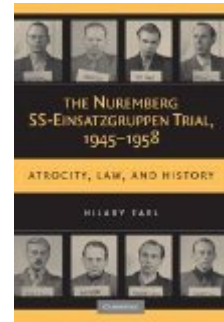


Hilary Earl. *The Nuremberg SS-Einsatzgruppen Trial, 1945-1958: Atrocity, Law, and History*. Cambridge: Cambridge University Press, 2009. XV, 336 S. \$85.00 (cloth), ISBN 978-0-521-45608-1.

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## The Biggest Murder Trial in History

The title of Hilary Earl's impressive book does not do justice to the scholarly achievement of its author. While the study is organized around the prosecution of two dozen *Einsatzgruppen* officers before an American tribunal in Nuremberg in 1947/48, it actually addresses a much broader range of issues relevant to our understanding of the "Final Solution," including its origins, the motivations of its perpetrators, and its post-1945 adjudication. The *Einsatzgruppen* constituted the core of the paramilitary units that followed the Wehrmacht into the Soviet Union starting on June 22, 1941. Supported by battalions of the Order Police, the Reserve Order Police, and the *Waffen SS*, they murdered hundreds of thousands of Jews from the Baltic in the north to the Crimea in the south. They killed their victims in open-air, mass shootings, often relying on the collaboration of local antisemitic militia groups. Between September 1947 and April 1948, two dozen of the *Einsatzgruppen* commanders were tried in Case 9 of the so-called subsequent Nuremberg proceedings. Four of the defendants were sentenced to death and executed. The remainder either had death sentences commuted or were sentenced to terms behind bars. By the end of 1958, all had been released from prison.

Earl's book is a significant addition to the growing body of scholarship about the *Einsatzgruppen*.<sup>[1]</sup> The originality of its contribution lies not in its reconstruction of the murderous actions of these units, but rather in its comparative biographical examination of the men who commanded them. Earl has admirably explained

who these men were, how they became mass murderers, and why, in the end, they were not punished more severely. The book is also the first full-scale study of the Nuremberg *Einsatzgruppen* Trial, an important historical event in its own right, and one that the Associated Press rightly described at the time as "the biggest murder trial in history."<sup>[2]</sup>

Earl's analysis of the social backgrounds of the *Einsatzgruppen* commanders relies heavily on Michael Wildt's influential study, *Generation der Unbedingten*.<sup>[3]</sup> Most of the officers were born during the first decade of the twentieth century. Although too young to have served in World War One, they were old enough to have been traumatized by Germany's defeat and to have internalized the soldierly virtues of the slightly older "front generation." They were an exceedingly well-educated group of men, but, like many of their generational cohort, they saw their professional opportunities restricted by the economic conditions of the postwar period. As a consequence, they drifted into the orbit of the Nazi movement, taking up positions in the *Sicherheitsdienst* (SD) that recruited well-educated young men to engage in political intelligence operations. Earl points out that they did not join the SD with the intention of becoming mass murderers. The Nazi leadership, however, turned to them when it required a cadre of men who possessed the toughness, discipline, and ideological dependability to carry out the Final Solution.

Earl paints compelling portraits of several of these killers, most notably Otto Ohlendorf, the commander of *Einsatzgruppe D*, which murdered tens of thousands of Jews in the region of the Crimea. Ohlendorf admitted his crimes to his British and American captors in 1945, and then testified as a star witness for the prosecution at the International Military Tribunal (IMT). Ohlendorf hoped to save his skin by making himself valuable to the Allies. Described by Earl as supremely self-confident and intellectually arrogant, Ohlendorf also deluded himself into believing that his expertise in economics would pave the way for a postwar career. When, contrary to his expectations, he was placed on trial for his crimes, Ohlendorf invoked not only the superior orders defense, but also the argument that the mass killing of Jews in the Soviet Union had been a legitimate act of German self-defense against the threat emanating from Bolshevism. Earl never does make quite clear whether this was the disingenuous legal strategy of a man on trial for his life or actually a sincere expression of Ohlendorf's paranoid fear of Judeo-Bolshevism. The latter possibility was most certainly plausible, given the fact that Ohlendorf had spent his entire adult life in the Nazi party, having joined in 1925 at the age of eighteen.

Earl's careful dissection of Ohlendorf's testimony to Allied investigators, at the IMT, and at his own trial has some bearing on the debate over the decision-making process that led to the Final Solution. Ohlendorf claimed that, prior to the German invasion of the Soviet Union, he and the other *Einsatzgruppen* commanders had received verbal notification of an order from Adolf Hitler—a so-called *Führerbefehl*—according to which the Jews of the Soviet Union, including women and children, were to be killed. Several early historians of the Holocaust took Ohlendorf at his word. But Alfred Streim, a leading West German war crimes prosecutor, cast doubt on Ohlendorf's claim, suggesting that it had been a fabrication intended to undergird a legal defense based on superior orders. The consensus today among specialists is that Streim was correct. This position is buttressed by other evidence that the *Einsatzgruppen* were at first tasked with killing only Jews who were Communist officials, or were otherwise seen as threatening, and that only several weeks into the campaign were these political liquidations expanded into genocide of Soviet Jewry.[4]

For her part, Earl suggests two alternative explanations for Ohlendorf's assertion about the existence of a *Führerbefehl* to kill all Soviet Jews dating from June 1941. The first is that the claim was not a fabrication, but rather an error of memory on Ohlendorf's part. The second is that

Ohlendorf's testimony regarding the *Führerbefehl* may have actually been true, a possibility supported by a comment made by Hitler to Romanian leader Ion Antonescu in June 1941, in which the *Führer* described his desire to kill the Jews of the Soviet Union in connection with the upcoming invasion. If the latter of these explanations is correct, then the question remains open of why *Einsatzgruppen* generally avoided killing Jewish women and children during the initial weeks of their activity. Earl does not address this problem, nor does she spell out one possibility that is implied by her evidence: a decision to exterminate Soviet Jewry had indeed been made prior to the invasion, but was only fully implemented after a delay of some weeks.

Aside from Ohlendorf, several further figures emerge in Earl's account as compelling personalities. One of these is Paul Blobel, whose barbarism seemed to provide a contrast to the more methodical, business-like methods of Ohlendorf. Blobel was the German official in charge in September 1941 at Babi Yar, where over thirty thousand Jews were murdered over two days. His efficiency as a killer notwithstanding, Earl characterizes Blobel as one of the small number of "conflicted murderers" among the defendants. Lacking Ohlendorf's ideological certainty, Blobel suffered from emotional turmoil as he carried out his mission. Earl explains his monstrous behavior as a form of psychological compensation for the absence of genuine ideological conviction. Both here and in several further instances, Earl draws on insights provided by James Waller into the psychology of Holocaust perpetrators.[5]

If the book features a large cast of complicated villains, it is not without its complex heroes. Chief among them is the presiding judge at the trial, Michael Musmanno, to whom Earl devotes a substantial subchapter. A larger-than-life figure, Musmanno had made his legal reputation by trying to overturn the death sentences of Nicola Sacco and Bartolomeo Vanzetti in 1927.[6] At the *Einsatzgruppen* trial, he exerted a commanding presence in the courtroom. He was determined to give the defendants a fair trial, but he also did not hesitate to intervene in their cross-examination when he thought they were being evasive or misleading. Musmanno personally opposed capital punishment, but now faced the prospect of having to dole out multiple death sentences. Earl concludes that Musmanno's way around this moral dilemma was to sentence to death only those defendants who had openly admitted to their crimes in court, while sparing the lives of those who had not. Earl refrains from leveling a criticism of Musmanno that will strike some readers as

obvious: by injecting his personal morality into his decisions on sentencing, the judge in effect rewarded several defendants for lying about their actions.

Musmanno sentenced fourteen of the defendants to death. Only four of the men, including Ohlendorf and Blobel, were ultimately executed, however. Barely ten years after the conclusion of the trial, all of the remaining *Einsatzgruppen* commanders had been released from prison. Earl asks: “What went so horribly wrong to allow some of the most active and notorious perpetrators of the Third Reich to be released back into German society so soon after they were punished” (p. 265)? The answer to this question will come as no surprise to any reader familiar with the history of West Germany in the 1950s. The prosecution of Germans by foreign powers had never been popular, and public pressure in favor of sentence revision intensified as Germans strove for recognition of their new role as valuable allies in the Cold War. Calls for clemency came not only from German nationalists, but also from high-ranking clergymen of both the Catholic and Protestant churches. The American high commissioners, first John McCloy and then James Conant, acquiesced in demands for commutations, pardons, and amnesties.

Adolf Ott was the last of the *Einsatzgruppen* commanders to leave prison. Ott had joined the Nazi party in 1922, receiving membership number 2,433. He became a member of the SS (*Schutzstaffel*) in 1931, and went to work for the SD in 1934. Between February 1942 and January 1943 he took charge of *Einsatzkommando 7b*, which, according to the Nuremberg judgment, murdered “great numbers of people” while under Ott’s command. Accordingly, the tribunal sentenced him to death. Ott admitted at the trial that he remained a National Socialist at heart even after the collapse of the Third Reich. John McCloy commuted the sentence to life in prison. A Mixed Parole and Clemency Board convened under the authority of James Conant finally granted him parole in May 1958. Earl carefully documents the circumstances in which, in cases like Ott’s, Germans and Americans chose to subordinate justice to political expediency. At the same time, Earl’s anger over justice denied is never far below the surface of her text—very much to her credit.

Indeed, the power of this book derives as much from the style of its prose as from the morally compelling nature of its subject. Earl’s writing is straightforward, and does not shirk from characterizations such as “brutal,” “barbaric,” “malicious,” and “cowardly.” Her idiom enables her to evoke the monstrousness of Nazi crimes, but

she never succumbs to the Goldhagen syndrome of sacrificing nuance and analytical sophistication.

The book is based on an enormous body of documentation in American and German archives. In addition to making extensive use of the voluminous records of the Nuremberg *Einsatzgruppen* Trial, which have long been available on microfilm, Earl consulted interrogation reports, the papers of several of the prosecutors, the papers of Justice Musmanno, the papers of Ohlendorf’s defense attorney, Rudolf Aschenauer, and the papers of Bishop Theophil Wurm, one of the leading German clergymen who lobbied for the early release of the convicted commanders.

My main quibbles with the text derive from its tendency toward repetition, an over-utilization of chatty footnotes, and the presence of numerous spelling errors in German titles listed in the bibliography. More care should have been taken in the editing process, although these problems do not detract significantly from the overall readability of the book. All told, Hilary Earl has produced an important and compelling study that deserves a wide readership among scholars and students interested in German history, the Holocaust, comparative genocide, and transitional justice.

#### Notes

[1]. The foundational study of the *Einsatzgruppen* was Helmut Krausnick and Hans-Heinrich Wilhelm, *Die Truppe des Weltanschauungskrieges: Die Einsatzgruppen der Sicherheitspolizei und des SD* (Stuttgart: DVA, 1981). Important recent work includes Andrej Angrick, *Besatzungspolitik und Massenmord: Die Einsatzgruppe D in der südlichen Sowjetunion 1941-1943* (Hamburg: Hamburger Edition, 2003); Klaus-Michael Mallman and Gerhard Paul, eds., *Einsatzgruppen in Polen: Darstellung und Dokumentation* (Darmstadt: Wissenschaftlichen Buchgesellschaft, 2008); and Klaus-Michael Mallmann, Jochen Böhrer und Jürgen Matthäus, eds., *Karrieren der Gewalt: Nationalsozialistische Täterbiographien* (Darmstadt: Wissenschaftlichen Buchgesellschaft, 2004).

[2]. United States Holocaust Memorial Museum, “The Biggest Murder Trial in History,” *Holocaust Encyclopedia*. <http://www.ushmm.org/wlc/article.php?~lang=en&ModuleId=10007155> (accessed September 8, 2006).

[3]. Michael Wildt, *Generation der Unbedingten: Das Führungskorps des Reichssicherheitshauptamtes* (Ham-

burg: Hamburger Edition, 2003).

[4]. Christopher Browning, *The Origins of the Final Solution: The Evolution of Nazi Jewish Policy, September 1939-March 1942* (Lincoln: University of Nebraska Press, 2004).

[5]. James Waller, *Becoming Evil: How Ordinary People Commit Genocide and Mass Killing*, (New York: Oxford University Press, 2007).

[6]. Richard Newby, ed. *Kill Now, Talk Forever: Debating Sacco and Vanzetti* (New York: AnchorHouse, 2003), xxxv.

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