

Berel Lang, Act and Idea in the Nazi Genocide

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Intending Genocide

The hard decision had to be made that this people should be caused to disappear from the earth. . . . Perhaps, at a much later time, we can consider whether we should say something more about this to the German people. I myself believe that it is better for us—us together—to have borne this for our people, that we have taken the responsibility for it on ourselves (the responsibility for an act, not just for an idea), and that we should now take this secret with us into the grave.

HEINRICH HIMMLER, Secret Address to SS Officers, at Poznan, 10 June 1943

The term “genocide” has come to be used when all other words of moral or political opprobrium fail, when the speaker or writer wishes to indict a set of actions as extraordinary for their malevolence and heinousness. The pathology of everyday political life has left no shortage of candidates for this designation or of accusers, with good reason or not, who have been ready to confer it. So we find the term assigned to the policies in Nicaragua first of the Somoza government and then of the Sandinistas—no less categorically than to the actions of the Turks against the Armenians in 1915–17; to the role of the United States in Vietnam and to policies toward ethnic minorities within the USSR; to the political structure imposed by the Afrikaners on nonwhite South Africans, or again to the social definition in the United States of blacks living there; to the intentions of Israelis with respect to Palestinian Arabs and of the Palestinians with respect to Israelis; to policies and decisions in Canada,

Tibet, Chile, Australia, Paraguay, Bangladesh¹—and, of course, to the lasting exemplar of the war of the Nazis against the Jews during the rule of the Third Reich.

It is noteworthy that quite different, often conflicting designations have been given for each one of the situations mentioned; the difficulty of finding anything common among these uses, except for their referral to violence and mass death, makes it clear that the term "genocide" has become largely emotive in meaning. This conclusion is itself not without significance: curses, too, disclose principles and commitments. But this diffuseness also suggests the need to provide an analysis of genocide itself, if only in order to determine what in that phenomenon supports the connotations of extraordinary wrongdoing which the term unmistakably carries with it. For genocide *is* distinctive, not, as has often been claimed, in the "uniqueness" of its occurrence—since we know that there may have been, and even more surely can be, more than one of these—but as an idea and act of wrongdoing, and thus too for its place in the history of ethics.

The academic tone of this thesis may seem to clash with the moral enormity of its subject. But when ethical issues are confronted in their historical settings rather than as hypothetical, the distance between act and description, between idea and exemplification, becomes a feature of the discourse itself. Undoubtedly, writing is also a form of action, at times perhaps of moral action; but where moral experience is the subject, and more certainly where the moral facts are so compelling as to speak for themselves, talking or writing about those facts must always seem to open itself to invidious comparison.

1. The Idea as History

The history of the concept of genocide provides a number of important clues for the analysis of genocide, and two principal sources are relevant to that history: the first, the writings of Raphael Lemkin; the second, the legislation of the United Nations Convention on Genocide. The word "genocide" itself first appears in print in 1944 in Lemkin's book

1. See, e.g., Robert Davis and Mark Zannis, *The Genocide Machine in Canada* (Montreal: Black Rose Books, 1973); Rodney Y. Gilbert, *Genocide in Tibet* (New York: American-Asian Education Exchange, 1959); Carlos Cerda, *Genocide au Chili* (Paris: Maspéro, 1974); Tony Berta, "Relations of Genocide: Land and Lives in the Colonization of Australia," in Isidor Wallimann and Michael N. Dobkowski (eds.), *Genocide and the Modern Age* (Westport: Greenwood, 1987), 237–52; Kalyan Chandhuri, *Genocide in Bangladesh* (Bombay: Orient Longmans, 1972); Richard Arens (ed.), *Genocide in Paraguay* (Philadelphia: Temple University Press, 1976).

Axis Rule in Occupied Europe.² In that work, which he began to write in 1940, Lemkin, a Polish Jew whose family would perish almost in its entirety in the few years after that, reviews what was then known of the actions by the Nazis against noncombatants in countries they had conquered or occupied. Still earlier, in 1933, with grim prescience, Lemkin, at the Fifth International Conference for the Unification of Penal Law in Madrid, had introduced resolutions proposing definitions for two new international crimes: "barbarity"—"oppressive and destructive actions directed against individuals as members of a national, religious, or racial group"; and "vandalism"—"the destruction of works of art and culture." Those resolutions were not adopted by the Madrid Conference; when in his 1944 formulation Lemkin joins under the single, broader heading of "genocide" the two crimes to which he had previously attempted to call attention, he notes that the earlier proposals would have provided legal instruments for judging the actions of the Nazis in the years since.

By 1944, in any event, the need and applicability of such legislation were only too evident. Provision had long been made for judging military actions against civilians as individuals, Lemkin points out, as in the Hague Conventions of 1899 and 1907. But the actions of the Nazis were marked by a pattern of violence different from anything anticipated in those Conventions. For the Nazis were not only persecuting noncombatants; they were persecuting at least some of them solely on the basis of their membership in certain cultural and religious groups, with the intention of destroying those groups as groups. The purpose of these quasi-military operations differed from those in which individual "enemy" civilians were harmed, even willfully, by an occupying force. The concept of genocide—the killing of a race, the members of a common "descent," more broadly, of a "kind"—was intended to represent this difference. The rights of individual noncombatants and of defeated soldiers, Lemkin asserts, had been clearly defined and to some extent protected, but the "fate of nations in prison . . . has apparently not

2. Raphael Lemkin, *Axis Rule in Occupied Europe* (Washington, D.C.: Carnegie Endowment for International Peace, 1944). Lemkin also served as a consultant in the drafting of the UN Convention (see Raphael Lemkin, "My Battle with Half the World," *Chicago Jewish Forum*, Winter 1952). On the historical and conceptual background of genocide, see also Uriel Tal, "On the Study of the Holocaust and Genocide," *Yad Vashem Studies* 13 (Jerusalem, 1979), 7–52; Irving L. Horowitz, "Many Genocides, One Holocaust?" *Modern Judaism* 1 (1979), 74–89; Leo Kuper, *Genocide: Its Political Use in the Twentieth Century* (New Haven: Yale University Press, 1981); Yehuda Bauer, "The Place of the Holocaust in Contemporary History," in J. Crankel (ed.), *Studies in Contemporary Jewry*. (Bloomington, Ind.: Indiana University Press, 1984); Wallimann and Dobkowski, *Genocide*.

seemed to be so important as to call for supervision of the occupational authorities" (84).

In formulating the concept of genocide, Lemkin cites mainly the "national" but also the "ethnic" and the "religious" group as examples of the *genos* against which the act of genocide might be directed. He does not indicate in these comments, however, exactly how these "kinds" are themselves to be defined: what features distinguish them among the considerably larger variety of groups which appear within most social structures. A second and related issue, also mentioned and left unresolved by Lemkin, concerns the nature of the destruction—more literally, the "killing"—indicated in the term "genocide." He addresses the latter issue by citing eight aspects of group existence that are liable to destruction: the "political," "social," "cultural," "economic," "biological," "physical," "religious," and "moral" structures of a group. Early in his book, Lemkin suggests that genocide is effected by a "synchronized attack" (xi) on *all* these aspects. Subsequently, he proposes that only some of them must be attacked in order for the charge of genocide to be warranted, but he does not even then distinguish among the aspects or compare them in their bearing on the charge of genocide.

The two questions thus raised—what groups can be the victims of genocide, and what aspects of such groups are the objects of the act of genocide—are central to any consideration of the phenomenon of genocide. They pose theoretical difficulties, on the one hand, for defining the concept (could, for example, the limited *genos* of the family be the "occasion" of genocide?); they give rise, on the other hand, to practical difficulties for legislation or judicial proceedings that address its historical occurrence. The United Nations Convention on the Prevention and Punishment of the Crime of Genocide, initiated by a resolution passed in the General Assembly in 1948,³ constitutes the principal legal state-

3. The text of the United Nations Convention on the Prevention and Punishment of the Crime of Genocide, together with a history of its formulation and a commentary, appears in Nehemiah Robinson, *The Genocide Convention* (New York: Institute of Jewish Affairs, 1960). The United States, an original signatory and advocate for the resolution in the General Assembly in 1948, did not ratify the Convention until February 1985; proposals for Senate ratification either died or were defeated on four separate occasions previously (1970, 1973, 1973, and 1976). Even in voting to ratify in 1985, the Senate attached "reservations" that effectively block international jurisdiction over charges that might be brought against the United States by another country or a group outside the United States. The legislation for implementing the qualified United States ratification, required before the resolution could be transmitted to the United Nations, was not enacted until October 1988. A contrast bears mentioning: in 1973, the Senate and the House of Representatives passed the Endangered Species Act on its first presentation, without dissent in the Senate and with four dissenting votes in the House of Representatives.

ment that has been formulated about genocide; it is important, although also problematic, for the responses it proposes to these two questions.

After a dramatic opening which asserts that "genocide, whether committed in time of peace or in time of war, is a crime under international law," the UN Convention defines the potential victim of genocide as a "national, ethnical, racial, or religious group"; genocide, then, is "committed with intent to destroy, in whole or in part" any such group. As versions of destruction, the Convention cites, in addition to the outright killing of members of the group, four other sufficient conditions: "causing serious bodily or mental harm to members of the group"; "deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part"; "imposing measures intended to prevent births within the group"; and "forcibly transferring children of the group to another group." Even the last of these conditions—and more obviously, the other four—underscores the basic emphasis of the Convention on the *physical* destruction of a group as characteristic of genocide. (The motion initiating the UN Convention was passed in the General Assembly over objections to its failure to include political genocide, a category that had been included in an earlier draft of the resolution.)

This emphasis of the UN Convention makes explicit what will also be elaborated here as the distinguishing features of genocide; these are themselves linked, however, to a number of historical issues. One of the latter concerns is the historical occurrence of genocide. For even if the term or, more generally, the concept of genocide does not appear prior to the events of World War II, the phenomenon itself obviously could have—and has been alleged to have—occurred before then. One precedent in particular has been widely referred to, namely, the attempted destruction by the Turkish government in 1915–17 of the Armenian population in Turkey. Lemkin himself cites this, as well as a number of much earlier examples, among them the Roman destruction of Carthage in 146 B.C., the conquest of Jerusalem by Titus in A.D. 72, and a conglomerate of the brutalities of Genghis Khan. These, together with the other references mentioned in the opening paragraph of this chapter, are no doubt all arguable as instances of genocide, although it is also clear that the evident differences among them suggest the need for gradations within the concept itself. In the attack of the Turks on the Armenians, for example, the Turks sometimes (although in no systematic way) allowed the Armenians the alternative of conversion to Islam as a means of saving themselves—in effect substituting the intention of religious or cultural genocide (ethnocide) for physical genocide. Moreover, the attacks of the Turks on the Armenian populace were confined to the boundaries of Turkey—thus imposing a geographical constraint on the intentions of

genocide.⁴ In a more extreme form of genocide, national or geographical boundaries might be a constraint in fact but not in principle; the option of emigration or of finding refuge elsewhere would be denied even as a possibility.

It is important that typologies should be elaborated of the historical and possible instances of genocide which would take account of these differences. Such typologies would be required for assessing responsibility in specific instances of genocide; no less importantly, their analysis of the variable features in genocide is a necessary step in constructing social or political models designed to anticipate or prevent the occurrence of genocide, and a number of attempts have been made along these lines recently.⁵ But the emphasis in the present discussion is not on distinguishing among different forms of genocide, but in characterizing what will be claimed here to be as yet its most explicit and fully determined occurrence, namely, the Nazi genocide against the Jews. For it is in this exemplification that the distinctive conceptual and moral features of the phenomenon of genocide most fully appear; if one can speak of a "paradigm" of moral enormity, it is here that the paradigm of genocide is found.

This claim, it should be noticed, is not a claim even for historical, let alone for metaphysical, uniqueness. In any other than the trivial sense in which every event is unique, historical descriptions would be more precise in restricting their reference to events as "unprecedented"—since the past notwithstanding, there always remains the future possibility of identical or closely comparable events. Even if it should be concluded that the Nazi war against the Jews represents one and so far the only actual instance of genocide—or, more restrainedly, that it is if not the only, the most explicitly intended and documented instance of genocide—one historical judgment concerning the status of genocide would still take precedence over any metaphysical one: the obvious but urgent inference that if genocide happened once, it can happen twice,

4. See Yehuda Bauer, *The Holocaust in Historical Perspective* (Seattle: University of Washington Press, 1978), 36; Helen Fein, *Accounting for Genocide* (New York: Free Press, 1979), 10–18; David M. Lang, *The Armenians* (London: George Allen and Unwin, 1981).

5. See, e.g., Vahakn N. Dadrian, "A Typology of Genocide," *International Review of Sociology* (1975); Helen Fein, "Scenarios of Genocide: Models of Genocide and Critical Responses," in Israel W. Charney (ed.), *Toward the Understanding and Prevention of Genocide* (Boulder, Colo.: Westview Press, 1984), 3–31; Leo Kuper, *International Action against Genocide* (London: Minority Rights Group, 1982), and *The Prevention of Genocide* (New Haven: Yale University Press, 1986); Roger W. Smith, "Human Destructiveness and Politics: The Twentieth Century as an Age of Genocide," in Wallimann and Dobkowski, *Genocide*, 21–39. See also the typological distinction between "genocide" and "Holocaust" in Bauer, *Holocaust*, chap. 2—and the denial (and also, it seems to me, refutation) of that distinction in Alan Rosenberg, "Was the Holocaust Unique: A Peculiar Question?" in Wallimann and Dobkowski, *Genocide*, 153–56.

that genocide is possible because it has been actual. Any claim for historical distinctiveness made in reference to a particular act of genocide has also to take into account this sobering feature of history itself.⁶

A second point of reflection on genocide as an historical phenomenon contributes to a thesis concerning the history of ethical concepts more generally; namely, that ethical judgment has a history of development that differs markedly from the progressive view often given of it. Genocide may not be entirely an "invention" of twentieth century; but it was even for the Nazis sufficiently alien (and even for them, one infers, sufficiently terrible) that they did not set out with the goal of genocide clearly fixed before them. They came to it, at the levels both of idea and of practice, by a succession of steps, each opening onto further historical possibilities and only later, by this cumulative progression, affirming the intention for genocide. The establishment of concentration camps within Germany in the first year of the Nazi regime (1933); the implementation of the Nuremberg Laws in 1935 by which the Jews of Germany were denied certain features of civil protection; the invasion of Poland in 1939 and the concurrent establishment there of Jewish ghettos; the invasion of Russia in June 1941 and the accompanying ("Commissar") order to violate the conventions of war in the treatment of prisoners; the starting up of the death camps at the end of 1941 and the explicit formulation of the plan for the Final Solution at the Wannsee Conference in January 1942: the sequence here is cumulative and (it shall be argued) intentional—but it also represents a series of individual steps each of which causally influences the one following it. The explicit "deduction" of the goal and practice of genocide appears only rather late in this progression and in any event years after the Nazi accession to power.

Admittedly, an alternative description to this one has argued that the future genocide against the Jews was explicitly indicated early on—in statements by Hitler himself, for example, in *Mein Kampf* (1924–26) or even before that, in the late nineteenth-century sources of anti-Semitism that would then influence Hitler.⁷ (The term "anti-Semitism" itself first

6. On the issue of the uniqueness of the Nazi genocide, see, e.g., Nathan Rotenstreich, "The Holocaust as a Unique Historical event," *Patterns of Prejudice* 22 (1988), 14–20; Steven T. Katz, "The 'Unique' Intentionality of the Holocaust," in Katz, *Post-Holocaust Dialogues* (New York: New York University Press, 1983), 287–317; Kenneth Seeskin, "What Philosophy Can and Cannot Say about Evil," in Alan Rosenberg and Gerald E. Myers (eds.), *Echoes from the Holocaust* (Philadelphia: Temple University Press, 1988), 91–93.

7. See in support of this claim George L. Mosse, *The Crisis of German Ideology* (New York: Grosset and Dunlap, 1964), 138–45, and *Toward the Final Solution* (New York: Howard Fertig, 1978), chaps. 12 and 13; Lucy Dawidowicz, *The War against the Jews, 1933–1945* (New York: Bantam, 1976), 156–58; and Joachim Fest, *Hitler*, trans. Richard and Clara Winston (New York: Harcourt Brace Jovanovich, 1974), 679. Among the other

appears in the latter period, impelled by the "League of Anti-Semites" formed by Wilhelm Marr.) There are, furthermore, conceptual and practical difficulties in fixing the historical point at which an intention becomes an intention—even for a single person, let alone where group or corporate intentions are in question. (This issue is especially pertinent to the claim advanced recently by a number of historians that the genocide against the Jews was in its origins never specifically intended by the Nazis, that it occurred almost spontaneously, as the outcome of a series of unrelated, and so undirected, decisions.)⁸

Notwithstanding these counterclaims and issues, however, the weight of evidence argues that the design for the extermination of the Jews of Europe emerged as an explicit intention only gradually, becoming fully formed and definite in the period between 1939 and 1941; and that as this design unfolded, it disclosed certain features of genocide that had not previously appeared in any historical formulation of political purpose, either in the classical or in the modern worlds. Contrary to such casual assertions as Sartre's, that "the fact of genocide is as old as humanity,"⁹ genocide thus conceived had arguably never before been intended; the idea and the act which are joined in the Nazi effort to annihilate the Jews—to annihilate them not only in one or several lands but wherever they might be—represented an innovation in the concept of genocide which in effect brought that concept to completion. With the definition that the Nazis gave to the concept of genocide, there was nothing more that *could* be added to it.

It is usually acknowledged that certain ethical ideals (for example, the concept of "natural rights") evolved over a period of time, influenced by a variety of cultural and intellectual sources. But evil or the "ideals" of wrongdoing have been accorded no parallel history—apparently on the grounds that evil, unlike good, is all one, or, alternatively, that the

evidence against this thesis, one passage in particular in *Mein Kampf* is worth noting. Hitler, who makes constant use of hyperbole in excoriating the historical role of the Jews, writes of the difference it would have made to the course of World War I and its aftermath if "twelve or fifteen thousand Hebrew corrupters of the people had been poisoned by gas before or during the war." At the time, those evidently seemed to him very large numbers.

8. See, e.g., Martin Broszat, "Hitler and the Genesis of the Final Solution," *Yad Vashem Studies* 13 (1979), 61–98; and Hans Mommsen, "Die Realisierung des Utopischen: Die 'Endlösung des Judenfrage' im 'Dritten Reich,'" *Geschichte und Gesellschaft* 9 (1983), 381–420. For concise statements of the disagreement between the "Intentionalist" and the "Functionalist" accounts of the Nazi genocide, see Eberhard Jäckel, *Hitler in History* (Hanover, N.H.: University Press of New England, 1984), esp. 29–46; and Saul Friedländer, Introduction to Gerald Fleming, *Hitler and the Final Solution* (Berkeley: University of California Press, 1982).

9. Jean-Paul Sartre, *On Genocide* (Boston: Beacon Press, 1968), 57.

mechanisms of evildoing leave no room for innovation. But the recent history of the phenomenon of genocide argues against this assumption; it moves in the opposite direction, in fact, by demonstrating that evil, too, is open to historical revision and conceptual "advance." The imagination, we thus learn, has no native ties to moral conscience—and references to the progress of moral concepts (as for example, in Whitehead's description of the evolving opposition in Western societies to slavery)¹⁰ must also leave room for a progression of quite a different kind. Genocide is portentous not only for its occurrence *in* history but for the shape it gives *to* history.

A number of quasi-legal conditions concerning the definition of genocide warrant mention before its more basic structure is analyzed. The term "genocide" itself, it will be recognized, differs from its etymological analogues (as in "homicide" or "fratricide") in that the action of killing—denoted by the suffix "cide"—need not be fully realized for the term to apply. Legal and moral judgment; characteristically distinguish between homicide and attempted homicide, implying that the latter, because of its difference in consequence, ought also to be judged differently. Genocide would obviously be charged to actions that destroy a group in its entirety, but neither Lemkin's formulation nor the UN Convention cites this as a necessary condition; on those accounts, the term applies if the intended killing of a "kind" is no more than partly realized, or indeed if only the intention itself is demonstrated.¹¹ (The UN Convention complicates—and to an extent, confuses—this issue by stipulating that the charge of genocide would be warranted even if the intention to commit genocide were directed not at a group as a whole but only at part of a group.) This ascription of culpability to intentions even when they are not realized undoubtedly adds to the requirements for proof in certain possible instances of genocide; but the charge of genocide is no different in this respect from other charges in which an agent's intentions are a significant consideration.

As has already been mentioned, neither Lemkin's analysis nor the more narrowly focused UN Convention on Genocide provides specific criteria for identifying the "national, racial, or religious" groups that may be the objects of genocide. (As noted, the General Assembly vote on the UN Convention in 1948 deliberately excluded the category of "political genocide"; but this exclusion—itsself based on political considerations—narrows only slightly the definition of the groups to which

10. Alfred North Whitehead, *Adventure of Ideas* (New York: Macmillan, 1933), 13–31.

11. It is difficult to imagine but not logically impossible that such an intention could be made explicit without the killing of *any* member of the group.

the Convention applies.) It seems likely in fact that necessary and sufficient conditions may not be ascertainable for the phenomenon of genocide, mainly because of the difficulty already mentioned in identifying such conditions for the concept of a *genos*. The possibility of a definition is further hindered by the fact that the type of "destruction" will also vary in relation to the group specified: a group that defined itself in terms of a common linguistic tradition, for example, would become a victim of genocide if a ban were effectively imposed on the use of the language. Yet notwithstanding the vagueness of certain distinctions used to refer to the phenomenon of genocide, there is nothing intrinsically problematic about the concept or, much more obviously, its appearances. Some exemplifications of genocide have been only too clear, and the emphasis in the UN Convention on Genocide on the physical destruction of a group defined by (allegedly) biological traits—the definition represented in the Nazi genocide against the Jews—suggests a basis for their definition.

Before considering further the two primary factors in the concept of genocide (the specification of the group and the intention related to its destruction), it is important to recognize the implied relation between these factors, on the hand, and the likely agents of genocide, on the other. That genocide entails the destruction of a group does not imply that the act of genocide itself must be the act of a group; but the practical implementation of a design for genocide would almost necessarily be so complex as to assure this. Admittedly, the same technological advances that make genocide increasingly possible as a collective action also have increased the possibility that an individual acting alone could initiate the process. (When the push of a single button can produce cataclysmic effects, we discover an order of destruction—"omnicide"—even larger than genocide.)¹² But the opprobrium attached to the term "genocide" seems also to have the connotation of a corporate action—as if this act or sequence of acts would be a lesser fault, easier to understand if not to excuse if one person rather than a group were responsible for it. A group (we suppose) would be bound by a public moral code; decisions made would have been reached collectively, and the culpability of individual intentions would be multiplied proportionately. Admittedly, corporate responsibility is sometimes invoked in order to diminish (or at least to obscure) individual responsibility; so, for example, the "quagmire" effect that was appealed to retrospectively by defenders of the United

12. Larger in one sense, but conceptually and morally dependent on it. See Berel Lang, "Genocide and Omnicide: Technology at the Limits," in Avner Cohen and Steven Lee (eds.), *Nuclear Weapons and the Future of Humanity* (Totowa, N.J.: Rowman and Allanheld, 1986), 115–30.

States' role in Vietnam. But for genocide, the likelihood of its corporate origins seems to *accentuate* its moral enormity: a large number of individual, intentional acts would have to be committed and the connections among them also affirmed in order to produce the extensive act. Unlike other corporate acts that might be not only decided on but carried out by a single person or small group of persons, genocide in its scope seems necessarily to require collaboration by a relatively large number of agents acting both collectively and individually.

The pressure to ascribe individual responsibility for genocide is a reflection of this pattern in the act of genocide, and the UN Convention anticipates the latter point when, in article IV, it claims the liability to punishment for anyone who commits genocide, "whether they are constitutionally responsible rulers, public officials or private individuals." Admittedly, this stipulation only defers the issue of accountability as between the corporate and the individual agent: does responsibility extend to everyone serving in an army which in only some of its units is carrying out the orders that specifically involve genocide? to the citizens who pay taxes to a government which through its armies or other agencies effects the policy of genocide? to the nation as a whole? But these are standard and difficult examples for assessing responsibility in *every* instance of corporate action. They are distinctive in respect to genocide only as the enormity of an act may affect the degree of culpability (the more serious the crime, the greater the blame), and thus also as it heightens the importance of assessing responsibility. In any event, it needs to be said once again that the fact that it may be impossible to demonstrate agency or responsibility for some instances of genocide does not mean that for other instances or agents such judgments may not be certain—as certain, in any event, as moral judgments ever can be.

2. Genocide as Principle

The reason for emphasizing the feature of physical destruction in the structure of genocide is evident. Where life itself remains, as in cultural genocide or ethnocide, the possibility also remains of group revival; but this is not the case where genocide involves physical annihilation. A conceptual relation has already been asserted, furthermore, between the *genos* subjected to genocide and the type of destruction involved in that act. Here again, physical destruction would also result in cultural genocide, but the converse does not hold: for a group which is defined genetically, physical destruction is the one form that genocide can take. Thus genocide in which both the *genos* and the means of destruction are defined in biological terms represents genocide in its most extreme and

unequivocal form; it is, in effect, the "paradigm" of genocide. This is, we recognize, the form that the Nazi genocide against the Jews took, as that also remains, for other reasons, the most explicitly articulated and fully documented instance of the idea and act of genocide. Any general claims about genocide as a phenomenon, including the contention which follows here of the moral distinctiveness of genocide, can thus be measured against the structure—in intention and act—of the Nazi genocide.

In itself, the claim for the distinctiveness of the Nazi genocide in these terms still faces many of the standard questions relevant to other and less extreme instances of morally culpable decisions. Here, too, the question recurs of how an agent's intentions can be determined and of how important a role intentions have in the ascription of responsibility; here, too, the question is unavoidable of how culpability is to be measured in relation to the consequences of an act. Insofar as these considerations bear on ethically relevant decisions in general, the distinctiveness of the Nazi genocide must lie elsewhere. It seems clear, moreover, that such distinctiveness is not to be based only on the number of victims involved, although the reference in "genocide" to a group or kind suggests that that number is likely to be large. The total number of noncombatant victims of the Nazis in World War II, for example—killed in concentration and death camps, by forced labor, massacres, bombings—has been estimated to be on the order of twenty million. (The figure itself guarantees that it is at most an approximation; but this is not the immediate issue.) The size of that figure and the enormity of the acts which produced it can be acknowledged, however, without maintaining that all the people included in it were victims of genocide. Obviously, the term used to designate an act of killing makes little difference to the victim. But there remains a significant distinction, conceptually and morally, between mass murder and genocide—a distinction that does not depend on numbers at all. (This does not mean that the question of numbers will not have psychological or even moral force. In 1949, for example, the American Bar Association—which remained until 1973 a consistent and influential opponent to American ratification of the UN Convention on Genocide—recommended to the United States Senate a reservation to be appended in the event that the Senate did vote to ratify the convention, to the effect that a minimum number of people [in the "thousands"] should be fixed for defining the groups covered by the Convention.)

What distinguishes the concept of genocide in its extreme form, then, is its requirement of the physical destruction of a group of people as a consequence of their membership in an allegedly "natural" (biologically defined) group. There are two implications which follow from the con-

vergence of these identifying features. The first implication is that the persons against whom the genocide is directed retain, neither as individuals nor as a group, any agency in the rationale or justification for that process. No personal deed or possession of the victims is at issue; the persons who constitute the group can do nothing, short of revising their biological history, to alter the terms of genocidal intention. They cannot affect that intention by renouncing a cultural or religious identity, or by proposing ransom or compensation; they cannot ask or be offered the options of exile or conversion or assimilation as "assurances" against the future. Genocide singles them out by their identification with a group quite apart from any choices they have made of identity or character and indeed aside from all individual characteristics other than the biological feature(s) which (allegedly) mark them as group members. Apparent individual divergences from the stereotype of the group can only be interpreted as superficial and accidental: the verdict against such "exceptions," like the broader one against "ordinary" members of the group, follows from the claim of a *generic* essence that is irrefutable at the level of individuals.

This status of the victim of genocide is linked to the second implication: that the agent of genocide requires nothing from his victims except their destruction and that in setting this condition he acts on a principle that is categorical and nonutilitarian. He is not motivated here by the hope of gain, like a robber who might be satisfied to acquire the money for which he commits robbery by other means; he differs also from a murderer who anticipates a reward for his act or who has a personal score to settle or even one who acts on sadistic impulse. Evidently, these or similar motives may influence individual agents of genocide, but by themselves they could not account for the distinguishing features of that act.

It may be objected that the decision to destroy a group and its members can be, and at times has been, based on categorical premises which are nonetheless utilitarian. This argument has been made, in fact, in respect to the Nazi genocide—on the basis of the claims by the Nazis that the existence of the Jews was a threat to the well-being of other groups in the society or of the society as a whole. Defended on these grounds, the extermination of the Jews would then be warranted or even obligatory, for instrumental or possibly "moral" reasons.

It is important to note against this line of reasoning, however, that the utilitarian justification for the policy of genocide, so far as it was a factor at all, was inconsistently applied by the Nazis both in practice and in principle. This inconsistency, moreover, was not an accidental lapse but was symptomatic of a rejection of the utilitarian rationale within the

Nazi ideology itself. There is a variety of evidence for this contention, but it appears most clearly in respect to the medical or biological metaphors that Nazi ideologists frequently employed in their public attacks on the Jews.¹³ In these metaphors, the Jews were compared to various types of bacilli or disease: cancers, plague, tuberculosis. On the basis of these analogies, the extirpation of the Jews would then represent a cure; genocide would in effect be a requirement of public health.

The inconsistency that appears in connection with this justification is not in the use of these analogies or metaphors, however, but in the context of justification of which they are part. Had the Nazis held consistently to the values implied by the metaphors of disease, the value of self-preservation—the ostensive reason for attacking agents of disease—would have been a dominant motive for them, and the genocide against the Jews would then follow justifiably from that premise. But on a number of occasions when the policy of genocide conflicted with the requirements of self-preservation that became progressively more urgent in the general war the Nazis were fighting, it was the former, not the latter, that won out. It can be stated as a general conclusion, in fact, that the Nazis were willing to increase the risk that they would lose the wider war—with whatever consequences this would have for their survival individually or as a nation—in order to wage their war against the Jews. That this order of priorities was a matter of policy and not simply a result of circumstance is clear from a number of statements and decisions. So, for example, the Minister for Occupied Eastern Territories who had ordered the extermination in those territories of Jews who might have been used for forced labor to support the war effort con-

13. The use of the disease metaphor recurs in Nazi ideology. So, for example, in *The Jew in German History*, a German army indoctrination booklet from 1939 (cited in Dawidowitz, *War Against the Jews*), the Jews are a "plague," "poisonous parasites." Hitler in a letter of 16 September 1919 writes that the "effect of Jewry will be racial tuberculosis of nations"; and in *Mein Kampf*, he speaks of them as "germ carriers," as an "abscess." A remarkable extension of the metaphor appears in a speech by Hitler in February 1942 (cited by Fest, *Hitler*, 212): "The discovery of the Jewish virus is one of the greatest revolutions which has been undertaken in the world. The struggle we are waging is of the same kind as in the past century, that of Pasteur and Koch. How many diseases can be traced back to the Jewish virus? We shall regain our health only when we exterminate the Jews." Alex Bein points out that the disease metaphor was used to reinforce the distinction between the Jews and "inferior races" who nonetheless remained human ("The Jewish Parasite: Notes on the Semantics of the Jewish Problem with Special Reference to Nazi Germany," *Yearbook of the Leo Baeck Institute* 9 (1964), 3–40. See also the discussion of the disease metaphor by Saul Friedländer, "On the Possibility of the Holocaust," in Yehuda Bauer and Nathan Rotenstreich (eds.), *The Holocaust as Historical Experience* (New York: Holmes and Meier, 1981), 7–8.

firmed that order with the assertion that "as a matter of principle no consideration should be given to economic interests in the solution of this problem" (Nuremberg Document PS-3666). A similar statement would be made by Himmler himself in 1944, when the course of the war was still more obviously going against the Nazis.¹⁴ It was in that year also that the evidence most frequently cited for the claim that the Nazis were willing to sacrifice their own interests appears; this is the use by the Nazis, even on the brink of defeat, of badly needed railroad transport to convey Jews (mainly during this period, the Jews of Hungary) to the death camps. At his trial in Jerusalem, Eichmann was to appeal to this fact as evidence of the disinterested and self-sacrificing "principles" that had motivated him.

Additional reasons for rejecting Nazi references to the Jews as pestilence or disease as a consistent rationale of their acts are suggested by the history of the metaphors themselves. The most immediate implication of the nineteenth-century discovery of the "germ theory of disease" was that the way to fight disease would be to attack the organisms which caused it or their carriers. The medical campaigns based on these premises spoke of immunizing or curing the individuals affected by disease, or at most of "sanitizing" certain geographical areas—but virtually never of eradicating the source of the disease.¹⁵ (These more modest goals undoubtedly reflected what were seen as the realistic possibilities of medical science at the time.) It was only late in the nineteenth century

14. See Yitzhak Arad, *Belzec, Sobibor, Treblinka* (Bloomington, Ind.: Indiana University Press, 1987), 133. This emphasis is in flagrant contrast to one of the main reasons given by the Allied governments for their negative responses, while the Nazi genocide was being committed, to proposals for the rescue of the Jews. So, for example, in a memo from the British Foreign Office (15 December 1943): "The Foreign Office are concerned with the difficulties of disposing of any considerable number of Jews should they be rescued from enemy or occupied territory . . . [including the] difficulties of transportation, particularly shipping . . ." (cited in David Wyman, *The Abandonment of the Jews* (New York: Pantheon, 1984), 182).

15. Medical histories have not focused on this issue, but see, e.g., Robert P. Hudson, *Disease and Its Control* (Westport, Conn.: Greenwood Press, 1980), chaps. 8 and 9; and Arturo Castiglioni, *A History of Medicine* (New York: Knopf, 1985), 692–93. Bein points out ("Jewish Parasite") that biological metaphors (e.g., "parasite") go back at least to the eighteenth century. But parasites do not themselves cause disease: the step toward that identification comes after the development of the germ theory of disease in the nineteenth century. Thus the medical prescription for eradicating the source of disease and the impulse for genocide have a proximate historical—and more than metaphorical—relation. Consider in respect to this background, for example, the statement by Paul Legarde (1887): "One does not negotiate with trichinae and bacilli; trichinae and bacilli are not chosen to be educated, they are exterminated quickly and as thoroughly as possible." (cited in Bein, "Jewish Parasite," 32).

and in the early twentieth century that the possibility was envisioned that a disease-related organism might be exterminated *as a kind*.

The difference between preventing or curing a disease, on the one hand, and eliminating its cause, on the other hand, approximates the relation in political terms between common warfare and genocide. The historical development of these two forms of "defense" was so closely linked chronologically, moreover, that the developing idea of political genocide might have contributed to the goal of medical prevention as well as the more obvious other way around. It could be argued, still more extremely, that use of the concept of disease as a political metaphor is itself a foreshadowing of the phenomenon of genocide. For the latent content of that metaphor seems almost calculated to provoke the genocidal reaction: that the members of a particular group pose a mortal danger because of their inherent characteristics; that those characteristics cannot be controlled by the people who "have" them or anyone else—and thus that attempts either to change or to quarantine the group would necessarily fail; that there are no compensating features among the group; and that extermination is the obligatory response to the danger they pose. The group and its members are in effect irremediable.

Viewed in these terms, the disease metaphor employed by the Nazis is symptomatic of the structure of genocidal intention most basically in denying any semblance of humanity or personhood to members of the group singled out. It is not necessary to settle the disputed question of what those features of humanity or personhood are to recognize that they will in some form involve an individual power of agency and self-determination, a sense of continuing identity or character, and a capacity of intersubjective rationality or power of discourse. Where the individual person is considered only as the member of a group—and the group itself defined by characteristics over which the individual has no control—nothing remains to any of these aspects of the person *qua* person. Not self-determination or individual identity or the capacity for shared discourse is admitted for members of the group, and this reiterative denial of the self makes the disease metaphor appropriate symptomatically to the act of genocide in which the *genos* is to be destroyed, with the individuals within the *genos* entirely incidental. (The Nazi order of 17 August 1938 that German Jews whose first names were not already on an approved list should "legally" take common names—"Israel" for the men, "Sara" for the women—was itself a step in this direction.)

What emerges from analysis of the utilitarian justifications proposed by the Nazis for their genocide against the Jews is a basis *in principle* which contradicts those supposedly prudential arguments. A bitter

irony appears here in the form of an inverted conception of moral agency: the agent of genocide does not treat his victims as a means; he attacks them as ends in themselves and on grounds of principle rather than of inclination. There is no use that the agent wishes to make of his victim, nothing he requires or wants of the latter except to deprive him of all claims of selfhood. In the act of physical destruction on the basis of group identity, all claims of the individual are denied: the agent is here entitled, even obligated, to act toward his victims in a way that demonstrates that they have no claims as persons. To act otherwise—to take account of the individual as a person or even to allow this as possible—would in these terms be a fault, a moral parody in the sense that anthropomorphism always is. The principle applied here asserts that certain persons may—more strongly, *ought*—to be treated not as ends in themselves, but as the negation of ends in themselves. The individual is attacked not for anything he himself is or does, but for his relation to a group, a relation over which he has no control; the reason for the attack is not personal interest, gain, or inclination, but the principle that membership in the group itself suffices to exclude him from the domain of humanity. This principle may not itself *require* the physical destruction of the group—but annihilation is the one way of affirming the principle that leaves no doubt either about the principle or about its applicability to the group.¹⁶

This aspect of genocide suggests the surprising conclusion that there may be differences among wrongdoers in respect to the measure of humanity they acknowledge in the persons of their victims. To be sure, a robber violates the person of his victim, treating the victim as a means. But insofar as the robber wants what his victim *has*, he is not attacking or denying everything that the victim *is*; this condition holds also for the thief who steals simply for the pleasure of the act: here, too, there could be surrogates or substitutes. Even a murderer may be responding (however disproportionately) to something his victim possesses or has done as an individual. It is only where a person is defined in every essential characteristic by an abstraction of group membership beyond the person's own choosing, and where the attack on the group is itself raised to the level of principle, that all sense of individual agency in the victim—choice, deliberation, the potentiality for change—is denied. It is only

16. Such a principle is presupposed in statements such as that by Hitler, in his political Last Will and Testament (29 April 1945), written hours before his death and with the thousand-year Reich in ruins around him: he could still urge (one wonders whom) that "above all I charge the leaders of the nation and those under them to scrupulous observance of the laws of race and to merciless opposition to the universal poisoner of all peoples, international Jewry."

here, in genocide, that the victim is no longer, except in an accidental physical sense, a person at all.

No other morally relevant action can be consistently described in these terms, and it is in this that the distinctiveness of genocide consists. Most wrongdoing is directed against individuals as individuals and against groups only insofar as those groups reflect the deliberate histories or traits of their members. Even where group identification beyond the control of individual members affects the choice of the victim (for example, in sexual attacks), the act will usually be emotionally expressive—for example, the means of revenge—not a matter of principle. Anger or hatred often lead to actions which conflict with the practical interests of the agent, but then, too, the agent chooses among interests; he does not forego them in the name of principle. It is extraordinary, moreover, that actions directed against classes or groups of people should call for their complete destruction, wherever they might go or be; here, too, the sense of individual agency is denied. So long as *some* alternative is proposed (e.g., ransom, religious or cultural conversion), or where the “punishment” itself follows an alleged injury, the sense remains that compensation is being exacted for something the members of the group are held responsible for. When, however, identification in the group is entirely out of the hands of its members, when the act of destruction is directed against individuals entirely as members of the group, willing the extinction of both as a matter of principle and oblivious to even self-interested consequences, there we have a distinctive act, one in which physical destruction or murder has become an end in itself.

It might be objected that to identify the act of genocide with a process of *dehumanization*, even for the Nazi genocide but more obviously as a general rule, begs the question. What is at issue in the ideological structure of genocide as represented in Nazi policy, for example, might be judged a consequence of bad science, not of moral criminality—since if the Nazis genuinely believed that the Jews *were* a disease, there would be no force to the charge of dehumanization: the Jews would not have been human to begin with. Nor would there be any basis for the more general claim that genocide was for the Nazis nonutilitarian and a matter solely of principle. Since (in this view) the Jews posed a grave threat, their destruction, like any other act of self-defense, could be justified on prudential or even moral grounds.

But this interpretation faces an objection identical to the one cited before against the view of Nazi genocide as based on more general utilitarian considerations. The contention that the Jews were not human was not consistently maintained by the Nazis, and the inconsistencies are so

flagrant that they undermine any force that the contention would otherwise have. The conclusion is difficult to avoid, in fact, that it was a deliberate and systematic feature of Nazi policy to dehumanize the victims of the genocide they were implementing—and this feature of their policy itself suggests a quite different starting point than the premise that the Jews were not human.

There is undoubtedly some basis for attributing this belief to the Nazis; the Jews, in contrast to the Slavic peoples, who according to the Nazi typology were *inferior* human beings, were formally classified as *sub-human*, i.e., not human at all. But there is substantial evidence beyond that already cited that the Nazis themselves did not either consistently credit this claim or, more to the point, act on it. I refer here not only to the many expressions of awareness on the part of the Nazi leadership, in quite conventional terms, that their policies were open both to serious moral and to scientific question, but more importantly, to the *practice* of dehumanizing their victims that was so constant a part of the Nazi design. For a period of more than eight years from the time that they came to power, Nazi policy did not initiate the systematic extermination of the Jews. It was, in fact, only in October 1941 that the emigration of German Jews from Germany was formally prohibited; before that, forced emigration had been the principal feature of the "Solution" proposed by the Nazis to the "Jewish Question." (In the period between 1933 and 1938, about a third of the German Jewish community did in fact leave Germany, something that would have been impossible if the policy of extermination had even been anticipated.) But neither during that time nor subsequently was there any doubt about the systematic brutality and degradation which figured in Nazi policy and which itself, by a cruel inversion, testifies more strongly even than extermination itself to the essentially human status accorded the Jews to begin with. In the face of alleged danger, a justification for violence based on the right of self-defense can plausibly be invoked. But a systematic pattern of torture and degradation is only intelligible on the premise that the victims are not essentially dissimilar from the perpetrators and that something much more morally complex than self-defense is at issue. When Franz Stangl, the commandant of Treblinka, was asked, after his capture, why, if it was clear that the Jews were to be killed anyway, such extremes of cruelty and humiliation were made part of that process, he responded that this was done in order "to condition those who actually had to carry out the policies."¹⁷ Even if one accepts this response as cred-

17. In an interview with Gitta Sereny, recorded in Gitta Sereny, *Into That Darkness* (New York: Random House, 1983), 101.

ible, it acknowledges that those "who actually had to carry out the policies" saw (and recognized that they saw) in their victims a shared humanity, not nonhumans threatening them with mortal danger.

3. The Form of Intention

The process of systematic dehumanization requires a conscious affirmation of the wrong involved in it—that is, that someone who is human should be made to seem, to become, and in any event to be treated as less than that. And this step is not, it seems, only a feature of the Nazi attacks on the Jews, for in its more general form, it marks the distinctiveness of genocide as well: that here the agent of the act is voluntarily choosing to do wrong as a matter of principle—what is wrong even by *his* lights. This is a large claim to make, and the evidence for it will be considered more fully in chapter 2. But in the immediate context of what has been said about the occurrence of genocide, the basis for the claim can be seen in the stages of deliberation which the act of genocide presupposes and without which neither the idea nor the act embodying the idea is possible. One stage of deliberation is required in order to identify apparent individuals in terms of a generic and collective essence—that is, to "see" individuals not as individuals but as exclusively defined by their membership in a group. A second stage is presupposed in the claim that this generic essence represents an imminent danger, and that it has this character not as it happens, but necessarily: a judgment is made that the essence is intrinsically a menace. A third stage of deliberation is required for the decision that only extermination of the danger, now fixed intrinsically in the *genos*, can be an adequate response to it.

Each of these stages entails a process of reflection which, as the stages succeed each other, concludes with the intention of genocide. Each of the steps requires the agent's denial of a burden of evidence, a denial in which conceptual analysis and evaluation merge: the denial, first, of an individual nature and the capacity for individual agency in human beings; the denial, secondly, of qualities in the group or its members that would allow an alternative response (deportation, imprisonment) to "problems" associated with the group; thirdly, the rejection of claims of self-interest or even self-preservation in the face of what is then asserted as the "principled" demand for genocide. (The last of these denials may seem to be a distinctive feature not of genocide as such but of the Nazi genocide in particular. But where a human *genos* becomes the object of annihilation, the feature appears as a general one; the principle is required as part of the justification.) Hannah Arendt, responding to criticism of her conception of the "ba-

nality of evil" in the actions of Eichmann, expanded on that reference by describing Eichmann as "thoughtless," as not having understood and thus of not having willed or chosen the consequences of the acts that made him so central a figure in the Nazi genocide. The difference between the "banality" of evil in an Iago and the profundity of evil in a Satan is for Arendt the *absence* of deliberation or intention in the former, in contrast to the latter.¹⁸ But thinking and so also thoughtlessness are not only or necessarily psychological categories; we may infer them as well in the logical and moral structure of certain acts. And if deliberation or intention can ever be inferred, they appear here, in the abstractive process of conceiving, affirming, and then acting on a *principle* that claims a warrant, even an obligation, for group killing. Cain, when he first discovered or invented the possibility of individual murder, might have been thoughtless, simply enraged and thus striking out at Abel, who was near at hand as an immediate object. By contrast, it is in the *nature* of genocide that it requires deliberation, first in conceptualizing and generalizing its object—and then by intending and realizing a process of annihilation as a matter of principle.

Two systematic objections have yet to be considered in this account. The first of these concerns the claim of intentionality or deliberateness—and the evidence that for the corporate process of genocide, in any event of the *Nazi* genocide, such intentions may be fragmentary or unclear, not fully formed or deliberate at all. This indeed has sometimes been alleged to be a defining feature of totalitarianism: that it serves precisely to incapacitate individual and voluntary action. If this were the case, when that structure turns to waging war—however its opponents are defined—there would ensue "processes of destruction which, although massive, are so systematic and systemic, and . . . therefore appear so 'normal' that most individuals involved at some level of the process of destruction may never see the need to make an ethical decision or even reflect upon the consequences of their actions."¹⁹ The process, in other words, moves itself, apart from or even in defiance of anything like an individual decision or intention.

But it is important to notice that this consideration presupposes a view of intentionality which is itself open to question, especially as juxtaposed to an alternative conception. Intention may be conceived as a mental "act" chronologically prior to what is intended and thus also physically separated from it; it is on this view that interpretation of the

18. Hannah Arendt, *Eichmann in Jerusalem: a Report on the Banality of Evil*, rev. ed. (New York: Penguin Books, 1980), 280–98.

19. Wallimann and Dobkowski, *Genocide*, xvi.

Nazi genocide as “unintended” largely depends. What would be required in this view would be explicit documentary evidence of a Hitler-order for the Final Solution, or at least the record of a public and collective statement by the Nazi hierarchy to the same effect—either of them prior to and thus setting in motion the Nazi genocide.

The failure to meet this requirement (no such Hitler-order has been found), however, may reflect as much on the requirement as on the facts of the matter; that failure, moreover, is to a great extent avoided in an alternative account according to which an intention “occurs” as an aspect of the act itself, not as independent and prior to it.²⁰ Since evidence of the presence or absence of intention often appears *only* in the shape of the event to which intentionality is ascribed (or denied); and since even when other external evidence exists, the shape of the event itself—that is, whether it *appears* to have been intended—is a crucial consideration, it seems at once more economical and coherent to link intention, the idea of the act, with the act itself rather than to define and locate the two separately. This does not mean that intention may not in *some* sense precede the act intended, but that both the evidence and existence of an intention is fully realized only in the outcome of the act itself. In this sense, then, where a corporate decision or act is in question, it is the intelligibility of the decision or act as purposive (and its unintelligibility otherwise) that is crucial to its identification as intentional. Individual or collective statements attesting to a role for intention are not irrelevant (such statements do in fact exist in respect to the plan for the Final Solution). But even when they are in evidence, such statements are not privileged; they must themselves be judged together with other aspects of the act itself. Only when all of these are joined is an intention constituted.

The second objection to be considered is that even given the conception of genocide as intentional, it does not follow that this deliberation is accompanied—for genocide as such or for the Nazi genocide in particular—by an intention to do evil. An act that turns out to be evil, in other words, may have been directed toward a specific end without having been intended *as* evil; and it seems clear, in fact, that many actions later judged to be evil initially have this character of innocence in the eyes of its agent. The issue occurs in a more general form in the traditional Platonic thesis that “no one does evil willingly”—that to do evil is always to act out of ignorance, since no one would knowingly choose to do wrong.

20. See, e.g., Ludwig Wittgenstein, *Philosophical Investigations*, trans. G. E. M. Anscombe (New York: Macmillan, 1953), paragraphs 638–49, and G. E. M. Anscombe, *Intentions* (Ithaca: Cornell University Press, 1957).

The general issue at stake here will be taken up in chapter 2, although, obviously, if it could be shown that the Nazis intended genocide knowing that it was wrong, this would also have implications for the general question. Admittedly, to show this would not imply that they intended the genocide against the Jews *because* it was wrong—but the first step in this direction would itself be significant.

Here, too, certain other general issues obtrude, for example, of how it is possible to prove that an act has been initiated “knowingly” (whether of good or evil). How, in other words, can it be demonstrated that someone has morally sufficient knowledge of what he is doing? One evident means of responding to this question would be to view the act in question in the context of other related acts; that is, in relation to other knowledge of the agent’s conduct. And in this respect, other of the Nazis’ acts, although themselves open to interpretation, are revealing. One preeminent feature of the Final Solution is that it was intended to be concealed from beginning to end by a cloak of secrecy. A detailed system of speech rules governed references to the Final Solution and what that “solution” entailed; the code words themselves were to be used sparingly. (This phenomenon is discussed further in chapter 4, “Language and Genocide”.) At a different level, the operations of the six death camps which epitomized the genocidal intention—in four of them there was not even the pretense of “employing” the captive labor within them—were governed by rules of extraordinary secrecy, and required specific avowals of silence beyond the standard pledges of loyalty by all the members of the SS involved in their work. Great efforts were made (and were to some extent successful) to obliterate traces of the existence of the death camps: to erase traces of the gas chambers and crematoria that they employed; of the bodies or graves of their victims; and of the identities and the numbers of the victims.

In this sense, the fact that no documentary evidence has been located of an order issued by Hitler which set in motion the process of the Nazi genocide is not, as certain commentators have concluded, a problematic feature in identifying the genocide as intentional—let alone one that would exculpate Hitler as ignorant of the policy or imply that the process of genocide did not occur by design. So far as anything follows from this, it is that the absence of such evidence is consistent with a pattern of concealment that runs through the history of the planning and implementation of the Final Solution, at least from the time that its prospect came to be something more than a wistful fantasy. (It is also consistent with a pattern according to which Hitler sought to insulate himself from a number of the most morally portentous decisions made by the Third Reich.) This dedication to silence is compellingly formulated in Himml-

ler's statement that appears at the beginning of this chapter (a statement originally made in a secret speech at Poznan): "I myself believe that it is better for us—us together—to have borne this for our people, that we have taken the responsibility for it on ourselves (the responsibility for an act, not just for an idea), and that we should now take this secret with us into the grave."

To be sure, there were official, even public references to certain of the individual events which together constituted the Final Solution; to conceal the presence of the fact itself would have been impossible, given the numbers and groups of people required for its implementation. But this is quite different from *announcing* a policy—and it is clear that an essential part of the policy of the Nazi genocide was precisely the opposite of this, that is, concealment (from the Germans themselves as well as from others). It was an ideal here that, in Himmler's words, the Jews should "disappear"—and the implication of this and the other evidence cited is that they should also *seem* to have disappeared, that is, impalpably and mysteriously to have dropped out of existence. (This was evidently also a premise on which the Nazi plan for building a Jewish museum in Prague was based: a museum that was being developed for the study of the history and ways of an extinct group at the same time—and by the same people—that the process of making that group extinct was being carried on.)

Admittedly, alternative explanations can be given for the fact that someone or group might wish to conceal its actions, even that it should go to great lengths to conceal them. The most obvious of these is that although Nazi officials were themselves convinced that the policy of genocide was warranted—justified, right—they knew also that many other people, within Germany as well as outside, would disagree. Thus, in order to prevent resistance (including, of course, resistance by the intended victims) and also to anticipate later retribution, it would be natural that they should build a wall of secrecy around the acts undertaken in order to implement the Final Solution.

There is no means, it seems clear, of proving conclusively that the phenomenon of concealment on the scale that it was practiced by the Nazis is a reflection of guilt rather than a calculation of prudence. (In any event, the former conclusion would not mean that the latter was not a motive, only that it was subordinate to the other.) But as the moral distance between the two explanations is evident, so, too, is their difference in plausibility. The many risks that the Nazis openly ran in order to plot and to implement the Final Solution; their acceptance of the need to sacrifice themselves for what they alleged to be the principle involved in the war against the Jews; their dedication to other aspects of the cause of

National Socialism and of the *Führerprinzip*, the source of authority that went beyond all other laws: these explicit commitments diminish the likelihood that the concurrent effort by the Nazis to conceal the details of the Final Solution was mainly the expression of a practical concern either for their own security or for the success of their plans. Certainly the probability that what appears here was a divided consciousness—bound on one side to the “principle” motivating the genocide against the Jews; on the other side, to an awareness of the moral enormity of that principle—is at least as likely as the prudential explanation. It would be on the basis of this consciousness that the affirmation given by the Nazis to the policy and act of genocide would also be an affirmation, at the very least an acknowledgment, of the evil which these entailed.

It should be mentioned that the efforts by the Nazis to conceal the Final Solution do not stand alone as evidence of their consciousness of its moral enormity. There are, for example, records of the kinds of medical and psychiatric care required for SS personnel assigned to the death camps and for those who had been members of the four *Einsatzgruppen* especially commissioned for massacre at the beginning of the Russian campaign.²¹ There remain also fragmentary and isolated statements of certain officers in the Wehrmacht who protested aspects of the genocide; the fact that these protests were muted and had few practical consequences is less to the point than the indication in the protests themselves that they reflected a more widespread consciousness of the moral implications of the policy of genocide. There is the strangely parallel—and also secret—career of the program of “euthanasia” (known at T-4), which began at the time of the Nazi invasion of Poland and was officially ended not quite two years later, almost simultaneously with the invasion of Russia. (The conclusion of that program came most immediately in response to protests within Germany about the “mercy death” given to the approximately fifty thousand victims—mainly non-Jewish Germans—who were judged “unworthy of life.” Its effect, however, was to allow a number of the doctors and other personnel involved in the euthanasia program to move on to the death camps in the East, where what they had learned about killing by means of gas was again put to use.)²²

21. See on these consequences Robert J. Lifton, *The Nazi Doctors: Medical Killing and the Psychology of Genocide* (New York: Basic Books, 1986), 159, 437. For the emphasis on secrecy, see also Anna Pawelczynska, *Values and Violence in Auschwitz*, trans. Catherine Sleach (Berkeley: University of California Press, 1979), 83; and Fleming, *Hitler*, 19–20.

22. For accounts of the “euthanasia” policy, see Ernst Klee, *Euthanasie: Im NS-Staat* (Frankfurt A. M.: S. Fischer, 1983); Lifton, *Nazi Doctors*; Leni Yahil, *The Holocaust: The Fate of European Jewry 1932–1945* (Hebrew), (Tel Aviv: Schocken, 1987), 428–32. It is

There is thus substantial evidence, as inferred from the character of genocide in general and as visible in the course of the Nazi genocide against the Jews in particular, of the genocide's intentional character—intentional in respect both to the act of genocide and to the knowledge of its moral enormity. This conclusion may be more significant in its particularity than in any more general thesis on which it bears, but the challenge it represents to the traditional conception of evil-doing as “unintentional” is unmistakable. There obviously are occasions when moral agents act in or out of ignorance, and there are rarer instances when such agents act out of a general moral blindness. In the tradition of philosophical rationalism, these explanations account for *all* acts of wrongdoing: there is no instance in which the wrongdoer has full or genuine knowledge that he ought not to do what he chooses to. There is no doubting the great power in this position, in the consistency of its view of knowledge and in its tribute to the faculty of reason. But the price paid for those advantages is evident in their clash with experience—experience which now includes, among less extreme events, the phenomenon of genocide. The levels of awareness required to move through the conceptual “moments” of genocide, the kinds of evidence and rationalization presupposed there, are such that if we still conclude that the Nazis were doing only what they *thought* to be right—with the implication that such error was based finally on ignorance—we give up all hope whatever of distinguishing moral judgment from what anybody, at any particular moment, does. Where the issues are significant, the conclusions reached by moral reasoning—like those of logical inference—are not self-evident; even their status as moral reasoning requires a decision which distinguishes them in those terms. And if, with the combination of historical and conceptual evidence disclosed by it, genocide were still denied as an instance of reason willing evil, we would also be forced to the conclusion that there is unlikely to be *any* act of wrongdoing for which the evidence would show that it had been done willfully. The very possibility of moral evaluation and the assignment of moral responsibility becomes problematic.

Admittedly, the more general question at issue here is whether evil is

evident that the chronological connections between first the “euthanasia” program and then the Final Solution, on the one hand, and the progressive expansion of the more general war, on the other hand, were not accidental. Even without the explicit statements made by Hitler in respect to this timing, coincidences of this sort would be very improbable; the timing is thus further evidence of the intentional design of the Final Solution (there has been little dispute about the deliberateness of the euthanasia policy). It is hardly a startling conclusion, but this chronology, like that of the Turkish genocide against the Armenians which consciously took advantage of the disruptions of World War I, points to the “cover” for genocide that wartime provides.

ever done knowingly or willfully, and it would hardly settle that question to say that if intended evil ever occurs it appears in the act of genocide, specifically in the Nazi genocide against the Jews. The alternative conclusion might be drawn that since it does not appear there, it does not appear anywhere. But the consequences of this response amount to a denial of the grounds for moral judgment of any kind whatever. Or again: the assignment to genocide of a decisive role in determining the question of whether evil can be intended might be considered impermissibly ad hoc. Is it not possible, on the basis of what has been claimed here for the place of genocide in the history of ethical "development," that another, still larger means of wrongdoing will be discovered or invented—one that would challenge the reference here to genocide as a "proof text" for the possibility of doing evil intentionally? Why not yet another stage in the progress of evil? But there is no need either to deny the point of such questions or to draw any conclusions from them about the character assigned here to genocide. That character means no more than that history is part of ethics, that historical paradigms—exemplary causes—are components of that history, as similar structures have otherwise, in other areas, also figured in the history of human ideas and acts. There is nothing surprising or problematic in the claim that we come to know what moral principle is—or, on its side, evil principle—by encountering it first in history, by seeing there, close up, its transformations and its consequences. It is, indeed, difficult to know what an alternative to this, as a basis for the history of ethics, could be.²³

Genocide comes as close as any act of which humanity has experience to exemplifying the statement of Milton's Satan in *Paradise Lost*: "Evil, be thou my good." Historically, the figure of Satan has represented precisely this improbable conjunction: evil as a conscious and deliberate—intended—choice. We see in the phenomenon of genocide that Satan is not, after all, only a mythical figure, that also human beings can do evil voluntarily. That is, insofar as the concepts of good and evil, voluntary and involuntary, have applicability to human affairs at all. Genocide has undoubtedly not occurred as often as those using the term have claimed. But the fact that it has occurred at all, that we know it now always to be possible because it has been actual, discloses as much as is required in order to establish a relation between human intentions and the status of evil.

23. This is not to imply that the act of genocide or the judgment of it is *determined* by cultural norms, but only that such norms influence moral judgment. An apologia for slavery written in eighth-century B.C. Egypt *means* something different (and must then be judged differently) from an "identical" statement written in the United States today. Even moral blindness is thus not context-free; but this does not imply that there are no extra-situational ethical norms—only that history is a factor in shaping and applying them too.