

Nuremberg Trial Upholds Our Justice

Court's Proceedings and Acquittals Are Declared to Enhance the Prestige of Anglo-U. S. Legal System

By HANSON W. BALDWIN

The conduct of the Nuremberg trials, acquittal of three defendants and partial acquittal of others and refusal of the International Military Tribunal to indict the German General Staff and some German organizations as criminal have greatly increased the prestige of Anglo-American and Allied justice.

Here, clearly, was no mock trial, no foregone verdict; the justice was military and severe, but it was justice.

This has not always been so. American and Allied conduct toward the conquered since the war's end has not always been moral and just; sometimes we have acted as conquering "supermen" and turned to revenge instead of to justice. Some of the war criminal trials have smacked far too much of "kangaroo courts," where the verdict was foregone and the trial nearly a mockery.

Yamashita Trial Contrasted

Nuremberg was in particularly refreshing contrast to the trial of Lieut. Gen. Tomoyuki Yamashita, who commanded the Japanese Fourteenth Army Group in the Philippines from Oct. 9, 1944, to Sept. 2, 1945. This trial, which resulted in the subsequent execution of General Yamashita, evoked a new principle of military law, in fact of all law, and one that might have established, had it not

been for Nuremberg, a dangerous judicial and military precedent.

This is the conclusion of Major Eugene P. Boardman, United States Marine Corps, who was an official interpreter at the Yamashita trial. In "The Yamashita Trial Changes the Rules" in the June issue of The Marine Corps Gazette, an article of particular interest because of the end of the Nuremberg trial, Major Boardman describes the unorthodox and precedent-making rules of the trial.

Rules Called Extraordinary

"In effect neither a court-martial nor a civil body, this body [the military commission that tried Yamashita] was directed to follow rules of procedure created specifically for the trial of war criminals. Considerable latitude was given as regards the admissibility of evidence. Acceptable as evidence was heresy and sworn statements unsupported by witnesses. Further, the commission was both jury and judge."

These extraordinary "rules," contrary to all past Anglo-American ideas of justice, and the whole concept of the trial that led to General Yamashita's conviction and execution mean, Major Boardman concludes, that "the United States has now taken a decisive step toward establishing the principle which is a new concept of command responsibility: that the war crime of a subordinate, 'com-

mitted without the order, authority or knowledge of his superior,' is the war crime of the superior."

Obviously such a precedent was far-reaching; under its terms nearly any commander anywhere, Americans included, could be held liable as a war criminal for murder or rape committed by a subordinate, even if he had ordered the punishment of such crimes.

Because of such history-making concepts and because of the attempt in Nuremberg to indict an entire military hierarchy, the war crimes trials had been followed with great interest—and some uneasiness—by the American and other armies and navies. There has been no sympathy for the defendants, although it was felt that some of them, particularly the acquitted and Grand Admiral Karl Doenitz, were far less culpable than the others.

The chief worry was felt lest the somewhat elastic rules of the Yamashita trial be made applicable to Nuremberg, and that a blanket indictment and a distortion of the ordinary concepts of Anglo-American justice receive the seal of judicial approval.

Nuremberg has upheld those concepts of justice, extraordinary though the trial has been, that most Americans regard as fair. That in itself is a moral factor of some importance in reshaping the future world.