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Moral knowledge and mass crime

A critical reading of moral relativism

Abstract In this article I ask how moral relativism applies to the analysis of responsibility for mass crime. The focus is on the critical reading of two influential relativist attempts to offer a theoretically consistent response to the challenges imposed by extreme criminal practices. First, I explore Gilbert Harman's analytical effort to conceptualize the reach of moral discourse. According to Harman, mass crime creates a contextually specific relationship to which moral judgments do not apply any more. Second, I analyze the inability thesis, which claims that the agents of mass crime are not able to distinguish between right and wrong. Richard Arneson, Michael Zimmerman and Geoffrey Scarre do not deny the moral wrongness of crime. However, having introduced the claim of authenticity as a specific feature of the inability thesis, they maintain that killers are not responsible. I argue that these positions do not hold. The relativist failure to properly conceptualize responsibility for mass crime follows from the mistaken view of moral autonomy, which then leads to the erroneous explanation of the establishment, authority and justification of moral judgments.

Key words Richard Arneson · Gilbert Harman · inability thesis · mass crime · moral relativism · moral responsibility · Geoffrey Scarre · Michael Zimmerman

1 Introduction

When we define our interests and goals, or when we act, we are rarely motivated only by instrumentally rational considerations. The context of our lives is more complex. To begin with, we are moral persons. In a minimum sense, our moral personhood identifies us as autonomous agents who have the ability to judge right from wrong, and who are duty-bound

to choose what is right. It follows that many of our reflections and actions are inseparable from the questions of the good life. How should I live? How should I think about questions that confront me? What should I believe? What should I do and how should I act? How should I treat other people?

These are the questions of practical morality. Answers to them function as necessary points of orientation in our lives. But, at the same time, these questions are so difficult that no one can be expected to search for answers on his or her own. Thus, we have a puzzle: on the one hand, as autonomous persons who live with our moral equals, we ought to reflect on the context of our choice, and base our behavior on the morally right choice; on the other hand, this duty, taken in its simple form, is beyond individual abilities. No single individual can be the judge of right and wrong. So, we need guidelines to help us in our search for the answers. Let us call such guidelines moral standards, and let us understand them as norms, or stabilized directions we use to distinguish between right and wrong, good and bad, or true and false. Introducing this category leads to additional questions. How do moral standards emerge, or what is their source? Why do people typically respect them, or what makes them authoritative? How do we know that moral standards themselves are right, or how are they justified as valid points of orientation for our behavior?

Some answers are perhaps already in place. We know that every society has its normative standards, developed in the intergenerational practice of living together. This seems to offer the solution to the puzzles of the source and the authority of moral norms: we are motivated to respect them because they are specifically *ours*. On this view, categories of the right, good and true, would be defined by the context of our historically shaped societal culture.

This is a controversial claim. On the one hand, it is difficult to dispute the importance of culture for our individual moral identities. On the other hand, the claim that a particular unrepeatable practice of living together is the only foundation or the morally relevant meaning, eliminates some important questions of justification. First, answers to moral questions are given, and it does not make sense to ask whether these are the right answers. Second, it is pointless to discuss morality of *anyone's* life – there can be no universal normative guidelines. The unrepeatable historical concreteness of our life cannot be subjected to any moral norm external to it. Moral knowledge about right and wrong, and morally relevant evaluation of human behavior, are possible only relative to the historically developed, exclusive cultural standards of a concrete society. These claims provide the core of moral relativism.

Relativism is not a trivial thesis, and the strength of its arguments deserves careful analysis. In this article I ask how relativism applies to

the analysis of responsibility for mass crime. Mass crime is an act committed by a significant number of members of a group, in the name of all members of that group, and against individuals identified as a target on the basis of their belonging to a different group.¹ It is possible to isolate several constitutive features of mass crimes: their ideological justification; the role of the regime in criminal activities; the number of perpetrators and collaborators; the number of victims, and the attitudes and behavior of bystanders. An important facet of these features is the normalization of crime, which in turn has at least two elements. The first consists in ideological, legal and political institutionalization of crime. The system of values, the political arrangements and the legal norms are all shaped in a manner that allows, justifies, and renders routine the killing of those who are arbitrarily proclaimed as enemies. The second aspect of normalization is the support of an important number of subjects for the regime and its practices. If both criteria of normalization are met, a specific sub-type of criminal regime is created, which can be called a populist criminal regime.²

Mass killing of innocent people is deeply disturbing. Almost equally disquieting is the normalization of the criminal practice: institutionalization and routinization of the machinery of death, which are made possible by the support of 'ordinary people'. When one thinks about Nazi Germany or Serbia under Milosevic, the gravity of the crimes sometimes prompts very basic questions. How was it possible? What turned decent people into monsters? What happened to the elementary moral standards of right and good? How did human capacity for empathy and solidarity so suddenly disappear? One of the questions that always comes back concerns the ability of an individual to judge and to act autonomously when confronted with the evil that permeates through the whole of society. A negative answer – the inability thesis – is in the core of the relativist argument against moral responsibility of perpetrators, collaborators and bystanders. I will argue that this argument does not hold. The relativist failure to properly conceptualize responsibility for crime follows from the mistaken view of moral autonomy, which then leads to the erroneous explanation of the establishment, authority and justification of moral judgments.

This introduction (Section 1) is followed by four other sections. Section 2 introduces moral relativism. Then I explore two influential attempts to present relativism as an approach capable of theoretically consistent response to the challenges imposed by extreme practices. Section 3 is devoted to Gilbert Harman's analytical effort to conceptualize the reach of moral discourse. Without resorting to cultural determinism, Harman claims that moral judgments are *logically* possible only within a particular societal context; however, in the next step, he argues that mass crime creates a contextually specific relationship to which moral judgments do

not apply any more. Section 4 introduces a version of determinism based on the inability thesis, which claims that the agents of mass crime are not able to distinguish between right and wrong. In section 5 I offer a reading of Richard Arneson, Michael Zimmerman and Geoffrey Scarre. None of these authors denies the moral wrongness of crime. However, having introduced the claim of authenticity as a specific feature of the inability thesis, they argue that killers are not responsible.

2 Moral relativism: an introduction

The question of whether the truth and justification of moral judgments are universally valid or context-specific, is one of the standard points of disagreement in moral philosophy. Consider the following statement:

At least some questions about what is good or bad for people, what is harmful or beneficial, are not in any serious sense matters of opinion. That it is a bad thing to be tortured or starved, humiliated or hurt, is not an opinion: it is a fact . . .³

This is an objectivist, or universalist, statement. It argues that every mentally capable person – any time, anywhere, and irrespective of a particular context of choice – ought to understand that harming another person is morally wrong. Indeed, it seems intuitively obvious that the claim of wrongness of harm cannot be reduced to just one among possible moral beliefs. It seems equally obvious that this identification of moral wrong is not founded on a group's particular conventions, its distinct cultural identity, or the special duties and social roles individuals may have. Neither the personal 'I', nor the group-specific 'we', perspective seems proper. At stake is a moral fact, independent of the first-person (both singular and plural) points of view, that 'transcend[s] both the merely social and the merely personal'.⁴ Accepting this position further implies the existence of the universally valid and context-independent standards for founding and evaluating beliefs, attitudes, intentions and actions. We all ought to be able to recognize such standards as our own, regardless of where we belong, what we prefer, or what constraints a particular context of choice imposes on us.

Still, not everybody would agree that moral judgment is this unambiguous, not even in the cases like Auschwitz, Rwanda, or Srebrenica. Most of us concur that killing or otherwise harming innocent people is plainly wrong, but this in itself does not provide the argument for the universalist position. The offered intuition begs a positive explanation, especially if it aims at being more than a statement of moral disgust in the face of evil. This raises many questions. What is the source of the objective standpoint? What is the content of moral universals? What are the procedures of their identification? What motivates people to accept them?

Moral relativists will argue that universalism is incapable of addressing these questions, and they will offer an alternative. The relativist argument rests on two theses.⁵ The empirical thesis points out that ‘as a matter of empirical fact, there are deep and widespread moral disagreements across different societies, and these disagreements are much more significant than whatever agreements there may be’.⁶ The metaethical thesis argues that ‘the truth or falsity of moral judgments, or their justification, is not absolute or universal, but is relative to the traditions, convictions, or practices of a group of persons’.⁷ It is difficult to deny the intuitive plausibility of the social thesis formulated here. In the first step, it proposes only to acknowledge the relevance of a simple proposition: our lives are not independent of the historical, political, or societal circumstances. The question is then how exactly this set of empirical constraints influences our individual and collective identities, values, attitudes, choices and actions. The relativist answer requires that we acknowledge the normative importance of the belonging. Moral relativism is a normative pluralist theory, which argues that pluralism of cultures is not merely an empirical fact – it is an important feature of the normative basis of living together in modernity. ‘A view from nowhere’ simply does not exist. Objective reason, which claims that ‘something is without relativistic qualification true or false, right or wrong, good or bad’,⁸ i.e. that moral judgment is a matter of the context-independent knowledge that precedes experience, is both empirically poorly related to realities in which we live, and normatively inimical to the value of moral pluralism. A Kantian who believes in arguing from the perspective of universal reason fails to see that his or her normative position makes sense only within a particular perspective.⁹ If we want to reveal the core of our most fundamental ideas, attitudes, moral beliefs and judgments, we have to turn to our culture, which provides us with the morally relevant distinctions between right and wrong.

To say that morality is always historically conditioned and group-specific is not the same as arguing that truth and justification do not exist. Moral standards are not absent – a universally valid moral framework is absent. I am not simply free to take as right what you take as wrong: I have my morality which I (ought to) respect, but my moral truth is relative to my social and cultural context; the same holds good for you. Each of the moral standards, seen from the vantage point of a particular group, can be defended as true and right for that group, while remaining incomprehensible, or appearing as wrong, to members of all the other groups.¹⁰ One important inference is that any attempt to find a rational basis for rising above such disagreements and finding a minimum common morality, is doomed to failure. Consequently, given that there are no common standards of evaluation, there is no room for moral conflict either.¹¹ What appears as a moral disagreement among groups and their members, is just the lack of a minimum common denominator that would make the communication among closed, self-sufficient moral positions possible.

To sum up, relativists agree with universalists that the central question concerns the positive grasp of the meaning of the morally good life. But, they insist, the answer remains relative to the social and cultural frameworks within which the individuals are placed. These frameworks differ, and they make us different people, in terms of our interests and preferences, our views of the self and society, moral convictions we hold, moral justifications of actions we undertake, and moral judgments we make. More sophisticated relativists will not simply deny individual autonomy. The question 'Who am I?' remains relevant, but on this understanding one's autonomy consists chiefly in the ability and duty to identify and accept normative features of the group-specific empirical context in which one lives. Two fundamental human autonomous abilities – ability to judge, and ability to act – are culturally outlined categories.

Having informed us that morality is founded in, and justified by, our particular collective experience, relativism seems to offer neat guidelines for dealing with basic moral questions. Moral judgment commands authority because it stems from, and comprises an intrinsic feature of the way of life we share. Being discovered and accepted as *our* moral judgment, it becomes the true source of motivation and the effective guideline for thinking and acting morally.

But relativism is not free of ambiguities. Most importantly, it fails to provide a clear account of the justification of moral judgments. It often reduces moral beliefs to the prevailing points of view, grounded in habits, shared cultural practices, and from this personal choice is derived.¹² On closer examination, this strategy may cut short understanding, relying instead on ready-made convictions and conventions, justified by the recourse to tradition and the majority support.¹³ This simple relativism argues that in our search for justification there is always a point at which we stop, concede to the primary fact of our social condition, and stick to the existing rules, beliefs and attitudes:

Since all justifications come to an end [with] what the people who accept them find acceptable and not in need of further justification, no conclusion, it is thought, can claim validity beyond the community whose acceptance validates it.¹⁴

Some relativists realize the gravity of this objection. Also, some of them are aware of the potentially frightening implications of the 'relativity of truth(s)' and 'disappearance of moral conflict' arguments. Assume that I, a citizen of New Zealand, insist that Auschwitz or Srebrenica are objectively wrong, morally indefensible practices, and that they are such regardless of what some Germans or some Serbs think about them. Confronted with such a claim, a relativist cannot simply maintain that all truths are relative to the given contexts, and that one's contextually shaped moral position – including the positions of killers, collaborators,

and bystanders – cannot be judged from the perspective of any other moral position. A consistent application of this understanding of relativism would lead to the conclusion that only Germans can say that the Holocaust was wrong (or that it was *not* wrong), or that only Serbs can say the same about Srebrenica. This would be an irresponsibly wrong statement, regardless of where we belong, or which theory we subscribe to. Therefore, relativism has to defend its argument in a manner that would effectively reject the objection of its inability to confront moral questions that arise from the practices which most people, irrespective of their belonging, condemn as morally unacceptable.

3 Gilbert Harman on the non-moral character of extreme intentions

Gilbert Harman introduces relativism as ‘a soberly logical thesis about logical form’.¹⁵ This formula carries the claim that only relativism can meet the basic analytical demand for moral thinking: to identify conditions for the authority of moral judgments. Addressing this issue leads back to the meta-question of the very possibility and the sources of moral knowledge. Harman argues that not all judgments of ‘ought to/ought not to’, or ‘right/wrong’ types, qualify as moral judgments. We need to distinguish between ‘normative’ and ‘moral’. ‘Normative’ is the category of the assessment of a *situation*, while ‘moral’ points to a *relation* between an agent and her or his action.¹⁶

For example, any person, regardless of the social and cultural context of his or her life, can legitimately argue that the Nazi regime was bad, that it ought not to have existed, and that no argument can justify attitudes, intentions, and practices developed there. Still, this is only a normative, and not a moral, statement. Why? This is an example of an external, or, in Harman’s terminology, non-inner judgment. We who are not the actors in a particular social context in which a practice has been developed, can pass only a non-inner judgment on that practice – not being group members, we cannot analyze and assess the relationship between the agent and the action. To be able to morally evaluate an action, I have to be in the relation of the ‘relevant moral understanding’ with its agent. This relation is the only legitimate basis of the *inner judgment* about a practice. The exclusive authors of such a judgment (in Harman’s terminology, the *speakers*) are the persons identified as members of the group within which the action happens, that is, the persons who share the group membership with the agent. The process of reaching the point of the ‘relevant moral understanding’ Harman identifies as bargaining. Its result is morality itself, understood as ‘an implicit agreement about what to do’.¹⁷ So, I qualify to pass a moral judgment on another person’s actions on the basis of our shared, contractually shaped and morally

relevant membership in a group. Only as the group member, I am entitled to say that another group member was duty-bound to behave in a certain way in a certain situation, and I am entitled to evaluate her or his behavior as morally right or wrong.

So, we have the social thesis, which points to the group-specific character of morality. But what is specifically moral in this agreement and the ensuing inner judgment? Can this construct escape the trap of conventionalism, where moral standards would be reduced to those patterns of thought and action that have been agreed on, or simply socially transferred? In response to this challenge, Harman addresses the issue of motivation, arguing that moral judgment does not address the action itself, but rather the motivational properties of our special relationship: 'We make inner judgments about a person only if we suppose that he is capable of being motivated by relevant moral considerations.'¹⁸ In the core of inner judgments we find the shared motivational attitudes between the speaker and the agent, attitudes which are presented as the 'sameness of moral considerations' that guide our thinking and acting.¹⁹

But, again, the 'sameness of moral considerations' still appears to be firmly anchored in a type of relativism that endorses the validity of local conventions. Harman seems to uphold this position when he makes the following claim: the speaker can say the agent should not have done what he or she did only if the speaker accepts that the agent had reason to act the way he or she acted. The speaker should 'in some sense endorse these reasons and suppose that the audience also endorses them'.²⁰ Still, aware of the problems that could follow from this statement, Harman reminds us that moral agreement is not about the facts of an action, nor about attitudes, but about relevant *intentions*, identified in the process of bargaining.²¹ A more precise definition then says that morality is an implicit agreement about the intentions that qualify as right in internal group relations. Only intentions, understood as desires and goals guiding our actions, adequately reflect the social conditionality of our life together. Therefore, to say that the speaker endorses the agent's reasons for an obviously wrong action, does not imply the speaker's endorsement of the action itself. It refers only to the speaker's affirmation of the agreement on intentions. If a member of my group kills an innocent person, my acknowledgment of his or her reasons for this action only means that I understand the logic of his or her goals and desires in the context of the shared intentions that stand in the core of our common morality. In this way I only affirm the moral point of view itself. By endorsing the killer's reasons, I say simply that the killer and I have somehow and sometime tacitly agreed on sharing the same moral universe. It is *only from here* that I can proceed by telling you that 'you ought not to have done this; your action was wrong'. This is a moral judgment. In expressing it, I am conveying the message to the killer that by committing the crime he or

she broke the terms of our implicit agreement, which comes down to violating the valid rules of the moral communication in the society. For this action, the agent deserves the moral sanction of blame.

How does this abstract theory work when applied to concrete cases in specific contexts? Harman explores Hitler's case, looking for the proper moral understanding of his role in the Holocaust, and, more generally, for the proper moral attitude towards the whole practice of the Holocaust. Anyone is entitled to make a normative, that is, non-inner and hence non-moral, judgment about the Holocaust, and to assess it as a practice that ought never to have happened. In the same way, anyone can infer that what Hitler did was wrong. Following Harman's exposition of the analytical conditions for inner judgments, we would expect that only Germans could say that Hitler's intentions were *morally* wrong. But, Harman here makes an interesting theoretical turn, arguing that in Hitler's case even Germans cannot reconstruct an inner, moral judgment: 'It sounds odd to say that Hitler should not have ordered the extermination of the Jews, that it was wrong of him to have done so.'²² What would be 'odd' in the statement of a German that Hitler's intentions were morally wrong, or that the Holocaust was morally wrong, given that it would be a clear instance of the inner judgment? The moral judgment does not work here, argues Harman, because it is too *weak* – the speakers come to realize that Hitler's actions were so terrible that they placed him beyond the scope of moral considerations. Hitler remains 'beyond the pale'.²³

This is where a sophisticated theoretical model reaches its limits. By claiming that 'Hitler is beyond the pale', Harman uses a concrete extreme example to make a generalizable inference: distinguishing between external and internal judgments is not a sufficient condition for a precise demarcation of the status and the meaning of morality. As persons in the relation of 'relevant moral understanding', we realize that distinguishing between right and wrong intentions is sometimes a matter of degree. However, some intentions transpire as so gravely and indisputably wrong that they obstruct the basic meaning and the very possibility of the moral understanding – it is not possible to acknowledge the moral terms of the internal group relationship any more. The (realized) intention to kill the Jews or the Bosniaks tells us about abandoning the background moral understanding. The society has entered a new condition, to which moral criteria do not apply any more. It follows that the moral judgment about mass crime and its agents is not possible because the agents' intentions and actions remain 'beyond the motivational reach of the relevant moral considerations'.²⁴ Or, they do not fit into the logical form of inner judgments.

This is perhaps an attempt to defend the theory against the charge of conventionalism. Exploring German Nazism, we can indeed reconstruct both the bargaining process and the resulting implicit agreement. But

the fact that the regime as the agent, and the majority of subjects as the speakers, acted in concert against the backdrop of what appeared as shared moral understanding, does not grant the status of legitimate morality to the intentions behind the joint acceptance of the mass crimes. Then, a relativist who sees morality as logically possible only within the unique group experience, but who does not want to concede to clearly wrong practices, can only deny any moral status to such an agreement. But, if this reading is accurate, then the category of the 'motivational reach of the relevant moral considerations' challenges the whole formal logical structure on which Harman's relativism rests. If this category requires denying morality of intentions that we find to be 'beyond the pale', it works as an objective moral standard.

The serious problem is in the way Harman steps out from his theory, to account for the objectively wrong intentions and practices. By asserting the weakness of the moral argument in the face of evil, we say that overstepping *some* borders – having some kinds of intentions and doing some kinds of things otherwise identifiable through the categories of the inner moral 'wrong' and 'ought not to' – pushes the whole issue beyond the reach of moral evaluation. If the logical explanation and rational justification of morality fail when confronted with the events like the Holocaust, we are perhaps left with a possibility of a descriptive account. However, Harman concedes that there can be no normatively neutral and morally disengaged description of mass crime. Contrary to his original analytical plan, Harman then completes the theory with a *normative* statement: morality is relative to social contexts, but it can happen that at certain historical moments the place of basic moral distinctions is won over by deeply wrong motivational considerations shared by the majority of the group members. Resulting intentions and practices cease to be morally relevant exactly because they are unacceptable in the perspective of the demand for the rightness of the fundamental inner judgments. But if it is like that, then we are back to square one. If a relativist cannot unambiguously state that any inner judgment provides for a valid moral perspective, then the existence of the objective criteria for the assessment of any particular intention or action, could logically follow. This again comes close to moral universalism.²⁵

4 Moral relativism as cultural and psychological determinism: introducing the inability thesis

When thinking about perpetrators, collaborators or bystanders, we try to understand what made it possible for them to commit or support crimes. We also want to know what led them to abandon moral standards for the sake of the perverted value system imposed by the criminal regime.

In this context, both the ability to act and the ability to judge gain special connotations. First, one should not reject nor underestimate the impact of the circumstances on the ability to act freely. The conditions in criminal regimes are so difficult that they sometimes provide excuses for morally wrong (non-)actions. People may be effectively denied freedom of choice, or saddled with a situation they cannot control. They may fail to act out of reasonable fear, or may choose to perform a morally wrong action for the sake of preventing what they see as the direct threat to them or to the people close to them, even though they know that in this way they could cause harm to some other innocent people. In short, the context may perhaps excuse the agent from responsibility for an action or attitude that in normal situations would be considered morally flawed.

Second, the question of the status of the autonomous judgment under the criminal regime asks if there can be a reason, or a set of reasons, affecting one's grasp of the moral character of the criminal intention and action. Can a person be held ignorant of the immorality of crime, on the account of her or his justified ignorance of the moral code? The question is important in the light of the disturbing empirical evidence. In the populist criminal regimes the majority of people supported criminal attitudes, intentions and the practice of the mass crimes committed in their name. They acknowledged the outcomes as right. Looking from the outside, and applying universalist moral standards, we could infer that such an establishment and realization of the perverted 'ethics of evil' amounts to a moral breakdown, in which the community and most of its members abandoned basic civilizational standards for the sake of brutal barbarianism. We will see: a lost sense of justice and the absence of an elementary concern for the humanity of the members of the targeted group; indifference of the majority towards suffering of innocent human beings; the institutionalized machinery of violence, and 'ordinary men' preaching their loyalty to it. We will identify causal connections between political, societal and individual perspectives. We will conclude that the ruling political and cultural elite somehow brought most of the group members into a state in which they were ready to participate in the crime, and to support it as a legitimate practice. Obviously, this attitude cannot be justified. Something else is the subject of controversy. Can a person, or a group of persons, be absolved of responsibility by pointing to the interpretation of culture that was dominant during the crime, and that presented killing as morally right?

Some relativists provide an affirmative answer. Following Michelle Moody-Adams' critical analysis, I identify this relativist argument as the inability thesis.²⁶ The claim is that the interplay between culture and agency under the populist criminal regime assumes a distinct form. For instance, the analysis of Nazi Germany or Serbia under Milosevic demonstrates that criminal ideology was so effectively implemented

in the processes of socialization, through different measures ranging from education and cultural propaganda to political manipulation, that we can infer a systematically created inability to think, judge, and act morally. Once the enterprise of socialization succeeds, subjects – both perpetrators and ordinary people – do not understand any more the wrongness of the ethical patterns that justify criminal ideology and practices. Culturally induced inability leads to moral ignorance. Morally disabled human beings stop being assumptively responsible agents, simply because they are not autonomous persons any more. They cannot make sense of their place in the world, which is demonstrated both in their inability to judge right from wrong, and in their inability to act morally. This finally justifies the judgment of their diminished legal, political or moral accountability:

A graduate of Sandhurst or West Point who does not understand his duty to noncombatants as human beings is certainly culpable of his ignorance; an officer bred up from childhood in the Hitler *Jugend* might not be.²⁷

The inability thesis implies that moral corruption at the societal level creates individuals whose patterns of evaluation and action indeed appear to be morally flawed. But the moral corruption of the practice of mass crime can be observed only from the viewpoint of civilized normalcy, in which moral laws are valid. Only people who live in a society whose cultural identity is based on the harmony of the universal and group-specific values, can distinguish between right and wrong. One can know only what is valid in one's society. Individuals imprisoned in the described cultural contexts remain strictly speaking beyond moral judgment, because they are brought up in a society which has effectively deprived them of the possibility to learn moral standards.

This is the standard version of the inability thesis, which argues that the perpetrators and bystanders should be absolved of accountability for crime. But some relativist authors would not stop here – they argue that even in such an extreme context persons remain moral agents. Without denying either the power of duress to diminish the ability to act, or the power of the criminal ideology to destroy one's ability to judge, they claim that there still exists room for the moral appraisal of one's actions. It follows that moral guidelines we find in a criminal regime cannot be simply dismissed as morally irrelevant on the account of their unjustifiability. To judge perpetrators, accomplices and bystanders relative to the context, first requires assessing the authenticity of their moral convictions. The second question is whether the agents acted in accordance with their authentic convictions. The conclusion reads that authenticity exculpates.

5 The inability thesis as the authenticity thesis: on 'broken thermometers', 'genuine beliefs' and mass crimes

5.1 Richard Arneson on moral inequality and responsibility

The argument opens by stating the criterion of authenticity. An 'authentic person' is doing what he or she *sees as right*:

Suppose I do the best I can with my limited cognitive capacities, I make a judgment as to what is morally right, however misguided, and I am conscientiously resolved to do what I take to be morally right.²⁸

Suppose the agent – due to the limitations of her or his personal cognitive capacities or due to the effective social imposition of moral ignorance – erroneously infers that killing people who belong to an ethnic group is morally permissible, and he or she indeed goes to realize this conviction by committing murder. We see the agent acting wrongly, but we also see the agent doing so because of the mistaken belief that wrong is right. How should we judge the agent? In answering this question, Arneson departs from the claim that 'doing what one thinks is right is noble and admirable even if one's conscience is a broken thermometer'.²⁹ It is so because 'the capacity to do what is right can be factored into two components, the ability to decide what is right and the ability to dispose oneself to do what one thinks is right. One might hold that the latter capacity is the true locus of human dignity and worth'.³⁰

So, the abilities to judge and to act are not of equal moral weight. Moral evaluation of the agent should be based only on the latter. People are not moral equals, meaning that their abilities to distinguish right from wrong differ – this is why we cannot take the ability to judge as the commonly acceptable baseline for the assessment of one's morality. But all people are capable of deciding whether to follow their convictions or not. Hence, one's authenticity – doing what one *sees as right* – is the fair basis of moral evaluation. Following his critique of 'Kant's epistemology and psychology', Arneson offers a scale of moral capacities, and uses it to distinguish 'not persons', 'near-persons', 'marginal persons' and 'genuine persons'.³¹ The agents can be for different reasons effectively locked in the state of moral confusion, but their resulting moral ignorance does not imply that they do not think about moral questions at all. They do make their moral choice, albeit the erroneous one. The choice remains relevant at the level of action: like any other people, these persons can act in accordance with, or against, the demands of their moral conscience. Given that the inability thesis holds, they cannot be blameworthy for the wrong moral choice; neither can their action be assessed against the objective moral standard of right. The only remaining criterion of morality is one's genuine commitment to one's moral choice. In the above example, the agent's moral reflection is fatally flawed, but the resulting conviction

and intention are genuine, and the action is true to them. The agent acts true to his or her conscience (that is, if the agent kills because he or she genuinely believes that killing is right), and therefore the action should be judged as 'noble and admirable'.

Think of Hitler along Arneson's lines. When Hitler reflects on the German history and the present condition, when he deduces that the Jews are at fault for what he sees as the plight of the Germans, and that therefore they deserve to be killed, he is committing a terrible moral error. Perhaps his capacity of rationally distinguishing between right and wrong is very limited – perhaps he only marginally qualifies for personhood. But realizing that he is only a 'near-person' is not the reason for excusing him for responsibility for his actions. He does not need an excuse at all: when he inspires and leads the Holocaust, he is acting 'admirably', because his action is true to his reflection, regardless of how distorted that reflection is. In acting on reflection, he has demonstrated the 'valued capacity' to act conscientiously, and this is why he would have to be exempted from the negative moral judgment and from retrospective responsibility for what he did. Again, Hitler should not be treated as a person who does not qualify for assumptive responsibility in the first place. He *is* assumptively responsible, but the criterion of his responsibility has to be adjusted relative to who he really is. Nothing here is meant to diminish the horrifying character of Nazism and the Holocaust. But, once we realize that the Kantian principle of moral equality, and the ensuing claim of the equal ability to judge, are empirically wrong, we realize that no objective moral principles can be used as the benchmarks of one's responsibility.

5.2 Michael Zimmerman and the debate on 'excusing the inexcusable'

The authenticity thesis provides what some moral philosophers see as a worthy guideline. First, killing innocent people is 'beyond the pale' if it can be shown that the murderer sincerely believed that her or his action had been right. Second, one who kills motivated by a genuine conviction is more worthy of our moral empathy than a selfish or frightened bystander who turns his or her head in order not to see:

Yet it is one thing to act from passionate commitment to bad ideals that one believes to be good, and another to be a moral fellow traveler who from laziness or an eye on the main chance is content to think within the moral frame favored by his superiors or peers. Both kinds of agents could be said to act in accordance with their moral beliefs when they do evil, but there is nothing noble or admirable about people who are complicit out of selfish disregard or indolence.³²

Imagine a Serbian who joins paramilitary forces and participates in mass atrocities against the ethnic Albanian population, led by sadistic,

greedy, or opportunistic motives. This agent fails to consider the truth of the distinction between right and wrong as relevant for his or her choice of action; he or she will be responsible for the failure to believe the truth. Second, imagine another Serbian who joins the same unit and participates in the same mass killing, guided by – frighteningly erroneous, but genuine – belief that killing is right. This agent wrongly believes in the truth of facts. Surely, the sincerity of belief does not justify the action, but it suffices to absolve the agent from responsibility.

Focusing only on the sincerity of the murderous intention, and disregarding the question of the moral character of that intention, the authenticity thesis abandons the independent relevance of the insight that the crime presents the cruelest violation of basic moral standards: the immorality of crime does not translate into blameworthiness of criminals. The supporters of this position understand that it hurts our moral intuitions, and in response they try to prove its analytical validity. How does the defense work? Michael Zimmerman offers perhaps the most intriguing version of the authenticity thesis:

When Auschwitz camp commandant Rudolf Höss had over two million people put to death, he was not to blame. When Adolf Eichmann delivered victim after victim to the concentration camps, he was not to blame. When William Calley led the massacre of hundreds of civilians at My Lai, he was not to blame.

These are startling claims. Many find them outrageous. I think that they are probably true.³³

Indeed, this is an assertion that most people will feel uneasy with. At stake is a radical attempt to offer philosophical arguments in support of determinism of the inability thesis. The core of the argument provides the already mentioned claim of justified moral ignorance. Let us recall that determinism typically (Arneson being an important exception) aims at proving that the power of the social and cultural context in a criminal regime excludes the perpetrators from the community of assumptively moral persons – in this sense, they do not differ from children or the mentally ill. For this reason, argues Zimmerman, the claim that Höss, Eichmann, or Calley, is not responsible remains true, even if it is a ‘bitter pill to swallow’. Although their freedom of choice is not denied by the external circumstances, killers, collaborators and bystanders lack the ability to judge. Thus, even when they inflict the cruelest harm on innocent people, we cannot blame them, simply because they remain beyond the reach of an independent moral judgment. In brief, the claim is not that the crime can be justified, but rather that the circumstances effectively exclude its agents from the moral community, which is the condition that renders immaterial the question of their retrospective responsibility.

What is novel in this argument in comparison to the ‘classical’ moral relativism and cultural determinism, which also argue that criminals ‘could

not know', and that therefore they are not responsible for the failure to apprehend the moral corruption of their behavior? Zimmerman's starting point is that we need to revisit the question about the conditions under which somebody can be responsible for ignorance about something. The reasons on the basis of which we can blame agents for ignorance of the moral implications of their actions are much more restrictive than it is routinely assumed. At stake is factual ignorance, which Zimmermann understands as 'the failure to know the truth', which in turn can be grasped only as 'a failure justifiably to believe the truth'.³⁴ This failure can appear in two forms. The first is negative, where I do not believe the truth of something. The second is positive: I believe the truth, but my belief is unjustifiable. Surely, the latter case also implies the negative claim, but only as an inference of the positive conviction: I fail to believe that killing is bad *because* I genuinely believe that killing is good. In the first case I simply fail to address the moral relevance of this question. The first case qualifies as the blameworthy ignorance; the second does not.³⁵

A straightforward objection argues that a mistaken view of the moral facts cannot provide the ground for the judgment of innocence. Höss perhaps indeed failed to realize the moral meaning of his actions, but he ought to have known. The claim that there can be contexts depriving individuals of the ability to make the basic distinction between right and wrong cannot be defended. In his critique of Zimmerman, James Montmarquet rejects as rhetorical the argument that the person who is not aware of the wrongness of her or his position cannot be expected to try to overcome it. The argument wrongly assumes that such people are mere products of a difficult context. It fails to see that they actually brought themselves into this condition, through their unacceptable carelessness towards the world in which they live, and the people with whom they live:

If one is in a given mental state but is not aware of any wrongness attached to being in this state, how can one be expected to exert any efforts to get out of this state? (This seems to violate the familiar notion that 'ought implies can.')

The answer to this rhetorical question, however, is that if one's lack of awareness of any wrongness is *itself* culpable – that is, if due to such factors as not bothering to ask oneself whether this is a wrongful state to be in – then one certainly can, and should, be 'expected' to be in some different state. To be sure, we are not expecting this individual, magically, to exert a suitable effort while being in the mental state he is; rather, our expectation is that he should not be in this state.³⁶

What is Zimmerman's response? The critique assumes that the 'lack of awareness of any wrongness' leads necessarily to culpability. This is wrong. The agent who today sticks to the wrong belief is not in control of his or her carelessness: 'One cannot have direct control over the care

one takes regarding what to believe about something or over the belief itself . . .³⁷ Zimmerman then agrees with Montmarquet that the analysis of responsibility requires stepping back in time, and focusing on the moment of transition from one state of mind (say, where the agent believes that killing is wrong) to another state of mind (where the agent believes that killing is right). But, Montmarquet mistakenly believes that one is always directly responsible for entering a certain state of mind – Zimmerman argues that a careful look into one's past shows that no one can be directly responsible for changing one's moral views. If this is so – if a mass murderer is not directly culpable for becoming morally corrupt – then he or she cannot be directly culpable for killing.

Zimmerman travels a long way before reaching this conclusion. Consider first the hypothesis about the minimum necessary condition of causal responsibility: 'One is culpable for behaving ignorantly only if one is culpable for being ignorant'.³⁸ It follows that in order to blame the agent who genuinely believes in the rightness of her or his wrong action, we have to show her or his direct responsibility for a preceding action. Direct responsibility for that preceding action would mean that one acted knowing: (1) that the action was wrong; and (2) that it would produce one's later ignorance.

If . . . one is culpable for ignorant behavior, then one is culpable for the ignorance to which this behavior may be traced. Hence one's culpability for one's ignorant behavior, at least, is merely indirect. . . . Indirect culpability for something presupposes direct culpability for something else. Whatever this something else is, it cannot be ignorant behavior, because then the argument would apply all over again to this behavior. Hence all culpability can be traced to culpability that involves lack of ignorance, that is, that involves a belief on the agent's part that he or she is doing something morally wrong.³⁹

In brief, one who kills following wrong moral beliefs would be responsible only if one did something in the past with the intention to bring oneself into the state of the later moral ignorance.⁴⁰ Then the central question, claims Zimmerman, is 'how can I control . . . my transition from a state of not believing that p to a state of believing that p ?⁴¹ Such control requires that the transition occur either by way of my bringing it about that I believe that p or by way of letting it happen that I believe in p .' Montmarquet will argue that in this situation everyone has a fundamental duty of reflection: each person, confronted with the possibility of the transition, ought to care, that is, ought to demonstrate the openness to the questions of the truth and value.⁴² Zimmerman disagrees:

But even if taking such care were in my direct control, *still* we should say that my believing that p is not in my direct control. This is because, in such a case, my bringing it about that I believe that p must be a nonbasic action . . .⁴³

So, moving from the state of not believing that p (say, I do not believe killing innocents can ever be justified) to the state of believing that p (where I would believe killing innocents is justified) is a non-basic action. It is non-basic because the subject is people who are ‘closed-minded’ at the moment of transition. For such people, it holds that ‘I must first change my attitude from one of being “closed” to one of being “open” and it is only *by way of* doing this that I can come to see the truth’.⁴⁴ It is because of the closed-mindedness at the moment of transition that those who will later become killers fail to ask Montmarquet’s question: the basic action of taking morally proper care would require opening one’s mind.⁴⁵ If I understand Zimmerman correctly, the argument can be presented through the following example: before transition, Eichmann most likely had not believed that killing innocent people was right. But he was closed-minded (for instance, he believed that the Jews were exploiting the Germans). When the time of the transition came, he failed to perform the basic action of opening his mind (which would mean realizing that his views on the Jews were actually unjustifiable prejudices), which resulted in his non-basic action of accepting the belief that p (killing the Jews is justified).

Analytical and empirical conclusions follow. Analytically, one’s responsibility for an action committed in ignorance of moral norms is ‘at least indirect’. Even if we establish that the closed-minded agent in the past successfully carried out the action intended to cause his or her own later ignorance, we need to take into account two moments: first, this is a non-basic action; second, at the moment of committing the blameworthy action the agent is ignorant not only about the character of today’s action, but also about the character of the past action that brought about the transition. Thus, ‘one is never in direct control of whether one is ignorant’.⁴⁶ Assume that in the past I successfully performed the intentional action that brought me into today’s state of ignorance. Specifically, my intention was to become ignorant of the moral implications of killing innocent people, so that in the future I would be able to kill members of another ethnic group without being aware of the immorality of that action. If I today kill, my ignorance about the character of my action will be indeed authentic – being ignorant today implies that I do not comprehend any more my past action that brought me here. One’s freedom of action rests on one’s freedom of will, which is a mental condition.⁴⁷ One’s mental capacity today is relative to one’s mental states and actions in the past, meaning that the agent does not have direct control over her or his ability to judge today.

The empirical claim follows: the requirement of ‘at least indirect’ responsibility practically comes down to no responsibility at all. It would be very unusual, and difficult to imagine, that I today (1) decide to behave in a certain way guided by the idea that this behavior would bring me into

a specific condition of moral ignorance, and (2) form an expectation that my new moral views could once in the future create the opportunity for me to commit a morally wrong act for which – as a person who does not have the required knowledge any more – I will not be responsible.⁴⁸

But at the end of one of the analyzed texts Zimmerman somewhat unexpectedly leaves his analytical framework, to conclude:

... I continue to maintain that such agents [Höss, Eichmann and Kelly – N.D.] are in all likelihood not to blame for what they have done. I know that this is a bitter pill to swallow, but I submit that it is true. If we ignore this truth, we run the risk of treating many individuals unjustly (a *great* many, I should think) and thus of ourselves becoming doers of evil (for which, I concede, we will likely not be to blame, but that will not diminish the evil). Indeed, this is surely a risk that is realized every day. We must put an end to this evil we do.⁴⁹

So, Zimmerman departs from the claim that causes many people's intuitions to rebel, and then he offers its analytical defense. But the reasoning closes with a strong normative claim: to blame mass murderers for the evil they committed equals committing evil. He takes Höss, Eichmann and Kelly as *examples*, to sharpen the importance of his analytical concern. But he fails to observe that the choice of the examples has redefined the coordinates of his theme. Moral philosophy that – either through examples, or by choosing its particular topic – engages with premeditated killing of innocent people, cannot pursue its line of reasoning without reflecting on the ways of the development, justification, and the content of the murderers' moral beliefs. It should further ask about the ways of transforming beliefs in murderous intentions, justification of the decision to realize the intention through the criminal action, and the moral consequences that the crime creates. Failing to address these questions cannot be defended as a methodological preference for the analytical approach – this is an analytical mistake.

Geoffrey Scarre tries to defend Zimmerman's thesis by asking some questions that are neglected in the original theory – he proposes to consider the cultural context. Montmarquet's demands for openness and a responsible reflective attitude to the questions of the truth and value, rather than offering a guideline for a serious confrontation with the concrete problems of moral choice in hard cases, only formulate liberal virtues: 'Sadly, our feelings do not shine out like beacons, illuminating the moral truth however corrupt our factual convictions.'⁵⁰ The problem is not so much that people are typically less than fully open for moral considerations that would prompt them to reflect on the distinction between the truth and the lie, or right and wrong. The problem is that such openness, even if it could be achieved, 'is not the epistemic panacea it might at first seem'.⁵¹ Put simply, history teaches us that in borderline situations

people are inclined to come up with wrong answers to moral questions, even if they are capable of overcoming closed-mindedness, and of realizing that they are entering the transition into something wrong.

This is an important claim. It brings us back to the problem of comprehending the emergence and interiorization of the perverted ethics that precedes the criminal practice. Let us assume, or let us reconstruct from the historical experience, the following story.

We used to live as decent citizens in a community that acknowledged the principle of moral equality, both in the relationships among citizens, and in the way the state treated all its citizens. Then things somehow changed: the majority of those who used to be decent people sided with a militant extreme nationalist group, gradually accepting the group's ideology as their own value system. The group came to power 'democratically', thanks to the support of the new majority, and it set forth to carry out its ideology, again with the majority support. Mass killing of the innocent co-citizens, singled out on the basis of their belonging to a 'less valuable' or 'inherently evil' group, followed. After some years, the criminal regime collapsed, and the new regime opened the process of the democratic transition. The following predicament transpires: the same people, who as the subjects of the criminal regime used to support the crime, or who at least used to refuse to comprehend evil, now become the citizens of the democratic regime. The regime officially closes the book on the past, claiming either that imperatives of the democratic transition do not leave room for the backward-oriented considerations, or that the forward-looking transitional process renders such considerations obsolete, because legacies cease to matter at the rate at which we affirm democracy. So, yesterday's supporters of the criminal regime safely return to civilized normalcy, as individuals who allegedly clearly understand and accept the moral standards of decent society as their own.

This story reveals a frightening historical and moral dynamic. There used to be a time in which basic moral standards were accepted across the society. Then, these standards were abandoned both by the regime and most of its subjects, for the sake of hatred, moral ignorance, and indifference. After the crime, the new regime and the majority of its citizens rediscover moral norms, as if nothing happened. Their transition from the state of not believing that p (the crime cannot be justified) to the state of believing that p (the crime is justified), seems to be smoothly annulled by their return to the state of not believing that p (the crime cannot be justified). Although we yesterday believed that killing innocent people was good, from today on we are set to believe that moral equality and democracy are valuable, and that therefore the innocent ought not to be killed (any more).

Relativists would object that such a reasoning fails to account for the inner logic of the past events. The inner logic, Scarre would argue,

is determined by the people's limited capacity to resist the perverted ethics on which the regime based its ideology. This insight into the fact of human weakness is supported by the sadly rich empirical evidence. We are manipulable beings in whose lives 'fears and desires (conscious and unconscious) can play a large role in determining what we find plausible'.⁵² Perhaps Zimmerman goes too far with his claim that conscientious adherence to a morally corrupt ideology can acquit the agent, but Moody-Adams is equally wrong when she argues that the cultural context cannot possibly absolve from responsibility, and that moral ignorance is always self-induced. The truth, believes Scarre, lies 'somewhere between these extremes'. But what is the truth here? Acknowledging the analytical power of Zimmerman's arguments, the empirical evidence provided by the thesis of cultural determinism, and accepting Moody-Adams' claim that cultures are not 'conceptual prisons', Scarre will offer something that looks like a softened version of Arneson's thesis:

If we ask where precisely between these extremes the truth lies, the reply is that there are as many answers as there are individual predicaments. An agent's degree of moral responsibility is a function of a range of personal and situational factors, not all of which are within her control. Some of the agents of Hitler's will were patently better equipped or more favorably situated than others to subject the claims and demands of the regime to critical scrutiny. Doubtless some Germans who were capable of assuming a critical stance failed to do so because they scented opportunities for personal advance so long as they toed the party line. Others may have failed to exercise properly their 'power of taking care' from sheer laziness or cowardice or a liking for the quiet life, or from a conviction that people in authority must be wiser than they were. The basic moral principle here is that more is demanded from those who are capable of more.⁵³

'The basic moral principle' thus emerges as a combination of 'personal and situational factors'. We determine the former through the identification and classification of the psychological patterns of behavior, following the assumption of the individuals' unequal personal strengths. Second, 'situational factors' point to the relevance of the context for the person's *ability to express* the autonomous judgment. However, one could critically observe that these are two different issues, which raise different moral questions, requiring different approaches. Ability to judge (the 'personal factor') asks whether the person in the context of collective crime remains the moral agent, or whether perhaps the pressure of circumstances nullifies one's moral autonomy, excluding the perpetrator from the moral universe. When we say that a person in a criminal regime has ceased to be the moral agent, we exempt him or her from any responsibility for any action, including a criminal one. Consequently, his or her judgment about crime cannot be relevant any more, in the same way that the moral judgments of children or mentally disabled

persons are irrelevant. On the other hand, 'situational factors' can be understood as external obstacles to morally right behavior only if we agree that personal factors, understood in Scarre's way, are not relevant. Situational factors, properly understood, exonerate the assumptively responsible agent from retrospective responsibility if it can be demonstrated that duress was such that nobody could justifiably require the agent to oppose the morally blameworthy practices. The moral status of the agent who does not oppose the crime because it is impossible, is incomparable to the moral status of the agent who endorses killing as a morally legitimate action. Only the assumptively responsible moral agent can be exposed to the morally relevant duress, say in the form of the pressure of the regime's ideology and violent threats that deprive one of the possibility to express the moral opinion about the crime, or to act in accordance with that opinion. The agent who 'genuinely believes' that killing is morally justified will not be threatened by the criminal regime – this, I believe, should be one of the crucial features of any intellectually responsible social thesis.

In sum, Scarre's attempt to construct the 'basic moral principle' as a combination of psychological, cultural and historical features, the core claim being that moral evaluation of action cannot be based on the assumption of the agent's ability to judge, offers a problematic perception of both personal and situational factors. The analysis shows that writers like Zimmerman and Scarre work against the background of two theses that both pretend at moral relevance. The first thesis argues that there can be no universal moral criterion for the judgment of responsibility of the agents who in different ways participated in the crime. The parallel thesis says that the criminal action itself remains unjustifiable. Still, consider the analytically uneasy rapport between the two theses. While universalism applies to the judgment of the crime as the moral fact, relativism applies to the judgment of moral responsibility of the agents. The crime is morally unjustifiable, while the perpetrators, or at least some of them, are not accountable – to properly address the question of their accountability requires exploring their intentions and actions relative to different external contexts and personal constraints, or their combinations.

The argument fails to see that the two theses cannot and do not stand together. The relativist thesis taken seriously empties the human condition of any valid universal morality, hence rendering defenseless the thesis of the unjustifiability of the crime. To say that killing or otherwise harming other human beings is a universal fact of moral wrong that cannot be justified, and to proceed with the relativist thesis, amounts to an analytical error. I am not arguing that all participants in the mass crime are always causally responsible, nor do I claim that responsibility of all discrete individuals who belong to one of the subgroups of participants – perpetrators,

collaborators, or bystanders – is equal. Circumstances matter, but in a manner that differs from the relativist exposition. Circumstances can be properly conceptualized as the specific reasons that perhaps provide for different measures of retrospective responsibility of concrete individuals, or altogether absolve some other concrete individuals of retrospective responsibility. This claim retains the presumption of their assumptive responsibility. As such, it is substantively different from the claim of relativism, which largely focuses on abandoning assumptive responsibility.

Put simply, the ability *to judge*, as the distinguishing feature of one's moral agency, is not context-dependent. What remains context-dependent is the capacity *to act* in accordance with moral reasons. Relativism denies this distinction by reducing ability to judge to the contingent effect of circumstances. It claims that in a social, cultural, or historical context which upholds the standards of decency and moral equality, we can suppose that the people are typically assumptively responsible. But when external conditions change, internal ability to judge will crumble, depending on the type and strength of the blow to normalcy our society suffers, *and* on our character traits. A decent society produces moral individuals, while a rogue society undermines the moral decency of its members. Surely, these are all complex processes, which importantly depend both on human strength and on the character of the societal, cultural, or political crisis. But what really counts, according to the relativist argument, is that in such situations we cannot legitimately expect individuals to be autonomous agents any more. Maybe some of them will be in a better position – due to their status in society or due to their stronger character – to oppose duress and manipulative socialization. And perhaps we can, with Scarre, 'demand more from those who are capable of more'. Indeed, this looks like a logically correct step, especially if we abandon the principle of moral equality and settle for the claim that one's morality is a matter of measure. The measure is calculated by dividing the power of the context by the individual's social position and psychological and mental qualities. When comparing the results of this calculus, we could – following, for instance, Arneson – assume that the bigger numbers denote one's higher position on the scale of moral capacities.

This brings us back to the introductory relativist distinction between the empirical and the metaethical thesis. Consider the way analytical relativism combines its formal reasoning with the normative claims that 'Hitler is beyond the pale', or that 'the bitter pill has to be swallowed' in order to avoid the continuation of the evil practice that does injustice to the people like Eichmann or Kelly. We learn that an analytically scrupulous approach is not enough to defend the relativist position. When making normative statements, Harman and Zimmerman do not claim that such statements follow from the logic of the preceding analysis. When Harman argues that it would be 'odd' to expect Germans to evaluate Hitler's

behavior in moral terms, or when Zimmerman urges us to stop our unjust practices, they are building bridges back to the empirical thesis. The empirical thesis points to the independent force of culture or to the definite constraints imposed by one's mental and psychological condition. Both culture and individual psychology appear as empirically given determinants of one's morality. The conclusion then reads that the philosophical thesis of moral relativism is parasitic on a certain perception of culture, or on a certain understanding of human psychology, or on both. These are not thematized, but are merely assumed as empirically valid. However, a closer scrutiny would show that these are not empirical insights, but rather simplified interpretations of the alleged essence of culture and human character.⁵⁴ The problem is that the analyzed philosophical argument works only if we in advance agree with the truth of the offered claims about culture and character.

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Notes

- 1 This definition is taken from Linda Radzik, 'Collective Responsibility and Duties to Respond', *Social Theory and Practice* 27(3) (2001): 455–7 (456).
- 2 I try to elaborate on these categories in 'A Continuity of Silence in Serbia: From the Irrelevance of Human Rights, to Collective Crime, and Beyond', in Gurminder Bhambra and Robbie Shilliam (eds) *Silencing Human Rights: Critical Engagements with a Contested Project* (Basingstoke, Hants: Palgrave Macmillan, 2009), p. 132.
- 3 Mary Warnock, *Contemporary Political Philosophy* (New York: St Martin's Press, 1970), p. 60; quoted after Warren Thompson, 'Ethics, Evil, and the Final Solution', in Alan Rosenberg and Gerald Myers (eds) *Echoes from the Holocaust: Philosophical Reflections on a Dark Time* (Philadelphia, PA: Temple University Press, 1988), p. 181.
- 4 Thomas Nagel, *The Last Word* (New York: Oxford University Press, 1997), p. 10.
- 5 Here I follow Christopher Gowans, 'Moral Relativism', in *The Stanford Encyclopedia of Philosophy*, ed. Edward Zalta (Winter 2004 edn) [<http://plato.stanford.edu/entries/moral-relativism/>]
- 6 *ibid.*
- 7 *ibid.*
- 8 Nagel, *Last Word*, p. 6.
- 9 This comes close to a classical claim of all criticisms of the universalist position, where moral universalism is seen as a poorly hidden parochialism, which denies the wealth of the cultural experiences, forcing them into the straitjacket of moral principles that are valid only for some, and often legiti-

- mizing different forms of domination: ‘What the relativists, so-called, want us to worry about is provincialism – the danger that our perceptions will be dulled, our intellects constricted, and our sympathies narrowed by the overlearned and overvalued acceptances of our own society’; see Clifford Geertz, ‘Distinguished Lecture: Anti Anti-Relativism’, *American Anthropologist* 86(2) (1984): 263–77 (265).
- 10 James Ryan, ‘Moral Relativism and the Argument from Disagreement’, *Journal of Social Philosophy* 34(3) (2003): 377–86 (377).
 - 11 ‘The aim of relativism is to explain away each conflict, and this involves two tasks. It has to say why there is no conflict, and also why it looked as if there were one’; see Bernard Williams, *Ethics and the Limits of Philosophy* (Cambridge, MA: Cambridge University Press, 1985), pp. 156–7.
 - 12 Gilbert Meilaender, ‘The (Very) Last Word’, *First Things* 94 (June/July, 1999): 45–50 (45).
 - 13 This argument faces some difficulties at the level of the logical consistency: if everything is relative, then this ultimate thesis of relativism has itself to be seen as an objective standard, and not merely as an expression of a local point of view. See Nagel, *Last Word*, p. 15.
 - 14 *ibid.*, pp. 4–5.
 - 15 Gilbert Harman, ‘Moral Relativism Defended’, *The Philosophical Review* 84(1) (1975): 3–22 (4).
 - 16 *ibid.*, 6.
 - 17 *ibid.*, 13.
 - 18 *ibid.*
 - 19 David Thunder, ‘An Argument against the Relativism of “Inner” Moral Judgments’, manuscript (1998); see: [<http://www.nd.edu/~dthunder/Articles/Article2.html>]; a text that provides an excellent analysis of Harman’s argument.
 - 20 Harman, ‘Moral Relativism Defended’, 8.
 - 21 *ibid.*, 13, 3.
 - 22 *ibid.*, 7.
 - 23 *ibid.*
 - 24 *ibid.*, 8.
 - 25 Gowans, ‘Moral Relativism’, pp. 7–8.
 - 26 Michelle M. Moody-Adams, ‘Culture, Responsibility, and Affected Ignorance’, *Ethics* 104(2) (1994): 291–309 (293).
 - 27 Alan Donagan, *The Theory of Morality* (Chicago, IL: Chicago University Press, 1977), p. 135; quoted after Moody-Adams, ‘Culture, Responsibility’, 293.
 - 28 Richard Arneson, ‘What, If Anything, renders All Humans Morally Equal?’, in Dale Jamieson (ed.) *Peter Singer and His Critics* (Oxford: Blackwell Publishers, 1999), pp. 120–1.
 - 29 *ibid.*
 - 30 *ibid.*
 - 31 *ibid.*
 - 32 Geoffrey Scarre, ‘Excusing the Inexcusable? Moral Responsibility and Ideologically Motivated Wrongdoing’, *Journal of Social Philosophy* 36(4) (2005): 457–72 (458).
 - 33 Michael Zimmerman, ‘Controlling Ignorance: a Bitter Truth’, *Journal of Social Philosophy* 33(3) (2002): 483–90 (483).

- 34 Michael Zimmerman, 'Moral Responsibility and Ignorance', *Ethics* 107(3) (1997): 410–26 (412).
- 35 *ibid.*
- 36 James Montmarquet, 'Zimmerman on Culpable Ignorance', *Ethics* 109(4) (1999): 842–5 (845).
- 37 Zimmerman, 'Controlling Ignorance', 485.
- 38 Zimmerman, 'Moral Responsibility', 414.
- 39 *ibid.*, 418.
- 40 *ibid.*, 415–18.
- 41 Zimmerman, 'Controlling Ignorance', 487.
- 42 Montmarquet, 'Zimmerman', 845.
- 43 Zimmerman, 'Controlling Ignorance', 488.
- 44 *ibid.*
- 45 It is possible, admits Zimmerman, to imagine people whose minds *are* open at the moment of transition: their 'bringing it about to believe that *p*' would be indeed a basic action, 'but the sort of case under consideration here is not like that'; *ibid.*
- 46 Zimmerman, 'Moral Responsibility', 418.
- 47 *ibid.*, 414.
- 48 'In the absence of any such cognitive connection between that for which an agent is directly culpable and its consequences, these consequences are not indicative of the extent to which the agent is culpable, and hence it seems quite inappropriate to say that the agent is culpable for them, even indirectly'; *ibid.*, 420.
- 49 Zimmerman, 'Controlling Ignorance' 489.
- 50 Scarre, 'Excusing?', 466.
- 51 *ibid.*, 464.
- 52 *ibid.*
- 53 *ibid.*, 468–9.
- 54 Michele Moody-Adams, *Fieldwork in Familiar Places. Morality, Culture, and Philosophy* (Cambridge, MA: Harvard University Press, 1997), p. 83.