

**PERSONAL RESPONSIBILITY UNDER TOTALITARIAN REGIMES: AN ANALYSIS
OF HANNAH ARENDT'S PHILOSOPHY ON THE PREVENTION OF EVILDOING
AND CRIMINAL LIABILITY FOR INTERNATIONAL CRIMES**

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Abstract

After witnessing the Eichmann trial, Hannah Arendt realized that it is a misconception that the occurrence of international crimes (and evil) mostly implicates the work of people with evil motives. For this reason, she developed a new form of criminal liability that falls between the two forms of liability of traditional criminal law. By analysing and emphasising the role of the 'hanger-on' criminal, Arendt became convinced that, when international crimes take place, besides evil intentions or culpable negligence, also *thoughtlessness* should establish personal criminal liability for them, since when evil occurs without reflection upon it, it can spread limitlessly. Within this theory, each person participating in a bureaucratic institution that is part of a totalitarian regime should be held personally responsible. Although never implemented in practice, this way of reasoning is an interesting contribution to the thinking on international criminal law.

Introduction

One of the many incomprehensible truths about crimes against humanity and other international crimes is that they, under certain circumstances, are able to occur on a perplexingly large scale. The questions surrounding this truth demand extensive factual, moral and legal analysis. Firstly, how is it possible that so many people participate in the heinous crimes that certain regimes or movements perpetrate? And secondly, in what way should these people be held responsible? Philosopher Hannah Arendt (1906 – 1975) was also confronted with these topics. In several books she tried to explain the history of the totalitarian regimes she observed, scrutinise their structure and make their criminal possibilities visible and intelligible. In this article I try to answer the question in what way, according to Arendt, individuals can be held personally responsible for criminal deeds while living and operating under a totalitarian regime. In my conclusion, I shortly analyse how her thinking on this subject can contribute to contemporary thinking on international criminal law.

During her life, Arendt attempted to grasp the situation in which 'radical evil' is possible. She realised that it is a misconception that this mostly entails the

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work of people with evil motives.¹ For that reason, she started to analyse and emphasise the role of the ‘hanger-on’: people who simply follow a set of (moral) rules without thinking about it. Consequently, this article does not focus on the international criminals that do have bad intentions. It follows Arendt’s line of thought and focuses on the profile of the wrongdoer that does *not* have the evil intentions one would expect from international criminals. Since Arendt regarded this type of wrongdoer as the most dangerous, this article cuts right through a major part of Arendt’s philosophical thoughts. It combines her books *The Origins of Totalitarianism* and *Eichmann in Jerusalem*, with the posthumously published sections of *Life of the Mind* and the essays in *Responsibility and Judgment*. This combination is possible, as Arendt, after having written *Origins*, shifted her thinking in the later part of her life from describing political actions and movements, towards thinking about the prevention of evil-doing. She investigated the significance of the human ability of ‘thoughtlessness’ with which she was confronted at the trial of Adolf Eichmann. In her book on the trial, she coined the famous concept of ‘the banality of evil’, initially purely meant as a factual description of the nature of a specific kind of evil caused by a thoughtless person. However, later in life she started to think about the concept on a more theoretical level by asking herself the question: ‘with what right did I possess and use the concept?’²

Arendt received a lot of critique on her work, especially on her thoughts regarding the ‘banality of evil’. Yet, in this article I do not have the ambition to go into this critique, as that would require a study on its own. As said, my intention is to understand Hannah Arendt’s thinking on the hanger-on, the *thoughtless* criminal. To do this, I respectively expound the elements of totalitarianism according to Arendt; explain her view on the moral situation within a totalitarian regime; describe her reflections on the human abilities of ‘judging’ and ‘thinking’; distinguish her notions of radical from banal evil; outline her thoughts on the connection between thinking and the prevention of evil-doing; and clarify her analysis on the only right thing to do while living under a totalitarian regime. I conclude with looking into the worth of this thinking of Arendt for the field of international criminal law.

I. Elements of Totalitarianism

To understand Arendt’s theory of personal responsibility under a totalitarian regime, we have to understand what she meant with this type of regime. In her book *The Origins of Totalitarianism* Arendt distils her insights into the elements of totalitarianism, by describing, *inter alia*, the characteristics of a totalitarian regime in power.

First of all she states that totalitarian regimes, in order to exist, have to *destroy the public realm of life*. This makes all forms of politics, in the sense of citizens

¹ H. Arendt, *The Life of the Mind*, New York: A Harvest Book 1971, p. 4.

² H. Arendt, *Responsibility and Judgment*, New York: Schocken Books 2003, p. 161.

speaking, persuading, deciding and acting in the public realm, disappear.³ Secondly, Arendt argues that a totalitarian regime has the form of a *many-layered onion*. Regimes like tyrannies and authoritarian ones, are structured like pyramids, with the leader located at the top; in contrast, the leader of a totalitarian regime is located at the centre. A third element is the existence of an *ideology* that explains all history, justifies the regime and legitimises its policies.⁴ Slowly, this ideology removes all foundations of the existing legal system. In conjunction with this, Arendt writes that totalitarian regimes are characterized by *total terror*. The results of this total terror eventually do not spare any part of the population; once there is the willingness to persecute and sacrifice huge numbers of people for no reason other than the existing ideology, no form of destruction is unthinkable any longer.

Further on, Arendt describes the *demolition of natural human bonds*, as totalitarian governments do not only demolish the public realm but extend into every aspect of human life – and with that also destroy private life. This isolation makes intimacy impossible. As a consequence, people living under a totalitarian regime feel they do not belong to the world at all, which is “among the most radical and desperate experiences of man.”⁵ The last element of totalitarianism discussed is *government by bureaucracy*. Totalitarian regimes assault any form of individual judgment and make the shifting of responsibility a daily routine. Therefore Arendt writes that bureaucracy is a “government by nobody” and with that “perhaps the least human and the most cruel form of rulership.”⁶ It turns men into cogs of the administrative machinery and thus dehumanises them.⁷

II. Morality Under a Totalitarian Regime

While expounding these characteristics, Arendt argues that when a totalitarian regime successfully gets into power, a new reality comes into existence. In this reality, all moral standards are turned upside down, especially the intuitive viewpoint that *Das Moralische versteht sich von selbst* is completely untrue.⁸ Almost overnight all customs and matters of the citizens of a society change as easily as table manners.⁹

For this reason, Arendt calls the situation in which a person living under a totalitarian regime is placed ‘a total moral collapse.’ Suddenly ‘normal people’ are committing crimes and ‘the exceptions’ are not, as the newly installed political system is founded on criminal principles. In other words, from the perspective of totalitarian governments, people who commit crimes are

³ H. Arendt, *The Origins of Totalitarianism*, New York: A Harvest Book 1976, p. 474.

⁴ Idem, pp. 468-471.

⁵ Idem, p. 475.

⁶ Arendt 2003 supra note 2, p. 31.

⁷ H. Arendt, *Eichmann in Jerusalem*, New York: The Viking Press 1963, p. 289.

⁸ Arendt 2003 supra note 2, p. 22.

⁹ Idem, p. 50.

'innocent'.¹⁰ In this situation citizens realize that the moral categories that existed before have exploded and become inadequate.¹¹ The moral question that now arises is how we can expect a person to tell right from wrong under these circumstances, independent of his knowledge of the law, for it turns out to be morally useless. In Arendt's words:

What happens to the human faculty of judgment when it is faced with occurrences that spell the breakdown of all customary standards and hence are unprecedented in the sense that they are not foreseen in general rules, not even as exceptions from such rules?¹²

Arendt wondered about this question while aware of the fact that in totalitarian regimes there are always people who do resist. What enables them to do that? If they were not following rules, how were they able to make their judgments?¹³

III. Euphoria and Judgment

While writing *Eichmann in Jerusalem*, Arendt began to understand what the answer to this question was. She realised, almost 'euphoric', that the capacity of telling right from wrong while living in a moral collapse, appeared to be connected with the faculty of thinking – and not so much with the faculty of judging. Much later, in her book *Life of the Mind* she returned to this subject. In this book she distinguishes the three human mental activities, which she said to be 'Thinking', 'Willing' and 'Judging'. Important for the aim of this article is that, although it seems intuitively that the human ability to judge enables us to choose what we do and subsequently to be held responsible for our actions, Arendt argues that things are different in a reality in which a totalitarian regime is in power. To comprehend this, we first have to understand –more or less– what she meant when she spoke of the human 'faculty of judging'.

Arendt had the suspicion that the answers to the questions surrounding this faculty could be found in Immanuel Kant's *Critique of Judgment*.¹⁴ In her view, parts of what Kant discovered about aesthetic judging could be directly transferred into the domains of political and moral judging. According to Kant, aesthetic judging happens 'reflectively', starting with a generality and going to a particular. For example, the judgment: 'This is a beautiful rose!' is not the result of the syllogism: 'All roses are beautiful / this is a rose / this is a beautiful

¹⁰ Idem, p. 33.

¹¹ Idem, p. 25.

¹² Idem, p. 27.

¹³ E. Young-Bruehl, *Why Arendt Matters*, New Haven & London: Yale University Press 2006, p. 173.

¹⁴ I. Kant, *Critique of Judgment*, Oxford: Oxford University Press 1790; Young-Bruehl 2003, supra note p. 162.

rose.’ Aesthetic judging simply works in a different way: it begins when a particular phenomenon ‘strikes’ you. Crucially, according to Kant, this type of judgment demands “enlargement of the mind” accomplished by “comparing our judgment with the possible rather than actual judgments of others [...]”¹⁵ That being so, aesthetic judgments, as Kant describes them, always reflect upon others.¹⁶ In her notes (and lectures) on Kant, intended for the ‘Judging’ part of *The Life and the Mind*, Arendt tried to place these ideas on reflective thinking into her theory on moral judging. In her own experience, Arendt stated, moral judgment also happens in relation to others, more so than any other mental abilities. Both in reality and in her imagination, she constantly visited others: to consult them, hear their points of view, exchange opinions with them and persuade them. This communicative experience also requires ‘an enlarged mentality’.¹⁷ From this perspective, moral judging involves the capacities of identification and empathy; the ability to identify with others and to look at the world from their perspective. Arendt:

[...] while I take into account others when judging, this does not mean that I conform my judgment to theirs. I still speak with my own voice and I do not count noses in order to think what is right. But my judgment is no longer subjective either, in the sense that I arrive at my conclusions by taking only myself into account.¹⁸

Unfortunately, to completely understand Arendt’s philosophy on the faculty of judgment in *The Life of the Mind*, the reader’s imagination is required since the book was never finished. However, to answer the main question of this article, a further elaboration is not necessary, as Arendt never connected personal criminal responsibility under a totalitarian regime with the faculty of *judgment*, but with the faculty of *thinking*. Nonetheless, these two faculties are inherently connected because judging is a *by-product* of the liberating ability of thinking.¹⁹ Although Arendt describes judging “as the most political of man’s mental abilities”, she does not identify it as the crucial mental ability of morality for people living under a totalitarian regime. This is the faculty of thinking, illustrated in the situation of moral collapse, when people first and foremost stop to *think* and, unthinkingly, start to *do* and *believe* what others believe and do. As a consequence, since people fail to *think* about their situation, their ability to judge is also ‘switched off’.

IV. But what is Thinking then?

In her analysis of thinking, Arendt intentionally left all metaphysics out by simply concentrating on the fact that men are *thinking beings*.²⁰ This way she

¹⁵ Arendt 1971, supra note 1, p. 257.

¹⁶ Idem, p. 266.

¹⁷ Young-Bruehl 2003, supra note 13, p. 165

¹⁸ Arendt 2003, supra note 2, p. 141.

¹⁹ Idem, p. 189.

²⁰ Arendt 1971, supra note 1, p. 11.

would, if it indeed turned out that the ability to think had something to do with avoiding evil-doing, be able to *demand* people to do it, no matter how erudite or ignorant a person was.²¹ In addition, Arendt had witnessed that *thoughtlessness* could be found in highly intelligent people, which made her sceptical about whether *thoughtfulness* had something to do with intelligence.

Arendt describes the activity of thinking as a soundless conversation that we constantly have with ourselves, a definition she acquired from Plato.²² Thinking does not serve knowledge, since nothing that comes forth out of a particular reasoning can be regarded as 'a solid axiom.' Put another way, when we begin to think about the *meaning* of things, everything starts to move.²³ To illustrate this point, Arendt says that no one is even able to define the words that we use regularly in our daily lives, like 'happiness' or 'justice'. No matter how hard we contemplate on these definitions, we do not produce results that are verifiable or tangible. That being the case, thinking has a natural aversion to accepting its own results and is self-destructive. For that reason, Arendt describes thinking as 'the veil of Penelope.' Every morning it undoes what it has finished before.²⁴ Arendt also uses Socrates as an example, a personification, of thinking. Firstly, she states, Socrates was a gadfly. He aroused citizens who, without him, would have 'slept' for the rest of their lives. According to him not thinking was the same as not being fully alive. Secondly, he forced people to give up thoughts based on incorrect reasoning without giving them a new truth. And thirdly, Socrates' thinking *paralysed* him and others. His questions and 'knowing nothing' had a destructive and undermining effect on all criteria, standards and measurements for good and evil.²⁵

Summed up, the activity of thinking is an enterprise without result; it does not create new values and will not help find out what 'the Good' is. Thinking is therefore dangerous for *all* beliefs. Furthermore, Arendt knew, after seeing Eichmann and others, that a life without thinking is quite possible, although this life fails to develop its own essence. "Unthinking men," Arendt wrote, "are like sleepwalkers."²⁶

IV. Banal and Radical Evil

According to Arendt, it is precisely these unthinking men who are able to produce a type of evil that can spread limitlessly. To comprehend this, it is important to realise that what Arendt wrote on the concept of 'evil' changed during the course of her life. In her earlier work, Arendt wrote about evil as 'radical evil', in reaction to Immanuel Kant. For Kant, radical evil is a type of evil that is rooted in evil motivation, the intention to do evil by people with an evil

²¹ Idem, p. 12-13.

²² Idem, p. 6.

²³ Arendt 2003, supra note 2, p. 171.

²⁴ Idem, p. 166.

²⁵ Idem, p. 176.

²⁶ Idem, p. 191.

heart. Radical evil differs from 'regular' evil, because the latter is rooted in ignorance or an intention to do good that has gone wrong.²⁷ Radical evil comes forth from a "perverted ill will."²⁸

Arendt adopted this concept of radical evil while elaborating about the Nazi concentration camps in *the Origins of Totalitarianism*. These camps tried to prove that everything was possible, by attacking human nature as such. Arendt called this mass annihilation of human beings undertaken by the Nazi's 'radical evil', since it did not serve any humanly comprehensible purpose and therefore assaulted human reason. The crimes that occurred cannot be understood in light of any motives, not even evil motives like self-interest, greed, lust for power or cowardice.²⁹ Radical evil tears apart all traditional categories of understanding politics, law and morality.³⁰ Therefore it is impossible to think about these crimes in traditional terms of morality and law, which makes them, as Arendt famously stated, impossible to punish or to forgive.

However, after Arendt attended Adolf Eichmann's trial in Jerusalem in 1961, her thoughts on evil changed. While listening to and looking at him, she concluded that he was a superficial and conformist person, with no sense of responsibility, solely driven by the goal of climbing higher in the Nazi hierarchy. Despite the monstrous crimes in which Eichmann participated, he seemed neither monstrous nor demonic. In her book *Eichmann in Jerusalem* she called this "the banality of evil", the phenomenon of evil deeds, committed on an enormous scale, that are not rooted in wickedness or the ideological conviction of the doers.³¹ For this type of evil it is impossible to trace the deeds of the wrongdoers back to any deeper level of motives. Subsequently, Arendt noticed that Eichmann's behaviour did not originate in stupidity, but from a "curious, quite authentic inability to think."³² Next to his personal advancement he had no motives at all and simply never completely thought his actions through; *he never realized what he was doing*. This observation made Arendt realise that it is exactly this human ability of thoughtlessness that makes the most evil crimes – crimes as evil as the Holocaust – possible, *not* criminals perpetrating crime. Although a number of criminals are always present in every community, morality collapses when 'normal people' start to thoughtlessly participate in criminal actions they never thought they could get involved in, while their traditional moral standards are still socially accepted.³³ When that happens, evil can spread *limitlessly*, as it is never reflected upon. Evil acts are forgotten as they are being committed.³⁴ This kind of evil is *banal evil*, not carried out carelessly but without thinking and remorse – without considering the *moral*

²⁷ Young-Bruehl 2006, *supra* note 13, p. 2.

²⁸ Arendt 1976, *supra* note 3, p. 459.

²⁹ *Ibid.*

³⁰ Arendt 2003, *supra* note 2, p. 19.

³¹ *Idem*, p. 159.

³² Arendt 1963, *supra* note 7, p. 277.

³³ Arendt 2003, *supra* note 2, p. 54.

³⁴ *Idem*, p. 20.

experience of a certain deed. Hence, it is *thoughtlessness* that makes the massive crimes of totalitarian regimes possible and poses the biggest moral questions.

V. Thinking and Evildoing

Later in her life, Arendt seemed to be of the opinion that all evil is banal, and that the things people do with bad intentions are the result of *wickedness*. In this way, evil has nothing to do with sinning, but with 'non-wicked people' who commit terrible crimes with no special motives.³⁵ This leads to the question how non-wicked people are able to prevent this. What can a person do when everyone else is swept away in thoughtlessness?

As explained earlier, living in a totalitarian regime means living, completely isolated, in a moral collapse that is dominated by total terror. Dialogue with others becomes impossible, which makes thinking, the inner dialogue with oneself, the only thing left. And like the veil of Penelope, the faculty of thinking starts to do what it always does: bring out the implications of unexamined opinions, theories and convictions, and destroy them.³⁶ This destruction causes resisters within totalitarian regimes not to collaborate with the system.³⁷ Arendt concluded this by, among other things, analysing the motives of the few resisters in Nazi Germany. She saw that these resisters did not seem to be able to judge better on a moral level because they succeeded in obtaining a moral system of higher value, or because their traditional system of values was still deeply ingrained in their minds. On the contrary, the people who believed the most in the traditional system of rules seemed to be the first to yield to the temptation of the new one. Thus, Arendt reasoned, there had to be another criterion that distinguishes non-collaborators. This criterion turned out to be inherently bound to the faculty of thinking, and the viewpoint that thinking is "a soundless conversation that we constantly have with ourselves."³⁸ According to Arendt, the resisters: "[...] *asked themselves to what extent they would still be able to live in peace with themselves after having committed certain deeds.*"³⁹

In other words, people who think realise that, whatever happens, the only certainty is that they have to continue to live with themselves, because their silent inner dialogue of the 'two-in-one', their *thinking*, will always carry on. Realising this, they refuse to be a part of the totalitarian regime because they are unwilling *to live together* with a murderer, 'living together' understood as *living with yourself in your own head*. Thus, those who think will decide not to do what the government asks from them in a totalitarian regime, as they do

³⁵ Idem, p. 188.

³⁶ Idem p. 188

³⁷ Idem, p. 44.

³⁸ Arendt 1971, supra note 1, p. 166.

³⁹ Arendt 2003, supra note 2, p. 44.

not want to live together with a wrongdoer because that would no longer make their life worthwhile.⁴⁰

VI. The Only Right Thing To Do

Given their lack of thinking, Arendt concludes that Eichmann and others failed to do the only right thing under a totalitarian regime: a full withdrawal from public life. This complete withdrawal is necessary, as the total domination and terror of a totalitarian regime has the consequence that there is no office, nor any job of public significance, that does not demand unequivocal acceptance of the ruling principles. Since everything is coordinated, any form of participation in public life is a support to the criminal regime as a whole.⁴¹

Arendt emphasises that her instruction to withdraw from public life altogether is only valid in extreme and marginal situations.⁴² However, living under a totalitarian regime is one such marginal situation. She gives two reasons for this; first, the evil of totalitarian regimes is so monstrous that no form of participation can ever be excused. For instance, in the Second World War the extermination of the Jews was only possible after a gradual sequence of anti-Jewish measures, each of which was accepted with the argument that refusal would only make things worse. The result was a situation in which nothing worse could have possibly happened.⁴³ The second reason Arendt gives is that the reality of a totalitarian regime entails 'impotence' in the realm of politics; the public sphere is destroyed and total terror reigns. Therefore Arendt regards living under a totalitarian regime as a valid excuse for doing nothing. When a person is powerless and isolated, the only thing he could be expected to do is prevent personal responsibility for the crimes that occur by not participating.⁴⁴ Importantly, although a person knows his attitude has no political consequences whatsoever, a complete withdrawal from public life is still the only right thing to do – even when this withdrawal puts his safety at risk: "If I would do what is now demanded of me as the price of participation, [...], I could no longer live with myself [...] Hence, I much rather suffer wrong now, and even pay the price of a death penalty in case I am forced to participate, than do wrong and then have to live together with a wrongdoer."⁴⁵

To defend this, Arendt stresses that totalitarian bureaucratic governmental organisations should be regarded as functioning common enterprises that individuals can choose to 'support' or not. As said before, the fact that the whole of public life is dominated by the criminal totalitarian state makes *any* possible participation an act of support to the perpetuation of the regime.

⁴⁰ Idem, p. 156.

⁴¹ Idem, p. 33.

⁴² Idem, p. 156.

⁴³ Idem, p. 37.

⁴⁴ Idem, p. 45.

⁴⁵ Arendt 2003, supra note 2, p. 156.

Consequently, non-support is the most effective weapon against perpetuation, because if people simply stop participating, the regime will cease to exist. While this line of thought might sound idealistic, Arendt's argument has strong similarities with commonly used ways of reasoning on, for instance, the importance of voting: the relevance of one person voting might be marginal (and some indeed see this as a reason not to vote), but the individual decision to vote does have major significance at the systemic level for a democracy.

Conclusion

Hannah Arendt touches upon several important topics that encircle the field of the liability of the banal 'hang-on' criminal. In this conclusion, I comment on how her thinking on this subject can contribute to contemporary thinking on international criminal law.

In a way, the expounded theory reveals that Arendt had a positive view on the nature of man. She claimed that most hanger-on criminals would be *repelled* by the crimes they commit the moment that they realised what they were doing. Nonetheless, the problem is that, in general, people will not realise this, and this thoughtlessness enables evil to spread boundlessly. Therefore, Arendt argues that the most flagrant international crimes are committed by a web of people *who do not really intend* to participate in them. A person who acts with bad intentions, or even a group of people who do so, are *never* able to perpetrate a crime that approaches the scale and force of international crimes. That being the case, Arendt argues that *each* cog of a bureaucratic institution should be held personally responsible, because otherwise the majority of the guilty would be able to live on unpunished when a totalitarian regime comes to an end.

With this, Arendt chooses a broad and novel account of personal and criminal responsibility. If we try to connect this to the contemporary practice of international tribunals, this has interesting results. For instance, the International Criminal Court (ICC) has declared that it wants to focus on 'the most responsible', which means that it intends to mainly prosecute the leaders of criminal governments or groups. From a pragmatic perspective, this seems to be a wise thing to do, as international procedures take much time and effort and the caseload therefore quickly becomes too heavy. Yet, on a theoretical level, Arendt's viewpoint is very interesting for the practice of international criminal law, as it acknowledges an important difference between the character of domestic and international crimes.

In traditional criminal law, people who commit crimes need to have the intention to do wrong or be culpably negligent to be criminally liable. Convictions are therefore not solely based on facts (*actus reus*), but also on motives (*mens rea*). This means that when a person was *not able* to realise the wrongness of his deeds, he cannot be punished.

If we take, with this in mind, Arendt's description illustrated by Eichmann, we see that he never made up his mind about right and wrong as a result of his thoughtlessness. She literally writes that he *did not realise what he was doing*. He was neither wicked nor insane, but utterly normal. For that reason Arendt, to her own surprise, describes him as banal; there was no indication that he was misled by a perverted will or had criminal intentions. It appears that he just did not think; he never started the conversation with himself about the conditions under which he would still be able to live with himself. However, this description does not make him *negligent* either, as he did actively participate in a bureaucratic government that perpetrated international crimes and evil. He even functioned carefully within the system and succeeded in climbing the hierarchy. Nevertheless, according to Arendt, despite his ambitions and care for his job, it never occurred to him that his deeds were criminal and he never morally experienced what he was doing.

So the Eichmann that Arendt describes, the banal wrongdoer, does not fall in any of the categories of criminals that traditional criminal law holds guilty, as he had no wrong intentions and was not negligent. Nevertheless, Arendt concludes that some international crimes are of such gravity that people who intentionally participate in them should be punished, although they were never aware of the evil of their deeds and never had evil intentions.⁴⁶

Yet I suspect that this does not meet the profile of individuals that the ICC wants to prosecute, when it talks about 'the most responsible'. The abandonment of the requirement of evil intentions, or otherwise grave negligence, and a focus on the gravity of the deed would mean an enormous shift in the thinking of international courts and of traditional criminal justice in general. Nevertheless, it could be argued that this shift is required to confront the problem of the thoughtless 'hang-on' criminals who operate within totalitarian and bureaucratic governments and make the most heinous crimes imaginable – crimes with the scale of the Holocaust, Arendt's point of reference – possible.

This argument could even be regarded as crucial, as it is precisely these types of crimes that the field of International Criminal Law tries to tackle – since the scale and gravity of international crimes legitimises the existence of the ICC and other international tribunals since exactly these differences in scale and gravity distinguish international crimes from domestic crimes. Thus, if Arendt is correct that the most heinous international crimes in human history are only possible because of large groups of thoughtless people, international tribunals need to find a way to hold this group of thoughtless people criminally liable, otherwise they regretfully fail to react to the essence of the evil that occurred.

⁴⁶ Arendt 1963, *supra* note 7, p. 279. Arendt on Eichmann: "[...] no member of the human race, can be expected to want to share the earth with you. This is the reason, and the only reason, you must hang."

As mentioned, Arendt thinks that this personal liability for criminal deeds under a totalitarian regime should be rooted in the human ability to think. If people living under a totalitarian regime deeply think their situation over, it becomes clear to *everybody* that a complete withdrawal from public life is required. So in order to have a bearable life afterwards, the only option for a thoughtful person is not to support the criminal government.