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Anti-Semitism on Trial: The Case of Julius Streicher Before the International Military
Tribunal at Nuremberg

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Abstract

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The use of courts of law in the effort to combat anti-Semitism has been prevalent in many Western nations since at least the late nineteenth century. However when anti-Semitism is placed on trial, in legal frameworks not designed with that purpose in mind, the results tend to come to less than what those who initially brought the cases had hoped. Julius Streicher's trial before the International Military Tribunal at Nuremberg (IMT) was one such case. Selected due to his notoriety as one of Nazi Germany's most prolific Jew-baiters and the publisher of an anti-Semitic tabloid, his case did not fit well within the charges laid out by the IMT, and as such the prosecution was forced to try his case using evidence that only tangentially related to the charges brought against him. This study seeks to examine his trial through the lens of anti-Semitism, and specifically the role anti-Semitism played in his trial and subsequent execution. I argue that the people charged with setting up the IMT did not have a clear conception of the role anti-Semitism had played in Germany from the Imperial era through Hitler's rule, and as such misinterpreted the degree of Streicher's influence on the acceptance of anti-Semitism by the German population, granting him a larger stature than he deserved. In order to examine this case, I used several primary sources, chiefly the papers of Francis Biddle, the American judge at Nuremberg, as well as extensive secondary literature written about anti-Semitism as well as the Nuremberg trial itself. My aim is to place Streicher's trial in the context of other trials in which anti-Semitism was the real focus, and in doing so provide insight onto an area of the IMT that could be improved upon in subsequent trials.

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Introduction

On May 23, 1945, Major Henry Plitt of the United States Army was sitting in the back seat of his Jeep taking in the picturesque Alpine landscape on his way to Berchtesgaden when a small farmhouse just off the road caught his eye. Thirsty, he decided to make an unplanned stop to see if he could find something to drink. As he got out of his Jeep, he discovered a short, bearded man sitting on the farmhouse porch painting and asked the man for a glass of milk. As his milk was being poured, Plitt inquired as to this man's occupation. The man explained that he was not the owner of the farm, but rather "Mr. Sailer, an artist." Eager to get a handle on the German mood following the Nazi defeat, Plitt decided to start a conversation with this unassuming fellow, and the two men began chatting in Yiddish. Plitt was specifically interested in discerning why anyone would have joined the Nazi party in the first place.

"What do you think of the Nazis?" Plitt asked the man.

"I don't understand these things. I am an artist," the man replied, "and have never bothered about politics."

"But you look like Julius Streicher!" Plitt quipped, demonstrating his knowledge of the better-known Nazis while trying to keep the conversation light.

As soon as the words left his mouth something seemed amiss. The man's reaction to the statement didn't quite fit with how the conversation had been going up to that point. He suddenly appeared flustered and slightly stunned. He paused, and his next words brought an even greater shock to Major Plitt.

"How did you recognize me?" an incredulous Julius Streicher asked.

Major Plitt instantly realized that he had, completely by chance, come across one of the most wanted men in what, until two weeks prior, had been Nazi Germany.

Streicher immediately tried to cover his obvious blunder, repeating his earlier claim that he was, in fact, “Mr. Sailer” the simple artist, but Plitt would have none of it. He and his men placed Streicher under arrest.¹

So goes one version of the story of Julius Streicher’s capture, recounted first by Heydecker and Leeb in 1958. This account persisted in a more or less similar form for the next three decades, further promulgated by Robert Conot and James and Ann Tusa in their respective works on the Nuremberg Trial.² More recently, however, a second version of Streicher’s capture has emerged, one recounted by Major Plitt himself in front of a video camera for the U.S. Holocaust Memorial Museum in Washington, D.C. As Plitt tells it, providence was not what led him to stop at the farmhouse on that sunny May afternoon, but rather his trip out to the Alpine countryside was the result of a tip he had received that suggested a high-ranking Nazi was living in hiding in a town just down the road from Berchtesgaden. In his own words, he entered the farmhouse “with my .45 in hand,” expecting to find Heinrich Himmler. He quickly determined that the man he found in the farmhouse was not Himmler, but the initials on his identification papers read J. S., so he tossed out the name Julius Streicher. Streicher responded, “Yeah, that’s who I am.” And without further questioning, he was taken into custody.³

1 Joe J. Heydecker and Johannes Leeb. *The Nuremberg Trial: A History of Nazi Germany as Revealed Through the Testimony at Nuremberg* (Westport, Connecticut: Greenwood Press, 1962), 42-3.

2 Robert E. Conot. *Justice at Nuremberg* (New York: Harper & Row, 1983), 33; Ann Tusa and John Tusa, *The Nuremberg Trial* (London: Macmillan, 1984), 41.

3 Henry Plitt, “Henry Plitt,” United States Holocaust Memorial Museum, <http://www.ushmm.org/outreach/hps0055m.htm> (accessed February 15, 2009).

No matter which story one chooses to believe, the very fact that there are two versions, both of which are credible and both of which reach the same conclusion, is indicative of Streicher's life-long tendency towards controversy. From early adulthood, when Streicher found himself sitting before a host of disciplinary boards as an errant grade school teacher, through his tenure as Gauleiter of Franconia during the Nazi regime, which ended in house arrest in February 1940, Streicher was a man for whom no act of belligerence was taboo. It was this belligerent nature that led to his dismissal as a teacher during the Weimar period in 1923, and to his expulsion from the Nazi government in 1940.⁴ And it was this belligerent nature that, arguably, played a large part in his addition to the short list of major Nazi war criminals in the days immediately following the end of World War II.⁵

Julius Streicher and Adolf Hitler had a relationship that dated back to the early days of the Nazi party. By the time Hitler was appointed Chancellor of Germany on January 30, 1933, Julius Streicher counted himself as one of Hitler's closest allies. While Streicher had been a member of a rival anti-Semitic political party in the early 1920s, by October of 1922 Streicher had chosen to shift his allegiance to the National Socialist party, where he quickly emerged as one of Hitler's staunchest supporters.⁶ The two men were initially suspicious of one another, as they were both highly political creatures and each had a specific set of ideas he wanted to thrust upon the German public. However, they both soon recognized that their ideas were similar enough to warrant an alliance, and

⁴Bytwerk, Randall L. *Julius Streicher: The Man Who Persuaded a Nation to Hate Jews* (Briarcliff Manor, N.Y.: Stein & Day, 1982), 19.

⁵Dennis E. Showalter, *Little Man, What Now? Der Stürmer in the Weimar Republic*, (Hamden, Connecticut: Archon Books, 1982), x.

⁶Ibid., 29.

so moved past their initial doubts in their efforts to gain power and influence in German politics. Streicher cemented his place in Hitler's inner circle in the aftermath of Hitler's failed Beer Hall *Putsch* in Munich in November 1923. Both during and after the *Putsch*, Streicher stood loyally by Hitler, receiving a jail sentence of two months for his participation and forever sealing his fate as a committed ally and trusted friend of Adolf Hitler. The year 1923 proved to be a major turning point for Streicher, for in addition to his initiation into Hitler's inner circle, it was also the year that he began publishing the rabidly anti-Semitic weekly tabloid newspaper *Der Stürmer*, the paper that would eventually lead him to the dock at Nuremberg twenty-two years later.⁷ Had he not been such a confrontational anti-Semite, there is a good chance that Henry Plitt would have simply continued on his way after a glass of milk and a short conversation. But this was not to be the case, and one of the few facts about Julius Streicher that is not the subject of debate is that on May 23, 1945, he entered into American custody as a war criminal.

This date proved to be the beginning of the end for Julius Streicher, the man who would be labeled at the Nuremberg Trial as "Jew-Baiter Number One" as a result of the shrill anti-Semitism published in *Der Stürmer*.⁸ Streicher would never again know freedom. He remained in custody throughout his trial before the International Military Tribunal (IMT), at which he was found guilty of crimes against humanity and, seventeen months following his capture, sentenced to death by hanging. When Plitt arrived at Berchtesgaden with Streicher in tow, the press, which had been alerted to Streicher's imminent arrival, was delighted to find an ironic twist with which to sell their story:

⁷ Ibid., 28-30.

⁸ International Military Tribunal. *The Trial of German Major War Criminals by the International Military Tribunal Sitting at Nuremberg, Germany*. (Washington, D.C.: U.S. Government Printing Office, 1947), Vol. 2, 689.

Major Henry Plitt was Jewish.⁹ Thus the self-avowed and avid anti-Semite Streicher, who had built and actively maintained a reputation as Germany's premier rhetorical enemy of the Jews, and who spent a large part of his life publishing anti-Semitic editorials, was eventually brought down by a member of the Jewish faith he so publicly loathed. What's more, it was this very anti-Semitism, and the force and belligerence with which he expounded it, that was the impetus behind his being brought before the Tribunal in the first place, and indeed which has become, to some historians, the key issue that calls into question his conviction and execution at Nuremberg.¹⁰

What makes Streicher's case all the more interesting is the fact that he was no stranger to the defendant's bench in Nuremberg courtrooms, having been taken to court there on numerous occasions in the 1920s and 30s as a result of his anti-Semitic rants. In fact, it was most often articles he had printed in *Der Stürmer* that got him into legal trouble, usually as a result of a libel suit filed by someone Streicher was attacking through editorials.¹¹ These trials resulted in Streicher being forced on numerous occasions to pay small fines or serve short jail sentences for his libelous rhetoric.¹² For Jews living in Weimar Germany, the concept of using the courtroom, and specifically charges of libel, as a means of combating anti-Semitism was one that had been employed since the 1890s.¹³ While it was not a perfect form of combat, as holding anti-Semitic views was not in and of itself a crime, libel charges represented the only means through

⁹ Plitt, "Henry Plitt"

¹⁰ Whitney R. Harris, *Tyranny on Trial: The Trial of the Major German War Criminals at the End of World War II at Nuremberg, Germany, 1945-1946* (Dallas: Southern Methodist University Press, 1999), 29.

¹¹ Showalter, *Little Man*, 201.

¹² Dennis E. Showalter, "Jews, Nazis, and the Law: The Case of Julius Streicher." *Simon Wiesenthal Center Annual* 6 (1989): 147.

¹³ Christoph Jahr, and Deborah Cohen. "Ahlwardt on Trial: Reactions to the Antisemitic Agitation of the 1890s in Germany." *Leo Baeck Institute. Year Book* 48 (2003): 67-85.

which Jews could battle anti-Semitism on the legal front, and as such were used frequently in the effort to repress anti-Semitic sentiments.

Such cases were often successful in that anti-Semitic defendants were convicted, however because the law was not set up specifically to handle such cases, the offenders oftentimes got nothing more than a slap on the wrist, and were frequently able to use their trials as a means of publicity for their causes.¹⁴ The sensational “Jewish Rifles Trial” of Hermann Ahlwardt in 1892 was one such case. Ahlwardt had accused the German government of purchasing rifles from a Jewish company that was deliberately producing defective rifles in an effort to cripple the German army. He was tried in court on charges of libel for his statements, which the German government felt defamed the nation and negatively affected national security by portraying the Army as potentially ineffective. He was convicted of libel and sentenced to five months in prison. The case, however, was fraught with legal difficulties, arising mostly out of the fact that libel laws had not been created with the express purpose of fighting anti-Semitism.¹⁵ In one sense, Julius Streicher’s trial at Nuremberg represented the continuation of this tradition—an anti-Semite being tried largely as a result of his anti-Semitism through a legal process that was not created with that purpose in mind.

The International Military Tribunal at Nuremberg was established by the London Agreement between the Allies signed on August 8, 1945. In the history of International Law, perhaps no single trial has been more transformative than the IMT, that began on 14 November, 1945 and concluded on 1 October, 1946.¹⁶ Within that one year, twenty-two

¹⁴ Showalter, “Jews, Nazis and the Law,” 145.

¹⁵ Jahr and Cohen, “Ahlwardt on Trial,” 73-5.

¹⁶ Robert G. Storey, Foreword. In Harris, *Tyranny on Trial*, xi.

Nazis sat before a tribunal composed of one judge and one alternate from the United States, Great Britain, the Soviet Union and France. Every man and woman seated in the courtroom as the trial unfolded knew that this was a trial without precedent, and which seemed destined from its very inception to be a groundbreaking event in legal history. When the verdicts were read on the morning of October 1, 1946, the world learned that of the twenty-two defendants, eleven were condemned to die for their crimes, three were sentenced to life imprisonment, four were to spend between ten and twenty years in prison, and three had been acquitted.¹⁷ The executions were carried out fifteen days later, and on 24 October, 1946, the powers granted to the IMT to conduct investigations and trials were transferred to the Office of Chief of Counsel for War Crimes and entrusted to General Telford Taylor, who would use those powers to try lesser Nazis guilty of similar crimes.¹⁸ The entire process had lasted less than sixteen months from conception to conclusion.

The idea behind the Nuremberg Trial had been a simple one—the Allies sought to hold the men in whose name the world had been dragged into war accountable for their actions, on the one hand to exact some token of justice on behalf of the men and women who lost their lives and livelihoods as a result of their belligerence, and on the other hand to clearly state to anyone who would seek power through military aggression in the future that such acts would not be tolerated.¹⁹ Yet this simple idea turned out in practice to be much more difficult and nuanced than anyone could have expected. While it is true that

¹⁷ Harold Leventhal, Sam Harris, John M. Woolsey, and Warren F. Farr. “The Nuernberg Verdict.” *Harvard Law Review* 60, no. 6 (July 1947), 907.

¹⁸ Harris, *Tyranny on Trial*, 547.

¹⁹ Norbert Ehrenfreund, *The Nuremberg Legacy: How the Nazi War Crimes Trials Changed the Course of History*, (New York: Palgrave Macmillan, 2007), 11-14.

the trial's primary goal was to hold the representatives of the Nazi State accountable for their aggression, in the process of carrying out the trial a number of issues emerged that, while ancillary to this goal, nonetheless proved to be central to the historical debate and discussion that would follow its completion.

Anti-Semitism was one such issue. While the term was not even explicitly mentioned in any of the four counts leveled against the defendants, the nature and scale of the Nazi crimes against Jews throughout the course of WWII made it, if notoriously not the trial's primary concern, then at least an issue to which the trial could not remain blind.²⁰ Julius Streicher was tagged to be the personification of that anti-Semitism.²¹ His case is unique among the twenty-four defendants²² charged in the indictment in that he was never, directly or indirectly, involved in the national politics of the Nazi state, and had in fact been dismissed from the office of Gauleiter before the beginning of the war. His crime, and indeed the only evidence presented against him at trial, revolved around blatantly anti-Semitic statements he made either in public appearances or through his tabloid mouthpiece *Der Stürmer*. Immediately following Hitler's rise to power in 1933, Streicher had been appointed *Gauleiter* of Franconia, yet, in February 1940, almost a year before the mass killings of Jews began along the Eastern front, he was stripped of office and placed under house arrest. He would spend the remainder of the war publishing *Der*

²⁰ For the counts of the tribunal, see Norman J.W. Goda, *Tales from Spandau: Nazi Criminals and the Cold War* (New York: Cambridge University Press, 2007), 11. For the issue of anti-Semitism in relation to the IMT, see Harris, *Tyranny on Trial*, 29; James Owen, *Nuremberg: Evil on Trial* (New York: Headline, 2006), 12; Donald Bloxham, *Genocide on Trial: The War Crimes Trials and the Formation of Holocaust History and Memory*, (Oxford: Oxford University Press, 2001), 64-5; Bradley F. Smith, *Reaching Judgment at Nuremberg*, (New York: Basic Books, 1977).

²¹ Owen, *Nuremberg*, 12.

²² Note that the discrepancy between the aforementioned twenty-two men who were tried and the twenty-four men who were charged reflects the fact that Robert Ley, head of the German Labor Front, committed suicide shortly before the trial's commencement, and industrialist Gustav Krupp was declared medically unfit to stand trial. See Harris, *Tyranny*, pp. 26 & 32.

Stürmer from the comfort of a large estate just outside of Nuremberg.²³ While his anti-Semitic rants continued to find an audience, he was otherwise completely cut off from Nazi politics.

A few of the other defendants could and would claim that they were not a part of the Nazi establishment in the final years of Nazi power, notably Hitler's deputy Rudolph Hess, who had flown to Scotland in 1941 in a Quixotic attempt to negotiate a peace settlement with the British, and Hjalmar Schacht, president of the Reichsbank from 1933 to 1939 who was ousted from the Nazi government in 1938. Both men, however, were spared the death sentence, and Schacht, in fact, was acquitted of all charges. Hans Fritzsche, the head of Goebbels' Radio Division within the Ministry of Propaganda, would make a similar claim in his own defense, insisting that he was nothing more than a puppet who was manipulated by Goebbels, and had made no direct decisions regarding policy, a defense that earned him an acquittal as well. Why, then, was Julius Streicher, who had no official ties to the Nazi government that initiated WWII and committed horrific crimes against humanity, found guilty and subsequently hanged as a result of those crimes, committed by others, at the behest of others?

This question was on the minds of contemporary reporters covering the IMT when the verdict was read,²⁴ and indeed has plagued more than a few historians who have studied the IMT.²⁵ In his description of the contemporary reaction to the verdict, Joseph Persico recounts a scene in a Nuremberg press bar on the evening of October 1, 1946, the day the verdicts were announced. As Margaret Higgins, a reporter for the New York

²³ Owen, *Nuremberg: Evil on Trial*, 12.

²⁴ E.g., Richard L. Stokes, editorial in *The St. Louis Post-Dispatch*, October 4, 1946.

²⁵ David Fraser, *Law after Auschwitz: Towards a Jurisprudence of the Holocaust*, (Durham: Carolina Academic Press), 131-8.

Herald Tribune, entered the bar, she found a debate underway between reporters as to why the IMT had found eleven defendants guilty of crimes punishable by death. She heard reporters from all over the English-speaking world going back and forth amongst themselves as to what the conviction of these men meant. As the discussion moved to Streicher, one reporter asked a question about why, exactly, Streicher deserved to be hanged. Persico describes the conversation, writing, “What about that pathetic sod, Streicher, what was he dying for? A British reporter asked. For incitement to murder, a companion answered. But that was the same thing Fritzsche had been accused of, and he went free.”²⁶

In the histories of the IMT, questions regarding the judicial veracity of Streicher’s death sentence have become commonplace in recent decades. Many historians, chiefly John and Ann Tusa and Telford Taylor, have insisted that Streicher was convicted and hanged not because the facts of his case warranted a conviction, but rather because his revolting personality and rabid anti-Semitism made him an easy target.²⁷ Yet while recent scholarship has tended towards the consensus that Streicher did not fit with the other defendants at Nuremberg, and his conviction and execution were less justified, no thorough investigation has taken place so far regarding exactly why his case did not fit within the framework of the IMT, and what the ramifications of his inclusion were and continue to be. It is relatively easy to determine, with only a cursory glance at the secondary literature regarding the IMT, and an even shorter glance at the published trial proceedings themselves, that Streicher’s crimes were not only outside the

²⁶ Joseph E. Persico, *Nuremberg: Infamy on Trial*, (New York: Viking, 1994), 406.

²⁷ Tusa and Tusa, *The Nuremberg Trial*, 457; Telford Taylor, *The Anatomy of the Nuremberg Trials: A Personal Memoir*, (New York: Knopf, 1992), 562.

realm of jurisdiction that the Tribunal had set for itself, but also that his conviction was at best based on faulty assumptions about the origins of German anti-Semitism. However to declare that Streicher fell victim to his own personality and his deep-seated anti-Semitic beliefs, no matter how revolting they both may have been, is to look past the larger issue that resulted in his selection as a defendant in the first place, namely anti-Semitism, as both an idea and as a call to action.

Thus anti-Semitism, and the difficulties it presents when it is tried in a court of law, seems to be the most logical factor to analyze in the attempt to understand Streicher's place in the Nuremberg trial. Yet to date, no study has been undertaken that examines his case at Nuremberg through the lens of anti-Semitism. This thesis seeks to fill this void in the historiography of the Nuremberg trial, which is otherwise a thoroughly researched and often discussed subject, in order to allow for a more thorough understanding of an area in which the IMT failed to live up to its self-imposed standards of justice. I argue that Streicher's conviction, and indeed his very selection as a defendant before the IMT, came to pass largely as a result of misconceptions regarding the origins of anti-Semitism in Germany on the part of those planning and trying his case, as well as the judges who eventually found him guilty of crimes against humanity. Without a basic understanding of modern anti-Semitism's origins, and the significant role it played in Imperial and Weimar Germany, Streicher's case easily becomes subsumed in the unfathomable tragedy of the Holocaust, and his impact on German acceptance of anti-Semitism tends to become over exaggerated. This amplification of Streicher's influence plagued the prosecution at the IMT, and indeed has leached into much of the subsequent literature revolving around Streicher.

In order to determine the role that anti-Semitism played in Streicher's trial and conviction at Nuremberg, this paper first reviews several current histories of modern German anti-Semitism, focusing specifically on its nineteenth century origins and the subsequent role it played in Germany through Hitler's ascension to power. Couched within this discussion is an analysis of the extent to which Streicher was able to influence the German populace to accept anti-Semitism. The thesis then closely examines the establishment of the International Military Tribunal, and from there the prosecution's case against Streicher in order to determine exactly how the Tribunal sought to fit Streicher into the broader framework of crimes against humanity. Next, the study progresses to the legal reasoning behind his conviction through a close analysis of several unpublished primary source texts from the Francis Biddle collection housed at Syracuse University. Francis Biddle was the American judge at Nuremberg, and his papers contain a treasure trove of minutes, analysis and commentary on myriad aspects of the trial, shedding light on how the judges came to their decision. Throughout, the paper will use the legal framework surrounding Streicher's trial as a springboard from which to extrapolate the role that anti-Semitism played in Streicher's inclusion, prosecution, and conviction at Nuremberg, focusing specifically on the difficulties posed by cases that revolve around anti-Semitism.

Much of this analysis is based on the volumes of the official transcript of the International Military Tribunal published by the United States, as well as several monographs written about the origins of the trial. Here, the investigation is framed in terms of legal means that were used to try anti-Semites before the IMT. How did Streicher's prosecution at Nuremberg fit into this wider milieu? Other trials which

revolved around anti-Semitism will be used to provide a context through which this question can be addressed, one from Imperial Germany, referenced above and several involving Streicher during the Weimar Republic .

This discussion seeks to answer the following questions: How and why did the four Justices who presided over the International Military Tribunal at Nuremberg come to the conclusion that Julius Streicher was guilty under Count Four (crimes against humanity) of the indictment? What differences existed between Streicher, who was ostensibly hanged for persecuting Jews, and Hans Fritzsche, the head of the Radio Division of Goebbels's Propaganda Ministry, who was acquitted? Was it simply the fact that Streicher was an easily dislikable character who refused to repent and walked to the gallows still spouting anti-Semitic nonsense, or was it based on a preponderance of evidence that pointed towards guilt? In addition to the above questions, the paper examines the repercussions of Streicher's case in regards to anti-Semitism in the courtroom, and the issues that arise when anti-Semitism is the central issue in a legal proceeding.

Although a significant portion of this thesis concerns itself with several key problems that emerged out of the IMT proceedings as highlighted through Julius Streicher's trial, I want to make it clear that in no way am I attempting to declare Streicher an innocent man, nor is it my intent to argue that the IMT was an intentionally malignant and unorganized court. On the contrary, I am of the view shared by many historians, including Andrea Carcano, who insist that "It was indeed at Nuremberg that, as a result of their first extensive application, the pillars of an international criminal

system received a definitive consecration.”²⁸ Most of those who have studied the IMT echo this analysis.²⁹ However, if Nuremberg is to be elevated to such mythic heights in the history of international law, and indeed used as a precedent for similar trials in the present day, it must be analyzed not only for its strengths but also for its weaknesses. One of those weak points was the trial of Julius Streicher, a man who was one of the most rabid, unrepentant and unpalatable Nazis seated before the tribunal, yet whose crimes simply did not match in scale or importance those of many of his counterparts.

²⁸ Andrea Carcano, “Sentencing and the Gravity of the Offence in International Criminal Law,” *The International and Comparative Law Quarterly* 51, no. 3 (July 2002): 584.

²⁹ For similar opinions on the trial, see Rt. Hon. Sir Ninian Stephen, foreword to David A. Blumenthal and Timothy L. H. McCormack, eds, *The Legacy of Nuremberg: Civilising Influence or Institutionalised Vengeance?*, (Boston: Martinus Nijhoff Publishers, 2008), xiii; Bradley F. Smith, *The Road to Nuremberg*, (New York: Basic Books, 1981), 4; Robert G. Storey, introduction to Harris, *Tyranny on Trial*, 6; Allen W. Dulles, introduction to Robert G. Storey, *The Final Judgment? From Pearl Harbor to Nuremberg*, (San Antonio: The Naylor Company, 1968), xvii.

Chapter I: *Der Stürmer* in Context: German anti-Semitism from Bismarck to Hitler

On the Origins of anti-Semitism

When Hitler came to power in 1933, his anti-Semitic views were well known to the German populace, and while he did not emphasize these views during the election campaigns up to 1932, neither did he make a concerted effort to hide them. While the Nazis were never able to secure more than thirty-seven percent of the vote in any free election before their seizure of power, the fact that a party based so forthrightly around anti-Semitism polled so well is indicative of the fact that, at the very least, a great many Germans were not sufficiently turned off by that emphasis on anti-Semitism to cause them to vote for another party.³⁰ In a discussion regarding the role anti-Semitism played in the execution of the 'Final Solution to the Jewish Question,' Ian Kershaw reverses the normal conception that anti-Semitism was one of its main causes. He insists that it was not necessarily the case that most or many Germans were particularly hostile anti-Semites, but rather that they were not sufficiently opposed to anti-Semitism. He writes that

it seems clear that, although the 'Jewish Question' was not an issue of the greatest moment to the majority of the population, the widespread latent anti-Semitism which itself conditioned the absence of any serious and organized opposition to antisemitism from non-Jewish institutions *before* the Nazi takeover of power, was quite sufficient to allow the anti-Jewish radical momentum of the Nazi regime from 1933 onwards to

³⁰ Philippe Burrin, *Nazi Anti-Semitism: From Prejudice to the Holocaust*, (New York: The New Press, 2005), 51.

gather pace until, given the existential conditions of the war years, it was as good as unstoppable.³¹
[emphasis his]

Here, Kershaw is arguing that the latent anti-Semitism present in the minds of the German populace was exploited by Hitler and the Nazis in their grab for and subsequent consolidation of power. Instead of convincing the Germans to hate Jews, he insists that they simply had to convince them not to care once Jews were being persecuted, a distinction that seems trivial at first glance, but which in reality carries a great deal of philosophical and practical weight. In this construction, the Germans are envisioned as having possessed a passive anti-Semitism as opposed to an active one, and moreover (and what is most significant to analyzing Streicher's role in the propagation of anti-Semitism) this anti-Semitism was not a feeling that Hitler and the Nazis had to cultivate—it was already present in the German collective consciousness, hidden below a thin veil of civilized society, yet constantly lurking just below the surface. If this analysis is taken at face value, it would be difficult to argue that Streicher, and his ludicrous and racist pronouncements in *Der Stürmer*, played a major role in precipitating a general mood of anti-Semitic feeling within Germany, given that this mood was already latent within Germans before he arrived on the public scene and that, even by the time the first stage of the Holocaust was unfolding with the mass executions of Jews by mobile killing squads in the East, Germans chose to simply ignore what they knew to be happening, namely the mass murder of Jews, rather than cheering it along.

Philippe Burrin takes Kershaw's line of reasoning back one step. He asserts that latent anti-Semitic feelings were not unique to Germany in the early years of the

³¹ Ian Kershaw, *Hitler, the Germans, and the Final Solution*, (New Haven, Connecticut: Yale UP, 2008), 148

twentieth century, and in fact were present in many western nations, including the United States and much of Europe. Burrin believes that the shift towards a totalitarian form of government was a key factor in the persecution of Jews in Germany, and the presence of anti-Semitic feeling was so pervasive there that he insists, “judging from the way that the conservative parties there developed from 1930 on, an abrogation of emancipation would already have been in the cards...even without Adolf Hitler’s accession to power.”³² This statement is in fact quite radical, in that it places quite a bit of responsibility for the rise of anti-Semitism on Germans themselves, rather than on Hitler as having been the instigator of such sentiments. Here again, as with Kershaw, Burrin is insisting that the rise of anti-Semitism in Germany cannot be explained away by the actions of one or several anti-Semitic men, no matter how vociferous they may have been. Instead he posits that there were larger, systematic realities that played a direct role in sparking anti-Semitic fervor, in his case completely detached even from the Nazi party.

Peter Pulzer, in his seminal 1964 work *The Rise of Political Anti-Semitism in Germany and Austria*, also places anti-Semitism in a structural context, and explains the latent anti-Semitism present by the 1930s within the German populace as having originated in the 1870s. He argues that its development as a major part of German culture and politics was due largely to the failure of Liberalism to take root in Germany in the 1870s.³³ He insists that Liberalism’s failure to capture the imagination of the German people provided anti-Semitism with an entry-point into the German consciousness. This entry-point, coupled with emerging scientific ideas that permitted

³² Ibid., 29.

³³ Peter G. J. Pulzer, *The Rise of Political Anti-Semitism in Germany & Austria* (London: Halban, 1988), 28.

racial anti-Semitism to take a pseudo-scientific bent, allowed anti-Semitism to gain ‘scientific’ credence, and hence eventually be accepted by a significant portion of the German population.³⁴ In addition to these factors, Pulzer adds the seemingly paradoxical idea that anti-Semitism would not have been able to flourish in Germany without the advent of mass participation in politics. Democracy, he argues, which allowed the masses to participate in the political process, also provided anti-Semitism with the opportunity to spread at the grass-roots level, thereby pervading society to a greater extent than would otherwise have been possible.³⁵

Pulzer acknowledges the fact that tangibly, very little came of the growth of anti-Semitism in the period between German unification in 1871 and the end of World War I in 1918, but insists that to focus on the lack of measurable anti-Semitic action within the German government in that timeframe is “to miss the point.”³⁶ Instead, he insists that the centrality of this period rests not on the political achievements it could claim, but rather the fact that the very debate created by anti-Semites meant that “anti-Semitism was no longer disgraceful in wide social and academic circles...”³⁷ Thus the addition of anti-Semitism as a legitimate part of political discourse “permanently lowered the tone of public debate.”³⁸ Having brought the debate down to its level, anti-Semitism had become an integral, if not yet effective, part of German politics. Pulzer concludes, “The [anti-Semitic] arsenal was fully assembled in 1918. It was merely a question of waiting for the order to fire.”³⁹

³⁴ Ibid., 286.

³⁵ Ibid., 287.

³⁶ Ibid., 291.

³⁷ Ibid.

³⁸ Ibid.

³⁹ Ibid., 292.

Shulamit Volkov pursues a different route in her formulation of the origins of anti-Semitism in Nazi Germany. Instead of focusing on the larger context in which anti-Semitism grew, she examines the shift in anti-Semitic rhetoric that occurred in the late 1870s. She begins by tracing the origin of the term ‘anti-Semitism’ back to Wilhelm Marr, the anti-Jewish agitator who first used it in 1879.⁴⁰ Marr created the term, Volkov argues, in order to move anti-Jewish attacks away from the “old, anachronistic meaning of Jew-hatred,” which tended to attack Judaism as a religion, rather than the Jews themselves, and towards an attack that would “fit the rhetoric of the period and invest it with a new content, according to modern parlance and modern style.”⁴¹ Within months of its inception, ‘anti-Semitism’ became fully integrated into the German vernacular, and quickly gained a life of its own. It invited attacks on all things Jewish, rather than simply the Jewish religion, and “pretended to connote an entire corpus of social and political opinions, a cohesive worldview, an ideology.”⁴²

Armed with an all-encompassing term by which to define themselves, newly minted ‘anti-Semites’ soon set about transforming Jew-hatred into an ideology that placed the Jews at the very center of Germany’s problems. Volkov credits Otto Glagau, an anti-Semitic journalist, with tying Jews to the “Social Question,” a catch-all term for a bundle of social problems associated with rapid industrialization familiar to and debated by a large proportion of German society in the late nineteenth century. By declaring that Jews were to blame for these issues, Glagau “linked a general, rather defused attitude

⁴⁰ Shulamit Volkov, *Germans, Jews, and Antisemites: Trials in Emancipation* (Cambridge: Cambridge University Press, 2006), 83-4.

⁴¹ *Ibid.*, 83.

⁴² *Ibid.*, 84.

toward some of the most pressing issues of the day with a pronounced hatred of Jews.”⁴³ Even though Jews had nothing to do with these issues in actuality, the link established by Glagau was able to persist and even flourish precisely because it was “simple, elegant and extremely suggestive.”⁴⁴ Volkov illustrates its effectiveness by insisting that attacks on a range of social issues “were by the end of the [19th] century invariably associated with anti-Semitism. In the eyes of many the slogan replaced reality. The link was made as a matter of course. It became part of the prevailing culture.” Through this connection, Jews were suddenly identified with (and often blamed for) all sorts of problems associated with ‘modernity.’

Hence to Kershaw, Burrin, Pulzer and Volkov, the buildup of German anti-Semitism was neither solely the result of Hitler’s ascension to power nor of some collective, hidden anti-Semitism held by the German people. In fact, they argue that it was the combination of Nazism’s insistence that Jews were the root of Germany’s problems, coupled with structural factors inherent in German society, including a propensity towards authoritarian rule, that inclined it to be open to accepting this insistence as truth, which created the potential for anti-Semitism to take root in the German consciousness. It is at this point that Streicher once again enters the picture. Drawing from these authors’ conclusions, that anti-Semitic feelings became pervasive beginning in the 1870s and were latent within the German populace by the 1930s, or that Germans were primed by the very nature of their society to accept, actively or passively, a Nazi regime based around anti-Semitism, it is now possible to assess Streicher’s role in the build-up of anti-Semitic sentiment in Germany from 1933 onwards.

⁴³ Ibid., 86.

⁴⁴ Ibid., 89.

Julius Streicher and the Rise of Nazi anti-Semitism

When Julius Streicher established *Der Stürmer* in 1923, it began with a modest circulation of only 2,000 copies, and was largely limited to the area immediately surrounding Nuremberg. By January 1933, the month Hitler was sworn in as Germany's Chancellor, its circulation had increased to only 10,000 copies.⁴⁵ By late 1933 however, following Hitler's consolidation of power, *Der Stürmer* was selling an average of 25,000 copies per week, a number which doubled within a year, reaching 100,000 by early 1935 and peaking at around 500,000 by the end of that year.⁴⁶ Thus Streicher, at least by the middle of the 1930s, was reaching a wide audience with his weekly anti-Semitic rants. But were people taking his rants seriously, or were they interested more in his sensationalism than in his message? And if they were taking him seriously, what effect did his opinions have on their attitudes towards Jews?

By all accounts, Julius Streicher's *Der Stürmer* was a newspaper that any moderately intelligent person could have easily written off as nothing more than yellow journalism, constantly seeking to outdo itself with progressively more outrageous and sensational headlines and stories. And yet it managed to achieve a circulation, by 1936, of some 500,000 copies weekly.⁴⁷ What, then, filled the pages of such a paper that could attract so large a readership in a country as civilized as Germany, and who were the men and women who made up the weekly audience for *Der Stürmer*? Randall Bytwerk, who along with Dennis Showalter has emerged as the pre-eminent scholar on Julius Streicher and *Der Stürmer*, provides a fitting analogy to a contemporary publication in order to

⁴⁵ Klaus Kipphan, "Julius Streicher: Propagandist of the Holocaust," in R. Church and K. Kipphan, *Juniata Studies: Peace, Justice and Conflict* (Huntingdon, PA, 1976), 21.

⁴⁶ Randall T. Bytwerk, "Julius Streicher and the impact of *Der Stürmer*," *Wiener Library Bulletin*, 29, no. 39, (1976), 41.

⁴⁷ *Ibid.*

answer this question. He writes, “The sensational angle to the *Stürmer*’s stories made the paper of interest to a range of people. Adults read it, and their children did as well; it was the Nuremberg equivalent of an American youngster’s clandestine copy of *Playboy*.”⁴⁸ However in the case of *Der Stürmer*, the mantra ‘sex sells’ became secondary to ‘anti-Semitism sells,’ a distinction that brings with it a series of questions about the willingness of the German population to consume such material in the first place.

According to Dennis Showalter, a typical issue of *Der Stürmer*, in the years following Hitler’s rise to power in 1933, contained stories that revolved around a specific set of anti-Semitic stereotypes. In his analysis, *Stürmer* stereotypes primarily consisted of the Jew as a sex offender, the Jew as a businessman, and finally the Jew as a bad neighbor. He further subdivided each category into more specific sub-categories, each of which he identified as a general framework around which Streicher and his staff built a majority of the stories published in *Der Stürmer*. Under the auspices of Jews as sex offenders, Streicher painted Jews “as violators of the innocent, as perpetrators of bizarre sex crimes, and finally, as ritual murderers.”⁴⁹ As businessmen, Streicher tended to emphasize the idea that Jews were using their profits, which they had obtained from the German people through trickery and deceit, to deliberately destroy the ability of German workers to produce. He insisted that even in philanthropic endeavors, including charitable donations to various German relief funds, Jews were performing a “Talmudic trick to increase business or camouflage conspiracy,” and hence further their plot to

⁴⁸ Randall T. Bytwerk, “Julius Streicher and the Early History of ‘Der Stürmer,’ 1923-1933,” *Journalism History* 5, vol. 3, (1978): 76.

⁴⁹ Showalter, *Little Man*, 88.

poison and pillage the German populace.⁵⁰ Yet the third stereotype was by far the most insidious—the Jew as a bad neighbor. This construct, argues Showalter, contained four main archetypes—“Jews simply being Jews, Jews interacting negatively with Gentiles, Jews behaving as bad citizens, and Jews benefiting unfairly from the Weimar system.”⁵¹ Thus the Jew as sex offender provided fodder for the arousal of the darker side of his reader’s desires, while the Jew as businessman served to instill fear among them. But the third stereotype, the Jew as a bad neighbor, was an attempt to make “even the word ‘Jew’ an insult,” by calling into question the morals and character of the ordinary-looking Jews who composed a small minority in many German cities and towns (in 1933, there were 500,000 Jews in Germany out of a population of 70,000,000).⁵²

In this endeavor, Streicher was able to play off of actual differences between Jews and Gentiles, specifically the customs and rituals practiced by observant Jews, which made them stand out from the rest of the German population. Drawing from his vast knowledge of Jewish tradition Streicher was able to fabricate stories that were incendiary and patently false, yet which contained just enough truth to maintain their plausibility and thus prevent discerning readers from dismissing his stories out of hand. For instance, a story published in 1930 told the tale of a Jewish cattle dealer who allegedly refused to break the Sabbath to kill a cow inflicted with a broken leg, and who moreover refused to call on a Gentile butcher to do so, choosing instead to let it suffer through the day. As Showalter points out, this refusal by a Jew to break the Sabbath even to commit a merciful act stands as a direct counterpoint to the New Testament philosophy that insists

⁵⁰ Ibid., 113.

⁵¹ Ibid., 131; for population, see Harris, *Tyranny on Trial*, 389.

⁵² Ibid.

that one should break the Sabbath to save an ox that has fallen into a pit. The fact that this story fits so perfectly as an inversion of this New Testament doctrine certainly forces the reader to question its veracity, yet at the same time it is plausible that a strictly observant Jew could have chosen to let an animal suffer in such a situation rather than risk breaking the commandment forbidding the performance of work on the Sabbath.⁵³

Der Stürmer certainly contained many stories far more outrageous and inflammatory than this, however it was stories similar to this one that allowed Streicher to convince some of his readers that Jews were, in fact, different from Germans, and that in this sense, difference was synonymous with danger.

This cursory examination of *Der Stürmer* illustrates that it was a vile, rabidly anti-Semitic tabloid that sought to inflame, shock and disturb its readers, not give them an honest accounting of news from Germany. Thus there is no doubt that Streicher, who maintained direct editorial control and who indeed penned many of the paper's articles, was himself an anti-Semite on a scale to rival any Nazi, including Adolf Hitler himself. However, in order for Streicher to be considered a viable candidate for trial at Nuremberg, let alone to justify his death sentence, the prosecution at the IMT needed to first make a connection between *Der Stürmer* and the acts that led to the mass murder of the Jews.

Today, several schools of thought exist on the question of Streicher's role in the promotion of anti-Semitism in Nazi Germany. On one side, some scholars insist that Streicher was in fact guilty of inciting the Germans to hatred of the Jews. Randall Bytwerk has emerged as the chief proponent of this point of view. His monograph *Julius*

⁵³ Showalter, *Little Man*, 132.

Streicher: The Man Who Persuaded a Nation to Hate Jews chronicles Streicher from his youth through his execution, with an emphasis on *Der Stürmer* and its impact. The question of establishing Streicher's personal role in the rise of German anti-Semitism, he writes, "is extraordinarily difficult to answer, since Streicher did not work alone, and since it is impossible to determine the exact influence he had on millions of Germans."⁵⁴ Yet despite the fact that by his own admission it would be impossible to identify exactly how convincing Streicher was in the push to make anti-Semitism Germany's central ideological bent, Bytwerk argues that his influence was considerable, and that his trial and execution at Nuremberg were justified. He bases his analysis of Streicher's role on the fact that, in his estimation, "Streicher was the worst, the most visible, the most prolific Jew-baiter in the land."⁵⁵ He builds a strong case for this assessment of Streicher, yet does not pay a great deal of attention to the fact that while Streicher was a notorious anti-Semite, this trait alone does not necessarily indicate that he played a large role in convincing others to share his views.

Bytwerk insists that Streicher's role was a large one, focusing back onto *Der Stürmer* itself to determine that paper's influence on Germany. He cites as evidence for its influence the fact that Streicher received "many letters from people who attributed their anti-Semitism to Streicher's efforts."⁵⁶ While there is no doubt that Streicher did receive many such letters, Bytwerk does not address the possibility that many of them could have been sent in disingenuously. Especially in light of the analyses of anti-Semitism in Germany before 1933 outlined above, these letters should not be taken at full

⁵⁴ Bytwerk. *Julius Streicher*, 171.

⁵⁵ *Ibid.*

⁵⁶ *Ibid.*, 172.

face value.⁵⁷ The very fact that a person would take the time to write a letter to a tabloid newspaper such as *Der Stürmer* would seem to indicate that this person harbored a great deal of anti-Semitism in his daily outlook. While it is within the realm of possibility that this person was converted to the cause of anti-Semitism by Streicher, it seems more likely that *Der Stürmer* provided an outlet for anti-Semitic feelings already present in this person's cultural milieu. Alternatively, such a letter could very plausibly have been written by a reader intrigued by Streicher's rants and looking for a place within which to express his anti-Semitism publicly, adding the fact that his views were heavily influenced by Streicher in a bid to have his letter published by the paper.

In any event, the important fact lies not in what the actual motivations were behind these letters, but rather that Bytwerk takes them at their word when there are several plausible, alternative motives that merit discussion when attempting to discern Streicher's impact on the German people. This failure to account for the possibility of alternate explanations seems to be due in large part to the fact that Bytwerk has not placed Streicher and *Der Stürmer* into a broader discussion of German anti-Semitism. By failing to properly contextualize, Bytwerk falls into the trap of analyzing Streicher simply on the merits of his writings, which when taken out of the larger framework of earlier anti-Semitism can seem more important and more unique than they would otherwise seem if taken in comparison with the history of German anti-Semitism in the sixty years preceding World War II.

⁵⁷ See Kershaw, *Hitler*, 139-198; Burrin, *Nazi Anti-Semitism*, 1-62; Pulzer, *The Rise of Political Anti-Semitism*, 1-120, 285-321; Volkov, *Germans, Jews, and Antisemites*, 1-66.

Bytwerk uses *Der Stürmer*'s pillory column as further evidence of the paper's effectiveness in arousing anti-Semitic feeling among Germans.⁵⁸ The pillory column was a space included in each edition of *Der Stürmer* from 1933 onwards that published the names of Germans who were not conforming to the anti-Semitic practices being pushed by Streicher and the Nazi party. Readers had the opportunity to write letters to the paper describing the pro-Jewish activities of their neighbors, from which the *Stürmer* editors would pick a dozen or so names and stories and publish them, sometimes including the addresses and photographs of the offenders.⁵⁹ Bytwerk sums up the pillory column with a summary of twenty stories included in a 1937 edition of *Der Stürmer*. Examples included a postal employee who had tipped his hat to a Jewish woman and three Germans who had bought items from Jews.⁶⁰ Clearly, it did not take a particularly overt sign of affection towards Jews to land an unsuspecting German in this column.

Bytwerk interprets this pillory column as containing a dual meaning. On the one hand, he sees it as proof that there were some Germans who still had not internalized the Nazi message of anti-Semitism, drawing from the fact that there were enough purported incidences of friendliness towards Jews to sustain a weekly section of the paper. He writes, "The fact that so many Germans were attacked for their 'spineless' dealings with the Jews is of course evidence that they had a great deal of spine."⁶¹ In some cases, offending Germans were warned by neighbors that their stories would be sent to *Der Stürmer* if they did not cease their friendly interactions with Jews, only to refuse to be intimidated. In this sense, the pillory column indicates that resistance to anti-Semitism

⁵⁸ Bytwerk, *Julius Streicher*, 175-7.

⁵⁹ *Ibid.*, 174.

⁶⁰ *Ibid.*, 175.

⁶¹ *Ibid.*, 176.

was alive in Germany, despite the best efforts of Streicher and the entirety of the Nazi propaganda machine. Yet Bytwerk makes only slight mention of this fact before progressing to the second interpretation of the column, namely that it was a powerful tool employed by Streicher in his push to bring all Germans to accept his rabid form of anti-Semitism.

In this vein, Bytwerk cites the psychological factors that the pillory column had on the portion of the German population which would otherwise have been nowhere close to accepting of anti-Semitic ideology, at least in their interactions with the Jews who touched their daily lives. He argues that this column managed to intimidate Germans who previously had no qualms with their friendly associations with Jews into maintaining their distance from them, both physically and psychologically. Far from being the rule, the people who were willing to stand up for their relationships with Jews were a part of a small, righteous minority who were willing to accept the consequences of maintaining their morals in the face of public denigration. Bytwerk writes, “For every brave man or woman who resisted the pressure to hate Jews, there were many more ordinary people, the kind who [thought] it was too risky to do what they knew was right.”⁶² Thus the pillory column, when viewed in this light, emerges as one of the vehicles through which Germans were coaxed into the sort of passive anti-Semitism envisioned by Kershaw and mentioned earlier.⁶³ Such individuals by no means championed the hateful manner in which the Jews were treated by Germans, but did not possess the strength of character to protest it either. Bytwerk again makes a compelling case for his assertion that the pillory column intimidated some Germans into changing the

⁶² Bytwerk, *Der Stürmer*, 177.

⁶³ Kershaw, *Hitler*, 5.

way they interacted with Jews. But what he fails to do is interpret the origins of this intimidation on its own merits, a distinction that seems subtle but which carries a great deal of weight in the analysis of the German anti-Semitism, and from there to Streicher's role in its cultivation.

In order for Streicher's pillory column to be effective, it needed to be able to hang over the heads of those who sought to stay out of its grasp a real threat that, should they find their names published within it, their lives could be negatively affected in some respect. Such is the nature of intimidation and public humiliation that it can only be accomplished if the deed one is being accused of undertaking is one that society determines is beyond the pale of established social norms. For instance, if someone were to insinuate that an article printed in the *Los Angeles Times* reporting that Tom Hanks had been working with Steven Spielberg and Harvey Weinstein on a new film and had recently been visited by Alan Dershowitz was aimed at coercing him into breaking off those relationships, that insinuation would be instantly rejected by any sensible person.⁶⁴ Similarly, an article indicating that Jude Law was seen leaving a Neiman Marcus store with four bags of clothes would hardly be interpreted, in the Western world, as an attempt to smear his image and alter his behavior by defining him as a friend of Jews.⁶⁵ Yet this is precisely the kind of reaction Streicher was assuming he would receive by publishing an article accusing a German wine merchant of associating with Jewish wine merchants and lawyers, or a German blacksmith of buying goods from a Jewish firm.⁶⁶ Hence while there is no doubt that the pillory column was successful in intimidating at least some

⁶⁴ Weinstein, Spielberg and Dershowitz are Jewish.

⁶⁵ Neiman Marcus was founded by two Jews.

⁶⁶ Bytwerk, 175.

number of Germans into rejecting contact with Jews, it was able to function as such only because there existed in Germany a climate so overtly hostile to Jews that publishing a story that would be completely mundane by today's standards was, in its own context, an incitement to anti-Semitism.

Bytwerk makes no mention of people whose names were published in the pillory column ever being taken to prison or concentration camps as a result of their actions towards Jews being published in *Der Stürmer*.⁶⁷ Thus if neither the Nazi state nor Julius Streicher himself were going to personally intimidate these individuals, the only avenue left from which the intimidation could arise is their very own neighbors and associates. In fact, Bytwerk concedes this point, stating, "Even if most [pilloried individuals] were not officially prosecuted, they could lose friends and businesses."⁶⁸ Again, Bytwerk has made a true statement but has not shown a desire to examine it more deeply. Yes, these individuals did stand to lose friends or business, but only because those friends and customers were willing to end their relationships with that individual because he remained on friendly terms with Jews. Again, Bytwerk's failure to place Streicher in the context of broader German anti-Semitism has clouded his analysis. It would be difficult if not impossible to pin this society-wide anti-Semitism squarely on Streicher's shoulders, especially given that his pillory column began in 1933, when his circulation was no more than 25,000 copies.⁶⁹ Yet Bytwerk nonetheless attempts to do so. However he is by no means alone in his analysis. The prosecution at Nuremberg would claim exactly this

⁶⁷ While it is true that the absence of evidence is not necessarily the evidence of absence, for argument's sake it is assumed that, if there were occurrences of Germans being detained for having had their names published in the pillory column, they were infrequent enough that they were not the primary cause for concern among people whose names were published.

⁶⁸ Bytwerk, *Julius Streicher*, 176.

⁶⁹ Bytwerk, "Julius Streicher and the Impact of *Der Stürmer*," 41.

connection between Streicher and the rise of anti-Semitism in Nazi Germany in its case against Streicher before the IMT. But in order to understand how the prosecution was able to make this connection, the prosecution must first be understood in the wider context of the IMT itself.

Chapter II: The International Military Tribunal: Origins and Aims

On the morning of April 4, Meyer Levin, travelling with the American Fourth Armored Division, made a discovery so horrible it was at first beyond comprehension. His unit had come across Ohrdruf, a concentration camp just outside Weimar, Germany, one of the first camps to be discovered by the British or French that still contained prisoners or corpses. He would later describe the scene, recalling that “it was as though we had penetrated at last to the center of the black heart, to the very crawling inside of the vicious heart.”⁷⁰ When Generals George Patton, Omar Bradley and Dwight Eisenhower toured the camp less than a week later, they were left horrified, despite the carnage they had lived through almost continuously for the previous four years. Historian Robert Abzug described the aftermath of their visit, writing, “Bradley recalled that Eisenhower turned pale and silent, but insisted on seeing the whole camp...Patton retired behind a barracks and became physically ill.”⁷¹ Upon his return to headquarters, Eisenhower ordered every unit within range and not on the front lines to take a tour of Ohrdruf. He then sent telegrams to Washington and London, encouraging the press corps to come in and be eye witnesses to the camps. “We are constantly finding German camps,” wrote Eisenhower, “in which they have placed political prisoners where unspeakable conditions exist. From my own personal observation, I can state unequivocally that all written statements up to now do not paint the full horrors.”⁷²

As the Allied armies made their way east on a victorious march through Germany in April 1945, such discoveries began cropping up elsewhere, and news of the

⁷⁰ Robert H. Abzug, *Inside the Vicious Heart: Americans and the Liberation of Nazi Concentration Camps*, (New York: Oxford University Press, 1985), 19.

⁷¹ *Ibid.*, 27.

⁷² *Ibid.*, 30.

unimaginable brutality and horror of the camps began to spread. Thus by May 1945, it had become clear to the world that the Nazis had committed not only war crimes but also crimes against non-combatants the likes of which the world had never seen. Something needed to be done to assure that these heinous actions did not go unpunished. The question of what to do with Nazi war criminals had been the subject of debate since as early as 1940, when the Polish government, at that time in exile in London, asked the United States and Britain to condemn Nazi atrocities and threaten the perpetrators of such atrocities with punishment. The request was denied, but the thought was left lingering in the back of the minds of Allied policy makers.⁷³ Several statements were later issued which denounced the crimes perpetrated by the Nazis, but no substantive declaration was made announcing what would be done to those who committed such atrocities until November 1943, when the Allies issued a resolution from a conference in Moscow entitled “The Moscow Declaration.”⁷⁴ In this declaration, the Allies stated that any Nazi official who was “responsible for, or ha[d] taken a consenting part” in any “atrocities, massacres and executions,” would “be sent back to the countries in which their abominable deeds were done in order that they may be judged and punished.”⁷⁵ For those who committed crimes with no “particular geographical localization,” the Allies proclaimed that they would “be punished by joint decision of the Governments of the Allies.”⁷⁶ This document marked the first time that the Allies warned the Germans that they would be held accountable for the crimes they were committing across Europe,

⁷³ Arieh J. Kochavi, *Prelude to Nuremberg: Allied War Crimes Policy and the Question of Punishment*, (Chapel Hill: The University of North Carolina Press, 1998), 7.

⁷⁴ Bradley F. Smith, *The American Road to Nuremberg* (Stanford: Hoover Institution Press, 1982), 5.

⁷⁵ “The Moscow Declaration,” November 1, 1943, in Smith, *American Road*, 13.

⁷⁶ *Ibid.*, 14.

should they emerge from the war defeated. It was also the device with which they would later be able to prosecute those Nazis whose crimes were so vast and all-encompassing that they transcended national boundaries in their scope—i.e. those functionaries, strategists, and ideologues who never fired a single shot in anger, but without whom the atrocities would not have been possible.

Yet while the Moscow Declaration indicates that the question of what to do with Nazi war criminals was at least being considered as early as 1943, the fact remains that very little official thought or effort was put into this endeavor until late 1944, and understandably so. With the outcome of the war in Europe far from certain, the Allies had precious little time to devote to the question of how Nazi atrocities should be dealt with, as the war by necessity consumed the vast majority of the resources of each of the Allied governments. In fact, the fate of Nazi war criminals was not the only issue brushed aside as the Allies focused on victory. According to historian Bradley Smith, the lack of attention to the post-war treatment of war criminals was a symptom of the fact that as late as August 1944, two months after the Allied invasion of France at D-Day on June 6, 1944, “the question [of the treatment of postwar Germany] had apparently not yet been seriously considered at the top level of any department in the United States government.”⁷⁷ With the occupation of Germany ostensibly around the corner, Roosevelt was testing the waters among the Allies regarding how the occupation should be undertaken, and was not ready to commit to any specific plans. As such the destiny of Nazi war criminals was left alone for the time being.⁷⁸

⁷⁷ Bradley Smith, *The Road to Nuremberg*, 13.

⁷⁸ *Ibid.*

As 1944 progressed and the invasion of Germany became a more realistic and impending goal, the Roosevelt administration began to focus an increasing level of attention onto what its occupation policy would be for Germany, a shift that brought with it the question of how to deal with Nazi war criminals. In an earlier time these men would certainly have faced the fate that Winston Churchill, the British Foreign Office, and numerous U.S. officials initially wanted to impose upon them— a swift and unceremonious execution.⁷⁹ But with the memory of the failure of the post World War I restructuring of Germany looming over the heads of the Allied Powers, it was apparent to most that retribution for retribution's sake was a recipe for disaster. Cooler heads prevailed, and as such the Allies decided to create a system, agreeable to each of the four occupying powers (the United States, Great Britain, France and the U.S.S.R.), that would be able to both legally determine the criminal guilt of each of the defendants and effectively mete out justice upon those deemed guilty. As there was barely any precedent for trying heads of state for crimes committed during war (this had been attempted following WWI, but had proven unsuccessful), the tribunal had to be constructed from the ground up, establishing almost an entire legal system essentially *ex nihilo*.⁸⁰

⁷⁹ Harris, *Tyranny on Trial*, 7; Smith, *The Road to Nuremberg*, 13; William J Bosch, *Judgment on Nuremberg: American Attitudes Toward the Major German War-Crime Trials* (Chapel Hill: University of North Carolina Press, 1970), 9.

⁸⁰ The process of creating this precedent, and really an entire legal system, is quite fascinating itself, but is regrettably outside the scope of this paper. The task fell largely to a group of a few American bureaucrats led primarily by Supreme Court Justice Robert H. Jackson, who had been charged by Truman not only to design the process by which the defendants would be tried, but also with leading the prosecution against them. For a concise if perhaps slightly sophomoric analysis of Jackson's contribution in this endeavor, see Michael B. Williams, "Robert H. Jackson: Man of Conviction." (Unpublished major paper submitted to Emory University Dept. of History, May 2007). For a more thorough analysis of all the players involved in the initial planning of the IMT, see Smith, *The Road to Nuremberg*; Bosch, *Judgment on Nuremberg*, 3-40; Owen, *Nuremberg*, 1-14; Kochavi, *Prelude to Nuremberg*.

The result was an international tribunal unprecedented in scope and built upon a hastily formed legal foundation, a fact not lost on the men charged with creating the framework around which the tribunal was built.⁸¹ When the four men sent by their respective governments to lead the creation of the tribunal—Justice Robert Jackson for the United States, Attorney General David Maxwell-Fyfe for Great Britain, Major General I.T. Nikitchenko for the Soviets, and Professor André Gros for the French—met for the first time in London in June 1945, they each brought with them a different set of assumptions as to how the trial would be carried out, centered primarily on the legal traditions of their home state.⁸² It was Robert Jackson, however, who was able to steer the discussions as to the direction that the tribunal was to eventually take. He arrived at the London conference with a draft proposal in hand which envisioned a trial whose main purpose would be to convict the heads of the various arms of the Nazi government that had been responsible for dragging the world to war, and in so doing declare the entire divisions they led criminal organizations. These divisions, which the IMT would eventually seek to declare criminal entities, included the Reich Cabinet, the Nazi Party Leadership Corps, the SS, the SD, the Gestapo, the SA and the General Staff and High Command of the German Armed Forces. This plan, which had originally been conceived by Lieutenant Colonel Murray C. Bernays of the War Department in September 1944, centered around a charge of common conspiracy for each of the defendants, linking them individually to the war and the crimes committed in conjunction with it, a plan that had

⁸¹ Conot, *Justice at Nuremberg*, 23.

⁸² *Ibid.*, 23 and John and Ann Tusa, *The Nuremberg Trial*, 74. Note that Robert Falco was the official spokesperson for the French delegation, however, according to Tusa & Tusa, “French views on the whole were put forward by André Gros.” 74. The published record of the quadripartite discussions regarding the establishment of the tribunal collected by Robert Jackson in *Report of Robert H. Jackson United States Representative to the International Conference on Military Trials* (Washington, D.C.: U.S. Government Printing Office, 1949) reinforces this assertion as well.

been in preparation by various agencies of the American government since as early as September 1944.⁸³ Jackson saw the charge of conspiracy as the *sine qua non* of the tribunal, and fought tenaciously to ensure that it was included in the charter. He insisted, “We are trying to reach by our ‘common plan or enterprise’ device the planners. The zealots who put this thing across...”⁸⁴ In this debate, Jackson was restating a position he had outlined earlier in a letter to President Truman sent June 6, 1945, and published two days later in the *New York Times*. In this letter, Jackson outlined his plan for prosecuting the major Nazi war criminals, and insisted that the “case against the major defendants is concerned with the Nazi master plan, not with individual barbarities and perversions which occurred independently of any central plan.”⁸⁵ Even before the Allies met to finalize the charter for the IMT, Jackson was on record declaring how the trial would be set up.

Yet while Jackson was adamant about how he thought the trial should be focused, he was also cognizant of the fact that holding these men personally responsible for the actions they had carried out on behalf of the Nazi government was a feat never before attempted in international law, and as such one not grounded in legal precedent. In his deliberations with his Allied counterparts on July 23, 1945, he said, “We must declare that they [the Nazi leaders] are answerable personally, and I am frank to say that international law is indefinite and weak in our support.”⁸⁶ This weakness, however, left Jackson undeterred, and instead became for him an opening to redefine international law.

⁸³ Smith, *The Road to Nuremberg*, 50-53, 93, 242-6.

⁸⁴ Conot, *Justice at Nuremberg*, 23.

⁸⁵ Robert H. Jackson, “Report to the President by Mr. Justice Jackson, June 6, 1945,” in *The New York Times*, June 8, 1945, 4.

⁸⁶ “Minutes of Conference Session of July 23, 1945,” in Robert H. Jackson, *Report of Robert H. Jackson, United States Representative to the International Conference on Military Trials* (Washington, D.C.: U.S. Government Printing Office, 1949), 331.

To his mind, “it [wa]s entirely proper that these four powers, in view of the disputed state of the law of nations, should settle by agreement what the law [wa]s as the basis of this proceeding.”⁸⁷ Failure to do so, he insisted, could allow the tribunal to “adjudge that, while these persons had committed the acts we charge, these acts were not crimes against international law, and therefore to acquit them.”⁸⁸ This brazen redefinition of international law would eventually open up the IMT, rightly or wrongly, to allegations that it had imposed *ex post facto* law on the defendants it tried.⁸⁹ Nevertheless, Jackson succeeded in persuading the other delegates that conspiracy was paramount to a successful prosecution, and that the law upon which the trial would be based could and should be defined solely by the delegation. Just over two weeks later, the outline for the IMT was announced. The London Agreement, signed on August 8, 1945 by the British, French, American and Soviet governments, brought the IMT from idea to reality, and delineated the principles upon which the trial would be grounded, which had been worked out over the previous two months.

The tribunal granted itself prosecutorial jurisdiction over three types of criminal acts—crimes against peace, war crimes and crimes against humanity, resulting in four counts under which the defendants could be tried (crimes against peace was split into two counts).⁹⁰ The first count, ‘the common plan or conspiracy,’ was the only offense that all twenty-four defendants were charged with, and was defined as “the formulation or execution of a common plan or conspiracy to commit, or which involved the commission

⁸⁷ *Ibid.*, 329

⁸⁸ *Ibid.*, 330

⁸⁹ Hans Ehard, “The Nuremberg Trial Against the Major War Criminals and International Law.” *The American Journal of International Law* 43, no. 2 (April 1949): 223-245.

⁹⁰ IMT, Vol. 1, 11.

of, Crimes against Peace, War Crimes, and Crimes against Humanity.”⁹¹ The second, ‘crimes against peace,’ involved “the planning, preparation, initiation, and waging of wars of aggression, which were also wars in violation of international treaties, agreements, and assurances.”⁹² Third was ‘war crimes,’ which covered war crimes committed “between 1 September 1939 and 8 May 1945, in Germany and in all those countries and territories occupied by the German Armed Forces since 1 September 1939, and in Austria, Czechoslovakia, and Italy, and on the High Seas.”⁹³ Finally, ‘crimes against humanity’ encompassed “among other things, the murder and persecution of all who were or who were suspected of being hostile to the Nazi Party and all who were or who were suspected of being opposed to the common plan alleged in Count One...” committed “...during a period of years preceding 8 May 1945 in Germany and in all those countries and territories occupied by the German armed forces since 1 September 1939 and in Austria and Czechoslovakia and in Italy and on the High Seas.”⁹⁴ The fact that crimes against humanity were considered relevant only if committed after September 1, 1939 placed real restraints on the evidence the Tribunal could accept in its deliberations on the verdicts of several of the defendants charged on that count, including Julius Streicher.

While the definition of war crimes was not innovative, and in fact was based upon traditional definitions of crimes of war as defined by the Fourth Hague Convention of 1907,⁹⁵ such as murder, killing of hostages, wanton destruction and plunder, the very inclusion of crimes against peace and crimes against humanity represented an

⁹¹ Ibid., 29.

⁹² Ibid., 42.

⁹³ Ibid., 43.

⁹⁴ Ibid., 65. These are excerpts of the definitions as laid out in the indictment of the defendants.

⁹⁵ Jackson, “Report to the President,” 4.

unprecedented break with existing international law.⁹⁶ These were the counts to which Jackson was referring when he insisted that the tribunal must establish its own charter and indictment as the basis for its legality, rather than attempt to try the defendants under the pre-existing international law framework. Yet while crimes against peace and crimes against humanity were essentially new legal creations, the language of the charter also placed substantial restrictions on how the IMT could apply them. Crimes against humanity, for instance, had been defined in the charter as “murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war, or persecutions on political, racial, or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal.”⁹⁷ It is the second half of this definition that most directly affected Streicher’s case at Nuremberg, and illustrates the secondary role that crimes against humanity were afforded at the tribunal. Jackson, in arguing for this definition, made it clear that it was the common plan that made crimes against humanity a criminal offense, and not the other way around. He insisted, “The reason that this program of extermination of Jews and destruction of the rights of minorities becomes an international concern is this: it was a part of a plan for making an illegal war. Unless we have a war connection as a basis for reaching them, I would think we have no basis for dealing with atrocities.”⁹⁸ Here, Jackson openly stated that the IMT was not specifically focused on the Nazi persecution of Jews, or the Holocaust that had occurred partly because of that persecution.

⁹⁶ Smith, *Reaching Judgment at Nuremberg*, 60; IMT, Vol. 1, 11.

⁹⁷ IMT Vol. 1, 11.

⁹⁸ “Minutes of Conference Session of July 23, 1945,” in Jackson, *Report of Robert H. Jackson*, 331.

Interestingly, later on in the same discussion, Jackson was very candid as to exactly why the U.S. was insistent on defining crimes against humanity only under the auspices of a conspiracy. He said

ordinarily we do not consider that the acts of a government warrant our interference. We have some regrettable circumstances at times in our own country in which minorities are unfairly treated. We think it is justifiable that we interfere or attempt to bring retribution to individuals or to states only because the concentration camps and the deportations were in pursuance of a common plan or enterprise of making an unjust or illegal war in which we became involved.⁹⁹

Anti-Semitism, then, in order to be considered a crime before the IMT, would only be a secondary charge—the wording of the charter necessitated that it be tried only as an outgrowth of a larger conspiracy indictment. This lack of primary status was partly a result of an unwillingness on behalf of the U.S. government to open itself up to foreign criticism of the treatment of minorities, namely African Americans (as evidenced by the above passage), and resulted in a legal construct whereby the atrocities of the Holocaust were punishable only because they had taken place in the context of a war initiated by Germany. According to this construct, the mass murder of Jewry would have been ‘legal’ had Hitler carried it out only within Germany, and before he initiated WWII. In any event, the Holocaust did happen simultaneously with a war of aggression, and so the construct applied to at least some of the crimes against humanity perpetrated by the defendants at Nuremberg. However, this muddled wording would ultimately raise problems that the prosecution and judges would eventually be forced to reconcile.

⁹⁹ Ibid., 333.

Thus, while the charge begins by defining crimes against humanity very broadly, it ends by tightly controlling the time frame in which the tribunal could consider the commission of these crimes by insisting that they must have been performed concurrently with another crime over which the tribunal had jurisdiction. This qualification essentially meant that “nothing that the German Government had done...was a crime against humanity if it took place before September 1, 1939.”¹⁰⁰ Because of this chronological restraint imposed by the charter, the persecution of Jews *within* Germany fell essentially outside the purview of the IMT. Yet despite this clear definition of the timeframe within which prosecutable crimes against humanity occurred, the prosecution nonetheless devoted a large portion of its case against Streicher to outlining inflammatory statements he made between 1925 and 1939. This restriction, and the prosecutorial problems that arose as a result, leads Smith to insist that the “untidy language of Article VI,” which defined the three crimes under the purview of the IMT within the London Agreement, became a great hindrance in the prosecution’s efforts to convict the defendants as conspirators to commit crimes against humanity or peace, because it was the only reference from which they could seek guidance as they tried the twenty-two defendants, and its language was not conducive to charges of conspiracy. While the counts of the indictment were far from perfect, they had been written by agreement of the four powers sitting at the tribunal, and as such became the framework around which the tribunal was built. Streicher’s case was one of the cases negatively influenced by this ‘untidy language.’

¹⁰⁰ Smith, *Reaching Judgment at Nuremberg*, 60.

At the same time that discussions were underway regarding how the tribunal would be set up, the British delegation was busy at work attempting to come up with a concise list of top Nazi criminals who, in their estimation, would be best suited for trial, working under the assumption that Jackson would succeed in his insistence on a trial based on Nazi conspiracy.¹⁰¹ They came up with a list of ten men—Hermann Göring, Rudolph Hess, Robert Ley, Wilhelm Keitel, Joachim von Ribbentrop, Ernst Kaltenbrunner, Alfred Rosenberg, Wilhelm Frick, Hans Frank and Julius Streicher—who they believed represented a cross section of the Nazi state.¹⁰² There is wide disagreement among historians of the IMT regarding the effectiveness and degree of thought put into the selection of these defendants. On the one hand, Bradley Smith insists that this list “was prepared with great care and included major representatives from each area of the Nazi system that was targeted in the original plan.” Telford Taylor and James Owen, however, take the opposite view, arguing that the list was not well thought out, and even led to problems during the trial, specifically a difficulty in finding evidence against several of the defendants that could fit within the tribunal’s framework.¹⁰³ In Taylor’s estimation, the British selected these ten men “on the basis that their names were well known to the general public.”¹⁰⁴ In fact, he writes that “little effort had been made to assess the evidence which might be available against them individually, nor had the British selections fully met the need for adequate representation of such organizations as the prosecution might seek to have declared criminal by the tribunal...”¹⁰⁵ In any event, the American delegation came up with its own list of defendants the following day,

¹⁰¹ Tusa and Tusa, *The Nuremberg Trial*, 92-4.

¹⁰² Smith, *Reaching Judgment at Nuremberg*, 63.

¹⁰³ *Ibid.*

¹⁰⁴ Taylor, *Anatomy*, 86; Owen, *Nuremberg*, 12.

¹⁰⁵ *Ibid.*, 86.

adding Hjalmar Schacht, Karl Doenitz, Albert Speer, Walter Funk, Arthur Seyss-Inquart and Adolf Hitler (whose death had still yet to be officially established).¹⁰⁶ Discussion as to additional defendants was then tabled, with the remaining nine being added in August, and consisting of Martin Bormann, Hans Fritzsche, Alfred Jodl, Gustav Krupp, Franz von Papen, Erich Raeder, Konstantin von Neurath, and Baldur von Schirach.¹⁰⁷

If the addition of Julius Streicher to the docket is any indication of the level of thought put in to this selection, it would seem that Owen and Taylor have correctly interpreted the British choices. His case simply did not fit with the aims of the tribunal. He was in theory to be tried as the embodiment of anti-Semitism, yet unlike the other defendants, most of whom were selected as heads of various Nazi organizations, and whose conviction, it was initially hoped, would allow those organizations they had led to be declared criminal, thereby making the prosecution of their lesser members easier, Streicher represented no clear organization. His conviction had no chance of aiding the prosecution of anyone beneath him, as there was no one beneath him to be tried. It seems as if the British, in their haste to come up with a satisfactory list of defendants and cover as wide a range of Nazi criminals as possible, picked Streicher to embody anti-Semitism without considering where he actually fit in the matrix of German and/or Nazi anti-Semitism. This lack of consideration was undoubtedly influenced by the rapidity with which the trial was coming together, but it seems equally likely that the people charged with the selection of defendants did not have a clear conception of the way anti-Semitism fit into Nazi Germany, and the crimes against humanity perpetrated by the Nazis. As such, Julius Streicher found himself on the defendant's bench before a tribunal that had

¹⁰⁶ Ibid.

¹⁰⁷ Ibid., 87-8.

not been created with anti-Semitism in mind (or at least not in the foreground), and that, like the men who put him in the dock in the first place, did not possess the tools necessary to effectively place him within the larger anti-Semitic milieu that had been present in Germany well before Hitler. The prosecution's inability to do so ensured that the case laid out against him was not as effective as those laid out against a majority of the defendants.

Chapter III: Julius Streicher at Nuremberg

Streicher on Trial

So what, exactly, did the prosecution seek to accomplish in trying Streicher at Nuremberg? And how did it view his crimes in relation to the twenty-one other defendants? The case made against him is explicit in its assessment of his role in Nazi Germany. The collection of evidence compiled against Streicher in preparation for his trial states, “It was to the task of educating and poisoning the people with hate, and of producing murderers, that Streicher set himself.”¹⁰⁸ Having thus defined Streicher as a man intent upon instilling anti-Semitism into the minds of the German populace, the prosecution then took its analysis a step further:

In the early days he was preaching persecution. As persecution took place, he preached extermination and annihilation and, as millions of Jews were exterminated and annihilated, in the Ghettos of the East, he cried out for more and more. The crime of Streicher is that he made these crimes possible, which they would never have been had it not been for him and for those like him. Without Streicher and his propaganda, the Kaltenbrunnners, the Himmlers, the General Stroops would have had nobody to do their orders. In its extent Streicher’s crime is probably greater and more far-reaching than that of any of the other defendants.¹⁰⁹

This statement essentially places the blame for the entirety of the Holocaust directly upon Streicher’s shoulders. In the span of five sentences, the prosecution has managed to argue that Streicher himself was the single most heinous criminal in all of Nazi Germany, guilty of convincing the German population to hate the Jews. To assert that one man was responsible for the anti-Semitic feelings of an entire nation, and thus directly responsible

¹⁰⁸ International Military Tribunal, *Nazi Conspiracy and Aggression*, (Washington, D.C.: U.S. Government Printing Office, 1947), vol. 2, 709.

¹⁰⁹ *Ibid.*

for brutal murder of over six million Jews is arguably one of the most damning indictments laid against any individual before a court of law. Such an assertion was also possible only by operating under the assumption that anti-Semitism in Germany was largely a creation of men such as Streicher and other Nazis, and that their efforts played a direct role in the origins of the Holocaust. Since the prosecution did not have the benefit of decades of hindsight which allowed authors such as Kershaw et al. to reach their conclusions in regards to the origins of German anti-Semitism, it is safe to assume that they were operating under a conception of German anti-Semitism that had not been informed by historical inquiry, but was rather a result of an attempt to hold someone responsible for propagating it, and as such for creating the Holocaust itself. Nonetheless, it would be difficult to imagine that such a far reaching claim could be made without equally compelling evidence that could prove beyond any shadow of a doubt that Streicher was completely and totally guilty of these crimes. Upon further inspection, however, the prosecution's case does not fully reach the burden of proof that should exist when making such accusations, once again due in large part to its inability to accurately fit Streicher into a larger framework of German anti-Semitism.

Streicher's prosecution was presented by Lieutenant Colonel J.M. Griffith-Jones of the British delegation. It rested almost exclusively on the fact that Streicher was the publisher of *Der Stürmer*, and a series of articles contained therein. The prosecution admitted as much in its presentation of the evidence against Streicher, saying "the course of Streicher's incitement and propaganda may be traced more or less in chronological order by referring to short extracts from '*Der Stuermer.*'"¹¹⁰ The excerpts were selected

¹¹⁰ *Nazi Conspiracy and Aggression*, vol. 2, 690.

“with a view to showing the various methods Streicher employed to incite the German people against the Jewish race.”¹¹¹ Interspersed between the articles and speeches penned by Streicher were only three references to Streicher’s role as an official in the Nazi government, first as a leader of the April 1933 anti-Jewish boycotts, second as Gauleiter of Franconia during *Kristallnacht*, and finally as a conspirator against peace in his capacity as Gauleiter.

The prosecution presented the excerpts and analysis of Streicher’s official roles in more or less chronological order, beginning with a series of speeches Streicher gave in the 1920s. In a speech delivered in Nuremberg in 1922, Streicher is quoted as saying, “Germany will be free when the Jew has been excluded from the life of the German people.”¹¹² Thus the prosecution sought to make it clear that, from very early on, Streicher was agitating for the removal of Jews from German society, a fact that Streicher had never been bashful about flaunting.

The second speech presented by the prosecution followed in the same vein, quoting Streicher as blaming German ills on the Jews and insisting that the German people must free themselves from Jewish domination. Immediately thereafter, however, Griffith-Jones presented a passage from a speech, delivered in April 1925, that was outlandish even for a man like Streicher, in which he said, “For thousands of years the Jew has been destroying the nations. Let us make a new beginning today so that we can annihilate the Jews.”¹¹³ Clearly, such rhetoric was inflammatory to say the least, and provided excellent fodder for the prosecution in its mission to portray Streicher as a man

¹¹¹ Ibid.

¹¹² Ibid.

¹¹³ Ibid., p. 691.

intent on seeing the Jews wiped out. Yet the prosecution provided no context regarding where the remarks were made, nor did it make clear any specific connection between his words and the actions of any individual German, Nazi or otherwise. Instead, the prosecution attempted to tie this statement directly to the Holocaust, saying, “This appears to be the earliest expression of one of the conspirators’ primary objectives—the annihilation of the Jewish race. Fourteen years later it became the official policy of the Nazi government.”¹¹⁴ Here, the prosecution is suggesting that Streicher was intimately tied to the decision-making process that eventually led to the Holocaust, a fact that it later undermined in its concluding remarks, where Griffith-Jones stated, “It may be that Streicher is less directly involved in the commission of the crimes against Jews than some of his coconspirators.”¹¹⁵ Hence the prosecution wanted to have it both ways—to be able to admit the fact that there was no direct link between Streicher and the Holocaust, while at the same time insisting, or at least insinuating, that he was intimately bound-up in its genesis.

While the prosecution did not explicitly state that Streicher was involved in planning or execution of the Holocaust, by grouping Streicher with the ‘conspirators,’ and immediately thereafter stating that annihilation eventually became Nazi policy, it implies that Streicher was part and parcel not only with incitement to violence, but also with the origins of the Holocaust itself, in theory if not in practice. But more importantly, it has also placed itself squarely behind the idea that the Holocaust was brought about by the deliberate actions of the top Nazi officials. By drawing a connection between a speech given by Streicher in 1924 and the Holocaust, and insisting that this speech was

¹¹⁴ Ibid.

¹¹⁵ Ibid., 709.

“the earliest expression of one of the conspirators’ primary objectives,” the prosecution was essentially arguing that these conspirators planned from the 1920s onwards to murder all of European Jewry. This line of reasoning, whereby the Holocaust is interpreted as a goal decided upon long before it began in earnest in 1939, eventually became the basis a major school of thought called intentionalism. Indeed, Donald Bloxham argues that “there is little substantive difference between the ‘conspiracy-criminal organization’ plan and the intentionalist interpretation...both are predicated on the principles of long-term planning and unwavering dedication to a goal, and uniformity of purpose amongst the implementers.”¹¹⁶ In the immediate post-war years, intentionalism became the dominant explanation for the Holocaust, however it has since been questioned and discredited by many prominent historians, having been replaced by functionalist/structuralist analysis.¹¹⁷ Here once again the prosecution attempted to draw a direct line connecting Streicher, *Der Stürmer* and the Holocaust together as if the former led logically to the latter. This faulty conception reiterates the notion that the prosecution at the IMT simply did not have a firm grasp on the relationship between anti-

¹¹⁶ Bloxham, *Genocide on Trial*, 205.

¹¹⁷ Intentionalism was so named because it insists that Hitler and the Nazis intended to exterminate the Jews systematically and completely, years before the Holocaust was carried out. Its antithesis, functionalism, argues that the Holocaust was more a result of systematic and structural factors that pushed towards genocide than of a pre-formulated plan to exterminate European Jewry. While the debate between functionalism and intentionalism is far beyond the scope of this paper, it remains a key factor in the analysis of responsibility for the Holocaust, and as such touches, at least tangentially, on Streicher’s case at Nuremberg. For a recent intentionalist interpretation of the Holocaust, see Daniel Jonah Goldhagen, *Hitler’s Willing Executioners: Ordinary Germans and the Holocaust*, (New York: Alfred A. Knopf, 1996); for a functionalist perspective, see Hans Mommsen, *From Weimar to Auschwitz*, (Princeton, NJ: Princeton University Press, 1991); Karl A. Schleunes, *The Twisted Road to Auschwitz: Nazi Policy Toward German Jews, 1933-1939*, (Urbana, IL: University of Illinois Press, 1970) ; for an excellent analysis of the debate as a whole, see Dan Michman, *Holocaust Historiography: A Jewish Perspective. Conceptualizations, Terminology, Approaches and Fundamental Issues* (Portland, Oregon: Vallentine Mitchell, 2003), esp. pp 91-126; Yehuda Bauer, “Overall Explanations, German Society and the Jews or: Some Thoughts about Context,” in *Probing the Depths of German anti-Semitism: German Society and the Persecution of the Jews, 1933-1941*, ed. David Bankier (New York: Berghahn Books, 2000), 3-17.

Semitism and the Holocaust (an understandable misconception given the fact that they had mere months to prepare a case with which to try the perpetrators of a genocide so massive in scale that it took professional historians decades to untangle and interpret it more correctly).

Following these speeches, the prosecution brought into evidence a series of clippings from various articles of *Der Stürmer* as well as several anti-Semitic books written by Streicher in an effort to highlight the lengths to which he had been willing to go in order to convince Germans to hate the Jews. Griffith-Jones and his team had chosen two aspects of Streicher's anti-Semitism as having been particularly noteworthy—namely his focus on ritual murder and his quest to “poison the minds of children at school at the earliest possible date.”¹¹⁸ Together, these two varieties of anti-Semitism formed the core around which the prosecution built its case.

What is sorely lacking in the case as presented by Griffith-Jones, however, is a multitude of articles or speeches delivered during the war, between September 1939 and May 1945. As stated earlier, due to the awkward linguistic construct of Article VI in the IMT charter, which outlined the crimes under the jurisdiction of the tribunal, the only evidence that should have been weighed under the charge of crimes against humanity was that which had taken place within that timeframe. Instead, the prosecution focused the majority of its case on speeches and articles Streicher gave before 1939, with several of the most damning examples having originated years before the Nazis had even taken power (i.e. the annihilation speech given in 1925).¹¹⁹ Where Griffith-Jones did bring in articles and speeches from the war period, they tended to revolve around Streicher's

¹¹⁸ *Nazi Conspiracy and Aggression*, Vol. II, 703.

¹¹⁹ *Ibid.*, 691.

knowledge of the mass murders being committed against Jews in the East. In this endeavor, the prosecution sought to tie Streicher to the Holocaust by proving that he knew that Jews were being murdered, and yet continued to publish anti-Semitic articles in *Der Stürmer*. Specifically, Griffith-Jones presented a series of articles that appeared in *Israelitisches Wochenblatt*, a Jewish newspaper that Streicher subscribed to, and that by as early as 1941 was publishing reports of Nazis murdering Jews by the thousands on the Eastern Front.

In an exchange typical of Griffith-Jones' handling of this subject while arguing his case against Streicher, he first produced a copy of an article from a November 1942 issue of *Israelitisches Wochenblatt* that contained the following quotation and asked Streicher if he thought he had read it—"The Jews who were there had mostly been deported to the notorious unknown destination further to the East. At the end of this winter the number of victims will be 4 million."¹²⁰ Streicher responded, "I cannot recollect that I have ever read that but I do want to say that if I had read it I would not have believed it."¹²¹ Griffith-Jones then produced an article penned by Streicher for *Der Stürmer*, which directly contradicted his previous statement of disbelief. In this article, dated 17 December, 1942, Streicher wrote that he had read in *The London Times* an article about a resolution that "expresses the grief and horror of the Anglo-Jewish community at the unspeakable atrocities committed by Germany and her allies and vassals against the Jews of Europe which had only one aim, to exterminate the whole Jewish population of Europe in cold blood...Since [the second World War began] the German Führer has warned and prophesied again and again that the second World War,

¹²⁰ *International Military Tribunal*, Vol. XII, 362.

¹²¹ *Ibid.*

instigated by world Jewry, must necessarily lead to the destruction of Jewry...”¹²² Hence Griffith-Jones had effectively caught Streicher in his own lie, demonstrating that Streicher probably knew, at least generally, what was happening in the East, and was in fact advocating it from Nuremberg. Yet while this exercise did an excellent job of describing Streicher as a heinous individual cheering for the murder of millions of Jews, what it did not do is tie Streicher himself to those murders. Despite this lack of a clear connection, painting Streicher in such a light was an effective rhetorical device, and would eventually play a significant role in his conviction.

Subsequent scholarship, elucidated by historians including Jeffrey Herf, has indicated that general knowledge of the Nazi genocide program, such as that which Streicher read in publications such as the London *Times* and *Israelitisches Wochenblatt*, was readily available in Germany to those who chose to believe it. Herf goes so far as to assert that

During World War II anyone in Nazi Germany who regularly read a newspaper, listened to the radio, or walked past the Nazi political posters between 1941 and 1943 knew of the threats and boasts of the Nazi regime about intentions to exterminate European Jews, followed by public assertions that it was implementing that policy...With confidence we can say that millions and millions of Germans were told on many occasions that...the Nazi regime was exterminating the Jews...¹²³

Hence on this accusation, as with the accusations of Streicher’s direct link to the crimes of the Holocaust, the prosecution overrepresented the weight that should have been given to the evidence demonstrating that Streicher had knowledge of the Nazi genocide against

¹²² Ibid., 363. The speech referenced by Streicher in this passage is one given by Hitler on January 30, 1939.

¹²³ Jeffrey Herf, *The Jewish Enemy: Nazi Propaganda During World War II and the Holocaust*, (Cambridge, Mass: Harvard University Press, 2006), 267.

the Jews. A more thorough understanding of anti-Semitism and its role in Nazi Germany would have at the very least allowed the prosecution to reformulate its cast to better fit into Count IV of the indictment. Unfortunately as the evidence has shown, the prosecution did not have a firm grasp of how Streicher fit into the larger context of Nazi anti-Semitism. Their lack of understanding proved to be central to his eventual conviction, as the judges, who did not possess such a framework of their own, took the prosecution's case at face value.

Julius Streicher: Judgment at Nuremberg

Despite the obvious flaws in the presentation of evidence against Streicher, he was found guilty under Count IV of crimes against humanity, and sentenced to death by hanging. His conviction, however, was a split decision. When Sir Geoffrey Lawrence read Streicher's verdict on October 1, 1946, the court learned that he had been found innocent on Count I (conspiracy to commit crimes against peace), yet guilty on count IV (crimes against humanity). In its decision, the court treated the two counts separately. It described its decision on Count I as not guilty, but did add a qualification. The judgment on this count, comprised of only five sentences, read

Streicher was a staunch Nazi and supporter of Hitler's main policies. There is no evidence to show that he was ever within Hitler's inner circle of advisers; nor during his career was he closely connected with the formulation of the policies which led to war. He was never present, for example, at any of the important conferences when Hitler explained his decisions to his leaders. Although he was a Gauleiter there is no evidence to prove that he had knowledge of these policies. In the opinion of the Tribunal, the evidence fails to establish his connection with the Common Plan or Conspiracy to

wage aggressive war as that conspiracy has been elsewhere defined in this Judgment.¹²⁴

Having decided that Streicher played no discernable role in the conspiracy to commit war charged under Count I, the judgment then took up Count IV, crimes against humanity.

On this count the judges were not as lenient. The judgment began by reiterating the point made first by the prosecution that Streicher was known in Germany as “Jew-Baiter Number One,” insisting that through his writings and speeches, “he infected the German mind with the virus of anti-Semitism and incited the German people to active persecution.”¹²⁵ The key to the dissemination of his particularly virulent brand of anti-Semitism had been “*Der Stürmer*, which reached a circulation of 600,000 in 1935, [and] was filled with such articles, often lewd and disgusting.”¹²⁶ Yet the text of the judgment rested not on the mere fact that Streicher published an anti-Semitic paper, but rather focused specifically on the articles written therein that contained references to “the annihilation of the Jewish race.”¹²⁷ In this endeavor, the judges made a distinction between the twenty-three articles calling for extermination that were published before 1941, and the twenty-six similar articles published between August 1941 and September 1944, although examples of articles from both periods were cited. It cited one particularly atrocious example from the 1941 Christmas edition of *Der Stürmer*, which read, “If the danger of the reproduction of that curse of G-d in the Jewish blood is finally to come to an end, then there is only one way—the extermination of that people whose

¹²⁴ IMT, Vol. 22, p. 547.

¹²⁵ Ibid.

¹²⁶ Ibid.

¹²⁷ Ibid., 548.

father is the devil.”¹²⁸ Having thus established that Streicher made repeated calls for the annihilation of world Jewry, the judges then connected these calls to the evidence that indicated Streicher knew that Jews were being murdered en masse on the Eastern front, in an effort to prove that his incitement was effective. They wrote, “With knowledge of the extermination of the Jews in the occupied Eastern territory, this defendant continued to write and publish his propaganda of death.”¹²⁹ To the judges, this connection, between Streicher’s words and the deeds of the war criminals on the Eastern front, was a key indicator of his guilt as a criminal against humanity.

In order to establish this connection, the judgment cited the 1942 *Der Stürmer* article mentioned earlier in this essay in which Streicher referenced a report in the London *Times* that detailed the “atrocities, aiming at extermination” being undertaken by the Nazis in the East, as well as articles published in *Israelitisches Wochenblatt*, to which Streicher subscribed, that reported the atrocities being committed.¹³⁰ This evidence, according to the judgment, was enough to prove that Streicher was guilty of crimes against humanity. The judgment concluded, “Streicher’s incitement to murder and extermination, at the time when Jews in the East were being killed under the most horrible conditions, clearly constitutes persecution on political and racial grounds in connection with War Crimes, as defined by the Charter, and constitutes a Crime Against Humanity.”¹³¹ Thus the text of the judgment makes it clear that the primary reason behind Streicher’s conviction under Count IV rested not on the fact that he called for extermination, but that he continued to make such pronouncements even after learning

¹²⁸ Ibid.

¹²⁹ Ibid.

¹³⁰ Ibid., 549.

¹³¹ Ibid.

that atrocities, specifically the murders of innocent Jews, were in actuality being committed.

This connection between Streicher's extermination comments and his knowledge of the atrocities being committed in the East was a condition the judges needed to establish in order to make the charge stick, because without it, they could not insist that his persecution was tied in to another crime over which they had jurisdiction, namely war crimes. This connection also served the purpose of tying him in to a criminal conspiracy—had he not known of the atrocities being committed, it would have been impossible to insist that he was a part of a conspiracy, which inherently implies concerted action between individuals in pursuit of a common goal, in this case the annihilation of the Jews. Thus his knowledge of the atrocities being committed becomes the key to his conviction. Without it, the conspiracy aspect of his conviction would have been untenable, and without the conspiracy, Streicher's case would not have met the clause, included in the charter of the IMT, that insisted that crimes against humanity must be committed "in execution of or in connection with any crime within the jurisdiction of the Tribunal" in order to reach conviction.¹³²

The prosecution proved beyond a reasonable doubt that Streicher had at least general knowledge of the goings on in the East, but the link between his knowledge of the commission of atrocities and his own words is tenuous, as they did not prove, nor did they even seek to prove, that Streicher's words were actually tied to these actions. Instead, they proved that Streicher was promoting anti-Semitism, in some cases preaching annihilation, and that while he was doing so, Nazis were carrying out mass

¹³² IMT, vol. 1, 11.

murder in Eastern Europe. Yet proving a correlation is vastly different than proving causation.

Chapter IV: Behind the Scenes: The “Little Jew Baiter” is Guilty

While the texts of the proceedings at the International Military Tribunal provide the legal reasoning behind Streicher’s conviction, they do little to shed light on exactly what the judges were thinking and discussing when they came to that conclusion. It is here that archival sources provide the missing links and illuminate how the judges came to find Streicher guilty. In this endeavor, several sources are useful, and allow the judgment to be examined from different angles. The first, and most direct source is the minutes of the meetings held between the judges of each of the four powers present at the IMT as they sought to determine the guilt and innocence of each defendant. The first meeting to discuss the opinion was held on June 27, 1946. At this meeting, the question of how the Tribunal should assess the count of conspiracy was debated at length.¹³³ Such discussions would recur in July and August, where serious consideration was given to dropping the charge altogether.¹³⁴ In the end, however, the count was maintained, and on September 2, 1946, the judges began their deliberations on verdicts for the individual defendants.

In their initial discussion of Julius Streicher, the judges do not seem to have taken a great deal of time to reach their conclusion. In fact, the record of the discussion, as written by Francis Biddle, indicates that a majority of the judges were not familiar with Streicher’s case at all as they sat down to determine his fate. While Streicher had been indicted only on Counts I and IV, five of the eight judges (DeVabres, Biddle, Nikitchenko, Volchkov and Lawrence) initially voted to convict him on Count III, war

¹³³ Francis Biddle, “Notes on Judgments,” June 27, 1946, p. 3, Box 14, The Francis Biddle Papers, Syracuse University Library, Syracuse, NY (Hereafter cited as “Notes on Judgments”).

¹³⁴ Ibid., August 14, 1946.

crimes, a crime of which he had never been indicted, and which had never been argued against him in trial proceedings!¹³⁵ Although a man's life hung in the balance, it seems clear that the judges, at least at this point, had not taken the time to carefully review Streicher's case, instead contenting themselves to arbitrarily vote on his guilt. Interestingly, none of the other defendants were deemed guilty in this discussion of crimes that they had not been charged with in the original indictment.¹³⁶

What makes matters more confusing, and indeed casts even more doubt on the degree of seriousness with which the judges handled Streicher's case, is the paragraph that immediately follows the vote on Streicher's guilt in Biddle's "Notes on Judgments." Biddle recounts a conversation that apparently came up in connection with the discussion of Streicher's case, writing, "The Russians, Falco, and even the British, are talking of holding defendants guilty on account of the positions they held. 'Streicher', Volchkov says, for instance, was personally connected with Hitler."¹³⁷ Biddle, incensed that such a conversation would even be taking place, took it upon himself to interject. "I blurt out that I think it's preposterous to hold a little Jew baiter as a conspirator because he was a friend of Hitler, or a Gauleiter, or a Nazi," he said.¹³⁸ Lawrence then reprimanded him for having "bad manners," before Parker stepped in, insisting, "we must limit the theory of conspiracy, and ... Streicher had nothing to do with planning or conspiring."¹³⁹

¹³⁵ "Notes on Judgment," September 2, 1946, p. .23

¹³⁶ In their discussion of Kaltenbrunner's guilt, Biddle, Falco, DeVabres and Lawrence indicated that they did not believe he was guilty under Count II, despite the fact that such an observation was moot as he was not charged on this count. However, in this case the judges, while again demonstrating a degree of ignorance as to which counts the defendants were charged with, were merely being redundant, not adding on extra charges at the last minute. See "Notes on Judgment," p. 22-3.

¹³⁷ Ibid., 24.

¹³⁸ Ibid.

¹³⁹ Ibid.

This exchange is troubling and vexing on several counts. First, the very fact that, as late as September 2, 1946, less than a month before the sentences were handed down, half or more of the judges were advocating holding Streicher, and presumably other defendants, guilty simply because they had been close to Hitler is disturbing to say the least. Although the defendants had been selected due in large part to their high rank in the Nazi government and their leadership of organizations that the Tribunal sought to declare criminal, basing a guilty verdict on their positions alone, without regard for the evidence presented at trial, would have obviated the need for a trial in the first place. If the judges felt content declaring guilt so easily, the expense, effort and hardships created as a result would have been for naught, and all parties concerned would have been better off following Churchill's initial plan for summary execution. For a trial that sought to redefine international law, and distance itself from accusations that it was nothing more than victor's justice, such behavior on behalf of the men charged with dispensing justice is one step short of reprehensible. Luckily, Biddle stepped up to defend the integrity of the proceedings, but in so doing, directly contradicted the opinion he gave on Streicher's guilt. He had been one of the five judges to vote for a verdict of guilty on Count III only minutes before, and indeed voted to hold him guilty on Count IV as well. His remark against finding a "little Jew baiter" guilty as a conspirator indicates that he must have assumed, on some level, that Streicher was guilty of more than only conspiracy.

Parker, too, seems to have been either confused or simply ignorant of how the Tribunal was set up, as he voted guilty solely on Count IV, only to insist immediately thereafter that "Streicher had nothing to do with planning or conspiring." If he truly believed that Streicher was not a conspirator, he could not have voted in good conscience

to convict him of only Count IV, since as an alternate judge he would have known that to be found guilty under Count IV, the defendant's crimes must also have been carried out in connection with another crime under the jurisdiction of the Tribunal. It is possible that holding Streicher guilty under Count III was a mechanism by which the other judges were justifying their guilty verdict under Count IV to themselves. This argument would at least lend logical sense to this phantom guilty verdict, although it would not justify their ignorance of the facts of the case. Parker's vote of guilty under Count IV and subsequent insistence that Streicher was no conspirator, on the other hand, can indicate one of only two things—he was unaware of the clause in Count IV necessitating the connection between crimes against humanity and another crime in order to reach a guilty verdict, or that he simply had not taken the time to familiarize himself with the facts of Streicher's case, and something other than the evidence presented in court led him to believe Streicher was guilty. Unfortunately, the record stops abruptly, and does not provide any further indicators that allow the issue to be resolved based on the merits of the discussion alone.

Discussions as to the guilt of the individual defendants resumed eight days later, on September 10th under the heading "Final Vote on Individuals." As opposed to the earlier debates, which largely consisted of only a listing of the counts on which each judge believed each defendant was guilty, the final discussions on the individual defendants tended to be more detailed and nuanced. In several cases, however, the descriptions of the debate are again nothing more than a few lines indicating the votes of each judge. The men on whom debate was short tended to be those who had been accused of the most heinous crimes.

For example, Fritz Sauckel had been Plenipotentiary in charge of organizing the slave labor program from March 21, 1942 until the end of the war, during which time he forced some ten million Eastern European prisoners into Germany in the drive to fill factories and farms with free labor.¹⁴⁰ The debate on his judgment was summed up in three lines, with no explanation other than a listing of guilty verdicts from the various judges resulting in a finding of guilty under Counts II and IV and a sentence of hanging.¹⁴¹ Similarly, the fate of Hans Frank, who served as Governor General of Poland during WWII and oversaw and approved the murder of millions of Jews beginning in 1941 (by 1942, fully 85% of the Jews living in the area controlled by his General Government had been sent to extermination camps),¹⁴² was decided in only five lines, culminating in a verdict of guilty on Counts III and IV and sentenced to death by hanging.¹⁴³

Men whose guilt the judges were less sure of, however, could fill several pages with back and forth debate, in some cases debates that had to be called off and resumed at a later time because the judges could not agree on a verdict, including Hjalmar Schacht, who served as Hitler's Minister of Economics from 1934 until 1937, when he was forced to resign.¹⁴⁴ Despite the thin veil of evidence that tied Julius Streicher to the counts of conspiracy and crimes against humanity, he was treated like the more egregious war criminals, and his verdict and sentence do not appear to have been debated at all. The 'debate' over his verdict consisted of nothing more than a disagreement as to whether or

¹⁴⁰ Eugene Davidson, *The Trial of the Germans: an Account of the Twenty-Two Defendants at the International Military Tribunal at Nuremberg* (New York: Macmillan, 1966), 504, 521.

¹⁴¹ "Notes on Judgment," September 10, 1946, p. 49.

¹⁴² Davidson, *The Trial of the Germans*, 438.

¹⁴³ "Notes on Judgment," September 10, 1946, p. 48.

¹⁴⁴ *Ibid.*, September 12, 1946, pp. 54-5; Davidson, *The Trial of the Germans*, 223-6.

not he was guilty under Count I for conspiracy to commit crimes against peace. He was found guilty by all parties on Count IV, and even found guilty on Count I by the Russian judges. No debate was had over his sentencing, which was universally agreed to be death by hanging.¹⁴⁵ What, then, could have caused the judges to treat Streicher, the publisher of an admittedly odious newspaper who had been ousted from government in 1940, as if he were one of the major criminals sitting on the defendant's bench, even while he was surrounded by men who had held mighty political and military power and made decisions that had shaped the fate of Nazi Germany?

Francis Biddle took the time following his tenure as the American judge at Nuremberg to have a set of memoranda, notes and analysis created by and for him during the trial collected and put in a set of bound editions. The volume of this series entitled "Defendants" is a collection of memoranda analyzing the cases of the individual defendants, apparently compiled to aid the American judges in their deliberations. The memo on Julius Streicher, drafted by Maj. Bob Stewart, an aide to Parker, the American alternate judge, is especially helpful in the attempt to determine the rationale behind the decision to convict him on Count IV, particularly because the judgment on Streicher was eventually drafted with this memo in mind. Stewart begins his analysis of Streicher by insisting that he "is probably less important than most of the other defendants for the purposes of this trial."¹⁴⁶ Yet despite his lack of importance, "his activities are so repugnant and repulsive to the civilized mind, and had such a far reaching, though possibly indirect, effect on the crimes committed against the Jews that the Tribunal would

¹⁴⁵ "Notes on Judgment," September 10, 1946, p. 49.

¹⁴⁶ Memorandum by Maj. Bob Stewart, Box 5, "Defendants," p. 169, The Francis Biddle Papers, Syracuse University Library, Syracuse, NY (Hereafter cited as "Stewart").

not be justified in letting his crime go unnoticed.”¹⁴⁷ Hence Stewart has indicated that a large part of Streicher’s guilt was based upon the fact that he was “repulsive and repugnant.” His memorandum continues, outlining Streicher’s rise to power, and summarizing the evidence presented against him.

After reviewing the evidence presented against him at trial, Stewart concludes by comparing Streicher to a cheerleader at a football game. He concedes that “it is impossible to evaluate in exact figures the responsibility of Streicher for the murder of six million Jews.”¹⁴⁸ However, he insists, “A cheerleader never carries the ball nor calls a play, yet by his continual goading the crowd to a frenzied excitement he is a key personality in his team’s successes.”¹⁴⁹ Streicher, in this context, played the role of “whipping up the crowd to hate the Jews, and inciting them to fall in behind the Nazi policy of persecution.”¹⁵⁰ Stewart then cites the evidence from the trial that indicated that Streicher knew about the killings in the East through various foreign newspaper reports, and reaches the conclusion that this knowledge, coupled with his continued calls for the annihilation of Jewry, meant that he was actively inciting such acts of barbarism. In his concluding sentence, he writes, “Thus at the very least, he became an aider and abetter (sic) to this Nazi crime and should be found as guilty as the principals who were actually effecting it.”

Interestingly, several sections of Stewart’s memorandum appear almost word for word in the final judgment against Streicher published in the official transcript of the trial, and indeed the judgment follows the same structure as the memo, indicating that his

¹⁴⁷ Ibid.

¹⁴⁸ Ibid., 178-9.

¹⁴⁹ Ibid., 179.

¹⁵⁰ Ibid.

judgment was ultimately based around Stewart's analysis.¹⁵¹ This analysis was colored to a large extent by the assumptions regarding Streicher's direct link to anti-Semitism promulgated by the prosecution. Thus it seems likely that Parker and Biddle went into the discussions on judgment having read and taken to heart Stewart's analysis of Streicher's case, and having done so, did not seek to question his findings, which were at least partly based on Streicher's unsavory personality characteristics and Stewart's (and the prosecution's) failure to fully comprehend the origins of German anti-Semitism. With this analysis in mind, neither Biddle nor Parker showed a great deal of interest in advocating for a not-guilty sentence for Streicher, and instead were content to voice only a very small degree of dissent. The judges were also rather pressed for time, with the judgment due out in mere weeks, and the trial still in progress, another factor that certainly contributed to their hasty deliberations.

A comparison of the deliberations held regarding Streicher with those regarding Hans Fritzsche also sheds light on the lack of thought put into Streicher's sentencing, a fact that was not true of each of the defendants. Unlike Julius Streicher, who was one of the initial ten men selected to stand trial before the IMT, Hans Fritzsche was one of the last to be added to the docket. According to historian Robert Conot, Fritzsche was a last minute addition by the Russians, who had up to that point contributed only one man to stand trial. Conot insists that, because the Americans, British and French were contributing thirteen, seven and one defendant to stand trial, respectively, "it was a matter

¹⁵¹ "Streicher- Judgment," in Institute of Documentation in Israel, (Haifa, Israel), *The Two Antisemitic Nazi-Leaders: Alfred Rosenberg and Julius Streicher at the Nuremberg Trial in 1946: Documentary Collection*, (Haifa: Institute of Documentation in Israel for the Investigation of Nazi War Crimes, 1998) p. 501-2.

of pride to the Russians that they be permitted at least two.”¹⁵² Because Josef Goebbels, the man who had controlled Hitler’s Nazi propaganda machine, had committed suicide in May 1945, Fritzsche, who had worked in the upper levels of Goebbels’ Propaganda Ministry, and served as Radio Minister, became the representative of official propaganda for the trial.¹⁵³

The debate surrounding Fritzsche’s conviction was very different from Streicher’s. Instead of a drumhead sentencing, the judges in Fritzsche’s case were torn, and had to revisit his case three times before settling on an acquittal. Opinion was split at the first deliberation. Falco opened up the discussion by insisting that Fritzsche was not guilty under Count I, but was an accomplice to war crimes and crimes against humanity for his propagating of Nazi propaganda. DeVabres agreed, calling him “the least guilty of all.”¹⁵⁴ Parker went even farther, insisting that he was a

small man...Only indicted because Goebbels is dead. Like the Krupp case—[Fritzsche is a] vicarious sacrifice. Freedom of speech and press is of greatest importance to liberty. A man shouldn’t be convicted for what he says or writes unless it is an incitement to crime. If speech is not free for error it is not free for truth.¹⁵⁵

In this discussion, only the Russians dissented. Nikitchenko countered that “propaganda is criminal. These crimes could not have been committed without resorting to propaganda. 1932-1938 [Fritzsche was] in charge of radio broadcast, and in press division from 1933-1937—in charge till 1942, etc. His propaganda led to atrocities.”¹⁵⁶ As such, he voted to find Fritzsche guilty on Counts I, II and III (although once again,

¹⁵² Conot, *Justice at Nuremberg*, 28.

¹⁵³ Harris, *Tyranny on Trial*, 29.

¹⁵⁴ “Notes on Judgment,” September 10, 1945, p. 44.

¹⁵⁵ *Ibid.*

¹⁵⁶ *Ibid.*, 45.

this is an instance of a judge voting to find a defendant guilty of a count he was not charged with—Fritzsche had been charged only on Counts I, III and IV).¹⁵⁷ The discussion was then tabled. When his case was revisited on Sept. 12th, all of the judges, with the exception of the Russians, voted to acquit.¹⁵⁸

The parallels between Streicher's case and that of Fritzsche invite comparison. Both men were being tried as a result of their words, rather than their deeds, as neither was involved in the planning of actual crimes against Jews or others. Both had evidence brought against them at Nuremberg that demonstrated that they propagated anti-Semitic propaganda. Yet there were very large differences between the two men as well. Streicher himself was never a member of the Nazi party leadership. He served as Gauleiter of Franconia for a period of seven years, between 1933 and 1940, but was eventually forced out of government and into house arrest. Fritzsche, on the other hand, was a member of the upper echelons of the Propaganda Ministry, working directly under Goebbels. While his personal power might not have been great, from 1940 on, it was certainly greater than Streicher's, as he maintained an official position in the Nazi government.

To the judges, however, the cases never once seemed related. Nowhere in the transcripts of the trial, nor in the records of the debates kept by Francis Biddle, do any of the judges attempt to make a connection between Fritzsche and Streicher. At one point during the debate over Fritzsche's guilt Volchkov made a statement that would have fit Streicher's case perfectly, saying, "We, of course, must not try journalists for what they

¹⁵⁷ Ibid.

¹⁵⁸ Ibid., September 12, 1946, p. 54. The Russian's harsh stance on Fritzsche's case can be written off as at least partially due to the fact that, as Fritzsche was one of the two defendants that the Russians had contributed to the hearings, their government understandably did not want to see fifty percent of 'their' defendants acquitted.

write, but Fritzsche is being tied as a leader of the Press...”¹⁵⁹ He went on to argue for Fritzsche’s guilt, but the interesting piece of this statement is its beginning, whereby he stated that journalists should not be tried for their writings (an interesting statement in the first place coming from a Soviet judge, and one made no doubt with the intention of wooing over his democratic counterparts, not out of ideological conviction). When Streicher’s case was brought up later on that same day, none of the judges seemed to remember this statement, or the debate around which it centered, or if they did, none thought it relevant to his case, despite the fact that, unlike Fritzsche, Streicher was not a leader of journalists, but rather a lone journalist.

The lack of debate on the merits of the prosecution’s case against Streicher could, if taken out of the larger context of the debates on the cases of all of the defendants, be interpreted as a general lack of intellectual curiosity on the part of the judges with regards to the life or death decisions they were making. Yet the fact that there was real and candid debate between the judges on several of the defendants, including Fritzsche, demonstrates that they were both willing and able to pose serious questions about the cases of defendants when they felt it necessary to do so. Streicher’s case should have been one over which considerable debate occurred, yet such was not the case.

Instead, the judges seem to have accepted at face value the misconceptions of German anti-Semitism that had been present throughout the Tribunal, propagated by the prosecution but which traced their origins to the selection of the defendants months before the charter was signed. This complacency to the prosecution’s view that the

¹⁵⁹Ibid., September 12, 1946, p. 45.

Holocaust was a direct result of Streicher and his anti-Semitic propaganda is evidenced by the fact that the judges never once sought to rethink that conception.

Conclusion

Julius Streicher remained defiant and spiteful until the very end of his life. Drexel Sprecher, a prosecutor for the American delegation at Nuremberg, recounts the execution of the condemned defendants, including Streicher, which began shortly after 1:00a.m. on the morning of October 16, 1945. All of the condemned, with the exception of Streicher, walked calmly towards their fate. He writes

In the course of the next hour and one half, the remaining condemned prisoners were brought in to one of two gallows and executed...None of the prisoners offered resistance during the process except Streicher. He had to be dragged to the gymnasium while he screamed 'Heil Hitler!'...All of the condemned except Rosenberg spoke brief last words...A number of them made patriotic references to the Fatherland and Germany...to their families, and to their innocence. Fewer were contrite and spoke of lessons to be learned. One, Streicher, still screamed obscenities at the Jews...As Streicher climbed the thirteen steps, he again shouted: 'Heil Hitler!' As the black cloth was placed round his head Streicher shouted out: 'Now I go to G-d, Purim Festival 1946!' As the hangman was about to pull the trap door, Streicher screamed at him: 'The Bolsheviks will hang you someday!'¹⁶⁰

Such was the end for Julius Streicher, who had spent the previous twenty years using every public forum he could get his hands on to spout anti-Semitic vitriol, and whose hatred for the Jews was so deeply rooted that he could not spare himself one final opportunity to do so in the final seconds of his life. The execution of a man as straightforwardly odious and spiteful as Streicher is in no way worthy of regret. Had he not spent the better part of his life preaching hate, and attempting to convert Germans

¹⁶⁰ Drexel A. Sprecher, *Inside the Nuremberg Trial: A Prosecutor's Comprehensive Account*, (Lanham, Md: University Press of America, 1999), 1434.

over to his anti-Semitic cause, he would not have found himself before a court such as the IMT. Indeed at a time in which the atrocities of the Holocaust were only beginning to be fully comprehended, his hanging as the embodiment of the anti-Semitism that had played no minor role in the commission of those atrocities is not without symbolic importance.

But to get wrapped up in a discussion of whether Streicher's execution was deserved on a moral level is to miss the importance of Streicher's case. The IMT was created with a view to reshaping international law so as to ensure that an event as destructive and terrible as World War II could never happen again, and to do so not with a threat of overwhelming military force, but by the promise that the world would hold anyone who attempted to do so responsible through a clearly constructed legal framework.¹⁶¹ Streicher's presence before the Tribunal, and his eventual conviction and execution, provides a window into an area of that framework that was not sufficiently thought out before the trial began, namely the role that anti-Semitism played in the events that led to the Holocaust.

While the Holocaust played an important role in the arousal of public support for the IMT, within the context of the trial itself it was assigned a secondary position from the outset. Due in part to unease within the United States government, which was concerned that charges of crimes against humanity could possibly be brought against it for its treatment of African Americans if the charge were too broadly defined, Robert Jackson ensured that definition of such crimes was inseparably bound to the commission of aggressive war by the IMT charter, a definition that sufficiently shielded the U.S. from

¹⁶¹ Donald Bloxham, "Milestones and Mythologies: The Impact of Nuremberg," in *Atrocities on Trial: Historical Perspectives on the Politics of Prosecuting War Criminals*, ed. Patricia Herberer and Jürgen Matthäus (Lincoln, Nebraska: University of Nebraska Press, 2008), 263-82.

such allegations. In doing so, however, the charge of crimes against humanity included under Count IV of the indictment became watered down, encompassing only those crimes committed between September 1, 1939 and the end of the war. Julius Streicher, who was tried only under Count IV and the conspiracy charge of Count I, emerged as a difficult defendant to try even before the Tribunal began.

The prosecution was additionally hampered by a lack of a thorough understanding of anti-Semitism as it existed prior to the Nazi takeover, as well as its impact on the planning, preparation and execution of the Holocaust. Streicher's case was built around the assumption that he had a significant impact on the degree to which the German population accepted anti-Semitism. In this regard, the prosecution failed to account for the fact that anti-Semitism had been alive and well in Germany long before Streicher entered the political picture. As the evidence clearly shows, Julius Streicher contributed to the arousal of anti-Semitic sentiment through his venomous tirades against Jews both in his speeches and via *Der Stürmer*. But the degree to which he was effective was never taken into account by the prosecution, which was content to declare, without proof, that Streicher deserved a lion's share of the blame for German anti-Semitism during the Nazi years, and hence for the Holocaust that it envisioned as a plan devised by Hitler and his associates such as Streicher, and which it insisted could not have occurred without the vitriol extolled in *Der Stürmer*.

For their part, the judges, who had been tasked with weighing the facts of the cases and determining the guilt or innocence of the defendants, through a combination of a scarcity of time, a similar lack of historical background regarding anti-Semitism, and an understandable feeling of general disgust towards Streicher did not spend time debating

the merits of the case brought against him. Instead, they took the prosecution's case at face value, along with the assumptions inherent within the case, and so had no difficulty finding him guilty and deserving of execution. They did so without a thorough debate as to the legality of such a conviction as defined by the charter of the IMT. They also did so without deeply considering whether Streicher truly belonged on the defendant's bench along with the major players in the Nazi state.

Most of these problems with the prosecution and judgment rendered against Streicher at the IMT were a symptom of one overall problem—the Tribunal was simply not set up with the prosecution of a man such as Streicher in mind, who ostensibly represented German anti-Semitism. Thus the failure of the Tribunal to try his case appropriately, and subsequently of the judges to identify the problems associated with his trial, was largely a result of the fact that the IMT was meant to render judgment against men who had committed crimes on a vast scale, namely the initiation of a World War. Those tasked with putting the IMT together knew that anti-Semitism had played a role in the Nazi state, yet they did not know, and in reality could not have known exactly what that role was, as they were forced by necessity to try it before a full account of the facts could take place. Yet Streicher was nonetheless tried and convicted, despite the fact that his case had been shoehorned into a framework that simply was not designed to handle a case such as his. In trying Streicher as a major war criminal, the International Military Tribunal elevated Streicher from the unimportant if disproportionately loud position he had held in the Nazi regime to one in which he was envisioned as a major player within the Nazi state.

In this context Julius Streicher's case before the Nuremberg Trial is another example of an attempt to deal with anti-Semitism through a legal means in which it did not perfectly fit. Such instances had occurred with some frequency in Germany prior to the Nazi period, notably the case of Hermann Ahlwardt in 1892, who was placed before a court on charges of libel for a series of unfounded accusations implicating the German government in a Jewish plot to cripple the army. In that case, as with several similar cases that transpired around the same time in Germany, an anti-Semite was held responsible for the anti-Semitic remarks he had made, not because the remarks were anti-Semitic, but because they were found to be untrue, and thus libelous towards the people against whom he made them.¹⁶²

When anti-Semitism is placed on trial, in legal frameworks not designed with that purpose in mind, the results tend to come to less than what those who initially brought the cases had hoped. In the Ahlwardt case, his trial inadvertently provided him with a chance to expose even more people to his anti-Semitic rants than had been possible through his own efforts. Although he was convicted, the benefits of his conviction were all but wiped out by the resulting publicity he had gained. Similarly, Streicher's case at Nuremberg, and the hole it opened in an otherwise sound legal framework, has provided modern-day anti-Semites with an opportunity to use his execution as an example of Nazi martyrdom at the hands of vengeful nations. To be sure, Streicher was a reprehensible individual, and his death is not a matter to be mourned. But the dubious legality of his hanging allows the Nuremberg trial to be examined both for its achievements and its

¹⁶² Jahr and Cohen, "Ahlwardt on Trial," 73-5, 83-5.

faults, thus providing future trials with an opportunity to grow from the mistakes made there.

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