The Eichmann Trial: A Triumph of Natural Law

by DonnaRose Echeverria
Vattarott College

On the evening of 11 May 1960, Ricardo Klement, a.k.a. Nazi criminal Otto Adolf Eichmann, was kidnapped walking home from the bus stop near Garibaldi Street in his lower class Buenos Aires suburb. His Israeli captors secretly transported him by military jet to Jerusalem to be tried for his role as a member of the bureaucracy of Germany’s Third Reich. Eichmann’s trial for crimes against humanity as a Nazi leader during Hitler’s reign was, this essay argues, a public affirmation of the triumph of natural law over positive, man-made law.

After almost a year of pre-trial hearings, on 11 April 1961 Eichmann stood in the District Courtroom of Jerusalem to hear the fifteen charges against him, as documented in Criminal Case Number 40/61. To each count, he replied, “Not guilty in the sense of the indictment.” He never clarified the meaning of this unusual response, neither during the official proceedings nor in a private interview. Although his trial included a lengthy cross-examination, Eichmann was never asked if he considered himself guilty in some other sense. He did not admit to a single personal act of murder, insisting that he had never killed anyone, Jew or non-Jew. Otto Adolf Eichmann claimed to be guilty of nothing more than belonging to the losing side of the war. As a good Nazi bureaucrat, he had followed every order which came from his superiors. In the words of his lawyer, Robert Servatius of Cologne, Germany, his acts were those “for which you are decorated if you win and go to the gallows if you lose.”

Thus, from the beginning of his trial, Eichmann’s defense focused not so much on his actions but rather raised the question of whether or not he himself, as the Colonel in charge of the “IV B4 Office” of the Gestapo which handled “Jewish Affairs and Evacuations,” could be deemed personally responsible for “crimes against humanity.” The heart of this accusation, namely that his crimes were against humanity, and not committed solely against European Jews, implies a standard of moral behavior which transcends any man-made law. This transcendent moral norm is what is known as natural law. It is inscribed in the minds of all men, and it is from this universal moral framework which good and just leaders attempt to pattern the laws of the lands. As David Ben-Gurion explained, “Eichmann’s
crime, in its enormity, was against humanity and the conscience of humanity rather than against Jews as such.\textsuperscript{6}

Eichmann's defense lawyer, Robert Servatius, did not argue against the existence of natural law but against its bearing in the case. The heart of the Eichmann defense can be summed up in the man's own words describing his activities during the Nazi regime. "I sat at my desk and did my work."\textsuperscript{7} Servatius claimed that Eichmann's actions had been permissible under the law of the land and that what he did as a member of the Nazi bureaucracy was not a crime at all, but simply the actions of a law-abiding citizen. This appeal to positive law as a defense for his actions against humanity did not save Eichmann from a guilty verdict and death by hanging. It did, however, give many involved in the trial and in the media commentary surrounding it the opportunity to consider the moral aspect of such a defense and its ramifications on society.\textsuperscript{8} Hannah Arendt succinctly describes the moral aspect of the Nazi interpretation and use of positive law to defend their actions as members of the Third Reich. It is her view of the Eichmann trial and the moral aspect of his defense, which this paper supports. It is worth quoting Arendt in full:

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.\textsuperscript{9}

The laws of the Nazi Third Reich attempted to repudiate any application of natural law by turning it upside down, making evil itself legal, in this instance the killing of innocent Jews, and therefore a good thing. Resistance to this positive law of evil thus became the illegal action, and as such a punishable offense. The law of the land (positive law) as documented in the courts of Nazi Germany, was grounded solely in the words of Hitler. Given this "legal" framework, any action or order that was contrary to Hitler, and thus to Nazi law, was a crime.\textsuperscript{10} This Nazi definition of legality would consider a crime to be any action or supporting word by a person in Occupied Europe which was perceived as a defense of the Jews.

Such a use of positive law conflicts not only with the sensibilities of most
men, but also with the traditional definition of law, which is that a law must be rational: “an ordinance of reason for the common good.” The law of the Third Reich took a narrower view, supporting not the common good, but the good of the Aryan race and the Nazi regime. If a man were to conform his nature totally to the law of the Reich, the result could not be far from the nature of Eichmann. His indictment found him to be “a competent organ of the state responsible for the carrying out of the general political plan” which would have included the 1938 Nuremburg laws and all subsequent Nazi laws designed to remove the Jewish people from the Reich.

In a sense, the charge against Eichmann was his own defense. He had become the ultimate citizen of the Reich. He lived to serve the state and as a creature of the state lived by the laws of that state and no other. Natural law, for Eichmann had ceased to exist. Whatever ordinance of reason he may have paid heed to in years past had been obliterated by his complete slavery to the state. Only the furtherance of that state mattered to him, and in his absolute devotion, Eichmann had become the Nazi bureaucratic prototype.

Natural law, the traditional basis of the positive law of man throughout the ages vanished from Nazi Germany. This idea of natural law is best defined as that sense of moral order in society which is known by instinct. It is this primordial moral sense which enables man to discern by reason good and evil. Right and wrong was never wholly dependent on a knowledge of the Decalogue. Even St. Paul said:

Indeed, when Gentiles, who do not have the law [Mosaic Law], do by nature the things required by the law, they are a law for themselves, even though they do not have the law, since they show that the requirements of the law are written on their heart, their consciences also bearing witness, and their thoughts now accusing, now even defending them.

Natural law is “based on human nature and for the flourishing and fulfilling of human nature.” Arendt, echoing St. Paul, calls it “the law that supposedly speaks in all men’s hearts with an identical voice.” Law such as this had no place in Nazi society and therefore was of no interest to Eichmann. In fact, it could be said that the new order of the Reich attempted to answer in practice the theoretical question of Thomas Aquinas (1224-1274): “Can the natural law ever be abolished from the heart of man?” In formulating their own rules to protect the fulfillment and flourishing of the Aryan race, Nazi law was attempting to recreate a moral law which would reflect their own purposes. Thus in Nazi Germany a good man could no longer rely on his instincts of right and wrong to guide his daily actions, but must ignore the voice of reason and rely instead on the Nazi code of law.

It was a radical inversion of the original moral sense which enables man to discern good and evil, right and wrong. To live within the boundaries of the Nazi’s moral order, one’s conscience had to be completely re-formed.
turned around one hundred eighty degrees. The righteous Nazi was one who could, in good conscience, as he saw it, resist the temptation to love his neighbor as himself. The new code of the Third Reich did not uphold the ancient biblical tradition of law, neither the Mosaic Decalogue nor the two great commandments of Jesus Christ, but replaced these with a new definition of right and wrong, as stated above by Arendt. The Nazi moral code produced men whose lives no longer conformed with the law inscribed on their hearts. This was in total conflict with the natural law. Knowledge of the moral norms which directed human relationships was not dependent on the knowledge of the Old Testament Decalogue. The moral code inscribed on men’s hearts pre-dated the influence of Christianity in western culture.

For there is a true law: right reason. It is in conformity with nature, is diffused among all men, and is immutable and eternal; its orders summon to duty; its prohibitions turn away from offense. . . . To replace it with a contrary law is a sacrilege; failure to apply even one of its provisions is forbidden; no one can abrogate it entirely.

Good men who knew and followed the law of their hearts regardless of the written law they lived under had no place in the Reich. Hitler and the Nazi party sought to form men “who were literally estranged from themselves as well as from others and from the world; who concealed from once vital human parts of themselves the enormity of what they were doing, or watching, or knew about, or were trying not to know about.”

Such estrangement from one’s own conscience led Eichmann, as well as other members of the Nazi regime who came to face a court of law after 1945, to defend themselves on the basis of their law-abiding actions in this thoroughly man-made system. As a significant part of their defense, they had to deny the existence or application of the traditional moral law in the Nazi code as well as prove their case for a moral order built solely on positive law.

Eichmann was not alone in his conversion to the Nazi’s legal positivism. At Nuremberg in 1946, the defendant Joachim von Ribbontrop showed himself to be a moral man in this new tradition of the Third Reich. His character was described as one who obeyed the Nazi law to the abandonment of his own independent thought, what philosophers call “dead souls” or “spiritual corpses.” At the trial, his secretary, Margaret Blank spoke in his defense: “In cases of differences of opinion between himself and the Fuhrer, Herr von Ribbontrop subordinated his own opinion to that of the Fuhrer. Once a decision had been made by Adolf Hitler there was no more criticism afterward.”

In the Nazi moral system, one’s conscience was thus considered to be properly formed when it relied solely on Hitler’s word, and not on biblical or moral tradition. One’s duty was to the Reich and the furtherance of the Aryan race, not to mankind. This defined all moral action. Adherence to the Fuhrer in all matters could be considered the new “Golden Rule” for the Nazi
bureaucracy. Eichmann’s own kidnapper in Argentina, Zvi Aharoni, agreed that in this sense, Eichmann was obedient to the law. “He was a devoted civil servant who performed his duties to a tee.”

Robert Servatius, Eichmann’s lawyer, had been a member of the defense team at Nuremberg and had used a similar defense strategy for Fritz Sauckel. He was from Germany, but was paid by the Israeli government in adherence of the Nuremberg precedent, in which all defense attorneys were paid by the Tribunal of the victorious power. He gave an account of Sauckel’s activities during the Nazi regime as follows: “Sauckel was a tireless worker, and carried out his task with a strict sense of duty without looking to the right or the left.” And for his commendable service to the Reich, Sauckel was condemned to death by hanging in 1946.

History may never uncover exactly what brought Adolf Eichmann to the point of wholeheartedly accepting Nazi law and rejecting in his own mind any vestige of traditional natural law. Hints of what led him to such an extreme legal positivist position must be gleaned from the events which shaped his life. In his years of hiding after the fall of the Reich, Eichmann worked on his memoirs as a hobby, but these have neither been released to the public nor independently validated.

There appears to be several versions of some of the circumstances surrounding his life before he entered the Nazi civil service. His first real job in Austria was that of a salesman representing the Vacuum Oil Company. He was dismissed from his position for either economic or political reasons, or may have left of his own free will. The telling of the tale seems to depend more on the reaction desired from the audience than on the truth. Eichmann loved to talk, especially about himself. Even while he was being held by Israeli agents awaiting transport to Jerusalem in 1960, he talked openly with his captors about his early years with the SS.

In any event, Eichmann seems to date his significant history after 1933, when he had completed military training in the SS (Schutzstaffeln der N.S.D.A.P.). At first, his assignments were dull, consisting of clerical-type office chores. His first significant assignment was in Berlin with the “II 112-Jews” division in charge of information. This was his opportunity to exercise his extraordinary gift for organization.

As an officer of the SS, Eichmann had pledged his oath, not to the Nazi party or the Third Reich, but to Hitler himself. He served by devoting his life to the organization of his assigned duties, the removal of Jews from German-held territory. In the early years, this meant deportation. In Vienna 1937, Eichmann met regularly with Jewish leaders to discuss expulsion strategies. As a Nazi who actually talked with the Jews, he was considered “soft,” a Nazi with whom one could negotiate. In fact, he even considered himself their deliverer, providing exit visas for those who met the criteria (in this case, a hefty fee). Among his own kind, he began giving lectures for Nazi officers on Zionist matters and was soon considered to be the Nazi...
expert on Jewish matters. His newly elevated position and importance in Austrian affairs was reflected by his domestic surroundings. While stationed in Vienna, he and his family, which now included two sons, lived in the former Rothschild mansion. The family limousine was assigned to him, as he moved about Vienna in full SS uniform, attending frequent meetings as administrator of the project which would render Austria judenrein, or Jew-free.

By the time of the German invasion of Poland, Eichmann was comfortable in his new position of power and authority. Still, he was not in a position of direct contact with the physical extermination of the Jews. He never held a gun to the head of a Jew and pulled a trigger. In the course of the war, he never even witnessed a massive gassing operation. In fact, he only glimpsed the horror of whole-scale human destruction once, in 1941. His direct superior Muller sent him on an information gathering expedition to Poland to investigate the use of mobile gas vans in the Lodz ghetto. On a later trip to Russia, he also witnessed the after effects of a mass shooting. The sight of a filled-in ditch, now a mound, which spouted blood from the bodies buried within the heaped earth revolted him.

This was as close to death as Eichmann actually came during his years with the Reich. He remained an office-bound bureaucrat, interested in his tables and schedules, not the people they affected. His expertise was in transportation and the movement of massive quantities of people to their destination. What happened once they arrived at that destination was not his concern. He was not directly involved in anti-Semitic campaigns in the occupied countries of Europe nor the establishment of concentration camps. He was “merely the traffic manager in the Nazi extermination apparatus, the man who set up the train schedules” which efficiently took the Jews to their death.

After the Wannsee Conference on 20 January 1942 in which the “Final Solution” to the Jewish problem was discussed, Eichmann’s attitude changed. He was no longer the petty clerk nor the deliverer of the Austrian Jews, but began to carry himself as a man at home with both his power inside the Nazi bureaucracy and his own elevated position within that group who were actually close to Hitler. The change may have been due to the exposure this conference gave him. At Wannsee, Eichmann had an opportunity not only to serve as secretary to the heads of state of the Third Reich, but to socialize as a peer with such dignitaries as Undersecretary Josef Muller and his own direct superior, Reinhardt Heydrich. This gave him a new confidence in his own abilities as well as an assurance of the security of his position within the bureaucracy. It also seemed to deepen his new sense of Nazi morality. At his trial, he testified that this meeting provided him with “a certain solace” or moral satisfaction since the final solution had now been taken out of his hands. “When the elite--the veritable popes of the regime--cast the die there was nothing for me to do but conform. I had a feeling like Pilate--free of any
The ultimate responsibilities for the actions of carrying out the "Final Solution" were now under the sole authority, at least in Eichmann’s conscience, of the Third Reich.

It would appear that this conference saw the completion of Eichmann’s rejection of any sense of a transcendent moral norm, a natural law. His conversion to Nazi morality was complete. He was now free to do his job. As a staff member of the Gestapo Office IV B4, his duties were strictly limited to transportation logistics. Even though he was the executive organ of the department, his orders were not of his own doing, but those of the Reich and ultimately the orders of none other than Hitler.

This is precisely the point where the breakdown, or rationalization, of moral responsibility can be seen in Eichmann’s life. He knew full well that his work would lead to death for most of the people he transported across Europe, yet in his mind, he was relieved of any moral responsibility. He divorced himself from the outcome of his actions, emotionally indifferent and morally insensitive to their effect on human life. “I sat at my desk and did my work.” The fact that the nature of his actions, and thus overall Nazi policy, was criminal was certainly clear to him. His comparison between Pontius Pilate in Jerusalem and himself at the Wannsee Conference shows proof of the depth of his understanding. Like Pilate before the mob, he chose to absolve himself of guilt. Yet like Pilate, his rationalization was not enough. He may have convinced himself that he was a good man under the new Nazi moral order, but as soon as the Reich fell, so did the Nazi version of positive moral law. In Jerusalem in 1960, Eichmann was forced to defend himself against charges of crimes against humanity, against natural moral law. He had hoped to be charged only with “aiding and abetting,” supporting the policies of a failed regime. Instead, he was held personally responsible for his own actions.

Throughout his trial, Eichmann claimed that his signature on orders was not personally incriminating but merely the actions of a faithful servant carrying out the orders of his superior. The judges, the press, and indeed a majority of the public following the trial outside Israel saw his complicity with the Nazi atrocities during the war as evidence of his guilt. Only a very small group of observers polled after the verdict believed that Eichmann’s position as a responsible bureaucrat absolved him of personal guilt. His explanation of his actions as being “not a crime but an act of state” was not accepted in either the court of law or the public court of opinion. The upshot of all this is simply that the court held Eichmann subjectively responsible for the wrongdoing that he did because it held that he should have known better.

In his analysis of the Eichmann verdict, Peter Papadatos maintains that the proposition set by the 1946 Nuremberg Court established an important precedent in the recognition of moral standards for international law. He supports the conviction, which he claims is “already widespread in the free
world" that the court, aside from judging the vanquished, was attempting to create a standard for justice in the international field. It would seem that precedent was already firmly established in the hearts of humanity, and the court simply reaffirmed the existence of natural law.

The International Military Tribunal of Nuremberg in 1946, as well as the Supreme Court of Israel in 1960, in placing the leaders of the Nazi regime on trial, affirmed the transcendent truth of personal responsibility for one’s actions. As Papadatos puts it:

This viewpoint takes as its point of departure the fact that the sources of international law are not only treaties and custom but in addition the "general principles of law recognized by civilized nations." This refers to the higher principles in the hierarchy of legal orders which are inherent in mankind’s consciousness of the law and which are, hence, generally recognized in the positive municipal law of civilized nations.

Thus Eichmann’s claim to have been just following orders was not an acceptable defense, either before an international court, or a higher authority, which was also recognized by the Court.

The Nazi attempt to become the moral authority for mankind ended with the war in Europe in 1945. When order was restored and the men who had orchestrated the devastation of Europe were brought to trial, they were not accused of belonging to the Nazi Party. As war criminals, they were considered “enemies of all mankind.” Their crimes were those against humanity, not the Jews, not Europe, but all persons. The fact that such an accusation could be made, especially in a court of law, assumes the existence of a law which transcends the written law which varies among states, countries, and cultures. This moral norm is what unites mankind, as well as provides a framework for all laws. When this law, not the written code of any society, is violated, a crime against humanity has taken place.

Article 6 of the Charter of the International Military Tribunal recognized the defense of the subordinate in following orders as a reason for mitigating punishment only, not as an acceptable excuse from criminal liability. Papadatos states that Eichmann could not be considered to have been coerced by the Nazi Party to coordinate and assist in the implementation of the Final Solution. His position as a key member of the Third Reich showed that he was both devoted to the Party and had proven his strong will to follow Nazi policy. Eichmann’s elevated Party status alone showed him to be a man capable of making difficult and well thought out decisions, and as such, capable of knowing right from wrong. He simply chose wrong over right, and then tried to justify his actions when he was caught.

In choosing to follow the Nazi moral order, Eichmann rejected natural law. With the fall of the Third Reich and the assembly of an international tribunal in Nuremberg, the natural moral order was restored to the foundation of positive law in Germany. Despite the plans of Hitler and the Nazi party,
Natural Law triumphed, and it is this Natural Law which provides us with the basis for discerning good and evil. The dignity of the human person would not be safe from violation without this foundation. As Pope John Paul II explained:

[T]otalitarianism arises out of a denial of truth in the objective sense. If there is no transcendent truth, in obedience to which man achieves his full identity, then there is no sure principle for guaranteeing just relation between people. Their self-interest as a class, group or nation would inevitably set them in opposition to one another. If one does not acknowledge transcendent truth, then the force of power takes over, and each person tends to make full use of the means for the rights of others. People are then respected only to the extent that they can be exploited for selfish ends. Thus, the root of modern totalitarianism is to be found in the denial of the transcendent dignity of the human person who, as the visible image of the invisible God, is thereby by his very nature the subject of rights which no one may violate—no individual, group, class, nation, or State.⁵⁴

Notes

4. Ibid., 21-22.
7. Papadatos, 29.
8. Ibid., 2.
9. Arendt, 150.
10. Ibid., 148.
11. This definition of law has its roots in Thomas Aquinas’s *Summa Theologia* (I-II, 90, 4), which is referenced in Peter Kreeft, *C.S. Lewis for the Third Millennium* (San Francisco: Ignatius Press, 1994), 98.
12. Papadatos, 2, 3.
18. Thomas Aquinas *Summa Theologia* (I-II, 94, 6), as referenced in Kreeft, 97.
22. Kreeft, 102-103.
27. Ibid., 498.
28. Arendt, 27.
29. Ibid., 29; Papadatos, 25.
30. Malkin, 203-204.
32. Papadatos, 25.
33. Malkin, 205.
34. Ibid., 30.
35. Arendt, 57.
38. Arendt, 87-89.
40. Arendt, 112-114.
42. Papadatos, 27.
43. Ibid., 29
45. Arendt, 22.
48. Papadatos, 72; Arendt, 21.
49. Papadatos, 70.
50. Ibid., 68.
52. Papadatos, 83.
53. Ibid., 87.

182 Catholic Social Science Review