

The Defense of Hjalmar Schacht

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We have neither given nor received unauthorized aid on this assignment.

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The prosecution has indicted Dr. Hjalmar Schacht on Count One, the Common Plan or Conspiracy; Count Two, Crimes against Peace; and Count Four, Crimes against Humanity. The prosecution claims that the economic policies Schacht promoted for rearmament of Germany under his tenure as President of Reichsbank, Minister of Economics, and Plenipotentiary General for War Economy implicate him as a co-conspirator in the formation of the Third Reich's common plan to wage an aggressive war. Furthermore, they also argue that he knowingly violated international treaties by establishing programs to finance the rebuilding of the German army and weaponry later used to wage war. Lastly, the prosecution claims that Schacht enacted specific policies that targeted Jews thereby constituting his guilt under Count Four. However, we, the defense argue that the policies Schacht enacted for financing rearmament were passed to stimulate the German economy, not to conspire in waging aggressive wars. The defense also asserts, that the treaties Schacht is alleged of violating are binding on states not individuals and furthermore were in many regards nullified by the actions of the other states. Finally, the defense claims that the proceedings are not based on law, and the defendant has not received equal protection under the law.

According to the Charter of this tribunal, charges for conspiracy can be brought against a defendant if their actions were not "too far removed from the time of the decision and of action" and were carried out due to their participation in "a concrete plan to wage war."¹ We argue that not only was Schacht far removed, but he was not involved in any "concrete plan." We intend to demonstrate that Schacht's policies for rearmament were not for the purposes of war, but rather his for the economic recovery of Germany, and as such he is not guilty of conspiracy, as alleged under Count One.

Beginning in March 1933, Schacht was appointed to a number of positions in the Reich government. Serving in these positions allowed Schacht to implement policies necessary to stimulate Germany's economy. When Schacht came to power, the country was still feeling the effects of the Great Depression and was unable to raise money either through external or internal loans.² As such, Schacht continued public works programs, funded by large budget deficits, introduced under Kurt von Schleicher's government, which he believed that would stimulate the economy and reduce unemployment. Although initially the program focused on infrastructure, armaments soon became priority because unlike other projects, orders could be distributed among a number of pre-existing factories spread equally across the country.³ Furthermore, pursuing rearmament allowed the government to cut associated costs such as accommodation and transportation for workers to employment locations.⁴ Schacht's program was deemed successful as Germany saw the most rapid decline in unemployment in any country during the Great Depression.⁵

¹ Avalon Project: Judgment: The Law as to the Common Plan or Conspiracy : <<http://avalon.law.yale.edu/imt/judlawco.asp>>

² Avalon Project: Nazi Conspiracy and Aggression – Vol. 2 Ch XVI Part 12 <http://avalon.law.yale.edu/imt/chap16_part12.asp>

³ Schacht, Hjalmar. Confessions of "The Old Wizard": The Autobiography Hjalmar Horace Greeley Schacht

⁴ Ibid.

⁵ DeLong, J. Bradford 1997

As stated above, the public works program was successful due to the government running large budget deficits. This process was possible through the issuance of government bills, including “mefo” bills. These bills held by private banks and investors and the Reichsbank were to be repaid by the government after five years from expected increases in tax revenue. The prosecution claims that this operation allowed the Reichsbank to lend more money to the government than was legal; however, they fail to note how this system allowed for economic recovery. The kind of deficit-financing encouraged a rapid increase in liquidity of the systems and decreased industry’s dependence on the banks, allowing for unclogging of mercantile credit.⁶ The system was quite successful; as tax revenue did increase, allowing for the government to pay off both foreign debt and a large part of the debt contracted in the first years of recovery.⁷

Furthermore, beginning in 1936, Schacht openly opposed Hitler’s Four-Year Plan and advocated cautious fiscal policy. His disagreement with Hitler, who claimed Schacht “was trying to derail his plans through financial methods,” led to his resignation as Minister of Economics and Plenipotentiary General for War Economy in November 1937 and open hostility towards Schacht by Hitler’s inner circle. His 1943 dismissal from his post, Minister without Portfolio, and his 1944 arrest for complicity in the bomb plot were, in part, based on Hitler’s enmity towards Schacht.⁸ “Had the policies advocated by him been put into effect, Germany would not have been prepared for a general European War.”⁹ Thus, we can show Schacht’s motive was not to finance aggressive wars, but rather to revitalize the depressed German economy; furthermore, there was a large amount of time that passed between his dismissal and the waging of aggressive wars. Thus, we believe that the prosecution cannot claim that he was an active participant in the common plan.

Count One and Two are deeply intertwined with each other; Count Two states that all Schacht during a period of years preceding May 1945, participated in the planning, preparation, initiation, and waging of wars of aggression, also violated international agreements.¹⁰ While Schacht’s actions helped lay the foundation for Germany’s rise as a military power, rearmament itself is not a crime under the Charter.¹¹ To be a crime against peace, under Article 6 of the Charter, it must be clear that Schacht carried out rearmament as a part of a plan to wage aggressive wars.¹² This is not justified.

The prosecution asserts the Schacht’s economic policies which promoted rearmament were in direct violation of the Versailles Treaty, the Locarno Pact and the Kellogg-Briand Pact. However, as we have demonstrated, Schacht’s motive was not to aid in the preparation of aggressive wars; rather, his actions—calling for limitations on armaments, resigning from Reich posts, attempts to exercise financial constraint in spite of the Four-Year Plan—demonstrate that his primary motivation for promoting rearmament was Germany’s economic revival.

⁶ Overy, R.J. *The Nazi Economic Recover, 1932-1938*. 1982: 42

⁷ Ibid.

⁸ Ibid.

⁹ Avalon Project: Judgment: Schacht. < <http://avalon.law.yale.edu/imt/judschac.asp>>

¹⁰ Avalon Project:

¹¹ Avalon Project: Judgment: Schacht.

¹² Ibid

As the prosecution pointed out, both the Locarno and Kellogg-Briand Pacts bind states to respect countries' sovereignty and renounce war as a mean to settle disputes.^{13,14} They do not mention rearmament in any regard. Although the Versailles Treaty and the charter of the League of Nations address rearmament explicitly, the fact these treaties were not violated solely by Germany is significant. The failure of the U.S. to ratify these treaties, as well as the Allies' failure to impose limitations on their militaristic activities, as outlined in the preamble of Part V of the Versailles Treaty and Article Eight of the League's charter, undermines their legitimacy as binding international agreements.

Moreover, it is vitally important to note that under these agreements it is only states, not individuals, which are subject to its jurisdiction. Holding individuals accountable under these treaties sets a dangerous precedent in international law as it would require international tribunals to try extremely large numbers of people who have had differing levels of involvement in international conflicts.

As mentioned above, participation, as outlined in the charter, is a necessary condition for prosecution of a defendant on Count Two. However, Schacht was not involved in the planning of any of the specific wars of aggression charged in Count Two.¹⁵ Furthermore, we argue that his participation in the occupation of Austria, Czechoslovakia, and Rhineland was so limited that it does not amount to participation in the common plan.¹⁶ During this period, Schacht served only as President of the Reichsbank actively working to secure the economy by attempting to exercise fiscal restraint and urging Hitler to reduce armament expenditure.¹⁷ Thus, following from the tribunal charter, Schacht should not be subject to prosecution under Count Two.

Hjalmar Schacht has also been indicted on Count Four for enacting policies that both targeted Jews and denied them their right to self-determination.

The defense does not contest the fact that Schacht proposed the Paltrue Agreement that deported 170,000 Jews to Palestine, nor does it deny that he passed laws that limited the Jews' ability to exercise self-determination. The prosecution bases its case on the idea that although these "crimes" were not encoded in law, they nevertheless violated human rights that were recognized before the creation of the Charter of the International Military Tribunal or Universal Declaration of Human Rights (UDHR) and were thus accepted as a legal standard.¹⁸ The defense will contest this claim.

For this tribunal to be a legal proceeding, then it must base its judgment on the law. According to Oliver Wendell Holmes the law is defined by the "prophecies of what the courts will do."¹⁹ No such prophecies existed before the creation of the Charter; therefore to say that Schacht violated the law contradicts the very meaning of the word. Antonin Scalia adds to this

¹³ Avalon Project:: The Locarno Pact 1926

¹⁴ Avalon Project : Kellogg-Briand Pact 1929

¹⁵ Avalon Project: Judgment: Schacht

¹⁶ Ibid

¹⁷ Ibid

¹⁸ Chime Dolma and Nestor Martinez. "The Prosecution of Hjalmar Schacht" (2010), p. 5-7.

¹⁹ Oliver Wendell Holmes. "The Path of the Law." *Harvard Law Review* 10, no. 457 (1897): ~460.

point by stating that “rudimentary justice requires that those subject to the law must have the means of knowing what it prescribes.”²⁰

The prosecution tries to maneuver around the absence of law by making the claim that the human rights that were violated had already been established before the creation of the UDHR, but this argument does not have merit. The prosecution cites a treaty signed by the United States, Britain, and several other countries in 1919 that established the “total and complete protection of life and freedom of all people regardless of their birth, nationality, language, race or religion.”²¹ While the aims of this treaty were noble, Germany was not party to it. The prosecution would have a stronger argument that Germany was obligated to recognize these “rights” had the signatories and their allies abided by treaty, but that was not the case.

In the American South society was legally segregated through the Jim Crow laws. From the 1880s to the 1960s these laws dictated how people of different races could interact;²² thus denying them the total and complete protection of freedom regardless of their race.

During the Second World War the US denied a racial minority this same freedom by confining Japanese-Americans to internment camps. President Roosevelt authorized the detention of 120,000 persons on February 19, 1942.²³ This was a clear violation of the treaty that the prosecution cites, so it is difficult to make the claim that these norms should be applied to non-party states. Should the prosecution wish to proceed with this argument, then we must take into account the actions taken by the allies of the signatories.

Throughout the course of the Second World War the USSR repeatedly violated the norms articulated by the treaty and the laws established by the Charter. On the night of June 14-15, 1941 the Soviets deported 60,000 Estonians, 34,000 Latvians and 38,000 Lithuanians. In Eastern Poland up to one million people were forcibly expelled throughout the war, and thousands were massacred in the Katyn forest. Entire nations from Crimea and the Caucasus region were removed including, but not limited to, the Volga Germans, Crimean Tatars and Chechens.²⁴ Geoffrey Hosking, a historian, has made the observation that, “it seems as if Stalin intended to eliminate these nations by depriving them of their homeland, their economy, their customs, their religion and their language.”²⁵ Yet these norms articulated by the treaty were not applied to the USSR.

If the prosecution would like to make its case based on implied legal principles rather than established legal codes, then it must recognize the concept of equal protection under the law. This idea, reiterated by Article 7 of the UDHR,²⁶ is essential to any legal system. Scalia states, “The Equal Protection Clause epitomizes justice more than any other provision of the

²⁰ Antonin Scalia. “The Rule of Law as a Law of Rules.” *The University of Chicago Law Review* 56, no. 4 (1989): 1179.

²¹ Chime Dolma and Nestor Martinez. “The Prosecution of Hjalmar Schacht” (2010), p. 7.

²² Vernellia R. Randall. “Examples of Jim Crow Laws.” The University of Dayton.
<http://academic.udayton.edu/race/02rights/jcrow02.htm> (accessed 3 May 2010).

²³ Ingolf Vogeler. “Japanese Internment Camps.” The University of Wisconsin-Eau Claire.
<http://www.uwec.edu/geography/ivogeler/w188/j1.htm> (accessed 3 May 2010).

²⁴ Geoffrey Hosking. *A History of the Soviet Union: 1917-1991* (London: Fontana Press, 1992), pp. 252-4

²⁵ Hosking, *A History of the Soviet Union*, p. 255.

²⁶ General Assembly of the United Nations. “The Universal Declaration of Human Rights.” United Nations.
<http://www.un.org/en/documents/udhr/> (accessed 3 May 2010).

[US] Constitution.”²⁷ In light of the crimes committed by the US and the USSR, it is clear that equal protection has been ignored. The prosecution may try to argue that because the tribunal only has jurisdiction to try war criminals from the European Axis equal protection under the law was not violated. Such an assertion is false if we abide by the principle behind the tribunal.

The Charter outlines the procedure with which the defendants will be tried and identifies the crimes for which they will be tried for, but the tribunal operates under the principle that the laws that were violated already existed.²⁸ Therefore the tribunal is merely enforcing universal laws, and it is the responsibility of the Allies to use other legal mechanisms with other jurisdictions to enforce these laws. The fact that no charges were brought against the Allied heads of state powers nor other high-ranking government and military officials responsible for crimes against humanity is clear evidence that the law was not applied equally. This legal double standard is not, as Henry Kissinger states, “permitted in the jurisdictions of many democracies – in Canada, for example, a charge can be thrown out of court merely by showing a prosecution has been selective enough to amount to an abuse of the process.”²⁹ Because the US, Britain, France and the USSR were the states bringing charges against Schacht, it is clear that the prosecutors have abused the legal process by failing to enforce the law equally when they possess the power to do so in their respective jurisdictions.

Count One: Common Plan or Conspiracy. Schacht’s motivation was not to wage war but to rebuild the German economy.

Count Two: Crimes Against Peace. Because he was not a part of the conspiracy he cannot be charged for crimes against peace.

Count Four: Crimes Against Humanity. The laws that Schacht is tried under did not exist, and, nevertheless, all countries and individuals have the right to equal protection under the law.

Given the evidence at hand, we find that Hjalmar Schacht should be acquitted.

²⁷ Scalia, “The Rule of Law as a Law of Rules,” p. 1178.

²⁸ The Avalon Project. “Charter of the International Military Tribunal.” Lillian Goldman Law Library. <http://avalon.law.yale.edu/imt/imtconst.asp> (accessed 3 May 2010).

²⁹ Henry A. Kissinger. “The Pitfalls of Universal Jurisdiction.” *Foreign Affairs*, July-August 2001.

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