

Were the perpetrators of the Holocaust brought to justice?



View of the defendants in the dock at the International Military Tribunal trial of war criminals in Nuremberg, Bavaria, Germany., November 1945.

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The recent release of the film *Nuremberg* has introduced a new generation to one of the twentieth century's most significant trials.¹ Like many historical dramas, it raises an important question: do courtroom verdicts necessarily mean that justice has been achieved? As Richard J. Evans observes, historical interpretation must ultimately rest upon critical scrutiny of evidence,² a principle particularly important when assessing whether post-war justice matched the scale of the crimes committed. The survival and scrutiny of that evidence also matters beyond the courtroom, as Deborah Lipstadt demonstrates the importance of preserving the documentary

¹ James Vanderbilt (director), *Nuremberg*, Sony Pictures Classics, 2025.

² Richard J. Evans, *In Defence of History*, 3rd edn, London, Granta Books, 2018, p. 70.

record in resisting Holocaust denial.³ The Holocaust claimed the lives of approximately six million Jews, together with millions of other victims targeted by the Nazi regime. Following Germany's defeat, the Allies then faced an unprecedented legal and moral challenge: how should those responsible for crimes of such magnitude be brought to justice? Was justice achieved simply by prosecuting the principal Nazi leaders at Nuremberg, or did it also require accountability for the thousands of officials, administrators and collaborators who enabled genocide? This essay argues that Holocaust perpetrators were brought to justice only partially.

The Nuremberg Trials established groundbreaking principles of international criminal law and held many senior Nazi leaders accountable. However, the onset of the Cold War, evidentiary challenges, and the sheer scale of Nazi participation meant that many perpetrators escaped meaningful punishment. As Kevin Jon Heller states:

the OCC's [Office of Chief of Counsel for War Crimes] lack of time and resources negatively affected its ability to apply its "substantial evidence" criterion, leading it to indict suspects against whom the evidence was weak and to ignore suspects potentially more deserving of prosecution.⁴

Heller's assessment illustrates that incomplete justice resulted not simply from political unwillingness, but also from the practical limitations confronting the post-war prosecution process. Assessing the extent of post-war justice therefore requires consideration of what justice meant in the context of genocide. This includes the achievements and limitations of Nuremberg, the problem of prosecuting ordinary perpetrators and the continuing search for accountability after the war.

³ Deborah E. Lipstadt, *Denying the Holocaust: The Growing Assault on Truth and Memory*, New York, Free Press, 1993, p. 7.

⁴ Kevin Jon Heller, *The Nuremberg Military Tribunals and the Origins of International Criminal Law*, Oxford, Oxford University Press, 2011, p. 73.

The defeat of Nazi Germany in May 1945 ended the killing but left the Allies confronting an unparalleled legal and moral problem. Never before had a modern state used its political, administrative and industrial resources to organise the systematic murder of millions of people. Omer Bartov describes this as:

The mechanized, rational, impersonal, and sustained mass destruction of human beings, organized and administered by states, legitimized and set into motion by scientists and jurists, sanctioned and popularized by academics and intellectuals, has become a staple of our civilization, the last, perilous, and often repressed heritage of the millennium.⁵

The Holocaust was not simply another wartime atrocity. It developed from Nazi ideology and was carried out through the institutions of the modern state. As Jürgen Matthäus relates, genocide became embedded within the routine functions of government, “and required for its implementation close cooperation between state officials, doctors and hospitals”.⁶ This raises an essential question: how should justice be interpreted to accommodate crimes of such significance? Criminal punishment was essential, but justice also involved assigning responsibility, preserving the historical record and establishing legal principles intended to deter future atrocities.

In popular memory, the Nuremberg Trials have come to represent post-war justice. However, as Bloxham and Waterlow show, they were only one part of a much wider and far less consistent process of bringing perpetrators to account.⁷ Their importance should not be underestimated. They established the principle that

⁵ Omer Bartov, *Murder in Our Midst: The Holocaust, Industrial Killing, and Representation*, New York, Oxford University Press, 1996, Introduction, pp. 12–13.

⁶ Jürgen Matthäus, 'Nazi Genocides', in John Ferris and Evan Mawdsley (eds), *The Cambridge History of the Second World War*, Vol. I: *Fighting the War*, Cambridge, Cambridge University Press, 2015, p. 164.

⁷ Donald Bloxham and Jonathan Waterlow, 'War Crimes Trials', in Richard Bosworth and Joseph Maiolo (eds), *The Cambridge History of the Second World War*, Vol. II: *Politics and Ideology*, Cambridge, Cambridge University Press, 2015, p. 181.

individuals, including political and military leaders, could be held personally responsible for crimes committed under the authority of the state, and in doing so helped lay the foundations of modern international criminal law. Even so, establishing these principles did not necessarily mean that justice was achieved.

The most obvious starting point for assessing post-war justice is the International Military Tribunal (IMT), held at Nuremberg between November 1945 and October 1946.⁸ Established under the London Agreement of 8 August 1945, “the Nuremberg Charter enabled the IMT to prosecute individuals for crimes against peace, war crimes, and crimes against humanity”.⁹ Importantly, this signified that political and military leaders could no longer claim that their position within the state protected them from personal responsibility for their actions. Opening the proceedings, Chief Prosecutor Robert H. Jackson declared that the trial represented humanity's determination that:

The common sense of mankind demands that law shall not stop with the punishment of petty crimes by little people. It must also reach men who possess themselves of great power and make deliberate and concerted use of it to set in motion evils which leave no home in the world untouched.¹⁰

For the first time, leading political and military figures of a defeated state were held individually accountable before an international tribunal for crimes committed under state authority.¹¹

⁸ Charter of the International Military Tribunal, annexed to the Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis, London, 8 August 1945, *Treaty Series No. 27 (1946)*, London, His Majesty's Stationery Office, 1946, Art. 6.

⁹ Doreen Lustig, 'The Nature of the Nazi State and the Question of International Criminal Responsibility of Corporate Officials at Nuremberg: Franz Neumann's *Behemoth* at the Industrialist Trials', *ILJ Working Paper 2011/2, History and Theory of International Law Series*, New York, Institute for International Law and Justice, NYU School of Law, 2011, p. 8.

¹⁰ Robert H. Jackson, 'Opening Statement before the International Military Tribunal', 21 November 1945, in *Trial of the Major War Criminals before the International Military Tribunal*, Vol. II, Nuremberg, 1947, p. 850.

¹¹ Kevin Jon Heller, *The Nuremberg Military Tribunals and the Origins of International Criminal Law*, Oxford, Oxford University Press, 2011, pp. 24-25.

As Kevin Jon Heller argues, one of the Tribunal's most significant legal innovations was the development of the doctrine of "taking a consenting part", which extended criminal responsibility beyond those who physically committed atrocities.¹² From this, the Tribunal developed principles that imposed liability upon individuals who ordered, authorised, facilitated or knowingly participated in criminal enterprises, as well as those who failed to prevent crimes committed by their subordinates. Responsibility therefore depended not only upon direct participation in murder, but also upon a person's position, authority and contribution to the Nazi system. This broadened the meaning of individual accountability but also showed how difficult it would be to apply these principles to the very large numbers of people who had contributed to genocide. The Tribunal also generated "a massive documentary record of Nazi criminality", preserving captured documents, testimony and photographic evidence that continue to underpin Holocaust scholarship.¹³

Although public memory often centres on the twenty-two defendants before the International Military Tribunal, the wider post-war process of accountability was far more extensive. As Bloxham and Waterlow note, "at least 96,798 Germans and Austrians were convicted of war crimes, crimes against humanity and other Nazi-related offences", demonstrating that post-war justice extended well beyond the courtroom at Nuremberg.¹⁴ Even so, the scale of Nazi participation meant that many perpetrators still escaped prosecution. The trials therefore had broader purposes: deterrence, German political re-education and preservation of the documentary record. They also helped reinforce the post-war international order.

¹² Heller, *The Nuremberg Military Tribunals and the Origins of International Criminal Law*, p. 279.

¹³ Heller, *The Nuremberg Military Tribunals and the Origins of International Criminal Law*, p. 26.

¹⁴ Donald Bloxham and Jonathan Waterlow, 'War Crimes Trials', p. 181.

However, Nuremberg formed only one part of a wider international effort. Although this essay is concerned with Holocaust perpetrators, brief comparison with Allied prosecutions in Asia helps place the European trials within the broader Allied programme of post-war justice. As Bloxham and Waterlow observe:

Overall, the US prosecutions of Japanese war criminals were of a similar magnitude to those of Germans: the USA tried 1,344 Japanese, with 140 executions and 182 acquittals. (Comparatively, the USSR tried about 3,000 Japanese POWs, but on a range of charges, and it is not clear how many of these were effectively war crimes trials; China tried at least 800 Japanese for war crimes, convicting at least 500).¹⁵

Nuremberg therefore represented a remarkable legal achievement, but it could never by itself deliver complete justice. The obvious question remained: what happened to the thousands of other perpetrators as the above comment implies?

The International Military Tribunal showed that senior Nazi leaders could be held legally accountable, but it also exposed the limits of prosecuting genocide on a never-before-seen scale. The Holocaust was not perpetrated by a handful of political leaders alone. It was carried out through the participation of thousands of individuals performing apparently ordinary duties within an extraordinary criminal system.

Administrators prepared deportation lists, railway officials organised transports, industrialists supplied materials, police battalions carried out mass shootings, camp guards supervised prisoners, and civil servants maintained the bureaucratic machinery that transformed Nazi ideology into systematic murder.¹⁶ The sheer breadth of participation meant that prosecuting every perpetrator was never likely to be achievable.

¹⁵ Bloxham and Waterlow, 'War Crimes Trials', p. 202.

¹⁶ Jürgen Matthäus, 'Nazi Genocides', p. 164.

This reality has generated one of the central historiographical debates surrounding Holocaust justice: who should properly be regarded as a perpetrator? Historians such as Omer Bartov and Daniel Jonah Goldhagen have approached this question differently, particularly in explaining the motivations of ordinary perpetrators and the extent to which responsibility extended beyond the Nazi leadership. Bartov draws attention not only to the “administrative and technical apparatus of the killers”, but also to the rank-and-file perpetrators, the “little people” whose role had traditionally been underrepresented in Holocaust historiography.¹⁷ Daniel Jonah Goldhagen argues that the Holocaust depended not simply upon orders issued by the Nazi leadership but upon the willing participation of large numbers of ordinary Germans whose deeply embedded antisemitic beliefs made extermination socially acceptable rather than merely tolerated. As he states:

The farcical notion that ordinary Germans did not know about these things taking place openly all over their country is one of the myths that Germany's apologists still propagate despite the unanimity of serious scholarship that knowledge even of the Jews' mass murder was enormously widespread in Germany.¹⁸

These differing views of who should be regarded as a perpetrator are important when judging the success or failure of post-war justice. Overall, they demonstrate why complete judicial accountability was never realistically achievable. Some perpetrators directly participated in murder, while others administered, assisted or willingly supported the machinery of genocide. This meant that responsibility extended far beyond those who carried out the killings. The wider the definition of a perpetrator becomes, the greater the gap between the number of people involved in the Holocaust and those who were ultimately brought before a court.

¹⁷ Omer Bartov, ‘Introduction’, in Omer Bartov (ed.), *The Holocaust: Origins, Implementation, Aftermath*, London, Routledge, 2000, p. 7.

¹⁸ Daniel Jonah Goldhagen, *Worse Than War: Genocide, Eliminationism, and the Ongoing Assault on Humanity*, New York, PublicAffairs, 2009, p. 117.

Even where governments sought prosecution, there were serious problems with the available evidence. Destroyed records, deceased witnesses and incomplete testimony made individual responsibility difficult to prove, encouraging prosecutors to concentrate on cases that could most readily be demonstrated.¹⁹ These basic difficulties were compounded by changing political priorities as the emerging Cold War shifted Allied attention from punishment towards reconstruction. As Konrad Jarausch argues, the recivilisation of post-war Germany required more than punishment by itself. Democratic reconstruction depended upon restoring functioning public institutions.

This process inevitably required the reintegration of many former Nazi Party members whose administrative and professional expertise was still needed. As Jarausch observes,

What did not succeed, however, was the complete elimination of all former Nazis from professional life, since that was an unrealistic objective from the start. Despite massive pressure from the international community and the wishes of German anti-Fascists, it proved simply impossible to condemn all 6.5 million Nazi Party members to manual labor in service of reconstruction, since without expert knowledge the administration and economy of the occupied country would have quickly broken down.²⁰

Justice then became a compromise between holding former Nazis accountable and the practical need to rebuild Germany. This created an uncomfortable moral dilemma, as the more urgently the Allies sought political and administrative stability, the more they were prepared to compromise on accountability.

¹⁹ Heller, *The Nuremberg Military Tribunals and the Origins of International Criminal Law*, pp. 73–74.

²⁰ Konrad H. Jarausch, *After Hitler: Recivilizing Germans, 1945–1995*, Oxford, Oxford University Press, 2006, p. 78.

The contrasting experiences of East and West Germany further show that post-war justice was shaped by politics as much as law. Wendy Lower shows that prosecutions in the German Democratic Republic increasingly reflected changing political priorities. She “examines how evolving political considerations in the 1950s and 1960s shaped investigations, judicial processes, and sentences”. The GDR’s continuing “struggle against the fascist enemy” served both its domestic objective of building a socialist state and its political campaign against West Germany.²¹ As a result, prosecutions could serve political purposes rather than providing a full reckoning with German society’s involvement in Nazi crimes.

The limitations of Holocaust justice reflected more than legal shortcomings. The scale of participation, evidentiary difficulties and Cold War politics left large areas of Nazi involvement beyond judicial scrutiny. Nuremberg established that crimes against humanity could be punished but also exposed the limits of courts confronting genocide on such a scale. The search for accountability did not end in 1946. It continued for decades as investigators, governments and historians sought to identify and prosecute those who had remained beyond the reach of the original trials.

Australia provides a notable example of how the unfinished business of post-war justice extended far beyond Europe and continued for decades. Having initially failed to pursue suspected Nazi war criminals who had settled in Australia, the Hawke government established the Special Investigations Unit (SIU) in 1987 following

²¹ Wendy Lower, ‘Male and Female Holocaust Perpetrators and the East German Approach to Justice, 1949–1963’, *Holocaust and Genocide Studies*, vol. 24, no. 1, 2010, pp. 56–57.

renewed public concern.²² Of 841 investigations, however, not one produced a conviction; Ivan Polyukhovich, the only suspect whose case reached a jury trial, was acquitted in 1993.²³ The documentary *The Hunt for the Last Nazis* also follows Konrād Kalējs and Kārlis Ozols, demonstrating how alleged perpetrators could remain beyond the effective reach of justice for decades.²⁴ Australia's experience therefore provides an especially troubling example of the gap between identifying suspected perpetrators and actually holding them legally accountable.

The recent film *Nuremberg* reminds modern audiences that justice was sought after the Holocaust, but historical evidence reveals a far more complex picture than courtroom drama can portray. The International Military Tribunal transformed international law and preserved an enduring record of Nazi criminality, yet political compromise, evidentiary limitations and the immense scale of participation ensured that accountability remained selective. Justice was therefore neither complete nor impossible, but necessarily partial. Perhaps this is Nuremberg's enduring legacy: justice lies not only in courtroom verdicts but in the continuing pursuit of accountability and preservation of historical truth. The perpetrators of the Holocaust were brought to justice, but only partially.

²² Gideon Boas and Pascale Chifflet, 'Suspected War Criminals in Australia: Law and Policy', *Melbourne University Law Review*, vol. 40, no. 1, 2016, p. 54.

²³ Boas and Chifflet, 'Suspected War Criminals in Australia', pp. 55, 71.

²⁴ Dan Goldberg (director), *The Hunt for the Last Nazis*, Mint Pictures/SBS, 2026.

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