THE NUREMBERG TRIALS: A REAPPRAISAL AND THEIR LEGACY
AN INTRODUCTION

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That four great nations, flushed with victory and stung with injury stay the hand of vengeance and voluntarily submit their captive enemies to the judgement of the law is one of the most significant tributes that Power has ever paid to Reason.1

The Benjamin N. Cardozo School of Law held a major International Human Rights Conference from March 27-29, 2005, on the theme “The Nuremberg Trials: A Reappraisal and Their Legacy.” The Cardozo Program in Holocaust and Human and Rights Studies, with the generous support of the David Berg Foundation, sponsored the Conference, which was co-organized by Professor Michael J. Bazyler, “1939” Club Law Scholar in Holocaust and Human Rights Studies at Whittier Law School.

The Conference brought together a distinguished international group of parliamentarians, lawyers, law professors, jurists, psychology and sociology scholars, human rights advocates from NGO’s, government officials, and students to discuss some of the more compelling issues of our times at a significant and meaningful moment. For the Conference took place on the occasion of the 60th anniversary of the Nuremberg Trials and marked the inauguration of the Program in Holocaust and Human Rights Studies at the Benjamin N. Cardozo School of Law.

That the Nuremberg trials of sixty years ago remain relevant in today’s current political and historical context was evidenced by the overwhelming response the Conference organizers received. As the Conference title suggests, it was organized around the themes of reappraising the trial of the major Nazi war criminals held by the International Military Tribunal in Nuremberg and the subsequent so-called zonal trials held in the four occupied zones of Germany under

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Control Council Law No. 10, and deeply assessed the legacy and meaning of these trials and the principles they spawned in contemporary society. The exploration proceeded with presentations by over forty participants, including individuals who participated in the Nuremberg Trials as prosecutors, investigators and translators, as well as individuals involved in the offspring of the Nuremberg trials, the ad-hoc tribunals, and other international fora.

Nuremberg’s greatest achievement was to pierce the sovereign veil; to make individuals responsible for crimes against humanity committed by the states they formerly ruled. At the same time, developing a rule that held that those states have a responsibility to prosecute and punish those individuals. And if they do not do so, another state or the international community will bring them to justice. Sovereign immunity and “superior orders” would no longer be available defenses, and what sovereign states do to their own citizens will no longer just be a matter of concern for that sovereign. Rather, how states treat their citizens became a matter of concern to everyone, everywhere.

Prior to Nuremberg, crimes against humanity did not exist as a legal category. Crimes against humanity were codified for the first time at Nuremberg. Article 6c of the Charter of the Nuremberg Trial defines crimes against humanity as “murder, extermination, enslavement, deportation and other inhumane acts committed against any civilian population before or during the war.” These crimes became the modern day versions of the crimes of piracy and slavery, attracting individual responsibility under international law. Perpetrators of these crimes were conceived as enemies of the world because “the very fact that a fellow human could conceive and commit them diminishes every member of the human race.”

In the opening statement at the Nuremberg Trials, Justice Robert Jackson, who was on leave from the United States Supreme Court to be the Chief Prosecutor for the United States at the International Military Tribunal, proclaimed: “The wrongs which we seek to condemn and punish have been so calculated, so malignant, so devastating, that civilization cannot tolerate their being ignored, because it cannot survive their being repeated.” The Nuremberg trials were expected to command individual responsibility for crimes against humanity, so that such crimes might never again be perpetrated.

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3 GEOFFREY ROBERTSON, CRIMES AGAINST HUMANITY 236 (2002).

4 2 INTERNATIONAL MILITARY TRIBUNAL, supra note 1, at 98-99.
The Conference explored the meaning of Justice Jackson’s words, and the Nuremberg Principles in today’s world where major human rights abuses and crimes against humanity continue unabated. The Conference sought a holistic approach to answering the legacy question, one that went beyond strict legal principles to ask questions about the law’s impact on the victims as witnesses at trials or as bystanders to the justice process operating on their behalf, the constitutive role of law in societies recovering from mass violence, as well as questions about memory and the role of law as history maker. And last, but not least, to seek solutions to the question of why “Never Again” continues to be “Over and Over Again.”

Since Nuremberg, the international rule of law has made tremendous strides against impunity. A permanent international criminal court has been established, which has jurisdiction over the most serious international crimes; Slobodan Milosevic stands trial in The Hague; Augusto Pinochet can no longer claim immunity; and soon a tribunal in Cambodia will begin trying surviving leaders of the Communist Khmer Rough regime.

And yet the legacy of Nuremberg remains elusive. Opposition to the International Criminal Court persists; leading international lawyers in the U.K. debate whether the war against Iraq was a “crime of aggression”; the United States has defined the death and destruction in Darfur, Sudan as genocide, while the United Nations Commission of Inquiry has determined that it is not—and either way the extreme suffering continues—and the temptation to give into fear over reason is never far from the surface in this post-9/11 world.

While we debated the legacy of Nuremberg, which remains elusive, most of all, we sought and continue to seek (with the publication of this Symposium edition of the Cardozo Law Review) to reaffirm the lesson of Nuremberg, which is not elusive: that it is not only the sickness of hate and evil that allowed atrocities to go unabated in Nazi Germany, Cambodia, Bosnia and Herzegovina, Rwanda, and today in Darfur, Sudan, but also the crimes of silence and indifference.