THE EICHMANN TRIAL. By Peter Papadatos. [London: Stevens. 1964. x + 119 pp. £1. 7s. 6d.]

LE PROCES EICHMANN. By Peter Papadatos. [Geneva: Librairie Droz. 1964. 128 pp. no price stated.]

AUSCHWITZ IN ENGLAND. By Mavis M. Hill and L. Norman Williams. [London: MacGibbon & Kee. 1965. 293 pp. 36s.]

Professor Papadatos attended the Eichmann Trial in Jerusalem as an observer for the International Commission of Jurists. His book, which has been published simultaneously in English and French, is an efficient and workmanlike account of some of the principal legal problems involved in that case.

The learned author is an ardent believer in the development of an international criminal law and regrets that it was necessary for the trial to be conducted by a municipal rather than an international tribunal. Nevertheless, he regards the trial in Jerusalem as "an incomplete step in the prevention and punishment of genocide on an international scale, a necessary step, however, so long as an international jurisdiction with power to mete out punishment does not exist" (p. 42). He justifies the exercise of jurisdiction on the basis of universality concerning such an offence (p. 44), and considers genocide a crime in customary law (p. 48). It is a little difficult to accept this view, particularly as he holds that what makes this a crime in international customary law is the fact that it is the State which is the principal responsible party (p. 49).

By and large, Dr. Papadatos is concerned with demonstrating and assessing the contribution made by the Eichmann trial and judgment to the further recognition and punishment of genocide in international law. It is not enough, however, to assert that Eichmann's offences were nob political, because he was charged with what were 'branded by the universal conscience as "heinous crimes", the perpetrators of which deserved no asylum' (p. 58). It may well be true that war criminals are not political offenders, but the reasons are far deeper than this. Nor does it help, in the Eichmann case at least, that this has been confirmed by the Genocide Convention, for he was not charged under the Israeli legislation giving effect to this Convention.

There is already much controversy concerning the concept of *abus de droit* in international law. Care must therefore be taken not to extend this idea unduly, a tendency that is very marked among those who may be regarded as devotees of an international criminal law. Thus, Dr. Papadatos says that for an asylum State 'to hinder his [an alleged "genocider"] being brought to trial constitutes an abuse of sovereignty which is incompatible with the duties that international law requires of that State' (p. 58). It would be interesting to know how many lawyers agree with the author's contention that the Nuremberg Charter imposes obligations and grants rights upon the individual as a direct subject of international law, and that the Universal Declaration of Human Rights with its guarantees of individual liberty and security has 'been set out in international treaty law by the Convention of Rome', which is declaratory of international law and binding upon Israel (p. 61).

The arrival of the twentieth anniversary of the end of hostilities in Europe has drawn attention to the problem of limitation periods in criminal law. While it is somewhat dogmatic to assert that periods of limitation apply to all criminal offences (p. 93), Dr. Papadatos makes an important point with regard to retroactivity: 'In so far as this punishment [of Nazi criminals] is retroactive we are in the presence of two postulates of justice: of fundamental justice on one hand and of formalism on the other. In such a conflict it is obviously the higher principle which shall prevail', (p. 65).

Professor Papadatos has written an interesting book which is a tribute to his idealism and his devotion to the international rule of law. Thus, if there be a conflict between international and municipal law, 'according to the general principle of the supremacy of international law the international norm, which is at the summit of the hierarchy of legal orders, prevails over the norm of national law' (p. 82) —

but this is only true in an international arena and would not operate in most municipal courts. According to the learned author the most important feature of the Eichmann Trial is the realisation of international criminal justice' (p. 102), and its highlighting of the 'ethical postulate of the punishment of genocide' (p. 104).

The drive for respect for human rights since 1945 has led to the widening view that totalitarianism is incompatible with the rule of law, and this value-judgment underlies much of the work of the International Commission of Jurists. The current approach is expressed by Professor Papadatos: 'The limitation and control of power in principle are only attained by a regime of liberal democracy. Totalitarianism, on the contrary, cultivates genocide for it needs an "enemy" in order to justify itself and it creates this enemy by cultivating in the people subjected to the will of the leader the belief that certain human groups are radically different from themselves and represent a danger to its existence. It is certainly not by mere chance that this kind of regime has been intimately related to the greatest genocides in history'. (p. 106).

Genocide is not only the extermination of a people by murder. It also includes the prevention of their reproduction. Among the practices of the Nazis was sterilisation of "lesser breeds of humanity" and many of these experiments were conducted at Auschwitz. For the main part it has been difficult to trace survivors or find living accused. This has occasionally happened and war crimes trials have ensued, usually conducted by the victors, although recently Western Germany has shown awareness of its own tasks in this field.

One of the most amazing cases involving the sterilisation programme never came before a criminal court and was heard in England. Mr. Uris wrote a novel called *Exodus* in which he named Dr. Dehring as having performed 17,000 such "experiments" in surgery without anaesthetic. Dr. W. A. Dering, O.B.E., of Polish origin but practising in London brought an action for libel against the author and publishers. A number of survivors appeared as witnesses as well as doctor prisoners who were living proof of the contention that it was possible to refuse to obey Nazi orders and yet live. If prisoners could do this, how much easier it must have been for officers like Eichmann had they so desired. The trial is also evidence that on some issues at least cooperation is possible across the international frontier of the cold war. The Polish Government made available the medical register from Auschwitz, showing entries in Dering's own handwriting.

In the light of a careful summing up by Lawton J., the jury found that 17,000 was an exaggerated figure. They held, however, that Dering had performed such operations and, although finding against the defendants, only awarded ½d costs. The learned judge held that each party was to pay its own costs.

Dering v. Uris [1964] 2 W.L.R. 1298 perhaps served to bring home to the English public more than any other trial the true nature of the Nazi machine, and the depths to which even doctors could sink in the name of an ideology. It also emphasised that the verdicts of the war crimes trials, despite the absence of a jury and the presence of an enemy judge, did in fact usually achieve a just result. The learned editors, both of whom are law reporters, are to be congratulated and thanked for having made available a readable "record of a libel action". *Auschwitz in England* should be read by laymen and lawyers alike.

L. C. GREEN.