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# AN INTERVIEW WITH TELFORD TAYLOR

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LINDA MAGUIRE

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*Linda Maguire (LM): At the time of the Nuremberg trials, did Allied prosecutors ever speculate that the United States might be accused of war crimes in relation to the atomic bombing of Nagasaki or the internment of Japanese-Americans?*

Telford Taylor (TT): I don't remember it ever being discussed. Of course, it's generally thought that Nagasaki took place without necessity, even from the standpoint of what we were trying to do. The feeling now is that, after the first bomb was dropped at Hiroshima, the war was probably going to end soon, so there was no need to drop the second bomb on Nagasaki. I have no doubt that many people have argued this back and forth since then, but I don't happen to remember anyone talking very much about it at the time. Indeed, I don't believe that I became aware that there was any difference between the two bombings until quite a time after they took place.

Regarding the Japanese internment camps in California — and might I say that I was very much against this practice at the time — they were initially supported by public opinion in the early stages of the war. It wasn't until considerably later that some began to take a better look into the situation. But here again, I can't remember personally that at the time there was much discussion about the practice. Of course after awhile, a hell of a lot of such discussion occurred and in the long run, the camps were closed and compensation was paid and so on. But in the beginning, in the early parts of it, I cannot remember any discussion about the possibility of war crimes prosecution.

*LM: In The Anatomy of the Nuremberg Trials, you write "[t]here are no permanently established means of enforcing the Nuremberg principles, and they are often flouted, but as a moral and legal statement, clothed with judicial precedent and United Nations recognition, the Nuremberg principles are an international legal force to be reckoned with." If that is so, why have we not seen another tribunal set up to prosecute war criminals until now?*

TT: I think the major reason for that is quite obvious. At the end of World War II, there was nothing left of the German government, nothing left of the army. All the meticulously kept records and documents from the Hitler period were intact. So, when the German government collapsed, the situation was such that

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*Telford Taylor was the chief U.S. prosecutor during the Nuremberg trials. This interview was conducted on 11 February 1994 in New York City.*

the Allies could do practically anything they wanted to in Germany. And the accused were all there. The situation was a unique one, and there were not the obstacles that are obvious today.

In the Nuremberg trials, it was clear that since the effort was going to be multitudinous and a number of different countries would be involved, this was something that would require the laws of war on an international basis. So, when the war was still ongoing, there was a great deal of discussion about a war crimes tribunal and, as soon as the war was over, there was an enormous push to prosecute war crimes. In addition to the Nuremberg trials, there were probably more than 2,000 such utilizations of the laws of war in all the other countries that had been subject to occupation. The period from 1944 to 1952 or so, was marked by the utilization of, and the discussion of the problems that arose from using, the Nuremberg principles. Needless to say, although there had been some utilization of the laws of war before then, they were minuscule compared with what happened after World War II.

You ask why we haven't seen any war crimes tribunals until now, yet I don't know if we are even going to see this one come to pass. How are we going to get there? Both the people involved and the evidence required are inaccessible. Therefore, I am of the view that until we come to an end of hostilities or until the suspects are captured, to set up a tribunal is premature.

*LM: Do you think there was any basis for bringing Iraq to trial for war crimes?*

TT: Well, this is entirely a political matter. I think there is no question that there were violations of the laws of war and that it would have been possible to get sufficient evidence against Saddam Hussein and others. But for political reasons it wasn't done. And therefore a discussion of an Iraqi war crimes tribunal would not be a discussion of the laws of war at all. It would be a discussion of the political factors involved.

*LM: You could probably make the same point about Cambodia and Somalia as well.*

TT: I guess so, though I know very little about them.

*LM: How will the tribunal handle crimes of war committed by Bosnians and Croatians, assuming, of course, that the tribunal actually reaches this point?*

TT: Very difficult. No one *wants* to go to war. The Serbs have gone a long way toward getting what they want and they are not going to want to pull back and make things better for the Bosnians, so the war could drag on and make things that much worse. But at the moment, both sides seem to be endeavoring to find some solutions for these problems.

*LM: So in the interest of a lasting political settlement, the idea of the former Yugoslavian Tribunal might be scuttled altogether, just so the parties can move on?*

TT: I should think that it would be very difficult to come to a conclusion with the Serbs without some agreement between the parties allowing for a general amnesty, or some other solution that the Serbs would be willing to swallow.

*LM: Critics of international tribunals assert that war crimes and the like should always be prosecuted in national courts. Assuming there is a choice between national and international courts, what's the argument for trying people on the international level instead of nationally?*

TT: Well, often it has to be on an international level. Most of the beginnings of the laws of war were not written down, they were customary law, and the first time that the effort was made to write down the laws of war, was in 1863.

*LM: The Lieber Code.*

TT: The Lieber Code, yes. That was limited to the laws of war of the American army. The Navy, I think, was in the beginning much more active in laying down laws of various kinds. About 15 years before the Lieber Code, there was a meeting of about 12 major countries, all of whom were sea powers. In around 1846 or 1847, they came together and agreed that what had been up to that time customary laws, such as the rules governing use of blockades, would be written down. And these rules, or laws if you like, were international. They could only be international. Some situations work best if it is international rather than national.

*LM: So that's the reason for the distinction — some things are by their nature, better handled internationally?*

TT: Yes. But you see, the rules appear, in many cases, to be applicable whether nationally or internationally. Which one will depend a great deal upon who is involved. At Nuremberg, there were many people who wanted to be in on the trials, and international participation is what everybody wanted at that time. But you are right, there are a lot of situations where it might be better done locally. Many times, it can be one or the other. I think probably for Bosnia, there are a number of different countries who have interests at stake and therefore, they would much prefer to make it an international process.

*LM: Clearly, the tribunal faces serious problems. We've heard about the practical difficulty of gathering enough information to prosecute, as well as the political obstacles related to the tribunal. Some officials are concerned that agreeing to prosecute politicians from other states establishes a dangerous precedent that they may live to regret. What do you think will be the greatest problem for prosecutors at the second tribunal?*

TT: Well, we don't know what, or even if, the second tribunal is going to be. The greatest problem for prosecutors at the second tribunal might prove to be simply getting to trial.

*LM: Are there any other states that might be prosecuted for war crimes?*

TT: Yes. I should think within parts of the former Soviet Union, in India, and in South Africa. In Georgia, for example, you have war crimes going on right now. And it looks to me like there could be a good many more before they stop. However, I think it unlikely that any such prosecutions will take place.

LM: *Do you think it possible or even desirable that a permanent international criminal court be established to adjudicate, in addition to war crimes, other crimes of an international character, such as terrorism and drug trafficking?*

TT: I'm all for it. I'm all for it as a thing which *should* be done. The difficulty is that those who want to do it, don't really want to do it until some particular thing happens. Proponents of the Bosnian tribunal initially thought that the tribunal would result in greater usage of the laws of war. Now, those who were most enthusiastic about the [Bosnian] tribunal feel that possibly the best that might be come of this is to get good evidence against those responsible for war crimes so that, even if they are not caught, their lives could be made pretty difficult.

LM: *Is there a generally accepted notion of "universal jurisdiction" in international law with regard to war crimes? I'm thinking of the Demjanjuk case where an autoworker from Ohio was tried in Israel for being the death camp guard "Ivan the Terrible." The argument was put forth by the defendant that Israel was not in existence at the time the alleged war crimes took place and therefore did not have jurisdiction to try him. Israel argued that, even though it could not assert jurisdiction on the basis of territory or nationality, there were some crimes so heinous as to give any state "universal jurisdiction" over them.*

TT: Yes, of course that very problem came up very sharply in the Eichmann case too. As a matter of fact, I wrote a piece for the *New York Times*, just after Adolph Eichmann had been brought to Israel and Ben Gurion had made it very plain that they were going to try him. In the article that I wrote, I took the view that it seemed to me that there were other ways to try him that would be better. I said that I did not agree with the view that Ben Gurion had taken, and that there was much to be said for having the case go to Germany. Indeed, I thought that Germany needed to know about Eichmann more than Israel did.

I should also think that some of the laws of the sea are regarded as having universal jurisdiction.

LM: *In reflecting on Nuremberg, what do you think is most misunderstood today about the tribunal?*

TT: I think the most misunderstood thing was on the part of Germany and its reaction to what we had done at Nuremberg. Very few Germans saw that the purpose of Nuremberg was really for the benefit of Germany. Practically none of them saw that if Nuremberg had not occurred, the results would have been far worse. Almost all the situations in which a country undertakes to bring one of its own people to trial as a defendant, these people almost always get convicted, but they get almost nothing in the way of penalty.

For example, you may remember that at Versailles, the French and the British tried to secure an assurance from the Germans that they would take care of war crimes committed by German forces during World War I. The demand was accompanied by a list of quite a number of Germans whose names the allies had put up. But virtually nothing was done to any of them. There were two cases

that the Germans did bring to trial in their national courts and these related to German submarines sinking British hospital ships. In both of those cases, the German submarines had sunk the hospital ships on the basis that they were carrying munitions, in which case they could be rightly sunk. On one of them, it was very clear that there had been no munitions on board, but for some reason, the captain of the submarine thought that there were munitions on board and he sank them. He then found out from the survivors that there had been no munitions. Nonetheless, he went on to sink two lifeboats from the ship. This was one of the things that the British asked the Germans to prosecute after the war. And the Germans did try it. However, the captain himself had vanished so the trial was limited to two subordinates who helped the captain carry out the attacks. It was held that even though these two had only followed orders, they were nonetheless each given four-year sentences. How long did they stay in prison? About three months. They were allowed to escape.

And look what happened to [Lt. William] Calley. If ever anyone deserved to be prosecuted for war crimes, it was he. He was in command at the time of the My Lai massacre. And he was given a life sentence, but it got smaller and smaller and smaller at each stage of the proceedings. And the man who finally ended it — the President — commuted the sentence. Calley was actually in a cell only about three days. He was very rapidly out and eventually the President commuted him and away he went.

So, in answer to your question about how Nuremberg was misunderstood, immediately after the war, most Germans were occupied with day-to-day survival so that, with the exception of those who came to serve as lawyers at the trials, the people were not that engrossed in the affair. It was only later that Germans began to sense the significance of what we had done.

I think it is interesting that my book, *The Anatomy of the Nuremberg Trials*, is going to be published in Germany soon. Not one of the six or seven books I have written has been published in Germany so I was quite surprised when they took this one. I am very interested to see what's going to happen there, particularly with the present rise of extremists there.



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