

**Kerstin von Lingen, »Crimes against Humanity«.  
Eine Ideengeschichte der Zivilisierung von  
Kriegsgewalt 1864–1945, Paderborn, München,  
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This excellent book is presented as an intellectual history of the origins of the concept of »crimes against humanity« in international history and law. A number of scholars have studied this topic in the past decade, notably Americans Elizabeth Borgwardt and Peter Holquist. In all cases the goal is explaining in retrospect how it became imaginable for the victorious Allies in World War II, in London in the summer of 1945, to add this charge to their bill of particulars for the planned International Military Tribunal at Nuremberg, held starting that fall.

Kerstin von Lingen agrees that the goal of a history of crimes against humanity is to trace how that concept came to refer to atrocity crimes, in a kind of long pre-history of Nuremberg. To this end, she reviews the history of the renovation of the laws of war beginning in the 1860s, and then turns to a little-known institution, the United Nations War Crimes Commission, which began working in 1943–1944. It has not regularly figured in accounts of the makings of international justice, and von Lingen joins scholars Mark Lewis and Dan Plesch in assigning it great importance – especially when it comes to consciousness of atrocity crimes in the 1940s and attempts to stigmatize them. Late in her book, von Lingen successfully demonstrates the Commission’s role in making the London addition of »crimes against humanity« to the charges possible.

Overall, von Lingen’s account is promotional and teleological, and understandably so. It is important to understand how charging crimes against humanity became conceivable in the postwar world. Other questions to ask, however, are blocked. It is hard to argue that the development of the laws of war after 1864 is best characterized as victim-centered. On the contrary, as scholars like Eyal Benvenisti and Doreen Lustig (and many others before them) have demonstrated, and von Lingen sometimes concedes, what accounts for most innovation in the laws of war before World War I was the goal of state legitimation and order. No wonder that so many peace activists in the era were so anxious that innovations in the laws of war would primarily have the effect of entrenching war.

With all due sobriety, one can also question how far one should regard the coinage and charging of »crimes against humanity« in 1945 as a moral and legal breakthrough. (Ironically, it made it into the London Charter for Nuremberg in August, precisely in between the bombings of Hiroshima and Nagasaki.) Even within atrocity crimes, it is normally forgotten just how selective a part



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of the misconduct »crimes against humanity« singled out. That phrase was the tertiary charge in London and at Nuremberg. But the core events of the Holocaust already consisted of ordinary war crimes, across the borders of European states as they stood in 1939, where high percentages of East European Jewry were exterminated. Crimes against humanity was introduced, at London, mainly to address the persecution of Jews that might not count as ordinary war crimes – and above all, the fate of Jews who had been citizens of Germany in 1939 – or to capture that German atrocity came not just in the form of a series of individual murders but as an extermination on grounds of race or religion. But compared to East European Jewry, about half of German Jewry survived the war. The point is not to trivialize what German Jewry suffered, not at all, but rather that if the goal is to single out the worst atrocities that Nazis perpetrated, it is not entirely clear that charging crimes against humanity was the most important thing. Anyway, because of a drafting error, the intent to cover crimes against German Jews even before 1939 was frustrated by Nuremberg's judges.

Furthermore, if atrocity was already largely covered by Nuremberg's secondary charge of war crimes, with crimes against humanity third on the list, something else was first. Contemporaries, in fact, regarded the chief breakthrough at Nuremberg as trial of anyone for aggressive war, not for any kind of atrocity crime. Americans and Soviets agreed that it was starting wars, not crimes within them, that mattered most. The desire to criminalize aggression had been the real priority for several decades, notably when there were moves to try Kaiser Wilhelm II at the end of World War I. In fact, while looking for the origins of the concept of crimes against humanity at Nuremberg, recent historians have turned up strong evidence that its most important public meaning before 1945 was making war, not committing atrocity. Von Lingen misses this point. But at the end of World War I, no less a figure than British prime minister David Lloyd George testified to »a growing feeling that *war itself* was a crime against humanity« (my emphasis). »The war was a hideous, abominable crime«, he thundered at one point, »a crime which has sent millions of the best young men of Europe to death and mutilation. [...] The men responsible for this outrage on the human race must not be let off because their heads were crowned when they perpetrated the deeds.«

Von Lingen has made an outstanding contribution. But it does not answer what, in my opinion, deserve to be the two main questions about the intellectual origins of »crimes against humanity« as we invoke that notion today. What happened over fewer than thirty years, between the end of World War I and the end of World War II, to make possible the transformation of the meaning of the phrase from aggression to atrocity? And what happened, in the long decades after the 1940s, to make aggression seem less important than atrocity?



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