

The Eichmann Trial

The Eichmann trial commenced on the 11th of April 1961 in the theater house Beit-Ha'am (in Hebrew: 'House of the People') in Jerusalem. Adolf, the son of Karl Eichmann, was charged with crimes against Jews, Gypsies, and others during the years of Nazi reign in Germany and in the areas occupied by it. He was tried under a special Israeli law, the Nazis and Nazi Collaborators (Punishment) Law of 1950. The trial was viewed from the outset as an historical event of great importance. In a dramatic announcement before the Keneset (Israeli Parliament) David Ben-Gurion, then prime minister of Israel, declared that Eichmann had been captured by Israeli security services in Argentina, where he was hiding under false identity. He was brought to Israel in a special plane in May 1960. A special panel of judges, which included Supreme Court justice Moshe Landau, who headed the bench, and District Court judges Benjamin Halevy and Isaac Raveh, was appointed. The auditorium was packed with representatives of the international media as well as interested members of the Israeli public, Holocaust survivors alongside native Israelis. The prosecution was headed by Gideon Hausner, Israel's attorney general, and the defense was conducted by a German attorney, Dr. Robert Servatius who had previously defended Nazis at the Nuremberg Trials.

During World War II, Eichmann was in charge of the Nazi security police's Jewish Department. In September 1939 he became head of the Jewish Section in the Gestapo. It was his job to oversee the transfer of Jews from the countries conquered and annexed by the Nazis and from Germany itself to concentration and extermination camps in the East. In this role, he became responsible for the deaths of millions. From his early days in the service of the Nazi apparatus Eichmann specialized in questions relating to Jews and Zionism, and in 1937 he even visited Palestine incognito. His first noteworthy role was to organize the enforced emigration of Jews from Austria after the Anschluss [the annexation of Austria by Germany in March 1938], where in a short time he and his team managed to force more than 50,000 Jews to emigrate by stripping them of their property. By the end of 1940 Eichmann's office had the authority over all the Jews within the Reich. Later, he personally directed the 1944 deportations from Hungary while negotiating with Jewish representatives over a deal,

to exchange Jewish lives for goods or money. This deal never materialized and about 400,000 Hungarian Jews were sent to their deaths. His importance for the implementation of the 'final solution', however, did not derive from his formal rank in Nazi bureaucracy, as he had never attained a rank higher than the equivalent of a Lieutenant Colonel [Oberstleutnant], and was thus separated from Interior Minister Himmler by at least two ranks. Rather, the main source of his influence was his expertise in connection with Jewish affairs, and his having dealt with them throughout the Nazi period.

At the Jerusalem District Court Eichmann was indicted on fifteen counts, including crimes against the Jewish people, crimes against humanity, war crimes, and membership in various criminal organizations, including the SS, the Security Service (SD), and the Gestapo. Trying Eichmann in a domestic criminal court raised some very difficult questions. First, there was the problem of judging him according to an extra-territorial and retroactive law. Second, the connection of the judges to the community of the victims seemed to undermine the objectivity of the court. Third, the focus of the trial on victims' testimonies and on relating the suffering of them was unprecedented. Aside from these legalistic problems, the judges had to resort to doctrines of domestic criminal law to adjudicate the novel category of crimes against humanity that were committed over an extended period of time, in different places, and by numerous actors. The court refused to rely on the law of conspiracy that was used in the Nuremberg trials, because of its overreach, and its tendency to blur important distinctions of the criminal law. Thus, while the Anglo-American doctrine of conspiracy offered a simple solution to the adjudicating of collective crimes, it also threatened to undermine the age old distinction between the principal agent and the accessories to the crime. Instead, the Israeli court developed a unique interpretation of the "final solution" as a crime that implicated different agents in its various stages of implementation and was able in this way to attribute responsibility to Eichmann as a principal agent. Eichmann relied on the defense of 'obeying superior orders', but the court rejected it on the basis of the doctrine of 'manifest illegality' that was previously recognized by the Nuremberg tribunal. The task of the court was not simple. It had to find a way to adjust its jurisdiction rules and to interpret domestic criminal law so that it could address the novel categories of Nazi crimes without undermining the procedural guarantees of a fair trial. .

The special significance of the Eichmann trial both to the international community, and to the national community in Israel can be understood in light of two earlier trials: The Nuremberg trials conducted after WWII, and the Gruenwald libel trial (better known by its popular name the Kastner trial) that took place in Israel during 1954-5. Many of the prosecution's decisions regarding the way in which to structure the Eichmann trial were undertaken in order to avoid the risks that had materialized in those two earlier trials. Eichmann was not tried by the international military tribunal at Nuremberg, together with other Nazi criminals, since he had managed to escape to Argentina. However, not only Eichmann was absent from Nuremberg but also the full story of the Holocaust of European Jewry, as Ben-Gurion emphasized in press interviews. Among the reasons for this were the jurisdictional limitations imposed by the charter of the tribunal. The charter authorized the court to adjudicate only those actions falling under the category of 'crimes against the peace' and 'war crimes' that took place since 1939. These limitations stemmed from the novelty of the legal category of 'crimes against humanity' and from the fear that the precedent might unduly serve to undermine the sovereignty of states later on. By contrast, the Jerusalem court, which derived its authority from the the Israeli law, was able to consider the whole range of Eichmann's actions throughout the pre-war and wartime period (1933-1945), since the law did not impose a similar time limitation. In addition, the court was called to focus on crimes against the Jews, alongside crimes against humanity.

The prosecution used the platform of the trial to tell the missing story of the Jewish Holocaust. For this purpose it brought 112 witnesses who testified about the events of the Holocaust and Eichmann's involvement in coordinating and carrying out the "final solution". In addition it submitted 1,600 documents that described the systematic persecution of European Jewry in all its phases. This evidence helped the prosecution draw a picture of the full extent of the Holocaust, even though some of the facts it sought to establish were not controversial, since the defendant did not contest the facts about the 'extermination' of Jews, or the authenticity of the documents. The main line of defense was of 'obeying orders' and it therefore called for a much narrower scope of factual examination in the trial. Accordingly, the decided not to cross-examine witnesses whose testimony did not relate directly to the actions of Eichmann. Although the court did not adopt this view of the defense it

noted in its verdict the undue extension of the trial's scope, saying that the Attorney General "occasionally deviated to a small extent from the path which the court had deemed correct to delineate".

Relying solely on Israeli law, however, raised other concerns, since it was an ex-post legislation that extended the jurisdiction of the Israeli court to adjudicate crimes that occurred outside the state of Israel, and before its establishment. For this reason, the appellate court advanced an alternative basis for the court's jurisdiction, known as the doctrine of universal jurisdiction for trying crimes against humanity. The doctrine of universal jurisdiction remained dormant for forty years, since the international community viewed with suspicion the political aspects of the Eichmann trial. However, during the nineties when the international community was struggling to establish a permanent criminal international court, the ruling in the Eichmann trial came to serve as one of the main precedents for national courts that were beginning to adjudicate crimes against humanity that had taken places outside their territorial borders.

The second trial which Eichmann's prosecutors had much in mind and which had a crucial impact on their approach was the Kastner trial, as noted above. During the fifties, the Israeli Law for Trying the Nazis and their Collaborators was used mainly to try "their collaborators" among the Jews in Israel. One trial that caught much of the public attention and gave rise to an intense controversy within Israel dealt with the failed negotiations, which the Zionist leader, Rudolph Kastner conducted with Adolf Eichmann. Israeli public opinion divided over the appropriate course of action taken by Jews to the Nazi oppressor. Some favored armed resistance whereas others upheld the course of negotiations and cooperation. This debate reached a tragic climax when Kastner was assassinated a short while after the trial court reached its verdict, in which it strongly condemned Kastner for collaborating with the 'devil'. The prosecution in the Eichmann trial, aware of this traumatic event, attempted to change the atmosphere of blaming the victims' leaders by focusing on the guilt of the Nazi perpetrator – the defendant Adolf Eichmann. The Eichmann trial was to play a crucial role in unifying the ranks in Israel and in helping to construct a collective Israeli memory of the holocaust. The prosecution asked key witnesses to avoid the debate over the cooperation of the Judenrate (Jewish leaders) with the Nazis and

instead focused on the suffering of the victims. This decision to rely on the victims' testimonies had an enormous symbolic significance in legitimizing their words and lifting the taboo on discussing the Holocaust from the point of view of the victims both for legal and for historiographical purposes..

These decisions of the prosecution - turning the trial into a platform for telling the story of the Jewish holocaust by the victims, as well as avoiding the issue of Jewish cooperation with the Nazis - were sharply criticized by philosopher Hannah Arendt. Arendt, a German Jew, was living in France when World War II broke out. Interned in southern France along with other stateless Germans in 1940, she escaped and reached America in 1941. She made her name in 1951 with *The Origins of Totalitarianism*, a thorough account of the historical and philosophical origins of the totalitarian state, one that drew parallels between Nazi Germany and Stalinist Russia. In 1961, Arendt was sent by *The New Yorker* to cover the Eichmann trial in Jerusalem. Her reports, which harshly criticized the Israeli prosecution, were later published in expanded form in the book *Eichmann in Jerusalem*. She disagreed especially with the prosecution's decision to cast the trial's spotlight on the Jewish Holocaust and its victims. Arendt believed that instead of employing a category created by Israeli law, "crimes against the Jewish people," the prosecution should have based its case solely on "crimes against humanity." However, unlike many in the international community, she did not doubt the wisdom of using a legal process against Eichmann, or the right of Israel to judge him. In her opinion, the systematic plan of the Nazis to annihilate the Jewish people justified a trial of Eichmann by a tribunal belonging to the victims' new political community. She praised the judges for resisting the temptation to allow politics into the court, especially Justice Landau.

The parts of Arendt's narrative that stirred much controversy discussed the complicity of the Jewish leaders in the destruction of their own communities, and the depiction of Eichmann's state of mind as "banal". Jacob Robinson who served as an advisor on international law to the prosecution team, devoted a book, *And the Crooked Shall be Made Straight*, to refuting the inaccuracies in Arendt's report. Gershom Scholem, an eminent scholar and public intellectual published a letter questioning Arendt's unforgiving condemnation of the Judenrate. The report sparked a furor and an intense debate that was waged primarily in the American press.

Notwithstanding the controversy, Arendt's book remained one of the classical sources addressing the philosophical and jurisprudential aspects of the Eichmann trial. Ironically, it was Arendt's book that did not allow the trial to lose its pertinence some forty years later. The book was belatedly translated into Hebrew in the year 2000, stirring a new public debate, this time, regarding historical representations of the period.

In its verdict, the district court rejected Eichmann's arguments, both those challenging the jurisdiction of the court and those raising the substantive defense of obeying superiors' orders. Eichmann was found guilty on all counts and on December 15, 1961 was sentenced to death. He appealed, but the Supreme Court upheld the district court's decision. His appeal for clemency was also denied by Israel's president, notwithstanding the pleas of several public intellectuals on his behalf. Eichmann was hanged on the night between May 31 and June 1, 1962. His body was cremated, and the ashes scattered at sea. It was the only death sentence to be carried out in the history of the State of Israel.

Above all, the Eichmann trial is symbolized by the bulletproof glass booth in which Adolf Eichmann had been seated in order to protect his life. Abba Kovner, a leader of Jewish resistance group and a witness in the trial, proposed to see the glass booth as a symbol of the predicament of the Jews themselves under Nazi rule. Today, after the publication of numerous historical studies of the crimes of the Nazis, we may understand the glass booth as symbolizing the Nazi criminals themselves. By resorting to "clean language", and by distancing the higher members of the Nazi apparatus from the daily murder and brutality which was the fate of the victims, the Nazis succeeded in introducing to the world a new form of crime which threatens to pervert the technological achievements of civilization into the instruments of its destruction. The Eichmann trial stands as a warning sign to humanity in this regard.

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