

The background of the cover is a solid light yellow color. Scattered across the cover are several stylized, light green leaf motifs. Each motif consists of a short horizontal stem with two leaves pointing upwards and outwards at an angle. These motifs are positioned at various heights and horizontal locations, creating a subtle, organic pattern.

# Americans, Germans, and War Crimes Justice

---

Law, Memory, and “The Good War”

James J. Weingartner

 **Greenwood**  
PUBLISHING GROUP

# Americans, Germans, and War Crimes Justice

---



# Americans, Germans, and War Crimes Justice

---

Law, Memory, and  
“The Good War”

James J. Weingartner



AN IMPRINT OF ABC-CLIO, LLC  
Santa Barbara, California • Denver, Colorado • Oxford, England

Copyright 2011 by James J. Weingartner

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, except for the inclusion of brief quotations in a review, without prior permission in writing from the publisher.

### Library of Congress Cataloging-in-Publication Data

Weingartner, James J., 1940–

Americans, Germans, and war crimes justice : law, memory, and “the good war” / James J. Weingartner.

p. cm.

Includes bibliographical references and index.

ISBN 978-0-313-38192-8 (alk. paper) — ISBN 978-0-313-38193-5 (ebook)

1. World War, 1939–1945—Atrocities. 2. World War, 1939–1945—Atrocities—Germany—Borkum. 3. World War, 1939–1945—Atrocities—Germany—Voerde (North Rhine-Westphalia) 4. War crimes—Germany—Borkum. 5. War crimes—Germany—Voerde (North Rhine-Westphalia) 6. Prisoners of war—Crimes against—Germany. 7. Prisoners of war—Crimes against—United States. 8. War crime trials—Germany. 9. World War, 1939–1945—Moral and ethical aspects. I. Title.

D803.W44 2011

341.6'90268—dc22 2010052047

ISBN: 978-0-313-38192-8

EISBN: 978-0-313-38193-5

15 14 13 12 11 1 2 3 4 5

This book is also available on the World Wide Web as an eBook.

Visit [www.abc-clio.com](http://www.abc-clio.com) for details.

Praeger

An Imprint of ABC-CLIO, LLC

ABC-CLIO, LLC

130 Cremona Drive, P.O. Box 1911

Santa Barbara, California 93116-1911

This book is printed on acid-free paper ∞

Manufactured in the United States of America

# Contents

|                                 |     |
|---------------------------------|-----|
| Introduction                    | vii |
| 1 War Crimes and the Law of War | 1   |
| 2 Building a Case               | 29  |
| 3 A Town Brought to Trial       | 49  |
| 4 “Worms on the Ground”         | 71  |
| 5 Divided Counsel               | 85  |
| 6 Fed to the Lions              | 117 |
| 7 Germans as Victims            | 135 |
| 8 Posttrial Drama               | 163 |
| 9 Two Kinds of Justice?         | 183 |
| 10 Memory                       | 193 |
| 11 August 4, 2003               | 203 |
| Epilogue                        | 211 |
| Bibliography                    | 217 |
| Index                           | 225 |



# Introduction

In December 2009, an op-ed piece entitled “The Real Rules of War” appeared in the *Wall Street Journal*. It is a commentary on war crimes and the rules that seek to limit the savagery that is a common and perhaps inevitable part of armed conflict. Laws governing behavior in war are well and good, the author argues, but only so long as both sides respect them, a rare occurrence. And he suggests that the law of war is problematic in a more general sense. It applies the behavioral standards of civilian society to soldiers who are exposed to stresses that civilians who have never experienced combat can scarcely imagine. Although the author declares the rules of war to be “important,” his primary message seems to be that efforts to govern the behavior of soldiers in battle are often impractical.

The essay appears to have been inspired by recent American experiences in Iraq, including cases of allegedly illegal conduct by U.S. forces. Ahmed Hashim Abed was beaten by Navy SEALs who captured him, but, after all, he was the mastermind of the brutal murders of four civilian contractors in Fallujah. Although they violated the rules, do the Americans who beat him deserve to be punished? The three SEALs accused of the violations have since been acquitted by military courts. But most of the historical evidence that the author uses to flesh out his argument is drawn from the experience of World War II. U.S. troops murdered German soldiers who had surrendered during the Battle of the Bulge, the author concedes, but Germans had murdered American prisoners earlier in the battle. Surrendered SS men were massacred by American forces at the Dachau concentration camp, but “the obscene



horror of the Nazis" was in full evidence all around them.<sup>1</sup> Should soldiers abide by the international law of war when their adversaries do not? Unfortunately, American (and all other) soldiers in World War II did not always need the provocation of enemy atrocities to commit their own, a point that the author does not address.

The essay sparked spirited reaction from readers. Some of these were published in a column provocatively entitled "Do the Realities of War Turn Warriors into Criminals?"<sup>2</sup> The essay and the responses to it indicate that the depressing history of war crimes and their punishment in World War II remains relevant to the contemporary world, fraught as it is once again with armed conflict and controversy surrounding the bringing of suspected war criminals to justice. This book is offered as a contribution to a better understanding of that history, which may be more complex than the author of the essay realizes.

What follows is a story of crime and punishment. The perpetrators and victims are soldiers and civilians who were caught up in modern history's most devastating war. Literature on war crimes committed during World War II and the trials that some of them occasioned is plentiful, but this book is different. The Holocaust, that most horrendous of crimes associated with the Second World War II and the focus of most war-crimes literature, is mentioned only in passing and the "rape of Nanking" and the Katyn Forest massacre not at all. The atrocities that form the focus of this book each cost the lives of only a handful of victims, far fewer than the notorious Bataan "Death March" or the "Malmédy massacre." It is safe to say that they are unknown to the great majority of professional historians working in this period and to most if any of that vast throng of World War II enthusiasts. Yet, the legal and moral issues raised by these crimes and, in particular, by their judicial processing far transcend the very limited scope of the atrocities themselves.

This book is different in another way. Unlike almost all literature dealing with World War II war crimes, it concerns in part atrocities perpetrated by American soldiers. Those crimes and the way in which the U.S. Army regarded them will be compared with the character and legal treatment of *similar* crimes committed by Germans. "Similar" is a critical qualifier that must be emphasized. In no way should this book be interpreted to suggest even approximate moral equivalence between the wartime records of the United States and Nazi Germany. The Holocaust, German genocidal war against the Soviet Union, and murderously brutal German occupation policies that afflicted much

of Europe during the dark period between September 1939 and May 1945 have no counterparts in the conduct of U.S. forces during World War II.<sup>3</sup>

But all countries that participated in World War II committed war crimes, and to this generalization the United States is no exception. This may be difficult to reconcile with the mythologized and celebratory image of the U.S. war effort to which all Americans have been long exposed. Paul Fussell, once a young platoon leader with the U.S. 103rd Infantry Division in France who had experienced the “Real War,” has written that “For the past fifty years [he was writing in the late 1980s] the Allied war has been sanitized and romanticized almost beyond recognition by the sentimental, the loony patriotic, the ignorant, and the bloodthirsty.”<sup>4</sup> But, in the immediate aftermath of the war, perhaps before memory had congealed into patriotic myth, it was possible to read in a mass-circulation middlebrow American magazine such as the *Atlantic Monthly* a bitter article written by Edgar L. Jones, an American ambulance driver and war correspondent. Jones mused:

What kind of a war do civilians suppose we fought, anyway? We shot prisoners in cold blood, wiped out hospitals, strafed lifeboats, killed or mistreated enemy civilians, finished off the enemy wounded, tossed the dying into a hole with the dead, and in the Pacific boiled the flesh off enemy skulls to make table ornaments for sweethearts or carved their bones into letter openers. . . . As victors we are privileged to try our defeated opponents for their crimes against humanity, but we should be realistic enough to appreciate that if we were on trial for breaking international law, we should be found guilty on a dozen counts.<sup>5</sup>

In fact, Americans *were* sometimes tried for war crimes. Some U.S. airmen, including eight captured members of the Doolittle raid of April 1942, were tried by the Japanese for alleged attacks on civilians in trials that, by Anglo-American standards, were travesties on justice, and some defendants were executed.<sup>6</sup> But this book concerns trials of a different sort. As is generally known, the U.S. Army conducted hundreds of war-crimes trials of Germans, both military and civilian, between 1945 and 1947, involving more than 1,600 defendants. What is less widely known is that the Army also occasionally tried its own members for atrocities committed in the course of the war, and some of

these atrocities were similar in scope and character to crimes for which the Army tried and punished its enemies.

This book has as its primary focus two such war crimes and the trials that resulted from them. The defendants in one were German and in the other, American. Both were conducted by the U.S. Army in the months immediately following the end of the war in Europe, and one case would unexpectedly impinge upon the other. But did the Army approach the two cases in the same way? Was the evidence required to bring defendants to trial in the two cases of approximately equal weight? Were the two trials conducted according to similar procedural standards, and were verdicts and punishments based on equally rigorous standards of judgment? In other words, did the U.S. Army mete out equal justice in their trials of these men, American and German? These questions can be answered only by a careful examination of the two crimes and of the trials that resulted from them.

The answers to these questions have important implications that go beyond the assessment of two criminal cases. By means of war-crimes trials, the United States intended not only to punish Germans for their offenses, the worst of which beggared (and continue to beggar) the imagination, but also to educate the German people as to the criminal nature of the regime that most of them had supported or at least tolerated. It was also hoped that an example of fair trials conducted for the vanquished by the victors would help convince Germans of the virtues of a democratic society based on respect for law.<sup>7</sup> But, if the victors were unwilling to apply the same standards of judgment for war crimes to themselves, the educational value of the trials would be seriously diminished. Sixty years later, the announced intention of the U.S. government to try accused terrorists before military commissions in the absence of some of the legal protections ensured to American citizens, including American soldiers tried by court-martial, has sparked vigorous debate.<sup>8</sup> The appearance of hypocrisy and the application of a double standard in the matter of judging wartime atrocities were as potentially damaging to a nation's moral standing in 1946 as they are today.

A number of people made contributions to the completion of this book. Robin Smith, historian of the 486th Bombardment Group, provided valuable documents and photographs relevant to B-17 #909 and its crew and to the dedication of the memorial to them on Borkum. For his assistance and for his unfailing interest in this project, he has my gratitude. Linda J. Erickson of the U.S. Army Judiciary supplied vital

court-martial documents generated by the Voerde atrocities, and Carol Martin and Randy Sowell of the Harry S. Truman Library located correspondence related to the Schneeweiss case. Michelle Romero of the Snell Library at Northeastern University provided permission to use material from the papers of Edward F. Lyons Jr. To Jens Westemeier go my thanks for a stimulating exchange of views on the subject of war crimes and, in particular, for valuable insights on the contemporary German perspective on that subject. Riccardo Giannola provided me with his father's account of the massacre of Italian prisoners on Sicily, while Danny S. Parker shared with me important documentary material from his own research. I thank *The Atlantic Monthly* for permission to quote from Edgar L. Jones's "One War Is Enough." Quentin F. Ingerson kindly gave permission to use his photograph of the crew of B-17 #909, of which he had been a member. Praeger's Michael Millman proved a supportive editor and thanks are due to Apex for their perceptive copyediting.

Finally, I am deeply grateful to my wife, Jane Vahle Weingartner, for her invaluable assistance as literary critic, grammarian, and word processing expert and for her patience with a sometimes ill-tempered and preoccupied husband. Of course, any errors of fact or interpretation are solely my responsibility.

James J. Weingartner  
Edwardsville, Illinois  
April 21, 2010

## NOTES

1. Warren Kozak, "The Real Rules of War," *The Wall Street Journal*, December 23, 2009.

2. "Do the Realities of War Turn Warriors into Criminals?," *ibid.*, January 5, 2010.

3. Racial hatreds and the dehumanization of the enemy evident in the attitudes and conduct of many Americans toward the Japanese do, however, bear some uncomfortable similarities to German perspectives and conduct regarding the peoples of the Soviet Union. The crucial difference, however, is that, unlike Germany, genocide never became U.S. policy. On this subject, see John Dower, *War without Mercy: Race and Power in the Pacific War* (New York: Pantheon, 1986); Omer Bartov, *The Eastern Front, 1941–45: German Troops and the Barbarization of Warfare* (New York: St. Martin's Press, 1985); James Weingartner, "War against Subhumans: Comparisons between the German War against the Soviet Union and the American War against Japan," *The Historian* 58 (Spring 1996): 557–73.

4. Paul Fussell, *Wartime: Understanding and Behavior in the Second World War* (New York: Oxford University Press, 1989), ix.
5. Edgar L. Jones, "One War Is Enough," *Atlantic Monthly*, February 1946, 49–50.
6. Craig Nelson, *The First Heroes: The Extraordinary Story of the Doolittle Raid—America's First World War II Victory* (New York: Penguin, 2003), 280–83; "Trial of General Tanaka Hisakasu and Five Others," *Law Reports of War Criminals, Selected and Prepared by the United Nations War Crimes Commission 6* (London: His Majesty's Stationery Office, 1948): 66–70.
7. Frank M. Buscher, *The U.S. War Crimes Trial Program in Germany, 1946–1955* (Westport, CT: Greenwood Press, 1989), 2.
8. See, for example, Kevin J. Barry, "Military Commissions: Trying American Justice," *The Army Lawyer* (November 2003): 1–9; Colonel Frederic L. Borch III, "Why Military Commissions Are the Proper Forum and Why Terrorists Will Have 'Full and Fair' Trials," *ibid.* (November 2003): 10–16.

# War Crimes and the Law of War

---

Borkum and Voerde are two towns in northwestern Germany. They are separated by little more than 100 miles as the crow flies but differ significantly. Since the 19th century, the island of Borkum, part of the North Sea Frisian archipelago, has been a popular (and, prior to World War II, notoriously anti-Semitic) vacation retreat, with the town of Borkum's economy centered on catering to a flourishing tourist trade. But Borkum in the early 20th century had a schizophrenic character. Sharing the island with hotels and shops serving vacationers and residents in the town on Borkum's southwestern corner were heavy coastal defense guns to the north, forming part of the defensive chain protecting Germany's North Sea coast. A German officer stationed there during World War I poetically called upon Borkum to "protect the ships that seek safe haven, defend the mainland with your strong arm."<sup>1</sup> By the start of World War II, Borkum's "strong arm" included the two 240 mm guns of Battery Oldenburg and the four 280mm weapons of Battery Coronel. Complementing Borkum's big-gun defenses against seaborne assault was an array of anti-aircraft batteries and air defense radar that offered protection against the newer threat from the air. Foreign forced laborers were put to work strengthening fortifications against an Allied attack that never came. Borkum was able to ride out the war in relative safety and never fully lost its prewar character as a seaside resort. At least two Allied aircraft crashed on Borkum in the course of the war, and stray bombs jettisoned by bombers in distress sometimes fell in the North Sea close by or even on the island itself, although little damage was done. The island was occupied by Canadian forces at the end of the war.<sup>2</sup>

Voerde, on the other hand, was a small town on the lower Rhine not far from the border with the Netherlands to the west and the heavily industrialized (and heavily bombed Ruhr Valley) to the east.<sup>3</sup> The town was home to a 19th-century military installation, the Friedrichsfeld *Truppenübungsplatz* (troop training area), which had served as a prisoner-of-war camp during the Franco-Prussian War, and the Buschmannshof compound, a grim barracks-like structure that housed not soldiers but small children. Its tiny inmates—the oldest were no more than two years old—were the children of Eastern European women who were employed as slave laborers by the huge Krupp industrial complex in Essen, a short distance away. The Buschmannshof facility had been established in 1943, when Krupp's own hospital could no longer accommodate the growing numbers of children born to its female captive workers. The children were cared for by a staff of Russian women under German direction, but the quality of care given to them was minimal. Disease and malnutrition caused the death of close to 100 of these small prisoners, 48 of them in a diphtheria epidemic in the fall and winter of 1944, before a pitiful remnant was evacuated in the face of advancing Allied forces. How many, if any, survived is unknown.<sup>4</sup>

What brings Borkum and Voerde together in this book is the fact that both were the scenes of war crimes. As World War II atrocities go, they were small in terms of the number of victims each claimed—small even in comparison to the loss of life due to criminal negligence incurred at Buschmannshof. The crimes that will be addressed here, however, were not the products of negligence but were willful acts of murder. One was perpetrated by Germans and the other, by troops of the U.S. Army, and both would occasion postwar trials of the alleged perpetrators. In that context, the two crimes would converge in an unexpected but meaningful way.

By August 1944, the tide of war was running strongly in the Allies' favor. The Anglo-American forces that had landed in Normandy two months before were ashore to stay, and Patton's Third Army was fanning out into the interior of France. In the East, the Red Army had driven German forces from most Soviet territory and was threatening the border of East Prussia. In the south, Rome had fallen to Mark Clark's Fifth Army two days before the start of Operation Overlord, and, on August 4, British forces had entered Florence, 140 miles to the north. The threat of German U-boats had been mastered the year before, and, in the air, vast fleets of American and British bombers

operated against often little more than token opposition from German fighters. Missions over Germany were much safer than they had been a year earlier when, in twin attacks by the U.S. Eighth Air Force on August 17, 1943, on the ball-bearing works at Schweinfurt and the Messerschmitt factory at Regensburg, 60 heavy bombers had been shot down and more than twice that number damaged, many beyond repair. More than six hundred crewmen had been lost. But flak, occasional German fighters, and accidents ensured that operating a bomber on missions in German skies remained dangerous business until the end of the war.

The Eighth Air Force was to be up in strength on the morning of August 4, 1944. From their bases in East Anglia and the Midlands, more than 1,300 bombers were assigned to strike targets in northern Germany. One of these aircraft was B-17 #909 of the 486th Bombardment Group (Heavy), based at Sudbury. The crew was composed of recent arrivals in the European Theater of Operations, having joined the 486th late in July. Under the command of Second Lieutenant Harvey M. Walthall of Baltimore, they were hastily integrated into a group then making the transition from flying Consolidated B-24 "Liberators" to Boeing B-17 "Flying Fortresses," which, although built to an older design than the B-24, had a higher operational ceiling and were more stable bombing platforms. Walthall's crew had flown its first mission two days earlier. The fledgling #909 returned safely, but Walthall had shown himself to be a less than satisfactory formation flyer, having had difficulty holding position in his element and, in the process, frightening the crews of neighboring planes. The August 4 mission began inauspiciously; takeoff was delayed by fog, and assembly was complicated by a malfunctioning radio beacon. But, by a few minutes past 11 A.M., the bombers were crossing the English coastline at 13,000 feet and climbing on a northeasterly heading to their bombing altitude of 25,000 feet.

The 486th's primary target was the 5,000-ton-per-month capacity Ernst Schliemann oil refinery at Hamburg, an objective that was part of a campaign against the German oil industry then in the process of rapidly "demodernizing" the Nazi war effort to a premotorized state. Each B-17 carried a bomb load of 20 250-pound general-purpose bombs. These were light missiles, but effective against a refinery's fragile network of storage tanks, pipes, and retorts. The Schliemann refinery, however, would be spared #909's bombs. Shortly before 1 P.M., the 486th crossed the German coast north-northwest of Bremen, where



flak sent #949 spinning to earth. One parachute was observed. A few minutes later, as the formation was executing a turn east of Bremen, two planes collided, perhaps the result of a flak burst that propelled one into the other and/or pilot error. In any case, #145 fell out of control and disintegrated in midair. The other B-17 was Walthall's #909. In the terrifying moments following the collision, two crewmen, flight engineer Sergeant Kazmer Rachak and navigator Second Lieutenant Quentin Ingerson, took to their parachutes. The rest of the crew might have followed, had it not been for #909's initially uncontrolled dive that trapped them in their positions. But, fatefully, as events would prove, Walthall and his copilot, Second Lieutenant William Myers, succeeded in bringing #909 under control and swinging the damaged plane around in an attempt to nurse it home to England. There were no surviving witnesses to the effort, but Walthall undoubtedly would have ordered #909's bomb load jettisoned in order to lighten the aircraft as it struggled westward. It was not enough. By the time it had passed the German coastline, Walthall's bomber had lost too much altitude to permit it to cross the 250 miles of the North Sea to British soil. Beneath its wings lay the inviting beaches of Borkum. Walthall brought his plane in from the northeast and executed a wheels-up landing on tidal flats north of the town, known to locals as the *Muschelfeld*. It was a harrowing conclusion to a terrifying mission, for #909 had been fired upon by naval antiaircraft gunners on its approach, and some German witnesses claimed that fire had been returned by the B-17's defensive .50-caliber machine guns. Yet, #909 had suffered little additional damage, and the remaining seven crewmen surrendered peacefully and without further incident to German personnel who had been dispatched to the scene.<sup>5</sup>

The emergency landing of #909 on Borkum brought into collision not only aircraft and earth but also asymmetrical elements of the laws of war. To the degree that the vast and mutual dealing of death and destruction characterizing World War II was influenced by international law, it was affected primarily by conventions concluded in the periods immediately preceding and following World War I. One of these was Hague Convention IV of 1907, "Convention Respecting the Laws and Customs of War on Land," a slight revision of a similar treaty completed in 1899. In explaining the intentions of its signatories, its preamble notes that they had been "Animated by the desire to serve . . . the interests of humanity and the ever progressive needs of civilization" and "inspired by the desire to diminish the evils of war,

*as far as military requirements permit* [author's italics]." Nevertheless, the convention notes that "The right of belligerents to adopt means of injuring the enemy is not unlimited" (Article 22). The protections due prisoners of war are stated unambiguously: "They must be humanely treated," (Article 4) and "it is especially forbidden . . . to kill or wound an enemy who, after having laid down his arms, or having no longer means of defense, has surrendered at discretion" (Article 23). Article 25, however, contains an element that also seems unambiguous in regard to civilians and their property: "The attack or bombardment, by whatever means, of towns, villages, dwellings or buildings which are undefended is prohibited," although the definition of "defended town" might be subject to a variety of interpretations. The inclusion of the phrase "by whatever means" was clearly intended to address the recently invented airplane, for it was the only change made to a similar article in the Hague Convention of 1899, four years before the Wright brothers' first heavier-than-air flight. Aerial warfare had been addressed at the 1899 conference, however, in the form of a five-year prohibition on the employment "of balloons or similar new machines for throwing projectiles or explosives," due to their indiscriminate nature. This, of course, had expired by 1907.<sup>6</sup>

But, if attack on an undefended town (however that might have been understood) was an illegal operation of land warfare, what was one to make of Hague Convention IX, "Bombardment by Naval Forces in Time of War," which was signed on the same day as "Hague IV"? An apparently similar prohibition of the bombardment of "undefended ports, towns, villages, dwellings, or buildings" was followed by a body of exceptions large enough to allow the passage of a battleship. A naval commander, according to Article 2, was free to destroy with his big guns "military works, military or naval establishments, depots of arms or war materiel, workshops or plants which could be utilized for the needs of the hostile fleet or army." Moreover, "He incurs no responsibility for any unavoidable damage which may be caused by a bombardment under such circumstances." And even undefended places devoid of military significance were open to bombardment if, "after a formal summons has been made to them, [local authorities] decline to comply with requisitions for provisions or supplies" (Article 3).<sup>7</sup>

In sharp contrast to existing primitive aircraft, warships, particularly battleships, were the most sophisticated and destructive weapons systems of the day. The revolutionary HMS *Dreadnought*, placed in service with the Royal Navy less than a year prior to the signing of

Hague IX, was capable of firing 10 850-pound projectiles per minute to a range of 12 miles. The greater effectiveness of naval gunfire and long experience with its employment against shore targets going back to the 16th century may account for the unwillingness of the conferees to impose significant restrictions upon its use. Comparatively primitive bombardment by heavier-than-air aircraft, on the other hand, would not be introduced to international conflict for another four years, when Italy employed a handful of planes against Turkish forces in Libya; these dropped their first bombs on enemy positions on November 1, 1911. The tiny missiles, weighing no more than five pounds, had little physical effect, but the first lines of a new and terrifying chapter in the history of warfare had been written. When aircraft were again used against their army in the Balkan War of the following year, the Turks threatened to execute any of the attacking airmen whom they might capture.<sup>8</sup>

World War I threw into high relief the destructive potential of aerial bombardment and saw the application to it, in practice, of the relatively permissive standards that already regulated naval bombardment. The shelling by German battle cruisers of British coastal towns in December 1914 resulted in substantial loss of civilian life and property and earned for the Germans condemnation as “baby killers” in the British press, although some of these towns were fortified and, therefore, seemingly legitimate targets under existing international law.<sup>9</sup> In 1915, raids on British cities by Zeppelins were followed two years later by the operational advent of the Gotha, history’s first strategic bomber, capable of carrying a 660-pound bomb load at 80 miles per hour at altitudes up to 15,000 feet. An attack on London on June 13, 1917, by 14 Gothas resulted in the deaths of 160 people, about half of them women and children, when a bomb struck the Liverpool Street Station.<sup>10</sup> Such raids were condemned in Allied propaganda as examples of a uniquely German barbarity, although the British carried out similar attacks of their own and their naval blockade of German ports resulted in the deaths by malnutrition of hundreds of thousands of civilians.<sup>11</sup> By the end of the war, the British had succeeded in dropping a 1,650-pound bomb (far larger in terms of explosive payload, if not gross weight, than the biggest naval projectiles of the time) from a bomber and were planning an aerial assault on Germany with hundreds of Handley Page V/1500 four-engine bombers capable of reaching Berlin from bases in England and able to carry maximum bomb loads of 7,500 pounds.<sup>12</sup> All of these acts exemplified an accelerating destructive dynamic in which the

economic base of modern industrialized war provided both the means and the justification for mass assaults on civilian populations.

Something more than 8.5 million men had died in combat during World War I, primarily the victims of the machine guns and artillery pieces produced in the industrial centers of Europe. Some theoreticians concluded that the airplane, whose enormous destructive potential was suggested by aircraft such as the V/1500, could provide the means of avoiding such battlefield carnage in future wars. Fleets of heavy bombers could strike devastating blows at enemy cities, crippling industrial infrastructures and demoralizing populations, bringing conflicts to quick and relatively inexpensive conclusions, victorious conclusions at least for those best prepared materially and psychologically to wage war in this manner. Yet, the fact that what came to be known euphemistically as “strategic bombing” inevitably involved the killing of civilians—perhaps in very large numbers—was troubling to many. Delegates to the Washington Conference on the Limitation of Armament, whose most notable achievement was the establishment of fixed ratios of strength among the world’s leading naval powers, decided, in 1922, to establish a commission composed of representatives of Britain, France, Italy, Japan, and the United States to determine whether the existing rules were adequate in light of recent innovations in the waging of war, particularly in the air. The result was a 62-article document entitled “The Hague Rules of Air Warfare,” which proposed to regulate the future employment of aircraft in international conflict. Most important was a series of provisions that sought to restrict the latitude of combatants to bomb population centers. Aerial bombardment was to be limited to military objectives, defined as “military forces; military works; military establishments or depots; factories constituting important and well-known centres engaged in the manufacture of arms, ammunition, or distinctively military supplies; lines of communication or transportation used for military purposes.” Attacks on population centers not in the immediate vicinity of the operation of ground forces were prohibited unless they contained military objectives so defined, but those objectives might be attacked only if the “indiscriminate bombardment of the civilian population” could be avoided. Population centers that *were* in the immediate vicinity of such forces might be bombed “provided that there exists a reasonable presumption that the military concentration is sufficiently important to justify such bombardment, having regard to the danger thus caused to the civilian population.” Although the restrictive provisions, in practice, would have

been open to broad interpretation and would have allowed considerable freedom to the new breed of air warriors, the proposed rules nevertheless threatened to complicate and to some degree constrain the employment of a new technology of possibly war-winning potency, and this the major powers were unwilling to risk. The Hague Rules of Air Warfare remained a dead letter.<sup>13</sup>

International law regulating the treatment of prisoners of war was a different story. Hague IV of 1907 had stated simply that prisoners "must be humanely treated" and then specified in 16 articles the particulars of their required treatment. World War I had seen prisoners of war taken in unprecedented numbers and held, in some cases, for more than four years. Some had suffered terribly. The Convention of July 27, 1929, Relative to the Treatment of Prisoners of War of 1929 (the "Geneva Convention," in the discourse of World War II) was inspired, according to its preamble, by the recognition that, "in the extreme case of a war, it will be the duty of every Power to diminish, so far as possible the unavoidable rigors thereof and to mitigate the fate of prisoners of war." The 1929 convention spelled out in much greater detail than had Hague IV the conditions under which prisoners were to be held, down to a long list of the specific injuries and illnesses that were to qualify them for repatriation prior to the end of hostilities. But the fundamental requirement of the convention was that prisoners of war not be harmed. "They must at all times be humanely treated and protected, particularly against acts of violence, insults and public curiosity. Measures of reprisal against them are prohibited" (Article 2). And "Prisoners of War shall be evacuated within the shortest possible period after their capture, to spots located in a region far enough from a zone of combat for them to be out of danger" (Article 7). Unlike the proposed rules for aerial bombardment, with their numerous qualifiers in regard to the safety of civilians, the 1929 Geneva Convention was unambiguous. Moreover, unlike the abortive air rules, it was adhered to by most of the world's independent states. Of the major powers, only the Soviet Union and Japan (the latter signed but did not ratify) refused to become parties to it.<sup>14</sup>

On the eve of World War II, then, it seems appropriate to speak of a significant asymmetry in the laws of war. The protected status of prisoners under all circumstances was clear. Those countries that had not become parties to the Geneva Convention of 1929 might be written off as existing on the fringes of the "civilized" world. Civilians, on the other hand, had little, if any, formal legal protection against

aerial attack; pre-World War I treaty law and custom were in general agreement that injuring civilians was not a good thing but was acceptable if it could not be avoided in the pursuit of “legitimate” military objectives. And advocates for “strategic” bombing suggested that civilian casualties might actually serve humanity by bringing wars to quick conclusions, thus avoiding the prolonged mass slaughter that had characterized World War I. The will to impose meaningful limitations on a new technology whose potential had only begun to be explored was lacking. The killing of prisoners of war was not likely to produce victory, but airpower might!

Among the most enduring icons of the Second World War are scenes of vast urban devastation wrought by aerial bombardment. Never before or since have so many great places of human habitation and endeavor been subjected to destruction of similar magnitude. Approximately one million human beings, as a rough estimate, died as a consequence, many of them in overwhelmingly horrible ways. Germany initiated the air war on European cities, and its willingness to use urban bombing as a conscious instrument of terror is beyond serious dispute.<sup>15</sup> What is also beyond dispute, however, is that British and American air forces inflicted vastly greater damage on German cities and their civilian populations than the Luftwaffe visited upon Germany’s enemies. More Germans died in two series of raids (those on Hamburg in July 1943 and Dresden in February 1945) than did British civilians in all German air attacks, including V-1 and V-2 missile bombardments, during the whole of World War II. Although German aircraft manufacturers produced prototypes of bombers capable of crossing the Atlantic, the cities of the United States emerged from the war unscathed by aerial assault.

If there was no clear prohibition of urban bombing in international law, were the Allies *morally* justified in demolishing German cities and killing hundreds of thousands of civilians in the process? Opinion is by no means unanimous on this contentious issue. Applying the standard of proportionality in the context of genocidal German policies that resulted in the murders of millions of human beings, policies most expeditiously terminated by the fastest possible termination of the criminal regime that gave rise to them, might suggest an unambiguous “yes.” Yet, it may be difficult to resist some degree of empathy with Hamburg policeman Otto Müller who, following the firestorm produced by the British attack of the night of July 27–28, 1943, encountered a young girl who had been wandering for days dragging the body of her

little brother. "I got so angry at this incident," he later recalled, "that I would have shot any enemy airman who had parachuted down. I also think that any English or American person would have felt the same way."<sup>16</sup> At least one American agreed. U.S. Army Major Burton F. Ellis, an attorney sent to Germany after the war to assist in the trial of German war criminals, wrote to his wife in August 1945: "On Sunday I went through Darmstadt, a place about the size of Fresno. It was leveled. Block after block with nothing but burned out skeletons of apartment houses. If your family, your home, your possessions were buried there—what would your reaction be? These people that lived there beat some airmen to death. I can see why they did what they did. I would have done likewise."<sup>17</sup>

But it was not only bombing that assailed civilian populations. Less widely known and discussed than urban bombing is the fact that fighter pilots commonly attacked "targets of opportunity" as they flew over enemy territory. Such targets were sometimes human beings, and not always military personnel. This issue was frankly addressed in one of the documentary films produced by the U.S. War Department for showing to service and civilian audiences. Director William Wyler's *Thunderbolt* portrays the routine operations of a U.S. Army Air Forces fighter-bomber group flying the Republic P-47 "Thunderbolt" from bases on the island of Corsica against targets in German-held territory in Italy during the bloody Allied struggle to break through German defenses south of Rome in the first half of 1944. Viewers of the film are placed "in the head" of one pilot, whose voice is supplied by an actor as he flies to the day's target (a bridge), drops his bombs, and heads for home. On his way back to base, he sees a group of people on the ground, although he is unable to identify them. He muses in the clipped, unemotional tones affected by this film, "Somebody in that field. Don't know who they are. No friends of mine." With that, he opens fire with his plane's eight .50-caliber Browning machine guns, collectively spewing bullets a half-inch in diameter at the rate of one hundred per second. Continuing on, he sees rural Italian houses and comments on the supposed German practice of storing munitions in such structures. He proceeds to strafe them, initially without explosive effect, commenting, after each attack, "Nothing there" (except, perhaps, one is tempted to observe, an Italian family). Finally, one of the houses detonates, revealing the presence of enemy munitions and presumably justifying the attacks on the others.<sup>18</sup>



Wartime fighter pilot and famed postwar test pilot Chuck Yeager recalls orders received by his fighter group in the fall of 1944:

Our seventy-five Mustangs [P-51 fighter planes] were assigned an area fifty miles by fifty miles inside Germany and ordered to strafe anything that moved. The object was to demoralize the German population. Nobody asked our opinion about whether we were actually demoralizing the survivors or maybe enraging them to stage their own maximum effort. . . . We weren't asked how we felt zapping people. It was a miserable, dirty mission, but we all took off on time and did it. If it occurred to anyone to refuse to participate (nobody refused, as I recall), that person would have probably been court-martialed. . . . We were ordered to commit an atrocity, pure and simple.<sup>19</sup>

Such attacks, delivered at low altitude and against small groups and, in some cases, individuals, seemed more personal than bombs dropped from altitudes of four or five miles and were possibly more frightening and infuriating to the intended victims. Pastor Florenz Siekermann of Voerde declared, "One can only call it a crime against humanity that low-flying fighters [*Tiefflieger*] began more and more to fire on peaceful people in the streets and even in their fields." His judgment was probably influenced by an incident toward the end of 1944 in which a 10-year-old boy of the village was machine-gunned on his way home from school.<sup>20</sup>

Some Germans were able to view the ruination being rained upon them as just retribution for the criminal actions of their own government and people. One remarked long after the fact, "I shouldn't really say this but I felt a wild joy during those heavy British raids. That was our punishment for our crimes against the Jews."<sup>21</sup> Such reactions were almost certainly exceptional. It would be unrealistic to expect most German civilians who were on the receiving end of Allied bombs and bullets to regard them as their just desserts. On the contrary, it would be remarkable if occasional violence against downed Allied airmen had not occurred, as attacks on German airmen had sometimes taken place when they had fallen into the hands of the enemy.<sup>22</sup> Desire for revenge and frustration over the inability of the Nazi regime to retaliate in kind grew as German cities were progressively reduced to rubble.<sup>23</sup> But, in the later stages of the war, the regime openly encouraged and sought to legitimize the ill treatment and murder of



captured Allied aircrew, which served as a means of releasing anger and deflecting it from the dictatorship that was unable to protect the German people from increasingly devastating attack from the air. It also had the effect of making ordinary Germans participants in Nazi criminality, thus giving them seemingly no alternative but to support the regime as it fought desperately to fend off defeat and Allied retribution. By the end of the war, perhaps 350 downed U.S. and British airmen had been murdered by German civilians, military personnel, or police and party officials.<sup>24</sup> Although the number killed represents only a small fraction of the total number of Allied airmen captured on German soil during that period and although some of the murders would probably have occurred in the absence of official encouragement, such encouragement was clearly provided. On August 10, 1943, SS commander and German police chief Heinrich Himmler ordered police officials not to intervene if civilians attacked captured Allied aircrew. On May 21, 1944, Hitler directed that downed Allied airmen be summarily executed if they had fired on German airmen parachuting from stricken aircraft or German aircrew who had crash-landed or if they had attacked trains or individual civilians.<sup>25</sup> And, in an editorial published in the Nazi Party newspaper *Völkischer Beobachter* during the following week, Propaganda Minister Josef Goebbels, in "a word on the enemy air terror," accused British and American airmen of the willful murder of German civilians. German morale was the primary objective of Allied bombing, he asserted, and 99 percent of the physical damage was to the civilian sector. The consequence of this "murder of women and children" was likely to be that the German people would be moved to take matters into their own hands and pay back in their own coin Allied flyers who had bailed out over German territory. But Goebbels reserved most of his venom for Allied flyers who strafed civilians with their machine guns and cannon, not wholly a figment of the propaganda minister's malignant imagination, as we have seen. "That has nothing more to do with war," he declared. "That is sheer murder." Goebbels went on to describe one incident "out of thousands" that had allegedly occurred the previous Sunday (thus, presumably, particularly dastardly) somewhere in Saxony in which groups of children were attacked, causing numerous casualties. If such criminals were to be shot down and captured, Goebbels continued, it would be inappropriate for German soldiers to protect them from civilians and their just desire for vengeance.<sup>26</sup> In fact, according to an order by Hitler (of which Goebbels may have been unaware),

troops who captured airmen guilty of such acts were to kill them. At the end of the month, Hitler's private secretary and Nazi Party chancellery chief Martin Bormann circulated a secret memo to party leaders down to the district level. Provocatively entitled "Re: Justice Exercised by the People against Anglo-American Murderers," it, too, referred to the strafing of civilians, including children, while the latter were engaged in innocent pursuits and directed that no prosecution or punishment of citizens who participated in the killing of such airmen was to take place. Local party bosses or *Ortsgruppenleiter* were to be notified orally of the contents of the memo. By early July 1944, the German high command had issued a top-secret order discouraging military personnel from intervening to protect captured Allied air crew from civilian attack and made specific reference to Goebbels's editorial.<sup>27</sup>

Goebbels was guilty of hypocrisy of staggering proportions when he contrasted the "unlimited barbarity" of the Allied air campaign with the alleged German wish "that the war should be conducted in a chivalrous manner." The air war *was* barbarous. Genocide was far worse. And he was simply wrong when he claimed that "There is no rule of international law which the enemy can call on in this matter. The Anglo-American pilots place themselves through such a criminal code of warfare outside the pale of every internationally recognized rule of warfare."<sup>28</sup> Goebbels had conflated instances of fighter planes machine-gunning civilians with urban bombing, but the fact was that international law constraining aerial warfare was thin at best, while that regulating the treatment of prisoners of war and mandating their protection was well established. There was little in international law to counter the dominant Allied perspective that extreme and often indiscriminate force from the air was justified in defeating an enemy extreme in its evil.

By the summer of 1944, Germans had been subjected to years of increasingly devastating aerial assault. In spite of the ambiguities in Goebbels's editorial, they had every reason to believe that they were free to do with any of their tormentors who fell into their hands as they pleased. Yet, it would appear that relatively few Germans actually participated in or facilitated attacks on captured U.S. flyers. Given the provocation of Allied bombing and strafing and the encouragement of lawlessness from Nazi leaders, it is remarkable that so many captured American airmen (in excess of 32,000) survived the war.<sup>29</sup> But seven members of the crew of #909 would not be among them.