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<Guilt and Innocence: The Collective and the Individual >

The worst crimes in the history of humankind were not committed by one person. Wars and genocides that have killed and mutilated millions of people throughout the ages have always been planned and executed by larger groups, by nations and by their armies. We are witnessing the most recent example right now, the Russian war of aggression against Ukraine and the atrocities committed by the Russian army against Ukrainian civilians are not just the work of Vladimir Putin. He may have given the orders, but the officials in the Russian government and the army carried them out. Without them, Putin's orders would have had no effect. So in this time of crisis, we have to ask ourselves, is there such a thing as collective guilt for the crimes that are being committed in Europe at this very moment? Do we have to blame the entire system that supports Putin or even all the Russian people who do not actively try to overthrow this system? Can we simply accuse "The Russians" as being all guilty of these crimes? To answer this question, we have to look to a different time period that faced a similar problem. After the Second World War, there were also debates about collective guilt when it came to the horrifying crimes against humanity committed by Hitler's Third Reich. This Essay will at its core be concerned with the ideas of a thinker who was shaped by the horrors of Nazi Germany and who also examined the concept of collective guilt and its validity, the famous philosopher and political theorist Hannah Arendt. In her well-known and controversial work from 1963 "Eichmann in Jerusalem. A Report on the Banality of Evil", she argued: "Many people today would agree that there is no such thing as collective guilt or, for that matter, collective innocence, and that if there were, no one person could ever be guilty or innocent. This, of course, is not to deny that there is such a thing as political responsibility which, however exists quite apart from what the individual member of the group has done and therefore can neither be judged in moral terms nor be brought before a criminal court." In this Essay we will analyse both concepts that Arendt presents, the concept of collective guilt or innocence which she claims does not exist and the concept of political responsibility and if it can be judged in moral and legal terms. We will examine these concepts so that they can be applied to the present day and may help us to find a way to solve the problems with collective guilt that the war in Ukraine has brought up anew.

Let us begin with the concept of collective guilt or collective innocence. Linguistically these two phrases mean that a collective, a group of people is either guilty or innocent of a specific crime. While this concept is often used for large organizations like political parties or states, we will start by trying to examine collective guilt and innocence on a much smaller scale. We will

consider the following scenario: A group of three criminals rob a bank together. So far it seems simple, they are all responsible for the crime because they all participated in the bank heist. If only a collective guilt was assigned, they would all be equally guilty and would be sentenced as a group. But during the heist, not everybody acts exactly the same. Robber A is just the driver, he does not threaten anybody and he uses no weapons, he just drives the other two to the bank and leaves once they are done. Robber B is the hostage taker, he threatens the people in the bank with a gun so they hand out the money. And Robber C is a murderer because he shot one of the hostages without any reason and to the shock of his fellow robbers. So is the entire group now guilty of murder, just because one member committed a murder that was not part of their plan? It would be highly unfair and irrational, if they now were all considered murderers because that would be making the driver responsible for a murder he did not participate in and did not even know about. Assigning the guilt for the murder collectively would be an unfair judgement because while all three robbers were part of the same crime, they all individually behaved very differently and personally committed different parts of the crime. Making the driver and the murderer equally guilty would mean either downplaying the much more serious crime of the murderer or blaming the driver for events beyond his control. And if the group was declared collectively innocent of the murder because two out of three members did not murder somebody, the murderer would absolved from guilt for his heinous crime.

The notion we should take away from this hypothetical scenario is that if we simply assign collective guilt or innocence, there is always the risk that our assignment is unfair towards the people we judge. But we need a fair procedure to determine guilt, otherwise we will not be able to offer every person what the famous legal philosopher Ronald Dworkin called “equal concern and respect”. If we assigned guilt or innocence only collectively, we would not be concerned about or respect people who we declared guilty of far greater crimes than they themselves actually committed or we would be unconcerned about the safety of innocent citizens because we acquit serious criminals through collective innocence. Assigning guilt in such a way would be morally unjustifiable and would even lead to the disappearance of the concept of personal guilt and innocence, like Hannah Arendt said. In a world of collective judgement, personal responsibility would lose all meaning and we would no longer be able to distinguish the guilt or innocence of a single person. If we look at this from the perspective of Immanuel Kant’s famous categorical imperative, we will see that universalizing the maxim of assigning guilt or innocence collectively would lead to a world in which innocents might be punished for crimes they did not commit, while some actual criminals are not declared guilty. As rational beings we cannot want such a world.

We therefore need a different concept of guilt and innocence, one that treats people fairly, even when like our robbers they are all criminals, but have committed quite different crimes. Hannah Arendt already alludes to the principal of personal responsibility, assigning guilt or innocence individually instead of collectively. That means giving every person a fair trial and trying to carefully and meticulously distinguish between the crimes they are guilty of and those in which they were not involved. This idea is also consistent with another concept introduced by Ronald Dworkin, his theory of “Law as Interpretation”. A judge cannot simply look into his law book and find the perfect model solution for the case before him. Instead he has to interpret the law and its principles always also within the context of the case. For our particular question of guilt and innocence that would mean acknowledging and exploring the

nuances of what a person maybe could have done differently but did not do. Let us return to our case of the three robbers for an example: Maybe robber B, the hostage taker could have avoided the murder committed by Robber C but did not do so. That also implicates him in the murder, more so than the absent Robber A, but not as much as Robber C himself. This does not mean that just letting a crime happen does not make one guilty, but the nuance has to be acknowledged that just being an intentionally passive bystander is not the same as directly committing the crime. But as we can see, in order to assign guilt and innocence fairly, these nuances must be explored. So Hannah Arendt is right, instead of collective guilt or innocence we need individual judgements and furthermore, these judgements have to fit the complexities of the specific cases and only then are they truly fair.

But Arendt also introduces a different concept, that of political responsibility that exists apart from individual actions and cannot be judged morally or legally. Let us firstly try to grasp what she means by that and then examine the moral and legal dimensions of political responsibility. Hannah Arendt says that a collective can be assigned political responsibility independent of the actions of individual members. An example for such a group, that Arendt herself witnessed, might be the NSDAP, the party of Adolf Hitler. The party was politically responsible for building a totalitarian state, starting World War Two and orchestrating the industrial genocide of the Holocaust. But this political responsibility does not always necessarily say something about the actions of an individual member. To choose arguably the most extreme example, Oskar Schindler, the man who saved thousands of Jews from the horrors of the Holocaust was also officially a member of the NSDAP. But nobody would say that because of this one man, who was on paper a member of the party, the NSDAP is suddenly no longer political responsible for countless crimes against humanity, this would just be a disgusting act of denialism.

And at first glance it seems like Arendt is right when she says that such political responsibility cannot be used for moral or legal judgement. After all, we just mentioned the example of a man in the NSDAP whose heroism is undeniable and admirable, who might have on paper participated in the party, but actually worked against its brutality. And we also already established that collectively assigning guilt is always a great mistake. So we could just leave it there and say that in cases of political responsibility, there still need to be individual judgements of guilt or innocence. But maybe our judgement must go further, away from individuals and towards institutions. Institutions like those in the Third Reich carry the political responsibility for the horrible actions that they orchestrated. That does not mean that every individual in the institution is personally guilty. But it does mean that the institution is morally wrong and that legal action should be taken against it. The NSDAP was a fascist party, a party with an agenda that disregarded human rights and wanted to establish a totalitarian ethno-state. To pretend that it was just a neutral assembly of people of which the vast majority happened to be ruthless fascists would be extremely disingenuous. The party as a whole was a criminal organization and it was banned in Germany because of its crimes. So while individuals might have to be judged on a case-by-case basis, the institutions in which these individuals operate are not necessarily neutral, they too can be criminal. Political parties, departments or armies can become institutions of terror and violence even if not everybody on the inside participates in their activities or even fights against them. When the official agenda of an institution is morally wrong and criminal, this institution has to be judged accordingly. These judgements of institutions do not necessarily affect the innocent people within them, they can

just leave and integrate into different institutions that are not criminal. Therefore only the structure and ideology of the institution is judged, the members are judged separately.

So parallel to the judgements of all the individuals in an institution, where some might be judged as innocent, there also needs to be a judgement of the structure and of the ideology through which all of these individuals are connected. Sometimes the institution has nothing to do with individual actions, like when a company unknowingly employs a violent criminal, then of course the institution has nothing to do with his crimes, at worst they could be accused of a faulty background-check. But when it comes to institutions like those in Nazi Germany, there is a clear political responsibility.

What can we now learn from this examination of collective guilt and personal responsibility for the future? We have to ask ourselves this question now more than ever, for there may hopefully come a day, when those responsible for the current war in Europe will have to face trial. And when that day comes, those who judge the warmongers need to clearly identify all those responsible and to judge them fairly. As Hannah Arendt wrote and as it also became apparent in this essay, collective assignments of guilt or innocence can only fail and lead to unfair judgements. Instead, judgements have to be made meticulously and fairly, by taking the principles of law and interpreting them in the given context, like Dworkin suggested. And if over the course of those trials and investigations it becomes clear that certain institutions carry the political responsibility for the atrocities that were committed, action must be taken against them too. Our concept of responsibility and guilt can have the power to distinguish and to identify nuances, unlike the violence and irrationality of despotism. Therefore this standard of fair procedure must be rigorously applied. In this war that affects all of us, it is easy to become influenced by a mentality of us-against-them, even when one is not directly involved in the conflict. But we have to acknowledge that not every person in Russia is equally an enemy to the Western World or a war criminal. Fair and reasonable treatment also of the citizens of an aggressive country is essential because in the end it's very easy for the victor in a conflict to force his will on the defeated, it might be harder to treat the defeated with the dignity that all human beings deserve.