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Book Reviews

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BOOK REVIEWS

TYRANNY ON TRIAL, by Whitney R. Harris, Dallas, Texas: Southern Methodist University Press, 1954. Pp. 648. 47 illustrations, $6.00.

The Nuremberg War Crime Trials can be analyzed under at least four possible viewpoints: a military, a political, a legal, and a historical one.

Some have defended, and others have attacked the fact that at Nuremberg the victors sat in judgment over the vanquished. The Nuremberg Trials have been hailed as an incentive to peace, and condemned as a cause for greater destructiveness of any future war. They have been called milestones in the development, and perversions, of international law. They have, finally, been praised for providing the most complete source material ever collected for students of history, only to be blamed by others for slanted and non-objective reporting.

It is the great merit of Mr. Harris in his book "Tyranny on Trial" to have provided, in a handy volume, the material for constructive discussion of the Nuremberg Trials under these, or any other view points.

Mr. Harris has confined himself to the record of the first and probably most important case before Nuremberg Tribunals, that against Goering, *et al.* This limitation can be accepted because of the fundamental character of that first case.

Mr. Harris gives some substantial material on the potentially military aspect of the Nuremberg Trials. His book has some good arguments against it, in Mr. Justice Jackson's introduction to the book:

> Chief Justice Stone, who had his own personal reasons for disliking the trial, writing about "the power of the victor over the vanquished"

said, "It would not disturb me greatly if that power were openly and frankly used to punish the German leaders for being a bad lot, but it disturbs me some to have it dressed up in the habiliments of the common law and the Constitutional safeguards to those charged with crime." (Mason, "Extra-Judicial Work for Judges: The Views of Chief Justice Stone," 67 Harv. L. Rev. 193.) It is hard to find a statement by a law-trained man more inconsistent with the requirements of elementary justice. When did it become a crime to be one of a "bad lot"? What was the specific badness for which they should be openly and frankly punished? And how did he know what individuals were included in the bad lot? Can it be less right to punish for specific acts such as murder, which has been a crime since the days of Adam, then to punish on the vague charge always made against an enemy that he is "bad"? If it would have been right to punish the vanquished out-of-hand for being a bad lot, what made it wrong to have first a safeguarded hearing to make sure who was bad, and how bad, and of what his badness consisted?[1]

A pertinent *political* lesson of the Trials is stated by the author on page 16:

> The leaders of Hitler's Germany are discredited, and Western Germany stands with the free world against a tyranny of a different kind. What was learned at Nuremberg about the methods and objectives of despotic men can serve us well in evaluating our relations with the Soviet regime. For tyranny is not a product of nations or of races, but of men.

The *law* of the Nuremberg Trials is, on pp. 461 *et seq.*, somewhat summarily stated. This part, too, is well done, though, and is adequate in view of the intended, and desirable, appeal of the book to everybody, not only to the lawyer or historian.

It is not, and was hardly intended to be, a treatise on, or even a full summary of, the "Nuremberg law." Little can be found in this book on the standard Nuremberg defense of "superior orders," though this aspect of the Nuremberg Trials is one that has interested Americans generally, and American soldiers specifically, more than any other aspect of the "Nuremberg law." The

[1] p. xxxiii.

author, probably rightly, sees the greatest contribution of the Nuremberg Trials to international law in their precedent-setting effect. But the old function of punishment, the *quia peccatum est* and the *ne peccetur* could perhaps have been more strongly emphasized.

As a sourcebook, Mr. Harris' opus is dependable. In 500 pages, he gives the substance of literally thousands of pages of testimony and of documentary evidence. It will be difficult to find elsewhere as much compact horror as in his chapters on "The Murder Marts" and the "The Einsatz Groups,"[2] and the anatomy of military aggression has rarely been as tensely described as in Chapter 6 *et seq*, dealing with the Nazi attacks on Austria, Czechoslovakia, Poland, and so on.

The overall importance of this book becomes evident when it is contrasted with Veale's "Advance to Barbarism" which, unfortunately and undeservedly, has become an "intellectual" and political force in this country. Veale says of the Nuremberg trials:[3]

> Except to students of the customs, practices, beliefs, and ideas of primitive man, the details of this unique trial need not concern anyone who values his time.

Veale speaks of "Nuremberg with its collection of foreign hangmen."[4] The object of the Nuremberg Trials, according to Veale, was "not to ascertain the truth but to secure a conviction."[5] Mr. Harris' book is a very necessary and a very competent refutation of this and other errors.

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[2] Chapters 25 and 26.
[3] Veale "Advance to Barbarism," p. 2.
[4] *Id.* at 79.
[5] *Id.* at 149.
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MOORE' FEDERAL PRACTICE, SECOND EDITION, VOLUME 6.

By James Wm. Moore. Albany, New York: Mathew Bender & Company, 1953. Pp. xvii, 4055. $18.50.

Professor James Wm. Moore of the Yale University School of Law, is well known to the Federal Court practitioner because of his profound knowledge of Federal practice and his ability to organize the vast material on the subject into a usable treatise.

The Sixth Volume of the Second Edition continues Professor Moore's treatment of the Federal Rules begun in the Second Volume and covers Rule 54 Judgments, Costs; Rule 55 Default; Rule 56 Summary Judgment; Rule 57 Declaratory Judgments; Rule 58 Entry of Judgment; Rule 59 New Trials, Amendment of Judgments; and Rule 60 Relief from Judgment or Order. In general the official rule is stated, followed by the history of the rule, committee notes, discussion of the relationship to other rules, changes made to the rules since originally promulgated, if any, and a detailed discussion of the various provisions of the rule. The paragraphs of the text are geared to the rules so as to facilitate the use of the material, and the text is divided into short balanced essays arranged in logical order. The treatise contains Professor Moore's opinions as to the probable judicial interpretation of the various provisions of the rules. The problems relating to the rules are recognized and practical information and advice are supplied throughout the volume for the proponents of either side of the question. The volume is very comprehensive and the text supported by cross references and citations to Federal Rules Service as well as the official reports. There are numerous quotations from cases; the cases are evaluated by Professor Moore, and the comments on the cases are coordinated with the text.

Because of the particular rules covered by this volume it would seem to the reviewer that the volume would be of special interest and assistance to the practitioner. In the discussion of Rule 54, Judgments, Costs, the problem of finality is thoroughly discussed.

The jurisdictional statutes and the other related sections of the United States Code are stated and considered in connection with the problem. Such subjects as direct appeals from the District Courts to the Supreme Court, bankruptcy appeals, interlocutory appeals in injunction, receivership, patent and admiralty proceedings and the All Writs Statute, 28 U.S.C. Sec. 1651, are exhaustively covered in a very scholarly manner.

Because of the increased use of the relatively new motion for summary judgment and declaratory judgment procedure, this volume should be especially helpful. In addition to Professor Moore's general treatment of the rule on summary judgments, Rule 56, there is a very extensive discussion of the materials on which the motion may be heard which will aid the attorney in preparing the motion and in determining the support required and that available in his particular case. Over 100 pages of the discussion of this rule are devoted to the summary judgment in particular actions and on particular issues. This discussion of the rule applied to particular actions and issues, together with the authorities cited, and Professor Moore's evaluation and comments on the cases should serve as a valuable guide both to the attorney for the movant and the respondent.

Professor Moore does not limit his discussion of declaratory judgments to Rule 57 which makes reference to the procedure for obtaining a declaratory judgment pursuant to Title 28, U.S.C., Sec. 2201, but gives a complete discussion of this rule and of the Declaratory Judgment Act. The constitutionality of declaratory judgments, purposes of the Act and the rule, and judicial discretion are all thoroughly covered. Once again, Professor Moore gives in his discussion of this rule and of the related statute an application of the general principles of justiciability and the exercise of judicial discretion to render or to refuse to render a declaratory judgment in various types of cases, including tax cases, insurance cases, patents, trade marks and copy rights, etc.

As evidence of the practical use to which this volume may be put, the procedural aspects of the declaratory judgment proceeding are set forth in detail.

The value of this treatise, not only for research and a guide to practice, but as an authority within itself, is shown by the fact that the Federal Courts, including the United States Supreme Court, have cited this treatise as an authority. Above all, the treatise is thorough and scholarly, and is a recommended as a complete guide to practice.

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