

O Germany –

Hearing the speeches that ring from your house, one laughs.

But whoever sees you, reaches for his knife.

– Bertolt Brecht

I

The House of Justice

'Beth Hamishpath' – the House of Justice: these words shouted by the court usher at the top of his voice make us jump to our feet as they announce the arrival of the three judges, who, bare-headed, in black robes, walk into the courtroom from a side entrance to take their seats on the highest tier of the raised platform. Their long table, soon to be covered with innumerable books and more than fifteen hundred documents, is flanked at each end by the court stenographers. Directly below the judges are the translators, whose services are needed for direct exchanges between the defendant or his counsel and the court; otherwise, the German-speaking accused party, like almost everyone else in the audience, follows the Hebrew proceedings through the simultaneous radio transmission, which is excellent in French, bearable in English, and sheer comedy, frequently incomprehensible, in German. (In view of the scrupulous fairness of all technical arrangements for the trial, it is among the minor mysteries of the new State of Israel that, with its high percentage of German-born people, it was unable to find an adequate translator into the only language the accused and his counsel could understand. For the old prejudice against German Jews, once very pronounced in Israel, is no longer strong enough to account for it. Remains as explication the even older and still very powerful 'Vitamin P,' as the Israelis call protection in government circles and the bureaucracy.) One tier below the translators, facing each other and hence with their profiles turned to the audience, we see the glass booth of the accused and the witness box. Finally, on the bottom tier, with their backs to the audience, are the prosecutor with his staff of four assistant attorneys, and

the counsel for the defense, who during the first weeks is accompanied by an assistant.

At no time is there anything theatrical in the conduct of the judges. Their walk is unstudied, their sober and intense attention, visibly stiffening under the impact of grief as they listen to the tales of suffering, is natural; their impatience with the prosecutor's attempt to drag out these hearings forever is spontaneous and refreshing, their attitude to the defense perhaps a shade overpolite, as though they had always in mind that 'Dr Servatius stood almost alone in this strenuous battle, in an unfamiliar environment,' their manner toward the accused always beyond reproach. They are so obviously three good and honest men that one is not surprised that none of them yields to the greatest temptation to play-act in this setting – that of pretending that they, all three born and educated in Germany, must wait for the Hebrew translation. Moshe Landau, the presiding judge, hardly ever withholds his answer until the translator has done his work, and he frequently interferes in the translation, correcting and improving, evidently grateful for this bit of distraction from an otherwise grim business. Months later, during the cross-examination of the accused, he will even lead his colleagues to use their German mother tongue in the dialogue with Eichmann – a proof, if proof were still needed, of his remarkable independence of current public opinion in Israel.

There is no doubt from the very beginning that it is Judge Landau who sets the tone, and that he is doing his best, his very best, to prevent this trial from becoming a show trial under the influence of the prosecutor's love of showmanship. Among the reasons he cannot always succeed is the simple fact that the proceedings happen on a stage before an audience, with the usher's marvelous shout at the beginning of each session producing the effect of the rising curtain. Whoever planned this auditorium in the newly built *Beth Ha'am*, the House of the People (now surrounded by high fences, guarded from roof to cellar by heavily armed police, and with a row of wooden barracks in the front courtyard in which all comers are expertly frisked), had a theater in mind, complete with orchestra and gallery, with proscenium and stage, and with side doors for the actors'

entrance. Clearly, this courtroom is not a bad place for the show trial David Ben-Gurion, Prime Minister of Israel, had in mind when he decided to have Eichmann kidnaped in Argentina and brought to the District Court of Jerusalem to stand trial for his role in the 'final solution of the Jewish question.' And Ben-Gurion, rightly called the 'architect of the state,' remains the invisible stage manager of the proceedings. Not once does he attend a session; in the courtroom he speaks with the voice of Gideon Hausner, the Attorney General, who, representing the government, does his best, his very best, to obey his master. And if, fortunately, his best often turns out not to be good enough, the reason is that the trial is presided over by someone who serves Justice as faithfully as Mr Hausner serves the State of Israel. Justice demands that the accused be prosecuted, defended, and judged, and that all the other questions of seemingly greater import – of 'How could it happen?' and 'Why did it happen?,' of 'Why the Jews?' and 'Why the Germans?,' of 'What was the role of other nations?' and 'What was the extent of co-responsibility on the side of the Allies?,' of 'How could the Jews through their own leaders cooperate in their own destruction?' and 'Why did they go to their death like lambs to the slaughter?' – be left in abeyance. Justice insists on the importance of Adolf Eichmann, son of Karl Adolf Eichmann, the man in the glass booth built for his protection: medium-sized, slender, middle-aged, with receding hair, ill-fitting teeth, and nearsighted eyes, who throughout the trial keeps craning his scraggy neck toward the bench (not once does he face the audience), and who desperately and for the most part successfully maintains his self-control despite the nervous tic to which his mouth must have become subject long before this trial started. On trial are his deeds, not the sufferings of the Jews, not the German people or mankind, not even anti-Semitism and racism.

And Justice, though perhaps an 'abstraction' for those of Mr Ben-Gurion's turn of mind, proves to be a much sterner master than the Prime Minister with all his power. The latter's rule, as Mr Hausner is not slow in demonstrating, is permissive; it permits the prosecutor to give press-conferences and interviews for television during the trial (the American program, sponsored by the Glickman Corporation, is

constantly interrupted – business as usual – by real-estate advertising), and even ‘spontaneous’ outbursts to reporters in the court building – he is sick of cross-examining Eichmann, who answers all questions with lies; it permits frequent side glances into the audience, and the theatrics characteristic of a more than ordinary vanity, which finally achieves its triumph in the White House with a compliment on ‘a job well done’ by the President of the United States. Justice does not permit anything of the sort; it demands seclusion, it permits sorrow rather than anger, and it prescribes the most careful abstention from all the nice pleasures of putting oneself in the limelight. Judge Landau’s visit to this country shortly after the trial was not publicized, except among the Jewish organizations for which it was undertaken.

Yet no matter how consistently the judges shunned the limelight, there they were, seated at the top of the raised platform, facing the audience as from the stage in a play. The audience was supposed to represent the whole world, and in the first few weeks it indeed consisted chiefly of newspapermen and magazine writers who had flocked to Jerusalem from the four corners of the earth. They were to watch a spectacle as sensational as the Nuremberg Trials, only this time ‘the tragedy of Jewry as a whole was to be the central concern.’ For ‘if we shall charge [Eichmann] also with crimes against non-Jews, . . . this is’ not because he committed them, but, surprisingly, ‘because we make no ethnic distinctions.’ Certainly a remarkable sentence for a prosecutor to utter in his opening speech; it proved to be the key sentence in the case for the prosecution. For this case was built on what the Jews had suffered, not on what Eichmann had done. And, according to Mr Hausner, this distinction would be immaterial, because ‘there was only one man who had been concerned almost entirely with the Jews, whose business had been their destruction, whose role in the establishment of the iniquitous regime had been limited to them. That was Adolf Eichmann.’ Was it not logical to bring before the court all the facts of Jewish suffering (which, of course, were never in dispute) and then look for evidence which in one way or another would connect Eichmann with what had happened? The Nuremberg Trials, where the defendants had

been 'indicted for crimes against the members of various nations,' had left the Jewish tragedy out of account for the simple reason that Eichmann had not been there.

Did Mr Hausner really believe the Nuremberg Trials would have paid greater attention to the fate of the Jews if Eichmann had been in the dock? Hardly. Like almost everybody else in Israel, he believed that only a Jewish court could render justice to Jews, and that it was the business of Jews to sit in judgment on their enemies. Hence the almost universal hostility in Israel to the mere mention of an international court which would have indicted Eichmann, not for crimes 'against the Jewish people,' but for crimes against mankind committed on the body of the Jewish people. Hence the strange boast: 'We make no ethnic distinctions,' which sounded less strange in Israel, where rabbinical law rules the personal status of Jewish citizens, with the result that no Jew can marry a non-Jew; marriages concluded abroad are recognized, but children of mixed marriages are legally bastards (children of Jewish parentage born out of wedlock are legitimate), and if one happens to have a non-Jewish mother he can neither be married nor buried. The outrage in this state of affairs has become more acute since 1953, when a sizable portion of jurisdiction in matters of family law was handed over to the secular courts. Women can now inherit property and in general enjoy equal status with men. Hence it is hardly respect for the faith or the power of the fanatically religious minority that prevents the government of Israel from substituting secular jurisdiction for rabbinical law in matters of marriage and divorce. Israeli citizens, religious and nonreligious, seem agreed upon the desirability of having a law which prohibits intermarriage, and it is chiefly for this reason – as Israeli officials outside the courtroom were willing to admit – that they are also agreed upon the undesirability of a written constitution in which such a law would embarrassingly have to be spelled out. ('The argument against civil marriage is that it would split the House of Israel, and would also separate Jews of this country from Jews of the Diaspora,' as Philip Gillon recently put it in *Jewish Frontier*.) Whatever the reasons, there certainly was something breathtaking in the naïveté with which the prosecution denounced the infamous Nuremberg Laws of 1935,

which had prohibited intermarriage and sexual intercourse between Jews and Germans. The better informed among the correspondents were well aware of the irony, but they did not mention it in their reports. This, they figured, was not the time to tell the Jews what was wrong with the laws and institutions of their own country.

If the audience at the trial was to be the world and the play the huge panorama of Jewish sufferings, the reality was falling short of expectations and purposes. The journalists remained faithful for not much more than two weeks, after which the audience changed drastically. It was now supposed to consist of Israelis, of those who were too young to know the story or, as in the case of Oriental Jews, had never been told it. The trial was supposed to show them what it meant to live among non-Jews, to convince them that only in Israel could a Jew be safe and live an honorable life. (For correspondents, the lesson was spelled out in a little booklet on Israel's legal system, which was handed to the press. Its author, Doris Lankin, cites a Supreme Court decision whereby two fathers who had 'abducted their children and brought them to Israel' were directed to send them back to their mothers who, living abroad, had a legal right to their custody. And this, adds the author – no less proud of such strict legality than Mr Hausner of his willingness to prosecute murder even when the victims were non-Jews – 'despite the fact that to send the children back to maternal custody and care would be committing them to waging an unequal struggle against the hostile elements in the Diaspora.') But in this audience there were hardly any young people, and it did not consist of Israelis as distinguished from Jews. It was filled with 'survivors,' with middle-aged and elderly people, immigrants from Europe, like myself, who knew by heart all there was to know, and who were in no mood to learn any lessons and certainly did not need this trial to draw their own conclusions. As witness followed witness and horror was piled upon horror, they sat there and listened in public to stories they would hardly have been able to endure in private, when they would have had to face the storyteller. And the more 'the calamity of the Jewish people in this generation' unfolded and the more grandiose Mr Hausner's rhetoric became, the paler and more ghostlike became the figure in the glass

booth, and no finger-wagging: 'And there sits the monster responsible for all this,' could shout him back to life.

It was precisely the play aspect of the trial that collapsed under the weight of the hair-raising atrocities. A trial resembles a play in that both begin and end with the doer, not with the victim. A show trial needs even more urgently than an ordinary trial a limited and well-defined outline of what was done and how it was done. In the center of a trial can only be the one who did – in this respect, he is like the hero in the play – and if he suffers, he must suffer for what he has done, not for what he has caused others to suffer. No one knew this better than the presiding judge, before whose eyes the trial began to degenerate into a bloody show, 'a rudderless ship tossed about on the waves.' But if his efforts to prevent this were often defeated, the defeat was, strangely, in part the fault of the defense, which hardly ever rose to challenge any testimony, no matter how irrelevant and immaterial it might be. *Dr Servatius*, as everybody invariably addressed him, was a bit bolder when it came to the submission of documents, and the most impressive of his rare interventions occurred when the prosecution introduced as evidence the diaries of Hans Frank, former Governor General of Poland and one of the major war criminals hanged at Nuremberg. 'I have only one question. Is the name Adolf Eichmann, the name of the accused, mentioned in those twenty-nine volumes [in fact, there were thirty-eight]? . . . The name Adolf Eichmann is not mentioned in all those twenty-nine volumes . . . Thank you, no more questions.'

Thus, the trial never became a play, but the show Ben-Gurion had had in mind to begin with did take place, or, rather, the 'lessons' he thought should be taught to Jews and Gentiles, to Israelis and Arabs, in short, to the whole world. These lessons to be drawn from an identical show were meant to be different for the different recipients. Ben-Gurion had outlined them before the trial started, in a number of articles designed to explain why Israel had kidnaped the accused. There was the lesson to the non-Jewish world: 'We want to establish before the nations of the world how millions of people, because they happened to be Jews, and one million babies, because they happened to be Jewish babies, were murdered by the Nazis.' Or, in the

words of *Davar*, the organ of Mr Ben-Gurion's Mapai party: 'Let world opinion know this, that not only Nazi Germany was responsible for the destruction of six million Jews of Europe.' Hence, again in Ben-Gurion's own words, 'We want the nations of the world to know . . . and they should be ashamed.' The Jews in the Diaspora were to remember how Judaism, 'four thousand years old, with its spiritual creations and its ethical strivings, its Messianic aspirations,' had always faced 'a hostile world,' how the Jews had degenerated until they went to their death like sheep, and how only the establishment of a Jewish state had enabled Jews to hit back, as Israelis had done in the War of Independence, in the Suez adventure, and in the almost daily incidents on Israel's unhappy borders. And if the Jews outside Israel had to be shown the difference between Israeli heroism and Jewish submissive meekness, there was a lesson for those inside Israel too: 'the generation of Israelis who have grown up since the holocaust' were in danger of losing their ties with the Jewish people and, by implication, with their own history. 'It is necessary that our youth remember what happened to the Jewish people. We want them to know the most tragic facts in our history.' Finally, one of the motives in bringing Eichmann to trial was 'to ferret out other Nazis – for example, the connection between the Nazis and some Arab rulers.'

If these had been the only justifications for bringing Adolf Eichmann to the District Court of Jerusalem, the trial would have been a failure on most counts. In some respects, the lessons were superfluous, and in others positively misleading. Anti-Semitism has been discredited, thanks to Hitler, perhaps not forever but certainly for the time being, and this not because the Jews have become more popular all of a sudden but because, in Mr Ben-Gurion's own words, most people have 'realized that in our day the gas chamber and the soap factory are what anti-Semitism may lead to.' Equally superfluous was the lesson to the Jews in the Diaspora, who hardly needed the great catastrophe in which one-third of their people perished to be convinced of the world's hostility. Not only has their conviction of the eternal and ubiquitous nature of anti-Semitism been the most potent ideological factor in the Zionist movement since the Dreyfus

Affair; it was also the cause of the otherwise inexplicable readiness of the German Jewish community to negotiate with the Nazi authorities during the early stages of the regime. (Needless to say, these negotiations were separated by an abyss from the later collaboration of the *Judenräte*. No moral questions were involved yet, only a political decision whose 'realism' was debatable: 'concrete' help, thus the argument ran, was better than 'abstract' denunciations. It was *Realpolitik* without Machiavellian overtones, and its dangers came to light years later, after the outbreak of the war, when these daily contacts between the Jewish organizations and the Nazi bureaucracy made it so much easier for the Jewish functionaries to cross the abyss between helping Jews to escape and helping the Nazis to deport them.) It was this conviction which produced the dangerous inability of the Jews to distinguish between friend and foe; and German Jews were not the only ones to underestimate their enemies because they somehow thought that all Gentiles were alike. If Prime Minister Ben-Gurion, to all practical purposes the head of the Jewish State, meant to strengthen this kind of 'Jewish consciousness,' he was ill-advised; for a change in this mentality is actually one of the indispensable prerequisites for Israeli statehood, which by definition has made of the Jews a people among peoples, a nation among nations, a state among states, depending now on a plurality which no longer permits the age-old and, unfortunately, religiously anchored dichotomy of Jews and Gentiles.

The contrast between Israeli heroism and the submissive meekness with which Jews went to their death – arriving on time at the transportation points, walking on their own feet to the places of execution, digging their own graves, undressing and making neat piles of their clothing, and lying down side by side to be shot – seemed a fine point, and the prosecutor, asking witness after witness, 'Why did you not protest?', 'Why did you board the train?', 'Fifteen thousand people were standing there and hundreds of guards facing you – why didn't you revolt and charge and attack?', was elaborating it for all it was worth. But the sad truth of the matter is that the point was ill taken, for no non-Jewish group or people had behaved differently. Sixteen years ago, while still under the direct impact of the

events, David Rousset, a former inmate of Buchenwald, described what we know happened in all concentration camps: 'The triumph of the S.S. demands that the tortured victim allow himself to be led to the noose without protesting, that he renounce and abandon himself to the point of ceasing to affirm his identity. And it is not for nothing. It is not gratuitously, out of sheer sadism, that the S.S. men desire his defeat. They know that the system which succeeds in destroying its victim before he mounts the scaffold . . . is incomparably the best for keeping a whole people in slavery. In submission. Nothing is more terrible than these processions of human beings going like dummies to their deaths' (*Les Jours de notre mort*, 1947). The court received no answer to this cruel and silly question, but one could easily have found an answer had he permitted his imagination to dwell for a few minutes on the fate of those Dutch Jews who in 1941, in the old Jewish quarter of Amsterdam, dared to attack a German security police detachment. Four hundred and thirty Jews were arrested in reprisal and they were literally tortured to death, first in Buchenwald and then in the Austrian camp of Mauthausen. For months on end they died a thousand deaths, and every single one of them would have envied his brethren in Auschwitz and even in Riga and Minsk. There exist many things considerably worse than death, and the S.S. saw to it that none of them was ever very far from their victims' minds and imagination. In this respect, perhaps even more significantly than in others, the deliberate attempt at the trial to tell only the Jewish side of the story distorted the truth, even the Jewish truth. The glory of the uprising in the Warsaw ghetto and the heroism of the few others who fought back lay precisely in their having refused the comparatively easy death the Nazis offered them – before the firing squad or in the gas chamber. And the witnesses in Jerusalem who testified to resistance and rebellion, to 'the small place [it had] in the history of the holocaust,' confirmed once more the fact that only the very young had been capable of taking 'the decision that we cannot go and be slaughtered like sheep.'

In one respect, Mr Ben-Gurion's expectations for the trial were not altogether disappointed; it did indeed become an important

instrument for ferreting out other Nazis and criminals, but not in the Arab countries, which had openly offered refuge to hundreds of them. The Grand Mufti's connections with the Nazis during the war were no secret; he had hoped they would help him in the implementation of some 'final solution' in the Near East. Hence, newspapers in Damascus and Beirut, in Cairo and Jordan, did not hide their sympathy for Eichmann or their regret that he 'had not finished the job'; a broadcast from Cairo on the day the trial opened even injected a slightly anti-German note into its comments, complaining that there was not 'a single incident in which one German plane flew over one Jewish settlement and dropped one bomb on it throughout the last world war.' That Arab nationalists have been in sympathy with Nazism is notorious, their reasons are obvious, and neither Ben-Gurion nor this trial was needed 'to ferret them out'; they never were in hiding. The trial revealed only that all rumors about Eichmann's connection with Haj Amin el Husseini, the former Mufti of Jerusalem, were unfounded. (He had been introduced to the Mufti during an official reception, along with all other departmental heads.) The Mufti had been in close contact with the German Foreign Office and with Himmler, but this was nothing new.

If Ben-Gurion's remark about 'the connection between Nazis and some Arab rulers' was pointless, his failure to mention present-day West Germany in this context was surprising. Of course, it was reassuring to hear that Israel does 'not hold Adenauer responsible for Hitler,' and that 'for us a decent German, although he belongs to the same nation that twenty years ago helped to murder millions of Jews, is a decent human being.' (There was no mention of decent Arabs.) The German Federal Republic, although it has not yet recognized the State of Israel – presumably out of fear that the Arab countries might recognize Ulbricht's Germany – has paid seven hundred and thirty-seven million dollars in reparation to Israel during the last ten years; these payments will soon come to an end, and Israel is now trying to negotiate a long-term loan from West Germany. Hence, the relationship between the two countries, and particularly the personal relationship between Ben-Gurion and Adenauer, has been quite good, and if, as an aftermath of the trial, some

deputies in the Knesset, the Israeli Parliament, succeeded in imposing certain restraints on the cultural-exchange program with West Germany, this certainly was neither foreseen nor hoped for by Ben-Gurion. It is more noteworthy that he had not foreseen, or did not care to mention, that Eichmann's capture would trigger the first serious effort made by Germany to bring to trial at least those who were directly implicated in murder. The Central Agency for the Investigation of Nazi Crimes, belatedly founded by the West German state in 1958 and headed by Prosecutor Erwin Schüle, had run into all kinds of difficulties, caused partly by the unwillingness of German witnesses to cooperate and partly by the unwillingness of the local courts to prosecute on the basis of the material sent them from the Central Agency. Not that the trial in Jerusalem produced any important new evidence of the kind needed for the discovery of Eichmann's associates; but the news of Eichmann's sensational capture and of the impending trial had sufficient impact to persuade the local courts to use Mr Schüle's findings, and to overcome the native reluctance to do anything about 'murderers in our midst' by the time-honored means of posting rewards for the capture of well-known criminals.

The results were amazing. Seven months after Eichmann's arrival in Jerusalem – and four months before the opening of the trial – Richard Baer, successor to Rudolf Höss as Commandant of Auschwitz, could finally be arrested. In rapid succession, most of the members of the so-called Eichmann Commando – Franz Novak, who lived as a printer in Austria; Dr Otto Hunsche, who had settled as a lawyer in West Germany; Hermann Krumei, who had become a druggist; Gustav Richter, former 'Jewish adviser' in Rumania; and Willi Zöpf, who had filled the same post in Amsterdam – were arrested also; although evidence against them had been published in Germany years before, in books and magazine articles, not one of them had found it necessary to live under an assumed name. For the first time since the close of the war, German newspapers were full of reports on the trials of Nazi criminals, all of them mass murderers (after May, 1960, the month of Eichmann's capture, only first-degree murder could be prosecuted; all other offenses were

wiped out by the statute of limitations, which is twenty years for murder), and the reluctance of the local courts to prosecute these crimes showed itself only in the fantastically lenient sentences meted out to the accused. (Thus, Dr Otto Bradfisch, of the *Einsatzgruppen*, the mobile killing units of the S.S. in the East, was sentenced to ten years of hard labor for the killing of fifteen thousand Jews; Dr Otto Hunsche, Eichmann's legal expert and personally responsible for a last-minute deportation of some twelve hundred Hungarian Jews, of whom at least six hundred were killed, received a sentence of five years of hard labor; and Joseph Lechthaler, who had 'liquidated' the Jewish inhabitants of Slutsk and Smolevichi in Russia, was sentenced to three years and six months.) Among the new arrests were people of great prominence under the Nazis, most of whom had already been denazified by the German courts. One of them was S.S. General Karl Wolff, former chief of Himmler's personal staff, who, according to a document submitted in 1946 at Nuremberg, had greeted 'with particular joy' the news that 'for two weeks now a train has been carrying, every day, five thousand members of the Chosen People' from Warsaw to Treblinka, one of the Eastern killing centers. Another was Wilhelm Koppe, who had at first managed the gassing in Chelmno and then become successor to Friedrich-Wilhelm Krüger in Poland. One of the most prominent among the Higher S.S. Leaders whose task it had been to make Poland *judenrein*, in postwar Germany Koppe was director of a chocolate factory. Harsh sentences were occasionally meted out, but were even less reassuring when they went to such offenders as Erich von dem Bach-Zelewski, former General of the Higher S.S. and Police Leader Corps. He had been tried in 1961 for his participation in the Röhm rebellion in 1934 and sentenced to three and one half years; he was then indicted again in 1962 for the killing of six German Communists in 1933, tried before a jury in Nuremberg, and sentenced to life. Neither indictment mentioned that Bach-Zelewski had been anti-partisan chief on the Eastern front or that he had participated in the Jewish massacres at Minsk and Mogilev, in White Russia. Should German courts, on the pretext that war crimes are no crimes, make 'ethnic distinctions'? Or is it possible that what was an unusually

harsh sentence, at least in German postwar courts, was arrived at because Bach-Zelewski was among the very few who actually had suffered a nervous breakdown after the mass killings, had tried to protect Jews from the *Einsatzgruppen*, and had testified for the prosecution at Nuremberg? He was also the only one in this category who in 1952 had denounced himself publicly for mass murder, but he was never prosecuted for it.

There is little hope that things will change now, even though the Adenauer administration has been forced to weed out of the judiciary more than a hundred and forty judges and prosecutors, along with many police officers with more than ordinarily compromising pasts, and to dismiss Wolfgang Immerwahr Frankel, the chief prosecutor of the Federal Supreme Court, because, his middle name notwithstanding, he had been less than candid when asked about his Nazi past. It has been estimated that of the eleven thousand five hundred judges in the *Bundesrepublik*, five thousand were active in the courts under the Hitler regime. In November, 1962, shortly after the purging of the judiciary and six months after Eichmann's name had disappeared from the news, the long awaited trial of Martin Fellenz took place at Flensburg in an almost empty courtroom. The former Higher S.S. and Police Leader, who had been a prominent member of the Free Democratic Party in Adenauer's Germany, was arrested in June, 1960, a few weeks after Eichmann's capture. He was accused of participation in and partial responsibility for the murder of forty thousand Jews in Poland. After more than six weeks of detailed testimony, the prosecutor demanded the maximum penalty – a life sentence of hard labor. And the court sentenced Fellenz to four years, two and a half of which he had already served while waiting in jail to be tried. Be that as it may, there is no doubt that the Eichmann trial had its most far-reaching consequences in Germany. The attitude of the German people toward their own past, which all experts on the German question had puzzled over for fifteen years, could hardly have been more clearly demonstrated: they themselves did not much care one way or the other, and did not particularly mind the presence of murderers at large in the country, since none of them were likely to commit murder of their own free will; however,

if world opinion – or rather, what the Germans called *das Ausland*, collecting all countries outside Germany into a singular noun – became obstinate and demanded that these people be punished, they were perfectly willing to oblige, at least up to a point.

Chancellor Adenauer had foreseen embarrassment and voiced his apprehension that the trial would ‘stir up again all the horrors’ and produce a new wave of anti-German feeling throughout the world, as indeed it did. During the ten months that Israel needed to prepare the trial, Germany was busy bracing herself against its predictable results by showing an unprecedented zeal for searching out and prosecuting Nazi criminals within the country. But at no time did either the German authorities or any significant segment of public opinion demand Eichmann’s extradition, which seemed the obvious move, since every sovereign state is jealous of its right to sit in judgment on its own offenders. (The official position of the Adenauer government that this was not possible because there existed no extradition treaty between Israel and Germany is not valid; that meant only that Israel could not have been forced to extradite. Fritz Bauer, Attorney General of Hessen, saw the point and applied to the federal government in Bonn to start extradition proceedings. But Mr Bauer’s feelings in this matter were the feelings of a German Jew, and they were not shared by German public opinion; his application was not only refused by Bonn, it was hardly noticed and remained totally unsupported. Another argument against extradition, offered by the observers the West German government sent to Jerusalem, was that Germany had abolished capital punishment and hence was unable to mete out the sentence Eichmann deserved. In view of the leniency shown by German courts to Nazi mass murderers, it is difficult not to suspect bad faith in this objection. Surely, the greatest political hazard of an Eichmann trial in Germany would have been acquittal for lack of *mens rea*, as J. J. Jansen pointed out in the *Rheinischer Merkur* [August 11, 1961].)

There is another, more delicate, and politically more relevant, side to this matter. It is one thing to ferret out criminals and murderers from their hiding places, and it is another thing to find them prominent and flourishing in the public realm – to encounter innumerable

men in the federal and state administrations and, generally, in *public* office whose careers had bloomed under the Hitler regime. True, if the Adenauer administration had been too sensitive about employing officials with a compromising Nazi past, there might have been no administration at all. For the truth is, of course, the exact opposite of Dr Adenauer's assertion that only 'a relatively small percentage' of Germans had been Nazis, and that a 'great majority [had been] happy to help their Jewish fellow-citizens when they could.' (At least one German newspaper, the *Frankfurter Rundschau*, asked itself the obvious question, long overdue – why so many people who must have known, for instance, the record of the chief prosecutor had kept silent – and then came up with the even more obvious answer: 'Because they themselves felt incriminated.') The logic of the Eichmann trial, as Ben-Gurion conceived of it, with its stress on general issues to the detriment of legal niceties, would have demanded exposure of the complicity of all German offices and authorities in the Final Solution – of all civil servants in the state ministries, of the regular armed forces, with their General Staff, of the judiciary, and of the business world. But although the prosecution as conducted by Mr Hausner went as far afield as to put witness after witness on the stand who testified to things that, while gruesome and true enough, had no or only the slightest connection with the deeds of the accused, it carefully avoided touching upon this highly explosive matter – upon the almost ubiquitous complicity, which had stretched far beyond the ranks of Party membership. (There were widespread rumors prior to the trial that Eichmann had named 'several hundred prominent personalities of the Federal Republic as his accomplices,' but these rumors were not true. In his opening speech, Mr Hausner mentioned Eichmann's 'accomplices in the crime who were neither gangsters nor men of the underworld,' and promised that we should 'encounter them – doctors and lawyers, scholars, bankers, and economists – in those councils that resolved to exterminate the Jews.' This promise was not kept, nor could it have been kept in the form in which it was made. For there never existed a 'council that resolved' anything, and the 'robed dignitaries with academic degrees' never decided on the extermination of the Jews, they only came together to plan the

necessary steps in carrying out an order given by Hitler.) Still, one such case was brought to the attention of the court, that of Dr Hans Globke, one of Adenauer's closest advisers, who, more than twenty-five years ago, was co-author of an infamous commentary on the Nuremberg Laws and, somewhat later, author of the brilliant idea of compelling all German Jews to take 'Israel' or 'Sarah' as a middle name. But Mr Globke's name – and only his name – was inserted into the District Court proceedings by the defense, and probably only in the hope of 'persuading' the Adenauer government to start extradition proceedings. At any rate, the former *Ministerialrat* of the Interior and present *Staatssekretär* in Adenauer's Chancellery doubtless had more right than the ex-Mufti of Jerusalem to figure in the history of what the Jews had actually suffered from the Nazis.

For it was history that, as far as the prosecution was concerned, stood in the center of the trial. 'It is not an individual that is in the dock at this historic trial, and not the Nazi regime alone, but anti-Semitism throughout history.' This was the tone set by Ben-Gurion and faithfully followed by Mr Hausner, who began his opening address (which lasted through three sessions) with Pharaoh in Egypt and Haman's decree 'to destroy, to slay, and to cause them to perish.' He then proceeded to quote Ezekiel: 'And when I [the Lord] passed by thee, and saw thee polluted in thine own blood, I said unto thee: In thy blood, live,' explaining that these words must be understood as 'the imperative that has confronted this nation ever since its first appearance on the stage of history.' It was bad history and cheap rhetoric; worse, it was clearly at cross-purposes with putting Eichmann on trial, suggesting that perhaps he was only an innocent executor of some mysteriously foreordained destiny, or, for that matter, even of anti-Semitism, which perhaps was necessary to blaze the trail of 'the bloodstained road traveled by this people' to fulfill its destiny. A few sessions later, when Professor Salo W. Baron of Columbia University had testified to the more recent history of Eastern European Jewry, Dr Servatius could no longer resist temptation and asked the obvious questions: 'Why did all this bad luck fall upon the Jewish people?' and 'Don't you think that irrational motives are at the basis of the fate of this people? Beyond the understanding

of a human being?’ Is not there perhaps something like ‘the spirit of history, which brings history forward . . . without the influence of men?’ Is not Mr Hausner basically in agreement with ‘the school of historical law’ – an allusion to Hegel – and has he not shown that what ‘the leaders do will not always lead to the aim and destination they wanted? . . . Here the intention was to destroy the Jewish people and the objective was not reached and a new flourishing State came into being.’ The argument of the defense had now come perilously close to the newest anti-Semitic notion about the Elders of Zion, set forth in all seriousness a few weeks earlier in the Egyptian National Assembly by Deputy Foreign Minister Hussain Zulficar Sabri: Hitler was innocent of the slaughter of the Jews; he was a victim of the Zionists, who had ‘compelled him to perpetrate crimes that would eventually enable them to achieve their aim – the creation of the State of Israel.’ Except that Dr Servatius, following the philosophy of history expounded by the prosecutor, had put History in the place usually reserved for the Elders of Zion.

Despite the intentions of Ben-Gurion and all the efforts of the prosecution, there remained an individual in the dock, a person of flesh and blood; and if Ben-Gurion did ‘not care what verdict is delivered against Eichmann,’ it was undeniably the sole task of the Jerusalem court to deliver one.

II

The Accused

Otto Adolf, son of Karl Adolf Eichmann and Maria née Schefferling, caught in a suburb of Buenos Aires on the evening of May 11, 1960, flown to Israel nine days later, brought to trial in the District Court in Jerusalem on April 11, 1961, stood accused on fifteen counts: 'together with others' he had committed crimes against the Jewish people, crimes against humanity, and war crimes during the whole period of the Nazi regime and especially during the period of the Second World War. The Nazis and Nazi Collaborators (Punishment) Law of 1950, under which he was tried, provides that 'a person who has committed one of these . . . offenses . . . is liable to the death penalty.' To each count Eichmann pleaded: 'Not guilty in the sense of the indictment.'

In what sense then did he think he was guilty? In the long cross-examination of the accused, according to him 'the longest ever known,' neither the defense nor the prosecution nor, finally, any of the three judges ever bothered to ask him this obvious question. His lawyer, Robert Servatius of Cologne, hired by Eichmann and paid by the Israeli government (following the precedent set at the Nuremberg Trials, where all attorneys for the defense were paid by the Tribunal of the victorious powers), answered the question in a press interview: 'Eichmann feels guilty before God, not before the law,' but this answer remained without confirmation from the accused himself. The defense would apparently have preferred him to plead not guilty on the grounds that under the then existing Nazi legal system he had not done anything wrong, that what he was accused of were not crimes but 'acts of state,' over which no other state has jurisdiction (*par in parem imperium non habet*), that it had been his

duty to obey and that, in Servatius' words, he had committed acts 'for which you are decorated if you win and go to the gallows if you lose.' (Thus Goebbels had declared in 1943: 'We will go down in history as the greatest statesmen of all times or as their greatest criminals.') Outside Israel (at a meeting of the Catholic Academy in Bavaria, devoted to what the *Rheinischer Merkur* called 'the ticklish problem' of the 'possibilities and limits in the coping with historical and political guilt through criminal proceedings'), Servatius went a step farther, and declared that 'the only legitimate criminal problem of the Eichmann trial lies in pronouncing judgment against his Israeli captors, which so far has not been done' – a statement, incidentally, that is somewhat difficult to reconcile with his repeated and widely publicized utterances in Israel, in which he called the conduct of the trial 'a great spiritual achievement,' comparing it favorably with the Nuremberg Trials.

Eichmann's own attitude was different. First of all, the indictment for murder was wrong: 'With the killing of Jews I had nothing to do. I never killed a Jew, or a non-Jew, for that matter – I never killed any human being. I never gave an order to kill either a Jew or a non-Jew; I just did not do it,' or, as he was later to qualify this statement, 'It so happened . . . that I had not once to do it' – for he left no doubt that he would have killed his own father if he had received an order to that effect. Hence he repeated over and over (what he had already stated in the so-called Sassen documents, the interview that he had given in 1955 in Argentina to the Dutch journalist Sassen, a former S.S. man who was also a fugitive from justice, and that, after Eichmann's capture, had been published in part by *Life* in this country and by *Der Stern* in Germany) that he could be accused only of 'aiding and abetting' the annihilation of the Jews, which he declared in Jerusalem to have been 'one of the greatest crimes in the history of Humanity.' The defense paid no attention to Eichmann's own theory, but the prosecution wasted much time in an unsuccessful effort to prove that Eichmann had once, at least, killed with his own hands (a Jewish boy in Hungary), and it spent even more time, and more successfully, on a note that Franz Rademacher, the Jewish expert in the German Foreign Office, had scribbled on one of the

documents dealing with Yugoslavia during a telephone conversation, which read: 'Eichmann proposes shooting.' This turned out to be the only 'order to kill,' if that is what it was, for which there existed even a shred of evidence.

The evidence was more questionable than it appeared to be during the trial, at which the judges accepted the prosecutor's version against Eichmann's categorical denial – a denial that was very ineffective, since he had forgotten the 'brief incident [a mere eight thousand people] which was not so striking,' as Servatius put it. The incident took place in the autumn of 1941, six months after Germany had occupied the Serbian part of Yugoslavia. The Army had been plagued by partisan warfare ever since, and it was the military authorities who decided to solve two problems at a stroke by shooting a hundred Jews and Gypsies as hostages for every dead German soldier. To be sure, neither Jews nor Gypsies were partisans, but, in the words of the responsible civilian officer in the military government, a certain Staatsrat Harald Turner, 'the Jews we had in the camps [anyhow]; after all, they too are Serb nationals, and besides, they have to disappear' (quoted by Raul Hilberg in *The Destruction of the European Jews*, 1961). The camps had been set up by General Franz Böhme, military governor of the region, and they housed Jewish males only. Neither General Böhme nor Staatsrat Turner waited for Eichmann's approval before starting to shoot Jews and Gypsies by the thousand. The trouble began when Böhme, without consulting the appropriate police and S.S. authorities, decided to *deport* all his Jews, probably in order to show that no special troops, operating under a different command, were required to make Serbia *judenrein*. Eichmann was informed, since it was a matter of deportation, and he refused approval because the move would interfere with other plans; but it was not Eichmann but Martin Luther, of the Foreign Office, who reminded General Böhme that 'In other territories [meaning Russia] other military commanders have taken care of considerably greater numbers of Jews without even mentioning it.' In any event, if Eichmann actually did 'propose shooting,' he told the military only that they should go on doing what they had done all along, and that the question of hostages was entirely in their own

competence. Obviously, this was an Army affair, since only males were involved. The implementation of the Final Solution in Serbia started about six months later, when women and children were rounded up and disposed of in mobile gas vans. During cross-examination, Eichmann, as usual, chose the most complicated and least likely explanation: Rademacher had needed the support of the Head Office for Reich Security, Eichmann's outfit, for his own stand on the matter in the Foreign Office, and therefore had forged the document. (Rademacher himself explained the incident much more reasonably at his own trial, before a West German court in 1952: 'The Army was responsible for order in Serbia and had to kill rebellious Jews by shooting.' This sounded more plausible but was a lie, for we know – from Nazi sources – that the Jews were not 'rebellious.') If it was difficult to interpret a remark made over the phone as an order, it was more difficult to believe that Eichmann had been in a position to give orders to the generals of the Army.

Would he then have pleaded guilty if he had been indicted as an accessory to murder? Perhaps, but he would have made important qualifications. What he had done was a crime only in retrospect, and he had always been a law-abiding citizen, because Hitler's orders, which he had certainly executed to the best of his ability, had possessed 'the force of law' in the Third Reich. (The defense could have quoted in support of Eichmann's thesis the testimony of one of the best-known experts on constitutional law in the Third Reich, Theodor Maunz, currently Minister of Education and Culture in Bavaria, who stated in 1943 [in *Gestalt und Recht der Polizei*]: 'The command of the Führer . . . is the absolute center of the present legal order.') Those who today told Eichmann that he could have acted differently simply did not know, or had forgotten, how things had been. He did not want to be one of those who now pretended that 'they had always been against it,' whereas in fact they had been very eager to do what they were told to do. However, times change, and he, like Professor Maunz, had 'arrived at different insights.' What he had done he had done, he did not want to deny it; rather, he proposed 'to hang myself in public as a warning example for all anti-Semites on