

Book Review: The Nuremberg Military Tribunals and the Origins of International Criminal Law

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This book seeks to provide the first comprehensive legal analysis of the twelve war crimes trials held in the American zone of occupation between 1946 and 1949, collectively known as the Nuremberg Military Tribunals. The judgements the NMTs produced have played a critical role in the development of international criminal law, particularly in terms of how courts currently understand war crimes, crimes against humanity, and the crime of aggression. Kevin Jon Heller provides a wealth of detail and a valuable starting-point for further thought and research, concludes Tara O'Leary.



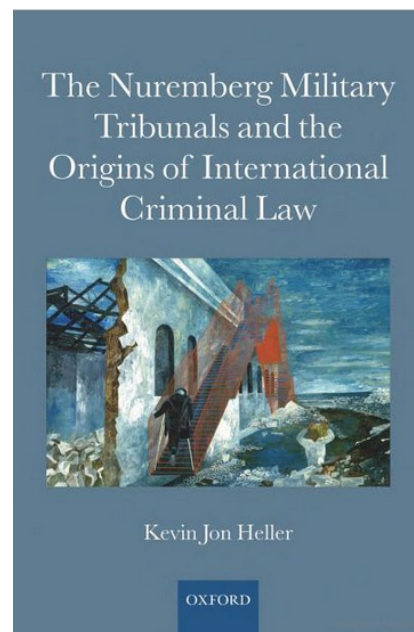
The Nuremberg Military Tribunals and the Origins of International Criminal Law. Kevin Jon Heller. Oxford University Press. October 2012.

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Kevin Jon Heller is Associate Professor at Melbourne Law School, and is well-known among the international justice community as an academic, writer and [commentator](#) on international criminal law. His latest book traces the history of the Nuremberg Military Tribunals (NMT), a second program of trials of suspected Nazi criminals which took place shortly after their more well-known predecessor, the International Military Tribunal at Nuremberg (IMT).

Commonly remembered and referred to as “the” Nuremberg Trial, between November 1945 and October 1946 the IMT heard a single criminal case against 23 of the most important political and military leaders of the Third Reich. It was in fact followed immediately by another 12 trials involving 185 defendants, charged by the NMT with war crimes, crimes against humanity, the crime of aggression (initiating hostile warfare) and membership of criminal organisations such as the SS.

Commencing in December 1946, the NMT trials were more detailed in breath and scope. They too took place in Nuremberg (some in the same, iconic courtroom as the first trial), although where the IMT had been convened jointly by the four Allied powers, the NMT trials were solely a creation of the Americans in the context of the administration of their zone of occupation in Germany.



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That first IMT trial is rightfully venerated for its ground-breaking role in establishing internationally-recognised categories of criminal behaviour which extended individual criminal responsibility for conduct committed during conflict significantly further than that which had ever bound state actors previously. The IMT was not the first or the only war crimes trial to take place either before or after the Second World War, but it differed in that it took its authority and jurisdiction from an international treaty agreed between the victorious Allied powers. The categories of criminal behaviour set out in that treaty and the IMT's interpretation of them were recognised as binding upon the international community by the United Nations General Assembly in December 1946, which is why (unlike the jurisprudence of other, more peremptory war crimes trials) they have been handed down to us today and have formed the basis of the laws applied by international courts and tribunals since the 1990s.

The NMT's first trial – the *Medical* case, against those suspected of conducting human experiments in concentration camps – opened two days before the General Assembly's historic affirmation of the Nuremberg Principles, so it was therefore the first and (until the International Tribunal for the former Yugoslavia was established in 1993, also by the agreement of international powers, this time at the UN Security Council) almost the only occasion on which these new laws were implemented. The trials therefore hold immense jurisprudential value for courts tasked with implementing and interpreting what is still a relatively new body of law, yet [Heller has written](#) of his surprise at discovering a profound dearth of scholarship on the NMT.

He is therefore to be commended for remedying this void with this book's extraordinary body of archival research, which must have been an intense labour of love for the author. The core section of the book is, naturally, a detailed and comprehensive analysis of the jurisprudence produced by the trials. Particular highlights include the NMT's expansion of the IMT's definition of crimes against humanity and its consideration of the 'nexus' requirement, applicable defences and evidentiary rules, and the opaqueness of the tribunals' sentencing decisions, many of which remain live issues in present-day international criminal trials. Heller's classification of the NMT as "inter-allied special tribunals" rather than as an international or national court is a particularly intriguing contribution to the literature.

Taken alone, this would more than justify praise for the book's contribution to the field in terms of its usefulness to lawyers, judges, and scholars of international criminal law, and the book is, therefore, to be primarily recommended as a text for practitioners specialised in this area.

However, for those more generally interested in the phenomenon of international justice, Heller has carefully set out a historical account of the trials which situates them in their political context. As he emphasises, the history of the NMT is the history of the early Cold War: during its existence, Churchill gave his 'Iron Curtain' speech, the United States announced the Truman Doctrine, and the Soviet Union overran Czechoslovakia and commenced the Berlin Blockade.

This impacted directly on the trials, as the general public lost interest and the American authorities – even, appallingly, some of the judges – became increasingly concerned that the trials were only serving to undermine the US struggle against Soviet communism. For this reason the NMT was "deliberately underfunded". Chief Prosecutor Telford Taylor's efforts to indict German industrialists who had actively enabled and profited from some of the worst Nazi atrocities were officially undermined and publicly ridiculed, largely due to concern that such charges would discourage American businessmen from collaborating with the US government in fighting the Cold War.

In this light, the book's discussion of administrative matters at the NMT – budget, staffing arrangements, building facilities, etc. – is unexpectedly compelling, given that they profoundly influenced the eventual structure, scope, and legal outcome of the trials. The NMT's 185 defendants represented a fraction of the 2,500 "major war criminals" who were initially prioritised for trial. To take a startling example, certain individuals escaped trial because not all defendants could physically fit into the available courtrooms; others because judges could not be made available. Meanwhile the Prosecution considered dropping the *Einsatzgruppen* case – now considered among the most significant of the 12 trials – because its investigators had not had the capacity to examine between eight and nine million documents which meticulously detailed the genocidal activities of death squads in Eastern Europe.

This is the story of the decision-making processes, political pressures and struggle to ensure representativeness which unfolded as the budget shrank, trials were abandoned and perpetrators escaped justice, all under the cold gaze of pragmatism. This narrative has an eerie familiarity to observers of contemporary international tribunals, and these issues cut straight to the heart of the key critiques still lobbied against them today. Criticism of selectivity, bias, politicisation, neo-colonialism and gender insensitivity, among many others, bear an uneasy relationship with administrative rather than purely legal obstacles which has yet to be adequately reflected in international criminal law scholarship.

Ultimately Heller has begun to remedy this gap, as well as that of legal jurisprudence, by showing us that there are many lessons to be learned. For this and much more besides – from the inclusion of women prosecutors, to discussion of the best means to legally represent the Holocaust, to policy-making which saw the convicts released within only ten years – Heller has provided a wealth of detail and a valuable starting-point for further thought and research.

Tara O'Leary graduated from the LSE with an LLM in Public International Law, and is specialised in international criminal justice and human rights. She has worked as a legal adviser and researcher with Amnesty International, the Organization for Security and Co-operation in Europe (OSCE) missions in Kosovo and in Bosnia and Herzegovina, and the United Nations. Tara also has an LLB in Law and European Studies from the University of Limerick. [Read more reviews by Tara.](#)