

Reassessing the Nuremberg Military Tribunals: Transitional Justice, Trial Narratives, and Historiography. Edited by Kim C. Priemel & Alexa Stiller. New York and Oxford: Berghahn Books, 2012. Pp. 334. 978-0-85745-530-7. \$95.00/£60.00 hardback.

The International Military Tribunal (IMT) staged in Nuremberg between November 1945 and October 1946 was once considered a failed experiment in the application of international criminal law. Since the establishment of the International Criminal Court (ICC), the achievements of the IMT have been positively revised. It has been touted as the first instance of transitional justice. Indeed, Lawrence Douglas reckons that “it would be no exaggeration to claim that international criminal law was an *invention* of the IMT” (p. 277).

However, the reputation of the “subsequent trials” held by the US Military Tribunal at Nuremberg (NMT) is long overdue for re-evaluation. The NMT, a series of twelve trials held at Nuremberg between 1946 and 1949 to prosecute a representative sample of Nazis and their collaborators for war crimes and crimes against humanity, has suffered from decades of comparative neglect. The editors of *Reassessing the Nuremberg Military Tribunals* seek to rectify this. They state in their introduction that contributions to this collection of essays “do not merely rescue the NMT from the long shadow of the IMT but show that the later trials shaped our views of the Third Reich and the Holocaust, on the one hand, and the paths of international criminal law on the other, possibly even more so than their famous precedent” (p. 15). This is a tall order but, in my estimation, this volume achieves both these goals admirably.

I do not have the space to do justice to all ten chapters in this book. So I propose to confine my comments to those NMT trials I reckon to be the most significant in evaluating its import and the legacy.

According to Hilary Earl, the *SS-Einsatzgruppen* trial, held in the Palace of Justice from September 1947 to October 1948, was the first genocide trial. She points out, “unlike any of the other Nuremberg trials, the *Einsatzgruppen* trial was the first and arguably only war crimes trial to deal exclusively with individuals whose sole job was their participation in the genocidal murder of Jews” (p. 65). The *Einsatzgruppen* provided support for the *Wehrmacht* which waged a ‘war of extermination’ against Jews, Bolsheviks and partisans in the occupied areas of Eastern Europe. Armed with documentary evidence that incriminated the *Einsatzgruppen* with war crimes, the prosecutor Benjamin Ferencz charged representatives of the middle leadership of these mobile killing commandos. The key defendant in the trial turned out to be the commander of *Einsatzgruppe D*, Otto Ohlendorf, who confessed that his unit killed 90,000 Soviet civilians in 12 months. Although Earl’s focus on courtroom dynamics tends to turn the spotlight on the *dramatis personae*, she points out that “Ohlendorf’s testimony established a version of the Final Solution that was clearly hierarchical and premeditated” (p. 66). Although there was no definitive evidence that Hitler, Himmler and Heydrich had given orders to “exterminate all Jews”, Ohlendorf and his fellow defendants stuck to their guns that they were simply following orders. But the judge in this case, Michael Musmanno, ruled that this was not sufficient grounds to exonerate those committing or supervising these face-to-face killings. The *Einsatzgruppen* case revealed that their killing spree was a prequel to the technologically efficient mass killings that were a feature of the death camps.

Alexa Stiller argues convincingly that the term ‘genocide’ was not applied exclusively to the extermination of Jews in the late 1940s. In her words, “the crime of genocide was not consistently

seen as congruent with the Holocaust” (p. 104). She traces the genesis of the former term to Raphael Lemkin’s 1944 book *Axis Rule in Occupied Europe* in which he describes the elimination of entire national racial or religious groups as genocide. In examining its subsequent evolution, Stiller points out that the term’s meaning was unstable during the IMT and subsequent proceedings. She argues that the Race and Settlement (RuSHA) trial characterised genocide as the ethnic reconstruction and Germanisation of Eastern Europe, combined with the extermination of *untermenschen* who did not fit the Aryan profile. Thus the RuSHA case sought to hold accountable those who were charged with the planning and implementation of the *lebensraum* policy, whereas the *Einsatzgruppen* case was concerned with those responsible for its execution (in both senses of the word). Subsequently, the term genocide came to be increasingly narrowly defined and used as a synonym for ‘Holocaust’. However, this concept only gained prominence in public memory and discourse following the Eichmann trial of the early 1960s. She insists that “the mass murder of Jews was singled out from other Nazi mass violence” and that this resulted in “the triumph of the narrative of the Holocaust as *the* Nazi genocide” (p. 124). Following the adoption of the new nomenclature, the Holocaust was regarded as *sui generis*, and other Nazi victims were neglected.

Another discernible tendency during the Nuremberg trials was to identify the *Schutzstaffel* (SS) as the main perpetrator of the genocide. The strategy of the prosecutor in the SS trial, James McHaney, characterised the SS as “a state within a state” thereby disassociating the SS “from rest of the German bureaucracy, state and party organisations, and implicitly from German society” (p. 142). The SS leadership, and Himmler in particular, became the incarnation of evil in the prosecutor’s narrative. This effectively minimised the culpability of rank-and-file SS personnel as it diminished their agency. A corollary of this narrative was that ‘ordinary’ Germans were exempted from responsibility for Nazi criminality and atrocities. As Jan Erik Schulte put it, the SS became the ‘alibi of a nation’ (p. 134). The inclination of the German people to see themselves as cogs in the machinery of an all-powerful Nazi state made it possible to find scapegoats, whether they blamed a small circle of the Nazi party hierarchy or the SS. It also provided an argument in mitigation for the masses that had supported the same party and brought it to power. Accordingly, it became possible and convenient for Germans to regard themselves as victims of Hitler and his minions, as well as the targets of Allied retribution that sought to destroy the civilian population by bombing their cities to rubble. However, the unseemly quest for victimhood was as much the result of wilful ignorance as it was the appropriation of NMT narratives on the part of the Germans.

As an organ of the Nazi Party, the SS (along with the SD and the Gestapo) was declared a criminal organisation in terms of the purview of the London Charter by the IMT. However, the Wehrmacht which was regarded as an apparatus of the state (or German Reich) was not considered, *ipso facto*, criminal. And despite the NMT obtaining convictions for war crimes and crimes against humanity in the trials of military personnel and the High Command case, this did little or nothing to tarnish the reputation of the Wehrmacht on account of its conduct in the aforementioned *Vernichtungskrieg* (‘war of extermination’). Valerie Hebert attributes this to the American occupation authorities’ post-trial decisions regarding clemency and parole for convicted war criminals, as well as their failure to publish the trial materials in German (p. 195). She omits to mention that a clique of Wehrmacht generals had tried to pre-empt the IMT/NMT’s findings by publishing a memorandum providing their version of events. This memo articulated what were to crystallize into the basic elements of the myth of the Wehrmacht’s ‘clean hands’ that took root in the (West) German imagination in the postwar years (p. 202). It was reinforced by the Bundeswehr’s

need for legitimation and effectively condoned by the Allies as it suited them to refrain from alienating the West German armed forces with the onset of the Cold War. Whilst glossing over the intervening years, Hebert rightly shows that the myth was only destabilised in the 1990s after the Hamburg Institute of Social Research mounted an exhibition called “War of Extermination: Crimes of the Wehrmacht, 1941-1944”.

I concur with the contributors/editors who hold that the competing narratives that emerged from the Nuremberg trials influenced how the Germans came to terms with their Nazi past and, in turn, shaped their identity, especially in the Federal Republic. Devin Pendas holds that, “[f]ar from vitiating a narrative of German victimization, Nuremberg was transformed in German public discourse into a confirmation of it” (p. 270). And Priemel and Stiller insist that the Nuremberg prosecutors “unwittingly co-authored” an exculpatory narrative that provided West German society with an alibi for its shameful conduct. These statements suggest that narratives of victimhood were much more readily appropriated than the lessons that Telford Taylor, in his capacity as chief prosecutor of the NMT, wished the Germans to learn. Given the taint of “victor’s justice”, it is not surprising that the Germans chose to draw their own lessons from the Nuremberg trials. Knowledge about crimes exposed during the process was marginalised by the media and wilfully ignored by the political elites and, thus, marginalized in public consciousness.

This volume provides a welcome reassessment of the legacy of the NMT. My only reservation is that I think it overestimates the capacity of the postwar occupation authorities to have influenced German consciousness through the legal process. Whereas the courtroom served up adversarial narratives, the court of public opinion in a democratizing society allowed for the circulation of a much wider range of ideas which the Americans and their allies were bound to have to tolerate.

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