

Herbert Pell Papers  
Box 28  
War Crimes Commission:  
Pell Notes and Statements

R. 25

Toward the end of June, 1943, I was offered the position of American representative on the War Crimes Commission. I accepted at once, and was told to report immediately to the State Department, which I did. I was told to get ready to go to London as soon as possible, and after a couple of weeks arranging my private affairs, I reported ready. I was then told that the British Government did not want me over there until the Commission was ready to sit. I urged on the State Department the desirability of my going to London to look over the ground and make acquaintances, but they did not let me go until the end of November. The Commission met informally a couple of times in December, and then adjourned over the Christmas holidays. At the first meeting in January, I moved that the Committee should organize itself and start business at the meeting the following week. The Commission preferred to make it a fortnight, and two weeks later the Commission met, elected a chairman (Sir Cecil Hurst, the British representative) and other officers, including a rules committee of which I was chairman.

I had only been in London a few days when I discovered that far from objecting to my presence in London, the British had wanted me over there and that no suggestion that I should be kept in America had gone from the United States Embassy to the State Department. I had asked to have as my assistant, Professor Sheldon Glueck, of the Harvard Law School, who had specialized in the study of war crimes. The Department did not send him, but sent me a Mr. Lawrence Preuss, who had been lecturer on international law at a mid-western university. I very soon discovered that an essential part of his duty was to write letters to Mr. Sandifer in the State Department, who in his turn passed them on

to Mr. Hackworth, the Legal Advisor of the Department. These letters were derogatory of me, and obviously designed to undermine my influence. As I could not stop Preuss writing these letters, I said he had better file them with the Commission documents, which he did in some cases but not all. All the time that he was in London, he spoke to his friends on the Commission, pointing out to them that I was nothing more than a presidential appointee, while he represented the regular organs of the Government. When I moved that crimes committed in Germany for race, religion or political opinion, regardless of nationality, should be treated as war crimes, he publicly stood up and opposed me, although he was supposed to be my assistant. On this particular question I had the personal support of President Roosevelt, and at least inferentially from his public statements, of Secretary Hull. However, I did nothing about this as Preuss was going back anyway in a short time.

A little later, a British General sent me a military document from the British War Office, marked "Secret." Preuss asked for half a dozen copies. I said that no copies were to be made, but that he could see the document if he wanted to. He took it and was caught dictating it to a stenographer. I confiscated the stenographer's notes and as much as she had finished and also the carbons. I immediately notified the Ambassador and Secretary of State that I could not be responsible for secret documents if any subordinate could arrogate to himself the privilege of making copies for his own purposes which were unknown to me. Preuss was sent back to America, but not to discredit. He was retained in the Department with access to American documents and put in a position where he could continue to sabotage the efforts of the War Crimes Commission. I not only reported this matter personally to Mr. Hull by letter, but by word of mouth to Mr. Stettinius

when as Assistant Secretary of State, he came to London during the summer of 1944.

On the 29th of May, 1944, almost entirely due to my efforts, the Commission instructed its chairman to notify the various governments that crimes committed, even though against German citizens in Germany, because of race or religion should be treated as war crimes. It is manifest that these crimes were the first of the Nazi performances that shocked the conscience of mankind. Every responsible statesman had spoken of them and expressed the desire that they should be punished. To this letter, the British Government refused to make any answer. The State Department of the United States did not give me any instructions to go ahead on this matter. Nevertheless I went ahead. I had the approval of President Roosevelt expressed in a personal letter sent to me.

During the summer, a committee of the War Crimes Commission, of which I was chairman, recommended to the various governments that arrangements should be immediately made to arrest all members of the Gestapo who were captured, and that an organization along the lines of the F.B.I. should be set up to comb prisoners and the population as we got into Germany. We also recommended that courts should be set up, prepared for the immediate trial of war criminals. We particularly recommended the setting up of international military courts which could be expanded ad lib. It was manifest that it would take time to organize such courts and to get the machinery ready. We believed that all of this should be done before the actual occupation of Germany so that the trials could commence as soon as possible. It would take time to designate the officers for these courts and find substitutes for them in their other work. Their methods of procedure would have

to be settled; their permanent offices selected, etc. Altogether we thought that a civilian court could not begin trials in less than a year from its acceptance by the United Nations, and that a military court would require at least three months before it could begin work. Therefore, we believed these things should be prepared immediately and that everything should be ready when wanted. The last of these recommendations came over here in October 1944, and lay in Mr. Hackworth's files, so far as I know, untouched. Certainly nothing was done about it.

I returned about the 6th of December, 1944 to report and to see how things were getting on. I was shocked to find that the State Department, under Mr. Stettinius and Mr. Hackworth had done absolutely nothing about these recommendations and apparently had no intention whatsoever of moving. I protested against this and endeavored to see the President, who was then preparing for his trip to Yalta. I managed to get an interview with him on the 9th of January. Before seeing him, I went to Mr. Hackworth's office and asked him if there had been any developments of which the President should be informed. He told me, "No, there had been no change." I then went over and talked to the President who quite agreed with my contention that the Gestapo should be punished to a man; and, as Sir Cecil Hurst, the British representative and chairman of the Commission, had resigned, he told me that I should take the place myself. His last words to me were, "Go back as quickly as you can and get yourself appointed chairman." That afternoon, I went over to see Secretary Stettinius, thinking/I<sup>that</sup> would just shake him by the hand and take the first ship back to England. When I arrived at his office, Mr. Hackworth was there who said that the last Congress which had adjourned on the 19th of

December, about three weeks before, had failed to make any appropriation for the War Crimes Commission, and therefore, I could not go back. This rather surprised me. I pointed out to Mr. Hackworth that as he had known this in the morning before I went to see the President, he should have told me. He said, "You were the President's appointee and not mine, and it was none of my business to inform you." Mr. Stettinius upheld him on this.

It is perfectly obvious that all this was designed to get me out because I had so vigorously upheld the cause of the victims in Germany. My place was taken by Colonel Hodgson, who apparently could take the place because he was paid by the War Department and not the State Department. The State Department, however, found enough money to pay the rent of the office and all the other expenses of the Commission. All Mr. Hackworth lacked was money to pay me. I offered to serve for nothing, but he said this could not be done either.

You must not imagine that when we speak of the Jews in Germany that they were the only victims. Protestant churches were broken up and their preachers and congregation made prisoners and their property confiscated. Catholic institutions were treated in the same way. Labor unions had long ago been broken up and their money confiscated to the Nazi party. Had not a single Jew been touched, there would have been ample horrors to shock the conscience of the world. It happens that the Jews were the most numerous, but they probably did not constitute more than half the victims of the concentration camps.

The Gestapo which had charge of these camps was a volunteer body, in which no person was forced to join. In fact, it took a good deal of effort to get into it, and the qualifications of the

candidates were seriously considered by the authorities before admittance. No man joined it without knowing what it was and being willing to identify himself with this gang of sadists. I believe that they should all be punished. It must be remembered that there have been, altogether, over ten million people killed and many more than that hideously enfeebled. It does not seem to me excessive when I ask for one punishment for ten murders.

I think we must remember that everything we do today will be judged by one standard, and by one standard only. Will it, or will it not, assist in preventing a third war? Nothing else counts.

The effective life of the ordinary man does not begin much before twenty, and he is fortunate if it does not end before seventy. An average of fifty effective years would be high. The world has been at general war for ten years and has spent much more than that recovering from damages caused by belligerent activities. Roughly we can say that half, or at least a third of our lives, have been made ineffective or at least less efficient by war.

The world simply cannot afford the continuance of this sort of thing. Anyone can imagine where we would be if the colossal efforts put into this war and the last had been used to advance the arts of peace. We would have protested in our youth if we had been told that we would have to fight, or at least work for war, every Monday, Tuesday, and Wednesday of our lives, leaving Thursday, Friday and Saturday for our private purposes, and yet this is just about what has happened.

We can roughly measure the material status of any civilization by the amount of time and effort which it is able to divert from primary necessities to secondary needs and luxuries. The naked savage has practically no time for anything except gathering food

and achieving some slight protection from the elements. As men become more civilized, they do not work less hard, but apply their efforts to the acquisition of things of which a less efficient organization could not dream. Do we dare to say that mankind organized in democratic government is so stupid that it cannot think seriously of using the accumulated creative power brought by civilization for any other purpose than destruction. If this is so, let us go back to barbarism where the call of primitive necessity will prevent us from indulging in the luxury of universal destruction.

I do not take this view of democracy. I believe our people can survive, but to do so, we must have foresight. We must know the result of our activities and we must not repeat the errors of the past.

Make no mistake, Germany today is stronger relatively than it has ever been before. I know the Germans. I was minister to Portugal for four years and in Hungary during 1941 until war was declared on us. I watched the Germans, and I know their point of view. They expect to fight the next war with boys at present under fifteen years of age, who will be less than thirty-five in twenty years. These boys in Germany are well fed, strong and numerous. In the rest of Europe they are weak, rare and rickety. This is the result of a deliberate policy pursued during the entire war with the express idea of preparing for the next.

They believe that the next twenty years will be a repetition of the period between 1918 and 1929. For a short time they will be in the dog house. Russia will be occupied in repairing the physical damage of an area almost as large as the United States, which was overrun by the Germans and practically destroyed. The western

nations will be busy repairing their damages and supplying themselves with the things which during the war they went without. We will be making new cars, new farm machinery and new houses. Things will hum.

Presently the demand will become less. The Germans expect that again American money will be sent in enormous quantities to Germany to help them buy American produce. They will tell the Russians that Germany cannot be allowed to be too weak because Russia needs protection from the capitalist powers of the west. We will be told that Germany must be strong because we need protection from Communistic Russia. Eventually they believe a crisis of some sort will come which will break the unity of the allies and make it possible for them once more to rebuild their war machinery in the most modern way. They do not propose to fight in 1965 with present day weapons any more than they fought this war with the weapons of 1914. This is their plan, which is openly expressed. It can only be stopped by a degree of supervision which is unimaginable and impractical, or else by convincing the average German that the penalty of war is so great that he will not tolerate the beginning of another. This can only be done by a general punishment which will reach the whole mass of the people and such a punishment we cannot hope to see. It is ridiculous to think of 150, 200 or even 2,000 leaders of Germany, or of any other country, as if they were cattle herders driving an irresponsible mass to slaughter. The German people knew what was happening. They are not as politically active or responsible as Americans, but nevertheless, they made their choice and they supported the Nazi government with enthusiasm. It is silly to think that such support was given by the German people to the German

government as merely an action of unwilling slaves. I grant that they were not first class active citizens, nevertheless, they did accept without protest everything that was done.

We know, as practical men, that any government, if it is to continue, must fairly represent the point of view of the community. Could anyone imagine the largest majority in Congress or State legislature seriously forcing the people of the United States into a course of life in utter variance with their interests, desires and point of view? Without considering the point of view of the occupied countries, we must remember that in every one of the Axis allies our advance was assisted by liberty-loving citizens, anxious to overthrow the Fascist regime. We have all heard innumerable stories of escaping prisoners being helped by Italian peasants--in Rumania, Bulgaria and in Hungary--but there was no such cases in Germany. Not only was there no organized resistance to Nazism in Germany, but no individuals came to the assistance of the liberating armies or did anything to hamper the activities of the Nazis in any way, civilian or military. Does this suggest an innocent people overawed by its government?

If we accept the idea that the German people are so incapable of handling their own government that any adventurer can take control of the enormous power in Germany, we find ourselves, for our own security, condemned to govern Germany for at least fifty years. Is this what we want? Do we want to wash our hands of the whole affair and leave the third war to our descendants as our fathers left a second war to us? Or are we just too tired of the whole thing and will let it slide? The consequence of this course must be considered, because however fearful we may be of decision, we must realize that a default is a decision.

The people of Europe not only need leadership, but what is far more important, know that they need it. Twenty nations, only four of which have more inhabitants than the State of New York, and none the area of Texas, in a territory no larger than that of the United States, manifestly cannot continue as totally independent units in the modern world. Inevitably some sort of economic union will have to be devised and some sort of a political alliance developed. This group, when organized, will have three hundred million inhabitants, slightly more than twice the number shown in our last census. They will have a varied but strong culture.

It is obvious that half the white race concentrated in the Continent of Europe will have a great effect on all our lives. The manufactures of a united Europe will compare favorably with those of the United States. Its scientific advances will equal ours. We cannot wisely refuse the call of those people for the leadership which is necessary for their development, and we must always remember that if we refuse to take this high position, it will be given to some other nation.

There is little chance of a new growth of the nationalistic chaos that made this war possible. The people of Europe would like American leadership, but they fear it, not because it is undesirable, but because they believe that it may not be permanent and that at any time, as a result of some domestic upheaval, we may abandon them to their own devices. The leadership of the world is being offered to us on a silver plate. We can take it or leave it, but having declined the dish, we cannot complain if the next nation to which it is passed should help itself lavishly.

So far we have done nothing to show either an understanding

of the problem or a willingness to face it. The penalty of a leader is that he must lead. A policy of back-seat driving will not control the course of the world; it will only exasperate the driver and the other passengers. So far we have acted like visionary pettifoggers--sometimes uncompromisingly holding to some small advantage, and at others, talking like Utopians in an imaginary world. This is not leadership. Intelligent leaders look at the facts, consider what can best be done in the actual circumstance and then do as well as they can. This has been our private course in our real lives. If we can't get one thing, we make another do. If a man, whose cooperation is necessary to us, will not go all the way, we accept a compromise even though it should not satisfy our heart's desire. A successful card player is the one who best manages the cards in his hand, not the one who makes the most brilliant suggestions to the rules committee.

The facts of the world which we must face--the cards in our hand--include Germany and Japan, Russia, Great Britain, China and the United States. These nations exist. They have their own ideas and each has great power. None is about to dominate the others, and any one of them is strong enough to make a try at world domination, as did Germany. At most we can take the lead. Recognizing that there must be a leader--a very different thing from a tyrannical overlord--I believe that for this country and for the world, American leadership would be the best. If the alternative were the angel Gabriel coming down from Heaven, I should vote against Uncle Sam, but that is not the case. I realize that American leadership will involve costs that we have never met; responsibilities that we have never faced; problems that we have never considered, but I see no reason to

think that we are unable to meet these costs, or that the responsibilities and problems will be better faced by anyone else. On balance, I am in favor of the United States taking the lead, but if we take it, we must take it firmly. We cannot refuse responsibility. We cannot wait months while pettifoggers consider precedents. When a present problem demands a present answer, that answer must be given at once, and as well as possible, without waiting for months of fruitless consultation.

We have bungled the matter of war crimes in a disgraceful way. Our policy in this matter has lost us a great deal of influence in the world. I suggest the case of a Czech or a Serb, who has seen his daughter raped by a German and his wife tortured to death in a concentration camp. The Russians catch the man who assaulted the daughter and hang him. The Americans capture the concentration camp, gently slap the commanding officer on the wrist and let all the other Gestapo men free, because the State Department can find nothing on the subject in the works of Puffendorf. Will this man be for American or Russian leadership?

Czechoslovakia, from the moment of its recognized independence has turned to the western powers. It relied on Great Britain and France to maintain its independence. It was hideously betrayed at Munich, but when it was overrun, its government in exile went to London and did not migrate to Moscow. Its representative joined ours on the Commission which considered the question of war crimes. He worked hard and valuably, still looking to us rather than to any other nation for the justice which his country demanded. We refused to act. Our government and that of Great Britain did nothing to make ready the machinery of justice so that it would be able to

function the moment our troops entered Germany. Can we blame such a people for being discouraged and for looking elsewhere for that leadership which we refuse?

It appears possible that we may conduct a series of trials which will convict and punish a few hundred of the more prominent war criminals. Could any policy be devised which would more certainly encourage another war? A few of the leaders may be executed, enough to provide every German with a war shrine within two hours of his home, to which he can take his son and tell him of the dead hero and also that his own experience shows there is no danger in joining such a movement except for those at the top. A good many of us remember the veterans of the Civil War in small towns, who were still talking of their campaigns when they saw the first airplane. The same thing is certain to happen in Germany. The members of the Gestapo, who, to satisfy the timidity of American and British bureaucrats, were left free, will tell their children of the fun they had in Norway, of the joys of torturing people in Poland or in concentration camps, and of profitable looting of France. They will be the heroes of their villages. The youth of Germany will be desirous of following in their footsteps, but their zeal would be very much lessened if their last recollection of Uncle Fritz were, not of that gentleman being the hero of the village beer garden, but of seeing him hanging on a tree. There will always be found plenty of men ready to take the gamble of leadership in any enterprise, and our present policy of guaranteeing the security of the followers will be most helpful to the successors of Hitler and Göring.

I have suggested that our lack of vigor springs from the timidity of pettifogging bureaucrats afraid to accept the responsi-

bility of any decision. A more sinister reason has been suggested. It cannot escape our knowledge that the largest manufacturing company of electric supplies in Germany was financed and owned by General Electric Company of America--the Opel works was about the largest of the German automobile plants, which of course was turned into war production as were our own. This belonged to the General Motors, of which Mr. Stettinius, who at the time was Secretary of State, had been vice president.

Whatever the course may be, during the whole period of the war, the British and ourselves held before the people of the occupied countries a vision of justice to inspire their efforts against the Germans, and now that we can carry out this promise, nothing whatsoever has been done.

After I was discharged from my position as member of the War Crimes Commission, there was an outburst of public indignation which demanded that something should be done. Speeches were made in Congress. The acting Secretary of State announced, "It is the policy of this Government to see to it that the Axis leaders and its henchmen, who have been guilty of war crimes and atrocities, shall be brought to the bar of justice." When asked if this included crimes committed by the Germans against their own citizens for race or religion, he said that it did. Mr. Stettinius, the Secretary of State, announced that everything was being done that was necessary to punish the Germans for these acts.

At a Press Conference, on January 17, Secretary Stettinius, asked by Mr. Player of the N. Y. POST, "What is the attitude of the United States toward punishment of crimes against Hebrews of Europe?" The Secretary replied: "This country's position is not yet ~~final~~ <sup>finally</sup>

determined. The whole matter is being attacked with forcefulness, determination and aggression."

Were these statements mere eye-wash, intended to fool the public to protect the susceptibilities of legalists and the investments of American financiers, or were they the expression of men in high office with every opportunity to carry them out and who lacked the zeal or the courage to face such difficulties as they were?

It is manifest that nothing has been done and that nothing will be done to suggest to the ordinary German in the future that he runs any personal risk whatsoever in joining and supporting a new effort for world domination. The whole problem is rapidly becoming as discreditable a farce as were the Leipzig trials after the last war. It is perhaps well for us to remember that although the American people have practically forgotten that episode, it remained in the memory of the Germans and unquestionably gave them a feeling of security in their torture camps, which has unfortunately been justified.

24 Apr. 1945

The hideous mass murders which have horrified the world have been no surprise to me, and they should not surprise the lawyers of the State Department who are to a great extent responsible for them. The German authorities know as well as everybody else that the recommendations of the War Crimes Commission would have been amply adequate to provide for the prompt and severe punishment of those responsible for these horrors. They also know that these recommendations have been left to gather dust in the files of the Legal Adviser of the State Department. They know that a system of courts, which would have been sufficient to convict them, was proposed to the State Department in October. Six months later nothing has been done.

Do the American people like the idea of giving the green light to Hitler's organized murderers?

I returned to the United States last December, fully expecting to find that the excellent recommendations of the War Crimes Commission were about to be accepted by this country, which would have meant that the German assassins would have been under clear notice that the United States meant business, and that they would commit further excesses at their peril.

I found that nothing had been done. On May 29th I reported a letter sent by the War Crimes Commission asking to treat persecution for race, religion or political opinion as a war crime. No answer ever appeared. In October the courts were recommended. Nothing has been done on that subject. We recommended the arrest and the detention of the Gestapo, the inter-

change between the United Nations of captured war criminals. All these proposals remain in the files as mere suggestions.

My expressions of surprise were followed by my being relieved for the ostensible reason that the Department of State could not extract \$30,000 from Congress.

Is it astonishing that the German murderers feel safe?

What is the use of sending Congressmen across the Atlantic if nothing is to be done?

I have been talking of this for six months in this country. Do we have to wait for confirmation from members of the British parliament?

Over six months ago we recommended setting up mixed military tribunals to be ready to try just such cases, which we foresaw. For making these recommendations and for protesting publicly that they were not carried out, I am consigned to outer darkness -- the result you see.

The truth is that there is today no international machinery to try them. Individual armies will do what they can. It is manifest that it would be better for the world and better for the Germans themselves if mixed military tribunals representing all the United Nations had been made ready to dispense justice in the name of all the world.

President Truman vigorously repeated the ideas of President Roosevelt when he insisted on the proper punishment of war criminals. President Truman is the hope of the world. It is to him that those who have suffered look for justice, and I am sure that they will not look in vain.

Herbert Pell

April 24, 1945

Wednesday, the 1st December, 1943.

I was taken by General Betts at lunch to the Athenaeum with Sir Cecil Hurst. We met, discussed various extraneous subjects, conspicuously Sir Cecil Hurst's garden which I think is located in Sussex. As he manifestly did not wish to discuss the affairs of the Commission or possibly was waiting for me to rush in, I kept off and nothing particular was said.

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Thursday, the 2nd December, 1943.

I saw Ambassador Koo at the Chinese Embassy. I have known him for a long time. We were boys together at Columbia. The next time I saw him he was Chinese Minister at the Nine Power Conference in Washington. I was at the time State Chairman of New York. In 1940, we were both special ambassadors at the Portuguese Centennial Exposition. It was then that I met Mrs. Koo. She is an extremely pretty, most attractive and cultivated light-weight. He is one of the most intelligent men that Columbia ever graduated. He is now Chinese ambassador to England and associated with me on the War Crimes Commission. He believes that we should do a great deal and do it quickly. He is anxious to have the Commission set up a panel to take care of the Asiatic questions.

Friday, the 3rd December, 1943.

Lord Atkin dined with me at the Ritz. We discussed the affairs of the Commission. Atkin, who is one of the Law Lords, said that he feared too much 'legalism' in the Commission and hoped that it would result in something practical.

Thursday, the 9th December, 1943.

I lunched with Dr. Glaser, representative of Poland to the War Crimes Commission, at Brown's Hotel in Dover Street. He felt that the suffering in Poland was not getting sufficient consideration here and that the Commission should begin to work more actively.

Friday, the 10th December, 1943.

Ambassador Koo called on me at the Ritz. We had quite a long talk, during which he elucidated his idea of a panel. We came to the conclusion that whether it be called a panel or sub-committee, some separate body of individuals must be gathered together to consider the Japanese question separately from the German. We thought there was no reason to make a point of the name. Panel, sub-committee, delegates all mean the same thing. It is manifestly impossible to handle the Japanese affair except separately.

Saturday, the 11th December, 1943.

I lunched with Lord Atkin at the Reform Club. We again discussed the possibilities of the Commission and he once more expressed his fear of 'legalism'. I told him that I would do everything I could to prevent the Commission being turned into a political tool or farce. His last words to me were "Remember, I am with you".

Tuesday, December 14th, 1943.

I lunched with Dr. J.M. de Moor, at the Dorchester Hotel, the Dutch representative on the War Crimes Commission. He seemed very much pleased when I agreed with him that it was most important to have a rapid and just punishment of war criminals. It seems that he and some other members of the Commission have cooked up a letter to be sent to Sir Cecil Hurst, asking for an early meeting of the Commission, 2) regular and frequent meetings to follow, 3) that the committee should declare itself officially existent, 4) that it should elect a vice-chairman, 5) that it should proceed with all possible speed to the erection of a ..... *an international tribunal*

He seemed to think that there would be a good deal of hostility to its activity on the part of Hurst, probably backed by Simon. I suggested and prevailed on him not to send this letter but to prepare their motions so that when the Commission does meet it can be sprung without preparation. I told him that he knew more of law than I did by a good <sup>sight</sup> side but that my experience of politics was probably greater than his and that I did not want <sup>to allow</sup> three, four or five weeks for the preparation of spokes to be thrust in our wheel. He agreed with the idea and said he would telephone to his colleagues in preparation of this letter, to hold it up.

Memorandum

On Thursday the 27rd of December Mr. Vinant dined with us alone in our apartment at the Ritz.

He commented on the lateness of my arrival in England.

I told him the story of my appointment and how I had on many occasions during the summer written to Washington, and twice gone down, to see if my departure could not be expedited. On every occasion I was told that the British Government did not want me over until the Commission was organized. I suggested that I should come over here to look over the ground, but this was refused.

At one time Mr. Shaw told me it might be six or eight months before I would be able to go to England, and that all of these instructions had come through the Ambassador here.

The Ambassador told me that on no occasion had he sent any cables to the Department suggesting delay, and that the British Government had been seriously put out by my delay in arriving.

He told me the story of this Commission.

It appears that late one evening the President and the Prime Minister of Great Britian had talked over the possibility of such a Commission. The only other person with them was Mr. Harry Hopkins, whom they asked to make some notes of the conversation, which were reported here on this basis and no other.

The American Ambassador and the British Foreign Secretary, Mr. Eden, developed the idea and started the ball rolling.

It seems apparent that some members of the State Department were put out at the impudence of the President interfferring in foreign affairs and decided to give him a lesson. Hence the extraordinary lack of cooperation and support given to this Commission.

It is a curious fact that I was appointed in the early part of July, and now at the end of the year have received no written instructions whatsoever from the State Department except for a note asking me to report to Captain Connolly at the pier of embarkation, New York, November 14th. Since I have been in England, for something more than a month, I have received no answer to any telegram sent to the Department.

NARROW LEGALISM vs. FUNDAMENTAL JUSTICE

Herbert C. Pell, lately American member of the United Nations War Crimes Commission, states that he was unable to continue to serve on that body because of opposition to his insistence that Nazi leaders should be tried and, if found guilty, punished for crimes against their co-nationals, both Christians and Jews. This situation calls for clarification, and effective means for the apprehension and trial of these criminals must be immediately prepared - we cannot wait.

Mr. Pell's charges are in accord with reports that some American officials are influenced by considerations of narrow legalism rather than fundamental justice - after all, war itself is recognized as legal according to international law in its present stage of development! The officials who hold that it is technically contrary to international law to punish the Nazis for acts against their co-nationals, which are recognized by the civilized world as criminal in intent and fact, are aiding those anti-democratic forces in this country which seek to scuttle the Dumbarton Oaks proposals.

Leniency towards the Nazis encourages the proponents of a soft peace and the opponents of the Dumbarton Oaks proposals. The failure of half-hearted and muddyminded officials to clarify our position concerning recent tragic events in Brussels, Rome, Athens, Warsaw, etc. has already confused Americans overwhelmingly bent upon securing a democratic world organization. The action that the United Nations takes on this issue vitally affects the likelihood of our participation in a world organization which Americans want, but not if built on the treacherous sands of appeasement.

The Nazis, violating the fundamentals of international morality, started a hideous political movement by persecuting various groups, not only Jews, liberals, and labor leaders but later Catholic and finally Protestant leaders. We must make it crystal-clear that, as victory nears, we are not fighting for the right of outlaw nations and domestic crypto-fascists to set group against group. This war began that way - so can another.

February 1, 1945

A. J. G.

THE CHRISTIAN SCIENCE MONITOR

Boston  
February 1, 1945

Justice Waits

Britishers and Americans who have been seriously concerned over the apparently wide gap in Allied plans for punishing war criminals will welcome the statement made yesterday by Richard Law, British Minister of State. His assurance that every attempt would be made to plug any technical loopholes through which some Nazis guilty of atrocities might escape was badly needed.

Establishment of the United Nations War Crimes Commission some fifteen months ago had aroused hopes that there would be no repetition of the criminal trial farce of World War One. The Commission, however, has failed to win support for its policies from its own leading governments - Great Britain and the United States. As a result, the British Chairman recently resigned. And now the American member is also out. Congress failed to appropriate funds for his work and he charges that the State Department had obstructed it.

Chief disagreements now appear to be over the handling of major war criminals, and the recommendation that crimes within a country against its own nationals - such as Nazi persecution of German Jews - be included. The latter is a knotty problem which continues to call for wise and prayerful consideration of the rights of both States and individuals.

The question of major criminals is one which stumped the jurists in 1918, since no international penal code or court ever had

been formed to try heads of States. The present Commission has recommended that the preparation and launching of this war be recognized as a crime, and that the responsible persons be treated as criminals. It drafted a convention for the establishment of an inter-Allied tribunal to deal with the ringleaders.

The British Foreign Office fears the extralegality of such a procedure and favors punishment by joint decision of the Allied Governments. This position received some support in the proposal made some time ago by Charles Warren, historian of the Supreme Court and a leader of the international bar. He would have included in surrender terms a list of leading war criminals to be turned over to the United Nations, reserving to the Allies the right to fix any punishment they chose. This, he declares, would be an act of "high policy" which is recognized in international law as the legal right of a nation when international agreements and rules of war do not cover a situation.

In the meantime, Russia - not a member of the Commission - and several of the liberated and surrendered nations are proceeding with their own trials of the so-called lesser criminals. This, itself, is not in violation of the intent of the Commission, which favors trials within the country where crimes were committed. But a uniform policy of judgment and justice is sadly lacking.

It is no mere question of retribution that faces the Allies. It is a matter of safeguarding the world against murderers and marauders. It deserves an important place in the forthcoming deliberations of the

Big Three. And the War Crimes Commission - strengthened and revised if necessary - should receive the co-operation of its governments. A step in this direction should be prompt action by Congress to restore an American member to the Allied body.

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