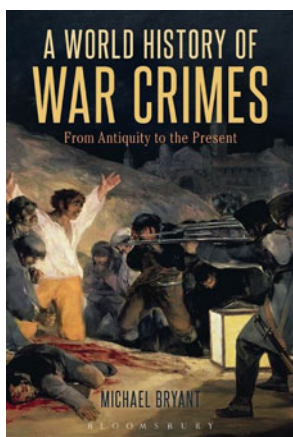


## BOOK REVIEW



# A World History of War Crimes: From Antiquity to the Present

**Michael Bryant\***

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To comprehend, understand and appreciate the present legal system adequately, it is necessary to acquire a background knowledge of the course of its growth and development. ... If we were to confine our attention exclusively to the law as it is, our understanding of it is bound to be deficient as it is not possible to appreciate its present ordering without some familiarity with its past.<sup>1</sup>

In line with the above quotation, Michael Bryant,<sup>2</sup> professor of history and legal studies at Bryant University, presents yet another historical account in his book *A World History of War Crimes: From Antiquity to the Present*. The work is a succinct yet comprehensive blend of the history not only of war crimes but also of the development of the laws of war, from prehistoric times to the present era. Such a combination of history and law is a rarity, and hence the book has a twofold advantage and is indeed welcome. War crimes<sup>3</sup>, in simple terms, amount to serious violations of the laws and customs of war, and thus their history is bound to run parallel with that of the laws of war. This is why the title of each chapter makes reference to the laws of war applicable in a certain period of history. For instance, the titles of the first three chapters are “The Roots of the Law of War in World History”, “The Law of War in Rome, the Islamic World,

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and the European Middle Ages”, and “Making Law in the Slaughterhouse of the World: Early Modernity and the Law of War”. The subtitle of the book – “From Antiquity to the Present” – indicates in limited words the wide amplitude of Bryant’s research. The book thus seeks to contribute to the emerging scholarship of history and international law, as it is an original work enriched by reliable sources.

The introduction of the book begins with a sentence telling the bitter truth of human stupidity: “At a no longer verifiable point in distant time, the human mind discovered that the crude weapons it had fashioned to hunt and fell animals could be turned against human beings with the same deadly effect.”<sup>4</sup> Subsequently, Bryant attempts to establish that the notions of crime and its derivative war crime are much later inventions. For this purpose, he briefly discusses the evolution of the idea of criminal acts in pre-modern societies, after which he informs the reader that the term “war crime” was coined in 1906 by Oppenheim in his treatise *International Law*. He adopts Jasper’s concept of the Axial Age as a methodology to identify the crucial emergence of the vision of goodness and justice in world history that is relevant to the conduct of war even today.<sup>5</sup>

Stone Age warfare is the author’s starting point for his historical account of war crimes, which further covers the ancient laws of war in China, India, Israel, Greece, Rome and the Islamic world, discussing every important political upheaval. It is no easy task to gather those necessary early facts in respect of war crimes from the sparsely available sources on the ancient history of war and the customs of warfare. To support his discussion on Stone Age massacres, he cites excavation sites at Djebel Sahaba in Sudan and at Talheim in Germany.<sup>6</sup> The history of conflict subsequent to the Stone Age is discussed with the help of the prevailing practices and early classical and religious literature of Europe and Asia, such as the Book of Deuteronomy, the Quran, the Mahabharata, the Arthashastra, the works of Cicero and Sun Tzu’s *The Art of War*.<sup>7</sup>

Efforts to trace the restraints on war in archaic and classical Greece are even more difficult because it has been observed that generally only barbarism committed by the Greeks on the battlefield is found in books.<sup>8</sup> However, Bryant does describe some of the religious and ritualistic limitations on war prevalent in Greece. While

- 1 M. P. Jain, *Outlines of Indian Legal and Constitutional History*, 7th ed., LexisNexis, New Delhi, 2014, p. 2.
- 2 Bryant’s previous works include *Confronting the “Good Death”: Nazi Euthanasia on Trial, 1945–53*, University Press of Colorado, Boulder, CO, 2005; *Eyewitness to Genocide: The Operation Reinhardt Death Camp Trials, 1955–1966*, University of Tennessee Press, Knoxville, TN, 2014.
- 3 For a statutory definition, see Rome Statute of the International Criminal Court, 2187 UNTS 90/37 ILM 1002 (1998)/[2002] ATS 15, 17 July 1998 (entered into force 1 July 2002), Art. 8.
- 4 *A World History of War Crimes*, p. 1.
- 5 *Ibid.*, p. 5.
- 6 For comprehensive data on this connection, the scientific and anthropologic study done by Hobhouse could also be used as it exhibits a data analysis of men slain, women and children enslaved, human sacrifice and cannibalism during primitive feuds. It would, however, be a secondary source. See Leonard Trelawney Hobhouse, Gerald Clair Wheeler and Morris Ginsberg, *The Material Culture and Social Institutions of the Simpler Peoples*, Chapman & Hall, London, 1915, pp. 228–243.
- 7 *A World History of War Crimes*, pp. 18–38.
- 8 See, for example, Charles G. Fenwick, *International Law*, Indian reprint, Vakils, Feffer and Simons, Bombay, 1971; Charles Seignobos, *History of Ancient Civilisation*, trans. Arthur Herbert Wilde, Charles Scribner, New York, 1906, pp. 158–159.

discussing the Roman laws of war, he traces their origin in natural law and *jus gentium*, which are explained in detail. The section on medieval Europe and the laws of war is equally remarkable as it tells the reader about just war doctrine, canon law, declarations of the Lateran Councils, trials, courts of chivalry and, most importantly, the gap between theory and practice and the tendency to disregard the law when fighting outsiders. Thus, the reader finds a unique blend of the history of war crimes and the development of the laws of war.

The title of third chapter, “Making Law in the Slaughterhouse of the World: Early Modernity and the Law of War”, is ferocious enough to indicate the quantum and magnitude of savagery committed in Europe during that period. The slaying of soldiers in Cirencester’s conquest and the slaughter of thousands in Magdeburg are cases in point. The author brings out the truth beautifully: “Neither the Roman *jus gentium* nor the medieval code of chivalry softened the brutality of warfare, particularly when the cause was consecrated as ‘just’ and the enemy was a true outsider.”<sup>9</sup> The author cites siege warfare, rebellion and religious conflict as the prime causes of indiscriminate violence in early modernity. Indeed, civilization was not a guarantee of humane treatment. One criticism that can be made of the book here is that it appears to have been centred largely on Europe – recording the wholesale butchery and destruction of cultural property committed by Mongol, Turkish and Arabian invaders in India and other regions of Asia during the medieval era would have rendered the historical account more comprehensive.

Bryant gives due acknowledgment of the contribution of early modernity theorists in the third chapter. He not only cites their relevant texts, but also links them with the political events occurring at the time. Moreover, he also examines the relevance of the writings today. He includes in this section writings by Vitoria, Ayala, Suarez, Gentili and Grotius, and devotes his most poetic and superlative prose to those who broke from the traditional approaches of amoral expediency and just war doctrine and instead presented before mankind a humane approach which led to universally acceptable norms that would continue to be relevant in the future. He equates Gentili with a skilled mariner wintering in safe and familiar harbours, who suddenly hoists sail and scuds into the vast watery unknown.<sup>10</sup> He calls Grotius an idealist and a world-class jurist.

In the fourth chapter, Bryant’s account of eighteenth- and nineteenth-century law clearly highlights two different turning points: first, the sentiment of nationalism unleashed more barbarism in war than the attachment to dynasty, and second, the Industrial Revolution and the invention of more destructive weapons brutalized the havoc of war and brought wholesale butchery. The author thus asserts that advancement in technology made mankind pitiless, inhumane, insensitive and more barbaric, as was evident from the French Revolution, Peninsular War, Crimean War and Franco-Prussian War. Indeed, as weapons were less destructive until the eighteenth century, civilians were not easy targets and consequently restraints on war were soft – but when advanced weapons were

9 A *World History of War Crimes*, p. 68.

10 *Ibid.*, p. 94.

discovered and used in war, violence increased, especially against civilians, and war therefore had to be limited by law. This leads the author to present the nineteenth century as the dawn of stricter restraints on war, which started off with provisions in municipal laws and ultimately led to States signing multilateral treaties.

Among the events that occurred in the First World War, the fifth chapter highlights the two most relevant ones: war crimes committed by Germany and the half-hearted attempts to punish the German perpetrators, which are presented as lessons to be learnt if the world community wants to punish war criminals:

The conventional view of efforts after the First World War to prosecute violations of the Law of War tends to be negative. The failure of justice enacted on so many levels has bolstered the argument that the postwar settlement, as seen from the vantage point of the Law of War, was a disaster. Yet the bitter experience of the war crimes debacle would leave an enduring mark on the minds of the planners who devised the trials of Nazi and Japanese war criminals twenty-five years later. They would learn from the Allies' mistakes after the Great War, and in the process forge a new paradigm of war crimes prosecution that would revolutionise international law.<sup>11</sup>

In the sixth chapter, the author presents a well-researched and detailed account of German and Japanese violations during the Second World War.<sup>12</sup> The chapter begins by focusing on the events prior to the beginning of the Second World War, with the German conquest of Austria and the Sudetenland in 1938, and extends to the indiscriminate, brutal misdeeds committed in the name of the Final Solution, Germanization, general pacification, the German war of extermination, and the gas chambers. Nazis made the utmost abuse of chemicals, gases and technology in accomplishing these shocking crimes against mankind. Besides this, the chapter features war crimes committed by the Japanese army, including the Rape of Nanking, the Bataan Death March, the use of bacteriological weapons, and medical crimes. The price paid by the victims of the above inhumane treatment laid the foundation for the prosecution of war criminals and the unanimous resolution to humanize the laws of war.

The author goes on to tell the reader how the international community did not repeat the mistakes committed in attempting to punish the war criminals of the First World War. A concerted plan was devised in the form of the International Military Tribunal Charter to show the whole world that the heinous war crimes, crimes against peace and crimes against humanity weighed more than the selfish defences of superior command, *ex post facto* laws and victor's justice. The author concludes with these words:

Finally, both the crimes committed during the war and their judgment afterward fostered a moral revulsion against extreme forms of state

<sup>11</sup> *Ibid.*, pp. 155–156.

<sup>12</sup> This chapter demonstrates the impact of Bryant's earlier works, which concentrated on the Second World War. See, for example, the topics covered in his previous works, above note 2.

criminality in the postwar era, leading by the 1990s to the creation of *ad hoc* tribunals and, in an effort to establish a fair, permanent, and independent judicial body, an international criminal court.<sup>13</sup>

In the seventh chapter, the author steps into the period of the making of the four 1949 Geneva Conventions, a path-breaking attempt in the history of the laws of war to comprehensively restrain war and fix accountability. While critically outlining the features of the Geneva Conventions, a few loopholes are highlighted in the discussion, such as the fact that the Conventions did not use the term “war crimes” for violations of the laws of war; that there was no provision as to international trials of war criminals; and also that the United States and France opposed the application of Common Article 3 to their operations in Vietnam and Algeria. Additionally, the chapter presents a history and overview of the adoption of Additional Protocols I and II to the Geneva Conventions, and the Chemical Weapons Convention.

The chapter extends to cover breaches of international humanitarian law (IHL) and other conventions committed at the end of the twentieth and beginning of the twenty-first century, namely mass killings, systematic rape and forced displacement in Bosnia in 1994, genocide and other violations of IHL in Rwanda in 1994, the terrorist attacks of 11 September 2001 in the United States and the subsequent US interrogation programme in the name of the “war on terror”. In connection to this, the author unhesitatingly remarks that the United States is equally guilty of committing war crimes in its use of inhumane interrogation techniques. He states: “Not without irony, history has revealed that the immoderate responses of democratic societies to terrorist attacks in the name of an overriding military necessity pose a graver danger to the Law of War than terrorism itself.”<sup>14</sup>

In the final chapter, “The Future of the Law of War”, Bryant visualizes in light of the present international state of affairs the effect of the laws of war in times to come. He emphasizes that the relevance of international legal restraints on war should not be judged by deviations from those restraints, because occurrences of crimes in civil society do not render domestic criminal law any less useful.<sup>15</sup> In his opinion, our best hope of curbing humankind’s peculiar talent for superfluous violence and extravagant self-destruction lies in the ideal of humanitarianism as reflected in the Geneva and Hague Conventions.<sup>16</sup>

Summing up, it can be said that the limited number of pages in Bryant’s book does not render it any less useful, to researchers and jurists as well as students. The book will be a great help to all those engaged in the study of IHL, peace and conflict and history because it is not confined to the history of war crimes but encompasses the history of war and the accompanying development of the laws of war.

13 *A World History of War Crimes*, p. 196.

14 *Ibid.*, p. 224.

15 *Ibid.*, p. 227.

16 *Ibid.*