, he neatly summarises the argument as a belief that “legal discourse is too formal and anchored in precedent to make sense of unprecedented crimes” (2001: 4). The critics of Nuremberg’s extra-legal motivations believe in adhering to the axiom “law, and nothing but the law” (Wilson, 2011: 2).

The discussion, thus far, has exposed the weakness of the argument that there was one over-arching great idea behind the creation of Nuremberg. The perceived idea behind the Trial varied according to the individual and nationality. The circumstances at the end of WWII also meant that a pure legal intention underlying Nuremberg was unlikely. In his memoirs, Taylor said that in 1945, “the political and emotional factors... were overwhelming” (1993: 629).

## The Legalism of Nuremberg

The 1945 London Charter, signed by the four powers and later adhered to by 19 other countries, was the governing instrument of the IMT. The crux of Nuremberg’s legalism appears in Article 6 of the Charter, where the specific crimes coming within the jurisdiction of the Tribunal are outlined (Marrus, 1997: 51). It is necessary to look in detail at the three crimes and the four counts contained within Article 6 to analyse the legal basis of the IMT. Article 6(a) referred to *crimes against peace*, establishing two counts upon which the defendants were to be tried—conspiracy to commit crimes against peace and the crime of waging aggressive war. Article 6(b) related to *war crimes* that violated the laws or customs of war. Article 6(c) referred to *crimes against humanity*. I will look at the problems and achievements related to the four counts individually, and then explore some of the legal criticisms that affected all three crimes as laid out in the Charter.

Going into the Trial, crimes against peace were undoubtedly the focus of the IMT. History has tended to focus on the Holocaust horrors that emerged at Nuremberg, but the priority of the IMT was the German war of aggression against the Allies. As Bass says, “Nuremberg was self-serving in ways that are usually forgotten today” (2000: 148). Justice Jackson reiterated this point in his opening address when he said that Nuremberg represented the effort “to utilise international law to meet the greatest menace of our times – aggressive war” (cited in Marrus, 1997: 80). But how successfully did Nuremberg consolidate the concept of crimes against peace?

The first count contained within Article 6(a), conspiracy to commit crimes against peace, was seen as a novel and controversial charge. The charge aimed to prove that membership of a criminal group alone was sufficient grounds for conviction. However, the conspiracy charge was widely criticised and was difficult to apply. Overy (2003: 9) said that it was hard to know where to draw the line when it came to collective criminal responsibility, and attempting to criminalise organisations proved to be time-consuming and risked implicating hundreds of thousands of German citizens. Taylor highlighted the failure of the conspiracy charge when he concluded that the charge “did more harm than good... and left a black mark on the prosecution’s judgment” (Taylor, 1993: 637). As the Trial progressed, the importance of the conspiracy charge diminished, and the French judge, Henri Donnedieu de Vabres, even suggested dropping the count on the grounds that the “crime did not exist in international law and evidence had shown that

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there had been no common plan” (Beigbeder, 1999: 41). Although the conspiracy count was retained, in reality it had little impact on the judgments since all eight defendants found guilty of conspiracy were also convicted under count two.

Persico says that the second Article 6(a) count, the prosecution of aggressive war, was “the larger issue on which the legal pioneers of Nuremberg pinned their hopes” (1994: 443). They hoped that the IMT would establish a precedent for punishing and deterring crimes against peace in the future. However, Moghalu is one of a number of authors who believes that the preventative aspect of the aggressive war charge failed and that Nuremberg “did not achieve its ultimate and unrealistic goal of deterring aggression with the spectre of accountability” (2006: 40). The most common reason for claiming that deterrence failed is the large number of wars and conflicts seen all over the world in the 67 years since Nuremberg. Yet, this seems a rather harsh benchmark by which to judge Nuremberg. Curing the world of all conflict was an impossible task for the IMT. As Overy says, failing to prevent further violations is not a real failure but just “a consequence of a persistent reality in which power will always tend to triumph over justice” (2003: 29). There are also numerous examples where, post-Nuremberg, the ban on aggressive war has led to intervention by the international community. For instance, in response to Iraq’s invasion of Kuwait in 1990, the 1956 British-Israeli attack on Suez, and North Korea’s invasion of South Korea in 1950, the ban was invoked in the interests of peace (Taylor, 1993: 637).

The third count of war crimes, under Article 6(b), proved to be problematic because it was selective about what constituted a war crime. The biggest criticism of count three was that it rejected the *tu quoque* (you too) defence, in order to shield any crimes committed by the Allied forces from legal examination. Buruma says that at Nuremberg, “the *tu quoque* principle was expressly forbidden in any discussion of war crimes” (1995: 143), primarily because under the *tu quoque* principle, the defence counsels could legitimately refer to cases such as the bombing of Dresden by the British and the 1939 Nazi-Soviet division of Poland. Thus, Nuremberg distorted the normal level playing field of the law by asserting that specific crimes were justified or unjustified depending on who committed them. Overy explains that “the hypocrisy was sustained on grounds of Realpolitik” (2003: 26), since all the aforementioned ideas behind the creation of Nuremberg would have been jeopardised if the IMT cast doubt on the legitimacy of the victors’ actions. Interestingly, Taylor says that although the timing and circumstances of Nuremberg made alternatives impossible, in retrospect, he is of the opinion that “there is no moral or legal basis for immunizing victorious nations from scrutiny. The laws of war are not a one-way street” (1993: 641).

The fourth count, under Article 6(c), judged the defendants in relation to crimes against humanity. Many observers see the definition of crimes against humanity as Nuremberg’s greatest innovation and achievement. Douglas describes Article 6(c) as “the legal imagination’s attempt to respond to the unprecedented nature of Nazi crimes against the Jews” (2001: 47). Meanwhile, Richard Goldstone, the first Chief Prosecutor of the Hague and Arusha trials, believed that “the recognition of crimes against humanity was the most important legacy of Nuremberg” (cited in Bass, 2000: 204). The subsequent codification of the crime of genocide in the 1948 Genocide Convention (Moghalu, 2006: 31) and the frequent use of the phrase “crimes against humanity” in modern international parlance gives credence to the view that Article 6(c) was an important legal achievement for Nuremberg.

However, the charge of crimes against humanity at Nuremberg is not immune from criticism. Douglas (2001: 80) points out that the IMT failed to clarify exactly what they meant by the word “humanity”; for instance, whether it referred to a specific standard of humaneness or whether it referred to humankind as a whole. Plus, it was questionable whether fundamental principles and laws of humanity could exist given that the essence of human nature was highly subjective and varied according to individuals and circumstances.

Another valid criticism of Nuremberg’s treatment of Article 6(c) is that although it was perceived as breaking new legal ground, the IMT actually played safe by placing a number of restrictions and limits on the application of the Article. Schwelb describes how crimes against humanity were interpreted as “a kind of by-product of war, applicable only in time of war or in connexion with war” (2008: 147). So, crimes against humanity could only be considered if accompanied by either crimes against peace or war crimes. One significant consequence of limiting the scope of Article 6(c) was Nuremberg’s “famous conclusion that pre-war atrocities against the Jews did not fall within its jurisdictional competence” (Douglas, 2001: 49).

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The charges, as laid out at Nuremberg, raised questions about geographical jurisdiction, especially in regards to crimes against humanity. Subjecting the German leaders to foreign jurisdiction violated principles of national sovereignty and marked a “radical inroad” (Schwelb, 2008: 121) into the sphere of domestic jurisdiction. A state could be deemed to be contravening international law even in matters that concerned civilians under domestic law. Thus, Nuremberg subordinated dominant state-centric law to international authority. In the words of De Vabres, “the Nuremberg judgment ratified the supremacy of international law over national law” (cited in Beigbeder, 2006: 256).

Closely connected to the concept of sovereignty was that of individual criminal responsibility. State sovereignty could not be used as a defence at Nuremberg, and neither could superior orders. Previously, domestic criminal law and civil law had dealt with individual responsibility, but it had not been applied in cases where a state sanctioned action against its own citizens. Thus, Nuremberg led to “the prescription of an extensive corpus of law designed to protect all individuals from the abuses of their own governments” (Ratner and Abrams, 2009: XLV). Clapham perceives this paradigm shift as “international law going beyond obligations on states and attaching duties to individuals involving criminal responsibility” (2003: 33). One of the knock-on effects of holding people personally responsible, for crimes against the international community and human dignity, was that it called into question the actions of all individuals and negated the idea of command responsibility. This led to what Teitel describes as the “post-Nuremberg liability explosion” (2000: 36).

The final key aspect of Nuremberg’s legalism is judged by many observers to have “cast a pall over its [the IMT’s] legitimacy” (Moghalu, 2006: 34). It was the idea that the crimes upon which the Trial was based were *ex post facto*, since they did not exist as crimes in international law at the time that they were committed. The IMT would, in effect, be practicing retrospective justice by “being both legislator and judge, creating crimes in order to punish them” (Overy, 2003: 21). Shklar went as far as to say that there was “not even a pseudo-legal basis” (1964: 158) for the offence of crimes against humanity. Nuremberg’s instigators used a number of arguments in countering the charge that the IMT was implementing retroactive law.

Firstly, they claimed that the 1928 Kellogg-Briand pact, the 1907 Hague Rules of Land Warfare, and the 1929 Geneva Conventions all alluded to crimes against peace and crimes against humanity, thus the IMT was merely enforcing the treaties (Moghalu, 2006: 34). Secondly, Justice Jackson appealed to customary morality as being equally important as the written law in recognising criminality—“we propose to punish acts which have been regarded as criminal since the time of Cain and have so been written in every civilized code” (cited in Marrus, 1997: 43). Finally, it was argued that international law, like common law, should grow and develop and be entitled to set new precedents. The IMT said that it should be understood that “law is not static, but by continual adaptation follows the needs of a changing world” (cited in Clapham, 2003: 32).

An examination of the Law as presented at Nuremberg does expose a number of flaws that could be described as “ugly facts.” The law certainly was not perfect and did not satisfy everyone. However, it is important to recognise that Nuremberg strived to deal with a situation without precedent and thus it was “a law of circumstances” (Beigbeder, 2006: 255). Problems with aspects of the law at Nuremberg undoubtedly existed, but there is little evidence to suggest that the legal flaws destroyed the Trial.

## The Practicalities of Nuremberg

There are a number of points to be made on the practical reality of the Trial. Firstly, the IMT was not a conventional court and thus it is difficult to draw direct comparisons with a regular Court of Law. It was no accident that Nuremberg was established as an *ad hoc* military tribunal; Justice Jackson said that the IMT’s status was chosen “to avoid the precedent-creating effect of what is done here on our own body of law and the precedent control which would exist if this were an ordinary judicial body” (cited in Schwarzenberger, 2008: 170). Also, the IMT ambitiously attempted to reconcile the Anglo-American and continental European legal systems and for the proceedings to take place in four languages. The adversarial Anglo-Saxon common law system was adopted by the IMT and subsequently came to be the dominant system for international war crimes trials. This has led some critics to claim that Nuremberg was “international more in form than in substance” (Schwarzenberger, 2008: 173).

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The choice of defendants at Nuremberg was questionable. Ratner and Abrams describe the selection of defendants as being “determined more by political considerations than by relative culpability or evidentiary considerations” (2009: 212). Legal objectivity was clearly disregarded in deciding who should stand trial. Overy (2003: 12) describes how most of the individual defendants were chosen as representative of important aspects of the Nazi regime. For example, Streicher embodied anti-semitism, Jodl and Keitel represented German militarism, and Schacht and Funk symbolised German capitalism. Meanwhile, two of the defendants stood trial at Nuremberg purely because they were the highest-ranking Nazis captured by the Soviets. Adding Fritzsche and Raeder to the list of defendants was a matter of national pride for the Soviets, since the Americans and the British provided the majority of the defendants (Conot, 1983: 28). The process of choosing the defendants could be described as an “ugly fact,” making a mockery from the outset of the idea of Nuremberg as a noble exercise in neutral justice.

The style of the Trial diverged markedly from original expectations. The discovery of an enormous amount of material evidence in the run-up to the Trial led Justice Jackson to push for “trial by document” (Douglas, 2001: 67). This documentary approach by the prosecution prioritised paper over people, with the view that material proof was more credible than verbal evidence from victims. In practice this documentary approach caused some problems.

Firstly, it was accused of being complex and obsessively technical, resulting in what the journalist West called “boredom on a huge historic scale” (West, 1955: 11). International interest in Nuremberg waned “as the Trial went on with weeks and months of tedious legal proceedings” (Beigbender, 2006: 238). Also, some critics felt that Nuremberg became an abstract, elite forum marked by “the virtual absence of the voices of the Nazis’ principal victims” (Douglas, 2001: 78). But Nuremberg is equally remembered for successfully introducing film footage to the courtroom and providing the first documentary census of the Holocaust. In terms of duration, the eight-month Trial was deemed to be relatively quick, given that there were 22 defendants and the Trial covered crimes in 10 different countries over a number of years (Moghalu, 2006: 38). Thus there is no indication that the length of the Trial, the boredom factor, or a focus on documentary evidence did any lasting damage to Nuremberg.

The crucial point about the practicalities of Nuremberg is, however, that it involved human beings and thus was inevitably tainted by human failings. Beigbender describes Nuremberg as “a human justice, an incomplete justice” (2006: 256). Persico (1994: X) describes how the IMT witnessed a battle of personalities, with both defendants and legislators acrimoniously turning on each other. The Tribunal also had to cope with the suicide of three of the defendants and ability disparities among the judges, defenders and prosecutors.

In addition, the impending Cold War soured relations among the Allies. The international disunity and rancour is evident in Taylor’s description of the Soviets as the biggest “political wart” (1993: 639) on Nuremberg. The influence of individuals and international relations on the IMT takes us back to one of the original questions about the central idea behind Nuremberg—was it established for political rather than legal purposes? In response to that question, I would agree with Hazan’s observation that “an absolute barrier between law and politics is impossible” (2007: 17). It is fruitless to deny that the creation and conduct of Nuremberg involved politics and personalities, but that involvement did not doom the enterprise.

The over-riding perception of Nuremberg is that the achievements outweighed the flaws. Ratner and Abrams conclude that in the end, there was popular acceptance of the judicial process, and that the Trial was “remarkably fair and effective, especially in light of the politically and emotionally charged circumstances” (2009: 212). Although the outcome could be perceived as relative justice, it was still preferable to doing nothing, or to any of the other options available in 1945. The IMT is still the most celebrated international criminal court in history, and ultimately “legalists are justified in seeing Nuremberg as a famous victory, even if they forget that the margin was razor-thin” (Bass, 2000: 205).

Discussion about Nuremberg’s legacy leads back to the quote contained within the title of this essay. It seems that many people judge Nuremberg’s failure or “murder” not on the basis of the IMT itself but on the subsequent condition of international law and war crimes trials. Deak claims that failure is implicit because, “the International Tribunal has had no imitators” (2000: 10). Meanwhile, Shklar decried Nuremberg as largely irrelevant because “the future of international law was unaffected” (1964: 171). But it seems odd to judge the IMT on what the international

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community succeeded or failed to do in the coming years. Persico bases his “murder” premise on the lack of international appetite to apply the principles established at Nuremberg elsewhere.

However, it is important to point out that Persico’s book was published in 1994, eight years before the International Criminal Court (ICC) came into being, one year before the first case began at the International Criminal Tribunal for the former Yugoslavia (ICTY), and one year prior to the establishment of the International Criminal Tribunal for Rwanda (ICTR). By his own admission, Persico saw the ICTY initiative as raising “cautious hopes that reports of this murder may have been exaggerated” (1994: 443).

Even if we allow that post-Nuremberg developments can alter our view of the IMT; it is evident that the IMT contributed enormously to the International Humanitarian Law within the 1949 Geneva Convention, provided a springboard for International Human Rights Law to create the likes of the Universal Declaration on Human Rights and the International Covenant on Civil and Political Rights, and led to the further elaboration of international law on individual criminal responsibility (Ratner and Abrams, 2009: 6). Nuremberg also established a legal and judicial precedent that would prove decisive in the creation of other international tribunals and the ICC (Beigbeder, 1999: 49). Arguably, Nuremberg’s most important legacy was that it laid the foundation for a cosmopolitan global society, because the IMT proved that “when there is a will amongst the world powers to cooperate, a common denominator for such joint effort can be found” (Schwarzenberger, 2008: 188).

In conclusion, it appears inaccurate to say that there was one “beautiful idea” behind the establishment of the IMT. The purpose of the Tribunal was conceived differently according to individual or national interests, politics, and historical circumstances. Some of the motivations could possibly be perceived as beautiful; for instance, the pursuit of pure justice. But others are far more prosaic and unattractive; for example, victors’ justice and the imposition of Anglo-American liberal values.

In terms of the “ugly facts” that afflicted Nuremberg, well certainly a plethora of problems and issues arose before and during the Trial. A number of unpleasant legal realities stood out, especially the rejection of the *tu quoque* principle and the acceptance of *ex post facto* law. In terms of ugly practicalities, Nuremberg displayed selectivity in choosing defendants and the proceedings foundered on petty personal relations and acrimonious national arguments. The post-Nuremberg path of international law and justice has not been smooth, but that is not a case for the IMT to answer. Ultimately Nuremberg’s “murder” did not materialise. On the whole, history looks favourably upon the IMT as an innovative experiment that resulted in a legal and political triumph.

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[1] In his 1870 British Association Presidential Address entitled "Biogenesis and abiogenesis," Thomas Henry Huxley referred to "the great tragedy of Science – the slaying of a beautiful hypothesis by an ugly fact" (Collected Essays, Vol. 8, p. 229) <http://aleph0.clarku.edu/huxley/CE8/B-Ab.html>.

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Written by: Clare Santry  
Written at: SOAS, University of London  
Written for: Catherine Jenkins

# **The Nuremberg Trial: A Beautiful Idea Murdered by Ugly Facts?**

Written by Clare Santry

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