



THE LEGAL CASE METHOD APPLIED TO THE FILM *JUDGMENT AT NUREMBERG*

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ABSTRACT

The aim of this paper is to reflect and comment on certain scenes from Stanley Kramer's film Judgment at Nuremberg based in the Case Method methodology used in university lessons to teach Law and Ethics. The judgement which this film addresses is extraordinary, being one in which judges themselves were judged by other judges; as such, it presents a perfect example through which to think about the social responsibility of the legal profession with respect to the application of Law and what relationship this has to broader moral and ethical considerations of the value of human rights.

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1. Introduction

"The last decade has witnessed important changes in the higher education landscape, among which we can highlight the use of technology to improve learning in every level of the educational system in general and in university education in particular" (Magadán-Díaz & Rivas-García, 2021, p. 186). Audiovisual resources are an example of the evolution of learning, which is constantly improving thanks to technology. With the use of audiovisual tools, we achieve a "good teaching technique that facilitates the understanding of more abstract concepts" (Gutiérrez et. alt., 2022, p. 3).

For more than a decade I have been using pedagogical resources such as films to talk about the relationship between law and cinema, give historical examples and explain in a creative and participatory manner the main ethical debates in the history of law. The resolution of practical cases as a type of problem-based learning, also called "Case method", is a teaching methodology very commonly used by modern pedagogical trends in American law schools, which has been successfully incorporated into our pedagogical models as a case study. The case method aims to analyze a real or hypothetical event in order to link theory and practice dialectically in a process of reflection that is significant to the students. As an active learning method, it consists of the description of a fact that allows students knowing it, interpreting it, creating different working hypotheses, carrying out a diagnosis to reach its resolution and, on occasions, finding possible alternative solution procedures (Atienza, 2006).

What are the results of the case study method in student learning? The Case Method can offer three teaching objectives whose relevance must be considered: First, it supposes for the students a first contact with reality —especially if the proposed cases are current— essential in the ethical-legal world. Secondly, it contributes to reinforce or complement the knowledge exposed and analyzed in the theoretical or expository classes. The practical classes are the appropriate venue to return to influence some topics, aspects or questions that are difficult to understand theoretically, or on which it has not been possible to emphasize. Thirdly, the Case Method fosters a forum for student participation in the classroom, this being the most appropriate moment for them to assume a leading role in the classroom.

This methodology is highly suitable for the development of communication skills, problem analysis and awareness-raising and decision-making regarding key issues for ethical and legal reflection. In fact, in the specific practical case proposed, they are asked to deliberate as judges of the case and motivate a sentence based on the various legal theories. Below we will explain in detail what exactly this example of an ethical-legal case study consists of.

And one of the best-known audiovisual works that have been most useful for us to apply the Case Method with our Law and Ethics students has been the film *Judgment at Nuremberg* (Kramer, 1961). The film *Judgment at Nuremberg* premiered in 1961, at a time when the events that the film depicted were still recent memories. As is well known, the victorious Allied Powers agreed unanimously to judge and to condemn those responsible for the atrocities that had been committed during the Nazi regime, from the rise to power of Adolf Hitler in 1933 to the end of the war in May 1945. This process took place in 1947, in Nuremberg, before the International Court, and the accused comprised judges, prosecutors and senior officials of the Ministry of Justice who had had a prominent role in the creation and application of the legal norms of the Nazi regime.

This film retains its importance today, nearly seventy years after this process took place, because these judgements are widely considered to have been the first important step in creating an International Criminal Court —which, rising above state interests, and even standing against them, has acted to condemn the most serious violations committed by arrogant state powers against human rights. It thus protects the human rights of individuals themselves, but also those of ethnic, religious, ideological or political minorities, who have every right to freely and peacefully practice their ideas and beliefs, or to develop as groups. Perhaps the most significant development in international criminal justice since the Nuremberg trials has been the establishment, by the Rome Statute in 1998, of the permanent International Criminal Court (ICC) in The Hague; and here we might venture to say that Kramer's film contributed to the formation and strengthening of a universal consciousness of an ethics of human rights, as stated by the Former United Nations Secretary-General Kofi Annan: "This cause ...

is the cause of all humanity”¹. Hence the importance of *Judgment at Nuremberg* for the Ethics and Law as subjects to be taught at university, and for its role as being the first step in creating an International Criminal Court. As stated by Nir Eisikovits,

The Nuremberg trials still stand out as legalism’s greatest moment of glory. In spite of intense political pressure by Stalin, Churchill, and powerful figures inside the United States to dispense with trials all together, and in spite of the unprecedented nature and magnitude of the crimes, the judges at Nuremberg presided over a remarkably cool and orderly procedure. The tribunals also established important principles of international justice, such as the responsibility of heads of state, the rejection of the infamous excuse that claim *I was just following orders*, the weakening of retroactivity as a defence against crimes of mass atrocity, and the right of war criminals to a fair trial. In addition to these important legal achievements, Nuremberg also established the trial as an invaluable instrument for creating a credible, lasting historical record of human rights abuses (Eisikovits, 2014, Section 2.1, para. 7-8).

In addition to the strictly legal issues that we will discuss in this paper, we must recall that the complexity of the problems addressed in this judgment was exacerbated due to several factors: first, the lack of legal precedents; secondly, the suspicion that, deep down, it was simply a "Justice of the victor" against the vanquished (Fonseca & Miró, 2022). In fact, in Spain this film received the ambiguous title *¿Vencedores o Vencidos?* [*Winners or losers*] and has been brilliantly analyzed by a complete and rigorous study of Muñoz Conde & Muñoz Aunió (2003, p. 114); and thirdly, because of the lack of understanding between the victors themselves, who, due to geopolitical reasons, failed to come to agreement on the proper way to proceed.

As is explained below, while some thought that state reason should prevail, others held that International Law should prevail. *Judgment at Nuremberg* is therefore a challenging film about a challenging issue; it sets out the most important ideas of Nazism, and prompts us to think about the responsibility that the leaders of Nazism had in the application of Law. And although it is true that Kramer’s cinematographic script contains some historical imprecisions —for example, only four of the twenty-four men who were accused actually appear in it— this film gathers in essence the historical and legal frame of the epoch, and raises legal problems that have enduring interest for the Ethics and Law (Martínez Cristóbal, 2022). Let us move on, then, and comment on some scenes from the film.

From the specific point of view of the Philosophy of Law, this film concerns a vexed and difficult issue: the problem of the responsibility of the individual for his decisions when he acts inside a system that formally legitimates and even imposes actions that should appear, to any good or sensible person, to be crimes against humanity. This issue becomes even more urgent when it applies to prestigious jurists, as was the case here: authors who wrote bulky works on the Concept of Law yet who, at the same time, were capable of performing the most inadmissible violations of elementary human rights, something that no one in their right mind could think of doing with impunity. Among other things, the cases adverted to in the film concern: forced sterilisation; extermination in concentration camps of Jews, political dissidents, and the socially marginalised; and racist and discriminatory laws against persons belonging to other races, or those of Ukrainian or Polish origin (Lee Vera, 2023, p. 2).

These measures were legitimised, created and implemented by eminent and unscrupulous jurists: often, these were fanatics driven by the biological-racist ideology of National Socialism; but in other cases —and these are perhaps the most worrying— they did their work simply because they were carried away by opportunism, obedience, or even fear and cowardice. Such feelings are rooted in human nature and have nothing to do with ideology, and are all the more dangerous for being so difficult to detect; and as is noted in the film, some of the judges themselves were not even Nazis, yet acted *just out of blind obedience*. Here we see the tricky relationship between law, reason and emotion.

Certainly, the work of lawyers and jurists as legitimizers of any political regime often goes unnoticed from the perspective of public opinion; and the importance of this film lies precisely in that it makes us see that there was indeed a distinguished group of German jurists drafting those norms

¹ The International Criminal Court (ICC) investigates and, where warranted, tries individuals charged with the gravest crimes of concern to the international community: genocide, war crimes, crimes against humanity and the crime of aggression. See The International Criminal Court (ICC) website: <https://www.icc-cpi.int/about/the-court> [accessed February 10, 2023].

and applying them and, thus, what they were doing through their professional actions was to legitimise one of the greatest and most horrible tragedies that the human race has experienced so far, namely the Holocaust. This is what Judge Haywood means, in presenting his verdict, when he says that “The dagger of the assassin was concealed beneath the robe of the jurist” (Kramer, 1961, 00:20:00). This is a danger to which we must be alive even today.

We must recall that there were other prosecutions against the Nazi doctors who practised euthanasia, against the companies that enriched themselves with Nazism, etc. The film depicts only one of the thirteen Processes that took place at Nuremberg. The film’s choice to focus on the judgement on Nazi Jurists is therefore no coincidence, but reflects the significance of the juridical questions that these issues raise. That is why Kramer’s film, besides being an excellent piece of art, is the preeminent indictment of the crimes of the State and the impunity with which such crimes can sometimes be committed by government employees.

We recommend the reader watches the movie alongside reading this paper, so we leave this introduction here and move on to comment on the first scene that we want to pick out in this paper (Kramer, 1961, 00:08:30–00:16:00). This sequence is important, because here it is said that the defendants —the judges of the Third Reich— were capable of *committing crimes in the name of law*. This is, at least, paradoxical. Until now, the delinquent had been seen as someone who *breaks* the law (literally a *law-breaker*). Yet this scene raises the question: Is it really possible to commit a crime in the name of law? And if so, how is this possible? The explanation for this lies in the fact of the accused not knowing —as the district attorney remarks— what a *norm* is and what the *spirit of law* is. This is what was not known by these Nazi judges. This is a classic distinction and was explained in the mid-18th century by Montesquieu in his *The Spirit of the Laws*, a treatise in 31 volumes, wherein he establishes the principle of the division of powers as a guarantee against oppression, and wherein he considers the relationship between the spirit (or *raison d’être* of laws) and its pure expression as norms. Montesquieu stated that laws possess a *letter* (that is, written law), but they also have a *spirit*, a soul (Montesquieu, 2002, p. 94).

What does this spirit consist of? His answer is that it consists in that which motivated the legislator to dictate it, and this, often, is an intention that is not very clear in what is specified in the written law. Because of this, the interpretation that judges make of laws *a posteriori* is important, since they are supposed to be able to distinguish between the *law in the books* and *what is desired by the legislator*. As stated by the American legal philosopher Lon L. Fuller:

No superior wants a servant who lacks the capacity to read between the lines. The stupidest housemaid knows that when she is told “to peel the soup and skim the potatoes” her mistress does not mean what she says. She also knows that when her master tells her to “drop everything and come running” he has overlooked the possibility that she is at the moment in the act of rescuing the baby from the rain barrel. Surely we have a right to expect the same modicum of intelligence from the judiciary. (Fuller, 1949, p. 626).

Hence the criticism levelled at these German judges by the American attorney: better than anyone else, they should have known the difference between the *letter* and the *spirit* of laws, the relationship of law with justice and values. Those who should know the concept of justice *better* are therefore *guiltier*. It is precisely their own knowledge that makes them particularly culpable for their support of the Nazi ideology.

Furthermore, we must not forget that this judgement is also extraordinary because it is a judgement where judges themselves are judged by other judges; as such it is a perfect example to identify where the legal function must reside in cases of unfair laws. What arises here is the controversy between those defending the position of the *technical judge* and those defending the figure of the *wise judge*. For the former, the judge must be a mere technical applicator of Law to avoid falling into a subjectivism that falsifies the sense of law, and which, instead of revealing what the original lawmaker desired, would give judges further discretion in their sentences —in effect this would be to allow them to attribute the intention of the legislator by themselves, in this way falsifying the sense of the law. These are the considerations to which a positivist would appeal in defense of their ideal of the *judge as a technician*. The other version says that the judge must always bear in mind the *soul of law* —that to which Montesquieu was referring— which is something very different from

the text itself, and which is therefore something that should be taken into account so as not to falsify the sense of Law or of justice. This is what an iusnaturalist would appeal to in defending his ideal of the *wise judge*. This dialectic between the function of the wise judge and the technical judge is the one presented, in dramatic form, in this film.

Let us now comment on another scene (Kramer, 1961, 00:16:00 - 00:20:00). This scene raises an important question: Why does the defence attorney say that "It is not only Ernst Janing [one of the German judges accused] who is being judged here, but the whole German people?" (Kramer, 1961, 00:16:00 - 00:20:00). The answer is that the scope of this court is much wider than merely condemning these men. The court is "aspiring to find a code of justice accountable to the whole world" (Kramer, 1961, 00:16:00 - 00:20:00). However, the question remains of how this code could be set. Such a code cannot be arrived at only by reviewing legal documents, but requires us to go further and to broach political and social questions, what the defence attorney calls *the character of men*.

One of the main problems represented in the film is that the German judges who are on trial acted in agreement with positivist postulates and defended this idea of the *judge as a technician*. This is seen in some of the formulations that the defense attorney refers to, which summarize very well the positivist and stalist ideas characteristic of the Modern Age, having to do with the separation of powers and with the idea of the Constitutional State. This the attorney says: "A judge is not the one who promulgates laws, [he] is the one who enforces those in his country" (Kramer, 1961, 00:16:00 - 00:20:00). It is clear that this is a positivist thesis. But the most positivist expression of all is when the attorney says: "My country comes first, whether it is right or wrong" (Kramer, 1961, 00:16:00 - 00:20:00); that is to say, for a positivist the priority is legality, *with* or *without* morality. From this perspective, obedience or disobedience to the Fuhrer would have been a choice between *patriotism or treason*.

Here we can find certain echoes of Machiavelli's idea that the important thing is to support the State, the Reason of State, its purposes, and all that makes it itself, thus increasing its strength; but the means to be used to reach these purposes are not important (Machiavelli, 1981). In raising these allegations, the defense attorney, Lawson, very cleverly formulates his defence by stating that are not only Germans, as one would imagine, but also patriotic Americans have been moved by this idea of the Reason of State. In this way he holds other American patriots responsible, who, like the Germans, have made such mistakes, and thus argues that the Germans are not the only criminals (in this respect we may think of Hiroshima and Nagashaki).

In his allegations, we can see that attorney Lawson is trying to make the members of the court see that the German judges had sworn to respect the Constitution of Weimar and the Laws of Nuremberg, professing loyalty to Hitler, and that they could not be condemned for having fulfilled and applied the laws of their country, because that was what they were supposed to do, that is, it was their duty to obey the law. And the defense attorney adds that, had these German judges acted against the laws of their country, they would have become traitors, thus violating the Constitutional State that consists precisely in respecting positive laws themselves, the very laws that they had respected. Here, then, lies a problem: Can positive laws be questioned for not adapting to moral laws? To what extent is resistance to Law allowed? In other words, what differentiates a healthy critic and defender of justice from a terrorist that seeks to put an end to the democratic State for reasons that are foreign to law? This question of having a moral responsibility to disobey unjust laws that are based on illegitimate legality was magnificently explained by Martin Luther King:

We should never forget that everything Adolf Hitler did in Germany was "legal" and everything the Hungarian freedom fighters did in Hungary was "illegal." It was "illegal" to aid and comfort a Jew in Hitler's Germany. Even so, I am sure that, had I lived in Germany at the time, I would have aided and comforted my Jewish brothers. (Luther, 2008, p. 234)

Let us continue by commenting another scene (Kramer, 1961, 00:28:00 - 00:37:40), where we can therefore see how shrewd this lawyer is to base his arguments on references to similar cases of sterilisation that occurred in the United States, mentioning, among others, the case of Virginia, where the American Judge Oliver Wendell Holmes supported a law that allowed the sexual sterilisation of criminals and mentally incompetent men. This is certainly different from the political use that was given to it in Germany, but lets us accept that there was already an established background and

jurisprudence on these issues in other countries, because in this historical moment they may not have been aware of the dangerous use which this could eventually be given.

In addition, the film also explains the status of judges in Germany before and during the dictatorship. Before the rise of Hitler there was judicial independence; then, during the dictatorship, judges were pressured to enforce a kind of “objective justice”, that is, what was necessary for the country (or for the dictatorship, which were considered the same at that time). Here lies another key issue: about judicial independence and the possibility of *conscientious objection* by judges in times of dictatorship. This is seen when the judge asks if the judiciary protested against the laws which reduced their independence and whether they believed that judges noticed the consequences that lay ahead. And the answer given by the witness is quite telling: he remarks that the dictatorship “became clear to those who had eyes or ears”. We can see this same problem later in the film (Kramer, 1961, 1:43:20 - 1:45:00).

This film also makes us reflect on the social responsibility of the legal profession, in this case of judges: for though they did not personally run concentration camps or power gas chambers, nor did they perform any acts of torture and killing, they did impose and execute laws and deliver verdicts that condemned thousands of people. They fulfilled law in a diligent way, terribly and meticulously, as a civil servant or a bureaucrat carries out a mechanical task. There is a scene where this problem is explained in great detail, towards the climax of the film (Kramer, 1961, 1:58:30 - 2:02:27). This scene takes place after some harrowing extracts from some real documentaries about the concentration camps. Here we may ask several questions, among them: Is it true that only a few Germans knew about those atrocities that were taking place in concentration camps? But... did they really *not know*? And here we should also ask ourselves: How can a nation that has contributed so much to culture, art and science have arrived at such an aberration? This is a philosophical and human problem: Was there some flaw in the German character, or it is a moral issue for the entire world?

On this issue, we can turn to Hannah Arendt’s concept of the *Banality of Evil*. Her own biography itself is very interesting. In precisely the same year that this movie was release, in 1961, the trial of Adolf Eichmann was being held in Israel for genocide against the Jewish people during the Second World War; after the trial, he was found guilty of crimes against humanity. Almost all the world’s newspapers sent reporters to cover the sessions, which were held in public by the Israeli government, and among these reporters was Hannah Arendt, sent by the magazine *The New Yorker*. In 1963, based on her reporting of the trial and drawing on her philosophical and political knowledge, Arendt wrote a book called *Eichmann in Jerusalem: a report on the banality of evil* (Arendt, 1994), which describes not only the way the sessions unfolded, but also makes an analysis of the *individual* Eichmann. According to Arendt, Adolf Eichmann had no traits of a person with a twisted or mentally ill character; he did not even have history of or tendency towards anti-Semitism (this is also seen in one of the defendants at Nuremberg, who housed Jews in his home as a service despite the risk that it entailed).

Arendt concludes that Eichmann acted like he did simply because of his desire to advance in his professional career; that is, his actions were simply the result of compliance with superior orders. He was a simple bureaucrat following orders, without thinking about their consequences. For Eichmann, everything was done with zeal and efficiency, and there was not a sense of *good* or *evil* in his actions. But with this she is not saying that he was a moral idiot: because in his individual life, with his family and loved ones, he acted normally and could distinguish between right and wrong. His problem, according to Arendt, was his lack of moral reflection, which made it possible that an intelligent individual like Eichmann could be devoid of all morality, and could employ torture as a simple method to get the system to work. That is also stated by Judge Haywood:

If he and all of the other defendants had been degraded perverts, if all of the leaders of the Third Reich had been sadistic monsters and maniacs, then these events would have no more moral significance than an earthquake, or any other natural catastrophe. But this trial has shown that under a national crisis, ordinary – even able and extraordinary – men can delude themselves into the commission of crimes so vast and heinous that they beggar the imagination. No one who has sat at through trial can ever forget them: men sterilized because of political belief; a mockery made of friendship and faith; the murder of children. How easily it can happen. (Kramer, 1961, 1:58:30 - 2:02:27)

This is also shown by Arendt when she notes that Eichmann did not feel guilty for his multiple crimes. In fact, he even said that he had read Kant and that he met the Categorical Imperative, in that his actions were performed out of duty itself: no specific evil motives, no reason. The subjective root of his crimes was not therefore an ideological motivation. And this is the terrible thing: it is not *what* he did, but *why* he did it. The worst is that behind his actions there were no motivations or any elaborate rationalisations. There was nothing, and this is the most terrible thing of all. The fact is that he was capable of a Holocaust that has gone down in history as the reification of substantive evil, and yet for this we can cite no reason or any evil will. This is what Arendt called the *Banality Of Evil* (Arendt, 1994).

This thesis is also supported by other authors such as Primo Levi. A Jewish survivor of Auschwitz, also a well-known Italian writer, Primo Levi was asked if he resented the Germans for what they did in the concentration camps. He replied: not particularly, because he saw them as pure officials, as cogs in a machine (Levi, 1959). This is very similar to Arendt's position. For her, Eichmann was not the "monster", the "pit of evil" as he was considered by most of the press. Of course, Eichmann's acts were not excusable, and neither was he innocent, but these acts were not performed because Eichmann was endowed with an immense capacity for cruelty, but rather because he was a bureaucrat, an operator in a system which happened to be oriented towards extermination. Arendt thus coined the phrase the "banality of evil" to express how dangerous it is that individuals should act simply within the rules of the system to which they belong, without reflecting on their actions. They do not care about the consequences of their actions, just about compliance with orders. For them, torture, execution of human beings or the practice of "evil" acts, are not considered in terms of their effects or their outcome, provided only that orders to carry them out have come from the higher strata (Fernández-Salinero, 2022, pp. 211-224).

On this issue, we can listen to the words of one of the accused in *Judgment at Nuremberg*, who would be a good example of a positivist judge, who says that "the personal sense of justice must be sacrificed to the legally established order" (Kramer, 1961, 02:35:00 - 02:37:37). He also considers himself innocent of all blame, for everything he did, he did for his country. In this part of the film the accused deny their guilt or liability for a range of reasons. Here we have what Norberto Bobbio called an *ideological positivist*, who separates and silences that personal sense of the right in order to enforce the law, however unjust it may be (Bobbio, 2005, pp. 33-51).

This was just one of the exculpatory arguments presented by the defence, but there were many others. In this process, as was generally the case in those which followed, all the defendants denied their responsibility in one way or another: some said that they never knew anything of mass extermination, or simply followed orders (like the above-mentioned positivist judge in the film), or said that they couldn't have done otherwise; others said that they always sought to ameliorate the most damaging aspects of the orders received or that they chose the lesser evil. Some of them even appealed to that *everyday routine* of judicial bureaucracy, which was many times put forward as an exculpatory argument, because it blurred the consciousness of illegality that some may have in applying those laws.

It was the appeal to these kinds of exculpatory arguments that led Hannah Arendt to her remark that there is evil, but evil understood as *banality*, as a lack of reflection on the purposes of Law. Today this phrase "the banality of evil" is used with a universal meaning to describe the behaviour of historical figures who committed acts of extreme cruelty and showed no compassion for other human beings, where no trauma or diversion of personality has been found to justify their actions (García, 2022, p. 245).

How can we then explain that these people can say that they were unaware of the terrible nature of their actions? The unquestionable evil of Eichmann's deeds seems not to be assignable to that individual, who is not particularly rare or demonic or monstrous. The terrible thing is that he was a normal person and did not have any obvious abnormal traits. So Hannah Arendt elaborates on the complexity of the human condition and alerts us of the need to always be aware that men may lose that critical capacity and fail to be able to distinguish between good and evil.

There is another key scene in which we can see Ernst Janning's self-incrimination, as well as the symbolic fact that he himself sat back in his place: in the dock of defendants. Here is the speech where Ernst Janning (played by Burt Lancaster) confesses his guilt to the Tribunal:

It is important not only for the tribunal to understand it, but for the whole German people. But in order to understand it, one must understand the period in which it happened. There was a fever over the land, a fever of disgrace, of indignity, of hunger. We had a democracy, yes, but it was torn by elements within. Above all there was fear, fear of today, fear of tomorrow, fear of our neighbors, and fear of ourselves. Only when you understand that can you understand what Hitler meant to us, because he said to us: "Lift your heads. Be proud to be German. There are devils among us, communists, liberals, Jews, gypsies. Once these devils will be destroyed your misery will be destroyed". It was the old, old story of the sacrificial lamb. What about those of us who knew better, we who knew the words were lies and worse than lies? Why did we sit silent? Why did we take part? Because we loved our country. What difference does it make if a few political extremists lose their rights? What difference does it make if a few racial minorities lose their rights? (Kramer, 1961, 02:17:10 - 02:26:26)

He said that their democracy was marked by fear. Why were they silent and why did they participate? Because for them what mattered was the welfare of the country. Janning acknowledges his guilt and accepts the sentence and humiliation that it implies: yet he says it is the guilt of all those who have sacrificed the rights of minorities *for love of country* (González, 2022, p. 159). And he criticises the defence lawyer who says that they did not know anything about the extermination programmes. Maybe, they may not have known the details, but if they did not know it was because they did not want to. This is clearly stated when he says that: "Were we deaf, dumb and blind?" (Kramer, 1961, 02:17:10 - 02:26:26). And referring to the accused judges, among whom he locates himself, he defines this idea of *the good German who knew how to take orders*. This distrust was caused by the heteronomy of modest and obedient civil servants of the judicial order who are sensitive only to the political balance of power in which nothing is rooted in the ground of social institutions, that is, humans themselves. That is why after the judgment at Nuremberg there was a widespread reaction against the abstract and formalist character of the positivist theory of law, and that is what led to a revival of Iusnaturalism, with its concept of law and legal interpretation as based on morality.

Let us continue by commenting on another scene, where the closing argument delivered by the defense sets out the idea that the German people found powerful allies:

Your Honor, it is my duty to defend Ernst Janning, and yet Ernst Janning has said he is guilty. There's no doubt, he feels his guilt. He made a great error in going along with the Nazi movement, hoping it would be good for his country. But, if he is to be found guilty, there are others who also went along, who also must be found guilty. Ernst Janning said, "We succeeded beyond our wildest dreams". Why did we succeed, Your Honor? What about the rest of the world? Did it not know the intentions of the Third Reich? Did it not hear the words of Hitler's broadcast all over the world? Did it not read his intentions in *Mein Kampf*, published in every corner of the world? Where's the responsibility of the Soviet Union, who signed in 1939 the pact with Hitler, enabled him to make war? Are we not to find Russia guilty? Where's the responsibility of the Vatican, who signed in 1933 the Concordat with Hitler, giving him his first tremendous prestige? Are we not to find the Vatican guilty? Where's the responsibility of the world leader, Winston Churchill, who said in an open letter to the London Times in 1938 - 1938!! Your Honor - "were England to suffer national disaster should pray to God to send a man of the strength of mind and will of an Adolf Hitler!" Are we not to find Winston Churchill guilty? Where is the responsibility of those American industrialists, who helped Hitler to rebuild his armaments and profited by that rebuilding? Are we not to find the American industrialists guilty? No, Your Honor. No! Germany alone is not guilty: The whole world is as responsible for Hitler's Germany. [...] Ernst Janning said he is guilty. If he is, Ernst Janning's guilt is the world's guilt, no more and no less. (Kramer, 1961, 02:26:26 - 02:30:11)

What the defense attorney Lawson reveals with this statement is that others also collaborated with Nazism, and so must also be considered guilty, even if they are not to be found here sitting in the dock with the defendants. It is not therefore the character of the German people, but the whole world, to whom the defence attorney assigns responsibility for Hitler's rise to power. Here is again the problem of responsibility: not only legal, but also the human, social (responsibility), of all citizens.

Finally, then, let us comment on the last scene of the film *Judgment at Nuremberg* (Kramer, 1961, 02:39:22 - 02:51:52) where the three judges deliberate on the case and pronounce the verdict. The last judge states at the end of this scene that this case should be deliberated upon in future years, when historical perspective allows us to think about these problems with greater knowledge. Well, then, here we are, in those very future years to which he refers.

This scene presents the moment of deliberation by the members of the Court. It is quickly revealed that one of them will vote for the acquittal of the Nazi judges, arguing that the acts of the defendants on behalf of the Government and in compliance with the laws thereof may not be legally judged. This judge feels more in line with the state order, and says that the defendants are not really responsible for crimes against humanity. He even raises this question: "I ask you to tell me: What good will it bring to continue with this politics?" (Kramer, 1961, 02:39:22 - 02:51:52). In this sentence, we see clearly expressed the idea of Reason of State, of the consideration of the utilitarian purposes which can help the State regardless of its righteousness (Manzanero, 2022, pp. 39-47).

Judge Haywood, however, shows his skepticism; he doesn't understand how anyone can deny individual responsibility for the acts they themselves have performed. He therefore defends his personal sense, which is not only subjective, but also a criterion of a universal consciousness of justice, when he says that he hates to accept that there is no responsible person for all the dramatic events which he has been witnessing over the course of the proceedings (Caldera-Ynfante & Rosell-Aiquel, 2023).

Therefore, the idea of personal responsibility here constitutes the axis of and the guide for Criminal law. These are some of the questions that we should address: Where does individual responsibility lie? What law are we liable to? Are we only liable to the positive laws of men, or to the natural law which would be those moral principles recognised in ideally civilised nations? (Valdés, 2022, pp. 92-106).

Again, here's Antigone asking for Justice: Are we liable to the law of men or are divine laws also important? Therefore, concerning those German judges who had applied those unjust laws and, based on them, had sentenced citizens to death —citizens who had committed no offenses, or only offenses artificially created by the Nazis— the Court finally declared that "These judge's robes hid the dagger of the assassin" (Kramer, 1961, 02:39:22 - 02:51:52).

We must also bear in mind the context in which this statement occurs. The trial itself takes place in a single room, but there are also scenes from outside the trial where we can see that, in those years, the international political situation was becoming more and more complicated. As was widely expected, when the war ended the victorious powers withdrew into two separate and irreconcilable blocks, and the world was divided. The two truly victorious countries, the United States and the Soviet Union, now openly faced a new war that yet was *cold*, but which could lead to an armed attack at any moment, and this time with even more serious consequences. The atomic bomb had already been used in Hiroshima and Nagasaki, and the result of a nuclear war could this time be the destruction of Humankind. The Russians also sought to control Berlin, while the Americans were trying to thwart them, because losing Berlin would mean losing Europe, the West, and the Eastern Communist countries. It was during these years that the Berlin blockade began, and the war threatened to start all over again. All of this is constantly referred to during the trial, as well as events that happen outside the court and which influence —or at least threaten to influence— the judge's sentence. Thus the judge is virtually told that the verdict should be *smooth*, that it is not *convenient* to irritate the German population at that time, in order to retain their support in the difficult times ahead. This is the same advice that is given not only to the judge, but also to the attorney himself, so that he should not ask for big sentences. The American judges are told that the Germans have already forgotten that everything is ready to start a new phase based on *reconciliation*.

But Judge Haywood, who throughout the film has taken a position of observer and has not conditioned or influenced the judgment of the viewer, now invites us to form our own judgment; here, right at the end of the film, he is beginning to show his iusnaturalist point of view. Judge Dan Haywood defends his position and his judicial independence from politics, saying that he is a judge, not a politician, and must act in the name of Justice, not political interests. Let us reproduce some excerpts from the actual sentence:

From the evidence taken, it conclusively follows that the accused did the dirty work asked by politicians, and turned the Administration of Justice into a tool for the elimination of Jews, Poles, of the population of the occupied countries, of domestic political opposition. The abandonment of the state legal system to reach criminal goals is almost worse than the actual criminal facts. If Justice can kill thousands, why can't the police kill hundreds of thousands? (Kramer, 1961, 02:39:22 - 02:51:52)

So, finally, the Court is faced with the dilemma of having to pronounce a verdict which satisfies, at the same time, the sense of justice, and the political expediencies of the moment in which it is being delivered. Right at the end of the film, Judge Haywood states his opposition to this vision of reconciliation, of a German people who are ready to forget. He believes that there is an idea of Justice that is above political expedience, and realises that the case to be judged is one that goes beyond the interests of the accused, even of the German people. It is a case of interest to all Humankind, for it is the very idea of Justice that is at stake. This can be seen in this text by General Tedford:

The Temple of Justice must be consecrated again. This cannot be achieved in the blinking of an eye or by a simple ritual. Nor by a singular action or anywhere. It can only happen here in Nuremberg. Here we have a unique opportunity and the great responsibility to achieve that goal. Before us are the men who played a prominent role in the destruction of Law in Germany. And they must be condemned according to law. And it is appropriate to do it with conformity to the norms that they, however, denied to others. A conviction according to law is the only righteous destination for the defendants; the prosecution does not require anything else. (Kramer, 1961, 02:39:22 - 02:51:52).

Judge Haywood then adds something solemn and important: "The one who really calls for justice before this Court, is civilisation" (Kramer, 1961, 02:39:22). The Judge also appeals to that common principle, as iusnaturalists do when referring to natural law, when he says that during a national crisis, ordinary beings, even able and extraordinary men, may deceive themselves to commit terrible crimes. These speeches are indeed real gems: one that we might particularly appreciate, for example, comes when Judge Haywood delivers the decision of the Court:

A nation is not a rock, nor is it an extension of oneself. It is the cause that one defends, it is what one defends when defending something is most difficult! Before the nations of the world, let me proclaim in our verdict what we stand for: the Justice, Truth and Respect which the human being deserves. (Kramer, 1961, 02:39:22 - 02:51:52).

The conclusion that we can draw from this film is that the period after the Second World War saw the beginnings of a renaissance of iusnaturalism, the view that tries to propose a concept of law and of legal interpretation based on morality. As Professor John Finnis has remarked:

natural law theory's account seems the most explanatory: the moral rules applied were also rules of the "higher law" applicable in all times and places (and thus in Germany and its territories, before as after the Charter) as a source of argumentation and judgment "according to law" when the social-fact sources which are the normally dominant and quasi-exclusive source of law are, in justice, inadequate and insufficient guides to fulfilling obligations such as the judicial obligation to do justice according to law, or everyone's obligation to behave with elementary humanity even when under orders not to –even if those orders have intra-systemic legal validity according to the formal or social-fact criteria of some existing legal system. And if one has doubts about victors' justice, those very doubts can likewise appeal to principles of the same higher law, *ius gentium*, or law of reason and humanity. (Finnis, 2014, Section 3.1, para. 5).

Several authors who then began to recover the iusnaturalist theses did so in a way that helped lead to reviews and improvements of the doctrine of legal positivism. In particular, this is the case for the German philosopher of law Gustav Radbruch, who is now considered to be one of the champions of the "renaissance of natural law", and whose work aimed to challenge legal positivism on the basis of the Nazi experience (Radbruch, 1932). As we have seen in the case of the Nuremberg trials, Natural Law

will continue to play a crucial role in filling the gaps in positive law and in denying legal effect to norms that are radically unjust. Indeed, today, to be considered as valid law, laws must accommodate themselves to certain content criteria that integrate ideas of morality and justice—for example, fundamental rights (Grande Yáñez, 2021, p. 259). That's why Hart said that “Natural Law arguments were revived in Germany after the last war in response to the acute social problems left by the iniquities of Nazi rule and its defeat” (Hart, 1961, pp. 207-208).

It was not long, however, before legal arguments against these Military Courts in Nuremberg, headed by North American judges, were contemplated; one basis for such argument, for example, referred to the infringement of the principle of legality and non-retroactivity of criminal laws, since the acts of those who were accused had not been categorized before being committed. It is on this basis that the accused judge Janin refuses to recognise the authority of the Court at the beginning of the film, citing also the obvious bias of the judges, who were citizens of the victorious powers, etc. But these arguments did not affect the core of the case, and they were rejected by the Court on the basis of various arguments which are not under consideration now. Few people today, however, question the legitimacy of the Court's judgments; indeed, many criticise their limitations and the arbitrary way in which they were discontinued when faced with the new situation of cold war which was quasi-declared between the United States and the USSR. However, on the basis of the jurisprudence set out in Nuremberg, the International Criminal Law started to take shape.

We may say, then, that the Nuremberg trials provided a reference model for the creation of the International Criminal Court. Therefore, although the accused judges maintained their innocence for having simply enforced the laws in force in the Nazi regime, it seems obvious that adhering strictly to law does not justify any action against human rights, so no one should rely on the literality of the law in force to exempt themselves from responsibility for their actions and decisions.

And what happened to the condemned? Except for Hermann Goering, who committed suicide before being executed, and others who were sentenced to death and hanged, the rest, including those sentenced to life imprisonment, emerged from prison sooner or later and rejoined civil life under normal conditions. Indeed, most of the convicted men were soon released. The judge had predicted this and even admits that it is logical, remarking, however, that *not always what is logical is fair*. These are important words for a lawyer to bear in mind: not all that is arguable on the basis of logic is fair. But the fate of Janning and other convicted men was not as bad as one might initially imagine. After their release, they did not have many difficulties integrating into ordinary life. They were protected by their colleagues, and soon found jobs in various activities, generally related to the administration of justice or legal education, and their retirement pensions were recognized and generously paid. Their liability for those crimes was soon forgotten, and was diluted in the collective memory with the passage of time. The German public didn't care much about it either. Their sentences, therefore, didn't have many repercussions, nor were they the subject of any comment either for the population or for the legal professional sectors concerned.

Only now, through the work of certain historians, is interest in it being rekindled. That is why Kramer's film has a significance that goes beyond the purely cinematic, as it has bequeathed to posterity, masterfully and through a mass medium, an account of a fundamental ethical issue that concerns not only jurists, but anyone worried about the limits of the state and its servants in the employment of the terrible and at the same time necessary instrument that law is (Albar et. al, 2022). This is a problem that will surely command attention in the present historical moment, just as much as it will in the years to come.

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