

**Justice for War Criminals:
The Trials of Nazi Concentration Camp Guards at Dachau**

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Foreword

I am writing this paper for my grandfather, Ararad Buzdigian, and for his father Elias. My grandfather always told me the stories of his ethnic Armenian father and grandfather who, against all odds, were able to escape the Armenian genocide and start a life in America. The horrors of genocide cost Armenia nearly 1 million sons and daughters and, after asking my grandfather what being Armenian was, I learned how close I came to never getting the opportunity to exist. My grandfather volunteered to serve in WW2 and acted as a forward scout. He returned home, started a family, and lived to his eighties in St. Petersburg, Florida. His prized Cadillac Brougham sits in my parent's driveway under a car port and, every month or so, my mother and father get inside and take a ride to visit my grandfather's final resting place. He was a great man who fought to bring men of incomprehensible evil to justice. Writing this paper is the least I can do to defend the validity of the justice he so selflessly sought.

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Abstract

This paper will seek to explore whether or not Nazi war criminals tasked with manning and staffing the various concentration and death camps were in any way entitled to due process of law upon their capture and trial. This concept is debated among international Holocaust scholars and often discussed with purely apodictic arguments based upon a lack of understanding of military law. This paper will discuss in detail the rights, liberties, and treatment of Nazi war criminals after World War II in relation to the trials of concentration camp guards. It will also necessarily explore and explicate the misunderstood military legal environment in which these trials occurred as well as identify the international and domestic laws upon which these trials were based. By drawing upon primary source documents like memoranda, trial records, and other notes by officials and parties involved in trying these war criminals, this paper will argue that Nazi concentration camp guards were not entitled to due process nor could they claim any rights independently of those charitably granted them by their captors. This paper will reference the flawed conceptions of international law held by dissenting scholars and juxtapose them with the letter of the law at the time of the trials. This will serve as proof that the concentration camp guards were afforded the proper rights and will also present a cogent and strong argument that promotes understanding of a complex military legal system while simultaneously refuting and quantifying the rights of the concentration camp guards in question.

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Introduction

The Holocaust carried out by Hitler's Third Reich on the European Jewry stands as one of the most unconscionable crimes against humanity ever committed. After creating a network of death camps, ghettos, and intentionally undersupplied labor camps, Adolf Hitler and his generals were responsible for the deaths of nearly six million Jews and nearly five million non-Jewish individuals deemed unsavory or dangerous to the Nazi party. The usual path of one of these individuals ranged from freedom, to ghettoization, to the compulsory liquidation of that ghetto, to transportation to one of the concentration camps at which point they would either work and die of starvation, illness, abuse, or murder by the camp guards or they would be further transported to one of the Operation Reinhard death camps where they would die by firing squad, gas chamber, beating, hanging, or maleficent medical experimentation.

World War II, despite being concerned with countless issues beyond the crimes against humanity carried out on the European Jewry, is largely categorized by these atrocities. The wounds inflicted upon countless millions of soldiers, families, mentally ill persons, and innumerable other classes and castes of people could only begin healing after those responsible for carrying out these terrific crimes were held accountable for their actions. In pursuance of this goal, upon the official surrender of the Axis nations, the United States government and allied nations came together to draft a framework within which the trials of these criminals would be conducted.

This paper will discuss this framework as well as the legal environment in which the trials of a particular subset of Nazi war criminals were held. It will provide background to international law such as the Law of Armed Conflict, law as identified by the London Charter, and military law as it stood at the time the trials occurred. It will then provide background on the Dachau

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concentration camp where the crimes were committed in an effort to communicate the severity and real impact on the prisoners. There will be a brief profile on the major defendant Martin Gottfried Weiss as well as a description of the trials themselves. Included within the paper will be primary source pictures of testimony, examples of evidence as entered by both the prosecution and the defendants, and a comprehensive analysis of why the outcome of the trials was, in fact, both correct and justifiable under international law as it existed at the time of those trials.

The ultimate purpose of this paper is to prove that the United States of America, in handling the prosecution of the concentration camp guards at Dachau, was both justified and fully authorized by both statutory and customary law to indict, try, and sentence these war criminals in accordance with the procedures and bylaws privy to them at the time the trials occurred. It will endeavor to prove that the Nazi concentration camp guards in question were, in fact, not entitled to due process or any due process rights under the body of international law existing at the time the trials occurred. In so doing, this paper will disprove the growing body of scholars suggesting that the trials were not valid and did not afford the guards the necessary procedural due process and rights that they were entitled to.

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The Trials

Dachau, as the first concentration camp formed after Hitler's rise to power, was a hub of Nazi activity until the day it was liberated by allied forces on April 29, 1945 (Record Group 549, Reel 1 Item 1). Dachau began operations in March of 1933 as a place to house prisoners of war and political refugees. This role quickly expanded to accommodate anyone whom Hitler and the Nazi party deemed unsavory or dangerous. Critics of Hitler's regime were quickly silenced and sent there to live in squalor and filth without trial or opportunity to defend themselves. Of the untold thousands of prisoners who traveled through the gates, 32,979 were alleged to have died in Dachau. This number, while appalling, was only the proverbial tip of the iceberg when the true function of the Dachau camp is revealed. Dachau was far more than just a single camp; it embraced "a network of 85 subcamps scattered throughout southern Germany and Austria" (Record Group 549, Reel 1 Item 1).

Despite having such a large and widespread presence, Dachau was still grossly overcrowded. Designed to originally accommodate 10,000 prisoners, Dachau's population quickly swelled beyond its capacity to 65,613 on the day of its liberation (Record Group 549, Reel 1 Item 1). The vast majority of the residents died from malnutrition and disease, while others were killed outright by the guards and others still died in illicit medical experiments carried out by Dr. Klaus Schilling and other Nazi physicians. The men responsible for these killings are the primary subjects of this paper and their trials will be the focal point from which a conclusion as to the actual legality and correctness of their trials can be emphatically drawn.

The main (or "parent") case itself was conducted at Dachau between November 15th and December 13th, 1945. The case was tried under the title *United States of America v. Martin*

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Gottfried Weiss et al. and resulted in a guilty verdict for all 40 defendants. After this ruling was reached, 36 of the 40 defendants were sentenced to hanging. 28 of the 36 defendants sentenced to death were actually executed while the remaining 8 had their sentenced commuted to various terms of imprisonment, ranging from life to 10 years. The remaining 4 not originally sentenced to death also received various terms of imprisonment (all greater than or equal to 10 years).

The lead defendant was Obersturmbannführer (German for Lieutenant Colonel) Martin Gottfried Weiss, the Nazi Camp Commander in charge of Dachau's operations as well as all of the subcamps involved in its support. Weiss, after presiding over Dachau, became the commander of Majdanek, a Nazi death camp in Poland that hosted one of the worst massacres carried out by the Nazi party where nearly 17,000 Jews were murdered during their harvest festival. This massacre was carried out on November 3rd, 1943 and Weiss was sworn in as commander on November 4th, 1943. After his inauguration, Weiss tasked 611 Jewish prisoners with cleaning up after the massacre. The women would remove and sort the clothes of the corpses, move the bodies, and remove shoes and other valuables while the men would dig and bury the corpses in mass graves. Once the bodies were buried, the men knelt at the edge of the grave they had just dug and were shot and pushed in with the bodies they had just buried. The women were sent to Auschwitz where they were all summarily killed by gas (Zámečník, 254-255).

Weiss, after completing his work in Majdanek, was promoted to head an office of the Economic Committee and developed a program using Jewish laborers to build fighter jets for the German Air Force. This was the final role he held before being indicted and executed by the US government. He and his fellow defendants were represented by 4 court appointed legal counsels: Lt. Col. Douglas Bates, Maj. Maurice J. McKeown, Capt. John May, and Capt. Dalvin Niles. The prosecution consisted of Lt. Col. William Demson, Capt. William Lines, Capt. Richard

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McCuskey, and Capt. Philip Heller. The sitting court judges were Brigadier General John M. Lentz, Colonel George E. Bruner, Colonel George R. Scithers, Colonel Laird A. Richards, Colonel Wendell Blanchard, Colonel John R. Jeter, Colonel Lester J. Abele, and Colonel Peter O. Ward (Record Group 549, Reel 1 Item 9).

The 40 defendants in the case held positions ranging from Camp Commander (Weiss) to Doctors (Witteler, Schilling, and Eisele) to guards, guard commanders, and sergeants in charge of general camp operations. All of the defendants pled “not guilty” after being indicted on charges of “violating the laws and usages of war” while “acting in pursuance of a common design” by subjecting their prisoners to various cruelties under the Geneva Conventions definition of the “law of war.” While there were motions filed by the defense to suspend the trial or sever the charges, these motions were always relatively shallow and indefensible.

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Criticism of the Trials

Because this paper seeks to rebut attempts to discredit the trials, it is first important to establish the arguments against the validity of US Army Courts at Dachau. These arguments either focus on the actual processes of the trials, the ability of the US prosecutors to accurately represent the crimes as they were committed, or the lack of defined genocide laws. While these were valid difficulties facing the American prosecution, they did not in any way exculpate the defendants for their crimes, nor is there any real basis for these criticisms if we examine the framework of international and military law within which these trials occurred.

As this paper will present in its “Background to Military Law” and “Background to International Law” sections, the process by which the accused were tried was not only legal but also benevolent in its pursuit of actual justice. The US Military Courts were under no pressure or legal obligation to provide the defendants with the rights they were actually afforded. The Geneva Conventions and London Charter are, for example, often cited as evidence against the procedural validity of the Dachau trials. In all actuality, while the US Military Courts did not structure themselves exactly after those at Nuremberg, they did parallel the structure of these trials on many levels. What differentiates the Dachau trial structure from that of the Nuremberg trials is, in fact, that the Dachau trials did not need to adopt practices from the London Charter (which laid out the structure of the Nuremberg trials) but *did so anyways*. If any criticism should be levied against these trials it should be that they were unnecessarily benign in their treatment of the war criminals subject to their jurisdiction.

The problems faced by the prosecution in terms of accurately presenting the crimes were valid in that they were attempting to analyze substantial criminal activities within the otherwise narrow

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framework of international law, but this does not impinge on their ability to hold the criminals in question accountable. The defendants, in pursuance of genocide not yet codified, committed murder and criminal neglect on an unprecedented scale. It is therefore clear that the crimes existed but the scale was unmatched. As discussed in the “Introduction to the Trials” section of this paper, the defendants were charged with violating the laws and usages of war not genocide or mass murder. The prosecution was able to identify and build a case for a codified crime to hold these criminals accountable for their actions under the existing body of military law without having a manifest charge that adequately reflected the crimes the defendants actually committed. The prosecution was not guilty of holding a kangaroo court; rather it acted conscientiously in charging the defendants with a crime actually defined within the scope of their jurisprudence.

Genocide, as mentioned above, was not yet defined as a crime in the environment of international law. The crime of genocide was only officially introduced by a UN Convention in 1948 after the trials concluded. The prosecution, understanding the vast scope and severity of the crimes committed both at Dachau and throughout the entirety of the Holocaust, were handcuffed by a body of international and military law that lacked the ability to adequately describe the crimes committed by the defendants. The fact that the crime they committed was not entirely described by the charges leveled against them was not a reflection of a procedural shortcoming but rather a reflection of the inadequacy of international jurisprudence and the novelty of the crimes committed by the defendants.

Some of the criticism the trials are subjected to came not from academic sources but from the media and subsequent outcry within both Germany and the United States. After a trial known as the Malmédy case “in which the US Army Court at Dachau prosecuted seventy-three Waffen SS soldiers for killing American prisoners of war during the Battle of the Bulge,” there was public

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outrage over a claim by the German soldiers that they were forced to sign confessions after being subjected to “questionable interrogation techniques” (Heberer and Matthaues, 64). These claims caused such a disturbance that there was actually a joint campaign between German and American citizens for the summary release of the Nazi soldiers responsible for the murders. The campaign had several notable figureheads, among them bishop Aloisius Muench from North Dakota, who was alleged to have been in frequent contact with the war criminals themselves and was a staunch advocate for not only their release but for the release of *all* sentenced German war criminals, on the grounds that they committed their acts in service to their country (Heberer and Matthaues, 66). As a result of his (along with several other members of the Catholic Church and the media) pressures, the US Military Government for Germany created a War Crimes Modification Board tasked with examining the trials and sentences and making recommendations. It quickly began reducing sentences across the board in an effort to appease the growing outcry (Heberer and Matthaues, 66).

Modern legal scholars like Theresa Beiner reflect incorrectly on the actions and considerations of period American jurists in regards to dealings with Nazi war criminals. In her study of Justice Thurgood Marshall’s decision to send Nazi War Criminal Karl Linnas to the Soviet Union for execution years after he was tried *in absentia*, for example, she failed to address the legal environment in which Linnas committed his crimes. Her argument was therefore flawed from the very first premise. Such authors and historians fall into the trap of applying contemporary lenses to World War II-era military law that they fail to understand (Beiner, 293).

Beiner composed a substantial piece that identified various flaws in the procedural due process used in the trials of many Nazi war criminals. She uses Linnas as a façade under which her apparent agenda of discrediting trials of war criminals could be put in motion. She, for example,

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references the fact that the photographic evidence provided by the prosecution in pursuance of justice against war criminals could often be “highly suggestive” (Beiner, 296). The phrase “highly suggestive” intimates the fact that she doesn’t feel as if the introduction of this evidence was entirely appropriate or valid. As previously mentioned the nature of these crimes was unprecedented and couldn’t even be accurately described by law. How, then, could a military tribunal possibly comprehend the extent and severity of the crimes, conditions of the camp, and massive loss of life without either A) visiting the camp while the evidence was still present or B) viewing photographs taken at the time of the camps liberation that would reveal this unbelievable cruelty and depict the severity of the crimes committed.

The Linnas case was used as yet another polemical point for Beiner, which she framed in such a way as to portray the US Government as acting in a manner that was fundamentally incongruent with the Eight Amendment of the Constitution. She felt that the US Government, by approving the extradition of Linnas, was violating its own condemnation of cruel and unusual punishment by allowing the extradition to go through. While Justice Thurgood Marshall did block the deportation prior to the court’s decision, Linnas was ultimately found to be deportable and this decision was upheld by the US Court of Appeals. He was found guilty for his crimes in the Soviet Union, sentenced to death, and executed upon his successful extradition in 1987 (Beiner, 293). Beiner’s critique of Linnas’ extradition and summary execution in the country where his crimes were committed is yet again reflective of her lack of understanding of international criminal proceeding and the legal environment present at the time of Linnas’ original sentencing.

Insofar as Beiner is one of the major academic critics of the procedural due process of the trials of Nazi concentration camp guards, pointing out the shortcomings of her frame of reference and overall attempt to discredit these trials is important to the purpose of this paper in that it

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adequately captures the many problems that plague nearly every criticism of procedural validity in reference to the trials of war criminals. She fails to consider the severity of the crimes, their unprecedented nature, and the inadequacy of international law in being able to describe the atrocities committed. She also fails to reference the period in which the sentences were handed down, the procedural responsibilities of military law, and the differences between criminal courts and military courts.

The Defense's Strategy

The testimony offered by the accused tended to be either denial of the charges filed against them or some version of superior orders. The superior orders defense was omnipresent throughout nearly every military tribunal held by the United States or any of its allies against Nazi war criminals. Superior orders was simply the practice of deflecting the blame from the man who carried out the crimes to his superiors by stating that he was simply acting in compliance with whatever orders his commander had given them. The United States government quickly identified that this defense would unfairly exculpate nearly every defendant but Adolf Hitler himself and passed a provision within the famous London Charter (the agreement between the allied powers through which the trials of the major war criminals would be organized and carried out) through which the Nuremberg Tribunals were organized that prohibited such a defense.

The defense attempted to dispute the jurisdiction of the trials themselves, made several attempts and arguments aimed towards invalidating the foundation on which these trials occurred.

Foremost among these claims was that the defendants were never accurately defined by the prosecution within the statement of charges in that they were never referred to as “enemy nationals” or “enemy combatants.” This claim will be addressed in great detail within the chapter of this paper entitled “The Influence of Military Law” but, in summary, will be dismissed as invalid due to the fact that the defendants were not lawful enemy combatants as defined by the Geneva Conventions.

Challenging the jurisdiction of the courts is synonymous with saying that the trials have no place being conducted. The defense's assertion that their clients were “enemy combatants,” therefore, is an assertion that the courts did not have the jurisdiction to try the case. This defense was

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quickly dismissed after summary review by the courts due to the fact that there was overwhelming evidence to the contrary after even a cursory examination of the conditions and treatment of prisoners within the camp (UN War Crimes Commission, 10).

The defense also attempted to reclassify their clients in a different way by asserting that the defendants were, in fact, prisoners of war and entitled to protection under Article 63 of the Geneva Conventions. Article 63 states that “A sentence may be pronounced against a prisoner of war only by the same court and according to the same procedure as in the case of persons belonging to the armed forces of the detaining power.” This article is essentially aimed at ensuring that lawful combatants are entitled to procedural due process equal to what would be given to a member of the detaining power’s forces should they commit a similar transgression. Again, this motion was summarily defined due to the fact that the defendants were not, in fact, lawful combatants held as prisoners of war and were therefore not entitled to the protections of the Geneva Convention (UN War Crimes Commission, 9).

Another angle sought out by the defense was one characterized by criticizing the extent to which the charges levied against the concentration camp guards were defined and explained. The defense attempted to state that the defendants were unaware of the case being brought against them because the time period specified by the prosecution was far too large for the defendants to recall the particulars of their actions. The prosecution responded by identifying that the charges leveled against them throughout that time period were the result of an ongoing and continuous process that resulted from the common design of the concentration camp system. It was, therefore, unnecessary for the defendants to recall particulars because the behavior was occurring during the entirety of the time period specified in a similar manner. This motion was similarly denied on the grounds presented by the prosecution (UN War Crimes Commission, 9).

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The defense also attempted to sever the charges levied based on the idea that the number of defendants drawn from the same location and charged with the same offenses would overcomplicate the proceedings due to “antagonistic testimonies” fostered by the fact that each defendant would be a witness to the crimes their peers were being charged with similar crimes. Testifying against their peers would, therefore, also implicate themselves in their own trials. This motion for severance was combated by the prosecution by stating that the individual defendants were not subject to a joint trial and, therefore, their testimony against one of their peers would be inadmissible in their own trial. It was by this logic that the motion for severance was denied by the courts (UN War Crimes Commission, 10).

A major takeaway after reviewing the above defenses is as superficial as observing how many attempts to simply dismiss the case on procedural grounds were made. To say that the defendants did not receive adequate defense or opportunities to defend themselves is absolutely incorrect. There were hundreds of photographs, memoranda, testimonies, and other items entered into evidence by both the prosecution and the defense. This evidence was observed, introduced, and explained as necessary and presented to the courts just as it would be in a trial of an American soldier under these same circumstances. The structure and procedure of the trials mirrored that of the Nuremberg Tribunals of the major war criminals which were entirely engineered by and legally authorized by the London Charter.

The Influence of International Law

Among the only agreed upon tenets of international jurisprudence present at the times of these trials were unwritten-yet-agreed upon “principles” by which international criminals were to be tried. These were not, under any circumstances, to be confused with specific legislation concerning criminals of war who were, as previously mentioned, entirely unaffected by any and all principles other than the tenets of military law as understood by the nation by which these criminals were tried.

Of these principles, among the most critical is the so-called “protective principle of jurisdiction” which identifies that a state is able to exercise its criminal laws when the crimes committed are deemed “harmful to the vital interests of the state” (Baldree, 27). In the case of the Dachau concentration camp guards, the mass deportation of populations and the countless murders they [the guards] carried out as agents of Hitler’s Third Reich would entirely fulfill the obligations of this principle and further serve to justify the actions of the US military tribunals.

The territorial principle was yet another customary principle by which these war criminals trials could be justified. It identifies that a state may exercise its discretion when deciding upon laws and policies regarding crimes carried out within its borders (Beckett via Baldree, 26). This principle, once coupled with the active nationality principle which suggests that the nationality of a victim gives the state from which that victim came jurisdiction over criminal proceedings concerning the crimes carried out upon its citizen, provides yet another justification to the actions of and decisions reached by the US military tribunals at Dachau.

Perhaps the most exhaustively utilized principle by which the actions of the US military tribunals at Nuremburg (and thereby the trials which occurred at Dachau) could be justified would be

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through the principle of universality. This critical principle of customary international law could be best summarized as one that provides any state with justification to punish and try any criminal offender for their crimes regardless of the nationality of the victims or criminal or even where the crime was committed. This principle is supported by numerous precedents that existed prior to entry into World War II by the US including one example where the US tried a German defendant in Germany for crimes committed against “Czechoslovak and Russian nationals” (Baldree, 28).

It was from these unwritten, unlegislated principles of international jurisprudence that future formal doctrines of international criminal proceedings would be written. It bears mention that these so-called customary principles of international law were just that—customary insofar as they were universally agreed upon but never formalized via transcription or international treaties. Furthermore, these principles did manifest themselves formally in the Geneva Conventions of 1949 in different terms that served to provide for and formalize the same sort of treatment as specified within the customary laws preceding it.

The simple truth about the scope of international law at the time the trials occurred and the influence it may have had is that it was a total nonfactor. The only internationally recognized piece of legislation that could bestow any rights on these defendants is the Declaration of Human Rights issued by the United Nations...in 1948 (Baldree, 10). That is nearly 3 years after the trials off these concentration camp guards occurred. Needless to say, any interpretation of the trials that would cite this document as proof that the trials were less than adequate would be ahistorical.

The Declaration of Human Rights eventually gave rise to the European Convention of Human Rights, which essentially laid out the five essential rights afforded to alleged criminals to be tried

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under international law that would ensure a fair trial. These rights closely paralleled those afforded to Americans in the Bill of Rights and included communication of the crimes the individual was being tried for, giving the accused proper time to prepare their defense, the right of the accused to either defend themselves or obtain a qualified attorney, adequate examination of witnesses in the accused's defense and, if necessary, the use of an interpreter (Harris, European Convention on Human Rights).

The cornerstone of both past and present international military law is the aforementioned body known as the Geneva Conventions. These articles are aimed at outlining and explicitly defining the terms of international warfare specifically concerned with the well-being and protection of prisoners of war regardless of if they are a combatant or civilian. These conventions specifically identify the rights and legal responsibilities of the "Occupying Power" and empowers the Occupying Power to conduct tribunals and trials as needed in order to "enable the Occupying Power to fulfill its obligations under the present Convention, to maintain the orderly government of the territory, and to ensure the security of the Occupying Power, of the members and property of the occupying forces or administration, and likewise of the establishments and lines of communication used by them (Geneva Conventions, article 64)."

Article 64, as cited above, is a part of a series of 11 articles that outline and empower consenting nations to enforce the penal procedures and legislation necessary for an occupying nation to maintain its control over and preserve the safety of those individuals subject to that occupying nation's jurisdiction. These articles provide a detailed criminal procedure by which prisoners of war and internees as identified by these conventions could be tried, detained, and summarily sentenced in pursuance of the best interest of both the occupying nation and the civilians subject to their jurisdiction. They do not, however, identify the trials and treatment of Prisoners of War

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or War Criminals which is discussed in great detail within the draft of the third Geneva Convention.

The articles of the third Geneva Convention, which specifically deal with the treatment of and general treatment of Prisoners of War, were not drafted until 1949 and were not signed by the United States until 1951. Critics of the US Military Tribunals conducted both at Nuremburg and at Dachau frequently cite these conventions as the means by which the trials could be discredited. They reference a number of GPW articles as proof that the US did not conduct itself in a manner becoming of a benevolent occupying power. They criticize the Tribunals as “kangaroo trials” where the verdicts were predetermined and the sentences handed down in a summary manner without adequate opportunity for defense. The following analysis will carry through each of these articles and will show that the United States military tribunals fulfilled the obligations of the Geneva Conventions despite the fact that they were never required to do so.

In order to defend the validity and integrity of the US military tribunals at Dachau, it is first important to understand the definition of the Prisoner of War as identified within the Geneva Conventions. While there are 6 identified classes of people identified as possible Prisoners of War this paper is largely concerned with the traditional definition by which the Dachau concentration camp guards were classified and held. Section 1 of Article 4 identifies that “Members of the armed forces of a Party to the conflict as well as members of militias or volunteer corps forming part of such armed forces.” It also continues on to specify that those who were “commanded by a person responsible for his subordinates” can be held as POWs. This clause, Article 4 Section 2a, is important to note in that it ties those subordinate to an easily identifiable officer or commander (like Weiss, the Dachau Camp Commandant) and permits an

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occupying nation to make the assumption that those under this person's command were associated with the hostile force.

Article 82, entitled "Relations between prisoners of war and the authorities, Chapter III: Penal and disciplinary sanctions, I. General provisions" is the single most essential article to the purposes of proving the thesis of this paper and it will, therefore, be transcribed in its entirety:

A prisoner of war shall be subject to the laws, regulations and orders in force in the armed forces of the Detaining Power; the Detaining Power shall be justified in taking judicial or disciplinary measures in respect of any offence committed by a prisoner of war against such laws, regulations or orders. However, no proceedings or punishments contrary to the provisions of this Chapter shall be allowed.
If any law, regulation or order of the Detaining Power shall declare acts committed by a prisoner of war to be punishable, whereas the same acts would not be punishable if committed by a member of the forces of the Detaining Power, such acts shall entail disciplinary punishments only.

This article provides the cornerstone framework by which an Occupying Nation, referred to within the third Convention as a "Detaining Power," could prosecute POWs as defined within Article 4. Article 82 specifically authorizes the Detaining Power to apply its laws and judicial processes in litigating and sentencing POWs for any crime they may have committed. This article alone represents a justification of the entire foundation of the US Military Tribunals held at Dachau. The US Military conducted trials in accordance with its own policies and procedures in respect to offenses committed by POWs in the occupied zone. The US Military fulfilled every obligation of this oft-cited article in pursuance of justice for these war criminals.

Article 85 of the Geneva Convention specifically identifies that POWs tried for "acts committed prior to capture shall retain, even if convicted, the benefits of the present Convention." This, in conjunction with Article 82, lends credence to the military tribunals held by the US at Dachau in that it specifically authorizes the Detaining Power to try POWs under their procedures regardless of whether or not the offenses occurred prior to their capture. This identifies that, regardless of

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lens or opinion, the US military legitimately had the right to conduct the tribunals at Dachau as they did.

In that many of the defendants were sentenced to death by hanging, it is important to also examine the circumstances in which a prisoner of war could be executed under the third Convention. Article 100 identifies that:

The death sentence cannot be pronounced on a prisoner of war unless the attention of the court has, in accordance with Article 87, second paragraph, has been particularly called to the fact that since the accused is not a national of the Detaining Power, he is not bound to it by any duty of allegiance, and that he is in its power as the result of circumstances independent of his own will.

Article 87 essentially identifies that the individual must have committed the act himself and must not be punished collectively for an individual act. It also stipulates that a POW cannot be sentenced to any penalty that is not “provided for in respect of members of the armed forces of the said Power who have committed the same acts.” This essentially states that there must be equity in the treatment and sentencing of the offenses levied against the POW defendant in comparison with the sentencing of those same offenses should they have been committed by a US soldier. The treatment and handling of the trials and sentencing cannot be unduly severe due to the fact that the defendant is not a citizen of the Detaining Power.

The framework within which these trials occurred was largely shaped by the London Charter of 1945, which laid out in great detail the crimes that the major war criminals could be tried for and how the proceedings were to be structured. This charter, decided upon by the International Military Tribunal and signed on August 8th, 1945, did exist prior to the tribunals at Dachau and would therefore serve as the major driving legal force behind the trials of concentration camp guards at Dachau. It was not, however, responsible for lending legal authority to these trials nor did it directly stipulate the structure or form of the trial proceedings.

The Influence of Military Law

Military law at the time of these trials was an exceedingly ambiguous entity at best. There was no framework under which war criminals would have rights bestowed upon them. The United States Army was able to conduct these trials in any manner they would have liked. They could have hosted a kangaroo trial with predetermined verdicts and denied the defendants a right to representation. They did not need to inform the defendants of their crimes. They did not need to structure any sort of trial. The United States could have, had it been so predisposed, dragged these men into the razed landscape they created and summarily shot them without any semblance of a chance to defend themselves.

What the United States did, however, was try these men in a manner similar in procedure and structure to those occurring at Nuremberg. The trials themselves were authorized by Joint Chiefs of Staff Directive 1023/10, which formally authorized the commander of the United States Forces in the European Theater to begin forwarding cases against “illegal combatants” and “criminals” as stipulated and defined under the directive to the commander of the 3rd US Army in Bavaria. This commander would then be authorized to sign off on trials such as those that occurred at Dachau. Simply put, J.C.S 1023/10 gave the commanders of occupying armies in Germany the authority to try and sentence the war criminals in their custody.

In pursuing the validity of these trials, it is important to itemize and define the definitions of both an illegal combatant and the crimes used to characterize a war criminal under these proceedings. An illegal combatant, under the Geneva Conventions, is one who does not comply with or satisfy the various criteria for being a recognized belligerent. The criteria that was primarily violated by the concentration camp guards at Dachau was Article 4, Section 2, Item D which states that a

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lawful combatant is one who “conducts their operations in accordance with the laws and customs of war” (Geneva Convention, article 4).

It is this defining principle of the Third Geneva Convention that almost single handedly invalidates the arguments of all critics attempting to criticize the validity of the trials at Dachau. Stating that the trials were held in a manner inconsistent with the Geneva Conventions or any other body of international law germane to the topic is making the key assumption that the men being tried were even eligible for the protections provided to them under these bodies of law. To crystallize the importance of this point, in order to be protected by the Geneva Conventions, these men had to be lawful combatants which, due to their violations of the laws and usages of war, they were unequivocally not. Any argument suggesting that they were mistreated due to any failure to provide a service as requested by these bodies of law is, therefore, entirely invalid.

J.C.S 1023/10 also defines the crimes covered under its directive and, thereby, the crimes that could be levied against the men subject to its jurisdiction. These crimes were :

Atrocities and offenses against persons or property constituting violation of international law, including the laws, rules and customs of land and naval warfare, initiation of invasions of other countries and of wars of aggression in violation of international laws and treaties, [and] other atrocities and offenses, including atrocities and persecutions on racial, religious or political grounds, committed since 30 January 1933 (JCS 1023/10).

In itemizing these crimes, it is clear that any man tried and found guilty of these crimes would also necessarily have to be found to be an illegal combatant and therefore not entitled to protections under the Geneva Conventions. It is important to realize that this, coupled with all of the evidence to be compiled and identified throughout the remainder of this paper, is among the most important elements of defending the validity of the US trials at Dachau.

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While this J.C.S directive was the primary means by which the trials were authorized, there is also an article within the Constitution of the United States Military Government in Germany that formally grants authority over “all offences against the laws and usages of war” (UN War Crimes Commission, 6). Article 2 of Ordinance No. 2 identifies that such a violation would give jurisdiction over the trials and the procedure by which these trials were to be carried out entirely to the discretion of the United States Military. Evidence that these men violated the laws and usages of war is plentiful and indisputable in that, among the items that would constitute a violation under the Geneva Convention, was the fact that prisoners of war must “at all times be humanely treated and protected particularly against acts of violence or insults and from public curiosity.” In addition to this protection, those in the care of the concentration camp guards on trial must have been afforded proper medical inspections on a monthly basis (Article 31), sufficient food rations (Article 26), adequate clothing (Article 27), access to canteens and water (Article 28), and clean, sanitary accommodations (Article 29). It requires very few examples as entered into the evidence by the prosecution that all of these usages were violated and, in many cases, entirely disregarded in the treatment and imprisonment of the Dachau camp’s population.

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Conclusions

To reiterate the message contained within the various items of legislation itemized above, these articles lend further justification to the acts of the US Military Tribunals from a purely historical perspective in that the protections of these Conventions were NOT present or afforded to the defendants by the US Army at the time of the trials because they did not exist in a formal capacity. The US simply afforded the defendants these rights gratuitously. The principles outlined in the Geneva Conventions existed in a purely customary respect at the times the trials occurred if they existed in any respect at all. The US military, in its trial, sentencing, and execution of these war criminals, operated under the sole discretion of the US Government and whatever treaties between the allied nations may have existed that affected the occupied zone and trials therein.

Through examining numerous primary source documents as well as historical accounts of the trials, it is evident that the US Military Government in Germany was well supported in its trials of the 40 defendants at Dachau. A crowning piece of evidence is found when we examine the very surrender and admission of failure by the German Army in that, as soon as their surrender was offered, Germany as a political state ceased to exist in any legitimate form other than the territorial construct that we knew to be Germany. Its government, people, and army were now under the jurisdiction of the allied powers until such time came that the allies could return to Germany its sovereignty. The trials occurred, not in Germany, but in the United States Military Government in Germany. This critical distinction now draws every principle of customary international law (namely the principle of territoriality) to the side of those who would defend the validity of the trials.

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On nearly every front, the US military was shown to have acted in accordance with all international and military laws independently of the fact that they were under no requirement to do so. As illegal combatants, the Nazi criminals tried at Dachau were literally entitled to no protections under the Geneva Conventions and found themselves at the whim of a benign US Government. The Soviet Union, alternatively, in their trials of Nazi war criminals in their occupied zones, was initially much less forgiving. This would be understandable when it was later found that nearly 26.6 million Soviet men and women died as a result of the Second World War, comprising nearly 14% of their total population. To put it in better perspective, the population in the Soviet Union in 1941 was 196,700,000 and, in 1945 after the conflict had ended, the population was 170,500,000 (Russian Academy of Science). Such a massive loss of life necessarily predisposed the Soviets towards merciless pursuance of justice for those responsible for the crimes committed against their people, a fact which was evinced by the plentiful death penalties handed down by the Soviets during its own trials.

On a more personal level, I admit that I am entirely appalled by the desire of anyone to defend or question the justice done on behalf of humanity upon these monstrous and tyrannical men of violence. As the descendant of ethnic Armenians who, having escaped the genocide and made a life for themselves in this great nation, I am entirely sensitive to the impact of such hatred and cruelty that I have learned of over the course of the composition of this manuscript. This project became less of a task over time and seemed to take on a more meaningful role. I enjoyed, if that is the correct word to use, further condemning the men in question by presenting real and impactful evidence to defend the validity of their trials. It was almost vindicating to arrive at this conclusion paragraph and know, even if my readers do not, that the justice wrought upon the 40 men discussed throughout this piece was good and unquestionable. They could hang a thousand

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times for their crimes and it still would not make up for the countless thousands of lives they ruined, bloodlines they stopped, and families they destroyed. Over the 20 or so years of Dachau's terrible operation, these men slowly formed the ropes, tied the knot, slipped the noose, and then hung by the neck until dead as a result of their actions. Justice, although perhaps not capable of reflecting the extent of these men's crimes, was done in the name of their victims. Theodore Haas, a survivor of Dachau, stated that his only thought of the wretched conditions at Dachau was "The World has gone mad." Let us learn from this dark chapter of humanity and, by adopting the philosophy of Holocaust survivor Viktor Frankl, change whatever it is in us that causes such atrocities to occur. Frankl said "When we are no longer able to change a situation- we are challenged to change ourselves." Let us change ourselves so that men like those hung at Dachau can never come to exist again.

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Literature Review

Baldree, Charles. *War crimes trials procedural due process*. Charlottesville: The Judge Advocate General's School, 1967. Print.

This thesis, completed by a major in the US Army in pursuance of a Judge Advocate position, is a fantastic cornerstone piece on which my analysis of international law and its application to war crimes trials could be based.

Beiner, Theresa. "Due Process for All? Due Process, the Eight Amendment, and Nazi War Criminals." *Journal of Criminal Law and Criminology* 80 (1989): 293. Print.

This piece is one aimed at criticizing the actions of both domestic and foreign American military and federal courts in their handling of war criminals both during and after the original war crimes trials immediately following WW2. It is used in a demonstrative fashion to showcase the many forms that criticism of the validity of the trials could be questioned.

Cipriano, Noel J.. *Must the manual for courts-martial, United States, 1951, be applied in war crime trials?*. Charlottesville: The Judge Advocate General's School, 1954. Print.

This piece is cited as a preliminary piece I reviewed in order to gain a firmer grasp on the structure and application on military law in respect to these war crimes trials. Cipriano is also a US Military officer in the JAG program and this piece is critical to my understanding of the state of the law at the time the trials occurred.

Heberer, Patricia, and Jurgen Matthaus. *Atrocities on trial: historical perspectives on the politics of prosecuting war crimes*. Lincoln: University of Nebraska Press ;, 2008. Print.

This piece is often cited as a major source of the historical attempts to discredit or

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invalidate these trials. Heberer and Matthauss go into great detail over explaining the various sources of dissonance across borders, mentioning the Roman Catholic Church, American politicians, and even American citizens in its attempt to explain the various public outcries over the trials.

Jardim, Tomaz. *The Mauthausen trial: American military justice in Germany*. Cambridge, Mass.: Harvard University Press, 2012. Print.

Jardim leverages his understanding of procedural due process in military law by using the example of the Mauthausen trials as a means to communicate its intricacies and application in the trials of war criminals.

"Law-Reports of Trials of War Criminals." *The United Nations War Crimes Commission* 11 (1949): 1-17. Print.

These law reports effectively itemize and address the various defenses used during the Weiss et al. trials and the prosecution's attempts to rebuke them. It also identifies which precedents and statutes the US government relied upon in pursuance of justice during the case.

Harris, D. J., M. Boyle, and Colin Warbrick. *Law of the European Convention on Human Rights*. London: Butterworths, 1995. Print.

This piece was cited in reference to the Geneva Conventions as an explanatory piece on the European Convention on Human Rights and the legislation that arose afterwards. *The Geneva Conventions of August 12, 1949*. Geneva: The Committee, 1981. Print.

This primary source was used at great lengths throughout the piece as both a means to justify the actions of the prosecution and as a piece used by critics to discredit the validity

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of the trials. The Geneva Conventions were used quite frequently in the composition of this paper and were a cornerstone piece of legislation.

Zamecnik, Stanislav. *That was Dachau: 1933-1945*. Bruxelles: Fondation internationale de Dachau ;, 2004. Print.

This piece was used in order to provide context into what exactly occurred at Dachau and explained the Harvest Day massacre at Majdanek in great detail. This was critical in pursuance of establishing the monstrous nature of Martin Gottfried Weiss.

Bryant, Michael S.. *Confronting the "Good Death": Nazi euthanasia on Trial, 1945-1953*. Boulder: University Press of Colorado, 2005. Print.

This text, written by this paper's supervisor, examines several trials directly related to the concentration camp guards this paper is examining. The text goes into great detail about the trials themselves as well as the reasons the trials are occurring. It will be used as a background piece and a critical building block in the development of this paper's argument in that it pulls together information from many of the forthcoming sources and constructs a vivid picture of subject matter germane to the argument presented.

Friedlander, Henry. "The Judiciary and Nazi Crimes in Postwar Germany." *Simon Wiesenthal Center Annual* 1 (1984): 27-44. Print.

Friedlander presents a background on the judiciary involved with prosecuting war criminals in Germany, rather than traditional sources examining international tribunals. This piece lightly examines the military jurisprudence within Germany and will provide insight into the domestic systems where these criminals were secondarily tried.

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Jackson, Robert. *Report of Robert Jackson, US Representative to the International Conference on Military Trials, London 1945*. Washington DC: Department of State, 1949. Print.

As the chief prosecutor in the Nuremburg trials, Robert Jackson is an excellent source of accurate legal and topical information as it relates to these trials. He had the unfortunate pleasure of operating within an incredibly ambiguous environment of international jurisprudence and was, through his control over the proceedings, a major force in shaping the environment of international military law.

Loewenstein, Karl. "Reconstruction of the Administration of Justice in American-Occupied Germany." *Harvard Law Review* 61 (1948): 419-67. Print.

Loewenstein's article examines the justice system established in Germany under American military control in an effort to chronicle the steps and means by which a justice system is developed and implemented. Through the lens he provides, it is possible to identify differences between the various systems of law as well as the fundamental structure of American military law in occupied Germany.

Marrus, Michael. *The Nuremburg War Crimes Trial, 1945-46: A Documentary History*. New York: Bedford Books, 1997. Print.

This basic piece serves as the major reference for facts, both specific and general, pertaining to the Nuremburg trials. These trials, while not entirely representative of the legal proceedings this paper is examining, were a fantastic microcosm of the sentiments and attitudes of both the German and allied legal environments in which the concentration camp guard trials occurred.

Mueller, Ingo. *Hitler's justice: the courts of the Third Reich*. Cambridge, Mass.: Harvard University Press, 1991. Print.

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This piece is a shocking examination of the court systems used by Hitler to maintain control over the German state. It will serve as a starkly contrasting piece when examined alongside both modern and period schools of law and will provide insight into the lawlessness and impunity with which these concentration camp guards and officers were allowed to operate.

Nobleman, Eli E.. *American military government courts in Germany, with special reference to historic practice and their role in the democratization of the German people*. Rev. ed. Fort Gordon, GA: U.S. Army, Civil Affairs School], 1961. Print.

Nobleman examines with great detail the military law that the concentration camp guards were subject to under American supervision. The topic covered in this source is the least understood and most overlooked element of examining these trials and will serve an important function.

Nowak, Kurt. *Euthanasie" und Sterilisierung im "Dritten Reich*. Gottingen: Vandenhoeck & Ruprecht, 1984. Print.

Nowak's article, written entirely in German, examines in great detail some of the more gruesome crimes of Nazi concentration camp guards and officers. Sterilization, euthanasia, and even medical experiments are examined within this source and will be used within the paper to help characterize the guards subject to the perceived "unfair" trials.

Plan for the administration of justice, U.S. Zone. S.l.: s.n.], 1945. Print.

A primary source document, this plan represents and explains in great detail the entire legal strategy for the American military system in dealing with war criminals of all severity. This plan outlines the main components of the trials being examined and will be used to crystallize the systems in question by dissenting opinions.

Rückerl, Adalbert. *The Investigation of Nazi Crimes 1945-1978*. Hamden: Archon Books, 1980.

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Print.

Ruckerl examines a multitude of Nazi war criminals and chronicles the ongoing process of understanding, documenting, and prosecuting the countless crimes discovered after WWII. This piece will be used to outline the process by which these crimes were investigated as well as in providing the scope and pervasiveness of these crimes committed primarily by concentration camp guards.

Trials of War Criminals before the Nuremburg Military Tribunals under Control Council Law

#10, October 1946-April 1949. 15 ed. Washington DC: US Government Printing Office, 1946. Print.

This primary source document provides trial records and various decisions for the smaller, non-“Major” war criminals. It is a record of the trials that were brought under fire by the various scholars discussed within this paper and will serve as the primary “battleground” on which this paper seeks to argue its thesis.

Record Group 549. College Park: National Archives, 1949. Print.

As a major primary source for this paper, Record Group 549 is a collection of various trial records, decisions, and other documents directly related to the main premise of this paper. It will serve as a direct look into the trials themselves as well as provide insight into the logistics and structure of the proceedings.

Record Group 107. College Park: National Archives, 1949. Print.

Yet another primary source, Record Group 107 details a number of important elements of the trial including background to the separation of the trial proceedings and a number of procedural descriptions that were critical to the understanding of military law procedure.