NORTHWESTERN UNIVERSITY

Nazi Crimes, British Justice: The Royal Warrant War Crimes Trials in British-Occupied Germany, 1945 – 1949

A DISSERTATION

SUBMITTED TO THE GRADUATE SCHOOL
IN PARTIAL FULFILLMENT OF THE REQUIREMENTS

for the degree

DOCTOR OF PHILOSOPHY

Field of History

By

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EVANSTON, ILLINOIS

December 2017

ABSTRACT

Nazi Crimes, British Justice: The Royal Warrant War Crimes Trials in British-Occupied Germany, 1945 – 1949

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The unprecedented crimes of World War Two, especially those committed by the Nazi state, unleashed an equally unprecedented effort to hold perpetrators accountable and secure justice for millions of victims. This effort encompassed hundreds of trials of thousands of individuals in the immediate postwar period and continues to the present day. Traditionally, questions of guilt and responsibility after World War II have been examined through the lens of the International Military Tribunal (IMT) at Nuremberg, in which the four Allied powers tried twenty-two of the major war criminals. The IMT, however, focused on only a fraction of Nazi perpetrators, and only the most high-ranking ones. Thousands of other perpetrators intimately involved in carrying out criminal activities were tried under separate war crimes programs conducted by each of the four powers that occupied Germany, including some one thousand individuals tried by the British Army between 1945 and 1949.

This dissertation explores the British war crimes program under the Royal Warrant. Dissenting from the conventional view that dismisses the British legal proceedings in occupied Germany as half-hearted, ineffective, and blind to the particular crimes targeting Europe's Jews (what became known as the Holocaust), I argue that the British war crimes investigations and prosecutions did recognize and prosecute Holocaust-specific crimes, and did so by using established legal tools. Through an examination of trials involving three types of Holocaust-specific crime–the operation of concentration camps, the exploitation of forced labor, and the production of Zyklon B as an instrument of murder–I show how the British prosecution of Nazi

war criminals utilized longstanding legal approaches to address new and unprecedented categories of crime.

The British postwar war crimes trials rested upon a different set of legal principles than the Nuremberg Charter. Exclusively focused on war crimes—rather than the newer category of "crimes against humanity"—and grounded in pre-existing international law, the British trials took a more conservative legal approach than the more explicitly didactic and legally inventive Charter. Although the British legal proceedings have often been dismissed as half-hearted, ineffective, and blind to what would come to be known as the Holocaust, I argue to the contrary that the British not only recognized Holocaust-specific crimes, but also effectively prosecuted such crimes using an established legal tool. Emerging in the context of an occupation regime that had limited resources, the British trials demonstrate that longstanding legal approaches could address new and unprecedented categories of crime.

The British incorporated the persecution of Jews into their understanding of Nazi crime, but were reluctant to make the Jews a central focus of criminal cases. While British prosecutors repeatedly argued that Nazis targeted Jews for extermination solely because of their Jewishness, in violation of international criminal law, the argument relied on existing law to avoid setting potentially unwelcome precedents. In following this course, the British inadvertently created a *more* effective precedent for war crimes prosecution than Nuremberg. The law the British used, drawn from the Hague and Geneva Conventions, was more durable than the Nuremberg Charter. Precepts from the British trials have been upheld by the International Criminal Tribunals for Yugoslavia and Rwanda, and some of the precedents set have been invoked in contemporary cases, particularly the principle that individuals can be held personally liable for war crimes and human rights violations, regardless of the individual's relationship to the state.

Acknowledgements

This work would not have been possible without the generous financial support of the Crown Family Center for Jewish and Israel Studies, the Holocaust Educational Foundation of Northwestern University, the Northwestern University Graduate School, the Northwestern University History Department, the Chabraja Center for Historical Studies, and the Buffett Institute for Global Studies. In addition, this dissertation was made possible thanks to the author's tenure as Stephen B. Barry Memorial Fellow at the Jack, Joseph, and Morton Mandel Center for Advanced Holocaust Studies, United States Holocaust Museum.

I am indebted to several organizations that provided me with opportunities to travel to historical sites and archives, connect with fellow scholars, and receive feedback on my work, including the Auschwitz Jewish Center; the Center for Advanced Genocide Research at the USC Shoah Foundation; the Holocaust Educational Foundation of Northwestern University; the Jack, Joseph, and Morton Mandel Center for Advanced Holocaust Studies at the United States Holocaust Memorial Museum; and the Institut für Zeitgeschichte/Ludwig-Maximilians-Universität München.

I have been incredibly fortunate to call Peter Hayes my advisor, and this work simply would not have existed without him. In addition to his contributions to my dissertation, which are many, he is an excellent scholar who modeled for me the critical, compassionate, ethically-minded, and engaged historian I aspire to be. Likewise, I am deeply grateful to Deborah Cohen and Ben Frommer, the value of whose assistance and advice cannot be understated. To all three, my deepest and most sincere thanks.

For the past seven years I have found my home in the Northwestern University History Department, and I would be remiss if I did not thank all the faculty, staff, and students in the

department. Graduate work is long and often isolating – I cannot imagine undertaking this venture anywhere else. The Northwestern Main Library has been my second home, and I want to thank the fantastic library staff, especially the ILL team, for helping me access all the materials I needed to complete this dissertation. The Chabraja Center for Historical Studies and the Holocaust Educational Foundation have also been invaluable campus resources.

I have been very lucky to have learned from excellent teachers along the way, starting with John Brande and Ann Marie Nee. I would like to thank the Providence College History Department and the Liberal Arts Honors Program, especially Margaret Manchester, Raymond Sickinger, and the late Donna McCaffrey, as well as the Boston College History Department, particularly Devin Pendas.

This dissertation would never have been completed without the help of Elizabeth Lenaghan and the Graduate Writing Place at Northwestern University – thank you for your help, and the support you provide to the graduate student community across Northwestern.

The Beatles famously sang "I get by with a little help from my friends," and so do I. At Northwestern, thank you to Kevin Baker, Emma Goldsmith, Mariah Hepworth, Alex Lindgren-Gibson, Emilie Takayama, and Marlous van Waijenburg, with special thanks to Sam Kling, friend and editor extraordinaire. I could not ask for a better group of people to share this experience with. Beyond Northwestern, thank you to the friends who have encouraged me and held me up along the way, including Michele LeRoux, Lillian Hoodes, Mara Georgi, Liz Morgan, Joseph Cullen, Katie Gustafson, Danny Cohen, and Jess Saunders. Thank you all for being your wonderful selves.

I need to thank my incredible family for a lifetime's worth of love and support. To the Costellos, Finns, Quinns, and McGuires – thank you all. To Matt and Eggs, thank you – I would

not be who I am without the two of you. Everybody should have a grandmother like mine, and I am so lucky to have Barbara Costello in my life. Thank you, Nana, for everything. Finally, to my parents, Anne and Con Healey. Everything I have done was only possible because of you. Thank you for being on my team, even when you didn't understand the game or why anyone would want to play. Thank you for being mine.

Contents

Introduction

The unprecedented crimes of World War Two, especially those committed by the Nazi state, unleashed an equally unprecedented effort to hold perpetrators accountable and secure justice for millions of victims. This effort encompassed hundreds of trials of thousands of individuals in the immediate postwar period and continues to the present day. Traditionally, questions of guilt and responsibility after World War II have been examined through the lens of the International Military Tribunal (IMT) at Nuremberg, in which the four Allied powers (the United States, the United Kingdom, and the Soviet Union, plus France) tried twenty-two of the major war criminals. The IMT, however, focused on only a fraction of Nazi perpetrators, and only the most high-ranking ones. Thousands of other perpetrators intimately involved in carrying out criminal activities were tried under separate war crimes programs conducted by each of the four powers that occupied Germany, including some one thousand individuals tried by the British Army between 1945 and 1949.

This dissertation explores the British war crimes program under the Royal Warrant. Dissenting from the conventional view that dismisses the British legal proceedings in occupied Germany as half-hearted, ineffective, and blind to the particular crimes targeting Europe's Jews (what became known as the Holocaust), I argue that the British war crimes investigations and prosecutions did recognize and prosecute Holocaust-specific crimes, and did so by using established legal tools. Through an examination of trials involving three types of Holocaust-specific crime – the operation of concentration camps, the exploitation of forced labor, and the production of Zyklon B as an instrument of murder – I show how the British prosecution of Nazi war criminals utilized longstanding legal approaches to address new and unprecedented categories of crime.

The primary effort to punish Nazi war criminals, the International Military Tribunal (IMT) at Nuremberg, has drawn considerable scholarly attention and generated a well-developed historiography.[1] The war crimes programs of the individual occupation authorities, however, have received much less attention, with the exception of two initiatives on the part of the American military government, the subsequent Nuremberg proceedings and the Dachau trial series.[2] The relatively few studies of the British occupiers suggest that they were less invested in denazification than the Americans and the Soviets and prioritized the economic restoration and

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[1] For example, see Ann Tusa and John Tusa, *The Nuremberg Trial* (New York: Skyhorse Publishing Inc., 2010); Bradley F. Smith, *The Road to Nuremberg* (New York: Basic Books, 1981); Bradley F. Smith, *Reaching Judgment at Nuremberg* (New York: Basic Books, 1977); Arieh J. Kochavi, *Prelude to Nuremberg: Allied War Crimes Policy and the Question of Punishment* (Chapel Hill, NC: University of North Carolina Press, 2000); Telford Taylor, *The Anatomy of the Nuremberg Trials: A Personal Memoir* (New York: Knopf, 2012); Michael Robert Marrus, *The Holocaust at Nuremberg* (Toronto, ONT: Faculty of Law, University of Toronto, 1996); Michael Denis Biddiss, *The Nuremberg Trial and the Third Reich* (Longman, 1992); Robert E. Conot, *Justice at Nuremberg* (New York: Carroll & Graf Publishers, Inc, 1984); Kevin Jon Heller, *The Nuremberg Military Tribunals and the Origins of International Criminal Law* (New York: Oxford University Press, 2011); Gary Jonathan Bass, *Stay the Hand of Vengeance: The Politics of War Crimes Tribunals* (Princeton University Press, 2014); Laura Jockusch, "Justice at Nuremberg?: Jewish Responses to Nazi War-Crime Trials in Allied-Occupied Germany," *Jewish Social Studies* 19, no. 1 (2012): 107–147; Gwynne Skinner, "Nuremberg's Legacy Continues: The Nuremberg Trials' Influence on Human Rights Litigation in US Courts Under the Alien Tort Statute," *Albany Law Review* 71, no. 1 (2008): 321–67.

[2] Hilary Camille Earl, *The Nuremberg SS-Einsatzgruppen Trial, 1945-1958: Atrocity, Law, and History* (Cambridge: Cambridge University Press, 2010); Valerie Geneviève Hébert, *Hitler's Generals on Trial: The Last War Crimes Tribunal at Nuremberg* (Lawrence, Kan.: Univ. Press of Kansas, 2010); Tomaz Jardim, *The Mauthausen Trial: American Military Justice in Germany* (Cambridge, Mass.; London: Harvard University Press, 2012); Paul Weindling, *Nazi Medicine and the Nuremberg Trials: From Medical War Crimes to Informed Consent* (Basingstoke: Palgrave Macmillan, 2008); Paul Weindling, "From International to Zonal Trials: The Origins of the Nuremberg Medical Trial," *Holocaust and Genocide Studies : An International Journal Holocaust and Genocide Studies* 14, no. 3 (2000): 367–89; Joseph Borkin, *The Crime and Punishment of I.G. Farben* (London: Deutsch, 1979); Frank M Buscher, *The U.S. War Crimes Trial Program in Germany, 1946-1955* (New York: Greenwood Press, 1989); Kim Christian Priemel and Alexa Stiller, *Reassessing the Nuremberg Military Tribunals: Transitional Justice, Trial Narratives, and Historiography*, 2014; Jonathan Friedman, "Law and Politics in the Subsequent Nuremberg Trials, 1946-1949," in *Atrocities on Trial: Historical Perspectives on the Politics of Prosecuting War Crimes*, ed. Patricia Heberer and Jürgen Matthäus (Lincoln, NE: University of Nebraska Press, 2008), 75–101; David A. Hackett, *Elusive Justice: War Crimes and the Buchenwald Trials* (Boulder, Colo.: Westview, 2007); Patricia Heberer and Jürgen Matthäus, *Atrocities on Trial: Historical Perspectives on the Politics of Prosecuting War Crimes* (University of Nebraska Press, 2008); Kim C. Priemel and Alexa Stiller, *Reassessing the Nuremberg Military Tribunals: Transitional Justice, Trial Narratives, and Historiography*, vol. 16 (Berghahn Books, 2012).

general rehabilitation of their zone in order to hold down occupation costs in the wake of war that had consumed virtually all of Britain's economic reserves. As a result, most commentators on the subject portray the British as comparatively lenient, emphasizing pragmatism over justice, and point to the low British arrest rate for war crimes relative to the other occupying powers.[3] The British war crimes program under the Royal Warrant is thus characterized as a failure of justice. The lone divergent voices are from Anthony Glees, who – briefly – contends that "Britain's record stands favourably alongside that of other states," although he concedes that trustworthy figures are difficult to obtain, and Lorie Charlesworth, who argues that too little work on the British occupation has appeared to permit such determinations about success or failure.[4]

Historical writing on the Royal Warrant war crimes trials in particular is scant and often weak. Much of the existing work focuses on British occupation policy and practice, with particular emphasis on the shifting priorities occasioned by the Cold War; specific trials and individual perpetrators; and statistics on conviction and sentencing rates (these studies often

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[3] See Richard Bessel, *Germany 1945: From War to Peace* (London: Pocket, 2010), 187, 190, 193, 285–97; Donald Bloxham, "British War Crimes Trial Policy in Germany, 1945-1957: Implementation and Collapse," *Journal of British Studies* 42 (2003): 105; Ian D. Turner, *Reconstruction in Post-War Germany: British Occupation Policy and the Western Zones, 1945-55* (New York: St. Martin's Press, 1989); Timothy R Vogt, *Denazification in Soviet-Occupied Germany: Brandenburg, 1945-1948* (Cambridge, Mass: Harvard University Press, 2000), 7–8; Wolfgang Benz, *Deutschland unter alliierter Besatzung 1945-1949/55: [ein Handbuch]* (Berlin: Akademie, 1999), 49; Michael Ahrens, *Besatzerleben in einer fremden Stadt - die Briten in Hamburg (1945-1949)* (Hamburg, 2010); Fred J. Taylor, *Exorcising Hitler: the occupation and denazification of Germany* (London: Bloomsbury Press, 2011); Ulrich Schnakenberg, *Democracy-Building: britische Einwirkungen auf die Entstehung der Verfassungen Nordwestdeutschlands 1945-1952* (Hannover: Hahnsche, 2007); Patricia Meehan, *A Strange Enemy People: Germans under the British, 1945-1950* (London: Peter Owen, 2001); Christopher Knowles, *Winning the Peace: The British in Occupied Germany, 1945-1948*, 2017; Douglas Botting, *In the Ruins of the Reich* (York: Methuen Publishing Limited, 2011); Roy Bainton, *The Long Patrol: The British in Germany 1945* (Edinburgh: Mainstream, 2003).

[4] Anthony Glees, "The Making of British Policy on War Crimes: History as Politics in the UK," *Contemporary European History* 1 (July 1992): 182; Lorie Charlesworth, "Forgotten Justice: Forgetting Law's History and Victim's Justice in British 'Minor' War Crime Trials in Germany 1945-8," *Amicus Curiae* 2008, no. 74 (2011): 2–10.

emanate from legal scholars and social scientists rather than historians).[5] Many studies rush to judgment in disregard of the historical record and underestimate the complexity of the postwar period's competing political, social, and economic needs. Many, if not most, of these works reflect a desire to judge the Royal Warrant trials by idealistic and unrealistic standards, rather than to explain them.[6] The authors generally fail to provide explicit definitions of success/failure or to acknowledge the constraints of the postwar period. The result is an ahistorical body of work

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[5] For British occupation policy and practice, see: Meehan, *A Strange Enemy People*; Anne Deighton, *The Impossible Peace: Britain, the Division of Germany and the Origins of the Cold War* (Oxford: Clarendon, 2011); Benz, *Deutschland unter alliierter Besatzung 1945-1949/55*; Turner, *Reconstruction in Post-War Germany*; Günter Pakschies, *Umerziehung in der Britischen Zone: 1945-1949 : Untersuchungen zur britischen Re-education-Politik* (Wien: Böhlau Verlag, 1984); Volker Koop, *Besetzt: britische Besatzungspolitik in Deutschland* (Berlin: Be.Bra-Verlag, 2007); Josef Foschepoth and Rolf Steininger, *Die britische Deutschland- und Besatzungspolitik 1945-1949: eine Veröffentlichung des Deutschen Historischen Instituts London* (Paderborn: Ferdinand Schöningh, 1985); Insa Eschebach, "Interpreting Female Perpetrators: Ravensbrück Guards in the Courts of East Germany, 1946 – 1955," in *Lessons and Legacies V: The Holocaust and Justice*, ed. Ronald Smelser (Northwestern University Press, 2002), 255–67, https://muse.jhu.edu/book/34822; Anette Kretzer, *NS-Täterschaft und Geschlecht: der erste britische Ravensbrück-Prozess 1946/47 in Hamburg* (Berlin: Metropol, 2009); Herbert Diercks and Anette Kretzer, eds., "'His or her special job:' die Repräsentation von NS- Verbrecherinnen im ersten Hamburger Ravensbrück-Prozess und im westdeutschen Täterschafts-Diskurs," in *Entgrenzte Gewalt: Täterinnen und Täter im Nationalsozialismus* (Bremen: Edition Temmen, 2002), 134–50; Claudia Taake, *Angeklagt: SS-Frauen vor Gericht* (Oldenburg: BIS Verlag, 1998); Simone Erpel, ed., *Im Gefolge der SS: Aufseherinnen des Frauen-KZ Ravensbrück: Begleitband zur Ausstellung* (Berlin: Metropol Verlag, 2011); Simone Erpel, "Die britischen Ravensbrück-Prozesse 1946 – 1948," in *Im Gefolge der SS: Aufseherinnen des Frauen-KZ Ravensbrück: Begleitband zur Ausstellung*, ed. Simone Erpel (Berlin: Metropol-Verl., 2011), 114–28; Irmtraud Heike, "Johanna Langefeld-Die Biographie Einer KZ-Oberaufseherin," *Werkstatt Geschichte* 12 (1995): 7–19; Hanna Elling and Ursula Krause-Schmitt, "Die Ravensbrück-Prozesse Vor Dem Britischen Militärgericht in Hamburg," *Informationen* 35 (1992): 13–37; John Cramer, *Belsen Trial 1945: der Lüneburger Prozess gegen Wachpersonal der Konzentrationslager Auschwitz und Bergen-Belsen* (Göttingen: Wallstein Verlag, 2011); Priscilla Dale Jones, "Nazi Atrocities against Allied Airmen: Stalag Luft III and the End of British War Crimes Trials," *The Historical Journal* 41, no. 2 (1998): 543–65; Lorie Charlesworth, "2 SAS Regiment, War Crimes Investigations, and British Intelligence: Intelligence Officials and the Natzweiler Trial," *Journal of Intelligence History* 6, no. 2 (2006): 13–60; Katrin Hassel, *Kriegsverbrechen vor Gericht: die Kriegsverbrecherprozesse vor Militärgerichten in der britischen Besatzungszone unter dem Royal Warrant vom 18. Juni 1945 (1945-1949)* (Baden-Baden: Nomos, 2009); Matthew Lippman, "Prosecutions of Nazi War Criminals Before Post-World War II Domestic Tribunals," *University of Miami International and Comparative Law Review* 8 (1999): 1–113.

[6] Donald Bloxham, *Genocide on Trial: War Crimes Trials and the Formation of Holocaust History and Memory* (New York: Oxford University Press, 2001); Claire Louise Sharman, "War Crimes Trials between Occupation and Integration: The Prosecution of Nazi War Criminals in the British Zone of Germany" (University of Southampton, 2007); Bloxham, "British War Crimes Trial Policy in Germany, 1945-1957"; Ben Shephard, *After Daybreak: The Liberation of Belsen, 1945* (Random House, 2006).

that is not useful for understanding the dynamics of the Royal Warrant trials. Furthermore, the approach taken literally begs the question: it assumes that success *was* possible, that a legal system – be it the Royal Warrant trials or the other postwar efforts – could engage with Nazi crimes, apprehend the perpetrators, and achieve justice for literally millions of victims. As Devin Pendas has pointed out, legal systems are inherently limited and trials are an inadequate method of addressing war crimes.[7] Acknowledging that war crimes trials cannot deliver "successful" or "ideal" justice, but only partial, incomplete gestures toward justice, frees scholars to focus on how the war crimes trials operated, what they were able to do, and why they accomplished what they did, rather than what they failed to do.

The literature also suffers from its fragmentary nature. Most of the existing studies focus on single aspects of the Royal Warrant trials, be it British policy, specific trials, or conviction data. These studies neither integrate these aspects nor situate them within any historical context other than the emerging Cold War. When scholars criticize the Royal Warrant approach for failing to embrace the concept of crimes against humanity, they imply that the British did not care enough about European Jews to punish Nazis on their behalf. Multiple writers have suggested that the Royal Warrant trials, partly because of the structure of the Royal Warrant and partly because of British political calculations – or, worse, indifference – failed to understand that Nazism singled Jews out for particular persecution and extermination.[8] Others have recently suggested that a careful reading of the available evidence, in fact, does not support this assertion.[9] This charge of apathy towards the Jewish plight requires careful investigation,

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[7] Devin O. Pendas, *The Frankfurt Auschwitz Trial, 1963-1965: Genocide, History, and the Limits of the Law* (New York: Cambridge University Press, 2006).
[8] Bloxham, *Genocide on Trial*, 75–90, 95; Sharman, "War Crimes Trials between Occupation and Integration," 77, 227.
[9] Charlesworth, "Forgotten Justice"; Jardim, *The Mauthausen Trial*.

particularly because Jews accounted for only half the survivors of Bergen-Belsen, the sole camp liberated by the British and thus the epitome of Nazi crimes for the U.K. public, and many of the worst atrocities against Jews took place in Eastern Europe, outside of postwar British purview.[10] Moreover, I argue the Zyklon B trial demonstrates that the British were capable of recognizing and prosecuting crimes against Jews *as such*, suggesting that British proceedings were shaped by complicated and often competing considerations, including timing, investigative zeal, domestic and international politics, and public opinion.

WARTIME PLANNING

Allied and British planning for the problem of war criminals began early in the war, as the "Big Three" (Churchill, Roosevelt, and Stalin) debated whether Nazis should be summarily executed (exemplary punishment), brought before criminal courts to face charges, or treated with some combination of both.[11] Initial British discussions were motivated by two primary, at times contradictory concerns: learning from the "lamentable" example of the war crimes trials following the first World War, and avoiding obligations to draft lists of supposed war criminals, or otherwise committing to more extensive actions than the British government was prepared to undertake.[12] Although the British pledged "fit and proper punishment for all those responsible for the appalling and almost incredible crimes committed by the Nazis in their attempt at the

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[10] Hagit Lavsky, *New Beginnings: Holocaust Survivors in Bergen-Belsen and the British Zone in Germany, 1945-1950* (Detroit: Wayne State University Press, 2002), 59.
[11] Bass, *Stay the Hand of Vengeance*, 149; The Proceedings of the International Military Tribunal of Major German War Criminals Sitting at Nuremberg Germany, "Charter of the International Military Tribunal," August 8, 1945, The Avalon Project: Documents in Law, History and Diplomacy, http://avalon.law.yale.edu/imt/imtconst.asp.
[12] *Hansard Parliamentary Debates*, House of Lords, 7 October 1942, Vol. 124, cc555-94;Priscilla Dale Jones, "British Policy Towards German Crimes Against German Jews, 1939–1945," *The Leo Baeck Institute Yearbook* 36, no. 1 (1991): 346; Jones, "Nazi Atrocities against Allied Airmen," 544.

world conquest," ideas about what constituted "fit and proper punishment" and who, specifically, was to be held responsible changed over the course of the war.[13]

The first step towards the development of a comprehensive war crimes program was the Inter-Allied Declaration on Punishment for War Criminals, also known as the St. James's Palace Declaration, signed January 1942. The St. James's Palace Declaration stated that the governments-in-exile "place among their principal war aims the punishment, through the channel of organised justice, of those guilty or responsible for these crimes, whether they have ordered them, perpetrated them, or participated in them."[14] The precepts enumerated in the Declaration were based on the principles issued in twin pronouncements by American President Franklin D. Roosevelt and British Prime Minister Winston Churchill in the autumn of 1941.[15] In the British Declaration, Churchill announced, "retribution for these crimes must henceforward take its place among the major purposes of the war," although the Declaration did not specify forms of retribution.[16]

The next major statement on war crimes policy was the Moscow Declaration, issued in October 1943, which explicitly committed the British, Americans, and Soviets to the principles enumerated in the St. James's Palace Declaration and pledged the Allies to continue the war until the Axis powers surrendered unconditionally. The attached "Statement on Atrocities," signed by Roosevelt, Churchill, and Soviet Premier Joseph Stalin, declared that war criminals would be "sent back to the countries in which their abominable deeds were done in order that they may be

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[13] *Hansard Parliamentary Debates,* House of Commons, 10 November 1944, Vol. 404, cc1714-64.
[14] Inter-Allied Information Committee, London, "The Inter-Allied Declaration on Punishment for War Criminals," in *The Inter-Allied Declaration Signed at St. James's Palace, London, on 13th January, 1942, and Relative Documents* (London: H. M. Stationery Office, 1942), 3–5.
[15] Elizabeth Borgwardt, *A New Deal for the World* (Harvard University Press, 2007), 218.
[16] "British Declaration," 25 October 1941 in *The Inter-Allied Declaration Signed at St. James's Palace, London*, 15.

judged and punished according to the laws of these liberated countries and of free governments which will be erected therein." The Allies further swore to pursue war criminals "to the uttermost ends of the earth and ... [to] deliver them to their accusors [sic] in order that justice may be done."[17] Otherwise, the Moscow Declaration side-stepped the question of what "punishment" was to look like.

At this point, the British, along with the other Allies, were still uncertain what form "fit and proper punishment" would take. Many British believed that Germans were "wholesale massacreurs and sadists," "beasts from another planet," "enemies of mankind," "thugs and hooligans," and "one and all utterly inhumane … without exception."[18] In Parliament, MPs called for the "liquidations of the entire Gestapo and all the Death's Head Guards at the concentration camps," for "the lives of every German man and every German woman who has had not only a hand but a finger in that foul business," for "the extinction of Germany as a nation," and for the "extermination [of] as many war criminals as possible if you can catch them."[19] According to a Mass Observation report from January 1944, only one in four Britons thought trials suitable punishment, and "for better or for worse, the principle of retribution has been let loose now beyond the possibility of retraction."[20] Once Bergen-Belsen was liberated in April 1945, inundating the home front with reports and images of atrocities well beyond what had been previously imagined, these yearnings for revenge only grew stronger, as ordinary Britons recommended mass castration, enslavement, and the complete "extermination" of the

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[17] "Moscow Declaration Statement on Atrocities," 1 October 1943. *The Avalon Project: Documents in Law, History and Diplomacy at the Yale Law School*. Accessed 5 March 2012, http://avalon.law.yale.edu/wwii/moscow.asp.

[18] *Hansard Parliamentary Debates*, House of Lords, 7 December 1943, Vol. 130, cc109 – 41. See also Bessel, *Germany 1945*, 285–86.

[19] *Hansard Parliamentary Debates*, House of Lords, 7 December 1943, Vol. 130, cc109 – 41; House of Commons, 20 July 1944, Vol. 402, cc471 – 80.

[20] "Vengeance," File Report, January 1944, 4–5, Mass Observation Online.

German race and state as fit responses to German atrocities.[21] Churchill even referred to the persecution of the Jews as "probably the greatest and most horrible crime ever committed in the whole history of the world .... [for which] all concerned in this crime who may fall into our hands, including the people who only obeyed orders by carrying out butcheries, should be put to death after their association with the murders has been proved."[22] But when Churchill and others spoke of retribution for persecution, they did not conceptualize this persecution in the contemporary sense of "the Holocaust" or "the Shoah."[23] A detailed discussion of the reasons why is beyond the scope of this project, but access to information, the domestic political context, and British ideological orientation all played a role.[24] Moreover, as Walter Laqueur has pointed out, to know and to believe are not the same – even for world leaders with access to the best intelligence available.[25]

Certain segments of the British government, including Prime Minister Churchill, favored a summary purge of German leadership, accompanied by mass executions.[26] Motivated by desires for retribution and revenge, Churchill, along with Foreign Minister Anthony Eden, favored immediate executions of top Nazis (approximately 50 – 100), followed by trials for rank-

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[21] "German Atrocities," File Report, May 5, 1945, 11, 2248, Mass Observation Online; "Attitudes to the German People," File Report, February 23, 1948, 19–22, Mass Observation Online; Tony Kushner, "From 'This Belsen Business' to 'Shoah Business': History, Memory and Heritage, 1945-2005," *Holocaust Studies* 12, no. 1–2 (2006): 189–216.

[22] Winston Churchill to Foreign Secretary Anthony Eden, 11 July 1944, in Winston Churchill, *The Second World War. Volume VI: Triumph and Tragedy* (Boston: Houghton Mifflin Company, 1985), 597.

[23] Memo from Prime Minister Winston Churchill to Foreign Secretary Anthony Eden, 11 July 1944, in Churchill, 597; Tony Kushner, "Different Worlds: British Perceptions of the Final Solution during the Second World War," in *The Final Solution: Origins and Implementation*, ed. David Cesarani (New York: Routledge, 2002), 247.

[24] Kushner, "Different Worlds: British Perceptions of the Final Solution during the Second World War"; Tony Kushner, *The Holocaust and the Liberal Imagination: A Social and Cultural History* (Wiley, 1995).

[25] Walter Laqueur, *The Terrible Secret: Suppression of the Truth about Hitler's Final Solution* (New Brunswick: Transaction Publishers, 2012), 3.

[26] Glees, "The Making of British Policy on War Crimes," 177.

and-file party members.[27] Even then, Churchill believed trials were necessary for the rank-and-file only because he thought "that the British nation at any rate would be incapable of carrying out mass executions for any length of time, especially as we have not suffered like the subjugated countries."[28] Following the Quebec Conference in 1943, Churchill had drafted a telegram to Stalin on behalf of himself and Roosevelt (though the telegram was never sent), suggesting that such a purge take place within six hours of Germany's unconditional surrender, arguing that the fates of the Nazi leadership were a political, rather than judicial, matter. By 1944, however, the War Office had grown wary of recommendations for immediate executions, fearing that such executions would provoke retaliation and jeopardize the safety of British troops serving abroad.[29] Nevertheless, Churchill continued to endorse summary justice as late as the Yalta Conference, though now in the face of opposition from Roosevelt and Stalin.[30] Roosevelt had been brought around to war crimes trials by his secretary of war, Henry Stimson, whereas Stalin, envisioning a rather different kind of trial than his western counterparts, recognized the propaganda value of a public trial.[31]

Churchill's stance stemmed from his memories of the Leipzig trials following the First World War.[32] The Allies' failure to try Germans for war crimes after World War I, despite the provisions to do so included in the Treaty of Versailles, and the utter inadequacy of the ensuing

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[27] Bass, *Stay the Hand of Vengeance*, 181.
[28] CAC66/42, Churchill War Criminals Note, War Cabinet, W.P. (43) 496, 9 November 1943 quoted in Bass, 21.
[29] Bass, 182–83.
[30] Guy Liddell, Diary Entry, 21 June 1945,"The National Archive of the UK KV 4/466 Diary of Guy Liddell, Deputy Director General of the Security Service, June to November 1945" November 18, 1945, The National Archives, Kew.
[31] Guy Liddell, Diary Entry, 21 June 1945, "The National Archive of the UK KV 4/466 Diary of Guy Liddell, Deputy Director General of the Security Service, June to November 1945."
[32] Bass, *Stay the Hand of Vengeance*, 58, 185; Gerd Hankel and Belinda Cooper, *The Leipzig Trials: German War Crimes and Their Legal Consequences after World War I*, 2014.

German attempt, convinced Churchill that judicial means were not appropriate for what he considered political problems, given the possibility of exonerations or token sentences. Thus, Churchill believed summary justice was necessary to ensure that those guilty of the most egregious crimes did not escape punishment.[33]

ALLIED AND ZONAL TRIALS

With Churchill persuaded in favor of war crimes trials by Roosevelt and Stalin (though not entirely convinced), planning for the postwar settlement picked up speed in the final months of the war. Two types of trials developed subsequently: an international trial under collective Allied auspices and zonal trials under each of the four occupation authorities. The international Allied tribunal was to try the so-called "major war criminals," while the military occupation government of each zone was to undertake prosecutions of crimes committed within its geographic jurisdiction. Thus, in addition to sharing responsibility for the International Military Tribunal (IMT) at Nuremberg, which charged high-ranking Nazis such as Hermann Goering, Rudolf Hess, Hans Frank, and others, the British were also tasked with identifying, apprehending, and trying war criminals for crimes committed within the British occupation zone in northwestern Germany.[34] The resulting proceedings were not governed by the Nuremberg Charter, but by the Royal Warrant of 1945. The British, like the other Allies, thus faced the challenges of applying a geographically-based system of legal jurisdiction to a crime that overran national boundaries, involved victims and perpetrators transported across national lines, and

[33] Bass, *Stay the Hand of Vengeance*, 58.
[34] Proceedings of the Nuremberg War Crimes Trials, "Indictment, The Trial of German Major War Criminals: Proceedings of the International Military Tribunal sitting at Nuremberg Germany," The Avalon Project: Documents in Law, History and Diplomacy, accessed June 7, 2016, http://avalon.law.yale.edu/imt/count.asp; Kochavi, *Prelude to Nuremberg*.

stripped and reassigned citizenship with impunity, a situation hardly conducive for traditional methods of determining jurisdiction.

Having decided on trials, the Allies focused on determining what constituted a punishable war crime under their jurisdiction, particularly on whether German crimes against German nationals, including German Jews, as well as against non-Allied civilians, especially Jews, constituted prosecutable war crimes.[35] Throughout most of the war, the British government insisted that such crimes did not fit the technical definition of war crimes and thus could not be tried as such, no matter how dastardly the act in question. As Foreign Secretary Anthony Eden explained to the House of Commons in October 1944, "Crimes committed by Germans against Germans, however reprehensible, are in a different category from war crimes and cannot be dealt with under the same procedure."[36] Prosecuting crimes against German Jews and non-Allied civilians would not only have widened the scope of Britain's postwar judicial activities and eaten up resources, but also potentially diverted public attention away from cases involving British victims, which were the highest priority for the British government.

Not until late 1945, with the promulgation of Allied Control Council Law No. 10 and subsequent British Military Government Ordinance No. 47, issued on 30 August 1946, did the British formally expand their definition of war crimes to allow the prosecution of "war crimes committed by persons of German nationality against other persons of German nationality or stateless persons," which included German Jews.[37] However, by the time Ordinance No. 47 was

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[35] Jones, "British Policy Towards German Crimes Against German Jews, 1939–1945," 348–52.
[36] *Hansard Parliamentary Debates*, House of Commons, 4 October 1944, Vol. 403, cc906 – 7. See also *Hansard Parliamentary Debates,* House of Commons, 10 November 1944, Vol. 404, cc1714-64.
[37] Ordinance No. 47, 30 August 1946, published in *Military Government Gazette, Germany, British Zone of Control*, No. 13: 306. See also "Control Council Law No. 10: Punishment of Persons Guilty of War Crimes, Crimes Against Peace and Against Humanity," 20 December 1945, *Documents on Germany under Occupation 1945 – 1954*. Edited and translated by Beate Ruhm von Oppen. (New York: Oxford

issued, multiple trials already had been completed under the Royal Warrant, including not only the Bergen-Belsen trial, but also the Zyklon B trial. When the British liberated Belsen in April 1945 and began collecting evidence for war crimes trials, the official British policy was only to bring cases involving Allied nationals as victims. However, in the absence of formal instructions from London (the Royal Warrant was not issued until June), British personnel – who were utterly unprepared for and horrified by what they encountered in Belsen – began collecting evidence and making arrests regardless of victim nationality as soon as they entered the camp. The practice established a pattern of arrests for crimes against Jews that proved difficult to abandon. Moreover, the Zyklon B trial, which took place in March 1946, five months before Ordinance No. 47 was released, prosecuted defendants for crimes committed against victims primarily defined as Jews. The inclusion of such persecution, although it was never the primary focus, in trials held before 30 August 1946 indicates that Ordinance No. 47 was a confirmation of the British investigative and prosecutorial practice that emerged in occupied Germany, rather than an innovation.

As noted above, war crimes trials were held under the jurisdiction of the Royal Warrant of June 1945.[38] The Royal Warrant defined a war crime as "a violation of the laws and usages of war committed during any war in which His Majesty has been or may be engaged at any time since the 2nd September 1939," and gave the British military the power to convene military tribunals for war crimes.[39] The document also laid down basic procedures and parameters for

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University Press, 1955), 97 – 101; United Nations War Crime Commission, *History of the United Nations War Crimes Commission and the Development of the Laws of War* (London: HM Stationery Office, 1948), 214; Jones, "British Policy Towards German Crimes Against German Jews, 1939–1945," 361–63.

[38] War Office, "The Royal Warrant of 14 June 1945," in *The Law of War on Land: Being Part III of the Manual of Military Law*, ed. Hersch Lauterpacht (London: H.M.S.O., 1958), 347–50.

[39] War Office; Anthony P. V. Rogers, "War Crimes Trials under the Royal Warrant: British Practice 1945-1949," *International and Comparative Law Quarterly*, 1990, 780–800.

these military tribunals, but it did not give the British authority to try crimes against humanity, unless the crime in question was simultaneously a war crime.[40] The Warrant thus stood in contrast to the Nuremberg Charter that governed the International Military Tribunal and asserted jurisdiction over three categories of crime – crimes against peace, war crimes, and crimes against humanity. The Charter defined the third category as:

> … murder, extermination, enslavement, deportation, and other inhumane acts *committed against any civilian population, before or during the war* [italics added]; or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated.[41]

The different emphases of the Warrant and the Charter had significant implications for the respective trials held under each. First, because the Royal Warrant only authorized the prosecution of war crimes, actionable crimes must have taken place after the outbreak of war on 2 September 1939, whereas the Charter encompassed crimes committed from the time Adolf Hitler rose to power in 1933 through the end of the war. Second, the Warrant initially applied only to crimes against British citizens or Allied nationals, not, for example, German Jews, whereas the Charter asserted jurisdiction for crimes committed against "any civilian population."[42] Third, the Warrant's exclusive focus on war crimes rooted British practice deeply in formal, pre-existing international law, defined as crimes in international treaties and

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[40] United Nations War Crime Commission, *History of the United Nations War Crimes Commission and the Development of the Laws of War*, 216; United Nations War Crime Commission, "Annex 1: British Law Concerning Trials of War Criminals by Military Courts," in *Law Reports of Trials of War Criminals*, vol. I (London: Stationary Office, 1949), 105–10.

[41] The Proceedings of the International Military Tribunal of Major German War Criminals Sitting at Nuremberg Germany, "Charter of the International Military Tribunal," pt. II, Article 6.

[42] The Proceedings of the International Military Tribunal of Major German War Criminals Sitting at Nuremberg Germany, "Charter of the International Military Tribunal."

agreements and accepted military practice, whereas the Charter sought to establish new legal grounding for the categories of crimes against peace and crimes against humanity.[43]

THE ROYAL WARRANT

Under the Royal Warrant, war crimes tribunals were composed of a Judge Advocate, responsible for providing the "summing up" of the case prior to deliberations, a president, and at least two court members, in addition to the prosecution and defense. The Judge Advocate's role was strictly advisory, with the court functioning as both judge and jury (in a contemporary American sense). To the extent possible, the court was to be composed of officers of equal or superior rank to the accused, and if the victims came from countries other than Britain, the court was to include representatives of those nations' militaries.[44] Defense attorneys were to be of the same nationality as the defendant, or a British officer if a co-national was not available. Tribunals under the Royal Warrant had the legal status of British municipal courts, but utilized the procedures of a Field General Court Martial of the British Army.[45] The tribunals retained the same standards of British justice, including the assumption of innocence until proven guilty, the standard of reasonable doubt, the right of the accused to testify on his/her own behalf, and the rules of witness examination.[46] While the use of British courtroom standards and practices undoubtedly made the trials easier to stage for the British military, this choice also benefited the British prosecutors at the expense of the non-British defense attorneys, who lacked familiarity with British legal norms and had varying degrees of English fluency.

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[43] War Office, "The Royal Warrant of 14 June 1945."
[44] War Office; Lippman, "Prosecutions of Nazi War Criminals Before Post-World War II Domestic Tribunals," 4.
[45] United Nations War Crime Commission, "Annex 1: British Law Concerning Trials of War Criminals by Military Courts."
[46] War Office, "The Royal Warrant of 14 June 1945"; United Nations War Crime Commission, "Annex 1: British Law Concerning Trials of War Criminals by Military Courts."

Occupied Germany faced several specific challenges that required a degree of flexibility with regard to legal procedure. The Royal Warrant presciently anticipated these needs, but in doing so introduced additional challenges. Certain evidentiary rules were relaxed for the tribunals to accommodate postwar exigencies – primarily the admission of hearsay evidence under a provision that allowed "the consideration of any oral statement or any document appearing on the face of it to be authentic, provided the statement or document appears to the Court to be of assistance in proving or disproving the charge."[47] This was a sensible position considering the context in which the trials were held. Many victims were unknown; many witnesses were suffering from the effects of war and trauma; and much of the documentary evidence had been destroyed by the Nazi state. British guidelines ensured that even if all witnesses to a specific crime had died or a prisoner had information about a crime s/he did not personally witness, relevant evidence could still come before the court. In practice, however, the Royal Warrant's flexible evidentiary standards also often translated into vague and confusing procedures, particularly for the many non-British lawyers appearing before the courts. Especially in the earlier trials, lawyers and court members had little sense of what was permissible and what was not, and so these questions were largely resolved in practice, through a process of trial and error.

The Royal Warrant also established a provision for prosecuting war crimes in concentration camps that arose from collective action or the routine functioning of the camp system, rather than the initiative of a single individual. "Where there is evidence that a war crime has been the result of concerted action upon the part of a unit or group of men," the Warrant stated, "then evidence given upon any charge relating to that crime against any member of such

[47] War Office, "The Royal Warrant of 14 June 1945," para. 8i.

unit or group may be received as prima facie evidence of the responsibility of each member of that unit or group for that crime."[48] This provision enabled the British prosecution to connect the guilt of SS or concentration camp staff members more easily. Finally, the Royal Warrant also established the permissible punishments (death by hanging or shooting, imprisonment, confiscation, fines) and the right of the defendant to petition against – not appeal – verdicts and sentences.[49] Courts under the Royal Warrant issued verdicts alone, with no reasoned judgments or opinions. Insight into how the court reached its decisions and what evidence it found most persuasive must be found in other sources.

UNCERTAIN PUBLIC SUPPORT FOR WAR CRIMES TRIALS

Within a year of the war's end, the British public began to express concern about the war crimes trials. Critics complained that the trials were too slow, too expensive, inhibited the reconstruction of an independent Germany, and damaged "the good name of British justice."[50] The principal worry prior to the actual start of most postwar trials was their possible length, both as to how long individual defendants would have to wait before standing trial – potentially a violation of due process – and how long the proceedings would take. Even before the trials began, government officials in London wanted to set an end date for the trial program.[51] Some were concerned that the "trials ought to be proceeded with as soon as possible," in an effort to maximize the impact of the trials by staging them immediately at the end of the war.[52] Others linked the duration of the war crimes program with cost, as Viscount Maugham argued in

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[48] War Office, "The Royal Warrant of 14 June 1945."
[49] War Office.
[50] *Hansard Parliamentary Debates*, House of Lords, 15 October 1946, Vol. 143, cc246 – 72.
[51] Jones, "Nazi Atrocities Against Allied Airmen," 548.
[52] *Hansard Parliamentary Debates*, House of Commons, 29 May 1945, Vol. 411, cc34 – 7; JP Wallis, letter to the editor, *The Times (London)*, 25 January 1944, 8; "Trial of War Criminals: Lord Wright on Need for Speedy Action," *The Times (London)*, 26 July 1945, 4.

Parliament that "the longer it takes us to try all these various people and to deal with all those in the concentration camps, the worse it will be for us, because even in these days, when we deal with enormous figures which are almost impossible to realize, £80,000,000 a year is still a very substantial sum."[53] At £80,000,000 annually, or £3billion/$3.7billion in 2016 currency values, four years of British-sponsored war crimes trials would have cost £12billion/$14.8billion, more than the £9.6billion the British spent in Iraq between 1991 and 2013.[54]

Fears about a long, drawn-out trial process were also related to worries about the postwar reconstruction of Germany and concerns that "the good name of British justice in Germany has suffered."[55] One letter to the editor in the *Times* suggested that the delays in bringing charged individuals to trial might lead "impartial German observers" to "suppose that the ways of democracy are, in truth, but little different from those of Nazism."[56] Trials were also thought to impede German reconstruction, by continuously bringing attention back to the war, rather than to the future, contributing to a victim mentality among the Germans, and tying up large sections of the workforce in criminal detention, a concern raised in Parliament:

> While there are tens of thousands of people in prisons for war crimes or in concentration camps, it seems to me impossible to think that the work of regeneration can really succeed. That is my firm belief. It is for that reason that I want us to have done at an early date with the trials, with the sentences and with the detentions in concentration camps. Let us try to persuade all the decent-minded Germans that we have come to an end of retribution, and are now

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[53] *Hansard Parliamentary Debates*, House of Lords, 15 October 1946, Vol. 143, cc246 – 72. See also Tom Bower, *The Pledge Betrayed: America and Britain and the Denazification of Postwar Germany*. (New York: Doubleday and Company, 1982), 161; Mass Observation FR2424A, "Note on Nuremberg," September 1946, 1; Mass Observation FR2565, "Attitudes to the German People," February 1948, 7.
[54] Malcolm Chalmers et al., *Wars in Peace: British Military Operations since 1991*, ed. Adrian L. Johnson (London: Royal United Services Institute for Defence Studies, 2014), 268; "Measuring Worth - Relative Worth Comparators and Data Sets," accessed August 23, 2017, https://www.measuringworth.com/.
[55] *Hansard Parliamentary Debates*, House of Lords, 15 October 1946, Vol. 143, cc246 – 72. See also Charles L. Nordon, letter to the editor, *The Times (London)*, 20 January 1943, 5.
[56] Raymond Phillips, letter to the editor, *The Times (London)*, 8 May 1946, 5.

> desirous by every means in our power of helping the Germans to become once more a great nation, but a nation without any power again to re-arm or to make preparations for another war. … Persons in confinement will also be considered, in some cases, as martyrs of the Fatherland. For my part, and I think that a great many of your Lordships would be of the same opinion, I do not believe that the re-education of German citizens can begin while these terrible but just sentences are being given out, week after week, month after month, during a prolonged period.[57]

Thus, concerns about speed, cost, justice, and reconstruction were all closely related before the end of the war and in the early postwar period. However, these particular concerns were mostly the province of politicians, military leaders, government officials, and members of the public who remained in Britain, not those on the ground in Germany carrying out the work of investigating war crimes and prosecuting cases.

OVERVIEW

In Chapter I, I examine the first trial the British held, for the Bergen-Belsen Concentration Camp, whose formative influence on British war crimes personnel, protocol, and procedure cannot be understated. I argue that the conditions at Belsen at the time of liberation had an enormous influence on both British public opinion about Nazi crimes and on British war crimes policy. As the first opportunity for the British to put their limited planning into action and test trial procedures, Belsen was critical for forming the model that guided subsequent Royal Warrant trials. Given the lack of formal instructions to guide the Belsen investigation (Belsen was liberated and the investigation began two months before the Royal Warrant was issued), the choices that the British made on the ground in response to conditions at Belsen shaped not only this trial, but all that followed. The Belsen trial thereby provides considerable insight into the

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[57] *Hansard Parliamentary Debates*, House of Lords, 15 October 1946, Vol. 143, cc246 – 72; JP Wallis, letter to the editor, *The Times (London)*, 25 January 1944, 8. See also comments of Foreign Office official A. A. E. Franklin from 21 January 1946 quoted in Jones, "Nazi Atrocities against Allied Airmen," 549–50, 565.

reasons and motivations behind the development of the particular British method of prosecuting war crimes, as well as the mechanics of the trials, including investigation tactics, collection and use of evidence, court proceedings, and the relationships between the staffs on the ground in Germany and back home in Britain.

Each of the next three chapters traces the British prosecution of one particular type of crime, while outlining the development of British policy and practice over the four years of the occupation period. Chapter II considers the aiding and abetting accessory charges faced by three top executives from Tesch & Stabenow, one of two firms that distributed Zyklon B, a toxic gas used in the gas chambers at some concentration camps to murder people. The chapter contradicts the typical presentation of Royal Warrant trials by demonstrating that although the proceedings held no domestic political benefits, the British nonetheless went ahead, and did so on behalf of predominantly Jewish victims. The Zyklon B trial shows that the British, or at least those responsible for prosecuting cases, did recognize the particularity of the murderous fate the Nazis dispensed to European Jews. Through an examination of the Zyklon B verdict and the U.S. Alien Tort Claims Act, Chapter II also explores the long-term influence of the Royal Warrant on international criminal law.

Chapter III focuses on forced labor crimes at the so-called baby farms at Velpke, Rühen, and Lefitz. During the war, Nazi labor policy imported forced laborers from Poland and the Soviet Union to work on farms and in factories in support of the German war effort. When these foreign workers had children, their babies were taken away so the women could continue working uninterrupted. Placed in group homes, nearly all the children died from gross neglect. Chapter III argues that while the baby farms could have been prosecuted as simple violations of the Hague Conventions' restrictions on the use of occupied foreign labor, the British instead

treated the baby farm cases as a racial crime, a product of Nazi racial ideology, thus expanding traditional conceptions of war crimes involving foreign labor.

Chapter IV explores concentration camps as war crimes, using the Ravensbrück *Konzentrationslager* as a case study. That the British held seven trials regarding Ravensbrück provides an excellent opportunity to explore changes in British war crimes policy, priorities, and practice over time due to external political, social, and economic pressures. With the proliferation of conflicting and increasingly vocal interest groups, the British hewed to an increasingly conservative and traditional prosecutorial line to ensure the trials could continue, even if this approach satisfied few observers.

IMPACT

The British postwar war crimes trials rested upon a different set of legal principles than the Nuremberg Charter. Exclusively focused on war crimes—rather than the newer category of "crimes against humanity"—and grounded in pre-existing international law, the British trials took a more conservative legal approach than the more explicitly didactic and legally inventive Charter. Although the British legal proceedings have often been dismissed as ignorant of what would come to be known as the Holocaust, I argue to the contrary that the British not only recognized Holocaust-specific crimes, but also effectively prosecuted such crimes using an established legal tool. Emerging in the context of an occupation regime that had limited resources, the British trials demonstrate that longstanding legal approaches could address new and unprecedented categories of crime.

The British incorporated the persecution of Jews into their understanding of Nazi crime, but they were reluctant to make the Jews a central focus of criminal cases. While British prosecutors repeatedly argued that Nazis targeted Jews for extermination solely because of their

Jewishness, in violation of international criminal law, the argument relied on that law in order to avoid setting potentially unwelcome precedents. In following this course, the British inadvertently created a *more* effective precedent for war crimes prosecution than Nuremberg. The law the British used, drawn from the Hague and Geneva Conventions, was more durable than the Nuremberg Charter created specifically for World War II. Precepts from the British trials have been upheld by the International Criminal Tribunals for Yugoslavia and Rwanda, and the precedents set by some of the British trials have been invoked in multiple contemporary cases, particularly the principle that individuals can be held personally liable for war crimes and other human rights violations, regardless of the individual's relationship to the state.

Focusing on the British Royal Warrant trials allows me to pose and answer a number of questions that have gone unexplored or been addressed inadequately in the existing literature. First, were the British truly less concerned with punishing war crimes than the other Allied powers, as scholars have suggested? Second, were the conservative terms of the British Royal Warrant the result of British apathy regarding the plight of the Jews, legal traditionalism, or economic exhaustion? Third, how did Jews (and other Nazi victim groups) and Germans respond to this British approach? Fourth, how did British choices intersect with broader issues in the new postwar world, notably the strength of the United States as a global superpower and the fragility of the British empire? Though some scholars contend that the limited scope of the British Royal Warrant derived from the United Kingdom's disregard for the Nazis' Jewish victims or limited economic resources, I argue that British jurisprudence reflected a more complex reality, combining British legal sensibilities with a range of political and cultural factors that defined postwar Europe. I contend that British postwar jurisprudence emerged from the complex interaction of contemporary British perspectives on the law; wartime and postwar British

attitudes towards Jews, Nazis, and Germans; domestic and international opinion; and a disinclination to set universalist legal precedents.

Trying Hell: The Trial of Bergen-Belsen and Auschwitz

LIBERATION

In April 1945, the 21st Army Group of the Second British Army, under the command of Field Marshal Bernard L. Montgomery, was marching across Germany toward Berlin and a rendezvous with the Soviet Army. In the course of liberating prisoners at many sites, British units picked up rumors that a massive concentration camp, rife with typhus, lay ahead. On April 12, the truth behind the rumors began to emerge, when advance parties encountered a phalanx of Wehrmacht officers under a white banner. They sought to negotiate a truce for the swift transfer of Bergen-Belsen concentration camp to British management in order to prevent the spread of typhus among the local civilian population, and then to retreat.[58] The British cadre, under the aegis of Brigadier Taylor-Balfour, agreed to take control of Belsen as part of a 48 square kilometer/19 square mile neutral no-fire zone.[59] The truce agreement called for Wehrmacht troops at the adjoining Panzer Training School to evacuate to German lines, SS personnel would remain in their posts at the camp, and Hungarian guards on site to help the British with the transition.[60] The SS remaining at Belsen were to be treated as prisoners of war; however, several of them escaped Belsen in the two days between the truce agreement and the British takeover of the camp, along with many of the Hungarian guards.[61]

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[58] Joanne Reilly, *Belsen: The Liberation of a Concentration Camp* (London; New York: Routledge, 1998), 22; J. Douglas Paybody, USC Shoah Foundation Visual History Archive Interview, Video Recording, May 18, 1997, 29664, http://vhaonline.usc.edu/viewingPage.aspx?testimonyID=31644&segmentNumber=0.

[59] Shephard, *After Daybreak*, 8.

[60] "Interim Report of No. 1 WCIT Re: War Crimes and Atrocities by the Germans at Bergen-Belsen Concentration Camp from 1st December 1944 – 15th April 1945 and at Other Concentration Camps from 1940 – 1945, "The National Archive of the UK WO 309/1346" December 1945, The National Archives, Kew.

[61] Paul Kemp, "The British Army and the Liberation of Bergen-Belsen, April 1945," in *Belsen in History and Memory*, ed. Joanne Reilly et al. (Portland, OR: F. Cass, 1997), 134; Reilly, *Belsen*, 23.

Three days later, Captain Derrick Sington of the No. 14 Intelligence Corps Amplifying Unit drove through the gates of the camp and into the depths of what he later described as "a fine hell."[62] Accompanied by Sargent Eric Clyne and Lance Corporal Sidney Roberts, Sington drove around the camp with a loudspeaker, announcing in multiple languages that the camp inmates were now free.[63] Except that they were not. Although Bergen-Belsen had been liberated, the catastrophic conditions within it—rampant disease, mass starvation, the disintegration of all sanitation and hygiene, and the collapse of the water supply—meant that no one could leave. The camp that Sington encountered was a world turned upside down, one filled with "strange simian throng[s], who crowded to the barbed wire fences, surrounding the compounds, with their shaven heads and the obscene striped penitentiary suits," a charnel house where 10,000 corpses lay rotting and the sight of dead bodies quickly ceased to be surprising.[64]

Over the next few days, British personnel poured into Belsen, experiencing the same shock and horror as Sington. Soldiers, reporters, and medical students, at a loss to describe what they were seeing, fell back on metaphors, especially those invoking hell. Dante's *Inferno* was a popular, if problematic, reference.[65] Although British troops had seen terrible things while liberating previous sites, all experience paled in comparison to Belsen.[66] The first responders at

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[62] W. D Rubinstein, Michael Jolles, and Hilary L Rubinstein, *The Palgrave Dictionary of Anglo-Jewish History* (Basingstoke: Palgrave Macmillan, 2011), 924.Mark Celinscak, *Distance from the Belsen Heap: Allied Forces and the Liberation of a Nazi Concentration Camp*, 2015, 61. Deposition of Captain Derrick Adolphus Sington, 26 June 1945, "The National Archive of the UK WO 309/17" October 1945, The National Archives, Kew.
[63] Derrick Sington, *Belsen Uncovered* (London: Duckworth, 1946).
[64] Sington, 16, 49, 37.
[65] Ibid., 46; Reilly, *Belsen*, 31.Isaac Levy, USC Shoah Foundation Visual History Archive Interview, Video Recording, January 30, 1996, 8610, http://vhaonline.usc.edu/viewingPage.aspx?testimonyID=11061&segmentNumber=0; Isaac Levy, *Witness to Evil: Bergen-Belsen, 1945* (Peter Halban, 1995), 10; Testimony of Harold Osmond Le Druillenec, "The National Archive of the UK WO 235/13" September 1945, The National Archives, Kew.
[66] Reilly, *Belsen*, 24, 35–36.

Belsen found themselves immersed in a world far more horrific than they imagined possible.

One soldier recorded how unprepared he was for the sights he struggled to depict:

> The extent of the problem had not really been fully relayed – and had probably not been fully known – but we certainly were not told. It was quite an unexpected sight that we met. It was dark, and we came in and settled down for the night, and the extent of what was before us came to light in the morning.
>
> The only way to describe it is the fact that there was just a carpet of human bodies, mostly very emaciated, many of them unclothed, jumbled together; people had just died where they stood. And they were outside, and inside, the various huts. Outside, lying where there were any trees or any open ground, it was incredible: the mass of bodies that didn't putrefy because they were so skeletal – there was so little flesh on them: their arms and their legs were just like matchsticks really. It was a gruesome and horrible sight that I will never forget, never.[67]

A Canadian wrote home to his wife,

> Tonight I am a different man. I have spent the last two days in Belsen concentration camp, the most horrible festering scab there has ever been on the face of humanity. … It makes me sick to my stomach even to imagine the smell, and I want to weep and go out in the streets and kill every Nazi I see when I think of what they have done to those countless thousands of people.
>
> You have seen pictures in the paper but they cannot tell the story. You have to smell it and feel it and keep a stern look on your face while your heart tears itself into pieces and the tears of compassion drench your soul. My God, that there should be such suffering on the face of this earth. I have seen hundreds of people dying before my eyes. I have seen filthy green corpses used as pillows for the living. I have seen forty thousand people living and dying amongst their own fetid offal. They are dying faster than they can be buried. For most of them food is absolutely of no use. Their stomachs will not take it – they vomit or they have dysentery and it goes right through them. All over the camp, both men and women squat wherever they happen to be. There is no latrine and it is almost impossible to walk around without stepping in filth.[68]

As relief efforts began in earnest under the medical leadership of Brigadier Hugh Llewellyn Glyn Hughes, the shock deepened, rather than abated.

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[67] Major Alexander Smith Allan, 113 Light Anti-Aircraft Regiment quoted in Ben Flanagan and Donald Bloxham, *Remembering Belsen: Eyewitnesses Record the Liberation* (London; Portland, OR: Vallentine Mitchell, 2005), 9. See also J. Douglas Paybody, USC Shoah Foundation Visual History Archive Interview; Paul Wyand, *Useless If Delayed* (London: G.G. Harrap, 1959), 159–67.

[68] Letter from King Whyte to wife Dorothy Alt, dated 24 April 1945, "somewhere in Germany," in King Whyte, *Letters Home, 1944-1946* (Toronto: Seraphim Editions, 2007), 105.

News of the so-called "horror camp," helmed by the "Beast of Belsen," *Kommandant* Josef Kramer, spread rapidly to those back at home.[69] Just two days after the British entrance into Belsen, correspondent Richard Dimbleby recorded a report that aired on BBC radio on 19 April 1945. He attempted to set forth "the simple, horrible facts of Belsen" for his listeners, even as he was noticeably overcome by emotion at various points.[70] Dimbleby's account, in fact, so shocked his superiors at the BBC Home Service that they initially refused to believe it and consented to air the broadcast only when Dimbleby threatened to quit.[71]

Other media reports quickly followed. Newspapers, both local and national, began covering relief efforts at the camp, while Army newsreels showed both Britons and Germans the ghastliness of the camp.[72] A cameraman, Paul Wyand, later wrote that he and his partner

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[69] Reilly, *Belsen*, 21; "The National Archive of the UK WO 309/424" April 1945, The National Archives, Kew.

[70] "WWII: Witnessing the Holocaust - Richard Dimbleby Describes Belsen" (BBC Home Service, April 19, 1945), http://www.bbc.co.uk/archive/holocaust/5115.shtml.

[71] "WWII: Witnessing the Holocaust - Richard Dimbleby Describes Belsen."

[72] See the Mass Observation report "German Atrocities" for the British reaction to newsreels of Belsen and Buchenwald, "German Atrocities," May 5, 1945; Terence Prittie, "Belsen," *The Manchester Guardian (1901-1959)*, May 24, 1957; "The News-Reels," *The Times*, May 1, 1945; "Army Men Shocked," *The Daily Mail*, April 20, 1945; Doon Campbell, "Band Played While Hundreds Died," *The Daily Mail*, April 21, 1945; Tom Downes, "'Killer' Kramer Is Unashamed," *The Daily Mail*, April 23, 1945; John Gosse, "'Mail' Man in Belsen," *The Daily Mail*, April 25, 1945; "The Horror of Belsen," *The Essex Chronicle*, April 27, 1945; "M.P.s on Way to 'Death Camps,'" *The Daily Mail*, April 20, 1945; Gerald Debnam, "Letters: Take Hitler Round in a Cage," *The Essex Chronicle*, April 27, 1945; David Woodward, "Belsen Surprises Burgomasters: Horrified by Scenes," *The Manchester Guardian*, April 25, 1945; "Cannibalism in Prison Camp: British Medical Officer's Visit to 'Most Horrible Place,'" *The Manchester Guardian*, April 19, 1945; "Hundreds Still Dying Daily at Belsen," *The Manchester Guardian*, April 21, 1945; David Woodward, "Prison Camp's Fate: Truce to Decide, British to Take Charge," *The Manchester Guardian*, April 14, 1945; Wigham, "S.S. Regime of Terror at Belsen Camp," *The Manchester Guardian*, April 22, 1945; "The Belsen Commandant," *The Manchester Guardian*, April 24, 1945; *Belsen Concentration Camp*, Newsreel, 1945, http://www.britishpathe.com/video/belsen-concentration-camp/query/belsen; *German Atrocities*, Newsreel, 1945, http://www.britishpathe.com/video/german-atrocities/query/belsen; *Belsen: Destruction Of Camp*, Newsreel, 1945, http://www.britishpathe.com/video/belsen-destruction-of-camp/query/belsen; *British Troops Enter Belsen*, Newsreel, 1945, http://www.britishpathe.com/video/british-troops-enter-belsen/query/belsen; *Concentration Camp Atrocities*, Newsreel, 1945, http://www.britishpathe.com/video/concentration-camp-atrocities/query/belsen; Tony Kushner, "From 'This Belsen Business' to 'Shoah Business.'"

periodically had to "break off work in order to vomit."[73] On the result, the *Times* commented, "Nobody but a monster would want to see the current news-reels which contain photographs of the camps of Belsen and Buchenwald; nobody should shirk seeing them, and the news-reel companies, in distributing the evidence, are fulfilling a public duty."[74] Following Dimbleby's broadcast from Belsen, other radio reportage included interviews with adult and child survivors and a documentary on Harold Osmond le Druillenec, a British citizen who emerged from the camp.[75] The *Daily Express* held a public exhibition of atrocity photographs in Trafalgar Square under the title "SEEING IS BELIEVING."[76] The widespread reporting on Belsen stoked an enormous sense of shock on the part of the British public, and was meant to do so.[77] British public opinion research conducted immediately after news broke about Belsen demonstrated that most of the British public had a sense of "marked horror" at the news.[78] By mid-April, 80% of the British population believed reports of German atrocities were true.[79] The media coverage certainly created a sense of shock, but this did not necessarily translate into understanding Nazism's genocidal aims, and in some cases made such understanding all the more difficult by preventing people from taking in new information and ideas beyond the crisis situation at Belsen.[80]

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[73] Wyand, *Useless If Delayed*, 161.
[74] "The News-Reels." For examples of the camp footage used in newsreels, see *An End To Murder*, Newsreel, 1945, http://www.britishpathe.com/video/an-end-to-murder/query/belsen; *German Atrocities*, 1945; *Concentration Camp Atrocities*; *British Troops Enter Belsen*; *Belsen*, 1945; *Belsen Concentration Camp*; *Belsen*, Newsreel, 1945, http://www.britishpathe.com/video/belsen/query/belsen.
[75] Suzanne Bardgett, "What Wireless Listeners Learned: Some Lesser-Known BBC Broadcasts about Belsen," *Holocaust Studies* 12, no. 1–2 (2006): 123–136.
[76] "German Atrocities," May 5, 1945.
[77] Reilly, *Belsen*, 57.
[78] "Attitudes to the German People."
[79] "Attitudes to the German People," 17.
[80] Reilly, *Belsen*, 50–77; Kushner, "Different Worlds: British Perceptions of the Final Solution during the Second World War."

However visceral the response, the British revulsion at Belsen was not misplaced. The site was initially constructed as a training facility for the Wehrmacht during the 1930s. Following a period as an internment camp for Soviet prisoners of war, the SS and German Foreign Office designated Bergen-Belsen as a concentration camp for special categories of prisoners. The WVHA (*Wirtschaftsverwaltungshauptamt*, SS Business Administration Main Office) sent prisoners from Natzweiler and Buchenwald to construct the camp in 1943.[81] The first transport of Jews arrived on 29 April 1943, and for a time the camp was considered an "exchange camp," a place to house Jews who might prove useful bargaining chips in negotiations for German prisoners of war.[82] These prisoners were kept separately in the *Sternlager* (star camp), and enjoyed relatively good conditions compared to the other prisoners at Belsen.[83]

In 1944, the Nazis began to use Belsen as a "convalescent camp" for prisoners sent from elsewhere until they, theoretically, recovered enough to return to work at their previous camp.[84] Needless to say, even at its best, life at Belsen was incompatible with convalescence. Instead, the designation as a convalescent camp introduced large numbers of sick and injured prisoners to a site that lacked adequate facilities to treat or contain illnesses. With the deportation of the Hungarian Jews in 1944 and the advance of the Red Army prompting the evacuation of camps

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[81] David Cesarani, "A Brief History of Bergen-Belsen," *Holocaust Studies* 12, no. 1–2 (2006): 13–14, 16.
[82] Eberhard Kolb, *Bergen-Belsen: Vom "Aufenthaltslager" Zum Konzentrationslager, 1943-1945* (Vandenhoeck & Ruprecht, 2002), 19–31.
[83] Geoffrey P Megargee, Martin Dean, and United States Holocaust Memorial Museum, *The United States Holocaust Memorial Museum Encyclopedia of Camps and Ghettos, 1933-1945. Early Camps, Youth Camps, and Concentration Camps and Subcamps under the SS-Business Administration Main Office (WVHA) Vol. 1, Part A-B*, vol. I, The United States Holocaust Memorial Museum Encyclopedia of Camps and Ghettos, 2009, 278.
[84] Kolb, *Bergen-Belsen*, 31–39.

further east, the Nazis sent ever increasing numbers of prisoners into Belsen.[85] SS *Hauptsturmführer* Josef Kramer, formerly stationed at Dachau, Sachsenhausen, Mauthausen, Natzweiler, and Auschwitz, was made *Kommandant* of Belsen in December 1944.[86] On Kramer's watch, the death toll at Belsen skyrocketed due to massive overcrowding coupled with poor conditions that set the stage for a dangerous typhus epidemic.[87]

The early months of 1945 brought constant streams of incoming prisoners.[88] The population increased from 15,000 in December 1944; to 22,000 in February 1945; and to 41,250 by 1 March 1945.[89] Hagit Lavsky rightly points out that the growth in numbers would have been even higher, but for the camp's grotesque death toll in its final months. By the time the camp was liberated in mid-April, it held 60,000 prisoners, 30,000 of them Jewish, mostly sick and dying, fewer than half of whom had arrived prior to 1 April 1945. The majority of the prison population in August 1944 had died and been replaced by constant new arrivals.[90]

Although some witnesses claimed that it was "quite impossible to give any adequate description on paper of the atrocious, horrible, and utterly inhumane condition of affairs" when the British arrived, some things are certain.[91] Corpses were everywhere. Even though the Germans had begun burying bodies as quickly as possible in anticipation of the British, an

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[85] Megargee, Dean, and United States Holocaust Memorial Museum, *Encyclopedia of Camps and Ghettos*, I:280.
[86] Donald M. McKale, *Nazis after Hitler: How Perpetrators of the Holocaust Cheated Justice and Truth* (New York, NY: Rowman & Littlefield, 2014), 62–70.
[87] Kolb, *Bergen-Belsen*, 39–52.
[88] Patrick Gordon-Walker and R. D Pearce, *Patrick Gordon Walker: Political Diaries 1932-1971* (London: Historians' Press, 1991), 145.
[89] Megargee, Dean, and United States Holocaust Memorial Museum, *Encyclopedia of Camps and Ghettos*, I:280.
[90] Lavsky, *New Beginnings*, 39, 59.
[91] Deposition of Lt. Col. James Alexander Deans Johnston, 29 May 1945, "The National Archive of the UK WO 309/1697" June 1945, The National Archives, Kew.

estimated 13 to 15,000 corpses still lay out in the open.[92] The piles of the dead made a powerful impression on the British; nearly every soldier and medical relief worker immediately commented on the "heap[s] of emaciated bodies cast helter-skelter into pits" as the British rushed to bury the infectious bodies.[93]

In addition, the camp had no water. Access to potable water had been interrupted periodically throughout the war, but by the time of liberation no water had flowed for several days, because the electricity had gone down.[94] Without water, hygiene and sanitation broke down, and prisoners relieved themselves wherever they could. Finally, food rations, never generous, became especially meager in the camp's last days. Bread distribution ceased, leaving the prisoners to fight for small quantities of thin soup offered twice daily.[95] Such conditions only exacerbated the public health disaster at Belsen.[96]

WAR CRIMES

Although the truce negotiated over Belsen did not provide for the detention or arrest of war criminals, once the British saw the conditions in the camp, they moved to arrest

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[92] Deposition of Lt. Col. James Alexander Deans Johnston, 29 May 1945, "The National Archive of the UK WO 309/1697." Opening Address of Colonel Backhouse for the Prosecution, "The National Archive of the UK WO 235/13;" Lt. Col. L. J. Genn, Interim Report of No. 1 War Crimes Investigation Team re War Crimes and Atrocities by the Germans at Bergen-Belsen Concentration Camp from 1st December 1944 - 15th April 1945 and at Other Concentration Camps from 1940 - 1945 , 21 June 1945 from the "Private Papers of Lieutenant Colonel Savile Geoffrey Champion," n.d., Documents.2323, The Imperial War Museum.

[93] Isaac Levy, *Witness to Evil*, 12.

[94] Lt. Col. L. J. Genn, Interim Report of No. 1 War Crimes Investigation Team re War Crimes and Atrocities by the Germans at Bergen-Belsen Concentration Camp from 1st December 1944 - 15th April 1945 and at Other Concentration Camps from 1940 - 1945 , 21 June 1945 from the "Private Papers of Lieutenant Colonel Savile Geoffrey Champion"; "The National Archive of the UK WO 235/13"; "Private Papers of Lieutenant Colonel R J Phillips MBE," n.d., Documents. 13505, The Imperial War Museum.

[95] Deposition of Lt. Derrick Adolphus Sington, 25 June 1945, "The National Archive of the UK WO 309/1697"; "The National Archive of the UK WO 309/1553" October 1945, The National Archives, Kew; Whyte, *Letters Home, 1944-1946*, 101.

[96] Dr. Hugh Llewelyn Glyn Hughes, "Medical Report on Belsen Concentration Camp," 15 June 1945, "The National Archive of the UK WO 309/1553."

Kommandant Josef Kramer and any SS still at Belsen. One such person was SS Dr. Fritz Klein, who supposedly had commented to Kramer that when the British entered Belsen, "if they had any sense [they] would put himself and Kramer against the wall and shoot them."[97] Although this did not happen, the shock the British experienced influenced the arguments made in the subsequent prosecution, the strategic choices of the British defense attorneys, and the questions and decisions of the Judge Advocate and the Court itself. The shock of Belsen translated into legal and procedural precedents that impacted all subsequent trials under the Royal Warrant. Arising out of the concomitant desire for retribution, the precedents that emerged from the first Belsen trial were not necessarily grounded in the Royal Warrant itself or in officially sanctioned investigative priorities and methods, but rather in methods and approaches determined on the ground in the emotional moments of crisis by British soldiers who could not wait for official instructions regarding war crimes investigations and procedures, but began to take steps independently of the War Office.[98]

Although the Royal Warrant set forth the operating definition of war crimes, instructions for trial procedure and practice, and the applicable penalties for guilty verdicts, none of this was yet in place when the 21st Army Group arrested Josef Kramer, Fritz Klein, and others in Belsen in April 1945. The British government did not release the Royal Warrant for another two months, on 14 June. However, the British government and the War Office had already made clear that they intended to hold war crimes trials in occupied Germany. Thus, when the British Army encountered one of the most atrocious crime scenes of the twentieth century, its officers had only the vague knowledge that the government planned to eventually hold war crimes trials

[97] Dr. Fritz Klein quoted by Col. T.M. Backhouse, "Prosecution Opening Address," Belsen Trial Transcript, 17 September 1945,"The National Archive of the UK WO 235/13."
[98] A second Belsen trial was held for the Hungarian guards stationed at the camp, but this chapter is concerned solely with the first Belsen trial of Germans.

of some sort. In the immediate response to Belsen, then, British personnel proactively established precedent and procedure for British war crimes trials. Lacking specific directives, the British on the scene responded to the horror before them by looking for someone, anyone, to punish, no matter how minor their role or recent their arrival at Belsen. As a result, British shock and horror at Belsen shaped not only the immediate relief efforts at Belsen, but also the form of the investigation, the determinations about who to charge and with what crimes, the choice to prosecute for both Belsen and Auschwitz, the eventual emergence of a specific profile of witnesses for the prosecution, and even the verdicts that became a source of much consternation to the British public. Consequently, the outraged reactions to the revulsions of Belsen influenced not only the Belsen trial, but also the subsequent trials held under the Royal Warrant, both positively and negatively.

British personnel from the Special Investigations Bureau, the Legal Office, and the Judge Advocate General's Office began collecting evidence within days of the liberation of Belsen. By 27 April 1945, despite the dire state of medical emergency within the camp, British personnel at Belsen had already interviewed at least 18 witnesses and compiled lists of some 32 SS men and 26 SS women still in the camp. Ten of these men later faced war crimes charges, along with 13 of the 26 women on the list.[99] In the "Interim Report on Collection of Evidence at Bergen-Belsen Concentration Camp," Captain Harry Gillett Sherrin of the Military Government Legal Office recommended charges against five of the Nazis already in custody. Beyond these five, Sherrin commented:

> The punishment of War Criminals after trial has been accepted as a war aim of the Allies. If this is to be carried out, reliable evidence must be collected and recorded. At the moment there is no organisation for doing this, probably because the volume of evidence

[99] Capt. H.G. Sherrin, "Interim Report on Collection of Evidence at Bergen-Belsen Concentration Camp," in "The National Archive of the UK WO 309/1696" June 1945, The National Archives, Kew.

> is unexpectedly great. A perusal of Part II [of the report] will show what a wealth of evidence could be obtained, if a proper organisation was set up. It is most desirable that the officer collecting evidence at Belsen should know who is in custody at Sachsenhausen and vice versa. It is recommended that, if it has not already been done, a staff be set up to direct the collection of evidence and its collation.[100]

Even at this point, less than two weeks after the British entered Belsen, an investigation into war crimes at Belsen already was well underway and Sherrin was asking for more help. War crimes investigators, legal officers, and others had begun amassing witness statements, and by the first week in May were collecting sworn affidavits to forward to the Judge Advocate General in the War Office, not only from the survivors in the camp, but also from one another. Internal reports and firsthand accounts, whatever camp paperwork could be found, and photographs of the camp wreckage, were assembled for use at trial.

As more relief and investigative support arrived at Belsen over the upcoming weeks and conditions began to improve, the process for collecting evidence gradually became more standardized, though it never lost some of the improvisational qualities from the early days of emergency. The issuance of the Royal Warrant on 14 June 1945 helped provide guidelines and establish certain practical norms, but the document was short on specifics. Thus, investigators and the legal teams continued to guess at the Warrant's intent and developed precedents based on an interpretation of the Warrant that reflected circumstances particular to Belsen.

INVESTIGATION AND TRIAL PREPARATIONS

Although Sherrin requested more support in his report on 27 April, the No. 1 War Crimes Investigation Team (WCIT) did not arrive at Belsen until 20 May 1945 to take over the ad hoc

[100] Sherrin, "Interim Report on Collection of Evidence at Bergen-Belsen Concentration Camp, "The National Archive of the UK WO 309/1696."

proceedings that had arisen to date.[101] The unit was led by Lt. Col. Leopold John Genn, a former barrister turned star of stage and screen.[102] Genn and his small team of investigators and translators collected evidence from hundreds of witnesses at Belsen.[103] Three "primary objects of investigation," and seven "secondary objects of investigation" guided the No. 1 WCIT's efforts.[104] The primary objects included collecting evidence against Commandant Kramer, his off-site superiors SS *Gruppenführer* Richard Glücks and SS *Obergruppenführer* Oswald Pohl, and any person believed to have committed a crime against a British national; investigating the "48 SS Men and 29 SS Women" imprisoned at Belsen when the No. 1 WCIT arrived; and compiling wanted lists, based on witness interviews, for perpetrators who committed crimes either at Belsen or other locations.[105] These foci reflect the initial British focus on avenging British victims, especially prisoners of war, but investigative priorities expanded as the military entered the camps. The No. 1 WCIT also identified a longer list of secondary targets for investigation, including *Kapos* (prisoner functionaries); information about other camps,

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[101] Lt. Col. L. J. Genn, "Interim Report of No. 1 War Crimes Investigation Team Regarding War Crimes and atrocities by the Germans at Bergen-Belsen Concentration Camp from 1st December 1944 – 15th April 1945 and at Other Concentration Camps from 1940 – 1945," 21 June 1945, "The National Archive of the UK WO 309/1346."

[102] "Obituary of Leo Genn," *Variety (Archive: 1905-2000)*, February 1, 1978; W. D Rubinstein, Michael Jolles, and Hilary L Rubinstein, "Genn, Leopold John (Leo)," *The Palgrave Dictionary of Anglo-Jewish History* (Basingstoke: Palgrave Macmillan, 2011). After studying law at Cambridge, Genn became involved in amateur theater companies in an effort to find clients for his fledgling legal practice. Genn was nominated for an Academy Award as best supporting actor in 1951 for his performance of Petronius in *Quo Vadis*.

[103] Lt. Col. L. J. Genn, "Interim Report of No. 1 War Crimes Investigation Team Regarding War Crimes and Atrocities by the Germans at Bergen-Belsen Concentration Camp," 21 June 1945, "The National Archive of the UK WO 309/1346."

[104] Lt. Col. L. J. Genn, "Interim Report of No. 1 War Crimes Investigation Team Regarding War Crimes and Atrocities by the Germans at Bergen-Belsen Concentration Camp," 21 June 1945, "The National Archive of the UK WO 309/1346."

[105] Lt. Col. L. J. Genn, "Interim Report of No. 1 War Crimes Investigation Team Regarding War Crimes and Atrocities by the Germans at Bergen-Belsen Concentration Camp," 21 June 1945, "The National Archive of the UK WO 309/1346."

especially Auschwitz; evidence about "mass extermination in gas chambers at Auschwitz;" any military units that may have been at Belsen; Hungarian troops used as camp guards; etc.[106]

Shortly after the No. 1 WCIT arrived at Belsen, the team realized that the planned methods for collecting evidence, particularly for documenting eyewitness accounts, were not feasible in light of the conditions at Belsen. The team's report of 21 June 1945, estimated that there were "over 55,000 potential witnesses in varying degrees of health," an incredible number for any unit to interview, and simply impossible for the short-handed No. 1 WCIT.[107] Moreover, many of the people did not fit the British ideal of a model witness. Nearly all showed obvious signs of trauma, and few were able to provide the specific dates, locations, names, and other details the British wanted.[108] The leader of the No. 1 WCIT, Lt. Col. Genn, also lamented that the survivors were largely "unversed in British ideas of evidence," a ridiculous expectation out of sync with the wartime experiences and present situation of the Belsen survivors.[109] The Judge Advocate later described the British ideal of the "credible witness" in his Summing Up, and it did not include having experienced recent physical and emotional trauma. Accordingly, Stirling counseled the Court to consider carefully whether the prosecution witnesses may have been overly emotional or biased as a result of losing their entire families to the Nazi onslaught, though

[106] Lt. Col. L. J. Genn, "Interim Report of No. 1 War Crimes Investigation Team Regarding War Crimes and Atrocities by the Germans at Bergen-Belsen Concentration Camp," 21 June 1945, "The National Archive of the UK WO 309/1346."
[107] Lt. Col. L. J. Genn, "Interim Report of No. 1 War Crimes Investigation Team Regarding War Crimes and Atrocities by the Germans at Bergen-Belsen Concentration Camp," 21 June 1945, "The National Archive of the UK WO 309/1346."
[108] Lt. Col. L. J. Genn, "Interim Report of No. 1 War Crimes Investigation Team Regarding War Crimes and Atrocities by the Germans at Bergen-Belsen Concentration Camp," 21 June 1945, "The National Archive of the UK WO 309/1346."
[109] Lt. Col. L. J. Genn, "Interim Report of No. 1 War Crimes Investigation Team Regarding War Crimes and Atrocities by the Germans at Bergen-Belsen Concentration Camp," 21 June 1945, "The National Archive of the UK WO 309/1346."

he did not want to suggest any "criticism" of these "unfortunate people who have had to undergo these terrible circumstances."[110]

The British also had difficulty keeping track of witnesses, as survivors were constantly moving out of the camp or dying. The WCIT had no way to keep witnesses at Belsen if they wanted to leave. Nor would it be in the British interest to attempt to hold witnesses, since very few survivors would then cooperate with the investigation. Furthermore, "the lack of certainty as to the precise legal position has made the nature and scope of the investigation all through[out] somewhat vague and has also contributed to the difficulty, as has the time lag between the liberation of the camp, and the presence of organised investigation on the spot."[111] Thus, due to the enormity of the task in the still-chaotic Belsen, the No. 1 WCIT had to abandon the pre-determined investigative plan and improvise a faster, more flexible method that accounted for the daily reality of Belsen, all the while trying to "[bear] strongly in mind the fact that the interests of the accused should be watched."[112]

In light of these difficulties, the No. 1 WCIT developed an adaptive approach to investigative work that allowed the unit to collect more evidence than would have been possible had it followed the officially designed approach. Rather than requiring both the commanding officer and second-in-command to take all depositions jointly, which was a considerable drain on already limited manpower, the team branched out in pairs of investigators and translators to take statements from witnesses, which the administrative staff then turned from note form into

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[110] Judge Advocate General Carl Ludwig Stirling, "JAG Summing Up," Belsen Trial Transcript, 16 November 1945, "The National Archive of the UK WO 235/13."
[111] Lt. Col. L. J. Genn, "Interim Report of No. 1 War Crimes Investigation Team Regarding War Crimes and Atrocities by the Germans at Bergen-Belsen Concentration Camp," 21 June 1945, "The National Archive of the UK WO 309/1346."
[112] Lt. Col. L. J. Genn, "Interim Report of No. 1 War Crimes Investigation Team Regarding War Crimes and Atrocities by the Germans at Bergen-Belsen Concentration Camp," 21 June 1945, "The National Archive of the UK WO 309/1346."

depositions. Once in deposition form, the statement was read to the deponent in his/her native language, and sworn before the commanding officer or second in command. If the witness died or left Belsen before swearing to his/her statement, the unsworn deposition was considered less reliable, not useful as primary evidence but possibly helpful as corroborating evidence.

To accommodate these changes, the No. 1 WCIT implemented a policy that required all witness statements to be corroborated by at least one other witness account supporting the original statement, not necessarily with an account of the same specific event, but one that reported "a similar or analogous type [of action] or of a type which was not similar or analogous but was of such a nature as to give rise to a reasonable assumption that the accused was, by his or her general conduct, likely to have committed the offence."[113] The No. 1 WCIT did not require the corroborating witness to provide evidence of the same incident, because the Team believed that it was highly improbable two witnesses to the same event would both survive *and* then be found by the investigators amongst all the thousands of other survivors, given the enormous number of potential witnesses at Belsen and the small number of investigators.[114]

By the end of June, the No. 1 WCIT had collected enough evidence to recommend specific charges and provide counterarguments to potential defense strategies for the coming trial, although they acknowledged that there was enough investigative work at Belsen to occupy them for several more months. The team's report first recommended two general charges – murder, and aiding and abetting murder. The No. 1 WCIT advised charging Commandant Kramer, and his superiors Glücks and Pohl, with murder for creating and sustaining conditions at

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[113] Lt. Col. L. J. Genn, "Interim Report of No. 1 War Crimes Investigation Team Regarding War Crimes and Atrocities by the Germans at Bergen-Belsen Concentration Camp," 21 June 1945, "The National Archive of the UK WO 309/1346."

[114] Lt. Col. L. J. Genn, "Interim Report of No. 1 War Crimes Investigation Team Regarding War Crimes and Atrocities by the Germans at Bergen-Belsen Concentration Camp," 21 June 1945, "The National Archive of the UK WO 309/1346."

Belsen designed to cause death. Against the SS and other camp personnel, the investigative team then recommended charging anyone who had ever worked at Belsen, in any capacity, with aiding and abetting murder by contributing to the maintenance of conditions at Belsen incompatible with life. The third recommendation was to file charges against anyone and everyone who had ever served at Belsen whenever the British had evidence for a specific incidence of "murder, gross cruelty, or similar relevant offenses," such as beatings, withholding medical attention, etc.[115] Although the report singled out Kramer, Glücks, Pohl, SS Dr. Rudolf Horstmann, SS *Oberst-Gruppenführer* Karl Harries, SS *Oberst-Gruppenführer* Hanns Schmidt, the unidentified commander of the Hungarian forces at Belsen, and Kapo Erich Zoddel, for special notice, along with all SS personnel listed in the report's appendix, the investigative team was interested in holding any person with a connection to Belsen responsible. As a result, while many of the 45 individuals who eventually stood trial had earned their position in the dock, a number of lesser defendants were also included, primarily prisoner functionaries who in some cases had been sent to Belsen only days before the camp was liberated. In the shock and disarray of the camp's liberation, anyone present who appeared to hold a position of authority within the camp was assumed responsible by the British and liable for prosecution.

Looking ahead to the challenges posed by the legal requirements of a trial, the No. 1 WCIT's report cautioned that Belsen's criminality lay not in the individually documented examples of personal violence, but in the creation of a world in which specific crimes such as these ceased to become notable or even noticeable in light of the ongoing horror of everyday life:

> … the whole situation at Belsen Camp demands some form of charge establishing mass murder on the lines outlined in paragraph 1 of the Recommendations below [the murder

[115] Lt. Col. L. J. Genn, "Interim Report of No. 1 War Crimes Investigation Team Regarding War Crimes and Atrocities by the Germans at Bergen-Belsen Concentration Camp," 21 June 1945, "The National Archive of the UK WO 309/1346."

> charge] and that the specific instances of murders or gross cruelty which can be established against individuals are of secondary importance and should be used only as support to the main charge. This argument is of particular force in the case of Kramer where specific instances are difficult to prove. It is considered to apply almost as strongly to his subordinate SS and other personnel. It is not considered that this is the place to elaborate the many arguments that can be brought forward hereon but the main reason is that a single instance of murder or brutality appears in the nature of a drop in the ocean in the light of the many thousands of deaths caused over a period of time by the joint deeds of all concerned.[116]

Writing here on behalf of the No. 1 WCIT, Genn, who also served on the Belsen prosecution team, correctly intuited one of the greatest legal stumbling blocks British military prosecutors encountered under the Royal Warrant: finding ways to convict for general conditions and systemic mistreatment not proven by individual incidents of misconduct, particularly in the case of leadership or supervisory positions. The Royal Warrant's focus on war crimes, particularly war crimes as defined by the British *Manual of Military Law*, which stemmed from the early 20th century international agreements signed at Geneva and the Hague, was not conducive to prosecuting indirect authority structures, such as the Nazi chain of command, or what might be termed criminal conditions. Instead, the Royal Warrant was designed to enable the prosecution of specific, attributable war crimes, like those from earlier wars or even ordinary British civilian crime. However, as the British soldiers, war crimes investigators, and prosecutors quickly learned, Nazi crimes were far more insidious for the way they were institutionalized as part of daily life in the Third Reich.

Sensing some of the difficulties the prosecution would face at trial, the No. 1 WCIT report anticipated two likely lines of defense to the recommended charges, and provided counter-arguments. The first was an argument of "non-responsibility," following orders rather than acting on one's own initiative, which the report rejected as not only indefensible, but inadmissible. As a

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[116] Lt. Col. L. J. Genn, "Interim Report of No. 1 War Crimes Investigation Team Regarding War Crimes and Atrocities by the Germans at Bergen-Belsen Concentration Camp," 21 June 1945, "The National Archive of the UK WO 309/1346."

corollary to this non-responsibility defense, the report suggested the defense might also attempt a "town under siege" defense, arguing that the camp had the equivalent legal status of a town under siege and thus the camp staff was required to take certain steps, including the use of force, to maintain order and control. As Genn pointed out, however, the camp inmates were not ordinary inhabitants of a regular town, but "prisoners forcibly and illegally contained," without trial and for reasons not recognized by any legitimate state. If force was required to control the prisoners, it was only because the Nazis themselves created conditions that required force, and the level of force exercised was excessive relevant to the threat. Force was not carefully deployed in order to maintain order; instead, the excessive use of force was "part of the sadistic tendencies exhibited by the SS guards at Belsen Camp and quite unchecked by those in authority."[117]

The No. 1 WCIT continued to collect evidence at Belsen into the summer of 1945, while formal plans began to take shape for the trial. Motivated by the desire to hold as many people responsible as possible, and faced with thousands of survivors who had come through Auschwitz with horrific stories and, in some cases, had far less to say about Belsen as they had only been there a few days, the WCIT began to consider bringing charges for Auschwitz alongside Belsen. By July, the British had decided that the Belsen trial would encompass charges for crimes committed at both Bergen-Belsen and Auschwitz concentration camps. Auschwitz, located in occupied Poland rather than Germany, fell outside of the postwar jurisdiction for British, American, Soviet, or French trials according to the system the Allies established. However, the Allies, understandably appalled by the situation at Auschwitz, particularly the gas chambers,

[117] Lt. Col. L. J. Genn, "Interim Report of No. 1 War Crimes Investigation Team Regarding War Crimes and Atrocities by the Germans at Bergen-Belsen Concentration Camp," 21 June 1945, "The National Archive of the UK WO 309/1346."

wanted some way to include Auschwitz in the individual postwar trials, both to hold the perpetrators accountable and to benefit from the moral capital that airing such heinous crimes would provide. Josef Kramer and his staff, many of them recently assigned from Auschwitz to Belsen, provided an opportunity for the British to pursue charges for both Belsen and Auschwitz, under the premise that Regulation 8 of the Royal Warrant allowed for combining charges for offenses as specified by Rule of Procedure 16 in the *Manual of Military Law*. Rule of Procedure 16 permitted that charges may be joined "provided that all the said offences are founded on the same facts, or form or are part of a series of offences of the same or similar character."[118] Since Kramer and many of his co-defendants had served at Auschwitz as well as Belsen, by contending that the crimes committed at both locations were of one kind or part of a pattern, the British could prosecute for crimes at both locations.

The decision to prosecute for Belsen and Auschwitz was not just a legal or moral question, but also a practical consideration given the history of Belsen and the high mortality rate and frequency with which prisoners were transferred in and out of Belsen. By the time of liberation, very few of the survivors had been at Belsen for longer than three months, and most of their experience of the Holocaust had taken place elsewhere, at Auschwitz and other camps. Likewise, Kramer had only served as commandant at Belsen since late 1944, but was known to many of the survivors for crimes committed at other locations. Therefore, by linking Belsen and Auschwitz through Kramer, the British not only gained an opportunity to try Auschwitz, otherwise out of their reach, but they were also able to make better use of the potential witnesses they had at their disposal. As a result, war crimes investigators focused on witnesses who had survived both Belsen and Auschwitz, which shaped the witness profile towards eastern European

[118] United Nations War Crime Commission, *Law Reports of Trials of War Criminals.*, vol. VII (New York: H. Fertig, 1983), vol. II.

survivors of Jewish descent. Of the 121 survivors who testified at the Belsen trial, 52% were Polish, 17.3% were Czechoslovak, and 7.4% were Russian. The other 23.3% were Austrian, Belgian, British, Dutch, French, German, Greek, Hungarian, Roma, Romanian, and Yugoslav. Approximately 66% self-identified as Jews, contradicting the conventional wisdom that the British wrote the Jews out of the Holocaust.

By late July, the Judge Advocate General's Office had begun circulating a draft version of the charges while moving forward with other preparations for the trial – assigning a judge advocate, designating the prosecution team, recruiting court members, and seeking defense attorneys. Two counts, one for Belsen and one for Auschwitz, charged members of the camp staff "responsible for the well being of the persons interned there in violations of the law and usages of war acting in concert" with the "ill-treatment of certain such persons causing the deaths … and physical suffering of Allied Nationals."[119] Meanwhile, Lt. Col. Genn, together with assistant Belsen prosecutor Major H. G. Murton-Neale, drew up the slate of witnesses to face charges at the Belsen trial alongside Kramer. This roster was approved by the United Nations War Crimes Commission on 1 August 1945 and returned to the British.[120] Forty-five defendants then stood trial at Lüneburg in September.[121] Among the defendants were 24 men and 21 women, 35 of whom were SS personnel, and 10 *Kapos*. Kramer was the most senior Nazi official to stand trial for Belsen.

TRIAL

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[119] "Proposed Charges for Bergen-Belsen and Auschwitz," 31 July 1945, "The National Archive of the UK WO 309/424."

[120] "Letter from Lt. Col. L. J. Genn to Major H. G. Murton-Neale regarding list of Belsen defendants," 21 July 1945; "Notes from Discussion Re: Belsen at 74th Meeting of the United Nations War Crimes Commission," "The National Archive of the UK WO 309/424."

[121] Three individuals, Nicholas Jenner/Jonner, Paul Steinmetz, and Walter Melcher, were struck from the indictment prior to the start of the trial due to ill health or death.

The Belsen trial opened at the courthouse in Lüneburg on 17 September 1945, almost five months to the day after Derrick Sington first passed through the gates at Bergen-Belsen. In an unintentionally ironic twist, it was also Yom Kippur, the Jewish Day of Atonement.[122] The Belsen trial was the first trial held under the Royal Warrant, and among the first war crimes trials held in occupied Germany, beginning two months before the International Military Tribunal started proceedings at the Palace of Justice in Nuremberg. This speed, especially the push to start before the IMT, reflected the War Office's effort to capitalize on the popular outrage over Belsen while it was still part of public consciousness, and to stave off multiple political pressures that urged a rapid conclusion to the whole business of war crimes trials.

The opening of the Belsen trial was a major public event, receiving heavy press coverage not only in Germany and Britain, but internationally, with 113 correspondents from 13 countries covering the trial. More than 20 British news organizations alone sent reporters to Lüneburg.[123] As the trial convened, the survivors scheduled to appear as witnesses entered the courthouse through a gauntlet of press to demonstrate their return to health and resumption of their rightful place among the living. The defendants were transported from the jail and seated in the court with assigned identification numbers hanging from placards around their necks.

Deputy Judge Advocate General Carl Ludwig Stirling, OBE, CBE, QC presided over the Belsen trial, a complicated logistical exercise that involved 45 defendants, two prosecutors, twelve defense attorneys, five court members (and one alternate), a rotating staff of translators, and over 100 witnesses. The charges before the court when it opened in September were quite similar to those first drafted in July. The accused each faced one or both counts that charged the

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[122] Colonel T. M. Backhouse, "Closing Address for the Prosecution," Belsen Trial Transcript, 13 November 1945, "The National Archive of the UK WO 235/13"; "Belsen Beasts' Trial: German Atrocities Corroborated," *The Jewish Chronicle*, September 21, 1945.
[123] Memo re: Press Arrangements for Belsen Trial, "The National Archive of the UK WO 309/424."

defendants with committing war crimes at Bergen-Belsen and/or Auschwitz between 1 October 1942 and 30 April 1945.[124] All of the accused pled not guilty.

DEFENSE OBJECTIONS AND MOTIONS

As the Belsen trial was the first trial held under the Royal Warrant, without any precedent or example yet to guide the court, Judge Advocate Stirling immediately faced a number of motions filed by the defense attorneys attempting to challenge the proceedings on legal and procedural grounds. Legally, the defense attorneys collectively filed two objections, the first that the "charge does not disclose an offence," and second to ask the court for assistance in mounting the defense.[125] The objection that the "charge does not disclose an offence" was based on Rule of Procedure No. 32, which stated that "the accused, when required to plead to any charge, may object to the charge on the grounds that it does not disclose any offence under the Army Act [or the Royal Warrant] and is not in accordance with the regulations."[126] However, rather than asking that the charges be thrown out immediately because they did not specify individual criminal acts on the part of each defendant, the defense attorneys instead asked the court to reserve their ability to make this argument at a later point in the trial. They were not yet challenging the charge, because the defense attorneys "[found] ourselves in a considerable difficulty in that between us we have very little knowledge of international law. It appears to us

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[124] Belsen Trial Charges, United Nations War Crime Commission, *Law Reports of Trials of War Criminals.*, vol. VII, vol. II, 4. The first charge was for crimes committed at Belsen, and included the names of some of the Allied victims at Belsen to stand in for the whole. The second charge addressed crimes committed at Auschwitz, and was worded identically to the Belsen charge, save the victims' names. See also Charge Sheet in Major Andrew S. Munro, Belsen Trial Papers, 1945, MS208, Perth & Kinross Council Archive.

[125] Belsen Trial Transcript, 17 September 1945, "The National Archive of the UK WO 235/13."

[126] Rule of Procedure No. 42, quoted in Belsen Trial Transcript, 17 September 1945, "The National Archive of the UK WO 235/13."

that there are some points on international law which arise in this case and we do not know where we are because we have not sufficient knowledge to apply our minds to the points."[127]

This led into the defense attorneys' second objection, which was to request that the court provide assistance with the defense, specifically in terms of providing legal books and other documents, access to expert consultants in international law, and assistance locating and transporting defense witnesses. For the logistical matters in the second objection, the Judge Advocate directed the defense to take up the matter with the Judge Advocate General's Office, which was to provide the defense with the necessary resources and assistance. As for the first objection, the Court decided it wanted to begin hearing evidence in the case, but would consider allowing the defense to make the argument during the closing phase of the trial.[128]

These two legal objections, filed immediately on the first day of the trial, even before the charges were read in open court, signal a lack of realistic preparation on the part of the defense attorneys and the British war crimes program as a whole. For the Belsen trial, each defendant was offered a choice of British or German representation, and all chose British attorneys. One Polish attorney, Lt. A. Jedrzejowicz, was brought in to represent the six Polish-speaking defendants, all of whom were *Kapos*.[129] The eleven British attorneys (nine solicitors, two barristers) were assembled from among active duty officers with legal training or experience, but no particular background in criminal defense or international law was required. Josef Kramer's attorney, Major T.C.M. Winwood, recounted his assignment as defense attorney for the infamous "beast of Belsen:"

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[127] Major L.S.W. Cranfield on behalf of all 12 defense attorneys, Belsen Trial Transcript, 17 September 1945, "The National Archive of the UK WO 235/13."
[128] Belsen Trial Transcript, 17 September 1945, "The National Archive of the UK WO 235/13."
[129] Jedrzejowicz represented Medislaw Burgraf, Vladislav Ostrowoski, Antoni Aurdzieg, Helene Koper, Antoni Polanski, and Stanislawa Starostka.

> In the early summer of 1945, I saw a notice from the Headquarters of the British Army on the Rhine requesting the names of serving officers qualified as barristers or solicitors. I had qualified as a solicitor in 1938 and, ignoring the first rule of Army life – 'never to volunteer' – I sent in my name. Some two months later, I was ordered to report the following day at RAF headquarters at Celle. As far as I can remember, there was no reason specified for the visit.
>
> The next day, I was greeted by a Staff Officer who told me, 'Well, as you are the first to arrive, you had better take the first four on my list.' Noticing my expression of bewilderment, he told me that as soon as Bergen-Belsen Concentration Camp had been liberated, a War Crimes Investigation Unit went into the camp and, as a result, some thirty members of the SS, men and women, had been arrested and were now being charged with War Crimes. The Accused were in Celle Prison and were due to be moved the following day to Luneburg, where their trial was due to start in two or three weeks' time. … As I spoke German, I refused the offer of a Dutch interpreter, picked up my pile of paper, and, having perused them for thirty minutes, went along to the prison.[130]

Winwood defended not only Kramer, but also three other defendants (Dr. Fritz Klein, Peter Weingartner, Georg Kraft), meaning Winwood had to prepare four separate defenses for capital war crimes charges.

The defense attorneys began their preparations on 7 September, only ten days before the trial opened.[131] This was an extraordinarily short period of time for the attorneys to familiarize themselves with the voluminous piles of paper generated by the Belsen investigation, consult with their clients, track down defense witnesses, and prepare trial strategies. Conversely, the prosecutor, Colonel T. M. Backhouse, was assigned as prosecutor in August, with three supporting co-prosecutors, and had been working on the case in other capacities since at least June, although for a case of this magnitude with 45 defendants, that was still not much time to

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[130] Major T.C.M. Winwood, "Over their Shoulder: Recollections of a British War Crimes Tribunal in Europe," undated, in "Private Papers of Major T C M Winwood," n.d., Documents.11522, Imperial War Museum.

[131] Major L.S.W. Cranfield, "Joint Application on Behalf of Defending Officers," 17 September 1945, Belsen Trial Transcript, "The National Archive of the UK WO 235/13."

prepare.[132] Each defense attorney, although representing between two and six clients, defended clients individually, necessitating the preparation of separate arguments and witnesses for each one. Given this standard, expecting one individual to prepare between two and six capital cases in ten days, even considering the chaos and exigencies of the war's end, bordered on malpractice.

Furthermore, none of the defense attorneys in the Belsen case volunteered to defend suspected war criminals, much less individuals charged at the Belsen trial, a fact the Army, the court, and the defense attorneys themselves were anxious to underline. One of the defense attorneys, Captain Airey Neave, complained to the Judge Advocate partway through the trial that his depiction in the press made it appear as though his arguments on behalf of his clients represented his personal beliefs, rather than his military and professional responsibility. Neave feared his assignment as a Belsen defense attorney would damage his postwar career prospects: "I am not a member of the Judge Advocate General's department, nor am I a member of any war crimes investigation team. … I have spent close to two months on this ill conceived and extremely distasteful case, not as a free agent but as an officer performing a duty, and I do not intend to have my future career prejudiced by a newspaper reporter."[133] Neave later went on to a successful postwar career in Conservative politics, until his assassination in 1979 by the Irish National Liberation Army in a car bomb outside the House of Commons parking garage.[134]

The Judge Advocate responded to Neave with a vigorous defense of the freedom of the press. However, at the urging of the Judge Advocate General's office, the Court President, Major

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[132] Memo Re: Trial of Belsen Camp Staff, BAOR/37711/A(PS.4), 29 August 1945, "The National Archive of the UK WO 309/424;" Lt. Col Genn, "Letter to Colonel Backhouse Re: Hungarian Guards at Belsen," 13 June 1945, "The National Archive of the UK WO 309/1346."
[133] Capt. Airey Neave, Belsen Trial Transcript Day 36, "The National Archive of the UK WO 235/13."
[134] Brian Harrison, "Neave, Airey Middleton Sheffield (1916-1979)," ed. H. C. G. Matthew and Brian Harrison, *The Oxford Dictionary of National Biography* (Oxford: Oxford University Press, 2004), http://www.oxforddnb.com/view/article/31488/51384.

General H.P.M. Berney-Ficklin, C.B., M.C., did choose to deliver final remarks to the court that dealt not with Belsen or principles of justice, but with the efforts of the twelve defense attorneys.[135] In a rather interesting conclusion to a trial that had just spent 54 days challenging the idea of superior orders and refuting the claim that orders must always be followed, Berney-Ficklin then praised the attorneys for doing just that:

> You Defending Officers were ordered on account of your legal qualifications to act in defence of the accused. … There is no need for me to remind you that it is the basis of all discipline that an officer not only accepts orders unquestionably, but carries them out to the very best of his ability. This Court has been fully sensible of the fact that you have done that…. The court cannot but hope that the fact that you yourselves were not seeking a cheap notoriety but were officers not only obeying orders, as of course you must, but obeying them to the full limit of your own knowledge and ability even, I understand, at considerable inconvenience to yourselves (since the Court has been told that some of you by doing so have passed your release dates), therefore the Court feels that that fact should be most widely known, not only to the public, but, to your friends and to your future clients.[136]

Following the legal petitions, the defense attorneys then made two motions on procedural grounds, first for a separation of charges, and then for a separation of defendants. The separation of charges referred to the two counts of the indictment, one for Belsen, and one for Auschwitz. On behalf of those charged with crimes only at Belsen or only at Auschwitz, the defense attorneys asked that the defendants be tried individually, and that the two charges be heard separately, so as not to unfairly taint defendants with crimes committed by others.[137] Arguing jointly on behalf of all the defense attorneys, Captain Phillips submitted an "application that under Rule of Procedure 32 that the defendants are incorrectly joined in both charges, and,

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[135] Brigadier [Illegible], "Letter Re: Trial of Belsen Camp Staff," 14 November 1945, "The National Archive of the UK WO 309/1553."
[136] Major General H.P.M. Berney-Ficklin, C.B., M.C., "Belsen Trial Transcript Day 54," 17 November 1945, "The National Archive of the UK WO 235/13."
[137] Captain Phillips, "Application by Defense Attorneys for Separate Trials," Belsen Trial Transcript, 17 September 1945, "The National Archive of the UK WO 235/13."

secondly, that the two charges are incorrectly joined at the one trial."[138] Although the Court ultimately rejected both motions, allowing the trial to advance, these procedural matters sparked a debate in court about the Royal Warrant that turned into an argument about the nature of the Nazi administration and concentration camp system.

Although these procedural motions may seem less significant than the legal motions the defense attorneys started with, the procedural matters had the potential to derail the trial entirely. After the Judge Advocate questioned Phillips regarding Regulation 8(2) of the Royal Warrant, which allowed units or groups to be tried together and prohibited challenges based on the separation of charges, Phillips argued that Regulation 8(2) did not apply, because the "joiner" bringing together the Auschwitz and Belsen charges was "bad."[139] This joiner, however, was the basis for British jurisdiction over Auschwitz, and had it been rejected, the Auschwitz charges would have been thrown out and the permissible evidence for Belsen sharply circumscribed, making Auschwitz as important to Belsen as it was independently. According to Phillips, there was no concerted action between Auschwitz and Belsen and thus no relationship between crimes committed at Auschwitz and crimes committed at Belsen – "all they have in common is this slight surface similarity of them both being concentration camps administered by Germans."[140] Moreover, Phillips contended that even at Belsen, the defendants' actions could not be considered "concerted action," in the words of the Royal Warrant, as the defendants served at

[138] Captain Phillips, "Application by Defense Attorneys for Separate Trials," Belsen Trial Transcript, 17 September 1945, "The National Archive of the UK WO 235/13."
[139] Captain Phillips, Belsen Trial Transcript, 17 September 1945, "The National Archive of the UK WO 235/13."
[140] Captain Phillips, Belsen Trial Transcript, 17 September 1945, "The National Archive of the UK WO 235/13."

Belsen for various terms, with some not even arriving until April.[141] In response, the prosecutor Backhouse emphasized the connections between Auschwitz and Belsen as component parts of a single system in which all of the defendants participated in an overarching "common action."[142] This argument, which was accepted by the Court as it rejected the defense petitions for the separation of charges and trials, formed the basis for the prosecution's central trial argument that Backhouse presented later that same day in the opening address for the prosecution.

This initial pretrial stage of motions and petitions demonstrates just how much the court was making up as it went along, despite the ostensible guidance of the Royal Warrant. This phase of the trial was marked by confusion, as the prosecution, defense, Judge Advocate, and Court debated what the Royal Warrant meant and how it functioned. These were not the usual debates over how to apply a particular law to a given situation before the court, but a highly interpretative process of working from the (rather vague) written document to actual practice for the first time. The Judge Advocate's role, unlike that of a civilian judge, was merely to advise the members of the Court on the legal issues at play, which the Court would take under advisement, but had no obligation to follow. While the defense was presenting motions and petitions, the Judge Advocate frequently asked prosecutor Backhouse for his advice on how the Royal Warrant should be interpreted on a particular issue. The defense attorneys were never similarly consulted. That the defense attorneys asked to bring in an expert due to their lack of expertise, and the Judge Advocate asked the prosecutor for guidance before advising the Court, suggest considerable improvisation that set precedents for the subsequent trials under the Royal Warrant. For the prosecution, defense, Judge Advocate, and the Court, the Belsen trial was a continuously

[141] Captain Phillips, Belsen Trial Transcript, 17 September 1945, "The National Archive of the UK WO 235/13."
[142] Colonel T. M. Backhouse, Belsen Trial Transcript, 17 September 1945, "The National Archive of the UK WO 235/13."

creative and generative process, as they constructed the operations of the Royal Warrant in the courtroom.

PROSECUTION

Having preserved the British ability to prosecute crimes at both Bergen-Belsen and Auschwitz, Colonel Backhouse delivered his opening statement on the afternoon of 17 September, following the public reading of the charges. In his wide-ranging speech, covering everything from jurisdictional background and the conditions of the camps, to a description of how the trial would proceed and how evidence would be treated, Backhouse outlined a multi-part argument he asked the court to accept in order to find the defendants guilty of war crimes. Before Backhouse began his argument, however, he drew on the legal scholarship of Oxford Professor James Brierly to offer a simple test for determining if a crime is specifically a war crime: "Can this killing which would normally be murder, this injury which would normally be unlawful wounding, this taking of property which would normally be theft, be justified as an act of war? If not it will be a war crime."[143] Assuming that the Court would find the answer to this question to be no, and thus find these acts to be war crimes, Backhouse set out the components of his argument.

Backhouse's first contention was that everything about both Auschwitz and Belsen violated Article 46 of the Regulations in Section III: Military Authority over the Territory of a Hostile State of the Laws and Customs of War on Land set out in the 1907 Geneva Convention.[144] Both Belsen and Auschwitz demonstrated a "complete disregard for the sanctity

[143] Colonel T. M. Backhouse, "Opening Address for the Prosecution," Belsen Trial Transcript, 17 September 1945, "The National Archive of the UK WO 235/13."

[144] Article 46 states that "Family honour and rights, the lives of persons, and private property, as well as religious convictions and practice, must be respected. Private property cannot be confiscated." "Treaties, States Parties, and Commentaries - Hague Convention (IV) on War on Land and Its Annexed

of human life and for human suffering," which influenced the actions of every member of staff, from the *Kommandant* to the *Kapos*.[145] Backhouse's next points argued that all camp deaths, whether due to living conditions or beatings, shootings, or asphyxiation in a gas chamber, were intentional and thus constituted murder. Especially at Auschwitz, this murder rose to the level of a "cold-blooded" "policy of deliberate extermination."[146] Backhouse then turned to the issue of individual and collective culpability, insisting that all defendants must be judged individually responsible, but that their acts took place within a system that could be held against all the defendants because they each functioned within it. This aspect of Backhouse's argument was particularly important for speeding up the prosecution's case and allowing the use of affidavit testimony.[147]

Before getting down to the business of calling witnesses and presenting evidence, Backhouse outlined his trial approach. It was designed first to establish the elements common to all of the defendants under each charge – in particular, what the British found at Belsen, the conditions of the camp, and the existence of gas chambers at Auschwitz. Having covered the background of the "common action," Backhouse then focused on presenting evidence against each of the accused.[148] Once Backhouse began calling individual witnesses, his questioning assumed a consistent pattern derived from his overall argument and approach. For prosecution witnesses, especially survivor witnesses, Backhouse generally began by asking the witnesses

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Regulations, 1907 - Regulations: Art. 46 -," accessed July 22, 2016, https://www.icrc.org/ihl/WebART/195-200056.

[145] Colonel T. M. Backhouse, "Opening Address for the Prosecution," Belsen Trial Transcript, 17 September 1945, "The National Archive of the UK WO 235/13."

[146] Colonel T. M. Backhouse, "Opening Address for the Prosecution," Belsen Trial Transcript, 17 September 1945, "The National Archive of the UK WO 235/13."

[147] Colonel T. M. Backhouse, "Opening Address for the Prosecution," Belsen Trial Transcript, 17 September 1945, "The National Archive of the UK WO 235/13."

[148] Colonel T. M. Backhouse, "Opening Address for the Prosecution," Belsen Trial Transcript, 17 September 1945, "The National Archive of the UK WO 235/13."

who they were, where they were from, why they had been arrested or detained, and where they had been prior to their arrival at Belsen. Backhouse then asked the witness to identify which of the defendants they recognized, stepping down into the court if necessary for a better look, before inviting the witnesses to tell the court what they could about each of the defendants they recognized. Next, Backhouse inquired about selections, whether the witness had personally observed or experienced selections, and finally, Backhouse asked the witness to provide as many specific details as possible about individual instances of mistreatment, whether experienced or witnessed.

DEFENSE

The defense attorneys pursued a strategy that focused on four arguments, albeit with some customization for individual defendants, particularly the highest or lowest ranked individuals. As all the defendants pleaded not guilty, their attorneys argued for acquittal by appealing to superior orders, denying personal participation in individual acts of violence, challenging the memory of the witnesses, and contesting whether the victim was truly an Allied national. Since most of the defendants were still at Belsen when they were arrested, it was difficult for them to argue that they had not been present, although some of the defendants facing charges for both Auschwitz and Belsen were able to make that claim regarding Auschwitz. Since the defendants could not plausibly deny their presence at Belsen, many acknowledged that they were there, but attempted to disavow criminal responsibility by resorting to the defense of superior orders. This defense argues that a soldier is not responsible for his/her actions if s/he was fulfilling an order from a superior – orders were to be followed, and military discipline trumped all other considerations. In this case, many of the defendants pinned the blame on Heinrich Himmler as the ultimate authority issuing the orders they merely implemented.

Major T.C.M. Winwood vigorously pursued the superior orders argument in his defenses of Josef Kramer, the Belsen camp *Kommandant*, and Fritz Klein, the SS doctor stationed at Belsen. Winwood devoted significant time, in both his opening and closing statements, to detailing the authority structures in the Third Reich and Nazism's emphasis on hierarchy and obedience, urging the court to remember that "National socialism demanded two things: implicit obedience and trust on the part of the person carrying out the order."[149] Moreover, echoing the military trappings of the trial, Winwood reminded the Court, all serving as part of their military duty, that "one cannot protest when in the army."[150] Winwood thus explicitly argued on behalf of his defendants that whatever they may have done or not done, they were not guilty of war crimes because they were carrying out orders issued by a legitimate military authority, and had no standing to object or refuse as subservient members of that military. This argument echoed the statement given in court the previous day by Colonel Herbert Arthur Smith of the University of London as a defense expert on international law. Moreover, Winwood reasoned, even if Kramer or Klein were to refuse, their refusal would have had no effect on the overall implementation of Nazi policy, as someone else would step in to execute the order.[151]

In the event that the Court was unconvinced by the superior orders argument, the defense attorneys then offered a second defense for individual defendants – demonstrating that while a defendant may have worked at Auschwitz or Belsen, he or she did not instigate or personally participate in the acts of direct violence taking place around them. This tactic involved

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[149] Major T.C.M. Winwood, "Opening Address on Behalf of Kramer, Klein, Weingartner, and Kraft," Belsen Trial Transcript, Day 19, "The National Archive of the UK WO 235/13."
[150] Major T.C.M. Winwood, "Closing Address on Behalf of Kramer, Klein, Weingartner, and Kraft," Belsen Trial Transcript, Day 46, "The National Archive of the UK WO 235/13."
[151] Major T.C.M. Winwood, "Closing Address on Behalf of Kramer, Klein, Weingartner, and Kraft," Belsen Trial Transcript, 8 November 1945, "The National Archive of the UK WO 235/13." Colonel Herbert Arthur Smith, "Legal Argument for the Defense," Belsen Trial Transcript, 7 November 1945, "The National Archive of the UK WO 235/13."

acknowledging that terrible things happened in the camps – prisoners selected for the gas chambers, beaten to death, shot for sport – but claiming that these specific individuals on trial had not personally participated. Defendant Franz Hössler, for example, acknowledged that selections were part of camp life, ordered from above, but insisted that he did not partake in the selections, and indeed, he "never had occasion to shoot anyone, or beat anyone," and instead tried "to be kind to the prisoners."[152] Another defendant, Elisabeth Volkenrath, admitted occasionally slapping prisoners, but steadfastly denied beating the interned women, contrary to the evidence of multiple witnesses, and thus claimed not to have committed war crimes.[153] Gertrud Sauer acknowledged beating and slapping the faces of prisoners, but entirely rejected witness claims that she used a riding whip, suggesting that "the British officers … invented a riding whip" because otherwise "it was not brutal enough."[154] Presumably, the aim of this strategy of part-truths was to maintain one's personal innocence while acknowledging the realities of camp life, so as not to appear completely out of touch with reality. However, in most cases this strategy seems to have been counterproductive, suggesting that the defendant(s) in fact had more cognizance and agency than s/he claimed, if they were able to refrain from participating in an environment where violence was the norm. One or two witnesses admitted to having used violence themselves, but swore never to have witnessed anyone else in the camp resorting to violence.[155] A few defendants did not bother to attempt walking this tightrope, notably Irma Grese. Sometimes known as the "beautiful beast of Belsen" or the "blonde bitch of

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[152] Deposition of Defendant Franz Hössler, Belsen Trial Transcript, read to court on 5 October 1945, "The National Archive of the UK WO 235/13."
[153] Testimony of Defendant Elisabeth Volkenrath, Belsen Trial Transcript, 12 October 1945, "The National Archive of the UK WO 235/13."
[154] Testimony of Defendant Gertrud Sauer, Belsen Trial Transcript, 30 October 1945, "The National Archive of the UK WO 235/13."
[155] Testimony of Defendant Juana Bormann, Belsen Trial Transcript, 12 October 1945, "The National Archive of the UK WO 235/13."

Belsen," Grese openly described whipping and beating prisoners, as well as forcing women to kneel during roll calls and to "make sport" as punishment for minor infractions, in a sort of sadistic version of "Simon Says."[156]

When witnesses were able to provide detailed accounts of specific acts of violence committed by individual defendants, the defense lawyers often resorted to contesting the memory of the witnesses. Rather than try to challenge the witnesses on specific details or parse the witness accounts for potential inaccuracies, the attorneys merely repeated the witnesses' allegations, and then offered some variant of "I suggest what you are saying is most untrue, and this entire account is a figment of your imagination. What say you to that?" For example, following the testimony of star prosecution witness Dr. Hadassah "Ada" Bimko, later Bimko Rosensaft, in which Bimko described the methods of selections and mechanisms of the gas chambers at Auschwitz, Major L.S.W. Cranfield, who represented Irma Grese, Ilse Lothe, Hilde Lohbauer, and Josef Klippel, questioned Bimko, "I suggest to you that that statement is quite untrue. What do you say to that?," to which Bimko responded, "I have sworn at the very beginning that I shall say nothing but the truth, and I am very astonished if I am approached now to be lying."[157] Attorneys Phillips, A.S. Munro, Cranfield, Boyd, Winwood, and Brown all made ample use of this tactic, with little or no effect.[158]

In fact, this strategy generally backfired in that the open-ended question, "What say you?" gave witnesses an opportunity to reassert their claims against the defendant. When this

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[156] Victoria E. Collins, *State Crime, Women and Gender* (New York, NY: Routledge, 2015), 113; Antony Rowland, "Reading the Female Perpetrator," *Holocaust Studies* 17, no. 2–3 (2011): 145–161; "The National Archive of the UK WO 235/13."

[157] Cross Examination of Hadassah "Ada" Bimko, Belsen Trial Transcript, 22 September 1945, "The National Archive of the UK WO 235/13."

[158] Two of the Belsen defense attorneys were named Munro, Captain (later Major) A. S. Munro, and Captain D.E. Munro, each representing separate defendants.

tactic of challenging witnesses' memory did not produce the results the defense attorneys hoped for, the lawyers turned to their final recourse – challenging whether the crime in question was perpetrated against an Allied national, and therefore eligible for prosecution as a war crime under the Royal Warrant. The Royal Warrant only extended protection to Allied nationals for crimes committed after 2 September 1939, meaning that crimes occurring before the formal outbreak of war, or against Jews from Nazi-allied or occupied states, could not be prosecuted.[159] Defense attorneys tried to get allegations thrown out on the basis that the victim was actually a German Jew, or a Hungarian, a Romanian, etc. Karl Egersdorf, the SS official in charge of the Belsen bread store, attempted this technique. Witness Dora Almaleh identified Egersdorf in an incident in which she saw Egersdorf shoot and kill a girl:

> One day in April, 1945, whilst at Belsen, I was working in the vegetable store when I saw a Hungarian girl, whose name I do not know, come out of the bread store near by [sic] carrying a loaf of bread. At this moment Egersdorf appeared in the street and, at a distance of about 6 metres from the girl, shouted, "What are you doing there?" The girl replied, "I am hungry," and then started to run away. Egersdorf immediately pulled out his pistol and shot the girl. She fell down and lay still, bleeding from the back of the head where the bullet had penetrated. Egersdorf then went away and a few minutes later I went and looked at the girl. I am sure she was dead, and men who were passing by looked at her and were of the same opinion. The bullet had entered in the centre of the back of her head. I do not know what happened to her body.[160]

Twice, first when Almaleh's evidence was introduced and again during his closing, Egerdorf's attorney Major C. Brown objected to the classification of this Hungarian girl's murder as a war crime:

> There is also a question of law arising in this case. The accused is charged with committing a war crime in violation of the Laws and Usages of War, having caused the deaths and suffering of Allied nationals. That exhibit, which is the only evidence against him, relates to the shooting of a Hungarian girl in April of 1945. I feel quite confident that it is within the knowledge of the Court that Hungarians were not in April 1945 Allied nationals, and that the Court is bound to agree that at that time a German could not

[159] War Office, "The Royal Warrant of 14 June 1945."
[160] Deposition of Dora Almaleh, Belsen Trial Transcript, read aloud to court on 3 October 1945, "The National Archive of the UK WO 235/13."

> commit a war crime against a Hungarian. The question has already been put before the Court, and all I wish to add to it at this moment is this.[161]

Likewise, Captain J. H. Fielden, representing Ansgar Pichen, Walter Otto, and Franz Starfl, emphasized this same point in his closing address, arguing that in order to bring war crimes charges, the prosecution had to demonstrate that the alleged victims were all Allied nationals – a futile effort, in many cases, since the victims' identities were unknown – because it was simply not possible for a German to commit a war crime against another German, i.e., German Jews. Furthermore, Fielden suggested that the court should not consider even Polish citizens as Allied nationals. Instead, Fielden classed Poles as German nationals, since according to German law at the time of the defendants' military service, "Poland as a sovereign state had ceased to exist, that previous Polish nationals from that part of Poland annexed by Germany were, as a result, German nationals," and thus were not eligible for war crimes protection under the Royal Warrant.[162]

This argument about restricting war crimes charges only to crimes involving Allied nationals as victims received support in the courtroom from Colonel Herbert Arthur Smith, an expert on international law, and professor at the University of London in civilian life. Before the individual closing addresses, Colonel Smith addressed the court on matters of international law on behalf of all twelve defense attorneys. As none of the defense lawyers had any experience in international law, at the start of the trial the attorneys petitioned the court to allow an expert to assist them during the closing phase of the trial – not as a witness, but to present summary legal arguments on behalf of the defense team. Colonel Smith was brought over from London to

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[161] Closing Address of Major C. Brown on Behalf of Karl Egersdorf, Belsen Trial Transcript, 9 November 1945, "The National Archive of the UK WO 235/13."
[162] Closing Address of Captain J. H. Fielden on behalf of Ansgar Pichen, Walter Otto, and Franz Starfl. Belsen Trial Transcript, 9 November 1945, "The National Archive of the UK WO 235/13."

provide an interpretation of international law on behalf of the defense lawyers. Smith's analysis included a legal argument focused on restricting war crimes charges to Allied nationals, because it was not Britain's responsibility to police interactions amongst Germans or between Germans and German allies.[163]

Technically, the Royal Warrant did restrict British prosecution of war crimes to cases involving Allied nationals, at least at the time of the Belsen trial.[164] It was not until late 1945/1946 that British policy, drawing on the experience of the first few Royal Warrant trials, was amended to allow for the prosecution of offenses against "other persons of German nationality or stateless persons," (i.e., Jews), under Allied Control Council Law No. 10 and British Military Government Ordinance No. 47.[165] While other trials, notably the Zyklon B trial in March 1946, effectively ignored this restriction even before the policy change under British Military Government Ordinance No. 47, prosecutor Backhouse was limited by this jurisdictional restriction, as Belsen was the first of the Royal Warrant trials. Given this limitation, when Backhouse did include crimes against non-Allied nationals, such as the charges against Karl Egersdorf, he had to argue that the crime was relevant because it spoke to the character of the camp environment, regardless of the victim's nationality.[166] Therefore, the mistreatment of any individual internee was relevant to the mistreatment of all internees, in which Egersdorf

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[163] Colonel Herbert Arthur Smith, "Legal Argument for the Defense," Belsen Trial Transcript, 7 November 1945, "The National Archive of the UK WO 235/13."
[164] War Office, "The Royal Warrant of 14 June 1945."
[165] Ordinance No. 47, 30 August 1946, published in *Military Government Gazette, Germany, British Zone of Control*, No. 13: 306. See also "Control Council Law No. 10: Punishment of Persons Guilty of War Crimes, Crimes Against Peace and Against Humanity," 20 December 1945, *Documents on Germany under Occupation 1945 – 1954*. Edited and translated by Beate Ruhm von Oppen. (New York: Oxford University Press, 1955), 97 – 101; United Nations War Crimes Commission, *History of the United Nations War Crimes Commission and the Development of the Laws of War*. (London: H.M.S.O., 1948), 214; Jones, "British Policy Towards German Crimes against German Jews," 361 – 363.
[166] Colonel T. M. Backhouse, Court Discussion Regarding the Admissibility of Deposition of Dora Almaleh, Belsen Trial Transcript, 2 October 1945; Colonel T.M. Backhouse, Closing Address for the Prosecution, Belsen Trial Transcript, 13 November 1945, "The National Archive of the UK WO 235/13."

participated as a member of the staff at Belsen. Although Egersdorf was subsequently acquitted, the Court overruled the objection of Egersdorf's lawyer Brown, thus opening the door for the prosecution of cases involving non-Allied nationals as victims, which became accepted practice in subsequent trials.

Backhouse laid the groundwork for this expansion in his closing statement. First, Backhouse began by arguing that nationality was irrelevant for international criminal law, as international law was intended to protect all people, regardless of nationality or military/civilian status. Quoting from Article 46 of the Geneva Conventions, which stated that "all forms of corporal punishment, confinement in premises not lighted by daylight and, in general, all forms of cruelty whatsoever, are prohibited," Backhouse argued that although Article 46 referred specifically to the treatment of prisoners of war, it should apply to all interned individuals, for two reasons.[167] One, civilians in wartime were legally entitled to the same protections as prisoners of war, according to the 1917 Hague Convention and a 1918 JAG ruling in *Ex parte L. Tebmann*. Two, Backhouse argued that since civilians were entitled to the same protections as prisoners of war, those protections thus extended to all civilians, regardless of the geographical location where they entered German custody. Even if civilians were considered inhabitants of occupied countries, they were entitled under the Hague Convention to greater legal protections than they received. Regardless of how the Belsen internees were classified, their treatment was unquestionably illegal.

Second, Backhouse argued that the defense was misappropriating the Royal Warrant's distinction between Allied and non-Allied nationals in order to obscure large numbers of victims

[167] Chapter 3, Part 1, Article 46, Geneva Conventions, 1929 quoted by Colonel T.M. Backhouse, Closing Address for the Prosecution, Belsen Trial Transcript, 13 November 1945, "The National Archive of the UK WO 235/13."

and obfuscate a central goal of Nazi war policy – the "deliberate destruction of the Jewish race."[168] Colonel Smith tried to claim for the defense that the murder of Jews, regardless of nationality, could not be considered a war crime because German antisemitic measures began prior to the outbreak of hostilities in September 1939, and would have continued after the war, had Germany won. Therefore, these murders were not *war* crimes and did not fall under the purview of the Royal Warrant or other international law addressing war crimes. Backhouse argued strenuously in response, that because the extermination of Jews was a central Nazi war aim, any crimes connected with that aim qualified as war crimes, regardless of the nationality of the victim or location of the crime.[169]

ACKNOWLEDGEMENT OF JEWISH PERSECUTION

With this argument, the trial finally began to engage questions of Jewish identity and Nazi antisemitism. Contrary to established belief that the British did not care about Jewish victims and were not cognizant of the specifically antisemitic nature of Nazism, Backhouse's approach to witness questioning and his closing address demonstrate that the British prosecution was indeed aware of the extent to which the Nazis targeted Jews. The vast majority of witnesses at the Belsen trial were witnesses for the prosecution, and most of them were survivors of the camps (the rest were British military personnel). Of the approximately 121 survivor witnesses called by the prosecution (either in person or via affidavit), 81 of them, or 66%, identified themselves to the court as Jewish.[170] Four witnesses identified as Christian, and another 33

[168] Colonel T. M. Backhouse, Closing Address for the Prosecution, Belsen Trial Transcript, 13 November 1945, "The National Archive of the UK WO 235/13."
[169] Colonel T. M. Backhouse, Closing Address for the Prosecution, Belsen Trial Transcript, 13 November 1945, "The National Archive of the UK WO 235/13."
[170] Figures based on my own calculations. I narrowed the pool of prosecution witnesses to that of survivor witnesses by excluding all defendants (including those who were prisoner functionaries) and all British officers who arrived at the camp as part of the British liberation. Some survivor witnesses were Germans

witnesses had indeterminate religious backgrounds. Eighty-one times, the court heard that individuals had been arrested and sent to camps (or worse) simply for being Jewish. Despite this high rate of Jewish representation before the court, however, it is unclear how much of this was the result of intentional witness selection, or a demographic side effect of the decision to try Belsen and Auschwitz jointly. Since the trial involved two camps, investigators looked for witnesses who were able to provide information about both Auschwitz and Belsen. Of the available witnesses at Belsen after liberation, those who met the Auschwitz-*and*-Belsen criterion were more likely to come from Jewish backgrounds. Most likely, the high Jewish representation among the prosecution witnesses was not a specific choice, per se, but rather the British considered it an "acceptable" effect of the choice to prosecute Auschwitz along with Belsen.

The very first question Col. Backhouse asked each and every prosecution witness was about the circumstances of the witness's arrest. The answer was almost invariably "because I am a Jew/ess."[171] After the first few survivor witnesses were called to testify, all of them asked the reason for their detention, defense attorney Major L. S. W. Cranfield, representing Irma Grese, Ilse Lothe, Hilde Lohbauer, and Josef Klippel, objected to the question. Cranfield protested that not only was the question unfairly prejudicial to the defendants, but claimed it was also "irrelevant why the witnesses were arrested."[172] The Judge Advocate pointed out to Cranfield that the question was in his defendants' own interest, because in the event of witnesses who had

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of non-Jewish background, including one former Wehrmacht member sent to the camps for "seditious talk." One Roma witness testified at Belsen. Individuals were counted as Jewish only if they self-identified as Jewish in their testimony or statement. Of the 33 witnesses of indeterminate religious background, some of them were likely also Jewish, but in the absence of definitive documentary evidence, I kept them in the "indeterminate" category.

[171] Hadassah "Ada" Bimko, Dora Szafran, et al. "Witness Testimony," Belsen Trial Transcript, 1945, "The National Archive of the UK WO 235/13."

[172] Major L. S. W. Cranfield, Objection to Direct Examination of Prosecution Witness Dora Szafran, Belsen Trial Transcript, 24 September 1945, "The National Archive of the UK WO 235/13."

been sent to the camps for criminal malfeasance, the defense could ask the court to disregard that witness's testimony as lacking "credibility."[173] More importantly, Col. Backhouse contested the objection on the grounds that having witnesses testify to the fact that they were forcibly imprisoned *because* they were Jewish, not for their nationality or committing a crime, was "part of [his] case, because one of the Laws [sic] and usages of war is that no one will be ill treated because of their religion."[174] The Court agreed with Backhouse and Stirling, and Backhouse continued to ask witnesses about the grounds for their arrest.

However, while Jewish background as a cause for arrest was referenced in the courtroom and composed part of the prosecution's case, the subject did not receive much explanation or context. Witnesses were asked the reason for their arrest, but not about previous antisemitic measures or living conditions, or about their lives in general. A few witnesses mentioned the ghetto(es) where they had been sent prior to deportation, but for most witnesses, the court's interest in their life began only at the moment of arrest or deportation. Even then, the court's interest was limited to specific incidents of mistreatment and murder, *not* one's personal experiences of life in the camps. While this specific focus on perpetrator actions, rather than on victim experiences, was very frustrating for some of the witnesses, it was perhaps an unavoidable consequence of the competing interests at play in war crimes trials held under the presumption of innocence until proven guilty.

Only in the prosecution's closing address, after 49 full days of testimony, did Backhouse begin to explain the significance of the Jewish persecution to the court. Backhouse's summation

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[173] Judge Advocate Carl Ludwig Stirling, "Response to Cranfield's Objection of Questioning of Witness Dora Szafran," Belsen Trial Transcript, 24 September 1945, "The National Archive of the UK WO 235/13."

[174] Colonel T. M. Backhouse, Rebuttal to Objection Re: Questioning of Prosecution Witness Dora Szafran, Belsen Trial Transcript, 24 September 1945, "The National Archive of the UK WO 235/13."

identified two Nazi war aims: the evisceration of Poland, and the "deliberate destruction of the Jewish race," which the Nazis believed was critical for weakening resistance by Germany's enemies and thus ensuring victory.[175] Moreover, Backhouse plainly stated that "in Auschwitz alone literally millions of people were gassed for no other reason than that they were Jews. The people who were gassed were the old, the weak, the pregnant women and children under fourteen. Those were the people who were being selected and put into these gas chambers and quite blatantly murdered."[176] Thus, it seems quite clear that from the start of the Royal Warrant trials, British prosecutors and investigators understood very well that Nazism targeted European Jews for mass extermination simply for being Jewish – the most basic fact of what became known as the Holocaust, or Shoah. Nevertheless, the fact that Jews were killed simply for being Jews did not form the centerpiece of the Belsen trial, for reasons both legal and political. The mass murder of Jews had to be fitted into the framework of traditionally defined war crimes, which did not include a provision for genocide. The Belsen trial was Britain's first attempt to work the Jewish genocide into the framework specified by the Royal Warrant, and it quickly revealed the limitations of this approach for subsequent trials – most notably the need to be able to include Jewish victims as Allied nationals.

VERDICTS AND SENTENCING

Following the conclusion of the closing addresses and the Judge Advocate's Summing Up, the Court recessed to consider its verdicts (sentencing was considered separately). After six hours of deliberation, the Court found 30 defendants guilty on at least one charge, and 14 not guilty on either charge. On the first charge concerning Belsen, the Court found 28 defendants

[175] Colonel T. M. Backhouse, "Closing Address for the Prosecution," Belsen Trial Transcript, 13 November 1945, "The National Archive of the UK WO 235/13."
[176] Colonel T. M. Backhouse, "Closing Address for the Prosecution," Belsen Trial Transcript, 13 November 1945, "The National Archive of the UK WO 235/13."

guilty, and 16 not guilty; on the second charge for Auschwitz, which only twelve of the defendants faced, the Court found nine individuals guilty, three not guilty.[177] Lt. Col. R. McLay served as a junior member of the Court, and his personal notes taken during the trial provide insight into the thought process of the Court. All but two of the defendants appear in McLay's extant records, where he dutifully noted his general impressions of the defendants and observations about witnesses he found particularly credible or effective. While he referred to defendant Johanne Roth as "the biggest bloody liar I've heard in years" and called defendant Ilse Forster's testimony "very fishy," McLay also deemed the case against Charlotte Klein insubstantial.[178] As both the prosecution and defense presented their cases, McLay carefully marked down his preliminary thoughts on the guilt or innocence of each defendant. These records indicate that the Court considered each defendant individually, rather than issuing the Belsen verdicts pro forma. McLay's preliminary assessment of guilt or innocence did not always match the Court's ultimate finding. Moreover, in multiple cases McLay noted that he was unable to form an impression about guilt or innocence and would need to talk over a given issue with the full Court in order to decide. In particular, McLay was concerned about which of the non-SS defendants were officially sanctioned prisoner functionaries, because camp prisoners were eligible for prosecution only if they were prisoner functionaries, rather than prisoners who achieved a modicum of power independently of the camp administration system.[179]

The verdicts were announced on Friday, 16 November 1945, and the presentation of mitigating arguments followed immediately, continuing into the next day. Delivered by the

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[177] The court returned no finding for Ladislaw Gura, who took ill during the trial and was dropped from the charge; Raymond Phillips and Lord Jowitt, *Trial of Josef Kramer and 44 Others: "(The Belsen Trial)"* (London, Edinburgh, Glasgow, 1949), 641.
[178] "Private Papers of Lieutenant Colonel R McLay," n.d., Documents.3597, Imperial War Museum.
[179] "Private Papers of Lieutenant Colonel R McLay."

defense attorneys, the mitigating pleas were to be exactly that – *mitigating* pleas, as the Royal Warrant did not allow defendants to appeal or otherwise request a reconsideration of the verdicts regarding guilt and innocence. At this point the court also required the defense attorneys to complete biographical forms on behalf of each convicted defendant that collated the basic information the Court needed for sentencing considerations.[180]

Mitigating pleas focused on perpetrators' ages (whether advanced age or youth), nationality, draft status, exposure to Nazi propaganda, family circumstances, relative degree of power (or lack thereof) within the Nazi hierarchy, and their own status as victims. While claiming victimhood may have been reasonable for those who were forcibly brought into the concentration camp system as prisoners, other defendants strained credibility with their interpretation of victimization. Captain J. M. Boyd, on behalf of Gertrud Fiest, Gertrud Sauer, and Hilde Lisiewitz, pled that anybody who came into contact with the horrific conditions at Belsen so ably described by the British survivor Harold Le Druillenec, whether as prisoner or supervisor, was brutalized, and thus victimized, by those conditions.[181]

Captain J. R. Phillips offered another version of the victimization plea on behalf of his convicted clients, Herta Bothe, Frieda Walter, and Irene Haschke. Rather than claiming his clients were victims, as Boyd did, Phillips warned against creating additional victims by holding these women accountable as scapegoats for crimes committed by the Nazi Reich. Rather, Phillips hoped to see his clients sentenced as "individuals and as in no way the representatives of the

[180] See examples in Major Andrew S. Munro Papers, Belsen Trial, 1945, MS208, Perth & Kinross Council Archive.
[181] Captain J. M. Boyd, "Mitigating Plea on Behalf of Gertrud Fiest, Gertrud Sauer, and Hilde Lisiewitz," Belsen Trial Transcript, 17 November 1945, "The National Archive of the UK WO 235/13."

German nation, all of whom I would say were equally guilty."[182] Representing the Polish defendants, Lt. Jedrzejowicz argued that his clients were "primarily the victims of war" as Polish nationals.[183] Furthermore, almost all of the defense attorneys offered some variant of a mitigating plea based on superior orders, arguing that the defendants committed crimes only because they were ordered to, not because they chose to. In fact, some of the defense attorneys pointed out that while their clients had been convicted of mistreating prisoners, there was "no personal accusation of actual killing," conveniently ignoring the obvious connection at Belsen between mistreatment and death.[184] In the case of some of the highest-ranked officials, such as Josef Kramer and Fritz Klein, as well as Karl Flrazich, Otto Kulessa, and others, their attorneys weakly suggested that the defendants should receive credit for *not* escaping Belsen when the truce was first declared in April, before the British physically took control of the camp.[185]

Even more so than during the trial, the defense attorneys walked a difficult line on behalf of their clients during the mitigation phase. At this point the attorneys were no longer dealing with alleged perpetrators, but convicted war criminals about whom there often was not much good to say. Once in the mitigation phase, the defendants and their attorneys could no longer argue for innocence, and had to find ways to justify reprehensible criminal conduct in hopes of a

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[182] Captain J. R. Phillips, M.C., R.A., "Mitigating Plea on Behalf of Herta Bothe, Frieda Walter, and Irene Haschke," Belsen Trial Transcript, 17 November 1945, "The National Archive of the UK WO 235/13."
[183] Lt. A. Jedrzejowicz, "Mitigating Plea on Behalf of Stania Starostka, Helena Kopper, Vladislaw Ostrowski, Medislaw Burgraf, and Antoni Aurdzieg," Belsen Trial Transcript, 17 November 1945, "The National Archive of the UK WO 235/13."
[184] Major C. Brown, R.A., Capt. D. F. Roberts, Major C. Brown, et al, "Mitigating Pleas on Behalf of Defense Defendants," Belsen Trial Transcript, 16/17 September 1945, "The National Archive of the UK WO 235/13."
[185] Major T.C.M. Winwood, R.A., "Mitigating Plea on Behalf of Josef Kramer, Fritz Klein, and Peter Weingartner," Belsen Trial Transcript, 16 November 1945, "The National Archive of the UK WO 235/13."

lighter sentence. This posed a challenge for many of the attorneys, who feared the British public interpreting their professional duties and statements as indications of their personal beliefs.

During the closing arguments, Major Winwood had to offer a public apology for saying in the course of defending camp *Kommandant* Josef Kramer, that the deplorable conditions in the camps were due to the internee population, rather than the staff or camps themselves: "The type of internee who came to these concentration camps was a very low type and I would go so far as to say that by the time we got to Auschwitz and Belsen, the vast majority of the inhabitants of the concentration camps were the dregs of the Ghettoes of middle Europe."[186] After the public fallout over his comments, including press coverage in *The Manchester Guardian*, discussion in the House of Commons, and a rebuke from the Board of Deputies of British Jews, Winwood stated that:

> I do personally indeed regret that any words which have been spoken by me in the course of this trial should have added any pain to that race which has suffered so much in Nazi Germany. I feel sure that the Court and those to whom these words are addressed will appreciate that I have been acting only as a mouthpiece of the accused whom I represent and that I have expressed no personal views of my own at all.[187]

Alexander Eastman, the British representative of the World Jewish Congress serving as an observer at Lüneburg, also received a letter of apology.[188]

When the mitigation pleas had concluded, the Court adjourned to consider the sentences. The court reconvened after about four hours and 45 minutes of deliberation to pronounce death

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[186] Major T.C.M. Winwood, "Opening Address on Behalf of Josef Kramer, Fritz Klein, Peter Weingartner, and Georg Kraft," Belsen Trial Transcript, 8 October 1945, "The National Archive of the UK WO 235/13"; Sharman, "War Crimes Trials between Occupation and Integration," 68–70.
[187] Major T.C.M. Winwood, "Closing Defense on Behalf of Josef Kramer, Fritz Klein, Peter Weingartner, and Georg Kraft," Belsen Trial Transcript, 8 November 1945, "The National Archive of the UK WO 235/13;" Hansard Parliamentary Debates, *HC Deb, 23 October 1945, Vol 414, cc1974-5W;* "The Belsen Trial: Defense Counsel's Astounding Statement," *The Jewish Chronicle*, October 12, 1945; "Belsen Counsel's Apology: Statement About Jews," *The Manchester Guardian*, November 9, 1945."Belsen Counsel's Apology: Statement About Jews," 8.
[188] Sharman, "War Crimes Trials between Occupation and Integration," 69.

sentences on eleven individuals, including Josef Kramer, Fritz Klein, Peter Weingartner, Franz Hossler, Karl Flrazich, Ansgar Pichen, Franz Starfl, Wilhelm Dorr, Juana Bormann, Elisabeth Volkenrath, and Irma Grese. The court also sentenced one person to life imprisonment, five people to terms of 15 years, nine people to ten years, two people to five years, one person to three years, and one person to one year.[189]

Public reaction to the Belsen verdicts, in particular the fact that only eleven of 45 defendants received the death sentence, fell into three categories – cautiously surprised (Germans), proudly self-congratulatory (British), and disappointed/angered (everybody else). Across all categories, the fourteen complete acquittals and three partial acquittals startled people.[190] The German public generally had expected that all defendants appearing on war crimes charges would be found guilty, and most would face execution. The fact that not all defendants were sentenced to death, let alone found guilty, was a surprise to many Germans, who, according to *The Manchester Guardian's* special correspondent,

> were impressed by the thoroughness with which each person's share in the evil-doing had been weighed and the degree of responsibility arrived at, and were impressed, too, by the number of acquittals. By the Germans for the most part the death sentence for everybody had been thought inevitable. They never believed that the real process of judicial investigation was going on in the hideous, sham-Gothic gymnasium under the Union Jack hanging limply from the flagstaff.[191]

As the Belsen trial concluded and the International Military Tribunal at Nuremberg got underway, German audiences were generally pleased by the unexpectedly moderate outcome of the Belsen trial.

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[189] Phillips and Jowitt, *Trial of Josef Kramer and 44 Others*, 643–44.
[190] Leonard N. Muddeman, "Decade: 1937-1946," unpublished memoir, Leonard N. Muddeman, "Private Papers of Leonard N. Muddeman" 1946, Documents.9802, Imperial War Museum.
[191] "Only One Scene When Belsen Accused Are Sentenced: Polish Woman Asks for Death," *The Manchester Guardian*, November 19, 1945, 6.

The British response to the Belsen trial was generally one of self-congratulation, as people applauded the outcome as a "truly British verdict" that not only modeled the concept of a fair trial for the Germans, but also "upheld justice" for the benefit of "a world that had almost forgotten what justice was."[192] Others commended the trial for considering the defendants individually, rather than en masse, and thought Belsen boded well for the IMT at Nuremberg. Beneath the praise, however, lay tension and concern. The Belsen trial had taken nine weeks, sparking pre-emptive justifications by both the prosecutor and the judge advocate.[193] Both Backhouse and Stirling equated the length of the proceedings with evidence of a fair, well-run trial, rather than a drawn-out drain on taxpayer pounds.[194] As soon as the Belsen trial concluded, observers began suggesting ways to speed up the next trials, such as grouping defendants by language to eliminate some of the translation needs that had consumed so much time during the Belsen trial.[195]

Aside from concerns about time, the British military and public were uneasy with soldiers taking on the role of defense attorneys. Aside from logistical issues around scheduling and individual officers' reluctance to take on this role, the British were uncomfortable with Nazi arguments coming from British mouths, even as a necessary part of the defense.[196] This uneasiness was reflected in Winwood's public apology before the court, Neave's complaints to the Judge Advocate, and the attorneys' convoluted attempts at trial to argue for their clients while making clear that they did not agree personally with what they were saying.

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[192] "Diarist 5403," November 17, 1945, Mass Observation Online; "Kramer and Grese Among the Belsen Guilty: How They Heard Their Verdicts," *The Manchester Guardian*, November 17, 1945.
[193] Colonel T.M. Backhouse, "Closing Address for the Prosecution," Belsen Trial Transcript, 13 November 1945, Judge Advocate General C. L. Stirling, "Judge Advocate's Summing Up," 16 November 1945, "The National Archive of the UK WO 235/13."
[194] "The Belsen Verdicts," *The Manchester Guardian*, November 19, 1945, 4.
[195] "Kramer and Grese Among the Belsen Guilty: How They Heard Their Verdicts."
[196] "Russians on the Trials," *The Manchester Guardian*, October 26, 1945, 4.

Whereas the British had some uneasiness with the Belsen outcome, the Russian, French, Polish, and Jewish communities were quite upset. They believed that the British court treated the defendants too kindly, and the number of acquittals was unacceptable. The Polish accused the British of an appalling demonstration of "the feeling of love for your neighbor" towards the Germans, who "during the war they [the British] described as a nation of criminals."[197] The Soviet newspaper *Izvestia* complained that the trial did not do enough to denounce the evils of fascism, and suggested that the British were evading responsibility behind the presumption of innocence until proven guilty.[198] Unsatisfied with the outcome, the French wanted to retry all of the Belsen defendants, this time under French jurisdiction.[199] The fact that relatively few defendants were sentenced to death, and approximately one-third of the defendants were acquitted, could serve as evidence of a fair trial, but it indicated the impact of the British shock at Belsen. Some of the defendants, especially the prisoner functionaries who had been at Belsen for only a few days during the height of the chaos, clearly should not have faced charges, especially alongside Josef Kramer, Fritz Klein, and Irma Grese. That these individuals such as Eric Barsch, who the Judge Advocate declared during his Summing Up must be acquitted due to a lack of evidence, or Ignatz Schlomowiz, a Jewish prisoner appointed *Kapo* three days before liberation and only four days after his arrival at Belsen, faced trial is attributable to the impact of the shock the British experienced upon entering Belsen.[200] When faced with such unprecedented horror, the British desire to hold people accountable overrode the sense of proportion. Literally anyone the

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[197] "Russians on the Trials."
[198] "Russians on the Trials."
[199] Reuters, "France Wants New Belsen Trial," *The Daily Mail*, December 15, 1945.
[200] Judge Advocate General Carl Ludwig Stirling, "JAG Summing Up," Belsen Trial Transcript, 16 November 1945, "The National Archive of the UK WO 235/13."

British could get their hands on, including Jewish prisoners and others from victim groups, was considered a reasonable target for prosecution, no matter how implausible the case.

For Jewish observers, the problems with the Belsen trial centered less on the specific outcome – curiously, the *Jewish Chronicle* was not particularly critical of the Belsen verdicts – than on the extent of Jewish representation and the portrayal of Jews. Despite the high number of Jews called as witnesses, many observers and participants chafed at the restrictions put on Jewish testimony. When Hadassah "Ada" Bimko was on the witness stand, she was visibly frustrated by the fact that she could only answer questions that were asked of her, by attorneys who had not personally experienced the camps, rather than speak freely to tell her own story. To add salt to her wounds, the defense attorneys were knowingly allowed to ask questions based on hearsay or misinformation.[201] Moreover, observers resented insinuations that Jewish witnesses were somehow less credible. From Major Winwood's reference to "the dregs of the ghettoes of middle Europe" to the Judge Advocate's postulation that the survivor witnesses could be prone to allowing their emotions to influence their testimony, to the frequent suggestions by defense attorneys that witnesses were simply wrong, lying, or forgetful, trial watchers in the British Jewish community believed that the trial devalued Jewish experiences and expertise.[202]

Many critics also had trouble with the very notion of extending a fair trial to Nazis, who had systematically tortured and exterminated Jews. Both inside and outside the survivor and Jewish communities, many people doubted that the procedures and formalities of a trial could grasp the core evil of Nazi crimes. As survivor and witness Ada Bimko wrote, she "was outraged

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[201] "Cross-Examination of Dr. Hadassah 'Ada' Bimko by Defense Attorney Major C. Brown, R. A.," Belsen Trial Transcript, 22 September 1945, "The National Archive of the UK WO 235/13."
[202] Major T. C. M. Winwood, "Opening Address on Behalf of Josef Kramer, Fritz Klein, Peter Weingartner, and Georg Kraft," Belsen Trial Transcript, 8 October 1945, "The National Archive of the UK WO 235/13"; "Summing Up in Belsen Trial: Jewish Criticism," *The Manchester Guardian*, November 15, 1945, 5; Sharman, "War Crimes Trials between Occupation and Integration," 79.

that the killers of hundreds of thousands of Jews in Auschwitz and Belsen were given such consideration. I simply couldn't understand the concept of a 'fair trial,' the principle that every accused, even the most brutal murderer, was entitled to a defense," or the possibility of acquittal.[203] As a result, Bimko turned down subsequent requests to testify at the International Military Tribunal at Nuremberg, other British zonal trials, and at the Eichmann trial in 1961. Bimko found the experience of testifying emotionally quite difficult, though also somewhat satisfying to watch the tables turn.[204] Norma Falk had a similar response to the trial, despite having a very different wartime experience from Bimko. Falk was a British military nurse from a Jewish family in Sheffield. She was assigned to serve as the "duty nurse" for the Belsen trial, sitting with the military police behind the defendants in the dock every day. Although Falk considered the trial good, fair, and a "high representation of British justice," she too, did not understand how any of the defendants could be acquitted or receive anything less than the death sentence.[205]

Another witness, Anita Lasker, later Lasker-Wallfisch, grasped the crux of the problem when she deemed the trial a "total and utter farce," because one "cannot apply British justice, which is a very commendable thing, to something that is so outside anything that has ever been."[206] The goals of legal proceedings, especially the strictures that govern war crimes prosecutions, are not equivalent to the goals of survivors or even the abstract cause of "justice."

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[203] Hadassah Bimko Rosensaft, *Yesterday: My Story* (Yad Vashem and the Holocaust Survivors' Memoirs Project, 2005), 89–90.
[204] Hadassah Bimko Rosensaft, 89–91.
[205] Norma Falk, USC Shoah Foundation Visual History Archive Interview, March 9, 1998, 39261, USC Shoah Foundation Visual History Archive, http://vhaonline.usc.edu/viewingPage?testimonyID=42082&returnIndex=0.
[206] Anita Lasker-Wallfisch, USC Shoah Foundation Visual History Archive Interview, December 8, 1998, 48608, USC Shoah Foundation Visual History Archive, http://vhaonline.usc.edu/viewingPage?testimonyID=51672&returnIndex=0#.

The inherent contradictions between survivors' needs and legal procedures meant that trials were always going to be an inadequate method for addressing the Holocaust. For survivors, legal methods were not commensurate with their devastating experiences. Extending legal courtesies to the defendants that were denied to Nazi prisoners shifted the focus onto perpetrators and away from the victims and survivors. Despite this fundamental mismatch, Lasker-Wallfisch believed trials were the right choice after the war because otherwise the "only alternative was lynching."[207]

A trial that began with shock as the British took over the camp at Belsen ended appropriately with another sort of shock and consternation. Not just one note of shock, but many – at the crimes, at the defense arguments coming from British officers, at the verdicts, at the length of time required, and at the very effort to subject Nazi atrocities to the ordinariness of legal proceedings.

[207] Anita Lasker-Wallfisch.

The Business of Murder: Tesch and Stabenow and the Zyklon B Trial

Late in the summer of 1945, after the collapse of the Third Reich, a letter made its way to the Judge Advocate General (JAG) branch of the British Army in occupied Germany. The letter was from Emil Sehm, a German accountant who had worked for the pesticide firm Tesch & Stabenow during the war, alleged that under the direction of Dr. Bruno Tesch, that enterprise had advised the *Oberkommando der Wehrmacht* (OKW, Army High Command) on ways to exterminate European Jews using hydrocyanic acid, and then sold a vaporizing form of the chemical, patented under the name Zyklon B, to the Nazi state.

The British authorities wasted no time opening an investigation into Tesch & Stabenow's wartime activities that developed into proceedings colloquially known as the *Giftgas* – or poison gas – case. Within weeks, British personnel arrested twenty employees of Tesch & Stabenow. In March 1946, Dr. Bruno Tesch and two of his colleagues stood accused of war crimes before a British military court. Chief gassing technician Joachim Drosihn was acquitted; Tesch and his second in command, Karl Weinbacher, were found guilty and subsequently executed. Of the three, Tesch was the only one who was a Nazi party member.

In the context of the Royal Warrant trials, the Zyklon B trial stands out as an anomaly – a trial that should not have happened, but did, and that left a surprising legal legacy. The Zyklon B trial shows that the British did try cases without benefitting British political interests, did understand the specificity of Jewish persecution and the ultimate fate intended for European Jews, and did have a lasting influence on international criminal law.

Chemist Bruno Tesch founded the pesticide firm at the center of the trial in 1923 when he left Degesch, a subsidiary of Degussa, in a dispute over Zyklon patent profits. His initial partner was Paul Stabenow, a chemical sales representative who died, possibly by suicide, sometime

after leaving the firm in 1927, and their enterprise functioned as a pesticide distributor and contract extermination firm.[208] The company did not produce gases or equipment itself.[209] Tesch & Stabenow sold various pesticides, including T-gas, Tritox, Ventox, Cartox, Cyanogas, Knock-out, and Zyklon B, as well as extermination equipment – filtered gas masks, circulation machines for gas chambers, suction pipes, pressure piles, evaporizers, and gassers – for use in concentrating and targeting gases on infested object(s).[210] Much of Tesch & Stabenow's business centered on ships entering and exiting Hamburg.

In 1925, Bruno Tesch received the sales monopoly for Zyklon B east of the Elbe River.[211] Zyklon is a toxic hydrogen cyanide gas that becomes lethal upon contact with air at temperatures above 79 degrees Fahrenheit, or 26 degrees Celsius. Also known as prussic acid, or in German as *Blausäuregas*, hydrogen cyanide gas was first developed in the late 18th century, and was initially used in the 19th century as a pesticide for fruit trees in California. During World War I, chemist Fritz Haber and his team at the Kaiser Wilhelm Institute in Berlin developed a form of hydrogen cyanide dubbed "Zyklon A," for use disinfecting housing and food supplies.[212] Faced with various legal and technical obstacles limiting the military or widespread commercial application of the gas, Haber, Tesch, and other chemists refined the formula for Zyklon B in order to skirt postwar Allied restrictions while also making the gas more stable and easier to

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[208] "The National Archive of the UK WO 309/1602" September 1945, The National Archives, Kew; Peter Hayes, *From Cooperation to Complicity: Degussa in the Third Reich* (New York, NY: Cambridge University Press, 2005), 272–300.
[209] "The National Archive of the UK WO 309/1602"; Hayes, *From Cooperation to Complicity*, 272–300.
[210] "Description of Gases and Equipment from the Report of No. 2 War Crimes Investigation Team Concerning Dr. Bruno Tesch and the 'Giftgas' Case," "The National Archive of the UK WO 309/1602."
[211] Hayes, *From Cooperation to Complicity*, 277.
[212] Paul Weindling, "The Uses and Abuses of Biological Technologies: Zyklon B and Gas Disinfestation between the First World War and the Holocaust," *History and Technology, an International Journal* 11, no. 2 (1994): 291–298.

transport.[213] Like earlier forms of the gas, Zyklon B's primary uses included the fumigation and disinfection of ships, buildings, textiles, food supplies, and other articles in order to kill vermin without affecting the object.[214] Because of the highly toxic nature of Zyklon B, however, German law tightly limited its use to trained professionals, such as those at Tesch & Stabenow.[215] Per the terms of the monopoly agreement, Degesch (the patent holder of Zyklon) also bought 55% of the company's shares, while Tesch & Stabenow agreed to use only Zyklon for its fumigation contracts, rather than other gases.[216]

Relations between Tesch and Degesch remained fractious following the monopoly concession. Tesch still harbored a grudge against Degesch for excluding him from the profits on the Zyklon B patent, and he resented Degesch's majority ownership stake in his firm.[217] The situation deteriorated further in the late 1930s, to the point that Degesch attempted to reclaim the shares it had allowed Tesch to exercise, leading Tesch to file suit against Degesch. Tesch lost, and Degesch took steps to remove Tesch from his position at Tesch & Stabenow, a move that was formalized in December 1941. However, since Tesch personally held the government concession for Zyklon B, rather than Tesch & Stabenow, removing Tesch as CEO would effectively shut down Tesch & Stabenow, which by this point was fulfilling a vital military need. Thus, Tesch and Degesch reached an agreement in June 1942 that allowed Tesch, who had been a

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[213] Hayes, *From Cooperation to Complicity*; Kalthoff and Werner, *Die Händler des Zyklon B*; Ebbinghaus, "Der Prozess gegen Tesch und Stabenow. Von der Schädlingsbekämpfung zum Holocaust."
[214] Hayes, *From Cooperation to Complicity*; Kalthoff and Werner, *Die Händler des Zyklon B*; Ebbinghaus, "Der Prozess Gegen Tesch Und Stabenow. Von Der Schädlingsbekämpfung Zum Holocaust."
[215] "Secondary Cross-Examination of Joachim Drosihn by Attorney Otto Zippel," The National Archive of the UK WO 235/83.
[216] Hayes, *From Cooperation to Complicity*, 277–278.
[217] Hayes, 278.

Nazi party member since 1933, to become sole owner and shareholder of Tesch & Stabenow in return for various concessions.[218]

Meanwhile, Tesch & Stabenow's business model and customer base had changed with the onset of war. Military customers became increasingly important, but also brought a shift in the nature of the business. The SS, in particular, was quick to embrace the military value of gas, initially for disinfection and then for more nefarious purposes. Rather than rely on Tesch & Stabenow for contract gassing, the SS gave itself a legal exemption that allowed the organization to deploy Zyklon B itself. Much of Tesch & Stabenow's business thus shifted from a disinfestation-and-sales model to a far less lucrative training-and-sales model. Despite this shift, the majority of Tesch & Stabenow's business came from the military and other wartime auxiliaries. Moreover, given the importance of military contracts and political connections in obtaining Tesch & Stabenow's independence from Degesch in 1942, Tesch remained tightly enmeshed with and dependent on his military contacts, especially the SS, even once the SS weaponized Zyklon B against human beings in gas chambers.

With the end of the war in 1945, military demand for disinfectant gas waned, and Tesch & Stabenow downsized. The company was refocusing on providing pest control in Hamburg's ports when British war crimes investigators appeared in September 1945. Emil Sehm's letter had arrived just as the British authorities were preparing to launch their first war crimes trial, focused on crimes at Bergen-Belsen and Auschwitz. Thus, the investigation phase of the Zyklon B trial took place against the background of the highly publicized Belsen trial, which disseminated accounts of mass murders in the gas chambers at Auschwitz, where Zyklon had been supplied. The Zyklon B trial, then, was to be the British engagement with gassing.

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[218] Hayes, 286–88.

The BAOR No. 2 War Crimes Investigation Team (WCIT) led the investigation into Tesch & Stabenow. Although one source suggests that British war crimes investigators were already aware of Bruno Tesch and searching for evidence against him when Emil Sehm's letter arrived, it appears more likely that Tesch did not come to British attention until then.[219] About three weeks after receiving Sehm's letter, the No. 2 WCIT, accompanied by Emil Sehm, went to the Tesch & Stabenow offices on September 18, 1945, to meet with Bruno Tesch in an effort to locate a travel report referenced in Sehm's letter. Tesch & Stabenow employees Karl Weinbacher, Alfred Zaun, Erika Rathcke, Wilma Nachtweh, and Margarete Knickrehm were also present.[220] In this meeting, Sehm affirmed that he had read a trip summary in which Tesch reported "g[iving] his opinions" to the "leading personalities of the Army Command" on using "Blausäuregas procedure … for 'removing' the Jews."[221] In response, Tesch insisted that the firm's gases had killed only vermin, never people; that the firm offered training courses for other gases, but never Zyklon; that he did not know about the atrocities in the camps until the media reported it after the war; and that under all circumstances, he had to follow orders given by the government and the OKW.[222] Investigators never found the travel report in question – whether Tesch or a firebombing raid that hit the office before the end of the war destroyed the document remains uncertain.

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[219] The only source to suggest the British were already aware of Tesch & Stabenow is Fred Pelican, who worked for the No. 2 WCIT. Pelican is not a particularly trustworthy source on this matter. Fred Pelican, *IWM Audio Interview with Fred Pelican*, 1986, Imperial War Museum Sound Archive; Fred Pelican, *From Dachau to Dunkirk* (London, England; Portland, Or.: Vallentine Mitchell, 1993).

[220] "Preamble: Report of No. 2 War Crimes Investigation Team Concerning Dr. Bruno Tesch and the 'Giftgas' Case," "The National Archive of the UK WO 309/1602."

[221] "Production No. 1: Statement of Emil Sehm from the Report of No. 2 War Crimes Investigation Team Concerning Dr. Bruno Tesch and the 'Giftgas' Case," "The National Archive of the UK WO 309/1602."; Report of Meeting at Tesch & Stabenow Offices, 18 September 1945, "The National Archive of the UK WO 309/1603" October 1945, The National Archives, Kew.

[222] "The National Archive of the UK WO 309/1602."

Two British officers, Captain Draper and Captain Frank, formally interrogated Tesch for the first time on September 26, 1945 at the BAOR headquarters in Bad Oeynhausen.[223] From the very beginning, the questions the British asked Tesch concentrated on four areas: Tesch's political convictions and connections, the firm's business activities, the conditions in concentration camps, and Nazi attitudes towards, and extermination of, the Jewish population. During this interrogation, Draper and Frank got Tesch to admit to several facts – that Tesch & Stabenow sold gas to various branches of the Nazi state, that poisonous gases could be used to kill people, that the Nazis killed people with gas in concentration camps – but were not able to connect these facts in such a way to imply that the Zyklon he provided was used in a systematic campaign of murder against the Jews. Even when faced with ample evidence of the Nazi mass murder, Tesch continued to equivocate on whether he believed his gas was involved, stating, "No, I do not believe it. … If you say so, gentlemen, perhaps it is true; you may have better evidence."[224]

Throughout the interrogation of Tesch, Draper and Frank identified Nazi victims almost exclusively as Jews, referring to "the policy to exterminate Jews in a large way," and informing Tesch that "your neck, your life, hangs on the thread of your interpretation of 'vermin.' Now if vermin is interpreted in the way the SS did, that is 'Jews,' you have had it."[225] Furthermore, Draper and Frank framed Nazi actions as a comprehensive plan of murder designed to eliminate European Jews, encompassing both the overall conditions of concentration camps and the gas chambers. The British interrogators not only questioned Tesch about the position of Jews in Nazi

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[223] "Report of Interrogation of Bruno Tesch at Bad Oeynhausen, 26 September 1945," The National Archive of the UK WO 309/1603, October 1945, The National Archives, Kew.
[224] "The National Archive of the UK WO 309/1603."
[225] "Report of Interrogation of Bruno Tesch at Bad Oeynhausen, 26 September 1945," "The National Archive of the UK WO 309/1603."

society, but also asked him about attitudes towards vermin, prompting Tesch to assert, "It is an official duty for humanity to exterminate vermin."[226] In this initial interrogation of Tesch, the two British officers advanced a theory of Tesch's guilt predicated on a Nazi system that considered Jews vermin and directed their elimination as such.[227]

Following this interrogation, the No. 2 WCIT launched an official investigation into Tesch & Stabenow on October 6, 1945, with the stated goals of "establish[ing] that gas and/or equipment distributed by TESTA was delivered to KZ camps where gassing of human beings was carried out and that the gas supplied by the firm was used for this purpose" and "determin[ing] the individual responsibility of the members of the firm TESTA for the deaths of the KZ camp inmates…."[228] To this end, British officials arrested twenty Tesch & Stabenow employees between October 6 and October 20, 1945, including Bruno Tesch, Karl Weinbacher, and Joachim Drosihn, who would eventually stand trial.[229] Most of the employees were interrogated and subsequently released from Altona jail while British investigators put together their case and decided exactly what charges to bring, against whom, and when.

The interrogations of the arrested Tesch & Stabenow employees revealed patterns and themes that eventually formed the backbone of the British prosecution's case. The British investigators questioned Tesch & Stabenow employees on five subjects: the internal

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[226] "The National Archive of the UK WO 309/1603."
[227] "The National Archive of the UK WO 309/1603." For a discussion of the ways in which Nazi ideology viewed Jews as vermin and the resulting influence on policy, see Ebbinghaus, "Der Prozess gegen Tesch und Stabenow. Von der Schädlingsbekämpfung zum Holocaust."
[228] TESTA, or Testa, is the acronym for Tesch & Stabenow. "Object of the Investigation: Report of No. 2 War Crimes Investigation Unit," The National Archive of the UK WO 309/1602.
[229] The following individuals were arrested: Wilhelm Arndt, Hermann Bock; Joachim Drosihn, Johann Holst, Margarete Knickrehm, Gustav Koch, Friedrich Lankenau, Alfred Lesser, August Marcinkowski, Edmund Marso, Johannes Mueller, Wilma Nachtweh, Heinrich Peitsch, Erika Rathcke, Hans Rieck, Josef Schroll, Otto Schultz, Bruno Tesch, Karl Weinbacher, Alfred Zaun. "Method of Investigation: Report of No. 2 War Crimes Investigation Team Concerning Dr. Bruno Tesch and the 'Giftgas' Case," The National Archive of the UK WO 309/1602.

administration of Tesch & Stabenow; Bruno Tesch's personality and interpersonal relationships; Tesch & Stabenow's business activities, including training courses and work in concentration camps; facts about gas and chemistry; and Nazi atrocities. The questions surrounding the internal administration concerned the organizational responsibilities within the firm, and attempted to establish how much oversight and control Tesch and others, namely Weinbacher and Drosihn, exercised over the day-to-day functioning of the firm. Likewise, the questions about Bruno Tesch's personality and relationships tried to gauge how Tesch managed his namesake firm. In these two areas, the employees under arrest provided a consistent picture of Tesch as a highly-involved manager, aware of all aspects of his business, and somewhat difficult to get along with. Indeed, some employees alleged Tesch kept a "black book" about his staff.[230] The only area of disagreement amongst the employees on these topics concerned access to the filing room – some said it was kept locked, others said it was open to all.[231]

The three other topics of questioning – business activities, chemical information, and Nazi atrocities – dealt with specific criminal activity. The No. 2 WCIT was collecting evidence to demonstrate that not only did Tesch & Stabenow supply the lethal gas used in the gas chambers at Auschwitz, but also that the firm's principal managers knew what was happening in concentration camps and to the Jews. Here the British investigators pursued a double line of questioning, suggesting first that the firm's political importance to the Nazi regime – demonstrated by the exemption of Tesch & Stabenow staff from military service, its particular

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[230] "Production No. 10: Statement of Alfred Zaun from the Report of No. 2 War Crimes Investigation Team Concerning Dr. Bruno Tesch and the 'Giftgas' Case;" "Production No. 22: Statement of Gustav Koch from the Report of No. 2 War Crimes Investigation Team Concerning Dr. Bruno Tesch and the 'Giftgas' Case;" "Production No. 29: Statement of Joachim Drosihn from the Report of No. 2 War Crimes Investigation Team Concerning Dr. Bruno Tesch and the 'Giftgas' Case," "The National Archive of the UK WO 309/1602."

[231] "No. 2 WCIT Interrogation Interview Records," "The National Archive of the UK WO 309/1602."

role in the liquidation of the Jews, and its presence in concentration camps – meant that the company had direct, verified knowledge of the Final Solution. Second, the British line of questioning also implied that Tesch & Stabenow employees must have known what was happening to the Jews, simply as citizens living in Germany during the Third Reich, especially when given the quantity of Zyklon B the company was moving. Questions about gassing protocols and chemical toxicity sought to insinuate that the amount of Zyklon B Tesch & Stabenow sold during the war was inherently suspicious.

While no employee under arrest admitted to direct knowledge of mass murder resulting from his/her position at Tesch & Stabenow, assessments of public knowledge and the political climate were mixed.[232] Some employees, including Erika Rathcke, Wilma Nachtweh, Friedrich Lankenau, Otto Schultz, Heinrich Pietsch, Josef Schroll, Alfred Lesser, and Hans Rieck, claimed to have known nothing about gassing or mass murder until after the war and the start of the British occupation, when they learned about it through the media. A few even cited the press coverage of the Belsen trial as their first source of information.[233]

Others, however, suggested that the targeting of the Jews and concentration camp crimes were not well-kept secrets or, at least, should not have come as surprises. Multiple members of the gassing technical staff, including some who swore to have known nothing about the gassing of humans, had carried out fumigation operations in concentration camps during the war.[234]

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[232] Two employees not under arrest, Anna Uenzelmann and Erna Biagini, did provide information about mass murder gleaned during the course of their professional duties.

[233] "Productions No. 7, 8, 9, 14, 15, 16, 17, 19: Statements of Erika Rathcke, Wilma Nachtweh, Friedrich Lankenau, Otto Schultz, Heinrich Pietsch, Josef Schroll, Alfred Lesser, and Hans Rieck, from the Report of No. 2 War Crimes Investigation Team Concerning Dr. Bruno Tesch and the 'Giftgas' Case," The National Archive of the UK WO 309/1602.

[234] "Productions No. 14 – 16, 18 – 22, Statements of Otto Schultz, Heinrich Pietsch, Josef Schroll, Edmund Marso, Hans Rieck, August Marcinkowski, Johannes Mueller, Gustav Koch, from the Report of

Alfred Zaun, the head bookkeeper, acknowledged that he had heard about "Jews and imbeciles" being gassed in 1941 or 1942, but assumed it was a rumor, while gassing technician Gustav Koch stated he was "astonished" at the Zyklon sales figures the British investigators showed him "because there cannot be that quantity of vermin. A gassing expert who being given these figures and who showed no surprise over them must either have been half-witted or must have closed his eyes to them."[235] Initial interviews with employees who were *not* under arrest were even more damning. Former secretary Erna Biagini stated that in December 1942, she had heard rumors in the office that Zyklon B was "not only used against vermin."[236] Accounts clerk Anna Uenzelmann recalled typing a travel report for Tesch, after which he confided to her that Zyklon was being used to kill people.[237]

In addition to interrogating Tesch & Stabenow employees, the No. 2 WCIT also collected evidence and statements from other witnesses, including camp survivors, camp employees, other gassing contractors, and Emil Sehm's friends. The interviews with these witnesses had three functions. The first was to corroborate statements made by key individuals in the case, so Emil Sehm's friends were interviewed about what Sehm told them about Tesch & Stabenow, and other gassing contractors were questioned about the quantities of gas sold by Tesch & Stabenow. The second function was to provide specific evidence against Tesch & Stabenow from

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No. 2 War Crimes Investigation Team Concerning Dr. Bruno Tesch and the 'Giftgas' Case," "The National Archive of the UK WO 309/1602."

[235] "Production No. 10: Statement of Alfred Zaun from the Report of No. 2 War Crimes Investigation Team Concerning Dr. Bruno Tesch and the 'Giftgas' Case;" "Production No 22: Statement of Gustav Koch from the Report of No. 2 War Crimes Investigation Team Concerning Dr. Bruno Tesch and the 'Giftgas' Case," The National Archive of the UK WO 309/1602.

[236] "Production No. 4: Statement of Erna Elisa Biagini from the Report of No. 2 War Crimes Investigation Team Concerning Dr. Bruno Tesch and the 'Giftgas' Case," "The National Archive of the UK WO 309/1602."

[237] "Production No. 5: Statement of Anna Uenzelmann from the Report of No. 2 War Crimes Investigation Team Concerning Dr. Bruno Tesch and the 'Giftgas' Case," "The National Archive of the UK WO 309/1602."

individuals who witnessed or participated in the gassing, and the third was to illuminate the experiences of the victims and the conditions they faced. This third function was critical not only to demonstrate the environment of the Third Reich in which the firm was operating, but also to connect the abstract, paper-based business dealings of the firm with the bloody realities of murder.

The No. 2 WCIT interrogated the three defendants multiple times between their initial arrests in October 1945 and the start of the trial in March 1946. These interrogations were largely similar in substance to the initial interrogation conducted with Tesch, though the No. 2 WCIT staged an elaborate scheme in one interview in hopes of inducing Tesch to incriminate himself to his head bookkeeper, Alfred Zaun, when they thought themselves alone. The plan was to catch the confession on tape, only the British forgot to adjust the hidden microphones to pick up whispers and missed out on the conversation entirely.[238]

At this point, Weinbacher's defenses, such as they were, were largely similar to Tesch's denials. The second in command professed to have known nothing, to have done nothing, and to have been so busy working that he was unable to keep up with sales figures and thus was unaware that the SS was the firm's biggest client.[239] To the extent that gas sales were high, it was only because the camps were "of terrific size," and not because anything untoward was taking place.[240] Even with the news reports and evidence that emerged at the end of the war, Weinbacher claimed the mass murder difficult to believe: "I still don't know whether it is true

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[238] "Discussion of Certain Features: Report of No. 2 War Crimes Investigation Team Concerning Dr. Bruno Tesch and the 'Giftgas' Case," "The National Archive of the UK WO 309/1602."
[239] "Interrogation Record of Karl Weinbacher," 16 October 1945, The National Archive of the UK WO 309/1603; "Production No. 28: Statement of Karl Weinbacher from the Report of No. 2 War Crimes Investigation Team Concerning Dr. Bruno Tesch and the 'Giftgas' Case" 30 October 1945, The National Archive of the UK WO 309/1602.
[240] "Interrogation Record of Karl Weinbacher," 16 October 1945, The National Archive of the UK WO 309/1603.

that people had been gassed. I still like to doubt it. … No, I don't believe it."[241] Weinbacher's attitude extended beyond simple disbelief, as British records note that Weinbacher "was so insolent that special steps had to be taken by the interrogating officer," Anton Walter Freud, though what these "special steps" might have been is not evident from the interrogation transcripts.[242]

Joachim Drosihn, the third defendant, was more cooperative than Tesch or Weinbacher. Like Tesch and Weinbacher, Drosihn denied any knowledge of human gassings. He also claimed ignorance of all sales data by virtue of his position within the company. As chief gassing technician, Drosihn spent most of his time out of the office, traveling for contract gassings, and his was not an executive position. However, Drosihn did spend time in concentration camps, and while he insisted he neither witnessed nor had knowledge of murder in the camps, he did see a prisoner parade at Sachsenhausen, admitted that female prisoners were worked "very hard" at Fürstenberg, and described camp conditions in general as "horrible and not worthy of human dignity."[243] Drosihn was not a Nazi and did not get along particularly well with Tesch, but the documentary record is not sufficient to judge whether Drosihn was truly alarmed by the conditions he observed in the camps, or whether he was merely astute enough to recognize when he was in trouble and to adopt a position more conciliatory than blatant denial.

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[241] "Interrogation Record of Karl Weinbacher," 16 October 1945, "The National Archive of the UK WO 309/1603."

[242] "Value of Evidence of Accused and Certain Witnesses: Report of No. 2 War Crimes Investigation Team Concerning Dr. Bruno Tesch and the 'Giftgas' Case," The National Archive of the UK WO 309/1602.

[243] "Interrogation Record of Joachim Drosihn," 17 October 1945, The National Archive of the UK WO 309/1603; "Production No. 30: Statement of Joachim Drosihn from the Report of No. 2 War Crimes Investigation Team Concerning Dr. Bruno Tesch and the 'Giftgas' Case," 1 November 1945, The National Archive of the UK WO 309/1602.

Together, these interrogations and witness interviews coalesced into a conception of the case based on three central beliefs: first, that the defendants knew that the Zyklon B they sold was being used in murder; second, that the firm profited from the sale of Zyklon B as an instrument of murder; and third, that by selling Zyklon B to the SS, Tesch & Stabenow was participating in an explicit Nazi plan to eliminate all Jews merely because they were Jews.[244] The significance of this last belief cannot be understated, particularly since as late as 1944/45, the British were still debating whether it was even possible to prosecute crimes committed by Germans against German Jews as Jews or non-Allied civilians.[245] Considering that the formal resolution of this question did not come until Control Council Law No. 10 in December 1945 and British Ordinance No. 47, in August 1946, which expanded "Allied nationals" to include German Jews and non-Allied civilians, the *Giftgas* case was ahead of British policy in recognizing Nazi antisemitic persecution and the necessity of recognizing Jewish victims as such.[246] Moreover, this suggests that British policy developed at least in part due to the actions and experiences of British personnel on the ground in occupied Germany.

In the initial case report prepared by the No. 2 WCIT, the investigative team advised that Tesch, Weinbacher, and Drosihn "must be held responsible in their activities as stated if they continued to carry on the business of the firm knowing for what purpose their activities were

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[244] "Facts Established and Imposition of Guilt: Report of No. 2 War Crimes Investigation Team Concerning Dr. Bruno Tesch and the 'Giftgas' Case," The National Archive of the UK WO 309/1602.
[245] Jones, "British Policy Towards German Crimes Against German Jews, 1939–1945." *Hansard Parliamentary Debates*, House of Commons, 4 October 1944, Vol. 403, cc906 – 7; *Hansard Parliamentary Debates,* House of Commons, 10 November 1944, Vol. 404, cc1714-64.
[246] Ordinance No. 47, published in *Military Government Gazette, Germany, British Zone of Control*, No. 13: 306; "Control Council Law No. 10: Punishment of Persons Guilty of War Crimes, Crimes Against Peace and Against Humanity," 20 December 1945, *Documents on Germany under Occupation 1945 – 1954*. Edited and translated by Beate Ruhm von Oppen. (New York: Oxford University Press, 1955), 97 – 101; United Nations War Crimes Commission, *History of the United Nations War Crimes Commission and the Development of the Laws of War*. (London: H.M.S.O., 1948), 214; Jones, "British Policy Towards German Crimes against German Jews," 361 – 363.

being turned."[247] In the opinion of the No. 2 WCIT, sufficient evidence existed to support five specific charges, three against Tesch, and one each against Weinbacher and Drosihn. Against Tesch, the No. 2 WCIT recommended charging him with advising the OKW on the use of gas to kill humans, knowingly supplying Zyklon B to concentration camps for the purpose of murder, and teaching the SS how to use Zyklon for purposes of murder. The No. 2 WCIT suggested Weinbacher also be charged for knowingly supplying Zyklon B to concentration camps for the purpose of murder, and Drosihn for continuing in his position at Tesch & Stabenow with the knowledge that the firm was providing poisonous gas for the purpose of murder.[248]

The British brought charges against the three defendants in late 1945. Initially, despite the recommendations of the No. 2 WCIT, the JAG Legal Staff planned to charge Tesch first and then bring charges against Weinbacher and Drosihn, depending on the outcome of the trial against Tesch. At first, the No. 2 WCIT recommended charging Tesch with providing Zyklon B to concentration camps for murder. [249] However, within a week, members of the Legal Staff began to debate the language of the charge against Tesch and recommended charges against all three – Tesch, Weinbacher, and Drosihn – at the same time.[250] In the reasoning of Group Captain A. G. Somerhough, if tried separately, Tesch, Weinbacher, and Drosihn would call one another as witnesses, to the benefit of the defense. Trying the three together, in Somerhough's opinion, would be more advantageous for the prosecution: "The effect to the Defence of the testimony of Drosihn and Weinbach [sic] will be far more formidable if they appear as witnesses in the case

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[247] "Imposition of Guilt: Report of No. 2 War Crimes Investigation Team Concerning Dr. Bruno Tesch and the 'Giftgas' Case," "The National Archive of the UK WO 309/1602."
[248] Conclusions and Recommendations: Report of No. 2 War Crimes Investigation Team Concerning Dr. Bruno Tesch and the 'Giftgas' Case," "The National Archive of the UK WO 309/1602."
[249] "Memo MD/JAG/FS/76/85, 28 November 1945, Signed H. Shapcott, Brigadier, Military Deputy, JAG," "The National Archive of the UK WO 309/1602."
[250] Group Captain A. G. Somerhough, "Minute of Advice: BAOR/15228/2/C 1386/JAG, 5 December 1945," The National Archive of the UK WO 311/423 September 1945, The National Archives, Kew.

with an untainted background than if they are joined as accused and give precisely the same evidence with the background of the dock."[251] Somerhough's argument won out, and on 21 December 1945, Brigadier H. Shapcott ordered that Bruno Tesch, Karl Weinbacher, and Joachim Drosihn stand trial on the charge of "COMMITTING A WAR CRIME in that they at Hamburg Germany between 1st January 1941 and 31st March 1945 in violation of the laws and usages of war did supply poison gas used for the extermination of Allied nationals interned in concentration camps well knowing that the said gas was to be so used."[252] This language reflected slight changes to the first charge proposed against Tesch, broadening it against all three defendants, but was largely consistent with the suggestions of the No. 2 WCIT; however, the Legal Staff did drop, for unspecified reasons, the No. 2 WCIT's proposed charge for training the SS in the use of Zyklon B.

With the charges established, the case moved to trial. After a few scheduling delays, the trial opened in Hamburg on March 1, 1946, under Judge Advocate C. L. Stirling. Major (later Colonel) G.I.A.D. Draper represented the prosecution, and three German lawyers handled the defense: Otto Zippel represented Bruno Tesch, the owner and director of the firm; Carl Stumme represented Karl Weinbacher, the procurist or second in command; and A. Stegemann represented Joachim Drosihn, the head gassing technician. All three men faced the same charge, and all three pled not guilty.

The fact that the *Giftgas* case made it to trial at all is unexpected and instructive. For an occupation authority that was doing as much as possible to limit its expenditures in Germany and that lacked ideological commitment to war crimes prosecutions, pursuing the Zyklon B case was

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[251] Group Captain A. G. Somerhough, "Minute of Advice: BAOR/15228/2/C 1386/JAG, 5 December 1945," "The National Archive of the UK WO 311/423."
[252] Brigadier H. Shapcott, "Minute of Advice: MD/JAG/FS/76/85, 21 December 1945," "The National Archive of the UK WO 311/423."; "Charge Sheet," The National Archive of the UK WO 235/83.

in some ways a strange decision. Shortly after the end of the war, the British public already had begun to express concern that the war crimes trials would be too slow and costly, inhibit the reconstruction of an independent Germany, and potentially damage Britain's international reputation unless the trials measured up to an impeccable standard. Before the trials even began, government officials wanted to set their end date in order to move on from the war as quickly as possible.[253]

If the British truly wanted to limit their number of cases and to drop one from their docket, the Zyklon B case would have been a reasonable option. British authorities did not begin to investigate Tesch & Stabenow until after the end of the war, unlike the investigations into Ravensbrück that had begun earlier. The case was difficult to prove, especially because a firebombing raid that hit Tesch & Stabenow's Hamburg office had destroyed much of the evidence. The Zyklon B case charged business leaders from a non-Nazi organization – the type of defendant to whom the British were most likely to extend the benefit of the doubt – and focused on accessory acts, rather than individual acts that directly resulted in murder.[254] Most

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[253] Jones, "Nazi Atrocities Against Allied Airmen," 548. *Hansard Parliamentary Debates*, House of Commons, 29 May 1945, Vol. 411, cc34 – 7; JP Wallis, letter to the editor, *The Times (London)*, 25 January 1944, 8; "Trial of War Criminals: Lord Wright on Need for Speedy Action," *The Times (London)*, 26 July 1945, 4. *Hansard Parliamentary Debates*, House of Lords, 15 October 1946, Vol. 143, cc246 – 72. See also Tom Bower, *The Pledge Betrayed: America and Britain and the Denazification of Postwar Germany*. (New York: Doubleday and Company, 1982), 161; Mass Observation FR2424A, "Note on Nuremberg," September 1946, 1; Mass Observation FR2565, "Attitudes to the German People," February 1948, 7. *Hansard Parliamentary Debates*, House of Lords, 15 October 1946, Vol. 143, cc246 – 72; JP Wallis, letter to the editor, *The Times (London)*, 25 January 1944, 8. See also comments of Foreign Office official A. A. E. Franklin from 21 January 1946 quoted in Jones, "Nazi Atrocities Against Allied Airmen," 549 – 550, 565.

[254] Brigadier H. Scott-Barrett, "Memo for Confirmation of Proceedings in Military Court for Bruno Tesch, Karl Weinbacher, and Joachim Drosihn," 5 April 1946, The National Archive of the UK WO 235/641.

Royal Warrant trials succeeded in obtaining convictions only for direct and individual acts of violence, not for systemic mistreatment.[255]

British public opinion was not demanding justice for Tesch & Stabenow's activities, and the civilian defendants were unknown businessmen. The British might have feared that a precedent of charging businesses with war crimes would make British citizens vulnerable elsewhere in the world if their business activities were ever connected with human rights abuses. While Britons knew that the Nazis had gassed Jews and other victims in concentration camps, very few people had heard of Zyklon B or Tesch & Stabenow, unlike the more familiar Bergen-Belsen or General Erich von Manstein. Zyklon had led to few or no British victims, unlike the Natzweiler and Stalag Luft III cases that focused on crimes against British parachutists and airmen.[256] In fact, the gas chambers of Auschwitz and Birkenau left no survivors, unlike the Ravensbrück cases, whose survivors pressed the British to take action. Yet, British justice called Tesch & Stabenow to account, suggesting that even in the absence of the external pressures that galvanized other war crimes prosecutions, revulsion at Nazi mass gassings and a genuine desire for justice were enough to motivate the case.

Unexpected or not, the *Giftgas* case did move to trial. Once the trial began, Major Draper refined the conception of the case developed by the No. 2 WCIT. The prosecution's central argument became that Tesch & Stabenow failed to respect "family honor and rights, individual life, and private property, as well as religious convictions and worship" under Article 46 of the

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[255] Erpel, "Die britischen Ravensbrück-Prozesse 1946 – 1948," 127.
[256] Jones, "Nazi Atrocities against Allied Airmen"; Bloxham, "British War Crimes Trial Policy in Germany, 1945-1957"; Wolfgang Zeuss et al., *Trial of Wolfgang Zeuss [and Others]: The Natzweiler Trial* (London: Hodge, 1949).

Hague Regulations of 1907, and thus had violated the laws and usages of war.[257] Simply put, Tesch and Stabenow committed war crimes.[258] Draper argued from both international and English criminal law and highlighted three "contentions," two factual, one legal, that he intended to demonstrate before the court in order to prove the prosecution's underlying argument. The first contention was that Tesch & Stabenow supplied Zyklon B to concentration camps, where camp staff used the gas to murder people. The second contention was that Tesch, Weinbacher, and Drosihn all knew that this "wholesale extermination of human beings" was taking place and yet they continued to provide Zyklon B to the SS. The third contention, based in the Royal Warrant's interpretation of international law, was that to "knowingly … supply a commodity for the mass extermination of Allied civilian nationals is a war crime, and the people who did it were war criminals for putting the means to commit the actual crime in the hands of those who actually carried it out."[259]

Inherent in the prosecution's approach, and indeed, part of the motivation behind it, was an understanding of the threat Nazism posed to Jews. The Zyklon B trial demonstrates that British investigators and prosecutors recognized that the Nazis singled out Jews for special persecution and murdered them simply for being Jews. Perhaps more than any other case tried under the Royal Warrant, the Zyklon B case proceeded on behalf of Jews as the primary victim group, and the language and strategy of the court reflected this. Although the charges in the Zyklon trial referred to "Allied nationals," in keeping with the terminology of the Royal Warrant, the phrase clearly meant Jews. The focus on Auschwitz and Birkenau excluded the possibility of

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[257] "The Laws of War : Laws and Customs of War on Land (Hague IV); October 18, 1907," accessed August 10, 2015, http://avalon.law.yale.edu/20th_century/hague04.asp.
[258] "Opening Statement of Major G.I.A.D. Draper for the Prosecution," The National Archive of the UK WO 235/83.
[259] "Opening Statement of Major G.I.A.D. Draper for the Prosecution," "The National Archive of the UK WO 235/83."

focusing on British or even Western Allied victims as at other trials, and the British investigators and prosecutors emphasized that the trial centered on Jewish victims. British internal reports and utterances during the course of the trial repeatedly described the victims as Jews, referring frequently to the "killing of Jews."[260] Moreover, the proceedings allowed no illusions as to the fate of the Jews – the British recognized that Jews faced systematic elimination under the Nazis for no reason other than that they were Jews and repeatedly described the genocide with words such as "extermination" and "liquidation."[261]

The prosecution built its case around three categories of documentary evidence and witness testimony as it set out to prove Draper's three contentions: First, Tesch's own written and verbal statements acknowledging the role of Zyklon B in the mass murder of the Jews; second, the firm's business records and account books showing Zyklon sales to Auschwitz; and third, the political and ideological orientation of the Nazi state, including the horrific results of its ideology as enacted in the concentration camps, namely gross and staggering violations of human rights and international criminal law.

Although the indictment had dropped the charge concerning Zyklon training for the SS that the No. 2 War Crimes Investigation Team had suggested, the prosecution focused on these training courses as a way to demonstrate *mens rea*, or criminal intent. Major Draper identified such training courses as one of Tesch & Stabenow's three primary business functions and as one of the points of entry for Tesch & Stabenow employees into concentration camps.[262] While Tesch, Weinbacher, and Drosihn did not face charges for these courses specifically, Draper used

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[260] "Pre-Trial Report of the No. 2 War Crimes Investigation Team," The National Archive of the UK WO 309/1602, September 1945; The National Archive of the UK WO 235/83.
[261] "Charge Sheet;" "Major Draper's Cross-Examination of Defendant Bruno Tesch," The National Archive of the UK WO 235/83.
[262] "Major Draper's Opening Address for the Prosecution," "The National Archive of the UK WO 235/83."

the courses as evidence for his argument that the three defendants knew very well what the gas they provided was being used for and still continued to supply the gas and provide instruction to the perpetrators. Although Tesch and Drosihn denied that they had provided instruction in methods of murder as part of SS trainings, their occurrence was not in dispute. Both Tesch and Drosihn admitted that they led training sessions, numerous Tesch & Stabenow employees testified about the courses, investigators questioned past attendees, and Tesch & Stabenow itself promoted the trainings in publicity materials.[263]

The choices made by the prosecution regarding courtroom strategy and witness selection also reflect this understanding of Jewish victimization. Although the bulk of the prosecution's evidence at the trial came from employee testimony and Tesch & Stabenow's business records, Major Draper also argued at length that given the Nazi state's systematic purging of Jews from public life, the defendants "stretched the limits of human belief" by claiming not to have known that Jews were being murdered or that the increasing amounts of Zyklon B they sold to Auschwitz were being used in those murders – despite acknowledging that the gas was highly poisonous.[264] To demonstrate this, Draper questioned the defendants extensively about conditions for Jews in Nazi Germany, asking about Hitler's statements about Jews, Jewish exclusion from public life, Kristallnacht, the 1941 "liquidation" of Jews in Riga, and the organization, authority, and activities of the SS.[265] Tesch, to his detriment, chose to defend the

[263] "The National Archive of the UK WO 235/83."
[264] "Major Draper's Closing Address for the Prosecution," "The National Archive of the UK WO 235/83."
[265] "Major Draper's Cross-Examination of Defendant Bruno Tesch," "The National Archive of the UK WO 235/83."

Kristallnacht perpetrators as acting in "good faith," while also describing the prisoners at Sachsenhausen as "look[ing] good and quite happy."[266]

While all three of the defendants steadfastly pledged that they had no idea that the Nazi state was murdering Jews, other witnesses – Alfred Zaun, Rudolf Diels, Gustav Koch, Friedrich Grunske, and Charles Sigismund Bendel, in particular – testified that although the details were not known, other than concerning the massacre of Jews in Riga, it was common knowledge in Germany that the state was murdering Jews.[267] According to these witnesses, the genocide of the Jews was not only talked about on trains, in pubs, and at sporting grounds, but was also the subject of jokes among the German people.[268] Perhaps the most significant admission came from Alfred Zaun, the head accountant at Tesch & Stabenow, who was intimately familiar with all of the company's sales and financial transactions. As part of a lengthy stint on the witness stand for the prosecution, Zaun testified that he had "heard some talk in the railway" about the murder of the Jews, and he assumed that if he knew about it, so did everybody else, which would include his boss.[269] Evidence from defense witness Friedrich Grunske, a doctor for the Hygienic Institute, corroborated Zaun's testimony. Under cross-examination by Major Draper, Grunske admitted that he knew Jews were being murdered, though not specifically by Zyklon, and stated that the mass murder was frequently talked about on the streets and on ships.[270]

Even the witnesses – namely the defendants – who maintained throughout the trial that they did not know anything about the mass murder of the Jews until it was revealed during the

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[266] "The National Archive of the UK WO 235/83."
[267] "Testimony of Alfred Zaun;" "Affidavit of Dr. Rudolf Diels;" "Statement of Charles Sigismund Bendel," "The National Archive of the UK WO 309/625" February 1945, The National Archives, Kew; "The National Archive of the UK WO 235/83."
[268] "Affidavit of Dr. Rudolf Diels," The National Archive of the UK WO 309/625.
[269] "Testimony of Alfred Zaun," The National Archive of the UK WO 235/83.
[270] "Testimony of Friedrich Grunske," "The National Archive of the UK WO 235/83."

occupation to their great shock, made statements and testimonies that cast doubt on the extent of their ignorance.[271] Both Tesch and Drosihn admitted that they knew about the massacres of Jews in Riga, conspicuously outside of Germany, although Tesch qualified his admission by claiming that while he had "heard in Riga about the extermination of the Jews, [he] understood they were not German Jews."[272] Drosihn also acknowledged that he knew about the murder of Jews in Riga, and he was more open than Tesch about his visits to concentration camps and other situations he observed. Whereas Drosihn described the conditions he witnessed in Sachsenhausen and Ravensbrück as "horrible and not worthy of human dignity," Tesch stated that he believed "people in concentration camps were quite comfortably treated and happy," though he also referred to camps as "not very pleasant" places where he personally did not wish to stay.[273] Drosihn also testified that he was aware of, and opposed to, the persecution of the Jews, but maintained that until the start of the British occupation, he was not aware of the genocide, which he found quite shocking. Although Drosihn was more forthcoming and believable than Tesch, it seems unlikely that a politically aware individual, working for Tesch & Stabenow with access to concentration camps, could not put together the pieces.

Defendants and witnesses who denied all knowledge of Nazi crimes tended to be inconsistent and self-contradictory, or to stretch the truth in ways that those witnesses who conceded knowledge of the targeting of Jews did not. Although some individuals may have lied about knowing that Jews were being killed, it is unlikely that those who did not and were not likely to face charges, such as Anna Uenzelmann and Erna Biagini did so, and they were quite

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[271] "Affidavit of Bruno Tesch;" "Testimony of Bruno Tesch," "The National Archive of the UK WO 309/1603"; "The National Archive of the UK WO 235/83."
[272] "Interrogation of Bruno Tesch," The National Archive of the UK WO 309/1603.
[273] "Statement of Joachim Drosihn;" "Interrogation of Bruno Tesch," "The National Archive of the UK WO 309/1602"; "The National Archive of the UK WO 309/1603."

clear in their statements against Tesch. The whistleblower Sehm likely had the greatest incentive to exaggerate knowledge, but Tesch stated multiple times that he had done Sehm a favor in hiring him and he did not think Sehm was likely to fabricate a story just to harm him, though the two men did not appear to like one another and clearly did not have a friendly relationship.[274] Witnesses had more incentive to lie in denying knowledge than in pretending to it, and the muddled effects of the latter strategy emerged in the testimonies of Drosihn and especially Tesch.

The prosecution also called witnesses to testify about their personal experiences in the camps in order to establish the level of brutality directed at the victims. While no victims of the gas chambers remained alive to testify, one witness had observed the murders from his position as prisoner-physician to the *Sonderkommando* at Birkenau, the group of prisoners who removed the bodies from the crematoria. Charles Bendel was a Jewish doctor who had been imprisoned at multiple camps. Bendel managed to escape the lethal fate of the rest of the *Sonderkommando*, and he testified in moving detail about the murders he had witnessed, describing the nakedness of the victims, the fear, the "shouting and screams."[275] In response to defense suggestions that the chemicals in question were on site for legitimate disinfection purposes, Bendel simply responded that "there was no disinfection intended, as these people brought into concentration camps were not brought there to be disinfected or kept clean or kept healthy, but to be disposed

[274] "Production No. 31: Statement of Bruno Tesch," 31 October 1945, "The National Archive of the UK WO 309/1602."
[275] "Statement of Charles Sigismund Bendel;" "Testimony of Charles Sigismund Bendel;" "Statement of Charles Sigismund Bendel," The National Archive of the UK WO 309/625; The National Archive of the UK WO 235/83; The National Archive of the UK WO 309/1602, September 1945.

of."[276] For those who did not believe him, Bendel pointed out that the "people who were gassed in Auschwitz … are the witnesses."[277]

The statements of Dr. Ada Bimko, who had been imprisoned at Auschwitz and Bergen-Belsen, supported Bendel's testimony. Bimko previously testified at the Belsen trial, but was unable to travel at the time of the Zyklon B trial due to heart problems. Instead, Bimko's affidavit was accepted by the court and read aloud.[278] Bimko was a Polish dentist who worked as a doctor at Auschwitz.[279] In her testimony, Bimko gave a detailed description of the ways in which individuals were selected for the gas chambers at Auschwitz, identifying arrivals, selection parades, and hospitals as the three avenues for selection for death. From her vantage point as a camp doctor, Bimko described how hospital "patients [were] made to run naked past the selectors and those who could not run quickly or looked ill or poorly developed or in the case of women were ugly, were picked out by any of the selectors present."[280] Significantly, Bimko then goes on to name names, listing twenty individual men and women – doctors, nurses, SS officials, and camp functionaries – who she witnessed participating in crimes at Auschwitz.

From the perpetrator side came the testimony of Perry Broad and Wilhelm Bahr, both Nazi officers who either witnessed or participated in the gassings. Perry Broad served at Auschwitz from 1942 through 1945. He described to the court the first gassing he witnessed in 1942, identifying the victims as Jews. Like Bendel, Broad recounted "shrieking and moaning" coming from the victims, before explaining to the court how the bodies were often burned in the

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[276] "Cross Examination of Charles Sigismund Bendel by Defense Attorney Otto Zippel," The National Archive of the UK WO 235/83.
[277] "Cross Examination of Charles Sigismund Bendel by Defense Attorney Otto Zippel," "The National Archive of the UK WO 235/83."
[278] "Statement of Major Draper," "The National Archive of the UK WO 235/83."
[279] Hadassah Bimko Rosensaft, *Yesterday*.
[280] "Statement of Hadassah 'Ada' Bimko," 9 May 1945, "The National Archive of the UK WO 309/1602."

open air because the crematoria were at capacity.[281] Unlike Broad, Wilhelm Bahr was not merely a witness to the gassings, but personally involved in them at Neuengamme, and he was subsequently executed for war crimes following the Neuengamme trial.[282] He had attended one of Tesch's Zyklon training courses, though he testified that the training was limited to disinfestation and did not include instruction in murder. Bahr admitted to participating in the murder of 200 Soviet POWs, and he described to the court how he administered the gas to the victims. Unlike Bendel and Broad, however, Bahr did not report any screaming, because as soon as he poured the gas into the barracks, he left to take his lunch break. He returned after two hours to load the dead bodies for disposal.[283]

Taken together, the language, arguments, and witness selection suggest that the British not only had a solid understanding of Nazi crimes in 1946, but also were willing to stage a trial on behalf of predominantly Jewish victims who were no longer alive to speak up for themselves. While some of the facts were wrong – for example, Auschwitz did not kill four million people, but closer to 1.1 million – the general picture presented to the court was quite detailed and accurate, down to the distinction between work and death camps.[284] As this was 1946, the British did not have an understanding of Nazi crimes analogous to contemporary understanding of the Holocaust, but prosecutors were far more cognizant of the specificity of Jewish persecution than scholars have suggested. At least in the Zyklon B trial, the British did directly address the Jewish specificity of Nazi crimes.[285]

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[281] "Testimony of Perry Broad," "The National Archive of the UK WO 235/83."
[282] "The National Archive of the UK WO 235/162" March 1946, The National Archives, Kew.
[283] "Statement of Wilhelm Bahr;" "Testimony of Wilhelm Bahr," The National Archive of the UK WO 311/423; The National Archive of the UK WO 235/83.
[284] "Major Draper's Closing Address for the Prosecution," The National Archive of the UK WO 235/83.
[285] Bloxham, *Genocide on Trial*, 75–76.

The defense teams attempted to respond to Draper's arguments with a two-pronged approach. First, defense attorneys Zippel, Stumme, and Stegemann offered the court a re-interpretation of the facts of the case. They argued that the increasingly large amounts of Zyklon delivered to Auschwitz were not inherently suspicious, but merely reflected a particularly large, dirty, or disease-prone camp, or a transit camp with a lot of prisoner turnover moving between camps.[286] All of the men claimed inability to believe that the Nazi state had murdered innocent civilians, and all denied knowledge of such murders prior to the start of the British occupation. They also contended that no direct evidence showed that the gas they sold to Auschwitz was actually used to murder people, rather than for "legitimate" disinfesting purposes.[287]

Second, the defendants contested the legal interpretation offered by the prosecution, disagreeing that the sale of Zyklon constituted a war crime, since both the product and its sale were legal in Germany.[288] As Tesch's attorney Zippel attempted to argue, the three defendants did not violate Article 46 of the Hague Convention of 1907 because they were charged as suppliers and, "only under such circumstances are the laws and usages of war violated in supplying means of destruction if those means by their very nature are tending in the direction of the destruction of life and property. … if those means of destruction can be used for other purposes as well, but quite lawfully and permissibly for those purposes, then such a case of violation of laws and usages of war does not exist."[289] Thus, since Zyklon had legitimate, non-

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[286] "Cross-Examination of Bruno Tesch;" Carl Stumme, "Petition on Behalf of Karl Weinbacher," "The National Archive of the UK WO 235/83." "Dr. Stumme's Closing Statement on Behalf of Karl Weinbacher," "The National Archive of the UK WO 235/83."
[287] "Dr. Zippel's Closing Statement on Behalf of Bruno Tesch," "The National Archive of the UK WO 235/83."
[288] "Dr. Zippel's Closing Statement on Behalf of Bruno Tesch," "The National Archive of the UK WO 235/83."
[289] "Dr. Zippel's Closing Statement on Behalf of Bruno Tesch," "The National Archive of the UK WO 235/83."

lethal uses as a sanitation measure, supplying it was not a war crime, particularly since the sale and use of the gas was legal in Germany.[290]

Moreover, they argued that even *if* using Zyklon were a war crime, which the defense was not prepared to admit, Tesch & Stabenow was not legally responsible, but rather the SS; or, in the case of Weinbacher and Drosihn, the SS and Bruno Tesch.[291] This is where the defense strategies of Weinbacher and Drosihn departed from that of Tesch, as owner and CEO of the company. Both Weinbacher and Drosihn argued that as subordinates to Tesch, they bore no responsibility for any of the firm's decisions, especially criminal acts. Weinbacher was the second in command and legally empowered to act in Tesch's stead in his absence. Thus, Weinbacher's claims that he was first, uninterested in overall sales figures despite his commission and had no idea how much Zyklon was going to concentration camps and second, obviously uninvolved in war crimes because otherwise he would have quit, which he did not and so must be innocent, are stunning in their naïveté and utterly unconvincing. Stumme even tried to argue that Weinbacher's courtroom demeanor was proof of his innocence, because if he had known about mass murder he would not be able to site before the court "in such a tranquil a calm way."[292] For his part, Drosihn's attorney, Dr. Stegemann, argued that Drosihn's job at Tesch & Stabenow was not a supervisory or managerial position, and therefore he was not responsible for the activities of the firm.[293]

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[290] "Dr. Zippel's Closing Statement on Behalf of Bruno Tesch," "The National Archive of the UK WO 235/83."
[291] "Dr. Zippel's Closing Statement on Behalf of Bruno Tesch," "Dr. Stumme's Closing Statement on Behalf of Karl Weinbacher," "Dr. Stegemann's Closing Statement on Behalf of Joachim Drosihn," "The National Archive of the UK WO 235/83."
[292] "Dr. Stumme's Closing Statement on Behalf of Karl Weinbacher," "The National Archive of the UK WO 235/83."
[293] "Dr. Stegemann's Closing Statement on Behalf of Joachim Drosihn," "The National Archive of the UK WO 235/83."

Ultimately it was Bruno Tesch who had the most to prove, and if he demonstrated his innocence, the work of Weinbacher and Drosihn's attorneys would become much easier. In the hands of Zippel, however, Tesch presented a defense that attempted to tiptoe between not incriminating himself and not antagonizing his British captors. Tesch's defense was characterized by a tortuous logic in which he admitted to discrete pieces of information or to hypothetical knowledge, all the while steadfastly denied not only actual knowledge of war crimes, but also even the ability to imagine such crimes. Tesch's statements and testimony attempted to project an image of a gullible, trusting and, frankly rather stupid man, who also woefully lacked curiosity. Considering that Tesch held a doctorate in chemistry and ran a successful chemical sales firm, this portrayal was unconvincing. The Judge Advocate's description of Tesch as a "first class businessman" and "hard master" and observation that "when you realize what kind of a man Dr. Tesch was, it inevitably follows that he must have known every little thing about his business" suggest that this attempt at misrepresentation was not effective.[294]

Following the closing addresses and the Judge Advocate's summing up, the case went to the Court. After 1 hour and 45 minutes of deliberation, the court returned with guilty verdicts for Tesch and Weinbacher, and a not-guilty verdict for Drosihn. The attorneys for Tesch and Weinbacher were then allowed to deliver mitigating statements, and the court took 15 minutes to deliberate before pronouncing death sentences for both Tesch and Weinbacher.[295] Royal Warrant trials did not issue opinions alongside verdicts, but it seems likely that Drosihn was acquitted by virtue of his subordinate position in the firm, whereas the superior positions of Tesch and

[294] "Judge Advocate's Summing Up," The National Archive of the UK WO 235/83.
[295] Findings and Sentences for Bruno Tesch and Karl Weinbacher, "The National Archive of the UK WO 235/83."

Weinbacher, coupled with sales figures and the testimony of Anna Uenzelmann and Erna Biagini that Tesch was aware of the mass murder of the Jews, were too much to dismiss.

Though no official reasoning accompanied the verdicts, military procedure required a British officer to summarize the case and recommend for or against confirmation of the outcome.[296] DJAG Brigadier Hugh Scott-Barrett prepared the trial summation in this instance.[297] After noting the significance of the case as the first to try "those who lent their skill and services to facilitating the gruesome work of the concentration camps and so identified themselves with breaches of the laws on a wholesale scale," rather than those who personally committed murder, Scott-Barrett summarized the prosecution's main argument and detailed its most convincing evidence in points 4 and 5 of the memo.[298] He found four specific pieces of evidence conclusive: first, the testimony of the concentration camp employees who attested to the use of Zyklon B at Auschwitz and Neuengamme; second, the Tesch & Stabenow account books recording sales of Zyklon B to concentration camps in quantities excessive for the disinfestation of clothing; third, the testimony of certain Tesch & Stabenow employees who Scott-Barrett does not name, most likely Uenzelmann and Biagini; and fourth, the letters from the SS helping Tesch & Stabenow acquire new office space following the firebombing of the firm's offices, presented by the prosecution as evidence of the importance of Tesch & Stabenow to the Nazi leadership and thus indicative of Tesch's access to information.[299]

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[296] George Brand, ed., *Trial of Heinrich Gerike, Gustav Claus, Georg Hessling, Richard Demmerich, Werner Noth, Fritz Flint, Hermann Müller, Valentina Bilien: (The Velpke Baby Home Trial)* (London: William Hodge, 1950), xxvi.
[297] DJAG Brigadier Hugh Scott-Barrett, "Summation of Zyklon B Case," 5 April 1946, "The National Archive of the UK WO 235/641."
[298] DJAG Brigadier Hugh Scott-Barrett, "Summation of Zyklon B Case," 5 April 1946, "The National Archive of the UK WO 235/641."
[299] DJAG Brigadier Hugh Scott-Barrett, "Summation of Zyklon B Case," 5 April 1946, "The National Archive of the UK WO 235/641."

After summarizing the defense case, which he notes was "ably and strenuously conducted by German Counsel," Scott-Barrett recommended confirmation of the verdicts and sentences.[300] Upon reading Scott-Barrett's summation, Major-General Nevil Brownjohn concurred, noting that "In sentencing the accused to death, the Court had no doubt that they were both fully aware of the criminal use to which the gas which they provided was being put, and I can see no reason for clemency."[301] Brownjohn forwarded his report, and Field Marshal Bernard Montgomery, Viscount Alamein, issued death warrants ordering the executions of Tesch and Weinbacher on 26 April 1946. The British executed Bruno Tesch and Karl Weinbacher by hanging at the Hameln *Zuchthaus* on 16 May 1946.[302]

Though the *Giftgas* case ended with the execution of Tesch and Weinbacher, the trial left an unexpected legal legacy that extended beyond the immediate postwar period. The Zyklon B trial established two precepts for international criminal law. First, the laws of war apply not only to combatants, military, and political leaders, but also to *anyone* involved in the violation of the rules of warfare, including civilians and businesses. Second, civilians can be held personally liable for any violations, even as an accessory enabling the commission of the crime, rather than as a primary perpetrator.[303] "Aiding and abetting" is thus considered an act of commission under

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[300] DJAG Brigadier Hugh Scott-Barrett, "Summation of Zyklon B Case," 5 April 1946, "The National Archive of the UK WO 235/641."
[301] Major-General Nevil Brownjohn, "Post-Trial Report BAOR/37711/526/A(PS4)," 24 April 1946, "The National Archive of the UK WO 235/83."
[302] "Death Warrants for Bruno Tesch and Karl Weinbacher," "The National Archive of the UK WO 235/83."
[303] In re Agent Orange Product Liability Litigation, 373 F. Supp. 2d 7 (Dist. Court 2005); United Nations War Crime Commission, "Annex 1: British Law Concerning Trials of War Criminals by Military Courts," 115; Matthew Lippman, "Fifty Years after Auschwitz: Prosecutions of Nazi Death Camps Defendants," *Connecticut Journal of International Law Connecticut Journal of International Law* 11, no. 2 (1996): 215; Skinner, "Nuremberg's Legacy Continues," 339–40.

international criminal law and is sufficient to establish liability for genocide and war crimes.[304] Furthermore, the aspects of the Zyklon B case that have proved the most precedential – the Zyklon B training courses for the SS – emerged not from the charges or verdicts themselves, but from the prosecutorial strategy at trial.

As a result, the Zyklon B case has been foundational in cases relating to liability for war crimes and crimes against humanity. The standard set by the Zyklon B case has been reinforced in the decisions of the International Criminal Tribunal for Yugoslavia and raised as precedent in a number of other court cases, as early as 1968.[305] These cases are primarily lawsuits brought under the Alien Tort Claims Act (also known as the Alien Tort Statute) in American courts, which allows non-American nationals to bring actions in American courts concerning violations of international law that took place anywhere in the world.[306] Under the Alien Tort Claims Act, plaintiffs have sued corporations and their representatives for participating in activities as varied as producing Agent Orange, collaborating with apartheid, and profiting from child slavery.[307]

Although the Alien Tort Claims Act dates back to the First Judiciary Act in 1789, the Alien Tort Claims Act was not utilized for human rights law and applied against individuals and non-state actors who committed war crimes and genocide, one of the major legal precepts to

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[304] W. Cory Wanless, "Corporate Liability for International Crimes under Canada's Crimes Against Humanity and War Crimes Act," *Journal of International Criminal Justice*, 2009, 219.
[305] Presbyterian Church of Sudan v. Talisman Energy, Inc. (United States District Court for the Southern District of New York March 19, 2003); United States v. Valentine, 288 F. Supp. 957 (Dist. Court 1968).
[306] Muzaffer Eroglu, *Multinational Enterprises and Tort Liabilities* (Northampton, MA: Edward Elgar Publishing, 2008), 124; Sean D. Murphy, *United States Practice in International Law: 2002-2004* (Cambridge University Press, 2002), 206.
[307] Khulumani v. Barclay National Bank Ltd., No. 05–2141–cv, 05–2326–cv (United States Court of Appeals for the Second Circuit October 12, 2007); Doe v. Nestle, S.A., No. CV 05-5133 SVW (JTLx) (United States District Court for the Central District of California September 8, 2010); Presbyterian Church of Sudan v. Talisman Energy, Inc.; In re Agent Orange Product Liability Litigation, 373 F. Supp. 2d.

emerge from the Zyklon B case, until the last two decades of the twentieth century. [308] In this regard the Zyklon case was supported by the findings of the Flick case under the United States Military Government for Germany in 1947, which charged industrialists for war crimes involving slave labor, spoliation and plunder, theft of Jewish property under "Aryanization" policy, and acting as accessories to the SS in the commission of war crimes.[309] In the Flick case, the American court found that "acts adjudged criminal when done by an officer of the government are criminal also when done by a private individual."[310] By 1995, this precept set by the Zyklon and Flick trials was established as part of the purview of the Alien Tort Claims Act in the *Kadic v. Karadzic* ruling concerning war crimes in Bosnia, thus providing a broader legal forum for war crimes and international human rights violations in the absence of formally convened international proceedings such as the International Military Tribunal at Nuremberg or the International Criminal Tribunal for Rwanda. The *Kadic v. Karadzic* ruling stated that the court "hold[s] that certain forms of conduct violate the laws of nations whether undertaken by those acting under the auspices of a state or only as private individuals."[311]

This ruling in *Kadic v. Karadzic* has further expanded the number and type of cases brought under the Alien Tort Claims Act, some of which have also explicitly drawn on the Zyklon B case, such as the *In Re Agent Orange Product Liability Litigation* case from 2005. Several individual Vietnamese plaintiffs, along with the Vietnam Association for Victims of Agent Orange/Dioxin, brought the *In Re Agent Orange* suit against Dow Chemical and multiple

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[308] Murphy, *United States Practice in International Law*, 206.
[309] Matthew Lippman, "War Crimes Trials of German Industrialists: The 'Other Schindlers,'" *Temple International and Comparative Law Journal Temple International and Comparative Law Journal* 9, no. 2 (1995): 186–206.
[310] United States v. Flick (United States Military Tribunal at Nuremberg December 22, 1947).
[311] Kadic v. Karadzic, No. 94–9035, 94–9069 (United States Court of Appeals, Second Circuit October 13, 1995).

other chemical corporations for damages sustained by the use of Agent Orange and other herbicides during the Vietnam War. *In Re Agent Orange* was ultimately dismissed because the violation of international law in question involving herbicides was not against international law at the time it took place and it did not rise to the level of "conduct so abhorrent as to be readily identifiable as violative of international legal norms and all standards of civilized human conduct," as "the use of such herbicides constitutes conduct of a qualitatively different nature from the mass murder and slavery engaged in by the Nazis."[312] However, the ruling in the case is notable for its spirited rejection of the government contractor defense in international law, which the court grounded in the precedent of the Zyklon B case.[313] The 2004 United States Supreme Court decision in the *Sosa v. Alvarez-Machain* case narrowed the types of cases that can be brought under the Alien Tort Claims Act, limiting jurisdiction to cases that "require any claim based on the present-day law of nations to rest on a norm of international character accepted by the civilized world."[314]

The outcomes of the cases brought under the Alien Tort Claims Act have varied, according to the plaintiffs' claims, the evidence, legal issues, and other factors, but in each case the test for determining when corporate activities become individual criminal accessory acts has been evidence of intention. Emerging from the Zyklon B case's focus on whether Tesch *et alia* knew to what purpose the Zyklon was being put, the courts have consistently required some evidence of *mens rea*, in which aiding and abetting must have been undertaken with some knowledge of the intended outcome, rather than an action taken in good faith that led to criminal

[312] In re Agent Orange Product Liability Litigation, 373 F. Supp. 2d.
[313] In re Agent Orange Product Liability Litigation, 373 F. Supp. 2d at 85–98.
[314] Sosa v. Alvarez-Machain, 542 US 692 (Supreme Court 2004).

conduct.[315] Echoing the Judge Advocate's Summing Up in the Zyklon B case, the *Presbyterian Church of Sudan v. Talisman Energy* case stated:

> According to the International Criminal Tribunal for the former Yugoslavia, participation in a crime is substantial if the criminal act most probably would not have occurred in the same way had not someone acted in the role that the accused in fact assumed. Certain means to carry out crimes constitute substantial assistance, even if the crimes could have been carried out some other way. For example, if there had been no poison gas or gas chambers in the Zyklon B cases, mass exterminations would not have been carried out in the same manner. That being said, some knowledge that the assistance will facilitate the crime is necessary. Such knowledge may be actual or constructive.[316]

What is interesting, however, is that many of the cases that have cited the Zyklon B case as precedent have emphasized an aspect of the case that was not actually part of the charges, but rather part of the prosecution's approach – the training sessions led by Tesch & Stabenow for the SS in the use of Zyklon B.[317] Although the No. 2 WCIT recommended a specific charge for these training courses, the actual charge excluded the trainings and only charged Tesch, Weinbacher, and Drosihn with the supply of "poison gas used for the extermination of allied nationals interned in concentration camps *well knowing* that the said gas was to be so used."[318] The prosecution brought up the training courses as a way to demonstrate that the defendants knew that their business was contributing to mass murder, but the training courses were not an official

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[315] Doe v. Nestle, S.A.; Khulumani v. Barclay National Bank Ltd.; Presbyterian Church of Sudan v. Talisman Energy, Inc.; In re Agent Orange Product Liability Litigation, 373 F. Supp. 2d; Skinner, "Nuremberg's Legacy Continues," 349.

[316] From the Judge Advocate's Summing Up: ""We now come to the real, important question in this case: Was that Zyklon B gas being delivered to Auschwitz with the knowledge of the people in charge of that firm that it was going to be used in the method which I have suggested to you might well amount to a war crime?", "Judge Advocate's Summing Up," "The National Archive of the UK WO 235/83." Presbyterian Church of Sudan v. Talisman Energy, Inc.

[317] In re South African Apartheid Litigation, 617 F. Supp. 2d 228 (Dist. Court 2009); Doe v. Nestle, S.A.; Khulumani v. Barclay National Bank Ltd.

[318] Emphasis added. "Charge Sheet for Bruno Tesch, Karl Weinbacher, and Joachim Drosihn." "The National Archive of the UK WO 235/83."

matter before the court, which the defense was quick to remind the court.[319] The ensuing legal emphasis on the Zyklon training courses suggests two things. First, precedent emerged from both trial outcomes and courtroom strategies, in this case a prosecutorial tactic designed to demonstrate *mens rea*. Second, the subsequent prominence of the training courses for the SS, which the No. 2 War Crimes Investigation Team wanted to include as a separate charge in the indictment, supports the proposition that it was those individuals on the ground in Germany in contact with the evidence who best identified the crimes committed under the Third Reich, rather than the policymakers in the JAG Legal Division.

Although the Royal Warrant trials have largely been dismissed and ignored by historians, the Zyklon B case suggests that these proceedings deserve more balanced treatment. The British commitment to war crimes prosecutions appears greater than generally assumed; the British did recognize the specificity of Jewish persecution under the Nazis; and the Royal Warrant cases continue to exert legal influence. If this analysis seems to support a more positive interpretation of the British war crimes program, my interpretation has a disappointing side. The Zyklon case demonstrates that the British authorities were cognizant of the Nazi animus against the Jews and capable of staging trials that did not carry a direct domestic political benefit, despite the economic cost. This indicates that the British were capable of far more than they accomplished in the pursuit of Nazi criminals after 1945.

[319] "Major Draper's Opening Address for the Prosecution;" "Dr. Zippel's Closing Defense on Behalf of Bruno Tesch," "The National Archive of the UK WO 235/83."

The Baby Farms: Forced Labor and Crimes against Families

Between 1946 and 1948, the British military held three trials to prosecute Nazis for the deliberate neglect of Polish and Soviet children housed in group homes in Velpke, Rühen, and Lefitz. To bolster the war effort, the Nazi regime had imported *Zwangsarbeiter* (forced laborers) to work on farms and in factories in violation of the 1907 Hague Conventions governing the treatment of occupied civilians.[320] When the *Zwangsarbeiter* had children in Germany, local Nazi officials took the children away and placed them into *Ausländerkinderpflegeheime* (foreign children's care homes), such as the three that ended up in the British occupation zone in contemporary Lower Saxony. The British nicknamed these "homes" "baby farms" in reference to the maligned Victorian practice of fostering illegitimate, unwanted, orphaned or impoverished children in group homes that had a financial disincentive to keep the children alive.[321] Children consigned to these homes endured systemic mistreatment at the hands of their German caretakers, resulting in thousands of deaths, including approximately five hundred fatalities between 1943 and 1945 at the three installations on which the British focused.[322]

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[320] "Article 45," "Article 46," The Laws of War : Laws and Customs of War on Land (Hague IV); October 18, 1907.

[321] Gill Rossini, *A History of Adoption in England and Wales 1850- 1961* (Pen and Sword, 2014).

[322] The exact death toll across Germany remains unknown; however, one project has documented at least 400 such facilities, estimating a total loss of 100,000 Polish and Soviet children between 1943 and 1945. At the three sites tried by the British, between 484 and 534 children died – 90 at Velpke, 9 at Lefitz, 35 at the Rühen farm's first location, and 350-400 at Rühen. See Bernhild und Florian Vögel, "Krieg gegen Kinder: Zum Schicksal der Zwangsarbeiterkinder 1943-1945," accessed January 9, 2017, http://krieggegenkinder.de/. Many thanks to Patricia Heberer Rice for bringing this website to my attention. For 19th century British baby farms, see Benjamin Waugh, *Baby-Farming.*, National Society for the Prevention of Cruelty to Children (London: Kegan Paul, Trench, Trübner & Co., 1890). For mortality rates at Velpke, Rühen, and Lefitz, see "Charges listed on United Nations War Crimes Commission Form," The National Archive of the UK WO 311/420, May 1945, The National Archives, Kew; "JAG Memo WCG/15228/2/C.3298/Legal," 17 January 1948; MD/JAG/GS/76/213(1K), 10 February 1948, The National Archive of the UK WO 311/507, April 1947, The National Archives, Kew; Major G.I.A.D. Draper, "Opening Address for the Prosecution," 21 May 1946, The National Archive of the UK WO 235/263: Rühen Baby Case, Proceedings Days 1-4, May 1946, The National Archives, Kew.

The British military charged twenty individuals for "the killing by wilful neglect of a number of children of Polish and Russian nationals."[323] At first glance, the three resulting trials appear to be a simple, straightforward applications of international law concerning the detention and displacement of occupied foreign labor, and indeed, they have been presented that way.[324] However, rather than prosecute the baby farm crimes solely as violations of the 1907 Hague Conventions, the British War Office situated these institutions within the framework of Nazi racial ideology and as part of a system of destruction aimed at racially inferior Poles and Slavs.[325] The deaths of children on baby farms were not merely a consequence of labor violations, but murders resulting from a "policy … [designed] to exterminate the children of displaced persons who were born in the area."[326] The prosecution presented individual criminal acts as taking place within this system, and the defendants as knowing participants in sustaining it.[327] Thus the British constructed a legal demonstration of the role of Nazi racial ideology in war crimes.

GERMAN LABOR NEEDS IN WORLD WAR II

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[323] "Rühen Charge Sheet," The National Archive of the UK WO 235/263: Rühen Baby Case, Proceedings Days 1-4, May 1946, The National Archives, Kew. For Velpke, the charge was "a number of children, Polish nationals," and the Lefitz charge lists the names of nine specific Polish and Russian children. See "Pre-Trial Minute MD/JAG/FS/76/213(1K)," 10 February 1948, The National Archive of the UK WO311/507, 1947 – 1948, The National Archives, Kew and "Arraignment," George Brand. *Trial of Heinrich Gerike, Gustav Claus, Georg Hessling, Richard Demmerich, Werner Noth, Fritz Flint, Hermann Müller, Valentina Bilien: (the Velpke Baby Home Trial)*. London: William Hodge, 1950, 3.
[324] Hersch Lauterpacht, "Foreword," in Brand, *Trial of Heinrich Gerike, Gustav Claus, Georg Hessling, Richard Demmerich, Werner Noth, Fritz Flint, Hermann Müller, Valentina Bilien*, xiii.
[325] "Statement of Facts: Wolfsburg and Rühen," United Nations War Crimes Commission, United Kingdom Charges against German War Criminals, Case No. UK-G/B535, 3035/UK/G/532, 27 April 1946, "The National Archive of the UK WO 311/420."
[326] "Loose Minute: Re War Crimes: Velpke Baby Farm, Rühen Baby Farm," MD/JAG/FS/76/68, 29 January 1946, "The National Archive of the UK WO 311/420."
[327] "Statement of Facts: Wolfsburg and Rühen," United Nations War Crimes Commission, United Kingdom Charges against German War Criminals, Case No. UK-G/B535, 3035/UK/G/532, 27 April 1946, "The National Archive of the UK WO 311/420."

The German practice of importing foreign civilian labor began during World War I. While all of the major belligerents used prisoner of war (POW) labor during the war—a practice later upheld by the 1929 Geneva Conventions—Germany went further.[328] Once the war broke out in 1914, Germany blocked Eastern European civilian workers who were in Germany from returning home.[329] Then in 1916, Germany moved to bolster its labor force by importing 5,000 mostly Jewish workers from Lodz, Poland, and 61,000 workers from Belgium.[330] International public outcry resulted in the Belgian workers' release in 1917, but the Jewish workers remained in Germany.[331] Despite the universal opprobrium, the international community did not punish Germany after the war for these actions, except insofar as they figured in the calculation of reparations**.**

When World War II began, Germany turned again to foreign labor to supplement its workforce. This time, the exploitation of foreign labor took place on a massive scale, with foreigners composing 26% of the German labor force by September 1944. By various degrees of coercion, millions of workers were compelled to serve the German war effort.[332] POWs were again deployed, but the Nazis made much more extensive use of forced civilian labor, which was illegal under the Hague Conventions. This civilian labor took many forms, including the use of concentration camp inmates as slave labor across the Reich. In the occupied territories of the

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[328] "Treaties, States Parties, and Commentaries - Geneva Convention on Prisoners of War, 1929" (1929), https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/52d68d14de6160e0c12563da005fdb1b/eb1571b00daec90ec125641e00402aa6.

[329] Ulrich Herbert, *Hitler's Foreign Workers: Enforced Foreign Labor in Germany under the Third Reich* (Cambridge; New York, NY: Cambridge University Press, 1997), 18–19.

[330] Sophie De Schaepdrijver, "Belgium," in *A Companion to World War I*, ed. John Horne (Chichester, U.K.; Malden, Mass.: Wiley-Blackwell, 2012), 392.

[331] Mark Spoerer and Jochen Fleischhacker, "Forced Laborers in Nazi Germany: Categories, Numbers, and Survivors," *Journal of Interdisciplinary History* 33, no. 2 (October 1, 2002): 170.

[332] Spoerer and Fleischhacker, 172.

East, men and women were forcibly removed from their home countries and sent into Germany to work for the German war effort. The *Ostarbeiter* (Eastern workers) were not slave laborers, who received no compensation for their work, but they were housed in substandard labor camps, subjected to German discipline and control, and paid sub-standard wages.

The Polish and Soviet citizens forced into labor in Germany tended to be young, generally in their early 20s. Half of the Soviet labor force in Germany was female, along with 34.4% of the Polish laborers.[333] One consequence of these demographics was that many women became pregnant, but Nazi policy banned marriage for Eastern workers, preventing them from formalizing relationships.[334] At first, Nazi officials dealt with this "problem" simply by sending pregnant women back to their homes in Eastern Europe. Over time, however, repatriation became a less desirable solution. Officials feared women were getting pregnant just to be sent home, and that once home, they might spread harmful stories about conditions in Germany.[335] Most importantly, however, sending pregnant women home removed trained workers from the labor force, negatively affecting agricultural production.[336] By 1943, as the trajectory of the war changed, Nazi officials were reluctant to lose any labor and decided to retain pregnant workers.[337] Nazi labor policy attempted to minimize disruptions to the workforce by pregnant and postpartum women in two ways. First, Nazi labor policy made an exception to the Criminal

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[333] Spoerer and Fleischhacker, 187, 198–99.
[334] Major G.I.A.D. Draper, "Opening Address for the Prosecution," The National Archive of the UK WO 235/263: Rühen Baby Case, Proceedings Days 1-4; Herbert, *Hitler's Foreign Workers*, 269–70.
[335] Herbert, *Hitler's Foreign Workers*, 270.
[336] Major G.I.A.D. Draper, "Closing Address for the Prosecution," 2 April 1946, Velpke Trial Transcript, Brand, *Trial of Heinrich Gerike, Gustav Claus, Georg Hessling, Richard Demmerich, Werner Noth, Fritz Flint, Hermann Müller, Valentina Bilien*, 318–19.
[337] Evelyn Zegenhagen, "Facilities for Pregnant Foreign Laborers and Their Infants in Germany (1943 - 1945)," in *Symposium Papers* (Children and the Holocaust, United States Holocaust Memorial Museum Center for Advanced Holocaust Studies, 2004), 65–76; Patricia Heberer, *Children during the Holocaust* (Lanham, MD: Rowman AltaMira, 2011), 62–64.

Code and to the 1943 Decree for the Protection of Marriage, Family, and Motherhood to allow—and encourage—abortions for pregnant *Ostarbeiterinnen*.[338] Second, they instructed local authorities to establish *Ausländerkinderpflegestätten* for the children so mothers could return to work within a few weeks, or often only a few days.[339]

CONDITIONS IN THE *KINDERHEIME*

The children's facilities were set up and run by local authorities within factories and local administrative regions known as *Kreise*. The automotive manufacturer Volkswagen initially established a child care facility on the grounds of the production facilities in Wolfsburg, before ultimately relocating it to the nearby town of Rühen. The Velpke and Lefitz baby farms were regional facilities intended for the children of agricultural workers.[340]

The Velpke baby farm opened in the *Kreis* Helmstedt in May 1944. The *Kreisleiter*, Heinrich Gerike, set up the farm on instructions from the *Gauleiter* of Hanover, Hartmann Lauterbacher, who directed Gerike to find a place to house the local, primarily Polish, *Zwangsarbeiterkinder*. Gerike chose two barracks constructed of corrugated iron, located alongside an abandoned quarry on the property of farmer Kurt Velke. These barracks had no

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[338] Gisela Bock, "Racism and Sexism in Nazi Germany: Motherhood, Compulsory Sterilization, and the State," *Signs* 8, no. 3 (1983): 407–8; Jill Stephenson, *Women in Nazi Germany* (Routledge, 2014), 38–40; Samantha Halliday, *Autonomy and Pregnancy: A Comparative Analysis of Compelled Obstetric Intervention* (Routledge, 2016), 102.

[339] Reichsverband der Landkrankkassen, "Rundschreiben Nr. 39/43 St./D: Betr: Rückführung schwangerer ausländischer Arbeitskräfte," 20 February 1943; "Testimony of Gustav Grunhage," 21 May 1946; The National Archive of the UK WO 235/271: Rühen Baby Case, Exhibits 1-20, June 1946, The National Archives, Kew; The National Archive of the UK WO 235/263: Rühen Baby Case, Proceedings Days 1-4; Herbert, *Hitler's Foreign Workers*, 270.

[340] Klaus-Jörg Siegfried, *Rüstungsproduktion und Zwangsarbeit im Volkswagenwerk, 1939-1945: eine Dokumentation* (Campus, 1987); Hans Mommsen and Manfred Grieger, *Das Volkswagenwerk und seine Arbeiter im Dritten Reich* (Econ, 1996).

running water, no electricity, no telephone service, and no medical facilities. The air quality was poor, due to the lack of functional windows, and the indoor temperature fluctuated wildly.[341]

As soon as Gerike requisitioned the barracks, he appointed an administrator, Georg Hessling, and a *Heimleiterin*, or matron, Valentina Bilien. Before the home began accepting children, beds and rudimentary cooking equipment were brought in. Initially, children entered the home approximately ten days after birth. The entrance age eventually rose to four weeks, though some farmers allowed mothers to keep their children longer so long as nobody noticed.[342] With little ability to wash laundry, children went without fresh diapers, clothing, and other linens. The babies were fed rationed and often-sour milk from a communal bottle, the advent of summer brought an invasion of bugs, and the untrained staff lacked the time and/or inclination to get the children out of their shared beds. Thus, the children were malnourished, scrawny, and highly susceptible to the illnesses that passed rapidly from child to child. The Velpke baby farm existed for eight months, during which 90 children are believed to have died out of 134 children who passed through the home.[343] When the baby farm closed in December 1944 because the barracks were needed to accommodate forced laborers at Volkswagen displaced by bombs, the surviving children were transferred to Rühen.[344]

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[341] "Major G.I.A.D Draper, "Opening Address for the Prosecution," 20 March 1946, "Testimony of Kurt Velke," Brand, *Trial of Heinrich Gerike, Gustav Claus, Georg Hessling, Richard Demmerich, Werner Noth, Fritz Flint, Hermann Müller, Valentina Bilien*; United Nations War Crime Commission, *Law Reports of Trials of War Criminals.*, vol. VII, vol. VII; "The National Archive of the UK WO 311/420."
[342] United Nations War Crime Commission, *Law Reports of Trials of War Criminals.*, vol. VII, vol. VII.
[343] "Charges listed on a UN War Crimes Commission Form," The National Archive of the UK WO 311/420.
[344] "Testimony of Kurt Velke," 20 March 1946; "Exhibit H, Interrogation of Hermann Müller," 7 October 1945; "Exhibit M, First Interrogation of Valentina Bilien," 3 October 1945; "Exhibit P, Interrogation of Georg Hessling," 27 September 1945; "Testimony of Alexsandra Misalszek," 25 March 1946; "Testimony of Heinrich Gerike," 26 March 1946, Belsen Trial Transcript, Brand, *Trial of Heinrich Gerike, Gustav Claus, Georg Hessling, Richard Demmerich, Werner Noth, Fritz Flint, Hermann Müller, Valentina Bilien*.

The facility at Lefitz was similar, albeit on a smaller scale, and fewer records have survived. Like Velpke, the Lefitz home was set up to house the children of *Ostarbeiterinnen* working on farms in the surrounding *Kreis*, in its case Dannenberg.[345] Conditions in the two homes were comparable, though perhaps slightly better at Lefitz due to the smaller size. But Lefitz was by no means humane; children reportedly were tied to their beds by the ankle.[346] Unlike at Velpke, where children died throughout the home's existence, deaths at Lefitz clustered in the autumn and winter months of 1944. Without giving notice, the matron, Minna Emma Friederike Grönitz, abruptly stopped arranging for food or making visits to the children's home, owing to a case of "boils on [her] buttocks" that rendered her unable to sit or ride a bicycle. Following the boils, Grönitz supposedly came down with a bout of influenza or pneumonia (sources differ) that kept her bedridden until mid-February 1945.[347] Before Grönitz was removed on 20 January 1945 for dereliction of duty, nine children out of twelve or sixteen had died.[348]

The Rühen baby farm was a much larger facility associated with the Volkswagen plant in Wolfsburg, although it also housed children of agricultural workers from the *Kreis* Gifhorn. In April 1943, Volkswagen, under the leadership of Hans Mayr, established a maternity hospital and day nursery in the *Ostlager* for workers.[349] Initially, the infants were assigned to the daytime

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[345] The National Archive of the UK WO 235/447, May 1948, The National Archives, Kew.
[346] "Deposition of Stanislaw Kowal," 28 October 1947; "Deposition of Zofia Piotrowska," 29 October 1947, "The National Archive of the UK WO 235/447."
[347] "Testimony of Minna Emma Friederike Grönitz," 18 March – 1 April 1948; "Defense Pleadings," "The National Archive of the UK WO 235/447."
[348] "JAG Memo WCG/15228/2/C.3298/Legal," 17 January 1948; "MD/JAG/GS/76/213(1K)," 10 February 1948, The National Archive of the UK WO 311/507.
[349] Major G.I.A.D. Draper, "Opening Address for the Prosecution," 21 May 1946, The National Archive of the UK WO 235/263: Rühen Baby Case, Proceedings Days 1-4.

care of Sister (nurse) Ella Schmidt and returned to their mothers overnight.[350] The *Ostlager* quickly ran out of space as the day nursery grew into a round-the-clock facility for the children of both VW workers and agricultural workers across the *Kreis* Gifhorn. Volkswagen first moved the facility to the Schachtweg in Wolfsburg. During the fourteen months (March 1943-May 1944) the facility was in Wolfsburg (both in the *Ostlager* and the Schachtweg), 35 children died, accounting for 25% of all the children under Volkswagen's care.[351]

Still growing, the home moved in June 1944 to the village of Rühen about five miles outside of Wolfsburg.[352] The Rühen baby farm occupied two wooden barracks that had previously housed Russian POWs.[353] Sister Ella Schmidt remained in control of the baby farm when it moved to Rühen, although her deputy, Sister Kathe Pisters, later took charge for six weeks while Schmidt was on sick leave. One barrack was for newborns, the other for infants over the age of three months. Sister Liesel Bachor headed the newborn barracks, and Sister Hildegard Lammer, had responsibility for the infant barracks.[354] Once in Rühen, the mortality rate skyrocketed, especially for the youngest children. Some 350 – 400 children died at Rühen in the ten months before American soldiers arrived in April 1945.[355]

As at Lefitz and Velpke, conditions at Rühen were deplorable. The indignities extended beyond living conditions. Parental visits at all three installations were usually allowed only for

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[350] The German title of Sister, *Schwester*, refers to nurses, rather than to nuns.
[351] Major G.I.A.D. Draper, "Opening Address for the Prosecution," 21 May 1946, The National Archive of the UK WO 235/263: Rühen Baby Case, Proceedings Days 1-4.
[352] The British use "Rühen" to refer to all three locations, and the charge encompasses crimes in both Wolfsburg and Rühen.
[353] Major G.I.A.D. Draper, "Closing Address for the Prosecution," 2 April 1946, The National Archive of the UK WO 235/270: Rühen Baby Case, Proceedings: Days 30-31, and Closing Addresses, June 22, 1946, The National Archives, Kew.
[354] Major G.I.A.D. Draper, "Opening Address for the Prosecution," 21 May 1946, The National Archive of the UK WO 235/263: Rühen Baby Case, Proceedings Days 1-4.
[355] Major G.I.A.D. Draper, "Opening Address for the Prosecution," 21 May 1946, "The National Archive of the UK WO 235/263: Rühen Baby Case, Proceedings Days 1-4."

mothers and sharply curtailed by restrictive visiting hours and requirements to obtain police permits before traveling.[356] Furthermore, baby farm administrators withheld parents' pay for the "care and upkeep" of their children—1 Reichsmark/day in the case of Velpke, 27 Reichsmarks/child in the case of Rühen—as well as for funeral and burial expenses. Funerals and burials incurred a charge of 15 Reichsmarks at Velpke and 23 Reichsmarks at Rühen, more than a parent typically earned in a week.[357]

These charges, however, often simply enriched local coffers, as the dead children received neither funerals nor proper burials. The children's bodies, in their wooden or cardboard boxes, were barred from the grounds of local cemeteries.[358] If parents wanted their child to be buried in a proper coffin, they had to provide it before the burial; otherwise, the children's bodies went into cardboard boxes that could contain up to six corpses.[359] The graves were mostly unmarked and located in makeshift burial grounds, although some parents tried to install small markers of their own. The Velpke children were buried in a corner of a potato patch adjacent to the town cemetery, and the Rühen children were interred in a burial plot for *Ostarbeiter*. Local officials defended these moves as part of a pre-existing plan to extend the cemetery (Velpke) and

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[356] Robert W. Kesting, "They Cry No More: A Case of War Crimes Against Newborns," *The Polish Review*, 1992, 317.

[357] "Testimony of Hugo Voges," 21 March 1946, Velpke Trial Transcript; "Interrogation of Gustav Claus," 7 October 1945, Velpke Trial Transcript; Major G.I.A.D. Draper, "Closing Address for the Prosecution," 2 April 1946, Velpke Trial Transcript, Brand, *Trial of Heinrich Gerike, Gustav Claus, Georg Hessling, Richard Demmerich, Werner Noth, Fritz Flint, Hermann Müller, Valentina Bilien*, 48–49, 73, 329; Evelyn Zegenhagen, "Facilities for Pregnant Foreign Laborers and Their Infants in Germany (1943 - 1945)"; Dorothy V. Jones, *Toward a Just World: The Critical Years in the Search for International Justice* (Chicago: University of Chicago Press, 2002), 173; The National Archive of the UK WO 235/263: Rühen Baby Case, Proceedings Days 1-4.

[358] The United States Army disinterred many of the graves in Velpke and Rühen and, following postmortem examinations, reburied the children in individual graves, marked with crosses, within the cemetery walls.

[359] "Testimony of Valentina Bilien," 29 March 1946, Velpke Trial Transcript, Brand, *Trial of Heinrich Gerike, Gustav Claus, Georg Hessling, Richard Demmerich, Werner Noth, Fritz Flint, Hermann Müller, Valentina Bilien*; Major G.I.A.D. Draper, "Opening Address for the Prosecution," 21 May 1946, The National Archive of the UK WO 235/263: Rühen Baby Case, Proceedings Days 1-4.

an attempt to respect the children's national heritage by burying them with their compatriots.[360] Moreover, unless the mother had specifically requested to be informed immediately in the event of her child's passing, authorities waited until after the burial to report this news. Without timely notification of a child's death, it was nearly impossible for parents to provide caskets or organize religious rites. During the postwar investigations, British and American troops reburied many of the children in individual graves with proper markers.[361]

The belated parental notification of death was *not* a logistical consequence of efforts to bury the bodies as quickly as possible during time of war. When a child died, the body was held in a designated area to await burial at the gravedigger's convenience or when a critical number of bodies had amassed.[362] At Rühen, Sister Schmidt and her staff stacked the bodies in a small room adjoining the bathroom, where as many as fourteen bodies awaited burial at one time.[363] At Velpke, the matron Bilien designated the second hut for the children's bodies, a hut that she described as "full of old junk, old bedsteads, old wardrobes, etc., and … even worse than the first one; there was no proper window or doors."[364] Without doors, the corpses were at the mercy of the elements, and a dog was able to abscond with one of the bodies—multiple witnesses reported

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[360] "Testimony of Waclaw Maziarz," 21 March 1946, "Testimony of Emma Hoppe," 21 March 1946, "Testimony of Alexsandra Misalszek," 25 March 1946; "Testimony of Martha Justus," 27 March 1946; "Testimony of Werner Noth," 30 March 1946; Dr. Worwerk, "Closing Address for Werner Noth," 2 April 1946, Velpke Trial Transcript, Brand, *Trial of Heinrich Gerike, Gustav Claus, Georg Hessling, Richard Demmerich, Werner Noth, Fritz Flint, Hermann Müller, Valentina Bilien*; "Testimony of Christoph Bar," 22-23 May 1946, The National Archive of the UK WO 235/263: Rühen Baby Case, Proceedings Days 1-4.

[361] Major G.I.A.D. Draper, "Opening Address for the Prosecution," 21 May 1946, Brand, *Trial of Heinrich Gerike, Gustav Claus, Georg Hessling, Richard Demmerich, Werner Noth, Fritz Flint, Hermann Müller, Valentina Bilien*, 6–7.

[362] "Testimony of Valentina Bilien," 29 March 1946, Velpke Trial Transcript, Brand, 239, 258.

[363] Major G.I.A.D. Draper, "Opening Address for the Prosecution," 21 May 1946; "Testimony of Eugenie Wirl," 24 May 1946, The National Archive of the UK WO 235/263: Rühen Baby Case, Proceedings Days 1-4.

[364] "Testimony of Valentina Bilien," 29 March 1946, Velpke Trial Transcript, Brand, *Trial of Heinrich Gerike, Gustav Claus, Georg Hessling, Richard Demmerich, Werner Noth, Fritz Flint, Hermann Müller, Valentina Bilien*, 258–60.

seeing the bloodied, hairy skull of a child alternately in the mouth of a dog or lying on the ground near the barracks of the baby farm, leading to a police report.[365]

These cesspools of neglect functioned right up to the arrival of Allied forces in western Germany in April 1945. The American Army began collecting evidence as it encountered the baby farms at Rühen and Lefitz and the abandoned barracks in Velpke. US soldiers took photographs of the conditions they found and exhumed some of the children's bodies for post-mortem examinations.[366] When the Americans withdrew from the area and turned it over to British administration, the Americans passed on the evidence they had collected about the baby farms. These American materials formed the basis for the British investigations.

JURISDICTION

As the British began investigating baby farms, one of the first questions was whether the baby farm cases fell under British jurisdiction. Postwar agreements called for Poland to try cases involving exclusively or predominantly Polish victims, and the Polish government in Warsaw requested to try the Velpke case for this reason.[367] However, the War Office lobbied the Foreign Office to retain the cases, reflecting a commitment on the part of the JAG office to prosecuting acts that demonstrated the criminal workings of the Nazi state. In making its case, the War Office began formulating an argument that Major G.I.A.D. Draper later developed in the Velpke trial,

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[365] Major G.I.A.D. Draper, "Opening Address for the Prosecution," 20 March 1946; "Testimony of Stanislawa Slomian," 20 March, "Testimony of Valeria Nowak," 20 March 1946; "Testimony of Wilhelm Munnig," 21 March 1946; "Testimony of Georg Hessling," 28 March 1946; Major G.I.A.D. Draper, 'Closing Address for the Prosecution, 2 April 1946,' Brand, *Trial of Heinrich Gerike, Gustav Claus, Georg Hessling, Richard Demmerich, Werner Noth, Fritz Flint, Hermann Müller, Valentina Bilien*.

[366] "Testimony of Alexsandra Misalsek," 25 March 1946, Brand, *Trial of Heinrich Gerike, Gustav Claus, Georg Hessling, Richard Demmerich, Werner Noth, Fritz Flint, Hermann Müller, Valentina Bilien*; "Deposition of Boleslaw Miazdzyk, 28 October 1947,The National Archive of the UK WO 311/507; Major G.I.A.D. Draper, "Opening Address for the Prosecution," 20 March 1946, Rühen, The National Archive of the UK WO 235/263: Rühen Baby Case, Proceedings Days 1-4.

[367] Colonel Henry Shapcott, "Memo MD/JAG/FS/76/68," 17 December 1945; Major G.I.A.D. Draper, "Memo BAOR/15228/2/C 1047/JAG," 12 December 1945, The National Archive of the UK WO 311/420.

situating the baby farms squarely within Nazi racial ideology: "In my view these 2 camps [Velpke and Rühen] were just as much extermination camps as Auschwitz and Belsen, and I take the view, therefore, that the Commander-in-Chief, British Zone, should try the accused under the Royal Warrant, since the matter goes to the root of the Nazi system, and is not one of individual cruelty by an employer of slave workers against his employees."[368] To the War Office, the baby farms were "analogous to concentration camp cases" and should not be turned over to Poland.[369] The baby farm crimes did not victimize Poles incidentally, but rather targeted Poles and Slavs based on their race, as part of a wider Nazi pattern.

The Foreign Office's primary concern in adjudicating the question of jurisdiction was the nationalities of the victims. If the victims were overwhelmingly Polish, if all the witnesses were Polish, and if all the evidence came from Poles, then the case should be turned over to Poland. If the case included victims of various nationalities, however, that suggested that Nazi crimes transcended national borders. Thus, the British argued the *Kinderheime* crimes should remain under their jurisdiction because they reflected the racialized exterminatory policies of Nazi Germany:

> We feel that if the evidence goes to show after further investigation that the camps were used exclusively or practically exclusively for Poles, we can hardly refuse to hand over those responsible for them to the Polish authorities, despite the fact that, as B.A.O.R. say, the matter goes right to the root of the Nazi system. The truth is that the system applied a policy of extermination to the Poles in a more drastic fashion that to any other race (save Jews and gypsies) and we should not feel justified in preventing the Polish authorities themselves doing justice to persons solely concerned with the carrying out of the policy of exterminating the Polish people. If, however, as paragraph 4 of your letter states, children of other nationalities were exterminated in these camps, we agree that we

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[368] Colonel Henry Shapcott, "Memo MD/JAG/FS/76/68," 17 December 1945, "The National Archive of the UK WO 311/420."

[369] "Memo Re: Phone Conversation between Colonel Halse and Major Thompson," 14 December 1945; "Loose Minute Re: Velpke 'Baby Farm' Case," 17 December 1945; "Loose Minute Re: War Crimes at Velpke and Rühen MD/JAG/FS/76/68," 26 January 1946, "The National Archive of the UK WO 311/420."

> should try the cases ourselves under the Royal Warrant as in the case of Belsen and other concentration camps.[370]

By positioning the baby farms as an integral component of the radical Nazi racial mission, the War Office preserved the baby farm cases for British prosecution.

CHARGES AND DEFENDANTS

With the question of courts and jurisdiction settled, in 1946 the Judge Advocate General's Office began to draw up charges based on the investigative work completed by the American and British war crimes investigators. Since the crux of these cases was the involuntary removal of Polish and Soviet citizens from their homes in areas occupied by Germany to service German labor needs, the cases fell under the purview of Convention IV of the 1907 Hague Conventions, the Convention Respecting the Laws and Customs of War on Land. Signed by France, Germany, Poland, Russia, the United Kingdom, and the United States, among others, the 1907 Hague Conventions were part of a series of international agreements in the early twentieth century that attempted to regulate international relations and warfare, including the Geneva Conventions, the League of Nations Covenant, and the Kellogg-Briand Pact.[371]

For each case, the British brought identical charges of murder, alleging that the defendants "in violation of the laws and usages of war, were concerned in the killing by wilful neglect of a number of children."[372] The Lefitz charge listed nine victims by name, whereas the Velpke and Rühen charges simply referred to "Polish and Russian nationals." The Rühen charge covered crimes committed at both Rühen and in Wolfsburg before the home was relocated. All

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[370] R. A. Beaumont, "Foreign Office Memo U.10415/10415/73," 16 January 1946, "The National Archive of the UK WO 311/420."
[371] The Laws of War: Laws and Customs of War on Land (Hague IV); October 18, 1907.
[372] "Arraignment," 20 March 1946, Velpke Trial Transcript, Brand, *Trial of Heinrich Gerike, Gustav Claus, Georg Hessling, Richard Demmerich, Werner Noth, Fritz Flint, Hermann Müller, Valentina Bilien*, 3; "Rühen Charge Sheet," The National Archive of the UK WO 235/263: Rühen Baby Case, Proceedings Days 1-4; "Lefitz Charge Sheet," "The National Archive of the UK WO 311/507.

the defendants at all three sites faced the same charge, regardless of title or function.

The British brought this murder charge against twenty defendants, ten from Rühen, eight from Velpke, and two from Lefitz, including administrators, medical personnel, matrons, local Nazi leaders, a gravedigger and a local farmer. The matrons, Valentina Bilien at Velpke, Sister Ella Schmidt at Rühen, and Minna Emma Friederike Grönitz at Lefitz, oversaw day-to-day affairs but were not the children's primary caretakers. Each baby farm had a few "helpers" to provide the hands-on daily care, usually teenaged Russian or Polish forced laborers. The matrons did not live with the children or spend nights at the baby farms—their primary responsibilities were to register the children, supervise the "helpers," coordinate policies, and serve as the designated person in charge.

Each of these three matrons came to their position from different backgrounds and experiences. Only one had medical training—Sister Ella Schmidt at Rühen was a nurse, but she did not have any particular experience with children or pediatric care. Grönitz took the position at Lefitz because she thought it would allow her to continue her current work as chauffeur for the midwife, Martha Frohwerk, who was also her roommate.[373] Unlike Schmidt and Grönitz, Valentina Bilien at Velpke did have experience with children, though not infants, as a high school teacher.[374] While Grönitz was willing to take the position as matron because she believed it offered flexible hours, Valentina Bilien did not volunteer for the position.

LEGAL ISSUES

Once the charges were prepared and the cases moved to trial starting in 1946, the British

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[373] Major C.G. Mason, "WCG/15228/2/C.3298/Legal Re: War Crimes, Lefitz Children's Hostel. Grönitz, Minna E.F., Machel, Wilhelmine E.M.," 17 January 1948, The National Archive of the UK WO 311/507.
[374] "Testimony of Frau Valentina Bilien," 29 March 1946, Velpke Trial Transcript, Brand, *Trial of Heinrich Gerike, Gustav Claus, Georg Hessling, Richard Demmerich, Werner Noth, Fritz Flint, Hermann Müller, Valentina Bilien*, 230.

faced two legal issues before arguments began in earnest: one, the crimes were not committed in occupied territory but in Germany; and two, the Third Reich had not itself been a signatory to the 1907 Hague Conventions, which formed the legal basis for the trials. Since the crux of the baby farm cases was the involuntary removal of Polish and Soviet citizens from their homes in areas occupied by Germans to fill German labor needs, legal guidelines restricting the actions of occupying powers were most important.

The 1907 Hague Conventions contained fifteen articles about the administration of occupied territories under Section III, "Military Authority over the Territory of the Hostile State," Convention IV, "the Convention Respecting the Laws and Customs of War on Land." Of these fifteen articles, Articles 43 and 46 were the most relevant for the baby farm trials. Article 43 specifically listed the general responsibilities of the belligerent in occupied countries: "The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country."[375] Article 46 elaborated further, enumerating specific actions that were prohibited on the part of the occupying power, which Germany had violated in the baby farm cases: "Family honour and rights, the lives of persons, and private property, as well as religious convictions and practice, must be respected. …"[376] Articles 43 and 46 were reinforced by the 1929 Geneva Convention that dealt with issues regarding the treatment of prisoners of war, specifically Article 2, which forbade reprisals against prisoners of war and required hostile powers to ensure the safe and

[375] "Article 43," The Laws of War : Laws and Customs of War on Land (Hague IV); October 18, 1907, sec. III.
[376] "Article 46," The Laws of War : Laws and Customs of War on Land (Hague IV); October 18, 1907, sec. III.

humane treatment of POWs, free from "violence and insults."[377]

The location of the victims when the crimes were committed, however, posed a potential problem for using the Hague Conventions to prosecute the baby farms—whether the crimes were committed in occupied territory and were properly considered international rather than domestic crimes. Article 46 of the Hague Conventions limited the permissible actions on the part of the occupying power towards civilians in occupied countries, but given the circumstances of the baby farms and their location in Germany, Article 46 possibly did not apply. The child victims of the baby farms were born in Germany, and their parents remained in Germany after their births. Germany was not then an occupied country, however, and ostensibly Article 46 was not in force there.

Nevertheless, the Judge Advocate General's Office firmly believed that the Hague Conventions, and Article 46, in particular, remained in effect, even in situations the drafters of the Conventions did not anticipate—namely, the forced transfer of occupied civilians into the territory of the belligerent party.[378] During both the preparatory phases and the actual trials, the British vigorously defended the applicability of the Hague Conventions. Article 46 guaranteed protections for individual and family life, and the British prosecution insisted these protections remained in effect even when hostile powers moved individuals out of occupied territories. Once the Nazi state moved civilians into Germany, "family life had come into Germany as a necessary consequence of the operation of war," and when that happened, the state was "equally bound to respect family life and new life born of workers, whether they are in their own country and

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[377] "Article 2," Treaties, States Parties, and Commentaries - Geneva Convention on Prisoners of War, 1929.

[378] Major G.I.A.D. Draper, "Opening Address for the Prosecution," 21 May 1946, "The National Archive of the UK WO 235/263: Rühen Baby Case, Proceedings Days 1-4"; United Nations War Crime Commission, *Law Reports of Trials of War Criminals.*, VII:76–81.

whether they are brought into Germany to work there."[379] Germany could not circumvent the protections afforded to occupied civilians by simply relocating the civilians out of occupied territory. Furthermore, this relocation of occupied civilians was itself illegal under international law, as was the murder of occupied civilians, regardless of where the killing took place.[380] Drawing on *Oppenheim's International Law*, the courts pointed to similar instances of forced labor during World War I and noted that "the whole civilized world stigmatized this cruel practice as an outrage."[381]

A second potential problem arose from the status of Nazi Germany as a signatory to the Hague Conventions. When Germany signed the Conventions in 1907, the country was an imperial monarchy led by Kaiser Wilhelm II. In 1918, the democratic Weimar Republic replaced the imperial government, and then in 1933 the Third Reich under Adolf Hitler supplanted the Weimar Republic. If Nazi Germany was not bound by the agreement made by imperial Germany, then it could be difficult to make a case under the Hague Conventions. Was Nazi Germany still legally bound by an international agreement signed by imperial Germany? The answer, per the Judge Advocate for the Rühen trial, R.G. Dow, was an unequivocal yes. Successor states are subject to the agreements made by their predecessor(s) unless a successor state formally repudiates the agreement by whatever process the agreement itself stipulates. Since neither the Weimar Republic nor the Third Reich ever repudiated the Hague Conventions,

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[379] Major G.I.A.D. Draper, "Opening Address for the Prosecution," 21 May 1946, The National Archive of the UK WO 235/263: Rühen Baby Case, Proceedings Days 1-4.
[380] "Major G.I.A.D. Draper, "Opening Address for the Prosecution," 20 March 1946, Brand, *Trial of Heinrich Gerike, Gustav Claus, Georg Hessling, Richard Demmerich, Werner Noth, Fritz Flint, Hermann Müller, Valentina Bilien*, 8; Major G.I.A.D. Draper, "Opening Address for the Prosecution, 21 May 1946, The National Archive of the UK WO 235/263: Rühen Baby Case, Proceedings Days 1-4; R.G. Dow, "Judge Advocate's Summing Up," 24 June 1946, The National Archive of the UK WO 235/270: Rühen Baby Case, Proceedings: Days 30-31, and Closing Addresses.
[381] Lassa Oppenheim, *International Law: A Treatise*, ed. Hersch Lauterpacht, Sixth, vol. II. Disputes, War and Neutrality (New York: Longmans, Green and Co., 1944), 345–46.

Germany at the end of World War II was still subject to the Conventions even though an earlier government had signed them.[382]

VELPKE

The first baby farm trial, regarding Velpke, opened in Braunschweig on 20 March 1946. Major G.I.A.D. Draper, just off the Zyklon B trial, prosecuted the case. Defense attorneys Drs. Herdegen, Will, Worwerk, and Rogge defended the eight accused: Heinrich Gerike, Georg Hessling, Werner Noth, Hermann Müller, Gustav Claus, Dr. Richard Demmerich, Valentina Bilien, and Fritz Flint, who died mid-trial.[383] The Judge Advocate General's Office decided not to assign a Judge Advocate for the Velpke trial, and instead recruited an officer with legal experience to sit on the Court and advise on legal questions that arose during the trial.[384] Lt. Col. E. Clarke filled that role for the Velpke trial, though he did not provide a Summing Up. Clarke was joined on the Court by four others, including one representative from the Polish military.[385]

Major Draper adopted the War Office's argument about the position of the baby farms within the Nazi racial *Weltanschauung* and made it the centerpiece of his prosecution at the Velpke trial. Draper argued forcefully that the children's separation from their parents and subsequent deaths from starvation, illness, and exposure were intentional due to their origins as children of racially inferior Eastern workers, and not incidental to the conditions of war. The

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[382] R.G. Dow, "Judge Advocate's Summing Up," 21 June 1946, "The National Archive of the UK WO 235/270: Rühen Baby Case, Proceedings: Days 30-31, and Closing Addresses."
[383] Fritz Flint was a member of the Gestapo who died of purulent meningitis midway through the trial. "Testimony of Dr. Anton Worwerk," 27 March 1946, Velpke Trial Transcript, Brand, *Trial of Heinrich Gerike, Gustav Claus, Georg Hessling, Richard Demmerich, Werner Noth, Fritz Flint, Hermann Müller, Valentina Bilien*, 180.
[384] Brigadier Henry Shapcott, "Confidential Memo MD/JAG/F3/76/63(1D)," 2 November 1945, "The National Archive of the UK WO 311/420."
[385] Brigadier Henry Shapcott, "Confidential Memo MD/JAG/F3/76/63(1D)," 2 November 1945, "The National Archive of the UK WO 311/420."

children's deaths resulted from a deliberate plan to which each defendant contributed through his or her individual actions:

> The Prosecution state that these accused, whether he be a Kreisleiter, Bürgermeister, Ortsgruppenleiter, or Gestapo man enforcing the separation, a doctor turning a blind eye to the conditions and doing nothing to improve them, or a matron, all acted, each according to his separate function, in a common plan whereby the infant children of the Eastern workers were not to be allowed to live, and that the neglect was both criminal and wilful, and that it was at all times a deliberate neglect of children, resulting in death which was as much desired as it was intended and which was, in fact, murder.[386]

Draper termed this common plan a "system of wilful neglect," and the creation of and participation in this system became the focal point of his case.[387]

Draper's argument at the Velpke trial centered on Velpke as an example of Nazi racism and the regime's mistreatment of people deemed unworthy of life. Velpke functioned not only as a "system of wilful neglect" run according to a "common plan," involving the local administrators and townspeople of Velpke, but also as part of an even bigger common plan or system implementing the Nazi racial vision. At Velpke, Draper demonstrated, local labor needs and Reich racial policies reinforced each other to bring about the mass murder of small children.

Draper focused his case on first, proving the existence of a "common plan" designed to eliminate the "undesirable … children of Eastern workers," and second, demonstrating the "separate function" of each defendant implicated in the plan. The prosecutor did not mince words when he described the purpose of the children's home in Velpke:

> It is the case for the Prosecution that these children were never meant to live, but by a system of wilful neglect consisting of improper feeding, premature separation, dirty conditions, insufferable heat with shut windows and a stove in a corrugated iron shed in summer, lack of attention in the changing of bedding and clothing and treatment, bed-sores, lack of medical attention, except to sign death certificates, lack of trained nurses, no running water, insufficient hygienic precautions with bottles, sour milk, and too full a

[386] Major G.I.A.D. Draper, "Opening Address for the Prosecution," Velpke Trial Transcript, Brand, *Trial of Heinrich Gerike, Gustav Claus, Georg Hessling, Richard Demmerich, Werner Noth, Fritz Flint, Hermann Müller, Valentina Bilien*, 8.
[387] Major G.I.A.D. Draper, "Opening Address for the Prosecution," Velpke Trial Transcript, Brand, 7.

> diet and failure to nourish either by passing it through the body by vomiting or by diarrhoea; by all these things it was intended that they should die, and die they did.[388]

The goal was to establish the existence of a common plan so conclusively that it would incorporate without question even those defendants who were not involved in the children's daily care.

As the trial progressed, the prosecution placed the defendants into two categories. In the first category were those who had either direct care responsibilities for the children or formal administrative oversight of the home. This included the matron, Valentina Bilien; the doctor, Dr. Richard Demmerich; and two administrators, *Kreisleiter* Heinrich Gerike and Georg Hessling.[389] The other defendants held local leadership positions and knew about, but did not have specific responsibilities for the baby farm, including the Velpke *Bürgermeister* Werner Noth; the *Ortsgruppenleiter* Hermann Müller, who was the highest-ranking Nazi in Velpke; and Gustav Claus, a local farmer. Noth, Müller, and Claus were acquitted, Claus even before the trial concluded.

Gustav Claus was a Nazi Party *Ortsgruppenleiter* in the neighboring village of Papenrode. As such, he was responsible for instructing farmers to send the children born to their *Zwangsarbeiter* to the baby farm in Velpke. Upon receiving such instruction in 1944, one farmer, Hugo Voges, contacted Claus to ask if a child recently born on his farm to Polish laborers Kataryna Pasternak and Johann Biczak could be exempted, as the boy "could well have stayed with its mother who was employed with me as a cook for twelve Polish workers."[390] Claus initially allowed Voges to keep the child with his parents. Another mother on a different

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[388] Major G.I.A.D. Draper, "Opening Address for the Prosecution," Velpke Trial Transcript, Brand, 7.
[389] Prosecutors intended for a second doctor, Dr. Kurt Schliemann, to also face charges relating to Velpke, but he was too ill to stand trial. Major G.I.A.D. Draper, "Opening Speech for the Prosecution," 20 March 1946, Velpke Trial Transcript, Brand, 9.
[390] "Testimony of Hugo Voges," 21 March 1946, Velpke Trial Transcript, Brand, 47–51.

farm, however, had sent her child to the Velpke baby farm as required. When this mother discovered Claus had allowed Voges to keep a child on his farm, Claus then "had to order the removal" of the Biczak child as well, and instructed Voges to withhold half of the father's wages to pay for the child's expenses.[391] The Biczak child, named Johann for his father, died seventeen days after he was admitted to the Velpke *Kinderheim*.[392] Given that this was the extent of the case against Claus, his lawyer, Dr. Rogge, was able to argue successfully that Claus had not known the conditions of the baby farm, would not have sent the child had he known, and had not sent the child malevolently. The Court agreed and released Claus.[393]

Müller and Noth were both charged on the basis of their local leadership positions within Velpke. Both men knew about and visited the baby farm, but neither man had formal responsibilities for the facility.[394] Draper argued that Müller and Noth, as local community leaders who visited the home and found it an inadequate environment for children, committed war crimes in their failure to ameliorate the situation or put a stop to it entirely. Müller and Noth, according to Draper, were guilty by reason of inaction. In his closing statement, Draper insisted that Müller and Noth "could have done a great deal" to improve conditions in the home, though Draper did not specify what, exactly, Müller and Noth could have done. Since Müller and Noth both acknowledged that they opposed the home and "knew perfectly well what the conditions were, that they were bad," Draper insisted that the two were guilty of negligent homicide—their

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[391] "Testimony of Hugo Voges," 21 March 1946, Velpke Trial Transcript, Brand, 47–51.
[392] "Testimony of Hugo Voges," 21 March 1946, Velpke Trial Transcript, Brand, 47–51.
[393] "Acquittal of Gustav Claus," 1 April 1946, Velpke Trial Transcript, Brand, 294.
[394] "Testimony of Stanislawa Slomian," 20 March 1946; "Testimony of Valeria Nowak," 20 March 1946; "Testimony of Anna Siede," 21 March 1946; "Testimony of Alexsandra Misalszek," 25 March 1946; "Testimony of Heinrich Gerike," 25 March 1946; "Testimony of Georg Hessling," 27 March 1946; "Testimony of Valentina Bilien," 29 March 1946; "Testimony of Werner Noth," 30 March 1946; "Testimony of Hermann Müller," 28 March 1946, Velpke Trial Transcript, Brand, 17, 23, 32, 123, 128, 129, 196, 213, 245, 246, 276, 282.

inaction, despite the knowledge and responsibilities they had as *Ortsgruppenleiter* and *Bürgermeister*, rose to the point where the two men became complicit in the system of wilful neglect that led to the deaths of some ninety children.[395]

The attorneys for Müller and Noth, Dr. Ernst Will and Dr. Anton Worwerk, did not dispute their clients' knowledge of the baby farms, but rather argued—separately—that the two men did everything they could to stop the baby farm from being built in their community, and bore no legal responsibility for it. This argument centered around intention and malice, and involved challenging the cause of death for the children, the legal requirements for a crime of omission, and the extent of individual freedom of action in Nazi Germany.

Will and Worwerk claimed that Müller and Noth were not responsible according to the structures of authority in Nazi Germany. As *Ortsgruppenleiter* and *Bürgermeister*, they were local officials, whereas the orders to establish the baby farm came from higher authorities. In Müller's case, as *Ortsgruppenleiter* was a Party position, Will argued that the decision came from the level of the *Kreis* above Müller's head, not the *Ort*, thereby eliminating any possibility of guilt on the part of Müller. For Noth, who held his role as *Bürgermeister* as a local bureaucrat rather than as a Party official (though he was a Party member), Worwerk asserted that the Velpke baby farm fell solely under the command of the Party and out of Noth's control.[396] Absent any formal "legal duties," Will and Worwerk argued, no crime of omission could have been committed—Müller and Noth "cannot be made responsible for anything, even if wrong was done in the Home by other persons."[397]

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[395] Major G.I.A.D. Draper, "Closing Address for the Prosecution," 2 April 1946, Velpke Trial Transcript, Brand, 318–38.
[396] Dr. Worwerk, "Closing Address for Werner Noth," 2 April 1946, Velpke Trial Transcript, Brand, 316.
[397] Dr. Will, "Closing Address for Hermann Mueller, 2 April 1946, Velpke Trial Transcript, Brand, 304.

Furthermore, Will and Worwerk insisted that the court needed to consider the differences between German and British societies if tempted to assign moral responsibility.[398] While the British took for granted the traditions of free speech, such a tradition did not exist in Germany, especially under the Nazis. The Nazi state did not allow for dissent or disagreement, and any deviation from the sanctioned path, the lawyers suggested, was enough to send a person to a concentration camp.[399] In this context, Will and Worwerk argued, Müller and Noth did not have the freedom of action British citizens enjoyed that would have allowed them to take steps against the baby farm, or to do anything other than attempt to quietly disassociate themselves. Will and Worwerk's argument here is similar to the superior orders argument used by defense attorneys in several other trials, except they were arguing that their clients lacked the agency to protest criminal activities, rather than participate in them.

Ultimately, despite the weaknesses of some of Müller and Noth's defenses, their attorneys' arguments about lack of legal responsibility for the *Kinderheim* were enough for the Court to acquit the two men. While Will and Worwerk were indeed correct that the masterminds behind the baby farms were not among those standing trial, their argument that only those with formal roles at the baby farm could be held to account rings hollow. Although Draper effectively demonstrated that Müller and Noth did play roles in the system of wilful neglect, the court deemed that their involvement did not rise to the level of murder. An accessory charge, perhaps, would have had more success against Müller and Noth.

Müller's attorney, Dr. Will, was not content with proving his client's innocence. He also challenged the very idea that the children in these institutions were murdered. Will asserted that

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[398] Dr. Will, "Closing Address for Hermann Müller," 2 April 1946, Velpke Trial Transcript, Brand, 304–5.

[399] Dr. Will, "Closing Address for Hermann Müller," 2 April 1946, Velpke Trial Transcript, Brand, 304.

no one intended to kill the children of the *Ostarbeiterinnen*, because if the goal was murder, baby farms, however inadequate, would not have been necessary. If the objective was the murder of Eastern children, Will suggested it would have been "terribly easy" to simply "draw a blanket over the face of the infant" to kill the child at birth.[400] Therefore, the mere existence of the baby farms supposedly proved the lack of homicidal intent. According to Will, the children did not die because of the inaction of Müller and his co-defendants, but because the war had an overall negative effect on child mortality, and if more *Zwangsarbeiterkinder* died than German children, it was because the *Zwangsarbeiterkinder* were "to a great[er] extent sick" at birth.[401] Will, however, did not make the obvious connection between the (mis)treatment of mothers and the health of their offspring.

Dr. Worwerk, defending Noth, went further than Will to explicitly state that the conditions of the baby farm did not cause the children's deaths. Rather, the children died because they had been separated too soon from their mothers. Noth and the other defendants, Worwerk pointed out, were not involved in those policy decisions, and the individuals who had decided when children were to be removed from their mothers' care were not among the defendants standing trial.[402] Though there is likely an element of truth in Worwerk's argument, especially given the insecurity of the food supply, it strains credulity to suggest that the appalling conditions at Velpke had no bearing on survival.

The four remaining defendants complicate the question about the relationship between formal responsibility for the baby farm and findings of guilt. Three of the four did have formal responsibilities: Valentina Bilien was the matron, Georg Hessling was the "organizer in general,"

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[400] Dr. Will, "Closing Address for Hermann Müller," 2 April 1946, Velpke Trial Transcript, Brand, 303.
[401] Dr. Will, "Closing Address for Hermann Müller," 2 April 1946, Velpke Trial Transcript, Brand, 304.
[402] Dr. Worwerk, "Closing Address for Werner Noth," 2 April 1946, Velpke Trial Transcript, Brand, 316.

and Heinrich Gerike was the administrative director.[403] The fourth, Dr. Richard Demmerich, had no official position at the *Kinderheim*, but became the home's de facto medical supervisor. Unlike Müller and Noth, Demmerich's informal role was significant enough for the Court to consider it equivalent to formal responsibility.[404] However, the sentences for Bilien, Demmerich, Gerike, and Hessling do not correspond with degrees of direct involvement or responsibility. Bilien and Demmerich, the two with the most frequent contact with the children, were sentenced to fifteen and ten years in jail, respectively, whereas Gerike and Hessling, who were not involved in the children's daily care, were sentenced to death. As Draper parsed the system of wilful neglect at trial, guilt was not a simple calculation based on measuring access to the children, but one that accounted for the role of the individual in establishing the conditions that led to the children's deaths.

Heinrich Gerike was the *Kreisleiter* of Helmstedt, an administrative district within the Hanover *Gau* that encompassed Velpke. When the *Gauleiter* of Hanover issued directives for the creation of baby farms, Gerike implemented those instructions. Gerike chose the location in Velpke, appointed Georg Hessling as "organizer in general," and through the Labor Office, enlisted Valentina Bilien as matron.[405] Bilien protested, but did not have a great deal of choice in the matter. Bilien was a *Volksdeutsche*, meaning that she had German ancestry but grown up in Latvia as a native speaker of Russian with little facility with the German language.[406] Upon

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[403] Major G.I.A.D. Draper, "Opening Address for the Prosecution," 20 March 1946, Velpke Trial Transcript, Brand, 5.
[404] "Major G.I.A.D. Draper, "Closing Address for the Prosecution," 2 April 1946, Velpke Trial Transcript, Brand, *Trial of Heinrich Gerike, Gustav Claus, Georg Hessling, Richard Demmerich, Werner Noth, Fritz Flint, Hermann Müller, Valentina Bilien*.
[405] Major G.I.A.D. Draper, "Opening Address for the Prosecution," 20 March 1946, Velpke Trial Transcript, Brand, 4–5.
[406] "First Interrogation of Valentina Bilien by Lt. Col. T. A. Stewart at Vorsfeld Prison," 3 October 1945, Velpke Trial Transcript, Brand, 84–85.

arriving in Helmstedt, she was summoned to the Labor Office to receive a work assignment as the matron for the new children's home in Velpke. Protesting that she lacked the experience necessary to run a children's home, Bilien asked the *Kreisleiter*, Heinrich Gerike, for a different assignment. Gerike refused, telling Bilien the job "was nothing special, [she] only had to buy the foodstuff and a book to register the children in."[407] Two days after receiving her assignment, Bilien made her first trip out to Velpke with Georg Hessling, the administrator appointed by Gerike, to take up a position that ultimately led to murder charges.

To Bilien, Gerike gave three instructions: call a doctor if necessary, do not return the children to their mothers, and do not send the children to the hospital.[408] With that, Gerike left Bilien to care for dozens of infants with the help of a few teenagers in an unheated barrack that lacked running water, electricity, telephone service, and rudimentary medical supplies. Given Bilien's utter lack of qualifications for the position of matron, Gerike's selection of Bilien as matron was itself an act of negligence. Although Gerike never returned to the *Kinderheim* once it began operations, he was regularly informed about the home's functioning and knew about the high mortality rate. Yet, he never took steps to address the situation. As the *Kreisleiter* who established the Velpke baby farm and gave the order for children to be removed from their mothers' care, Gerike could have delegated additional staff, detailed a doctor, or provided necessary supplies. By way of defense, Gerike repeatedly stated he believed the Velpke facility was meant to be a "temporary measure."[409]

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[407] "First Interrogation of Valentina Bilien by Lt. Col. T.A. Stewart at Vorsfeld Prison," 3 October 1945, Velpke Trial Transcript, Brand, 83. See also "Testimony of Fraulein Martha Justus," 27 March 1946, Velpke Trial Transcript; "Testimony of Frau Valentina Bilien," 29 March 1946, Velpke Trial Transcript.
[408] Major G.I.A.D. Draper, "Closing Address for the Prosecution, 2 April 1946, Velpke Trial Transcript, Brand, 321.
[409] "Testimony of Heinrich Gerike," 26 March 1946, Velpke Trial Transcript, Brand, 147, 154, 158.

Gerike selected Georg Hessling as his deputy. Hessling was to administer the baby farm, which entailed managing Bilien and her "staff," such as it was, and handling the finances. As financial manager, Hessling was positioned to know exactly how many children were entering the home and how many children were dying, as he was the one charging parents the "upkeep" and burial fees.[410] Whenever a child died in the *Kinderheim*, Bilien reported the death to Hessling. In turn, Hessling notified the farmer employing the child's parents to collect the 15 Reichsmarks for burial expenses, tracking receipts and issuing collection notices as necessary.[411] Hessling visited the home routinely, giving him a good sense of the conditions. He also received regular complaints and appeals from Bilien, asking to be removed from her post, informing Hessling that the milk was spoilt, the diet was inappropriate for small children, the children were too young, medical care was inaccessible, and most of all, that the mortality rate was excessively high.[412]

Other than Bilien and her assistants, Hessling knew better than anyone just what the children in the Velpke *Kinderheim* were forced to endure. At trial, he claimed to have been "unsatisfied" with the conditions in the home, but when asked "what steps [he] took to save one child's life," Hessling responded "that did not come in my duties."[413] From arrest through sentencing, Hessling never denied that he was aware of the problems with the home or Frau Bilien's dissatisfaction, but he steadfastly maintained that he was only responsible for the home's finances, nothing else:

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[410] "Testimony of Georg Hessling," 28 March 1946, Velpke Trial Transcript, Brand, 202.
[411] "Testimony of Georg Hessling," 28 March 1946, Velpke Trial Transcript, Brand, 205, 214–15.
[412] "First Interrogation of Bilien," 22 March 1946, 87, 88, 90-91; "Interrogation of Hessling," 22 March 1946, 100; "Testimony of Frau Valentina Bilien," 29 March 1946, 251, 260, 261; "Testimony of Frau Elsa Willgerodt," 30 March 1946, 264; Major G.I.A.D. Draper, "Closing Address for the Prosecution," 2 April 1946, 329-330, Brand, 87, 88, 90–91, 100, 251, 260, 261, 264, 329–30.
[413] "Testimony of Georg Hessling," 28 March 1946, Velpke Trial Transcript, Brand, 203.

> Q: When you think back on this terrible occurrence of the great mortality amongst those children, do you feel anything in your conscience at all as to there being anything you might have done differently, or not?
>
> A: I am convinced that everything was done there that we could do. I feel my conscience completely clear because, as I have said, it was my duty only to look after the administration and finances.
>
> Q: Do you feel the least prick of conscience in that in no way and in no case you have been the contributing means of even the death of one little child?
>
> A: I do not feel guilty.[414]

Gerike, however, denied that Hessling's responsibilities were limited exclusively to financial and supply matters. According to Gerike, he selected Hessling as the administrator to oversee all aspects of the Velpke *Kinderheim*, not merely the financial ones.[415] Of course, Gerike was motivated to maximize the responsibilities of others in order to minimize his own, but given the closeness of Hessling's interactions with Bilien and the frequency of his visits to the *Kinderheim*, Gerike's assessment of Hessling's role was likely more accurate than Hessling's own account. Gerike and Hessling were both sentenced to death for their crimes at the Velpke Children's Home, and were hanged on 8 October 1946.[416]

Why did Valentina Bilien and Dr. Richard Demmerich, the only two defendants who interacted with the children both receive lighter sentences than Gerike and Hessling? Bilien, in particular, posed a challenge for Draper and the British JAG team. As the *Heimleiterin* of the Velpke *Kinderheim*, Bilien was with the children almost every day, and ostensibly also had the greatest opportunity to ensure the well-being of the children. If the children were dying at an alarming rate under Bilien's direct care, then surely those deaths were Bilien's responsibility. However, as Draper well knew, Bilien was not involved with the establishment of the

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[414] "Testimony of Georg Hessling," 28 March 1946, Velpke Trial Transcript, Brand, 200.
[415] Major G.I.A.D. Draper, "Closing Speech for the Prosecution," 2 April 1946, Brand, 322, 326, 329.
[416] "Message Form Re: MG/125/PS;" "Death Warrant for Heinrich Gerike;" "Death Warrant for Georg Hessling," The National Archive of the UK WO 309/586, November 1946, The National Archives, Kew.

Kinderheim, but rather found herself assigned to a position of responsibility that she neither created nor wanted.

From the start, Bilien tried to get reassigned, objecting that she was not qualified for, and did not want, the position as matron. Once the first children were placed in the home, Bilien's protests to Hessling and Noth intensified, but to no avail. The matron of the home was acutely aware of just how bad conditions in the facility were, and she did try to improve them. Bilien provided medications for the children, which she paid for out of her own pocket, including charcoal tablets for treating intestinal troubles and ointment for boils.[417] Unsatisfied by the children's diet, Bilien supplemented their food with rice, rice cereal, apples, honey, and juice that she brought from home or paid for herself.[418] For the youngest children, Bilien procured a citrate supplement for milk (*Zitratenmilch*) that was supposedly the closest substitute for breast milk.[419] Citrate milk, however, could also cause the milk to sour more quickly if not prepared correctly, leading one prosecution witness to suggest that the citrate milk was actually the cause of death for many children.[420] Concerns about citrate milk would emerge again at the Rühen trial, but whatever the state of medical knowledge concerning citrate milk for infants at the time, Bilien's use of it at Velpke does not appear malicious.

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[417] "Testimony of Valentina Bilien," 29 March 1946; "Interrogation of Georg Hessling," 22 March 1946; "Testimony of Georg Hessling," 27 March 1946; "Closing Argument in Defense of Valentina Bilien," 2 April 1946; Velpke Trial Transcript, Brand, *Trial of Heinrich Gerike, Gustav Claus, Georg Hessling, Richard Demmerich, Werner Noth, Fritz Flint, Hermann Müller, Valentina Bilien*, 238, 99, 198, 310.
[418] "Further Statement by Valentina Bilien," 22 March 1946; "Testimony by Georg Hessling," 28 March 1946; "Testimony of Valentina Bilien," 29 March 1946, Velpke Trial Transcript, Brand, 106, 214, 255.
[419] "Further Statement by Valentina Bilien," 22 March 1946; "Testimony of Alexsandra Misalszek," 25 March 1946; "Testimony of Dr. Richard Demmerich," 26 March 1946; "Testimony of Georg Hessling," 27 March 1946; "Testimony of Valentina Bilien," 29 March 1946; "Testimony of Frau Dr. Anna Rodehuth," 30 March 1946; "Testimony of Maria Barkemeier," 30 March 1946, Velpke Trial Transcript, Brand, 107, 116, 169, 198, 238, 264, 271.
[420] "Testimony of Alexsandra Misalszek," 25 March 1946; "Testimony of Valentina Bilien," 29 March 1946, Velpke Trial Transcript, Brand, 119–21, 198.

One explanation for Bilien's lighter sentence is that she did not fit neatly into the British understanding of German racial ideology: although she was a *Volksdeutsche*, she identified as Russian and spoke primarily Russian and Polish. Her husband was in a Soviet prison, and she had two children, aged nine and twelve, to care for.[421] Within two months of Bilien's arrival in Helmstedt, in February 1944, she was assigned the matronage of the Velpke baby farm, leaving her children with her parents in Helmstedt while she went to Velpke.[422] Despite Bilien's obvious awareness of the problems at Velpke, she was not in a strong position to press for changes. It was no accident that Bilien, a relative outsider with few local connections, poor German language skills, and two children to support by herself, was assigned to this job that nobody wanted, which her defense attorney, Dr. Will, was quick to point out.[423] While acknowledging these limitations, the prosecution simultaneously argued that Bilien did not do everything possible to help the children under her charge. Never, in her eight months' tenure, did Bilien spend the night at the Velpke baby farm, though her children were being cared for by their grandparents. Instead, she returned to her flat every night, leaving her teenaged assistants to care for the children overnight – the same untrained, inexperienced teenagers who also provided most of the daytime care. Moreover, Bilien regularly left Velpke and the baby farm to go into Helmstedt to shop, visit her children, and meet with Hessling about the *Kinderheim*. Bilien testified that she was never absent from Velpke for more than two days at a time, but her absences were evidently frequent enough to spark local rumors of an affair between Hessling and herself.[424]

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[421] "First Interrogation of Valentina Bilien," 22 March 1946, Velpke Trial Transcript, Brand, 92.
[422] "Testimony of Valentina Bilien," 29 March 1946, Velpke Trial Transcript, Brand, 230.
[423] "Testimony of Valentina Bilien," 29 March 1946; Dr. Will, "Closing Argument in Defense of Valentina Bilien," 2 April 1946, Velpke Trial Transcript, Brand, 244, 307.
[424] Major G.I.A.D. Draper, "Opening Address for the Prosecution," 20 March 1946, "Interrogation of Werner Noth," 22 March 1946; "Testimony of Valentina Bilien," 29 March 1946, Velpke Trial Transcript, Brand, xvii, 68-69, 237.

Bilien's case, therefore, came down to whether her superior orders were exculpatory or merely mitigatory. For Bilien's defense attorney, Dr. Ernst Will, the superior orders, in combination with Bilien's efforts to improve conditions for the children, were clearly exculpatory. Dr. Will argued that Bilien was an intelligent woman, smart enough to recognize that she had no business running a children's home. Bilien did everything she could, according to Will, to get out of the assignment, short of blatant refusal, which Will equated with refusing a military order and likely to earn her a trip to a concentration camp.[425] Moreover, Bilien could not have anticipated that the baby farm would become a de facto "death camp," and could not be held responsible for failing to predict such depravity.[426] Once Bilien assumed her role at Velpke, Will argued, she did everything within her power to care for and help the children, but if she attempted to escalate her complaints above Hessling, "she would very easily have been faced with the prospect of a concentration camp."[427] Will presented Bilien as "a human being of the highest moral qualities," one who found herself in an untenable situation out of her control, and did the best she could—indeed, more than others did—to care for the children.[428]

Draper agreed with many of the individual points Will raised in his defense of Bilien, but drew opposite conclusions and found Bilien's behavior mitigatory, rather than exculpatory. Draper concurred that Bilien was very intelligent: "on one thing the Prosecution and Defence are in agreement—she is a highly intelligent woman, with a trained mind capable of thought, and

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[425] Dr. Will, "Closing Address on Behalf of Valentina Bilien," 2 April 1946, Velpke Trial Transcript, Brand, 307.
[426] Dr. Will, "Closing Address on Behalf of Valentina Bilien," 2 April 1946, Velpke Trial Transcript, Brand, 307.
[427] Dr. Will, "Closing Address on Behalf of Valentina Bilien," 2 April 1946, Velpke Trial Transcript, Brand, 311.
[428] Dr. Will, "Closing Address on Behalf of Valentina Bilien," 2 April 1946, Velpke Trial Transcript, Brand, 311.

that, we say, is a very material point in considering her position in relation to this Home."[429] Bilien's intelligence, however, should have given her some idea of what was likely to happen at Velpke—she was smart enough to know that children would become ill and that she was not qualified to deal with illness on that scale.[430] Most importantly, though, Draper acknowledged that Bilien became matron under duress, and stated that her share of the responsibility was less than that of those who established the baby farm.

Draper's task was to reconcile Bilien the bright but incompetent and negligent matron who oversaw dozens of deaths with Bilien the *Volksdeutsche* who took up the job not on her own initiative, but under orders she tried to avoid. Draper did so in two interconnected ways. First, he reminded the Court that superior orders can never be a "valid defence to a war crime," only a consideration in mitigation.[431] Second, Draper positioned Bilien within the system of wilful neglect to demonstrate for the Court how Bilien's actions directly contributed to children's deaths:

> Although she has said that what she did she did under order, she seems to have had very little idea of service and devotion and sacrifice to duty. If you undertake a task of skill, then in law you are called upon to show the skill of the task that you have undertaken. Bilien took up that job agreedly on an order, and showed a crass and wicked neglect of infant children in that Home, and her neglect, it is contended, was partly responsible with that of others for the deaths of the children. If, as she says, she had to do all these things, or failed to do the things required because of an order from above, then indeed her neglect is wilful because she knew that she ought to have done the things and send the children back, or got the Home closed for lack of facilities. She has told us orders debarred her from taking any such steps. We say, in short, that whatever power those orders had over her they do not render her guiltless of this charge.[432]

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[429] Major G.I.A.D. Draper, "Closing Address for the Prosecution," 2 April 1946, Velpke Trial Transcript, Brand, 332.
[430] Major G.I.A.D. Draper, "Closing Address for the Prosecution," 2 April 1946, Velpke Trial Transcript, Brand, 332.
[431] Major G.I.A.D. Draper, "Closing Address for the Prosecution," 2 April 1946, Velpke Trial Transcript, Brand, 333–34.
[432] Major G.I.A.D. Draper, "Closing Address for the Prosecution, 2 April 1946, Velpke Trial Transcript, Brand, 334.

Essentially, Draper argued that Bilien knew enough to know that what was happening in the *Kinderheim* was wrong, and she should have taken additional measures to stop the abuse rather than accept her position within it. Draper's argument resonated with the court, and Bilien was sentenced to fifteen years in prison, a substantial sentence but less than the death penalty meted out to Gerike and Hessling.

Draper's frequent references to Bilien as an "intelligent woman," as cited above, were not incidental. Rather, these references were part of a sexist argument deployed against Bilien that not only held her to a higher moral standard than her male co-defendants because she was a woman and a mother, but also called her womanhood into question. As a woman, Bilien should have known the responsibilities entailed in running a children's home; as a woman, Bilien should have known how to get doctors to take her messages; as a woman, Bilien should have been a shining exemplar of humanity; as a woman, Bilien should have known the importance of a proper diet for small children—"after you have seen Bilien give her evidence it is difficult to say that she, as a woman, really genuinely did all that she could for these children."[433] At least four of Bilien's male co-defendants (Gerike, Demmerich, Müller, and Hessling) were also parents, but their fatherhood was not considered relevant to the case at hand.[434]

The final defendant convicted of war crimes at Velpke was Dr. Richard Demmerich, who straddled the line between formal and informal responsibilities for the baby farm. Demmerich, unlike Bilien, Gerike, and Hessling, did not have official positions at the *Kinderheim*. Unlike Müller and Noth, however, Demmerich was found guilty for his involvement despite lacking an

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[433] Major G.I.A.D. Draper, "Closing Address for the Prosecution," 2 April 1946, Velpke Trial Transcript, Brand, 334.

[434] "Testimony of Heinrich Gerike," 26 March 1946; "Interrogation of Dr. Demmerich," 22 March 1946; "Testimony of Hermann Müller," 28 March 1946; "Testimony of Georg Hessling," 27 March 1946, Velpke Trial Transcript, Brand, 138, 81, 225, 196.

official position, and received a sentence of ten years' imprisonment. Demmerich was a medical doctor in Velpke, and when he was called up for the *Wehrmacht* in January 1942, Dr. Kurt Schliemann was assigned to cover Demmerich's practice. Schliemann occasionally (very occasionally) treated the children in the *Kinderheim*. When Schliemann became too ill to continue (later rendering him unable to stand trial), Demmerich was discharged from the *Wehrmacht* and returned to Velpke to reopen his practice on 4 September 1944.[435]

When Demmerich arrived back in Velpke, the *Kinderheim* had been in operation since May. After Bilien asked him to sign a death certificate, Demmerich began making regular visits to the children's home on his own initiative.[436] Soon, however, Demmerich stopped making visits to treat the children and went to the *Kinderheim* only to sign death certificates. The few children he examined, he saw in his office in Velpke, requiring Bilien to leave the *Kinderheim* to bring the child to Demmerich. According to the prosecution, most of the care Demmerich provided was for superficial medical issues, such as boils, rather than treatment for the illnesses that were killing the children – acute diarrhea, dysentery, and "catarrh of the intestines."[437]

Demmerich was prosecuted for failing to fulfill his responsibilities as a medical doctor. His defense, provided by Dr. Herdegen, offered two arguments. First, Demmerich did as much as he could for the children, but as the only doctor serving a district usually tended to by five or six doctors, he simply did not have the capacity to provide the ideal level of care to the children in the *Kinderheim*, or to any of his patients. Dr. Herdegen presented several witnesses who testified

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[435] "Testimony of Dr. Richard Demmerich," 26 March 1946, Velpke Trial Transcript, Brand, 159.
[436] "Interrogation of Dr. Demmerich," 4 October 1945, entered into court record 22 March 1946; "Testimony of Dr. Richard Demmerich," 26 - 27 March 1946; Dr. Herdegen, "Closing Address in Defense of Dr. Richard Demmerich," 2 April 1945, Velpke Trial Transcript, Brand, 74–82, 159–79, 295–301.
[437] "Testimony of Dr. Richard Demmerich," 26 March 1945; "Testimony of Georg Hessling," 27 March 1946; "Testimony of Valentina Bilien," 29 March 1946; Major G.I.A.D. Draper, "Closing Address for the Prosecution," 2 April 1946, Velpke Trial Transcript, Brand, 169, 198, 250, 262, 322, 325.

that Demmerich was a good doctor, well-respected by both Germans and "foreigners," but that once he returned to Velpke in 1944, he was simply unable to keep up with the immense medical needs of his district. Second, Herdegen contended that the true cause of the children's deaths was the early separation of the children from their mothers, which was not something Demmerich could treat.[438]

Interestingly, Herdegen did not make a defense argument based on Demmerich's lack of formal instructions regarding the Velpke *Kinderheim*. To prove crimes of neglect, which was the charge in question at the baby farm trials, the prosecution needed to establish that the defendant had a duty to act (or act in a certain way), and that the defendant failed to fulfill that duty.[439] Dr. Worwerk, in his defense of Noth, emphasized the legal significance of a required duty:

> The accused are charged with a certain neglect. We differentiate between two different crimes in criminal law. A crime can be committed both through doing something and through omitting to do something. Such an omission is the case here. A crime of omission can only be the case when it is proved that it was the legal duty of the accused to perform a certain thing—a moral duty would not suffice. Furthermore, it would have to be proved that the accused had violated his legal duties.[440]

The exemption of moral duties would seem to exclude transgressions under the Hippocratic Oath, as well. Given that Demmerich had no orders pertaining to the baby farm, and therefore no formal duties, an argument along these lines would make sense—one would expect to see Herdegen remind the court at every opportunity that Demmerich had no official affiliation with the *Kinderheim*. However, the Prosecution raised this fact before Herdegen did, and when he did bring it up, he did so only in passing as part of his plea for mitigation of sentence after the Court

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[438] Dr. Herdegen, "Closing Defense on Behalf of Dr. Richard Demmerich," 2 April 1946, Velpke Trial Transcript, Brand, 301.
[439] George Brand, "Introduction," Brand, xliii.
[440] Dr. Worwerk, "Closing Address in Defense of Werner Noth," 2 April 1946, Velpke Trial Transcript, Brand, 316.

had already pronounced Demmerich guilty.[441] Lacking an official Judge Advocate and therefore without a Judge Advocate's Summing Up, it is difficult to know exactly how the Court perceived Demmerich's role. The guilty finding, though, suggests that the Court agreed with the Prosecution's stance that in tending to the children at one point, Demmerich "assumed the care of children from their mothers" and therefore "[took] over the burdens, duties, and obligations of motherhood… ."[442] When Demmerich first stepped through the door of the Velpke *Kinderheim*, he essentially took on responsibility for its conditions, for which he could be found legally negligent.

The sentencing pattern for the Velpke *Kinderheim* suggests that the British were not merely punishing proximity to war crimes, but were attempting to identify and punish responsibility for creating and sustaining criminal operations. Of the eight defendants at Velpke, one died before the conclusion of the trial, three were acquitted, and four were found guilty. Death sentences were passed – and carried out – on the two defendants, Gerike and Hessling, with highest institutional responsibility but lowest burden of personal care. Bilien and Demmerich, who had hands-on responsibility for the children's daily welfare, received lesser terms of imprisonment, indicating that the Court understood the two were acting within a system they did not initiate. If the sentences for Bilien and Demmerich are considered relative to the time each was affiliated with the baby farm, Demmerich's ten-year sentence for four months association with the baby farm is a harsher sentence than Bilien's fifteen-year sentence for eight months. With no records surviving from either the court's sentencing deliberations (if any notes were made) and no extant oral histories, the reasoning behind the court's sentences is impossible

[441] Dr. Herdegen, "Plea in Mitigation of Sentence," 3 April 1946, Velpke Trial Transcript, Brand, 340.
[442] Major G.I.A.D. Draper, "Closing Address for the Prosecution," 2 April 1946, Velpke Trial Transcript, Brand, 335–36.

to know. Based on the arguments made at trial, however, it is likely that Bilien's relatively low sentence was an acknowledgement of her limited freedom of action and her efforts to ameliorate the situation, insufficient though they were.

RÜHEN

Rühen was the second *Kinderheim* to go to trial under the British. The proceeding began in Helmstedt on 20 May 1946, two months to the day after the start of the Velpke trial. As with the Velpke trial, the British approached the Rühen *Kinderheim* not as an isolated or incidental violation of international law, but as part of Nazi "racial policy" targeting Polish and Soviet children.[443] Major G.I.A.D. Draper again prosecuted, and he continued to build the argument originally established in the JAG Office's pre-trial preparations and then used in the Velpke trial. Once more, despite the effort to implicate as many as possible of the defendants in the "system of wilful neglect," this argument was most successful at convicting those with clear, formal responsibility for the baby farm. This time, however, the prosecution was not able to convict defendants for creating the baby farm, as with Gerike and Hessling, because of the way the Rühen baby farm was integrated into the administrative structures of the Volkswagen labor camp.

The Rühen *Kinderheim* (which I use, following the language of the charge, to refer to all three locations, first in the Volkswagen *Ostlager*, then the Schachtweg in Wolfsburg, and the final location in Rühen) was initially established as a facility for the children of the *Zwangsarbeiter* assigned to the Volkswagen production plant in Wolfsburg. Because of this connection, the Rühen baby farm was subsumed under the firm's management. The largest of the three baby farms prosecuted by the British, Rühen was under the medical direction of Dr. Hans

[443] Major G.I.A.D. Draper, "Opening Speech for the Prosecution," 21 May 1946, Rühen Trial, The National Archive of the UK WO 235/263: Rühen Baby Case, Proceedings Days 1-4.

Korbel and matronage of Sister Ella Schmidt. Alongside Korbel and Schmidt, the British charged eight others with war crimes at Rühen: Dr. Georg Tyrolt, welfare officer for the Volkswagen Works and Korbel's supervisor; Dr. Willi Ohl, medical doctor who delivered children in the maternity home; Sister Kathe Pisters, a volunteer nurse in the *Kinderheim*; Georg Severin, the Volkswagen Works' *Lagerführer*; Hermann Effe, who transported the corpses from the baby farm to the makeshift cemetery and may have been involved with the burials; Ewald Kuhlmann, the *Hauptlagerführer* responsible for the Volkswagen *Ostlager*; Hans Mayr, the director of the Volkswagen Works; and Sister Liesel Bachor, the infants' matron.[444] Of the ten defendants, seven were acquitted and three were found guilty. The three who were found guilty – Dr. Korbel, Sister Ella Schmidt, and Sister Liesel Bachor – all had formal responsibility for the baby farm and direct involvement in childcare.

Following the acquittals for Müller, Noth, and Claus at Velpke, Draper made adjustments to his argument for the Rühen trial in an attempt to close some of the distance between the local figures and the crimes that occurred daily in the baby farms. First, Draper's rhetorical style changed somewhat – he no longer explicitly referred to a "system of wilful neglect" as he did at Velpke. Although "wilful neglect" was still the key component of the charge, Draper no longer framed the crimes in terms of a system in which the defendants participated. Instead, he tried to demonstrate the personal, direct contributions each defendant made to the intentional neglect of the children – tantamount to murder.[445]

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[444] "Case Synopsis," Rühen Trial; Major G.I.A.D. Draper, "Opening Speech for the Prosecution," 21 May 1946, Rühen Trial, "The National Archive of the UK WO 235/263: Rühen Baby Case, Proceedings Days 1-4."

[445] Major G.I.A.D. Draper, "Opening Address for the Prosecution," 21 May 1946; Draper, "Closing Address for the Prosecution," 24 June 1946, "The National Archive of the UK WO 235/263: Rühen Baby Case, Proceedings Days 1-4"; "The National Archive of the UK WO 235/270: Rühen Baby Case, Proceedings: Days 30-31, and Closing Addresses."

Draper also introduced a new strategy designed to link the criminal activities at the baby farm with the institutionalized norms of the Nazi state. One way Draper did this was by including Nazi abortion policy as evidence of the racially motivated destruction of Poles and Soviets.[446] While abortion remained illegal for German women who carried the next generation of the Aryan race, it was legalized for Polish and Soviet women who carried less racially valuable offspring.[447] Rather than addressing the high death rate in the *Kinderheime*, the "best solution," he contended, was that "abortions should be performed on Polish and Russian women so that the problem of caring for their children would not arise."[448] Although none of the defendants standing trial for Rühen faced charges related to abortions, Draper explicitly connected party-level abortion policy with the Rühen baby farm through Dr. Hans Korbel, who authored a report endorsing abortion for Polish and Soviet women.[449] Abortion policy for *Ostarbeiterinnen* demonstrated that the baby farms, with their reprehensible conditions and devastating death rates, were consistent with Nazi policy and practice.

Draper used Robert Ley in a similar fashion, to integrate the crimes of the baby farm with the crimes and policies of the Third Reich. Ley was a convinced antisemite and ardent Nazi who

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[446] "List of Abortions;" "Document 88/44 (9.8.44) C XIII 1a. P – Abortion on Eastern workers and Polish Women;" "Document 226/1943 (10.9.43) C XIII 1d. m. Subject – Abortion on Eastern Workers;" "The National Archive of the UK WO 235/271: Rühen Baby Case, Exhibits 1-20."

[447] "Testimony of Gustav Grunhage," 21 May 1946; "Testimony of Sister Hildegard Lammer," 25 May – 3 June 1946, "The National Archive of the UK WO 235/263: Rühen Baby Case, Proceedings Days 1-4"; "The National Archive of the UK WO 235/265: Rühen Baby Case, Proceedings Days: 8-12" June 28, 1946, The National Archives, Kew.

[448] Major G.I.A.D. Draper, "Opening Address for the Prosecution," 21 May 1946, "The National Archive of the UK WO 235/263: Rühen Baby Case, Proceedings Days 1-4."

[449] "Report on the Foreign Children's Nursing Home," n.d.; Dr. Volkerding, "Pleading Against Sentence of Dr. Hans Korbel," 7 June 1946; "Sworn Statement of Dr. Hans Korbel," 22 June 1945; "Testimony of Dr. Hans Korbel," 8 June – 12 June 1946, "The National Archive of the UK WO 235/272: Rühen Baby Case, Exhibits 21-50" June 1946, The National Archives, Kew; "The National Archive of the UK WO 235/274: Rühen Baby Case, Petitions" October 1946, The National Archives, Kew; "The National Archive of the UK WO 235/273: Rühen Baby Case, Exhibits 51 - 82" June 1946, The National Archives, Kew; "The National Archive of the UK WO 235/267: Rühen Baby Case, Proceedings Days: 18-21" June 8, 1946, The National Archives, Kew.

headed the *Deutsche Arbeitsfront* (the German Labor Front, or DAF), and then committed suicide following his indictment on war crimes charges before the International Military Tribunal at Nuremberg. The DAF was in charge of Nazi labor policy, including the supervision of foreign forced labor. When the "very awkward problem" of pregnant laborers arose, Ley developed a three-part plan, in conjunction with Dr. Leonardo Conti, involving the end of deportations back to Eastern Europe, legalized abortions, and centralized housing for the children separate from their parents.[450] Draper used Ley, first, to provide a specific source of the policies enacted in the baby farms, and second, to connect the defendants' actions in the local *Kinderheim* with the racial ideology that undergirded the Third Reich. Korbel, Schmidt, and the others treated the foreign children in a neglectful manner consistent with state policy, and therefore their conduct had to have been intentional and deliberate, rather than an unfortunate result of the circumstances of war, thus making the defendants criminally culpable.

Six defense attorneys, Drs. Rogge, Volkerding, Will, Brandes, Mollenhauer, and Brockler, represented the ten Rühen defendants. Two of the six, Rogge and Will, had also served at the Velpke trial. The Rühen trial convicted three defendants: Dr. Korbel, Sister Schmidt, and Sister Bachor. Dr. Korbel and Sister Schmidt were sentenced to death; Sister Bachor received a lighter sentence of five years' imprisonment because she had worked at only one of the three Rühen locations.[451] None of the defendants charged as administrators responsible for the children's welfare and living conditions was found guilty. The defendants who were acquitted, however, including Georg Tyrolt, Georg Severin, and Ewald Kuhlmann, were certainly not naïve

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[450] Major G.I.A.D. Draper, "Opening Address for the Prosecution," 21 May 1946**,** The National Archive of the UK WO 235/263: Rühen Baby Case, Proceedings Days 1-4.

[451] Dr. Hans Korbel was executed on 7 March 1947. Sister Ella Schmidt's life sentence was first commuted to life imprisonment, and then 21 years and finally 15 years. "The National Archive of the UK WO 235/263: Rühen Baby Case, Proceedings Days 1-4."

about the existence or conditions of the Rühen baby farm. Tyrolt arranged for increased food rations and extra linens, and he ordered that sick children be kept in isolation.[452] Severin arranged for the children's bodies to be transported from the *Kinderheim* to the burial ground, handled the billing related to each child's death, and admonished the grave digger not to show mothers where their children were buried.[453] Kuhlmann was instrumental in setting up the original location in the *Ostlager*.[454]

These acts did not translate into convictions, though, as with Hessling and Gerike at Velpke, because of the intermediary role of Volkswagen. Whereas Hessling was the formal administrator of the Velpke *Kinderheim*, Tyrolt and the others held positions within Volkswagen and interacted with the Rühen baby farm as part of their duties at Volkswagen. Unlike Hessling in the rural district of Helmstedt, the Rühen defendants had formal job descriptions that did not include the *Kinderheim*, allowing their attorneys to argue that without official responsibilities, they could not be found criminally negligent.[455] In response to the multiple documents in evidence outlining the organizational responsibilities of the Volkswagen Works (and the welfare department in particular), the defense argued that, "I only want to point out that it says in this plan that every department is to administer its own function independently and that every particular employee is to look out that he does not meddle in the functions of any other

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[452] Dr. Rogge, "Closing Defense on Behalf of Georg Tyrolt," 24 June 1946, "The National Archive of the UK WO 235/269: Rühen Baby Case, Proceedings Days: 27-29" June 19, 1946, The National Archives, Kew.
[453] "Testimony of Georg Severin," 20 June 1946; "Testimony of Hermann Effe," 19 June 1946, "The National Archive of the UK WO 235/269: Rühen Baby Case, Proceedings Days: 27-29."
[454] Judge Advocate R.G. Dow, "Judge Advocate's Summing Up," 24 June 1946, The National Archive of the UK WO 235/270: Rühen Baby Case, Proceedings: Days 30-31, and Closing Addresses.
[455] Dr. Rogge, "Closing Defense on Behalf of Georg Tyrolt," 24 June 1946; Judge Advocate R.G. Dow, "Judge Advocate's Summing Up," 24 June 1946, The National Archive of the UK WO 235/269: Rühen Baby Case, Proceedings Days: 27-29; The National Archive of the UK WO 235/270: Rühen Baby Case, Proceedings: Days 30-31, and Closing Addresses.

department. There was a clear distinction made between the department general administration and the other department, public health, … Furthermore it has been proved that [they] neither had the duty nor the right to meddle in these matters in any capacity, whatever happened."[456] Without assigned duties relating to the baby farm, the defendants could neither be held responsible for what happened there, nor punished for failing to take contrary action. Running the Rühen *Kinderheim* through Volkswagen—a decision more likely born of practicality than cunning—made convicting anyone on a charge of wilful neglect quite difficult unless s/he was in a formal position of responsibility or directly involved in childcare.

LEFITZ

The third baby farm case, the trial for the Lefitz Children's Hostel, took place almost two years after the Velpke and Rühen trials, and close to three years after the end of the war. The Lefitz administrator, Wilhelmine Elisabeth Magdalene Machel, and the matron, Minna Emma Friederike Grönitz, faced charges related to the deaths of nine children in 1944, resulting in a death rate between 56% and 75%, depending on how many children were in the home – reported to be between 12 and 16.[457] The Lefitz case was not prosecuted by a military officer, as in most trials held under the Royal Warrant, but by a civilian barrister, W.P. Grieve, who earned six guineas per day for his services.[458] Machel was acquitted of the charge against her, although the Judge Advocate, Lt. Col. John Henry Lancelot Aubrey-Fletcher, declined to dismiss the charge mid-trial. The matron Grönitz was found guilty and sentenced to six months' imprisonment. Unlike the Velpke and Rühen trials, the Lefitz trial did not result from British investigative

[456] Dr. Brockler, "Closing Speech in Defense of Georg Severin," 22 June 1946, The National Archive of the UK WO 235/270: Rühen Baby Case, Proceedings: Days 30-31, and Closing Addresses.
[457] JAG Memo WCG/15228/2/C.3298/Legal, 17 January 1948, The National Archive of the UK WO 311/507.
[458] Lt. Col. G. Barratt, "Memo MD/JAG/FS/76/213 Re: Lefitz Children's Hostel Case," 10 March 1948, "The National Archive of the UK WO 311/507."

activities, but from local German inquiries. The resulting trial was a mess of insular drama motivated by postwar grievances and political disagreements.

Following the collapse of the Third Reich in May 1945, Franz Pöpel became the acting *Bürgermeister* of Clenze in the *Kreis Dannenberg*, where Lefitz was located. Residents of Clenze told Pöpel about what had gone on in Lefitz during the war. Local carpenter Adolf Büsch and farmer Heinrich Koopmann led the complaints concerning Walter Schulz, the former *Bürgermeister* of Lefitz, and Minna Grönitz, the matron of the Lefitz *Kinderheim*. Pöpel assigned *Polizeimeister* Wilhelm Hienen to investigate.[459] Following this investigation, details about the extent of which unfortunately have not survived, Pöpel concluded, "it appeared beyond doubt that the imputations raised against Miss Grönitz were without foundation," suggesting that the accusations against her stemmed from the "insincere rural people's" dislike of Grönitz's "unconcerned upright manner of urbane life"—i.e., Grönitz's rumored lesbian relationship with her roommate.[460] Pöpel believed Büsch was targeting Walter Schulz as part of a personal grudge, and Pöpel deplored what he considered the politicization of children's deaths for personal vendettas. Accepting that "the mortality among the children at the said time was due to pneumonic plague with which the inmates of the Home were infected," Pöpel rationalized that, "if there was not sufficient help at the right moment this was not the fault either of Miss Grönitz or Mr. Schulz; it was the District Party Office that failed, which was convinced of the

[459] "Letter from Franz Pöpel to *Polizeiwachtmeister* Thomann," 22 July 1947, "The National Archive of the UK WO 235/447."
[460] "Letter from Franz Pöpel to *Polizeiwachtmeister* Thomann," 22 July 1947; "Affidavit of Franz Pöpel," 15 March 1948, "The National Archive of the UK WO 235/447."

nationasocialist [sic] idea of the German superman."[461] As a result, Pöpel "did nothing in this manner" against Machel, Grönitz, or Walter Schulz.[462]

Unsatisfied, Büsch and Koopmann turned to Hermann Schulz (no known relation to Walter Schulz), a retired teacher in Clenze, for help writing up their concerns for the *Polizeiwachtmeister* Thomann of Dannenberg. Thomann investigated, but he also declined to press charges, concluding that:

> No neglects of duty whatever appear from the depositions of the rest of the witnesses, either with regard to the former Bürgermeister Schulz or Minna Grönitz, and which might constitute the fact of an indictable offence. On the contrary, since the establishment of the Home in June 1944, which was destined to take care of the children of women workers from the East, both have obviously tried to the best of their ability to protect the interest of the Home in spite of the constantly increasing difficulties.[463]

Trying for a third time, Büsch, Koopman, and Hermann Schulz appealed to the Polish witnesses to approach the British, leading to the internment of Grönitz, Machel, and Walter Schulz. Grönitz and Machel were subsequently indicted for war crimes, while Walter Schulz was released because his involvement in the *Kinderheim* was deemed, rather bafflingly, not to have contributed to the children's deaths, according to British investigators.[464]

At trial, the defense, conducted by Drs. Eissner and Meissner, picked up on Pöpel's early assessment that the push to prosecute Machel and Grönitz stemmed from political machinations. This was a reasonable strategy, as personal motives were certainly at play. Büsch and Walter Schulz were business competitors, and Koopmann apparently resented that his own son was

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[461] "Letter from Franz Pöpel to *Polizeiwachtmeister* Thomann," 22 July 1947, "The National Archive of the UK WO 235/447."
[462] "Letter from Franz Pöpel to *Polizeiwachtmeister* Thomann," 22 July 1947, "The National Archive of the UK WO 235/447."
[463] Thomann, "Cover Letter Accompanying Letter from Chair of Clenze Denazification Commission," 2 August 1947, "The National Archive of the UK WO 235/447."
[464] Major C.G. Mason, "Memo WCG/15228/2/C. 3298/Legal," 17 January 1948, The National Archive of the UK WO 311/507.

called up for military service while Walter Schulz's son was not.[465] Hermann Schulz had been a member of the Nazi Party during the war and lied about his party affiliation on his denazification *Fragebogen*, which Walter Schulz and Grönitz both knew. Grönitz was active in the Social Democratic Party, holding several local leadership positions after the war, whereas Koopmann and Hermann Schulz were both involved with Grönitz's political opposition, the NLP.[466] Meissner, defending Grönitz, did his best to cast the charges as part of a masterful smear campaign that merely served to distract from bigger geopolitical issues:

> Not the accused [Grönitz] nor the accused Machel belong in the dock, but the informers. We turn from them in disgust. For personal reasons and party-political differences of opinion they managed to find willing tools for their plan in the Polish witnesses for the prosecution. They speculated on the fact that these Poles in their partly justified hatred of everything German would readily comply with their wishes. They knew how to promote political hatred between two peoples that had become so pronounced during the last war. It is far better for the Poles and the Germans to try and establish amicable relations instead of fanning the hatred, for the common enemy, bolshevism, is threatening both just as it threatens the whole of civilized Europe.[467]

At Lefitz, all the individuals involved were local to Clenze, with relationships that both preceded and outlived the war, perhaps accounting for the degree of political interference. Conversely, Valentina Bilien was a newcomer to Velpke, and the Rühen facility moved three times in as many years. The squabbles in Lefitz did not end with the conclusion of the *Kinderheim* trial, but continued as Walter Schulz filed libel complaints against Anton Büsch and Heinrich Koopmann, and Hermann Schulz was investigated for lying on his *Fragebogen*.[468]

This line of defense worked for Machel, the home administrator, and likely would have

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[465] "Letter from Franz Pöpel to Dr. Meissner," 21 March 1948, "The National Archive of the UK WO 235/447."
[466] "Letter from Franz Pöpel to Dr. Meissner," 21 March 1948; Meissner, "Closing Address in Defense of Minna Grönitz," 31 March 1948., "The National Archive of the UK WO 235/447."
[467] Meissner, "Closing Address in Defense of Minna Grönitz, 31 March 1948., "The National Archive of the UK WO 235/447."
[468] Lt. Col. John Henry Lancelot Aubrey-Fletcher, "Judge Advocate's Summing Up," n.d., "The National Archive of the UK WO 235/447."

worked for Grönitz, too, if it had not been for the "Koopmann affair." One Sunday in December 1944, several Polish parents were attempting to visit their children. According to Ernst Fick, who lived across from the Lefitz *Kinderheim*, a scuffle broke out when a mother smashed a window, only to be chased away and struck by Grönitz.[469] For help, Grönitz called Walter Schulz, as the *Bürgermeister* and financial supervisor of the home, and in turn he summoned Koopmann, a reserve police officer.[470] By the time Schulz and Koopmann arrived, there was nothing more to see than a broken window, but the ruckus did bring Walter Schulz and Koopmann out to the hostel. Observing the children dressed only in thin clothes, sitting on the floor surrounded by wet laundry and eating mashed potatoes from a common bowl with a single shared utensil, Koopmann made some comments on the conditions to Grönitz. According to Koopmann, he told Grönitz "that all children would die under such treatment."[471] In response, Grönitz asserted that it was not his position to criticize the home, and only two children had died so far, whereas conditions were much worse in other facilities. The spat between Koopmann and Grönitz quickly became public, drawing the attention of *Polizeimeister* Wilhelm Hienen. Hienen stated:

> [Grönitz] complained about Koopmann who instead of helping her had taken the part of the Poles and started a row. She would refuse such a kind of help at any time in future. I [Hienen] then went to Koopmann and questioned him about this happening. Koopmann told me that he was called into the hostel and there he had come into an argument with Grönitz about the conditions in the hostel. I told him that he should use care on these things as he should know that reports of this kind were going to the Gestapo and he could imagine the consequences. I did not make any kind of report.[472]

Shortly afterwards, Grönitz ceased reporting for work at the Lefitz baby farm, abandoning her position.

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[469] "Deposition of Ernst Adolf Heinrich Fick," 1 November 1947; "Testimony of Ernst Fick," n.d., The National Archive of the UK WO 311/507; The National Archive of the UK WO 235/447.
[470] "Testimony of Minna Grönitz," n.d., The National Archive of the UK WO 235/447.
[471] "Deposition of Heinrich Koopmann," 22 October 1947, The National Archive of the UK WO 311/507.
[472] "Deposition of Wilhelm Friedrich Hienen," 31 October 1946, "The National Archive of the UK WO 311/507."

When it was clear that Grönitz was not returning, the two *Ostarbeiterrinnen* in the home contacted Walter Schulz to inform him that Grönitz had left, and several of the children were sick.[473] Before Walter Schulz went to inspect the facility, he called Grönitz to ask why she was not at the *Kinderheim*. Grönitz replied that she was no longer working at Lefitz, and when Walter Schulz "reproach[ed] her that she had not informed anybody, she answered that this was not my affair and I [Walter Schulz] should have nothing to say."[474] Although Grönitz told Walter Schulz she stopped working due to a "slight illness," Kaethe Riebesehl, who was staying with Grönitz as a houseguest at the time, testified that Grönitz stopped going to the *Kinderheim* because she had been attacked by Koopmann, and would not go back unless Koopmann apologized. According to Riebesehl, Grönitz's boils did not develop until after the incident with Koopmann, and Grönitz contracted the flu after her bout with boils.[475] Of the nine children who died at Lefitz, seven of them died during the period after Grönitz deserted the *Kinderheim*.

Had Grönitz not "preferred to place her personal bitterness against Koopmann before her obligations to these children" and remained in her position until the end of the war, or at the very least given notice when she chose to leave, she probably would have been acquitted, or possibly never faced charges in the first place.[476] For example, in this case the Judge Advocate, Lt. Col. John Henry Lancelot Aubrey-Fletcher, offered his personal opinion during the Summing Up, breaking with prior practice. The Summings Ups were intended to help the court with its deliberations by providing impartial analysis and advice about the relevant legal issues. The

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[473] "Deposition No. 3A of Walter Heinrich Wilhelm Schulz," 20 November 1947, "The National Archive of the UK WO 311/507."
[474] "Deposition No. 3A of Walter Heinrich Wilhelm Schulz," 20 November 1947, "The National Archive of the UK WO 311/507."
[475] "Testimony of Kaethe Riebesehl," n.d., "The National Archive of the UK WO 235/447."
[476] Lt. Col. John Henry Lancelot Aubrey-Fletcher, "Judge Advocate's Summing Up," n.d., "The National Archive of the UK WO 235/447."

Judge Advocate was not to act as a judge, but as a dispassionate source of British legal expertise. Instead, Aubrey-Fletcher remarked:

> And here I must say to you in my view there is not sufficient evidence to prove beyond reasonable doubt that the deaths of the 9 children were consequence upon any ill-treatment or neglect. … But I do not think it could be said that anything which Grönitz did or did not do caused their death nor do I think that the responsibility of Machel is sufficiently approximated to these deaths to allow that part of the charge to stand against either of them. It is of course entirely a matter for you, but that is the advice which I give you.[477]

Following that violation of protocol, Aubrey-Fletcher then released the court for deliberations with alarming instructions to: "not pay too much attention to the undoubtedly high death-rate in this home," which would seem to be the whole reason for the trial in the first place.[478] Given the circumstances under which the Lefitz case came to trial, the court's overall leniency, and the Judge Advocate's unorthodox Summing Up, Grönitz's abandonment of the children over a personal spat seems to have been the one element the court could not overlook, resulting in a six months' sentence.

The Lefitz trial, with its origins in personal and political disputes in postwar Germany, stands somewhat apart from the Velpke and Rühen trials. Without surviving records documenting the prosecution arguments, it is difficult to determine how – or if – the prosecutor Grieve situated the crimes at Lefitz within the framework of Nazi Germany. For the two *Kinderheim* trials with complete extant records, Velpke and Rühen, the British war crimes teams positioned the baby farm crimes as a reflection and consequence of an all-encompassing Nazi racial ideology, rather than incidental consequences of war. Without having the masterminds of the *Kinderheime* policy in custody available for trial, it was necessary for the British prosecution

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[477] Lt. Col. John Henry Lancelot Aubrey-Fletcher, "Judge Advocate's Summing Up," n.d., "The National Archive of the UK WO 235/447."

[478] Lt. Col. John Henry Lancelot Aubrey-Fletcher, "Judge Advocate's Summing Up," n.d., "The National Archive of the UK WO 235/447."

to implicate the people who carried out the policy in Nazi ideology. The ideology, then, provided the criminal motive and intent, not merely negligence, necessary to secure convictions.

Das Konzentrationslager as War Crime: the Ravensbrück Trial Series

By 1945, the Ravensbrück concentration camp outside of Berlin was already known as the "women's hell."[479] Between 1946 and 1948, this installation generated seven trials against 42 defendants that, unlike some of the other British Royal Warrant trials, focused primarily on non-British victims of Holocaust-specific crimes, including: forcible sterilizations of Roma children and adults, wanton and reckless medical experiments on human beings, imposition of forced labor and inhumane conditions on prisoners (in the form of a punishment camp and gas chamber), and the camp's high mortality rate.[480]

The Ravensbrück prosecutions are well-suited for exploring changes in British policy and priorities regarding the legal process. The trials show not only how the British approached concentration camp crimes in the courtroom – by linking individual perpetrators together as members of a collective camp staff and focusing increasingly on discrete criminal acts rather than negligent conditions – but also how the British approach changed over time in response to external political, social, and economic pressures. As these pressures from survivor advocacy groups and Parliament mounted, the British war crimes team attempted to preserve its ability to prosecute war crimes by fitting extreme crimes within existing criminal templates. As a result, the Ravensbrück trials exhibited a resurgence of conservative and traditional approaches to international criminal law, despite the adoption of a "common plan" strategy as the proceedings began. This retrenchment between 1946 and 1948 enabled the British to try as many Ravensbrück defendants as they did, but also has led some observers to question to what extent

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[479] Deposition of Captain Derrick Adolphus Sington, 26 June 1945, "The National Archive of the UK WO 309/17"; Megargee, Dean, and United States Holocaust Memorial Museum, *Encyclopedia of Camps and Ghettos*, I:1188.

[480] The figure of 47 defendants includes defendants who died during trial or who were absent for the trial but had evidence against them presented to the court.

those trials provided justice for victims and survivors, and whether trials were even capable of such justice.

CONDITIONS

The Ravensbrück women's concentration camp, located about 90 miles (55 kilometers) from Berlin, opened on 15 May 1939, with an initial population of 1,000 female prisoners transferred from a camp in Lichtenburg.[481] During six years of operation, approximately 123,000 women were interned at Ravensbrück, and 25 – 26,000 of them. Over one thousand children accompanied their mothers into the camp or were born there, and very few survived.[482] Starting in April 1941, small groups of men were brought into Ravensbrück to provide additional labor, accounting for another 20,000 internees, of whom 2,146 were killed.[483] The composition of the prisoner population varied over the years, but Ravensbrück held large numbers of Jehovah's Witnesses, resistance fighters/intelligence agents, "asocials," and "political" prisoners, as well as racial prisoners, including both Jews and Roma. Jewish women entered the camp in increasing numbers during the chaotic last months, making it difficult to determine how many prisoners were Jewish, but contemporary estimates put this proportion at close to twenty percent.[484] Prisoners from over 40 different nations passed through Ravensbrück, but the largest numbers

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[481] Jack Gaylord Morrison, *Ravensbrück: Everyday Life in a Women's Concentration Camp 1939-45* (Princeton, NJ: Wiener, 2000), 116; Megargee, Dean, and United States Holocaust Memorial Museum, *Encyclopedia of Camps and Ghettos*, I:1188.

[482] Megargee, Dean, and United States Holocaust Memorial Museum, *Encyclopedia of Camps and Ghettos*, I:1188–89.

[483] For the men, 1,742 recorded deaths, plus 300 victims of 14f13, plus 104 victims of the gas chamber for a total of 2,146 deaths. Megargee, Dean, and United States Holocaust Memorial Museum, I:1190.

[484] Rochelle G. Saidel, *The Jewish Women of Ravensbrück Concentration Camp* (Terrace Books, 2006), 24; Linde Apel, *Jüdische Frauen im Konzentrationslager Ravensbrück 1939-1945* (Berlin: Metropol, 2003); Judith Buber Agassi, *The Jewish Women Prisoners of Ravensbrück: Who Were They?*, 2014; Christa Schikorra, *Kontinuitäten der Ausgrenzung: "asoziale" Häftlinge im Frauen-Konzentrationslager Ravensbrück* (Berlin: Metropol, 2001).

were drawn from Poland (36%) and the Soviet Union (21%).[485] High-profile prisoners included French anthropologist Germaine Tillion; Geneviève de Gaulle-Anthonioz, French Resistance fighter and niece of Charles de Gaulle; Gemma LaGuardia Gluck, sister of New York City Mayor Fiorello LaGuardia; Elisabeth de Rothschild of the famous banking family; Violette Szabo and Odette Sansom, British SOE agents; Mother Maria Skobtsova, Russian nun and subsequent saint; Elisabeth Magdalena von Stauffenberg, wife of Claus von Stauffenberg, who attempted to assassinate Hitler; and Karl Seitz, the Austrian politician. That Ravensbrück held several highly educated and well-connected prisoners accounts for some of the public reaction to the Ravensbrück trials – these were women who had platforms for speech and audiences who would listen.

Prisoners in the Ravensbrück camp system, which at its height included as many as 40 subcamps, were forced to labor for the textile and armaments industries, and, to a lesser extent, in agriculture.[486] Both Siemens and the SS-owned textile company Texled had production facilities on-site.[487] The women were routinely overworked, putting in ten- and eleven-hour days in conditions that constituted "a definite policy designed to bring about their [the internees'] deaths."[488] The vastly overcrowded camp held quadruple the number of women intended, which forced the hasty erection of a flimsy tent to house 3,000 women who arrived in the latter half of

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[485] Megargee, Dean, and United States Holocaust Memorial Museum, *Encyclopedia of Camps and Ghettos*, I:1188–90.
[486] Bernhard Strebel, *Das KZ Ravensbrück: Geschichte eines Lagerkomplexes* (Paderborn: F. Schöningh, 2003).
[487] Megargee, Dean, and United States Holocaust Memorial Museum, *Encyclopedia of Camps and Ghettos*, I:1189.
[488] Major Saville Malcolm Stewart, "Opening Address for the Prosecution," Ravensbrück I, 5 December 1946, "The National Archive of the UK WO 235/305" February 1946, The National Archives, Kew.

1944.[489] The deplorable conditions quickly gave rise to fatal epidemics among the prisoners, including diphtheria, dysentery, and typhus.[490]

Prisoners were also subject to medical experimentation under the direction of Dr. Karl Gebhart.[491] Experiments included gruesome exploratory procedures involving the removal of bones, muscle, and nerves, the testing of sulfonamide as a treatment for battlefield gas gangrene infections, and the sterilization of Roma children, both boys and girls.[492] The sulfonamide was tested by surgically implanting foreign objects into the body to provoke an infectious response, or by restricting blood flow to a section of the leg and then infecting the blood-restricted muscle with bacteria.[493] The procedure was both ethically dubious and completely ineffective. Although Ravensbrück was not an extermination camp, prisoners faced selections for immediate death by gas, bullets, or the noose.[494] To facilitate these murders, in early 1945 a gas chamber capable of killing 150 – 180 people at once was constructed in a wooden storage unit on site, where staff members killed between five and six thousand prisoners.[495] Many Ravensbrück prisoners also faced selections for transport to other camps, including Auschwitz, Majdanek, Mauthausen, and Bergen-Belsen.[496]

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[489] Megargee, Dean, and United States Holocaust Memorial Museum, *Encyclopedia of Camps and Ghettos*, I:1189.
[490] Major B. Silley, "Interim Report by War Crimes Unit, BAOR on Ravensbrück Concentration Camp," "The National Archive of the UK WO 235/316" 1945, The National Archives, Kew.
[491] Keith Mant, "The Medical Services in the Concentration Camp of Ravensbrück," 26 May 1949, "The National Archive of the UK RW 2/4" May 26, 1949, The National Archives, Kew.
[492] Megargee, *Encyclopedia of Camps and Ghettos*, 1189; Schmidt, "The Scars of Ravensbrück," 31-32.
[493] Ulf Schmidt, "'The Scars of Ravensbrück:' Medical Experiments and British War Crimes Policy, 1945-1950," *German History* 23, no. 1 (2005): 32.
[494] Glen Whisler, "American Red Cross Memo Re: Refugees in Sweden," Stockholm Despatch No. 223 of 4th May 1945, 30 April 1945, "The National Archive of the UK FO371/51193" 1945, The National Archives, Kew.
[495] Megargee, Dean, and United States Holocaust Memorial Museum, *Encyclopedia of Camps and Ghettos*, I:1190.
[496] Megargee, *Encyclopedia of Camps and Ghettos*, 1190 – 1191.

Other prisoners were selected for the Uckermark *Jugendschutzlager*, a former "youth protection camp" for girls located nearby.[497] Under the command of Ruth Closius, conditions in Uckermark were even worse than in the main camp, and designed to induce death as quickly as possible.[498] Here, the meager rations were reduced even further, and the women had no blankets or appropriate clothing for winter. Ravensbrück *Kommandant* Fritz Suhren ordered the first 5,000 arrivals shot immediately at the *Jugendlager* and brought in Otto Moll from Auschwitz to carry out the job with supervision from Schwarzhuber, Hellinger, Peters, Treite, and others. When Moll had murdered only 150 women by the end of the third day (by a small caliber rifle shot to the neck), shooting was deemed too slow, leading to the construction of the gas chamber.[499] Daily selections for the gas chamber continued in the *Jugendlager*, while those who survived the selections still had to contend with nurse Vera Salvequart and her fatal injections of strychnine.[500] Under these conditions, four thousand prisoners were murdered in Uckermark over four months in 1945.[501]

The women's camp at Ravensbrück had a guard staff composed entirely of women and served as the training ground for *Aufseherinnen* (female guards) before they were sent to positions in other camps.[502] About 10% of these women were volunteers, while others were conscripted (70%) or assigned through the labor service. Given the pressing need for labor, Nazi

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[497] Simone Erpel, "Das 'Jugendschutzlager' Uckermark als Vernichtungslager," in *Das Mädchenkonzentrationslager Uckermark: Beiträge zur Geschichte und Gegenwart*, ed. Katja Limbächer, Maike Merten, and Bettina Pfefferle (Münster: Unrast, 2005), 179–97; Megargee, Dean, and United States Holocaust Memorial Museum, *Encyclopedia of Camps and Ghettos*, I:1532–34.
[498] Morrison, *Ravensbrück*, 286–89.
[499] Lt. Col. R.A. Nightingale, "Report by War Crimes Unit, BAOR on Ravensbrück Concentration Camp," "The National Archive of the UK RW 2/6" September 1, 1945, The National Archives, Kew.
[500] Erpel, "Das 'Jugendschutzlager' Uckermark als Vernichtungslager," 188.
[501] Megargee, Dean, and United States Holocaust Memorial Museum, *Encyclopedia of Camps and Ghettos*, I:1534.
[502] Wendy Lower, *Hitler's Furies: German Women in the Nazi Killing Fields* (New York: Houghton Mifflin Harcourt, 2014), 21.

ideological commitment was not required for a position as an *Aufseherin*. Instead, the positions were advertised as easy, high paying jobs in convenient locations, leading many women to consider camp positions as an alternative to factory work.[503] Regardless of how women came to be *Aufseherinnen*, most of them transformed once they took up their new roles.[504] The notorious "Bitch of Belsen," Irma Grese, was initially posted at Ravensbrück, and the slate of Ravensbrück defendants included women well-known for their brutality, including Dorothea Binz and Greta Bösel.[505] Although the guards were women, the commandants and other camp administrators were men. The last, and longest-serving, commandant was SS *Sturmbannführer* Fritz Suhren, who embraced a policy of extermination via work.[506]

By the beginning of 1945, Ravensbrück held over 45,000 female and 5,000 male prisoners. Starting in March, the SS began "evacuations" to other camps. These included a death march in April, when 20,000 prisoners were sent toward Mecklenburg before they were intercepted by the advancing Soviet Army.[507] Meanwhile, hundreds of women continued to die

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[503] Kimberly Allar, "From Recruitment to Genocide: An Examination of the Recruitment of Auxiliary Guards in National Socialist Concentration Camps," in *Orte Und Akteure Im System Der NS-Zwangslager: Ergebnisse Des 18. Workshops Zur Geschichte Und Gedächtnisgeschichte Nationalsozialistischer Konzentrationslager*, ed. Michael Becker, Dennis Bock, and Henrike Illig (Berlin: Metropol, 2015), 169–97.

[504] Germaine Tillion, *Ravensbrück* (New York: Anchor, 1975), 69; Margarete Buber-Neumann, *Under Two Dictators: Prisoner of Stalin and Hitler: With an Introduction by Nikolaus Wachsmann* (Random House, 2013), 232.

[505] Ljiljana Heise, *KZ-Aufseherinnen vor Gericht: Greta Bösel, "Another of Those Brutal Types of Women"?* (Frankfurt am Main; New York: Lang, 2009); Daniel Patrick Brown, *The Beautiful Beast: The Life & Crimes of SS-Aufseherin Irma Grese* (Ventura, Calif: Golden West Historical Publications, 2004); Whitney Croskery, "Constructing the Beastess: The Trial of Irma Grese and the British Press, 1945" 2011; McKale, *Nazis after Hitler*, 40–47.

[506] Morrison, *Ravensbrück*, 243.

[507] Wolfgang Jacobeit, "Die 'Todesmärsche' von Ravensbrüch in Nordwestlicher Richtung und das Erlebnis der Befreiung durch die Rote Armee," in *"Ich Grüße Euch Als Freier Mensch:" Quellenedition Zur Befreiung Des Frauen-Konzentrationslagers Ravenbrück Im April 1945*, ed. Sigrid Jacobeit and Simone Erpel (Berlin: Buchbinderei Heinz Stein, 1995), 80–129.

from illness, the gas chamber, and other punishments.[508] During the final month of the camp, the Swedish Red Cross was able to rescue approximately 7,500 prisoners through the negotiations of Count Folke Bernadotte, whose "white buses" brought the rescued women first into Denmark, and then to Sweden.[509] By the time Red Army liberated Ravensbrück on 30 April 1945, only about 2,000 people remained in the camp.[510]

Kommandant Suhren, after overseeing the transition of Uckermark from *Jugendlager* to dedicated death camp and the establishment of an on-site gas chamber, fled Ravensbrück in a last-ditch effort to save his skin just ahead of the advance of the Red Army. Suhren took with him prisoner Odette Sansom. Sansom was a British SOE agent captured in France alongside another agent named Peter Churchill. Though the two were soon separated, Sansom identified herself to her captors as Odette Churchill, hoping that the Nazis would keep her alive if they believed she was related to Winston Churchill – which neither she nor Peter Churchill actually was.[511] The ruse worked – Sansom was protected, and when Suhren fled Ravensbrück for the American zone of occupation, he brought Sansom along in hopes that her presence could secure

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[508] Simone Erpel, *Zwischen Vernichtung Und Befreiung: Das Frauen-Konzentrationslager Ravensbrück in Der Letzten Kriegsphase* (Berlin: Metropol Verlag, 2003).

[509] Rochelle G. Saidel, *The Jewish Women of Ravensbrück Concentration Camp* (Terrace Books, 2006), 186–88; Megargee, Dean, and United States Holocaust Memorial Museum, *The United States Holocaust Memorial Museum Encyclopedia of Camps and Ghettos, 1933-1945. Early Camps, Youth Camps, and Concentration Camps and Subcamps under the SS-Business Administration Main Office (WVHA) Vol. 1, Part A-B*, I:1191; Sune Persson, "Folke Bernadotte and the White Buses," *The Journal of Holocaust Education* 9, no. 2 (2000): 237–268; Robin Ostow, "Reimaging Ravensbrück," *Journal of European Area Studies* 9, no. 1 (2001): 107–123; Simone Erpel, "Rettungsaktion in Letzter Minute. Die Befreiung von Häftlingen aus dem Frauen-Konzentrationslager Ravensbrück durch das Internationale Komitee Des Roten Kreuzes, das Dänische und Schwedische Rote Kreuz," in *"Ich Grüße Euch Als Freier Mensch:" Quellenedition Zur Befreiung Des Frauen-Konzentrationslagers Ravenbrück Im April 1945* (Berlin: Buchbinderei Heinz Stein, 1995), 22–79.

[510] Dan Stone, *The Liberation of the Camps: The End of the Holocaust and Its Aftermath* (Yale University Press, 2015), 51–55; Ostow, "Reimaging Ravensbrück," 109; Sigrid Jacobeit, *"Ich grüsse Euch als freier Mensch": Quellenedition zur Befreiung des Frauen-Konzentrationslagers Ravensbrück im April 1945* (Berlin: Ed. Hentrich, 1995).

[511] Sarah Helm, *Ravensbrück: Life and Death in Hitler's Concentration Camp for Women* (New York: Anchor, 2015), 429, 630–31.

his protection. Instead, Sansom promptly denounced Suhren, who was immediately arrested. Following an initial escape, Suhren was subsequently tried and executed for his crimes by the French occupation authorities.[512] Though Suhren was indicted by the British for his role at Ravensbrück, he was never in British custody.

JURISDICTION

Ravensbrück fell under Soviet jurisdiction at the end of the war. Therefore, under the terms of the Moscow Declaration, the Soviets should have sponsored any trials related to the site. The Soviets, however, were not particularly interested, probably because the Ravensbrück victim profile did not fit Soviet preferences: too many non-Soviet victims, especially Poles. Furthermore, most of the witnesses and would-be defendants were no longer in the Soviet zone, having either been "evacuated" on death marches or fled in the early days of the occupation, thus necessitating inter-zonal transfer and extradition.[513] With the Soviets uninterested, the British, Americans, and French had to decide whether the occupiers' courts had jurisdiction to try Ravensbrück cases under Control Council Law No. 10 (and, if so, which occupier's court) or whether they should be referred to national courts (Poland had requested the extradition of many Ravensbrück defendants).[514] After determining that a trial of German medical personnel would not incapacitate the practice of medicine in Germany or impede reconstruction efforts, Britain took the lead because of its preexisting interest in medical crimes and early investigations of missing SOE agents.[515] The British subsequently indicted 42 individuals for their roles at

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[512] Helm, 640; Schmidt, "'The Scars of Ravensbrück,'" 39.
[513] Schmidt, "'The Scars of Ravensbrück,'" 34–35.
[514] Schmidt, 22–30, 34–39.
[515] The French later prosecuted a smaller number of Ravensbrück war criminals at Rastatt. For a full discussion of how Ravensbrück came under British jurisdiction, see Schmidt, "'The Scars of Ravensbrück.'"

Ravensbrück and brought 38 of them, 17 men and 21 women, to trial.[516] Rather than hold a massive single trial, as at Belsen, the British opted for seven smaller, more manageable proceedings.

The pool of defendants at Ravensbrück included doctors, nurses, SS officers, guards, and prisoner functionaries, sorted into functional categories for trial. Ravensbrück I, II, and IV tried medical personnel and camp leadership, Ravensbrück III tried the staff of the Uckermark *Jugendlager*, Ravensbrück VA and VB tried SS personnel, and Ravensbrück VI tried the *Aufseherinnen*. The primary charge was ill-treatment and killing of Allied nationals at Ravensbrück, but several defendants also faced additional, more specific charges, including ill-treatment and killing of *female* Allied prisoners, "selection of female Allied internees for despatch [sic] to Mass [sic] extermination camps for killing," "killing by lethal injections of a number of female Allied internees," "killing of a newly born child of an unknown female Allied internee," and "sending a number of unknown Allied nationals who were employed therein to the Jugendlager of the said camp well knowing that the natural and probable consequence of this action was that they would there be killed."[517] Four defendants were acquitted, and 33 were

[516] The number of Ravensbrück trials is sometimes reported as 6, rather than 7, because the fifth trial of SS personnel is divided into trials VA and VB. Since VA and VB were, in fact, separate trials on different dates, I have chosen to count them as distinct trials, for a total of 7 trials, although referring to them as Trials 5A and 5B. See also Simone Erpel, "Die britischen Ravensbrück-Prozesse 1946 – 1948," in Erpel, *Im Gefolge der SS: Aufseherinnen des Frauen-KZ Ravensbrück*, 114 – 128.

[517] "Charge Sheet," Ravensbrück I, 5 November 1946; "Synopsis of Case, First Charge – Seventh Charge," Ravensbrück IV; "Charge Sheet against Friedrich Opitz," Ravensbrück II; "The National Archive of the UK WO 235/305"; "The National Archive of the UK WO 235/530 Ravensbrück Case No. IV" June 1948, The National Archives, Kew; "The National Archive of the UK WO 235/433 Ravensbrück Case No. 2" March 1947, The National Archives, Kew.

found guilty, with sentences ranging from two years' imprisonment to death by hanging, though some sentences were later commuted.[518]

INVESTIGATION

Group Captain Anthony G. Somerhough from the JAG War Crimes Branch led the British investigation into Ravensbrück.[519] One of the first postwar reports about conditions at the camp came from a special delegation of the American Red Cross in Stockholm that examined refugees in Malmö, Sweden in April 1945.[520] Many of these refugees were former internees from Ravensbrück, so the report dedicated four of its ten pages to information gathered from survivor interviews. Glen Whisler, the report's author, detailed the process for entering the camp, the daily schedule, the typical punishments meted out to internees, and information about access to food, water, and medicine. The report established that Ravensbrück was staffed by the SS,

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[518] One defendant, Dr. Adolf Winkelmann, died in custody on 1 February 1947 just prior to the pronouncement of the findings on 3 February 1947. Thus, no finding was entered into the record for Winkelmann, but a listing of the sentences written before Winkelmann's death was announced to the court indicates that had he lived, he would have been found guilty and sentenced to death. Judge Advocate C.L. Stirling, "Findings," Ravensbrück I, 3 February 1947; "Finding for Accused Dr. Winkelmann," Ravensbrück I, "The National Archive of the UK WO 235/305"; "The National Archive of the UK WO 235/308" February 1946, The National Archives, Kew.

[519] Somerhough, a barrister, went on to serve with the Colonial Legal Service as the Deputy Public Prosecutor in Nairobi, Kenya in the 1950s. He prosecuted Jomo Kenyatta and the Kapenguria Six, a group of Kenyan nationalists, for conspiracy to murder the white population of Kenya, before becoming a puisne judge on the High Court in Northern Rhodesia. See Caroline Elkins, *Imperial Reckoning: The Untold Story of Britain's Gulag in Kenya* (New York: Harry Holt and Co, 2010); Virginia Morell, *Ancestral Passions: The Leakey Family and the Quest for Humankind's Beginnings* (Simon and Schuster, 2011); David Anderson, *Histories of the Hanged: The Dirty War in Kenya and the End of Empire* (New York: W.W. Norton and Co., 2011); "Mr. Justice Somerhough," *The Times*, October 11, 1960, The Times Digital Archive; Lord Russell of Liverpool, "Mr. Justice Somerhough," *The Times*, October 20, 1960, The Times Digital Archive; Lord Morris, "Mr. Justice Somerhough," *The Times*, October 12, 1960, The Times Digital Archive; Our Correspondent, "Trial Of Kenyatta," *The Times*, February 13, 1953, The Times Digital Archive; Our Correspondent, "Trial Of Jomo Kenyatta," *The Times*, December 2, 1952, The Times Digital Archive; Our Correspondent, "Prosecution Reply To Mr. Pritt," *The Times*, January 23, 1953, The Times Digital Archive; Our Correspondent, "Kenyatta Trial Incident," *The Times*, February 14, 1953, The Times Digital Archive; Our Correspondent, "Kenyatta Trial Rulings," *The Times*, February 18, 1953, The Times Digital Archive; Our Correspondent, "Kenyatta Trial," *The Times*, January 13, 1953, The Times Digital Archive.

[520] Glen Whisler, "American Red Cross Memo Re: Refugees in Sweden," Stockholm Despatch No. 223 of 4th May 1945, 30 April 1945, "The National Archive of the UK FO371/51193."

including women, whom he described as "especially adept at designing new forms of humiliation to be endured."[521]

To aid the investigation, the BAOR produced a brief on Ravensbrück that outlined the camp's history, information about the victims and the abuses they endured, and instructions for carrying out the investigation.[522] In addition to laying out the guidelines for tracing and interrogating suspects, the brief highlighted as areas of particular investigative interest camp conditions, certain individual personnel, medical experimentation, the *Jugendlager*, the fate of British subjects, the gas chamber, and the activities of the *Aussenkommandos*.[523] Significantly, the brief differentiated between junior and senior members of the Ravensbrück staff and outlined separate evidentiary requirements that had to be met for each. Evidence against senior members of staff focused on camp conditions, requiring "that the persons against whom the evidence is laid were responsible either deliberately or by wilful [sic] neglect for the conditions mentioned above," whereas evidence against junior members required details of specific acts and crimes committed against known victims.[524] Because evidence against senior staff members was collected as part of a "joint case" but against junior members for individual cases, charging and convicting junior members of the staff for specific, personal acts proved easier than holding senior members responsible for orchestrating the camp's machinery of death.[525]

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[521] Glen Whisler, "American Red Cross Memo Re: Refugees in Sweden," Stockholm Despatch No. 223 of 4th May 1945, 30 April 1945, "The National Archive of the UK FO371/51193."
[522] Captain A. Vollmar, "Brief for Investigation into Concentration Camp Ravensbrück," BAOR/15228/11/7/JAG, 16 April 1946, "The National Archive of the UK WO 309/417" April 1945, The National Archives, Kew.
[523] Captain A. Vollmar, "Brief for Investigation into Concentration Camp Ravensbrück," BAOR/15228/11/7/JAG, 16 April 1946, "The National Archive of the UK WO 309/417."
[524] Captain A. Vollmar, "Brief for Investigation into Concentration Camp Ravensbrück," BAOR/15228/11/7/JAG, 16 April 1946, "The National Archive of the UK WO 309/417."
[525] Captain A. Vollmar, "Brief for Investigation into Concentration Camp Ravensbrück," BAOR/15228/11/7/JAG, 16 April 1946, "The National Archive of the UK WO 309/417."

The BAOR War Crimes Investigation Unit drafted an "Interim Report on the Ravensbrück Concentration Camp" later in 1946, following the investigation.[526] The new document confirmed and expanded upon the information in the Red Cross report and the investigative brief; it also identified suspected war criminals and collected evidence against individual perpetrators. The Interim Report was grounded in survivor interviews, using dozens of depositions to substantiate specific allegations against individual war criminals, and the BAOR War Crimes Unit endorsed bringing unspecified charges against Gustav Binder, Dorothea Binz, Greta Bösel, Dr. Martin Hellinger, Johanna Langefeld, Margarete Mewes, Carmen Mory, Ruth Neudeck, Dr. Herta Oberhauser, Heinrich Peters, Hans Pflaum, Emma Raabe, Ludwig Ramdohr, Dr. Rolf Rosenthal, Dr. Gerhard Schidlausky, Vera Salvequart, Johann Schwarzhuber, Fritz Suhren, Dr. Percy Treite, and Dr. Adolf Winkelmann. With the exceptions of Suhren, Oberhauser, and Langefeld, who were tried by French, American, and Polish courts, respectively, all of these individuals, along with many others not listed in this report, stood trial in British courtrooms.

While the Interim Report took pains to report on conditions and crimes in Ravensbrück as accurately as possible – and generally did well – the disclaimer that, "in all, the investigators have attempted to allow for the histrionic exaggerations to be expected from the female sex," indicates that, due to sexism and a lack of comprehension, the War Crimes Investigation Unit was still not able to fully grasp the depths of depravity in the camps, despite previous experience

[526] The Interim Report, unfortunately, does not carry a specific date on it. While I believe the Interim Report was written after the "Brief for Investigation into Concentration Camp Ravensbrück" was issued, without a date for the Interim Report I cannot confirm that. Major B. Silley, "Interim Report by War Crimes Unit, BAOR on Ravensbrück Concentration Camp," "The National Archive of the UK WO 235/316."

with multiple camps by this point.[527] A revised version of the Interim Report was released as the "Report by War Crimes Unit, BAOR on Ravensbrück Concentration Camp."[528] This Report provides greater detail than the Interim Report, especially regarding the fates of specific transports and specific criminal acts by camp staff, noting that by January 1945, "a policy for mass extermination was embarked upon."[529] Notably, the later Report recasts the deaths mentioned in the Interim Report as "liquidations," "exterminations," and "mass executions."[530]

RAVENSBRÜCK I TRIAL

The first British Ravensbrück trial opened in Hamburg on December 5, 1946, and concluded on February 3, 1947 before a court composed of seven British, French, and Polish officers.[531] Eleven German defense attorneys, some of them now experienced in appearing before British military courts, represented the defendants.[532] Major S.M. Stuart, born as Stefan Strauss in Vienna before he fled to England in 1938, handled the prosecution.[533] Stewart was assisted by Captain John da Cunha, in front of Judge Advocate Carl Ludwig Stirling, who had

[527] Major B. Silley, "Interim Report by War Crimes Unit, BAOR on Ravensbrück Concentration Camp," "The National Archive of the UK WO 235/316."
[528] Lt. Col. R.A. Nightingale, "Report by War Crimes Unit, BAOR on Ravensbrück Concentration Camp," "The National Archive of the UK RW 2/6."
[529] Lt. Col. R.A. Nightingale, "Report by War Crimes Unit, BAOR on Ravensbrück Concentration Camp," "The National Archive of the UK RW 2/6."
[530] Lt. Col. R.A. Nightingale, "Report by War Crimes Unit, BAOR on Ravensbrück Concentration Camp," "The National Archive of the UK RW 2/6."
[531] "Form for Assembly and Proceedings of Military Court for Trial of War Criminals," 3 December 1946, "The National Archive of the UK WO 235/305."
[532] The defense attorneys were: Dr. Gunter Bruch, Dr. Meyer-Labastille, Dr. Harry Soll, Dr. Richard Gadke, Dr. Alfred Rucker von Klitzing, Dr. von Metzler, Dr. Alfred Beyer, Dr. Hans Meyer, Dr. Rudolph Martin, Dr. Walter Grimm, and Dr. Otto Zippel. Ravensbrück I Trial Transcript, "The National Archive of the UK WO 235/305."
[533] Michael J. Bazyler and Frank M. Tuerkheimer, *Forgotten Trials of the Holocaust* (New York: NYU Press, 2015), 139; Sarah Helm, *A Life in Secrets: Vera Atkins and the Missing Agents of WWII* (New York: Anchor Books, 2007), 321.

also served as Judge Advocate at the Belsen and Zyklon B trials.[534] All sixteen defendants present pled not guilty.[535]

The largest and most extensively documented of the seven Ravensbrück trials, the first Ravensbrück trial also established much of the court's knowledge base about Ravensbrück for the entire trial series – facts established at Ravensbrück I did not need to be re-established in subsequent trials. The prosecution's primary goals were to demonstrate first, that the acts in question constituted war crimes; second, that the acts occurred; and third, that the specific defendants on trial committed those criminal acts.[536] The prosecution began with a brief history of Ravensbrück, followed by an explanation of the charges facing the defendants, and a discussion of the relevant sources of applicable military, municipal, and international law, including the Royal Warrant, English Common Law, the IMT at Nuremberg, the Manual of Military Law, British Army Order No. 81 of 1945, and the Hague Convention, in order to establish that the crimes in question were war crimes.[537] Once the background was set and the crimes duly proven as war crimes, Major Stewart advanced the prosecution's argument, predicated on two main points: first, "that the offences disclosed in the charge have been

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[534] "John Da Cunha Papers: Ravensbrück War Crimes Trials," 1945-1949, RW2, The National Archives, Kew; "Private Papers of C L Stirling OBE CBE QC," n.d., Documents.17014, The Imperial War Museum.
[535] Gustav Binder, Dorothea Binz, Greta Bösel, Dr. Martin Hellinger, Elisabeth Marschall, Margarete Mewes, Carmen Mory, Heinrich Peters, Ludwig Ramdohr, Rolf Rosenthal, Vera Salvequart, Dr. Gerhard Schidlausky, Johann Schwarzhuber, Dr. Percy Treite, Eugenia von Skene, and Dr. Adolf Winkelmann.
[536] Major S.M. Stewart, "Opening Address for the Prosecution," Ravensbrück I, 5 December 1946, "The National Archive of the UK WO 235/305."
[537] Major S.M. Stewart, "Opening Address for the Prosecution," Ravensbrück I, 5 December 1946, "The National Archive of the UK WO 235/305."

committed," and second, "that the accused before you were the persons who committed and were together concerned in committing these offences."[538]

Although each of the defendants was considered and judged individually, a key component of the prosecution's case was the contention that the defendants committed the crimes "acting in concert."[539] This allowed the prosecution to link guilt among all Ravensbrück staff members, as "a member of the staff must share the responsibility not only for his own acts but for the acts of the whole staff, for their concerted actions throughout those years in which they created and maintained these horrible conditions of which you will hear in the evidence."[540] Essentially trying the Ravensbrück staff itself as an additional defendant enabled the prosecution to establish the guilt of individual defendants by virtue of their membership in the collective staff.

Much of the prosecution's case in the first Ravensbrück trial emphasized the conditions of the camp. The opening address by Major Stewart devoted significant time to discussing the camp's population, death rate, overcrowding, overwork, malnutrition, exposure to the elements, poor sanitation, and lack of clothing and other basic goods.[541] Although Stewart did go on to mention the execution squad, gas chamber, lethal injections, sterilizations, medical experimentation, and selections for the *Jugendlager*, he presented Ravensbrück as a place where

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[538] Major S.M. Stewart, "Opening Address for the Prosecution," Ravensbrück I, 5 December 1946, "The National Archive of the UK WO 235/305."
[539] Major S.M. Stewart, "Opening Address for the Prosecution," Ravensbrück I, 5 December 1946, "The National Archive of the UK WO 235/305."
[540] Major S.M. Stewart, "Opening Address for the Prosecution," "Closing Address for the Prosecution;" Ravensbrück I; 5 December 1946, 30 January 1947, "The National Archive of the UK WO 235/308"; "The National Archive of the UK WO 235/308."
[541] Major S.M. Stewart, "Opening Address for the Prosecution," Ravensbrück I, 5 December 1946, "The National Archive of the UK WO 235/305."

death occurred primarily through indirect means – death by criminal conditions.[542] On a "Summary of Witnesses Character and Evidence" list for Ravensbrück I, 53 of the 79 potential witnesses were listed according to the subject(s) of their testimony, and of those 53, 21 witnesses were able to testify about "general conditions." This was by far the largest category, followed by twelve witnesses capable of testifying about the *Revier*, nine about medical experimentation, three about the *Jugendlager*, and two about the gas chamber.[543] It should, however, be expected that fewer witnesses could testify about the *Jugendlager* and the gas chamber, because those best qualified to do so were dead. Prosecution witnesses were used to establish the conditions of the camp and the participation of the individual defendants in creating or maintaining the camp conditions, therefore committing war crimes.

Even with the charge of "acting in concert," the defendants at the first Ravensbrück trial were represented as individuals, though a few shared the same attorneys. Defense attorneys had the right to cross-examine prosecution witnesses, as well as to present their own witnesses. The general defense strategy at Ravensbrück I was to contest whether an individual defendant had, in fact, committed the crimes in question, rather than dispute whether the crimes had taken place. Like at the Belsen trial, most of the defendants pursued pleas of superior orders or necessity, arguing that they committed these crimes only because they were told to do so or believed they had to – a strategy made somewhat feasible by the absence of the camp commandant, Fritz Suhren.[544] The Judge Advocate did not receive these pleas well, informing the court that "any man and any woman, in my view, in the dock here has sufficient intelligence to know that it is

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[542] Major S.M. Stewart, "Opening Address for the Prosecution," Ravensbrück I, 5 December 1946; "Prosecution Closing Address," Ravensbrück I, "The National Archive of the UK WO 235/305"; "The National Archive of the UK WO 235/308."

[543] Summary of Witnesses Character and Evidence, Ravensbrück I, "The National Archive of the UK WO 235/316.".

[544] Prosecution Closing Address, Ravensbrück I, "The National Archive of the UK WO 235/308."

not right, can't be right, to beat or ill treat without any prior excuse an Allied prisoner in a concentration camp. It is still stronger that they can realize that there can be no justification in obedience to an order to commit murder."[545] The defense's questioning of prosecution witnesses attempted to create doubt about the reliability of the witness's account – could she remember *for certain* that a particular defendant had done a particular thing on a particular day – or the quality of the witness's character.[546] The defense attorneys were helped in this pursuit by the fact that the "camp authorities were at all times, but most markedly after the German armies ceased to advance with such rapidity, painfully careful to withhold their names from the prisoners."[547] Another tactic was to ask the witnesses testifying why, if they were aware of the killing taking place in the camp, they had not done anything to stop it.[548] If the defense could not credibly dispute the crimes, the best strategy was to sow doubt wherever possible, while casting the individual defendant as, at least, not *as* bad as the others – a rather dubious distinction.

As testimony for the first Ravensbrück trial concluded on 31 January 1947, rumblings of discontent began to emerge from international observers, even before the findings were announced.[549] The first statement came from three former French prisoners, Geneviève de Gaulle-Anthonioz (niece of Charles de Gaulle), Anise Girard, and Marie-Claude Vaillant-Couturier, who staged a public protest in Paris on January 22, 1947 regarding the trial

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[545] Judge Advocate General Summing Up, Ravensbrück I, "The National Archive of the UK WO 235/308." For more information on defense pleas in the postwar war crimes trials, see UNWCC, *Law Reports of Trials and War Criminals Selected and Prepared by the United Nations War Crimes Commission*, Vol. XV Digest of Laws and Cases. (London: His Majesty's Stationary Office, 1949): 155 – 188.

[546] Debra Workman, "Refusing the Unacceptable: The Women of the Association Nationale Des Anciennes Déportées et Internées de La Résistance (ADIR)" (University of Kansas, 2007), 261.

[547] Major B. Silley, "Interim Report by War Crimes Unit, BAOR on Ravensbrück Concentration Camp;" Lt. Col. R.A. Nightingale, "Report by War Crimes Unit, BAOR on Ravensbrück Concentration Camp," "The National Archive of the UK WO 235/316"; "The National Archive of the UK RW 2/6."

[548] Workman, "Refusing the Unacceptable," 261.

[549] "The National Archive of the UK WO 235/308."

proceedings.[550] The French women presented four objections: first, that only 16 camp staffers were put on trial, out of the more than 1,000 they claimed served at the camp during its full tenure; second, that British court procedures, specifically those governing evidence, failed "to permit a general indictment and inquiry into the system of the Camp;" third, that the cross-examination of victims was unnecessarily adversarial; and fourth, that the British judiciary lacked sufficient appreciation for the horrific reality of the Ravensbrück experience.[551] *The Manchester Guardian*, reporting on the French protest, took these criticisms seriously, noting that they "were of considerable importance for the reputation of British justice abroad," which had suffered in the wake of the Belsen trial and verdicts that had not been adequately explained – especially the acquittals – to the public.[552] The British government, sensitive to international criticism, responded by alleging that de Gaulle-Anthonioz was a Communist, and the protest nothing but "a plank in the Communist platform."[553]

A week later, Soviet Colonel V. Vassiliev, the official Soviet observer at the first Ravensbrück trial, announced to the press that he was displeased with the conduct of the trial and would be relaying his displeasure to Moscow – despite the fact that the Soviets had chosen not to prosecute Ravensbrück. Specifically, Vassiliev was dissatisfied with the case against Heinrich Peters, the head SS official at Ravensbrück. The prosecution had presented little direct evidence

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[550] Geneviève de Gaulle-Anthonioz, *God Remained Outside: An Echo of Ravensbrück* (London: Souvenir Press, 1999); Geneviève de Gaulle-Anthonioz, *The Dawn of Hope: A Memoir of Ravensbrück* (New York: Arcade Publishing, 1999).
[551] "French Criticise the British Way of Justice: Methods at the Ravensbrück Trial," *The Manchester Guardian*, 25 January 1947, 8.
[552] "French Criticise the British Way of Justice: Methods at the Ravensbrück Trial," *The Manchester Guardian*, 25 January 1947, 8.
[553] WO309/1971; WO309/470 quoted in Schmidt, "'The Scars of Ravensbrück,'" 149.

against Peters, and Vassiliev feared "that justice would not be done" in Peters' case – that Peters would get off.[554]

The findings and sentences in the first Ravensbrück trial were announced on Monday, 3 February 1947.[555] Of the 16 defendants who stood trial, 15 were found guilty. Eleven were sentenced to death: Gustav Binder, Dorothea Binz, Greta Bösel, Elizabeth Marschall, Carmen Mory, Ludwig Ramdohr, Rolf Rosenthal, Vera Salvequart, Gerhard Schidlausky, Johann Schwarzhuber, and Percy Treite. Mory and Treite subsequently committed suicide before their executions. Two were sentenced to fifteen years' imprisonment: Martin Hellinger and Heinrich Peters, the defendant Soviet observer Vassiliev was concerned about. Two were sentenced to ten years' imprisonment: Margarete Mewes and Eugenie von Skene.[556] No finding was announced for Adolf Winkelmann, who died on February 1, 1947. Had Winkelmann not died, he would have been found guilty and executed.[557]

Despite the decisive finding of guilt at the Ravensbrück I trial, particularly in comparison with the lower conviction rate at the earlier Bergen-Belsen trial, not everyone was pleased with the outcome – some thought it was too harsh, others not harsh enough. Many people wrote letters to the court. Those from the friends and family of the convicted war criminals implored the court to show mercy and leniency. Several, however, were from former internees, alternately in support of, or against, the recently convicted war criminals. Geneviève de Gaulle-Anthonioz, following up her earlier protest, sent a missive urging that the execution of Carmen Mory, a member of the Gestapo and possible double agent, take place as ordered. Signed by 15 other ex-internees, the letter concluded "criminals of this kind have no fatherland. Banish without fear or

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[554] "Russian to Protest Ravensbrück Trial," *The New York Times*, 1 February 1947, 2.
[555] "The National Archive of the UK WO 235/308."
[556] "The National Archive of the UK WO 235/308."
[557] "The National Archive of the UK WO 235/308"; "The National Archive of the UK WO 235/305."

remorse as you banish traitors without pity this woman who never experienced at Ravensbrück 'the miserable position of an internee,' and who, we assure you, deserves no mercy."[558]

The sentence of Dr. Percy Treite also provoked a strong response, including a number of letters to the court and even a British-authored editorial in the German press.[559] A contradictory portrait of Treite, a gynecologist with a British mother, emerges from these letters. Many letter-writers claimed that Treite was a good man who was responsible for saving lives and should be shown mercy.[560] Others insisted that Treite was nothing more than a two-faced murderer, "protest[ed] expressly against any milder judgment, and demand[ed] that Dr. Treite receives his just punishment, according to the strictest standards."[561] One former prisoner, Mary Lindell took it upon herself to undertake a letter-writing campaign in support of Treite.[562] Lindell was a British citizen and SOE agent who was deported to Ravensbrück in 1943 following her capture in France. However, she was also a suspected Nazi spy who appears to have carried on a relationship with Treite while interned at Ravensbrück.[563] The letter-writing campaign did not work out quite as Lindell had intended. Her letters in support of Treite included allegations of unfairness on the part of the Judge Advocate, directly contradicting the statements of Treite's lawyer, and an allegation that his trial was "a Communist manoeuvre which will do much harm

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[558] Letter from Geneviève de Gaulle-Anthonioz et al, 21 February 1947, Ravensbrück I, "The National Archive of the UK WO235/315" June 1946, The National Archives, Kew.
[559] "Nachspiel zum „Ravensbrück"-Prozeß? Englische Stimme gegen die Verurteilung von Dr. Percy Treite," *Keiler Nachrichten*, no date, "The National Archives of the UK WO235/313" February 1946, The National Archives, Kew.
[560] For a pro-Treite account, see Peter Hore, *Lindell's List: Saving American and British Women at Ravensbrück* (The History Press, 2016).
[561] Letter to Major Stewart from 15 former political prisoners at Ravensbrück, 22 February 1947, Ravensbrück I, "The National Archives of the UK WO235/313."
[562] Mary Lindell's name appears in both primary and secondary sources as Lindall and Lindell. For consistency, I have chosen Lindell as it appears slightly more often.
[563] Summary of Witnesses Character and Evidence, Ravensbrück I, "The National Archive of the UK WO 235/316.".

to Britain's good name if care is not taken to prevent this kind of thing."[564] Not content with writing to the court, Lindell also sent letters to members of the British government, including the king, much to the ire of the court. Moreover, Lindell's defense of Treite also moved some ex-prisoners to write letters against Treite, some even multiple times.[565] Ultimately, Lindell's entreaties failed to sway the court, and Treite committed suicide before his execution.

Another former Ravensbrück prisoner, the French anthropologist Germaine Tillion, criticized some procedural details of the trial, specifically the lack of diversity among the survivors called to testify as witnesses, the lack of attention paid to certain crimes, and the absence of total statistical figures concerning survival rates and the incidence of specific criminal acts. However, Tillion's criticism also went to the core issue of the feasibility of obtaining justice for crimes of this magnitude through the legal system. Writing in an editorial addressed to her fellow survivors, Tillion concluded:

> If I tell you these things, my comrades, it is only because I want you to realize that in the very principals [sic] of the trial and in the inevitable conditions in which it was held, there was something deceptive. … But the game is not up … it will never be, - only some difficulty in understanding, some slowness of mind and an insufficient coordination of efforts – all that is not much, on the whole, it must be overcome. As to the remainder – that confrontation – which in spite of all must remain a mockery – between the crime and its reparation, the violation of justice and its restoration – that confrontation that we alone are able to make – well, it is the price at which life is to be bought. We are still alive, so much the worse for us.[566]

Thus, the clear statement of guilt at the first Ravensbrück trial led to contradictory responses. For some, the trial was too harsh. For others, the trial was still too lenient, calling into question the suitability of trials as a mechanism of justice for such crimes.

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[564] BAOR/15418/525/540/JAG Memo, 11 March 1947, p.25, Ravensbrück I, "The National Archive of the UK WO235/315."
[565] Letters from Barbara Chatenay, 27 February 1947, 6 March 1947, Ravensbrück I, "The National Archives of the UK WO235/313."
[566] Germaine Tillion, *Voix et Visages*, No. 7 (1948) quoted in Workman, "Refusing the Unacceptable," 262.

PUBLIC REACTIONS

While the Ravensbrück II – VI trials were taking place in Berlin at the end of 1947 and into 1948, conversation at home in Britain about the war crimes trials continued. The same themes dominated as before the trials began – speed, cost, reconstruction, and justice – but now did so with reference to specific ongoing or recently concluded trials. As the trials progressed, British observers expressed recurring concerns about the pace of individual trials and the overall war crimes program as too fast or too slow.[567] By 1948, this concern had morphed in some quarters into an insistence that the war crimes trials had to end immediately, even if that meant being "prepared to risk now that some criminals escape punishment."[568] Other voices contended that ending the trials was not enough, they advocated "an amnesty at this stage; no more prosecutions; no more surrenders to other Governments, and a reconsideration of all sentences passed," even while trials were continuing in Germany.[569]

The question of speed was closely connected with concerns about both reconstruction and justice. Many believed that the war crimes trials kept the Germans in a state of purgatory, unable to move forward as long as the trials continued, thereby perpetuating the Nazi presence, and that "whereas it was right to bring war criminals to swift justice … there would come a time when, if these trials were still continued, the effect would not be that which was hoped for but one which would be harmful to what was bound to be the policy of the victorious allies – namely, to build up a new and sounder Germany."[570] Continuing the war crimes trials was therefore counterproductive to British objectives and interests, which were beginning to be defined against

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[567] De L'Isle and Dudley, letter to the editor, *The Times (London)*, 6 September 1948, 5.
[568] *Hansard Parliamentary Debates*, House of Lords, 5 May 1949, Vol. 162, cc376-416; "Bishop Calls for an End to Trials of War Crimes: 'In the Pathway of Reconciliation,'" *The Manchester Guardian*, 28 August 1948, 6.
[569] *Hansard Parliamentary Debates*, House of Lords, 5 May 1949, Vol. 162, cc376-416.
[570] *Hansard Parliamentary Debates*, House of Lords, 5 May 1949, Vol. 162, cc376-416.

a new foe. Shifting British priorities became evident in this period, as the Soviets were now referred to in Parliament as "beyond the pale of association in the comity of nations" and "even worse" than the Gestapo.[571]

As the trials continued, worries about Britain's reputation for justice persisted as well. For some, the very idea of war crimes trials was fundamentally suspect and unjust, a form of *ex post facto* justice.[572] Likewise, some found the trials to be hypocritical, instituting separate laws for winners and losers, remarking that "there was something cynical and revolting in the spectacle of British, French and American judges sitting on the Bench with colleagues who, however impeccable as individuals, represented a country which before, during and since the trials has perpetrated half the political crimes in the calendar."[573] As a result, some citizens expressed "fear for the reputation of our country" and for British "justice and humanity."[574]

Once the trials began, the British were able to voice these concerns about speed, cost, reconstruction, and justice with reference to concrete examples from the proceedings. Trial opponents used cases of specific war criminals to make general criticisms of the war crimes program, alleging that individual cases of possible misconduct or injustice were representative of the entire system and significant enough to terminate the trials.[575] Whereas formerly the concern was that war criminals should not "have a supply of champagne and chicken and so on," it was now the possible mistreatment of war criminals, evidenced by the Lord Bishop of Chicester's

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[571] *Hansard Parliamentary Debates*, House of Lords, 5 May 1949, Vol. 162, cc376-416.
[572] B.H. Liddell Hart, Gilbert Murray, Victor Gollancz, R.R. Stokes, letter to the editor, *The Times (London)*, 16 November 1948, 5.
[573] *Hansard Parliamentary Debates*, House of Lords, 5 May 1949, Vol. 162, cc376-416.
[574] De L'Isle and Dudley, letter to the editor, *The Times (London)*, 6 September 1948, 5; *Hansard Parliamentary Debates*, House of Lords, 5 May 1949, Vol. 162, cc376-416.
[575] *Hansard Parliamentary Debates*, House of Commons, 15 March 1949, Vol. 462, cc2072-82.

inquiries into accommodations and conditions at Spandau Prison.[576] In some ways, this is consistent with ongoing British concern for justice. However, the emphasis on individual war criminals also demonstrates a misplaced preoccupation with fairness that privileged the postwar experience of the war criminals over the wartime experience of the Nazis' victims, suggesting that many British had yet to grasp the enormity of the suffering and criminal conduct during World War Two.

A case in point is MP Quintin Hogg's misguided support for Dr. Benno Orendi, who was tried in the fourth Ravensbrück trial, sentenced to death, and executed on September 17, 1948.[577] Hogg based his support for Orendi – after Orendi had already been executed – on the following arguments: Orendi did not testify on his own behalf, there was only one, questionable, witness against him, the trial records were in a state of disarray, and the trial procedures would not have held up in a British court. Perhaps most disingenuously, Hogg suggested that "there was not a jot or tittle of evidence that extermination actually had taken place. In other words – you have hanged a man for the equivalent of murder and have not proved that anyone is dead."[578] Hogg may have been confused by the fact that after the first Ravensbrück trial, the subsequent trials did not need to establish that the crimes occurred, only the defendants' criminal complicity.[579] Earlier trials, however, had established murder, and to assert that death was unproven was blatantly deceptive, irresponsible, and insensitive. Though Hogg claimed to make no judgments on guilt or innocence, his speech on behalf of Orendi betrays a certain willingness to disregard

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[576] *Hansard Parliamentary Debates*, House of Commons, 29 May 1945, Vol. 411, cc34-7; *Hansard Parliamentary Debates*, House of Lords, 5 May 1949, Vol. 162, cc376-418.
[577] "The National Archive of the UK WO 235/530 Ravensbrück Case No. IV."
[578] *Hansard Parliamentary Debates*, House of Commons, 15 March 1949, Vol. 462, cc2072-82. See also Lord John Hope's defense of Oberst Hesselmann, *Hansard Parliamentary Debates*, House of Commons, 6 August 1947, Vol. 441, cc1596-606.
[579] Erpel, "Die britischen Ravensbrück-Prozesse 1946 – 1948," 124, 126.

the seriousness of crimes committed by white-collar Nazis. This domestic trend towards individualist focus on specific war criminals is particularly notable in light of the concomitant shift in the trials towards proving individual criminal responsibility, perhaps suggesting that the use of an individual-oriented critique of the war crimes program led to parallel prosecutorial choices.

These public conversations and the concerns motivating them had practical effects on the ongoing trials in the forms of increasing specificity and individualization. As the survivor community pushed back against the trial presentation and verdicts and institutional support in Britain was waning, the war crimes team in Germany responded by focusing on crimes that would be recognized as such by civil courts in Britain as well as military courts in occupied Germany. Rather than pressing to criminalize the camp staffs and to advance the concept of acting in concert, the war crimes team focused on preserving its ability to prosecute war crimes cases, even if that meant a less ambitious agenda or an increasingly conservative approach. The Ravensbrück trials II – VI demonstrate the prosecution's shift away from collective crimes and towards more traditional tactics.

RAVENSBRÜCK II - VI

The remaining Ravensbrück trials began in November 1947 with Ravensbrück II, and concluded in July 1948 with Ravensbrück VI. As a result of the evidentiary base established in the first Ravensbrück trial, in trials II – VI the prosecution was no longer required to establish that the crimes occurred, only that the defendants had committed the crimes.[580] Throughout these trials, the defense strategies remained largely the same as in the first trial – to challenge the

[580] Erpel, 124, 126.

witnesses' recall and memory, to introduce doubt wherever possible, and to paint individual defendants in a (relatively) positive light compared to the *true* criminals.

The prosecution, however, evinced several changes in strategy between the earlier and later Ravensbrück trials. First, the way the Ravensbrück concentration camp was presented shifted noticeably over the course of the later trials, congruent with the emergence of increasingly specific charges. The prosecution never presented Ravensbrück as anything other than a place of horror – the women's hell – but the emphasis on the nature of that horror changed between the first and seventh trials. The representations of Ravensbrück in the first trial focused on the conditions of the camp, portraying it as a place designed to induce death via inhumane conditions.[581] As the trials progressed the prosecution's emphasis shifted to focus more on outright murder and extermination, demonstrated by the increasing specificity of the charges as the trials continued. At the first trial, all 16 defendants were charged with the same crime, "committing a war crime in that they at Ravensbrück, in the years 1939 – 1945, when members of the staff at Ravensbrück Concentration Camp, in violation of the laws and usages of war, were concerned in the ill-treatment and killing of Allied Nationals interned therein."[582] By the second trial in November 1947, the sole defendant, Friedrich Opitz, was charged with the same ill-treatment and killing of Allied nationals charge as his peers at Ravensbrück I – what was known as the "omnibus charge" – but he also faced two additional charges, one for sending prisoners to the Uckermark *Jugendlager* with the knowledge that this meant death, and another for the killing

[581] Major S.M. Stewart, Prosecution Opening Address; See also testimony of witnesses Silvia Salvesen, Helena Dziedziecka, Neeltje Epker, Violette Le Coq, and Dr. Louise Le Porz, Ravensbrück I, "The National Archive of the UK WO 235/305."
[582] "The National Archive of the UK WO 235/305."

of an Allied Czech national.[583] By the Ravensbrück IV trial in 1948, the trial that so exercised MP Hogg, there were six additional charges covering a variety of offenses, in addition to the omnibus charge, including the charge against Dr. Walter Sonntag for the "killing by lethal injections of a number of female Allied internees," and the charge against Dr. Benno Orendi for the "selection of female Allied internees for despatch to mass extermination camps for killing."[584] These charges not only were more specific, but also they emphasized individual acts and personal responsibility over collective culpability.

The increasingly specific and individualized charges demonstrate the heightened prosecutorial attention to the more directly murderous and exterminatory aspects of Ravensbrück, and so do the trial proceedings. Whereas in the first trial the emphasis was primarily on the conditions of the camp, by the Ravensbrück II trial, the majority of attention was directed to more direct means of violence, including beatings, deportations to the *Jugendlager*, and the gas chamber.[585] This trend continued throughout the Ravensbrück trials, as the focus shifted from the conditions of the camp and the staff's responsibility for improving these conditions, to direct acts of violence against internees taken by the individual defendants. As a result, lower-level staffers who directly inflicted harm on prisoners became easier to convict than staff members in camp leadership positions. For example, Ravensbrück VI tried six *Aufseherinnen* for mistreating prisoners and selecting women for the gas chamber. Three of the

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[583] Final Address for Dr. Walter Sonntag, Ravensbrück IV; Charge sheet for Friedrich Opitz, Ravensbrück II, "The National Archive of the UK WO235/531: Exhibits: 1-20. Place of Trial: Hamburg." June 1948, The National Archives, Kew; "The National Archive of the UK WO 235/433 Ravensbrück Case No. 2."
[584] Charge sheet, Ravensbrück IV, "The National Archive of the UK WO 235/530 Ravensbrück Case No. IV."
[585] Prosecution Closing Precis, Ravensbrück II; Prosecution Opening Address, Ravensbrück I; Prosecution Closing Address, Ravensbrück I, "The National Archive of the UK WO 235/433 Ravensbrück Case No. 2"; "The National Archive of the UK WO 235/305"; "The National Archive of the UK WO 235/308."

women, Christine Holthower, Ida Schreiter, and Ilse Vettermann were *Aufseherinnen*; the other three, Luise Brunner, Anna Frederike Mathilde Klein, and Emma Zimmer were *Oberaufseherinnen*. Despite the higher position of the *Oberaufseherinnen*, their sentences were lighter, because fewer witnesses could identify the *Oberaufseherinnen* personally or testify to individual acts of cruelty.[586]

Some evidence also supports a pattern of increased haste as the Ravensbrück trials proceeded. The trials became much shorter, and their records less complete. The records from the later trials are generally handwritten, rather than typed, and consist mainly of notes and summaries instead of verbatim transcripts. MP Hogg, who was evidently keeping close watch on proceedings in Germany, complained to Parliament on 15 March 1949 about the state of the records from the Ravensbrück IV trial. Hogg's description of the records in 1949 matches the records in their current state, suggesting this is the original condition of the records, rather than a side effect of the passage of time.[587] Of course, trials with fewer defendants took less time, and with each subsequent trial, the court could draw on a growing body of established evidence from the previous trials, but the increased speed and the condition of the records perhaps indicate a conscious effort to expedite the proceedings.

Despite the changes in the charges and the presentation of Ravensbrück across the trials, and the continuing domestic public unease with the whole enterprise, the seven Ravensbrück trials delivered generally consistent conviction rates and thus do not suggest increasing leniency over time. Overall, the Ravensbrück trials had an 88% conviction rate, and of those found guilty, 51% received death sentences. With the exceptions of the Ravensbrück III and Ravensbrück VI trials, five of the seven trials convicted all the defendants across the board. The conviction rate

[586] Erpel, "Die britischen Ravensbrück-Prozesse 1946 – 1948," 127.
[587] *Hansard Parliamentary Debates*, 15 March 1949, Vol. 462, cc2072 – 82.

was the same for the first and last trials, with the lowest conviction rate belonging to the Ravensbrück III trial of the Uckermark *Jugendlager* staff. The *Jugendlager* trial ran from April 14 – 16, 1948, trying Johanna Braach, Elfriede Mohneke, Ruth Closius Neudeck, Margarete Rabe, and Lotte Toberentz for their roles at Uckermark. Neudeck, the *Oberaufseherin*, was convicted, sentenced to death, and executed; while Mohneke and Rabe received shorter terms of imprisonment. Braach and Toberentz were acquitted. The conviction rate rose again a few months later, however, for the *Aufseherinnen* trial (Ravensbrück VI) in July 1948, the last of cases. Six women were tried: Luise Brunner, Christine Holthower, Anna Friederike Mathilde Klein, Ida Schreiter, Ilse Vettermann, und Emma Zimmer. Holthower and Klein were acquitted, the other four convicted; Schreiter and Zimmer were both executed. Notably, the Ravensbrück III and VI trials were the only trials with all-female slates of defendants, which likely accounts for the lower conviction rates for these two trials.

The fact that the Ravensbrück trials did not convict all defendants undermined descriptions of the proceedings as show trials or victor's justice. In the words of US Justice Robert H. Jackson, "The ultimate principle is that you must put no man on trial under the forms of judicial proceedings if you are not willing to see him freed if not proven guilty. If you are determined to execute a man in any case, there is no occasion for a trial; the world yields no respect to courts that are merely organized to convict."[588] Consequently, the verdicts indicated a degree of deliberation, suggesting that the outcomes were not "predetermined results."[589]

That the Ravensbrück trials maintained a consistent conviction rate despite growing domestic concerns about and disaffection with the war crimes program is in some respects

[588] Robert H. Jackson, "The Rule of Law among Nations," *American Bar Association Journal*, 1945, 290–94, 293.
[589] Jackson, 293.

surprising, but becomes less so when we examine the ways in which the war crimes investigation teams adapted their approach to continue pursuing trials. In light of increased pressures from home, the changing emphasis and increasing specificity of the trials attest to a successful effort by prosecutors to justify the British war crimes program to a domestic audience concerned about financial expenditures and the legitimacy of such trials in the first place. Some measure of justice, however imperfect or imbalanced, resulted from an effort to evade domestic critics while pursuing punishment in whatever form circumstances allowed.

Furthermore, the outcomes of the Ravensbrück trials are generally consistent not only with the results of other British trials, but also with the outcomes of other Allied trials of concentration camp staffs in 1945 – 1949. First, the Ravensbrück trials' conviction rates represent the British norm, not an exception. The British held trials for more than a dozen other concentration camps, including Beendorf, Bergen-Belsen, Gaggenau, Hamburg-Sasel, Kiel-Hasse, Lahde-Weser, Natzweiler, Neuengamme, Neugraben-Tiefstack, Schandelah, and Stocken-Ahlen. These proceedings tried 159 defendants, found 133 guilty, and sentenced 44 to death. The overall conviction rate was 83%, just below the Ravensbrück conviction rate at 88%. However, only 33% of this group received death sentences, significantly lower than the 51% rate at Ravensbrück, suggesting either that justice was harsher at Ravensbrück, or that the crimes tried at Ravensbrück were judged as qualitatively different from those of other cases – not an impossibility given the gas chamber and *Jugendlager*. The average conviction rate across these trials was 87%.[590] If Ravensbrück is included in this group, the conviction rate rises to 86% and the rate of capital punishment to 37%.

[590] Calculations are my own, based on the data in UNWCC, *History of the United Nations War Crimes Commission*, 540 – 542.

Second, the British conviction rate was comparable to that of the Allies as a whole. Including British trials, the sample of concentration camp staff trials returns an 88% conviction rate, just above the British conviction rate and on par with Ravensbrück. The overall Allied rate of death sentences is 53%, quite close to the Ravensbrück death rate, but certainly higher than the general British rate. If the Allied results are considered without the British, the conviction rate is 91% and the death rate reaches its highest point at 64%.[591] The Allied IMT had a lower conviction rate at 69%, with a 43% death rate.

Furthermore, among the Americans, the conviction rate was 89% and the death rate 65%, quite similar to the results of Durwood Riedel's study of all US Army war crimes tribunals, not only those of concentration camps.[592] These conviction rates, for trials such as Buchenwald, Dachau, Dora-Nordhausen, Flossenbürg, Mauthausen, Muhldorf, the Nuremberg doctors, and Hadamar Hospital, are comparable with the British rates – barely higher than the 88% Ravensbrück rate and slightly higher than the general British rate of 83%. However, there is a significant disparity in sentencing.[593] Though the death sentence was only one of the punishments meted out by the courts, this does suggest that, if defined solely by sentencing, the Americans were harsher than the British. Rates of initial death sentences, however, are just that – rates of *sentencing*, not actual executions. For a variety of reasons, initial sentences were often commuted or reduced. Moreover, harshness of sentencing should not be equated automatically with justice. As Tomaz Jardim points out in his study of the American Mauthausen trial, the

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[591] Based on data in UNWCC, *History of the United Nations War Crimes Commission*, 540 – 542; UNWCC, *Law Reports of Trials of War Criminals, Vol. 1 - 15*.
[592] My conviction rate calculated on Durwood Riedel's data in Durwood Riedel, "The U. S. War Crimes Tribunals at the Former Dachau Concentration Camp: Lessons for Today?," *Berkeley Journal of International Law* 24, no. 2 (2006): 556.
[593] UNWCC, *History of the United Nations War Crimes Commission*, 540 – 542.

price of such justice was often the use "of a legal system that denied the accused a full and fair trial," something the British were keen to avoid at least the perception of.[594]

The seven trials of the Ravensbrück series illustrate the tensions between the competing priorities of disparate trial observers. For survivors, the trials were too focused on definitions and standards of criminal behavior, at the expense of allowing survivors to share their experiences. For British domestic audiences and politicians concerned with economic recovery and international relations, the trials chanced hindering both Britain's domestic and international agendas at a critical moment. Moreover, the trials also risked potentially violating British principles of justice, with negative repercussions for both the legitimacy of the trials and Britain's international reputation. To navigate such tensions, the British war crimes teams moved away from legal methods that accounted for the specificity of Holocaust crimes, as at the Zyklon B trial, in favor of using conservative criminal law to try exceptional categories of crime.

[594] Jardim, *The Mauthausen Trial*, 240.

Conclusion

Between 1945 and 1948, the British military prosecuted close to one thousand individuals for criminal acts committed as part of Nazi rule, and investigated countless others. These trials took place separately from the International Military Tribunal at Nuremberg, and were prosecuted under the British Royal Warrant of 1945. The IMT was rooted in the Nuremberg Charter, which was written specifically for the conditions of the Second World War, and embraced new legal concepts of crimes against humanity and genocide. The Royal Warrant, however, drew its authority from traditional, established, and conservative sources of international criminal law – primarily the Hague and Geneva Conventions – reflecting British hesitancy about international law grounded in universal human rights. Despite the lack of a purpose-built legal instrument, the British did prosecute Holocaust-specific crimes, including the operation of concentration camps, the exploitation of forced labor, and the production of Zyklon B for the purpose of murder, under the Royal Warrant. Without recourse to charges of crimes against humanity, the British prosecuted such crimes primarily as violations of international law that governed the management of civilians, the treatment of prisoners of war, and the (mis)use of occupied foreign labor. In doing so, the British employed established legal approaches to try new and extraordinary categories of crime in a way that also incorporated the racial motivations underlying Nazi crimes.

The postwar British criminal proceedings were shaped by complicated and often competing motivations, including timing, investigative zeal, domestic and international political considerations, and public opinion. While sincere legal conservatism was certainly a factor, the British approach to war crimes trials in Germany was fundamentally influenced by British imperial concerns and fears of setting universalist standards of human rights that could be

brandished against Britain by colonial nationalists. The British wanted to punish Nazis for crimes committed in a particular political and historical context. Although the British were certainly not averse to using the trials as a lesson for Germans or a warning to others in the international community who might attempt similar acts, the British focus was trained on specifically punishing *Nazis*, for crimes committed in World War Two. Other postwar occupation programs, notably the Americans, had much more explicit educational and ideological aims.

Moreover, these trials – Bergen-Belsen, Zyklon B, the baby farms, and Ravensbrück – demonstrate that the British were not as ignorant of Nazi persecution of Jews as has been presumed. The British courts under the Royal Warrant acknowledged the persecution of the Jews and included that persecution in the court's understanding of Nazi crime. Confronted by the limitations of the category of "Allied national" when faced with innumerable Jewish survivors from Nazi Germany and other Nazi-allied countries, British investigators, many of whom came from German, Austrian, and Jewish émigré backgrounds, simply pursued cases involving Jewish victims anyway. By 1946, the definition of "Allied national" was expanded under British Military Government Ordinance No. 47 to include German Jewish victims, bringing the official definition in line with the practices that had already emerged on the ground in British-occupied Germany. The Zyklon B trial, which took place before the War Office released Ordinance No. 47, is an excellent example of this, as well as the Bergen-Belsen trial's early focus on the eliminationist Nazi persecution of Jews. Thus, the British record stands up better alongside the American record identifying and prosecuting crimes against Jews.

To fully explain the British reputation as soft on Nazi war crimes and to account for the conservatism that established inadvertent lasting legal precedent, more research is needed into the links between British policy in occupied Germany and British postwar imperial concerns.

Although work on the influence of the early Cold War on the occupation and various trial programs already exists, this should be extended to incorporate decolonization within the British Empire and its connections with the British occupation and Royal Warrant trials, in particular. It seems obvious that the British were wary of setting legal precedent grounded in universal human rights that, in another context, colonial nationalists might use against the crumbling British empire. Ample evidence shows that British occupation officials were acutely attuned to the emerging Cold War, which not only played out in popular and political reactions to the Royal Warrant trials, but even made it into courtroom arguments attempting to minimize Nazism in comparison with the true menace – Communism. Additional research into the Colonial Office and Foreign and Commonwealth Office is necessary to extend these connections.

In 2011, a legal suit over British torture practices in Kenya during the Mau Mau Uprising forced the revelation of a hidden cache of government files held at Hanslope Park.[595] These records are known as the Foreign and Commonwealth Office migrated files, because these files were sent back, or migrated, from the colonies to Britain when the empire collapsed. By late 2013/early 2014, the Foreign Office revealed that the "secret archives" were much larger than initially reported in 2011, containing millions of files occupying more than 15 miles of shelf space.[596] Initial reports indicate that the collection includes both materials on the British occupation of Germany and files related to Holocaust survivors.[597] Scholars have not yet had an opportunity to view these files, and the fact that records related to the Holocaust and the

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[595] David M. Anderson, "Mau Mau in the High Court and the 'Lost' British Empire Archives: Colonial Conspiracy or Bureaucratic Bungle?" *The Journal of Imperial and Commonwealth History*. Vol. 39, No. 5, 2011: 699 – 716.
[596] Ian Cobain, "Foreign Office Hoarding 1M Historic Files in Secret Archive," *The Guardian*, 18 October 2013.
[597] Ian Cobain, "Slave Trade Documents among Illegal Foreign Office Cache," *The Guardian*, 20 January 2014.

occupation of Germany wound up secreted away alongside colonial records is itself intriguing. The collection also includes the private papers of individuals working in imperial service, which have the potential to include valuable material about the occupation and trials. Moreover, given the overlap between personnel working in occupation policy and war crimes investigation and those with careers in imperial service, these records will illuminate the intersecting networks of occupation and imperial knowledge in new ways. The UK National Archives in Kew is currently cataloguing many of these records, which will hopefully be available for scholarly use soon.[598] The files that emerged as part of the 2011 Mau Mau case have already influenced British imperial history, and it is critical that historians and other scholars be able to view the rest of the collection as soon as possible.

In the shadow of the IMT and subsequent Nuremberg proceedings, scholars have overlooked or dismissed the Royal Warrant trials. This has been a mistake. The Royal Warrant trials have had a lasting impact on international criminal law, as seen in the *Kadic v. Karadzic* and the *Presbyterian Church of Sudan v. Talisman Energy* cases, not in spite of the Warrant's inherent conservatism, but rather because of it. Moreover, the Royal Warrant presents a relatively self-contained, portable model for war crimes prosecution likely better suited to situations with less political and economic capital available. As a precedent less potentially fraught than the IMT, the Royal Warrant trials offer a legally continuous alternative that demonstrates the ability of conventional law to address unparalleled criminal acts.

[598] See the official guidance on the Foreign and Commonwealth archive transition plan at https://www.gov.uk/guidance/archive-records.

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AIR55 Air Ministry, British Air Forces of Occupation, Germany and Allied Commission for Austria (British Element), Air Division: Papers

Cabinet Papers

CAB128 Cabinet: Minutes
CAB129 Cabinet: Memoranda
CAB195 Cabinet Secretary's Notebooks
CAB24 War Cabinet and Cabinet: Memoranda
CAB63 War Cabinet and Cabinet Office: Lord Hankey: Papers
CAB65 War Cabinet and Cabinet: Minutes
CAB66 War Cabinet and Cabinet: Memoranda

Foreign Office

FO1006 Foreign Office and Predecessors: Control Commission for Germany (British Element): Schleswig-Holstein Region
FO1014 Control Office for Germany and Austria Foreign Office: Control Commission for Germany (British Element): Hansestadt Hamburg
FO1049 Control Office for Germany and Austria Foreign Office: Control Commission for Germany (British Element): Political Division, Records
FO1050 Control Office for Germany and Austria Foreign Office: Control Commission for Germany (British Element): Internal Affairs and Communications Division: Files
FO1060 Control Office for Germany and Austria and Foreign Office: Control Commission for Germany (British Element): Legal Division, and UK High Commission, Legal Division
FO371 Foreign Office: Political Departments: General Correspondence from 1906 - 1966
FO743 Foreign Office and Foreign and Commonwealth Office: Embassy and Legation
FO916 Foreign Office: Consular (War) Department, later Prisoners of War Department: Registered Files

Medical Research Office

FD1 Medical Research Committee and Medical Research Council: Files

War Office

WO205 War Office: 21 Army Group: Military Headquarters Papers, Second World War
WO219 War Office: Supreme Headquarters Allied Expeditionary Force: Military Headquarters Papers, Second World War
WO222 War Office: Medical Historians' Papers: First and Second World Wars
WO229 War Office: Supreme Headquarters Allied Expeditionary Force and 21 Army Group: Microfilms

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WO371 War Office: Boy Messenger Friendly Society and War Office School: Records

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HS4 Special Operations Executive: Eastern Europe, Registered Files
HS9 Special Operations Executive: Personnel Files

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Stewart Richard Arthur
Vera Atkins
William Alexander Gibson

General Collection

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