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BOOK REVIEW

PROLOGUE TO NUREMBERG: THE POLITICS AND DIPLOMACY OF PUNISHING WAR CRIMINALS OF THE FIRST WORLD WAR. By James Willis. Greenwood Press, Westport, Connecticut, 1982. Pp. xiii, 292.

Reviewed by Michel J. Landron*

It was the year Joyce Kilmer wrote "Trees." Elmer Rice first used the flashback technique in "On Trial." Tennessee Williams was born, and Pope Pius X died, succeeded by Cardinal della Chiesa (Pope Benedict XV). The Panama Canal opened, and E.C. Kendell prepared pure thyroxin for the treatment of thyroid deficiencies. Ten and one-half million people had emigrated from Europe to the United States during the previous decade. And on June 23, 1914, the assassination of Archduke Francis Ferdinand, heir to the Austrian throne, served as the precipitant to the Great War, the "war to end all wars."

That war saw new and terrifying methods of warfare. Some methods were used for the first time ever, some used for the first time on such a scale: chemical and gas warfare, barrage balloons, aerial dogfights, tanks, and, most importantly, U-boat warfare. The world was, to a considerable extent, astonished and appalled by a war in which territorial gains of but a few miles were paid for by hundreds of thousands of lives and many more casualties. It was felt by many that such carnage must cease and never occur again. Pacifists, especially in the United States, urged isolationism, withdrawal or peace at any cost. Militarists and chauvinists, however, urged victory at all costs. These two and other conflicting philosophies battled each other in the fora of public thought, diplomacy and policy. The advent of speedy mass-communications kept those conflicts in the public eye.

The subtitle of this work, "The Politics and Diplomacy of Punishing War Criminals of the First World War," clearly enunciates the book's focus. The author has undertaken an examination of the historical, political, diplomatic and legal antecedents of the post-World War II Nuremberg trials. In so doing, he has obviously devoted considerable energy to the research and compilation of the data and information which permeate every page of this work.

Prologue to Nuremberg is the precursor of what must certainly

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evolve as a body of literature that will provide a much needed analysis of the predicates and precedents of war crime trials. As the author so succinctly and eloquently illustrates in his first chapter, the Hague conferences of 1899 and 1907 took dramatic, if somewhat petite, steps to bring the conduct of war, as much as possible, within the realm of the concepts of human, moral and natural law. That these well-intentioned principles were repeatedly violated by both sides during the Great War is the unfortunate, but logical, result of the introduction of the human factor.

The author accurately illustrates the conduct of the diplomatic and political protagonists with particular focus on the individual actor's expressions of just and unjust warfare. He further indicates the reluctance of many in authority to recommend that their own particular country initiate, undertake or participate in war crimes trials precisely because they believed the veracity, if not the provability, of the allegations of war crimes on both sides. Of particular interest was the author's excellent treatment of the Turkish-Bulgarian war atrocities, the genocide of Armenians and the subsequent reactions of the allied powers. This aspect of the Great War was cogently presented and is illustrative of the work's merit.

Unfortunately, the author's scholarly treatment of the work, combined with the volume of raw materials extant and the very fact that this is, admittedly and admirably, a pioneering effort in this field, has some negative side-effects. To this reviewer the book fell somewhat short of expectations in several respects. Fact after arid fact is often foisted upon the reader. Comments and asides are paraded sequentially, frequently without any insight into the interactions of and between sovereigns, diplomats, nations and peoples which play a quintessential role in international outcome-determinations. The overall comprehension and appreciation of the average reader, even one schooled in the legal or political science disciplines, may certainly be taxed by this plodding recitation of what sometimes amounts to a shopping list of events, characters and anecdotes. The quality of the author's presentation did not match his obvious excellence in research.

The absence of legal precedent for the trials of World War I "criminals" was indeed (despite, e.g., the post-Civil War *Wirz* trial to which the author properly refers) an obvious stumbling block to the determination of a proper and adequate forum; to the procedural and substantive law to be followed; to the establishment of an accusatory process; to the actual conduct of proceedings; and to the punishment invoked. All these were duly, although somewhat erratically, illustrated for the reader.

But were these the sole or even the primary obstacles that re-

duced the post-World War I trials to a shallow exercise in political and military retribution or were there other factors? In relating the shift in focus of the proposed trials from an attribution of national culpability to an attribution of individual wrongs, the author fails to grasp or portray the national conscience or persona of the various combatants in the conflict. He fails to consider that the British sense of honor, gentility and fair play was outraged by U-boat warfare, which resulted in the loss of hundreds of innocent lives and nearly six and one-half million tons of merchant shipping from 1915 to 1917 alone. On the other hand, Great Britain teetered on the very brink of bankruptcy during the latter stages of the war, particularly before the entry of the United States to which it owed massive war debts. It needed prompt economic stability and recovery. The militarily emasculated Central Powers offered not only a source of reparations, but also a trade partner and a counterweight to prevent the emergence of an overly powerful France in post-war Europe. Indeed, Lloyd George snapped at Clemenceau at a peace conference that it was Britain's traditional policy to be France's enemy. The fact that Great Britain and Germany were traditionally and genealogically related further influenced their decisions regarding their post-war relations.

President Wilson, worried about the nagging turmoil in Mexico, about a real or imagined "Yellow Peril," about his New Freedom program and about his place in history, plodded on with blinders throughout this entire period. It is hardly surprising, therefore, that the British Room 40 was exceedingly cautious in transmitting the intercepted Zimmerman telegram, which served as the catalyst for America's entry into the war, to the United States. Wilson was also inclined to focus upon what he perceived to be greater priorities than the trials of war criminals: his Fourteen Points, the League of Nations and the continued vitality of the Monroe Doctrine.

France needed reparations to rebuild itself and repay its war debt to the United States. It needed further guarantees of safety from subsequent invasion in the form of a buffer between itself and Germany. Although Clemenceau did pressure for extensive trials, as did Lloyd George, France was forced to settle for those few prosecutions that did occur and allow the spotlight to dim and fade away on additional trials. That the author failed to illustrate clearly the above factors unfortunately detracts from the total effectiveness of this otherwise important work.

Additionally, the author's analysis of the legal precedents is inadequate. At that point in history, most of these "precedents" were merely traditions, albeit in many instances centuries-old, without the force or effect of "law." Even those principles of international law that

were "codified" under a treaty, international agreement or convention were not universally ratified or even recognized by all the belligerents. Nor was there any international body to enforce violations thereof in bilateral, let alone multilateral, conflicts. This is not surprising considering the high chauvinistic feelings and the inherent belief in the Act of State doctrine that existed in Europe at that time. Given these "precedents," it was hardly compulsory that war criminals be brought to trial. As the author properly points out in the beginning of his book, any punishment or retribution visited upon the vanquished by the victor was, at that time, primarily an executive act, without, and usually in disregard of, legal or judicial consideration. At an early stage in the book, the author lost sight of this fact.

The author often implies, whether intentionally or not, that the substantive charges of war crimes were readily capable of multinational definition and delimitation. He does, however, explain the difficulties in defining the concept of "aggression" quite well. The author never clearly points out the essential differences between the various legal systems of the belligerents, e.g., French civil law, Prusso-Germanic military code, British and American common law and general military justice principles. Absent some basic comprehension of these differences, the reader cannot obtain a truly accurate picture of the genesis of the Nuremberg trials or of the extent of the post-World War I difficulties. Essentially, the author assumes too much knowledge on the part of the average reader.

Despite the above shortcomings, the work is intellectually digestible in both form and content. The author's command of the subject is apparent. His communication of the subject matter, on the whole, is highly commendable. The book is an important initial step toward filling the void in this area. This reader looks forward to a sequel or second edition through which the author can channel his considerable expertise into an even more comprehensive work.