

The Nuremberg Trials: Transitional Justice?

- Richard Tüngel (Editor in Chief), 'Nuremberg Legality,' in: *Die Zeit* (January 22, 1948), and George S. Martin (Deputy Public Relations Officer, U.S. Office of Chief of Council for War Crimes), Letter to the Editor, in: *Die Zeit* (February 12, 1948), both translated by Thomas Dunlap on the GHDI website: http://germanhistorydocs.ghi-dc.org/sub_document.cfm?document_id=2309 (accessed June 14, 2019)

At the commencement of Germany's denazification program in Allied-controlled German territory, victorious Allied powers created tribunals for the prosecution of Nazi war criminals. After the courts concluded many objections towards the tribunals' transitional justice approach were raised. This source is a January 1948 editorial criticizing the United States' prosecution by editor-in-chief Richard Tüngel of the German newspaper *Die Zeit*. Three weeks later a response letter was written addressed to Mr. Tüngel's accusations.

Richard Tüngel, a German journalist who was born in Munich, Germany in 1893, was initially an architect and the Director of Construction in Hamburg.¹ Under National Socialist Germany, Tüngel was removed from his position in 1933, so he moved to Berlin and worked as a translator and writer until 1945.² Tüngel, who was controversial for his publications during the post-war years, openly expressed his opinions and those of many German people without fear. In 1958 he and journalist Hans Rudolf Berndorff published a book titled *Auf dem Bauche sollst du kriechen: Deutschland unter den Besatzungsmächten* (Upon thy belly shalt thou go: Germany under the Occupying Powers), which criticized the Allies. Tüngel's claims in the editorial rubbed the United States prosecution team the wrong way. Deputy of Public Relations Officer, George S. Martin, who was responsible in responding to Mr. Tüngel, defended the legality of the court's proceedings. His response letter began with a salutation stating the following, "Dear sir! I read with great interest the article 'Nuremberg Justice' written by Mr. Tüngel in its edition of January 22, 1948."³ Evidently, the letter addressed to Richard Tüngel was formulated in defense towards

¹ "Richard Tüngel." Prabook.com. Accessed May 28, 2019. <https://prabook.com/web/richard.tungel/1948742>.

² "Richard Tüngel." Prabook.com. Accessed May 28, 2019. <https://prabook.com/web/richard.tungel/1948742>.

³ Martin, George S., and Richard Tüngel. "Nurnberg: Ein Briefwechsel und ein Bericht." *Die Zeit* (Nuremberg), February 12, 1948. <https://www.zeit.de/1948/07/nuernberg-ein-briefwechsel-und-ein-bericht>.

the accusations expressed by the editor-in-chief. Ready to assert their reasons and justifications for the trial proceedings serves as the underlying premise which prompted the creation of this historical document.

This study has allowed me to examine a variety of scholarly platforms like JSTOR, Worldcat, and databases available online provided by UCSB's library. An important finding of the German newspaper *Die Zeit* on electronic publication online, allowed for a thorough understanding in full context of the document written in German . Using google translate, aided my interpretation of the text acquiring an extensive knowledge of the source that was very resourceful in this research. During this study, I encountered a diverse selection of publications in regard to the legality of transitional justice at Nuremberg. Transitional justice in international criminal law is the topic of many scholarly debates regarding its credibility. Addressing legality concerns, Tessa McKeown, of the Victoria University of Wellington, submitted a thesis to her department's honors program titled *The Nuremberg Trial: Procedural Due Process at the International Military Tribunal*. McKeown states that the application of retrospective law remotely with the proceedings being conducted under the ex-post facto law formulated legality concerns which emulated those of Mr. Tüngel.⁴ McKeown also cites Whitney Harris's book *Tyranny on Trial* and states how the tribunal attempted to keep the trial fair by utilizing both European and American systems yet they predominantly used the American system. Searching through UCSB's Library database aided my discovery of additional sources on Transitional Justice. Author Padraig McAuliffe, who was in agreement with Tüngel, wrote "Transitional Justice and the Rule of Law: The Perfect Couple or Awkward Bedfellows." Blatant in his claims, he believes that many assumed that transitional justice is considered a prerequisite for institutionalizing a "rule of law based society" following a problematic event or repression, and that they both serve as mutually supporting developments.⁵ Critical concerns emerging from every side of the spectrum prompted the creation of numerous scholarly debates regarding the problematic transitional justice institutionalized at the Nuremberg Trials. Furthermore, Rudi G. Teitel, who wrote *Transitional Justice Genealogy (Symposium: Human Rights in Transition)* for the New York Law School, states, "Moreover, following World War II, the application of

⁴ Tessa McKeown. "The Nuremberg Trial: Procedural Due Process at the International Military Tribunal." *Victoria University of Wellington Law Review* 45 (2014): 109-647.

⁵ McAuliffe, Padraig. "Transitional Justice and the Rule of Law: The Perfect Couple or Awkward Bedfellows?" *Hague Journal on the Rule of Law* 2, no. 2 (2010): 127-54. doi:10.1017/S1876404510200015.

international justice involved legal irregularities which raised tensions for the rule of law, especially given its stated liberalizing aim.”⁶ The conditions that Germany was facing during the post-war period resulted in the creation of this so-called transitional justice. Germany was left with no standing government and the Allied powers took it upon themselves to become the controlling powers in Germany. Spanish writer Gomez Aparicio wrote an editorial for the *New York Times* in which he writes about the injustice done for creating new crimes under the International Military Tribunal. He states, “the Soviet Union had no business passing judgement on the accusations involved because on all these crimes without exception charges could be placed against Russia.” Going against the Russians and all the atrocities they committed during the war was a fair statement.

Similarly, Tüngel's claims on American Prosecution at Nuremberg that were publicized in the *Die Zeit* newspaper addressed actual feelings of the defeated German people. In the letter he states, “witnesses are being pressured into signing false records of proceedings, ones that aren't similar to the statements they had made under oath.”⁷ It was clear that the vanquished were being punished severely by the victors by any means. The impartiality was conspicuous but the atrocious Nazi actions that unfolded during the course of the war upheld the formulation of contemporary international law and transitional justice. Following those claims he wrote, “We, who have always hated Hitler and his 'Third Reich,' we, who have demanded that the guilty of the Nazi system should be severely punished, we now find ourselves compelled to stand up and ensure that justice is done in Nuremberg. Six German lawyers have been arrested. Under the American legal system that is permissible – in Germany this happened only in the special courts of the 'Third Reich.’” The German populace, who were suffering immensely after the war, sought compassion from Allied Powers in control of what remained of Germany. The victors' goal at the end of the horrendous war was out to punish those responsible and make an example of the abominable events that unfolded in order to never be recreated again.

⁶ Ruti G. Teitel. "Human Rights in Transition: Transitional Justice Genealogy." *Harvard Human Rights Journal* 16 (2003): 69-245. 73

⁷ The Editor-in-Chief of *Die Zeit* on the Nuremberg Trials (January 22, 1948) and the American Response (February 12, 1948).

Annotated Bibliography in Chronological Order

Aparicio, Gomez, "Nuremberg Trial Scored: Spanish Editor Questions Legal Authority of Tribunal." *New York Times*, Oct 08, 1946. <https://search-proquest-com.proxy.library.ucsb.edu:9443/docview/107558677?accountid=14522>

The author of this newspaper article was the editor of the Hoja and director of the government news service Efe. In the editorial he states that the trials were conducted under new judicial rules for crimes that didn't exist until just now. As a writer at the time he was very qualified to talk about the subject because during the war there were many instances where writers had to cover what was going on. *The New York Times* is a credible source that publishes a variety of important articles.

Martin, George S., and Richard Tüngel. "Nurnberg: Ein Briefwechsel und ein Bericht." *Die Zeit* (Nuremberg), January 22 and February 12, 1948. <https://www.zeit.de/1948/07/nuernberg-ein-briefwechsel-und-ein-bericht>.

The authors of these historical document were the editor-in-chief of the German newspaper *Die Zeit* and the Deputy of Public Relations Officer for the United States. Tüngel, who was born in 1893, lived a relatively long life which concluded in 1970. Tüngel was a conservative journalist who had a central focus on voicing his critiques on behalf of the German people. He questioned the integrity of the trial and accused the United States of administering corrupt justice in correlation to the practice of the special courts of the Third Reich. Martin was a member of the American prosecution. The document found in the German history website online is condensed with information, however it is only 2 pages long on the website. The official publication found online on the newspaper website is 6 pages long. It does not contain Tüngel's original editorial, but it does contain a rebuttal to Martin's response by Tüngel. It promises to publish a report by Chief Justice Kempner in a future issue.

Harris, Whitney R. *Tyranny on Trial: The Evidence at Nuremberg*. Dallas: Southern Methodist University Press, 1954.

Harris wrote *Tryanny on Trial* based on the evidence used in the trial. The book was written relatively soon after the trial in 1954. It is cited in Tessa Mckweon's article on the Procedural Due Process at the International Military Tribunal. The trial was scrutinized by many different writers around the world due to the legality of the procedures. The trial was conducted under Anglo-American law but predominately under the American model. This was used to allow the trial to proceed efficiently without any compromises.

Osiel, Mark J. "Ever Again: Legal Remembrance of Administrative Massacre." *University of Pennsylvania Law Review* 144, no. 2 (1995): 463-704. doi:10.2307/3312631.

Osiel is a professor of Law at the University of Iowa. He obtained a J.D and Ph.D. from Harvard University in 1987. Professor Osiel is highly qualified in the field of Law

making him a credible source for my research. I found this article on the JSTOR online database, searching for anything regarding “Integrity of Nuremberg Trial.” The central focus of his study are the violations that occurred during the trial. This very long article is rich in information and very useful for this study.

Ruti G. Teitel. "HUMAN RIGHTS IN TRANSITION: Transitional Justice Genealogy." *Harvard Human Rights Journal* 16 (2003): 69-245.

Tietel is an internationally recognized author on international law, human rights, transitional justice, and comparative constitutional law. She is the Ernst C. Stiefel Professor of Comparative Law at New York Law School and Visiting Professor at the London School of Economics. She is highly qualified for the subject of my study thanks to her high level of education and expertise on the subject. Graduating from Georgetown where she earned her bachelors in 1977, followed by earning her J.D from Cornell in 1980, she attended Yale Law school. Well educated on the subjects stated, her central focus of this article is the history of transitional justice.

McAuliffe, Pdraig. "Transitional Justice and the Rule of Law: The Perfect Couple or Awkward Bedfellows?" *Hague Journal on the Rule of Law* 2, no. 2 (2010): 127–54.

McAuliffe is a respected lecturer in human rights law at the University of Dundee. The focal point of his research is in the fields of transitional justice, rule of law, and reconstruction and international criminal tribunals. He has published a number of articles on the topic of international law. McAuliffe’s literature serves well for the focus of my study, aiding with his factual publications on transitional justice.

Tessa McKeown. "The Nuremberg Trial: Procedural Due Process at the International Military Tribunal." *Victoria University of Wellington Law Review* 45 (2014): 109-647. Web.
McKweon graduated from the Victoria University of Wellington in New Zealand. Her thesis is an detailed study of the proceedings that took place in Nuremberg after World War Two. The central focus of her study lays out a very well-organized article on the violation of indispensable human rights on the defendants during the International Military Tribunal at Nuremberg. She provides an extensive list of reference footnotes validating her claims. More than qualified for speaking on the subject, she provides a well detailed article that reflects on the claims that Mr. Tüngel expressed in 1948. This was a very helpful source in my research.