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Distinguished Lecture in International Justice and Human Rights

Beyond Nuremberg:

The Future of International Criminal Justice



Prince Zeid Ra'ad Zeid Al-Hussein

Permanent Representative
of the Hashemite Kingdom of Jordan
to the United Nations

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Preface

Brandeis University was honored to host His Royal Highness Prince Zeid Ra'ad Zeid Al-Hussein of the Hashemite Kingdom of Jordan on January 30th, 2013. The occasion was the second Distinguished Lecture in International Justice and Human Rights, sponsored by the International Center for Ethics, Justice and Public Life with the generous support of the Planethood Foundation. Prince Zeid was introduced by Donald Ferencz, co-founder and executive director of the Planethood Foundation, and son of Nuremberg prosecutor Benjamin Ferencz.

Prince Zeid's talk, "Beyond Nuremberg: The Future of International Criminal Justice," delves deeply into the question of how men and women seek to restore their humanity in the wake of genocide and other atrocities. He takes a journey through the sites and the literature of the Holocaust. That journey starts figuratively with the account of his grandfather's revulsion at the hatred he encountered while touring Bavaria with a Jewish friend in the 1930s. Eventually, it brings Prince Zeid himself to Courtroom 600 in Nuremberg to hear a talk by Thomas Buerghenthal, a Holocaust survivor and one of the leading human rights figures of our time. These experiences lead this Arab diplomat to meditate on the question of how survivors – and their extended communities – can become whole again. For Prince Zeid, that process begins with the establishment of the rule of law, and in particular with the extraordinary trials at Nuremberg, that for the first time substituted due process for the cycle of revenge.

He also speaks of the institutional successors to Nuremberg, especially the International Criminal Court (ICC), which represents for him humankind's best hope to end impunity, to stay the hand of revenge and to honor the memory of the victims of crimes against humanity. Prince Zeid was himself an important player in the establishment of the ICC, chairing the difficult and sometimes politicized negotiations about which crimes would ultimately fall under ICC jurisdiction, and later serving as the first president of the ICC's governing body.

Beyond formal judicial processes, Prince Zeid addresses in his lecture the problem of contrition – why public remorse is so rare, but also why it is so necessary if victims are to feel that justice has truly been done. He argues that none of our usual transitional justice mechanisms – international trials, amnesties, truth commissions, or community-based courts – successfully promotes remorse by perpetrators or healing for victims. He insists rather that, as we undertake the long and essential process of extending the rule of law across the globe, we keep our eyes on other means to address the shortcomings of law itself.

I hope that in reading the text of Prince Zeid's lecture, you will feel what his Brandeis University audience felt the evening of its public delivery: a deep appreciation of how far the world has come since Nuremberg in its responses to mass violence and human rights violations, and an equally deep awareness of those parts of the human psyche that law seems incapable of reaching. We should not be discouraged by this knowledge, but instead inspired by Prince Zeid's words to further refine our responses to heinous crimes so that those most affected can find some resolution in the wake of their suffering.

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*For video of this talk and more about Prince Zeid's visit to Brandeis University
please visit: go.brandeis.edu/BeyondNuremberg*

Beyond Nuremberg: The Future of International Criminal Justice

In September of last year, I found myself standing in the Zeppelin Field, the site made infamous by the Nuremberg rallies, which very much retains its sinister feel: the memory of the evil it witnessed still fills every recess. And although I was not old enough to ask my grandfather before he died, I wondered what he made of the rallies he attended together with the rest of the diplomatic corps stationed in Berlin in the mid-1930s. He was Iraq's ambassador to Germany from 1935 to 1938, and was so accredited when the Nazi campaign against Germany's Jewish nationals was underway, along with the erection of the first camps and the early sporadic murders.

Only ten years earlier, my grandfather had toured much of Bavaria with his closest friend at Oxford University: a gentleman from St. Louis by the name of Israel Treiman, who subsequently became a noted professor of international law at Washington University. To my grandfather, bigotry and chauvinism were repellent – that I know – and so, as I stood in the spot close to where he once sat, I asked myself: What did he think when witnessing the spectacle of the Nuremberg rallies?

Later, in November – and it seemed a logical destination after Zeppelin – I spent two days in Auschwitz and Auschwitz-Birkenau, at the invitation of the Auschwitz Institute. Feeling sick at the general wretchedness of the place, I recalled the question of the heroic Polish resistance soldier Witold Pilecki – the founder of the Secret Polish Army – which he included in his report on life in the camp from 1940 to 1943, an account that was published in English only last year. In the spring of 1942, Pilecki was marching back along a road close to Birkenau, where the pace of killings was accelerating, when he noticed people from the surrounding countryside – couples taking strolls, women pushing prams, ordinary scenes – which prompted him to ask a simple and yet sublime question: “Were we all ... people?”¹

To complete this circular narrative, back in September 2012, I, together with some friends, found myself in Courtroom 600, where the International Military Tribunal (the IMT) and the 12 subsequent Nuremberg trials were held from 1945 to 1949. We were there to listen to Thomas Buergenthal of the United States – a most distinguished professor, a terrific defender of human rights, and formerly a judge on the International Court of Justice – give a very moving account of his experiences as a child in Auschwitz. Toward the end of his remarks Buergenthal spoke of his father, last seen by him in Birkenau. As he paused to collect his words, in the room where many of those responsible for his family's suffering were prosecuted, no longer was the towering legal figure Tom Buergenthal seated before us – only a 10-year-old boy who missed his father.

In 2005 I was on a stage in New York with scholars of the Yugoslav wars for a discussion focusing on the Srebrenica massacres, which were perpetrated from July 13 to July 22, 1995. After they all gave cogent and sophisticated explanations

1. Witold Pilecki, *The Auschwitz Volunteer: Beyond Bravery* (Los Angeles: Aquila Polonica, 2012), p. 175.

for how the wars unfolded and why, it came to me to speak, but in my mind all I could recall was how emotional my exposure to the war had been – because, at the time, there was not even a particle of an answer, in terms of human reason, that could explain all the torture, all the killing, and account for the giant void in mercy that made the massacres possible.

And it was not just the barbarism that was so evident in the former Yugoslavia, but also our proximity to the rest of Europe, which was so starkly different. One minute you were in a theater of war, a staggering crime scene in progress, and an hour or two later by air we would find ourselves attending diplomatic meetings in Vienna or Geneva, where a waiter would casually ask if we wanted sparkling or still water, as if distinctions of that sort were important, and merited a response. The contrast was so jarring – my Pilecki moment, if you will – that it took on a quality of the absurd in my mind.

I experienced another such contrast in October 1994, when I traveled with a U.N. delegation from Bonn to Gotha, in the former East Germany. As our aircraft approached its destination we were told by the control tower that a thick layer of fog covered the airfield, and so our pilot was told to divert and hold over nearby Weimar until the fog lifted.

With some minutes to spare, I read the most recent dispatches from our headquarters. The situation in Bosnia remained desperate: only hours earlier, the Sarajevo airport had once again been struck by mortar shells, and this on the heels of a machine-gun attack on the city's trams, which had left several civilians dead. Our only hope for peace then on the table was the Contact Group plan – and it too was, to all intents and purposes, dead.

And so we entered into a hold over Weimar, a beautiful city that was bathed in bright sunlight. Looking down, I could not help but think of the artistic and intellectual achievements of some of its former inhabitants, Goethe and Schiller being the most famous. Yet to the north of Weimar, as if keeping a watchful eye over the town, ran the southern perimeter of a low cloud bank – beneath which, in the dark, we could just make out a low-lying hill and a clearing. With every turn – and, for a fleeting moment, with every 360-degree sweep of the wing – this clearing, formerly the Buchenwald concentration camp, came into view. Weimar, always in sight and dressed in sunlight; Buchenwald appearing intermittently in the shadows. Another incongruity.

The meaning of this vista was clear: no matter how brilliant our achievements, whether artistic, scientific, or technological, we still lived in Albert Camus' "age of murder," in which, with shameful frequency, the evils and horrors some are capable of inflicting on others will test severely our hopes for and belief in humankind, and confirm for us what Cecil Lewis called "the invincibility of man's stupidity."

Only months earlier in 1994 the genocide in Rwanda had offered further proof of just how stillborn our collective conscience remained: a genocide, inflicted by machete, was carried out virtually without interruption against men, women and children over the course of several weeks – this despite the existence of the U.N. Security Council and all the potential political and military power on the planet. And it has not stopped there, of course: the catalogue of human injustices since has been full to overflowing.

Progress?

But now we have a court, ladies and gentlemen: the International Criminal Court, or ICC. A miracle really, given the realities of political inertia and the considerable opposition that once weighed against its creation. A court conceived not by governments alone, but by the particular individuals representing those governments, who decided in July 1998 in Rome, after five weeks of intense negotiations on a draft statute, to create it. What followed was even more remarkable: the statute's rapid entry into force and, after initial firm opposition on the part of the Bush administration, a sudden turnaround, with the Security Council referring the Darfur situation to the Court in 2005 (the U.S. abstaining) and, six years later, referring the crisis in Libya – in this case following a unanimous decision by the Security Council!

We now also have an agreement on a definition of the crime of aggression, and on the conditions for the exercise of jurisdiction over it. Even more striking is that a majority of U.N. member states – 121 out of a total 193 – have now voluntarily placed not just their citizenry but also their highest officials – every single one of them – under the jurisdiction of this international criminal court. This is a step so enlightened that it simply has no historical equivalent or precedent. No matter what the nature of the criticisms directed at the International Criminal Court or its founding Rome Statute, one has to admire the courage of those countries that have ratified the Statute. Some may call this naiveté, recklessness, or even folly; some will point to the inevitable corruptibility of court officials, the lack of clear accountability, the unchecked prosecutorial powers and so forth. But these arguments pale in importance when weighed against our desire to deliver justice to the victims of the grave offenses that come under the jurisdiction of the Court.

In the final analysis, we build an international criminal court of this sort for the victims and survivors – because it is they who will determine ultimately whether a society ever fully recovers from the brutalities of war. No country or society can possibly achieve lasting reconciliation once massive crimes have been committed if the victims themselves and their views are not addressed as a central priority of that country or society, and of the international community.

Something More?

And yet, as of late, I cannot help but wonder: should we not aspire to something more, something deeper, than merely punishing the guilty? That, of course, is the rationale for the very existence of the ICC. The preamble of the Rome Statute expresses the determination “to put an end to impunity for the perpetrators of these crimes” – that is, genocide, crimes against humanity, war crimes, and aggression. An objective that, for now, with 12 arrest warrants still outstanding and given the very real challenges posed by inconsistent levels of state cooperation, is perhaps enough. From the victims' perspective, the Rome Statute in any case also provides for restorative justice, in the form of humanitarian support as well as monetary compensation. Should we not be content with that?

No doubt we should accept that as a minimum; but I do not believe we should remain satisfied in the coming years with a system of justice that does little more than exact dressed-up retribution for the perpetrators. While I think Hannah Arendt would have viewed the ICC statute favorably, she would nevertheless have recognized how her preferred reasoning for Eichmann's sentencing would still apply to the ICC – even though, as a permanent international court, it was designed to be an improvement over ad hoc proceedings, both national and international.

In the famous concluding paragraphs to her still potent and controversial book covering Eichmann, Arendt attacked the argument that the Israeli court had framed for the sentencing. She was not comfortable with the death penalty generally, but if it had to be enforced with respect to Eichmann, she wrote, then the reasoning should have been: that “[b]ecause [Eichmann] had ... played a central role in an enterprise whose open purpose was to eliminate forever certain ‘races’ from the surface of the earth, he had to be eliminated.”² So, an elemental, straightforward equation: a crime, an enormous, outrageous crime – and for that, the extreme penalty.

But should we not expect more of ourselves in the coming years? Are we not, after all, people of the 21st century? Should we not seek a more sophisticated outcome? Requiring not just the whole truth, that longstanding aspiration of the common-law tradition, but some acknowledgment on the part of the perpetrator or perpetrators that their conduct was malicious, profoundly wrong – even wicked?

A genuine acknowledgment of wrongdoing. We all seek that from a person whose actions have run off course in everyday life. What, then, of a person who has committed first-degree murder? Who among us would not want to hear such a person utter, with genuine remorse, the words “I am truly sorry.” At the very least, it would elevate the victim – whose life at the moment of the crime meant nothing to the killer – back to being a person of some worth and value.

Would we not derive more satisfaction if punishment were to come not just from a court's sentencing, but from within the core of the perpetrator's self? If guilt were to be directed from one part of the perpetrator's self to the other, inscrutable part of it, revealing in some corner a human conscience? And would this desire on our part not be sharpened even further when the crimes depart from the ordinary and become something else entirely, something barely comprehensible? Perhaps one of the best descriptions to be found anywhere of such crimes grew out of the case prosecuted in 1947 by Benjamin Ferencz: the *Einsatzgruppen* trial. In its judgment at that trial, the Nuremberg Tribunal found that:

[i]f what the prosecution maintains is true, we have here participation in a crime of such unprecedented brutality and of such inconceivable savagery that the mind rebels against its own thought image and the imagination staggers in the contemplation of a human degradation beyond the power of language to adequately portray.³

2. Hannah Arendt, *Eichmann in Jerusalem: A Report on the Banality of Evil* (London: Penguin, 2006), p. 358.

3. Nuremberg Military Tribunal (vol. IV), p. 412.

The Commandant

When Rudolf Hoess, the man who built and, for most of its existence, ran Auschwitz, was about to be hanged on the morning of April 16, 1947, he said to a group of Polish officials, soon to be the witnesses to his execution, that he was regretful and that he desired their forgiveness.⁴ And in his memoirs – and particularly in the two final letters to his wife and children, respectively, written five days before his execution – he appeared human, his writings exposed feelings, and his contrition was seemingly deep and forthright.⁵

Could the Poles have believed him, as he prepared for his own death? To believe a serial liar is difficult enough; what then the man who organized the calculated destruction of the largest number of innocent individuals, over 1.1 million people, in a single space? What credibility should such a person receive from others? Could the Poles have inclined even slightly toward believing him? Clearly one of the camp's most famous survivors, Primo Levi, did not entertain that thought for one moment. Writing 38 years after his own captivity he explained why in the forward to Hoess' published memoirs. "Höss," he wrote, "spent all his life assimilating lies from the very air he breathed and [was] therefore lying to himself."⁶ Levi would not have been alone; I assume most of the survivors would have felt likewise.

To begin with, Hoess had shown no remorse whatsoever at the IMT – not in his depositions, not during the psychiatric interviews, not when called on by Kaltenbrunner's defense counsel as a witness in his client's proceedings. Quite the opposite, really. When giving oral testimony, Hoess famously inflated the number of people he murdered. And he refused to repent at his own trial.⁷

Furthermore, Hoess' grandson, Rainer Hoess, an honorable man, acknowledged recently in a television interview that Hoess' second son – Rainer's father, Hans-Rudolf Hoess – never showed any feelings of warmth toward his own children, "and remained a zealot for the Third Reich."⁸ So how does this square with Rudolf Hoess' quiet outpouring of regret in the dwindling hours before his execution? It cannot square – unless, of course, his regret was only a pragmatic maneuver, like all the pragmatic but malevolent decisions marking Hoess' tenure as commandant, and designed only to protect his young family once he was gone.

Remorseful Nazis?

Olga Lengyel had that impression of Fritz Klein, the chief physician of the women's camp at Birkenau, who appeared less sadistic than Mengele and, on rare

4. Ian Baxter, *The Commandant: Rudolf Höss, the Creator of Auschwitz* (Dunboyne, Ireland: Maverick House, 2008), p. 190.

5. *Rudolf Höss, Death Dealer: The Memoirs of the SS Kommandant at Auschwitz*, ed. Steven Paskuly (Buffalo, N.Y.: Prometheus Books, 1992), pp. 262–71.

6. *Ibid.*, p. 21.

7. Ian Baxter, *The Commandant: Rudolf Höss, the Creator of Auschwitz* (Dunboyne, Ireland: Maverick House, 2008), p. 186.

8. *Hitler's Children*, dir. by Chanoch Zéèvi (2012).

occasions, even displayed what resembled a conscience; yet Lengyel believed it was contrived – a calculation with a view to what might follow when the war was over, after Hitler had lost.⁹ And in fact, at Klein’s trial – the first Belsen trial – there did not appear to be any remorse.

Indeed, from Eichmann to Barbie, and among all the Nazi defendants, contrition on the part of those who were convicted was not in abundant supply – and this was so whether they were brought before the IMT, before the 12 subsequent trials, or before the separate trials conducted by the four victorious armies, including the seven Hamburg Ravensbruck trials and the two Belsen trials. Like the Polish trials – the most significant of which was the first Auschwitz trial – these were held in the immediate aftermath of the war,¹⁰ followed later by the German trials (the main one being the Frankfurt Auschwitz trial).

Franz Stangl, the former commandant of Sobibor and Treblinka, came very close to an expression of contrition in June 1971, in a well-known final interview with the late journalist Gitta Sereny – where, with gigantic exertion, prompted by Sereny’s lengthy silences, he finally gathered himself to utter, very softly, the words: “So yes ... in reality I share the guilt...,” although he was unable subsequently to elevate his emotional state to take the logical next step of confession, and instead slipped back into the trough of denial when he added “my guilt ... is that I am still here.... That is my guilt.”¹¹

Albert Speer was the only senior Nazi official in Nuremberg to show remorse.

The same could be said, incidentally – in terms of the absence of contrition – with respect to the IMT for the Far East, the two United Nations ad hoc tribunals for the former Yugoslavia and Rwanda, the Special Court for Sierra Leone, and the Extraordinary Chambers in the Courts of Cambodia. When some expression of remorse does happen, as in the cases of Speer, Biljana Plavšić, or Dragoljub Ojdanić – who only two days ago expressed his “regret to all of those who suffered as a result of the conduct for which I have been convicted,”¹² – the occasion stands out, for the very reason that it exists alone in a barren landscape of denial.

There is a famous scene in Bertolt Brecht’s epic *Mother Courage and Her Children* in which Eilif is being dragged to his execution for the killing of a peasant, when only six years previously, in war, the very same actions had earned Eilif praise from his commanding officer. Brecht’s genius is to make us understand the strange effect of circumstance, and the value we assign to it, on how we perceive conduct and morality – and, ultimately, to expose the odd lunacy of it all. But perhaps more significantly for the purposes of this lecture,

9. Olga Lengyel, *Five Chimneys: A Woman Survivor’s True Story of Auschwitz* (Chicago: Academy Chicago Publishers, 1995), p. 204.

10. Other notable trials included the Dachau IMT, which included the Dachau camp trials, the two Mauthausen-Gusen trials, the Flossenburg camp trial, the Muhldorf camp trial, the Dora-Nordhausen trial, and the Buchenwald camp trial. The Majdanek trial was actually conducted by the Polish and Soviet authorities during the course of the war.

11. Gitta Sereny, *Into that Darkness: An Examination of Conscience* (New York: Vintage Books, 1974), p. 588.

12. From a statement made on January 28, 2013 at the withdrawal of Ojdanić’s appeal of his earlier conviction by the ICTY trial chamber for war crimes. See: <http://www.icty.org/sid/11192>.

Eilif was depicted as an ordinary man, almost mechanical in his actions, like Rudolf Hoess, not predisposed in any pathological sense to killing peasants yet, ultimately, condemned for it. He killed first because of circumstance – it was war, he was a soldier, he was good at it, he became a hero because of it – but the context then changed: peace broke out, he did not know of it, he kept on killing and was now a murderer, and he was condemned for it.

It was as if Brecht had anticipated both Hannah Arendt's most perceptive point in her coverage of the Eichmann trial and Christopher Browning's outstanding and disturbing work *Ordinary Men* (published in 1992). The point being that most war criminals are not born with a desire to murder; rather, they are normal people who kill because in the strange cocktails of circumstances that can arise, and impelled by specific aspects of human evolutionary psychology, they feel they have no choice but to obey, thoughtlessly and even reluctantly (invoking the orders of superiors), and out of fear of punishment should they not obey – and if there is any guilt to be borne, they believe it is not their burden to bear. Others, on the other hand, will murder willingly, because the release from moral responsibility fans an inner desire to exercise power without restriction. The evil they all perpetrate is rationalized – or, in the words of one Holocaust historian, “internally justified”¹³ – to such an extreme that they do not recognize themselves as evil. Hoess did not, even though he wrote that he understood that his actions might well be so considered by others.

And, as James Waller explained thoughtfully in his book *Becoming Evil: How Ordinary People Commit Genocide and Mass Killing*,¹⁴ we are better situated now than ever before to create models for understanding just how genocides and mass killings can unfold. We still need to decipher the effect of fear in switching off some of our cerebral functions, along with the role of bloodlust. And what is not clear is whether the international criminal justice system can ever succeed in overturning a worldview, a construction of belief, deeply embedded in the thoughts of a mass killer or torturer who in every other sense is an ordinary person – leaving us with, and only with, court-ordered punishment.

Reflections on Conscience and the Perpetrators of Evil

Now I would like to take a few moments to reflect with you regarding two questions. The first is, are ordinary men like ordinary women? Are we all alike? We would like to believe, we tend to believe, in the human rights field that, after centuries of persecution and abuse at the hands of men, and after centuries of losing their husbands, sons, brothers, and fathers to senseless wars, women are more sensitive to, more attuned to, the pathetic and odious nature of violence. With women in positions of power, the world, we hold, will become a safer place, and I believe this to be right. And yet beyond the margins of barely recognizable human behavior, such as when looking at how female Nazi officials at Auschwitz

13. Laurence Rees, *Auschwitz: A New History* (New York: Public Affairs, 2006), p. 115.

14. James Waller, *Becoming Evil: How Ordinary People Commit Genocide and Mass Killing* (New York: Oxford University Press, 2007).

or Belsen or Ravensbruck tortured and killed other women, there seems to have been no distinction compared with the behavior of their male counterparts – and, aside from obvious sadists, it could be argued that some were even worse. Irma Griese would fit into that category.

But then we have the case of Johanna Langefeld, the Nazi who built and then supervised the women's camp in Birkenau, who was later dismissed in Ravensbruck by her Nazi superiors for showing unusual leniency toward the Polish prisoners. After the war, she escaped from detention while awaiting trial with the help of Polish staff owing to that reputation; she was never pursued further, and died in 1974. Was she another Fritz Klein? Meaning, had she exercised only a very tactical humanity, as it were, when the war was being lost and she began to think about her own survival? She had, after all, presided over numerous prisoner selections, was undoubtedly capable of great evil, and had shown leniency toward only the Polish nationals at Ravensbruck, not to others. That someone like her could have even recognized the kindness shown her in itself strikes me as somewhat odd.

Rudolf Hoess speaks glowingly in his memoirs of the kindness shown him by his Polish prison staff. Again, I think it is right to assume that that was designed to ingratiate himself with the Poles, if for no reason other than relieving pressure on his family. But that he even knew what kindness *was* (outside the orbit of his family) or what it meant is still, to me, extraordinary.

The historiography of Auschwitz includes many memoirs that set forth the suffering of victims and the brutality of their persecutors in frightening and moving detail. Many memoirs also shed light on acts of beautiful kindness, and on the heroism and generosity which some of the victims exhibited toward one another under these most terrible circumstances (and which only the survivors can ever know), when the desperate need to survive in and of itself exerted a crushing weight on everyone's nobler inclinations.

But more to the point, I have often wondered – and this is my second question – what it would have taken for a hairline crack to have developed in the hardness and total lack of empathy demanded of all SS men by Theodor Eicke – the man who first conceived how a concentration camp should be run. In the universe of all possible circumstances, did one exist that might have eroded their resistance to compassion? It is clear that shooting victims, for example – especially shooting the very young, and the resulting screaming and spraying of blood – had a disturbing, if not traumatic, effect on many of the individuals (like the members of *Einsatzgruppen* – Nazi death squads) who were pulling the trigger repeatedly and who had families themselves, and so gassing the victims was for the Nazis a psychologically easier alternative. So too was their decision not to separate young mothers from their children on the ramp in Birkenau, so that the murderers would not expose themselves to scenes that would be emotionally distressing to them.

It would appear, therefore, that the Nazis' internal mental fortifications were not so impregnable and could be shaken by continuous exposure to blood or extreme emotion, especially when it came to children. But could they have been cracked altogether by other means?

Generally speaking, what effect would a simple act of human kindness have on a perpetrator? Especially if that act of kindness came from the person being tormented, and was focused completely on the perpetrator himself or herself, in keeping with the sublime teachings of the three monotheistic faiths. Such a demonstration of reverse psychology in such an extreme scenario would be so rare that it would surely attain instant fame. And while I assume there must have been instances somewhere around the globe over the last 73 years when the seemingly impossible might have occurred, I have not come across any. And of course in literature we find variations on this theme: think of Victor Hugo's most famous novel and Javert's reaction to Jean Valjean's sparing his life. It would, even today in any context of mass killing, be the ultimate form of nonviolent resistance. I keep thinking about that.

But if nothing short of a most dramatic display of kindness, similar to the fictional one just described, is likely to produce an awakening in an otherwise dead conscience, can we ever aspire to anything more than simply retribution from an international criminal justice system? Here I should add that plea bargains, or those related situations wherein an amnesty is offered in return for the truth, do not, in my mind at least, satisfy our desire for complete justice, simply because the inducement itself creates an unwanted further uncertainty: namely, is the remorse resulting from it ever real?

Reflections on Human Nature and Our Evolution as a Moral Species

I suspect that part of the problem resides in our not having a singular, unified worldview, underpinned by a universal set of values. Instead, there are different worldviews, variably shaped by distinct histories and cultures, which offer people from different parts of the world distinct points of reference – signatures, if you will, as to who each of us is. And so the world becomes a kaleidoscope of relative impressions. Everybody tends to view their actions as somehow justified, and their rivals or enemies as more often than not wrong. And we classify people easily, almost without knowing it.

Many Arabs see right-wing Israelis as modern-day colonialists who are stealing Palestinian land on the West Bank, in violation of international law, and who will commit crimes to do so. Many Israelis see many Arabs as constituting an existential threat: prone to fanaticism and the practice of terrorism and bent on denying them the only state that exists expressly for the Jewish people. And each side can so easily succumb to degrading the other, wholesale.

Or take the members of Al Qaeda, who are viewed as the enemy of much of the civilized world – little to dispute there. But what about their offspring and their families: are they to be grouped in the same bracket? When they die in an attack directed at a leading commander of Al Qaeda, do we regret it? Yes, I suspect we do, but not with the same outrage, I suspect, that we would feel were the women and children the kin of a non-threatening individual. Does association not have a role, then? And should we not be more careful when classifying people, broadly speaking?

These thoughts can lay waste to recurrent bouts of optimism, yet there is some good news. Steven Pinker of Harvard University argues masterfully in his latest book, *The Better Angels of Our Nature*,¹⁵ that the broader trajectory that humanity appears to be on is a positive one. However odd it may seem to us, violence, whether perpetrated in the home or schoolyard, against animals, or on the battlefield, has been brought down when measured proportionately against the size of the global population. And there would seem to be both empirical and anecdotal evidence to support this proposition. We human beings are improving as a moral species. We are learning; our better angels are in fact doing well. Or maybe it is not so straightforward.

As we have learned more about what makes people carry out the most extreme acts of violence we realize, as I noted earlier, that the perpetrators are for the most part people of no special pathology. So the cold logic of social determinism goes like this: produce a particular mixture of conditioning and conditions, and many if not most of us here would be capable of criminal conduct we could only characterize as barbaric. And so even if we were to agree that our brain is an amazing piece of psychological and biological hardware, it remains flawed, and terribly so, because in evolving it has still remained vulnerable: introduce the wrong software into it, in the form of unusual circumstances, and the angel can still be swept away by the devil in us.

In the remarkable 2012 television documentary *Hitler's Children*,¹⁶ produced by Chanoch Zeevi and shown on the BBC, five individuals alive today and bearing the respective surnames Goering, Himmler, Frank, Hoess, and Goeth reveal what it has meant for them and their siblings to bear the name of their notorious kin. All five descendants interviewed are tormented from within by what their family members did – this in contrast to many of their relatives, who still live in denial. One of the interviewees, Niklas Frank, the son of Hans Frank, the former Nazi governor-general of occupied Poland, has written two books bitterly condemning the evil deeds of his father, and he speaks regularly to the youth of Germany about the dangers of extremism. Toward the end of the documentary he recalls speaking to one group and saying to them: “I don’t trust any of you. Who knows? If the economy turns bad again, you might get these ideas again: to follow a strong leader, restrict ethnic minorities, maybe even imprison them. You don’t have to call it concentration camps. Here and there you have a little murder, a little killing ... besides, it might create jobs for ‘real’ Germans.”¹⁷

Given Steven Pinker’s conclusions regarding an ever-improving picture for humanity, and putting aside the arguments regarding whether within us there is a unified self or a looser partitioning of many selves, it would seem to me that rather than changing in any dramatic sense, we have simply reduced the frequency of those situations that, in a toxic mix, fuel the demons within us.

15. Steven Pinker, *The Better Angels of our Nature* (New York: Viking, 2011).

16. *Hitler's Children*, dir. by Chanoch Zeevi (2012).

17. *Ibid.*

After all, was it not humanity's retrospective awareness of how terrible miscalculations led to two world wars that subsequently produced a multilateral system of states centered on the United Nations, and ushered in a new family of multilateral treaties and human rights instruments, all enabled by a shrinkage in the geographic distances between us stemming from technology, increased air travel, vastly improved communications and a correspondingly huge expansion in commerce and banking, and then – as of late – the creation of a new international criminal justice system?

The aggregate of these post-war developments has supported us in our belief that we, as people and as states, have been cooperating more, not less, since 1945. The interests of the world's states are now tied together in a global knot, even if those states still find it difficult to cooperate. The means by which the international system can erode conditions ripe for mass atrocities are now better than ever before, although by no means perfect, as we all know. But the fact of progress is clear, as Pinker has shown.

When all 193 states in the world today, therefore, are parties to the Rome Statute, and all work energetically with the International Criminal Court (which, alas, is not the case today), and when more states take their human rights obligations more seriously, then perhaps we could be proud that a single worldview on this point – no small feat – would have been achieved. All of us will then have accepted that there are no grounds whatsoever justifying the commission of the repugnant crimes listed in the Rome Statute, and that the customary right to sovereign immunity is no bar to national or, failing that, international prosecution of any official committing an atrocity.

We could then turn to the next challenge – as has long been championed by Benjamin Ferencz, Don's father: that we render war itself unthinkable. After all, without war, the commission of these crimes becomes far less likely.

But what if these crimes still materialized – crimes against humanity, for example – and there were trials; could we envisage an open acknowledgment by a convicted criminal of guilt (once there exists a single worldview on these matters)? Perhaps even to the point where that criminal would also loosen the bond by which a previously sympathetic community around him or her remains committed to whatever giant lie abetted his or her crime?

And how would we recognize contrition if it did emerge? There is, after all, that bedeviling paradox, a variation of the liar's paradox: how will we know whether a public acknowledgment of fault is real, if we believe that a liar will always lie? And having committed crimes so extreme, what would a criminal have to say or do to make us believe in his or her acceptance of guilt? The simple answer is: you cannot know easily.

Gitta Sereny saw it for only a fleeting second when Franz Stangl's reference to "my guilt," which I mentioned earlier, was accompanied by a "sagging of his body and on his face."¹⁸ Sereny recognized in that instant what she was seeing:

18. Gitta Sereny, *Into that Darkness: An Examination of Conscience* (New York: Vintage Books, 1974), p. 588.

Stangl had finally acknowledged to himself that he was guilty. Guilty of having committed the most dreadful crimes, only he could not force himself to actually say it to her. Instead, he came up with “I am still here,” which meant nothing, and so had slipped back into denial. That the only commandant of an extermination camp (or of two, in Stangl’s case) ever to be convicted, who held steadfastly to the “superior orders” defense 30 years after his outrageous crimes, revealed his true state of mind, for only a few seconds, to a journalist 19 hours before suffering a fatal heart attack, speaks to the severity of the challenge I have laid out.

Ultimately, then, yes, we should continue to limit the emergence of those contextual variables that we believe make it more likely for us to commit horrendous crimes, but that will not be enough. The demon, as Niklas Frank warns, would still be there, in most of us, lurking. We must therefore confront ourselves – the hardware – and begin to change it, so that we will not behave as the social determinists tell us we will behave in extreme circumstances. We must build and strengthen our moral tendencies, and shape what courage lies within us.



Education for Human Rights?

To accomplish this we must, of course, rely on education – but not what is normally understood by that term. I am increasingly supportive of the proposition that education of any kind, if it is devoid of a strong universal human rights component, can be next to worthless when it should matter most: when our world, however we choose to define it, begins to unravel.

What good was it to humanity that Josef Mengele had advanced degrees in medicine and anthropology, given that he was capable of committing the most wicked crimes? Did it matter that Radovan Karadžić was a trained psychiatrist, or that Pol Pot had studied radio electronics in Paris, when neither of them understood what humanity represented at a fundamental level?

When eight of the 15 people sitting around the table in Wannsee in 1942 held PhDs, does that not tell us something?¹⁹ Because they were not unique. Otto Ohlendorf, the commander of the *Einsatzgruppe D*, held a PhD in jurisprudence from the University of Pavia, and he was directly involved in mass killings. The first commandant of Treblinka, Irmfried Eberl, was a medical doctor, and gained his second doctorate, in psychiatry, from the University of Innsbruck. He was also responsible for the death of over 300,000 people, in the most diabolical of circumstances, in the one month he was commandant in 1942.²⁰ And the list goes on.

Knowing complex geometry, or molecular cell biology, or Cartesian philosophy, or anything within the epistemological universe is truly important, as far as we human beings are concerned; but when humanity threatens to tumble toward eventual self-destruction, it may be of only secondary value.

Before every child on this planet progresses to fifth grade, they must, I believe, acquire a foundational understanding of human rights, drawing on Article 26 (2) of the Universal Declaration of Human Rights.²¹

There are many who will say: “But we already do that!” Religious schools throughout the world devote themselves to conveying the necessary values to students in the hope of ensuring piety, humility, and love. And certainly, we in Jordan have been active in promoting the “Common Word” initiative, which focuses on the twin injunctions of “love of God and love of neighbor” common to the three Abrahamic faiths; if they were widely observed, they suggest a path by which humanity could attain lasting peace. There are other faiths, however, that must also be included, and governments the world over must likewise feel they have an obligation here – and that means recognizing that some are founded on the strict separation of religion and state. And so a broader approach may, I believe, be worth our consideration.

Children need to know what bigotry and chauvinism are, and that blind obedience can be dangerous when exploited for nefarious ends by figures of

19. Laurence Rees, *Auschwitz: A New History* (New York: Public Affairs, 2006), p. 119.

20. *Ibid.*, p. 210.

21. Article 26, paragraph 2, reads in part: “Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms.”

authority. They should also not feel exceptional because of where they were born, how they look, what passport they carry, or what they are being taught to believe ideologically – because the Zeppelin Field is never that far away.

Exceptionalism, they should learn, should only have currency in reference to our individual conduct, and should only be celebrated when that conduct is humane or kind or brings joy – perhaps even going a step beyond Martin Luther King, Jr.'s famous emphasis on the content of one's character. Children must appreciate that what makes them an individual is the very rich constellation of reference points from which, taken altogether, they define themselves. No one point of reference – not nationality, nor ideology, nor religion – should eclipse all else to the point of rendering the others irrelevant – which is what, by definition, we take extremism to mean. Think Zeppelin Field again. Children must take in all of this – in simplified form, of course – before they absorb the building blocks of basic comprehension, arithmetic, and reading.

Perhaps then, ladies and gentlemen, we can imagine a world without war, without atrocities, without the awful suffering that still now occurs; and should we fail humanity again in the distant future, we should be pleased to know that there would be no impunity – with the principal safeguard being the ICC itself – and the perpetrators, whose actions would, we hope, be rare enough, will come to understand that there can be no cultural-ideological worldview, no absolving argument, behind which denial can cower, and where conscience can remain unrevealed. Where a variation of a Hoess or a Stangl will not just say either: “I regret” or “I share the guilt” or both, but will also sob – sob uncontrollably, sob continuously, without interruption, for as long as they are on this earth, sob for all those they have killed, sob for the suffering of those who did not die but were tortured and abused ... sob for their living victims, like the Tom Buerghentals of today. Only then, ladies and gentlemen, will we be able to say that justice, within our world, this world, has reached a point such that we humans can demand no more of it, nor uphold any less of it.

Only then – to answer Witold Pilecki's simple question posed as he marched down that road near Birkenau in the spring of 1942 – can we say: Yes, indeed ... we are all people.

Let us make this, then, our final destination.





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