GIVING THE DEVIL HIS DUE: THE PURSUIT & CAPTURE OF NAZI WAR CRIMINALS—A CALL FOR RETRIBUTIVE JUSTICE IN INTERNATIONAL CRIMINAL LAW

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I. INTRODUCTION

A scene in Robert Bolt’s *A Man for All Seasons* depicts an argument between Sir Thomas More and his associates. They are feuding about the proper role of the law in the controversy leading up to Henry VIII’s break from the (Catholic) Church. More is defending the right of Henry and anyone else—even “the Devil himself”—to the law’s protection. The others, furious with this position, argue that it would be far better to “cut down every law in England” than to permit continued abuses. More, in contrast, contends that it is far better to “give the Devil benefit of law,” or else when all the laws have been abandoned and the Devil turns on those who have sought him, they have no moral or legal foundation from which to judge his actions.

This dialogue provides an illustrative foundation for examining the post-World War II prosecution of Nazi war criminals. The evil schemes of the Nazi government have become an immediate shorthand for the “Devil’s work,” signifying the “epitome of absolute evil in Western culture.” In the years since the war ended, new threats

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2. Id. at 66.
3. Id.
4. Id.
have come and gone, other mass murders have gone unpunished, and yet scores of individuals have remained devoted to the pursuit of Nazi war criminals. A few individuals and organizations sought vigilant justice against those responsible for the brutal torture and deaths of so many. Individuals from around the world rallied in an early consensus that these worst of offenders should be brought to justice through formal prosecution rather than lawless “revenge.” This process allowed for the overwhelming evidence against individual Nazis to be revealed publicly and stand as an independent indictment of their conduct.


6 See Simpson, supra note 5, at 8. The last trial of a Japanese war criminal was in 1947. Id. Human rights abuses since World War II have failed to garner the same level of interest in exacting justice from its participants. See, e.g., Mark Rothert, Note, U.N. Intervention in East Timor, 39 COLUM. J. TRANSNAT'L L. 257 (2000) (analyzing international response to the clash in East Timor as well as providing historical context). During the conflict “an unknown number of East Timorese were killed, nearly 500,000 were forced to flee their homes, and much of the territory was destroyed.” Id. at 260. During Sierra Leone's recent civil war, thousands of children were raped, mutilated, and killed. See, e.g., Celina Schocken, Note and Comment, The Special Court for Sierra Leone: Overview and Recommendations, 20 BERKELEY J. INT'L L. 436, 436-39 (2002). Approximately half a million were forced to flee the country, and one million were internally displaced. Id. Up to three million individuals were killed during the Khmer Rouge regime (led by Pol Pot) that governed Cambodia from 1975 to 1979. Matthew J. Soloway, Note, Cambodia's Response to the Khmer Rouge: War Crimes Tribunal vs. Truth Commission, 8 APPEAL 32, 38 (2002). Many individuals were slaughtered by the government; thousands more died from government induced famine. See, e.g., id.
community’s means and incentive to punish Nazi war criminals and the implications for modern efforts to mete out justice to offenders. It surveys the trials immediately following the war, the continuing search for those who evaded immediate capture, and the laws and processes by which Nazi war criminals are still being held accountable for their actions. The next section considers the history and legend surrounding Adolf Hitler’s death. Although Hitler died at the end of the war, thereby escaping earthly punishment, for decades following World War II, many individuals believed that he could still be caught or speculated about what would have happened had he been confronted personally with his crimes. The last section focuses on understanding the initial and continued efforts to prosecute Nazi war criminals in terms of retributive and utilitarian theories of criminal punishment and urges future prosecution of international criminals to adopt a retributive focus.

II. BRINGING NAZI WAR CRIMINALS TO JUSTICE

The horrors of World War II stand as a harsh indictment of the evil to which man can descend. The specific atrocities need not be detailed here, but must remain a firm foundation upon which to analyze the landscape of Nazi war crimes trials. The exact number of Nazi war criminals will never be known. Documentation—while overwhelming compared to other defeated enemies—remains incomplete, and many participants were never identified, nor were their crimes recorded. It is sometimes difficult to distinguish between individuals who were merely members of the Nazi party or coerced into participating in illegal conduct and those who actively, and voluntarily, participated in criminal conduct. A working definition of Nazi war criminals, as taken from the United States’ Holtzman Amendment, is any individual who “ordered, incited, assisted, or otherwise participated in the persecution

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7 Numerous accounts of the brutalities endured on both the Eastern and Western fronts of the war exist. See, e.g., Yves Beigbeder, Judging War Criminals 29-31 (1999) (providing a brief summary of the Nazi atrocities that were the focal point of the Nuremberg trials).

8 See generally Daniel Jonah Goldhagen, Hitler’s Willing Executioners (1996). This seminal work counters the long-held argument that average Germans did not know or participate in the atrocities committed by elite members of the Nazi government and military. Id.
of any person because of race, religion, national origin, or political opinion” in connection with the Nazi regimes of Europe.9

A. Nuremberg

As World War II ended, the international community reached a novel decision: to hold individuals personally accountable before an international forum in Germany for the war’s most atrocious effects.10 Some modern scholars are swift to discredit these prosecutorial proceedings as being “victor’s justice,” undertaken by political bodies rather than genuine legal institutions.11 To some degree, their view is understandable: the proceedings did favor the prosecution—defendants were denied certain defenses, were subject to trial in absentia, and lacked access to exculpatory evidence.12 Some of these alleged


10 As Justice Jackson stated during the negotiations establishing the IMT: “[W]e want this group of nations to stand up and say . . . that launching a war of aggression is a crime and that no political or economic situation can justify it.” RICHARD H. MINEAR, VICTORS’ JUSTICE: THE TOKYO WAR CRIMES TRIAL 14 (1971) (quoting Jackson at the London Charter). In his famous opening statement before the Nuremberg Tribunal, Justice Jackson argued:

The wrongs which we seek to condemn and punish have been so calculated, so malignant, and so devastating, that civilization cannot tolerate their being ignored, because it cannot survive their being repeated. That four great nations, flushed with victory and stung with injury, stay the hand of vengeance and voluntarily submit their captive enemies to the judgment of the law is one of the most significant tributes that power has ever paid to reason.


"errors" were acknowledged by the participants as the trial proceeded; others reflect recently-articulated human rights standards. Nonetheless, a careful study of the proceedings, especially those in Nuremberg, reveals a deliberate attempt by the post-World War II Tribunals to carry out their mission in accordance with contemporary notions of justice.

Even before the war ended, leaders of the Allied nations met to discuss the establishment of an international criminal court to hold accountable those guilty of war crimes and other violations of developing international legal standards. The failures associated with the post-World War I policy encouraging collective guilt upon German citizens—a primary contributor to the climate leading to World War II—impressed upon the Allied nations the importance of an international means of exacting penalties only from those responsible for particular crimes. Similarly, the few war crimes trials conducted in Germany after World War I had tutored the international community in the limited success of relying solely on domestic trials of accused war criminals.

POL'Y 305 (1997) (comparing the Nuremberg trial with the ICTY for purposes of showing improvements in policies and rules since the post-World War II trials).

13 MICHAEL P. SCHARF, BALKAN JUSTICE: THE STORY BEHIND THE FIRST INTERNATIONAL WAR CRIMES TRIAL SINCE NUREMBERG 3 (1997). Justice Jackson himself admitted, "[m]any mistakes have been made and many inadequacies must be confessed." Id. "But I am consoled by the fact that in proceedings of this novelty, errors and missteps may also be instructive to the future." Id.

14 See id. at 3-15; TAYLOR, NUREMBERG TRIALS, supra note 10, at 56-77 (chronicling the International Conference on Military Trials' meetings and negotiations).

15 SCHARF, supra note 13, at 5.

16 Timothy L.H. McCormack, Selective Reaction to Atrocity: War Crimes and the Development of International Law, 60 ALB. L. REV. 681, 706-07 (1997). Following World War I, Allied nations formed the Commission on the Responsibility of the Authors of the War and on Enforcement of Penalties. Its purpose was to determine a viable means by which individuals could be prosecuted and punished for war crimes. ROBERT K. WOETZEL, THE NUREMBERG TRIALS IN INTERNATIONAL LAW 27 (1960); see also McCormack, supra note 16, at 684-98 (discussing the history of the law of war). In early 1920, the Allies submitted to German officials an extradition list of 896 individuals, whom they sought to try before a war crimes tribunal. BEIGBEDER, supra note 7, at 29. Reaction in Germany was strongly opposed, not only to the number of individuals sought, but also to the formation of an international body to try German citizens. Id. Germany argued that it should be allowed to prosecute its own war criminals. Id. After rigorous debate, the Allies agreed to Germany's plan, which allowed forty-five from the list for immediate prosecution. WOETZEL, supra note 16, at 31-32. The defendants were charged with violations of international criminal law; German law was used for procedural and sentencing aspects of the
Allied leaders recognized a host of other incentives for an international forum as well. One impetus was the political desire to raise public awareness of the atrocities of Nazi conduct—in part to legitimize Allied conduct—but also to combat the impulse to privately avenge known perpetrators. In addition, the trials themselves created a record for future generations as well as survivors to learn about the horrors that took place during the war.

Representatives met for several months discussing the development of a court, during which the scope of its jurisdiction, its structure, basic procedural and evidentiary rules, and enforceable punishments were all debated. The Charter of the International Military Tribunal developed from this effort.

1. The London Charter

From the outset, the Tribunal’s architects faced important difficulties developing an international set of rules to govern the proceedings. The international delegates represented two primary legal traditions: the common law adversarial model and the continental or civil law’s inquisitorial model. Although both models established balanced protections for all parties involved, fundamental differences had to be resolved or preferences determined in order to establish the basic framework for the Tribunal. Perhaps the most important decision was that the triers-of-fact for all proceedings would be judges, not, as is prominent in common law systems, a jury of laymen. A judge and one alternate were selected from each of the four Allied nations.

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17 SCHARF, supra note 13, at 5, 6.
19 Agreement Between the United States of America and the French Republic, the United Kingdom of Great Britain and Northern Ireland, and the Union of Soviet Socialist Republics Respecting the Prosecution and Punishment of the Major War Criminals of the European Axis, Aug. 8, 1945, 59 Stat. 1544 [hereinafter Nuremberg Charter]; see also TAYLOR, NUREMBERG TRIALS, supra note 10, at 21-77 (tracing the Allied discussions leading up to and through the development of the London Charter); Lippman, Nazi War Criminals, supra note 9, at 8-10.
20 See MINEAR, supra note 10, at 119.
21 Nuremberg Charter, supra note 19, art. 2.
Each nation selected its own counsel. The United States, Great Britain, France, and the Soviet Union each had a team of prosecutors; each team was assigned specified portions of the case, charged with spearheading the respective research and oral arguments. Each defendant had the right to choose and acquire his own counsel. Defense counsel came primarily from Germany, and included several former Nazis.

The Tribunal had jurisdiction over three categories of crimes: crimes against peace, war crimes, and crimes against humanity. Crimes against peace consisted of “planning, preparation, initiation or waging a war of aggression, or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing . . . .” “War Crimes” were defined as:

violations of the laws or customs of war . . . includ[ing], but not . . . limited to, murder, ill-treatment or deportation to slave labour or for any other purpose of civilian population of or in occupied territory, murder or ill-treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns or villages, or devastation not justified by military necessity.”

Lastly, crimes against humanity included “murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population . . . or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal . . . .” Beyond these broad statutory categorizations, there was little other instruction or precedent on which the judges could base their interpretations of these crimes.

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22 Id. at art. 3; see TAYLOR, NUREMBERG TRIALS, supra note 10, at 79-80.
23 Nuremberg Charter, supra note 19, art. 16(d). The Allied Forces later decided to cover the cost of defense. TAYLOR, NUREMBERG TRIALS, supra note 10, at 144.
24 See Benjamin B. Ferencz, The Rights of the Accused Were Protected at Nuremberg, in THE NUREMBERG TRIAL 147 (Mitchell Bard ed. 2002); TAYLOR, NUREMBERG TRIALS, supra note 10, at 144.
25 Nuremberg Charter, supra note 19, art. 6(9).
26 Id. art. 6(b).
27 Id. art. 6(c).
28 This is one of the greatest criticisms of the post-World War II Tribunals—their supposed use of ex post facto law. See generally, e.g., MINEAR, supra note 10,
The judges issued simultaneous judgments of guilt and punishment; all judgments were final. The Charter authorized the Tribunal to impose "death or such other punishment as shall be determined by it to be just." From the outset, it was clear that many of the defendants would indeed face the death penalty.

2. The Trial

Allied nations chose Nuremberg, home to many of the Nazi party rallies, as the location for the Military Tribunal. The first trial, or "Trial of the German Major War Criminals," as it became known, included among its defendants Herman Goering, Rudolf Hess, Alfred Rosenberg, Hans Frank, and other high-profile Nazi leaders. The most controversial decision—even in that era—was to try Martin Bormann, the Deputy for Nazi Party Affairs and Hitler's confidante, in absentia. The trial began November 20, 1945. The trial was simultaneously broadcast in four languages, contributing to its often slow and tedious progression.

The first task for the prosecution was sorting through the massive quantity of Nazi documentation confiscated from Allied-captured German buildings. These records proved to be the foundation of the
Nuremberg prosecution's case. Chief Prosecutor Robert Jackson boasted that 331 documents had been entered into evidence during the first four hours of the trial. In addition to paper documentation, the prosecution showed footage taken when Allied forces first discovered the concentration camps. The first live witness was not called until two months into the trial, and only a combined 113 witnesses testified for either party. Among the witnesses were survivors of the concentration camps, members of Allied forces who liberated the camps, captured war criminals, and some of the defendants.

The judgments were rendered over a two-day period in the Fall of 1946. Twelve of the twenty-two defendants were sentenced to death. Ten of these sentences were carried out two weeks after the sentences were delivered; Goering committed suicide one day before he was supposed to be executed; Martin Bormann was never captured. Of the ten remaining defendants, seven were sentenced to various terms in prison and three were acquitted. While the most

34 Robert Shnayerson, Judgment at Nuremberg, in WAR CRIMES 64, 65 (Henny H. Kim ed., 2000). Over 300,000 affidavits and records filled six freight trains; the prosecutors systematized and organized many of these records attempting to prioritize not only who would be tried, but what evidence was necessary to prove their case. Id.
35 TAYLOR, NUREMBERG TRIALS, supra note 10, at 174. The authenticity of few, if any, of these documents was challenged by the defense. Richard May & Marieke Wierda, Trends in International Criminal Evidence: Nuremberg, Tokyo, The Hague, and Arusha, 37 COLUM. J. TRANSNAT'L L. 725, 748 (1999).
36 Lawrence Douglas, Film as Witness: Screening Nazi Concentration Camps Before the Nuremberg Tribunal, 105 YALE L.J. 449, 450 (1995) (analyzing the use of concentration camp footage during the Nuremberg proceedings).
37 Shnayerson, supra note 34, at 71.
38 May & Wierda, supra note 35, at 744.
39 See TAYLOR, NUREMBERG TRIALS, supra note 10, at 165-472 (detailing the progress of the trial); PERSICO, supra note 32, at 131-379 (same).
40 WOETZEL, supra note 16, at 7-15.
41 See id. at 7-15. Those sentenced to death were: Hermann Goering; Wilhelm Keitel; Alfred Jodl; Hans Frank; Wilhelm Frick; Ernst Kaltenbrunner; Martin Bormann; Alfred Rosenberg; Fritz Sauckel; Julius Streicher; Arthur Seyss-Inquart; and Joachim von Ribbentrop. Id.
42 See id. at 12, 15.
43 See id. at 7-16. Three were sentenced to life imprisonment: Rudolf Hess, Erich Raeder, and Walter Funk. Two were sentenced to twenty years in prison: Albert Speer and Baldur von Schirach. Constantin von Neurath was sentenced to fifteen years; Karl Doenitz was sentenced to only ten years. The remaining three defendants—Hjalmar Schacht, Hans Fritzsche, and Franz von Papen—were acquitted. Id. The prisoners served their sentences in Spandau; several received early releases. Id. at 15.
recognized war crimes trial judged only twenty-two of the thousands of Nazi war criminals, it established a precedent not only for the future prosecution of Nazi criminals, but also for prosecution of participants in other international atrocities.

B. Subsequent Trials

As the first trial at Nuremberg progressed, discussions continued among the Allied nations regarding the possibility of further joint mass defendant trials. The slow pace of the first trial, the high cost in terms of money and staff, the massive amounts of documentation required (e.g., copies in each language), and rising tensions between Russia and the other Allied countries quickly curtailed the plausibility of pursuing additional joint trials.\textsuperscript{44} Allied nations decided that the most expeditious option available was to proceed with a series of individual trials occurring within the jurisdiction (territorial and personal) of each Allied nation.\textsuperscript{45}

The Allies initially established Control Council Law Number 10 (Council Law Number 10) to supplement the London Charter and to establish “a uniform legal basis” for the many independent trials that would proceed against German officials.\textsuperscript{46} Enacted following the first month of the Nuremberg Tribunal,\textsuperscript{47} Council Law Number 10 authorized Allied forces to arrest suspected Nazi war criminals and establish “appropriate tribunals” to prosecute them.\textsuperscript{48} The jurisdiction of these tribunals consisted of crimes against peace (with a slightly expanded definition from the London Charter), crimes against humanity, war crimes, and membership in a criminal organization (as determined by the Nuremberg Tribunal).\textsuperscript{49} Each of the Allied countries prosecuted a number of defendants in courts established under the overarching authority of this Act.\textsuperscript{50}

\textsuperscript{45} Id.
\textsuperscript{46} Id. at 6 (quoting the Preamble to Control Council Law No. 10).
\textsuperscript{47} Id. at 8.
\textsuperscript{48} Id. at 7; Woetzel, supra note 16, at 220.
\textsuperscript{49} Woetzel, supra note 16, at 220.
\textsuperscript{50} See generally Matthew Lippman, Fifty Years After Auschwitz: Prosecutions of Nazi Death Camp Defendants, 11 Conn. J. Int'l L. 199 (1996) (detailing a number of domestic trials, including the twelve American trials discussed below, that targeted officials for creating and maintaining Nazi death camps) [hereinafter Lippman, Fifty Years].
The most prominent of these proceedings were the twelve American-led trials held in Nuremberg following the conclusion of the first Tribunal. These cases opened October 26, 1946; the last trial ended April 14, 1949. The cases prosecuted a total of 177 defendants. Each of these proceedings focused on a distinct category of offender:

- The Medical Case – twenty-three defendants were prosecuted for their roles in medical experimentation that occurred in concentration camps;
- The Milch Case – Field Marshall Erhard Milch was the single defendant in this case; he was second in command to Goering;
- The Justice Case – this case attracted a great deal of attention and was of special importance to the Prosecutors as it tried fourteen lawyers and judges for their roles in implementing Nazi policies;
- The Pohl Case – eighteen officials within the economic and administrative divisions of the SS were tried for their roles in the construction and supervision of concentration camps and the use of slave labor in mines and factories;
- The Flick Case – six defendants were charged with using slave labor in various industrial programs;

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52 TAYLOR, FINAL REPORT, supra note 44, at 91. One hundred and eighty-five defendants were indicted, but four committed suicide prior to the conclusion of the cases, and four were determined to be too ill to stand trial. Id.
53 Id. at 77, 118. Seven were acquitted, six were sentenced to death, five were sentenced to life imprisonment, two were sentenced to twenty years imprisonment, one was sentenced to fifteen years imprisonment, and one was sentenced to ten years imprisonment. Id.
54 Id. He was sentenced to life imprisonment. Id.
55 Id. Four were acquitted, four were sentenced to life imprisonment, four were sentenced to ten years imprisonment, one was sentenced to seven years imprisonment, and one was sentenced to five years imprisonment. Id.
56 Id. at 77-78, 118. Three were acquitted, four were sentenced to death, three were sentenced to life imprisonment, one was sentenced to twenty-five years imprisonment, one was sentenced to twenty years imprisonment, and six were sentenced to ten years imprisonment. Id. at 118.
57 ADALBERT RÜCKERL, THE INVESTIGATION OF NAZI CRIMES 1945-1978, at 27 (1980). Three were acquitted, one was sentenced to seven years, one was sen-
• The I.G. Farben Case – twenty-three executives of a chemical management corporation were held responsible for the development and sale of Zyklon B, the chemical used in the gas chambers;58
• The Hostages Case – ten individuals were tried for their roles in the slaughter of thousands of hostages in occupied territories;59
• The RuSHA Case – fourteen defendants from the Race and Resettlement and associated divisions of the SS were held responsible for the perpetuation of Nazi racial myths;60
• The Einsatzgruppen Case – twenty-two members of this elite mobile killing squad were tried for their roles in the death of over two thousand individuals;61
• The Krupp Case – twelve industrialists were tried for exploiting slave labor;62
• The Ministries Case – twenty-one political and economic ministers were prosecuted for exploitative and abusive policies;63
• The High Command Case – fourteen Field Marshalls and officers were tried for mistreatment of prisoners of war.64

In addition to these twelve major trials, American military courts tried 1,021 individuals for specific atrocities committed at the Dachau, Buchenwald, Mauthausen, Mittelbau-Dora, and Flossenbürg concen-

tenced to five years, and one was sentenced to two-and-a-half years. TAYLOR, FINAL REPORT, supra note 44, at 118.

58 TAYLOR, FINAL REPORT, supra note 44, 118. Thirteen received prison sentences and ten were acquitted. Id. at 79, 241.

59 Id. at 80. Two were acquitted, two were sentenced to life imprisonment, two were sentenced to twenty years imprisonment, one was sentenced to fifteen years imprisonment, one was sentenced to twelve years imprisonment, one was sentenced to ten years imprisonment, and one was sentenced to seven years imprisonment. Id. at 118.

60 Id. at 79-80, 118. One was acquitted, one was sentenced to life imprisonment, two were sentenced to twenty-five years imprisonment, one was sentenced to twenty years imprisonment, three were sentenced to fifteen years imprisonment, one was sentenced to ten years imprisonment, and one was convicted but released due to sufficient time already served in prison. Id. at 118.

61 Id. at 119.

62 RÜCKERL, supra note 57, at 29; TAYLOR, FINAL REPORT, supra note 44, at 119.

63 TAYLOR, FINAL REPORT, supra note 44, at 82, 119. Nineteen received prison sentences and two were acquitted. Id. at 82, 241.

64 Id. at 81-82, 119.
tration camps. Numerous smaller trials also took place in the months immediately following the war. Initially, more trials were planned, but as time passed, it became apparent that public sentiment was opposed to the continued prosecution of what it perceived to be "minor" criminals. The sentences became progressively lighter, with individuals who almost assuredly would have been sentenced to death or even life imprisonment had they been tried immediately after the war being sentenced to only a few years in prison. In fact, the average sentence imposed during the subsequent American trials was ten years.

A similar gradual decline in support for trials and severity of punishment is evident in the cases pursued by other Allied forces. Great Britain tried a total of 1,085 defendants in the first few years following the war. The Soviet Union also tried many war criminals, but the records are not as precise as to how many individuals were actually brought before Soviet courts. Tribunals in France and its occupied territory in Europe and North Africa convicted 4,981 war criminals (956 of the sentences were delivered in absentia). Additional trials were held in Belgium, Denmark, Luxemburg, the Netherlands, Poland, Czechoslovakia, and Norway.

Even as Allied war crimes trials declined, the Allies and post-war German leadership assumed that remaining war crimes trials would proceed in accordance with German law in German national courts. Between 1948 and 1949, West Germany completed 1,819 proceedings

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65 RÜCKERL, supra note 57, at 28.
66 See Bard, supra note 24, at 19. Approximately 900 U.S. proceedings tried nearly 3,000 defendants for war-related atrocities. Id.
67 TAYLOR, FINAL REPORT, supra note 44, at 81. Defendants in the "Ministries case" who were convicted of two or more counts of serious crimes were only sentenced to prison, and even then not for life. Id. at 81, 92.
68 See id. at 80-81.
69 See id. at 91-92.
70 RÜCKERL, supra note 57, at 29. See generally Matthew Lippman, Prosecutions of Nazi War Criminals Before Post-World War II Domestic Tribunals, 8 U. MIAMI INT'L & COMP. L. REV. 1 (1999-2000) (discussing the British Military Courts established immediately following the war) [hereinafter Lippman, Prosecutions of Nazi War Criminals].
71 RÜCKERL, supra note 57, at 30-31.
72 Id. at 29. See generally Lippman, Prosecutions of Nazi War Criminals, supra note 70 (discussing the French trials that took place following the war).
73 RÜCKERL, supra note 57, at 31. See generally Lippman, Prosecutions of Nazi War Criminals, supra note 70 (discussing the trials that occurred under Dutch, Norwegian, and Polish control).
against war criminals.\textsuperscript{74} By the end of 1961, an estimated 12,715 defendants had been sentenced in West German courts.\textsuperscript{75}

\textbf{C. Privatizing the Search}

By 1950, a spirit of ambivalence regarding the prosecution of Nazi war criminals settled upon the greater part of society.\textsuperscript{76} Governments for the most part halted prosecutions, abandoned the search for war criminals, and provided for the early release of many convicted Nazi criminals. There are several reasons offered for this change: when rumors of a restored Third or new Fourth Reich failed to materialize, individuals started to believe that the immediate threat had passed; practical problems of identification and capture of war criminals lessened the practicality of continued efforts;\textsuperscript{77} attention turned to rebuilding domestic economies;\textsuperscript{78} future trials were seen as a threat to growth and recovery in West Germany;\textsuperscript{79} and even former war crimes prosecutors believed that the deterrent effect of the proceedings had run its course.\textsuperscript{80} Even so, the primary reason for the failure to pursue Nazi war criminals was that the international community's attention was diverted to a greater, more imminent threat—the Soviet Union.\textsuperscript{81} Consequently, Cold War politics took priority over the desire to prosecute Nazis war criminals no longer deemed an immediate international security threat.\textsuperscript{82}

But not everyone was content to allow Nazi war criminals to escape judgment. A small number of individuals began the daunting struggle of investigating allegations at their own expense, using their own resources and knowledge to assist them. They struggled to have

\textsuperscript{74} RÜCKERL, supra note 57, at 40.
\textsuperscript{75} WOETZEL, supra note 16, at 245. A total of 5,178 defendants had been sentenced to prison, sixty-eight were given life terms, the rest of the defendants had died, been acquitted, or had their charges dropped. Id.
\textsuperscript{76} See, e.g., ALLAN A. RYAN, JR., QUIET NEIGHBORS: PROSECUTING NAZI WAR CRIMINALS IN AMERICA 29, 325 (1984); SIMON WIESENTHAL, JUSTICE NOT VENGEANCE 159 (Ewald Osers trans., Grove Weidenfeld 1989).
\textsuperscript{77} See HELLA PICK, SIMON WIESENTHAL: A LIFE IN SEARCH OF JUSTICE 206 (1996); WIESENTHAL, supra note 76, at 159.
\textsuperscript{78} Lippman, Nazi War Criminals, supra note 9, at 15.
\textsuperscript{79} Id.
\textsuperscript{80} See TAYLOR, FINAL REPORT, supra note 45, at 84.
\textsuperscript{81} PETER Z. MALKIN & HARRY STEIN, EICHMANN IN MY HANDS 105 (1990); RYAN, supra note 76, at 5-6.
\textsuperscript{82} See RYAN, supra note 76, at 5-6; PICK, supra note 77, at 206; ERAIM ZUOFF, OCCUPATION: NAZI HUNTER ix (1994).
elected officials and government leaders across the world respond to documented abuses, deport known offenders, indict war criminals, and change existing laws to make it easier to prosecute Nazi war criminals. These individuals came to be known as the Nazi-hunters.  

Simon Wiesenthal witnessed the abuses first-hand when he was sent to Janowska concentration camp after the German army captured his hometown of Lvov (then Austria-Hungary, now a part of the Ukraine). Wiesenthal was transferred to several other camps during the course of the war and forced into hard labor for the Nazis. Although Wiesenthal faced almost certain death numerous times during his confinement (including an attempted suicide), he miraculously survived the ordeal. After the Allied Forces’ liberation of Lvov, Wiesenthal became one of the thousands of displaced persons in Europe and emerged as a leader among them. He soon became frustrated with the lack of Allied support for this group, as well as the Allied failure to pursue their former oppressors.

Two quotes are especially poignant in understanding Wiesenthal’s determination to devote his life to the pursuit of Nazi war criminals. When a fellow survivor questioned Wiesenthal’s career choice, he responded:

When we come to the other world and meet the millions of Jews who died in the camps and they ask us, “What have you done?” there will be many answers. You will say, “I became a jeweler.” Another will say, “I smuggled coffee and American cigarettes.” Another will say, “I built houses.” But I will say, “I didn’t forget you.”

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84 See generally ALAN LEVY, NAZI HUNTER: THE WIESENTHAL FILE (2002) (one of the most recent biographies of Wiesenthal); PICK, supra note 77 (detailing Wiesenthal’s career); WIESENTHAL, supra note 76, at 1-22 (containing a brief biographical sketch written by one of Wiesenthal’s closest friends).
85 See generally LEVY, supra note 84.
86 Id.
87 Id.
88 Id.
Later, in describing the initial impulse that led him to seek justice for those who had escaped, Wiesenthal stated:

I saw what enormous cowards these people were; how, instead of dealing with their guilt, they tried to deny it . . . . The realization that I had remained alive while so many others—better ones, cleverer ones, more decent ones—had died, at some point almost seemed to me an offense against justice. I could restore the balance only by ensuring that the dead received justice.90

Wiesenthal’s pursuit led to the capture of over 1,000 Nazi war criminals.91 Yet, he is quick to share his success with other loyalists who continued with him to hunt Nazi war criminals when few others cared. For many, like Wiesenthal, the mission was personal—they had personally survived the Holocaust and were driven to pursue those who had so egregiously persecuted Jews and other minorities.92 For others, it was newspaper accounts or the testimony of relatives and friends that inspired the search.93 For some, it was simply a job.94

Israel was the only country that actively assisted the Nazi-hunters in their pursuits. An entire division of the Israeli police was devoted to actively investigating escaped war criminals.95 In each case, the Nazi-hunters tediously documented thousands of allegations, from letters claiming that an individual’s neighbor was a Nazi to reported sightings of more familiar war criminals in various places across the globe.96 They also sifted through the thorough, but poorly-organized records of

90 WIESENTHAL, supra note 76, at 30.
92 See JEFFREY, supra note 89 and accompanying text.
93 Eli Rosenbaum is the director of the United States Department of Justice’s Office of Special Investigations. His father had served in World War II as an Army intelligence officer and seen first-hand the horrors of Dachau concentration camp. His father’s “silence and tears” when questioned about his experiences led Rosenbaum to learn more about the prosecution of Nazi war criminals while in law school. See Emily Newburger, A Measure of Justice, HARV. L. BULL. (Summer 2002), available at http://www.law.harvard.edu/alumni/bulletin/2002/summer/feature_3-1.html.
94 See generally ASHMAN & WAGMAN, supra note 83 (detailing the continued international search for Nazi war criminals and chronicling the lives of many leading Nazi Hunters).
96 See, e.g., ZUROFF, supra note 82, at 255-56.
Allied forces following the war, crosschecking names and last known locations of Nazi war criminals. Despite the obstacles, the Nazi-hunters eventually profited from the fruits of their labor, culminating in their most well-publicized success—the capture and trial of Adolf Eichmann.

D. Adolf Eichmann

1. Pursuit & Capture

Adolf Eichmann escaped the world’s notice at the end of World War II. The former Chief of the Jewish Affairs Section of the Reich Security had been entrusted with developing and implementing the Final Solution throughout German occupied territory. And yet, amidst so many more recognizable Nazi leaders, he managed to sink beneath the radar of Allied attention and prosecution. Despite being captured twice by Allied forces at the end of the war, Eichmann escaped from the makeshift prison camps and fled to Austria.

Simon Wiesenthal was among the first Nazi-hunters to place a priority on locating Eichmann. He blocked Eichmann’s wife from having Eichmann declared legally dead and confirmed the non-existence of proof that Eichmann had died at the end of the war. As early as 1953, Wiesenthal reported several credible accounts tracing Eichmann and his family to Argentina. Little action was taken immediately,

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97 See, e.g., Pick, supra note 77, at 177; Zuroff, supra note 82, at 148-49; Lippman, Nazi War Criminals, supra note 9, at 35.
98 See, e.g., Zuroff, supra note 82, at ix.
99 Id. at I.
100 Woetzl, supra note 16, at 247; see also Lippman, Fifty Years, supra note 50, at 210-13 (summarizing Eichmann’s criminal activity); Ruth Sachs & Sean Dolan, Adolf Eichmann: Engineer of Death (2000) (same).
101 Malkin & Stein, supra note 81, at 74-78.
102 Id. at 75-76.
103 Pick, supra note 77, at 108.
104 Id. at 108-11, 121.
105 Id. at 131. Both the story of how Wiesenthal discovered Eichmann’s location and the actual informant’s discovery of Eichmann in Argentina are strikingly fortuitous. Wiesenthal, a stamp-collector, was visiting the home of a fellow enthusiast examining a unique postage stamp from Argentina when he noticed the contents of the letter he held. It claimed that a German family known as Eichmann was living in Buenos Aires. The letter’s author believed it to be the former Nazi leader. Wiesenthal, supra note 76, at 76. The Israeli secret police traced their lead back to a letter written by a blind man whose daughter was dating Adolf Eichmann’s son. The son openly expressed pride in his father’s Nazi activities. The family name,
although the Israeli intelligence, the Mossad, did have a special department to work specifically on locating Adolf Eichmann and other Nazi war criminals still at large.\textsuperscript{105} Although Wiesenthal may have been the first to discover strong leads to Eichmann’s approximate location in Argentina, it was the Mossad agents who built a specific case from this trail and were responsible for his eventual extradition.\textsuperscript{107}

Within a short period of time, Israeli agents sifted through hundreds if not thousands of documents to form an indictment against and discover clues as to the location of Adolf Eichmann.\textsuperscript{108} They eventually discovered that following the war Eichmann fled to Argentina and was residing in Buenos Aires under the pseudonym “Ricardo Klement.”\textsuperscript{109} Israeli agents developed a plan for the capture of Adolf Eichmann in Argentina, whereupon he would be secretly flown back to Israel to stand trial.\textsuperscript{110}

Eichmann’s capturers left Israel for South America on May 3, 1960.\textsuperscript{111} After following “Klement” for several days, they devised a plan for the appropriate time and location of his capture.\textsuperscript{112} Twenty days after arriving in Argentina, Israeli agent Peter Malkin stopped Eichmann on his way home,\textsuperscript{113} secretly apprehended him and hid him for questioning.\textsuperscript{114} For quite some time, “Klement” refused to admit who he was, but upon being asked what his SS number was, he responded truthfully—it matched Eichmann’s number.\textsuperscript{115} After being held for several days, he eventually signed a statement agreeing to leave Argentina voluntarily and submit to an Israeli court proceed-

\begin{itemize}
  \item \textsuperscript{105} Yablanka, supra note 95, at 371.
  \item \textsuperscript{107} See generally MALKIN & STEIN, supra note 84 (describing first-hand account written by one of the agents involved in the investigation and extraction of Eichmann from Argentina).
  \item \textsuperscript{108} Yablanka, supra note 95, at 372-73.
  \item \textsuperscript{109} MALKIN & STEIN, supra note 81, at 76-78.
  \item \textsuperscript{110} See generally ZHI AHARONI & WILHELM DIETL, OPERATON EICHMANN: PURSUIT AND CAPTURE (2000) (the author was in charge of the Israeli team assigned to pursuing and capturing Eichmann); MALKIN & STEIN, supra note 81 (tracing the author’s role as a lead Israeli agent involved in the capture of Adolf Eichmann).
  \item \textsuperscript{111} MALKIN & STEIN, supra note 81, at 147.
  \item \textsuperscript{112} Id. at 143-80.
  \item \textsuperscript{113} Id. at 181-90.
  \item \textsuperscript{114} See generally id. at 188-247 (detailing the interrogation of Adolf Eichmann in Argentina and the final plans made to fly him to Jerusalem for trial).
  \item \textsuperscript{115} Id. at 189-90.
\end{itemize}
ing.\textsuperscript{116} Even so, his capture and the plan to return him to Israel remained a secret.\textsuperscript{117}

2. The Trial

From the outset, the Israeli court was confronted with two jurisdictional challenges. The first challenge alleged that Argentina’s sovereignty was violated when Israel captured Eichmann without Argentina’s consent.\textsuperscript{118} Upon learning that Eichmann had been transferred to Israel, the Argentinean government demanded his immediate return and asserted jurisdiction over his ultimate prosecution.\textsuperscript{119} The United Nations proceeded to censure Israel for its blatant violation of Argentina’s state sovereignty.\textsuperscript{120} Despite these valid concerns, the court held that regardless of how he arrived in the country, Eichmann was now within Israel’s jurisdiction and could face charges before the Israeli court.\textsuperscript{121} A second concern that the court had to address was whether its law could be applied to Eichmann (a non-Israeli) for crimes committed against no Israeli citizens prior to the country’s founding.\textsuperscript{122} Lastly, several countries argued that another country would provide a better jurisdiction in which to try Eichmann.\textsuperscript{123} Even so, the Israeli court held that the case against Eichmann could proceed.\textsuperscript{124} The court

\textsuperscript{116} Id. at 230-31. See generally EICHMANN INTERROGATED: TRANSCRIPTS FROM THE ARCHIVES OF THE ISRAELI POLICE (Ralph Manheim trans., 1983) (containing transcripts of Eichmann’s statements from his capture in Buenos Aires through the beginning of the trial).

\textsuperscript{117} See generally MALKIN & STEIN, supra note 81, at 239-47.

\textsuperscript{118} Id. at 252.

\textsuperscript{119} Id. at 249-62; see also Matthew Lippman, Genocide: The Trial of Adolf Eichmann and the Quest for Global Justice, 8 BUFF. HUM. RTS. L. REV. 45, 54-59 (2002) (detailing the diplomatic debate surrounding Eichmann’s capture) [hereinafter Lippman, Adolf Eichmann].

\textsuperscript{120} G.A. Res. 138, U.N. SCOR, 14th Sess., U.N. Doc. S/4349 (1960). Although the Resolution recognized that Israel’s actions violated Argentina’s sovereignty, the U.N. failed to take any action against Israel with regard to Eichmann (most likely because of the unique context of the dispute), and merely warned that Israel, and other countries, should not engage in such conduct in the future. Id.; see also MALKIN & STEIN, supra note 81, at 251-52; WOETZEL, supra note 16, at 251; Lippman, Adolf Eichmann, supra note 119, at 59-64. See generally HANNA YABLONKA, THE STATE OF ISRAEL VS. ADOLF EICHMANN (2003).


\textsuperscript{122} See Lippman, Adolf Eichmann, supra note 119, at 67-71.

\textsuperscript{123} See Matthew Lippman, Crimes Against Humanity, 17 B.C. Third World L.J. 171, 242 (1997).

\textsuperscript{124} See Eichmann, 36 I.L.R. at 279-81.
justified its decision in part by relying on the universal jurisdiction for crimes as egregious as those with which Eichmann was charged.125

Eichmann’s trial began April 11, 1961.126 He was charged under Israeli law for war crimes, membership in a hostile organization, crimes against humanity, and crimes against the Jewish people.127 During the trial, which lasted approximately four months,128 over 100 witnesses testified, and hundreds of documents confirmed and independently condemned Eichmann’s conduct.129 The verdict was issued December 10, 1961.130 He was found guilty on all counts and sentenced to death.131 The sentence was carried out on May 31, 1962.132

The trial of Adolf Eichmann sparked new issues in the continuing debate surrounding international law. Many argued that the existence of a permanent international criminal court would have circumvented the jurisdictional dilemmas that had tainted the impact of Eichmann’s Israeli trial.133 The trial became an important component in the formation of the modern Israeli state and Jewish identity, while reminding the international community of the tragedy of the Holocaust, the extent of the atrocities, and the reality that Nazi war criminals were still at large.134 Many Nazi-hunters hoped that the Eichmann trial would renew the resolve of other governments to pursue Nazi war criminals who had gone unpunished in the fifteen years since the war, but the hope was largely unrealized, despite the temporary resurgence, until the latter part of the century.

126 WOETZEL, supra note 16, at 248. See generally Lippman, Adolf Eichmann, supra note 119 (insightful article detailing Eichmann’s life, from his crimes through his execution).
127 WOETZEL, supra note 16, at 248.
128 MALKIN & STEIN, supra note 81, at 255.
129 Yablonka, supra note 95, at 379-83.
130 MALKIN & STEIN, supra note 81, at 255-56.
131 Id. at 256.
132 Id.
133 See, e.g., Daphne Eviatar, The Show Trial: A Larger Justice?, N.Y. TIMES, July 20, 2002, at B7; Edward Fennell, The Moral Question of Our Time, TIMES (London), Oct. 19, 1999, at Law 11; David Ben-Gurion, The Eichmann Case As Seen by Ben-Gurion, N.Y. TIMES, Dec. 18, 1960, at § 6, 7 (Ben-Gurion responds to allegations that the Eichmann trial should take place in an international forum). This point was even recognized by the Israeli Supreme Court itself. Adolf Eichmann, 36 I.L.R. at 292.
134 See, e.g., WIESENTHAL, supra note 76, at 78; Yablonka, supra note 95, at 391.
E. Recent Endeavors

By 1960, war crimes trials had “all but ceased,” with the exception of the Eichmann trial. 135 Many countries persisted in turning a blind eye to documented Nazi war criminals within their jurisdiction. 136 Private investigations continued, however, and a few cases emerged in the years following the Eichmann trial. Two cases illustrate these efforts:

- Franz Stangl – Stangl commanded the Treblinka and Sobibor concentration camps during the war; these death camps were aptly named as between 700,000 to 1.2 million individuals were killed under Stangl’s watch. 137 Following the war, Stangl escaped via Rome to Syria. He later moved to Brazil, where he was arrested in 1967. He was sentenced to life imprisonment, but died within a year of his conviction. 138

- Hermine Braunsteiner-Ryan – Braunsteiner is one of the few women Nazi war criminals to be charged for her crimes as a concentration camp guard. 139 She came to the United States in 1959 using her married name and became a United States citizen four years later. 140 For many years, the government knew of her presence, but failed to take an active role in considering her background as impetus for deportation. 141 Finally, in 1965, charges were filed against her, but her case languished in the courts for years. 142 Her case was not seriously pursued until West Germany requested her extradition to face criminal

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135 Pick, supra note 77, at 141; Wiesenthal, supra note 76, at 160.
136 In 1962, for example, Canada refused to follow up on reports that Joseph Mengele was in hiding within its borders, expressing only a limited amount of interest in war crimes investigations. Lippman, Nazi War Criminals, supra note 9, at 22. It was not until 1985 that Mengele's bones were released for confirmation of his identity; he had died six years earlier in Paraguay. Pick, supra note 77, at 185-93; see also Wiesenthal, supra note 76 (containing numerous examples of Nazis whose identity and location had been confirmed or strongly suspected who remained at large due to a State’s unwillingness to take action); Adam Tamer, Germany Still Hunting Nazi War Criminals, Jerusalem Post, July 2, 2002, at 7; John S. Lang, Why the Nazi Hunters Keep Pressing On, U.S. News & World Rep., June 24, 1985, at 31.
137 Ryan, supra note 76, at 1; Wiesenthal, supra note 76, at 80-81.
138 Pick, supra note 77, at 178-85; Wiesenthal, supra note 76, at 80-87.
139 Pick, supra note 77, at 194-95.
140 See id. at 195-96
141 See id. at 196-97.
142 Id. at 197.
charges.\textsuperscript{143} Her 1973 extradition was the first such action taken against a Nazi war criminal residing in the States.\textsuperscript{144}

Beginning in the mid to late 1970s, governments gradually increased their attention to the existence and pursuit of Nazi war criminals.\textsuperscript{145} The United States took a different approach than many of the other countries, but increasingly countries across the world began investigating allegations and prosecuting Nazi war criminals in a similar fashion.

1. United States Approach

United States law prohibits bringing criminal charges against Nazi war criminals.\textsuperscript{146} Rather than pursuing this recourse, American Nazi-hunters sought to revoke citizenship and deport those war criminals residing within the nation.\textsuperscript{147} In an effort to assist with the European problem of displaced persons after World War II, the United States relaxed immigration standards by enacting the Displaced Persons Act of 1948.\textsuperscript{148} Between 1948 and 1952, an estimated 390,000 individuals immigrated to America under this Act;\textsuperscript{149} yet the provisions of this law actually precluded the entry of many victims of the war.\textsuperscript{150} In their stead, as many as ten thousand Nazi criminals, lying about their identities, entered the United States within the first years following the war.\textsuperscript{151} In the past few decades, a War Department program named Operation Paperclip has come to light—this endeavor actively recruited approximately 1,600 German scientists to America following

\textsuperscript{143} Id. at 198.

\textsuperscript{144} Id. at 198-99; RYAN, supra note 76, at 46-52; WIESENTHAL, supra note 76, at 150-57; Jay Maeder, The Nazi Next Door: Mrs. Ryan, August 1973, DAILY NEWS (N.Y.), Sept. 6, 2001, at 37.

\textsuperscript{145} See, e.g., RYAN, supra note 76, at 6.


\textsuperscript{147} See, e.g., RYAN, supra note 76, at 207.

\textsuperscript{148} See, e.g., id. at 5-6, 15-28; Lippman, Nazi War Criminals, supra note 9, at 50-51.

\textsuperscript{149} See RYAN, supra note 76, at 25-26.

\textsuperscript{150} Id. at 15-28 (detailing provisions of the Act and its harsh effect on individuals lacking proper identification or who did not meet the other requirements of the Act’s enforcement).

\textsuperscript{151} Id. at 5, 15-28. As former head of the OSI explains, even if only 2\% percent of those who came to America were Nazi war criminals, this would mean that 10,000 were invited into the country as a result of the very legislation intended to protect their victims. Id. at 26; see also Bard, supra note 24, at 14.
the war.\footnote{152} Between 1945 and the early 1970s, the Immigration & Naturalization Service only sought the deportation of ten individuals for their participation in Nazi criminal conduct.\footnote{153}

Created in 1979, the Office of Special Investigations (OSI) was assigned the responsibility of tracking down Nazi war criminals illegally residing within the United States.\footnote{154} For the first time in United States history, locating Nazi war criminals became a priority for the government.\footnote{155} In order to revoke an individual's citizenship, the Government must prove its case by "clear and convincing evidence."\footnote{156} Citizenship can be revoked or a resident alien can be removed from the United States if the Government discovers that an individual lied about his identity or personal history in order to gain admission or citizenship.\footnote{157} Within the first five years, OSI filed forty cases seeking the deportation of former Nazis who had entered the United States under false pretenses.\footnote{158} Since that time, an additional seventy-eight individuals have been brought to court in deportation or denaturalization proceedings.\footnote{159} In 2002, the OSI initiated proceedings against ten Nazi war criminals, the highest number of cases brought in a single year

\footnote{152} Bard, supra note 24, at 14. See generally \textsc{Tom Bower, The Paperclip Conspiracy: The Hunt for Nazi Scientists} (1987) (exposing the entire government effort; see page 4 for brief summary of the plan).

\footnote{153} \textsc{Ryan, supra note 76, at 31} (this number may not accurately reflect all the individuals for which deportation hearings were sought as Nazi collaborator status was not singled out as an independent basis for deportation until many years after the war).

\footnote{154} Bard, supra note 24, at 21.

\footnote{155} \textit{See Ryan, supra note 76, at 61-62.}

\footnote{156} \textit{Id. at 251.}

\footnote{157} \textit{See} 8 \textit{U.S.C. § 1182(a)(3)(E) (2004)} (Aliens who participated in Nazi persecutions are ineligible for visas and are also deemed inadmissible); 8 \textit{U.S.C. § 1182(a)(6)(C)(i) (2004)} ("Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under the Immigration and Nationality Act is inadmissible"); 8 \textit{U.S.C. § 1227(a)(1)(A) (2004)} ("Any alien who at the time of entry or adjustment of status was within one or more of the classes of aliens inadmissible by the law existing at such time is deportable").

\footnote{158} \textsc{Ryan, supra note 76, app. at 353-61.}

\footnote{159} Stephen Koff, \textit{Eli's Coming, Plain Dealer} (Ohio), July 28, 2002, at 12. Of those charged, sixty-eight lost their citizenship and fifty-six were deported. \textit{Id.} In addition, since 1989 alone, the work of the OSI has prevented 165 individuals from entering the country. \textit{Id.}
since the department’s creation.\textsuperscript{160} The case of Andrija Artukovic illustrates this process.\textsuperscript{161}

Artukovic was the highest ranking Nazi officer to enter the United States.\textsuperscript{162} He entered the country under an assumed name. While living comfortably in southern California,\textsuperscript{163} his visa expired, and he failed to leave the country.\textsuperscript{164} Although his presence was known for many years, the sporadic attempts to extradite him were unsuccessful until 1986,\textsuperscript{165} when he was extradited to Yugoslavia to stand trial for his criminal conduct during the war.\textsuperscript{166} There, he was convicted, but died before his death sentence could be imposed.\textsuperscript{167}

OSI-driven deportation proceedings, such as those initiated against Artukovic, have been criticized as insufficient.\textsuperscript{168} The “clear and convincing” standard is fairly high, and witness testimony is often essential to prove an individual’s real identity.\textsuperscript{169} In addition, deportation hearings—as with any modern-day criminal or civil proceeding—suffer from the fading memories of potential witnesses or their complete inability to testify due to relocation or death, the inability to track down witnesses who are now scattered throughout the world, and the documentation of crimes without named witnesses.\textsuperscript{170} The now-infamous case of John Demjanjuk illustrates the inherent dangers of a trial taking place so long after the events in question.\textsuperscript{171}

Demjanjuk was identified in the early 1980s as the Treblinka gas chamber operator known as \textit{Ivan the Terrible}.	extsuperscript{172} He had immigrated to the United States in 1952 and he obtained United States citizenship in

\textsuperscript{161} See generally \textit{Ryan, supra} note 76, at 270-72; \textit{Zuroff, supra} note 82, at 38-49.
\textsuperscript{162} \textit{Ryan, supra} note 76, at 270; \textit{Zuroff, supra} note 82, at 40.
\textsuperscript{163} \textit{Ryan, supra} note 76, at 270.
\textsuperscript{164} \textit{Zuroff, supra} note 82, at 40.
\textsuperscript{165} \textit{Zuroff, supra} note 82, at 40. See generally \textit{Ryan, supra} note 76, at 271 (describing procedural history of Artukovic case).
\textsuperscript{166} \textit{Id.}
\textsuperscript{167} \textit{Id.}
\textsuperscript{168} See \textit{id.} at 340-42.
\textsuperscript{169} \textit{Ryan, supra} note 76, at 65-93.
\textsuperscript{170} \textit{Id.}
\textsuperscript{172} \textit{Ryan, supra} note 76, at 106-07; \textit{Zuroff, supra} note 82, at xviii.
1958.\textsuperscript{173} He was working as a mechanic in Cleveland, Ohio when OSI investigators began proceedings against him,\textsuperscript{174} and the OSI successfully revoked Demjanjuk’s citizenship in 1981.\textsuperscript{175} He was extradited to Israel in 1985 for that country’s second trial against a Nazi war criminal.\textsuperscript{176} In 1988, he was unanimously convicted and sentenced to death.\textsuperscript{177} In 1993, however, with the release of new records from the former Soviet Union, Israel acquitted Demjanjuk for lack of evidence that he was really \textit{Ivan the Terrible}.\textsuperscript{178} He was allowed to return to Ohio and his U.S. citizenship was restored.\textsuperscript{179} In 1999, OSI investigators once again brought charges against the now seventy-nine year old Demjanjuk, this time not for being \textit{Ivan the Terrible}, but for his genuine participation in other Nazi war crimes.\textsuperscript{180} In 2002, his citizenship was once again revoked, but this time for crimes he actually committed.\textsuperscript{181}

The lesson learned must be underscored for future prosecutions. There must be a balance between zealously pursuing war criminals before it is too late to do so and ensuring that accurate prosecutions occur. Although Demjanjuk was, in fact, guilty of other war crimes, he was innocent of the array and gravity of crimes for which he was originally accused. OSI and Israeli investigators accurately uncovered the suspicious circumstances surrounding Demjanjuk’s entry into the United States and the lies concerning his past and his assumed identity. Consistent with what they did know, these investigators based their case on circumstantial evidence that pointed toward Demjanjuk being Ivan the Terrible. The poor publicity surrounding Demjanjuk’s initial wrong deportation and prosecution did little to deter the Nazi-hunters. Their continued dedication is evident in using every available resource to track war criminals (including scouring the Soviet Union’s records that were only released relatively recently) and in pursuing Demjanjuk for those crimes he actually committed even after being

\begin{flushleft}
\textsuperscript{173} Ryan, supra note 76, at 102-03.
\textsuperscript{174} Id. at 102.
\textsuperscript{175} Id. at 138-39.
\textsuperscript{176} ZUROFF, supra note 82, at 194.
\textsuperscript{177} Id. at 209-10.
\textsuperscript{178} ZUROFF, supra note 82, at xvii, 206-10.
\textsuperscript{180} Id.
\end{flushleft}
exonerated of the "Ivan the Terrible" charges. Deportation and citizenship revocation proceedings continue, with OSI prosecutors filing ten cases in 2003 and having over one hundred cases still under investigation.182

2. Other Approaches

While the United States has pursued deportation hearings, leaving criminal cases to be filed by other countries, many nations have decided to claim jurisdiction over war crimes so that criminals could be tried within their own court systems.183 In the late 1980s and 1990s, Canada, Great Britain, and Australia, among other nations, established commissions to investigate the existence of war criminals in their countries, to coordinate the deportation or prosecution of these war criminals, and to determine the feasibility of modifying laws to clear the way for future war crimes trials.184 Each country determined that its post-war immigration policies had permitted the entry of an unknown number—hundreds, even thousands—of fleeing Nazi war criminals.185 As a result of the Commissions' findings and recommendations, each country passed laws to locate Nazi war criminals and make it easier to prosecute those residing within their borders.186 The legislation focused on two key jurisdictional issues, and each state's laws contained slight variations as to the general approach taken.187

Each country had to determine how to confirm its own jurisdiction over crimes that had occurred outside of its territory and against and by individuals not of that country's nationality. Australia passed the

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183 Their argument is that the worst action would be to revoke citizenship of an individual who has lived within the country's jurisdiction for decades. Instead, these countries focus on ensuring the same protection afforded to their nationals, but still prosecute Nazi war criminals for their actions prior to immigrating there. See, e.g., Lippman, Nazi War Criminals, supra note 9, at 45-46, 52-53, 99.

184 ZUROFF, supra note 82, at 229.

185 Id. at 265-308, 317-36 (Great Britain and Canada); Lippman, Nazi War Criminals, supra note 9, at 13-15, 26, 33-34, 44-45 (Great Britain, Canada, and Australia). See generally DAVID CESARANI, JUSTICE DELAYED: HOW BRITAIN BECAME A REFUGE FOR Nazi War CRIMINALS (2001).

186 See ZUROFF, supra note 82, at 265-308, 317-36 (Great Britain and Canada); Lippman, Nazi War Criminals, supra note 9, at 13-15, 26, 33-34, 44-45 (Great Britain, Canada, and Australia).

187 Lippman, Nazi War Criminals, supra note 9, at 27.
most stringent legislation detailing the specific war crimes that could be prosecuted and limiting personal jurisdiction to Australian citizens or residents.\textsuperscript{188} The principle of universal jurisdiction for genocide and certain war crimes within international law assisted other countries that wanted a more expansive approach.\textsuperscript{189}

Some countries decided to claim that its country's laws in some sense incorporated these international laws within their own existing criminal law of the time. Great Britain took this approach.\textsuperscript{190} Under this interpretation, then, the War Crimes Act of 1991 merely made a formal recognition of a previously sanctioned jurisdiction over the acts at issue.\textsuperscript{191} Britain also determined that the egregious nature of the crimes made the citizenship of both the offender and the victim irrelevant to determining its authority.\textsuperscript{192}

Canada, in contrast, limited its jurisdiction to crimes against humanity that would have also been a crime under then-existing Canadian law.\textsuperscript{193} It also attempted to circumnavigate claims of overreaching personal jurisdiction by limiting individuals who could be tried in its courts to Canadian citizens or employees, citizens or employees from countries in an armed conflict against Canada, or individuals whose victims were Canadian citizens or citizens of states allied with Canada during the war.\textsuperscript{194} While technically more specific than Britain's law, the practical effect of the law's personal jurisdiction is identical.\textsuperscript{195}

Despite these efforts in the late 1980s and early 1990s, the potential prosecutions made possible by the new laws have largely failed to come to fruition. Although new investigations identified war criminals

\textsuperscript{188} \textit{Id.} at 40.

\textsuperscript{189} The concept of universal jurisdiction—that there are some crimes for which every country has jurisdiction to prosecute—is fairly controversial, but is gaining acceptance in cases of mass atrocity. Ultimately, this issue is outside the purview of this article, but warrants further analysis and debate. For some interesting discussions of its use and applicability, see, e.g., Curtis A. Bradley, \textit{Universal Jurisdiction and U.S. Law}, 2001 U. CHI. LEGAL F. 323; Malvina Halberstam, \textit{Belgium's Universal Jurisdiction Law: Vindication of International Justice Or Pursuit of Politics?}, 25 \textit{CARDozo L. REV.} 247 (2003); Anthony Sammons, \textit{The "Under-Theorization" of Universal Jurisdiction: Implications for Legitimacy on Trials of War Criminals by National Courts}, 21 BERKELEY J. INT'L L. 111 (2003).

\textsuperscript{190} \textit{Id.}

\textsuperscript{191} \textit{See, e.g., id.} at 20.

\textsuperscript{192} \textit{See} supra note 9, at 16, 18, 20.

\textsuperscript{193} \textit{Id.}

\textsuperscript{194} \textit{Id.} at 27.

\textsuperscript{195} \textit{See id.} at 22-28.
within each of the countries discussed, only a few prosecutions resulted, and public support once again waned.\(^{196}\) With so many other crises facing countries, public interest to hunt down aging criminals, several decades removed from their crimes, was waning.\(^{197}\) One leading Nazi-hunter lamented, "while these laws constitute a highly significant moral and judicial achievement . . . they have, in practical terms, yielded almost no concrete results."\(^{198}\) Nonetheless, the search continues, the periodic case is brought forward, and governments continue to be pressured to assist with disclosing any information they have regarding the location and identity of Nazi war criminals within their territories.\(^{199}\)

III. THE CONSUMMATE DEFENDANT ESCAPES—ADOLF HITLER: FABLE, FICTION, & FACT

Ironically, although Hitler avoided prosecutorial justice during his lifetime, universal condemnation of all he embodied has rung clear in the vast amount of "alternate-history" literature that followed. This section examines the legend surrounding Hitler's death, both in fact and fiction, and through this lens evaluates theories of just punishment for the deeds of such devils.

Conspicuously missing from the lists of indicted or hunted Nazi war criminals are the names of many of the top party officials. In the final months and days of the war, Heinrich Himmler committed suicide\(^^{200}\) and Joseph Goebbels and his wife participated in the deaths of

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\(^{196}\) See generally id. (discussing each country's post-Commission efforts to identify and prosecute war criminals within its jurisdiction); see also Greg Ansley, Australia's Labor Plans To Tackle Immigrant War Criminals, N.Z. HERALD, Feb. 26, 2004, at B3; David Cesaroni, Getting Away with Murder: The War Crimes Act Has Produced a Pathetic Single Conviction, GUARDIAN (London), Apr. 25, 2001, at 20; Ron Cislag, Reflections on an Outgoing PM, CANADIAN JEWISH NEWS, Dec. 11, 2003, at 1; CNN News Broadcast, supra note 182.

\(^{197}\) Lippman, Nazi War Criminals, supra note 9, at 10, 15.

\(^{198}\) ZUOFF, supra note 82, at 366.


\(^{200}\) Bard, supra note 24, at 14-15.
their six children and then killed themselves in a Berlin bunker.\textsuperscript{201} In that same bunker, Adolf Hitler and his long-time companion, Eva Braun, were reported to have committed suicide together on April 30, 1945.\textsuperscript{202} Although the bodies of other individuals who died in the bunker were identified within days of the Russian occupation of Berlin,\textsuperscript{203} rumor and a lack of evidence shrouded Hitler’s death.

Despite the apparent lack of physical evidence of his death, Hitler was not included in any of the war crimes indictments.\textsuperscript{204} Despite his formal absence from any of the war crimes indictments and trials, Hitler, nonetheless, permeated each proceeding; for it was Hitler’s vision that had been the driving force behind the atrocities of the Nazi regime.\textsuperscript{205}

In contrast to the decision not to try Hitler, Martin Bormann’s widely speculated death was sufficiently in doubt that Allied forces decided to try him \textit{in absentia} during the Nuremberg tribunal.\textsuperscript{206} Although evidence discovered many years after WWII indicates that Bormann died by suicide in Berlin in 1945,\textsuperscript{207} his name dominated the Nazi-hunters list of top leaders who had escaped capture.\textsuperscript{208}

Neither the reports of Hitler’s suicide nor the lack of formal proceedings against him prevented skeptics from doubting his death. Some skepticism is based on substantive doubts and reported sightings; most are pure fantasies. What should have been a relatively easy determination became embroiled in something even greater than Hitler himself, a political intrigue that was endorsed or perpetuated initially by Nazis and Allied forces alike, and later, by both sides of the Cold

\textsuperscript{201} ADA PETROVA & PETER WATSON, THE DEATH OF HITLER xi (1995).
\textsuperscript{202} Id. at x-xi.
\textsuperscript{203} Id. at 54-56.
\textsuperscript{204} Id. at 55-56.
\textsuperscript{205} Lippman, Nazi War Criminals, supra note 9, at 4.
\textsuperscript{206} See, e.g., PERSICO, supra note 32, at 360-61.
\textsuperscript{207} JEFFREY, supra note 89, at 77. Simon Wiesenthal has stated that he believes Bormann initially escaped Berlin, but committed suicide years after the war ended. PICK, supra note 77, at 193-94. Wiesenthal cites four primary reasons for the perpetuation of the Bormann survival myth: first, in the absence of Hitler, the Nazis needed a leader around which to rally; second, Communist propaganda also encouraged the speculation; third, reported sightings and other stories of his survival proved financially profitable to news agencies; and fourth, Bormann resembled a “typical” German and was rarely suspected to be a Nazi official. WIESENTHAL, supra note 76, at 105.
\textsuperscript{208} See, e.g., PICK, supra note 77, at 160.
War. Whatever the motivation, Hitler’s survival has become one of the “world’s most popular and treasured myths.”

A. The Bunker Suicides

The suicides of April 30, 1945 remain clouded by conflicting accounts from both witnesses and reporters. As one scholar articulated, “we know both too much and too little” about the day; a massive amount of evidence exists about the days and even hours surrounding Hitler’s death, but few facts have been uncovered regarding its actual occurrence and the cover-up that followed. The traditional account of Hitler’s suicide reports that Hitler, knowing that Berlin would soon fall completely into Russian hands, carefully planned his own death. Just after midnight on April 29, Hitler and Eva Braun were married. A few hours later, he wrote a new will that instructed that their bodies be burned after their deaths. He also designated Karl Doenitz as his successor. In the late afternoon on April 30, Eva swallowed a cyanide capsule. Hitler, it was reported, simultaneously swallowed a cyanide capsule and shot himself in the head. Shortly thereafter, their bodies were burned by loyal staff and buried just outside the bunker’s entrance.

B. The Legend Begins

The conflicting stories that were to emerge surrounding Hitler’s death began almost immediately. On the morning of May 1, Doenitz spoke through a Hamburg radio station and announced the Führer’s death. He stated that Hitler had fallen “that afternoon,” fighting “at the

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209 DONALD M. MCKALE, HITLER: THE SURVIVAL MYTH vii (1981); see also ANTON JOACHIMSTHALER, THE LAST DAYS OF HITLER: LEGEND, EVIDENCE AND TRUTH 7 (1995) (“[s]eldom before in history has the death of one man, who in his day dominated most of Europe, given rise to so many legends, lies, and half truths.”).  
210 MCKALE, supra note 209, at 199.  
211 Those in the bunker with him reported that on April 22nd, Hitler announced that “all is lost” and that he would remain in Berlin and commit suicide in the coming days. PETROVA & WATSON, supra note 201, at x, 21-44.  
212 Id. at x.  
213 Id.  
214 Id.  
215 Id. at 39.  
216 Id. at 56.  
217 Id. at x-xi.
head of his troops.”

Three days later, the Russian military countered this report, announcing that they had found the Berlin bunker and located Hitler’s remains; the body was paraded before the foreign media, but was later admitted to be a fraud. Eventually, the Russians admitted that they had located Hitler’s bones near the bunker; the next day, however, they held a conference claiming that no evidence of Hitler’s death existed and that the official opinion was that Hitler had survived. Stalin was almost assuredly behind this change, as he (at least publicly) appeared convinced of Hitler’s escape. Even General Eisenhower, when questioned, acknowledged that no one knew exactly what had happened to Hitler.

The political importance of identifying Hitler’s remains and ensuring his death was embraced by both Russian and American troops occupying Berlin at the war’s end. In the final days of World War II, carefully-balanced alliances quickly faded as the new Cold War division between democratic and communist countries took precedence. Both sides (Western Europe and America military investigators on the one side and Eastern Europe and Soviet investigators on the other) interrogated individuals who had been in the bunker with Hitler and attempted to piece together his final hours. At the same time, door-to-door searches within the city and surrounding areas were initiated to prevent his escape if Hitler had survived. No one wanted to risk that possibility.

But the legend of Hitler’s escape actually began even earlier. For months prior to the war’s end, media speculated that top Nazi leaders would feign suicide or use doppelgangers to evade capture. Nazi leaders used reports of Hitler’s survival to encourage continued support for their cause, alleging that Hitler would wait quietly in the wings like Napoleon, seeking the right moment for a bid to regain power. Some individuals believed that Hitler would return, pro-

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218 Id. at 13.
219 JOACHIMSTHALER, supra note 209, at 21.
220 McKALE, supra note 209, at 49-59; see also WERNER MASER, HITLER: LEGEND, MYTH, & REALITY 314 (Peter Ross & Betty Ross, trans., 1971).
221 JOACHIMSTHALER, supra note 209, at 22.
222 McKALE, supra note 209, at 65, 130-31.
223 See MASER, supra note 220, at 315-16.
224 See, e.g., PETROVA & WATSON, supra note 201, at 75.
225 McKALE, supra note 209, at 66-68.
226 Id. at 6, 11.
227 See JOACHIMSTHALER, supra note 209, at 29.
claiming a "fake resurrection" as soon as the world became convinced of his death.228

Hugh Trevor-Roper conducted the first official inquiry into Hitler's death in 1945.229 His book, The Last Days of Hitler, was first published two years later; seven subsequent editions have since been released using updated facts and analysis.230 He concluded that Hitler's death was a suicide and that there was no evidence supporting rumors of murder or survival.231 The primary problem with the first edition of his book was the final statement following Trevor-Roper's account of what had happened to Hitler's burned body: "these bones have never been found."229,232 For some, bones were deemed necessary to conclusively prove Hitler's suicide; their absence renewed skepticism of his death. Furthermore, the lack of physical evidence of his death drove many to doubt its occurrence; almost half of the individuals surveyed in a 1947 poll believed that Hitler was still alive.233

C. The Survival Myth

Accounts of Hitler's survival flourished immediately upon the first indications of his actual demise;234 reports of Hitler sightings tapered off over the years but persisted into the early 1990s.235 The capture and trial of Adolf Eichmann in the 1960s renewed interest in, and gave credibility to, the belief that Hitler could also have survived undetected in a remote corner of the globe.236 Popular books and magazines traced Hitler's whereabouts across the globe and intrigued readers with a host of plausible scenarios by which Hitler could have survived the war and evaded detection.237 The most popular methods of escape were airplane238 and submarine239 journeys to various exotic and not-

228 MCKALE, supra note 209, at 140.
229 PETROVA & WATSON, supra note 201, at 40-41.
230 Id. at 20; HUGH R. TREVOR-ROPER, THE LAST DAYS OF HITLER (7th ed. 2002).
231 PETROVA & WATSON, supra note 201, at 17, 20-21.
232 Id. at 41.
233 MCKALE, supra note 209, at 127.
234 JOACHIMSTHALER, supra note 209, at 21-34. See generally MCKALE, supra note 209 (tracing the evolution of the survival myth and its many variations).
235 PETROVA & WATSON, supra note 201, at 49.
236 See MCKALE, supra note 209, at 141.
237 Id. at 126.
238 Id. at 136-37.
239 JOACHIMSTHALER, supra note 209, at 26; MCKALE, supra note 209, at 32, 62-64.
so-exotic locales. Among the locations where Hitler was reported to be hiding, include:

- the Alps (living as a shepherd);\textsuperscript{240}
- Austria;\textsuperscript{241}
- Spain (Stalin suspected this getaway);\textsuperscript{242}
- Northern Italy (living as a hermit in a cave near Lake Garda\textsuperscript{243} or as a monk,\textsuperscript{244} depending on the version told);
- Evian, France (earning a living as a croupier at a casino);\textsuperscript{245}
- Denmark;\textsuperscript{246}
- Norway;\textsuperscript{247}
- Poland (as a member of the Polish Army);\textsuperscript{248}
- Moscow (protected as an advisor to Stalin);\textsuperscript{249}
- Japan;\textsuperscript{250}
- Tibet (living in a monastery);\textsuperscript{251}
- South America (in Argentina or Paraguay);\textsuperscript{252}
- the Antarctic.\textsuperscript{253}

In addition to the accounts of Hitler’s survival by fleeing Germany, other accounts held that Hitler was hiding somewhere within the country.\textsuperscript{254} Others held that Hitler had survived in Berlin for another year by hiding in a second bunker that had not been detected.\textsuperscript{255} Still more argued that while Hitler had not committed suicide, he had

\begin{footnotes}
\footnotetext[240]{JOACHIMSTHALER, supra note 209, at 25; PETROVA & WATSON, supra note 201, at 14.}
\footnotetext[241]{PETROVA & WATSON, supra note 201, at 15.}
\footnotetext[242]{JOACHIMSTHALER, supra note 209, at 23.}
\footnotetext[243]{PETROVA & WATSON, supra note 201, at 14.}
\footnotetext[244]{MCKALE, supra note 209, at 103.}
\footnotetext[245]{PETROVA & WATSON, supra note 201, at 14.}
\footnotetext[246]{MCKALE, supra note 209, at 136-37.}
\footnotetext[247]{Id.}
\footnotetext[248]{Id. at 103.}
\footnotetext[249]{Id. at 60.}
\footnotetext[250]{JOACHIMSTHALER, supra note 209, at 26.}
\footnotetext[251]{MCKALE, supra note 209, at 142.}
\footnotetext[252]{Id. at 62-64; PETROVA & WATSON, supra note 201, at 14.}
\footnotetext[253]{PETROVA & WATSON, supra note 201, at 126.}
\footnotetext[254]{It may not have been ridiculous to speculate that Hitler could have survived in the very territory that was now occupied by Allied forces. Adolf Eichmann, for example, had survived for several years in Germany and Austria before fleeing to South America. MALKIN & STEIN, supra note 81, at 73-77.}
\footnotetext[255]{MCKALE, supra note 209, at 131.}
\end{footnotes}
been wounded by the bombing of Berlin and died some months later.\textsuperscript{256}

Despite the implausibility of the foregoing theories, there remained a near universal belief that, if Hitler had indeed survived, Allied nations had a mandate to pursue him for as long as it took to capture and bring him to justice. An editorial in the Atlanta Constitution, for example, passionately articulated that Allies should “search [Hitler] out into the ends of the earth and see that he gets just punishment for his unprecedented crimes against humanity.”\textsuperscript{257} What that just punishment would entail ranged from a formal legal proceeding to far less due-process oriented torture schemes.\textsuperscript{258} There was a strong sense that Hitler’s suicide had deprived the world of its right to judge him face-to-face.\textsuperscript{259}

Myths and legends surrounding Hitler are not limited to his surviving the Berlin bunker. This legend is just one of many myths that followed Hitler’s demise, adding to the mystery of his persona. Other legends accepted the fact that Hitler had died, but attempted to explain—often with little supporting evidence—aspects of Hitler’s life that might provide insight into his conduct.\textsuperscript{260} While many of these texts proffer psychological or factual bases for their inquiries, multiple accounts simply draw on rumors to form the inspiration for completely fictional narratives of what “could have been.”

\section{Alternate History}

Alternate fictional histories have been developed for World War II, the Holocaust, Nazis, and Adolf Hitler.\textsuperscript{261} There are many explanations for the continued popularity of World War II,—its association

\begin{itemize}
\item \textsuperscript{256} Id.\textsuperscript{261}
\item \textsuperscript{257} Id. at 5.
\item \textsuperscript{258} See id. at 20, 24, 27.
\item \textsuperscript{259} See, e.g., id. at 9-10.
\item \textsuperscript{261} A recent search in WorldCat’s Books in Print Database returned 2,072 books containing one of these words, “Holocaust” (limiting it to Jewish, 1939-1945), “Nazi,” “World War, 1939-1945” or “Hitler, Adolf,” in its title that have been published since 2001.
\end{itemize}
with pure evil intriguing even the purest of hearts, its relative recent occurrence within history, its entertainment value, as well as its educational value. In the final analysis, however, Hitler and the Holocaust remain profitable subjects for publishers. These fictional histories provide a glimpse of the types of punishment people believe perpetrators of Nazi war crimes deserve and the motives of Nazi-hunters for pursuing them.

Some fiction is more closely linked to the truth than other fictional works. When writing The Odessa File, for example, Frederick Forsyth turned to Simon Wiesenthal for assistance. The book was extremely successful, but its greatest triumph was that it indirectly led to the exposure and death of its anti-hero, real-life Nazi war criminal Eduard Roschmann. In contrast, in The Boys from Brazil, author Ira Levin envisions a world in which the infamous Nazi medical experimenter Joseph Mengele resides in Latin America, creating exact genetic clones of Adolf Hitler. Mengele taunts the Nazi hunter who has pursued him, proclaiming, "[t]he boys are exact genetic duplicates of him . . . conceived in my laboratory . . . . [T]hey’re pure Hitler, bred entirely from his cells." Books of this genre of dystopian fiction either portray Hitler restored or create the emergence of a Fourth Reich to carry on his legacy.

Another collection of alternative histories draws inspiration in both the survival myth and the fates of other Nazi war criminals, depicting Hitler’s successful escape after the war, and concluding with his eventual capture and trial. One of the first novellas to depict an international tribunal was a pro-Nazi publication released in 1954. The

262 See, e.g., MCKALE, supra note 209, at 199.
263 PICK, supra note 77, at 217-21.
264 Roschmann fled Argentina after being detained by authorities, who released him only upon his promise not to return to the country (Argentinean officials denied his presence in the country when Germany attempted to extradite him around this same period). He arrived safely in Paraguay, only to die a few weeks later of a heart attack. WIESENTHAL, supra note 76, at 96-102.
266 Id. at 270-71.
268 MCKALE, supra note 209, at 144-43.
story depicts a fictional trial for war crimes, but ends with Hitler’s acquittal.269 Three books written in the past thirty years illuminate this approach from a more plausible perspective; they are: The Trial of Adolf Hitler by Philippe van Rjndt,270 The Portage to San Cristóbal of A.H. by George Steiner,271 and Operation Lucifer: The Chase, Capture & Trial of Adolf Hitler by David B. Charnay.272 In each of these portrayals, Hitler is defiant to the end, refusing to accept responsibility for his actions. Yet, unlike those who served under him in the Third Reich and were tried, he cannot attempt to blame the chain of command for his actions, nor can he deny the scope of the crimes in which his authority is implicated. At long last, even if only in fiction, the international community brings the Devil himself to account for the atrocities he instigated.

1. Philippe van Rjndt’s The Trial of Adolf Hitler

In this account, first published in 1978, Adolf Hitler turns himself over to the Bavarian Public Prosecutor twenty-five years to the day after his supposed suicide.273 The book’s plot centers on an eighty-one year old Hitler, who is “no longer in the best of health,” but wishes for the opportunity to prove his innocence prior to his actual demise.274 The story posits that in 1945, Hitler attempted to commit suicide, but survived and escaped to Bavaria with the assistance of those loyal to him.275 Another officer was killed, his body burned and placed next to Eva Braun’s for the world to discover.276

Following his surrender, the United Nations tries Hitler for crimes of aggression, crimes against humanity, and violations of the laws and customs of war.277 The evidence against Hitler is overwhelming, yet many countries appear sympathetic, some even supportive of the aging Führer.278 Like many war criminals, Hitler lived the intervening years

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269 Id.
272 CHARNAY, supra note 5.
273 Id. at 101-03.
274 Id. at 151.
275 Id. at 29-45.
276 Id. at 31.
277 Id. at 168, 201.
278 Id. at 226.
as a peaceful and "exemplary citizen" of his community, as his neighbors testify in his defense.

The deliberation amongst the judges focuses not on the determination of guilt, but rather on what sentence to impose and the need to avoid the appearance of evading their duty to deliberate over the charges. One justice argues that retribution, while not a wrong impetus, should not be the justification for the Tribunal's verdict. Another argues that any attempt to apply a retributive theory would fail given the "immensity of [Hitler's] evil;" thus, the Tribunal "cannot apply ordinary rules and precedents to this case." Rather than being proportional punishment, the sentence must be the "ultimate expression of [the world's] ability to distinguish good from evil and to act accordingly." On this basis, Hitler is declared guilty of all charges and sentenced to death. While Israel is given the privilege of carrying out the execution, it is done on a remote island, rather than on Israeli soil.

2. George Steiner's The Portage to San Cristóbal of A.H.

Set in 1977, this narrative chronicles the sojourn of Nazi-hunters who locate and capture Hitler in a remote part of Brazil. They transport Hitler to San Cristóbal where a helicopter will pick them up and bring Hitler to Israel for a public trial. Hitler is eighty-eight years old and described as a decrepit old man suffering from malaria; he is a mere shadow of the memory imprinted on his captors' minds.

The journey is arduous, and the Israeli agents fear that Hitler will not survive the journey out of the jungle. Moreover, they recognize that the announcement of Hitler's discovery and arrest will activate an unparalleled flood of media attention dwarfing even the Eichmann ordeal. The captors decide to try Hitler themselves to ensure that

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279 Id. at 283.
280 Id.
281 Id. at 303-322.
282 Id. at 311.
283 Id. at 317.
284 Id. at 318.
285 Id. at 320-21.
286 Id. at 321, 323-24, 327, 333-34.
287 STEINER, supra note 271, at 19-27.
288 Id. at 92.
289 See id. at 27, 133.
290 Id. at 139-43, 152-54.
justice is served before the Führer's death.\textsuperscript{291} One of them is appointed to serve as judge, another as prosecutor, and a third as defense counsel.\textsuperscript{292} Without an international audience, only the reader is left to cross-examine and judge Hitler as he takes the stand in his own defense.\textsuperscript{293} As Hitler finishes speaking, the participants hear the roar of helicopters hovering over them to rescue all of them from the jungle, bringing this saga to an abrupt end.\textsuperscript{294}

3. David B. Charnay's \textit{Operation Lucifer: The Chase, Capture & Trial of Adolf Hitler}

The story presented in \textit{Operation Lucifer} imagines that Hitler survived the war by escaping to Sweden and that the events of the Berlin bunker—his marriage to Eva, statements to loyal aides, and the drafting of his will—were all staged to assist in his flight.\textsuperscript{295} Eva Braun and another Nazi official were killed in order to deceive the world regarding the Führer's demise.\textsuperscript{296} After undergoing plastic surgery, the Führer assumed the identity of a wealthy Jewish businessman.\textsuperscript{297} Israeli Nazi-hunters are the first to suspect the true identity of this man, and with the support of American, British and French intelligence, he is apprehended in Cuba in 1952, when the atrocity of World War II is still fresh.\textsuperscript{298}

Hitler is brought before an American Tribunal and charged with the same charges facing Nazi leaders at Nuremberg—crimes against peace, war crimes, and crimes against humanity.\textsuperscript{299} Martin Bormann, whose capture and confessions led to Hitler's own arrest,\textsuperscript{300} provided crucial inside testimony at the trial,\textsuperscript{301} but the focal point of the proceedings were Nazi documents and films\textsuperscript{302} emotionally punctuated by the powerful testimony of Holocaust survivors.\textsuperscript{303} The Tribunal finds

\textsuperscript{291} \textit{Id.} at 159-60.
\textsuperscript{292} \textit{Id.} at 160.
\textsuperscript{293} \textit{Id.} at 160-70.
\textsuperscript{294} \textit{Id.} at 170.
\textsuperscript{295} CHARNAY, supra note 5, at 214-15.
\textsuperscript{296} \textit{Id.}
\textsuperscript{297} \textit{Id.} at 13, 16, 215.
\textsuperscript{298} \textit{Id.} at 16, 125, 184-85.
\textsuperscript{299} \textit{Id.} at 467, 468.
\textsuperscript{300} See, e.g., \textit{id.} at 142, 148, 154.
\textsuperscript{301} \textit{Id.} at 662-63, 708.
\textsuperscript{302} \textit{Id.} at 670-71, 676.
\textsuperscript{303} See, e.g., \textit{id.} at 542-44.
Hitler guilty on all counts, and he is sentenced to death by hanging until he is "pronounced dead and returned to [his] abode in hell."\textsuperscript{304}

\textit{E. What Really Happened . . . We Think}

In the decades following World War II, a number of accounts detailing Hitler’s death emerged in both the Soviet Union and the West. These accounts each failed to put an end to the rumors because they contained scientific discrepancies (none of which could be proven at that time), conflicting testimony, and the proponents’ own skepticism of their findings.\textsuperscript{305} Similarly, strong political motives on both sides of the Cold War led to accusations of conspiracy and withholding of information.\textsuperscript{306} In the early 1970s, one of the key witnesses to the events in the bunker, Erich Kempka, confessed that "in 1945, to save my own skin, I told American and British interrogators just about anything or everything they wanted to hear. Since they kept grilling me about that shot, I finally told them that I had heard it. It seemed to make things easier."\textsuperscript{307} The truth of the events in the bunker appeared farther from being resolved than ever.

Not until the fall of the Soviet Union, with the declassification of both Soviet and American intelligence reports, did pieces of the puzzle begin to fit together. The exact chain of events will probably never be known. The key to the puzzle, however, was the 1993 Soviet revelation that the Soviets had indeed found Hitler and Eva Braun’s bones in 1945.\textsuperscript{308} It was confirmed using dental records, but at Stalin’s order, the discovery remained a secret.\textsuperscript{309} Forensics experts determined that the cause of death was simultaneous suicide by swallowing a cyanide capsule and a single shot to the head.\textsuperscript{310} Most of the remains were reburied in Magdeburg, East Germany, but the skull and teeth were kept in Soviet archives.\textsuperscript{311} Fearing that the bones would be discovered, they

\textsuperscript{304} Id. at 712.
\textsuperscript{305} Hugh Thomas, \textit{The Murder of Adolf Hitler} 123 (1995); see, e.g., Petrova \& Watson, \textit{supra} note 201, at 91-93.
\textsuperscript{306} Petrova \& Watson, \textit{supra} note 201, at 43-44.
\textsuperscript{307} Id. at 110.
\textsuperscript{309} See Franchetti, \textit{supra} note 308, at 29; Reynolds, \textit{supra} note 308, at A1.
\textsuperscript{310} See Franchetti, \textit{supra} note 308, at 29; Reynolds, \textit{supra} note 308, at A1.
\textsuperscript{311} See Franchetti, \textit{supra} note 308, at 29; Reynolds, \textit{supra} note 308, at A1.
were uncovered, burned, and the ashes scattered in the Spring of 1970.\textsuperscript{312}

For most experts, the revelations from the Soviet archives finally put to rest any lingering doubts regarding Hitler’s death by suicide in 1945. Others, however, remain skeptical of the proof offered by the Soviet reports, arguing that there yet remained motive to lie about past conduct of the Soviet military and officials. A few, including forensics expert Hugh Thomas, believe that Hitler did die that day in 1945, but his death was not a suicide.\textsuperscript{313} Thomas has written extensively arguing that not only was Hitler too cowardly to commit suicide, but that his SS guard, Linge, murdered Hitler.\textsuperscript{314} He also claims that Eva Braun escaped from the bunker and that the body claimed to be hers was actually an unidentified Berlin woman.\textsuperscript{315}

Therefore, it appears that the final judgment of Hitler sought by the international community did not come in this life. Nevertheless, much is to be learned from the literature and legend of Hitler for today’s and tomorrow’s villains in developing the proper theory of punishment for the world’s worst criminals.

IV. A THEORY OF PUNISHMENT FOR THE PROSECUTION OF THE WORLD’S WORST WAR CRIMINALS

This section explores retributive and utilitarian theories of punishment, analyzes how these theories affected the punishment of Nazi war criminals and proposes that the retributive model is the only sound justification for the future.

The traditional motive for punishing criminal conduct has been a retributive model. That is, when individuals act contrary to the law, such acts necessitate particular penalties regardless of motives, incentives, or other extraneous factors. This model focuses on the past conduct of the criminal and the injury caused, and insists that the injury calls for payment.\textsuperscript{316} The utilitarian theory of punishment, which has garnered much popularity in the past several decades, imposes punishment only when and to the extent necessary to deter or rehabilitate

\textsuperscript{312} See Franchetti, \textit{supra} note 308, at 29; Reynolds, \textit{supra} note 308, at A1.
\textsuperscript{313} See generality THOMAS, \textit{supra} note 305.
\textsuperscript{314} \textit{Id.} at 185-88.
\textsuperscript{315} See generality \textit{id.} at 187-188.
the offender.\textsuperscript{317} In this model, the focal point is the criminal himself and what is necessary to preserve social order. In seeking to deter future criminal behavior, the utilitarian can direct punishment toward stopping a particular defendant from repeating his action (specific deterrence), or toward deterring other individuals from engaging in similar atrocities (general deterrence).

Some suggest that these models can be mixed, but others advocate their complete distinctiveness in theory, even if one approach has the unintended effect of achieving the other theory's purpose.\textsuperscript{318} The retributive and utilitarian models have both served as important models for the prosecution of Nazi war criminals. In the end, however, only the retributive model satisfactorily explains and justifies the ongoing pursuit of these individuals.

\textit{A. Nuremberg and the Subsequent Trials Immediately Following the War}

As is evident from an examination of the Nuremberg and subsequent trials of Nazi war criminals, a host of motivations spurred the prosecution of these defendants. Both the retributive and utilitarian theories assist in explaining how the trials progressed. Drawing from the retributive model’s focus on the individual conduct involved, the post-war community sought to avoid the expression of collective guilt that had prevailed following World War I. Instead, the trials attempted to link specific criminal conduct to each defendant, thereby enacting proportional punishment according to individual culpability.\textsuperscript{319} Thus, the need to \textit{enact justice} on a broad schematic level—and as an end in itself—provided a primary impetus for punishing Nazi war criminals. The individuals who had incited, planned, or implemented the horrors of the Holocaust would not be allowed to go unpunished.

Yet retribution also stayed the impulse within some Allied leaders, victims, and other witnesses who may have felt the need to enact private vengeance on Nazi criminals who otherwise would have gone free. Retributive justice, then, serves as an active condemnation of criminal conduct and a defense against unlawful means of seeking

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\item[317] See generally Utilitarianism, in Foundations of Criminal Law, supra note 316, 69-78.
\item[318] See generally Attempts to Integrate the Divergent Theories of Punishment, in Foundations of Criminal Law, supra note 316, at 112-20.
\item[319] The issue of collective guilt did haunt the Nuremberg trials. Compared to the sentiment following World War I, however, an attempt was made to distinguish between German conduct and individual culpability.
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justice. At the same time, however, Allied leaders recognized the need to deter Nazis who had escaped capture from attempting to regain control immediately or to plot a return to power at some later point in time, refusing to accept that their tyranny was at an end and that they, or their cause, could prevail over justice.

By trying individuals before an adversarial proceeding on an international scale, the rule of law prevailed over rampant evil. This legacy not only established a precedent for future violators, but also served as a warning to others who might have similar plans of aggression and are willing to sacrifice other humans for their own cause or power. Unfortunately, the legacy of Nuremberg has not proved to deter future transgressors, but it did impede an immediate resurgence of Axis power in the occupied territories. Nevertheless, in trying today’s worst tyrants, the retributive model should dominate their trials because it requires that the penalty shall be paid for the wrong, which further requires that we pursue perpetrators. Yet, guilt and sentencing should be apportioned according to the wrong, which necessitates rigid adherence to the rule of law and procedural safeguards.

B. When the Threat Passed: Justifying the Continued Pursuit

As public support for trials against war criminals lessened, so, too, did the prosecution’s belief that pursuing new cases was necessary. Many leaders felt that, since the immediate threat posed by Nazi war criminals had passed, the trials no longer had a legitimate deterrent effect and should therefore be abandoned. As the years turned to decades, many individuals could not understand the efforts of those who continued to pursue Nazi war criminals. Once criminals were located, what justified their continued prosecution? What purpose was served by revoking the citizenship of an eighty-two year old man like John Demjanjuk?

For those individuals who devoted their lives to the quest of Nazi hunting, the answer was simple. As Simon Wiesenthal articulated: “The thought that a mass murderer simply lives on after the war, that he grows old and eventually passes away peacefully, is intolerable . . . . [T]hey must suffer their just punishment, then they can be allowed to

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320 See, e.g., Lippman, Nazi War Criminals, supra note 9, at 22.

321 See, e.g., Caniglia, supra note 181; CNN News Report, supra note 182 (where the neighbor of a Nazi war criminal arrested in 2003 is quoted, “I kind of feel sorry for the guy myself.”).

322 See supra notes 171, 67 and accompanying text.
die."

Another proponent stated that "we are not placing people on trial as a symbolic gesture, or to serve some larger purpose of conscience. We are putting them on trial because they broke the law." Their motivation is the age-old principle of justice: that when an individual harms another individual, he or she must be held accountable.

In the years following World War II, the notion of retributive justice as a primary purpose of punishment fell into disfavor amongst academics and average citizens alike. There are many reasons for this phenomenon, but one of the most readily apparent is the improper association of retribution with vengeance. Many believe that the retributivist *eye for an eye* principle of deserved and proportional punishment necessarily implies vigilantism, lack of due process, or pure revenge apart from genuine justice. Instead, as mentioned above, some scholars believe that continued pursuit is justified only so long as it serves an important social objective and associates the passage of time as an appropriate mitigating factor weighing against the pursuit and prosecution of Nazi war criminals.

Under the utilitarian principles of specific deterrence or rehabilitation, there is at best a negligible social benefit to punishing Nazi war criminals. These individuals overwhelmingly led peaceful and law-abiding lives following the war. They do not constitute a continued active threat to anyone. At this late point in time, most of them are aged and in failing health; many who have been prosecuted die within a few years of sentencing. The need to deter them from future criminal conduct is moot; similarly, their reintegration into societies across the globe has itself indicated that their external conduct has at least been rehabilitated. The more worrisome trait is that most of these perpetrators, once captured and put on trial, argue that their conduct was not criminal.

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323 WIESENTHAL, supra note 76, at 104.
324 RYAN, supra note 76, at 335.
325 See, e.g., MALKIN & STEIN, supra note 81, at 255.
326 See Lippman, Nazi War Criminals, supra note 9, at 33.
327 See generally RYAN, supra note 76, at 268-70. Even the title of Ryan’s book, Quiet Neighbors, reveals the problems in identifying Nazi war criminals: they fled to America or other countries and blended in with other immigrants of the same period, who were often their victims. Id.
328 See WIESENTHAL, supra note 76, at 78-79; see also Bard, supra note 24, at 21.
329 See, e.g., ZUROFF, supra note 82, at 147; Lippman, Nazi War Criminals, supra note 9, at 7.
330 See, e.g., WIESENTHAL, supra note 76, at 78.
As a general deterrent, the failure to pursue with greater vigor Nazi war criminals in the early years following the war impeded any deterrent that Nuremberg or the other prosecutions might have had. Too many Nazis—and too many current violators of human rights—have gone unpunished to make the paltry numbers who are brought to justice an effective deterrent for future violators. Although it may be argued that the continued pursuit, even decades after the crime, may prove to be a deterrent to some would-be violators, the likelihood of prosecution remains so low that this is not a strong enough factor to, in itself, justify the continued pursuit and punishment of Nazi war crimes. The arguments against prosecution at this late date are numerous and persuasive without a proper understanding of retribution as the preferable and appropriate theory of punishment.

Retribution provides significant legal protections to Nazi war criminals, and yet it recognizes the moral basis that must guide individuals continuing the pursuit of Nazi war criminals. First, only a genuine authority (i.e., governments rather than individuals) can impose retribution. Therefore, retribution necessitates the active role of legal institutions in the imposition of a penalty. Similarly, since retribution mandates that individuals be punished for their actions, rather than collective responsibility or some greater government objective, actual and individual retribution is the end sought, rather than mass vengeance as feared by skeptics.

Recall the account of Demjanjuk’s mistaken identity case. Under the utilitarian theory, wrongful sentence would have been justifiable since he did something wrong and, though he would pay a greater penalty than called for by his crimes, such penalty would serve to deter others and satisfy the overall social good. This ambivalence of the U.S. Government and the prosecution to consider evidence of his innocence seems to indicate that they believed his wrongful sentence was justified in such a way. A retributive model would not support such a result. Although he was guilty of war crimes, he was not guilty of the specific crimes for which he was wrongly charged. A retributive view maintains that he should be punished, but only for the crimes that

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331 See Bard, supra note 24, at 12-13.
332 For Wiesenthal, “the decisive victory... was in the victim’s readiness to transfer his need for retribution to society, to subject it to certain rules—the rules of establishing the truth by courts of law—and to respect their punishment absolutely.” WIESENTHAL, supra note 76, at 14; see also ZUROFF, supra note 82, at 202 (analogy: the hunt for Nazi war criminals to the same feelings an individual would feel when his or her parents or children were killed, with the criminal still being sought and prosecuted forty years later).
he committed because the injury dictates the degree of individualized, proportional punishment - not a generalized sense that he is guilty. It is apparent that this is a fair and just result.

A retributive theory also acknowledges that the mere passage of time is inconsequential to an individual's culpability for certain actions. As such, the ongoing search for violators and their prosecution, even after fifty years, is not only permissible, but is required. Indeed, if we do not press on to bring justice for the atrocities of World War II, it is much less likely that today's villains in hiding will come to justice. Failing to understand this principle—the importance of punishing past conduct for its own sake—was one of many misunderstandings made by Adolf Eichmann during his trial. Eichmann believed that his conduct was morally justifiable because he simply obeyed orders.333 At one point during cross-examination, Eichmann suggested that while "the extermination of the Jews [was] one of the worst crimes in the history of mankind," he did not deserve to be punished because "what's done is done, and we must now do everything in our power to prevent it [from] happening again."

Eichmann may have believed that this is what the prosecution or public wanted to hear, but his words reflected the ultimate ends of utilitarian-based punishment. There is no excuse for ignoring the atrocities of the past simply because new threats exist or public interest wanes.

Although retribution is necessary to develop an adequate theory for punishing the world's worst international offenders, it is inadequate as the sole standard for punishment. There are certain shortcomings implicit in applying any one theory to punish mass atrocities on an international scale. Too often, the punishment enacted against the greatest of offenders can never come close to being genuinely proportional to their crimes. After one Nazi leader's conviction, Simon Wiesenthal stated that the leader's punishment "was purely symbolic. No punishment could be equated with the enormity of the crime."335

Hannah Arendt echoed these thoughts, stating:

[i]he Nazi crimes . . . explode the limits of the law . . . . [F]or these crimes, no punishment is severe enough. It may be well to hang Göring, [sic] but it is totally inadequate . . . . [T]his

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333 See WIESENTHAL, supra note 76, at 79.
334 Id. (quoting Eichmann's testimony during his trial); see also RYAN, supra note 76, at 338.
guilt, in contrast to all criminal guilt, oversteps and shatters any and all legal systems . . . We are simply not equipped to deal . . . with a guilt that is beyond crime.336

Thus, although retribution does not actually do justice, it best approximates justice. Each conviction is an additional opportunity for oppressors to face judicial consequences for their crimes.337 A retributive theory serves to confine culpability to personal conduct, rather than basing punishment on a collective sense of guilt or, on the other hand, the belief that no punishment is necessary based on conduct after the crime or passage of time.338 Retribution, then, plays a significant role in bringing Nazi war criminals to justice, although it falls short of the pure eye for an eye standard traditionally associated with it. Even so, it provides a gauge from which to determine the appropriateness of prosecution and an incentive to hold individuals accountable for their conduct whenever the opportunity presents itself.

V. CONCLUSION

This year will mark sixty years since Germany surrendered, and war criminals who escaped justice in this life will soon face the ultimate judgment before their Creator. Yet, in the time since Hitler’s fall from power, the world has only strengthened its collective fascination with the evil that he and his regime represented. At times, it has appeared as if the popular culture is more concerned with tracing alternative histories than seeking justice from all those involved in the atrocities of World War II.

In the end, the Nazi-hunters achieved several milestone successes—the Nuremberg trials, the Eichmann trial, the subsequent arrests and trials of a few key Nazi officials, and discovering the truth surrounding Hitler’s demise. War criminals who remained free tried to forget the past and create a new life. Many were apparently successful (whatever internal condemnation these individuals may have endured

337 See, e.g., WIESENTHAL, supra note 76, at 13. Wiesenthal concluded, “I could restore the balance only by ensuring that the dead received justice.” Id. at 30. After Stangl’s conviction, Wiesenthal stated that the judgment would in no way be proportional to the defendant’s guilt. Nonetheless, he reflected, “if I have done nothing else in my life but bring this wicked man to trial, I will not have lived in vain.” PICK, supra note 77, at 185.
338 See RYAN, supra note 76, at 335-44.
lies beyond the scope of an article focusing on government-imposed justice); but due to the efforts of men such as Simon Wiesenthal, their crimes have never been forgotten.

Thus, the quest for justice is not over for Nazi war criminals and is just beginning for today’s terrorists. Because of the gravity of the crimes and the belief that such conduct mandates a just punishment, the search for those who remain dare not end until the last lead has been investigated. A retributive theory of punishment provides the appropriate incentive and standard for pursuing and prosecuting international criminals. For without the prosecution of those individuals who have egregiously violated basic legal principles, the foundational concept of the rule of law—that is, understanding that individual and government conduct is bound by more than mere whim or momentary \textit{zeitgeist}—fades into oblivion.