

Dachau: A Legal Success. A Political Blunder.

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“Jedem das Seine.” Directly translated this means “to each his own,” but to the Nazis it held a meaning of “you get what you deserve” with regards to the Jews and the justification for the punishment they endured. Mounted over the gates of Buchenwald, this phrase exemplifies that the operators of the concentration and death camps believed what they did to the Jewish race was allowable and justified. Following the defeat of Nazi Germany, many people believed that the war criminals that committed such atrocities received their own punishment for the atrocities they committed. The post-war years saw a series of tribunals and trials by the allies attempting to punish the criminals of the Third Reich. While the Nuremberg Trials became the most famous, those trials only dealt with the supreme leadership and high ranking individuals. The U.S. Army held its own tribunal within the walls of the former concentration camp of Dachau. This paper will argue that the U.S. War Crimes Tribunal at Dachau successfully convicted captured war criminals, failed to adequately punish war criminals of the Third Reich, and that the trials had a negative impact on the denazification process carried out by the Allied powers. First, the provided summary of the trials serves to give a background of the Dachau trials. Following that, the conviction success rate and the methods used to achieve this conviction are discussed. A look into the failure of the U.S. Army to establish a footing to ensure that convicted criminals served their full sentences is included to argue a lack of adequate punishment. A list of grievances the German people had with the trials is also detailed, followed by a look into how these grievances resulted in the Dachau trials failing to support denazification.

From June 1944 to early 1948, the United States Army held 489 war crimes trials of former Nazis. The 1,672 defendants were comprised of Nazis caught in the U.S. occupational

zones within Germany and Austria, as well as Nazis who committed war crimes on U.S. soldiers and civilians extradited from other occupational zones.¹ These trials are sometimes referred to as the Dachau Trials, as they began within the walls of the liberated concentration camp Dachau. The Dachau trials consist of four categories of cases: the “parent” concentration camp cases, subsequent camp cases, “flyer” cases, and miscellaneous cases.

The six “parent” concentration camp cases involved 200 defendants who were directly embroiled in the operation and management of the concentration camps. Of the 40 Dachau camp members tried, 36 received death sentences.² The Mauthausen Trial saw 58 of 61 defendants sentenced to death.³ Flossenbürg defendants had 15 members of their camp sentenced to death.⁴ 22 of the 31 Buchenwald defendants were sentenced to death.⁵ The Mühldorf Camp Trial resulted in 5 death sentences.⁶ The Dora-Nordhausen Trial, which addressed the liability concerns of the V-2 Rocket scientists, convicted 15 SS guards with one sentenced to death.⁷

The 250 subsequent camp cases had 800 defendants who, tried after the “parent” cases had been completed, were involved with satellite facilities to the main camps.⁸ These subsequent trials meant to put accomplices to the crimes tried in the “parent” cases on trial for their aiding and abetting of war crimes. An announcement on November 21, 1946, stated that 116 Dachau camp officials and guards received some sort of imprisonment term.⁹ What became a common theme of the defense for these trials was the defendant's' lack of knowledge of the criminal activities described by the prosecution. The defendants attempted provide the proof on their own behalf of their lack of knowledge of the criminal enterprises taking place.

The 200 “flyer” cases involved 600 civilians and police officers who committed war crimes against downed American airmen.¹⁰ The “flyer” cases tried individuals who had been responsible for the mistreatment, beating, lynching and murder of American pilots shot down

over German countryside and who German locals had captured. The youngest member of this trial, and in fact all trials, was 16 year old Rudolf Merkel, who beat Sgt. Robert McDonough.¹¹

The miscellaneous cases consisted of various war crimes including, but not limited to, the Malmedy Massacre of American troops by the Waffen-SS, the Hadamar Murder Factory, and the Skorzeny case. The cases aforementioned are important because the media were overt about their developments and the public showed much interest. The Malmedy Massacre Trial responded to the massacre of over 300 American prisoners of war. The public held interest in this case as the witnesses failed to provide accounts of the event that would hold up in the American judicial system. Nevertheless, all but one defendant received a guilty verdict.¹² The Hadamar trial meant to convict those responsible for the systematic murder of mentally ill patients at Hadamar Euthanasia Centre. In 1944, the hospital was converted to a kill center for Russian and Polish workers who developed tuberculosis. 7 Hadamar administrators received 3 death sentences and the remainder received a sentence of 25 years to life in prison. This case, held in 1945, set a precedent for the Nuremberg Doctors' Trial held a year later.¹³ The final popular miscellaneous case was the Skorzeny Trial, which accused Otto Skorzeny and 9 officers of the 150 Panzerbrigade of improper use of U.S. military insignia, theft of U.S. military uniforms, and theft of Red Cross parcels from U.S. POWs. All of the defendants were acquitted, but the three weeks the trial lasted allowed for plenty of media attention. The case was an outlier with complete acquittal in and onslaught of convictions by the tribunal.¹⁴ The last of the American War Crimes Tribunals was the Nordhausen case in 1947.¹⁵

The U.S. War Crimes Tribunal at Dachau succeeded in convicting captured war criminals. The first four cases involving 177 staff members of Dachau, Buchenwald, Mauthausen and Flossenbürg resulted in a 100% conviction rate with 97 death sentences, 54 life in prison sentences, and the rest being sentenced to lengthy terms of hard labor.¹⁶ The

reason that this conviction rate was so “perfect” was that these trials were trying the system of the concentration camps.¹⁷ There was no defense for the accused as all had been participants in running and operating the camps and the evidence was vastly overwhelming. Most importantly, the Dachau Trials began before the Nuremberg Trials, and the idea of Crimes against Humanity (namely the murder, extermination, enslavement, deportation, and other inhumane acts committed against a civilian population, before or during the war, or persecution on political, racial, or religious grounds in connection with any crimes listed by the International Military Tribunal) being a triable offense had not yet been developed.¹⁸ The Dachau Trials resulted in charges with Violating the Laws and Usage of War according to the Hague Convention of 1907 and the Geneva Convention of 1929, which post-WW1 Germany signed.¹⁹ The Dachau Trials did not charge the accused with a specific crime, but rather with aiding and abetting the commission of crimes within the concentration camps, which the Allies labeled as a criminal enterprise. The prosecutors used common design indictments to reduce the amount of necessary evidence required to achieve a conviction. The Ilse Koch case that accused the wife of the Commandant of Buchenwald of aiding and participating in the murders at Buchenwald exemplified why the prosecutors chose this method of indictment. The prosecution was only able to produce a handful of witnesses to the claims made against Koch and she only served 4 years of imprisonment where the prosecution originally sought the death penalty. Had the prosecution applied the same individual indictment to Col. Peiper in the Malmedy Massacre Trial, he would have likely not been convicted of murder due to the lack of evidence of him actually shooting a POW.²⁰ When criticizing the methods applied to the Dachau trials, it is notable that there was no precedent to the crimes committed or the trials to be held. A situation such as this sometimes develops into the use of unorthodox and controversial methods to achieve success. By 1947, the trials achieved a conviction rate of 73%.²¹ Legally the war crimes

tribunal was a success. To give a modern comparison, all of the charges against the defendants of Dachau would be classified as felonies in the United States today, and only 59% of felony indictments resulted in conviction in 2016, a difference of 14%.²²

Despite this incredible conviction rating, the tribunal definitely had its faults, as it failed to adequately punish convicted war criminals and ensure they served out their sentences. Only 65% of the death sentences handed down at Dachau had full term completion. By 1955, only a few dozen of the life in prison sentences were still being carried out. Within 10 years, 120 of the sentences greater than 20 years had been reduced or pardoned. By December of 1957, the last of the German war criminals tried at Dachau had been released from Landsberg prison.²³ The tribunal systems greatest failure was that Germany imprisoned its German convicts. To foster a democratic Germany and a positive relationship, the Americans had to account for German public opinion when implementing policy, including the imprisonment of the war criminals. As political climates changed, so did the view of the German government on the imprisonment of war criminals, and the amount of influence the Germans had over the American court system became a considerable factor. With the establishment of the Federal Republic of Germany in 1949, the Allies needed to enlist West Germany in the defense of the West from the Soviet Union, and to achieve this, the Allies had to withdraw their claims as an occupational power to establish Germany's sovereignty. By 1951, U.S.-German relations required some form of a clemency review board, which undermined the tribunal system and its original convictions. What the United States did not want was for the clemency program to give the impression that the war crimes tribunals, including those at Dachau, were not credible and lacked integrity. The solution to this problem was a mixed clemency board of three Germans and one representative from each of the Three Powers (U.S., France and Great Britain). This board reviewed all tribunal verdicts and potentially suggested reductions or termination of sentences.²⁴ While this board

was controversial, especially in the United States after the parole of Sepp Dietrich of the Malmedy Massacre Case, it was seen by politicians as a necessary step to allow for the rearmament of Germany, even though it released the last of the Dachau defendants from Landsberg in 1957.²⁵ 34 Dachau defendants remained in Landsberg Prison when the United States established the board. It cannot be ignored that during the Dachau trials, and through much of the 1940s, the U.S. Army made a good faith attempt at providing valid, fair, and just punishment to all those convicted; however, the political climate that developed and the peculiar position of the U.S. after World War II failed to provide the supportive structure to ensure the fruition of the sentences delivered by the tribunal. Following the Dachau trials, while many defendants served time, the power of the justice system fell into the hands of the German people, who were not comfortable with the trials and had less supportive opinions of the war crimes tribunal.

The German people had several grievances with the American War Crimes Tribunal. First of all, the courts condemned the actions of Wehrmacht officers. This did not sit well with German veterans who felt this was a “direct attack on the honor of the German soldier.”²⁶ Secondly, though the war ended with a German defeat, there was still a nationalism amongst the German people that felt disgust for the way the courts personified the German soldier. The next grievance the German people had with the courts was the tribunal did not need proof of crimes to convict defendants, only evidence of being an avid sympathiser. The prosecutors’ usage of common design indictments to reduce the amount of necessary evidence required to achieve a conviction did not align with how the American Justice System treated its own citizens and fueled the criticism that these trials were of an occupying nation punishing the German people. Another grievance was that the evidence and testimonies provided constant reminders to the German people of the atrocities their country committed. Many Germans felt the

convictions implied a collective guilt of the German people, but Germans were not willing to accept responsibility for the crimes of the Nazis.²⁷ During the entire tribunal, Germans argued the legality of the trials. Critics believed that the war trials violated the concept of *nulla poena sine lege* (no crime without law). This argument suggested that because there was no law, either within Germany or international, that criminalized the actions of some of these war criminals, there was no legal basis for the trials of some of the war criminals.²⁸ Overall, the Germans felt these trials were as much an insult to the German people as it was a trial of war criminals.

While these trials were designed to punish war criminals, Allied leaders hoped that the punishment of former Nazi war criminals would promote denazification. Denazification was an initiative carried out by the Allies to remove the influence of the National Socialist Party from Germany and Austria. This movement lasted from the end of World War 2 to 1951. Denazification failed and, in some cases, achieved an opposite effect than desired. The war crimes tribunal did not promote denazification because it kept providing the German people with a reminder of the atrocities their country committed. In the post-war years, especially after the introduction of Basic Law in 1949, "schlusstrich ziehen" (to draw the final line) became the motto among most of the German people. They wished to put the past behind them and create a new Germany, their own Germany. The trials and later imprisonments of war criminals did not allow Germany to draw their final line - they only provided grim reminders of the past. Many people argued that the "truly guilty" (Hitler, Himmler, Goering and most of the rest of the High Command) died already, and the United States had not reason to punish the German soldier or people who were just following orders. For example, churches, politicians and newspapers began to portray the Landsberg prisoners as honorable soldiers being punished for following orders, not as the criminals they were convicted of being.²⁹ Furthermore, rather than portraying

these war criminals as agents of the Nazi regime, the tribunal repeatedly reminded the German people of the influence of the Nazi regime and its diligent efforts to creating a stronger, independent Germany, a cause many Germans were devoted to after the war. The Dachau trials, and subsequent tribunals, also resulted in many influential Germans from being involved in the development of Germany after the war, especially seasoned businessman and politicians.³⁰ While these individuals may have had Nazi influences, they had experience at running the businesses and government that had collapsed after the war ended and needed to be rebuilt. Without these individuals in the positions where they could help develop Germany, the German people lacked a significant resource that could help the recovery efforts. Many of the German people saw these individuals as the answer to rebuilding Germany, especially as 1950 approached. When these war criminals obtained freedom, the German people almost immediately elected or appointed them to positions of power once again.³¹ The German people humiliated the justice system the U.S. Army had established for the war criminals of the Nazi regime, exemplifying the failure of the war crimes tribunal to aid the denazification process.

The Dachau war crimes tribunals were a great undertaking by the U.S. Army. The magnitude and importance of these trials may have been able to help the Allied effort in rebuilding Germany, but poor execution and foundation failed to achieve such success. The U.S. Army war crimes tribunal at Dachau successfully convicted a high percentage of indicted war criminals. However, due to a poor structure for managing the sentences being served, the tribunal failed to adequately punish those convicted, as many received parole or got their sentences commuted. Furthermore, the German people poorly received the tribunal and it did not help the Allied attempt at denazification of Germany. Exemplifying its importance, the effects of the Dachau war crimes tribunal can be seen as recently as the Iraq Tribunal in 2006. The U.S.-installed Iraqi Governing Council heeded the failures of the Dachau trials and,

rather than employing a collective guilt amongst former Iraqi leaders and war criminals, the council developed indictments charging each individual with their own crimes committed against the people of Iraq and Kuwait.³² The U.S. Army war crimes tribunals, Dachau, and the others, and the effects they had on the German people proved that military interventions fail to promote democracy. Only cultural factors not affected by the manipulation of politicians allow a country like Germany to become a prominent symbol of democracy and the free world.

Endnotes

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