

# Paradigm Shift and the Post-WWII Nuremberg Trials: The Emergence of the Individual as a Subject and Object of International Law

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I am a Ph.D. student of international relations, with background knowledge of international law. My primary research focuses upon the permanent International Criminal Court (ICC), established in 1998 to investigate and prosecute individuals for genocide, war crimes, and crimes against humanity. These criminal atrocities are of the essential nature of those recognized and prosecuted by the post-WWII Nuremberg Tribunal. In these and other crucial respects, the ICC is a global governance fulfillment of the Nuremberg legacy.

My research questions include the following: What are the historical roots and dimensions of globalization and autonomy as they relate to the emergence or recognition of international human rights? How do those concepts relate to the development of international criminal justice, which is intended to help safeguard and promote greater respect and adherence to those rights? Within these contexts, I consider how conceptions of globalization and autonomy have evolved or transformed over time, and particularly how they have been actively engaged and contested.

In investigating the relationship between globalization and the processes of securing and building autonomy, a core tension exists between the respective standing and relationship between individual persons and sovereign states. The concepts and ideals articulated at Nuremberg introduced a novel and fundamental tension within international law between individual and collective forms of autonomy. This exists not only within formal international law, but also in other global social structures which directly or indirectly affect the lives of all persons. In this sense, the global or transnational scope of human rights and international criminal justice continues to exist awkwardly or unevenly within the broader state-centric system of international law. Though conceptions of individual worth, dignity, and accountability have gained widespread acceptance within global society, this core tension remains today. However, progress is reflected not only in measures to strengthen human rights protections, but also broader discussions and initiatives across a broad range of global governance issue areas.

Human rights and related notions have ancient historical philosophical foundations, and were more recently reflected within Enlightenment thinking. However, it was not until the unprecedented human-engineered atrocities of WWII and the Nuremberg Trials that global affirmation and formal legal codification and institutionalization of human rights was undertaken. These legal measures, and the conceptual understandings and sentimental connotations which they embody, have become globalized through international treaties, formal institutions, and political discussions.

In punctuating evolutionary dynamics within the global system, Nuremberg reflected and reinforced fundamental notions of individual worth and dignity, and embodied global concern and responsibility for such ends. Prior to Nuremberg, piracy was the only broadly recognized inter-national crime. However, it was essentially a practical problem for states to collectively address. What was specific

and crucial about Nuremberg was the introduction or affirmation of contemporary "international" (or global) crimes. These are deemed to fundamentally offend global standards of conduct, quite apart from their direct inter-national effects or lack thereof.

Nuremberg recognized individuals as direct "subjects" of international law: they are bound by the rules and consequences of international criminal justice. This responsibility applies regardless of individual citizenship or residency within states, and whether individuals are governmental officials, or have followed superior orders or national laws in committing such crimes. Conversely, in prosecuting such crimes to help safeguard all persons from human rights atrocities, Nuremberg also elevated or recognized individuals as distinct "objects" of international law: they are objects of global concern, and their fundamental human rights, dignity, and security are to be protected. Again, these individual legal protections exist apart from state citizenship or residency. In this sense, they are truly global rights — they are possessed by all individuals by virtue of their shared humanity.

I employ the term "paradigm shift" to describe this fundamental reorientation of international law. By "paradigm" I mean the basic way in which we conceptualize and construct the world through international law: Who or what is visible or has standing? What or whose interests, values, and concerns are to be recognized and advanced or protected? In proposing a "paradigm shift," I mean that formal international law is no longer exclusively concerned with regulating interaction and coexistence between sovereign states. States are no longer the sole "objects" with international legal rights, nor the sole "subjects" with international legal responsibilities. I describe the Nuremberg Trials as a "globalization moment" in the sense that the novel proceedings themselves, and the legal principles which were introduced or recognized in the final judgment, fundamentally introduced or catalyzed this "paradigm shift." However, for a variety of political, economic, and other social reasons, individuals still do not share equally in these legal rights and protections.

I learned that processes of international law, globalization, and autonomy are fundamentally interrelated. All are social phenomena, and all afford both challenges and opportunities. Globalizing conditions, including increasing concern for the autonomy and well-being of all persons, permitted the Nuremberg "globalization moment." In turn, that crucial legal development further propelled and influenced the evolution of globalization and autonomy. Individuals and groups have engaged and contested these normative developments to more assertively challenge the monopoly of state control and accountability. In exercising such autonomy, they have appealed not only to states, but also international organizations, non-governmental associations, and to the collective conscience of the global community as a whole.

The ICC itself is a significant global governance fulfillment of the Nuremberg legacy, and its final establishment marks a significant historical development within the broader context of globalization and autonomy. However, Nuremberg represented the crucial normative and legal "paradigm shift" which, in turn, ultimately found institutional expression in the ICC. Nuremberg established the novel parameters of individual autonomy and responsibility which inherently transcend the system of sovereign states. Though Nuremberg's full impact perhaps remains to be seen, it fundamentally reconfigured or challenged previously sacrosanct global structures, particularly state sovereignty. In this crucial sense, the post-WWII era is distinct from prior periods of the states-system.

These evolving understandings and practices of social concern, engagement, and contestation represent what some scholars have described as "global citizenship." This concept involves a reconsideration of individual rights and responsibilities, and the nature of community or communities within which such relationships socially exist. It implies that individual ideas and expressions of

citizenship increasingly encompass a sense of global identity and responsibility. Sovereign states may remain the primary bases for formal citizenship, but states have become less exclusive in terms of their significance for individual identities and allegiances. "Human security" is a related concept in the sense of embodying the common bonds uniting all of humanity. It too transcends the state by emphasizing the physical, psychological, and spiritual well-being of the individual as a distinct and pressing global concern. Both concepts have broader implications for how we investigate core concepts of globalization and autonomy.

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