

Eichmann: Is Evil So Banal?

A question that is hard to avoid is whether the authors of horrific crimes, in particular of such collective crimes as genocide, crimes against humanity and large-scale war crimes, are especially wicked men ('butchers' or 'monsters', as many tend to define them), or instead, share in our humanity and are induced to engage in criminality by particular social, psychological, or other historical circumstances. The latter view is held, among others, by Tzvetan Todorov in his essay published in this issue of the Journal. It is a view that is closer to current thinking, and is predicated upon the notion that none of us is free from aggressiveness and destructive drives, which most of us however stem, repress or channel towards peaceful and constructive action.

*A case in point is that of Adolf Eichmann. The most widespread and accepted interpretation of his behaviour is that propounded by Hannah Arendt in her famous book *Eichmann in Jerusalem: A Report on the Banality of Evil* (1963).¹ Her view hinges on two basic observations: (i) Eichmann was an ordinary man, used to executing orders; (ii) Eichmann's case shows that generally speaking evil can be 'banal', namely be committed by any person who happens to find himself or herself in certain historical conditions.*

Let us see how Arendt spelled out these considerations. According to her, Eichmann, a man 'with . . . rather modest mental gifts',² was not a particularly wicked man, nor a fanatic; he was a 'perfect bureaucrat'³ accustomed to obeying orders and duly executing Hitler's and Himmler's orders relating to the extermination of Jews;⁴ according to Arendt, 'his guilt came from his obedience'.⁵ He 'was not Iago and not Macbeth, and nothing would have been farther from his mind than to determine with Richard III "to prove a villain." Except for an extraordinary diligence in looking out for his personal advancement, he had no motives at all. And this diligence in itself was in no way criminal; he certainly would never have murdered his superior in order to inherit his post. He merely, to put the matter colloquially, never realized what he was doing.'⁶ Furthermore, 'he was not

1 H. Arendt, *Eichmann in Jerusalem: A Report on the Banality of Evil* (rev. edn., London: Penguin Books, 1977).

2 *Ibid.*, at 135.

3 *Ibid.*, at 137.

4 *Ibid.*, at 292–293 and *passim*.

5 *Ibid.*, at 247.

6 *Ibid.*, at 287 (emphasis in the original).

stupid. It was sheer thoughtlessness — something by no means identical with stupidity — that predisposed him to become one of the greatest criminals of that period. And if this is “banal” and even funny, if with the best will in the world one cannot extract any diabolical or demonic profundity from Eichmann, that is still far from calling it commonplace.⁷ Within this context, Arendt hints at a troubling episode of 1944 to which we will return later: in 1944 Hitler, needing the support of Hungary, had accepted the proposal made by Hungarian Prime Minister Horthy to save the life of 8,700 Jewish families, comprising about 40,000 persons, by allowing them to leave Hungary, apparently to emigrate to Palestine via Romania. Eichmann, furious at this order and relying on a contrary, written order by Himmler, threatened to prompt the Führer to change his mind, and in any case did everything to thwart his order in practice. Arendt explains Eichmann’s attitude as follows: ‘... the sad and very uncomfortable truth of the matter probably was that it was not his [Eichmann’s] fanaticism but his very conscience that prompted Eichmann to adopt his uncompromising attitude during the last year of the war, as it had prompted him to move in the opposite direction for a short time three years before.’⁸

Probably, as suggested by Julia Kristeva,⁹ Arendt’s interpretation of Eichmann’s role and character was influenced by her analysis of the Origins of Totalitarianism (‘as being a “crystallization” of the socio-political conditions of Nazi totalitarianism: the eradication of thinking in human beings, their ceasing to think for themselves, and their willingness to obey superiors who gave them orders’¹⁰). Be that as it may, this interpretation has not gone unchallenged. Not many know that in 1965 a Jewish historian, Jacob Robinson (who in Jerusalem had been part of Eichmann’s prosecution team), published a book containing a scathing critique of Arendt’s vision of the trial and of Eichmann’s personality: *And the Crooked Shall be Made Straight: The Eichmann Trial, the Jewish Catastrophe, and Hannah Arendt’s Narrative*¹¹ (a book little known, probably because it does not make easy reading, being substantially a minute and punctilious analysis of all Arendt’s misinterpretations, or alleged misinterpretations; surprisingly, Arendt never tried to respond and refute Robinson’s devastating criticisms). Among the numerous facts adduced by Robinson to attack Arendt’s views, two deserve particular attention: Eichmann’s attitude towards the 1944 order by Hitler, and the interview that Eichmann gave in 1955, while hiding in Argentina, to a pro-Nazi Dutch journalist, Willem Antonius Maria Sassen, in which he made very grave remarks about his past contribution to the extermination of Jews.

Both episodes are recounted in a paper by Judge Gabriel Bach, the former Chief State Attorney of Israel, who, after Eichmann’s arrest and transfer to Israel, assisted as legal adviser to the police force that investigated Eichmann’s crimes and was

7 *Ibid.*, at 287–288.

8 *Ibid.*, at 146–147.

9 J. Kristeva, *Hannah Arendt*, transl. by R. Guberman (New York: Columbia University Press, 2001).

10 *Ibid.*, at 148.

11 New York: Macmillan Company, 1965, at 406.

then deputy to the Israeli Prosecutor in Eichmann's trial before the Jerusalem District Court.

I am reproducing below the most important passages from Bach's paper,¹² with footnotes added by this editor. They confirm that Hannah Arendt, while she may have been right about the 'banality of evil', was wrong in maintaining that Eichmann had been a simple cog in the criminal machinery, a robot-like functionary who only obeyed orders. This was the picture of himself that Eichmann astutely projected at the trial. It is however belied by some episodes that show that he was a criminal bigot who, after starting off his job for the sake of a rapid career, became a fanatic, bent on the extermination of as many Jews as possible, and deliberately made a conspicuous personal contribution to such extermination.

Antonio Cassese

The Trial of Adolf Eichmann

Gabriel Bach¹³

[. . .] In May 1960, he [Adolf Eichmann] was abducted by Israeli agents, taken to Israel, and handed over to the Israeli Police. When, on 23 May 1960, the Prime Minister of Israel, David Ben-Gurion, announced in the Knesset (the Israeli Parliament): [1] 'Adolf Eichmann is under arrest in Israel and will shortly be put on trial', the impact throughout the country was electrifying. The police investigation, placed in the hands of a special unit established for this purpose, took about nine months to complete. I was at that time the Deputy State Attorney of Israel, and was asked by the Minister of Justice to be in charge of the investigation, and later to appear in the trial, together with the Attorney General of Israel, the late Gideon Hausner.

12 The paper, kindly handed by the author to this editor, is the basis of a lecture Judge Bach delivered on 5 December 2008 in Marburg, on the occasion of a conference on 'The Genocide Convention' organized by Professor Christoph Safferling. The editor wishes to thank both Judge Bach and Professor Safferling for authorizing the publication of the extracts given above. The full text of the lecture will be published in a book, edited by Professor Safferling, collecting all the lectures given at the Marburg Conference.

The pages of the original typescript are indicated in square brackets.

13 Gabriel Bach (born in 1927 in Halberstadt, Germany) fled Germany with his parents to The Netherlands in November 1938 (two days before the infamous *Kristallnacht*). Then, in March 1940, the family emigrated to Palestine. After receiving his legal education in Great Britain (University College, London) he became a barrister there; in 1953 Judge Bach joined the Israeli State Attorney's Office (in charge of all litigation, both civil and criminal, to which the Israeli state is a party), remaining there until 1982. In 1961 he was appointed Deputy State Attorney and in that capacity acted as legal adviser to the Police Bureau conducting the investigations into Eichmann's crimes. He was one of the three prosecutors in the trial against Eichmann before the Jerusalem District Court. In 1969, he was appointed State Attorney of Israel. In 1982, he was appointed a Judge of the Israeli Supreme Court, a position he held until 1997. He now acts as a Judge of the Israeli Army Court of Appeals.

In November 2006, Judge Bach gave an interview on the *Eichmann* trial to Professor Frank Tuerkheimer (University of Wisconsin Law School). The interview is online: www.eichmann-prosecutorinterview.org (visited 6 April 2009). There, among other things, Judge Bach addressed the issues dealt with in the excerpts from the paper published in this *Journal*.

The crimes against the Jewish people with which the accused was charged consisted of all aspects of the persecution of millions of Jews, including their arrest and imprisonment in concentration camps, their deportation to extermination camps, their murder, and the theft of their property. The charges did not, however, confine themselves to Eichmann's participation in crimes against the Jewish people; they also included crimes against other peoples, such as the mass expulsions of Poles and Slovenes; the seizure, deportation to extermination camps and murder of tens of thousands of Gypsies; and the deportation and murder of some one hundred children from the village of Lidice in Czechoslovakia, in revenge for the killing of Reinhard Heydrich, the notorious head of the SS Secret Police. [2] [. . .]

The leading defence counsel was Dr. Servatius, one of the advocates who had appeared for some of the defendants at the Nuremberg trials.¹⁴ Until the arrival of his lawyers in Israel, I was in fact the only contact Eichmann had with the outside world, and whenever he wanted to discuss any of his personal problems, he was brought before me.

I intend to share with [. . .] [the reader] some of my reminiscences and personal experiences at the early stages of the investigation and later during the trial itself.

By means of more than 100 witnesses and some 1600 documents — many of them bearing Eichmann's own signature — the prosecution presented to the court the full account of all the events related to the Holocaust of European Jewry, or the 'Final Solution of the Jewish question', as the Nazis called it. In great detail the prosecution furnished the court with proof of the persecution of the Jews in all its stages: the anti-Jewish legislation; the incitement among the general population of hostility to the Jewish minority; the plunder of Jewish property; and, worst of all, the searching out of Jews in every European country under German occupation and in the satellite states, their imprisonment, under inhuman conditions, in ghettos and concentration camps, where they were harassed and humiliated, and finally, their systematic mass murder, with the aim of completely destroying the Jewish people. The prosecution demonstrated what [3] had happened to the Jews of Europe, country by country, and it proved the personal involvement of Eichmann, as the head of Section IV B 4 (the Gestapo section for Jewish affairs), in every stage of the heinous operation. In fact the entire scheme was called 'Operation Eichmann' in some of the German documents. [4]

[. . .] Strange as it may sound, at first it was rather difficult to find witnesses who were prepared to testify at the trial. The reason was that most of the survivors of the Holocaust were reluctant to relate their terrible experiences because for all these many years they had attempted to suppress these memories and pass them into the realm of the subconscious. However, once we succeeded in persuading these people to testify, then one could not stop them and they wanted to tell us all the details about what happened to their families

14 See C. Burchard, 'Servatius, Robert', in A. Cassese et al. (eds), *Oxford Companion to International Criminal Justice* (Oxford: Oxford University Press, 2009), 512–513.

and friends. We did not want the trial to go on for [11] too long and therefore we often asked these witnesses to limit their testimony to a particular point that was not covered by the already existing evidence. Often we felt that we would be unable to curb the evidence of these witnesses, and with a heavy heart we had to strike some of them off the list of witnesses for this reason.

I am often asked: what sort of a man was this Eichmann, and 'what made him tick?'

As a general rule I object to defining any person, including an offender, by 'pigeon holing' him as being only a murderer, a robot, a bureaucrat, a sadist or, in genocide cases — a typical Nazi. People are never *only* something. They are a combination of things and they pass through stages of development. This holds true for Eichmann as well. It seems that when he, as a member of the SS, became an expert on Jewish affairs, and the head of the relevant department in the German Secret Police, the Gestapo, he did this because he thought that this would help him in his career. There he carried out, efficiently, all parts of the plan concerning the persecution of the Jews and later their annihilation. Then you could trace through the oral evidence and the official documents how this gradually became a form of obsession with him. Maybe it is psychologically understandable, that when for years you deal only with the mass murder of innocent people, men, women and children, [. . .] you must either go mad, or by some defence mechanism become obsessed with the idea that you are doing something which is justified and [12] worthwhile. One can see how towards the end of the war he became even more fanatical than people like Hitler and Himmler. That does not mean that he was as guilty as those leaders. They were the originators of this hideous scheme, and as such the persons mainly responsible. But for them there were other areas of interest, like the political and military situation. For Hitler those problems were no less important than killing every last Jew, perhaps even more so. But for Eichmann, all his endeavours centred on this one purpose — the liquidation of the Jewish race. Here we had proof, that during the final stages of the war, when the German generals on the Eastern Front were clamouring for reinforcements and for ammunition, Eichmann, by all kind of tricks and trickery, managed to get priority for his death-trains, knowing that by doing so he was actually harming Germany's war-effort. He told his friends: 'I know the war is lost, but I am still going to win *my* war'. And then he went to Auschwitz in order to increase the rate of killings from 10,000 a day to 12,000.

When in the final stages of the war, in 1944, Admiral Horthy, the leader of Hungary, who fought on the side of Germany and Italy, wanted to make a separate peace with the Allies, because he thought the war was lost, Hitler came to Budapest to meet him, in order to persuade him, by threats and promises, to continue the fight together with Germany. Horthy finally agreed, but attached some conditions to this, one of these being that the Germans should permit 8,700 Jewish families¹⁵ from Budapest to go to a neutral [13] country,

15 The paper gives the figure of 3,000 families. They were in fact 8,700, as specified in Bach's interview mentioned above, in note 13. The same figure of 8,700 families is also mentioned by Robinson (*supra* note 11, at 2 and 30; the whole episode is mentioned *ibid.*, at 30–32).

to Switzerland. Hitler agreed, because Hungary's continued support was more important for him than those 8,700 families.¹⁶ In this connection we found in the archives of the German Foreign Ministry a telegram from the German Ambassador to Hungary, von Veessenmayer, to the Foreign Minister, von Ribbentrop. He described in this telegram the agreement between Hitler and Horthy, including the condition concerning the 8,700 Jewish families,¹⁷ and then he added:

I have however to inform you, that the local representative of the SS *Obersturmbannführer* Eichmann is very upset about this arrangement. He fears that those 3,000 families [sic] might constitute important biological material. They may come to Palestine and may cause there a new cell for the rebuilding of the Jewish race.

Von Veessenmayer added that Eichmann had therefore given instructions to increase the speed of the deportation of the Jews from Budapest in such a way, that until the visas [could] be arranged for the entry of these people to Switzerland [8,700] Jewish families¹⁸ [would] remain in Budapest.

Here Eichmann was faced with a decision of the Führer Adolf Hitler himself, and he succeeded in thwarting even this order, because he wanted to prevent the saving of a small number of Jews.¹⁹

16 *Ibid.*

17 *Ibid.*

18 *Ibid.*

19 The District Court of Jerusalem, in its judgment of 12 December 1961, dealt with this episode as follows [quotation from the English translation published in 36 *International Law Reports* (1968) 5–276]:

In Hungary, the diplomatic representatives of a number of neutral countries strove devotedly to rescue Jews, both by granting letters of protection to them and by assisting their emigration. These humanitarian efforts are linked with the names of men of noble spirit — Raoul Wallenberg of Sweden and Lutz of Switzerland. The accused worked to thwart these efforts. On April 24, 1944, he wrote to his section in Berlin as follows (T/1216):

We have taken care that the (German) Embassy here will also do everything to delay the emigration efforts, and finally, after the continued deportation of the Jews, to stop such efforts completely.

He went on to request that

the German Government's consent which had been given at the outset should be phrased with more clarity and sharpness on this point and state that emigration to Palestine . . . does not meet with Germany's approval. (Judgment, §155 d, *ibid.*, at 196).

The consent of the Reich Government, mentioned in the last paragraph, referred to the proposals for Jewish emigration which had come from the Governments of Sweden, Switzerland and the United States of America. In reply to these proposals, Hitler agreed to the emigration of several thousand Hungarian Jews on condition that Horthy should hand over the rest of the Jews of Hungary (especially the Jews of Budapest) to the Germans (see T/1214, para. 5; N/85). And here the accused reached the extreme limit in his fight against the rescue efforts. Veessenmayer wrote in a telegram dated July 25, 1944 (T/1215, para. 2):

S.S. Obersturmbannführer Eichmann, head of the Jewish Operation Unit of the S.D. here, has taken the stand that as far as he knows in no circumstances does the Reichsführer S.S. agree to the emigration of Hungarian Jews to Palestine. The Jews in

Documents like that and similar pieces of evidence helped us to explode the 'small cog' theory of the defence, according to which [14] Eichmann was an officer of relatively low rank who merely had to obey orders.

One of the striking features was his preoccupation with killing Jewish children. Proof of this we found in the notes of the last commander of the Auschwitz camp, named Rudolf Höss. He was sentenced to death by a Polish Court and hanged in 1951, i.e. 10 years before Eichmann's trial. Before he was executed he wrote his autobiography, which was published in a book called *Commander of Auschwitz*. There Höss relates how they sometimes carried out actions in which they put 1,000 children to death on one day. He described how some of the children begged for their lives, and wrote that when he had to push those children into the gas chambers, then his knees often got a bit shaky. But after that he adds:

I did however always feel ashamed of this weakness of mine after I talked to *Obersturmbannführer* Adolf Eichmann. Eichmann explained to me that it was especially the children who have to be killed first, because where was the logic in killing a generation of older people and leaving alive a generation of young people, who can be possible avengers of their parents and can constitute a new biological cell for the re-emerging of this people.²⁰

This was not devoid of some macabre logic, but I must admit that when 10 minutes after reading this I had to sit opposite Eichmann, [15] who wanted to discuss something with me, it was not without difficulty [for me] to preserve a poker face.

During his testimony in Court, Eichmann said that he thought that this was the worst crime ever committed in History. I was asked by the Judges and others whether I believed that he honestly meant that. This point could have been important for the sentence which was finally imposed on him. My reply

question are without exception important biological material, many of them veteran Zionists, whose emigration to Palestine is most undesirable. Having regard to the Fuehrer's decision of which he had been informed, he is about to submit a report to the Reichsfuehrer S.S. and, if necessary, he will seek a new decision from the Fuehrer. Furthermore, it has been agreed with Eichmann that to the extent that assent will be given to further removals of Jews from Budapest, these are to be carried out as suddenly as possible and with such speed that the Jews in question will already have been expelled before completion of the formalities.

The telegram added that in the event of permission being granted for emigration to the West, the accused was considering preventing the emigrants from continuing their journey, for example, by taking appropriate steps on French territory.

What has the accused to say upon the above, which is more damning than a hundred witnesses? Apart from rambling remarks to the effect that Veessenmayer erred in his report, he explains that the Fuehrer's order was not in writing before him, whereas Himmler's order was given to him in writing. The Attorney-General refuted this explanation by pointing out that the order for the total extermination of the Jews was also notified to the accused by word of mouth alone, yet all his actions were guided by it. This incident is characteristic of the accused's attitude not only in relation to the matter with which we are at present dealing. We shall return to it in another context. (Judgment, § 155 e, *ibid.*, at 197).

20 R. Höss, *Commandant of Auschwitz: The Autobiography of Rudolf Höss*, trans. by C. Fitzgibbon (Cleveland and New York: World Publishing Co., 1959), 242–243.

was that this was mere lip service on his part. When asked what was the basis for this contention, my answer was as follows: I could imagine that even a man like that could theoretically change his mind. His eyes could have been opened between the end of the war in 1945 and 1961 when his trial took place. But here we had proof that in 1956, when he was in Argentina, he was visited by a Dutch Fascist journalist called Sassen, who recorded his talks with him on tape. The idea was that he would publish this after Eichmann's death. This was a kind of insurance policy for his family. When Eichmann was caught, the journalist sold this material to *Life* magazine and the transcripts, with Eichmann's handwritten corrections, were obtained by us and submitted to the Court as evidence. There Eichmann enthusiastically describes the trains that pulled towards the death camps almost in lyrical terms ('It was marvellous to watch these trains'). And when he was asked by Sassen whether he ever felt remorse and whether he was ever sorry for what he had done, he replied, 'Yes, I am sorry for one thing, and that is that I was not hard enough, that I did not fight those damned interventionists [16] enough, and now you see the result: The creation of the State of Israel and the re-emergence of the Jewish people there!'²¹ And I added, that if Eichmann said this in 1956, 11 years after the end of the war, and now in 1961, 5 years later, when he is fighting for his life, he suddenly speaks about 'the worst crime in history', I think we are justified in being sceptical about the sincerity of such a remark. [17] [. . .]²²

21 The Sassen episode is mentioned by Robinson, *supra* note 11, at 117–118.

22 In the interview to Professor Tuerkheimer cited above, at note 13, Judge Bach also mentioned other episodes proving Eichmann's intransigence in persecuting Jews. One relates to the French Professor Weiss, who had made important research on the radar; consequently, a General of the German Army had asked Eichmann to spare the life of that academic, given the military value of his survival to Germany; Eichmann refused to comply, 'as a question of principle', and then, after noting that in any case Weiss' contribution on radar had already been utilized by the German army, sent him to concentration camps. Another episode concerns 11 Dutch Jews who were loyal fascists. The German authorities requested Eichmann to spare those Jews, both because they were loyal to the Nazi regime and also because they could have been used as spies within the Jewish community. Eichmann again refused to comply, only suggesting that the deportation could be postponed for a week or two, so as to avoid arousing too great an outcry. Yet another episode concerns an Italian Jewish woman, Jenny Cozzi (the widow of an Italian high-ranking, non-Jewish army officer) who had been deported to Riga; the Italian authorities had asked, through the German Foreign Office, that she be sent back to Italy; again Eichmann refused (on this episode see also Robinson, *supra* note 11, at 46–47). Lastly, an episode related to the Frenchman Roger Masson, who had received an important military distinction, the *Croix de guerre*; the highest French Vichy authorities asked that he be not deported, and once again Eichmann refused. Bach also recounts the case where Eichmann proposed that all members of the Germany army who were Jews by a quarter (say, having a Jewish grandfather or grandmother) be castrated; the proposal was rejected by Wilhelm Keitel, Field-marshal of the German Army, because its acceptance would have 'demoralized the Army'.