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Eichmann's Mind: Psychological, Philosophical, and Legal Perspectives

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Eichmann's Mind: Psychological, Philosophical, and Legal Perspectives

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This essay discusses various representations of Eichmann's mind that were fashioned on the occasion of his trial in Jerusalem in 1961. Gideon Hausner, the prosecutor, presented the defendant as demonic. Hannah Arendt, the German-born American Jewish philosopher, portrayed him as banal or thoughtless. Limiting themselves to the issue of mens rea in their judgment, the Israeli Supreme Court justices described Eichmann's mind as controlled by criminal intent.

While these views have been widely discussed in the literature, much of this essay focuses on a hitherto little noted perspective on Eichmann's mind that was formulated by the mental health experts who examined Eichmann for the prosecution. As compared to the inclusionist, conflictual, and complex picture these experts presented of Eichmann's mind, Arendt's and Hausner's views appear similar in their reductionism, rather than diametrically opposed, while the approach of the Supreme Court justices to Eichmann's mind can be regarded as restrictive.

Methodological problems involved in all these different perspectives are discussed, and it is argued that even though the psychological outlook declares itself to be non-judgmental, it does, in fact, entail a

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dimension of moral judgment. Finally, Eichmann's recently declassified memoirs are adduced and interpreted as lending some support to the psychological, inclusionist perspective on Eichmann's mind.

INTRODUCTION

This essay discusses various representations of Eichmann's mind that were fashioned on the occasion of his trial in Jerusalem in 1961. The prosecutor presented the defendant as demonic. Hannah Arendt, the German-born American Jewish philosopher who covered the trial for *The New Yorker* magazine, portrayed him as banal or thoughtless. Three mental health experts — a psychologist, a psychiatrist, and another scientist of the mind whose credentials to this day remain somewhat vague — drew various pictures of Eichmann's personality, with at least one presenting him as conflict-ridden and ruled by inner contradictions. Finally, limiting themselves to the issue of *mens rea* in their judgment, the Israeli Supreme Court justices described Eichmann's mind as controlled by criminal intent.

In sketching the contours of the various representations of Eichmann's mind, this essay assumes that all of them are necessarily precarious hypotheses, whether legal, scientific, or philosophical in nature. We have only limited and indirect access to the inner workings of the mind based on interpretation of phenomena believed to hold evidence of its hidden, internal dynamics. Since our inner life is intangible and cannot be examined directly, it is open to contradictory interpretations, none of which can be fully corroborated or falsified.

Two images of Eichmann's personality that were presented at the trial have received much publicity. Gideon Hausner, the Israeli Attorney General who prepared the case for the prosecution, tended to portray Eichmann as a uniquely evil murderer, a demon in human disguise. In his opening speech, he proclaimed that in comparison with Eichmann's deeds, even the crimes of Genghis Khan, Attila the Hun, and Ivan the Terrible seemed almost insignificant.¹ At the very beginning of a book he wrote on the trial, Hausner described Eichmann as "a cunning, flinthearted plotter, with a demonic personality."² As journalist and writer Tom Segev reported, the

1 The Trial of Adolf Eichmann: Record of Proceedings in the District Court of Jerusalem 62 (Trust for Publication of Proceedings of Eichmann Trial ed., 1992-1993) [hereinafter Trial of Adolf Eichmann].

2 Gideon Hausner, Justice in Jerusalem 6 (1966).

prosecutor's language was in keeping with the vocabulary used at the time by much of the media as well as by the political and judicial elite in Israel.³

In contrast, Hannah Arendt asserted that "everybody could see that this man was not a monster."⁴ She claimed that Eichmann was "an average, 'normal' person, neither feeble-minded nor indoctrinated nor cynical."⁵ In *The Life of the Mind*, published a decade after the trial, she reiterated that for her, it was most strikingly obvious that Eichmann

was quite ordinary, common-place, and neither demonic nor monstrous. There was no sign in him of firm ideological convictions or of specific evil motives, and the only notable characteristic one could detect in his past behavior as well as in his behavior during the trial and throughout the pre-trial police examination was something entirely negative: it was not stupidity but thoughtlessness.⁶

Arendt's approach appears diametrically opposed to Hausner's view of the defendant. Arendt, herself, in fact referred to the finger-wagging figure that Hausner cut at the trial. However, as we shall see below, she seems to have taken some poetic license in her reporting.⁷

Much of the debate on Eichmann's psyche, particularly as it emerged at his trial, is structured along the Hausner-Arendt dichotomy: he is portrayed either as a demonic character or a banal individual. This essay argues that even at the time of the trial, these two options were not the only ones available. One of the aims of this paper is to draw attention to the way in which the mental health professionals appointed by the Court to examine Eichmann described his psyche in their reports. As will be shown, at least one of the experts offered a perspective on Eichmann's personality that diverged from the Arendt-Hausner dichotomy, arguing that Eichmann was neither banal nor demonic.

Section I below will outline this psychological portrait. At the same time, it will raise some questions concerning the psychological construction of Eichmann's mind. Accordingly, the techniques and procedures used to arrive

³ Tom Segev, *The Seventh Million: The Israelis and the Holocaust* 332 (1993).

⁴ Hannah Arendt, *Eichmann in Jerusalem: A Report on the Banality of Evil* 54 (1965).

⁵ *Id.* at 26.

⁶ Hannah Arendt, *The Life of the Mind* 4 (1971).

⁷ In *Eichmann in Jerusalem* — the controversial book based on her reports — Arendt depicts the Israeli prosecutor exclaiming, "Here sits the monster responsible for all this." In fact, although Arendt's portrait of Hausner captures much of his prosecutorial persona, no such statement can be found in the trial records.

at purportedly scientific discoveries and conclusions concerning Eichmann's personality will be discussed in some detail.

I. THE EXPERTS

Afraid that Eichmann might plead insanity, the Attorney General had him examined by two experts during the preparatory stages of the trial. From January 20, 1961, to March 1, 1961, Eichmann was subjected to a battery of psychological tests: the Drawing Test; the Bender-Gestalt Test; the Thematic Apperception Test; the Object Relation Test; the Wechsler Adult Intelligence Scale Test; the Rorschach Inkblot Test; and the Szondi Test, which will be discussed in detail below.⁸ The tests were administered to Eichmann in seven clinical interviews, taking about three hours each and conducted in German, by Dr. Shlomo Kulcsar, a psychiatrist and then Head of the Psychiatric Department at the government-run Tel Hashomer Hospital. With the exception of the Szondi Test, the results were interpreted and evaluated by Shlomo Kulcsar's wife, Shoshanna Kulcsar, Chief Clinical Psychologist in the Psychiatric Department at Tel Hashomer Hospital. Shoshanna Kulcsar never had any personal contact with Eichmann, apparently because the prison authorities did not want Eichmann to meet an additional person and, for some unexplained reason, were especially concerned that the presence of a woman might upset him.⁹

This constraint produced an unusual and highly problematic clinical procedure. Psychologists, not psychiatrists, are trained to administer psycho-diagnostic tests. Hence, it seems odd that the prosecution did not ask a German-speaking psychologist to perform this task. As we shall see below, the omission to do so had some serious consequences in terms of method. Nonetheless, the fact that a psychiatrist rather than a psychologist interviewed Eichmann may indicate that the Attorney General was primarily interested in establishing that the defendant was not insane and was fit to stand trial. To this purpose, he needed a psychiatrist, since a psychologist could not certify Eichmann's fitness to stand trial. Beyond this single though most important issue, Hausner seemed to have had one further interest in the test results: he sought evidence to support his view of Eichmann as diabolic.

⁸ Shlomo Kulcsar, Psychiatrist's Report on Adolf Eichmann, Yad Vashem Archives File No. TR-12/80, at 1 (1961) (Hebrew).

⁹ Shlomo Kulcsar et al., *Adolf Eichmann and the Third Reich*, in *Crime, Law and Corrections* 18 (Ralph Slovenko ed., 1966).

The Kulcsars tried to do as good a job as possible under the circumstances. Shoshanna Kulcsar wrote a report of her psycho-diagnostic assessment of Eichmann based on her husband's test protocols. Her test evaluations were, in turn, integrated into Shlomo Kulcsar's psychiatric report for the prosecution¹⁰ and also appended to the report in original form.¹¹ Some years after the trial, the Kulcsars published an article that contained much of Shlomo Kulcsar's psychiatric report and the test assessments and also included Lipot Szondi's¹² analysis of the results of the Szondi Test administered to Eichmann, a test that Szondi had invented. Although Szondi is listed as third co-author of the article, it emerges from the language used in the article that he did not in fact participate in writing it; it seems, rather, that his name was added only because his test evaluation was integrated into the essay.¹³ These four interrelated texts — the diagnostic assessment by Shoshanna Kulcsar, Shlomo Kulcsar's report, the co-authored article, and Szondi's test evaluation — provide a somewhat contradictory though comprehensive picture of the procedures by means of which Eichmann's mind was scientifically investigated while he was in prison in Jerusalem.

Some tensions both between and within these texts should be noted. Shoshanna Kulcsar's psycho-diagnostic assessment differed in tone from her husband's psychiatric report and stood in stark contrast to the chord struck throughout Szondi's test analysis. In many ways, Shoshanna Kulcsar's test assessment represented Eichmann's more human side, as it were. In contrast, Szondi's evaluation stressed Eichmann's murderous impulses, while both Shlomo Kulcsar's report and the co-authored article sought to integrate the two disparate elements into a more or less coherent picture.

Despite some differences in emphasis, the Kulcsars, for the main part, agreed with one another. They both depicted Eichmann as inevitably involved in a continuous, partly conscious, partly unconscious *mise-en-scène*, in which he played hide-and-seek both with himself and the world around him. Thus, vocabulary from the realm of theater and play-acting pervades the psychiatric report, Shoshanna Kulcsar's test analysis, and the

10 Kulcsar, *supra* note 8.

11 Shoshanna Kulcsar, Summary of the Psychodiagnostic Tests, Yad Vashem Archives File No. TR-12/80 (1961) (Hebrew). I am grateful to Hanna Yablonka for bringing this report to my attention and generously providing me with the details of its location in the Yad Vashem Archives. All the excerpts taken from the report have been translated from the original Hebrew into English by the author.

12 In some of the literature he also is referred to as Leopold or Lopet Szondi.

13 Kulcsar et al., *supra* note 9. I am grateful to Richard Karmel for referring me to this article.

subsequent co-authored publication. In the Kulcsars' view, "the defendant trained himself for months or years in enacting a certain role, identifying with it to such a degree that it is doubtful whether he still could be frank, even if he wanted to."¹⁴ According to them, for Eichmann, "... role-playing was ... not merely an effort to defend himself, but a deeply-rooted personality trait."¹⁵

What, then, was the play that the Kulcsars assumed to have been staged in Eichmann's mind? In their article, they describe him as weak and docile in the core of his psyche, yet governed by a Nazi moral code that did not allow for any weakness. In order to conceal his weaknesses from himself and others, he learned to play the role of a strong man who was never passive and had no need for help from others. At the same time, he was consumed by aggression, which caused him anxiety. According to the Kulcsars, Eichmann "lived in the throes of existential fear. He feared the forces that presided in him, because he felt he was unable to dominate them."¹⁶ Moreover, he feared that others might retaliate against his aggression and anger and hid such emotions by assuming the role of a totally devoted, completely rational, and idealist bureaucrat. Eichmann's role in the Nazi bureaucracy allowed him to tie the various strands of his personality together. It provided him with a legitimate framework for giving vent to his unlimited aggression, albeit in a restrained and deliberate form, while enabling him to deny, both to others and himself, any personal responsibility for his actions, even though much of the time he proceeded of his own free will. In other words, the role of desk murderer was perfect for Eichmann, and he was perfectly suited to the tasks Nazi Germany offered him. As the Kulcsars put it, "[b]y choosing his role of punctuality, lifeless chilliness, cynicism and superficial adaptivity, he could gratify his own destructive instincts while executing the destructive task bestowed on him."¹⁷ Hence, the Kulcsars' portrayal of Eichmann's character could account for both his ability to play a central role in a monstrous mass murder as well as his pretense of being no more than a cog in an enormous bureaucratic apparatus.

Now let us turn to the way in which this picture of Eichmann's mind was drawn. It was composed on the basis of the psychological tests administered to him, as well as the lengthy clinical interviews conducted by Shlomo Kulcsar. It seems that as a rule, Eichmann cooperated fully with the

14 Kulcsar, *supra* note 8.

15 Kulcsar et al., *supra* note 9, at 21.

16 *Id.* at 42.

17 *Id.* at 51.

psychiatrist, diligently filling in all the test forms he was given and answering all the questions he was asked. The first four clinical conversations took place in the presence of a German-speaking prison guard. However, when Eichmann was embarrassed by the psychiatrist's request to talk about his sex life, he asked for the usual guard to be replaced by one who did not understand German — a request that was met.¹⁸ Kulcsar noted that even though Eichmann's demand was granted and the guard changed for the last three meetings, as far as the defendant's sex life was concerned, his answers were nonetheless "limited, schematic and insincere."¹⁹ This was in contrast to Kulcsar's overall impression of Eichmann as a forthcoming test subject and interviewee. He described Eichmann as an anxious man who smoked too much, was detached from his feelings, with no close friends, and afraid of strangers — a feature that may not be all that surprising in relation to a Nazi criminal awaiting a probable sentence of death. Shlomo Kulcsar described Eichmann's language as convoluted and formalistic, composed of inordinately long and artificial sentences that were difficult to decipher and, sometimes, designed to hide ignorance of concepts. "His language ... like his view of the world, was lifeless and mechanical, formalized and dehumanized," he stated;²⁰ similarly, he described Eichmann's inner world as "inhuman, biological at best, and fundamentally mechanical."²¹

In this context, a subtle tension emerges between the text of the psychologist and that of the psychiatrist. Although Shoshanna Kulcsar and Shlomo Kulcsar both claimed that Eichmann was incapable of forming direct human relationships, Shoshanna Kulcsar asserted in her test assessment that "the internal life of the subject is rather rich and his capacity for self-observation is well developed"; moreover, she ascribed to Eichmann sensitivity, talent, and spontaneous empathy.²²

It seems that Shlomo Kulcsar tried to reconcile his view of Eichmann's inner life with that of his wife's perception by explaining that although Eichmann did originally possess a high potential for empathy, he at some stage had lost his capacity to identify with others; thus, his ability to understand others and their needs had become a tool that enabled him to take advantage of them. Therefore, Shlomo Kulcsar argued, although Eichmann did have some capacity for empathy, he used it only exploitatively and regarded others not as full human beings, but only as extras or props

18 Kulcsar, *supra* note 8, at 4.

19 *Id.* at 1; *see also* Kulcsar et al., *supra* note 9, at 31.

20 Kulcsar et al., *supra* note 9, at 29.

21 *Id.* at 25; *cf.* Kulcsar, *supra* note 8, at 8.

22 Kulcsar, *supra* note 11, at 1.

standing in the fringes of his life's stage; a stage on which only his own needs were of any relevance.²³

Despite this lack of concern for others, Eichmann exhibited alarm whenever he was confronted with representations of violence and aggression in the tests, such as in a picture from the Thematic Apperception Test that shows a man with a rifle. Similarly, during his clinical interviews, he denied having any aggressive feelings. According to the Kulcsars, "[i]t was extremely difficult here to differentiate between the defense of a defendant faced with his trial and those deeper defenses within an individual horrified at his own murderous impulses."²⁴ However, rather than interpreting Eichmann's avoidance and denial of aggression as a ploy, they were inclined to see it as evidence of a deep-seated feature of his personality.

The Rorschach Ink Blot Test was one of the psychological instruments used to provide insights into Eichmann's emotional dynamics, as opposed to simply establishing his cognitive abilities, as other tests did. Unfortunately, it is not clear how Shlomo Kulcsar proceeded in administering the test. The aim of the test is to elicit the subject's free associations to ten ambiguous inkblots on cards. The standard procedure is to first show the subject all the cards, one by one, in order to evoke some kind of comment on the shape, texture, shading, or colors of the blots. The examiner records the responses in detail, usually verbatim, noting mannerisms, measuring the time that elapses from the moment the card is handed until the subject responds, in which direction the card is turned, etc. After all the cards have been shown and associations have been articulated by the test subject, the second stage — the "inquiry stage" — follows. The examiner goes through the set of cards once again, trying to ascertain what induced the particular interpretation of each card. Starting with the first card, the examiner reminds the subject of his or her interpretation, asking him or her to explain the meaning attributed to the card, whether the entire ink blot or only part of it triggered the response, which qualities (color, shading, form) of the blot influenced the response, etc. The inquiry stage is considered crucial for revealing the subject's emotional responses and thought processes and, therefore, for interpreting the test. At the time of Eichmann's trial, in 1961, the most authoritative book on the theory and technique of this procedure, *Rorschach's Test*, stressed the significance of the inquiry stage as follows: "This [stage] is as important a procedure as the free association itself. Without the information obtained in the inquiry [the examiner] cannot know

23 Kulcsar, *supra* note 8, at 10.

24 Kulcsar et al., *supra* note 9, at 30.

how to process the responses and is not in a position to pattern out the personality structure."²⁵ The book's first edition was published in 1944, and already by 1946, when Rorschach Ink Blot Tests were being administered to the Nazi leaders imprisoned at Nuremberg prior to their trials, the book's protocol was being followed meticulously. Fifteen years later, when Shlomo Kulcsar administered the test to Eichmann, its guidelines had been, by and large, accepted as prescriptive by the psycho-diagnostic community.

Astonishingly, however, as indicated by the results of Eichmann's Rorschach Test (belatedly published in the appendix of *The Nuremberg Mind*), Shlomo Kulcsar skipped over the inquiry stage when he examined Eichmann.²⁶ Hence, the information gained from the administration of the test to Eichmann has to be regarded as severely limited in nature and of little use in terms of the test's own scientific standards.²⁷

The Kulcsars interpreted the results of the Rorschach Ink Blot Test as well as Eichmann's responses in the interviews as indicating that his conformism, orderliness, and punctuality were learned and not evidence of a deep-seated obsessive character.²⁸ They stressed repeatedly that Eichmann did not have an obedient personality and that the Nazi idea of *Kadavergehorsam* (cadaver-like obedience) was quite alien to him.²⁹ As they pointed out, he had never been a model child and had frequently disobeyed his father, although with time, "[h]e had learned how he could carry through his personal volition under the cloak of conformism."³⁰

When the Kulcsars told the prosecutor that in their view, Eichmann was fearful of his own aggression, Hausner dismissed the defendant's responses as part of a deliberate act put on for the trial.³¹ This vignette is significant; it illustrates well the discrepancy between the attempt on the part of the two mental health experts to understand the workings of Eichmann's mind, on the one hand, and the prosecutor's approach, on the other. Indeed, the Kulcsars stressed that even Eichmann was "a human being, made up of contradictions,

25 Samuel J. Beck et al., *Rorschach's Test, Basic Processes 4-5* (1961).

26 Florence R. Miale & Mark Selzer, *The Nuremberg Mind: The Psychology of the Nazi Leaders* 289-92 (1975).

27 *But see* Robert S. McCully, *A Commentary on Adolf Eichmann's Rorschach*, 44 *J. Personality Assessment* 311(1980) (for an attempt to draw further meanings from the test).

28 Kulcsar et al., *supra* note 9, at 32-33.

29 *Id.* at 50.

30 *Id.* at 50-51.

31 *Id.* at 30.

conflicts, hopes and fears."³² To them, Eichmann's anxiety and neurotic behavior suggested that he was not a monster devoid of any moral sense, but a human being with "some kind of a morality however primitive and archaic."³³ Obviously, the Kulcsars' attempt to construct a complex and differentiated understanding of Eichmann's mind, which included inner conflicts, fears, and guilt, could not serve the prosecution in its endeavor to portray Eichmann as demonic. Hausner sought to reduce Eichmann's personality to the evil he had done, rejecting any representation of Eichmann's mind that would make allowances for the presence of other psychic motive forces. This strategy may have been appropriate in the context of the trial, but it stood in contradiction to the logic of the psychological enterprise that the Kulcsars had undertaken.

Another manifestation of the difference between the prosecutor's approach to Eichmann and that of the Kulcsars is the amount of space devoted in Kulcsar's psychiatric report to the defendant's biography and the emphases that were placed on its various aspects throughout the analysis. A third of the twelve-page psychiatrist's report was an elaboration on Eichmann's early years in Solingen and Linz; his complicated relationship with his severe and punitive father; his lack of memories relating to his mother who had died when he was still a boy; as well as his sex life, siblings, and friendships — or, rather, the lack of the latter.³⁴ In other words, the report presented Eichmann as a person with a past, a childhood, an adolescence, two parents, six brothers, and a sister. In contrast, Hausner gave a short account of Eichmann's past in his opening speech, devoting only four lines out of its fifty-four pages to his childhood and adolescence. Already on the fifth line of the speech "we find [Eichmann] marching in the ranks of the German-Austrian Front Fighters, and in 1932 he became a member of the Nazi Party and the SS."³⁵ Hausner never mentioned the names of Eichmann's father, mother, brothers, sister, wife, or children. Even in the District Court judgment, eighteen lines were allocated to Eichmann's family history and reference was made to his parents, by name, before mentioning that he had joined the Front Fighters.³⁶

The Western liberal tradition of justice is atomistic in a double sense: first, it tends to focus on an isolated act or a series of causally interrelated acts; and second, it tends to regard the defendant as an autonomous, intentional, self-governing subject who bears individual responsibility for his or her actions. Thus, it purposefully excludes from its vista all information

32 *Id.*

33 *Id.* at 40.

34 Kulcsar, *supra* note 8, at 2-6.

35 Trial of Adolf Eichmann, *supra* note 1, at 71.

36 5 Trial of Adolf Eichmann, *supra* note 1, at 2115.

that is considered not directly relevant to the criminal intent and deed that are at issue. This type of legal understanding differs sharply from the psychological or psychiatric approach, which is relational and always seeks to uncover the origins of present conduct in earlier events, family constellations, deeper levels, additional layers, or hidden dimensions of a person. Almost by definition, when sitting opposite a criminal, a clinician will discover non-criminal character traits that may have been overlooked by the legal system. While legal understanding aims at arriving at a judgment, mental health care professionals are supposed to be non-judgmental, for psychological understanding seeks to explain without judging.

Thus, even though the Kulcsars performed their task in the service of the Attorney General, there was an especially wide gap between the representation of Eichmann's personality in the Kulcsars' texts and its portrayal by the prosecution. In his quest for the death penalty for the defendant, Hausner drew a somewhat limited picture of Eichmann as a lonely evil creature, without relatives whose names might have provided evidence of his humanity.

Obviously uneasy with such a depiction of Eichmann, the Kulcsars, in their article written after the trial, juxtaposed their picture of Eichmann's mind as complex and conflict-ridden with what they dismissively termed "the intentionally distorted and exaggerated figure made out by the prosecution ...".³⁷ However, it appears that when confronted with the architect of the Nazi genocide, it was impossible even for mental health practitioners like the Kulcsars to stick unequivocally to their role of non-judgmental professionals and to present Eichmann with equanimity as a complete human being. On the one hand, their article criticized the prosecution's representation of Eichmann and stressed the human aspects to Eichmann and his inner contradictions. On the other hand, the article referred to him only by the initial "E." As explained by Ralph Slovenko, the editor of the volume in which the Kulcsars' article appeared, this technique was employed because they considered Eichmann not worthy of reference by full name. There is much ambiguity with regard to the use of this device. It may have been employed so as to present Eichmann as a kind of human filth whose name at better not uttered in decent society. At the same time, the use of an initial instead of a person's full name also is standard practice in the psychiatric and psychological literature, intended to conceal and protect the identity of patients in case studies. Of course, the Kulcsars did not seek to conceal Eichmann's identity in their article. Having explicitly mentioned his full name at the beginning, they stripped this device of any

³⁷ Kulcsar et al., *supra* note 9, at 48.

protective function it may have served. Perhaps "E." was merely an expression of inevitable ambivalence; for although the Kulcsars had gained insight into Eichmann's human aspects, they hardly could be oblivious to the fact that their subject was being tried for genocide. Such features of the Kulcsars' text reveal that they did not manage to fully maintain a non-judgmental stance. Additional signs of such glissades can be found in the metaphors they used. They wrote, for instance, that Eichmann "lived within the structure of the Nazi organization, like an indifferent bacterial organism that vegetates in the intestine. Reciprocally, they exploited and supplemented each other."³⁸ Such language seems almost a reflection of the kind of rhetoric that Nazi Germany developed for the Jews, portraying them as vermin rather than human beings. Of course, confronting Eichmann may have been too extreme a test case for unbiased psychological and psychiatric diagnostics. However, rather than being treated only as an exception, it also may be taken as highlighting in dramatic colors a general feature of psychological practice that tends to be overlooked. Conceivably, some form of moral judgment is part of all psychological understanding, though generally, mental health practitioners do not acknowledge this dimension of their work.

The main reference to the homicidal side to Eichmann's character is brought into the Kulcsars' texts under the guise of Lipot Szondi's scientific authority, though he may have been a somewhat controversial authority to rely on for scientific certification of Eichmann's destructiveness. His diagnostic test, which, at the time, enjoyed a certain degree of popularity in Europe and the US, subsequently lost much of its credibility and is no longer in use anywhere. This is not surprising, given both the theory and practice on which it was based. Although described as a psychologist by Hausner and often also presented as a psychiatrist, Szondi was, in fact, trained as an endocrinologist. He did gain considerable psychological experience in the fourteen years during which he directed a psychological and therapeutic laboratory at the University of Budapest. Because of his Jewish origins, he was driven out of the University of Budapest in 1941 by the pro-Nazi government of Admiral Horti, and in 1944, he was deported to the concentration camp Bergen-Belsen. In 1945, he found refuge in Switzerland, settling in Zürich where he set up a private practice as a self-styled psychoanalyst, devoting much of his time to writing on the effects of heredity on human destiny. His theorizing was directed towards two aims: first, synthesizing Jung's and Freud's theories; and second, tracing life choices, such as love and friendship, to the hidden influence of latent

38 *Id.* at 51.

recessive genes. Szondi's somewhat speculative assumptions concerning the impact of latent recessive genes also provided the theoretical underpinnings for his test.

The Szondi Test equipment consisted of forty-eight cards bearing the pictures of individuals representing eight psychiatric diagnoses or, at least, what, at the time, were considered psychiatric diagnoses: a homosexual; a sadist; an epileptic; a hysteric; a catatonic schizophrenic; a paranoid schizophrenic; a manic-depressive depressed; and a manic-depressive manic. The cards were divided into six sets of eight pictures each, with all eight diagnoses represented in each set. The majority of pictures were taken from German textbooks on psychopathology. Some were of Hungarian patients, and a few others of Swedish criminals.

Eichmann, the test subject, was asked to select from each group first the pictures of the two people he liked most and the two he disliked most. The same instructions were repeated with every set presented, and the "likes" and "dislikes" divided into two separate piles. Then the twelve "likes" were presented to him, and he was instructed to choose four favorites from among them; the same procedure was repeated with the "dislikes." The results of the selections and rejections were recorded for each set.

Szondi believed that when the test was administered between six to ten times, a valid personality diagnosis could be obtained. He recommended administering the test no more frequently than every other day, until the desired number of profiles was obtained. In Szondi's view, the mental disorders represented by the faces on the cards were genetically determined. The subject's emotional reactions ("like" or "dislike") to the pictures reflected some kind of resemblance between the gene structure of the person on the card and that of the subject reacting to the picture.³⁹ In other words, the test was a means by which similar latent recessive genes recognized each other and identified with one another. Evidently, Szondi's approach was based on a whole series of rather idiosyncratic assumptions concerning psychiatric diagnoses, the etiology of mental illnesses, effects of such illnesses on physiognomy, the impact of the pictorial representation of such illnesses on another person's emotions, and the predetermination of emotional reactions by an underlying gene structure.

Shlomo Kulcsar followed Szondi's instructions meticulously. According to Hausner, the prosecutor, "Eichmann was given the test ten times over a period of forty days. In all, he selected faces he liked and disliked

39 Susan Deri, *Introduction to the Szondi Test: Theory and Practice 1* (1949).

240 times."⁴⁰ Hausner's statement is at variance with Kulcsar's claim that he met Eichmann only seven times. It is unclear how the test could have been administered ten times in seven meetings — though, of course, according to Szondi, even seven sets would have been sufficient to make a valid personality diagnosis. The Szondi Test captivated Eichmann. "He appeared to be fascinated by the pictures. He asked what the aims of the test were and by what means they could be achieved, and wished to be told about drives, their mode of action and their influence on a man's character."⁴¹

In order to be certain of the correct interpretation of Eichmann's preferences from amongst the facial representations, the test results were sent to Szondi in Switzerland, but — according to both Hausner and Shlomo Kulcsar — the identity of the test subject was not revealed to the test's inventor, and he gave a blind analysis. Szondi replied to the Israeli authorities, "You have on your hands a most dangerous person." Apparently Eichmann always had picked the most negative types as appealing, something Szondi claimed he had never seen before in the over six thousand tests he had assessed. According to Szondi, the subject tested was "a criminal with an insatiable killing intention" and "almost unique" in the history of the test.⁴²

Szondi made no attempt to explain or interpret these results. One wonders, therefore, whether his analysis actually contributed much to the understanding of Eichmann's mind. Rather, it seems that it did no more than provide the prosecution with scientific support for its rhetoric. It also seems rather ironic that Eichmann's homicidal tendencies were scientifically certified by means of a test developed by a Jewish Holocaust survivor who certified these tendencies on the basis of theories not unlike those that had lain at the foundation of the Nazi ideology.

The Kulcsars, too, seemed to have had certain doubts about some aspects of Szondi's theoretical framework, stating in their article that they "cannot follow Szondi's theory in all its implications."⁴³ Yet despite their theoretical misgivings, they turned to Szondi as a scientific authority, and there is no doubt that they took his test seriously as a scientific instrument, calling it "unfailing," since Eichmann's test results were evaluated by the test's inventor.⁴⁴ In addition, as noted, they included Szondi's test report in their article, invoking his notions of *Schicksalsanalyse* (analysis of destiny)

40 Hausner, *supra* note 2.

41 Kulcsar et al., *supra* note 9, at 20.

42 *Id.* at 47.

43 *Id.* at 44.

44 *Id.* at 45.

and a genetically transmitted family unconscious as a possible explanation for why Eichmann became a mass murderer.⁴⁵

II. THE PHILOSOPHER

Hannah Arendt's perspective on Eichmann was diametrically opposed to the ones discussed so far in a number of respects. In the wake of the trial, she acquired both fame and notoriety for coining the notion "the banality of evil" and for claiming that Eichmann's personality was neither complex and layered nor monstrous and insane. To be sure, Arendt did not seek to imply that the Holocaust itself was banal; her notion referred only to the personality of bureaucratic perpetrators like Eichmann. She argued that incomprehensible deeds did not necessarily point to a perplexing psyche and that the enormity of the evil created by the Nazis could not be taken as sign of a demonic inner life on the part of those who had planned and executed it.

In her book *Eichmann in Jerusalem*, Arendt claimed that if Eichmann were a man with a dangerous and insatiable urge to kill, he belonged in an insane asylum. To back up her depiction of the defendant as a perfectly normal and ordinary man, she related the following anecdote:

Half a dozen psychiatrists had certified him as "normal" — "More normal, at any rate, than I am after having examined him," one of them was said to have exclaimed, while another found that his whole psychological outlook toward his wife and children, mother and father, brothers, sisters and friends was "not only normal but most admirable"...⁴⁶

There is no trace of the evaluations of the six psychiatrists who, according to Arendt, examined Eichmann in prison. Their findings have never been published, and their identities remain a mystery to this day. In fact, the passage cited here is the only recorded assertion that such a visit to Eichmann ever occurred. The Kulcsars explicitly rejected Arendt's account in their 1966 article, reiterating that Shlomo Kulcsar had been the only psychiatrist who had met Eichmann personally and that even Shoshanna Kulcsar had not been admitted into the prison.⁴⁷ Thus, Arendt's account of

⁴⁵ *Id.* at 44.

⁴⁶ Arendt, *supra* note 4, at 25-26.

⁴⁷ Kulcsar et al., *supra* note 9, at 48; *see also* Miale & Selzer, *supra* note 26, at 6.

what she called "the comedy of the soul experts"⁴⁸ seems rather dubious and exemplifies her tendency to take poetic liberties in describing the trial.

Note Arendt's choice of the term "comedy" to describe Eichmann's alleged examination by a team of mental health professionals. In her eyes, the "soul experts" were putting on an act and a laughable one at that. This remark reflects Arendt's dismissive attitude towards psychologists, psychiatrists, and their crafts. Her unfinished *magnum opus*, *The Life of the Mind*, was intended to comprise three volumes, but she managed to complete only two before her death. In a somewhat high-handed manner, the book dismisses the entire discipline of psychology with a few disparaging comments. Clearly, there was no place for psychology in the philosophical mode of understanding pursued by Arendt. According to her, "psychology, depth psychology or psychoanalysis, can discover no more than the ever-changing moods, the ups and downs of our psychic life, and its results and discoveries are neither particularly appealing nor very meaningful in themselves."⁴⁹

As opposed to psychologists, whose interest she defined as focused on the discovery of structures assumed to exist in the hidden "inner world" of a personality, Arendt's understanding was directed exclusively at the diversity of visible and audible phenomena. Thus, her understanding, too, had its limits. It left no room for mental archeology, which seeks the forces active in the dark recesses of the psyche, encoded in external appearances. In Arendt's view, focusing on the mind's hidden structures or forces is as misguided as focusing on the body's internal organs: both yield monotonous results that are irrelevant to an understanding of the beautiful and abundant multiplicity of human existence.⁵⁰

Arendt presented her form of understanding as transcending the division between exterior and interior, performance and reality, appearance and truth. For her, the essential was not beneath the surface; rather, the surface of human conduct itself revealed the uniqueness, plurality, and splendor of life. Guided by such a phenomenological outlook — the principles of which she fully articulated only almost a decade after the Eichmann trial — her observations on the defendant in the glass booth centered on what could be seen and heard, that is, his appearance and utterances at the trial and the protocol of his interrogations. These phenomena revealed to Arendt neither splendor nor monstrosity, but extreme ordinariness and a thoughtlessness that led her to devise the notion of the banality of evil. As she put it, "[e]verybody

48 Arendt, *supra* note 4, at 26.

49 Arendt, *supra* note 6, at 35.

50 *Id.* at 29.

could *see* that this man was not a 'monster.'⁵¹ Similarly, Arendt also thought that everybody could *hear* that Eichmann was no monster:

The longer one listened to him, the more obvious it became that his inability to speak was closely connected with an inability to *think*, namely, to think from the standpoint of somebody else. No communication was possible with him, not because he lied but because he was surrounded by the most reliable of all safeguards against the words and presence of others, and hence against reality as such.⁵²

What one heard in Eichmann's cliché-ridden language, according to Arendt, was that he did not think. Though she did not infer, from Eichmann's way of speaking, the existence and activity of internal structures and forces of a psychoanalytic kind, she did make postulations concerning the presence of invisible processes in a speaker's mind — or the absence thereof. As we can see in *Eichmann in Jerusalem*, for Arendt, the activity of thinking — insofar as it was of relevance to the question of Eichmann's evil deeds — meant something like empathy or the ability to identify with the points of view of others.

Some years after the Eichmann trial, Arendt wrote the first volume of *The Life of the Mind*, which she devoted to the topic of thinking. As she explained in the Introduction, the confrontation with thoughtlessness at the Eichmann trial had provided one of the impetuses to writing the book. However, when she wrote the book, she no longer defined thinking in terms of empathy towards others. In the *Life of the Mind*, Arendt traced thinking to a "soundless dialogue ... between me and myself," in which the self is decentered and divided into two voices, one of which examines the other.⁵³ She explained that the silent dialogue of thinking creates a two-in-one, in which one part of oneself has to conform to the moral standards of the other part, with the latter acting as an inner spectator and, especially, as a relentless inner judge. Hence, the thinking subject is forced to avoid inner contradictions in order to establish and maintain the inner continuity, consistency, and coherence that one needs to be at peace with oneself. As Arendt put it, since we have to live with ourselves as thinking subjects, "we ... must take care not to do anything that would make it impossible for the two-in-one to be friends and live in harmony."⁵⁴

51 Arendt, *supra* note 4 (emphasis added).

52 *Id.* at 49.

53 Arendt, *supra* note 6, at 185.

54 *Id.* at 191.

Thus, while *Eichmann in Jerusalem* tied thinking to consideration for others, that is, to an embracing of external plurality, *The Life of the Mind* traced it to an active awareness of inner plurality and a quest for coherence. Arendt's later conception of thinking has almost psychoanalytical undertones. Despite her dismissal of psychology, the parallels between Arendt's concept of the inner moral voice and Freud's notion of the superego are striking, though unlike Freud, Arendt did not claim that the subject's moral voice had unconscious components and was constituted through the internalization of parental figures.⁵⁵ Similar to the way in which the Freudian canon characterizes an immoral person as having a weak superego, Arendt described a thoughtless person as undisturbed by an inner moral voice:

A person who does not know that silent intercourse (in which we examine what we say and what we do) will not mind contradicting himself, and this means he will never be either able or willing to account for what he says or does; nor will he mind committing any crime, since he can count on its being forgotten the next moment.⁵⁶

As Arendt pointed out, thinking, in the sense in which she referred to it in *Eichmann in Jerusalem* and *The Life of the Mind*, is not a prerogative of professional philosophers or the noble few. It is an ever-present faculty inherent to everyone that protects us from doing evil.⁵⁷ At the same time, she assumed that everyone — including philosophers, scientists, and scholars — has moments of thoughtlessness in which clichés and conventional expressions serve to avoid thinking. Such moments are inevitable, for otherwise we would be debilitated.⁵⁸ However, in these moments we are not fully alive, and the more we avoid thinking, the less we are alive. As Arendt commented, "[u]nthinking men are like sleepwalkers."⁵⁹ Moreover, it is precisely in those moments when most people become sleepwalkers that thinking turns from a personal moral activity into a political one:

55 According to Freud, the superego "acts as 'the critical agency', performing functions of self-assessment and self-punishment, as well as providing moral ideals and judgments." 21 Sigmund Freud, *Civilization and its Discontents*, in *The Standard Edition of the Complete Psychological Works of Sigmund Freud* 136 (James Strachey ed., 1930). See José Brunner, *Eichmann, Arendt and Freud in Jerusalem: On the Pleasures of Thoughtlessness and the Evils of Narcissism*, 8 *Hist. & Memory* 61 (1996), for an argument that despite Arendt's dislike for psychology, there also is much in her approach that coincides with a Kohution psychoanalytic perspective.

56 Arendt, *supra* note 6, at 191.

57 *Id.* at 180.

58 *Id.* at 4.

59 *Id.* at 191.

When everybody is swept away unthinkingly by what everybody else does and believes in, those who think are drawn out of hiding because their refusal to join in is conspicuous and thereby becomes a kind of action. In such emergencies, it turns out that the purging component of thinking (...) is political by implication ... has a liberating effect on another faculty, the faculty of judgement, which one may call with some reason the most political of men's mental abilities.⁶⁰

As we can see, Arendt asserted a close connection between thinking and judging, a notion to which she intended to devote the never-written third volume of *The Life of the Mind*.⁶¹

Eichmann in Jerusalem attributed the necessity of putting Eichmann on trial to his thoughtlessness. Legal judgment had become essential because Eichmann lacked the mental capacity for moral judgment, as Arendt illustrated in her chapter on the Wannsee Conference of January 1942, where the decision on the Final Solution was made and at which Eichmann acted as secretary. Arendt summed up Eichmann's moment of realization that the established civil servants of the Third Reich "were vying and fighting with each other for taking the lead in these 'bloody' matters. 'At that moment, I sensed a kind of Pontius Pilate feeling, for I felt free of all guilt.' *Who was he to judge? Who was he 'to have [his] own thoughts in this matter?'*"⁶² As Arendt presented it, it was precisely in those critical moments in which thinking could have acquired political significance that Eichmann's mind mirrored the minds of his superiors. By subordinating his moral judgment to that of others, he silenced his internal moral spectator.

On the one hand, Arendt's assertion concerning Eichmann's thoughtlessness did not free him from guilt for his crimes. On the other hand, sticking to the surface and to appearances, she accepted him as the principled bureaucrat that he purported to be. In her view, his mind contained no active force that drove him to do evil and no deep-seated urge, drive, or impulse to kill and exterminate. He administered the Nazi genocide simply

60 *Id.* at 192; see also Hannah Arendt, *Thinking and Moral Considerations: A Lecture*, 38 Soc. Res. 446 (1971).

61 For further discussions of Arendt's conception of judgment, see Ronald Beiner, *Hannah Arendt on Judging*, in Hannah Arendt: Lectures on Kant's Political Philosophy 84 (Ronald Beiner ed., 1982); Seyla Benhabib, *Judgment and the Moral Foundations of Politics in Arendt's Thought*, 16 Pol. Theory 29 (1988); Richard J. Bernstein, *Judging — the Actor and the Spectator*, in *Philosophical Profiles* 221 (1986).

62 Arendt, *supra* note 4, at 114.

because he was told to do so and lacked the mental activity that could have led him to oppose the extermination of the Jews. The inability to think turned Eichmann into an architect of genocide.

Hence, Arendt did not see Eichmann as a scheming liar. Lying would have indicated that he knew he had something to hide. Only rarely did Arendt attribute to Eichmann intention to deceive; even when his statements were proven to be false, she usually blamed the general mendacity of the Nazi regime or his faulty memory.⁶³ To Arendt, Eichmann was hiding nothing. Rather than deceitful, she regarded him as a buffoon. She claimed that any psychologist who wished to understand his character had to be insightful enough to realize "that the horrible can be not only ludicrous but outright funny."⁶⁴ Like Arendt, Shlomo Kulcsar — of whose report Arendt had no knowledge at the time — had been struck by Eichmann's contorted and, in some instances, grotesque misuse of German idioms. Giving a number of examples of what he considered to be Eichmann's strange, archaic, and convoluted German, the psychiatrist stressed that the defendant's style was empty and lifeless and regarded it as symptomatic of Eichmann's formalistic and mechanistic outlook and as a ploy to hide ignorance.⁶⁵ Though they may have agreed on the fact that Eichmann's excessive and idiosyncratic use of clichés opened a window into his inner world, the philosopher and the mental health experts constructed two antithetical pictures of Eichmann's mind. Unlike Arendt, the Kulcsars regarded Eichmann as driven by fears of his own aggression even while enacting his destructiveness. They sought to unmask what they considered to be no more than a facade of total obedience and conformity, and they argued that like all other humans, Eichmann had an inner moral voice, however archaic and rudimentary it may have been.

Arendt's approach allowed Eichmann no moral conscience, no wickedness, and no pleasure from his evil deeds. In her view, Eichmann performed his genocidal task out of thoughtlessness, not in order to satisfy a hidden destructive tendency. Thus, while the Israeli mental health experts regarded Eichmann as hiding his deep-seated aggressive impulses behind the external persona of the perfect conformist lacking any will or desire of his own, Arendt took his appearance as all there was to him.

Arendt's portrait of Eichmann's psyche also differs strikingly from the one presented by Hausner. In contrast to Hausner, she constructed Eichmann's mind as marked by a crucial absence; she attributed neither depth nor

⁶³ *Id.* at 52-54, 90.

⁶⁴ *Id.* at 48.

⁶⁵ Kulcsar, *supra* note 8, at 7.

contradiction to it, neither murderous passions nor a hatred of life nor a devotion to death.⁶⁶ However, there also was a surprising similarity between Arendt's conception and Hausner's that neither might have appreciated. Both of them presented Eichmann in a reductionist mode; for in contrast to the Kulcsars, both sought to reduce Eichmann's mind to one dimension: either to a demonic urge to annihilate the Jews or to a horrifyingly banal thoughtlessness. Both of them suggested that Eichmann had no conscience, lacked empathy and traditional standards of morality, and felt no guilt despite his murderous deeds. Moreover, in spite of Arendt's repeated emphasis on the ordinariness and normalcy of Eichmann's personality, her rhetoric constructed a deep divide between the defendant and ordinary, normal people. Since the latter are moral beings, they are capable of the kind of empathic thinking or inner dialogue that Arendt suggests lies at the foundation of morality.

The writer Mary McCarthy wrote to Arendt in June 1971 that by tracing Eichmann's deeds to an absolute lack of a feature characteristic to all humans — that is, to an inability to think — Arendt may have described him as a monster, despite her intention not to do so. As McCarthy put it,

[p]erhaps I'm dull-witted, but it seems to me that what you are saying is that Eichmann lacks an inherent human quality: the capacity for thought, consciousness — conscience. But then isn't he a monster simply? If you allow him a wicked heart, then you leave him some freedom, which permits our condemnation.⁶⁷

As mentioned above, nothing of what Arendt said about Eichmann was intended to convey that she sought to exculpate him. For her, understanding always implied judgment, and hence, any attempt at a retrospective, historical understanding of Eichmann's character and deeds had to be judgmental. Speaking as a philosopher, however, her attempt at understanding and at making moral judgment included placing the victims as well as the perpetrators on trial. Making controversial statements about the role of the *Judenräte* in the Final Solution, she painted her historical and moral picture in gray on gray rather than in black and white. Unfazed by the monumental context of the Holocaust, Arendt sought to undermine simplistic dichotomies between active perpetrators and passive victims, aiming to accentuate the

66 See José Brunner, *Toward a Political Economy of Evils: Responding to Ophir's Plea for a Hermeneutic Ethics*, 23 *Phil. F.* 231 (1992), for a discussion of positive and negative forms of rhetoric on evil.

67 Hannah Arendt & Mary McCarthy, *Between Friends: The Correspondence of Hannah Arendt and Mary McCarthy, 1949-1975*, at 297 (Carol Brightman ed., 1995).

intricacies of the moral issues at stake. Perhaps moral complexity is the privilege of the philosopher; for in contrast to legal judgment, philosophical or moral judgment has no institutional consequences and does not impose punishment — hence, it has greater leeway in addressing the victims in addition to the perpetrators.

In this respect, both the philosopher and the experts of the mind aimed at complexity where the legal process sought simplicity. The Kulcsars complicated the picture of Eichmann's inner life, while Arendt complicated the broader social and moral picture. In addition, Arendt's depiction of Eichmann's mind as thoughtless also issued a challenge to the established procedures in the legal judgment of Nazi criminals. For her, a proper understanding of Eichmann's mind could not free him from his legal and moral responsibilities, but would necessitate considering the possibility that he had had no criminal intent when committing his criminal acts. Issuing her own imaginary death sentence on Eichmann in the epilogue to *Eichmann in Jerusalem* — addressed, as it were, from the judges to the defendant — Arendt put in the mouths of the judges the following statement: "We are concerned here only with what you did and not with the possible non-criminal nature of your inner life and of your motives or with the criminal potentialities of those around you. ... [T]here still remains the fact that you have carried out a policy of mass murder."⁶⁸

According to criminal law, where awareness of the unlawful nature of one's criminal deeds cannot and does not exist, it cannot be claimed that a criminal act has been committed. Generally in criminal law, the absence of *mens rea*, that is, of a "vicious will" or criminal intent, precludes liability. In other words, a defendant's intentionality — what he intended, knew, or should have known — is relevant to the definition of his deed as criminal.⁶⁹ In her portrayal of Eichmann, Arendt argued that the Third Reich had produced a new type of criminal who lacked the intent to commit a crime and who organized genocide while believing his actions to be legal. She claimed that this new criminal "commits his crimes under circumstances that make it well-nigh impossible for him to know or feel that he is doing wrong."⁷⁰

68 Arendt, *supra* note 4, at 278-79.

69 Sanford H. Kadish & Stephen J. Schulhofer, *Criminal Law and its Processes: Cases and Materials* 204-05 (1995).

70 Arendt, *supra* note 4, at 276.

III. THE JUDGES (AND AN EXPERT FROM AMERICA)

The judges of the Jerusalem District Court who sentenced Eichmann to death and the justices of the Israeli Supreme Court who upheld the sentence on appeal did not treat Eichmann as the thoughtless and ludicrous criminal portrayed by Arendt. They deemed him a devious murderer who knowingly violated fundamental norms of human conduct and then lied in court in order to deny responsibility for his acts and extricate himself from punishment. What, then, did they have to say about Eichmann's mind, and perhaps no less significantly, what did they neither say nor wish to hear?

Arendt's voice was inaudible in the courtroom. Neither the Kulcsars' report nor Szondi's evaluation was made public during the trial, and the prosecution did not call on any of them to testify. Instead, Hausner called on another psychological authority to take the witness stand: Gustave Gilbert, Professor and Chair of the Psychology Department of Long Island University in Brooklyn. Gilbert had been prison psychologist at the Nuremberg Trials of the Major War Criminals in 1946. In this capacity he had held extensive conversations with all the indicted high-ranking Nazi leaders imprisoned in Nuremberg and administered Rorschach Ink Blot Tests to them. In addition, Gilbert also had kept a secret diary in which he had recorded his conversations with the prisoners, some of whom had mentioned Eichmann's role in the extermination of the Jews.⁷¹

Hausner wanted Gilbert not only to report on these conversations, but also to provide the court with his assessment of the psychological tests administered to Eichmann, so as to put on record the opinion of "perhaps, the most qualified expert in the world."⁷² The prosecutor explained that such expert testimony would answer the question of whether and how Eichmann had been capable of committing the crimes of which he was accused. Moshe Landau, the Presiding Judge, refused to admit such a statement. He ruled that the trial was to deal not with Eichmann's capacity to commit crimes, but with the question of whether Eichmann actually had committed the acts attributed to him. Since psychological expertise could not contribute to the clarification of the latter issue, such expert testimony could not be permitted.⁷³ Though Gilbert did testify at the trial, he did not speak as an expert of the mind.

Why did Hausner want Gilbert to comment on Eichmann's psychological

71 Gustave M. Gilbert, *Nuremberg Diary* (1947).

72 3 Trial of Adolf Eichmann, *supra* note 1, at 1009.

73 *Id.* at 1009-10.

profile rather than calling the Kulcsars to the witness stand? Perhaps the answer to this question can be found in an article that Gilbert published in an issue of *Yad Vashem Studies* two years after the trial. He explained that he wrote the article in order to publish what he was not allowed to say in the Jerusalem District Court, referring, however, to the Nazi personality in general, rather than addressing himself to Eichmann as an individual.

I found that Nazi Germany had produced a new inhuman personality type that I can only designate as "the murderous robots of the SS." This personality type is the unfeeling, mechanical executioner of orders for destruction no matter how horrible, who goes on and on with his ghastly work as though he were a mere machine made of electrical wiring and iron instead of a heart and a mind, with no qualms of conscience or sympathy to restrain him once someone has pressed the button to put him into action with a command.⁷⁴

Hausner may have called Gilbert to the witness stand rather than the Kulcsars, because Gilbert was ready to unequivocally confirm the prosecution's depiction of Eichmann as a murderous monster without feelings of guilt or inner conflict. In other words, Hausner may have been interested in Gilbert's testimony because it would have been the statement of a psychological expert, while providing a most un-psychological understanding of Eichmann's mind. Moreover, Hausner may have suspected that the judges would not admit psychological expert testimony of the kind he wanted to bring into the proceedings. He may, conceivably, have asked Gilbert to testify in order to create an opportunity for introducing psychological expertise by way of a witness whose testimony could be justified on other grounds. Possibly Hausner had expected more latitude. The judges of the Jerusalem District Court were not always all that strict in their limitations on testimony during the Eichmann trial. How, then, is one to explain their opposition to psychological testimony that was supposed to open the door to Eichmann's inner world?

It appears that the judges wanted to exclude from the trial anything that did not directly address the question of *mens rea*, but might have blurred or confused it with related, though irrelevant, issues. The defense had not claimed that Eichmann was insane. The judges rejected a "cog-in-the-wheel" defense, which sought to absolve Eichmann from guilt by claiming that he had only followed the orders of his superiors, and they dismissed claims

⁷⁴ Gustave M. Gilbert, *The Mentality of SS Murderous Robots*, 5 *Yad Vashem Stud.* 35, 36 (1963).

that Eichmann had acted under duress. Since the facts — i.e., Eichmann's involvement in the planning and management of mass murder — were not in dispute, Eichmann's criminal culpability hinged on the question of intent or *mens rea*. Thus, the judges preferred to take a narrow or restrictive view of Eichmann's psyche, limiting themselves to the legally relevant factors. They declared that Eichmann could not have played a central role in the orchestration of mass extermination without knowing that such deeds were criminal, even if the leaders of the Third Reich had authorized them. Unlike Hausner or Arendt, they made no attempt to reduce Eichmann's psyche either to a demonic urge or thoughtlessness. Instead, they constrained their own field of vision, excluding from it the particular form of understanding that psychological or psychiatric perspectives could have introduced.

However, in order to stress that his actions had not been the product of either following the orders of his superiors or duress, as the defense claimed, the judges did have to make declarations on Eichmann's feelings and inner life.⁷⁵ The District Court decision stated that Eichmann carried out his tasks "wholeheartedly and willingly, at every stage, also because of inner conviction." It described him as "energetic, full of initiative and active to the extreme in his efforts to carry out the Final Solution," emphasizing that Eichmann displayed in his actions "a measure of viciousness [that] can only be shown by a man who does his criminal job wholeheartedly and with all his being."⁷⁶ To this the Supreme Court added that the defendant had never shown remorse or weakness and had "carried out his unspeakably horrible crime with genuine joy and enthusiasm."⁷⁷

As we see, while commenting on Eichmann's mind, both courts limited themselves to statements concerning *mens rea* and avoided commenting on questions that would have transgressed the limits of the legal requirements, such as why Eichmann enjoyed his crimes or what had made him such an enthusiastic architect of industrial killing. Perhaps judgment and punishment by legal procedures are more feasible when they proceed without psychological perspectives that might subvert some of the apparently common-sensical perspectives regarding the behavior and feelings of defendants that judges tend to rely on.

75 5 Trial of Adolf Eichmann, *supra* note 1, at 2059-61.

76 *Id.* at 2200-02.

77 *Id.* at 2369.

CONCLUSION

As we have seen, it is doubtful whether any understanding or representation of the mind and criminal acts is possible without moral judgment. It seems, rather, that each form of understanding entails a different relationship to such judgment. Criminal procedure aims at institutionalized judgment that expresses moral condemnation and bears state-controlled forms of violence in its wake, such as imprisonment or execution. In order to justify such harsh punishments, its form of understanding tends to divide the world into binary categories, such as victim and perpetrator. Moreover, criminal procedure limits itself to grasping the intent that guides isolated acts of individual actors who are conceived as autonomous and responsible. For this purpose, it imposes strict exclusionary rules of discourse.

Limiting herself to external appearances, Arendt, too, imposed strict limitations on her discourse. In fact both the prosecutor and the philosopher approached Eichmann's mind in a reductionist manner, though from diametrically opposed vantage points; both tried to adduce scientific evidence in support of their views, and both ended up making highly problematic claims. Arendt conjured up a team of experts that made an imaginary visit to Eichmann, while deprecating psychology in general. Hausner, in turn, sought to introduce psychological testimony on Eichmann by calling a witness who had not examined him, while omitting to call Shlomo Kulcsar to the witness stand. Similarly, in his book, Hausner cited only the results of the highly questionable Szondi Test, while remaining silent about the more comprehensive evaluation Shoshanna Kulcsar had conducted and about the psychiatric report that her husband had submitted to him.

The judges of the District Court and the justices of the Supreme Court avoided such controversial trajectories by pursuing a restrictive approach that excluded any psychological testimony. This may have been cogent, given the legal context, but allowed only for simple and common-sensical statements concerning Eichmann's mind to be made in the courtroom.

In contrast, psychological understanding is inclusionist, complex, and conflictual and proclaims itself to be amoral and, hence, non-judgmental. Patients and test subjects are encouraged to speak as freely as possible in therapeutic encounters and diagnostic interviews, sometimes by the technique of free association. Psychologists can legitimately interpret anything the patient does or says, silence as well as speech. Therapeutic and diagnostic discourses are not bound by the constraints of Miranda and the Fifth Amendment. Moreover, psychological interpretation is not satisfied with conscious intent. It seeks to grasp hidden meanings and

features of personalities, family relations, and identities, placing isolated acts in their contexts. The explicit end of the psychological narrative is not moral judgment, but the coherent representation of a person's inner world, its contradictions and development in all their facets.

The texts of the mental health experts, which did not make it into the court proceedings, provide an additional perspective on Eichmann's psyche which was concerned with personality rather than conduct, with the hidden rather than the manifest. The Kulcsars sought to trace origins, conflicts, developments, and contradictions rather than judge Eichmann's actions. However, as has been shown, the psychological perspective cannot be contrasted to that of the philosopher or the legal practitioner as scientific versus non-scientific. Some of the theories and methods that were applied were whimsical, and some implementations of commonly accepted approaches were dubious. Rather than scientific rigor, what set the two clinicians apart from the philosopher, the prosecutor, and the judges in Jerusalem was the psychological attitude that guided their inquiry and allowed them to postulate that they had found internal conflict and contradictions and even guilt and anxiety in Eichmann's mind. However, as indicated by the examples of Szondi and Gilbert, as well as by some features of the Kulcsars' texts — such as their refusal to spell out Eichmann's full name — psychologists and psychiatrists, too, tend to transgress the boundaries of their field of discourse and to become judgmental — at least when confronted with an architect of genocide.

EPILOGUE: THE DEFENDANT

Shortly after completion of this essay in the form in which it appears above, public access was granted to the hitherto restricted memoirs that Eichmann wrote in prison in the summer of 1961 while awaiting the verdict of the Jerusalem District Court.⁷⁸ For a variety of reasons, the memoirs had been locked away in the Israeli State Archives for almost four decades. It appears that originally, the Israeli authorities wanted to prevent the publication of a document with the potential to overshadow the Court's verdict and to vindicate the defendant. However, it seemed unreasonable to continue to deny access to Eichmann's manuscript beyond the end of the twentieth century. Moreover,

⁷⁸ Adolf Eichmann, *Götzen* (unpublished memoirs; on file with Israeli State Archives) (German). All the excerpts taken from Eichmann's manuscript have been translated from the original German into English by the author.

one of Eichmann's sons petitioned its release as part of his rights to his father's estate. Hence, the Israeli authorities started looking for the appropriate occasion to declassify them, but, at the same time, in a way that would deny Eichmann's offspring any indirect financial gain from his genocidal activities. They found the *Irving v. Lipstadt* trial a convenient opportunity for allowing access to Eichmann's memoirs, ironically, in order to use Eichmann's voice against a denial of the Holocaust. The *Irving v. Lipstadt* trial, which was conducted in London in the Spring of 2000, was a libel suit that the controversial British historian David Irving had filed against the American scholar Deborah Lipstadt and her publisher, Penguin Books, for portraying him as a Holocaust denier.⁷⁹ Since Eichmann's memoirs contained first-hand factual reports of the extermination of Jews, which he had observed in visits to camps, it was thought that his manuscript would serve the defense to counter revisionist claims about the Holocaust. But the memoirs reached Lipstadt's defense team too late to be entered as evidence. Lipstadt nonetheless won her case, without Eichmann's help.

The memoirs are a peculiar document. Although Eichmann wrote them in the solitude of his prison cell, they are not a text of a private nature. They provide a carefully constructed self-portrait intended to explain and excuse Eichmann's role in the Final Solution and to absolve him of any responsibility or guilt for the extermination of the Jews. Since the memoirs were written for publication as a book, the factual claims are accompanied by references to documents submitted to the court at the trial. Eichmann even made suggestions for the color of the projected book's cover — he preferred pearl or gray.⁸⁰ Moreover, the memoirs were written in the shadow of the gallows. Evidently, Eichmann was aware of the fact that his execution was a possible, or even probable, outcome of the trial, for he included detailed instructions concerning the division of his ashes into seven parts and their distribution amongst his next of kin (which were not complied with by the Israeli authorities).⁸¹

All of these factors should make us suspicious regarding the veracity of Eichmann's memoirs, both in terms of their depiction of what the defendant may have felt or thought at the time of the events he described, as well as its representation of later, retrospective reflections. Nevertheless, as will be shown, the memoirs may be seen as offering some form of additional

79 Deborah Lipstadt, *Denying the Holocaust: The Growing Assault on Truth and Memory* (1994).

80 Eichmann, *supra* note 78, at 8.

81 *Id.* at 677.

evidence either supporting or undermining some of the claims concerning Eichmann's inner world that have been presented in this essay.

Eichmann describes his childhood in Upper Austria as an idyllic, happy period, until "the gods" — as he calls the leaders of the National Socialist Party — seduced him in 1931. He claims to have joined the National Socialists because of what he, like so many others, regarded as the unjust and draconian conditions of the Treaty of Versailles, which was imposed on Germany following World War I. By the time he became aware that the "gods" who took him from his beloved rural Austria to metropolitan Berlin were "false gods" or "idols" (*Götzen*) rather than harbingers of divine justice, it was too late. He was inextricably bound to them by too many secrets to which he had become privy, as well as by an oath of loyalty that he did not dare break.

Turning the notion of "false gods" into the title of his memoirs, Eichmann presents the entire history of his involvement with Nazism as one big misunderstanding by which an innocent and powerless human being became the servant of idols. If one is to believe his account, he entered the Nazi bureaucracy by way of a rather ridiculous mistake. He wanted to become a security officer, an armed warrior in the cause of justice, as it were, but somehow misunderstood the name of the relevant unit — the *Reichsicherheitsdienst* — volunteering instead for the *Sicherheitsdienst*, where there were only desk jobs.⁸² "Thus, then, I fulfilled my duty: a desk duty that suited me neither physically nor psychologically; that was a pain for me; for which I had to struggle and overcome myself every day anew, before I began the daily task that I was ordered to do."⁸³

In his words, he was willing to sacrifice himself unconditionally for the Fatherland and its liberty. He also was ready to give the gods their due, but he refused to surrender himself completely to them:

I shielded the soul — that which remains when the time has come and earthly values stop being the object of hope, faith and deed — as a most private realm [*als ein Privatissimum*] over which only I could decide. I did not even allow the gods access to it, even though I had succumbed to them faithfully. In this respect the education I received from my parents and the inner bonds to values that are transmitted from generation to generation were too strong to give in to attempts to intrude. In this respect I was stubborn. I was stubborn like the new heavy tanks, whose recent appearance as visible guarantors of

⁸² *Id.* at 26.

⁸³ *Id.* at 32.

freedom gave rise to joy in our hearts at the time. I was stubborn like the course of the new bomb squadrons, which roared unerringly in the Berlin skies.⁸⁴

Time and again, Eichmann uses mechanistic hyperbole, metaphors, and analogies in describing his psychic processes and his conflict with the Nazi hierarchy, thus justifying the claim made by Shlomo Kulcsar that the defendant's view of the outside world as well as his inner world was lifeless and mechanical.⁸⁵ It is evident that even while in prison in Jerusalem, Eichmann could not free himself of the imagery and language of the War years. In many ways, he seems to have been incapable of detaching himself from the Nazi mode of thought. He portrays World War II as a defensive war that was forced upon Germany.⁸⁶ He also repeats the Nazi myth of a Jewish assault against Nazi Germany that was supposed to have preceded the Holocaust, even though he declares this alleged assault to have been legitimate in view of the German treatment of the Jews — though it is unclear what he meant by the latter.⁸⁷

In his recourse to standard Nazi propaganda, Eichmann certainly comes across as the thoughtless man depicted by Arendt. He appears unable to formulate views of his own, even where this would have been to his benefit. At the same time, he portrays himself as someone who, although seduced and deceived by the promises of Nazism, did not completely abandon himself to its demands. He points out that he never accepted the Nazi race theory and never was an anti-Semite. Again, such statements accord with Arendt's view of him. But Eichmann also takes great care to mention instances of resistance or disagreement with those higher up in the Nazi hierarchy. He claims that he got married in church in SS uniform against the wishes of his superiors, who did not like to see SS members participate in Christian ceremonies. According to his own report, when he left the Church in 1937, he did so of his own free will.⁸⁸

While anecdotes such as these support the Kulcsars' claim that Eichmann did not have an obedient personality,⁸⁹ they do, of course, also serve an important purpose in Eichmann's argument. Namely, they are supposed to provide indirect support for his claim that his involvement in the Final Solution

84 *Id.* at 33-34.

85 Kulcsar, *supra* note 8, at 8.

86 Eichmann, *supra* note 78, at 192.

87 *Id.* at 65-67.

88 *Id.* at 36.

89 Kulcsar et al., *supra* note 9, at 50.

was imposed on him by orders that he could not resist without endangering his life and that he would have so resisted had it been possible. One of the central messages of Eichmann's memoirs is that he did possess a moral sense, that — contrary to Arendt's claim — he had an inner voice by means of which he examined and judged even the demands, deeds, and rules of the gods.

One's own attitude, one's own reaction to events of the day, is subject to a spiritual self-observation, in which my external "I" carries on a kind of dialogue with my inner "I" — which also could be called conscience. Then, on the basis of this "conversation," my inner "I" takes up its position, a position that I register either as "calming" or "upsetting." Depending on my psychic condition, I then sense a resonance in my physical condition. If one treasures inner calm and a certain pulsating harmony, as I do, or to use a familiar saying of my pre-war years, if one cherishes "*inner* quiet serenity" more than anything else, then one will do everything to restore order in the inner disarray, or at least try to do so.⁹⁰

Uncannily, it would seem as though Eichmann had read Arendt's theory of thinking in the *Life of the Mind* — published almost a decade after his death — and appropriated it for the portrayal of his mental processes.⁹¹ In striking contradiction to Arendt's claim about his thoughtlessness, he describes himself as carrying within himself precisely that inner dialogue impelled by a quest for coherence that in her later work, Arendt took to constitute the essence of thinking in the moral sense of the term — a capacity that she denied Eichmann.

However, Eichmann contends that it was both pointless and dangerous for people in his position in the Third Reich to articulate moral or practical misgivings about policy or to try to resist. Since, as he asserts, individuals like him were incapable of altering the policies imposed by a totalitarian leadership, there was not much actual purpose to internal dialogue and self-knowledge. The only way out would have been that of Socrates — suicide. And Eichmann concedes that he was no Socrates.⁹² Instead, he tried to fit in, but according to his own version of things, he tried to do so out of a feeling of powerlessness rather than thoughtlessness. Here, again, he illustrates his predicament by means of a mechanistic metaphor:

It is always easy for others to talk after the fact. But what would *they*

⁹⁰ Eichmann, *supra* note 78, at 581.

⁹¹ Arendt, *supra* note 6, at 185.

⁹² Eichmann, *supra* note 78, at 286-88.

themselves have done in such a situation? When the engine runs and the shaft is in gear, then the wheels have to turn, even if the tube — the soul of the tire — bursts, even if the tire itself is torn to pieces. They have to turn, even if they move on a battered flatfoot, until the driver changes his mind or the car goes to hell. I can be compared to such a wheel, many can be compared to it. Such a wheel cannot jump off out of its own force, even when it realizes that something is amiss with the driver.⁹³

When and why did Eichmann think that something was amiss with the driver of the Third Reich? He presents *Kristallnacht* of November 1938 as the event that gave him his first inkling that the gods might be false. On *Kristallnacht*, Jews were publicly humiliated, the windows of Jewish shops smashed, synagogues burnt down all across Germany, and as further insult, the Jewish communities of Germany were forced to pay an enormous fine and clean up the mess the Nazis had wreaked. At the time, Eichmann was in charge of building up an organizational structure for the forced Jewish emigration from the German realm. He explains that when he discovered that the Nazis had begun destroying the Jewish community organizations, which were needed for orderly emigration, he regarded their actions as "criminal."⁹⁴ His aim was Jewish emigration, not extermination. When the latter idea came up, he did not take it seriously, at least not in the beginning.⁹⁵ It was his first actual confrontation with gassing of Jews, near Posen in January 1942, that finally turned the gods into idols for him — or so he writes.⁹⁶ According to Eichmann, the observation of the killing of Jews — in his words, "a terrible inferno. No, it was a superinferno"⁹⁷ — left him with a sense of pervasive unreality and disorientation. His "sensible nature rebelled at the sight of corpses and blood,"⁹⁸ and he had to pinch the back of his hand, he claims, to make sure he was not dreaming.⁹⁹ For him, violence could not provide the solution to the Jewish question, but he had no power or authority to promote the political solution that he preferred. Nevertheless, he felt that he could not discontinue his service to the idols. Germany was at war, and one could not afford the luxury of choosing the type and place of one's duty to the

93 *Id.* at 206.

94 *Id.* at 97.

95 *Id.* at 176.

96 *Id.* at 179-84.

97 *Id.* at 181.

98 *Id.* at 186.

99 *Id.* at 182-84.

Fatherland. But from thereon his service to the Third Reich no longer derived from inner commitment:

I belonged to those who obeyed externally, who did nothing that would have placed them in conflict with their oath, and who honestly and sincerely fulfilled the duty they had been ordered to do. But their inner attitude led to a kind of personality split. It created an obstructing condition that killed every impetus and every elan, a condition under which the individual suffered more than one ever was ready to admit or actually admitted. Thus one drugged oneself with [concepts like] "duty" and "oath" and "loyalty" and "honor."¹⁰⁰

In such comments, Eichmann's self-depiction comes close to the Kulcsars' view of his totally devoted bureaucratic persona as a role that he had trained himself to play in order to hide his true feelings.¹⁰¹ Moreover, Eichmann's portrait of his reactions to the killings he observed is in accord with his responses to representations of violence and aggression in the Thematic Apperception Test, as described by the Kulcsars.¹⁰² However, in contrast to his own view, the Israeli mental health experts did not see him as the wrong man in the wrong place at the wrong time, but as the ideal person for the position of desk murderer. They argued that his mask of bureaucratic conformism served him well to both hide and give vent to deep-seated aggressive tendencies and existential anxieties of which he was afraid.

As has been pointed out in this article, in contrast to both Arendt and Hausner, the Kulcsars emphasized the complexities and contradictions of Eichmann's psyche and regarded him as a human being with hopes and fears as well as docility and aggression — despite his genocidal deeds.¹⁰³ It appears that only such an intricate conception of Eichmann's mind can account for a passage as stunning as the following:

Whether winter, whether summer, whether it was bright or poured from the heavens, I simply could not muster the force. I could not sit down behind the desk without driving up in the early morning on the Kahlenberg in order to look at the new day rising. ... When I still was a sergeant and had no car at my disposal ... I left home early enough to walk a few kilometers. I did this not for the sake of the hike. A pine tree [*Fichte*] had grown at a sawmill, and this pine tree in the middle

100 *Id.* at 193.

101 Kulcsar et al., *supra* note 9, at 21.

102 *Id.* at 30.

103 *Id.*

of a sea of houses touched me. I saw in it the Bohemian woods ... silent, dark green, rustling and whispering. By having a dialogue with this pine tree every morning, like a fool, I became happy and inwardly serene and free. ... Three long years I spoke to it. It knew my sorrow, it knew my joy and also my troubles; but mostly my joy.¹⁰⁴

Shlomo Kulcsar had argued that for Eichmann, other humans were but props on a stage on which he inevitably stood in the center.¹⁰⁵ Possibly, this passage reflects the irony of an approach to life that turns other human beings into mere props: pine trees become partners for dialogue. It seems that the presence of other people was so threatening to Eichmann that he had to deny them a fully human status — either in his fantasies or in reality — by contributing to the Final Solution. The man who more than anybody else became the epitome of the unfeeling, genocidal bureaucrat could feel free and uninhibited only when speaking to a tree.

Eichmann's memoirs, too, were written in solitude. Perhaps this was a necessary condition for Eichmann to articulate any feeling at all. Like his other utterances, the memoirs contain a fair amount of cliché, but their language differs sharply from the convoluted and formalistic style that both Arendt and Shlomo Kulcsar noted as typical of Eichmann, be it in his answers in the clinical interviews or in his responses in the courtroom, where he had to confront real interlocutors rather than trees. This discrepancy as well may be taken to indicate that his formalism was a defense mechanism and that there were more layers to his mind than either Arendt or Hausner was ready to acknowledge. *Pace* Arendt and *pace* Hausner, the memoirs suggest that rather than being either one-dimensionally banal or totally demonic, Eichmann's personality was complex and calculating, ridden with inner conflicts, driven by both ambition and fear, but ultimately weak and afraid and in need of masks and disguises. In short, the picture of Eichmann's mind that emerges from the memoirs is not unlike the one that is drawn in the Kulcsars' texts.

Nevertheless, the Kulcsars' depiction of Eichmann's psyche leaves one strangely dissatisfied, for it does not manage to integrate its various insights into a picture that could account convincingly for the defendant's behavior. Perhaps too much is asked for. It may be impossible to fully explain what allows a person to become a bureaucrat of mass death. Perhaps the inconclusiveness of Eichmann's psychological profile stems from a lack of craftsmanship on the Kulcsars' part; perhaps it is partly to do with

104 Eichmann, *supra* note 78, at 138.

105 Kulcsar, *supra* note 8, at 10.

the deviousness of the defendant. Whatever the case may be, there is no doubt that one reason for the somewhat fragmentary nature of the Kulcsars' account must stem from the context in which the defendant was examined: in a prison cell while awaiting a trial that could — and did — end with the death penalty. Obviously, such a situation does not foster frank and open exchange with a psychiatrist working for the prosecution. On the contrary, it elicits a whole series of defensive responses. Thus, even experts of the mind could never be certain whether Eichmann was putting on an act in order to mislead primarily himself or those around him, whether he was afraid, above all, of the powers hidden in himself or those who had put him in prison and were judging him. As the Kulcsars admitted, "it was extremely difficult ... to differentiate between the defense of a defendant faced with his trial and those deeper defenses within an individual horrified at his own murderous impulses."¹⁰⁶ Reading Eichmann's memoirs, four decades later, we can be no more certain than they were on these matters. All the memoirs reveal is that Eichmann was divided within himself, that he had something to hide and wore masks, but not when he had put them on, what they disguised, whom they were meant to deceive, and where they ended and his true face showed through.

106 Kulcsar et al., *supra* note 9, at 30.