

Mark Antaki

I. Summary of Larger Project: A Genealogy of Crimes Against Humanity

This study undertakes a genealogy of crimes against humanity. It inquires into key historical transformations that preceded the official birth of crimes against humanity in positive international law. The study brings to light changes in understandings of law, politics, and human being-together that accompany the articulation of crimes against humanity.

To speak of crimes against humanity is to speak the death of God. With the French Revolution, man displaces God as ground and measure of law and politics, leading to the articulation of crimes against *humanity*. The man who displaces God is “natural man,” a man who is naturally good, and for whom the good is wholly natural. Through the trial of Louis XVI, the medieval tyrant, the ruler who oppresses his own people, becomes the criminal against humanity. The duty of rulers to God gives way to the sovereignty of the nation. Paradoxically, the category of the “enemy” appears as the only way to recognize Louis XVI for what he was and to grant him his due.

Subsequently, key transformations in the international law governing war also lead to the articulation of crimes against humanity. First, war itself becomes a crime against humanity when, in the late nineteenth and early twentieth centuries, the public law of Europe is dissolved into an abstract international law ostensibly encompassing the world. With this dissolution, the juridical category of the enemy (a category enabling mutual restraint in war) and the spatial character of law are lost. Engaging with the work of Carl Schmitt makes possible a consideration of these two important themes, including the impossibility of cosmopolitics without geopolitics. Second, in the latter half of the nineteenth century, humanitarian intervention appears as *the* potential exception to the prohibition against the use of force. Humanitarian intervention is justified on the basis of what we today call crimes against humanity. The jurists who justify humanitarian intervention ground it in a law of humanity. This law of humanity protects the rights of men *as* men and is administered by civilized states on the basis of a solidarity grounded in sheer humanity. More permanent tutelage of less civilized peoples and occasional interventions required by violations of laws of humanity belong to the same way of thinking. Third, the ground of this solidarity makes itself manifest as the laws of war are transformed into “humanitarian law.” Charity, love of God, is replaced by humanity, love of man. Sympathy, suffering-with, emerges as the ground of a human solidarity.

Thus, the reduction of man to a “natural” or “mere” human being emerges as the principal ground of the articulation of crimes against humanity. However, and at the same time, this reduction of man to a mere specimen of the species humanity (to a being whose essence is given by nature) emerges as constitutive of the evil underlying crimes against humanity. Engaging with the work of Hannah Arendt makes visible this mirroring of the evils of crimes against humanity by the ground of the articulation of crimes against humanity.

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III. Abstract of F. Humanity as Humaneness: The Transformation of the Laws of War into Humanitarian Law

The articulation of crimes against humanity in positive international law is better understood when situated against the broader transformation of the laws of war into humanitarian law. This re-naming of the laws of war does not take place until the late 1970s with the Additional Protocols to the Geneva Conventions. However, this re-naming is made possible by the prior emergence, in the nineteenth century codification of the laws of war, of the principle of humanity as the ground of the laws of war.

Two twin transformations make possible the emergence of humanity as the ground of the laws of war. First, charity, the love of God, is transformed into the sentiment of humanity, the love of man. Aquinas and the scholastics discussed war under the heading of charity. With Grotius and Pufendorf, charity slides into humanity. The transformation is complete with Rousseau. Second, pain is transformed from a potential spiritual good that could bring one closer to God into something unintelligible and unacceptable. For Rousseau, humanity is pity writ large and sympathy, suffering-with, is the “first sentiment of humanity.” Rousseau appears as one of the fathers of the modern laws of war, of humanitarian law. Humanitarian law thus belongs to modern humanitarianism, to what Nietzsche calls “the religion of human suffering.”

Whereas the nineteenth century codification of the laws of war used the twin language of humanity and civilization, the transformation of civilization into a dirty word in the twentieth century made it that much easier for humanity to emerge as the ground of the laws of war, and for the laws of war to become “humanitarian.”