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## Crimes of the Holocaust (book review)

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## Book Notes

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*Crimes of the Holocaust: The Law Confronts Hard Cases.* By Stephan Landsman. Philadelphia, Pa.: University of Pennsylvania Press, 2005. Pp. 304. \$49.95, cloth.

The international community's response to genocide has been one of the most significant legal developments in the post-World War II world. How the world in 1945 came to grips with this radical crime—the deliberate attempt to exterminate an entire people—has been the subject of volumes of academic material. In *Crimes of the Holocaust*, Stephan Landsman, an American trial lawyer and legal academic, analyzes this development by rigorously evaluating the Nuremberg Trials, with their underpinnings in the Anglo-American devotion to adjudication through adversarial proceedings. He explains why the prosecution of genocide-related charges of crimes against peace, war crimes, and crimes against humanity present real difficulties for a judicial system that remains committed to justice. His penetrating examination of the proceedings against accused Nazi henchman strongly supports his central argument: the procedural problems that marked the Nuremberg Trials set unfortunate precedents for subsequent criminal prosecutions of individuals suspected of participating in the Nazis' campaign against the Jews.

Landsman begins by chronicling key details of the international tribunal at Nuremberg, where, he writes, “[N]azism itself was put on trial.” In describing a proceeding that favored the prosecution, he outlines the difficulty inherent in an adversarial event that serves to determine guilt and innocence while simultaneously endeavoring to establish a detailed historical record of the atrocity at issue.

Landsman bases his critique in the origins of the proceedings, when World War II's victorious Allied powers decided to rely primarily on the apparatus of criminal law, thereby expressing their desire for a new and more effective response to the misdeeds of those who had committed among the most heinous and depraved acts in human experience. The International Military Tribunal's prosecutions at the Nuremberg Trials drew on pre-existing national justice systems but converted them into mechanisms suited to the adjudication of the Nazis' gravest crimes. These prosecutions proved exceedingly difficult because the crimes lacked a single geographical or political locus and because they involved the operations of an entire government's bureaucratic apparatus. Moreover, the record included millions of pages of documents and hundreds of thousands of feet of film to be examined.

Landsman identifies “successor trials” as evidence of the tensions inherent in proceedings that have the dual mission of determining guilt and inno-

cence while attempting to establish a detailed historical record of the atrocity at issue. He examines the trials of Adolf Eichmann in 1961 and of John Demjanjuk in 1986, both conducted in Israel, and of Imre Finta in Canada in 1990. Meticulously distilling volumes of testimony and documentary information about each case, Landsman elaborates the difficulties inherent in achieving both a fair trial and justice in the aftermath of heinous crimes. These challenges include, among others, the "looseness of evidence rules that admitted reams of hearsay, prejudicial, and entirely irrelevant material." In the face of few historical and legal precedents, each legal action relies on the framework of its predecessors. This reliance only compounds the imperfections arising from the Nuremberg proceedings. The resulting jurisprudence, Landsman asserts, has left a trajectory of development that has heightened difficulties in prosecuting individuals accused of committing genocidal acts.

The most significant contribution of Landsman's book might be its final chapter, which focuses on the international legal response to recent acts of genocidal violence and the world's attempts to create international forums to address such criminality. Considering cases in the former Yugoslavia and Rwanda, Landsman assesses the effectiveness of international criminal tribunals created to resemble the one at Nuremberg. In this analysis, his critiques focus on procedure. The evidentiary rules in Yugoslavia, Landsman argues, were implemented based upon Nuremberg's adversarial model, resulting in similar shortcomings. As for Rwanda, the United Nations limited the Tribunal's jurisdiction to crimes committed in the calendar year 1994, assigned a "pitifully small contingent of six judges," located the Tribunal in Tanzania rather than in Rwanda, and refused, in accordance with a ban in the Universal Declaration of Human Rights, to sanction the death penalty. To fulfill the additional obligation of creating reliable historical records, both tribunals also ignored the types of limits ordinarily established in the name of justice. In addition, the proceedings have been marked by a substantial material disparity between prosecution and defense. The result has been a long-winded proceeding expected to conclude in 2008 without having "provided a prototype worthy of emulation." Despite experiencing more difficulties than its Yugoslav counterpart, the Rwandan Tribunal experienced some success when, four years after its inauguration, the world's first conviction for the specific crime of genocide came forth. The Tribunal convicted Jean-Paul Akayesu, who, as mayor of the Taba Commune in the Prefecture of Gitarama, had either directly or indirectly been responsible for the killing of as many as 2,000 Tutsis in 1994. As an observer of this legal process, Landsman surmises: "The *Akayesu* case and the others that followed were Nuremberg's progeny, big, slow-moving affairs that relied on an adversarial system but ignored evidentiary restrictions and devoted overwhelming attention to atrocity evidence."

In light of these strengths and weaknesses, Landsman evaluates the International Criminal Court, suggesting refinements that would enhance its mission of complementing existing national judicial systems while exercising

jurisdiction when national courts are unwilling or unable to investigate or prosecute such crimes. Finally, Landsman proposes guideposts for contemporary tribunals that attempt to prosecute atrocities' perpetrators. Atrocities trials could readily be improved by reforming their rules of procedure and evidence. Proceedings must be streamlined. Limits should be imposed on the amount of time each side is permitted to present its case. The number of witnesses and documents should be strictly controlled. Repetitive testimony should be restricted. No international prosecution should run more than nine months—the time it took to try the Nuremberg case. According to the author, unless restrictions are enforced, the system “will collapse under its own weight.” Major atrocities cases must be carefully shaped during the pretrial process. Landsman claims, “[t]aking three years to try Slobodan Milosevic is unacceptable.” *Crimes of the Holocaust* thus anticipates concerns that persist as the world watches the trial of deposed Iraqi president Saddam Hussein.

—Amos Jones

*My Neighbor, My Enemy: Justice and Community in the Aftermath of Mass Atrocity*. Eds. Eric Stover and Harvey Weinstein. New York: Cambridge University Press, 2004. Pp. 368. \$22.00, paper.

Transitional justice has risen to the forefront of international criminal law as a means by which countries seek accountability for mass atrocities or widespread human rights abuses. The international community has lauded large-scale efforts to use international legal structures as a means of “restoring” post-conflict societies. Yet little empirical evidence has been offered as to their effectiveness. *My Neighbor, My Enemy: Justice and Community in the Aftermath of Mass Atrocity* attempts to gauge the impact of transitional justice operations in societies recovering from large-scale ethnic and religious conflict, principally in the former Yugoslavia and Rwanda. In it, Eric Stover and Harvey Weinstein advance a compelling argument that both international and local trials do surprisingly little to advance justice and reconciliation as it is perceived by the communities of survivors.

Stover and Weinstein have assembled an impressive cadre of scholars and practitioners whose works represent a broad spectrum of fields. Many have longstanding ties to the regions they examine. Although the authors draw from a range of qualitative and quantitative research methods, all authors advocate for a holistic approach to community rebuilding, arguing that a multi-systemic approach to rebuilding is essential for addressing the individual and institutional needs of those affected by the conflicts. The work is grouped into three sections. The first section analyzes institutional responses to mass atrocities in the former Yugoslavia and Rwanda and how they relate, or often clash with, communities' perceptions of justice and reconciliation. The sec-