

betrayed his own people.) If interventions on behalf of "prominent" Jews came from "prominent" people, they often were quite successful. Thus Sven Hedin, one of Hitler's most ardent admirers, intervened for a well-known geographer, a Professor Philippsohn of Bonn, who was "living under undignified conditions at Theresienstadt"; in a letter to Hitler, Hedin threatened that "his attitude to Germany would be dependent upon Philippsohn's fate," whereupon (according to H. G. Adler's book on Theresienstadt) Mr. Philippsohn was promptly provided with better quarters.

In Germany today, this notion of "prominent" Jews has not yet been forgotten. While the veterans and other privileged groups are no longer mentioned, the fate of "famous" Jews is still deplored at the expense of all others. There are more than a few people, especially among the cultural élite, who still publicly regret the fact that Germany sent Einstein packing, without realizing that it was a much greater crime to kill little Hans Cohn from around the corner, even though he was no genius.

ARENDT, HANNAH

Eichmann in Jerusalem

VIII: Duties of a Law-Abiding Citizen

So Eichmann's opportunities for feeling like Pontius Pilate were many, and as the months and the years went by, he lost the need to feel anything at all. This was the way things were, this was the new law of the land, based on the Führer's order; whatever he did he did, as far as he could see, as a law-abiding citizen. He did his *duty*, as he told the police and the court over and over again; he not only obeyed *orders*, he also obeyed the *law*. Eichmann had a muddled inkling that this could be an important distinction, but neither the defense nor the judges ever took him up on it. The well-worn coins of "superior orders" versus "acts of state" were handed back and forth; they had governed the whole discussion of these matters during the Nuremberg Trials, for no other reason than that they gave the illusion that the altogether unprecedented could be judged according to precedents and the standards that went with them. Eichmann, with his rather modest mental gifts, was certainly the last man in the courtroom to be expected to challenge these notions and to strike out on his own. Since, in addition to performing what he conceived to be the duties of a law-abiding citizen, he had also acted upon orders—always so careful to be "covered"—he became completely muddled, and ended by stressing alternately the virtues and the vices of blind obedience, or the "obedience of corpses," *Kadavergehorsam*, as he himself called it.

The first indication of Eichmann's vague notion that there was more involved in this whole business than the question of the soldier's carrying out orders that are clearly criminal in nature and intent appeared during the police examination, when he suddenly declared with great emphasis that he had lived his whole life according to Kant's moral precepts, and especially

according to a Kantian definition of duty. This was outrageous, on the face of it, and also incomprehensible, since Kant's moral philosophy is so closely bound up with man's faculty of judgment, which rules out blind obedience. The examining officer did not press the point, but Judge Raveh, either out of curiosity or out of indignation at Eichmann's having dared to invoke Kant's name in connection with his crimes, decided to question the accused. And, to the surprise of everybody, Eichmann came up with an approximately correct definition of the categorical imperative: "I meant by my remark about Kant that the principle of my will must always be such that it can become the principle of general laws" (which is not the case with theft or murder, for instance, because the thief or the murderer cannot conceivably wish to live under a legal system that would give others the right to rob or murder him). Upon further questioning, he added that he had read Kant's *Critique of Practical Reason*. He then proceeded to explain that from the moment he was charged with carrying out the Final Solution he had ceased to live according to Kantian principles, that he had known it, and that he had consoled himself with the thought that he no longer "was master of his own deeds," that he was unable "to change anything." What he failed to point out in court was that in this "period of crimes legalized by the state," as he himself now called it, he had not simply dismissed the Kantian formula as no longer applicable, he had distorted it to read: Act as if the principle of your actions were the same as that of the legislator or of the law of the land—or, in Hans Frank's formulation of "the categorical imperative in the Third Reich," which Eichmann might have known: "Act in such a way that the Führer, if he knew your action, would approve it" (*Die Technik des Staates*, 1942, pp. 15-16). Kant, to be sure, had never intended to say anything of the sort; on the contrary, to him every man was a legislator the moment he started to act: by using his "practical reason" man found the principles that could and should be the principles of law. But it is true that Eichmann's unconscious distortion agrees with what he himself called the version of Kant "for the household use of the little man." In this household use, all that is left of Kant's spirit is the demand that a man do more than obey the law, that he go beyond the mere call of obedience and

identify his own will with the principle behind the law—the source from which the law sprang. In Kant's philosophy, that source was practical reason; in Eichmann's household use of him, it was the will of the Führer. Much of the horribly painstaking thoroughness in the execution of the Final Solution—a thoroughness that usually strikes the observer as typically German, or else as characteristic of the perfect bureaucrat—can be traced to the odd notion, indeed very common in Germany, that to be law-abiding means not merely to obey the laws but to act as though one were the legislator of the laws that one obeys. Hence the conviction that nothing less than going beyond the call of duty will do.

Whatever Kant's role in the formation of "the little man's" mentality in Germany may have been, there is not the slightest doubt that in one respect Eichmann did indeed follow Kant's precepts: a law was a law, there could be no exceptions. In Jerusalem, he admitted only two such exceptions during the time when "eighty million Germans" had each had "his decent Jew": he had helped a half-Jewish cousin, and a Jewish couple in Vienna for whom his uncle had intervened. This inconsistency still made him feel somewhat uncomfortable, and when he was questioned about it during cross-examination, he became openly apologetic: he had "confessed his sins" to his superiors. This uncompromising attitude toward the performance of his murderous duties damned him in the eyes of the judges more than anything else, which was comprehensible, but in his own eyes it was precisely what justified him, as it had once silenced whatever conscience he might have had left. No exceptions—this was the proof that he had always acted against his "inclinations," whether they were sentimental or inspired by interest, that he had always done his "duty."

Doing his "duty" finally brought him into open conflict with orders from his superiors. During the last year of the war, more than two years after the Wannsee Conference, he experienced his last crisis of conscience. As the defeat approached, he was confronted by men from his own ranks who fought more and more insistently for exceptions and, eventually, for the cessation of the Final Solution. That was the moment when his caution broke down and he began, once more, taking initiatives—for

instance, he organized the foot marches of Jews from Budapest to the Austrian border after Allied bombing had knocked out the transportation system. It now was the fall of 1944, and Eichmann knew that Himmler had ordered the dismantling of the extermination facilities in Auschwitz and that the game was up. Around this time, Eichmann had one of his very few personal interviews with Himmler, in the course of which the latter allegedly shouted at him, "If up to now you have been busy liquidating Jews, you will from now on, since I order it, take good care of Jews, act as their nursemaid. I remind you that it was I—and neither Gruppenführer Müller nor you—who founded the R.S.H.A. in 1933; I am the one who gives orders here!" Sole witness to substantiate these words was the very dubious Mr. Kurt Becher; Eichmann denied that Himmler had shouted at him, but he did not deny that such an interview had taken place. Himmler cannot have spoken in precisely these words, he surely knew that the R.S.H.A. was founded in 1939, not in 1933, and not simply by himself but by Heydrich, with his endorsement. Still, something of the sort must have occurred, Himmler was then giving orders right and left that the Jews be treated well—they were his "soundest investment"—and it must have been a shattering experience for Eichmann.

Eichmann's last crisis of conscience began with his missions to Hungary in March, 1944, when the Red Army was moving through the Carpathian Mountains toward the Hungarian border. Hungary had joined the war on Hitler's side in 1941, for no other reason than to receive some additional territory from her neighbors, Slovakia, Rumania, and Yugoslavia. The Hungarian government had been outspokenly anti-Semitic even before that, and now it began to deport all stateless Jews from the newly acquired territories. (In nearly all countries, anti-Jewish action started with stateless persons.) This was quite outside the Final Solution, and, as a matter of fact, didn't fit in with the elaborate plans then in preparation under which Europe would be "combed from West to East," so that Hungary had a rather low priority in the order of operations. The stateless Jews had been shoved by the Hungarian police into the nearest part of Russia, and the German occupation authorities on the spot had protested

their arrival; the Hungarians had taken back some thousands of able-bodied men and had let the others be shot by Hungarian troops under the guidance of German police units. Admiral Horthy, the country's Fascist ruler, had not wanted to go any further, however—probably due to the restraining influence of Mussolini and Italian Fascism—and in the intervening years Hungary, not unlike Italy, had become a haven for Jews, to which even refugees from Poland and Slovakia could sometimes still escape. The annexation of territory and the trickle of incoming refugees had increased the number of Jews in Hungary from about five hundred thousand before the war to approximately eight hundred thousand in 1944, when Eichmann moved in.

As we know today, the safety of these three hundred thousand Jews newly acquired by Hungary was due to the Germans' reluctance to start a separate action for a limited number, rather than to the Hungarians' eagerness to offer asylum. In 1942, under pressure from the German Foreign Office (which never failed to make it clear to Germany's allies that the touchstone of their trustworthiness was their helpfulness not in winning the war but in "solving the Jewish question"), Hungary had offered to hand over all Jewish refugees. The Foreign Office had been willing to accept this as a step in the right direction, but Eichmann had objected: for technical reasons, he thought it "preferable to defer this action until Hungary is ready to include the Hungarian Jews"; it would be too costly "to set in motion the whole machinery of evacuation" for only one category, and hence "without making any progress in the solution of the Jewish problem in Hungary." Now, in 1944, Hungary was "ready," because on the nineteenth of March two divisions of the German Army had occupied the country. With them had arrived the new Reich Plenipotentiary, S.S. Standartenführer Dr. Edmund Veessenmayer, Himmler's agent in the Foreign Office, and S.S. Obergruppenführer Otto Winkelmann, a member of the Higher S.S. and Police Leader Corps and therefore under the direct command of Himmler. The third S.S. official to arrive in the country was Eichmann, the expert on Jewish evacuation and deportation, who was under the command of Müller and Kaltenbrunner of the R.S.H.A. Hitler himself had

left no doubt what the arrival of the three gentlemen meant; in a famous interview, prior to the occupation of the country, he had told Horthy that "Hungary had not yet introduced the steps necessary to settle the Jewish question," and had charged him with "not having permitted the Jews to be massacred" (Hilberg).

Eichmann's assignment was clear. His whole office was moved to Budapest (in terms of his career, this was a "gliding down"), to enable him to see to it that all "necessary steps" were taken. He had no foreboding of what was to happen; his worst fear concerned possible resistance on the part of the Hungarians, which he would have been unable to cope with, because he lacked manpower and also lacked knowledge of local conditions. These fears proved quite unfounded. The Hungarian *gendarmarie* was more than eager to do all that was necessary, and the new State Secretary in Charge of Political (Jewish) Affairs in the Hungarian Ministry of the Interior, László Endre, was a man "well versed in the Jewish problem," and became an intimate friend, with whom Eichmann could spend a good deal of his free time. Everything went "like a dream," as he repeated whenever he recalled this episode; there were no difficulties whatsoever. Unless, of course, one calls difficulties a few minor differences between his orders and the wishes of his new friends; for instance, probably because of the approach of the Red Army from the East, his orders stipulated that the country was to be "combed from East to West," which meant that Budapest Jews would not be evacuated during the first weeks or months—a matter for great grief among the Hungarians, who wanted their capital to take the lead in becoming *judenrein*. (Eichmann's "dream" was an incredible nightmare for the Jews: nowhere else were so many people deported and exterminated in such a brief span of time. In less than two months, 147 trains, carrying 434,351 people in sealed freight cars, a hundred persons to a car, left the country, and the gas chambers of Auschwitz were hardly able to cope with this multitude.)

The difficulties arose from another quarter. Not one man but three had orders specifying that they were to help in "the solution of the Jewish problem"; each of them belonged to a different

outfit and stood in a different chain of command. Technically, Winkelmann was Eichmann's superior, but the Higher S.S. and Police Leaders were not under the command of the R.S.H.A., to which Eichmann belonged. And Veessenmayer, of the Foreign Office, was independent of both. At any rate, Eichmann refused to take orders from either of the others, and resented their presence. But the worst trouble came from a fourth man, whom Himmler had charged with a "special mission" in the only country in Europe that still harbored not only a sizable number of Jews but Jews who were still in an important economic position. (Of a total of a hundred and ten thousand commercial stores and industrial enterprises in Hungary, forty thousand were reported to be in Jewish hands.) This man was Obersturmbannführer, later Standartenführer, Kurt Becher.

Becher, an old enemy of Eichmann who is today a prosperous merchant in Bremen, was called, strangely enough, as a witness for the defense. He could not come to Jerusalem, for obvious reasons, and he was examined in his German home town. His testimony had to be dismissed, since he had been shown, well ahead of time, the questions he was later called on to answer under oath. It was a great pity that Eichmann and Becher could not have been confronted with each other, and this not merely for juridical reasons. Such a confrontation would have revealed another part of the "general picture," which, even legally, was far from irrelevant. According to his own account, the reason Becher joined the S.S. was that "from 1932 to the present day he had been actively engaged in horseback riding." Thirty years ago, this was a sport engaged in only by Europe's upper classes. In 1934, his instructor had persuaded him to enter the S.S. cavalry regiment, which at that moment was the very thing for a man to do if he wished to join the "movement" and at the same time maintain a proper regard for his social standing. (A possible reason Becher in his testimony stressed horseback riding was never mentioned: the Nuremberg Tribunal had excluded the *Reiter-S.S.* from its list of criminal organizations.) The war saw Becher on active duty at the front, as a member not of the Army but of the Armed S.S., in which he was a liaison officer with the Army commanders. He soon left the front to become the principal buyer of horses for the

S.S. personnel department, a job that earned him nearly all the decorations that were then available.

Becher claimed that he had been sent to Hungary only in order to buy twenty thousand horses for the S.S.; this is unlikely, since immediately upon his arrival he began a series of very successful negotiations with the heads of big Jewish business concerns. His relations with Himmler were excellent, he could see him whenever he wished. His "special mission" was clear enough. He was to obtain control of major Jewish business concerns behind the backs of the Hungarian government, and, in return, to give the owners free passage out of the country, plus a sizable amount of money in foreign currency. His most important transaction was with the Manfred Weiss steel combine, a mammoth enterprise, with thirty thousand workers, which produced everything from airplanes, trucks, and bicycles to tinned goods, pins, and needles. The result was that forty-five members of the Weiss family emigrated to Portugal while Mr. Becher became head of their business. When Eichmann heard of this *Schweinerei*, he was outraged; the deal threatened to compromise his good relations with the Hungarians, who naturally expected to take possession of Jewish property confiscated on their own soil. He had some reason for his indignation, since these deals were contrary to the regular Nazi policy, which had been quite generous. For their help in solving the Jewish question in any country, the Germans had demanded no part of the Jews' property, only the costs of their deportation and extermination, and these costs had varied widely from country to country—the Slovaks had been supposed to pay between three hundred and five hundred Reichsmarks per Jew, the Croats only thirty, the French seven hundred, and the Belgians two hundred and fifty. (It seems that no one ever paid except the Croats.) In Hungary, at this late stage of the war, the Germans were demanding payment in goods—shipments of food to the Reich, in quantities determined by the amount of food the deported Jews would have consumed.

The Weiss affair was only the beginning, and things were to get considerably worse, from Eichmann's point of view. Becher was a born businessman, and where Eichmann saw only enormous tasks of organization and administration, he saw

almost unlimited possibilities for making money. The one thing that stood in his way was the narrow-mindedness of subordinate creatures like Eichmann, who took their jobs seriously. Obersturmbannführer Becher's projects soon led him to cooperate closely in the rescue efforts of Dr. Rudolf Kastner. (It was to Kastner's testimony on his behalf that Becher later, at Nuremberg, owed his freedom. Being an old Zionist, Kastner had moved to Israel after the war, where he held a high position until a journalist published a story about his collaboration with the S.S.—whereupon Kastner sued him for libel. His testimony at Nuremberg weighed heavily against him, and when the case came before the Jerusalem District Court, Judge Halevi, one of the three judges in the Eichmann trial, told Kastner that he "had sold his soul to the devil." In March, 1957, shortly before his case was to be appealed before the Israeli Supreme Court, Kastner was murdered; none of the murderers, it seems, came from Hungary. In the hearing that followed the verdict of the lower court was repealed and Kastner was fully rehabilitated.) The deals Becher made through Kastner were much simpler than the complicated negotiations with the business magnates; they consisted in fixing a price for the life of each Jew to be rescued. There was considerable haggling over prices, and at one point, it seems, Eichmann also got involved in some of the preliminary discussions. Characteristically, his price was the lowest, a mere two hundred dollars per Jew—not, of course, because he wished to save more Jews but simply because he was not used to thinking big. The price finally arrived at was a thousand dollars, and one group, consisting of 1,684 Jews, and including Dr. Kastner's family, actually left Hungary for the exchange camp at Bergen-Belsen, from which they eventually reached Switzerland. A similar deal, through which Becher and Himmler hoped to obtain twenty million Swiss francs from the American Joint Distribution Committee, for the purchase of merchandise of all sorts, kept everybody busy until the Russians liberated Hungary, but nothing came of it.

There is no doubt that Becher's activities had the full approval of Himmler and stood in the sharpest possible opposition to the old "radical" orders, which still reached Eichmann through Müller and Kaltenbrunner, his immediate superiors in the

R.S.H.A. In Eichmann's view, people like Becher were corrupt, but corruption could not very well have caused his crisis of conscience, for although he was apparently not susceptible to this kind of temptation, he must by this time have been surrounded by corruption for many years. It is difficult to imagine that he did not know that his friend and subordinate Hauptsturmführer Dieter Wisliceny had, as early as 1942, accepted fifty thousand dollars from the Jewish Relief Committee in Bratislava for delaying the deportations from Slovakia, though it is not altogether impossible; but he cannot have been ignorant of the fact that Himmler, in the fall of 1942, had tried to sell exit permits to the Slovakian Jews in exchange for enough foreign currency to pay for the recruitment of a new S.S. division. Now, however, in 1944, in Hungary, it was different, not because Himmler was involved in "business," but because business had now become official policy; it was no longer mere corruption.

At the beginning, Eichmann tried to enter the game and play it according to the new rules; that was when he got involved in the fantastic "blood-for-wares" negotiations—one million Jews for ten thousand trucks for the crumbling German Army—which certainly were not initiated by him. The way he explained his role in this matter, in Jerusalem, showed clearly how he had once justified it to himself: as a military necessity that would bring him the additional benefit of an important new role in the emigration business. What he probably never admitted to himself was that the mounting difficulties on all sides made it every day more likely that he would soon be without a job (indeed, this happened, a few months later) unless he succeeded in finding some foothold amid the new jockeying for power that was going on all around him. When the exchange project met with its predictable failure, it was already common knowledge that Himmler, despite his constant vacillations, chiefly due to his justified physical fear of Hitler, had decided to put an end to the whole Final Solution—regardless of business, regardless of military necessity, and without anything to show for it except the illusions he had concocted about his future role as the bringer of peace to Germany. It was at this time that a "moderate wing" of the S.S. came into existence,

consisting of those who were stupid enough to believe that a murderer who could prove he had not killed as many people as he could have killed would have a marvelous alibi, and those who were clever enough to foresee a return to "normal conditions," when money and good connections would again be of paramount importance.

Eichmann never joined this "moderate wing," and it is questionable whether he would have been admitted if he had tried to. Not only was he too deeply compromised and, because of his constant contact with Jewish functionaries, too well known; he was too primitive for these well-educated upper-middle-class "gentlemen," against whom he harbored the most violent resentment up to the very end. He was quite capable of sending millions of people to their death, but he was not capable of talking about it in the appropriate manner without being given his "language rule." In Jerusalem, without any rules, he spoke freely of "killing" and of "murder," of "crimes legalized by the state"; he called a spade a spade, in contrast to counsel for the defense, whose feeling of social superiority to Eichmann was more than once in evidence. (Servatius' assistant Dr. Dieter Wechtenbruch—a disciple of Carl Schmitt who attended the first few weeks of the trial, then was sent to Germany to question witnesses for the defense, and reappeared for the last week in August—was readily available to reporters out of court; he seemed to be shocked less by Eichmann's crimes than by his lack of taste and education. "Small fry," he said; "we must see how we get him over the hurdles"—*wie wir das Würstchen über die Runden bringen*. Servatius himself had declared, even prior to the trial, that his client's personality was that of "a common mailman.")

When Himmler became "moderate," Eichmann sabotaged his orders as much as he dared, to the extent at least that he felt he was "covered" by his immediate superiors. "How does Eichmann dare to sabotage Himmler's orders?"—in this case, to stop the foot marches, in the fall of 1944—Kastner once asked Wisliceny. And the answer was: "He can probably show some telegram. Müller and Kaltenbrunner must have covered him." It is quite possible that Eichmann had some confused plan for liquidating Theresienstadt before the arrival of the Red Army,

although we know this only through the dubious testimony of Dieter Wisliceny (who months, and perhaps years, before the end began carefully preparing an alibi for himself at the expense of Eichmann, to which he then treated the court at Nuremberg, where he was a witness for the prosecution; it did him no good, for he was extradited to Czechoslovakia, prosecuted and executed in Prague, where he had no connections and where money was of no help to him). Other witnesses claimed that it was Rolf Günther, one of Eichmann's men, who planned this, and that there existed, on the contrary, a written order from Eichmann that the ghetto be left intact. In any event, there is no doubt that even in April, 1945, when practically everybody had become quite "moderate," Eichmann took advantage of a visit that M. Paul Dunand, of the Swiss Red Cross, paid to Theresienstadt to put it on record that he himself did not approve of Himmler's new line in regard to the Jews.

That Eichmann had at all times done his best to make the Final Solution final was therefore not in dispute. The question was only whether this was indeed proof of his fanaticism, his boundless hatred of Jews, and whether he had lied to the police and committed perjury in court when he claimed he had always obeyed orders. No other explanation ever occurred to the judges, who tried so hard to understand the accused, and treated him with a consideration and an authentic, shining humanity such as he had probably never encountered before in his whole life. (Dr. Wechtenbruch told reporters that Eichmann had "great confidence in Judge Landau," as though Landau would be able to sort things out, and ascribed this confidence to Eichmann's need for authority. Whatever its basis, the confidence was apparent throughout the trial, and it may have been the reason the judgment caused Eichmann such great "disappointment"; he had mistaken humanity for softness.) That they never did come to understand him may be proof of the "goodness" of the three men, of their untroubled and slightly old-fashioned faith in the moral foundations of their profession. For the sad and very uncomfortable truth of the matter probably was that it was not his 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. Eichmann knew that Himmler's orders ran directly counter to the Führer's order. For this, he needed to know no factual details, though such details would have backed him up: as the prosecution underlined in the proceedings before the Supreme Court, when Hitler heard, through Kaltenbrunner, of negotiations to exchange Jews for trucks, "Himmler's position in Hitler's eyes was completely undermined." And only a few weeks before Himmler stopped the extermination at Auschwitz, Hitler, obviously unaware of Himmler's newest moves, had sent an ultimatum to Horthy, telling him he "expected that the measures against Jews in Budapest would now be taken without any further delay by the Hungarian government." When Himmler's order to stop the evacuation of Hungarian Jews arrived in Budapest, Eichmann threatened, according to a telegram from Veessenmayer, "to seek a new decision from the Führer," and this telegram the judgment found "more damning than a hundred witnesses could be."

Eichmann lost his fight against the "moderate wing," headed by the Reichsführer S.S. and Chief of the German Police. The first indication of his defeat came in January, 1945, when Obersturmbannführer Kurt Becher was promoted to *Standartenführer*, the very rank Eichmann had been dreaming about all during the war. (His story, that no higher rank was open to him in his outfit, was a half-truth; he could have been made chief of Department IV-B, instead of occupying the desk of IV-B-4, and would then have been automatically promoted. The truth probably was that people like Eichmann, who had risen from the ranks, were never permitted to advance beyond a lieutenant colonelcy except at the front.) That same month Hungary was liberated, and Eichmann was called back to Berlin. There, Himmler had appointed his enemy Becher *Reichssonderkommissar* in charge of all concentration camps, and Eichmann was transferred from the desk concerned with "Jewish Affairs" to the utterly insignificant one concerned with the "Fight Against the Churches," of which, moreover, he knew nothing. The rapidity of his decline during the last months of the war is a most telling sign of the extent to which Hitler was right when he declared, in his Berlin bunker, in April, 1945, that the S.S. were no longer reliable.

In Jerusalem, confronted with documentary proof of his extraordinary loyalty to Hitler and the Führer's order, Eichmann tried a number of times to explain that during the Third Reich "the Führer's words had the force of law" (*Führerworte haben Gesetzeskraft*), which meant, among other things, that if the order came directly from Hitler it did not have to be in writing. He tried to explain that this was why he had never asked for a written order from Hitler (no such document relating to the Final Solution has ever been found; probably it never existed), but had demanded to see a written order from Himmler. To be sure, this was a fantastic state of affairs, and whole libraries of very "learned" juridical comment have been written, all demonstrating that the Führer's words, his oral pronouncements, were the basic law of the land. Within this "legal" framework, every order contrary in letter or spirit to a word spoken by Hitler was, by definition, unlawful. Eichmann's position, therefore, showed a most unpleasant resemblance to that of the often-cited soldier who, acting in a normal legal framework, refuses to carry out orders that run counter to his ordinary experience of lawfulness and hence can be recognized by him as criminal. The extensive literature on the subject usually supports its case with the common equivocal meaning of the word "law," which in this context means sometimes the law of the land—that is, posited, positive law—and sometimes the law that supposedly speaks in all men's hearts with an identical voice. Practically speaking, however, orders to be disobeyed must be "manifestly unlawful" and unlawfulness must "fly like a black flag above [them] as a warning reading: 'Prohibited!'"—as the judgment pointed out. And in a criminal regime this "black flag" with its "warning sign" flies as "manifestly" above what normally is a lawful order—for instance, not to kill innocent people just because they happen to be Jews—as it flies above a criminal order under normal circumstances. To fall back on an unequivocal voice of conscience—or, in the even vaguer language of the jurists, on a "general sentiment of humanity" (Oppenheim-Lauterpacht in *International Law*, 1952)—not only begs the question, it signifies a deliberate refusal to take notice of the central moral, legal, and political phenomena of our century.

To be sure, it was not merely Eichmann's conviction that

Himmler was now giving "criminal" orders that determined his actions. But the personal element undoubtedly involved was not fanaticism, it was his genuine, "boundless and immoderate admiration for Hitler" (as one of the defense witnesses called it)—for the man who had made it "from lance corporal to Chancellor of the Reich." It would be idle to try to figure out which was stronger in him, his admiration for Hitler or his determination to remain a law-abiding citizen of the Third Reich when Germany was already in ruins. Both motives came into play once more during the last days of the war, when he was in Berlin and saw with violent indignation how everybody around him was sensibly enough getting himself fixed up with forged papers before the arrival of the Russians or the Americans. A few weeks later, Eichmann, too, began to travel under an assumed name, but by then Hitler was dead, and the "law of the land" was no longer in existence, and he, as he pointed out, was no longer bound by his oath. For the oath taken by the members of the S.S. differed from the military oath sworn by the soldiers in that it bound them only to Hitler, not to Germany.

The case of the conscience of Adolf Eichmann, which is admittedly complicated but is by no means unique, is scarcely comparable to the case of the German generals, one of whom, when asked at Nuremberg, "How was it possible that all you honorable generals could continue to serve a murderer with such unquestioning loyalty?" replied that it was "not the task of a soldier to act as judge over his supreme commander. Let history do that or God in heaven." (Thus General Alfred Jodl, hanged at Nuremberg.) Eichmann, much less intelligent and without any education to speak of, at least dimly realized that it was not an order but a law which had turned them all into criminals. The distinction between an order and the Führer's word was that the latter's validity was not limited in time and space, which is the outstanding characteristic of the former. This is also the true reason why the Führer's order for the Final Solution was followed by a huge shower of regulations and directives, all drafted by expert lawyers and legal advisers, not by mere administrators; this order, in contrast to ordinary orders, was treated as a law. Needless to add, the resulting legal paraphernalia, far from being a mere symptom of German

pedantry or thoroughness, served most effectively to give the whole business its outward appearance of legality.

And just as the law in civilized countries assumes that the voice of conscience tells everybody "Thou shalt not kill," even though man's natural desires and inclinations may at times be murderous, so the law of Hitler's land demanded that the voice of conscience tell everybody: "Thou shalt kill," although the organizers of the massacres knew full well that murder is against the normal desires and inclinations of most people. Evil in the Third Reich had lost the quality by which most people recognize it—the quality of temptation. Many Germans and many Nazis, probably an overwhelming majority of them, must have been tempted *not* to murder, *not* to rob, *not* to let their neighbors go off to their doom (for that the Jews were transported to their doom they knew, of course, even though many of them may not have known the gruesome details), and not to become accomplices in all these crimes by benefiting from them. But, God knows, they had learned how to resist temptation.

IX : *Deportations from the Reich—Germany, Austria, and the Protectorate*

Between the Wannsee Conference in January, 1942, when Eichmann felt like Pontius Pilate and washed his hands in innocence, and Himmler's orders in the summer and fall of 1944, when behind Hitler's back the Final Solution was abandoned as though the massacres had been nothing but a regrettable mistake, Eichmann was troubled by no questions of conscience. His thoughts were entirely taken up with the staggering job of organization and administration in the midst not only of a world war but, more important for him, of innumerable intrigues and fights over spheres of authority among the various State and Party offices that were busy "solving the Jewish question." His chief competitors were the Higher S.S. and Police Leaders, who were under the direct command of Himmler, had easy access to him, and always outranked Eichmann. There was also the Foreign Office, which, under its new Undersecretary of State, Dr. Martin Luther, a protégé of Ribbentrop, had become very active in Jewish affairs. (Luther tried to oust Ribbentrop, in an elaborate intrigue in 1943, failed, and was put into a concentration camp; under his successor, Legationsrat Eberhard von Thadden, a witness for the defense at the trial in Jerusalem, became *Referent* in Jewish affairs.) It occasionally issued deportation orders to be carried out by its representatives abroad, who for reasons of prestige preferred to work through the Higher S.S. and Police Leaders. There were, furthermore, the Army commanders in the Eastern occupied territories, who liked to solve problems "on the spot," which meant shooting; the military men in Western countries were, on the other hand, always reluctant to cooperate and to lend their troops for the