

**THE HADAMAR TRIAL:
INADEQUACIES OF POSTWAR JUSTICE**

by Madeline Schlesinger

A handwritten signature in black ink, appearing to read "Robert H. Abzug". The signature is fluid and cursive, with a long, sweeping tail that extends to the right.

Dr. Robert H. Abzug, Advisor

A handwritten signature in black ink, appearing to read "David F. Crew". The signature is cursive and somewhat compact, with a distinct loop at the end.

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Abstract

Throughout the Second World War, the Third Reich used facilities at the Hadamar institution to carry out the Nazi euthanasia program—an operation that targeted German citizens suffering from mental illness and physical disabilities. Just months after Allied victory and the American liberation of Hadamar, a United States Military Commission led by the young Leon Jaworski tried personnel from Hadamar for violation of international law in the murder of 476 Soviet and Polish forced laborers. The Hadamar War Crimes Case, formally known as United States of America v. Alfons Klein et al., commenced in early October of 1945 and figured as the first postwar mass atrocity trial prosecuted in the American-occupied zone of Germany.

Although often overlooked in the shadow of the subsequent events at Nuremberg, the Hadamar Trial set precedent for war crimes trials and the rewriting of international law to include the charge of crimes against humanity. In its historical context, the Hadamar trial tells a story much larger than the conviction of seven German citizens. It tells the story of the Third Reich's murderous euthanasia program, one of the United States' first confrontations with the crimes of the Holocaust, the inadequacies of international law in the immediate postwar period, the impossibility of true retribution in the aftermath of Nazi atrocities, and the slow erosion of justice in the years following the war.

My thesis aims to accurately depict the crimes committed at Hadamar, present the collision of German and international law during the proceedings, and prove the inadequacy of contemporary legal infrastructure to prosecute the crimes against humanity committed during World War II.

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I dedicate this project to the 15,000 victims of the Hadamar institution. It is my sincere hope that this work will perpetuate their memory in the hearts and minds of my readers. I would also like to make a dedication to my grandparents—Dr. Joseph and Perla Schlesinger—Holocaust survivors, lifelong advocates of human rights, and inspirations to many.



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¹ The wall surrounding the Hadamar cemetery. Personnel from the institution placed jagged glass along its edge to discourage people from visiting or looking inside. 1 Mar. 2013
<http://www.ushmm.org/wlc/en/media_ph.php?MediaId=3838>.

**CHAPTER 1:
Setting the Historical and Legal Stages of the Hadamar War Crimes**

The Hadamar Trial, or *United States v. Alfons Klein et al*, commenced on the morning of October 8, 1945 in a Wiesbaden district courthouse.² Seven German civilians faced a United States military commission in the first post-World War II mass atrocity trial prosecuted in American-occupied Germany, charged with participation in the Nazi euthanasia program.³ Over the next seven days, a complex legal drama unfolded in an attempt to administer justice in the aftermath of crimes that exceeded all legal precedents and conceptions.

The subsequent three chapters tell the story of the Hadamar trial—its setting, characters, drama, and resolution. Most of the information comes from the trial records themselves, obtained from the United States National Archives in Washington, D.C., as no American scholarship dedicated exclusively to the Hadamar Trial exists. The records include pre-trial investigation documents, sworn statements, witness testimonies, a transcript of the seven days in court, petitions for clemency, correspondence, and internal route memos of the war crimes investigation team. This first chapter introduces the setting of the trial. A brief history of the Hadamar institution and its role in the Nazi euthanasia program set the scene of the crime. The infrastructure provided by both German and international law comprise the legal setting. Overshadowing all were the atrocities that shocked American liberators and, crucially, tested the tenuous laws in place at the time of the crime.

² Patricia Heberer, “Early Postwar Justice in the American Zone: The ‘Hadamar Murder Factory’ Trial,” *Atrocities on Trial: Historical Perspectives on the Politics of Prosecuting War Crimes*, ed. Patricia Heberer and Jurgen Matthaues (Lincoln: University of Nebraska Press, 2008) 25.

³ Heberer, 25.

Hadamar's dark history began the year Hitler ordered the German invasion of Poland. In light of a 1939 program permitting so-called "mercy killings" or euthanasia in the case of "incurably insane persons," the Reich government commissioned the establishment of six institutions to facilitate the mass murder of mentally and physically disabled German citizens. Under government orders from Berlin, Nazi officials converted Hadamar—located in Nassau Germany and formerly used as a sanatorium—into one of the six facilities designated to perform these "mercy killings." The pretrial investigation documents indicated, "After this institution went on a production basis, large numbers of German nationals were liquidated through the injections of deadly drugs consisting of morphine and scopolamine."⁴ According to German civil authorities, Hadamar personnel murdered an estimated 15,000 victims by gassing over the course of the war and another estimated 5,000 victims by drugs or poison.⁵

The American liberation of Hadamar in the spring of 1945 exposed the crimes committed at the institution. At this unplanned liberation, quite different from typical liberations motivated by military objectives, battle-weary American boys confronted the last of the surviving victims of Nazism. The United States First Army's Second Infantry Division entered the town of Hadamar on March 26, 1945.⁶ Local residents reported disturbing stories of thousands of murders in the town's sanatorium. Based on this information, Captain Alton H. Jung decided to investigate, and on March 29, American officials conducted their first visit to the Hadamar facilities.⁷ Investigators proceeded to discover 481 mass graves in the institution's cemetery. The team also found a death

⁴ Microfilm Roll 1, Image 0831.

⁵ Microfilm Roll 1, Image 0659.

⁶ Heberer, 28.

⁷ Heberer, 28.

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register containing the names of Hadamar's victims in a wine cellar near the cemetery.⁸

Captain Jung immediately contacted the United States War Crimes Branch, alerting the authorities to his findings at Hadamar.



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⁸ Heberer, 28.

⁹ U.S. Army sentry observes the mass graves at Hadamar. 1 Mar. 2013
<http://www.ushmm.org/wlc/en/media_ph.php?MediaId=3842>.



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Hadamar horrified and baffled the American liberators. Hall Boyle, an associated press war correspondent, wrote an article for the *Evening Star* on April 10, 1945 describing the liberators' findings at Hadamar. He writes, "American troops have discovered a German 'murder factory,' rivaling any house of horror dreamed up by fiction writers, where it is estimated 20,000 persons viewed by the Nazis as 'undesirables,' were systematically slain."¹¹ In another newspaper article included in the pre-trial documents, one investigator describes the scene he encountered at Hadamar. The account, entitled "Nazi Murder Mill Found in Asylum: Starved Till Weak, 20,000 Were Slain in 'Mercy Killings,'" the witness states:

¹⁰ Birds eye view of Hadamar. 1 Mar. 2013
<http://www.ushmm.org/wlc/en/media_ph.php?MediaId=3839>.

¹¹ Microfilm Roll 1, Image 0659.

Nobody would believe it...it had underground chambers with dripping water, bats flying around and little crazy men jumping out at you at every step...The head keeper showed us 481 graves in the cemetery. There were three fresh empty graves and when we asked him about them he said, "we always keep three graves ahead"...After their 10,000th killing the SS men had a drinking orgy. They cleaned out the skulls of some of their victims and used them as drinking cups.¹²

The testimony of a former employee at Hadamar also referenced the celebration of the 10,000th killing mentioned above. He described similarly horrific events, verifying the inconceivable commemoration. He remembered all of the personnel assembling in the right-hand wing of the institution, "where everybody was given a bottle of beer and from where we then went down into the cellar."¹³ There a naked male corpse "with an enlarged head" lay on a stretcher.¹⁴ All cheered as the "burner" pushed him—the 10,000th victim—into the crematorium.

¹² Microfilm Roll 1, Image 0658.

¹³ J. Noakes and G. Pridham, eds. *Nazism 1919-1945 Volume 3: Foreign Policy, War and Racial Extermination* (Exeter: University of Exeter Press, 1984) 419.

¹⁴ Noakes and Pridham, 419.



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American liberators and investigators encountered not only disturbing tales of what had happened in Hadamar but also survivors. War correspondent John Thompson's article from April 10, 1945 entitled "20,000 Slain in Nazi House of Shudders" writes: "...officers found 300 babbling insane creatures hiding in the dim recesses of the underground labyrinth or wandering about upstairs. They were what might be termed the permanent population, ones which were shown to visitors."¹⁶ Typical of many liberators'

¹⁵ Group portrait of T-4 personnel at a social gathering. It is not clear where this photograph was actually taken, but the 10,000th commemoration at Hadamar may have looked similar to this type of event. 1 Mar. 2013 <<http://digitalassets.ushmm.org/photoarchives/detail.aspx?id=1150423>>.

¹⁶ Microfilm Roll 3, Part 2, Image 1448.

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accounts, Thompson uses language that describes the survivors as somehow less than human.



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¹⁷ Emaciated survivor standing in Hadamar (most likely taken by a U.S. military photographer upon liberation). 1 Mar. 2013
<<http://digitalassets.ushmm.org/photoarchives/detail.aspx?id=1071006>>.



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¹⁸ U.S. military photographer questions survivors. 1 Mar. 2013
<<http://digitalassets.ushmm.org/photoarchives/detail.aspx?id=1071051>>.

These stories and images encountered by the liberators set the scene for the Hadamar trial, shocking American investigators and pushing the limits of their imaginations. Captain Brinkley Hamilton, a former British police officer assisting with the Allied investigation of the sanatorium, stated, “In 20 years of police experience at Bow Street, London...I’ve never heard anything like this. I’ve heard such stories but I didn’t believe them. Now I think anything is possible.”²⁰ Major Fulton C. Vowell of the United States War Crimes Office said the discoveries at Hadamar constituted the most horrible example of Nazi brutality he ever witnessed.²¹

Despite the atrocious nature of the crimes carried out against German citizens under Hadamar’s roof, American legal authorities maintained that the killing of German nationals carried out at Hadamar “was not subject to prosecution as a violation of international law.”²² Because Germans committed this mistreatment and murder of German citizens in accordance with a directive from Hitler—the German head of state—international law could not render Allied jurisdiction in the matter. However, the outraged American authorities were committed to finding a legal maneuver that permitted them to press charges, for the scene of the crime portrayed too much injustice to simply walk away.

The death registrar, listing the names and nationalities of the institution’s victims, found at Hadamar provided the essential information required by American military lawyers. The meticulous Nazi record keeping condemned the Hadamar personnel

¹⁹ Survivors in their beds at Hadamar upon liberation. 1 Mar. 2013
<<http://digitalassets.ushmm.org/photoarchives/detail.aspx?id=1071024>>.

²⁰ Microfilm Roll 3, Part 2, Image 1448.

²¹ Microfilm Roll 3, Part 2, Image 1441.

²² Microfilm Roll 1, Image 0003.

because the investigators noted that Polish and Russian nationals were also among the victims. As the prosecution later argued in court, the “unjustified killing of foreign nationals under Germany’s belligerent control could be tried because each nation-state had a specific interest in the maintenance of international law” as outlined by the principles of the Hague convention.

Until the summer of 1944, the Hadamar personnel confined the killings at Hadamar to German nationals. However, in July 1944, Polish and Russian men, women, and children forced laborers began to arrive at the institution.²³ Specially selected doctors and nurses murdered these foreign laborers—claiming they suffered from incurable cases of tuberculosis or other such diseases—immediately upon arrival by hypodermically administering a lethal dose of a morphine and scopolamine combination solution.²⁴ Statements of witnesses indicate that the Hadamar personnel disposed of approximately 300 Polish and 150 Russian forced laborers in this manner from the summer of 1944 until the arrival of the American troops in late March 1945. The transports of Russians and Poles arrived by train or bus in groups of varying size—sometimes as small as three or five, some around fifteen, and the largest reaching approximately seventy to eighty.²⁵ Every eastern worker admitted to Hadamar died in the institution, no matter what age and no matter the severity of his or her alleged illness.

²³ Microfilm Roll 1, Image 0029.

²⁴ Microfilm Roll 1, Image 0029.

²⁵ Microfilm Roll 1, Image 0029.



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Pathology examinations performed by an American physician determined that, at the time of their death, immediate death by illness endangered none of the victims. Major Herman Bolker, a member of the U.S. Army medical corps war crimes investigating team and licensed pathologist, performed autopsies on twelve exhumed bodies. According to the testimony of Friedrich Dickmann, a former patient and gravedigger at Hadamar, he and the other gravediggers buried German bodies without clothes but with identification tags on their big toes. The Poles and Russians were buried, on the other hand, in their underclothes but without identification tags.²⁷ Of the twelve bodies exhumed, Dickmann identified six as Polish or Russian and six as German

²⁶ A bus transporting victims to Hadamar. The windows were painted to prevent people from seeing those inside. Probably taken between May and September 1941. 1 Mar. 2013 <http://www.ushmm.org/wlc/en/media_ph.php?MediaId=881>.

²⁷ Microfilm Roll 1, Image 0579.

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based on his memory of burying them and on the information regarding clothing and tags on the patients' toes.



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²⁸ German civilians disinter bodies of murdered Polish and Soviet laborers at Hadamar. Allied liberators often required German civilians living near former concentration camps to perform tasks such as this one (which often consisted of digging mass graves for unburied corpses) as punishment for accepting atrocious Nazi policies rather than attempting to resist. 1 Mar. 2013 <<http://digitalassets.ushmm.org/photoarchives/detail.aspx?id=1071144>>.



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²⁹The exhumed bodies used for pathological examination. 1 Mar. 2013
<<http://www.holocaustresearchproject.org/euthan/images/exhumed%20corpses%20at%20hadamar.jpg>>.

Major Bolker noted, “Immediate comparison of the two groups of bodies showed the Poles and Russians to be a well-nourished group while the Germans showed evidence of considerable weight loss.”³⁰ This information, combined with more evidence disclosed throughout the course of the trial, proved the relative health of the forced laborers. While the German nationals perished due to mental illness under the government-ordered euthanasia program, these foreigners were murdered for no other reason than that the Reich—in its collapse during the final years of the war—no longer had the resources to feed these slaves. Deemed useless to the Nazi regime, they met death at Hadamar.

The pathology of the six foreigners provided essential information and evidence for the prosecuting authorities. According to the summary of pertinent pathological findings in the pretrial documents, “good nutrition was apparent in all six bodies” and one body showed no gross pathology.³¹ Although four corpses showed tubercular involvement, all was acute and insufficient to figure as the primary cause of death.³² According to Major Bolker, only one of the six bodies showed regional lymph node involvement (indicating previous or long standing disease).³³ Finally, he noted that the pupils of the bodies “were found to be contracted...a finding which is consistent with morphine poisoning.”³⁴

³⁰ Microfilm Roll 1, Image 0580.

³¹ Microfilm Roll 1, Image 0580-0581.

³² Microfilm Roll 1, Image 0580-0581.

³³ Microfilm Roll 1, Image 0580-0581.

³⁴ Microfilm Roll 1, Image 0580-0581.

Thus, of the six disinterred bodies, one showed no signs of tuberculosis and the other five showed a non-advanced stage of tuberculosis.³⁵ Based on these pathological facts, none of the individuals examined were in danger of immediate death and, with adequate medical attention, would all have lived for a number of years. However, these people did not receive proper medical attention, nor could they, as Hadamar contained no medical equipment designed to diagnose or treat tubercular patients, such as an X-ray machine or relevant pharmaceuticals. Thus, the scene of the crime looked grim for the Hadamar defendants as they faced charges of murder of hundreds of seemingly healthy foreigners in an institution that stunned its liberators with horror and disgust.



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³⁵ Microfilm Roll 1, Image 0488.

³⁶ Exhumed bodies at Hadamar used for pathology examinations. 1 Mar. 2013
<<http://digitalassets.ushmm.org/photoarchives/detail.aspx?id=1071156>>.



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Before delving into the details and complexities of the trial itself, one more stage must be set: that of international and German law. The legal contexts existing before, during, and in the immediate aftermath of the Hadamar atrocities unveil the precarious coexistence of legal and illegal activity under Hadamar's roof between 1939 and 1945.

In terms of the international legal framework, two conventions governed land warfare during the Second World War: the Hague Conventions and the Geneva Convention. Negotiated over the course of two international peace conferences—the first in 1899 and the second in 1907—the Hague Conventions consolidated the laws of land warfare, embodied the rules of customary international law, and addressed issues of war

³⁷ Major Bolker performs autopsies on exhumed bodies. 1 Mar. 2013
<<http://digitalassets.ushmm.org/photoarchives/detail.aspx?id=1071137>>.

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crimes and criminals.³⁸ The major powers of the Second World War—including the United States, Germany, Russia, and later Poland—ratified the resultant agreements and their annexes.

The Geneva Convention that existed prior to World War II included three treaties signed in 1864, 1906, and 1929, respectively. These treaties established protocols and standards of international law for humanitarian treatment of the wounded and sick during war. A fourth treaty, ratified in 1949 in the wake of World War II atrocities, implemented more comprehensive protections and standards, including protections for civilians during wartime. As demonstrated by the legal conflicts of the Hadamar trial (and other postwar proceedings), many of the provisions and precedents of these two conventions proved inadequate and insufficient to prosecute the type of crimes committed during the war. The unprecedented nature of the atrocities combined with the rather weak statutes of contemporary international law set a messy stage for the Allied commissions that tried war crimes cases.

During the Hadamar trial, “prosecution authorities placed great emphasis on the Hague Convention of 1907, which attempted to codify the rules of land warfare.”³⁹ Specifically, section III (entitled “Military Authority Over the Territory of the Hostile State”) article 46 (entitled “Annex to the Hague Convention, October 18, 1907) imposed strict requirements for the protection of civilians during wartime.⁴⁰ The relevant portion of the article reads: “Family honour and rights, the lives of persons, and private property,

³⁸ “Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October 1907,” 15 Mar. 2013 <<http://www.icrc.org/ihtmlmnsf/intro/195?OpenDocument>>.

³⁹ Microfilm Roll 1, Image 0003.

⁴⁰ Microfilm Roll 1, Image 0003.

as well as religious convictions and practice, must be respected.”⁴¹ Furthermore, according to this legislation, the Hadamar personnel committed deeds liable for prosecution as war crimes by a military commission as they participated in the killing of civilians without just cause.⁴² The portion of the Geneva Convention ratified in 1929 that expanded upon the regulations and precedents of the Hague Convention of 1907 also proved valuable to the prosecution during the Hadamar proceedings insofar as they related to the treatment of prisoners of war. In the establishment of a prima facie case, the U.S. Military Commission ultimately charged the defendants from Hadamar with “murder and malnutrition of allied Polish and Russian displaced nationals or forced laborers in violation of the Geneva Convention and Rules of Land Warfare.”⁴³ Thus, the provisions outlined by the international treaties created the initial foundation from which the prosecution pressed charges against the employees of Hadamar.

The Moscow Declaration, released on November 1, 1943, also played an essential role in the establishment of American jurisdiction in the Hadamar case. The governments of the United States, United Kingdom, Soviet Union, and China signed the joint four-nation declaration, stating their intention to prosecute war criminals after the end of the war. This document served as one of the bases for all war crimes following World War II, whether undertaken by military commissions, U.S. military tribunals, or international military tribunals.⁴⁴

⁴¹ “Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October 1907,” 15 Mar. 2013 <<http://www.icrc.org/ihtmlmnsf/intro/195?OpenDocument>>.

⁴² Microfilm Roll 1, Image 0003.

⁴³ Microfilm Roll 1, Image 0029.

⁴⁴ Microfilm Roll 1, Image 0015.

The section entitled “Statement on Atrocities” signed by President Roosevelt, Prime Minister Churchill, and Premier Stalin, contains important information regarding the intention of the Allied powers to bring crimes committed by the Axis powers to justice. The statement describes the “atrocities, massacres, and clod-blooded mass executions” perpetrated by “Hitlerite forces in many of the countries they have overrun and from which they are now being steadily expelled” by the advancing armies of liberating powers.⁴⁵ In light of these atrocities, the declaration asserts the three Allied powers’ intention to try perpetrators of war crimes. The document warns German officers and members of the Nazi party who “have taken a consenting part in the above atrocities” that they “will be brought back to the scene of the crime and judged on the spot by the peoples whom they have outraged” according to the laws of the free governments which will be erected therein.⁴⁶ Finally, the document finishes with a stern advisory to “those who have hitherto not imbrued their hands with innocent blood lest they join the ranks of the guilty, for most assuredly the three allied powers will pursue them to the uttermost ends of the earth and will deliver them to their accusers in order that justice may be done.”⁴⁷

These three documents—the Hague Convention, the Geneva Convention, and the Moscow Declaration—together set the legal stage of the Hadamar drama as the defendants, charged with violations of international law, took the stage. However, as the case advanced, the defense began to contest the legitimacy of this framework in various

⁴⁵ “The Moscow Conference; October 1943,” 10 Feb. 2013 <avalon.law.yale.edu/wwii/Moscow.asp>.

⁴⁶ “The Moscow Conference; October 1943,” 10 Feb. 2013 <avalon.law.yale.edu/wwii/moscow.asp>.

⁴⁷ “The Moscow Conference; October 1943,” 10 Feb. 2013 <avalon.law.yale.edu/wwii/moscow.asp>.

ways. Subsequent chapters address the legal nuances surrounding these debates; however, before moving on to the intricacies of the trial, one final and crucial context remains to be established: that of the Nazi euthanasia program. From this setting emerged an abundance of legal and moral ambiguities upon which the U.S. military commission ultimately passed judgment.

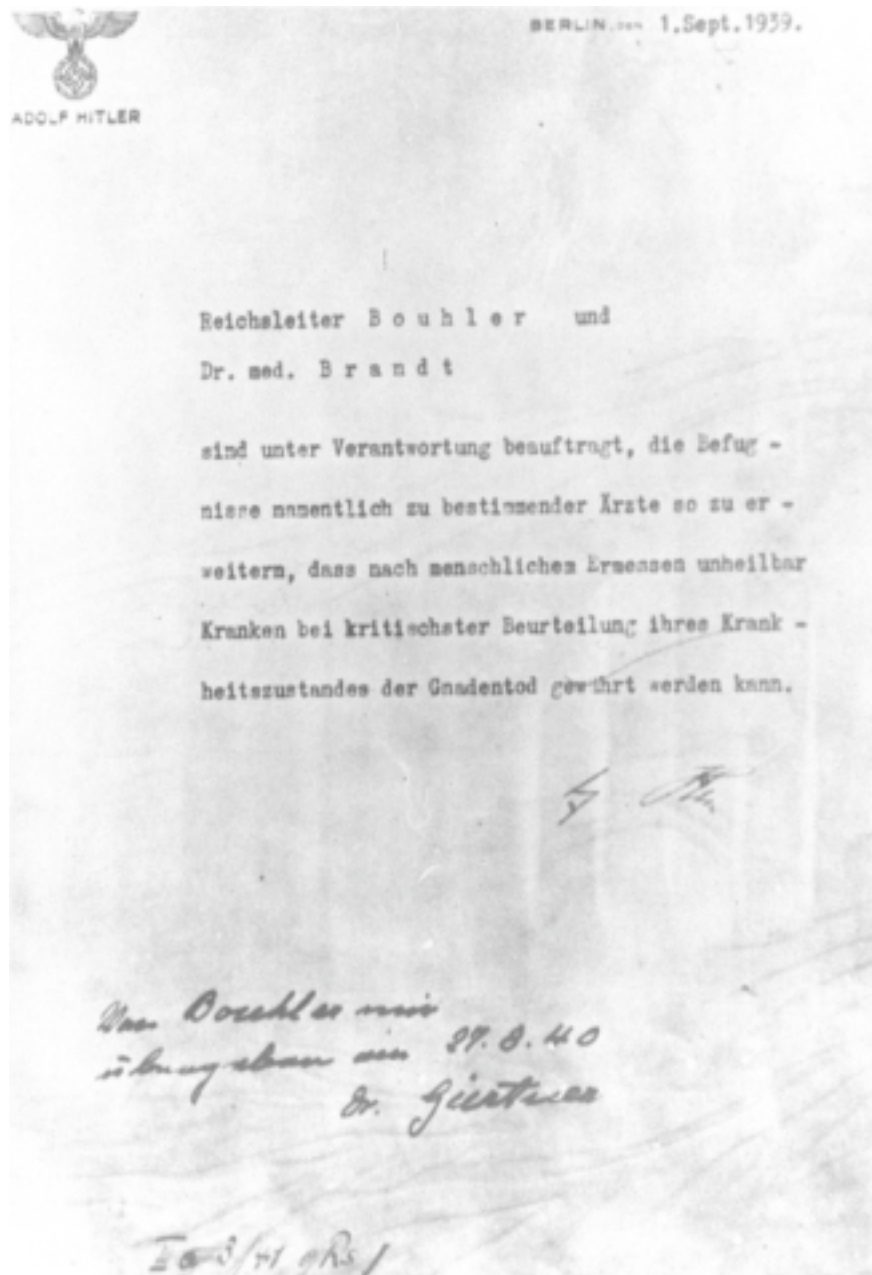
Hitler signed the order for the Nazi euthanasia operation, code named “T4” after the address in Berlin from which the department operated (Tiergartenstrasse 4), in October 1939.⁴⁸ The document, written on his personal notepaper rather than an official document read: “*Reichsleiter* Bouhler and Dr. med. Brandt are charged with the responsibility to extend the powers of specific doctors in such a way that, after the most careful assessment of their condition, those suffering from illness deemed to be incurable may be granted a mercy death.”⁴⁹ By signing this secret order, Hitler protected participating physicians, medical staff, and administrators from prosecution.⁵⁰ Furthermore, Hitler chose his private chancellery to serve as the engine for the euthanasia campaign. Because the *Führer* Chancellery—separate from state, government, and Nazi party apparatuses—remained insular and compact, the T4 organization maintained the essential elements of a high level of secrecy and tight security.⁵¹

⁴⁸ Noakes and Pridham, 413.

⁴⁹ Noakes and Pridham, 413.

⁵⁰ Holocaust Encyclopedia, “Euthanasia Program.” 15 Jan. 2013 <www.ushmm.org/wlc/en/article.php?ModuleId=10005200>.

⁵¹ Holocaust Encyclopedia, “Euthanasia Program.” 15 Jan. 2013 <www.ushmm.org/wlc/en/article.php?ModuleId=10005200>.



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Significantly, Hitler preferred an informal authorization of the program to a formal decree or law. Although the Interior Ministry drafted a euthanasia law—as many involved in the program (doctors, in particular) anxiously sought to legitimize their actions—Hitler refused to sign and resisted all future attempts to persuade him to sign the

⁵² Photograph of Hitler's T4 authorization. 1 Mar. 2013
<<http://digitalassets.ushmm.org/photoarchives/detail.aspx?id=15074>>.

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euthanasia program into law.⁵³ To protect himself and his policies, Hitler backdated the T4 authorization from October to September 1, presumably reflecting his sense that outbreak of war proved the most appropriate moment from which to approve such an extreme program and dramatic initiative towards realizing his ideological goals.⁵⁴

The Nazi euthanasia policy subsequently led to the murder of over one hundred thousand mentally ill and handicapped persons between 1939 and 1945, including over 10,000 victims in Hadamar. The Nazi program differed from traditional conceptions of euthanasia primarily in the nature of its criteria. Medical staff evaluated patients not on the basis of their individual welfare (although Nazis sometimes used this as a supplementary justification) but on their level of value to the national community as a whole.⁵⁵ This concept of the “destruction of worthless life” resided at the center of Nazi euthanasia policy.

Coined in the 1920s in a book written by Professor Karl Binding and Professor Alfred Hoche entitled *Permission for the Destruction of Worthless Life, its Extent and Form*, the idea emerged in the wake of World War I. The professors argued that in the aftermath of the war Germany became “intolerably lumbered with ‘living burdens’ (*Ballastexistenzen*), who were absorbing a disproportionate amount of resources which ought to be devoted instead to a national revival.”⁵⁶ The underlying mentalities of this work took root in German society over the next two decades.

From 1919 until Hitler’s rise to power in 1933, an increasing number of German professionals—including doctors, politicians, policymakers, and university professors—

⁵³ Noakes and Pridham, 413.

⁵⁴ Noakes and Pridham, 414.

⁵⁵ Noakes and Pridham, 389.

⁵⁶ Noakes and Pridham, 390.

agreed on the need for violent solutions to the “mental illness problem.”⁵⁷ In 1931, Hitler identified sterilization of mentally ill as “the most human act for mankind” and urged his listeners to overcome any misgivings about the practice.⁵⁸ Then, during his first year in power, Hitler published the first sterilization law in Germany on July 26, 1933. A wave of legislation between 1933 and 1936 identified categories “unworthy life” that soon became targets of the Nazi killing policy in 1939.⁵⁹ The forced sterilization program introduced in 1933 represented both a symptom of the Nazi commitment to constructing a new racial state as well as an important first step in the biological politics that lead to euthanasia led by T4 in 1939.

To determine their victims, in autumn of 1939 T4 planners strategically formulated questionnaires and distributed them to all public health officials, public and private hospitals, mental institutions, and nursing homes.⁶⁰ These forms gave the impression that the purpose of the survey was to gather statistical data; however, the emphasis of the questionnaire placed on the patient’s capacity to work revealed its sinister purpose.⁶¹ Secretly recruited medical experts worked in teams to evaluate the forms and identify those suffering from schizophrenia, epilepsy, dementia, encephalitis, and other chronic psychiatric or neurological disorders; those not of German or “related” blood; the criminally insane or those committed on criminal grounds; and those confined

⁵⁷ Michael S. Bryant, *Confronting the “Good Death”: Nazi Euthanasia on Trial, 1945-1953* (Boulder: University Press of Colorado, 2005) 20.

⁵⁸ Bryant, 25.

⁵⁹ Bryant, 27.

⁶⁰ Holocaust Encyclopedia, “Euthanasia Program.” 15 Jan. 2013 <www.ushmm.org/wlc/en/article.php?ModuleId=10005200>.

⁶¹ Holocaust Encyclopedia, “Euthanasia Program.” 15 Jan. 2013 <www.ushmm.org/wlc/en/article.php?ModuleId=10005200>.

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to the institution in question for more than five years.⁶² Based on the information provided by the surveys, T4 officials selected patients for the euthanasia program, plucked them from their home institutions, transported them to one of the six facilities designated for the euthanasia program by bus or rail, and proceeded to gas and cremate them.



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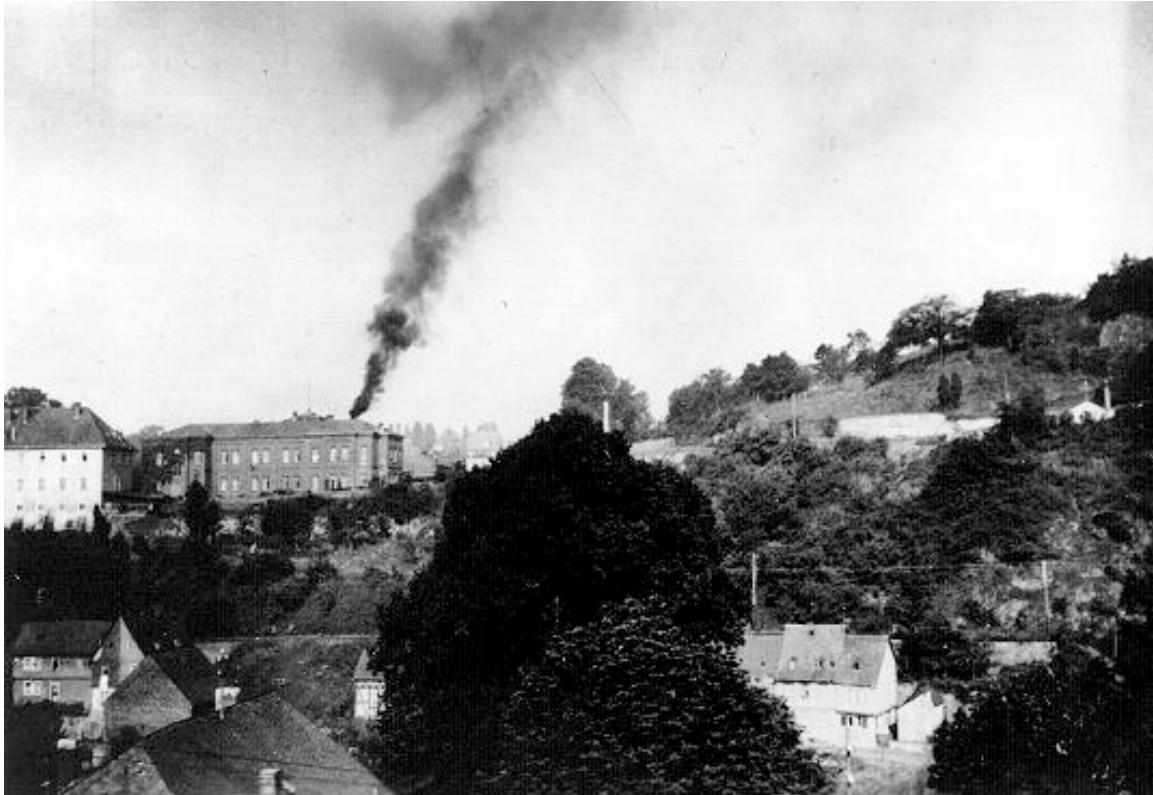
Despite efforts by T4 planners and personnel to conceal its murderous activities (such as the falsification of official records indicating natural causes of death), the Nazi

⁶² Holocaust Encyclopedia, “Euthanasia Program.” 15 Jan. 2013
<www.ushmm.org/wlc/en/article.php?ModuleId=10005200>.

⁶³ The corridor of Hadamar leading to the gas chambers; referred to by inmates as “Death Row.” 1 Mar. 2013 <<http://digitalassets.ushmm.org/photoarchives/detail.aspx?id=1071043>>.

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euthanasia program quickly became an open secret.⁶⁴ In light of protests coming from the German clergy concerning the killings, Hitler ordered a halt order that suspended the program in late August 1941. According to T4's own internal calculations, the euthanasia program claimed 70,273 lives of institutionalized mentally and physically disabled persons between January 1940 and August 1941.⁶⁵



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A second phase of the euthanasia program opened in August 1942 when German medical professionals and healthcare workers resumed the killings in a more carefully

⁶⁴ Holocaust Encyclopedia, "Euthanasia Program." 15 Jan. 2013
<www.ushmm.org/wlc/en/article.php?ModuleId=10005200>.

⁶⁵ Holocaust Encyclopedia, "Euthanasia Program." 15 Jan. 2013
<www.ushmm.org/wlc/en/article.php?ModuleId=10005200>.

⁶⁶ Smoke rising from the crematoria at Hadamar. 1 Mar. 2013
<http://www.ushmm.org/wlc/en/media_ph.php?MediaId=3320>.

concealed and decentralized manner than the first stage of the program.⁶⁷ This new phase relied predominantly upon regional and local authorities—rather than on national orders from Berlin—to determine the pace of the killing.⁶⁸ Because the gassing and cremating processes incited public outcry in the first stage, the second phase established a new and more inconspicuous method of killing: drug overdose and lethal injection. As this more secretive stage continued, the euthanasia program expanded to include a wider circle of victims. By the last days of the war, euthanasia personnel murdered geriatric patients, bombing victims, and foreign forced laborers (as in the case of Hadamar). Historians estimate that the euthanasia program, in both its phases, claimed the lives of approximately 200,000 individuals.⁶⁹

The euthanasia program and its history set the stage for the crimes under scrutiny in the Hadamar case. The successful implementation of the euthanasia program signaled the crossing of crucial moral thresholds within German society. By murdering members of their own society, the participants in the program demonstrated that few qualms remained regarding the murder of foreign nationals. Furthermore, the ideology implicit within the foundations of the T4 operation, in particular the notion of “life unworthy of life” (or *Ballastexistenzen*) explained why the 476 forced laborers arrived at Hadamar in the first place. The Reich government ordered the transport of these Polish and Soviet victims to Hadamar not because of incurable illness (as the defense claimed) but because their labor no longer profited the Reich. Towards the end of the war in areas surrounding

⁶⁷ Holocaust Encyclopedia, “Euthanasia Program.” 15 Jan. 2013
<www.ushmm.org/wlc/en/article.php?ModuleId=10005200>.

⁶⁸ Holocaust Encyclopedia, “Euthanasia Program.” 15 Jan. 2013
<www.ushmm.org/wlc/en/article.php?ModuleId=10005200>.

⁶⁹ Holocaust Encyclopedia, “Euthanasia Program.” 15 Jan. 2013
<www.ushmm.org/wlc/en/article.php?ModuleId=10005200>.

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Hadamar, the work designated for forced laborers proved exceedingly demanding as the German war effort crumbled. If workers failed to quickly complete hard labor projects in factories constructing war material, the Reich would rather dispose of them than pay to feed them. Thus, even mild sickness or weakness resulted in annihilation for many worn out slave laborers.

The question then arises, why were these workers—already confined in a concentration or labor camp setting—sent to Hadamar for elimination? The answer remains quite simple: many of the labor camps, particularly those in the Hadamar area or those in proximity to other major cities, lacked the necessary technology or willing personnel to execute mass murder. As a prime location for the euthanasia program, Hadamar already contained the necessary tools for systematic elimination—in the first phase of the program this meant gas chambers and crematoria, while in the second phase it meant drugs and poison.

Finally, the history of Hadamar and the T4 operation provides another essential component in the legal setting of the proceedings. The fact that the authorization to initiate both phases of the euthanasia program came through an informal order from Hitler led to considerable ambiguity during the trial, as the accused invoked the defense of alleged legality of their actions. They claimed they were under the impression that that German law required the “mercy killings” of German incurably insane as well as the Polish and Russian laborers in question. Despite these allegations, the defense remained unable to provide positive proof of the existence of such a law or decree or that the Poles and Russians could hypothetically come under the application of such law or decree.⁷⁰

Additional ambiguities surrounding the legality of the T4 program emerged as some

⁷⁰ Microfilm Roll 3, Image 0488.

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argued that Hitler's word, for all intensive purposes, represented the law itself. In that case, unofficial orders, including Hitler's authorization of the euthanasia program, existed under a functionally legal basis. This problematic nature of Nazi rule and its questionable underlying precepts created many problems for war crimes trials, the Hadamar proceedings included.

CHAPTER 2: Victims, Defendants, Plaintiffs

The next chapter introduces three groups of characters—the victims, defendants, and plaintiffs—and explains how and why they found themselves involved in the horrifying drama that played out at Hadamar. Before inquiring into the characters themselves, a brief summary of the case, as provided by the official allegations against the accused, provides a framework for the story. The United States military commission trying the Hadamar case charged seven German civilians with violation of international law—specifically violation of the Geneva Convention and Rules of Land Warfare—in the murder and malnutrition of allied Polish and Russian displaced nationals and forced laborers.⁷¹ The specification read:

In that Alfons Klein, Adolf Wahlmann, Heinrich Ruoff, Karl Willig, Adolf Merkle, Irmgard Huber, and Philipp Blum, acting jointly and in pursuance of a common intent and acting for and on behalf of the then German Reich, did, from on or about 1 July 1944 to on or about 1 April 1945 at Hadamar, Germany, willfully, deliberately and wrongfully, aid, and participate in the killing of human beings of Polish and Russian nationality, their exact names and number being unknown but aggregating in excess of 400, and who were then and there confined by the then German Reich as an exercise of belligerent control.⁷²

Hardly any information exists about the first group of characters in question: the victims. The official number of Polish and Russian nationals murdered at Hadamar totaled 476 men, women, and children. A total of 80 Poles (46 men, 29 women, and 5 children) and a total of 380 Russians (208 men, 163 women, and 9 children) perished at Hadamar.⁷³ The nationalities of 9 men, 5 women, and 2 children remained unknown to

⁷¹ Microfilm Roll 1, Image 0452.

⁷² Microfilm Roll 1, Image 0867.

⁷³ Microfilm Roll 1, Image 0779.

investigating authorities.⁷⁴ The trial records do not indicate from which concentration camps the workers came to Hadamar; however, Klein's pretrial statement indicates that one of the largest shipments of Poles and Russians to arrive at Hadamar traveled from Limburg (the district seat of Limburg-Weilburg in Hesse, Germany and the site of several Nazi concentration camps).



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Buried without any identification upon them, the sole source of identification of the Polish and Russian victims remains the Death Book (Exhibit 8), which lists the first

⁷⁴ Microfilm Roll 1, Image 0779.

⁷⁵ A survivor of Hadamar shows American liberators a remaining pile of Polish forced laborer uniforms stolen from victims. 1 Mar. 2013

<<http://digitalassets.ushmm.org/photoarchives/detail.aspx?id=1071141>>.

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and last name, marital status, age, birth date, and home city of the victims.⁷⁶ As mentioned in chapter one, all of the victims died of an overdose of morphine hypodermically administered in a solution combining lethal dosages of the drug with scopolamine.⁷⁷ The extent of this information unfortunately comprises all of the known facts regarding the victims of Hadamar.



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⁷⁶ Microfilm Roll 1, Image 0029-0030.

⁷⁷ Microfilm Roll 1, Image 0029.

⁷⁸ Two bottles of morphine found at Hadamar by U.S. Army investigators. 1 Mar. 2013 <<http://digitalassets.ushmm.org/photoarchives/detail.aspx?id=1071045>>.

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On the other hand, an abundance of information compiled from sworn statements, testimonies, and affidavits provide insight into the nature of the seven defendants and their roles in the Hadamar murder factory drama. To begin, Alfons Klein figured as the chief defendant in the case and the official in charge of administering the Hadamar institution.⁸⁰ A member of the storm troopers (the original paramilitary wing of the Nazi party, often abbreviated to S.A.) since the summer of 1930, Klein—in Huber’s words—“was a good National Socialist.”⁸¹ He served as block leader and administrative local

⁷⁹ Two pages of the Hadamar death registry. 1 Mar. 2013 <http://www.ushmm.org/wlc/en/media_ph.php?MediaId=3319>.

⁸⁰ Microfilm Roll 1, Image 0029.

⁸¹ Microfilm Roll 1, Image 0105.

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group leader of the National Socialist Peoples' Welfare Organization from 1934 to 1939.⁸² Additionally, from 1941 until the spring of March 1945 he served as county treasury comptroller for the Party.⁸³ Dr. Whalmann's pretrial statement indicates that Klein administered over all aspects of the institution, with the exception of those of a purely medically nature. He exercised authority over correspondence between Hadamar and the authorities in Wiesbaden and Berlin, all telephone traffic, and all types of visitors (both official and unofficial) to the institution.⁸⁴ Merkle's pretrial statement supports the allegations from Dr. Whalmann who commented: "Inspector Klein was in charge of the Hadamar institution...Mr. Klein was the first to be responsible for anything that happened at the institution; he made the decisions and gave the orders."⁸⁵

⁸² Microfilm Roll 3, Image 0637.

⁸³ Microfilm Roll 3, Image 0637.

⁸⁴ Microfilm Roll 1, Image 0056-0057.

⁸⁵ Microfilm Roll 1, Image 0074.



In his own statement, Klein gave a detailed description of his duties at Hadamar. “I was responsible,” he claims, “only for the business supervision of the institution...I was the cashier, and was in charge of the stock-clothing and food. Besides that I had to supervise the large farm, horticulture, and work shops, which were part of the

⁸⁶ Alfons Klein pictured front right as Irmgard Huber confers with counsel during a session of the Hadamar trial. 1 Mar. 2013
<<http://digitalassets.ushmm.org/photoarchives/detail.aspx?id=1046751>>.

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institution.”⁸⁷ Despite his extensive authority as evidenced by these administrative obligations, Klein proceeded to deny significant influence over the institution. In the same statement he argues, “The county institution of Hadamar is a state institution and is subordinated to the provincial administration of Wiesbaden. The institution could not make decisions of any kind on its own, but could only carry out demands and orders which were given by the main office in Wiesbaden. . . I, for myself, had nothing to decide, as to what kind of patients were to be admitted into the institution. This decision was made between state leader Sprenger and administrative councilor Bernotat.”⁸⁸ However, even in his allegedly subordinate position, Klein certainly felt some degree of guilt, as he immediately fled Hadamar’s grounds when the Americans invaded Germany, changed his name to “Alfons Klan” in May 1945, and carried a forged identity card until forced to reveal his true identity.⁸⁹

A defining portion from Klein’s statement represents his continual attempts throughout the course of the proceedings to cast the murders he oversaw in a positive light. All of his statements to the court reflected his twisted understanding of the crimes committed at Hadamar. Although the prosecution presented convincing evidence—particularly through the pathological findings—Klein maintained that he committed no wrong. He maintained that the Poles and Russians suffered from severe cases of tuberculosis despite the pathological evidence disputing this claim. Furthermore, and in typical Nazi ideological fashion, he argued, “these cases can hardly be regarded as cruel

⁸⁷ Microfilm Roll 1, Image 0253.

⁸⁸ Microfilm Roll 1, Image 0253.

⁸⁹ Microfilm Roll 1, Image 0104; Microfilm Roll 2, Image 0206; and Microfilm Roll 3, Image 0637.

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murder, but rather that it was made easier for them to die.”⁹⁰ Their murders, he contended, amounted to “injection[s] of mercy” to relieve them of their incurable and painful suffering.⁹¹

The next defendant under consideration, Dr. Adolf Wahlmann, oversaw the medical operations of Hadamar. The only licensed physician among the personnel of the institution, Dr. Wahlmann retired from his practice as a psychiatrist in 1936 due to a heart ailment after gaining fame as a pioneer of using electroshock therapy on psychiatric patients in Germany. However, in 1940, the Reich government recalled him to serve as the chief doctor of the Weilmuenster institution and later, in 1942, as chief physician of Hadamar.⁹² An ideological Nazi through and through, he stated in his examination: “In Germany there are four in every thousand who are mentally defective. There is a population of 80 million and that would make 320,000 in this country alone who are mentally defective and out of that number 200,000 are incurable. Therefore, we should be able to see that it was absolutely necessary to get rid of these people.”⁹³ Determining the type and amount of drug to administer to each prospective victim and signing the patients’ falsified death certificates constituted the majority of Wahlmann’s duties at the facility.⁹⁴ As Klein freely stated during his investigation, the cause of death listed by Dr. Wahlmann “was always an illness picked at random. Injections [of lethal dosages] were never given as a cause of death.”⁹⁵

⁹⁰ Microfilm Roll 1, Image 0254.

⁹¹ Microfilm Roll 1, Image 0254.

⁹² Microfilm Roll 1, Image 0061.

⁹³ Microfilm Roll 1, Image 0558.

⁹⁴ Microfilm Roll 1, Image 0082-0083 and Microfilm Roll 3, Image 0618.

⁹⁵ Microfilm Roll 1, Image 0248.



In a similar fashion to the other defendants, Wahlmann contended his innocence in his pretrial statement: “I was never conscious of the fact that I was doing a punishable deed, in that I carried out the orders which were given to me by my superior authorities,

⁹⁶ Portrait of Dr. Wahlmann during his confinement at Hadamar shortly after the American liberation of the facility. 1 Mar. 2013
<<http://digitalassets.ushmm.org/photoarchives/detail.aspx?id=1071127>>.

orders which have been made into law.”⁹⁷ In this argument, Wahlmann invokes two common defenses used by the Hadamar defendants: the responsibility to follow superior orders and the assumption of a formally legislated euthanasia decree. Furthermore, as evidence of his innocence and lack of guilty conscience, he presented in his pretrial statement the fact that it never occurred to him to flee when the Americans marched into town.⁹⁸ In a final demonstration of Wahlmann’s character and self-deception, he claimed during his examination: “I have never done anything wrong in my whole life...I am a good-hearted man and I wish you would ask the people in the city, the patients in the hospital and the personnel what they have against me...I have done nothing wrong. I did what my government told me to do during this war and that is all I could have done, and it is a great misfortune that I happen to be unlucky enough to be assigned to this institution.”⁹⁹

The next defendant, male nurse Karl Willig, bore responsibility for actually injecting the patients with lethal drug dosages. In her pretrial statement, Huber referred to him as “a fanatical National Socialist,” and subsequent examination of Willig about his behavior in the institution revealed that he certainly lived up to this description. Ostensibly a heartless man in regards to the treatment of the Polish and Russian transports, Huber recalled asking Willig to account for the foreigners, to which he responded, we shall “do with these tuberculous people, what...the Russians [would] do with the Germans.”¹⁰⁰ In contrast to Klein, who assumed a false identity in the months following liberation, Willig retained little if any concept of wrongdoing or guilt regarding

⁹⁷ Microfilm Roll 1, Image 0061.

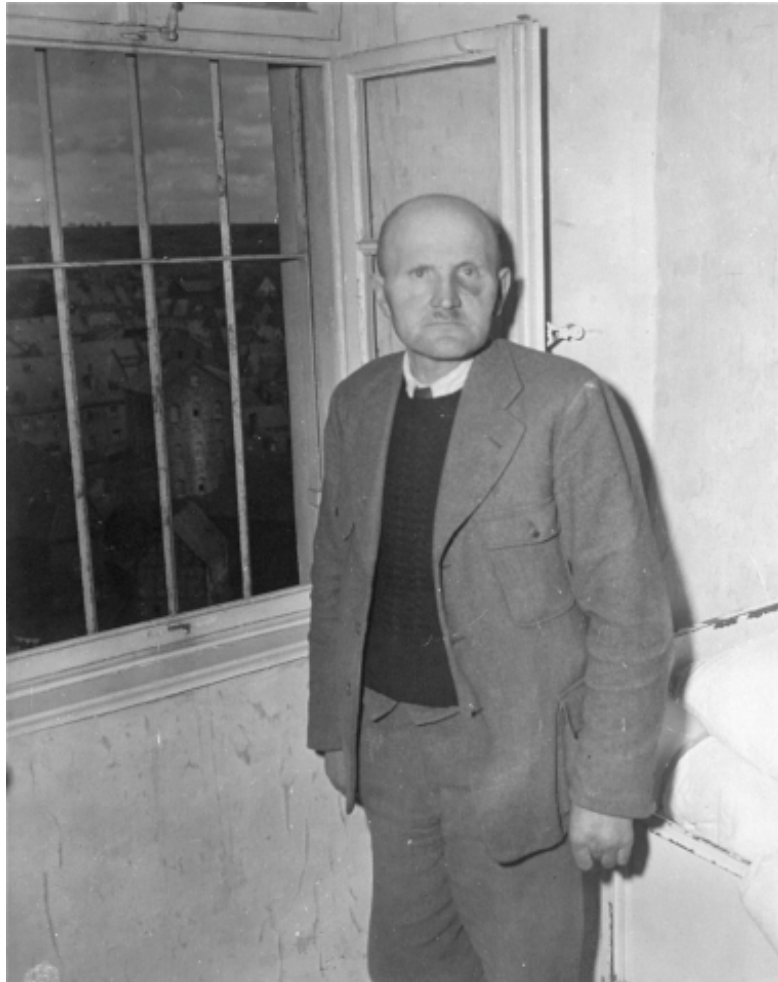
⁹⁸ Microfilm Roll 1, Image 0061.

⁹⁹ Microfilm Roll 1, Image 0565.

¹⁰⁰ Microfilm Roll 1, Image 0106-0107.

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his participation in the killings at Hadamar. The investigator in charge of his interrogation reported, “It is the impression of this interrogator, that subject [Willig] although recognizing the fact that it is not in the hands of human beings to terminate lives, did his job well, and fully aware of what he was doing.”¹⁰¹ Willig himself stated during the examination, “I did not know that I was doing anything wrong in the hospital. We were told that we were in the right. If I had known it was wrong I would not have done it.”¹⁰²



¹⁰¹ Microfilm Roll 1, Image 0051.

¹⁰² Microfilm Roll 1, Image 0051.

¹⁰³ Portrait of Willig after the American authorities placed him in confinement at Hadamar.. 1 Mar. 2013 <<http://digitalassets.ushmm.org/photoarchives/detail.aspx?id=1071129>>.

The next defendant and fellow male nurse with Willig, Heinrich Ruoff, also participated in the actual injections of the foreign laborers. Ruoff, along with Klein, belonged to the storm troopers (S.A.) and held an office in the party organization.¹⁰⁴ Ruoff himself openly admitted to administering lethal dosages of drugs to as many as 400 or 500 patients in his pretrial statement. He proclaimed, “Klein and Wahlmann gave Willig and me the order to give these Poles and Russians injections...As soon as the Russians and Poles came to the asylum, Willig and I gave them injections. We gave men and women the injection...Every Pole and Russian who came there while I was there died a few hours after arrival.”¹⁰⁵

Irmgard Huber, the only female defendant, presided as the head female nurse at Hadamar. Her primary duty consisted of administering morphine to female German patients. Although Huber took part in receiving the Poles and Russians from the first transport and leading them to their rooms inside the asylum, she asked to never again participate in the handling of foreign laborers. According to Minna Zachow’s statement (also a female nurse employed at Hadamar), Huber met with Klein in order to voice her concern about the foreign workers. Klein agreed with Huber that female “nurses should not have anything else to do with the Russians and Poles.”¹⁰⁶ However, further examination indicated she participated in the crimes against the foreign laborers indirectly by making arrangements for the elimination of the victims.¹⁰⁷ She helped relocate starving German patients to different wards of the institution to make room for the incoming transports to receive injections as quickly as possible.

¹⁰⁴ Microfilm Roll 1, Image 0058.

¹⁰⁵ Microfilm Roll 1, Image 0258.

¹⁰⁶ Microfilm Roll 1, Image 0213.

¹⁰⁷ Microfilm Roll 1, Image 0873.



¹⁰⁸ Huber poses in a corridor of Hadamar. 1 Mar. 2013
<<http://digitalassets.ushmm.org/photoarchives/detail.aspx?id=1071154>>.



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Huber's sworn statement, her examination by U.S. investigators (during which she burst into tears), and witness testimonies of others indicated a greater remorse over her actions than any of the prior defendants. During the first examination by the prosecution, Huber admitted that she "wanted to be clean and could not stand it [the treatment of the Russian and Polish transports]...It was wrong and I could not stand

¹⁰⁹ Portrait of Huber. 1 Mar. 2013

<<http://digitalassets.ushmm.org/photoarchives/detail.aspx?id=1071133>>.

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it...It...preyed on my mind.”¹¹⁰ In a later examination during the trial, Huber responded to questioning of how she felt about the killing of the Russians and Poles by stating, “I felt terrible about it. I knew that the Russians and Poles had their mothers and fathers and people that belonged to them and it would be very hard for them to die in a strange land.”¹¹¹ Despite these ambivalences, Huber insisted on her “kind-hearted...charitable...good” character.¹¹²



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Fellow convicts and witnesses also testified to Huber’s moral qualms over the activities at Hadamar. Dr. Wahlman stated, “On many occasions Huber opened up her

¹¹⁰ Microfilm Roll 1, Image 0488.

¹¹¹ Microfilm Roll 2, Image 0234.

¹¹² Microfilm Roll 2, Image 0239.

¹¹³ Huber under questioning by American investigators. 1 Mar. 2013
<<http://digitalassets.ushmm.org/photoarchives/detail.aspx?id=20144>>.

heart to me, and told me how much she suffered under the measures adopted by the authorities.”¹¹⁴ In the same statement he argued, “Head nurse Huber deserves the highest praise in regards to her service as well as her character...She showed nothing but love and understanding for the patients in all situations.”¹¹⁵ Merkle insisted in his pretrial statement that Huber “brought many provisions [such as cakes for the child patients], so as to make some patients happy.”¹¹⁶ In light of these testimonials to her moral character and as the only female defendant, Nurse Huber presented a challenging case for the prosecution throughout the trial.

The next defendant, Adolph Merkle, worked at Hadamar only from 1944 to 1945. During his year at Hadamar he performed the essential duties of record keeping and death certificate falsification. He forged the dates and causes of death on patients’ records to conceal their true fates of murder by injection only hours after their arrival at the institution and, thus, avoid suspicion from the deceased’s relatives.¹¹⁷ Nurse Zachow’s pretrial statement provides the most informative description of Merkle’s duties in the facility. She stated, “Merkle kept a death book prepared from papers which Poles and Russians brought with them and which Klein turned over to him. Every morning Merkle gave him a slip with names of people to be buried. With help of insane patients, he buried corpses and entered them in [the] burial book.”¹¹⁸ Aside from these clerical duties, the trial records provided little information regarding Merkle’s personal life or character.

¹¹⁴ Microfilm Roll 1, Image 0059.

¹¹⁵ Microfilm Roll 1, Image 0059.

¹¹⁶ Microfilm Roll 1, Image 0077-0078.

¹¹⁷ Microfilm Roll 1, Image 0873 and Microfilm Roll 3 Image 0488.

¹¹⁸ Microfilm Roll 1, Image 0873 and Microfilm Roll 3 Image 0488.

Philipp Blum, the final defendant and cousin of Alfons Klein, made arrangements for handling of victims as they came to the institution.¹¹⁹ Additionally, as chief caretaker of the cemetery, he administered the burial of deceased patients.¹²⁰ Blum first came to Hadamar as a doorman and telephone switchboard operator before the outbreak of war.¹²¹ After a short service in the *Luftwaffe* from 1940 to 1941, he returned to the institution as the caretaker of the cemetery until the Reich drafted him again in 1944.¹²² In his sworn statement he openly described his responsibilities at the asylum: “With the help of some of the insane patients I used to carry the bodies to the cemetery and bury them there. I would bury eight to twenty in one grave, and I would enter into the burial book where they were buried. I estimate that I buried, perhaps, one hundred Russians and Poles as long as I was there.”¹²³ Although the majority of his involvement in the crimes occurred after the murders, the testimonies of witnesses and fellow convicts led the court to conclude that Blum “was in the ward in which the victims were put to bed, received injections, and died, and he waited for them to die knowing that he would then be required to bury them.”¹²⁴

The official charges against him stated, “Blum was a civilian employee of the Hadamar Insane Hospital at Hadamar Germany, and assisted in carrying out a program of killing about 400 Russian and Polish forced laborers, who allegedly, suffered from tuberculosis, by administration of lethal doses of opiates.”¹²⁵ Although the allegations

¹¹⁹ Microfilm Roll 1, Image 0873.

¹²⁰ Microfilm Roll 1, Image 0873.

¹²¹ “Case No. 4 The Hadamar Trial: Trial of Alfons Klein and Six Others,” *Law Reports of Trials of War Criminals*, ed. United Nations War Crimes Commission (Buffalo: New York, 1997) 51.

¹²² Microfilm Roll 3, Part 1, Image 0273.

¹²³ Microfilm Roll 1, Image 0235.

¹²⁴ Microfilm Roll 3, Part 1, Image 0273.

¹²⁵ Microfilm Roll 2, Image 0016.

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accused Blum of assisting in 400 murders, the timing of his employment at Hadamar suggested that he probably only presided over 100 burials of foreigners, as only the first shipment of Poles and Russians arrived during his presence at the institution.¹²⁶ Despite his “minimal” involvement as compared to the other defendants, a newspaper article written by a U.S. war correspondent shortly after the liberation of Hadamar revealed the brutal nature of his participation. Entitled “Wholesale Poisoning is Admitted by Nazi Aide in Hadamar: Attendant, Reciting Role in Killing Poles and Russians, Says He Did ‘No Wrong’—Many Believed Buried Alive,” the column read, “Blum, under cross-examination, revealed that some victims may have been buried alive....He said he didn’t even touch the bodies to see if they were warm, but merely ‘looked them over’ and ordered their burial in graves containing twenty bodies each...He said that once there were so many dead Poles and Russians lying about he had to stack their bodies on the cellar floor until mass graves could be dug.”¹²⁷

Two final perpetrators of the Hadamar crimes remained. Both Gauleiter Jakob Springer and Fritz Bernotat played vital roles connecting orders from Berlin with the administrative leaders at the institution. The United Nations War Crimes Commission report noted that Hadamar “was a State institution and, during the relevant time, it was under the jurisdiction of the provincial administration located in Wiesbaden. It was subordinate to this provincial administration in that all policies were decided by, and all important orders came from, Landesrat Fritz Bernotat at Wiesbaden, who was in turn subordinate to Gauleiter Jakob Springer.”¹²⁸ Springer served as president of all the hospitals in the Hadamar region whereas Bernotat presided over all of the facilities used

¹²⁶ Microfilm Roll 3, Part 1, Image 0273.

¹²⁷ Microfilm Roll 3, Part 2, Image 1348.

¹²⁸ *Law Reports of Trials of War Criminals*, 47.

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for the euthanasia program within the Nassau district.¹²⁹ Bernotat gave Klein the instructions to murder the Russian and Polish transports at a conference in July or August of 1944.¹³⁰

Despite the crucial involvement of Bernotat and Springer in the Hadamar atrocities, both men escaped custody. Springer, president of all the hospitals in the Hadamar region, committed suicide several weeks after VE day. Investigators found his body, along with his wife's, in Austria.¹³¹ The trial records included little other information regarding Springer's official duties or personal character.

Bernotat, on the other hand, represented a much more interesting case. A very involved Nazi Party member, Dr. Wahlmann stated that he wore "the golden party insignia, and was elite guard regimental commander (S.S. *Standarten-Führer*)."¹³² During the war he served as the administrative councilor and official (hence the title "Landesrat") of the Hadamar institution.¹³³ Bernotat administered an oath at Hadamar in 1940 in which all of the personnel of the facility swore to keep the happenings of the institution a secret.¹³⁴ Huber remembers him threatening the employees with punishment if they talked about the murders administered at Hadamar or if they took any photographs.¹³⁵ According to witness testimony, Bernotat fled the Hadamar area on March 26, 1945 with the arrival of the American troops. Although investigators conducted a number of searches for him in the years following the war, all proved unsuccessful.

¹²⁹ Microfilm Roll 1 Image 0832-0833.

¹³⁰ Microfilm Roll 1, Image 0029 and *Law Reports of Trials of War Criminals*, 49.

¹³¹ Microfilm Roll 1, Image 0832-0833.

¹³² Microfilm Roll 1, Image 0058.

¹³³ Microfilm Roll 1, Image 0058.

¹³⁴ Microfilm Roll 1, Image 0120.

¹³⁵ Microfilm Roll 1, Image 0120.

A statement by Nurse Huber that “From heresy [*sic*] he [Bernotat] could walk over corpses,” provided a chilling testament to Bernotat’s character.¹³⁶ When Huber presented her attempted resignation from Hadamar to Bernotat on the basis “that the many killings were not nice, and that it bothers [her] very much,” he answered, “In wartime suffer, change, the soldiers must sacrifice much more.”¹³⁷ Throughout the course of the investigation and trial, many defendants placed responsibility for their actions on Bernotat, arguing that he gave the orders to kill the foreign laborers and that any attempt to resist said orders resulted in severe punishment. Heinrich Ruoff’s statement contained one such example of passing the blame: “Landesrat Bernotat declared that whosoever breaks his oath [of secrecy] will be committed to a concentration camp and won’t come out of there.”¹³⁸ While many defendants employed a similar defense to Ruoff’s, its legitimacy remained an unanswered question, as the American authorities never found Bernotat.

A final group of characters remained integral to the story of the Hadamar trial: the members of the United States Military Commission that conducted the trial. A military commission, rather than a military government court, tried the Hadamar case on the recommendation of Leon Jaworski (chief prosecutor of the case). He argued that, given the “character and importance” of the case as the first mass atrocity trial, a U.S. military commission, rather than a Military Government Court, should preside over the proceedings.¹³⁹ If a Military Government Court tried the case, held Jaworski, it would “probably be the first effort of that tribunal which in turn will mean that a considerable

¹³⁶ Microfilm Roll 1, Image 0107.

¹³⁷ Microfilm Roll 1, Image 0120.

¹³⁸ Microfilm Roll 1, Image 0262.

¹³⁹ Microfilm Roll 1, Image 0834.

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amount of confusion, delay, etc...will ensue.”¹⁴⁰ Thus, a United States Military commission proceeded to try the Hadamar case. Leon Jaworksi and his team of military lawyers prepared to hear the first mass atrocity case prosecuted in the American zone of Germany. The Commission consisted of Colonel Edward R. Roberts, F.A., H.Q. 7th Army, Colonel Lonnie O. Field, F.A., HQ. 7th Army, Colonel John L. Dicks, Q.M.C., HQ. 7th Army, Colonel Trevor W. Swett, G.S.C., HQ. 7th Army, Colonel David Wagstaff, Jr., Cav., 15th Cav. Group, Colonel Daniel S. Stevenson, V.C., HQ. 7th Army, Colonel Leon Jaworksi, J.A.G.D., HQ. U.S.F.E.T (Trial Judge Advocate), Capt. Wm. R. Vance, J.A.G.D., H.Q. U.S.F.E.T. (Asst. Trial Judge Advocate), Lt. Col. Juan A. A. Sedillo, J.A.G.D., HQ. XXI Corps (Defense Counsel), Capt. Melvin R. Wintman, Inf., HQ. 7th Army (Asst. Defense Counsel).¹⁴¹

Because a military commission rather than a military government court tried the case, the United States retained special privileges throughout the proceedings. According to the United Nations War Crimes Commission report, the U.S. military commission made its own rules for the conduct of its proceedings, as long as they remained consistent “with the powers of such a commission, as deemed necessary for a full and fair trial of the accused.”¹⁴² The report also indicated that the Commission “shall have regard for, but shall not be bound by, rules and procedure and evidence prescribed for general courts-martial.”¹⁴³ Finally, the report necessitated the concurrence of at least two-thirds of members present at the time of voting in order to secure conviction or sentence.¹⁴⁴

¹⁴⁰ Microfilm Roll 1, Image 0834.

¹⁴¹ *Law Reports of Trials of War Criminals*, 46.

¹⁴² *Law Reports of Trials of War Criminals*, 46.

¹⁴³ *Law Reports of Trials of War Criminals*, 46.

¹⁴⁴ *Law Reports of Trials of War Criminals*, 46.

Although the U.S. commission obtained jurisdiction in the proceedings, many parties initially contested the tribunal's right to participate in the Hadamar drama at all. Before the conflicts arose or the trial even began, Jaworski predicted a contention over American jurisdiction given that neither the victims nor the perpetrators were from the United States. In the event of this type of attack from the defense, he instructed his commission to rely upon the co-belligerent theory to support the American right to jurisdiction.¹⁴⁵ Sure enough, Jaworski's prediction came to fruition as the second of four pleas advanced by the defense read, "The defense moves that the charges against all seven accused be dismissed on the ground that the United States has no jurisdiction over the matters set forth in the specification as it pertains to the accused, the persons wronged, and the situs of the offense."¹⁴⁶

The defense maintained, through the above plea, that the United States possessed no right to jurisdiction in the case as neither the persons accused nor the persons wronged bore any connection or relationship to the United States. To further advance their argument, the defense cited a secret letter from the American War Department implying that the United States should try only those war criminals who committed offenses against Americans. The letter read, "There has been established in the Office of the Judge Advocate General a War Crimes Office to collect evidence concerning cruelties, atrocities and acts of oppression against members of the armed forces of the United States or other Americans, including the people of any dependencies such as the Philippines."¹⁴⁷ The defense supported their argument against American jurisdiction in the Hadamar case, reminding the commission that martial law does not function retrospectively by quoting

¹⁴⁵ Microfilm Roll 1, Image 0832-0833.

¹⁴⁶ Microfilm Roll 1, Image 0774.

¹⁴⁷ Microfilm Roll 1, Image 0775-0776.

Winthrop's Military Law and Precedents. The section read, "Thus, a military commander, in the exercise of military government over enemy's territory occupied by his own army cannot, with whatever good intention, legally bring to trial before military commissions ordered by him, offenders whose crimes were committed prior to the occupation."¹⁴⁸ Put simply, the defense insisted that offenders could not be tried for a crime committed before the proclamation of martial law.¹⁴⁹

In response to this concern over the right to jurisdiction, the United States submitted that the burden of showing some rule of law prohibiting the exercise of jurisdiction remained with the accused. As a matter of international law, they maintained, the Commission need not provide a citation of specific rule to support its jurisdiction. As determined in a previous case of the permanent Court of International Justice sitting at The Hague in 1927, to contend that the court of a state "must in each case be able to cite a rule of international law authorizing her to exercise jurisdiction" lies contrary to generally accepted international law.¹⁵⁰ The precedent set by this former case (the *Steamship Lotus* case) implied that the jurisdiction of the present Commission, as a matter of international law, "need be denied only upon a showing that there is a generally accepted rule of international law which would prohibit the exercise of such jurisdiction."¹⁵¹

The United States continued to respond to the pleas of the defense with two additional arguments. Firstly, the commission maintained "The right of the belligerent to punish, during the war, such war criminals as fall into his hands is a well recognized

¹⁴⁸ Microfilm Roll 1, Image 0775-0777.

¹⁴⁹ Microfilm Roll 1, Image 0775-0777.

¹⁵⁰ Microfilm Roll 1, Image 0852-0853.

¹⁵¹ Microfilm Roll 1, Image 0852-0853 (Cowles, *Universality of Jurisdiction Over Crimes*, 33 *Calif. Law Rev.*, p. 181).

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principle of International Law. It is a right of which he may effectively avail himself after he has occupied all or part of the enemy territory and is thus in the position to seize war criminals who happen to be there.”¹⁵² Furthermore, and along the same line of argument, the commission insisted on jurisdiction based on the fact “that the victims were allied nationals and the accused are in our custody.”¹⁵³ Secondly, the final argument advanced by the U.S., and perhaps the most fundamental, affirmed jurisdiction based on the simple premise that an offense against the laws of war violates the law of nations and, therefore, represents a matter of general interest and concern.¹⁵⁴

With these arguments over jurisdiction emerged the weakness of the contemporary international legal infrastructure that continued to haunt the Hadamar trial over the course of its proceedings. Many issues, in addition to jurisdictional questions, arose during the Hadamar proceedings and witnessed the same type of invocation of non-existent law to satiate the moral outrage of the Americans at the Nazi atrocities confronting them. A statement by Charles H. Taylor—Captain, JAG [Judge Advocate General]—at the end of the pretrial statement, provided a case in point. Regarding American jurisdiction, he argued, “In the absence of a specific rule of international law prohibiting the exercise of jurisdiction, the Commission’s jurisdiction may not be denied. No such rule exists, it being the consensus of authority that custody of the accused is sufficient basis for jurisdiction, at least where, as here, the victims were nationals of our war allies.”¹⁵⁵ Thus, in the end, the Commission relied on an absence of regulation to prove the right to jurisdiction.

¹⁵² Microfilm Roll 1, Image 0844 (Oppenheim, *International Law*, 6th ed, Rev, 1944, Sec 257a).

¹⁵³ Microfilm Roll 1, Image 0856.

¹⁵⁴ Microfilm Roll 2, Image 0030.

¹⁵⁵ Microfilm Roll 1, Image 0857.

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With the stage set and the characters in place, the story of Hadamar transitions into its intricate plot of action, conflict, and the ultimate—if ambiguous—resolution.

CHAPTER 3: Action and Conflict in the Hadamar Drama

With the setting and characters in place, conflicts between the parties intensified. All of the defendants pled “not guilty” to the charges and specifications raised against them and fought for their lives. On the other hand, the prosecution seethed with anger as the story of the atrocities committed at Hadamar unfolded time and again during the witness testimonies.¹⁵⁶ Chief Prosecutor Leon Jaworski—who later in his career served as the second special prosecutor of the Watergate Scandal—oversaw these contestations while struggling to designate legal authority amidst the collision between German and international law. Meanwhile, the most fundamental conflict centered on the question of how to administer justice in light of crimes that far exceeded most legal conceptions and frameworks.

Before the trial began, Jaworski anticipated pleas of superior orders, alleged legality under German law, and coercion and necessity by the defense. He predicted, “Each of them [the defendants] will find someone to whom they can ‘pass the buck.’ They will contend that they were faced with confinement in a concentration camp had they failed to obey these orders. This defense and the authorities pertaining thereto should be carefully studied so that the theory as a defense and even in extenuation may be successfully rebutted.”¹⁵⁷ Just as predicted, defendant after defendant appealed to these defenses in their pretrial statements to justify their actions.

¹⁵⁶ Microfilm Roll 2, Image 0005.

¹⁵⁷ Microfilm Roll 1, Image 0832-0833.



Regarding the plea of superior orders, most defendants initially “passed the buck” to Klein. Dr. Wahlmann insisted, “I can prove that during my 2 ½ years of activity in Hadamar, I have never made a single telephone call to the official authorities. Visiting officials always met in Klein’s room. These explanations prove that Klein and not I was the head of the institution and that Klein is responsible for all occurrences at the institution.”¹⁵⁹ In a similar fashion to Dr. Wahlmann, Merkle repeated in his pretrial statement that “Mr. Klein was the first to be responsible for anything that happened in the institution; he made the decisions and gave the orders.”¹⁶⁰ Finally, nurse Willig agreed in his sworn statement and argued, “Klein and Bernotat gave all the orders to give injections to the foreigners.”¹⁶¹ As for Klein himself, he placed responsibility for the Hadamar crimes on Landesrat Bernotat and Gauleiter Springer. His pretrial statement contended

¹⁵⁸ Photograph of Jaworski (later on in his career). 24 Mar. 2013
<<http://www.baylor.edu/about/index.php?id=88780>>.

¹⁵⁹ Microfilm Roll 1, Image 0056-0057.

¹⁶⁰ Microfilm Roll 1, Image 0074.

¹⁶¹ Microfilm Roll 1, Image 0575.

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that the “institution could not make decision of any kind on its own, but could only carry out demands and orders which were given by the main office in Wiesbaden...I, for myself, had nothing to decide, as to what kind of patients were to be admitted into the institution. This decision was made between state leader (Gauleiter) Springer and administrative councillor (Landesrat) Bernotat.”¹⁶² Thus, as Jaworski expected, defendants at all levels of the administrative hierarchy passed the buck to their superiors.

Defendants also invoked the plea of alleged legality of the euthanasia program in the pretrial investigation. Due to its admittedly ambiguous relationship to federal law, the accused leveraged this aspect of their defense to their benefit. For example, Dr. Wahlmann finished his pretrial statement stating, “I was never conscious of the fact that I was doing a punishable deed, in that I carried out the orders which were given to me by my superior authorities, orders which have been made into law.”¹⁶³ Similarly, Klein commented during an investigation, “We were told that the Reich Government decided upon this law [a law permitting “mercy killings”], that all incurable mentally diseased should die. I assumed that through the oath which was administered, all of the personnel knew about it.”¹⁶⁴ Again, in the same examination, he stated that although he never saw the law, he never doubted it.¹⁶⁵ Other defendants, as Jaworski predicted, allegedly shared Wahlmann and Klein’s assumption of formal legislation governing the euthanasia practices at Hadamar.

The final predicted defense—coercion and necessity—also emerged in the pretrial interrogations and investigations. Nurse Huber, in her pretrial statement, succinctly

¹⁶² Microfilm Roll 1, Image 0253.

¹⁶³ Microfilm Roll 1, Image 0061.

¹⁶⁴ Microfilm Roll 2, Image 0184.

¹⁶⁵ Microfilm Roll 2, Image 0184.

stated, “Working at Hadamar consisted only in coercion.”¹⁶⁶ Specifically, most defendants spoke of fear of transport to a concentration camp if they attempted to refuse orders. Dr. Wahlmann’s spoke in his pretrial statement of this fear and coercion. “I realized that I would have certainly gotten into a concentration had I refused to carry out the orders given me by the authorities during the last years,” he claimed.¹⁶⁷ However despite his contention, and many others like his, Klein maintained that employment at Hadamar involved no coercion. He stated in his sworn statement, “Nobody was threatened with the concentration camp, and nobody was told not to talk, and everyone worked there voluntarily, and was able to resign at any time. If anyone says that he was forced to work there, and was not able to quit, it is a lie.”¹⁶⁸ This plea, therefore, caused dispute between both parties and challenged the commission as its legitimacy proved hard to establish or deny after the fact. Thus, the three pleas of superior orders, German legality, and necessity and coercion emerged throughout the investigations and the pretrial statements, as Jaworski suspected.

When the trial commenced in early October, the defense moved for a finding of not guilty as to the specification and charge on the bases of the above pretrial pleas. Counsel for the defendants referenced the Supreme Court case *Mitchell v. Harmony* to support their motions. The opinion held, “If a superior in giving an order acted within the limits of a discretion confided to him by law, an inferior is justified in executing the order even though the superior abused his power.”¹⁶⁹ Although properly addressing the defense of superior orders, the argument ultimately proved inapplicable based on the

¹⁶⁶ Microfilm Roll 1, Image 0107.

¹⁶⁷ Microfilm Roll 1, Image 0059-0060.

¹⁶⁸ Microfilm Roll 1, Image 0250 – 0251.

¹⁶⁹ Microfilm Roll 1, Image 0778.

stipulation of “discretion confided to him by law” as the euthanasia program never existed as official legislation. Moving on, the defense made four pleas that continued the legal conflict in the Hadamar drama. The next section presents the pleas, their subsequent supporting arguments provided by the defense counsel, and responses by the prosecution.



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Firstly, “Defense moves that the charges against all seven accused be dismissed on the ground that there is no rule or law existing under International Law such as the specification alleges the accused of violating.”¹⁷¹ The defense proceeded to argue that international law’s only intent and purpose concerned the trying of “persons of the occupied land, for offenses committed during the actual occupation by the conquering

¹⁷⁰ The seven Hadamar defendants in court. 1 Mar. 2013
<http://www.ushmm.org/wlc/en/media_ph.php?MediaId=6147>.

¹⁷¹ Microfilm Roll 1, Image 0774.

forces.”¹⁷² Because the Hadamar case tried the personnel of the facility after the fact, the party argued that international law—“never intended for the purpose of trying persons for offenses committed prior to the conquest and prior to the occupation”—retained no jurisdiction in the case.¹⁷³ Moreover, the defense claimed that the United States maintained no authority or rights in the case, as the accused committed no offenses against the United States. In a similar argument to the one presented in an effort to undermine the United States’ right to jurisdiction, the defense claimed that international law provided no rule or law giving authority to one nation to try and punish nationals of another nation for committing offenses against nationals of other nations.¹⁷⁴

The second motion presented by the defense moved that “the charges against all seven accused be dismissed on the ground that the United States has no jurisdiction over the matters set forth in the specification as it pertains to the accused, the persons wronged, and the situs of the offense.”¹⁷⁵ Chapter Two addresses this second plea and resolves the question of American jurisdiction.

Thirdly, the defense moved that the judge dismiss the charges on the grounds that “at the time of the offense Poland was a conquered nation and as such was subject to German law.”¹⁷⁶ As an occupied nation, the defense maintained that Poland no longer resided within the scope of the rules and articles of the Geneva Convention. Furthermore, the party maintained that the United States possessed no right to jurisdiction, as the laws of occupying forces superseded the rules and articles provided by

¹⁷² Microfilm Roll 1, Image 0775-0777.

¹⁷³ Microfilm Roll 1, Image 0775-0777.

¹⁷⁴ Microfilm Roll 1, Image 0775 -0777.

¹⁷⁵ Microfilm Roll 1, Image 0774.

¹⁷⁶ Microfilm Roll 1, Image 0774.

international law.¹⁷⁷ Additionally, counsel for the defendants argued that the Russian nationals “that the specification cites as having been wronged were not protected by the rules and articles of the Geneva Convention,” as Russia neither attended the convention nor signed its articles.¹⁷⁸ Accordingly “Germany nor Russia never [*sic*] pretended to fight the war between themselves under any rules or articles of International Law.”¹⁷⁹ Thus, by this plea, the defense aimed to prove that the alleged war crimes under question remained outside the scope of both international law and American intervention.

In its fourth and final plea, the defense moved that the charges against the accused “be dismissed on the ground that the specification does not aver adequate and sufficient facts to constitute a legal, fair and impartial trial.”¹⁸⁰ The defense referenced Winthrop’s second edition of *Military Law and Precedent* to claim the impossibility of a fair trial given the circumstances under scrutiny. The citation argued that the “specification should properly set forth not only the details of the act charged, but the circumstances conferring jurisdiction,” namely that a state of war existed during Germany at the time of the crime.¹⁸¹ The text also mentioned that the status of the offender should appear, “as that he was an officer or soldier of the enemy’s army or otherwise a public enemy, or a prisoner of war, or an inhabitant of the place or district under military government or martial law or a person there serving.”¹⁸² Thus, because the crimes took place during a state of war in which the defendants lived and worked under the repression of Nazi rule

¹⁷⁷ Microfilm Roll 1, Image 0774.

¹⁷⁸ Microfilm Roll 1, Image 0774.

¹⁷⁹ Microfilm Roll 1, Image 0774.

¹⁸⁰ Microfilm Roll 1, Image 0774.

¹⁸¹ Microfilm Roll 1, Image 0775-0777.

¹⁸² Microfilm Roll 1, Image 0775-0777.

and not yet under the authority of the United States military government, a fair trial—according to the defense counsel—remained out of the question.

The key components of the defense arguments in the Hadamar trial—whether or not the court ultimately accepted them—clearly anticipated the most common arguments used later on in many other trials in German courts. The coercion argument remained very popular. Additionally, the argument that the crimes were not committed because of blood lust, hatred, or other “base motives” which would have qualified them in German law as murder, but rather that they fell under the lesser charge of aiding and abetting murder, at most. In this respect, the defense arguments and strategies in the Hadamar trial reveal a pattern that repeated itself over and over again in German courts throughout the 1950s and early 1960s.

The Hadamar drama continued to unfold as the U.S. military commission challenged these four pleas. Regarding the first and third motions that questioned whether the alleged specification constituted a violation of international law and whether the victims came under its scope, a memorandum circulated by the U.S. entitled “Has the Commission Jurisdiction to Hear and Determine the Hadamar Case?” reminded the prosecuting authorities that the crimes certainly constituted a violation of the international laws of war and, in turn, a violation of international law. The author asserted, “...it is of the utmost importance that we never lose sight of the fact that we are concerned with a clear violation of the international laws of war. Under no circumstances could German law have made these killings legitimate in derogation of that law. We will not be concerned, therefore, with a question of German law—or

Russian, Polish, or American law as such.”¹⁸³ The commission proved that the Hadamar murders violated the rules of land warfare with a specific citation from Article 46 of Section II of the Hague Convention: “Family honor and rights, the lives of persons and private property, as well as religious convictions and practice must be respected.”¹⁸⁴ Certainly, the murders perpetrated by the accused represented a blatant lack of respect of the rights and lives of their victims and, as such, constituted a clear violation of the laws of land warfare.

Therefore, the prosecuting party, under the agreement of Chief Jaworski, maintained as self-evident that “the belligerent occupant retains no right to disrespect the lives of the inhabitants of the occupied territory by using them as slave labor in the belligerent’s own country. In fact, one might argue that a mere deportation of the inhabitants itself constituted a war crime.”¹⁸⁵ Furthering its attempt to prove not only the right but also the necessity of American jurisdiction in the matter, the prosecution argued that every country maintained a vested interest in a violation of international law. For, as the author argued, “every state has a direct interest in preventing those violations which, if permitted to continue, would destroy the law.”¹⁸⁶

The prosecution debunked the fourth plea of the defense by calling to attention the joint declaration signed on January 13, 1942 by nine of the countries occupied by Germany (Belgium, Czechoslovakia, France, Luxembourg, Netherlands, Norway, Poland, Greece and Yugoslavia). The document denounced the murderous actions of Germany towards people of occupied countries and declared the illegality of acts of

¹⁸³ Microfilm Roll 1, Image 0849.

¹⁸⁴ Microfilm Roll 1, Image 0849.

¹⁸⁵ Microfilm Roll 1, Image 0850.

¹⁸⁶ Microfilm Roll 1, Image 0851.

violence against civilians according to the laws and customs of land warfare outlined at the Hague Convention of 1907.¹⁸⁷ The signatories to the declaration placed among their principal war aims the punishment of those guilty of or responsible for these crimes through “the channel of organized justice...whether they have ordered them or participated in them.”¹⁸⁸ Given these grounds of the declaration, the commission argued, “To claim that no ‘offense’ cognizable under international law exists in the Hadamar case is sheer mockery of civilized justice and international law.”¹⁸⁹

The above arguments by the commission, combined with the previously outlined argument for American jurisdiction (in chapter two), evidenced the shortcomings of international law to try the Hadamar case. While the defense invoked legitimate legal concepts, such as superior orders, alleged legality, and coercion, the U.S. tribunal fumbled for legal measures to advance their arguments. Again, the prosecution ultimately relied on their sense of moral outrage to secure justice in the case as they reverted back to the invocation of inexistent laws. The conclusion of the commission’s opening argument offered a case in point:

If it please the Commission – it would be an anomalous situation, in fact a tragic one, if our network of international law were so inherently defective as to be powerless to bring to justice the murderers of over 400 victims. It would be indeed a sad commentary on that great body of law that has existed for so many years for the purpose of controlling the conduct of civilized nations...I take it that my distinguished adversaries have not given consideration to the fact that there is a great body, a great part of international law that is based entirely on unwritten law. It is not restricted to the limits of conventions or treaties; it is part of international law that has grown up because of custom and usage among nationals...I am referring to the field manual that is termed

¹⁸⁷ Microfilm Roll 1, Image 0859.

¹⁸⁸ Microfilm Roll 1, Image 0859.

¹⁸⁹ Microfilm Roll 1, Image 0859.

Basic Field Manual, Rules of Land Warfare. Reading from the very beginning: “Among civilized nations the conduct of war is regulated by certain well-established rules known as the rules or laws of war... Unwritten rules. –Some of the rules of war have never yet been incorporated in any treaty or convention to which the United States is signatory. These are commonly called the unwritten rules or laws of war, although they are well defined by recognized authorities on International law and well established by the custom and usage of civilized nations.” The crime that is here charged is the type that is shocking to all humanity. It is the type of crime, the type of atrocity from which jurisdiction takes color from the very nature of the offense itself.¹⁹⁰

The striking inadequacy of international law emerged within this concluding argument, perhaps more clearly than at any other point during the trial. Although undoubtedly a “shocking” atrocity faced the commission, the bases of “unwritten rules of law” hardly seemed a secure measure with which to secure a legal victory. As expected, the defense immediately recognized the defectiveness of the legal network provided by unwritten international law and, subsequently, jumped at the opportunity to contend the tribunal on this point. Although “from the moral standpoint the argument is very good,” the defense admitted, “from a legal standpoint it isn’t any good.”¹⁹¹ The attorney continued, the “prosecution has failed to show us any law that permits the commission here to hear this case or to disprove a single one of our motions...the prosecution has failed to show that a rule of law exists under international law such as the specification alleges the accused of having violated.”¹⁹²

An excerpt from an article in the *New Yorker* published soon after the end of the war aptly described this insufficiency of international law felt by both parties during the proceedings at Hadamar. The article read:

¹⁹⁰ Microfilm Roll 2, Image 0027-0029.

¹⁹¹ Microfilm Roll 2, Image 0032 -0033.

¹⁹² Microfilm Roll 2, Image 0032-0033.

...we strongly suspect that the long delay in the war trials has been not so much because there was no solid floor under a certain courtroom as because there was no foundation under the new level of justice with which the victorious nations are now fumbling. Here are a handful of accused individuals of great renown, obviously guilty of rank deeds against society. The job is to make their trial seem legal and orderly and just when in fact they will have to be tried by makeshift processes and on charges of violating laws that are non-existent. The Allied peoples naturally want to punish these men as they deserve to be punished, and are determined to do so. In order to do it, they face the queer task of holding an individual responsible for an act on an international level. To what page of what statute book does the learned judge turn? There isn't any book. There isn't any page. All is virgin parchment—not a mark to go by...The justice is absent. The international government is absent.¹⁹³

The Allied Control Council issued the statute punishing crimes against humanity on December 20, 1945, after the conclusion of the Hadamar proceedings.¹⁹⁴ Thus, the commission continued to fumble under makeshift laws and processes for the entirety of the trial.

Moving beyond the pretrial motions and the opening statements, the legal drama continued to unfold in Wiesbaden. The accused continued to advance the same defense of superior orders while the Commission pushed back, refuting the premises of the argument with references from Wheaton's *International Law*. The tribunal maintained that superior orders, according to Wheaton, "cannot furnish a valid excuse."¹⁹⁵ Such shifting of responsibility would only lead to the conclusion that "millions of men, including responsible officers of higher commands, are to be held free from blame no

¹⁹³ Microfilm Roll 2, Image 0032-0033.

¹⁹⁴ The Avalon Project: Documents in Law, History and Diplomacy, "Nuremberg Trials final Report Appendix D: Control Council Law No. 10," 30 Oct. 2012 <<http://avalon.law.yale.edu/imt/imt10.asp>>.

¹⁹⁵ Microfilm Roll 1, Image 0860.

matter what atrocious deeds they have perpetrated.”¹⁹⁶ Ultimately, the defense of superior orders failed because it placed responsibility on only one person—the monarch or president of the belligerent state—and, as Wheaton and the Commission contended, “This is a conclusion which neither reason nor humanity can accept.”¹⁹⁷

Justice Jackson, Chief of Counsel for the United States in the prosecution of Axis war criminals, invoked a similar notion to Wheaton in a statement he made to Jaworski regarding the defense of superior orders. He argued that the coupling of the doctrine of immunity of a head of state and the doctrine of superior orders unjustly provided protection to those who obeyed and rendered nobody responsible. Modern society, Jackson maintained, cannot tolerate such broad official irresponsibility.¹⁹⁸ Jaworski agreed with Jackson and, before the court, reduced the defense of superior orders to its logical conclusion, that only “the great and mighty Hitler himself” remained guilty of a war crime, as all orders emanated from him.¹⁹⁹ Jaworski then illustrated Jackson’s point by asking the court to imagine if Hitler sat before the tribunal. The defense counsel, in this event, would stand up and argue that a head of state cannot be tried for commission of a war crime under the protection of sovereignty as the head of state. According to the “very beautiful predicament” the prosecution “couldn’t try the ones that did it, and...couldn’t try the fellow that gave the order,” leaving Reich officials and citizens to “run rampant and commit all the atrocities they wish.”²⁰⁰

Once Jaworski settled the dispute regarding superior orders on behalf of the commission, the next six days of the trial consisted of testimonies and examinations of

¹⁹⁶ Microfilm Roll 1, Image 0860.

¹⁹⁷ Microfilm Roll 1, Image 0860.

¹⁹⁸ Microfilm Roll 1, Image 0860.

¹⁹⁹ Microfilm Roll 2, Image 0398.

²⁰⁰ Microfilm Roll 2, Image 0398.

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accused and witnesses. Motions, pleas, discoveries, exhibits, and evidence emerged from the discussions and statements as the legal drama reached a climax. The statements provided by either party at the end of the case provided the most succinct and comprehensive accounts of the two sides of the story that advanced in the Wiesbaden courthouse. Jaworski spoke eloquently for the prosecution and condemned the accused for their murderous behavior while the defense attorney fought for the lives of his clients and spoke of the incomprehensible repression of the Nazi regime.

In a moving statement, Jaworski compared the trial given to the accused to the trial given to the victims upon arrival at Hadamar. He spoke on behalf of the commission under his jurisdiction:

For six days this commission has made a careful and painstaking search for truth in a matter that is as heinous, as shockingly shameful, as bestial and as dastardly as any that has come to light since the American occupation. In conducting this trial this commission has accorded to the accused every right that they could possibly have expected or wanted, rights and privileges that were unknown to them under the government that was theirs for so long...But the commission has no doubt seen for itself and has concluded that we are here not to seek revenge, but we are here for a very definite purpose, and that has been our goal, and that is to vindicate justice.²⁰¹

Jaworski continued his statement by speaking of the trial the accused gave their victims at Hadamar:

...let us pause to consider in the same breath what sort of trial these accused...gave to those unfortunate people who appeared before them at Hadamar... There came person after person, weary, heavy laden, some sick, some quite sick, but they came thinking that they saw upon the horizon the dawn of a brighter day. And what sort of trial was given them, what sort of a hearing, what sort of an opportunity was accorded them at this place where

²⁰¹ Microfilm Roll 2, Image 0392.

they thought they might find comfort, where they might find some happiness. They were brought into the death halls. Were they given medical examination? No. Were they given any medical treatment? No... Upon them was forced the hush of death. Their bodies were taken to a bleak cellar. They were lumped together and dumped together in a common grave buried without the benefit of clergy. With the ease and readiness that one would extinguish a candle light, so were the lives of human beings snuffed out by them. Yes, the counsel will be pleading for their lives. It's his duty, but before closing this opening argument, I want to say only this to the Commission: What right, what right have people situated as they are to expect that their lives be spared when they would not spare the lives of one of the several hundred that appeared before them? All they can ask is that they be judged as they have judged others.²⁰²

Jaworski's strong word to the court revealed the stakes of the matter at hand.

Every one of the defense counsel's clients stood before the bar charged with violations that warranted punishment by death and quite incriminating evidence. At this point in the trial, the outrage of the Americans and their status as victors of the war seemed likely to compensate for the weakness of international law underlying their arguments. Yet, in light of their odds, the defense opened their statement with attempts to justify the unprecedented crimes committed by their clients by appealing to the repressive and incomprehensible nature of the Reich government. The German lawyers pled for the Commission to consider their clients' situation under "a regime of atrocities, of concentration camps, of destruction of the just, of gas chambers" which "found itself in a position to violate the fifth Command in which it says one must not kill."²⁰³

The opening argument by the defense also demonstrated the ambiguity of the euthanasia program in its relationship to German law. The representative of the party

²⁰² Microfilm Roll 2, Image 0405-0406.

²⁰³ Microfilm Roll 2, Image 00407.

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claimed, "...shortly after the beginning of the war the government passed a *law* whereby people who were afflicted mentally should be put out of the way."²⁰⁴ However, as clarified in chapter one, Hitler permitted the so-called "mercy-killings" through an "administrative order" issued from his office rather than through official legislation.

Although the defense failed to provide any positive proof of the existence of such a law or decree, the civilian counsel representing Ruoff and Willig contended that the unofficial policy ordered by Hitler retained legal force. He maintained that, since 1933, "Laws could be proclaimed by the government itself which was represented only by the *Führer* Adolf Hitler who himself announced that laws did not even have to be approved."²⁰⁵ Under the Nazi regime, neither the Constitution nor Parliament retained any power. Thus, he argued that government proclamations, even unpublished or secretive orders (such as those under consideration in the Hadamar case) effectively functioned as laws.²⁰⁶

With this point, the counsel introduced a significant and controversial question into the argument: in a fascist regime, do policies established by the sole organ of political power (in this case, Hitler) constitute law? Although an admittedly interesting question, Jaworksi argued that it failed to offer protection to the accused as it resided outside the scope of the matter under consideration. For, the charges and specifications against the accused only concerned foreign nationals while Hitler's administrative order related only to persons of German nationality. He noted that it seemed "extremely difficult to conceive how the German authorities could have the right so to legislate or

²⁰⁴ Microfilm Roll 2, Image 0407.

²⁰⁵ Microfilm Roll 2, Image 0416.

²⁰⁶ Microfilm Roll 2, Image 0416.

decree effectively with respect to nationals of an opposing belligerent involuntarily under their control.”²⁰⁷

In response to the above allegation advanced by Jaworski, the defense contended that the murder of foreign nationals in fact did reside within the scope of the trial. Counsel maintained that in July 1944 Hitler’s directive regarding the euthanasia of German nationals in mental institutions extended to include incurable tubercular foreign workers by the chief leaders of the province (Springer and Bernotat).²⁰⁸ The lawyers for the defense, in turn, argued, “there is a great probability of it—that the order came from even higher sources because I cannot believe that even such a high official like the chief president dared to give such an order on his own person without being threatened by very severe punishment himself.”²⁰⁹

Although a plausible notion, the above argument by the defense relied so heavily on speculation that the prosecution dismissed its credibility. Additionally, the prosecution reminded its opposition that German law maintained no authority in the matter under consideration. A member of the commission argued:

If German law could be invoked as the guiding influence upon which the prosecution of war criminals was to be based, we would soon find that there could be and would be no war crimes trials because all that would be necessary to be done if we were relegated to the laws of the offending nation, would be for that nation to pass laws approving every character of atrocity, every type of brutality, no matter how base and dastardly it would be. Oh what a fine field day that would be for the war criminals, in that upon their being brought before a bar of justice, all they would have to say is, “We beat you to the draw, we passed a law approving this heinous offense.”²¹⁰

²⁰⁷ Microfilm roll 3, Image 0633.

²⁰⁸ Microfilm Roll 2, Image 0417.

²⁰⁹ Microfilm Roll 2, Image 0417.

²¹⁰ Microfilm Roll 2, Image 0427-0428.

Therefore, with the alleged legality of the euthanasia program rendered irrelevant and the certain illegality of the mercy killings of foreign nationals established, the prosecution gradually fought its way through the weaknesses of international law.

Before the conclusion of the proceedings and the rendering of the sentences, the defense attorneys advanced two final arguments on behalf of their clients, one of which appealed, absurdly enough, to their good moral character. To begin, the defense claimed, “According to our law murderers are the ones who kill a person because of the lust for murder, because of sexual perversions, because of greed or similar reasons. The accused had no such reasons. They did not even have any hatred against these patients... These are good-natured and not ill-natured persons who nursed their patients with care for many, many years and who only fulfilled these orders after the change of the law. They did not do that with a light heart.”²¹¹ Although the prosecution paid little attention to this argument during the proceedings, defenses such as these resurfaced in the few years following the trial when the convicted petitioned for reductions of their sentences. The second time around, this argument retained much more force and even resulted in awards of clemency for former war criminals. The second and final argument presented in the closing statements of the defense centered on the American’s misunderstanding of life under Nazi rule. The civilian counsel representing Merkle and Huber addressed the commission, “They are two different worlds [the wartime U.S. and Germany]. You are lucky to belong to a continent which still has democracy. We are citizens of an old continent with an ancient culture under which we suffer. Therefore, it is endlessly difficult for you as citizens of that other world to understand these things... these people

²¹¹ Microfilm Roll 2, Image 0420-0421.

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[the accused] got into a strange system.’’²¹² With these final words, the arguments between the opposing parties finished as the trial closed on October 15, 1945.

On a secret ballot, at least two-thirds of the members present at the time of the vote found each of the accused guilty as to the specification and charge, representing the climax of the complex and unprecedented legal drama.²¹³ In an example of swift and strict justice, Trial Judge Advocate Jaworski successfully obtained convictions and sentences against all seven defendants after only seven days of proceedings.²¹⁴ Administrative head of Hadamar Alfons Klein along with male nurses Ruoff and Willig received sentences of death by hanging.²¹⁵ The remaining four convicted received prison sentences. Dr. Wahlmann received a sentence of life imprisonment; Merkle received a sentence of 35 years, Blum 30 years, and Nurse Huber 25 years.²¹⁶

With the sentences of all seven defendants in place, the tribunal celebrated the first successful prosecution of a mass atrocity trial in U.S. occupied Germany. However, the legal drama proved far from over. The strict justice applied at Hadamar in 1945 began its slow erosion just months later.

²¹² Microfilm Roll 2, Image 0422.

²¹³ Microfilm Roll 2, Image 0430.

²¹⁴ Microfilm Roll 2, Image 0005-0006.

²¹⁵ Microfilm Roll 2, Image 0005-0006.

²¹⁶ Microfilm Roll 2, Image 0005-0006.



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²¹⁷ Alfons Klein meets his death in March 1946. 30 Mar. 2013
<<http://www.morticom.com/warcrimesentry011.htm>>.

**CHAPTER 4:
The War Crimes Modification Board and Ambiguous Resolutions to the Hadamar
Drama**

The tumultuous aftermath of the Hadamar proceedings provided resolution for only a handful of the actors involved. Petitions for clemency, the implementation of the War Crimes Modification Board, and the 1947 “euthanasia trials” prosecuted by German courts injected complexity into the already messy Hadamar drama. In the end, only three of the seven original sentences remained intact. The memory of the war seemed more and more distant as Cold War pressures mounted on the global political agenda. In light of the shifting international priorities, the reality of strict justice began a steady descent into its eventual dissolution in the mid-1950s.

To begin with, the Commission originally condemned Klein, Ruoff, and Willig “to be hanged by the neck until dead.”²¹⁸ Many relatives of these three men—including all three of their wives—filed petitions for clemency on their behaviors. Records indicated a total of three petitions on file for accused Klein: one from his wife (Marga Klein) to General of the Army Dwight Eisenhower, another from Marga to the Commanding General of the Seventh United States Army, and a final letter written by Klein himself. In her letter to General Eisenhower, Marga wrote that her husband, “was a decent and honorable man” while also invoking the defense of superior orders as well as coercion.²¹⁹ She argued, “It was clearly and distinctly proven, during the trial, that this institution [Hadamar] was under the pressure of the highest Nazi tyrants. The law of

²¹⁸ Microfilm Roll 2, Image 0430.

²¹⁹ Microfilm Roll 3, Part 1, Image 0022.

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these high criminals now punishes innocent people who were only used as helpless tools to their death.”²²⁰

Marga Klein, in a similar fashion to many other relatives of accused Nazi war criminals, struggled to wrap her mind around the fact that her husband stood convicted as a high criminal of the Nazi party. She attempted to present her husband’s actions not as murder because he did not kill anyone on his own initiative or because of base motives. In fact, she insisted upon Klein’s good moral character. However, the authorities reviewing Klein’s file determined that no valid reason for the exercise of clemency existed. Further support for the finding of the reviewing board came from Klein’s own petition that allegedly demonstrated “no evidence of any honest regret for or revulsion at what he had done, but only self-pity and a frantic attempt at justification.”²²¹ Based on these facts, the board remained committed to upholding Klein’s death sentence.

The trial records indicated two petitions on file for Ruoff—both from his wife Katharina. In a letter to general McNarney from November 1945 she wrote that Ruoff “humbled himself before the cursed Hitler-regime only for the sake of his family...He loved us so dearly therefore obeyed the direct order of Hitler.”²²² Despite her claims, the reviewing board determined that Ruoff “knew what he did was wrong and if he is not to pay the penalty for his terrible deeds, then there could be found in all Germany few men truly deserving of the gallows.”²²³ Thus, as in the case of Klein, the board maintained the original death sentence for Ruoff.

²²⁰ Microfilm Roll 3, Part 1, Image 0022.

²²¹ Microfilm Roll 3, Part 1, Image 0637-0638.

²²² Microfilm Roll 3, Part 1, Image 0085.

²²³ Microfilm Roll 3, Part 1, Image 0638.

Letters from Karl Willig himself and from his wife petitioning for clemency resided in his file. Pauline, wife of accused Willig, wrote a letter invoking similar arguments to Katharina. In her letter she wrote, "...my husband joined the Nazi-Party in 1932, in order to get a situation and bread...but that my husband shall have abused ill persons is not comprehensible. He had such a sensible heart."²²⁴ Within her letter, Pauline confronted similar disbelief regarding her husband's actions to Klein's wife. She struggled to understand the fact that her husband bore responsibility for administering lethal injections to thousands of innocent patients.

Willig himself wrote a letter to General Eisenhower in November 1945 pleading for mercy. He based his defense upon the alleged legality of the German euthanasia program and fear of punishment. He wrote, "As state employees, employees who had given a verbal and written oath, we had to obey the same as the soldier at the front. There could not have been any doubt as to the legality of this law."²²⁵ He continued, "To refuse [orders to carry out mercy killings] would have been regarded as sabotage, and would have carried with it immediate arrest and severest punishment."²²⁶ The final argument presented in his letter left reviewing authorities upset. He claimed all of the male nurses participated in the mercy killings out of a sense of duty rather than any sort of "hate or brutality."²²⁷ In light of this fact, he implored the reviewing authorities, "...you should not look upon us as committers of crimes or even murder, but rather as human beings who were always honest and upright, and fought for a livelihood with the

²²⁴ Microfilm Roll 3, Part 1, Image 0091.

²²⁵ Microfilm Roll 3, Part 1, Image 0126.

²²⁶ Microfilm Roll 3, Part 1, Image 0126.

²²⁷ Microfilm Roll 3, Part 1, Image 0127.

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greatest of effort.”²²⁸ However sincere his and Pauline’s pleadings, the board also confirmed Willig’s initial sentence of execution.

On the grounds that “it is impossible...for any person with a sense of justice to say that there is any proper punishment less than death for men who have stained their hands as these men have done,” the United States authorities sentenced Klein, Ruoff, and Willig to the gallows in the spring of 1946.²²⁹ On March 14th at Bruchsal Prison Army officials oversaw the hanging of the three condemned men.²³⁰ The swift justice embodied by their hangings represented an unequaled standard in subsequent “euthanasia” cases; however, the precedent proved unsustainable.²³¹

As Cold War pressures emerged, the focus of the international agenda shifted away from the legacy of World War II to the nuclear tension between the political and military powers of the Western and Eastern Blocs. Compounding the effects of this transition was the ever-expanding circle of victims in the years following the war; even perpetrators successfully victimized themselves as casualties of a repressive and coercive regime. Ultimately, the American authorities lightened the sentences for all four of the remaining Hadamar convicts, evidencing the systematic erosion of justice over the immediate postwar decade. Thus, the deaths of Klein, Ruoff, and Willig represented the only true act of retribution in the case of the Hadamar trial.

The fates of Huber, Merkle, Wahlmann, and Blum continually fluctuated during the first few years after the war as various parties filed petitions for clemency and the policies of the war crimes modification board proved increasingly lenient. Additionally,

²²⁸ Microfilm Roll 3, Part 1, Image 0127.

²²⁹ Microfilm Roll 2, Image 0774-0776.

²³⁰ Microfilm Roll 2, Image 0815.

²³¹ Heberer, 39-40.

the passage of Control Council Law No. 10 and the euthanasia proceedings at Frankfurt (tried under German jurisdiction) also affected the sentences of the accused as the international legal infrastructure shifted in the wake of the war.

To begin, the quadripartite Allied Control Council promulgated Control Council Law No. 10 on December 20, 1945 during the trials at Nuremberg.²³² The law established an international commitment to involve German justice in the adjudication of war crimes and crimes against humanity and also authorized German courts of law to pass sentence on crimes committed by German citizens against other German nationals or stateless persons.²³³ Therefore, in step with the precedent set by Jaworski in the Hadamar trial, occupation forces left euthanasia offenses—for the most part a German-on-German crime—to the newly reconstructed German tribunals.²³⁴ In light of this new provision, Frankfurt's public prosecutor's office initiated proceedings against institutions used by the former Nazi government to carry out the euthanasia program.²³⁵

In February 1946, the personnel of Hadamar faced charges, this time under a German court, for participating in the murders of nearly 15,000 German patients between 1941 and 1945 at the facility; proceedings took place in 1946 and again in 1947. In the first trial, Dr. Wahlmann and Hans Bodo Gorgass—a physician responsible for gassing thousands of patients at Hadamar in 1941—figured as the chief defendants, while Huber appeared third on the list of accused.²³⁶ Indeed, many Hadamar personnel who served as witnesses in the U.S. military trial of 1945 now sat in the dock as defendants.²³⁷ The

²³² Heberer, 37.

²³³ Heberer, 37.

²³⁴ Heberer, 37.

²³⁵ Heberer, 37.

²³⁶ Heberer, 37-38.

²³⁷ Heberer, 37-38.

1947 proceedings—often referred to as the Frankfurt Trial—proved more comprehensive than those of 1946 in its allegations. Lasting thirteen days and adjudicated by a panel of three German jurists, the scope of this trial finally embraced the full breadth of crimes committed at Hadamar.²³⁸ The defendants represented a much broader range of perpetrators than any other euthanasia trial, including physicians, nursing staff, technical workers, and bureaucratic personnel.²³⁹

Despite these positive changes, the German courts encountered a number of unforeseen difficulties. Firstly, the newly reinstated German penal code forced jurists to work within a much narrower confine than the former American military commission, allowing much less latitude than the previous proceedings, particularly in terms of rules of procedure.²⁴⁰ Secondly, German courts found mass murder carried out in an institutional setting much harder to litigate than killings perpetrated in concentration or extermination camps.²⁴¹ T4 murders failed to resonate with jurists or lay juries; annihilation by lethal injection or overdose seemed less brutal than murders of Jews in the Soviet Union or in death camps.²⁴² Finally (and in the same fashion as the original Hadamar proceedings) the euthanasia crimes proved difficult to prosecute as credible testimony and circumstantial evidence suggested that many perpetrators mistakenly believed in the existence of a secret euthanasia law.²⁴³ In light of this fact, intent proved quite difficult to establish.

²³⁸ Heberer, 38-40.

²³⁹ Heberer, 38-40.

²⁴⁰ Heberer, 38-40.

²⁴¹ Heberer, 38-40.

²⁴² Heberer, 38-40.

²⁴³ Heberer, 38-40.

The outcome of the 1947 trial evidenced the triumph of these unforeseen difficulties and the extent of growing leniency as the court only convicted 11 of the 25 originally accused.²⁴⁴ The majority of medical personnel associated with the killings received prison terms (most members of the Hadamar nursing staff drew between 2 ½ and 8 year imprisonment sentences); however, the court acquitted all bureaucratic and technical staff.²⁴⁵ Although chief defendants Wahlmann and Gorgass received death sentences, neither ended up executed due to Article 102 of the new Federal Republic of Germany's constitution forbidding capital punishment. In light of the new statute, the state attorney changed both physicians' death sentences to life imprisonment in July of 1949.²⁴⁶

In the aftermath of the original Hadamar trial, petitions for clemency filed on behalf of the four remaining defendants led to continual lightening of sentences. Beginning in 1950 and continuing into 1951, the Office of the Judge Advocate, Headquarters, European Command, conducted a review of the sentences of the surviving Hadamar defendants. As stated in the post-trial records, "On the basis of the modification board's recommendations, Adolf Merkle received credit for time already served and was freed in March 1950; Adolf Wahlmann's and Chief Nurse Irmgard Huber's sentences were reduced to 12 years; and Philipp Blum's sentence was reduced to 15 years. U.S. military authorities eventually released Wahlmann in December 1952, Huber in July 1953, and Blum in February 1954, retaining Blum under parole supervision until July 9, 1957."²⁴⁷ By 1957—only twelve years after VE day—all four of the

²⁴⁴ Heberer, 38-40.

²⁴⁵ Heberer, 38-40.

²⁴⁶ Heberer, 38-40.

²⁴⁷ Microfilm Roll 3, Part 1, Image 0006.

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surviving Hadamar defendants lived as free men and women. Each of Wahlmann, Huber, Merkle, and Blum's stories evidenced both the inability to enforce violations of international law in the aftermath of World War II and the gradual erosion of justice.

To begin, multiple parties filed petitions on behalf of Nurse Huber, including her mother (Frau Philomena Huber) in February 1946 and June 1950, German attorney Dr. Rudolf Aschenauer, Marial Kuhl in July 1950, and Margie Seiler in December 1950.²⁴⁸ In one of her letters to the war crimes modification board, Huber's mother pleaded (quite ironically in light of the allegations against her daughter):

...her trial records reveal her innocence beyond doubt, nevertheless she is not being released. Where is humanity, human rights, human dignity, of which so much is spoken, and printed in the papers? In the whole world, guilty persons deserve just punishment, in conformity with human laws, but innocent people should not suffer, simply because they blindly adhered to an ideology, without realizing that they were on the wrong path...it would be an act of humanity and justice, if my daughter Irmgard would at last be released.²⁴⁹

Additionally, Huber's mother attempted to prove Huber's misery during her time at Hadamar by referencing the "shocking letters" she sent home during the wartime years, mentioning that "she would prefer to walk the long way home than to stay any longer at this institution."²⁵⁰

Other petitions filed on behalf of Nurse Huber presented more reasonable arguments in favor of clemency. Maria Kuhl, also a former nurse at the institution, wrote of Huber's attempts to escape Hadamar. Dr. Wahlmann's affidavit submitted on June 9, 1949 testified to Huber's lack of involvement in the delivery of lethal drugs to Ruoff and

²⁴⁸ Microfilm Roll 3, Part 1, Image 0551.

²⁴⁹ Microfilm Roll 3, Part 1, Image 0174-0176.

²⁵⁰ Microfilm Roll 3, Part 1, Image 0554.

Willig.²⁵¹ Huber's German counsel also presented a number of arguments in his petitions for her clemency. He blamed the wartime conditions that prevailed in Germany and Hadamar's status as a secret institution as the primary excuses for Huber's inability to escape her work.²⁵² He argued that Huber's participation represented "but a small wheel within the framework of the whole" operation undertaken at the facility.²⁵³

During the second round of Hadamar trials in Frankfurt, the German courts sentenced Huber to eight years imprisonment (a much lighter sentence than the American counterpart). However, German legal authorities alerted the United States War Crimes Modification Board that their courts must "categorically refuse any review of the sentence as long as the American sentence is being upheld."²⁵⁴ In light of this request, the board reviewed Huber's file and concluded that she "participated in the killings only indirectly and in a minor degree and that her services at Hadamar Hospital during this period concerned were involuntary and against her will."²⁵⁵ Based on this finding and the evidence that Huber allegedly opposed the practices carried out at Hadamar and attempted in every way possible to be relieved from her assignment there, the court ordered the warranting of clemency and reduced her sentence to "the executed portion thereof."²⁵⁶ In July 1953 American authorities released Huber, the chief female nurse at the institution responsible for the murder of over 15,000 innocent victims, and she lived the rest of her life a free German citizen.

²⁵¹ Microfilm Roll 3, Part 1, Image 0535.

²⁵² Microfilm Roll 3, Part 1, Image 0536-7.

²⁵³ Microfilm Roll 3, Part 1, Image 0536-7.

²⁵⁴ Microfilm Roll 3, Part 1, Image 0536-7.

²⁵⁵ Microfilm Roll 3, Part 1, Image 0543.

²⁵⁶ Microfilm Roll 3, Part 1, Image 0543.

Adolf Merkle and his ultimate release from imprisonment represented another case of the quick evaporation of strict postwar justice. The European Headquarters of the U.S. Army received five petitions for clemency filed on behalf of accused Merkle—four by said accused (dated October 21, 1946; July 12, 1947; February 28, 1948; and January 13, 1949, respectively) and one by Dr. Kamps (the German lawyer representing him) on September 13, 1948.²⁵⁷ Dr. Kamps' petition provided a concise list of eight reasons why Merkle deserved release from imprisonment.²⁵⁸ He began by arguing that Merkle never, at any time, experienced contact with the Russian and Polish nationals killed at Hadamar and that he maintained no connection with their subsequent deaths at the institution.

Secondly, he reminded the readers that Merkle worked at Hadamar involuntary due to an assignment from the German Labor Office after his discharge from the army and that his duties consisted only in clerical work. Because he retained no executive or directive authority, only his superiors—and not he himself—ordered the false entries made into the records of the institution. However, Dr. Kamps reasoned that the records of the institution filled out by Merkle—whether correct or falsified—in no way caused the death of any individual at Hadamar. Therefore, he concluded: “There is no evidence from the records, either direct or circumstantial to show that this accused had any part in the formation or in the execution of the alleged common intent to kill Russian and Polish nationals” or that the accused “in any way aided or abetted in bringing about or causing the death of any individual.”²⁵⁹ Finally, Dr. Kamps maintained that accused “by failing

²⁵⁷ Microfilm Roll 3, Part 1, Image 0703.

²⁵⁸ Microfilm Roll 3, Part 1, Image 0704.

²⁵⁹ Microfilm Roll 3, Part 1, Image 0704.

or refusing to carry out his assigned duties at Hadamar” could not “have saved or even prolonged the life of any one of the victims killed there.”²⁶⁰

In addition to all of these arguments, Merkle himself pleaded that the authorities recognize his “dire circumstances” as “an invalid, a widower and father of a 15 years old boy.”²⁶¹ His letters reiterated that his duties consisted solely of keeping the files in order and copying official documents before him, whose authenticity he never questioned.²⁶²

In an affidavit, Dr. Wahlmann supported this notion, stating:

...[the] office rooms [where Merkle worked] were perfectly separated from the sick wards so it was impossible for Merkle to interfere in any way in the treatment of the inmates...Furthermore, he was not allowed to join the daily conferences in the Chief Doctor’s room so he could not be informed about the treatment of the inmates. Especially the arrival of foreigners being shipped to the asylum due to incurable tuberculosis did not come to his knowledge.²⁶³

Thus, Merkle maintained that he never even saw a patient, alive or dead, and “was just a little employee who did not have to say anything.”²⁶⁴ Finally, in a testament to his guilt-free conscience, he used the fact that he never attempted to flee Hadamar upon arrival of Allied troops as evidence.²⁶⁵

Merkle, in his petition for clemency, also introduced the issue of Control Council No. 10. Although the timing rendered the law’s application to the case irrelevant (as it passed two months after the promulgation of his sentence) Merkle contended that if authorities hypothetically considered the precepts of the new statute in regards to his sentence, even then he could not be found guilty of “a war crime proper” or “a crime

²⁶⁰ Microfilm Roll 3, Part 1, Image 0704.

²⁶¹ Microfilm Roll 3, Part 1, Image 0226.

²⁶² Microfilm Roll 3, Part 1, Image 0225.

²⁶³ Microfilm Roll 3, Part 1, Image 0607.

²⁶⁴ Microfilm Roll 3, Part 1, Image 0652.

²⁶⁵ Microfilm Roll 3, Part 1, Image 0652.

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against humanity.” For, he argued, “If I can be found guilty of conspiracy on the basis of my position, —where is the verdict of guilty for hundreds of high officials of the governments of the Reich and the Laender, for the members of the so called *Erbgesundheitsgerichte* [special courts for the prosecution of euthanasia crimes] which, as far as we know today, had to select the persons for Euthanasia, for the heads of the organs of the Reich-Laender and the Districts who caused the transfer of patients and others?”²⁶⁶ Thus, Merkle employed use of a hypothetical, a common legal tactic that presents a mixture of assumed or established facts in the form of a specific situation to an expert witness, in an attempt to prove his innocence.

Merkle’s petition finished with a reminder to the reviewing board that the German courts indicted him of no charges and, moreover, that “In all other Euthanasia trials...no office personnel was ever accused.”²⁶⁷ Regarding the Frankfurt proceedings of the Hadamar case in particular, the court and the reviewing board together acquitted all other office employees, even those present when the foreign laborers arrived. Finally, Merkle prompted the board to consider that he worked at Hadamar “the shortest time of all and in the most unimportant position.”²⁶⁸

The response of War Crimes Board of Review No. 2 to Merkle’s pleading provided a paradigm of the dissolution of justice that proliferated throughout the war crimes cases. In March 1949, the committee reviewing his file could not “see how copying into the records this data furnished by the administration of doctors, even if the accused knew it to be false, can constitute participation in the ‘common intent’ to commit

²⁶⁶ Microfilm Roll 3, Part 1, Image 0232.

²⁶⁷ Microfilm Roll 3, Part 1, Image 0232.

²⁶⁸ Microfilm Roll 3, Part 1, Image 0233.

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murder.”²⁶⁹ Furthermore, that Merkle worked only involuntarily and took no part in the planning or execution of lethal injections provided additional support for his clemency. In light of these facts and conclusions, the board reduced Merkle’s sentence to time already served and, on March 22, released the former employee of Hadamar from the United States war crimes prison in Landsberg.

The post-trial records relating to Merkle’s sentence also evidenced the growing desensitization of Allied officials to the war crimes more generally. One reviewer of his file wrote, “This case was tried in the fall of 1945 when feeling still ran high. The cold-blooded euthanasia carried on at Hadamar shocked the American mind.”²⁷⁰ The notion implicit in his statement, namely that the atrocities committed at Hadamar no longer astonished witnesses, crept into the American psyche as more and more stories of Nazi brutalities emerged. This type of desensitization won Merkle, and many others of the accused, release from prison.

Petitions for clemency on behalf of Philipp Blum arrived at the War Crimes Modification Board’s office from his father, wife, daughter, and Blum himself. As the caretaker of the cemetery, Blum’s duties only related to already deceased patients. Thus, Blum’s own defense (written on November 15, 1945) claimed that he “did not take any part in the death of these persons,” and, furthermore, that even if he refused to perform the burials, “it would not have helped them to remain alive.”²⁷¹ He also invoked the defense of necessity and coercion (like many others in his situation) and claimed that “Under the Nazi-System it was quite impossible not to carry out any order whatever it was...As employee of the State we were subjected to the hard laws of devotion to duty

²⁶⁹ Microfilm Roll 3, Part 1, Image 0417.

²⁷⁰ Microfilm Roll 3, Part 1, Image 0445.

²⁷¹ Microfilm Roll 3, Part 1, Image 0258.

and were forced to perform the work to which we were assigned.”²⁷² Because this first petition came to the board only a few months after the original trial, the Board responded with its early sense of strictness. Although they conceded Blum’s admittedly less involved role in the crime, they remained committed to the fact that “he was consciously an important link in the chain of actors who dealt with victims from their arrival at Hadamar to their complete disposal.”²⁷³ Thus, the Board upheld his original sentence under the terms that “to extend such clemency at this time will be condone a most serious crime, and therefore no clemency is recommended at the present time.”²⁷⁴

Despite the initial commitment of the Board to Blum’s original sentence, the gradual inflow of letters petitioning for leniency, compounded by growing desensitization toward Nazi crimes, led to a gradual reduction of his punishment. In March 1947 Blum’s wife wrote, “the functions which exclusively consisted in burying the bodies were not performed until after death ensued; therefore, according to legal and human estimation, my husband cannot be described as an accomplice to a deed which resulted in death. The proceedings proved, beyond the possibility of doubt, that my husband did not perform any kind of work which might have caused the death of these men.”²⁷⁵ The German courts at Frankfurt-Main agreed with her point and, in the proceedings of 1947, pressed no charges, as his duties required no participation in the actual killings at Hadamar. Soon after, Blum wrote another petition to the board that notified them of the court’s findings. Sworn statements by Huber and Wahlmann also advocated for Blum, arguing that he took

²⁷² Microfilm Roll 3, Part 1, Image 0258.

²⁷³ Microfilm Roll 3, part 1, Image 0273-4.

²⁷⁴ Microfilm Roll 3, Part 1, Image 0273-4.

²⁷⁵ Microfilm Roll 3, Part 1, Image 0275.

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no part in the application of euthanasia to patients.²⁷⁶ Finally, in a similar irony to the petition by Huber's mother, Blum's wife insisted "Should the sentence of my husband remain unchanged, I can only describe it as the greatest injustice the world ever witnessed."²⁷⁷

In response to these petitions, the War Crimes Modification Board decided on March 18, 1950 to lighten Blum's sentence from thirty-five to fifteen years' imprisonment "on the grounds of the minor nature of [his] participation in the mass atrocity as compared with co-accused responsible for operation of the institution or who actually participated in the killings of the inmates thereof."²⁷⁸ Despite this award of clemency, Dr. Rudolf Aschenauer (counsel representing Blum) wrote the board to ask for further review and lenience. His primary argument centered upon the fact that war service obligation bound Blum to employment at Hadamar.²⁷⁹ Despite these petitions, Blum spent three more years incarcerated due to the negative feedback from the war criminal prison regarding Blum's behavior and attitude. His parole application indicated that "He ha[d] been characterized by the Prison Director as surly and embittered and he ha[d] looked upon his confinement as an underserved punishment. Also, the Prison Director is of the opinion that it is doubtful whether the petitioner can be considered trustworthy."²⁸⁰ Despite his poor behavior, on February 15, 1954, the Board released Blum under the conditions of an Order of Parole.²⁸¹ Then, after a unanimous vote on May 8, 1957 by the modification board, the committee reduced his sentence to time

²⁷⁶ Microfilm Roll 3, Part 1, Image 0324-7.

²⁷⁷ Microfilm Roll 3, Part 1, Image 0313.

²⁷⁸ Microfilm Roll 3, Part 1, Image 0447.

²⁷⁹ Microfilm Roll 3, Part 1, Image 0360-0362.

²⁸⁰ Microfilm Roll 3, Part 2, Image 0899-0900.

²⁸¹ Microfilm Roll 3, Part 2, Image 1020.

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already served and on July 9, 1957 Blum received official release and discharge.²⁸²

Twelve years after the U.S. military commission tried the Hadamar defendants, Blum re-entered German society. None of the seven originally convicted remained in confinement.

Finally, the War Crimes Review Board received petitions for clemency filed on behalf of Dr. Wahlmann—former chief physician at Hadamar—from his attorney and from Wahlmann himself. Wahlmann’s counsel argued to the board all of the reasons why the U.S. military tribunal falsely accused Wahlmann of participating in war crimes during his time at Hadamar. He contended, “If Wahlmann in the witness stand had testified to the fact, he would have made the impression of throwing all the blame on some of his co-defendants [namely, Klein] and every decent man is reluctant to do so, therefore Wahlmann refrained.”²⁸³ Secondly, counsel argued that because tribunal gave the sentence only six months after the war, the Americans could not “at that time determine under what conditions German officers had to work. Hitler determined who could manage the dispensary and it was managed by someone else than a physician...they had young and trained men fitted to have and exercise authority even over the doctors.”²⁸⁴ Finally, Wahlmann’s defender appeals to his client’s old age, waning health, and professional credentials to sway the board into reducing his sentence. He concluded the petition asking the reviewers to decide “whether a man of medical science is to die in prison or not. He is 75 years old and very ill.”²⁸⁵

²⁸² Microfilm Roll 3, Part 2, Image 1037 and 1283.

²⁸³ Microfilm Roll 3, Part 1, Image 0710-0711.

²⁸⁴ Microfilm Roll 3, Part 1, Image 0710-0711.

²⁸⁵ Microfilm Roll 3, Part 1, Image 0710-0711.

Wahlmann's own statement to the review board relied upon the common defense of the alleged legality of the euthanasia program and adherence to superior orders. The primary argument he relied upon in his petition centered on his belief in the existence of a law mandating the killing of Russians and Poles and his subsequent assumption that protest against the law would constitute sabotage against the government.²⁸⁶

Additionally, he claimed that he attempted to refuse Bernotat's orders to perform euthanasia on the tubercular Poles and Russians in his care because of his "desire as a psychiatrist to cure the patients."²⁸⁷ Despite this alleged commitment to his duty as a physician, Wahlmann quickly abandoned moral ambivalence toward mercy killing in favor of loyalty to the Reich government and his fear of resisting Bernotat's orders.

On September 18, 1951, the military government decided to reduce Wahlmann's sentence from life imprisonment to a term of twelve years in what constituted the first of many clemency awards he eventually received.²⁸⁸ An internal route slip from the War Crimes Modification Board revealed the belief among its members that despite his service as the only physician on staff at Hadamar, Wahlmann "had no part in formulating the policies or issuing the orders for the killings" and that "his participation in the killings was indirect and consisted principally of issuing death certificates showing false dates and cause of death as he was required to do by direct orders of the institution superintendent."²⁸⁹ Ultimately the Board concluded that, due to his primarily clerical participation in the euthanasia of the foreigners, he deserved a reduction to the already executed portion of his sentence. In July 1951, the United States military government

²⁸⁶ Microfilm Roll 3, Part 1, Image 0759.

²⁸⁷ Microfilm Roll 3, Part 1, Image 0712-0713.

²⁸⁸ Microfilm roll 3, Part 1, Image 0714.

²⁸⁹ Microfilm Roll 3, Part 1, Image 0716-0717.

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authorized the discharge of war criminal Dr. Wahlmann, chief physician at the institution responsible for over 25,000 murders. He left War Criminal Prison No. 1 at the end of the summer and died a free man.²⁹⁰

The awards of clemency for all surviving defendants of the Hadamar trial demonstrated the unfortunate reality that strict justice proved unsustainable in the postwar era. Thus, the resolution of the story of the Hadamar institution and trial remained ambiguous at best. By the end of 1951, not one surviving member of the Hadamar staff convicted in either trial (the American proceedings of 1945 or its German counterpart in 1947) remained in confinement. Furthermore, the 1947 Hadamar proceedings at Frankfurt-Main represented the last euthanasia trials in the future Federal Republic to draw such stiff sentences.²⁹¹ Cold War pressures encouraged an increasingly lenient clemency policy for Nazi war criminals, as “the wheels of justice ground to a standstill” during the 1950s, with the triumph of West Germany’s determination to move beyond the recent German history of atrocity and into its new democratic future.²⁹²

The policies of Konrad Adenauer—the first post-war Chancellor of West Germany—figured as one significant contributor to the swift erosion of justice. The new West German state (and also East Germany in its own way) confronted the huge problem of trying to win the loyalties, or at least acquiescence, of populations of those formerly involved in the Nazi regime, including many of its crimes. Adenauer believed that continuing with harsh punishments against war criminals—even enthusiastic Nazis—would not only alienate these people and their families but also wider circles of the German population who displayed considerable sympathy with the people imprisoned by

²⁹⁰ Microfilm Roll 3, Part 1, Image 0762.

²⁹¹ Heberer, 40-41.

²⁹² Heberer, 40-41.

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the Allies. Thus, the subsequent move to ameliorate or even commute sentences, insofar as these moves resided within the power of German agencies, reflected the recognition that former perpetrators needed to be reintegrated into German society if West German democracy stood any chance at all of succeeding (and, in the East, if the socialist project won any popular legitimacy).

The “poor German victims” of Hitler claim figured as the other major factor contributing to the transition from strict to weak postwar justice. With each passing year, the war represented a more distant memory and sympathy for the victims of the Nazi euthanasia program transformed into empathy for the accused. Jurists spoke of the “untenable circumstances” under which doctors, nurses, and bureaucrats worked during the Nazi years, evidencing the ever-widening circle of victims in the decades following the war. In the end, “there seemed to be only victims and no perpetrators.”²⁹³

“There are stenches which not the name of justice nor reason or the public good, or any other fair word, can turn to sweetness.”
– Rebecca West

²⁹³ Heberer, 40-41.

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