Francia. Forschungen zur westeuropäischen Geschichte
Herausgegeben vom Deutschen Historischen Institut Paris
(Institut historique allemand)
Band 24/3 (1997)

DOI: 10.11588/fr.1997.3.61031

»Zusammenarbeitspolitikern« schenkte! Im Sommer 1944 äußerten die illegalen Parteien schließlich ihre Forderung nach Regierungsbeteiligung und die sogenannten »Alten Politiker« erkannten, daß nur durch einen Kompromiß mit dem »Freiheitsrat« der Anspruch an die Alliierten, auch Dänemark als alliiertes Land anzuerkennen, erhoben werden konnte. Man einigte sich auf eine 50 zu 50 Regelung zwischen Altparteien und dem »Freiheitsrat«. Die extrem unterschiedliche Ausrichtung der Programme aber, die von den Gruppierungen innerhalb des Freiheitsrates angeboten wurden, verhinderte bei den Wahlen im Herbst 1945 einen Erfolg für die Widerstandsgruppen, die dadurch keinen wesentlichen Einfluß auf die Nachkriegspolitik mehr erlangen konnten.

Interessant ist dieser Artikel besonders im Vergleich mit dem Schicksal der Widerstandsbewegungen etwa in Frankreich oder Belgien sowie Norwegen, wobei sich der Vergleich mit letztgenanntem Land besonders gut durch den Beitrag von Ole Kristian GRIMNES im selben Band herstellen läßt.

Einblick in die Thematik des Spannungsfeldes zwischen Ost und West bietet der Beitrag von Dirk LEVSEN, der sich mit der Beteiligung dänischer und norwegischer Truppen an der britischen Besatzung in Deutschland befaßt. Etwa 4000 Soldaten wurden ab 1947 jeweils aus Norwegen und Dänemark entsandt; erst 1953, bzw. 1958 verließen die letzten norwegischen, bzw. dänischen Soldaten Deutschland. Trotz starker Proteste aus der Öffentlichkeit blieben die Kontingente aus dem Norden auch nach der Verschärfung des Kalten Krieges 1948 in Deutschland stationiert und wurden in Schleswig-Holstein nicht nur zur Erfüllung von Okkupationsaufgaben, sondern dezidiert auch zur Verteidigung im Kriegsfall belassen. LEVSEN konstatiert in seinem Resümee, daß das dänische und norwegische Engagement in Deutschland für Großbritannien ein Gewinn war und sowohl Dänemark als auch Norwegen dadurch ihre Präferenz gegenüber dem Westen dokumentierten.

Bis auf einen Beitrag, der aufgrund einer extremen Detailfülle 42 Seiten umfaßt, liefern die Artikel sehr kompakte Informationen und spannende Einblicke. In einigen Fällen weisen die Autoren auf Forschungsmängel und Desiderata hin; meistens werden die Inhalte sehr klar definiert und eingegrenzt. Eine Hilfe für (noch) besseres Verständnis wären eine oder mehrere geografische Karten vom nordeuropäischen Raum. Nicht-Experten würde der Zugang zu manchen Texten dadurch wesentlich erleichtert.

Barbara PORPACZY, Wien

Jean-Marc VARAUT, Le Procès de Nuremberg, Paris (Perrin) 1992, 419 p. – Annette WIEVIORKA, Le Procès de Nuremberg, Rennes (Ouest-France, Société d'éditions) 1995, 201 p. (Collection Seconde Guerre Mondiale).

The 50th anniversary of the Nuremberg Trial has brought forth some new analyses, and if VARAUT's book appeared three years in advance, WIEVIORKA clearly felt that the trial, whose proceedings run to 16000 pages, could be examined afresh. We thus have two new additions to an already large field of literature on the greatest trial of the 20th century. VARAUT, a lawyer, adopts a chronological approach and then proceeds to a series of selected issues. WIEVIORKA, a historian, uses an academic and tighter structure, repeating certain anecdotes already given by VARAUT. VARAUT provides long and well selected verbatim accounts from the trial, and uses to advantage his expertise in the philosophy of law, presenting several important points in his personal summing-up. His book also provides the better coverage of Hitler's plans to wage war.

WIEVIORKA succeeds nevertheless, in a book half the length of the other, in presenting a first-rate synthesis: how did the idea form for such a trial, how was the Tribunal's statute established, how were the charges drawn up and the accused selected, how did the trial proceed and what did it reveal, and finally what was its aftermath? As Lord

Lawrence stated at its opening, the trial was unique in the annals of world law; »the real plaintiff in this court is civilization itself.« As VARAUT shows, natural law became, for the first time ever, the basis for prosecution and for penal action in a court whose authority was certainly challenged, above all on the basis of a principle universally upheld: *nullum crimen, nulla poena sine lege*. As Göring put it, »Our only crime was to have lost the war,« an argument which Robert Jackson, the US chief prosecutor, refuted at the outset: »The accused are on trial not because they lost the war but because they started it.« Indeed, the authority of the Tribunal derived not from victory in the struggle but from the weight of universal public opinion. If, of the four indictments, only one, War Crimes, had an existing status, another concept was also to be applied: the concept, first expressed by Padre Vitoria, that laws among nations do indeed exist. Sir Hartley Shawcross, the British chief prosecutor, read long extracts from the Briand-Kellogg Pact of 1928 (»the most ratified instrument of international relations«), to which Germany, Italy and Japan were signatories. (The USSR, it was recalled, was not a signatory to the Geneva Conventions.)

The judicial procedure which was chosen reflected the dominance of the Anglo-American partnership in the preparations. The code would basically follow English Common Law. Given the nature of the Soviet code of law, best demonstrated by Vichinsky in 1936, the only valid criticism came from the French judges Henry Donnedieu de Vabres and Robert Falco, for whom the procedure was a novelty. There would be virtually no prior interrogation *(instruction criminelle)*. The accused, all of whom pleaded not guilty, would be heard as witnesses at their own trial. Witnesses under Common Law are called only by the prosecution or by the defence. A compromise was nevertheless reached with the »continental jurists« – Jackson generously allowing the Soviet jurists to be lumped together with the French. In this mixed procedure, the bench would also have the right to interrogate any of the accused, but without allowing them the protection of the Fifth Amendment to the US Constitution.

The four indictments (Conspiracy, Crimes against Peace, War Crimes, Crimes against Humanity) were agreed upon, but not without argument. The first, rooted in Anglo-American jurisprudence, reflected its horror of »combination« (Jacobin and other), against which Edmund Burke had warned (»When evil men combine, the good must associate«), and against which the British combination laws and US federal laws (the latter still in force) had provided protection. The notion of a conspiracy against peace was nevertheless contested by Donnedieu de Vabres, who insisted that it had no basis in international law. It certainly embarrassed the Soviets, and to some extent the democracies which were responsible for the policy of appeasement. If you accept the principle of conspiracy, was there not conspiracy in the Molotov-Ribbentrop Pact? To Jackson's bitter disappointment, a compromise was necessary, limiting conspiracy to the charge of waging aggressive war, hence to those present at the secret conference in Berlin in November 1937. It was remarked that none of the five principal Nazi conspirators (Hitler, Himmler, Bormann, Goebbels and Heydrich) was present at Nuremberg.

The compromise did nothing to solve the embarrassment over the second indictment, Crimes against Peace. If aggressive war is a crime, how should one qualify the Soviet attack on Poland? Or the Russo-Finnish War? While War Crimes presented no problem, Crimes against Humanity was to be restricted to crimes committed from 1 September 1939. Guernica, for example, was out of bounds.

The accused were to be judged individually, and to convict the Tribunal required a majority of three of the four judges; in the event of a tie, the verdict would be decided by the vote of the presiding judge (Lawrence), but any sentence required the vote of at least three of the judges. The accused had the right to choose their own legal counsel, but they were specifically denied the right to invoke the *tu quoque* defence. What was

most obviously missing from the trial was any real understanding of the nature of the Nazi state. The twenty on the benches were selected largely because they were prominent Nazi figures and they were in Allied hands. The French prosecutor Charles Dubost aptly pointed out that every concentration camp had had a commandant and not one of them was present. The SS, the state within the state, was represented only by Kaltenbrunner. The principal work of the SS, Crimes against Humanity, essentially the Holocaust, received the least attention.

Many a participant reported afterwards that the trial was so long and tedious that even the accused were sent to sleep, but it also threw light in many a dark corner and it had its electrifying moments. Among the highlights was the Jackson-Göring duel, in which Göring, in the eyes of most, emerged the winner. Göring had placed a cue-card in front of him which read »Keep calm, behave correctly«, while Jackson, with the 1948 presidential elections in mind and on edge from the beginning, was easily provoked. Varaut finds Sir David Maxwell-Fyfe, Shawcross's predecessor and understudy, a master of the art of cross-examination, his brief prepared to perfection. The defence, as Wieviorka makes clear, was content to argue that, while horrible crimes were committed, none of them could be held responsible. Each in his separate way had simply carried out his patriotic duty, in that exemplary spirit of loyalty that Tacitus had remarked about the Germans two millenia ago.

The best moment for the defence was the revelation of the Secret Protocol, which until February 1946 was unknown in the West. The contents of this protocol remained secret throughout the trial, but its existence was left in no doubt. Dr. Alfred Seidl, counsel to both Hess and Frank, did his utmost to force the issue, vainly summoning Molotov to appear as witness. Both Varaut (p. 119) and Wieviorka (p. 69) write of the existence of only two copies of the protocol, both in Soviet hands from 1945, but in fact there were four (two in German, two in Russian), and photocopies of Germany's two copies had escaped the Soviet seizure. While these photocopies were not introduced into the trial, Dr. Friedrich Gaus, who in 1939 had headed the legal department of the Wilhelmstrasse and had drafted both the Pact and the secret protocol, presented an affidavit after reproducing the protocol from memory. Margarete Blanck, von Ribbentrop's private secretary, also attested to the existence of the protocol. As for von Ribbentrop, he stated that Hitler had instructed him in March 1939 to see if there was not some common ground between national socialism and bolshevism that could provide for a pact, and that »if we speak here of aggression against Poland, then the two countries are guilty.« Seidl put the question point-blank: »Can one of the Powers sitting on the bench be the judge of a crime in which it was the accomplice?«

All of this unnerved the Soviet chief prosecutor General R. A. Rudenko, who was recalled to Moscow for instructions. There was even talk of the USSR withdrawing from the Tribunal: the Cold War had made its entrée. Lawrence agreed to censor four pages of the proceedings, but the secret was out: the world now knew that a secret protocol existed. If the truth about Katyn Forest did not emerge at the same time, the Soviet version of events, presented in all its cynicism by Rudenko, was placed on the record, allowing Stalin to be judged when, in 1992, the fabric of lies was finally torn apart.

Lord Lawrence, writes Wieviorka, was undeniably the great moral presence in the trial. The verdicts, handed down in those resonant cadences that Voltaire praised (»If Justice had a voice, it would speak in the tones of an English judge«), received, in every case except those of Hess, Jodl and the admirals, the overall approval of the world. The presence of the Soviets diminished the Tribunal's prestige to some extent, but the isolated vote of the Soviet judge, General I. T. Nikichenko, had little influence on the decisions.

One point of criticism remained, and still remains. Would it not have been better for the Nazis to have been judged by those states which had remained neutral in the war,

rather than by the victors? Or by Germans who had resisted Hitler, in Germany or in exile? VARAUT points out that the latter procedure could have backfired. If the Germans had been given the responsibility, they would have faced a cruel dilemma: if too stringent, they would have been accused of vengefulness, and if too lenient, of subservience to the victors. On the whole, the verdicts were a milestone in the progress of justice, and as the French prosecutor Edgar Faure put it, »a broadening of the collective conscience of mankind.«

Both books suffer in quality from the lack of a bibliography and an index. WIEVIORKA's work contains few errors. The Tribunal opened on 18 October 1945, and not 1946 (p. 28). Molotov, not Stalin, signed the Pact (p. 67). The charges against the admirals were led by the British prosecutors not for »symbolic reasons« (p. 94) but because the Battle of the Atlantic had been fought primarily by the Royal Navy and not the US Navy. Ernest King, not Nimitz (pp. 96, 151, 171) was US Chief of Naval Operations. Christian Wirth, KL-Lublin's commandant (p. 138), did indeed hold SS rank (Obersturmführer). Kellogg (p. 64), KL-Buchenwald's commandant Pister (p. 136), and Ludwig Erhard (p. 179) are misspelt. But these errors are insignificant when compared with those of VARAUT, who leaves the reader asking if the author, albeit a lawyer, cared enough about his book to read its proofs. The following are misspelt: *Der Stürmer* (p. 15), Streicher (pp. 25, 43), Dr. Gaus (p. 70), *Lebensraum* (p. 78), Funk (p. 87), Shirer (pp. 107, 121) – who wrote no book under the title *Hitler* –, *Stars and Stripes* (p. 113), Hossbach (pp. 113, 370), Margarete Blanck (p. 118), Dr. Seidl (p. 128), Gleiwitz (p. 157), *Kugel-Aktion* (p. 178), *Sonderbehandlung* (p. 178), *Weserübung* (pp. 179, 306), Volkogonov (p. 192), von Reichenau (pp. 215, 218), *Endlösung* (p. 263), Hans Lammers (p. 263), Sonderkommando (pp. 270, 271), Pister (p. 277), *Werwolf* (p. 290), Eisenhower (p. 290), Broderick (p. 303), McCloy (p. 350), Potsdam (p. 357) – which was held in 1945, not 1943 –, Wannsee (p. 403) – which was held on 20 January, not 20 June 1942 (p. 284) –, and Ludwig Erhard (p. 407). In the photographs, the two American judges are given the title of English knights. Shawcross was responsible for Northern Ireland but not for Ireland (p. 95). No British division, indeed no British soldier, had landed in France by the time the Polish campaign ended (p. 106). Göring is described as »always the last to arrive in court« (p. 362) and »always the first to arrive in court« (p. 385). The reference to the cry of the US captain of the guard: »Whithout day« (sic, p. 388), is totally incomprehensible; if VARAUT means *sine die*, English leaves the term in Latin, and why would a captain of the guard say it? Hess died at the age of 94, not 84 (p. 392). Finally, an error common to both books is the failure to present the Gestapo, under Heinrich Müller and not directly under Kaltenbrunner (VARAUT, p. 15), in its proper place in the SS hierarchy. The Gestapo was Amt IV of the Sipo, which with the SD formed the RSHA. Eichmann was head not of IV.A.4 (VARAUT, p. 255) but of IV.B.4.

David Wingeate PIKE, Paris

Peter ERLER, Horst LAUDE, Manfred WILKE (Hg.), Nach Hitler kommen wir. Dokumente zur Programmatik der Moskauer KPD-Führung 1944/45 für Nachkriegsdeutschland, Berlin (Akademie) 1994, 426 p.

Cet ouvrage, conçu par des historiens des deux anciennes parties de l'Allemagne, nous présente une sélection de 41 documents rédigés par la direction du parti communiste allemand (KPD) en exil à Moscou. Ils traitent de l'organisation politique et sociale de la future Allemagne post-nazie et du rôle que la KPD entendait y jouer. Rédigés entre le début de l'année 1944 et juin 1945, et présentés par ordre chronologique, ils permettent d'apprécier l'évolution des projets de la KPD en fonction du développement des opérations mili-