

7. The Origins of the United Nations

Since the United Nations has been very involved in the affairs of Israel and Palestine, it is worthwhile to take some time to understand its origins. This will also illustrate how Great Powers tend to act and clarify what can reasonably be expected from them.

Before the 1920's began, "the war to end all wars" had ended. Before the 1930's began, the League of Nations had outlawed war itself. But before the 1940's began, the world was at war, and a great evil had taken control of the most scientific, most cultured nation in the world. An image and likeness of humanity far darker than many were capable of imagining had begun to emerge. Outlawing war had not eliminated its causes, consequences, or power dynamics. Nor had good wishes.

Though all wars have a moral dimension, World War II was seen to have been a direct assault on the moral values on which Western civilization had been built. Robert Conot expressed it this way: "What had taken place in this culture of lunacy was not that the ordinary human sensibilities had disappeared, or that the denizens had been unable to distinguish between right and wrong, or moral and immoral actions, but that Hitler had convinced them that commonly accepted ethics and morality were Judeo-Christian inventions to be superseded by new doctrines based on utilitarianism and necessity."¹

The Nuremberg Trials were the official attempt to satisfy the public outcry for justice. They were held to punish the major Nazi war criminals and organizations. The chief Allied Powers — the United States, Great Britain, France, and the Soviet Union — were apparently united on behalf of humanity to judicially condemn the Nazi regime and philosophy. The International Military Tribunal (IMT), before which the Trials were held, was publicly presented as the means for rendering that judgment and for issuing an unequivocal warning to any who might be tempted to follow the Nazi example.

What the Nazis had done could not be undone, but at least Justice could have the last word. Humanity could say with one voice, "We will not allow such evil to go unpunished. These trials will teach unforgettable lessons to all future generations."

As with all political endeavors, a realistic appraisal produces a markedly different picture than one based on hope. The United Nations is often seen as a suitable forum for acting on, if not solving, the Israel-Palestine conflict. Since the UN was a continuation of the Yalta Agreement between Roosevelt, Churchill, and Stalin, it is necessary to examine that agreement which also instituted the Nuremberg Trials of the International Military Tribunal (IMT). Examining the origins of the UN is essential to understanding what it is. We'll begin with the Trials, because they preceded the UN.

Unfortunately, the Trials were something other than their public presentation or image. Robert Jackson took leave from his duties as a member of the U.S. Supreme Court to be the Chief U.S. prosecutor at the trials. Harlan Fiske Stone, the Chief Justice of the United States Supreme Court at the time, said: "Jackson is away conducting his high-

grade lynching party in Nuremberg... I don't mind what he does to the Nazis, but I hate to see the pretense that he is running a court and proceeding according to common law. This is a little too sanctimonious a fraud to meet my old-fashioned ideas."²

In the eyes of the U.S. Chief Justice, the trials were not a search for Justice, but a pretense and a fraud. The Nazis deserved any punishment they received, but the IMT was created for political purposes, rather than as a search for moral justice of any kind. After all, the Allied Powers did not share a common morality or concept of justice. They did not have compatible legal systems nor even a common concept of the nature and purpose of law. They did not share a common set of human values. There was no common agreement on what is "good" in human behavior or in governmental rule. There were some differences between the United States, Great Britain, and France, but these were quite minor compared to the differences between these three and the Soviet Union.

The trials were not held to uphold any existing law which the Allies all shared. "Francis Biddle, recounting his participation [as the primary American judge] on the Nuremberg War Crimes Tribunal, observes that during that time he knew how judges must have felt in the formative period of the English common law, for he found himself creating the law almost *ex nihilo*."³ From his point of view, the Law they were to use did not already exist in statutes or in treaties; it was necessary to create it in order to conduct the trial. The Law was not completely created *ex nihilo*, for it echoed certain values and political realities, but it was *de novo*, and it was *ex post facto*.

"Professor Hans von Hentig, a German refugee teaching in the United States, protested to President Truman that every one of the defendants could be convicted under the laws of Germany or any other nation, but that the rules of the International Military Tribunal were similar to those of the French revolutionary tribunals during the Robespierre terror: 'There is not a professor of constitutional or criminal law in this country or any other civilized state who would not ask you urgently to have those rules reconsidered. They are opposed to all legal standards.'"⁴

There was no way that the Nuremberg Trials could have adequately punished the Nazis for what they had done. Nor could any other human means have adequately punished them. That, however, does not negate the fact that the Trials themselves were, in the words of U.S. Supreme Court Chief Justice Stone, a sanctimonious fraud. The Trials were publicly presented as a conscientious search for justice, but they showed little value for any concept of justice. The public was being defrauded.

The trial and the UN organization coupled with it were primarily advocated by the United States. The goal was to create a framework in which the Great Powers might work together to exercise more control over a world that had spun out of control. The trials were political, and the nascent organization to be set up after them was also political.

Throughout the Trial, the language of the Western allies reflected a common moral outlook. François de Menthon, the French Chief Prosecutor, told the Court, "I propose

today to prove to you that all this organized and vast criminality springs from what I may be allowed to call a crime against the spirit. I mean a doctrine which, denying all spiritual, rational, or moral values by which the nations have tried, for thousands of years, to improve human conditions, aims to plunge humanity back into barbarism; no longer the natural and spontaneous barbarism of primitive nations, but a diabolical barbarism, conscious of itself and utilizing for its end all material means put at the disposal of mankind by contemporary science. This sin against the spirit is the original sin of National Socialism from which all crimes spring.”⁵

In his final argument, American Chief Prosecutor Robert Jackson said, “We are not trying them for the possession of obnoxious ideas. It is their right, if they choose, to renounce the Hebraic heritage in the civilization of which Germany was once a part. Nor is it our affair that they repudiated the Hellenic influence as well. The intellectual bankruptcy and moral perversion of the Nazi regime might have been no concern of International Law had it not been utilized to goosestep the *Herrenvolk* across international frontiers. It is not their thoughts, it is their overt actions which we charge to be crimes.”⁶

In the very moving final remarks of his summation, the British Chief Prosecutor, Sir Hartley Shawcross, directed the Court to remember that there is a God in heaven who sees and judges. He recalled the testimony of one witness who had described the victims of a mass execution; especially a father and his small boy, as they, the rest of their family, and many others waited to be murdered. The father had spoken to his son and pointed to the sky. “Mankind itself — struggling now to re-establish in all countries of the world the common simple things — liberty, love, understanding — comes to this court and cries, ‘These are our laws, let them prevail!’ ... You will remember when you come to give your decision the story [of the mass execution], but not in vengeance — in a determination that these things shall not occur again. The father — you remember — pointed to the sky, and seemed to say something to his boy.”⁷

The Soviets did not refer to a moral standard, the spirit, God, or a Hebraic or Hellenic heritage. They occasionally used moral language, but always without specifying a specific standard. Stalin had done the same things for which the Nazis were on trial.

There were four major charges in the indictment:

“Count 1 — CONSPIRACY to commit crimes alleged in the next three counts.

“Count 2 — CRIMES AGAINST PEACE including planning, preparing, starting, or waging aggressive war.

“Count 3 — WAR CRIMES including violations of laws or customs of war.

“Count 4 — CRIMES AGAINST HUMANITY including murder, extermination, enslavement, persecution on political or racial grounds, involuntary deportment, and inhumane acts against civilian populations.”⁸

Counts 2, 3, and 4, and the additional Crime of Genocide, have provided the basic

framework for international criminal courts of the Twenty-First Century. Genocide was a major objective of the Third Reich. It was officially declared to be a crime in the “Genocide Convention” of 1948.⁹

At Nuremberg, the charge of conspiracy to start an aggressive war was the one which held the whole trial plan together. The conspiracy, however, was between Hitler and Stalin. The Nazis were on trial, Stalin was empowered to judge them. George Finch, the Chairman of the American Bar Association Committee on Punishment of War Criminals, said, “If the dictum of the Nuremberg Tribunal that the aggression against Poland constituted an international criminal act for which the perpetrators were individually liable is good law, then there follows an irrefutable implication that Soviet Russia and its officials were *participes criminis*.”¹⁰

It was not just in starting World War II that the Soviets engaged in aggressive war. They had done so before the War started, and they continued to do so after the War was over. Before the Trial began, Justice Jackson wrote to President Truman from Berlin, “We say aggressive war is a crime and one of our allies asserts sovereignty over the Baltic States based on no title except conquest.”¹¹ The first clause of the Molotov-Ribbentrop protocol — the secret agreement between Stalin and Hitler to begin the war — gave the Soviet Union approval to subjugate the Baltic States. The second clause called for the joint invasion of Poland.

In the first session of the International Military Tribunal, Sydney S. Alderman, Associate Trial Counsel for the United States, read to the Court the indictment which charged Hitler’s former henchmen with war crimes. Alderman recalled that, “Throughout the negotiations and, indeed, throughout the Nuremberg trial, all delegations were obviously embarrassed on this basic matter of aggressive war by the fact that our ally, the Soviet Union, had invaded Poland at the same time that Hitler invaded that country, the actual initiation of aggressive war.”¹² The defendants were forbidden to mention this fact.

The defendants were also on trial for deporting civilian populations. “When Bernays [the originator of the trial concept and proposal] had wanted to charge the Germans with the dispossession and transportation of populations, Assistant Secretary of War John J. McCloy had warned him not to — some fifteen million Germans were, at that very moment, being driven out of their homes in the East.”¹³

One of the specific initial charges in the indictment against the Nazi defendants was the slaughter of 15,000 captured Polish prisoners-of-war, the Katyn Massacre. When it was discovered that the Soviets had murdered them, the charge was quietly dropped from the indictment and never mentioned again.

In his opening statement to the IMT, Robert Jackson said, “These men created in Germany, under the ‘Führerprinzip’, a National Socialist despotism equalled only by the dynasties of the ancient East. They took from the German people all those dignities and freedoms that we hold natural and inalienable rights in every human being.”¹⁴ The

fuhrerprinzep made the law whatever the will of the leader of the State was.

The Ruler claims supremacy in all ways in all things. "In German legal theory, Hitler was not only the Supreme Legislator, he was also the Supreme Judge."¹⁵ Whatever he commanded was the law. German Justice Under-Secretary Kurt Rothenberger summed up his own legal philosophy with the words: "The judge is on principle bound by the law. The laws are the orders of the Führer."¹⁶ Rudolf Hess said, "The party is Hitler! But Hitler is Germany, and Germany is Hitler!"¹⁷

Professor Hermann Jahrreiss, a witness for all of the defendants at Nuremberg, told the tribunal: "If now in the European meaning one asks about legal restrictions, and first of all one asks about restrictions of the German law, one will have to say that restrictions under German law did not exist for Hitler. He was *legibus solutus* in the same meaning in which Louis XIV claimed that for himself in France. Anybody who said something different expresses a wish that does not describe the actual legal facts."¹⁸

Equating the will of the ruler with the Law was nothing new, not even in the West. More than seventeen hundred years earlier, "The Roman jurisconsult Ulpian coined the most widely used definitions of the prince's authority: 'what pleases the prince has the force of law (*quod principi placuit vigorem legem habet*)' (Dig. 1.4.1) and "the prince is not bound by the law (*princeps legibus solutus est*)' (Dig. 1.3.31)."¹⁹ The claim that the ruler was above the Law was standard in Western philosophy, especially in teachings on Sovereignty.

With less philosophy, but more fear, it was exactly the same in the USSR, only with Stalin. No one knew that better than the members of the Soviet delegation to Nuremberg. Andrei Vyshinsky was Stalin's personal representative at the IMT, and therefore the one whom all the other members of the delegation needed to fear and obey. He was responsible and accountable for all Soviet preparations for the trial.

At the end of World War I, Vyshinsky had become "the administrative head of distribution at the People's Commissariat of Food... solely in charge of distributing products and basic necessities across the entire vast, famished, poorly-clad and poorly-shod country."²⁰ In that capacity, he addressed "the First All-Russian Conference on Distribution Committees in November 1919: 'Nowadays in distribution one does not have to follow the universal principle of justice.... We are changing over from the principle of distribution on an egalitarian basis to the principle of class distribution.'"²¹ Whether or not needy individuals received food or clothing depended upon the "class" to which they belonged or to which they were assigned.

In the following years, Vyshinsky served as co-prosecutor in several of Stalin's show trials and, most importantly, he was the architect of Stalin's Great Purge. Vyshinsky successfully coordinated the Soviet Secret Police (NKVD) and its tortures, the press and its outraged condemnations, and the courts and their drama. At that level, the Soviet courts were unconnected to law, evidence, and guilt or innocence.

Because of Vyshinsky's mastery of the process, he was successively promoted to vice-premier of the Soviet Union and Minister of Foreign Affairs. Roy Medvedev said of Vyshinski, "He was an unprincipled, cowardly politician, hungry for power."²² After the war, Stalin appointed him to be the first Soviet representative to the newly formed United Nations.

Some of the Soviet representatives in Nuremberg had worked with Vyshinsky on the Purge Trials, and they knew what was expected of them. L. Sheinin, a member of the Soviet prosecution at Nuremberg, had become Vyshinski's right hand man. As an investigator who helped put Zinoviev, Kamenev, and Pyatakov to death, Sheinin was awarded the 'Labour Red Banner'.²³

The actual "crime" of Zinoviev and Kamenev was that they were competitors to Stalin for Communist Party leadership after the death of Lenin. Pyatakov was a close associate of Bukharin, another prominent Communist whose existence also detracted from absolute subservience to Stalin.

In Nikita Khrushchev's 1956 secret speech to the Party leadership, he commented on the way the Soviet Union had been run: "After Stalin's death, the Central Committee began to implement a policy of explaining concisely and consistently that it is impermissible and foreign to the spirit of Marxism-Leninism to elevate one person, to transform him into a superman possessing supernatural characteristics, akin to those of a god. Such a man supposedly knows everything, sees everything, thinks for everyone, can do anything, is infallible in his behavior.

"Such a belief about a man, and specifically about Stalin, was cultivated among us for many years."²⁴

General I. T. Nikitchenko was one of the two Soviet chief negotiators. For his service as a judge in putting Zinoviev, Kamenev, and Pyatakov to death, Nikitchenko had received the Order of Lenin award from Stalin.²⁵ He was Vice President of the Supreme Court of the Soviet Union. Stalin rewarded ingenuity and steadfastness in putting to death his enemies of the day.

Before the trial formally began, Nikitchenko, who had been announced as the Soviet Chief Prosecutor, left to go to Moscow. When he returned, he was the head Soviet judge. For the Soviets, this was merely a switch of position — all personnel had the same assignment. For the other Allies, it was a major violation of the impartiality of the judiciary. Robert Jackson remarked to the American judges at Nuremberg, Biddle and Parker, "This is not an ordinary trial. Some of the proprieties went by the way when General Nikitchenko, who had been the Soviet prosecutor, was made a member of the tribunal."²⁶ The proprieties were abandoned much earlier, when Stalin was included. As the Chief Justice of the United States Supreme Court remarked, the trial was a sanctimonious fraud.

The Soviet Chief Prosecutor, Col. Rudenko, later promoted to General, was a State

Counselor of Justice, Second Rank, and Procurator of the Ukrainian Soviet Socialist Republic. He later became the commandant of the Soviet Sachsenhausen concentration camp, an NKVD special camp, where 12,500 bodies were later found in mass graves. "Pathologists have determined that most of the victims died of starvation, exposure or communicable diseases. Some had evidently been beaten. Most were children, adolescents and elderly people."²⁷

During the trial, Ernst von Weizsacker, former German Deputy Foreign Minister, produced before the IMT a copy of the second secret protocol of the Molotov-Ribbentrop agreement. "The discomfiture of the Russians in Nuremberg was great, and the pending testimony on the Katyn Forest massacre promised to increase it further. A few days after Weizsacker's appearance, N. D. Zorya, one of the assistant Soviet prosecutors, shot himself."²⁸

While Zorya's suicide cannot be indisputably traced to a documented cause, it is a reasonable conclusion that he thought it better to kill himself rather than to return to Moscow to face the wrath of Stalin for the trial embarrassment. Such a suicide, to avoid being a tortured scapegoat for failing to prevent the truth from leaking out, was quite consistent with the whole record of Stalin's reign. Zorya was not the only one who killed himself rather than face Stalin.

Vyshinsky was in charge of the whole Soviet delegation. In February 1945, he had been seated next to Stalin and Vyacheslav Molotov as part of the Soviet team that negotiated with the U.S. and the U.K. at Yalta.²⁹

Molotov had signed the secret protocol with Ribbentrop on August 23, 1939. Its first article provided for the new boundary between the German Reich and the USSR after they made "a territorial and political rearrangement in the areas belonging to the Baltic States (Finland, Estonia, Latvia, Lithuania)". The second article provided for the same rearrangement after they divided Poland. The third article gave approval to Soviet control of Bessarabia in Roumania, now in Moldova.³⁰ The subsequent confidential protocol of September 28, 1939 gave approval to forcible resettlements of some civilians of particular nationalities residing in the affected areas.

Also at Yalta with them was Lavrenti Beria, head of the Soviet Secret Police. Beria, had already sent hundreds of thousands of people to the Soviet forced labor camps, the gulag, where many were killed in the same way as in Hitler's concentration camps. Additionally, Beria supervised the war-related purging, deportation, and ethnic cleansing of various minorities.³¹ He also prepared an order for the killing of particular groups of Poles which numbered about 25,000. Stalin signed the order, which resulted in what became known later as the Katyn Massacre, as well as smaller massacres in other places.

Stalin and his associates were guilty of all four counts listed in the indictment against the Nazi leaders: Crimes against Peace, War Crimes, Crimes against Humanity, and the Conspiracy to commit these crimes. But Stalin was not the only one who, though guilty,

was empowered to judge.

The Chairman of the American Bar Association Committee on Punishment of War Criminals had pointed out that, “In the matter of the German aggression upon Czechoslovakia, its initiation was celebrated by an agreement between the aggressors and some of the present prosecuting powers.”³² At Munich, the British and the French leaders joined with Hitler and Mussolini to support the invasion and destruction of Czechoslovakia. The British Prime Minister had encouraged his countrymen to rejoice in it. So “If the aggression against Czechoslovakia was an international criminal act, then all the participants in the Munich Agreement were equally guilty.”³³ No representatives of the government of Czechoslovakia were even invited to the Munich Conference.

If there was a basis for condemning the conspiracy to invade and divide Poland, then it would also apply with equal force to the conspiracy to invade and divide Czechoslovakia, a conspiracy in which Britain, France, the Soviet Union, and Italy took part. At Nuremberg, the Allies condemned actions which they had earlier accepted or approved, or in which they had been complicit. Stalin, in particular, was guilty of the same crimes against peace and humanity as those accused were. The whole trial was designed and managed to hide that fact, sometimes at American initiative.

The construct of the trial and its laws had to be approved by Stalin. The Western Allies were continually accepting his constructs. Finch noted that, “The charge of Crimes Against Peace is a new international criminal concept. It was not envisaged in the warnings issued by the Allies before hostilities ended nor made a part of the original terms of reference to the United Nations War Crimes Commission established in London during the war. It may be traced to the influence of Professor A. N. Trainin, of the Institute of Law of the Moscow Academy of Sciences...”³⁴ Trainin was the other Soviet chief prosecutor.

The conspiracy to wage aggressive war was a crime when committed by the Nazis, but not when committed by the Soviets, even when it was exactly the same act. The deportation of civilian populations was a crime when committed by the Nazis, but not when committed by the Soviets. The Katyn Massacre was a crime when it was said to have been committed by the Nazis, but only “an embarrassment” when it was known to have been committed by the Soviets.

Yalta and the United Nations

President Roosevelt had called for the Yalta conference, held in February 1945, because he wanted Stalin to agree to 1) form the United Nations organization; 2) hold a public trial of the top Nazi officials.; and 3) enter the war against Japan after Germany was defeated. Each of these was important to Roosevelt, and so he was willing to give Stalin whatever was necessary to get his agreement. The language of the agreement was

framed in terms of peace, freedom, democratic values, and self-determination, but none of those things had ever related to anything which Stalin had done. Some of the agreements were kept secret because they were directly contrary to those values.

To get Stalin to agree to the formation of the UN, Roosevelt and Churchill promised him a permanent veto so that the organization would be incapable of ever acting against important Soviet interests. He and his successors would have absolute immunity. They could act with impunity.

Roosevelt and Churchill told him that he could keep the territory of eastern Poland that he had taken in 1939 in the joint invasion with Hitler. They agreed that his puppet Provisional Government in Poland would become the official government, entrusting to him “the holding of free and unfettered elections as soon as possible on the basis of universal suffrage and secret ballot.”³⁵ Britain, after approving Hitler’s destruction of Czechoslovakia, had entered the war because Hitler (and Stalin) had invaded Poland. Hitler was defeated, but Britain let Stalin have all of Poland to himself.

Before the war, Hitler and Stalin had agreed that Stalin would have control of the Baltic States. At Yalta, before the war came to an end, Roosevelt and Churchill also agreed to that same conquest. Tens of millions of people in multiple nations were enslaved and oppressed for fifty years as a result.

To get Stalin to hold the public trial, Roosevelt and Churchill agreed to rules of procedure that limited what the defendants could do. They would not be allowed to argue *tu quoque*, i.e. you did it too. They would not be allowed to mention Soviet complicity in their crimes or Soviet commission of similar crimes. In effect, they would not be allowed to ask, “Why is it a crime when we did it, but not a crime when you did it?” The created law would apply only to them.

To get Stalin to commit to entering the war against Japan, Roosevelt and Churchill agreed to give diplomatic recognition to the Mongolian People’s Republic, a Soviet puppet state, thus severing it from China. They agreed to give the Soviets control over the railroads that led to the Chinese port of Dalian/Dairen. All of this was agreed before consulting the nationalist government of China.

The Soviets declared war on Japan on August 9, 1945, the day on which the atomic bomb was dropped on Nagasaki. One had been dropped on Hiroshima three days earlier on August 6th. Japan surrendered unconditionally on August 15th.

The pretence and sanctimonious fraud that were evident in the Nuremberg Trials had been agreed upon earlier at Yalta. The public U.S. report on the conference spoke of agreement and joint effort towards “democratic principles,” “law,” “peace, security, freedom and the general well-being of all mankind”.³⁶ Stalin had no known connection to any of these.

Stalin, Molotov, Beria, and Vyshinsky were the core of the Soviet delegation at Yalta. Every one of them had engaged in aggressive war; every one of them had ordered mass

murder. It has been estimated that Stalin (through his associates) murdered about 43 million Russian “citizens” in addition to the millions more he murdered in captive countries.³⁷ Yet these men were presented as the faithful Allies who had joined together for Peace and Justice in the post-war world. This was the origin of the UN.

Hindsight, of course, can be helpful in seeing clearly. Certainly there are many facts that Roosevelt and Churchill did not know at Yalta. But of what they did know, there was not a single aspect of reality that could show that Stalin had any love for peace, freedom, or democratic principles. There was absolutely no evidence that could have caused them to think that what they told the public was true. Nothing.

Thirteen months after the Yalta Conference, Churchill delivered his famous “iron curtain” speech, recognizing Stalin’s enslavement of Eastern Europe. Even then he told the Missouri college audience, “I have a strong admiration and regard for the valiant Russian people and for my wartime comrade, Marshal Stalin.”³⁸ The Soviet Union had valiantly fought back against and defeated the army of the Third Reich. And Stalin was the Soviet commander-in-chief in that war. But if one wants to admire Stalin for the behavior of the Soviet army, then one must also hold him accountable for the behavior of the Soviet army.

“Natalya Gesse, a close friend of the scientist Andrei Sakharov, had observed the Red Army in action in 1945 as a Soviet war correspondent. ‘The Russian soldiers were raping every German female from eight to eighty,’ she recounted later. ‘It was an army of rapists.’ ...Altogether at least two million German women are thought to have been raped, and a substantial minority, if not a majority, appear to have suffered multiple rape.”³⁹ “This caused the deaths of no less than 200,000 girls and women due to the spread of diseases, especially that many eyewitnesses recounted victims being raped as much as 70 times in that period.”⁴⁰

Churchill was not specific as to why he had strong admiration for Stalin, nor did he mention his own part at Yalta in clearing the way for the “iron curtain”. He concluded his talk by saying, “Let no man underrate the abiding power of the British Empire and Commonwealth. ...if all British moral and material forces and convictions are joined with your own in fraternal association, the high-roads of the future will be clear, not only for us but for all, not only for our time, but for a century to come.”⁴¹

At the very time that he spoke, India was united in demanding freedom from “all British moral and material forces”. They had suffered long enough from a British morality that denied them freedom and self-determination, and that let millions starve to death in benign neglect. One hundred fifty years after a million native inhabitants of British India died in the Orissa famine, there was a short simple piece that the BBC published. In part, it pointed out that, “In the mid-19th Century, it was common economic wisdom that government intervention in famines was unnecessary and even harmful. The market would restore a proper balance. Any excess deaths, according to Malthusian

principles, were nature's way of responding to overpopulation.

"This logic had been used with devastating effect two decades beforehand in Ireland, where the government in Britain had, for the most part, decided that no relief was the best relief."⁴² One million Irish people starved to death in that famine. Britain joined the United Nations as the "United Kingdom of Great Britain and Northern Ireland," without any discussion of how it had occupied and annexed Ireland by force.

At the time that Churchill spoke, there were many in Ireland, both in the south and in the north, who viewed "the abiding power of the British Empire" as an oppressive and evil thing. They longed to be set free from it. A year and a half after Churchill's speech, "the abiding power of the British Empire" would desert the Indian subcontinent, leading India and Pakistan into the catastrophe of Partition.

Three more items might help clarify the grotesque reality of the decisions of Churchill and Roosevelt. At Yalta, they agreed to turn over to Stalin all captured Cossacks who had fought against the Soviet army (from the 1917 Revolution through the end of the Second World War). This was euphemistically spoken of as the "repatriation" of Soviet citizens. They had never been Soviet citizens, and they had no desire to be sent to Stalin — to torture, concentration camps, and death.

Following Churchill's and Roosevelt's agreement to do that, the British deceitfully disarmed those who had weapons, and beat many of them senseless before throwing them onto trucks and into cattle cars to deliver them to Stalin. "Overall, two million Russians, among them 50,000 Cossacks, were forcibly repatriated to the Soviet Union in what one observer termed, 'An outright appeasement of the Stalin regime on the part of the U.S. and the U.K., a denial of political asylum on a mass scale.'"⁴³

The 50,000 Cossacks who had been combatants were essentially prisoners-of-war. Under command, the British army delivered them to certain slaughter. In the Katyn Massacre, without British help, Stalin had only murdered 15,000. The rest of the two million Russians — women, children, the injured and the elderly — were refugees who had fled a violent regime in their home country. Churchill forcibly sent them back.

The evil of such action was highlighted six years later as the cornerstone of the 1951 Convention Relating to the Status of Refugees: "No Contracting State shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion."⁴⁴ "The core principle is non-refoulement, which asserts that a refugee should not be returned to a country where they face serious threats to their life or freedom."⁴⁵

The enormity of what Churchill and Roosevelt agreed and proceeded to do is staggering. In a war characterized by mass atrocities, this was distinct. Two million people. What was in the minds and hearts of these esteemed leaders of the free world who assisted Stalin in stretching the limits of inhumanity?

It is difficult for us to reassess our own national or religious heroes because they are an integral part of the standard by which we evaluate ourselves and others. We minimize their faults and the harm they may have done to others; we magnify their virtues and the “good” they have done for “us”. That makes it difficult to fully accept and apply a non-partisan, external standard.

The second item concerns Chiang Kai-shek, leader of the Nationalist Chinese forces. “It is a little known fact that at least twice during the long course of the war, senior officials of the United States considered assassinating Chiang, who was fighting the Japanese on the side of the Americans.”⁴⁶ In November 1943, Roosevelt told American Maj. Gen. Joseph Stilwell, his senior commander in China, “if you can’t get along with Chiang and can’t replace him, get rid of him once and for all. You know what I mean. Put in someone you can manage.”⁴⁷

Stilwell’s chief of staff, General Frank “Pinky” Dorn devised a plan in which “Stilwell would take Chiang on a flight to Ramgarh in northeast India to inspect Chinese troops being trained there, as part of the effort to improve the Nationalists’ backward army. The pilot would pretend to have engine trouble and order his crew and passengers to bail out. Chiang would be escorted to the door of the plane wearing a faulty parachute and told to jump. ‘I believe it would work,’ Stilwell told Dorn.”⁴⁸

The third item is that, 3 months after Yalta, Churchill ordered the creation of a special military plan to launch a surprise attack on Soviet forces in Germany. The War Cabinet document said, “The overall or political object is to impose upon Russia the will of the United States and British Empire. Even though ‘the will’ of these two countries may be defined as no more than a square deal for Poland, that does not necessarily limit the military commitment. A quick success might induce the Russians to submit to our will at least for the time being; but it might not. That is for the Russians to decide. If they want total war, they are in a position to have it.”⁴⁹

The plan was evaluated and rejected, among other reasons was the fact that the U.S. was preparing to focus on the war with Japan, and the British Empire was in no position to undertake such action on its own. Whether the action, if feasible, would have been a good idea or not is not a question which we need to decide. But it is certainly more evidence that the political agreements of the British and American leaders should not be automatically trusted. If they can’t manage you, watch your back.

President Truman had introduced Churchill to the college audience to which he spoke in Missouri. The motto of Missouri is, “Show me.” It’s a good motto. One should not credulously believe what anyone says, especially not a political ruler.

It is no revelation to say that politics, especially in wartime, is often unclean and brutal. Options are limited, and many principles become lesser priorities when survival is at stake. One should not pretend that leading a major power is a simple, straightforward task, especially not at a time when the definition of what it means to be human is under

attack.

Often the only choices are between different evils, and one must choose the lesser evil. To do that, of course, one must believe in the existence of a prioritized standard of Good and Evil. I was not there and I did not know the intense viselike pressure of the situation, but that does not turn Evil into Good, nor does it cover a multitude of sins.

I point out these things here because the creation of the United Nations as the successor to the League of Nations was a continuation of what was agreed at Yalta. It was essentially the same process, with the same people, and the same purposes. How likely is it that a principled solution for Palestine would ever come from there?

In his book *The Immorality of the State*, Mikhail Bakunin (1814-1876), an anarchist, took an even dimmer view of Great Power politics, pointing to a congenital problem with government leaders. He said that religion or morality “serves them only as a pretext and a phrase, only as a means to fool the simpletons, for the aims pursued by them have nothing in common with religious goals. And the eminent statesmen of our times... would laugh a great deal if their openly professed religious convictions were taken seriously. They would laugh even more if anyone attributed to them humanitarian sentiments, considerations, and intentions, which they have always treated publicly as mere silliness.

“Then what constitutes their morality? Only State interests. From this point of view, which, with very few exceptions, has been the point of view of statesmen, of strong men of all times and all countries, all that is instrumental in conserving, exalting, and consolidating the power of the State is good — sacrilegious though it might be from a religious point of view and revolting as it might appear from the point of view of human morality — and vice versa, whatever militates against the interests of the State is bad, even if it be in other respects the most holy and humanely just thing. Such is the true morality and secular practice of all States.”⁵⁰

Sometimes a leader equates self-interest with “State interests”. And Bakunin is again a little too absolute in his characterization. A leader can and should have the wisdom, faith and humility to serve the One who is the Authority over all. Usually, however, for many human reasons, they do not.

Some think that kings and great or important people — whatever the field of their greatness or importance — should be judged by a different standard than that applied to ordinary people. ‘Ordinary people, little people, can’t really understand how far above them the great ones are.’

In writing to a bishop who held this view, Lord Acton said, “I cannot accept your canon that we are to judge Pope and King unlike other men, with a favourable presumption that they did no wrong. If there is any presumption it is the other way, against the holders of power, increasing as the power increases. Historic responsibility has to make up for the want of legal responsibility. Power tends to corrupt, and absolute

power corrupts absolutely. Great men are almost always bad men... ”⁵¹

Two reasons for this are that: 1) Sometimes none of the available choices are “good”; they are only greater and lesser evils. 2) To ascend to the pinnacles of Power, one must desire Power above all. An inverted moral natural selection tends to weed out everyone else.

According to Socrates, “men fight with one another about shadows only and are distracted in the struggle for power, which in their eyes is a great good. Whereas the truth is that the State in which the rulers are most reluctant to govern is always the best and most quietly governed, and the State in which they are most eager, the worst.”⁵²

FOOTNOTES

1. Robert Conot, *Justice at Nuremberg*, (NY: Harper & Row, 1983), p.512
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3. Barkun, Michael, *Law without Sanctions: Order in Primitive Societies and the World Community*, (New Haven: Yale U. Press, 1968) 1, citing Biddle, *In Brief Authority*, Garden City, NY, Doubleday, 1962, pp. 369-487
4. Conot, *Justice at Nuremberg*, pp. 68-69
5. Conot, *Justice at Nuremberg*, p. 284 This “sin against the spirit” is what Hans Morgenthau saw in Carl Schmitt, “his complete lack of a ‘geistig-seelisches Zentrum’ (spiritual-moral personality)”. Behr & Rösch, in Morgenthau, *The Concept of the Political*, p. 7
6. Conot, *Justice at Nuremberg*, p.469
7. Gustav M. Gilbert, *Nuremberg Diary*, (NY: Farrar, Straus & Co., 1947), p. 426
8. <https://www.historyplace.com/worldwar2/timeline/nurem.htm>
9. cf. Robert Cryer, “International Criminal Law,” *International Law*, Third Edition, edited by Malcolm D. Evans (Oxford: Oxford University Press, 2010) pp.752-783
10. George A. Finch, “The Nuremberg Trial and International Law,” *The American Journal of International Law*, Vol. 41, No. 1 (Jan., 1947) 27-28. Accessed at <https://www.st-andrews.ac.uk/itsold/papers/public/miscellaneous/printingproblems/nurem.pdf>
11. Conot, *Justice at Nuremberg*, p. 68
12. Sidney S. Alderman, “Negotiating the Nuremberg Trial Agreements, 1945”, in *Negotiating with the Russians*, edited by Raymond Dennett & Joseph Johnson, *World Peace Foundation*, 1951, pp. 75-76
13. Conot, *Justice at Nuremberg*, p. 68
14. Nuremberg Trial Proceedings Volume 2, 98-99. <http://avalon.law.yale.edu/imt/11-21-45.asp>
15. U.S.A. v. Alstoetter Et Al, cited in <http://famous-trials.com/Nuremberg/1991-Alstoetter>
16. U.S.A. v. Alstoetter Et Al, op. cit.
17. *Triumph des Willens [Triumph of the Will]*, Leni Riefenthal, 1935
18. U.S.A. v. Alstoetter Et Al, op. cit.

19. Kenneth Pennington, "Politics in Western Jurisprudence," *The Jurists' Philosophy of Law from Rome to the Seventeenth Century*, ed. Andrea Padovani and Peter G. Stein (A Treatise of Legal Philosophy and General Jurisprudence 7; Dordrecht: Springer, 2007) 157-211
<http://legalhistorysources.com/PoliticsWesternLaw.htm>
20. Arkady Vaksberg, *Stalin's Prosecutor: The Life of Andrei Vyshinsky*, (New York: Grove Weidenfeld, 1990) 27 The name is anglicized as Vyshinsky, Vyshinskii, and Vishinski.
21. Vaksberg, *Stalin's Prosecutor*, p. 28 Vyshinsky's declaration preceded by more than a decade what Robert Conquest has called the "Terror-Famine," by which Stalin killed millions of Ukrainians. cf. Robert Conquest, *The Harvest of Sorrow: Soviet Collectivization and the Terror-Famine*, (NY: Oxford U. Press, 1986)
22. Medvedev, *Let History Judge*, p. 415
23. Vaksberg, *Stalin's Prosecutor*, p.101
24. Khrushchev, Nikita, "speech to the 20th Congress of the C.P.S.U., Delivered Feb. 24-25, 1956. <https://www.marxists.org/archive/khrushchev/1956/02/24.htm>
25. Vaksberg, *Stalin's Prosecutor*, 101
26. Conot, *Justice at Nuremberg*, p. 69
27. Steven Kinzer, "Germans Find Mass Graves at an Ex-Soviet Camp," New York Times, 9/24/92 <http://www.nytimes.com/1992/09/24/world/germans-find-mass-graves-at-an-ex-soviet-camp.html>
28. Conot, *Justice at Nuremberg*, p. 420
29. Vaksberg, *Stalin's Prosecutor*, 245
30. http://avalon.law.yale.edu/20th_century/addsepro.asp
31. c.f. J. Otto Pohl, *Ethnic Cleansing in the USSR, 1937-1949*, (Westport, CT: Greenwood Press, 1999)
32. Finch, *Nuremberg and International Law*, 26
33. Finch, *Nuremberg and International Law*, 27
34. Finch, *Nuremberg and International Law*, 28-29
35. "Yalta Conference Agreement, Declaration of a Liberated Europe," February 11, 1945, Section VII. History and Public Policy Program Digital Archive, National Archives. <http://digitalarchive.wilsoncenter.org/document/116176>
36. Report of Crimea (Yalta) Conference, 1945, Signed Feb. 11, 1945, *Multilateral Agreements 1931-1945*
37. "Professor Rummel's actual estimate is 42,672,000 Russian citizens were murdered under Stalin's rule from 1929 to 1953. at p. 8) Stalin also bears responsibility for the death of many more people - perhaps also totaling in the millions - in Soviet controlled countries outside Russia that aren't included in Professor Rummel's estimate." Rudolph J. Rummel, *Death By Government*, (New Brunswick, NJ: Transaction Publishers, 1994 p.8 Cited in End Note 2,
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