

Rational Choice Theory

Resisting colonization

**Edited by Margaret S. Archer
and Jonathan Q. Tritter**



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11 The decision to commit a crime against humanity

Robert Fine and David Hirsh

The topic of this chapter is the decision to commit crimes against humanity. By the term ‘crimes against humanity’ we refer not so much to its specific legal definition as to the social phenomenon of individuals committing mass murder and other atrocities on behalf of a state or some other organized political movement.

The concept of ‘crimes against humanity’ was first legally articulated in the Nuremberg Charter of 1945. The Charter defined it in terms of certain specific acts (murder, extermination, enslavement and deportation), other non-specific ‘inhumane acts’, and persecution on political, racial or religious grounds. The limiting factor in all cases was that these acts had to be committed against civilian populations, have some connection with war and be carried out as part of systematic governmental policy.¹ The concept has now been amended in international law to broaden its application; for example, the nexus with war has been watered down and systematic rape has been incorporated in its list of specific acts.

The Charter introduced (as international law continues to advance) a strong notion of individual responsibility. It held that individuals acting within the legality of their own state can nonetheless be held responsible for crimes against humanity; the fact that defendants act under orders from their own government or superior officers cannot free them from responsibility; leaders and organizers who participate in the formulation of plans to commit crimes against humanity are as guilty as those who execute them; and the official position of defendants, whether as heads of state or as officials in government, cannot free them from responsibility. Not least, atrocities committed against one set of people – be it Jews, Poles, Roma, Tutsi or Muslims – are an affront not only to these people but to humanity as a whole, and humanity has the authority and duty to punish those who commit them.

International law establishes a definite link between individuals and their actions, by treating so-called ‘cogs in a murder machine’ as perpetrators and by refusing the excuse of service to the state. It presupposes that choices are available to the perpetrators of such crimes. If no such choice is in fact available, that is, if the situation is one of ‘kill or be killed’, then

this would constitute a legitimate defence or mitigation. This juridical presumption of choice and responsibility opens the door to sociological investigation into how decisions to commit crimes against humanity are made, even if the law is not itself directly concerned with this question.

The prevailing sociological explanation of such decisions is that provided in Zygmunt Bauman's (1993) genuinely path-breaking study, *Modernity and the Holocaust*. Bauman himself may not think of his work precisely in this way, but his basic proposition is that it is the dominance of 'rational choice' over moral response in the modern age that is the key to understanding how ordinary men and women commit such extraordinary crimes. Conversely, the key to overcoming this potentiality is seen to lie in the development of a postmodern ethics which subordinates the imperatives of 'rational choice' to a reconfigured 'moral point of view'. Bauman does not like a world structured around 'rational choice', but he accepts that this is the actuality of our present world. He looks to a way of thinking which overcomes the constraints of 'rational choice' and that in its place revives our suppressed capacity to act in a moral rather than rational way. From this perspective, 'rational choice' appears as a form of human decision-making which arises in the modern epoch and which has as its consequence the exclusion of ethical concerns. And 'rational choice theory' appears as a form of reified consciousness which hypostasizes rational choice, as a natural presupposition of social life, and blinds us to its historical preconditions and de-moralizing consequences.

Our interest, in this chapter, is not to defend rational choice theory against this very sharp line of criticism, but rather to argue that this line of criticism is over-dependent on the rational choice model which it attacks. We want to argue, firstly, that the reduction of 'modernity' to the imperatives of an amoral and instrumental rationality paints a one-sided picture of modernity which obscures the inner connections between modernity and the development of moral consciousness itself; secondly, that the reduction of reason to instrumental or technical or technological rationality distorts the meaning of reason and severs its connections with thinking, understanding, willing and judgement; thirdly, that the decisions of individuals to participate in crimes against humanity (including those synthesized under the name of the Holocaust) cannot be adequately explained within this framework; and, fourthly, that the moral point of view itself is far from being a purely innocent or suppressed factor in decisions to commit crimes against humanity. Most of all, although we recognize that Bauman and those who think like him have undoubtedly revealed something extremely important about the nature of organized violence in the modern age, we must also be alert to the dangers of forcing the empirical phenomena into an overdetermined theoretical straitjacket.

Modernity and the Holocaust: Bauman's critique of rational choice

In Zygmunt Bauman's conception, the modern world really does run the way rational choice theory says it runs: in terms of short-term and instrumental preferences set within a given domain. Every aspect of social life encourages, coerces and impels individuals to act in accordance with their own short-term, narrow, selfish interests. We live according to that 'principle' alone; we do that which we find rational in terms of immediate self-interest. This includes the search for means, obedience to orders and conformity with social norms, regardless of their moral content. It also means the prioritizing of self-advancement or self-preservation regardless of moral cost. We become a new type of bourgeois: not the Kantian who thinks and judges for herself, but the 'mass man' (to use a phrase borrowed from, among others, Hannah Arendt) who can kill without passion or enmity, simply as a job or in service to the state, because it is an efficient means to a given end, or because he is commanded so to do, or because that is what everyone else is doing. The making of merely 'rational choices', without regard for ethics, is the very mark of this social type. It is, Bauman argues, through the combination of many such 'rational choices' that the Jews of Europe were rounded up and murdered. As long as we remain within this 'rational' template, we are destined to play our part in the genocide.

The frighteningly domestic image through which Bauman portrays modernity is that of a 'garden culture' in which the extermination of weeds is the necessarily destructive aspect of the gardener's productive and aesthetic vision. A gardener has an image of how he wants his garden to be. He wants it to be well ordered and to conform to his own dreams of beauty and serenity. He likes certain plants and breeds them to fit in with his plan. He does not like other plants, which he designates as weeds, and then poisons or incinerates. In this scenario, the gardener sees the elements of nature instrumentally, in terms of how they effect him and may be affected by him, rather than as things endowed with an intrinsic value of which he is guardian (Bauman 1993: 91–2). In modernity, human beings are themselves stripped of intrinsic value. Some are defined as weeds, others are selectively bred. Genocide is a kind of social weeding, and Hitler and Stalin were but 'the most consistent, uninhibited expressions of the spirit of modernity' (Bauman 1993: 93).

If the technologization of conception is one aspect of the spirit of modernity, the other is the technologization of execution. In this reading of the situation, it was the bureaucracy which executed the Final Solution, and even the 'political master', Hitler, found himself in the position of the 'dilettante' standing opposite the expert and facing the trained official (Bauman 1993: 15).² There is no *decision*, as such, to commit crimes against humanity, simply the normal functioning of a bureaucratic state. In his discussion of Claude Lanzmann's *Shoah*, Bauman tells us that 'by far the most shocking among Lanzmann's messages is *the rationality of evil* (or was it the evil of rationality?)' (Bauman 1993: 202). For the bureaucratic

form of administration, which prevails in modern society, has a machine-like quality in which each bureaucrat follows detailed written rules unthinkingly and without responsibility for what the machine is doing as a whole. Bureaucracy is a machine for the exclusion of moral responsibility.

Bauman argues that the defining features of modern bureaucracy were not only well established in Germany during the Holocaust, but made the Holocaust possible. Government was conducted through a centralized, hierarchical and bureaucratic state; respect was afforded to science, knowledge and expertise; rational behaviour was valued over irrational behaviour; the breaking down of tasks into small parts was prevalent; the technology of factories and railways was well established. The Nazi regime appears in this reading as an extreme form of the modern state, and the administration which carried out the Holocaust as but an extreme form of modern bureaucracy. Even the choice of extermination ‘was an effect of the earnest effort to find rational solutions to successive “problems”’, and at no point did the Holocaust come into conflict with the principles of rationality:

The ‘Final Solution’ did not clash at any stage with the rational pursuit of efficient, optimal goal-implementation. On the contrary, *it arose out of a genuinely rational concern, and it was generated by bureaucracy true to its form and purpose.*

(Bauman 1993: 16–17)

In Max Weber’s exposition of modern bureaucracy, Bauman sees ‘no mechanism ... capable of excluding the possibility of Nazi excesses ... nothing that would necessitate the description of the activities of the Nazi state as *excesses*’ (Bauman 1993: 10). If it were the case that modern rational bureaucracy reduces the individual to nothing more than a cog in a machine, a blind applicant of rules, an actor only in the narrowest sense of making rational choices on exclusively instrumental grounds – if all this were true, then we could only conclude with Bauman that the condition of modernity robs people of any significant sense of moral responsibility and that it is this negation of moral responsibility that is the condition of the possibility, as Bauman might put it, of the decision to commit crimes against humanity.

Bauman implies that neither the abstract conceptions of individual responsibility found in law, nor the lack of any conception of responsibility in sociology, offers a remotely adequate response to the enormity of the issue. In this context, legal notions of individual responsibility are only a legal fiction imposed on a recalcitrant technological reality, and in any event a court is itself a bureaucratic, rule-bound institution which judges questions of criminal guilt by abstracting them from the complex reality of three-dimensional events. Putting the blame on a particular individual does little to confront the system of ‘rational choice’, for it is ‘modernity’ rather than individual killers that is primarily at fault. If perpetrators are guilty of not breaking free from this system, such is also the fate of the vast majority of people. Only

the few have the courage and vision to risk everything by stepping out of society and confronting their unconditional responsibility for others.

As far as sociology is concerned, Bauman argues that it typically mimics the society which it purports to understand. The general absence of the concept of moral responsibility in sociology, Durkheim's identification of morality with conformity to social norms, Weber's rationalization of bureaucracy, the reification of rational choice by rational choice theory – all this in effect reflects the conditions of modern society. In opposition to the unheroic 'mass man' who succumbs to the pressures and constraints of rational choice, the only way to save ourselves from complicity is to hear the call to Being with Others, the call of alterity, the call to act morally, the call to go beyond the 'morality-silencing' bounds of reason and society and rediscover the presocial sources of ethical life in the face of the other.

Rationality and the Holocaust reconsidered

Two particularly problematic areas in Bauman's critique of 'rational choice' concern his focus on bureaucracy. Firstly, in Weber's conception of bureaucracy, individual officials *are* responsible for their actions, and part of the immense power of bureaucracy is based on this responsibility for decision-making and rule interpretation which is distributed throughout the hierarchy. If the Nazi organization of terror and extermination constituted a typical modern bureaucracy, as Bauman argues, then individuals would have been expected to take responsibility for the tasks assigned to them, and the leadership could not have relied on its employees to perpetrate murder simply as 'cogs in a machine'. As Weber recognized, the process of following a rule is always mediated through mind and consciousness, and the ethos of public service is the oil that allows the machine to run.³

Secondly, the social organizations which conceived and executed the Holocaust were so different in both ideology and organization from the 'Weberian' model of bureaucracy that they should not rightly be called 'bureaucracy' at all. They expressed a mode of rule which inherited elements of bureaucratic authority but reconfigured them in a way that cannot simply be understood in terms of Weber's analysis of rationality. The Holocaust was organized neither by typically 'modern formations' nor by anything approximating an ideal Weberian bureaucracy.

Certainly, the analysis of totalitarianism in power offered, notably, by Hannah Arendt (1975) and Franz Neumann (1957, 1963) paints a profoundly different picture of totalitarian rule. Totalitarianism was not the final culmination of the power of the modern state, but a revolution against the structures of the modern state. Movement rather than structure was its essence. Totalitarian rule was organized on the basis of the intermeshing of various state and party institutions and the proliferation of organizations within the party. Duplication was particularly apparent within the many police apparatuses, which all did similar work, spying

on the population and on each other, without any clear knowledge of who would be rewarded and who would be purged.⁴ In the complex duplication of organizations involved in the Final Solution, all were 'equal with respect to each other and no one belonging to one group owed obedience to a superior officer of another' (Arendt 1994a: 71).⁵ The only 'rule' according to the *Führerprinzip* was that formulated by Hans Frank: 'Act in such a way that the Führer, if he knew your action, would approve it' (in Arendt 1994a: 11). This 'categorical imperative' is the opposite of clear, rational, written rules. The 'leader principle' is not that of a bureaucracy organized on the basis of formal rules within a structured hierarchy, for the allegiance of the official is not owed to his or her immediate superior but to the leader himself.

The individual responsibility of the official is arguably even greater under the leader principle than in a regulated hierarchical bureaucracy in which responsibility and authority are distributed according to plan. On the one hand, to grasp the will of the *Führer* demands zeal and creativity far in excess of the old-fashioned plodding bureaucrat; and wide latitude is given to sub-leaders for the execution of policies. On the other hand, each holder of position is held responsible for all the activities of his subordinates, even in cases of disobedience and failure. The perpetrators were not generally forced into the formations which implemented the Holocaust. Eichmann was keen to win promotion on his particular 'front line' and the members of the murderous police battalions (the *Einsatzgruppen*) were given the opportunity to withdraw from the killing actions (Browning 1993). When they accepted the authority of these outfits, they chose to do so even if the parameters of their choices were limited.

Authority in the modern sense of the term is not the same as power. People choose to defer to authority. To be sure, choices are never completely free. They are made within the limits of what is possible and of what alternatives are possible; there are always external constraints. Yet rarely are those constraints so rigid that there is no choice; rarely is the structure so dominating that it removes all agency. Under the leader principle, authority works through the will of every member to know and act in accordance with the will of the leader and to take responsibility for all the decisions taken in their field of operation. Bauman was right to tie his analysis of responsibility to the actual ways in which decision-making was organized in the planning and execution of the Holocaust, that is, not to remain exclusively at the level of political philosophy or legal theory but to link such concerns with a sociology of decision-making. However, the presumption of rationality in the substance of his analysis obliterates what Arendt called 'the horrible originality' of totalitarian rule.

A striking feature of the Holocaust commonly remarked upon was its industrialization of death. The Holocaust was of its time; it used the methods of its time, and particularly important to Bauman are the methods of modern management through which the genocide was in part carried out. We say 'in part' lest the 'industrial' image of Auschwitz overtake our imagination of the Holocaust as a whole. We should remember that the Nazis devised two basic strategies for the annihilation of Jews: mass shooting and mass gassing. Special duty

troops of the SS's Security Service and Security Police, called *Einsatzgruppen*, were assigned to each of the German armies invading the Soviet Union and were given the task of rounding up Jews and killing them through crude and primitive methods of shooting. These methods were the antithesis of Bauman's image of clean and dispassionate white-coated technicians introducing gas into gas-chambers. These were methods which confronted the killers with the blood, faces and screams of their victims. It is estimated that some 2 million Jews were murdered in this way. To murder the rest of European Jewry the Nazis built 'camps' with large-scale gassing and sometimes crematorium facilities (Auschwitz, Belzec, Chelmo, Majdanek, Sobibor and Treblinka), but also many other 'camps' which were designed to work their inmates to death. The technology used here was often barely more sophisticated than the brute violence of the *Einsatzgruppen*, and it was only when death camps were combined with labour camps (such as at Auschwitz) that architectural relics of 'industrial killing' were left behind. All in all about 3.5 million Jews were murdered in this way. A further half a million Jews or so were killed through hunger, disease and exhaustion in the ghettos and as victims of random terror and reprisal. In short, we should be wary of the contemporary synecdoche which substitutes 'Auschwitz', or rather an industrialized representation of Auschwitz, for the whole.

Some *elements* of bureaucracy certainly existed in the Third Reich: people were sometimes numbered, processed by bureaucratic-type machines, placed under systems of surveillance; there were papers, form filling, official stamps and files of information kept on individuals. But there was no bureaucratic hierarchy of command or system of rules that would be recognizable to a student of Weber. Officials who were technically in positions of authority could be denounced and replaced by their juniors; one apparatus was liable to be liquidated in favour of another; the stability and hierarchy of genuine bureaucracy were absent. What was most significant about the execution of the Holocaust was not the presence of bureaucratic authority but rather the *reconfiguration* of these elements to construct a principle of rule such as the world had not experienced before.

When Bauman turns rational choice into a modern fatality, he also reduces it to its basest elements. He declares that 'most scientists would be prepared in exchange [for research grants] ... to make do with the sudden disappearance of some of their colleagues with the wrong shape of nose or biographical entry' (Bauman 1993: 109). He says that rational individuals would play their part in gassing millions, if it meant holding on to a good job. The rational individual would look the other way, stand by and refrain from intervening into affairs that were none of his business, that were not in his job description. This is not the individual who would devote her life to making sense of the world in all its boiling complexity. The shame we feel when we live in a world in which the Holocaust has happened is represented as the antithesis of reason. It is as if morality and reason are opposed armies or

that the opposition of morality and reason which Bauman discerns under Nazism is true of modernity itself.

Bauman also totalizes rational choice to explain the behaviour of those who conceived the genocide, those who organized it, those who perpetrated it and those who stood by without intervening. And the same mechanism also appears to have governed the behaviour of the victims: 'The Jews could ... play into the hands of their oppressors, facilitate their task, bring closer their own perdition, while guided in their action by the rationally interpreted purpose of survival' (Bauman 1993: 122).

Bauman argues that the regime in power is always in control of the 'game' in such a way that the 'rational choice' from the point of view of the subordinates is also the preferred choice from the point of view of the regime. So it was that the Jewish administrators and police of the Ghettos were enticed to co-operate with the Nazis in the deportation of Jews on the grounds that, however many Jews they produced, they were saving or at least delaying the transport of the rest. The Nazis were able to rely on the Jews to act 'rationally' and thus collaborate in their own extermination: 'In [the world of Auschwitz], obedience was rational; rationality was obedience. ... Rational people will go quietly, meekly, joyously into a gas chamber, if only they are allowed to believe it is a bathroom ...' (Bauman 1993: 203).⁶

Here the 'rationality' of the Jewish response, which looked to make an accommodation with the Nazis, is contrasted with the 'irrationality' of the Warsaw Ghetto uprising. But the choice was not between unreason and reason. We may prefer the heroism of the Warsaw Ghetto uprising to the conformity of the Jewish councils, but in both cases Jews were faced with an impossible choice. The accommodation strategy seemed reasonable to a conservative Jewish leadership who understood the Nazi threat as a continuation of an age-old antisemitism with which a *modus vivendi* could eventually be found. It was an attempt to give a little in order to save more. The 'rebellion' strategy adopted in Warsaw seemed reasonable when it became clear that the Nazis planned to kill everyone and that there was no exit. It does not increase our understanding of events to assign the epithet of 'rational' to one strategy and 'ethical' to the other.

There can be two interpretations of Bauman's overall thesis. The *weak* one may be summed up by his observation that 'modern civilization was not the Holocaust's *sufficient* condition; it was, however, most certainly its *necessary* condition' (Bauman 1993: 13). This interpretation brings to the fore the fact that the Holocaust was modern both in its conception and in its execution and that the conventional view of Nazism as simply 'anti-modern' cannot hold. The *strong* interpretation of Bauman's thesis is that the dynamics of modernity push towards genocide, that there is nothing in modernity that pulls away from genocide, that even when genocide is not actual, its potentiality is ever-present. Bauman himself vacillates between these theses, but between them there is a lot of ground. The weak thesis reminds us that the Holocaust happened in a 'civilized' European country that was technologically and

culturally advanced and cannot be written off as an aberration or just another example of man's inhumanity to man. The strong thesis is that modernity brings with it the uncoupling of human beings from moral choice and the tying of human beings to a narrow, short-term instrumental rationality. People are made into unthinking cogs in the all-powerful structures of modernity. Bureaucracy brings us the human being who is incapable of seeing the bigger picture. Science brings us 'a rule forbidding the use of teleological vocabulary' (Bauman 1993: 190).⁷ Rational choice becomes our fate.

Doubtless the technical-administrative success of the Holocaust was due in part to the skilful utilization of 'moral sleeping pills' made available by modern science and technology; but it was also due to the skilful use of moral imperatives. The appeal by Nazi leaders to duty over private passion, economic utility and military need is now well established – whether in overcoming the resistance of 'ordinary men' to slaughtering other human beings or in overcoming the resistance of army generals to wasting much needed military resources on the killing of Jews. The 'moral point of view' was neither an innocent nor an excluded party in the decision to commit atrocities.

The case of Police Battalion 101

In his book *Ordinary Men*, Christopher Browning (1993) tells the story of Police Battalion 101, which was one of the formations which followed the German front as it invaded Russia in 1941 in order to kill the Jews who lived there. The personnel for the battalion was recruited from Hamburg during the war, after the youngest and fittest men, as well as the most politically committed, had already been drafted. Browning explores how these middle-aged citizens of Hamburg were transformed into mass killers. In interrogations after the war, the men of Police Battalion 101 identified a number of factors which led them to become killers: the wish to conform, to yield to peer pressure and to obey authority. They told of their desire not to be designated cowardly and not to evade their part in the dirty work that had to be done. Neither political indoctrination nor antisemitism seems to have been a major factor in these decisions.

The first assignment for the battalion was the rounding up of the Jews of Josefov. The men were to be sent to work camps and the women and children were to be shot. The Commander, Wilhelm Trapp, made it clear that no member of his battalion would be compelled to participate in the shootings: about a dozen of the men immediately decided not to take part and others opted out later. However, about 80 per cent of the men decided to participate. At first they found their task difficult to perform, but Browning argues that there was a 'toughening up' process which hardened the men to killing once they had already taken part. The 'decision' to commit crimes against humanity seems to have followed the first killings rather than to have preceded them. Once these men found themselves implicated in

massacres, the group acquired an *esprit de corps* of mutual guilt. As we find recently among perpetrators of atrocities in Bosnia, the group regularly drank large amounts of alcohol in the evenings to ‘blank’ out their days and avoid having to think about their actions.

The members of Police Battalion 101 seem to fit Bauman’s model better than that controversially advanced by Goldhagen (1996): that they were driven by an antecedent and virulent antisemitism. They decided to commit crimes against humanity under the influence of the command-structure to which they were subordinated. In private life, they were no more predisposed to violence than any other randomly selected group. Yet this genocidal formation was able without much difficulty to incorporate most of them and use them as its agents. There was a role for deference to authority and for the unthinking following of orders. The individuals were explicitly given a choice, and most of them made a positive choice to kill. Social factors, such as *esprit de corps*, peer pressure, the wish not to stand out, and so on, were all present in the making of these choices. However, the ‘hands-on’ massacres in which these men participated had nothing to do with ‘social distancing’ from unseen and faceless victims.⁸ The overcoming of their initial repulsion to their new-found jobs – and of the nausea they suffered as a consequence – were presented by their senior officers as a demonstration of their *exceptional being*, their *moral superiority* in overcoming natural inclinations, their toughness in doing what they naturally found repugnant. Many of the men seem to have accepted this proof of their *extra-ordinariness*. It was perhaps their way of not being ‘ordinary men’.

The case of Eichmann

Adolf Eichmann was not only a key bureaucrat and engineer of the genocide of Jews; he was the man in charge of the whole programme of Jewish extermination. He was not, of course, forced into his job. In his case, there was no question of ‘kill or be killed’. On the contrary, he was ambitious, keen to win promotion, and personified unquestioning recognition of the authority of the *Führer* (Arendt 1970: 45). In his trial he said that, though he bore no ill feelings toward his victims, he simply could not have acted otherwise. He acted according to his conscience, and apparently his conscience would have troubled him only if he had questioned orders – a thought which happily seems never to have occurred to him (Arendt 1994a).

If we are to believe what Hannah Arendt wrote about him, and her evidence is compelling, he was a rather pedestrian individual, with few motives beyond his diligence in looking out for his own career advancement. He had no ambition ‘to prove a villain’ (to quote Shakespeare’s *Richard III*), nor did he appear as even a convinced antisemite. He presented himself as simply a bureaucrat rooted in an everydayness that made him incapable of critical reflection or moral judgement. As Arendt put it, he was marked more by ‘thoughtlessness’

and 'remoteness from reality' than by any streak of 'Satanic greatness'. It was sheer thoughtlessness which predisposed him to become one of the greatest criminals of the modern age. The lesson Arendt (1970: 3–4) took from Jerusalem is that we have to come to terms with the fact that the man responsible for the execution of the Holocaust was terrifyingly normal: 'the deeds were monstrous but the doer ... was quite ordinary, commonplace, and neither demonic nor monstrous'.

Eichmann appears in this account as the very personification of Bauman's 'rational actor' driven by a narrow and petty self-interest to push aside any consideration of the moral substance of the job he did. When he offered the improbable defence that he had nothing to do with the killing of Jews, he seems not so much to have been lying as revealing that 'he merely never realized what he was doing' (Arendt 1970: 287). Since he conceived himself as a man who was 'only doing his job', acting not out of inclination but only in a professional capacity, he could not regard himself as a murderer. He saw himself merely as a 'cog in a machine' and, like any other cog, without moral responsibility. He was an archetype of what Arendt called the 'mass man': the new type of bourgeois who presents himself simply as an 'employee'.⁹ Eichmann stands at once as the exemplar of the claim that the perpetrators of the Holocaust were 'men like ourselves' who merely followed the norms of rational decision-making, and as a rejoinder to conventional images of a world dichotomized between our own absolute innocence and the unspeakable Nazi beast. He was living proof of what Arendt and Jaspers (1993: 62) termed the 'banality of evil': that the perpetrators were endowed more with 'prosaic triviality' than with 'satanic greatness'.

On the face of it, the case of Eichmann offers a strong case for Bauman's 'rational choice' argument. It also highlights, however, a major difficulty with his formulation of the problem. Hannah Arendt mentions one moment in the trial when Eichmann suddenly declared that he had lived his whole life according to Kant's moral precepts, and especially according to a Kantian definition of duty. Arendt comments that this was outrageous, since Kant's philosophy was bound up with the human faculty of judgement (i.e. with thinking for oneself) and so rules out blind obedience. However, when pressed further, Eichmann revealed that he had read Kant's *Critique of Practical Reason* and he came up with a roughly correct version of the categorical imperative: 'I meant by my remark about Kant that the principle of my will must always be such that it can become the principle of general laws' (in Arendt, 1994b: 136). He added that, from the moment he was charged with carrying out the Final Solution, he knowingly ceased to live according to Kantian principles. Arendt comments that Eichmann did not merely cease to follow Kant's categorical imperative, but rather that he distorted it in line with Hans Frank's formulation which we mentioned above: 'Act in such a way that the Führer, if he knew your action, would approve it.' This meant that duty was duty, a law was a law, and there could be no exceptions, not even for one's own friends. But when Eichmann said that he had given up on Kant, this also meant in effect that he put his own self-

advancement before any ethical concerns, and placed blind obedience to the Leader before his own practical reason and reflective judgement. In saying this, he must have recognized at some level his own descent into thoughtlessness, lack of reflection, unreason.

This account reveals the *inversion* of ‘reason’ and ‘passion’ in Bauman’s reformulation of Kant. In place of Kant’s identification of ‘practical reason’ with larger moral concerns and ‘passion’ with self-interest, self-advancement and self-preservation, Bauman reverses this order of association. Reason is now identified with self-interest, self-advancement, self-preservation, and so on, and ethics with one’s emotional response to the face of the suffering Other. In Kant’s hierarchy of reason and passion, passion is subordinated to the demands of ‘reason’ but it is not denounced or damned. Bauman’s hierarchy is more severe: it does denounce ‘reason’ (that which Kant calls ‘passion’) in favour of postmodern ethics (that which Kant calls ‘reason’). The neo-Kantian turns out to be more Kantian than Kant. The effect of this inversion is not only to accept the disconnection of rational choice from ethics, but also to sever the relationship between thinking and understanding, on the one hand, and moral judgement and decision-making, on the other.¹⁰ There are many moments in the text when Bauman writes of the separation of reason and ethics *under Nazism*. This may well be true, though we would continue to insist that the Holocaust had more to do with the ‘eclipse of reason’ (whether conceived in terms of economic, political or military utility) than with the triumph of reason, and with the triumph of a horrible kind of racist morality rather than with the eclipse of morality. The main point, however, is not to turn *this* opposition of rational and moral choice into an unalterable fact of ‘modernity’, still less into a fact of life as such. This is the slippage which seems to us to dog Bauman’s extraordinary analysis.

The case of Eichmann reveals to us a man who, when he became a Nazi, self-consciously gave up on ‘practical reason’ (thinking for himself, developing his reflective capacities, judging on the basis of universal criteria) and replaced it with mere obedience to orders, social conformity, rigid duty to order. This was his choice. It was a terrible one in the circumstances. But it had nothing to do with the effacement of a pre-social moral consciousness by the technical-rational norms of modernity. For the individual’s capacity to think and judge for herself is as much a feature of ‘modernity’ as is the awesome power of ‘society’ over the individual.¹¹

The case of Andrei Sawoniuk

Let us end this exploration with a brief discussion of a recent case.¹² In March 1999 Andrei Sawoniuk was found guilty at the Old Bailey of taking part in the genocide of the Jews in 1943 in Belorussia (contemporary Belarus). He was born and lived his childhood in a small town. His family did not have land to tend and so his mother made a living by doing laundry and other casual work for Jews, and when he was old enough, he also worked for Jews, doing odd

jobs wherever he could find them. He never knew his father, and his mother died when he was a child. He was regularly called a 'bastard' and subjected to bullying on that account. After his mother died, he lived with his grandmother and brother. He must have experienced a certain amount of alienation from the society in which he lived, and in which he did not really have an established place. He left school at the age of 14. He was known by everyone in Domachevo simply as Andrusha, a diminutive of Andrei. He was still known by this diminutive when he was the commandant of the local Nazi-organized police force.

Within a very few days of the occupation in 1941, the Germans organized a local police force which Sawoniuk and a handful of other local men joined enthusiastically. He was 20 years old and had experienced two years of very difficult times under Russian occupation. For the first time in his life he had a job and a place in the world. Quickly the policies of ghettoization and starvation of the Jews were put into place, and it was the local police who were given the main responsibility for their implementation. Sawoniuk's brother also joined the police, but he did not like having to carry out these duties and did not want to hurt and kill Jews. He left the police, using the excuse of poor health. The two brothers seem to have fallen out over this decision and Andrei Sawoniuk stayed in the police force. Witnesses at his trial tell of a number of brutal and cruel acts that Sawoniuk committed, such as beating a Jewish woman for attempting to smuggle some potatoes into the ghetto. A German *Einsatzgruppe* massacred the Jews of Domachevo on Yom Kippur 1942. It was the local police, however, who knew the local Jews and the local geography and had responsibility for hunting and killing those who had managed to escape the slaughter. By this time Sawoniuk was second-in-command of the local force and took a primary role in the search-and-kill operation. At his trial, witnesses tell of seeing him kill and beat different groups of Jews who had been found in the operation. Later, when the Germans retreated from the advancing Russians, Sawoniuk retreated with them and joined the Belorussian section of the Waffen SS, before deserting and joining the Free Polish Army and coming to the UK with them. Sawoniuk has lived in Britain since 1946. He worked for British Rail, and retired in 1986. He married twice after the war, both short marriages, and had a son with his second wife, but they parted shortly after his birth. In Britain he has been, as the police testified at his trial, 'of good character'.

It is difficult to estimate how many Sawoniuk killed. Maybe it was as few as 50 or 100 or 200 Jews. There were many tens of thousands just like him who took part in the genocide and were a necessary part of the machine which committed it. Some aspects of Sawoniuk's transformation into a mass killer are in tune with Bauman's framework, yet others are in contradiction with it. Both before and after the Holocaust, he was an ordinary, law-abiding, unexceptional person, but between 1941 and 1944 he was a sadistic, brutal mass murderer. It is probable that, had he not found himself in a social structure which was committing genocide, then he would never have become a killer. It is also true that, believing the Nazis were destined to win the war, his strategy of becoming a policeman and behaving in such a

way as to be trusted and promoted by the occupying power had a certain logic to it from the point of view of his own narrow self-interest. It gave him a job, a living, power and the possibility of promotion.

But it is stretching the facts to suggest that Sawoniuk's decision to become a *genocidaire* was simply an example of rational decision-making. Firstly, since his brother chose to leave the police force and is still living quite happily just across the river from Domachevo, it is clear that Sawoniuk could have made the same choice if he had wanted to. He chose a different course, and it was a free and conscious decision. He had an argument with his brother; he chose to kill Jews and his brother chose to take his chances outside the police force. Secondly, a decision such as whether or not to become a mass killer must involve factors other than rational choice. It is only possible to speculate about Sawoniuk's early life and what kind of a person he was when he chose to become a killer. It is clear enough that he was not brought up in a loving family and that he was poor. It also seems that he suffered as a child from some bullying. None of this, of course, can explain a man becoming a brutal mass murderer, but it is not irrelevant that he was an excluded, alienated, unloved young man. He found a way to improve his social prospects and also, perhaps, an outlet for his anger. But Sawoniuk was in no way a Weberian bureaucrat, who just obeyed orders and carried out professional duties. He chose to become a killer and he chose to kill and beat with more brutality than the efficient pursuit of a bureaucratic goal could possibly require.

Conclusion

Although the aim of this chapter is to cast doubt on the rational choice model of modernity which Bauman surprisingly sets up in order to destroy, we are not in a position to draw any definitive positive conclusions from our critique or our case-studies. We can, however, make some tentative suggestions as to a way forward. Firstly, we are not dealing with individuals who had prior (fixed) preferences for antisemitism and were thus 'just on the look-out' for propitious circumstances in which they could maximize these preferences at low opportunity costs to themselves. The making of a mass murderer is a social process in which there is an interplay between the act and the actor in which the commission of the deed may precede both its signification and its justification by the actors involved. Rather than the motive leading to the act, it was often the case that complicity in atrocity, torturing and murdering innocent human beings led to the search for good reasons – perhaps on the basis of the Pascalian principle that if you kneel first, then prayer will follow. We must emphasize the malleability of preferences, how experience changes them, how 'ordinary men' turn into hardened monsters or at least become hardened in their monstrous acts.

Secondly, the making of a mass murderer is a social process in which there is also an interplay between structure and agency. Regarding structure, the *Führer* principle

represented a new context (contra Bauman) in which ‘ordinary people’ are given new carrots to become ‘extraordinary’ by committing vile deeds. We see here a kind of ordinary (conformist and officially validated) extraordinariness. Once these incentives disappear, some became (like Eichmann) obedient servants to the authority of the court that tries them and most become ordinary ‘democratic’ civil servants and businessmen. Regarding agency, it is clear that some people walked away from the ‘incentives’ to murder and exercised their own moral judgement. Such judgements were not entirely ‘reflective’ in the sense that there were no rules or standards to guide them, for individual subjects could still appeal beyond the particular normative order of the so-called *Volk* to a humanist tradition – of thinking for yourself, of the right to subjective freedom, of universal equality – that is as much part of ‘modernity’ as instrumental rationality. We see here strong confirmation of our argument (again contra Bauman) that not even this totalitarian epoch could reduce all action to instrumental rationality. On the contrary, totalitarian terror demonstrated ultimately the subordination of instrumental rationality to a certain ‘moral’ point of view in which (as Hannah Arendt has in our view correctly argued) questions of economic, political and military utility were self-consciously subsumed to the *end* of killing and degrading Jews (Arendt 1994b).

Put at its strongest, it is difficult to escape the conclusion that in the modern/postmodern world the moral point of view is *always* a crucial element of decision-making, and that no rational choice can be understood *solely* in terms of instrumental rationality. Without reference to moral concerns, we cannot explain how some people monitor their preferences, refuse all incentives to violate them and resist to the end lending themselves to the horrible processes we have described in the text. The *wertrational* works not just as an accidental or subordinate ingredient within preference formation and expression, but as a constitutive aspect of how ‘we’ – i.e. individuals thrown into a world without absolute foundations – make sense of, understand and judge the preferences we endorse.

Notes

- 1 The Charter of the International Military Tribunal was signed on 8 August 1945 by the governments of the USA, the French Republic, the UK and the USSR and designed for the trial and punishment of the major war criminals of the European Axis (Avalon Project 1999).
- 2 Compare with Alan Bullock (1983: 381): ‘[Hitler] had a particular and inveterate distrust of experts. He refused to be impressed by the complexity of problems, insisting until it became monotonous that if only the will was there any problem could be solved.’
- 3 Rules are nothing without interpretation. Bureaucracies are machines made up of people, each of whom takes decisions within given parameters. Weber writes: ‘a system of rationally debatable

“reasons” stands behind every act of bureaucratic administration, that is, either subsumption under norms or a weighing of ends and means’ (Weber 1991: 220).

- 4 See also Alan Bullock (1983: 381):

There was always more than one office operating in any field. A dozen different agencies quarrelled over the direction of propaganda, of economic policy, and the intelligence services. Before 1938 Hitler continually went behind the back of the Foreign Office to make use of Ribbentrop’s special bureau or to get information through Party channels. The dualism of Party and State organizations, each with one or more divisions for the same function, was deliberate. In the end this reduced efficiency, but it strengthened Hitler’s position by allowing him to play off one department against another.

- 5 In September 1939, the Security Service of the SS, a party organization, was fused with the regular Security Police of the State, which included the Gestapo, to form the Head Office for Reich Security (RSHA), commanded by Heydrich. The RSHA was one of twelve Head Offices in the SS, two others of which were the Head Office of the Order Police, which was responsible for rounding up Jews, and the Head Office for Administration and Economy, which ran concentration camps and later the ‘economic’ side of extermination. The RSHA contained Section IV, the Gestapo, divided into Section IV-A, dealing with ‘opponents’, and Section IV-B, dealing with ‘sects’. The higher SS and police leaders were in a different command structure to the twelve offices of the RSHA, while the *Einsatzgruppen* were under the command of the RSHA, but were not one of the twelve offices (Arendt 1994a: 70).

- 6 He adds:

[T]here are no scientific methods to decide whether the well-off residents of the Warsaw ghetto could have done more to alleviate the lot of the poor dying in the streets of hunger and hypothermia, or whether the German Jews could have rebelled against the deportation of the *Ostjuden*, or the Jews with French citizenship could have done something to prevent incarceration of the ‘non-French Jews’.

7(Bauman 1993: 205)

- 7 Take the case, which Bauman (1993) cites, of Dr Arthur Gütt, the Head of the National Hygiene Department in the Ministry of Interior, who argued for selective breeding of human beings. Bauman comments that Gütt had no doubt that the policy he envisaged of ‘selection-cum-elimination’ was a logical extension, if not culmination, of the advancement of modern science. But Bauman does not discuss whether the theories of Dr Gütt *actually* constituted a logical extension of the work of the celebrated scientists, or indeed whether there was any *scientific* basis whatsoever for his theorizing. Gütt and his colleagues may have been recognized by the Nazis as genuine scientists, but that does

not mean that we have to accept this recognition. The problem with eugenics was not that it was scientific but that it was not scientific. Bauman seems to accept that Nazi doctors are doctors: that their talk of hygiene, cleansing, blood and purification were genuinely within a medical tradition. But this is to take rhetoric at its face value.

- 8 Bauman (1993: 26) acknowledges this point:

At the Einsatzgruppen stage, the rounded-up victims were brought in front of machine guns and killed at point blank range. Though efforts were made to keep the weapons at the longest possible distance from the ditches into which the murdered were to fall, it was exceedingly difficult for the shooters to overlook the connection between shooting and killing.

But Bauman (1993: 26) immediately goes on to claim that this was why the administrators of the Holocaust found the methods inefficient and dangerous to morale:

Other murder techniques were therefore sought – such as would optically separate the killers from their victims. The search was successful and led to the invention of ... gas chambers; the latter ... reduced the role of the killer to that of the ‘sanitation officer’.

It seems to us that this account not only misconstrues the order of succession between the face-to-face and the distanced (what about the ‘death marches’ at the end of the war?), but also misconstrues the organization of murder in the camps (as if the executioners did not have face-to-face contact with those they humiliated, tortured and killed).

- 9 Alain Finkelkraut (1992: 3–4) argued, in relation to the Barbie trial, that the Holocaust was ‘from Eichmann to the engineers on the trains ... a crime of employees’, and that it was ‘precisely to remove from *crime* the excuse of *service* and to restore the quality of *killers* to law-abiding citizens ... that the category of “crimes against humanity” was formulated’.
- 10 The interconnections of thinking, willing and judging and the dangers inherent in the separation of thinking from willing and judging became the subject-matter of Hannah Arendt’s later investigations in *The Life of the Mind* (1978).
- 11 There is now considerable evidence that the image which Eichmann presented of himself at the trial, which by and large Arendt accepted, that he was a bureaucrat of mass murder, concealed the far more active role he actually played in the extermination process.
- 12 The information on this case is drawn largely from notes taken by David Hirsh at the trial of Sawoniuk, at the Old Bailey, London, 1998–9.

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