

Dean's Address

Ulrich Preis

Dean of the Law Faculty of the University of Cologne

Magnifizenz,
dear guests of honour,
dear faculty members,
and above all, dear Mr Ferencz,

We are most grateful to you, Mr Ferencz, that you have so generously agreed to be with us today when we wish to pay tribute to your father, Benjamin Ferencz. Let me be clear right at the outset: Benjamin Ferencz' honorary doctorate constitutes a very important moment in the history of our Faculty.

The name "Benjamin Ferencz" provides sufficient reason for this statement: Dr Benjamin Ferencz' almost life-long contribution to international justice can only be called stellar. The Rektor has already alluded to this celebrated fact and our colleague Stephan Hobe will remind us of Dr Ferencz' tremendous achievements in a minute. But there is also a reason embedded in the history of our Faculty which makes Benjamin Ferencz' honorary doctorate a very important moment for us: As we all know, Benjamin Ferencz is the last surviving Nuremberg prosecutor. He acted as the US Chief Prosecutor in the Einsatzgruppen case on which we shall be hearing more later.

It is a less known fact, and very understandably so, that the history of the Cologne School of Law is also specially connected with Nuremberg. A few years ago, our Faculty member Claus Kreß had invited Professor Scott Shapiro, one of our guests of honour today, to address this connection more in detail here in Cologne. And Professor Shapiro did so in his impressive Inaugural Hans Kelsen Memorial Lecture on International Peace and Security. Let me hand over the floor to Professor Kreß so that he can remind us of some core elements of Professor Shapiro's Cologne speech.

Claus Kreß

Thank you very much, Spectabilis.

The story, my distinguished colleague and friend Scott Shapiro told us includes the sad fact that the Nazis drove Professor Hans Kelsen out of Cologne University because of his Jewish origin. Professor Hans Kelsen, the legal theorist, constitutional and international lawyer of world-wide renown, would then help the US government with the drafting of the London Charter which became the legal basis for the Nuremberg Trial. The story, Scott told us, also includes the sad fact that Professor Carl Schmitt was the only member of Cologne Law School who did not sign the Faculty's letter of protest against Professor Hans Kelsen's dismissal from office. The same Professor Schmitt who would engage in egregious anti-semitism and who considered the prohibition of aggressive war through the Briand-Kellog Pact an alarming fact, rather than a much to be hoped for breakthrough towards an international law against war. And Scott's story included the role at Nuremberg of Professor Hans Kelsen's successor, Professor Hermann Jahrreiß.

In Nuremberg, Professor Jahrreiß acted as a member of the defence team of the major German war criminal, General Jodl. In a well-known speech, delivered on behalf of the entire Nuremberg defence, Professor Jahrreiß presented the argument that convicting a German accused person for a crime against peace would violate the principle of legality. Scott suspects, with good reason, that in making his argument, Professor Jahrreiß followed a line of reasoning that had been set out before by Professor Schmitt. Professor Shapiro's magnificent Hans Kelsen Memorial Lecture ended on the note that Professor Jahrreiß later became Rektor of Cologne University. To be sure, the fact that he defended at Nuremberg did not, as such, preclude him from that office. The right to defence in criminal proceedings is fundamental and the victorious powers deserve praise for guaranteeing that right also in the case of the German defendants at Nuremberg.

There is thus nothing wrong with Professor Jahrreiß having acted as a defence lawyer at Nuremberg. He was even praised by Telford Taylor, the US Chief Prosecutor for the subsequent Nuremberg trials, for his eloquent performance in Court – and I strongly suspect that Benjamin Ferencz would have displayed the same sense of procedural fairness, if asked. Yet, the masterful chronology of Professor Shapiro's lecture contained an important implicit question directed to us in Cologne and to our Faculty in particular. The question is whether Professor Jahrreiß' service as Rektor of Cologne University should remain Cologne's last visible major connection with Nuremberg.

We believe it should not: Fortunately, we have left behind us the legal debate about Nuremberg and the principle of legality. And even more

fortunately, Germany as a country, after many decades of rejection or at least skepticism, has eventually come to terms with Nuremberg. Perhaps most fortunately, the official Germany has become a supporter of the idea of international criminal justice.

And Benjamin Ferencz had his share in bringing about this change of mind. Not through loud public statements, but silently, together with his friend, the late Hans-Peter Kaul. May it be recalled at this ceremonial occasion that we as a Faculty have paid tribute to Judge Kaul's tireless work on international criminal justice through the award of an honorary doctorate more than a decade ago. At this point, I wish to hand back the floor to the Dean.

Ulrich Preis

Thank you, Claus, for this reminder.

It is in view of this historic background that we believe that there is a special reason for us to honour Dr Benjamin Ferencz' stellar contribution to international justice here at Cologne Law School: The Nuremberg Defence has made its argument. Already at Nuremberg, it has not prevailed. The honour we have bestowed on Benjamin Ferencz implies our hope that his historic Nuremberg engagement and the legacy of his subsequent work building on the Nuremberg Principles will prevail also in the long run. Much remains to be done to that effect even after the establishment of the first permanent international criminal court in legal history.

For our Faculty, the inclusion of Dr Benjamin Ferencz in the fine college of its honorary doctors, will provide a most precious and lasting encouragement to continue to offer our scholarly contribution in support of his great vision of international justice.

Please, Mr Ferencz, do kindly convey to your father how grateful and how privileged we feel that he has accepted the honour we wished to offer him.

References:

- Hans-Jürgen Becker*, Die neue Kölner Rechtswissenschaftliche Fakultät von 1919 bis 1950 (Mohr Siebeck, 2021), pp. 86–93, 124–132.
- Lars Berster/Claus Kreß*, Verteidigung im Nürnberger Prozess: Die Akten von Hermann Jahrreiß, in: Peter W. Marx/Hubertus Neuhausen (eds.), Schätze der Universität zu Köln (Greven Verlag, 2019), pp. 162–167.

- Oona Hathaway/Scott J. Shapiro*, *The Internationalists: How a Radical Plan to Outlaw War Remade the World* (Simon & Schuster, 2017), pp. 217–223, 230–245, 268–275, 285–290.
- Hans-Peter Kaul*, Über Hoffnung und Gerechtigkeit, in: Verein zur Förderung der Rechtswissenschaft (ed.), *Fakultätsspiegel Wintersemester 2008/2009*, pp. 83–91.
- Claus Kreyß*, Hans Kelsen, Hermann Jahrreiß, Carl Schmitt und die Frage von Krieg und Frieden im Völkerrecht, in: Hanns Prütting (ed.), *Festschrift 100 Jahre Rechtswissenschaftliche Fakultät Universität Köln* (Otto Schmidt, 2020), pp. 79–106.
- Claus Kreyß*, Laudatio auf S.E. Hans-Peter Kaul, in: Verein zur Förderung der Rechtswissenschaft (ed.), *Fakultätsspiegel Wintersemester 2008/2009*, pp. 74–82.
- Reinhard Mehring*, Carl Schmitt (1888–1985): Sinneswandel eines Semesters – vom Egon mit Kelsen zum Probelauf des Kronjuristen, in: Steffen Augsburg/Andreas Funke (eds.), *Kölner Juristen im 20. Jahrhundert* (Mohr Siebeck, 2013), pp. 137–161.
- Thomas Olechowski*, Hans Kelsen. Biographie eines Rechtswissenschaftlers (Mohr Siebeck, 2020), pp. 545–557.
- Annette Weinke*, Hermann Jahrreiß (1894–1992): Vom Exponenten des völkerrechtlichen „Kriegseinsatzes“ zum Verteidiger der deutschen Eliten in Nürnberg, in: Steffen Augsburg/Andreas Funke (eds.), *Kölner Juristen im 20. Jahrhundert* (Mohr Siebeck, 2013), pp. 163–195.