On a ship off the coast of Newfoundland in August 1941, four months before the United States entered World War II, Franklin D. Roosevelt and British prime minister Winston Churchill agreed to commit themselves to “the final destruction of Nazi tyranny.” In mid-1944, as the Allied advance toward Germany progressed, another question arose: What to do with the defeated Nazis? FDR asked his War Department for a plan to bring Germany to justice, making it accountable for starting the terrible war and, in its execution, committing a string of ruthless atrocities.

By mid-September 1944, FDR had two plans to consider. Secretary of the Treasury Henry Morgenthau Jr. had unexpectedly presented a proposal to the president two weeks before the War Department finished its own work. The two plans could not have been more different, and a bitter contest of ideas erupted in FDR’s cabinet.

**To execute or prosecute?**

Morgenthau proposed executing major Nazi leaders as soon as they were captured, exiling other officers to isolated and barren lands, forcing German prisoners of war to rebuild war-scarred Europe, and, perhaps most controversially, dismantling German industry in the highly developed Ruhr and Saar regions. One of the world’s most advanced industrial economies would be left to subsist on local crops, a state that would prevent Germany from acting on any militaristic or expansionist impulses.

Secretary of War Henry Stimson, on the other hand, urged FDR to reject the approach championed by Morgenthau in favor of a legal prosecution that would define the Nazis’ wartime behavior as profoundly criminal, a transgression against universally recognized standards of decency. The Nazis’ unprovoked invasion of Europe, Stimson argued, was a “war of aggression” that violated antiwar treaties and the established laws of war, while German atrocities—against captured soldiers and civilians, for example—could be labeled as war crimes. He insisted that noted Allied jurists (many of whom FDR had appointed to the bench) could craft a sound indictment against Nazi defendants and design a multinational court capable of trying them.

Initially, FDR leaned toward Morgenthau’s approach. The president believed that not just Nazi ringleaders but also the German people must take responsibility for the carnage they had wrought in Europe. In the summer of 1944, FDR had invited Morgenthau—and not Stimson—to join him in meeting with Churchill in Quebec. There, the two
leaders went so far as to initial a summary of Morgenthau’s plan.

But upon returning to Washington, DC, FDR heard from an alarmed Stimson, who insisted that eliminating Nazi leaders without due process and reducing Germany to hopelessness, far from preventing armed belligerence in the future, would “tend to breed war.” Meanwhile, Morgenthau’s plan leaked to the press—on October 2, Time magazine ran its report under the headline “The Policy of Hate”—and the American public did not approve.

The War Department pushes for a trial

Feeling he’d made a mistake, FDR changed course, throwing his support to Stimson’s War Department to develop its plan for a defeated Germany, including the handling of top Nazis. The War Department by late January 1945 had assembled the basic outlines of its plan in a memo for FDR to take with him to Yalta, where the president would meet with Churchill and Soviet leader Joseph Stalin.

It called for an international tribunal that would charge Nazis with initiating an illegal war of aggression, committing war crimes, and engaging in a conspiracy—a master plan—to commit these crimes. The last point, it was hoped, would allow prosecutors to hold individual Nazis responsible for a sprawling system of murder and terrorism against peaceful populations whose appalling scope had begun to reveal itself with the first

From left to right: Secretary of State Cordell Hull, Secretary of the Treasury Henry Morgenthau Jr., and Secretary of War Henry Stimson, in a meeting of the War Refugee Board, a federal agency aimed at rescuing Adolf Hitler’s intended victims, March 21, 1944. Later that year, Morgenthau and Stimson would disagree profoundly over how to deal with defeated Nazis, with Morgenthau favoring execution of leading Nazi figures and exile for others, while Stimson pushed for international trials. FDR.

liberations of concentration camps by the Red Army in the summer and fall of 1944.

Signed by Stimson, Secretary of State Edward R. Stettinius, and Attorney General Francis Biddle, the memo advocated war-crimes trials with a rationale at once practical and moral. A legal prosecution, it noted, would uphold the “principles of justice” and thereby prevent the Germans from martyzing executed Nazis. It would, the trial planners argued, “command maximum public support in our own times” while also earning “the respect of history.” A trial, the memo said, would allow Allied prosecutors to document the events of the war and “make available for all mankind to study in future years an authentic record of Nazi crimes and criminality.”

At Yalta in February 1945, FDR found Stalin already in favor of trying Nazi leadership (although Stalin’s own credibility in the matter was always in doubt, given his own track record of mass murder on one hand, “show” trials on the other). Churchill, however, still thought the Allies should agree on a list of “arch-criminals” to be dispatched by firing squad.

Fateful days

In early April 1945, members of the U.S. Third Army entered Ohrdruf, a satellite of Buchenwald, the notorious Nazi concentration camp in east-central Germany. Ohrdruf was the first camp liberated by Americans, and they were shocked by what they saw—corpses stacked like cord wood, some hastily executed by fleeing Germans, and sick, emaciated survivors. On a tour of the camp on April 12, the Third Army’s famously tough commander, General George Patton, became ill.

That same day FDR died in Warm Springs, Georgia. The lawyer and aide FDR had assigned as his personal representative in the matter of Nazi trials, Sam Rosenman, was in England with Churchill, working to persuade the British leader that the American plan for an international tribunal must be carried out. “They didn’t want to try these Nazis,” Rosenman would recall. “They just wanted to announce one day that all of them had been shot.”

But FDR’s fateful decision in favor of legal prosecution, strongly endorsed by his successor, Harry Truman, would carry the day. Though Adolf Hitler and some of his top lieutenants would die by suicide, and other Nazis would avoid capture and hide out in distant locations, some two hundred would be made to stand up and answer for their crimes at Nuremberg in Germany.

General Dwight D. Eisenhower (center-right in military cap) and other U.S. Army officials view the bodies of slain prisoners at Ohrdruf, a satellite camp of Buchenwald, shortly after the camp’s liberation, August 12, 1945. On the same day, Franklin D. Roosevelt died in Warm Springs, Georgia. Though he had advocated international trials to hold Nazis accountable, the major Allies were not yet agreed on this approach. National Archives.
The Prosecution Takes Shape

The day after Franklin D. Roosevelt died, U.S. Supreme Court Justice Robert H. Jackson, who had served as FDR’s attorney general and been appointed by him to the high court, addressed the American Society of International Law in a speech entitled “The Rule of Law Among Nations.” If Nazi leaders were to be tried instead of summarily executed, he said, the trial should be a bona fide one, impartially weighing the evidence and giving the accused opportunity to call witnesses and marshal evidence in their own defense—not a sham with a predetermined result. The credibility of law itself was at stake. “Courts try cases,” Jackson said, “but cases also try courts.” As one journalist summarized the jurist’s remarks, the world needed to see “justice catch up with evil.”

Three weeks later, on May 2, 1945, President Harry Truman appointed Jackson chief U.S. prosecutor for the war-crimes trial and empowered him to pick his own legal team and negotiate the trial location and legal procedure with his British, French, and Soviet counterparts. Most German cities had been destroyed in the war, but the Palace of Justice at Nuremberg, though damaged, had survived Allied bombing raids. The assault on German Jews had begun in Nuremberg with the infamous 1935 Nuremberg laws stripping them of basic rights. Jackson thought it a fitting place to try senior Nazi leadership.

The Allied jurists agreed to indict more than a hundred German military leaders on four charges:

- crimes against peace, or waging an aggressive war in violation of the Kellogg-Briand Pact of 1928 and other antiwar treaties;
- war crimes, such as the inhumane treatment of prisoners of war;
- crimes against humanity, a novel legal concept that encompassed the forced labor, deportation, and mass killing of civilians, as well as the targeting of Jews, dissidents, and other specific groups; and
- conspiracy to commit the above crimes.

Clockwise from left: Chief American prosecutor Robert H. Jackson delivers his opening address at the trial of major war criminals, November 21, 1945. Jackson, a Supreme Court justice appointed by Franklin D. Roosevelt, felt strongly that trials of Nazi war criminals should uphold the highest legal standards. He said in his opening statement at the trial, “The accused do have a fair opportunity to defend themselves—a favor which these men, when in power, rarely extended to their fellow countrymen.” Truman Library

Robert H. Jackson around 1945. Just weeks after Franklin D. Roosevelt’s death, President Harry Truman appointed Jackson chief U.S. prosecutor in the international tribunal that would try major Nazi war criminals. Jackson had been FDR’s attorney general and was appointed by him to the Supreme Court in 1941. LOC

The Palace of Justice, site of the Nuremberg war crimes trials, July 15, 1946. Although Nuremberg had been damaged in Allied bombing raids, the court building remained relatively unscathed and the city, as the place where Adolf Hitler’s anti-Jewish Nuremberg Laws were introduced in 1935, seemed an appropriate place to try Nazi leaders. Truman Library

They also agreed that each nation would try a specific aspect of the case. British prosecutors would manage the charges related to treaty violations and waging an aggressive war. French and Russian prosecutors agreed to argue charges of war crimes and crimes against humanity. The American legal team would target Nazi organizations and the conspiracy to wage aggressive war.
The Evidence

As the Western Allies swept into the heart of Germany in early 1945, military investigators were careful to gather whatever records they could to expose and document the German totalitarian state and its war machine. They questioned locals and captured officials. They searched crumbling government buildings. Investigators found, stashed behind a false wall in an old castle in eastern Bavaria, all the personal and professional papers of Alfred Rosenberg, a key Nazi Party official and coauthor of its anti-Semitic theories. In an insane asylum that townspeople of Hadamar in west-central Germany called “The House of Shutters,” investigators discovered “death books” documenting Nazi “euthanasia” of mentally and physically disabled people as well as hundreds of Soviet and Polish forced laborers suffering from tuberculosis. Deep in an Austrian salt mine, investigators found records of European art treasures looted by the Nazis, along with many of the works of art themselves.

In the end, Nuremberg’s Office of the Chief Counsel found itself “embarrassed with riches,” as one official report put it. It had 250 tons of documents and three thousand frames of microfilm at its disposal, along with transcripts of some 950 individual interrogations.

Among other records in the hands of the prosecution were those of the German Foreign Office; the Army High Command as well as the German navy and Luftwaffe (air force); the Nazi Party and its paramilitary unit the SS; and companies Krupp and I.G. Farben, which had contributed to and profited from the German war effort.

The Allies also documented in still photography and film what they saw when they penetrated areas long occupied by the Nazis. One of the most harrowing pieces of evidence shown before the international tribunal at Nuremberg was a documentary entitled *Nazi Concentration and Prison Camps*, edited from eighty thousand feet of film shot by the U.S. military in Germany and Belgium. The film showed army personnel carrying stricken concentration camp inmates with gangrenous wounds from their filthy barracks, piles of the newly dead covered with lime, charred remains in crematoria, and the wan smiles of liberated Jewish women laid out on stretchers in the sun. The narration quoted General Dwight D. Eisenhower, supreme commander of the Allied invading forces, who called the German atrocities “almost unbelievable.”

Otto Ohlendorf, head of a notorious Nazi mobile death squad responsible for the mass murder of Jews in Ukraine, on the witness stand at Nuremberg looking at a complex Nazi organizational chart, January 3, 1946. The prosecution had carefully assembled reams of evidence collected during the Allied sweep into Nazi-occupied Germany. Later in 1946, U.S. investigators would find detailed records of the mobile killing units (or Einsatzgruppen) at Gestapo headquarters in Berlin. These would help convict twenty-two of twenty-four defendants in the special Einsatzgruppen trial of 1947–48. Ohlendorf, whose command murdered some ninety thousand people, would be executed in 1951. Harvard Law School Library
The Military
International Tribunal: Top War Criminals

In the first and best-known Nuremberg trial, the International Military Tribunal convened by the United States, Britain, the Soviet Union, and France weighed the evidence against twenty-three high-level Nazi defendants. The trial, which would last nearly ten months, began on November 20, 1945. It took the entire day just to read the charges. The following day all defendants pleaded not guilty. Chief U.S. prosecutor Robert H. Jackson then told the court: “The wrongs which we seek to condemn and punish have been so calculated, so malignant, and so devastating that civilization cannot tolerate their being ignored because it cannot survive their being repeated. That four great nations, flushed with victory and stung with injury, stay the hand of vengeance and voluntarily submit their captive enemies to the judgment of the law is one of the most significant tributes that power has ever paid to reason.”

The trial ended on August 31, 1946. The jurists took all of September to debate the evidence and the charges. On October 1, 1946, 315 days after the trial began, the verdicts were announced. Three defendants were found not guilty. Nineteen were convicted. Eight were found guilty of conspiracy to wage aggressive war, twelve were found guilty of crimes against peace (waging an aggressive war), and sixteen were convicted of war crimes and crimes against humanity.

Seven of the convicted would be imprisoned from ten years to life. Twelve were sentenced to death by hanging, including Hermann Goering, head of the Luftwaffe (the German air force) and at one time Adolf Hitler’s chosen successor; Joachim von Ribbentrop, the foreign minister who helped orchestrate the deportation of Jews from occupied countries to death camps; and Alfred Rosenberg, a top Nazi Party official and architect of some of its most perverse theories about race and power. On the day before he was slated to be hanged, Goering committed suicide by biting into a cyanide capsule. How he smuggled the cyanide into his cell remains a mystery.

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Robert H. Jackson, chief U.S. prosecutor, November 1945
Subsequent Nuremberg Trials

Following the trial of top Nazis by the International Military Tribunal, the United States, empowered by the Allies to try war criminals in its own occupation zone, held twelve more trials at Nuremberg between 1946 and 1949. Judges and prosecutors were American.

These trials focused on special crimes, weighing evidence against Nazi doctors who conducted medical experiments on prisoners; heads of industrial concerns accused of seizing private property and exploiting forced labor; German judges accused of facilitating Nazi atrocities; the Nazi Einsatzgruppen, or mobile killing units, for mass murder; and German bureaucrats for organizing the deportation and murder of Jews and other minority groups.

Among those tried and convicted were five field marshals and twenty-one senior military leaders; fifty-six high-ranking SS and other “police officers” who oversaw the concentration camps and the extermination program; thirteen members of SS organizations focused on racial persecution; sixteen physicians; and more than two dozen industrialists.

Top: Four of the two dozen defendants in the Einsatzgruppen trial of 1947-8, the ninth of twelve Subsequent Nuremberg Trials prosecuted before U.S. tribunals. Accused of mass murder as officers of Nazi mobile killing units in eastern Europe, all four were convicted and spent time in prison.

Right: Karl Brandt, personal physician to Adolf Hitler, receives his sentence—death by hanging—in the so-called Doctors’ Trial, August 20, 1947. Brandt took part in human experimentation on concentration camp prisoners and helped run the Nazi “euthanasia” program to eliminate people with physical or mental disabilities. He was executed on June 2, 1948.

Above: Defendant Christof Ludwig Knoll, a prisoner at Dachau placed in charge of others (“kapo”), testifies that he slapped prisoners in his detail rather than report them to higher-ups, December 7, 1946. Like the Subsequent Nuremberg Trials, the so-called Dachau trials were conducted before U.S. military tribunals. They took place at the former Dachau concentration camp between late 1945 and December 1947 and focused on atrocities committed by guards and other personnel in the Nazi camps as well as war crimes against American military personnel. They resulted in more than 1,400 convictions.

National Archives
The Nuremberg Trials and Human Rights

In the Nuremberg trials, countries came together for the first time to use international law to recognize and protect human rights during wartime—whether or not a person’s own nation recognized these rights. The trials set a precedent for holding individuals and not just nations responsible for wartime violations of international law. And they defined a new category of high crimes under international law, “crimes against humanity,” which encompassed the unthinkable campaign of genocide, enslavement, deportation, and political, religious, and racial persecution carried out by the Nazis.

The trials also forced people worldwide to confront their common humanity. The painstaking presentation of horrific evidence—lampshades made of human skin, shrunken heads used as paperweights, films documenting the torture and murder of children—drove people everywhere to ponder concrete proofs of unbridled human cruelty and a devastating failure of compassion. The testimony of unrepentant witnesses recounting their murderous regimens compelled jurists and legal scholars around the world to reexamine the protections national sovereignty conveyed to states that violated their own citizens’ basic rights. In short, as the journalist Max Lerner observed, the trials created “a collective standard by which gross violation of...conscience can be punished.”

Yet the verdicts at Nuremberg did more than create new law and assault the world’s conscience. As the human rights scholar Martha Minow observed, “Nuremberg launched a remarkable international movement for human rights founded in the rule of law; inspired the development of the United Nations and of nongovernmental organizations around the world; encouraged national trials for human rights violations; and etched a set of ground rules about human entitlement.”

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