

AND THE CROOKED SHALL BE MADE STRAIGHT: A NEW LOOK AT THE EICHMANN TRIAL. By Jacob Robinson. [New York: Macmillan. 1965. ix + 406 pp. \$6.95].

JUSTICE IN JERUSALEM. By Gideon Hausner. [New York: Harper & Row. 1966. xiii + 528 pp. \$12.50].

These two books by members of the prosecuting team responsible for preparing and presenting the case against Eichmann are complementary. That by Dr. Robinson is primarily intended as a reply to the series of articles by Hannah Arendt in *The New Yorker* which subsequently appeared under the title of *Eichmann in Jerusalem*, carrying the subtitle 'A Report on the Banality of Evil'. Compared with the other comments that have appeared on the Trial, Dr. Arendt's stand virtually alone in their unmeasured terms of criticism and almost jaundiced prejudice. It is this one-sidedness that forms the source of Dr. Robinson's title *And the Crooked Shall be Made Straight*.

To a great extent one can sympathise with Dr. Robinson's rejection of the Arendt approach. Dr. Arendt admits to being a layman and ignorant of matters of law. She therefore tends to make the sweeping statements on complex issues that one normally associates with 'barrack-room lawyers'. This is even more true when the layman purports to comment on involved issues of international law, basing those comments on an inadequate knowledge and probable misunderstanding! of municipal law. This is particularly clear when one bears in mind that "the status of international criminal law cannot be measured by standards borrowed from national legal systems. In international criminal law we have not yet gone beyond laws defining individual crimes, to laws defining crimes against the world order" (p. 68).

It is perhaps a little unfortunate that Dr. Robinson's task of controverting the Arendt thesis means pursuing her through every page of his account. While this

enables Dr. Hausner to "refrain from dealing with her book at all" (p. 465, note), it creates difficulty in ascertaining Dr. Robinson's own view of the legal problems involved. However, he does make clear one of the outstanding differences between the court in Jerusalem and other tribunals which had been trying war criminals. The latter were concerned with the war period only and with German crimes at large, while "the Jerusalem trial was concerned with crimes committed without territorial limitations, and throughout the whole Nazi period. The Jerusalem court dealt not with crimes against citizens (or residents) of one country, but [almost exclusively] with crimes against the Jewish people, whatever their country of citizenship" (p. 63). Perhaps one of the most interesting parts of *Justice in Jerusalem* is to be found in Dr. Hausner's account of how the case was prepared and the analysis of some of the problems with which the prosecution was faced (ch. 14-15).

It is not always appreciated that Eichmann was not charged with genocide, for this would have meant alleging a crime that was created — or at least identified — after his activities had ceased. Nevertheless, Dr. Robinson's comments on this matter are interesting, particularly in view of the current fashion of accusing the Americans of resorting to genocide in Vietnam. He reminds us that "we must always be careful to differentiate between genocide as a purely conversational concept, as a common law concept as stated in the 'Reservations' case of the International Court of Justice, and a strictly statutory concept under the Genocide Convention and the laws connected with its implementation" (p. 71).

There is little doubt that Dr. Robinson achieves his purpose and the crooked is indeed made straight. At the same time, his account shows, if that were still necessary, that the Jerusalem court conducted itself properly and fully obeyed the demands of justice (pp.101, 121). It also provides "the results of research in vast documentation and literature, [in such a way as] may help set straight the history of a tragic and difficult period of our times" (p. 281).

Because of its method of approach, Dr. Hausner's book is far easier to read. It will appeal to the lawyer for its detailed account of the Eichmann case in all its ramifications, primarily as expounded in court. In its style, it will perhaps prove more generally attractive than Dr. Robinson's essay, but it will not achieve the same purpose. There is no doubt that Arendt must be answered and on the popular level. *And The Crooked Shall Be Made Straight* is too learned and too detailed for this purpose, and *Justice in Jerusalem* does not attempt it. There is, however, one point in Hausner that should suffice to answer Arendt's assertions that the court failed to come to grips with fundamental political, moral and legal issues of the broadest kind. As the Attorney-General points out, "from a purely legal point of view, Eichmann's inner attitude to his crime was not decisive, at least not so far as obtaining his conviction was concerned. It was his actual deeds that counted, not the alacrity with which he perpetrated them" (p. 6 and see also p. 298). There was also a higher purpose in holding the trial, and in holding it in Jerusalem: "It was imperative for the stability of our youth that they should learn the full truth of what had happened, for only through knowledge could understanding and reconciliation with the past be achieved. Our younger generation, absorbed as it was in the building and guarding of the new state, had far too little insight into events which ought to be a pivotal point in its education. The teen-agers of Israel, most of them born into statehood or during the struggle for it, had no real knowledge, and therefore no appreciation, of the way in which their own flesh and blood had perished. There was a breach between the generations, a possible source of an abhorrence of the nation's yesterday. This could be removed only by factual enlightenment" (pp. 291-2). "Our youth, who were born or grew up in a free country, could not fully comprehend how deep the national disaster was and how it had come about. Now, when the young Israeli followed the trial, it dawned on him that he was no different from the millions who had perished. They were his own flesh and blood. He was merely fortunate not to have been in Europe himself in Hitler's time; he, too, would have been sent to Auschwitz. Moreover, since it was often a matter of chance who had left Europe in time and who had stayed behind, the Israel realized that one of those who perished there might have taken his place in Israel" (p. 434). This use of a trial for a high educational purpose cannot be criticised and since the lawyers, the judges and all connected with the process behaved absolutely in accord with the highest traditions of their mistress the law there can be no legitimate ground for complaint.

Among the problems that have been produced by the Second World War and the hunt for war criminals is that of the need to extend the concept of a fugitive from justice and to establish a clear responsibility for the punishment or extradition

of such an offender, regardless of the existence of any treaty. "The Supreme Court . . . formulate[d] the definition of 'fugitive from justice under the law of nations', since the crimes that were attributed to Eichmann were of an international character and had been condemned publicly by the civilized world. This was novel and interesting definition, which marks a further stage in the development of international law on universal jurisdiction. Such a fugitive — a Cain who has sinned against mankind as a whole — is liable to be tried by any civilized country, which in bringing him to trial enforces international law through its law and judicial organs. Any court could issue a warrant for his detention and any country could claim the right to try him. In view of this definition the manner in which such an offender is brought to justice is quite immaterial" (pp. 441-2). In fact, the Court referred to a wealth of prior practice from a number of countries to show that this was already a well-established principle in municipal law.

Dr. Arendt has criticised the Chief Prosecutor's conduct, although most commentators agree from reading the transcript that if anything he leaned excessively backwards in his efforts not to prejudice the accused beyond the provable evidence. His attitude is best illustrated by a statement in *Justice in Jerusalem*: "A grave moral indictment was registered at the Jerusalem proceedings against the free world: that it stood by inactive before the war when a nation was tortured and did not offer refuge or react when a nation was later led to the slaughter. I avoided playing up this aspect of the case; the court was trying the murderer, not those who looked on while his crimes were being committed. It would have done my case little good to join hands expressly with Eichmann in blaming other nations for his acts. But I placed the material on record and it heavily incriminated the free world" (p. 449).

These two books probably constitute all that need it be said from the popular point of view about the Eichmann trial. *Justice in Jerusalem* is a superb piece of condensation of the whole process, its prologue and its epilogue, while Dr. Robinson has provided a masterpiece of refutation. There is still room, however, for a work devoted simply to the legal problems connected with the crimes, the kidnapping and the trial.