

EPILOGUE | THE AFTERMATH OF THE HOLOCAUST:
Punishing and Preventing the Crime of Genocide



THE HOLOCAUST AND OTHER NAZI CRIMES WERE NEITHER THE INEVITABLE OUTCOME of a process set in motion by Adolf Hitler in 1933, nor the preordained result of the development of his and other Nazi party leaders' beliefs. To the contrary, the citizens who participated in or simply stood by and watched Nazi atrocities faced daily choices. The momentum of their actions as individuals over time propelled European society into unprecedented violence and systematized mass murder.

In the wake of Nazi Germany's defeat, the Allies faced a challenge: What should they do with a German nation that had made the Holocaust possible? What actions could be taken to bring culpable individuals to account and to return public life to an acceptable course? In addition to restoring order and physically rebuilding, the Allied leadership sought ways to confront the lingering effects of Nazi ideology. This effort, called "denazification," aimed at uprooting and eradicating all traces of Nazism in German society. This activity included confiscating and destroying books; monitoring radio stations, magazines, movies, and other public media; and destroying symbols, such as the swastika, that could contribute to the persistence of Nazi ideals and beliefs.

Among the most important efforts to reeducate and recivilize Germany was the criminal prosecution of Nazi perpetrators for crimes committed by the Nazi leadership and innumerable ordinary citizens. In 1945, the victorious Allied powers (the United States, the United Kingdom, France, and Soviet Russia) established the International Military Tribunal at Nuremberg for that purpose. After legal experts had labored over new concepts in international law to facilitate proceedings involving such unprecedented crimes, the tribunal indicted 22 senior officials of the Nazi regime on four charges: war crimes, crimes against peace, crimes against humanity, and conspiracy to commit each of those crimes. In the course of the trial, the tribunal rejected the long-standing doctrine of sovereign immunity, which exempted heads of state from prosecution for actions taken while in office, and the doctrine of superior orders, which protected subordinates from being prosecuted for crimes they committed as a result of a direct order. As U.S. Chief Prosecutor Justice Robert Jackson explained, "[T]he combination of these two doctrines means that nobody is responsible. Society as modernly organized cannot tolerate so broad an area of official irresponsibility."

Chief U.S. prosecutor Justice Robert Jackson (left) delivers the prosecution's opening statement against leading German officials at the International Military Tribunal war crimes trial at Nuremberg in November 1945. NUREMBERG, GERMANY, NOVEMBER 21, 1945. USHMM, COURTESY OF HARRY S. TRUMAN LIBRARY

The Nuremberg Trial brought major Nazi war criminals publicly to justice, exposing evidence of their guilt to the world. Of 21 defendants, 18 were convicted (one defendant committed suicide upon receiving the indictment); 12 were sentenced to death. As important as the convictions were the acquittals, which gave the Nuremberg Trial immediate and long-standing credibility. Each Nuremberg defendant had been granted a genuine opportunity to defend himself in the courtroom. In three cases, the evidence was insufficient to convict the defendants of legal responsibility, and they were acquitted. Signaling an intention to prosecute lesser perpetrators, the tribunal also found three organizations—the SS, the Gestapo and Security Service, and the Nazi Party Leadership Corps—to be criminal entities in which membership potentially constituted a crime.

Following the initial trial, the International Military Tribunal (staffed exclusively with U.S. prosecutors and judges), held 12 subsequent trials at Nuremberg for second-rank Nazi offenders. Those trials focused on members of the military, political, and economic leadership of Germany during the Third Reich, and included as defendants the doctors, judges, policemen, captains of industry, ministry officials, soldiers, and others who had helped realize the ideological goals of the Nazi regime, sometimes personally profiting from their service.

Finally, each victorious Allied power conducted dozens of trials in its allotted zone of occupation in Germany, with lower-level Nazis and non-Nazi perpetrators as defendants. In the U.S. zone alone, nearly 1,700 defendants were tried in 462 separate proceedings. By prosecuting and convicting low-ranking officials, Allied judges maintained the principle of individual legal responsibility for criminal acts while at the same time conveying in no uncertain terms that the acceptance, participation, and cooperation of people at every level of German society had facilitated Nazi crimes.

Among those working with the U.S. prosecution team to prepare for the Nuremberg trials was Raphael Lemkin, a Polish Jewish jurist who had escaped Nazi persecution and emigrated to the United States, but who had lost 49 members of his family, including his parents, during the Holocaust. Dedicating himself to ending such violence in the world, he was the first to give a name to the mass murder that had taken place, coining the term “genocide” in his 1944 work *Axis Rule in Occupied Europe*. “By ‘genocide’ we mean the ‘destruction of a nation or of an ethnic group,’” Lemkin wrote. “It is intended ... to signify a coordinated plan of different actions aiming at the destruction of essential foundations of the life of national groups, with the aim of annihilating the groups themselves.” Lemkin was able to get the word “genocide” included in the indictment against Nazi leadership, but the tribunal failed to define it as a specific crime in international law.

Lemkin was determined to see the concept of genocide incorporated into international law. He began lobbying at early sessions of the United Nations and worked to enlist the

support of national delegations and influential leaders. His efforts eventually resulted in the United Nations' approval of the Convention on the Prevention and Punishment of Genocide on December 9, 1948. The convention established genocide as an international crime that signatory nations "undertake to prevent and punish." As defined in terms of the convention, *genocide* means the intent to destroy, in whole or in part, a national, ethnic, racial, or religious group by killing members of the group; causing serious bodily or mental harm to members of the group; deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; imposing measures intended to prevent births within the group; and/or forcibly transferring children of the group to another group.

The Nuremberg trials and the 1948 Genocide Convention are two of the lasting legacies of the postwar period. From a legal standpoint, the Nuremberg trials provided a precedent for holding individuals at all levels of society accountable for criminal acts on behalf of their government or society. The existence of this precedent inspired the postwar development of an international criminal court to conduct criminal proceedings against individuals accused of genocide, mass murder, torture, and other crimes. From a diplomatic perspective, the Genocide Convention created a framework in which nations could hold one another responsible for the protection of human rights and a legal definition to develop indictments. Both were groundbreaking efforts to establish standards of international conduct that are not subject to changing political, social, or religious forces. But even with those legal and diplomatic mechanisms in place, the postwar period has witnessed ethnic cleansing in Bosnia, genocide in Rwanda, and resurgent antisemitism in many parts of the world, including lands in which the Holocaust took place.

In spite of calls of "never again," beginning in 2003 an ongoing genocide in Darfur, Sudan, gave daily evidence of a militia committing mass murder and rape, killing children, burning villages, and imposing wanton violence based on ethnic, racial, and tribal hatred. Those events test the limits of our faith in legal and diplomatic approaches to the problem of mass genocide. As society has so vividly become aware, a definition of genocide and even a collective commitment to hold those who commit it accountable are not enough to prevent it. Our inability to prevent genocide, however, does not absolve us of our responsibility to bring its perpetrators to justice. At the time of this writing, the International Criminal Court in The Hague indicts, prosecutes, and, if the evidence is sufficient, convicts perpetrators of the genocidal acts in Bosnia and Rwanda.

In this context, it is worth remembering that even during the Holocaust, some individuals saw through what psychologist Eva Fogelman has called "the gauze of Nazi euphemisms." Despite the indifference of most and the collaboration of others, those indi-

viduals—from all religious backgrounds and every European country—risked their lives to help Jews and other victims of the Nazi regime. In the end, the actions of individuals to protect human lives, human rights, and human dignity are the ultimate bulwark against abuses of human rights and genocide. As General Roméo Dallaire, head of a small peace-keeping force in Rwanda in 1993 who helplessly watched as the United Nations failed to stop the genocide of 800,000 Tutsis by Hutus, has said, “You’ve got to start wondering about the depth of your belief in the moral values, the ethical values, and your belief in humanity. All humans are human. There are no humans more human than others. That’s it.”

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