

Hanging the Sin Eater: International Criminal Law's Failure to Engage with the Role of Media in a Criminal State

Mark Bourrie
Ottawa, Canada

ABSTRACT

Background *Mainstream news media play an important role in the political system. For instance, they can use their authoritative voices to give legitimacy to regimes. In contrast, the fringe press is easily identified by its often outrageous partisanship. Fringe media such as Julius Streicher's Der Stürmer and Rwanda's Radio Télévision Libre des Mille Collines usually have no credibility with non-partisan audiences.*

Analysis *Mainstream media, because of their own credibility, can give credibility to criminal states. Analysis of the historical record shows that mainstream media escape prosecution in the rare cases where they are called to account for underpinning state criminality.*

Conclusions and implications *This article discusses the prosecution of the fringe partisan press for acting as propagandists for criminal states, while more "credible" mainstream journalists escape prosecution.*

Keywords *War crimes; Propaganda; Media in criminal states*

RÉSUMÉ

Contexte *Les médias d'information grand public jouent un rôle important dans les systèmes politiques. Par exemple, ils peuvent utiliser leur autorité pour légitimer certains gouvernements. À l'inverse, on reconnaît facilement les médias marginaux à leur partisanerie parfois outrancière. Normalement, des médias marginaux comme Der Stürmer de Julius Streicher et Radio Télévision Libre des Mille Collines au Rwanda n'ont aucune crédibilité auprès de publics non-partisans.*

Analyse *Les médias grand public, à cause de leur propre crédibilité, peuvent prêter une certaine crédibilité aux états criminels. Par surcroît, une analyse historique montre que ces médias, dans les quelques cas où on leur demande de rendre compte de leurs actions, sont rarement poursuivis en justice pour leur appui d'un état criminel.*

Conclusions et implications *Cet article discute de poursuites judiciaires envers la presse marginale ayant fait de la propagande pour un état criminel, dans des circonstances où l'on épargnerait normalement les journalistes traditionnels dits « crédibles. »*

Mots clés *Crimes de guerre; Propagande; Médias dans les états criminels*

Mark Bourrie, MJ JD PhD, is a Barrister and Solicitor in Ottawa, Canada. Email: mbourrie@yahoo.com

Canadian Journal of Communication Vol 43 (2018) 619–631 ©2018 Canadian Journal of Communication Corporation <http://doi.org/10.22230/cjc.2018v43n4a3209>

Introduction

When a political system lapses into despotism and a government embarks on criminality, who is to blame? When a nation's energies are directed at waging aggressive warfare, who should be called to account for manipulating the minds of the people to engage in such aberrant behaviour? It might be argued that cruelty and theft are hard-wired into the human psyche. What is called aggressive warfare and genocide are simply normal human violence that have been amplified through the organization of individuals into large groups equipped with a level of technology that makes mass killing and vast destruction relatively easy. Most people, however, will never hold powerful political office, command an army, or tally up the foreign currency taken from the bodies of death-camp victims. They will never kill other people, except under unusual circumstances. They live their lives as farmers, tradespeople, teachers, miners, truck drivers, and others whose names will not show up in the indexes of history books. They have just one real currency in the political sphere: the chance to give their vote or, in places with no vote, their physical support to a regime, whether it be honest or criminal.

People are swayed to do this by communicating with other people. Word of mouth is effective, although the facts communicated from person to person must come from somewhere. In a large society such as Nazi Germany or America, the chances of one's neighbours and friends knowing many people in the top tier of the political class are quite slim. More likely, the ideas and supposed facts spread by word of mouth come from some sort of mass media or propaganda system. Noam Chomsky, Edward Herman, and Edward Said called this process "manufacturing consent" (Chomsky et al 2011, lix), a smart allusion to the industrialization of mass communication.

The mass media is part of the power structure. The top political journalists work very hard to be members of the political class. The respect, admiration, and legitimacy that they give political actors are reflected in the attitudes of their readers. When a society engages in genocide and its leadership is called to account in international criminal law, it is not these influential consensus-makers who end up in the prisoner's box. In the very few cases in which the media have been prosecuted for the incitement of genocide and war crimes, it has been the disreputable fringe, rather than the respectable mainstream, that has been tried. Quite often, the journalists who normalized criminal regimes and their cruel policies have been able to walk away, or even continue working in media.

Journalists who facilitate and normalize state crimes are not victims. No one forces a person to become a journalist. Even in the most vicious wars and soul-sucking police states, goons and thugs do not come around to a village or apartment block to round up half-bright people and force them to work as headline writers or copy editors. Families rarely pressure young people to take up reporting rather than banking, civil service work, law, or some other white-collar job. And, when a journalist is pressured to do things that are evil or immoral, the journalist—unlike a soldier, a civil servant, or even a railway engineer running the locomotive on the train to the death camp—can quite easily beg off and find more palatable work without much repercussion, since they are easily replaceable due to their rather common skill set. The journalist

who engages in genocidal propaganda or beats the drum for aggressive war thus has a very high level of *mens rea* and likely cannot argue coercion.

When shilling for regimes that engage in war crimes, genocide, and crimes against humanity, mainstream journalists perform a very important role without serious personal risk from the outside world (though they may face serious consequences if they fall out of favour or internal political actors overthrow the regime). Instead, the journalist most likely to end up in the prisoner's dock in an international tribunal will be the fringe player kept at arms-length by the real planners and perpetrators. Political actors use these fringe journalists, who are deliberately kept from the mainstream media elite, to get out the ugliest part of their message. Later, the "respectable" journalists bring sanitized versions of those messages gently into the mainstream, where they become part of the political consensus of the power elite and those they govern.

Reich Press Law

Surprisingly little has been written about the mass print media of the Third Reich. It is difficult to track the fate of journalists during and after the Hitler regime. There appears to be a lack of academic interest in media history, as opposed to studies of Nazi radio and film propaganda. Those undertaking a study tracking individual journalists and executives of Nazi-era newsrooms must also contend with the industry practice in Western countries of publishing most stories without bylines (Schiller, undated). It is possible, however, to piece together a rough outline of the consequences of being part of the Nazi mass media.

The Nazis placed a very high value on cooperative and co-opted journalists. Many of the major Nazi leaders had, similar to their Soviet counterparts, some media experience. They had written articles for newspapers, or had edited, owned, or published a paper. Hitler was well aware of the importance of media, always travelling with a personal photographer and often with a film crew. Unlike the alt-right in today's America, the Nazis did not vilify journalism as a craft. Deputy Reich Press Chief Helmut Sündermann issued a brochure in 1938 titled *The Path to Journalism in Germany*, in which he equated the role of journalists to that of politicians. "After all, there are professions that introduce youth to politics because they are inherently a political profession. Journalism stands at the summit of such professions. A born journalist is a born politician." (Barton, 2015, p. 93).

On October 4, 1933, about nine months after taking office, the Nazi regime promulgated a Reich Press Law that effectively shut down the opposition newspapers. The rest came under direct government supervision. The Nazis were careful to maintain the illusion of freedom for the top tier of the respectable print media. *Frankfurter Zeitung* was allowed to continue publishing, but the Nazi regime forced its Jewish owners to sell the newspaper to corporate conglomerate IG Farben. With a nearly two-hundred-year tradition of moderate political writing and respected business news reporting, the paper had value to the Nazi leadership both as a solid news source and a political prop. Hitler's regime, knowing that *Frankfurter Zeitung* had a large foreign readership, used the paper as evidence that the regime allowed "respectable" publications to survive with a minimal amount of interference. (The paper was shut down in 1943 and revived in 1949 with most of its wartime staff.) Obviously *Frankfurter Zeitung's* staff

knew about at least some of the abuses of the regime and understood the vile propaganda spewing from the Nazi press, but *Frankfurter Zeitung's* journalists continued to press on under the somewhat gentle guidance of Joseph Goebbels's propaganda ministry. Although they had given an air of legitimacy to the Nazi regime and collaborated to ensure the Third Reich looked somewhat like a respectable Western state, the journalists who worked on this newspaper had little trouble transitioning into elite journalists in post-war Germany. Yet they had provided the curtain behind which Hitler's regime committed its crimes. The existence of the veneer of professional journalism in a sense allowed the continued denial of some Germans, who claimed they were duped by the illusion of normality, and, therefore, had no idea what was going on in the death camps and on the assembly lines manned by slaves.

Hans Fritzsche and Max Amann

Hans Fritzsche straddled the line between professional journalist and Nazi apparatchik. Fritzsche was forty-five years old when he was put on trial at Nuremberg. He had some university education and, before the Nazis took power, had worked for mainstream newspapers, most notably the Hugenberg Press, a chain of papers that supported right-wing parties. During the Weimar regime, Fritzsche was appointed head of the state-run Wireless¹ News Department, a position that he held when the Nazis took power. On January 30, 1933, the day Hitler was appointed chancellor, Fritzsche was visited by Nazi officials and, soon afterward, Fritzsche was confirmed in his job—on the condition that he fire any Jews who worked for the news service. Two months later, Goebbels, who was now minister of propaganda, visited Fritzsche to tell him the radio news service was going to be placed under the jurisdiction of Goebbels' ministry. Again, after assuring Goebbels that all the Jews working at the Wireless News Department had been fired, Fritzsche was confirmed in his job. On May 1, 1933, the Wireless News Department, now purged of Jews and liberals, was folded into the Ministry of Propaganda. That day, Fritzsche took an oath of allegiance to Hitler and joined the Nazi party. Later, Fritzsche was given control of the German Press Division, which, according to Fritzsche's own affidavit submitted at Nuremberg, provided efficient state control of more than 2,300 German daily newspapers. He was the lead communicator for the Nazi regime, holding daily press conferences for journalists from major papers and handing out censorship and propaganda instructions. These, called the daily paroles of the Reich press chief, instructed newspapers on the slant they were to take on the news, and told them the stories that should be highlighted and those that should be suppressed. These story lines included propaganda against Jews and others targeted by the Nazi regime, as well as propaganda articles that agitated for aggressive warfare.

Fritzsche was able to convince his judges that he did not create policy, but he was sometimes in the room where it happened. In his testimony at Nuremberg, for example, Fritzsche admitted to being part of discussions late in the war to decide whether the political risks of Germany abandoning the Geneva Conventions on the treatment of prisoners of war outweighed the potential gains.²

The indictment against Fritzsche placed in front of his judges at the International Military Tribunal at Nuremberg in October 1945 said:

By virtue of its functions, the German Press Division became an important and unique instrument of the Nazi conspirators, not only in dominating the minds and psychology of Germans, but also as an instrument of foreign policy and psychological warfare against other nations. (OUCCPAC, Vol. 1, 1946, p. 1035)

Despite Fritzsche's conscious decision to drive out Jews and liberals from his organization and to continue to disseminate propaganda to all the country's daily newspapers, the International Military Tribunal found "Fritzsche had no control of the formulation of these propaganda policies. He was merely a conduit to the press." Fritzsche still had personal control over the Reich's radio news network and issued daily "paroles" to all of the Reich's propaganda offices, and he was present at Goebbels' daily staff conferences. The court found he was simply a conduit for the Nazi leadership. Spreading its message, written in somewhat polite language and distributed in a seemingly professional, bureaucratic way, was not an act of criminality. The guilt of the offence of incitement lay with the makers of policy, not the people who worked to make it seem like normal government action. It also lay with the most extreme journalists, not those who normalized hate and made it mainstream.

Even Fritzsche's inflammatory anti-Semitic radio speeches were somehow less criminal than the material published by his co-accused, Julius Streicher, according to the tribunal:

Excerpts in evidence from his speeches show definite anti-Semitism on his part. He broadcast, for example, that the war had been caused by Jews and said their fate had turned out "as unpleasant as the Fuehrer predicted." But these speeches did not urge persecution or extermination of Jews. There is no evidence that he was aware of their extermination in the East. The evidence moreover shows that he twice attempted to have publication of the anti-Semitic "Der Sturmer" suppressed, though unsuccessfully... It appears that Fritzsche sometimes made strong statements of a propagandistic nature in his broadcasts. But the Tribunal is not prepared to hold that they were intended to incite the German people to commit atrocities on conquered peoples, and he cannot be held to have been a participant in the crimes charged. His aim was rather to arouse popular sentiment in support of Hitler and the German war effort. (Verdicts of the International Military Tribunal at Nuremberg, October 1, 1946)

The International Military Tribunal acquitted Fritzsche, although he was later convicted by a domestic de-Nazification court and spent four years in jail. Max Amann, treasurer of the Nazi Party and publisher of the *Völkischer Beobachter*, which, with a circulation of about two million at its peak, was by far the leading Nazi Party propaganda paper, was not tried at all by a Nuremberg tribunal, although he was sentenced to four years in prison by a de-Nazification court.³ Amann's newspaper carried a constant stream of articles advocating warfare and the oppression of Jews and other non "Aryans." At least once during the war, the paper advocated the murder by German civilians of downed Allied airmen in violation of the Geneva Conventions. On March 29, 1944, the *Völkischer Beobachter* published an article by Goebbels encouraging the

paper's civilian readers to kill "terror fliers" on the principle of "an eye for an eye, a tooth for a tooth" (MacKenzie, 1994, p. 496).

Along with publishing its newspaper, Amann performed other useful services for the Nazi Party. When Hitler took power, the Depression had already made the German newspaper industry financially untenable. There were about 4,700 daily and weekly newspapers in the country. While many of the leading Nazis wanted a complete takeover of the press, Amann, who Hitler and Goebbels delegated to run the Reich Press Office, instead decided to rationalize the industry. The financially weaker papers were closed and the stronger ones were allowed to dominate local and regional markets. Ideological conformity was ensured through the Nazi race laws, which forbade Jews and those married to Jews to work as journalists, and by purging newsrooms of centrist and left-leaning journalists. On the surface, the Nazi regime had fairly mild censorship laws, but because of its complete control of the economy, including the allotment of paper, the regime could easily decide which publishers survived. At the same time, the Gestapo's powers to arrest and imprison political prisoners, many of them in "protective custody," were deterrents for journalists who might try to criticize the regime.

Women journalists

Women print journalists in Nazi Germany got a complete pass from international and domestic courts. About two-hundred-and-fifty women were licensed to work on German newspapers and magazines during the Hitler regime, after they had finished a year of study at a journalism school (Barton, 2015, p. 21).⁴ The Nazi leadership did not allow women journalists to write about political events but the regime valued their work on what is thought of today as "lifestyle" coverage. In the public mind today, National Socialism was a militaristic movement with the sole motivation of waging aggressive war and genocide. In fact, the situation was much more complex. Hitler's regime wanted to remake German society and culture, along with its military and economy, and to politicize the private sphere. The regime sought to create larger families by giving public recognition and financial incentives to women who bore many children. Nazi labour organizations were set up to maintain productive workplaces without strikes or agitation from leftists. The Nazis engineered the mass production of previously unavailable luxury items such as cars, built a high-speed highway system, created the first entertainment television broadcasts, and even set up inexpensive resorts for families (Der Spiegel Staff, *TV Station Paul Nipkow 1935-1944*). All children were required to enroll in Nazi youth groups. Positive press coverage in sections of the newspapers geared toward women helped normalize the regime. This kind of writing, seen by its readers as light-hearted, upbeat, and apolitical, appeared to be an escape from the steady drumbeat of often-frightening news and Nazi opinion pieces. Women might have their political rights restricted and be limited in their choice of careers,⁵ but they still had influence over their husbands and sons. Their support of the Nazi social system was a strong incentive for them to pressure their families to conform. In writing this kind of soft news and features, the women journalists of the Third Reich performed an important service to the regime, one that took on even greater value as the war began going badly for Germany.

In 1934, the Propaganda Ministry into the Committee of German Women Journalists (Reichsausschuss der Schriftleiterinnen) organized women journalists. This was a sub-department of the German Press Association, chaired by Annie Juliane Richert. Committee members met frequently to discuss workplace issues affecting women journalists. They also discussed the regime's expectations regarding their articles and held professional development sessions to improve the quality of the women journalists' writing (Barton, 2015, p. 22).

While male reporters were sometimes put through "de-Nazification" processes, women were not. Allied occupation officers did not see the work done by women journalists as important or political, and thus women kept working without a break during the quick transition from a Nazi-dominated press to Allied-run media (Barton, 2015, Chapter 5). The occupying powers, especially in what became West Germany, were eager to communicate with civilians and prisoners of war through German-language newspapers, and they lacked the personnel to write and publish these papers themselves.

Julius Streicher

One man did assume the sins of the Nazi regime in German media and took them with him to the gallows. Julius Streicher, a pariah in his lifetime, was the odd man out among the Nuremberg defendants. Unlike Fritzsche, Streicher was short, ugly, bald, and foul smelling. He wore shabby clothes and had no manners or social skills. Most of the other Nazi defendants believed Streicher was psychotic.⁶ At "Ashcan," the special jail that held the major German war criminals at Nuremberg, the other prisoners would not eat with Streicher, so he took his meals alone at a small table. One German field marshal told the Americans that Streicher washed his face and brushed his teeth in a toilet. Streicher firmly believed that the trial was a Jewish plot, and that the lawyers and judges were all Jews (Overy, 2002).

Streicher had been trained as an elementary school teacher. He had fought in the First World War and returned to Germany as a decorated, embittered war hero. He sought companionship in the veterans' groups of Franconia, which were blazing with anti-Semitism grounded on the myth that Jewish politicians had stabbed the army in the back in November 1918 and signed a humiliating peace, the Treaty of Versailles. By the mid-1920s, Streicher was an eager, vocal Nazi, publishing the tabloid *Der Stürmer* and using it as a platform to viciously attack Jewish politicians in his home city of Nuremberg. Weimar Republic authorities often investigated him because of complaints about the racist and pornographic nature of *Der Stürmer* and Streicher's own violent and threatening behaviour. Despite Streicher's protests that he was engaging in free speech, his writings and speeches cost him his teaching job. In the hearing held to determine whether Streicher would be fired, Streicher argued that he had come to his anti-Semitism honestly, after years of study, and had the right to free expression—to comment on an opinion that he believed to be true. He claimed that he had no hatred for individual Jews unless they had somehow crossed him and wished none of them harm. Streicher claimed he wanted Jews to be driven out of society and the economy by legal means. As for creating an environment of persecution, he said: "If I must wade in mud, I do not create the mud. Rather, I pursue positive moral ends" (Showalter, 1983, p. 107)

While Streicher advocated the destruction of the Jews, he claimed to have meant that in a metaphorical way. At Nuremberg, he said that he was as surprised as anyone when he found out the Germans had built an entire industry of murder. Streicher was accused of being a member of the Nazi Party, being a Nazi member of the Reichstag, holding the rank of general in the *Sturmabteilung*, (SA)—the Nazis' original paramilitary organization—and promoting the Nazi's accession to power. The indictment claimed that "he authorized, directed and participated in the Crimes against Humanity ... including particularly the incitement of the persecution of the Jews" (Office of the United States Chief of Counsel for Prosecution of Axis Criminality, 1946, Vol. 2, p. 66).

The Holocaust would certainly have happened without Julius Streicher and his shabby newspaper. With a relatively small circulation, the utter lack of respect of most people, including the most vehement Nazis, and no real credibility, *Der Stürmer* was racist pornography, entertainment that titillated by pushing boundaries rather than by enlightening. If it resembles anything available on newsstands in the West today, the closest comparisons would be *Hustler* magazine and perhaps *Charlie Hebdo*. Still, only Streicher would die for the things he wrote and said during the Nazi regime. He did have one positive attribute: loyalty. Of all the major war criminals hanged at Nuremberg on October 16, 1946, Streicher was the only one who called out Adolf Hitler's name at the end (Carey, 1987).

Streicher was charged with crimes against peace and crimes against humanity. Prosecutors tagged Streicher prosecutors at Nuremberg as the Number 1 Jew-baiter in the Third Reich. His entire publishing career was a relentless attack on the Jewish people, not by rational argument or by gently bending facts. Streicher's tabloid carried vile, crude, sexually-explicit cartoons and hate-filled rants. Despite his loyalty and his services as a low-road propagandist, Streicher had no role in policymaking by the time war broke out in 1939. Hermann Goering had sidelined Streicher after he suggested Goering's daughter Emma had been conceived by artificial insemination because of Goering's supposed heroin-induced impotence. He had been fired from his local political job in Franconia in 1938 and was drummed out of the party in 1940 after being accused of embezzling Jewish assets after the state-sponsored Kristallnacht riots. The regime let him publish *Der Stürmer*, which he aggressively pushed on the public through a network of street peddlers. Despite being suspended from the Nazi party, Streicher still had many loyal readers among the paper's most die-hard followers, and the paper was displayed in prominent places in newsstands. As Nazi influence had grown through the 1920s, so had *Der Stürmer's* circulation, reaching a peak in the mid-1930s, although it appears to have never exceeded 500,000. It is not known how many of those were unread giveaways.

In his defence, Streicher argued it was ridiculous to blame him for anti-Semitism in Germany. It had always been a part of the culture of the country. He did not need to put into evidence the racial theories written by scholars and published in the scientific press in the nineteenth and twentieth centuries. He could reach back to the writings of Martin Luther in the sixteenth century. Streicher argued:

Anti-Semitic publications have existed in Germany for centuries. A book I had, written by Dr. Martin Luther, was, for instance, confiscated. Dr.

Martin Luther would very probably sit in my place in the defendants' dock today, if this book had been taken into consideration by the Prosecution. In the book *The Jews and Their Lies*, Dr. Martin Luther writes that the Jews are a serpent's brood and one should burn down their synagogues and destroy them. (Lackey, 2013, p. 106)

Streicher did not get to finish that argument. Robert Jackson, the U.S. Supreme Court justice acting as prosecutor at the tribunal, cut Streicher off and said Luther's writings were irrelevant to the case. "It seems to me very improper that a witness should do anything but make a responsive answer to a question, so that we may keep these proceedings from getting into issues that have nothing to do with them" (Lackey, 2013, p. 106).

Nor could the court reasonably conclude that Streicher laid the ideological foundations of Nazi anti-Semitism within the clique that created policy, including the extermination of Jews. He had not infected Hitler with it. Hitler and the other Nazi leaders were railing against Jews long before they met Streicher. While Hitler and Streicher met before the Nazi leader wrote *Mein Kampf*, Hitler makes clear in that memoir that his anti-Semitism took shape during his years as a homeless man in pre-war Vienna.

Because Streicher was not one of Hitler's inner circle and held no military rank, he was acquitted of the charge of crimes against peace. The International Military Tribunal found:

There is no evidence to show that he was ever within Hitler's inner circle advisers; nor during his career was he closely connected with the formulation of the policies which led to war. He was never present, for example, at any of the important conferences when Hitler explained his decisions to his leaders. Although he was a Gauleiter there is no evidence to prove that he had knowledge of those policies. In the opinion of the Tribunal, the evidence fails to establish his connection with the conspiracy or common plan to wage aggressive war as that conspiracy has been elsewhere defined in this judgement. (Verdicts of the International Military Tribunal at Nuremberg, October 1, 1946)

The International Military Tribunal convicted him of crimes against humanity for helping to create the social and political environment that generated the Holocaust. Noting Streicher's reputation as "Jew baiter number one," the tribunal ruled that Streicher's speeches and writings "infected the German mind with the virus of anti-Semitism and incited the German people to active persecution." Talk of the physical destruction of the Jews had started appearing in *Der Stürmer* in 1938, at a time when Jews were brutally persecuted in Nazi Germany but were not yet being murdered in large numbers. His propaganda was "poison [that] Streicher injected into the minds of thousands of Germans which caused them to follow the National Socialists' policy of Jewish persecution and extermination" (Verdicts of the International Military Tribunal at Nuremberg, October 1, 1946).

In its judgement, the International Military Tribunal explained how Streicher had used propaganda to dehumanize Jews and create a cultural environment in which they could be destroyed. The judges noted how prosecutors had entered 23 articles

published in *Der Stürmer* between 1938 and 1941 into evidence in which Streicher called for the “root and branch” extermination of Jews. Streicher’s targets were portrayed as something other than human, “germs,” and “pests,” “a parasite, an enemy, an evil-doer, a disseminator of diseases who must be destroyed in the interest of mankind,” and “swarms of locusts.” Streicher did not just advocate the extermination of Jews in Germany. He also urged the regime to launch a “punitive expedition” into Russia to kill that country’s Jews. “Such was the poison Streicher injected into the minds of thousands of Germans which caused them to follow the National Socialists policy of Jewish persecution and extermination,” the Tribunal judges ruled (Verdicts of the International Military Tribunal at Nuremberg, October 1, 1946).

Other defendants of the 1945 major war crimes trial argued they had little or no intent to commit crimes against humanity and genocide. Invariably, they—and the people tried in less famous war crimes trials—argued that they were simply doing their jobs and following orders, or had no idea of the magnitude of the Nazi industrial killing system. Streicher was a prosecutor’s dream, an unpleasant, unsympathetic, unrepentant ideologue who was quite willing to admit to his actions without trying to explain them away or deflect guilt to others.

Streicher was tried as a symbol. The spread of anti-Semitic ideas generated the German societal *mens rea* for the genocide conducted by the Nazis. But was hanging Streicher a mistake? Did he, in effect, have the sins of German journalism piled onto his shoulders? Was his hanging a grotesque absolution of the thousands of nameless German journalists who were willing, sometimes eager, to go along with the Nazis from the very beginning? Subsequent International Military Tribunals tried the cases of Nazi military officers, lawyers, industrialists, and doctors, but there was no International Military Tribunal session for the Nazi-era media. (William Joyce, who was dubbed Lord Haw-Haw for his English propaganda broadcasts directed at the United Kingdom, was prosecuted for treason by the British and executed.)

So in this way Streicher was symbolic, but his execution was made easier for the International Military Tribunal because he was so obviously antisocial, not only in his creepy, sleazy character but also in the fact that he had no respectability and worked outside of a bureaucracy or military and far from the middle-class mainstream media. In a sense, he was a freelancer, unprotected by solidarity from the members of his profession or from mannered society. In fact, much of what was written about Streicher at the time of the Nuremberg trials and in the years since dehumanizes him in ways that would have been familiar to a Nazi propagandist. Once he was made less than human, he was no longer of the same species as the respected, pliable journalists of *Frankfurter Zeitung*.

Why was Streicher hanged when Amann was not indicted as a war criminal, Fritzsche was acquitted, and women journalists and the staff of *Frankfurter Zeitung* allowed to step easily into German newsrooms in the post-Nazi era? Was it because Streicher was a true believer in Hitler and refused to recant? Was it because Streicher published a kind of pornographic propaganda that was repulsive even to some of the Nazi leadership? Was his fanaticism translatable into a higher level of *mens rea* for the crime of inciting genocide than that of mainstream Nazi editors and publishers such

as Amann and his editorial team at the *Völkischer Beobachter*, who, just like Streicher, were intent on destroying the Jews of the Third Reich, at the very least in the cultural and financial sense and, arguably, physically?

Hassan Ngeze

International law has never grasped the difference between a fringe character such as Streicher, an important apparatchik such as Fritzsche, a major mass-circulation publisher such as Amann, and mainstream women and men journalists willing to accommodate a criminal regime and normalize its message and its actions. Journalists have not been prosecuted at all by the International Criminal Court, and they have not been called to account at the special tribunals for Yugoslavia and Sierra Leone. When a tribunal finally embarked on an examination of the role of media in a criminal regime and in atrocity crimes, it again heard evidence against fringe media. The Rwandan newspaper *Kangura* very much resembled *Der Stürmer*. Its owner and editor, Hassan Ngeze, is the only print journalist convicted under international criminal law since Streicher. Even this case is not a clear-cut example of holding media to account, despite the obvious incitement, since Ngeze was far more embedded in the governing clique than Streicher, and evidence was presented to the Rwanda tribunal that Ngeze took an active part in the actual genocide against the Tutsis, including killing people with his own hands.

Ngeze was charged with conspiracy to commit genocide; genocide; direct and public incitement to commit genocide; complicity in genocide; and crimes against humanity (persecution, extermination, and murder). The court made it clear that his actions as publisher of *Kangura* were at the core of the case (Verdicts of The Prosecutor v Ferdinand Nahimana, Jean-Bosco Barayagwiza Hassan Ngeze Case, International Criminal Tribunal for Rwanda Case ICTR-99-52- T at para 10).

The International Criminal Tribunal for Rwanda (ICTR) found Ngeze guilty. His culpability lay in his abuse of his rights to freedom of expression:

Hassan Ngeze, as owner and editor of a well-known newspaper in Rwanda, was in a position to inform the public and shape public opinion towards achieving democracy and peace for all Rwandans. Instead of using the media to promote human rights, he used it to attack and destroy human rights. He has had significant media networking skills and attracted support earlier in his career from international human rights organizations who perceived his commitment to freedom of expression. However, Ngeze did not respect the responsibility that comes with that freedom. He abused the trust of the public by using his newspaper to instigate genocide ... He poisoned the minds of his readers, and by words and deeds caused the death of thousands of innocent civilians. (Verdicts of The Prosecutor v Ferdinand Nahimana, Jean-Bosco Barayagwiza Hassan Ngeze Case, International Criminal Tribunal for Rwanda Case ICTR-99-52- T at para 11)

Although the court had the power to impose the death penalty, Ngeze was sentenced to life without parole, which was later reduced to 35 years. His co-accused were convicted for their involvement with the radio station Radio Télévision Libre des Mille

Collines (RTL). Ferdinand Nahimana, who had fled Rwanda at the outbreak of the genocide, and Jean-Bosco Barayagwiza were found guilty of creating a radio station that incited the Hutus to engage in genocide against the Tutsis. One of its broadcasters was imprisoned by a domestic Rwandan court, and several are still at large.

But if an element of Ngeze's offence involved failing to use his medium for shaping public opinion to prevent genocide, why were the main Rwandan media not held to account for the same crime? *Kingura* was printed sporadically before the genocide and did not publish at all during the killing, yet it took the blame for the media of a society that was steeped in genocidal discourse. The writings on the Rwandan genocide are strangely silent about the rest of the media in that country, including Radio Rwanda, which often spread false smears against the Tutsis, and extremist publications issued by the Tutsis themselves (Human Rights Watch, 1999).

Conclusion

In the cases of Streicher and the people behind *Kangura* and the RTL, prosecutors indicted fringe elements in the political societies of two criminal states, while allowing mainstream journalists to escape punishment for cloaking these states in superficial legitimacy. They should have realized these states could not have been able to pass themselves off as responsible members of the international community without complicity from a media that mimicked responsible newspapers and radio stations, and was run by journalists who knew full well that the state was engaged in criminal actions and were prepared to hide that fact. These journalists, much more than those who were prosecuted, provided masks of legitimacy to hide state crimes from foreign and domestic audiences.

At traditional Irish funerals, a "sin eater" is employed to take on the sins of the deceased. Piling the sins of media onto the shoulders of people such as Streicher and Ngeze ends up being a deflection. By doing so, courts do not have to carefully parse out expression rights because the published material is so obviously false and crude. More importantly, they do not have to dissect the power structure of a society and question how good and bad ideas become parts of mainstream discourse. Doing so would challenge ideas of normalcy and respectability in ways that are beyond the abilities of a court of law.

Notes

1. "Wireless" was synonymous with "radio" in the first half of the twentieth century.
2. The idea, floated in the early months of 1945, was one of Hitler's brainchildren, although Goebbels had originally come up with it. Hitler asked the Nazi leadership to decide whether the German people would fight more tenaciously if they felt they were utterly alienated from the civilized world. The idea was dropped when the consensus was reached that abandoning the Geneva Conventions was more likely to demoralize the population than stimulating more ferocity (Mackenzie, 1994).
3. Including time served before his conviction, Amann spent just over seven years in jail. He was, however, stripped of his substantial fortune and died in poverty in 1957.
4. There were also several women working as full-time and part-time freelancers for magazines, since many magazines in Nazi Germany relied on freelancers for most of their content, as they do now in the West.

5. These limitations were fairly common throughout the West for women who were not engaged in domestic labour, such as maids, cleaners, and childcare workers. For example, Canadian women working for the federal government in white-collar jobs, even during wartime, were expected to resign from their jobs when they married.

6. Three psychiatrists examined Streicher and said he was sane, and his sanity was not an issue at trial. The psychiatrists—one American, a Soviet, and a French clinician—administered Rorschach tests to all the defendants, all of whom were willing participants in the testing. The psychiatrists found Streicher to be paranoid, but able to understand the nature and qualities of his actions (see Kelley, 1946). Two years after Streicher was hanged, a team of graduate students in psychology examined the trial transcript and came up with the following diagnoses: paranoid schizophrenia, chronic paranoid schizophrenia, paranoid state, neurotic depression with paranoid trends, neurotic depression, mild depression, anxiety and depression, normal, but with some signs of paranoid schizophrenia or obsessive-compulsive disorder (see Kass & Ekstein, 1948).

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