

Three Reasons for the Trial:

1. Justice must be done. The alternative: Let him go scot free impossible because of the nature of the crime: Its blatantly public character. This was true even at the time (secrecy only insofar as talking was concerned; everybody in responsible position knew of course); it is truer ~~last~~ after the end of the war. Justice must be rendered publicly. For this two alternatives: kill him ~~himself~~ and stand trial yourself, or kidnap him and let him stand trial. The fact is: that a/ no extradition was possible; b/ that ~~Germany~~ ^{neither} nor any other country ever wanted him. Only the Jews wanted him. And the reason: He was chiefly concerned with Jews. Plus: Because of his position he was extremely well known to them.

Justice must be rendered to prevent the world from becoming criminal. A trial is a kind of catharsis: ~~we~~ we must purge the murderers from our midst because we can't share the world with them.

2. Nature of crime is genocide on a race basis. Those who think that the defeat of the Nazis has eliminated this problem are mistaken. Genocide has not yet become an internationally recognized crime. The danger may ~~be~~ even increase under conditions of population explosion.

3. The ~~crimes~~ crime was international in nature. It has been called, properly, crime against humanity. Only if such a crime exists, can there be international law, criminal law, and an international court which ~~is~~ deals with individuals. The crime against humanity has been badly defined and mixed ~~up~~ with crimes against peace and war crime. The Nuremberg heritage. Crimes against peace: Preparation for war. War crimes: shooting of prisoners, wanton destruction etc. Against Humanity: extermination or enslavement of civil population. But this last in Nuremberg and again in Israel: Only during the war. Because of national sovereignty.

International law can accrue only through cases in which judges render justice beyond the law. This called: a breach of nullum crimen sine lege. This principle broke down in the case of "unprecedented" crimes, that is, crimes which no one had been able to foresee.

We shall see that we also deal here with a "criminal" whom no one had predicted.

Crimes against humanity: against the fact that mankind on principle is split up, is not One people, so that the killing of any part hurts the principle of plurality.

1. The defendant himself. His attitude to the Trial: READ letter -- This his attitude throughout: He caught (or honored) in historical processes whose truth only he knows. Hence hurt when told he lies. His false anonymity: Story to Time & Life Magazine; the adding of name to birth certificate of last child. Does not fight for life.

What kind of man: (Travelling salesman.) Negatives: He is normal. (The psychiatrists) He is no monster, no murderer, no fanatic even. No anti-semitite. He is not arrogant and he does not try to defend the Nazis. He would not even know how to do it. His life story: The flotsam of the time. He is a nobody and his only chance to become somebody in the SS. The grandiose talk about historical tasks like liquor. Interested in Jews because the only possibility of making a career.

Hence, he comes into contact with Jews early in Berlin: Rather nice and more intelligent than the others. Then Vienna: He becomes the head of the Emigration Services and what had been done in a matter of years in Berlin, is now done in a matter of weeks. The evacuation of Jews from Austria organized by him because of his very great organizational talents.

All the time, he never asks himself anything about right and wrong. But he knows the Zionist literature and develops a liking for the Zionist because, according to him, they have the same aims as the Nazis. This error was not only Eichmann's; to an extent, it was shared by the Zionist.

After the outbreak of war, for a time still emigration, but then stop. His only worry: Unemployed -- asks for post as President of Police in some town or city. Does not get it. Gets busy with Madagaskar. And then suddenly, in Summer 1941: The final Solution. He objects: This no solution -- but of course he obeys.

What he becomes now is the transportation officer and since transportations were not always smooth, he has to cajole or negotiate other governments -- French, Hungarian, Slovak etc, -- into it.

His position: He neither gives orders nor executes them. He is in-between -- one of the transmission belts without which nothing would have been possible. This plays role in his defence: He can always shift responsibility into two directions -- and that is of course what all of them did, with the exception of Hoess and Frank.

He tries to defend himself, or rather ~~him~~ explain himself; by spreading of guilt. Wannseekonferenz. Also read from past words. He had the feeling of a Pontius Pilatus. No one disobeyed.

Hence, question: What about his conscience? Mausner: Let Eichmann say the murder is in accordance with his conscience ...

No one ever answered the question -- for good reasons. The judges tried to get an answer because of question of responsibility at the time of the act. Had E. been able to answer truthfully, he would have said: At the time, my conscience did not bother me, only the sight of atrocities -- as one may be bothered with having seen an accident. Today it is different. Therefore, how can we possibly rely on conscience. It does not work.

For conscience to work: Either very strong religious belief -- extremely rare. Or: Pride, even arrogance. If you say to yourself in such matters: Who am I to judge -- you are already lost.

2. The Story. Servatius: "History is not made with silk gloves and when trees are felled chips will fly." Even Eichmann knew that one could no longer use such talk in view of what had happened.

- a) Anyhow, the chips spoke up: Everyone had his day in court. Judges first tried to intervene. Witnesses were not guided; most of what they said was either known or repetitious or irrelevant. Still -- one could not deny the importance. Greenspan and the woman who organized the rebellion in the Warsaw ghetto.
- b) The few stories of exceptions to the rule -- the captain who helped the Jewish underground in Poland and finally was caught and killed. One could not help thinking how different things would be politically if there had been a few more. How false it was to say: All one can do is useless. These few exceptions even today like rays of light into something which is more than pitch dark.
- c) The enormous ~~importance~~ importance of the attitude of the native population. The range from Poland on one hand (95% killed) to Denmark on the other. The example of Best. How much the Nazis were influenced by the behavior of the others. Suddenly they had a conscience.
- d) But, in conclusion: The story of suffering does not tell anything about deeds. One could well imagine the same amount of suffering through famine or other catastrophes. Many travellers from India describe the street of the cities as though a resurrection of Bergen-Belsen. The walking corpses. But also: every ordinary battlefield, or Hiroshima. Suffering proves nothing, no matter how much it may shake you. What was enormous and incredible and horrible were the deeds -- not the suffering.

3. The conduct of the Trial:

The dignity of the Court proceedings depended upon the respect for the human dignity of the accused. It was this respect which turned out to be the greatest merit of the Judges. They went occasionally so far that one could have misunderstood it for kindness. (He may sit, use of German) Especially evident in view of the constant abuse of the prosecutor and, much more disgusting, the snobbish arrogant attitude of the Defence: Social snobbery, "Würstchen" etc.

The problems:

1. Kidnapping -- very "learned" discussions after which one had the impression this is the most normal way of bringing some one to trial. None of the parallels were applicable; the nearest came piracy and hostis humani generis; but Eichmann had not done it for personal gain and was not likely to do it again. The remedy against kidnapping depends upon the state of which one is a citizen. Since no state wanted to claim Eichmann, he was stateless, and stateless people have no rights -- which to people like myself is not precisely news. In other words, either Argentina or Germany could have complained.
2. Impartiality of the Judges: This never a real issue; Impartiality is asked with respect to the defendant, not the crimes.
3. Israel is entitled because of victims and also because it was actually out of the holocaust that the state came into being. It was also argued that it was the most convenient place: Because of the availability of the accused (sic!), witnesses -- but none for the defense, and evidence: Yad Vashem. This of course all nonsense
4. Retroactivity of the Law: Had been argued in Nuremberg, nothing

new in Jerusalem. The principle: Nullum crimen sine lege: Against arbitrary definition of crimes. This should not blind us to the fact that in this instance the substance of crime is disobedience, not the crime itself. The example: Eating of apple in Paradise -- apart from all interpretations: The only reason: God had forbidden it. But how about: Cain slew Abel? The crime of course precedes the law.

5. Next point: Convicted before the trial began -- by definition because this was the only justification of the kidnapping. ~~But~~

Of all these things, there was only one argument which was bothersome: No defense witness could come because they would all have been open to be prosecuted for similar crimes under the same law. Hence: Israel not the most "convenient" place.