Dehumanising the dehumanisers: the problem of reversal in human rights discourse

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Abstract

If the legitimacy of international humanitarian and human rights law lies, in part at least, in its capacity to confront dehumanizing actions in the modern world, we may speak of the limits of this achievement. It is well known that people who commit genocide or crimes against humanity typically dehumanize those against whom their crimes are committed and that the humanitarian and human rights dimensions of international law were developed in response to the radicalization of this phenomenon. The expanded scope of international criminal justice caught a cosmopolitan imagination because it seemed to restore an idea of humanity in the face of organised attempts to eradicate the very idea of universal humanity. It also caught a cosmopolitan imagination because it seemed to restore the humanity of the perpetrators as well. They were no longer to be treated as beasts liable to the 'punishment' of the victors but to be brought to trial, held accountable for their deeds and converted back into responsible human beings. Today, however, I suggest that we face a double temptation: in confronting those who commit crimes against humanity to represent them as inhuman monsters rather than responsible human beings; in our compassion for victims of crimes against humanity it is to represent them merely as victims and not as moral and political subjects. In either case, there can arise a reversal of the problem we are trying to address. I do not suggest this tendency is inevitable but where it is present it indicates an insufficiently reflective relation to international law. I address the problem of reversal through a discussion of three authors (Rawls, Habermas and Arendt) and three issues ('pariah peoples', 'criminal states' and 'monstrous perpetrators').

Keywords: Arendt, Habermas, Rawls, dehumanisation, international law, human rights, reflexivity, crimes against humanity

We may say of a man that he is more often kind than cruel, more often wise than stupid… but it could never be true to say of one man that he is kind or wise and of another that he is wicked or stupid. Yet we are always classifying humankind in this way. (Tolstoy 1966: 252)

This universal language (law) comes just at the right time to lend a new strength to the psychology of the masters: it allows it always to take other men as objects, to describe and condemn at one stroke…. It knows only how to endow its victims with epithets, it is ignorant of everything about the actions themselves, save the guilty category into which they are forced to fit. (Barthes 1973: 101)

The injury which is inflicted on the criminal is… also a right for the criminal himself … In so far as the punishment … is seen as embodying the criminal's own right, the criminal is honoured as a rational being. He is denied this honour … if he is regarded simply as a harmful animal which must be rendered harmless. (Hegel 1991: ¶100)

Introduction

Perpetrators who commit acts of genocide or crimes against humanity typically dehumanize the people against whom their crimes are committed. They see them as less than fully human, or as inhuman, or indeed as the personification of why the very idea of humanity ought to be abandoned. Dehumanisation of Jews was part and parcel of the destruction of European Jewry by the Nazis (Arendt 2004: 454-457) and dehumanisation processes are characteristic of many other instances of organised violence against ethnically or politically defined groups. The typification of others as inhuman or less than fully human clearly has a long pre-history going back to antiquity. However, if dehumanisation presupposes the development of a universal conception of humanity, this only occurs late in human history and unevenly across the world (Levi-Strauss 1983). In the modern age it is condensed in a consciousness bred of European imperialism and then redirected against various collectivities within Europe itself.

It was against the politicisation and radicalization of dehumanizing projects that the criminal, humanitarian and human rights dimensions of international law were developed in the aftermath of the Second World War. For example, the law against 'crimes against humanity' was formulated in the Nuremberg Charter in 1945 and marginally applied to the charges laid against Nazi defendants in the Nuremberg Tribunal. The category of 'crimes against humanity' was conceived as a supplement to existing offences in international criminal law, notably 'war crimes' and 'crimes against peace', and was provoked by the unprecedented levels of organised violence directed against civilians in the course of the war. The concept was not entirely new. Its pre-history

goes back to the charge of 'crimes against humanity and civilization' laid at the Turkish government for the massacre of Armenians in 1915. But it was reformulated by international lawyers in the latter part of the war in order to make it possible to respond to the mass murder and torture of Jews and other ethnically and politically defined collectivities (Marrus 1997: 185-187).

This innovation in international criminal justice caught a cosmopolitan imagination because it seemed to restore the idea of humanity to the centre of our thinking in opposition to organised attempts on the part of totalitarian movements to eradicate the very idea of universal humanity. It established the principle that the humanity of people – including those selected as victims of extermination campaigns – transcends the boundaries of national sovereignty, ethnic identity, political and religious affiliation and bodily or mental attributes and it signified that this humanist principle has profound practical significance. As Hegel acknowledged in his critique of Kant, the strength of cosmopolitanism was to declare it a matter of 'infinite importance that 'a human being counts as such because he is a human being, not because he is a Jew, Catholic, Protestant, German, Italian, etc.' (Hegel 1991: ¶ 209R). The law of crimes against humanity signified that crimes committed against one set of people, be it Jews, Poles, Roma, etc., are an affront not only to these particular people but to humanity as a whole and that humanity has a duty to hold to account those who commit them (Jaspers 2000).

The enactment of 'crimes against humanity' also caught the cosmopolitan imagination because it seemed in some important sense to restore the humanity of the perpetrators as well. The perpetrators of this offence were no longer to be treated merely as barbarians or beasts, liable to the collective 'punishment' of the victors, but to be brought to trial, held accountable for their deeds, and treated as responsible human beings. The new law declared that individuals acting within the legality of their own state could be prosecuted as criminals; that service to the state no longer exonerates any official in any bureaucracy or any scientist in any laboratory from their human responsibility; that the excuse of 'only obeying orders' or 'only giving orders' no longer releases individuals from their human responsibilities. Even a head-of-state was to lose his impunity in the face of the law. The conception was radically humanist: the representation of mass murderers as mere criminals would deprive them of that 'streak of satanic greatness' with which they might otherwise have been endowed (Jaspers in Arendt and Jaspers 1992). The perpetrators, no less than the victims, were to be revealed as human – all too human.

It is deeply moving that the humanity of both victim and perpetrator was recovered at Nuremberg – the city where Nazis orchestrated rallies designed to convey the super-human force of their own movement and passed 'laws' designed to reveal the inhuman status of Jews. It was, I think, for this reason that the

philosopher, Karl Jaspers, discerned among the ruins of the city 'a barely perceptible dawn... a feeble, ambiguous harbinger of a world order the need of which mankind is beginning to feel' (Jaspers 2000: 60).

Now let us jump forward 65 years. In the present day I think it is fair to say that in its own self-conception international humanitarian and human rights law continues to stand for the indivisible bond of universal humanity and human diversity against social forces for whom dehumanisation of other people is but a prelude to wiping them out literally or metaphorically. International law reconstructs the relation between humanism and inhumanity as an external relation – situating international justice on one side and the perpetrators of genocide, ethnic cleansing and crimes against humanity on the other. This is not wrong in itself but it does not address the question of whether dehumanization processes can, as it were, cross borders and enter into the theory and practices of international law itself. The question I want to explore is whether dehumanization is a potentiality within as well as without international law. I shall argue that this potentiality comes to the fore when those deemed to be serious violators of human rights are bestialized within the popular imagination and that it can be addressed without abandoning international law (which is no solution at all) but by our becoming more genuinely reflective about the limits and possibilities of international law.

The logic of reversal

International law is part of society and as such it is not immune to the forces of dehumanization that arise within modern society. International law resists dehumanization but it also partakes of that which it confronts. A temptation we face in confronting those who commit crimes against humanity is to represent them as inhuman monsters and not as responsible human beings. A temptation we face in our compassion for victims of crimes against humanity is to represent them merely as victims and not as moral and political subjects. In either case there can arise a reversal or inversion of the social phenomenon we are trying to address.

The problem of reversal is succinctly outlined by Glyn Cousin in her discussion of the unequal relation between the racist and the victim of the racist's racism:

> Generally speaking, we have to be careful not to invert the problem we are addressing. Thus racists racialise particular groups of people into a unitary otherised category, and the temptation... is to respond with an act of reversal... (Cousin 2010)

The act of reversal to which Cousin refers is to treat racists as a 'unitary otherised category' in the same way as racists treat those they consider inferior. In her insightful paper Cousin explores such reversals in relation both to the racist and to those subjected to the racism in question. With respect to the racist she writes:

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This reversal does not get us very far down the reflexivity road because no human being is entirely 'other' than another, even where unequal social structures make this very hard to see. .....The philosopher, Gillian Rose (1993:8) put the problem well in arguing against representing the 'other' as 'sheer alterity': *'the other' is equally the distraught subject searching for its substance, its ethical life'*. (Cousin 2010)

Cousin makes the important argument that even in relation to the racist we need 'to include in our view of human complexity a regard for what we share or can potentially share'. In relation to the victims of racism Cousin points out the problems of turning victimhood into a dominant status:

In making this point, I am not suggesting that subjects are never victims, simply that few of us are *only* victims…. Our sense of injustice about our treatment can incline us to see only that injustice as formative. This creates a kind of emotional economy, famously characterised by Nieztsche as 'ressentiment', in which we replace ownership of our own agency with otherising and despising the people whom we charge with otherising and despising us. (Cousin 2010)

If the subjectivity of victims is subsumed to their victimhood, or to put it sociologically, if victimhood becomes a master status, then we are faced with the paradoxical situation that our compassion for the victims at once strips them of their humanity. They become ciphers of our *ressentiment* toward those perceived as their victimisers rather than morally and politically responsible human beings in their own right. We look only for wound-based narratives and we read their testimonies only from a victimist stance.

The sociologist, Raymond Aron, once raised a not dissimilar issue in his discussion of Jean-Paul Sartre's *Antisemite and Jew*. Aron argues that Sartre's treatment of the antisemite mirrors in part the antisemite's depiction of the Jew:

'Anti-antisemites tend to present all the colonisers, all the antisemites, all the whites as essentially defined by their contempt for natives, hatred of Jews, desire for segregation. They paint a portrait of the coloniser, the antisemite or the whites that is as totalising as their stereotypes of the Jew, the native or the Blacks. The antisemite must be *wholly* antisemitic.' (Aron 1969: 87-88, my translation)

Whether or not Aron was justified in his characterisation of Sartre, the issue he raises was of particular importance in the politics of the Algerian struggle. Hannah Arendt raises a related issue in her discussion of Jacobin conceptions of 'compassion for the poor' that arose in the course of the French Revolution.

> What counted here, in this great effort of human solidarisation, was selflessness, the capacity to lose oneself in the suffering of others... The magic of compassion was that it opened the heart of the sufferer to the sufferings of others, whereby it established and confirmed the "natural" bond between men which only the rich had lost... Where compassion ended, vice began. (Arendt 1988: 80-81)

My argument is that the reversals and inversions we find in the dichotomisation of victim and victimiser are also to be found in international law, especially where the dichotomy between the humanism of law and the inhumanity of Law's Other is unreflectively upheld. The humanist principles which inform international law are a necessary resource in the battle against dehumanisation in the modern world. However, this is the beginning, not the end, of the story. They may be exhausted in rhetorics that set the Innocent Victim and the Guilty Victimiser apart as members of different species or in rhetorics that posit the passage from innocent victim to guilty executioner as a 'dialectical necessity'. Nothing is less certain than that 'those to whom evil is done do evil in return' (W H Auden). The growing literature on cosmopolitan social theory (Fine 2007) points us precisely in the direction of rediscovering a common humanity across our differences.

Pariah peoples

Let me illustrate my concern by reference to John Rawls' extremely valuable work on *The Law of Peoples* (Rawls 1999). The principles Rawls outlines for the *Law of Peoples* are for the most part philosophical re-formulations of well-established principles of international law. They emphasise the self-determination of peoples, respect for treaties and other agreements between peoples, non-intervention in the internal affairs of other peoples, and norms regulating the conduct of war between peoples. In line with more recent developments in international law they also advance interventionist themes: peoples are bound to honour human rights, the principle of non-intervention may be suspended in the case of major human rights abuses, and the authority of international organisations such as the United Nations must be upheld.

Rawls maintains that those Peoples who acknowledge and uphold human rights should be recognised as equal members of a Society of Peoples. He has an apparently liberal view of membership in the sense that he includes within the Society of Peoples *non-liberal* regimes insofar as they are 'reasonable' or 'decent', that is, insofar as they do not have aggressive international aims, respect some basic human rights, have some idea of consulting their citizens, and acknowledge to some extent the authority of the Law of Peoples itself. However, Rawls excludes 'outlaw states' from the Society of Peoples, that is, those states which fail to meet these minimum standards. Outlaw states lies at the bottom of a threefold hierarchy of states Rawls sets up: liberal, decent and outlaw. It is characteristic of Rawls to say little about the institutional dynamics of classification and exclusion. How serious would a rights-violation have to be to exclude a state from the Society of Peoples?

Which international body has the authority to determine exclusion and on what basis? Rawls' ideal theory is designed to clarify the goals of reform and identify the wrongs that are most urgent to correct. The politics of labelling outlaw states remains largely outside his purview (Smith and Fine 2004; Carter and Virdee 2008).

Even at the level of ideal theory, however, the concept of 'outlaw states' raises conceptual and normative difficulties and has been accused of introducing a fundamentalist outlook into international law. Nico Krish, for example, argues that since the mid-1980s the US in practice employed the category of outlaw states under such titles as 'terrorist states', 'rogue states', or the 'axis of evil' (Krisch 2004). It is clear enough that states conceived as 'outlaw states' are as a consequence treated as second-class states that no longer enjoy the full protection of international law. Krish also maintains that individual members of 'outlaw states' are stripped of some of some of the rights they would otherwise enjoy under international law – famously, for instance, through their designation as 'unlawful combatants'. The point Krisch makes is that individuals can be punished – or their human rights diminished – because the state they belong to is considered to be an outlaw state.

The problem of exclusion Krish refers to is to my mind aggravated by, of all things, Rawls's preference for the category of 'peoples' over that of 'states'. The move Rawls makes from the concept of 'states' to that of 'peoples' is designed to break from the assumption underpinning classical international law that allows for unrestricted state sovereignty in the pursuit of national interests. Rawls argues that the concept of Peoples emphasises membership of states in a legal order in which sovereignty is mediated through law and must respect the human rights of its citizens. It seems to me, however, that this choice of terminology has its downside inasmuch as the concept of the 'people' collapses a distinction vital to political thought: the distinction between the state and the people over whom the state rules. Rawls would doubtless agree that to exclude a *people* from the *Society of Peoples* on the grounds that their *state* fails to observe basic human rights, fails to make the distinction between the state and society and opens the door to the stigmatisation of the people in question. I should add that this remains true whether or not the majority of the people support the rights-violating state. The slippage from condemning a *state* for human rights abuses (either against its own people or against other people) to condemning a *people* as unworthy of recognition within the Society of Peoples – this slippage introduces a dangerously fundamentalist principle into the realm of international law.

In Rawls' own work there is a tension between the notion of 'outlaw states' and his preference for the concept of 'peoples' over that of 'states'. In everyday political argument this confusion can be especially damaging if a 'people' is condemned and excluded from the society of peoples on account of acts committed by the state to which the people in question belongs. Such a move threatens to pathologise a 'people' because of the actions of the state that acts in their name. So if one of the functions of international humanitarian and human rights law is to humanise both victims and victimisers in terms of how 'we' see them and how 'they' see themselves,

it is difficult to square this function with the representation of 'outlaw peoples' excluded from the Society of Peoples. The problem arises notably when international law is instrumentalised in the service of the 'othering' of whole Peoples – often in the name of compassion for the suffering of other peoples (Habibi 2007). I am not saying that this outcome is inevitable in international law but that its potentiality is within it. Whether or not the slippage from condemning a *state* for human rights abuses to condemning a *people* as unworthy of recognition within the Society of Peoples is internal to Rawls's own conception of the Law of Peoples would require further study (Shue 2002). However, the problem of exclusion raised in Rawls' text is that the negation of human diversity can enter into the very institutions established to resist the negation of human diversity.

Criminal states

Jürgen Habermas picks up the mantle of Rawls' Law of Peoples through the idea of the 'constitutionalisation of international law' (Habermas 2008). He sees this development as a crucial condition for defending human rights against the power of nation states. The historical narrative he constructs is that within the framework of the nation state law was at first a means by which power was organised. Then with the advent of constitutional government a reversal was effected when power began to serve as the instrument of law, but this reversal was limited by the fact that the universal principles of the constitution and the executive power of the state were fused in one and the same institution. Then at the international level, where legitimate authority is no longer based on the formation of a world state but on the universal principles of the constitution itself, the supremacy of law over power has the chance finally to be actualised. The constitutionalisation of international law represents the end of this evolution. It appears not just as a marker of social change but as the marker of the transubstantiation of law from instrument of power into the crucible of its dissolution: constitutionalisation, he writes, 'reverses the initial situation in which law serves as an instrument of power' (Habermas 2006: 130-132). The vision of a fully constitutionalised international order-to-come inspires his work.

Habermas is well aware of the dangers of thinking that international law *already* has a constitution, whether written in the UN Charter or unwritten, and acknowledges that his way of thinking is vulnerable to the charge that it dresses up the strategic power-plays of strong states in the universalistic rhetoric of international law (Cohen 2004: 10). The difficulty Habermas addresses is that *in anticipation of* a fully legalised international order to come the norms of human rights and humanitarian law are open to abuse and he attributes such abuses to the *incompleteness* of the transition from classical international law to cosmopolitan law. Habermas refers to the restricted reach of existing global remedies: the International Court of Justice lacks compulsory jurisdiction; the International Criminal Court lacks adequate definition of war crimes; the Security Council is in urgent need of reform; the UN does not yet have its own army or mechanisms for deciding when to use it.

The question I pose is whether the dehumanisation of the Other remains a potentiality within even this idealised conception of international law. Consider the problem of how to respond to 'outlaw states' that commit serious human rights abuses against their own people. In the name of the human rights Habermas defends the principle that the international community has a duty to intervene, where it effectively can, to stop a state or quasi-state bodies from committing atrocities even within its own borders (Habermas 1999). Indeed, I think it is fair to say that he sees powerful states as having a particular responsibility to intervene where they can rather than merely fiddle whilst Sarajevo burns. Habermas acknowledges that the dilemmas involved in any so-called 'humanitarian military intervention' must lead to difficult moral and political judgements (Krisch 2002: 323-335). From his perspective, however, it would appear that such difficulties are necessary only because the constitutionalisation of international law is incomplete. Habermas tends to see the presence of moral judgment essentially as a stop-gap measure to be surpassed when a fully legalised international order is brought into being (Smith 2007: 72-89). Habermas seeks to situate decision making on humanitarian military intervention strictly within a framework of international law out of a desire to put an end to merely moral justifications for the use of force. It is his answer to Carl Schmitt's warning that those who refer to the idea of humanity in the international arena do so only to portray their enemies as inhuman. But can a juridical move of this kind counter this objection?

The spectre of a new figure of universal sovereignty, international law with a fighting force at its disposal, haunts this outlook (Derrida in Derrida and Habermas 2003). Its promise is that the constitutionalisation of international law can overcome the ambivalence caused by having to choose, say, between endorsing *illegal* action by a coalition of states designed to protect people from serious violation of their human rights and adhering to an international legal framework incapable of offering an effective regime of rights enforcement. This was, roughly speaking, the dilemma faced in Kosovo. I would suggest, however, that one way international law resolves such ambivalences is the way criminal law resolves all ambivalence: that is, by making a decision whether the accused (the rights abusing state in question) is guilty or not. If it is guilty then there is a prima facie case for humanitarian military intervention from without. If not guilty, then the case falls.

The danger inherent in this approach is that international law itself could revert to an 'adjectival psychology' which, in the words of Roland Barthes quoted at the start of this piece, 'is ignorant of everything about the actions themselves save the guilty category into which they are forced' (Barthes 1973: 45). International law might uphold the application of the principle of humanitarian military intervention in particular cases, but would it remain 'ignorant' of everything else about the situation? How, for example, would it support civil rights movements, free trade unions, women's equality movements and democratic political parties in atrocity-committing regimes? How would it support internal liberation forces seeking to overthrow a genocidal regime,

as was the case in Rwanda where genocide was brought to an end not by international intervention but by the Rwanda Patriotic Front? How would it support rights of asylum for those fleeing from atrocity-committing regimes?

Monstrous perpetrators

One of the most seductive temptations of modern political life, Arendt writes, is to 'judge and even condemn whole groups of people, the larger the better' (Arendt 2004: 297). To succumb to this temptation means that distinctions can no longer be made, names no longer named, individual responsibility no longer identified. At the same time Arendt acknowledges that there are risks involved when we judge on the basis of individual responsibility. When, for example, a machinery of mass murder impels many people to participate in terrible crimes, the labelling of one individual as the guilty party can permit the great majority to absolve themselves of all responsibility. As soon as one person is assigned a monopoly of guilt, it allows others to shrink back in horror at what was done and declare "Thank God, I am not like that" (Arendt 1994: 132). Moreover when we judge the guilty, we reproduce a moral division of the world that can at once demonise the guilty and discharge the victim of any responsibility (Arendt 2004: 15). With this posture there is nothing to learn about ourselves. Projecting guilt onto those whom we judge 'not like us' is a way of avoiding reflection about our human capacity to do monstrous deeds. Banishing the guilty as outcasts of society is a pre-reflective gesture.

When Adolf Eichmann was accused in Jerusalem of crimes against humanity and crimes against the Jewish people for his role in organising the transportation of Jews to the death camps, Arendt gives no credence to his defence that he was merely a cog in a killing machine, that he had surrendered his powers of judgment, and that had no responsibility for what was done. The actual responsibility officials had in the organisation of the killing machines was arguably greater than in a rational bureaucracy familiar to Weber. In any event this defence was legally pointless because in a trial 'all the cogs in the machinery... are ... transformed back into perpetrators, that is to say, into human beings' (Arendt 2004: 289). Arendt argued that the main business of any criminal trial is to 'weigh up the charges, render judgement and mete out due punishment'. In the case of Adolf Eichmann, she insisted that justice was done. Justice was done although the principal crime with which Eichmann was charged ('crimes against the Jewish people') could not be found in the law books. Justice was done although the prosecutor indulged in rhetorics of biblical vengeance, ignored evidential constraints in the testimonies he sought from survivor-witnesses, and painted a bestial picture of Eichmann – as a sadistic antisemite who took pleasure in killing Jews with his own hands – that went far beyond his proven role in organising the transportation of Jews to their death. Justice was done although the court echoed the official voice of Jewish nationalism in declaring that only in Israel could a Jew be safe and in camouflaging ethnic distinctions in Israeli society. Justice was done although the prosecution could not face up to the complicated

and to some extent complicit role of some Jewish community leaders in the execution of the Final Solution. The court magnified the crimes committed by Eichmann to prove his monstrousness and magnified the innocence of his victims to prove their heroism, but justice was still done (see also Koskenniemi 2002).

Arendt argued that justice was done but at a cost. The difficulty the judges had in understanding Eichmann was that he was 'terrifyingly normal'. Whilst his deeds were monstrous, Eichmann himself was in Arendt's view 'ordinary, commonplace, and neither demonic nor monstrous' (Arendt 2004: 3-4). The temptation to which the prosecutor succumbed was to try to fit him into a preconceived image of The Nazi Monster, whilst the evidence exposed him as human, all too human – in his petty ambitions, his almost comic inability to understand his situation, his inarticulateness, the sheer banality of his thinking.

Arendt herself referred to Eichmann through a category of Roman law, *hostis generis humani*, enemy of the human species. It might appear that Arendt's deployment of this category of Roman Law indicates that she wished to treat Eichmann in the same way as he treated Jews – that is, as an *Untermensch* who lacked the full moral capacities of a human being, who could not be punished according to normal legal standards, whom one would simply not wish to share the world with. However, this reading of Eichmann as *hostis generis humani* falls precisely into the problem I started this paper with: just as Eichmann put Jews outside the boundaries of the human species, it puts Eichmann outside the boundaries of the human species. Alan Norrie puts it well: 'judging Eichmann in these terms brings justice down to his level'. The defendant appears more like an animal who has mauled a child and must therefore be slaughtered, than a responsible human being who must be punished for his crimes (Norrie 2008). If we are to accept that Eichmann was *hostis generis humani*, it was not because he had disqualified himself as a human being but because he participated in the plot to eradicate the idea of humanity as such (Arendt 2004: 268-9). Arendt deployed the term to highlight what she saw the major deficiency of the trial: that the court could not grasp that the attempt to destroy a particular ethnic group, in this case the Jews, was not only an offence against the Jewish people but that 'humankind in its entirety might be grievously hurt and endangered' (Arendt 2004: 276).

A similar set of issues circulated around Arendt's use of the epithet 'banality of evil'. It is now well known that her critics accused her of trivialising Eichmann's involvement in the destruction of the Jews by writing of the banality and almost comic inadequacies of the accused and by self-consciously abandoning what they saw as the only appropriate concept – that of 'radical evil' (Bernstein 1996: 146-149). Arendt's defence of her terminology goes to the heart of the argument of this paper. First, she maintained that in her view nothing was further from Eichmann's mind than 'to prove a villain'. He was not even a convinced antisemite. In fact, he had few motives beyond diligence in looking out for his own advancement. His failings were recognisably human. The thought she took from Jerusalem was that 'remoteness from reality and thoughtlessness... wreak more havoc

than all the evil instincts taken together' (Arendt 2004:288). Second, she was concerned that the term 'radical evil' might serve to endow perpetrators with what Karl Jaspers once called a 'streak of satanic greatness' and mystify them in 'myth and legend' (Arendt and Jaspers (1992: 62-69). The advantage of treating perpetrators as mere criminals was precisely to present them in their banality. The experience of watching and hearing Eichmann was for Arendt a trigger to reaffirm the humanist tradition according to which 'only good is radical... evil is only extreme and ... possesses neither depths nor any demonic dimension'. For Arendt the Eichmann case demonstrated that those who commit even the most heinous crimes could be 'men like ourselves', not demons from another planet. Third, what I think worried Arendt was that the concept of 'radical evil' was implicated in a Holocaust discourse which, in emphasising the incomparability, singularity and uniqueness of the Holocaust, ran the risk of removing it from the whole realm of human understanding. In short, what was at issue for Arendt in this seemingly arcane distinction between 'radical evil' and 'banality of evil' was not only the character of the accused, not only the justice of the trial itself, but also a struggle between two philosophies: one rooted in sheer alterity, the other in a politics of recognition that understands the value for ourselves of not dehumanising the dehumaniser.

Conclusion: reflexivity and human rights

These brief case studies are intended to illustrate my contention that international criminal, humanitarian and human rights law have their own dehumanising capabilities. Today this problem has grown in importance since the terminology of international law has assumed a greatly enhanced role in political argument and especially in political argument concerning the use of organised violence. Labels drawn from the lexicon of humanitarian and human rights law are widely employed in the public sphere to condemn or defend military actions within and without states. Humanitarian and human rights norms sometimes seem to perform social functions not unlike those performed in the past by the idea of a universal law of nature: they serve as the measure against which the positive actions of peoples, states and individuals are judged (Koskenniemi 2009).

There are very good reasons to support the expanded scope of humanitarian and human rights law. These have to do with the need for a 'higher law' to inhibit the power of states, protect the rights and welfare of minorities, prevent aggressive wars and inhuman methods of warfare, compensate for the deficiencies of national forms of decision-making, and so forth. The expanded role of international law is justified historically by the catastrophic experience of organised violence in the 20th century which seems to have deprived states of 'the presumption of innocence that underlies the prohibition on intervention and immunity against criminal prosecution under international law' (Habermas 2008: 444; see also Levy and Sznaider 2006). Although the non-compliance of big powers with international law is well known, international law is not merely a facade. States respond to the restraints imposed upon them by international law with a multiplicity of strategies: they

manipulate it to suit their own interests; they reshape it to exempt themselves from its provisions; they create zones of exclusion where it no longer has purchase; sometimes they withdraw altogether from its sphere of operation and simply bring military superiority to bear. But these strategies all involve trade-offs and point to the equivocations of power, not to any simple opposition between power and law (Kumm 2004). Arguably, we can no longer do without the standards of judgment and categories of understanding provided by international law.

However, a note of caution must be struck. In the public sphere employment of human rights categories to judge the use of force may be based on common usage of terms like 'crimes and humanity' that differ substantially from legal definitions. We may morally condemn military actions, say for the suffering they impose on civilians, but they may not be criminal according to the norms of international law. We may appeal to the *values* and *principles* of international law to defend or reject the legitimacy of force even if these values and principles require the reform of actually existing international laws for their realisation. We may fail to recognise the magnifying effect of TV broadcasts on our perception of some crimes, such as the deliberate targeting of civilians in the twin towers or the more contested targeting of civilians in Gaza, and we may fail to distinguish between an 'ordinary massacre', one in which say 3300 and 1350 lives are taken, and those massacres in which hundreds of thousands or even millions of civilians are murdered (Achcar 2006: 27-33). In any event the claim that a particular military action accords with or violates norms of international law is far more frequently made than tested in any court.

Different parties may pick and choose those of its norms which favour their interests. The US is well disposed to those bits of international law which outlaw terrorism but not to the bits which relate to the mistreatment of prisoners of war. The anti-imperialist Left is better disposed to the bits of international law that uphold a right of resistance against occupation but, depending on the situation, less keen on injunctions against harming civilians. Both parties can be disdainful of actually existing international law on the grounds that it is controlled by their opponents, but still use its rhetoric to accuse the other of hypocrisy (Hirsh 2003, 151-160). The casting of international law as a trump card in political argument saves us the work of developing our own moral and political arguments or making our own judgments; it can provide an illusory sense of righteous finality.

My 'Arendtian' contention is that in our world international law should not be conceived as a reconstituted form of transcendent authority, at once criminalising the Other and idealising Oneself. It should rather be conceived as a material resource we have for confronting anew the problems of living together and constituting ourselves as a collectivity. In the face of the equivocations that accompany the expanded scope of humanitarian and human rights norms, it is difficult to learn how to use them well, to make distinctions between them, to make informed judgments on their application. Perhaps today the development of a 'human

rights culture' lags behind the institutionalisation of human rights themselves (Fine 2010). The current temptation to idealise international law is understandable but it is no less precarious than past temptations to idealise other moments in the modern system of right, such as private property, the state and civil society. My hope is that if we reflect on the equivocations of international law, we may become less inclined to open a back door through which all the old rodomontade – labelling, stigma, demonisation, sheer alterity – returns to haunt us (Fine 1977; 1977a).

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