

Miscellaneous

Telford Taylor

1908 — 1998

Law professor, author and former Nuremberg war-crimes prosecutor Telford Taylor died in New York on 23 May 1998, at the age of 90.

A graduate of Williams College and Harvard Law School, Telford Taylor worked as an attorney in the Roosevelt Administration and as a staff member in the United States Senate prior to the Second World War. During that conflict he served in the European theatre as an Army intelligence officer, playing an important diplomatic role in the Allied effort to break the German communications codes. When the war ended he joined the U.S. prosecution team at Nuremberg. Initially he served as one of the senior deputies to U.S. Supreme Court Justice Robert Jackson, the American Chief of Counsel (chief prosecutor) for the principal proceedings against the German leadership before the International Military Tribunal. Taylor simultaneously held the post of head of the Subsequent Proceedings Division in the U.S. Office of Chief Counsel.

With the conclusion of the International Military Tribunal on 1 October 1946, and Justice Jackson's resignation on 17 October, Taylor was promoted to the rank of Brigadier General and designated the Chief Counsel for War Crimes under Military Government for the subsequent proceedings against other senior, but lower-ranking, members of the German military and civilian leadership. His work continued through the remaining German trials, which concluded on 14 April 1949, and he submitted his final report to the Secretary of the Army on 15 August 1949 — ironically only three days after completion of the diplomatic conference that produced the four 1949 Geneva Conventions for the protection of war victims, now regarded as a major part of the foundation of the law of war.

The International Military Tribunal (and the limited number of military trials that preceded it or ran concurrently) established the precedent of

individual criminal responsibility for war crimes, crimes against humanity and crimes against peace. But it was through the efforts of General Taylor and his staff, and the civilian judges in the U.S. military tribunals, that discussion and elaboration of many law-of-war principles — such as military necessity, superior orders, command responsibility, and reprisal — gave substance to the principles laid down by those earlier trials.¹ The twelve subsequent proceedings under Control Council No. 10 against German lawyers, doctors, SS personnel, police, industrialists, financiers, field marshals, generals and government ministers resulted not only in 161 convictions (out of 199 accused) but well-reasoned judgements that have proved invaluable through the years in their discussion of above-mentioned principles.²

Taylor left the Army and returned to the practice of law and teaching law at Columbia University School of Law and the Benjamin Cardozo School of Law. He parlayed his military experience into a well-regarded trilogy of books: *Sword and Swastika: Generals and Nazis in the Third Reich* (1952) covering the story of the Nazis and the generals up to the fall of 1939; *The March of Conquest: the German victories in Western Europe, 1940* (1958) which analysed the German victories in Western Europe in the spring of 1940; and *The Breaking Wave: World War II in the summer of 1940* (1967), still regarded as one of the best analyses of the Battle of Britain. Subsequently he authored *Munich: The Price of Peace* (1979), which won the National Book Critics Circle Award for best non-fiction work of 1979, and *The Anatomy of the Nuremberg Trials* (1992), an historical analysis and partly autobiographical effort that is undoubtedly the best volume on the process that led to Nuremberg and the trial of the principal accused.

The highly controversial and divisive U.S. war in Viet Nam prompted Professor Taylor to write his small but strongly-worded *Nuremberg and Vietnam: an American tragedy* (1971) in which he was critical of many, but not all, aspects of U.S. military operations in that conflict. He also was — correctly — critical of the erroneous instructions relating to command responsibility by the military judge in the prosecution of the U.S.

¹ Reported in “Trials of war criminals before the Nuremberg Military Tribunals under Control Council Law No. 10”, 15 vols., 1946-1951.

² In addition to his official report and the official cases, see T. Taylor, “Nuremberg Trials — War Crimes and International Law”, *International Conciliation*, No. 450, April 1949, pp. 241-371.

Army company commander during the 16 March 1968 massacre of hundreds of civilians at My Lai, instructions that resulted in his acquittal.

It was my pleasure to share the stage with Professor Taylor on more than a dozen occasions as we addressed U.S. military officers at the senior staff and war colleges. We agreed far more than we disagreed, and in the very few cases of the latter our disagreements were not major. Taylor was a man whom I held in great respect, a gentleman possessed of considerable experience and knowledge.

He was not always right. He argued unsuccessfully in the subsequent Nuremberg proceedings that the December 1945 conviction of General Tomoyuki Yamashita by a U.S. military tribunal in the Philippines stood for the proposition of strict liability on the part of commanders for crimes committed by their subordinates; the courts did not accept this argument.³ In our last presentation together, in 1992, he suggested that military necessity might permit the execution of prisoners of war captured by an enemy patrol operating deep behind enemy lines, an act that would constitute a violation of Article 13 and a grave breach under Article 130 of the Third Geneva Convention. Given the considerable length of his distinguished service to his nation and to respect for the law of war, two missteps (which did not result in suffering by anyone) can be overlooked when compared with his invaluable contributions.

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³ See, for example, *United States v. von Leeb* (The "High Command" Case), *op. cit.* (note 1), vol. XI, 1948, pp. 510-511, 544.