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European Languages

زبانهای اروپایی

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02.01.2021

Donald the Culpable



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To the best of my knowledge, Donald Trump has never actually shot anybody on Fifth Avenue, not yet anyway, though the thought of acting out that famous boast of his must surely have crossed his mind. The man is amoral and sadistic, and always looking for ways to show off what he can get away with.

If he had shot somebody and his victim died, he could be arrested for murder, perhaps even while still in office.

These days, he'd probably not dare show his face on any New York City street, but if he did, and if he would then gun a victim down, he would find himself busted in a New York minute, sure as shootin'.

Because killings on Fifth Avenue or anywhere else in these United States that do not involve "interstate commerce" broadly conceived fall under the jurisdiction of state and local

governments, Trump couldn't pardon his way out of the consequences; presidents can only issue pardons for violations of federal crimes.

Sure as shootin' too, once arrested, Trump would convict himself. Unable to resist the temptation, he would brag about getting away with murder to everyone he could whenever he could; and so, his proverbial goose would be cooked.

That is how psychologically damaged the man is. Too bad for him that his mental problems, though serious, are not the kind that would support an insanity defense.

Therefore, depending on what prosecutors and judges would make of his intentions, he would be found guilty of first or, if done without premeditation, second degree murder.

Or, as anyone who logs serious time watching "Law and Order" or similar police procedurals knows, there is also "depraved indifference." Prosecutors charge it in cases where persons' actions cause death or other serious harm, but where they cannot prove intent of a kind that would warrant charges of first or second degree murder or, if done without deliberation or malice, manslaughter.

From a moral point of view, Trump's mishandling of the covid-19 pandemic would be a textbook example of depraved indifference. So would his treatment of refugees and asylum seekers along the Mexican border.

However, it is one thing to offend morality, and something else to violate the law.

In legal context, words and phrases – "depraved indifference," for example — do not always mean what they say in plain English. But with respect to issues pertaining to Trump's culpability, there is no need to dwell on fine points. Better to be as unsubtle and crude as Trump himself.

It would therefore be fair to say that, on any plausible construal of words and phrases typically used in discussions of morality and the law, Trump's crimes against the moral order are vastly more extensive and vile than his legally actionable offenses.

It should be noted, though, that there are more than enough of the latter to land anyone who is not white, well-off, and well-connected behind bars for many years.

If we had anything like "equal justice under law" in this country, Trump would be a goner too. But not, by any means, for the vilest, most immoral things he has done.

One reason why this is so is that it is practically axiomatic in real world politics that political leaders and their underlings cannot be held criminally liable for supporting pernicious public policies or for being bad at their jobs.

Even so, those of us who deem it crucial that he and they be brought to justice, even if only to deter future malefactors, can rest assured that they will not weasel their way out of punishment altogether. If nothing else, Trump and the others have enough old-fashioned, plainly actionable corruption under their belts to keep prosecutors busy for decades.

There is therefore no need to risk appearing to be soft on proscribing the criminalization of political opponents in the manner of illiberal autocrats, banana republic dictators, and Trump himself. It will more than suffice just to let the law take its normal course.

Arguably, exceptions should be made for non-actionable crimes that put organized human life itself in jeopardy or that could fairly be described as crimes against Mother Earth. Of these, Trump is guilty as sin. But, again, there is no need to go there – not when there are so many mundane offenses for which he could be put away.

However, this feels a lot like going after Al Capone for taxes.

But that is not because Trump's case is unusual; it is because he is an exceptionally awful person, a nasty old man with an authoritarian personality and the emotional maturity of a poorly socialized male adolescent; a vulgarian, a liar, a narcissist, a racist, a misogynist, an Islamophobe, a nativist, and a conman.

Compared to the competition, however, he does have a few good points. Unlike mainstream Democrats, he is generally averse to Cold War mongering as long as Russia is the targeted "enemy." And he has a healthy disdain for at least some neoliberal trade policies.

It is mostly just talk, however; and he is fine with Cold War mongering when China is the chosen target. Indeed, his support for Wall Street and, with some exceptions, for corporate elites is second to none. And despite all the blather about his "populism," he is as much a proponent of austerity politics as any corporate Democrat.

Also, although it is unclear what will come of it, his shenanigans have already done more harm to the Republican Party and to some of the more odious institutions of the national security state – the CIA, the FBI, the NSA, the whole rotten lot – than anybody else in the past half century. Whatever his motives might be, this is not to be despised.

Needless to say, none of this changes the plain fact that he is at least partly responsible for many of the grave harms we have suffered through over the past four years. At the present time and in the larger scheme of things he might well be the most culpable individual on the face of the earth.

Even so, the problems his case raises are not unusual. One way or another, and with varying degrees of intensity, they can and do affect everyone for whom politics is, in Max Weber's terms, a "vocation."

They arise too for everyone involved with war and preparations for war. They always have and will continue to do so unless and until the state itself is abolished, as anarchists demand, or "withers away," as Marx and Engels would have it.

However, even these highly unlikely – or, at best, far off — prospects hardly abrogate the general point except in the trivial sense that, were the state gone, armed conflicts involving state actors would be gone as well.

Assigning culpability is therefore more complicated than one might at first suppose. The issue is intractably problematic and will likely always remain so.

Were Trump to shoot somebody on Fifth Avenue or, for that matter, to mow down dozens of people anywhere, there would be no problem delineating his culpability; the relevant considerations would be straightforward. On the other hand, in the case of the hundreds of thousands of pandemic related deaths, illnesses, and hardships that his actions and inactions have caused, there is a good deal that is not straightforward at all.

From a moral point of view, Trump's culpability is beyond dispute. Anyone with a functioning moral compass would be hard pressed not to accuse him if not literally of depraved indifference, then of something very like it writ large.

But on a strictly legal plane, charging him with anything that could result in the kinds of punishments states mete out would be difficult at best.

To be sure, were public opinion overwhelmingly on board, and were his case in the hands of clever and determined prosecutors, anything is possible.

Judges are not nearly as apolitical as they claim to be when seeking Senate confirmation, and legal discourse is not nearly as constraining as is generally supposed. It may be impossible to correctly render certain judgments under certain descriptions, but anything, or almost anything, can be redescribed; and, in the law, if there is a will, there is usually a way.

With Joe Biden and like-minded Democrats calling the shots, chances are that Trump will walk away unpunished at the federal level for most, if not all, the crimes for which he could be charged. How likely is it, after all these years, that Biden and his cohort will all of a sudden discover that they actually do have backbones?

Fortunately, though, it is unlikely that he will ultimately get away with everything — because prosecutors in New York City and New York state will see to it that he does not.

But neither they nor anyone else can do much of anything to identify, much less remedy, Trump's offenses to basic human decency and morality.

Part of the problem is that it is not clear — in general, or particularly in Trump's case — how to distinguish depraved indifference (or whatever we call it) from sheer incompetence.

A bigger problem is that the idea that that ours is a political universe, and that this is just how things go in it, is widely — indeed, almost universally — taken for granted. This sense of how the world works affects the ways right-thinking people think about Trump and the lowlifes and loony-tunes that run the government for him, and also the ways that liberals think about “the good (actually, far from good) guys” they praise.

Thus, Madeleine Albright famously said that the deaths of some half-million Iraqis due to sanctions was “worth it”; she meant it too. As Bill Clinton's Secretary of State, she played some role in instituting and enforcing those sanctions. But since she didn't actually kill anyone herself, she comes off blameless. After all, she was only doing, and defending doing, what her job requires.

I would say that Albright's sanctions-boosting blather, or rather the policy positions behind it, are reprehensible enough to warrant her spending eternity in that "special place in hell" where she famously declared that women who did not support Hillary Clinton in the 2016 election deserve to go. But even I would have to concede that the idea that she ought to be deemed a murderer, perhaps even a mass murderer, is more than a little over the top.

Is this because I, like nearly everyone else, am under the sway of the consensus view? Or is it because it really does matter that she was only doing her job, and nobody – perhaps not even those Nazi death camp guards who were "only following orders" — should face punishment for that?

These are questions that elude simple answers; in the final analysis, they may be unanswerable. But they, or rather the puzzlements behind them, are the kinds of questions that need to be addressed in order to reflect properly on the culpability of Donald Trump.

It may therefore be impossible ever to come to terms with that issue definitively. But this is not to say that there is no chance at all of gaining clarity and insight by, as it were, poking around the edges. To that end, reflecting on the so-called good guys can be more illuminating than reflecting on the villains.

A liberal "icon" even more esteemed nowadays than Albright, Barack Obama, was more hands on. He would order weaponized drones deployed against targets in Afghanistan, Iraq, and elsewhere. He even drew up the "kill lists" himself — on Tuesday nights after dinner, according to some reports. He also deployed Navy Seals and other special ops assassins; thus he was boss of his very own Murder Incorporated.

Nevertheless, his situation is more like Albright's than Trump's would be were he actually to shoot somebody on Fifth Avenue – for the hell of it, as it were, not for reasons that fall under the rubric of legitimate state business.

This would be the case too for many other liberal idols – Harry Truman, for example. The buck stopped with him when it came to dropping atomic bombs on two Japanese cities, and to authorizing massively destructive carpet bombings of densely populated cities in Germany and Japan.

He also superintended the origins of the original Cold War and the murder and mayhem a few years later in Korea. A lot of people were killed or maimed in the Korean War, and it accomplished almost nothing of positive value.

Truman's German and Japanese counterparts had hell to pay for their many malfeasances, but no one thought to punish him. Why would they? Morality is a casualty of warfare, and nowhere more than in total wars, which is what the Second World War became. A president's gotta do what a president's gotta do.

I could go on forever. The conventional wisdom now has it that the United States "lost" the Vietnam War. In some ways, it did. But no one in the Kennedy, Johnson, or Nixon administrations suffered legal penalties on that account; and although the war tore American

society apart, we Americans hardly experienced anything like what the Germans and Japanese did in World War II.

It is practically axiomatic that Adolph Hitler was the epitome of a moral monster. Apart from the sad souls holed up in those dark quarters where, according to Trump, some “very fine people” reside, that is a universally held view even within the Trump base.

His case is the exception to the rule, inasmuch as Hitler actually would have been brought to justice, as many lesser Nazi war criminals were, had he been alive. However, this was a fluke, not a precedent.

To be sure, at the time, there were some who thought that constructive precedents were being established at the Nuremberg war crimes trials and in similar proceedings elsewhere, but, over the past seven decades, it has become increasingly difficult to keep faith in that expectation.

There has been remarkably little progress, and a whole lot of backsliding – particularly on the part of the United States, which has by now gone so far as to exempt itself from the very jurisdiction of the International Criminal Court, reinforcing the belief that, notwithstanding the intentions of enlightened jurists decades ago, the only international justice there is is victor’s justice, or ostensibly high-minded pretenses that ultimately serve the diplomatic and propagandistic interests of hegemonic states and their allies.

And then there is the military. The level of murder and mayhem for which they deserve blame, even just from the ordinary exercise of their duties, is many times worse than shooting somebody on Fifth Avenue could possibly be.

That they can and do get away with it, even in particularly egregious cases, goes without saying. And it is even worse than that.

Throughout human history, the consensus view has been that organized violent conflicts, whether or not just and whether or not justly pursued, provide occasions for persons involved in combat and for those that enable and command them to act in honorable ways, and to become honored.

Perhaps this is because, as Clausewitz famously said, war is “a continuation of politics by other means,” and all is fair, as it were, in both.

Trump seems to think about electioneering and governing in just the way that a military model would suggest. He knows little and cares less about what morality requires, but to the extent that he thinks about it at all, politics, as he conceives it, falls outside the moral sphere. There are legal pitfalls to be sure, and public relations matter a great deal, but otherwise all is fair, anything goes.

It is tempting to say that he is overcompensating for having evaded military service during the Vietnam War by getting a doctor to vouch for a lame medical excuse, bone spurs. But that explanation gives him too much credit; his mind, such as it is, is not that complex.

For Trump politics is a continuation of war because, having grown old without having normally matured, and having sociopathic predilections from the outset, he just doesn't know any better.

Here, perhaps is the nub of the issue, the reason why Trump's culpability seems qualitatively different from the culpability of others. It is because in the wars he fights, there is no honor; only pathetic self-regard, and a vain effort to avoid acknowledging shame.

JANUARY 1, 2021

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