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WAR TRIALS

W. Eliasberg

The author of this article is a distinguished practicing psychiatrist in New York City. He is a native of Vienna, Austria, and a frequent contributor to this *Journal*. The present article may be said to have grown out of two of Dr. Eliasberg's earlier publications: "Criminal Prophylaxis and Protection in Emergency Times" (this *Journal* XXXV, 3) and "Linguistics and Political Criminology," (*Jour. Crim. Psychopathol.* VI, 1, 1944). He bears upon a fundamental in Social Psychology—that the individual, through his affective attitudes, is identical with the group, party, nation to which he belongs. How completely—there's *one* question. Another question is on the presumption of guilt in any situation. The article should provoke discussion.—EDITOR.

The foundations of modern national life in peace and especially in wartime are quite different from what they were in Homeric times and even during the period of the Civil War. Industrial civilization gives strength to group life. It does not of itself buttress the idea of the democratic state as an organization to establish justice (in the individual case) and to secure the blessings of liberty (to individuals). "Thou shalt worship no other God." These words, spoken to a tribe in the desert thousands of years ago, move again industrial groups, masses, and youths who are excited by propaganda in our times because, paradoxically enough, the social psychology of such groups is much more resembling tribal life than that of a rational organization of rational individuals. The consequence of this, for international war trials (as I have already shown in this *Journal* and elsewhere), must be the identification of the individual with the group (s) to which he belongs. It has been shown also that there are methods available for such identification by analyzing the language that is used by questioned individuals. Linguistic and other codes should be thoroughly examined also. The existence of the code itself is a proof of a sub-surface movement, or at least a movement whose aims are tribal and that must therefore lead to criminality whenever that type of life comes into contact with individualistic or democratic life; for the latter is built on the assumption that individuals are equal before the law and that the rights of all individuals must be respected equally by all those who live under the law. In the tribal form of life of our time there is a regression to a stage where all those "out-group" individuals have less right or none at all and where the moral obligation to fellowman is substituted by blind obedience to a leader.

This regressive tendency of industrial civilizations has developed freely and without any inhibitions in the dictatorships. On the other hand such a development is strongly inhibited in the democracies.

If we are going to define war crimes, we must of course cling to the basic concepts of the law as developed in Anglo-Saxon

culture and adhered to more or less in every civilized nation at least until the period which came to a close with the first World War. It cannot be admitted that obedience to a Fuehrer unburdens or takes away the responsibility for the deed of the individual. Even the German war criminals, sensing as they do that blind obedience will not be accepted as an excuse have lately been representing that they did object to the orders which they felt were unlawful but had finally to carry out. In other words, conscience is being reinstated in these "sub-leaders." Membership, then, in SS. *e.g.* is not an excuse. It is important circumstantial evidence against one.

This important consequence has been taken up in the report of Justice Jackson. There have been suggested so-called main trials, that could also be called key trials in which the nature of certain organizations will be definitely established. The moment an organization has been held to be built on the principles of blind obedience and autocratic leadership its members are considered prospective conspirators against international and intra-national decency. The assumption must be that the crimes of which such members are suspect have indeed been committed by them. The burden of dissolving the assumption will be on the defendant, not on the prosecution.

Great thoroughness must, of course, be applied in establishing the criminal nature of an organized group. We have just mentioned the two principles of autocratic leadership and blind obedience. In Hitler Germany no group could by law exist that was not organized on such principles, be this a chess club, a dog breeders' association, a honey producers' meeting, a professional group, etc. Obviously to establish the criminal nature of the group itself a third principle is necessary. One must find out — and this is a question of fact — to what extent the group at hand has participated in intra- and international political activities. The professional groups decidedly have done so. The physicians have even created the absurd sterilization laws and adhered to them and we have learned with shudders that very famous men among the German physicians have cooperated in the horror operations and torture chambers of the concentration camps. Every organization whatsoever rejected those of its members who for racial or political reasons of non-conformity were no longer eligible. So the question will be one, as we just said, of fact, and a rather difficult one, especially if one does not want to set arbitrary limits. The methods for this purpose are: 1. identification of the group through questioning its members, and 2. the identification of a suspect as a member of a group. Such methods have already been developed by the author. (See introduction.)