

From Invisible Evil To Consensual Evil: A Look At The Banality Of Evil And Crimes Against Humanity

Eki Virto Drews

Abstract:

This article reflects on the possible relations between the concept of banality of evil, developed by the philosopher Hannah Arendt, and crimes against humanity, focusing on the institutional, bureaucratic, and cultural mechanisms of criminal states to systematize and, simultaneously, invisibilize crime. To this end, Hannah Arendt's (re)conceptualization of evil will first be introduced, continuing through the different political processes of trivialization, paying special attention to the concepts of obedience and thoughtlessness. Subsequently, it will explore crimes against humanity and their essential characteristics within international penal law, concluding with a reflection upon international criminal frameworks as the main response to trivial evil.

Keywords: Banality, morality, evil, crime, international law.

Introduction

If we stop to think about the totalitarian regimes of the 20th century, we will find the best examples of the institutionalization and systematic deployment of crime as state policies. In this context, it is also normal for us to reflect on the moral scaffolding that sustained genocide and barbarism, on the incontestable evil of these wormy societies¹. It was precisely this dilemma that Hannah Arendt faced in her book *Eichmann in Jerusalem*, a report on the trial of Adolf Eichmann, Obersturmbannführer (lieutenant colonel) of Section IVB4 of the Reich Central Security Office, convicted of crimes against humanity and against the Jewish people on December 15, 1961, for his administrative role in the execution of the Final Solution. In this essay, Arendt presents the concept of the **banality of evil**, which refers to an unconscious, invisible, diffuse evil, born of the absence of thought and generalized thoughtlessness, to the "substitutionary consciousness generated by the gregarious spirit of man and by his conformity to social norms, the criteria of success, the obedience and efficiency of bureaucratic organization" (Botero and Leal, 2013: 124) cited in (López Bravo, 2017).

As a response to the extreme cruelty and barbarity of the war against the civilian population, which reached unsuspected limits throughout the twentieth century, **crimes against humanity** are defined and incorporated (from the criminal sphere of international law). This joint effort to establish multilateral penal frameworks and bodies, which was born right in the twilight of the great wars, allows us to ask: To what extent can the banality of evil, which Arendt envisioned in German Nazism, be related to the delimitation and criminalization of crimes against humanity?

The Question of Evil from the Perspective of Hannah Arendt

Within the Western philosophical tradition, the question of evil had always been posed as a opposite, limitation or absence of being. Either as a defect of knowledge (Socrates), non-

being (Aristotle) or absence of the good necessary for universal harmony (St. Augustine). In all these attempts to define or characterize evil,¹ an attempt had been made to group a very wide series of manifestations through their shared "essence," even if it was, precisely, the lack of all essence or (in) ontological justification. In the moral and political field, this designation acquires greater relevance, particularly if we think of the role given to the will in the exercise of moral evil. As Gómez (2013) defines it: "evil depends on the moral intentionality that we imprint on our actions. Of our willingness to oppose or acquiesce to evil actions" (p. 55). In short, the evil of all human action depended on a corrupt will, as a reflection of the imperfection inherent in every being.

That said, an extremely valuable contribution of Arendt was her ability to question both the relationship between moral evil and will, as well as its ontological origin or root. In contrast to the previous tradition, Arendt visualizes evil from a historical-political dimension, as a process of contingent moral significance, also separating (objective) action from (subjective) will. For this reason, it is established that atrocious acts can be committed without ill will, that is, without thinking that an evil is being done, from a determined ethical-symbolic framework: "among the great problems raised in the Eichmann trial, the one raised by the premise that for the commission of a crime it is essential that the intention to cause harm concur (Arendt, 2022: 404)" and, we would add, that this damage manifests and/or embodies an ontological/radical evil.

The trivialization of evil as a political and cultural issue

From this new axis of coordinates, where every moral, juridical and political order acquires new plasticities and contingencies, it is much easier to think about the constituent act of evil of totalitarian regimes. If power achieves the consensus of the population, it can modify the moral bases previously recognized, constituting itself as a means for evil, as a machinery that "produces evil people" (Gómez, 2013:52): "Illegality must "fly" like a black flag, like a warning that reads Forbidden! In a criminal political regime, the black flag with its warning flies, "manifestly", over orders that would be legal in normal regimes (Arendt, 2022: 217)".

Other authors focus on the institutional factor of the banality of evil. In criminal political regimes, violence and inferiorizing segregation have been conceived as a means to achieve a "greater cause," and individuals have become "accustomed to those actions characterized by aggression [...] which allows violence gains ground in culture and spreads silently" (López Bravo, 2017:117). Tacitly, the "administrative killings" are made invisible through popular discourse and culture, turning evil into a matter of unconsciousness and public blindness, not so much into an alleged criminal will and acquiescence on the part of the citizenry. Nor can we forget the bureaucratic element, what Carmona (2014) calls "bureaucratization of crime [...] to prepare the distance from the crime through hierarchies that are mythologized and, consequently, to follow orders that are not subject to interpellation or reflection, and from ²the individual point of view, to resort to that organization as a justification for the crime committed (pp. 189)."

A concept of vital importance in Arendt's text is the "collapse of morality", which refers, precisely, to the spread and silent acceptance of a criminal order among the most "illustrious" European societies, and even of the victims themselves. From Arendt's point of view, this collective unconscious justifies and rationalizes individual crime; where, the "good," even when this entails the worst of crimes, it is the consensual good: "Eichmann had no need to 'close

¹ Which we can distinguish as a tradition from radical evil.

² Although, it is worth clarifying, the original term was coined by Hans Franck, not by Arendt herself.

³ Murder, extermination; enslavement; forcible transfer; arbitrary imprisonment; torture; rape and other sexual crimes; persecution of a group or collectivity based on political, racial, religious, etc. grounds; enforced disappearance; apartheid.

⁴ It is also extremely important to clarify that the attack must be directed at the civilian population and, moreover, can occur both in a context of war and in times of peace.

his ears to the voice of conscience' [...] No, he had no such need, not because he had a conscience, but because conscience spoke with a respectable voice, with the voice of the respectable society around him (p. 186)."

In this context, there are two inseparable issues of vital importance: obedience and thoughtlessness. At the moment when new ideologies, legal systems and value systems were consolidated, Arendt identified a moral formula, present in "ordinary" citizens, which Eichmann illustrates perfectly: the categorical imperative of the Third Reich. From this assumption, the reflexive autonomy of the individual, indispensable in the original Kantian formula, abdicates before the prevailing norm, leaving only the volitional component of convinced obedience; the profound conviction of the law replaces autonomous thought as the source of all law. This allows us to reflect, moreover, on whether the instability and distrust inherent in critical judgment can prevent the enormous moral hazards of an immutable, secure and reliable law: "one of the lessons that the Jerusalem process gave us was that such detachment from reality and such thoughtlessness can cause more harm than all inherent bad instincts. perhaps, to human nature (pp. 418)." As Estrada (2007) points out: "where free action and independent judgment in favor of the normatively disciplined behavior and blind acceptance of beliefs [...] the ground can be conducive to committing criminal acts without the actor being aware of what he or she is actually doing (p. 48)"

Crimes Against Humanity: A Solution to Banal Evil?

To understand the relationship between the banality of evil and crimes against humanity, we must specify their distinctive characteristics. First, we must look at the context in which they were born and their historical features within the framework of international criminal law. After several important milestones, such as the Martens clause (1899), which recognized the importance of "humane" treatment of combatants, the statute of the Nuremberg tribunals (1945), which elaborated a more detailed definition (although linked to war crimes) or the ad hoc tribunals of Yugoslavia (1993) and Rwanda (1994), the most developed definition and criminal instance were reached in the Rome Statute (1998) of the International Criminal Court (Gonzales, 2011).

Within the 11 categories of crimes³ defined in Article 7, there are four shared features of particular relevance: that the crime violates a **fundamental legal right**, that it is **widespread, systematic** and **knowledgeable**⁴. The first characteristic is presented as a minimum of ethics, a barrier that, in addition to protecting the individual from the all-encompassing power of the state machinery, attempts to confront the orders of death and the collapse of morality, recognizing a minimum threshold of dignity and universal and immutable rights. The second and third points, on the other hand, attempt to penalize the exercise of (invisible) evil as a state policy, deployed in the no-man's empire of bureaucratic organization. Finally, knowledge of the cause marks the degree of voluntariness, autonomy and, therefore, responsibility, of the person who commits the crime, because, although it is located in a framework of systematic crimes, "in every institution, there are orders that go beyond what can be obeyed" (Carmona, 2014:188). In this regard, Rotzitcher (2003) points out that "the evil that leads to the enjoyment of murdering and torturing another human being can never, we believe, be something indifferent to the one who executes it, [...] even the murderous routine must resonate in the darkest labyrinths of the murderer's own subjectivity (pp. 45)."

Since these are crimes committed by *hostis humani generis*, by violating the most precious and common goods of all men, the criminalization, reparation and prevention of crimes against humanity requires new frontiers, conditions and competences in their respective legal systems and on the part of the organs of justice. The law, we think, must break down its own procedural and territorial barriers in order to justice the wounded humanity, the humanity, present in everyone, that has been violated. A crime against humanity, even if it is committed in specific and atomized cases, undermines and lacerates the essential principles of the human and of the community as a whole; As Hannah Arendt brilliantly put it, referring to the Jewish genocide: "it is an attack on human diversity as such, that is, on one of the characteristics of the 'human condition', without which the terms

'humanity' and 'human race' would be meaningless (pp. 395)."

Therefore, the first aspect to consider is that the jurisdiction of such crimes does not depend on national state borders and that, rather, it would correspond to international bodies. In this case, the principle of territoriality is replaced by that of extraterritoriality and of universal application, (González, 2011), tacitly accounting for the protection of Human Rights, as universal and supreme, by international criminal law against any *raison d'État*.

Secondly, we must consider these penalties within the category of *jus cogens* and *obligatio erga omnes*, that is, from the assumptions of non-derogability, maximum hierarchy and mandatory compliance for the entire international community (Bolívar, 2011). Finally, crimes against humanity comply with the criterion of imprescriptibility and, at times, retroactivity, which shows the pre-eminence of justice and reparation over procedural rigor when it comes to crimes of this magnitude. In short, as a response to the possible inertia of banal evil and the totalitarian drifts of certain legal systems, an international penal framework emerges as a titanic attempt to achieve a solid and immutable moral conscience, free of political contingencies and which, above all, protects the individual in his or her inalienable dignity.

Conclusions

In the first instance, this work allows us to visualize the close relationship between the banality of evil and crimes against humanity within a criminal political program. We have seen how a context of strong institutionalization, reformulation of the traditional moral order and invisibilization of crime through political discourse can promote the most scandalous iniquities towards the human race. Although, the most disturbing paradox, precisely, is that the greatest vileness and inhumanity ever seen was carried out with the best of wills, there is the risk of thoughtlessness, blind obedience and the comfort of status:

The most serious thing, in Eichmann's case, is that there were many men like him, and that these men were not perverted or sadistic, but were, and still are, terribly and terrifyingly normal. From the point of view of our legal institutions and moral standards, this **normality** was far more terrifying than all the atrocities put together. (Arendt, 2022: 402)

However, we were also able to see the importance of determination and international consensus in establishing a universal penal framework, based on moral deontological principles or, at least, non-contingent and subordinate to the opinion of each State. As unprovable as morality may be, from a rational or ontological point of view, the many efforts of the international community to consolidate a criminal statute without frontiers have shown that, through consensus, the insurmountable limits of "evil" can be drawn, and that, equally, a common and recognizable goal for the future can be the prevention of unconscionable suffering.

Faced with the imminent risk of the banality of evil – the heart of certain political devices – consensual international frameworks are born, the need for energetic and tireless reflection, and sensitivity to suffering, as possible horizons to follow. In this regard, Villalobos (2022) states: "the world has the urgent task of distinguishing evil from crime [...] Legal life is not only a matter of legal processes, formalities and other prescriptions, it must have something more, finding greater value in "principles" than in the mere application of the law (pp. 199)."

References

- Arendt, H. (2022). *Eichmann in Jerusalem*. Barcelona. Pocket-friendly.
- Bolívar Mujica, E. (2011). Crimes against humanity in international criminal law. *Revista Principia Iuris*, N 15, pp. 158-175.
- Botero, J., & Leal, Y. (2013). Radical Evil and the Banality of Evil: The Two Faces of Horror of the Regimes Totalitarian since the perspective of Hannah Arendt. *Universitas Philosophica*, vol 30, n 60, pp. 99-126.

- Estada Saavedra, M. (2007). Normality as the Exception: The Banality of Evil, Conscience and Judgment in the Work of Hannah Arendt. *Mexican Journal of Social and Political Sciences*. Vol 49, N 201, pp. 31-53.
- Gómez-Esteban, J. H. (2014). The Not good and the Subjectivation politics. *Latin American Journal of Social Sciences, Childhood and Youth*, 12 (1), pp. 51-63.
- Carmona, D. (2014). Subjectivity and Obedience. The Banality of Evil in Defendants for Crimes Against Humanity in Argentina, *Revista de Psicología GEPU*, vol 5, n 1, pp. 185-191.
- Gonzalez Gonzalez, J. L. (2011). Crimes against humanity. *Journal of the Faculty of Law (University of the Republic, Uruguay)*. N 30, pp 153-170.
- López Bravo, Dayan. 2017. From the Naturalization of Violence to the Banality of Evil. *Ratio juris*, vol.12, n 24, pp. 111-125.
- Rozitchner, L. (2003). *Terror and grace*. Buenos Aires: Editorial Norma
- Villalobos Caballero, M.A. (2022). Hannah Arendt's Will in the Banality of Evil: Can Judges and Prosecutors Distinguish Evil in Crime? Orientations and perspectives of the philosophy of criminal law. *Revista Acadêmica Escola Superior do Ministério Público do Ceará, Fortaleza*, vol 14, n 1, pp. 189-217