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# LAWYERS WITHOUT RIGHTS

The Fate  
of Jewish  
Lawyers  
in Berlin  
after 1933



With forewords by  
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# Foreword

## The Honorable Stephen G. Breyer

As Nazi atrocities fall further into the past, direct recollection becomes more difficult. But recollection does not become less important. The Bible frightens us when it speaks of a King, perhaps an entire new generation, “who knew not Joseph.” And the French writer Albert Camus elaborates the thought in his book *The Plague*, an allegory of the Nazi occupation of France. His hero, Dr. Rieux, explains (in a way that I find moving) why he has written down the story:

the *bacillus de la peste*, the plague germ (a symbol for the evil in human nature), never dies; it never entirely disappears; it simply goes into remission, perhaps for decades, but all the while lurking: in the furniture, in linen cupboards, in bedrooms, in cellars, in trunks, in handkerchiefs, in file folders, perhaps one day to reawaken its rats, and then, to the misfortune or for the education of mankind, to send them forth once again to die in some once-happy city.

By helping us recollect, law can help us guard against the day when that perpetual evil, analogous to the plague germ, might re-awaken.

This book, *Lawyers Without Rights: The Fate of Jewish Lawyers in Berlin after 1933*, helps us recollect. It recounts the early days of the Holocaust from the perspective of the law and Jewish lawyers in Ger-

many, and Berlin specifically. It is important that we and future generations remember the misuse of laws in Germany and how it permitted a society to effectively purge a significant group of lawyers solely because of their religion, sending many in exile or to their deaths. It is about the misuse of law.

The book also reminds us that law can play a positive role in the task of recollection. Those who work with the law can engage in certain classic legal tasks, such as gathering and preserving evidence and creating legal precedent. One man who engaged in just those tasks was Justice Robert Jackson, once a member of the U.S. Supreme Court on which I sit.

Nearly 75 years ago, Jackson put aside his work in Washington to serve as the chief prosecutor at Nuremberg. He later described his Nuremberg work as the most important experience of his life, “infinitely more important than my work on the Supreme Court or . . . anything that I did as attorney general.” His object was to make “explicit and unambiguous” in law “that to persecute, oppress or do violence to individuals or minorities on political, racial or religious grounds . . . is an international crime . . . (and individuals) can, and will be punished.”

Jackson began by telling the Nuremberg tribunal:

The wrongs we seek to condemn and punish have been so calculated, so malignant and so devastating, that civilization cannot tolerate their being ignored because it cannot survive their being repeated. That four great nations, flushed with victory and stung with injury, stay the hand of vengeance and voluntarily submit their captive enemies to the judgment of the law is one of the most significant tributes that Power has ever paid to Reason.

And then he built what he called a “drab case.” He did not try, he said, to “appeal to the press” or public. He understood his role as collecting hard evidence largely built on the Nazis’ own documents “the authenticity of which” could not be “challenged.” And the evidence was largely unchallenged. Nineteen convicted defendants could not answer that evidence (three were acquitted). There was nothing to say.

Jackson collected evidence, not simply to convict the war criminals, but also to document the facts for history to remember. “We must establish incredible events by credible evidence,” he said. The evidence must be presented “with such authenticity and in such detail that there can

be no responsible denial of these crimes in the future and no tradition of martyrdom of the Nazi leaders can arise among informed people.”

Prosecutors brought to Nuremberg 100,000 captured German documents. They examined millions of feet of captured film. They produced 25,000 still photographs, a large majority from Hitler’s personal photographer. Month after month, detailed by 17,000 transcript pages, the prosecutors assembled a mountain of evidence. History was revealed and remains revealed for all to see. Like the work of Jackson’s team at Nuremberg, this book provides overwhelming evidence and documentation of how a Nazi regime through statute undermined the rule of law and why vicious regimes cannot be allowed to try again.

Like this book, trials can tell stories that help produce emotional, as well as factual, understanding of just what occurred. Doing so was a significant part of another historical trial that took place more than a half century ago in Jerusalem. That was the trial of Adolf Eichmann, the man in charge of transporting millions of Jews to death camps.

In prosecuting the case against Eichmann, Israel’s Attorney General Gideon Hausner provided documentation. But he did something more. He sought out survivors of the Holocaust to bear witness. About 100 took the stand. They told their own stories about what they saw, what they endured, what they survived and how they remembered those who did not survive.

The audience was different from that of Nuremberg. The trial was televised both in Israel and around the world. Millions in the United States watched the proceedings. For the first time, many people heard Holocaust survivors tell their stories with their own voices. Hannah Arendt described how the trial not just told us—but showed us—the banality of evil. Historian Deborah Lipstadt tells us that the human stories “changed our perception of the victims of genocide.”

Seen from the perspective of remembrance, both trials played an important role. We remember through facts, figures and rational argument; we also remember through human stories that carry emotion and implant feeling. The documented record prevents history from doubting what was done; the compelling personal stories help prevent the future from forgetting the victims themselves, their stories and their humanity.

The example of Nuremberg has helped to inspire the establishment of tribunals, often international tribunals, with authority to protect basic human rights and to pursue those who violate them. But like Penelope’s tapestry, the legal cloth that we weave in the day is often unraveled dur-



ing the night. This provides even more reason to continue the work—to substitute, as Justice Jackson reminded us, the power of Reason for the force of Power. The Talmud teaches us, “it is not incumbent upon you to complete the work. But neither are you free to evade it.”

Nuremberg reminds us that the Holocaust story ended with a fair trial. That trial, along with other ways in which law furthers the work of remembrance, fuels our eternal aspiration for justice. As this book so stirringly shows, the road to justice begins with a sound legal system. And as the Book of Exodus tells us, we cannot allow future generations to forget historical tragedies like the Holocaust and what can happen when there is no rule of law.