

Evil as an Aesthetic Concept

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Introduction

It should be quite easy to observe that there has been an overwhelming increase in popular usages of the concept of evil since events termed simply by the dual integers 9/11. The way the academic community has reacted to the (re)emergence of the signifier “evil” in public discourse can, I believe without cutting too many corners, be divided into three general trends. First there are the ethico-political discussions and investigations, which more or less take the concept at face value. Unsurprisingly quite a few commentators have embarked on this road. These jurists, philosophers, political scientists etc. all agree upon the notion that terrorism has emerged as the new (radical) evil, which liberal democracies are forced to take issue with and stern action against. A telling book title in this tradition is Michael Ignatieff’s *The Lesser Evil* (2005). Here, Ignatieff predictably argues that it is sometimes necessary to bend our attachment to fundamental human rights in order to prevent the greater evil of terrorism. Secondly there are the philosophical investigations into what the concept of evil could at all be taken to mean: “What is evil?” the philosophers ask. Richard Bernstein (2002), Susan Nieman (2004) are prominent representatives. As a very general rule, philosophers who take up this path tend to be weary of the very immediate understanding given to the concept of evil in most political discourse,

but rather than investigating the effects the frequent usage of the concept might have, they prefer to ask how we can be justified in calling things, actions, events or persons evil. Thirdly there are the more discourse-analytically inclined investigations into how human relations are structured by the usage of such morally defined signifiers. Joanna Zylińska (2005; 2006), Stephen Chan (2005) and Judith Butler (2004; 2005) represent this trend. Here the well-known argument goes as follows: By referring to your political, social or international adversary as evil, you immediately justify taking actions against him or her that you wouldn't normally condone.

What unites all of these approaches is the generally accepted idea that the concept "evil" is a moral or ethical one. The central point of this article is to challenge this idea. It will be argued that the crucial function, which the concept serves, is often aesthetic rather than ethical; what we end up saying, when we point out that someone is "evil", is not that the person is unjust or acting against certain fundamental moral principles; what we are saying is that the person pointed out is disgusting, degenerate, revolting or otherwise *aesthetically* unacceptable.

Evil and Human Rights

At first, however, I should like to make clear why an investigation of the specific scope of the concept of evil must be crucial for the understanding of human rights in the first place. It may not be immediately clear to the reader of juridical texts that the concept of evil is particularly pertinent. If one takes two of the most pertinent cases from the European Court of Human Rights concerning the issue of anti-terrorism legislation and the problems they pose for Human Rights, namely the cases of *A and Others vs. The United Kingdom* (ECHR Grand Chamber, 2009) and of *Gillian and Quinton vs. The United Kingdom* (ECHR Fourth Section, 2010), and carefully goes through the final verdicts, one will not see the concept of evil being used a single time.¹

It is not, however, as a specific juridical concept that evil is being considered in any case. Rather, in the approaches mentioned

¹ In both cases the Court argued that the UK had gone too far in its counter-terrorism measures and that certain forms of policing and detaining suspects of terrorism would have to be changed. The finer details of the verdicts, however, are beyond the scope of the present paper.

above, evil is being viewed as a specific moral or ethical category, which can form part of the background of social, political and juridical interaction. In other words: if terrorism is being viewed as a great new evil, against which society allows itself to take extraordinary measures, then this particular notion of evil is bound to form some of the background against which judges make their decisions in human rights cases. One can argue that this is an entirely necessary tendency or one can argue that it is an extremely dangerous one, but as legal scholars such as Oren Gross, Fionnuala Ní Aoláin, William Stuntz and many others have argued it is a well proven fact of the sociology of law, that judges tend to “go to war” when society does (Gross and Ní Aoláin, 2006, 77).

One cannot read Fourth Amendment cases from the 1980s without sensing judicial attention to the pros and cons of the war on drugs – even when the cases did not involve drug crime. Crack dealers were the most salient crime problem a dozen years ago; now, terrorists occupy that place (Stuntz 2002, 77).

When concepts of new and great evils emerge and begin to play a dominant role in public discourse, it is bound to have some effect on the state of human rights. It is with this in mind that we should approach my argument that the functioning of the concept of evil in public discourse can often belong to the realm of aesthetics rather than ethics.

Ethical Violence

Since it is the *functioning* of the concept that is the target, it seems natural that the third group of theorists mentioned above will be in focus. The danger that is identified by discourse-analytical approaches to the proliferation of the concept of evil is that a moralization of discourse could lead to a kind of ethical violence. Closely related to this idea is of course the binary logic that those who are fighting the “evil” ones automatically posit themselves as good. Joanna Zylinska, author of the book *The Ethics of Cultural Studies* (2005) gives a paradigmatic example of how this approach argues:

[I]n the US as well as the UK '9/11' has played a symbolic role in founding a new moral sensibility. This political moralism has underpinned the all-encompassing 'war on terror' unequivocally championed by Bush and Blair and fought against an invisible enemy, 'terror' itself. And it is through recourse to moral rhetoric, a discourse of good and evil, that a difference between 'us' and 'them' has been established in this war [...] Positioning '9/11' as an extraordinary, apocalyptic event after which 'nothing will ever be the same' has been part of this moral agenda, which attempts to legitimate military intervention with references to transcendent concepts and values (Zylinska 2006, 72).

In this line of thought it would seem that "ethical violence" means the kind of violence that is made possible by the binary logic of a radical separation of "us" and "them". What is called "ethical violence" functions in virtue of some form of exclusion – it is a symbolic form of violence, which excludes by making ethical judgements (such as "A is evil"). Exactly how such exclusive practice is carried out is still a question to be answered though. As should be clear from the introduction, the present argument makes the point that the kind of exclusion, which takes place in relation to "ethical violence" is not really ethical at all, but rather aesthetic.

This could seem to be a hard claim to validate. A violence that is aimed at furthering "good" and eradicating "evil" would according to many be the very definition of "ethical violence". As a first step towards countering this intuition it will be spelled out in detail how such a notion of ethical violence should be understood. This will be done by taking up the notion, as it is being developed by Judith Butler in her *Giving an Account of Oneself* (2005). The reason for choosing Butler here is that her approach draws upon ideas which should be seen as crucial for any research project within what is rightly termed discourse analysis: crucially that the human subject cannot be seen as a fundamental and self-transparent essence; that it instead in some way or other is decentred, out of joint or inaccessible to itself.

Butler on Ethical Violence

What then is contained in Butler's notion of "ethical violence"? As the title of the book would suggest, Butler chooses a specific strategy for describing the fundamentally precarious character of the human subject in *Giving an Account of Oneself*. This strategy focuses on the issue of self-narration and the fundamental impossibility thereof. She makes two points that are crucial for us: "[T] here is (1) a non-narrativizable *exposure* that establishes my singularity" (Butler 2005, 39) and there is "the *structure of address* in which it takes place" (ibid).

By the "non-narrativizable exposure that establishes my singularity" Butler alludes to the duality of the self, revealed whenever I give a narration of myself. First there is the "I," being narrated, and secondly there is the "I" which emerges as the narrator of the story. The non-narrativizable exposure is that which occurs, when this second I realizes that it is impossible for it to narrate its own emergence within the confines of the first narration. Any attempt at such an inclusion of this second "I" in the narration would only lead to the emergence of a new (a third) "I" that would be narrating the inclusion of the second in the narrative of the first. This structural discrepancy within any narration of the self is a fundamental problematic, which no narrative practice will ever be able to overcome.

With the "structure of address," Butler argues that whatever we do, when we give an account of ourselves, it necessarily takes the form of an address. Every narration implicates the "you" to whom I am telling my story. This also means that every narration involves the exposure of myself to this "you". Given that every narration involves a necessary discrepancy at the very core of the narrating self, this means that I expose my very lack of transparency to "you" whenever I address myself to you. Building upon this idea Butler argues that ethics is possible within the structure of address, where I ask "Who are you?" while recognizing that the other, to whom I put my question, is conditioned by the very same inaccessibility to her own narrative, by which I am bound.

Butler's overall point regarding human relations therefore is that genuine ethics is possible not because human beings are self-transparent and therefore responsible entities, but exactly because the lack of self-transparency conditions us to understand ourselves through our exposure to the other. Ethics is that which takes place

between subjects who are unable to fully come to terms with their own being.²

What does all this have to do with the notion of ethical violence? The point is straightforward: if the basic condition of being a human subject is that one is in an opaque relation to oneself, and if ethics is that which occurs in the field where subjects do or do not recognize each other in terms of this basic condition, then ethical violence is that which takes place when subjects force transparency upon each other. If I cannot accept my own opacity, chances are that I will not be able to accept it in you. Butler formulates it in the following way: "Suspending the demand for self-identity or, more particularly, for complete coherence seems to me to counter a certain *ethical violence*, which demands that we manifest and maintain self-identity at all times and require that others do the same" (Butler 2005, 42). Butler continues on to say that this suspending is exactly what is meant by her founding the ethical relation in the question "Who are you?" The ethical way of asking this question is to insist upon asking it and never cede. The moment we stop asking that question is the moment we say "now I know who you are" (Butler 2005, 43). In other words the ethical way of dealing with the other is to follow (Butler's version of) the Lacanian dictum to never "cede upon your desire [for the other]" (ibid.), it means to insist that the question "Who are you?" can never be given a satisfying answer.

Butler expands upon the situation in which "I know who you are" by turning her attention to what she calls ethical judgment. The fundamental form of the judgment is "A is X". In a judgment we ascribe a property to someone or something – in some way or other we define, what it is. In a judgment we therefore draw a clear line of differentiation between the judge and the judged. Butler does not want to argue that we should suspend ethical judgment altogether, but she vehemently argues that any ethical judgment that we make are conditioned by a prior relation of recognition: "Prior to judging an other, we must be in some relation to him or her. This relation will ground and inform the ethical judgments we finally do make. We will, in some way, have to ask the question "Who are you?" (But-

² In this way Butler reveals herself to be a certain kind of Hegelian (Butler 2005, 41). That being said she is a reluctant one: "There is lots of light in the Hegelian room, and the mirrors have the happy coincidence of being windows as well" (ibid.).

ler 2005, 45). To Butler, ethical judgement is only truly ethical if it is made against the background of the original situation of mutual recognition of the impossibility of self-identity.

The form of ethical violence which is entailed in insisting upon understanding the other as a “whole” person – as someone who can be expected to be and to know what he is and what he wants – is not the only one however. This becomes clear in her discussion of condemnations. She writes: “[C]ondemnation is very often an act that not only “gives up on” the one condemned but seeks to inflict a violence upon the condemned in the name of “ethics”” (Butler 2005, 46). Here we should detect a certain shift in the meaning “ethical violence.” In the discussion above, ethical violence meant insisting that the other should uphold a kind of self-identity; here on the other hand ethical violence is what takes place where the condemned other is “given up upon”, i.e. precisely posited as something wholly other than the speaker. To be sure, we find the general form of judgement “A is X” at the bottom of each of these types of ethical violence. This makes impossible a genuine and continued questioning “who are you.” Nonetheless, the difference should be obvious.

In the first instance ethical violence is a kind of subjectivization; as the inclusion of the other into the community of self-identical subjects. In the second instance ethical violence is performed as a kind of exclusion. A condemnation draws a sharp line of distinction between the judge and the judged, where the judged is no longer allowed in the ethical community of the judge.

Having established this distinction, we can take the further step of distinguishing between the forms of violence that is entailed. When ethical violence is conducted in the form of subjectivization, the aim is to form human beings into a certain kind of ethical substance. Here we find the disciplinary, educational, pastoral, sexual etc... forms of violence discussed and investigated by Butler herself and of course by Michel Foucault (e.g., in 1991). However, when ethical violence is conducted in the form of condemnation, something quite different takes place. A person judged to be evil in this way is *exactly not* a possible target of disciplinary uses of force or violence, because there is nothing there to be disciplined. He or she is neither posited as a self-identical subject, nor recognized as standing in an opaque relation to him or herself. Instead, such a person is a possible target of exterminatory or rather cleansing uses of violence.

Kant and Aesthetic Judgement

At this point we should be able to make an argument for why what is often discussed as ethical violence could be better understood as aesthetic violence by taking up a famous distinction from Kant's *Critique of Judgment*. I think here of the distinction between the beautiful and the sublime.

A crucial point about the judgments about the sublime and the beautiful is that they are what Kant understood as reflective judgments. This means that they are not descriptive or determinate judgments about what an object is, but rather ways of reflecting upon the cognitive capacities we utilize in order to make judgments in the first place. In the determinate judgment "The rose is red" we subsume an object (the rose) to a concept (red), i.e., we move from the concept to the object. In the reflective judgement "the rose is beautiful," such a move is not possible because, so argues Kant, we do not have a determinate concept of the beautiful in the same way as we have a determinate concept of redness. This means that a different kind of necessity is at work in reflective judgments than is the case in determinate judgements. Kant calls it subjective necessity.

The subjective necessity involved in judgements of beauty is best understood through a specific kind of ought. To make the judgment that something is beautiful entails a commitment to the belief that everyone else ought to find the same thing beautiful (Kant 2001, 212). Upon the experience of something beautiful in nature, I feel that the beautiful object is formed in exactly such a way that it is *as if* it were teleologically suited to my specific cognitive capacities. In a reflective judgment we are judging upon the very feeling, which arises from the experience of some object. The "as if" of the judgment is what corresponds to this very feeling. It is as if the rose was made exactly with me in mind, when I find it beautiful. Crucially however this very feeling that it is as if the rose was made with someone like me in mind, does not mean that the judgements of the beautiful are based upon the experience of a solipsistic subject detached from any kind of community. Exactly because of the feeling that it is as if the rose was made with me in mind, it is also as if it was made with everyone else in mind, who share my specific human capacities for judgement.

In the end that is what leads to the idea of a *sensus communis* (*Gemeinsinn*) in Kant's analysis of reflective judgment. Because the judgement of beauty commits me in the described way, I can get the feeling of belonging to the community of human beings, who have the same cognitive capacities as I do, through the experience of the beautiful thing (Kant 2001, 236ff.).

Where the beautiful gives us a feeling of teleologically belonging in the world, because it is as if the beautiful objects were made to suit our cognitive capacities, the exact opposite is the case with regard to the sublime. The feeling we experience when we experience the sublime is that it is as if it was made specifically with the *transgression* of our cognitive capacities in mind (Kant 2001, 246). The sublime is that which is large (the mathematically sublime) or powerful (the dynamically sublime) beyond measure. We simply cannot comprehend the magnitude and ferocity of the sublime. Indeed, as Kant puts it, "sublime is what even to be able to think proves that the mind has a power surpassing any standard of sense" (Kant 2001, 250).

How do these notions of the sublime and the beautiful fit with the normativity inherent in the types of ethical violence we extracted above? I believe that they can be shown to fit well.

Ethical violence in the sense of what we have described as Foucauldian subjectivization above could be translated into a form of aesthetic violence. Here, aesthetics is modelled upon the Kantian judgement of the beautiful. Such a translation would even refine our understanding of the violence entailed in the types of judgement that could be said to fit the knowledge "I know who you are" most prominently, i.e., "you are a woman," "you are a man," "you are normal," or "you are responsible." Judgements of this kind are not simply violent in the sense that they subsume a person to a given concept and directly impose a repressive structure. Rather their functioning could be illuminated as ways of reflecting upon the idea that it is as if everyone ought to agree to what is being said, but this form of "softer" or more "open" judgement should not trick us into thinking that what is going on is any less ideological.

Indeed, does not this description capture a crucial feature of contemporary ideology, which seems to have incorporated the poststructuralist critique of the '70s and '80s? We have in fact learned that 'woman' is not a determinate category that prescribes

a clearly defined set of rules of conduct, e.g., cleaning, cooking, breeding, but nevertheless we often seem to act *as if* we precisely had not learned this.

There is more to be said about this softer form of inclusive violence, but the crucial point has been made. What is described by Butler and many others as a certain kind of ethical violence can be translated into a no less violent, but perhaps more sinister form of aesthetic violence.

Even more crucial for my present purpose, however, is the fact that what has been defined as ethical violence in the form of condemnations above can be adequately understood as aesthetic violence, where aesthetics is modelled upon the Kantian notion of the sublime. As said above, condemnations, in the sense of “giving up upon” the other, precisely function in the way that they posit the other outside of the reach of disciplinary or even repressive violence. The condemned ones are not even *enemies* in the Schmittian sense of *political* enemies (Schmitt 2007a, 36-7). For Schmitt the political enemy is the one against whom one can go to war, but crucially he is also one with whom one can make peace. The political enemy is precisely not the one that is the target of extermination.

In the post-9/11 environment of counter-terrorism it has more than once been argued that the terrorist enemies of the west precisely are not considered to be enemies in the Schmittian sense. Rather, they are targets of extermination. It is at this point that the argument tends to turn “moral” or “ethical.” It is argued that it is because of the use of the concept ‘evil’ and the corresponding moral higher ground, which the speaker in question takes above the one’s, he is condemning, that violence takes this extreme form. Schmitt himself made the argument that it is precisely when the enemy becomes a moral enemy that he becomes the target of extermination (Schmitt 2007a, 36-7; see also 2007b). My point here is that the idea that this should be a moral or an ethical stance is weak. The very idea that taking a moral higher ground should result in the kind of absolute condemnation of the other, where he becomes the object of possible extermination, seems weak to me. To be on ethical higher ground means precisely to still recognise that the other is an ethical subject (regardless how one defines such a subject); the other may be less morally refined, but he counts as an ethical subject nonetheless. In the case of the absolute condemnation the other is no longer con-

sidered as a subject, but rather simply as an object: a disease, a pest and something to be destroyed rather than killed.

It is at this point that we encounter the Kantian sublime: the excessive externality which seems to be beyond the reach of our cognitive capacities is the sublime. It is that which I am incapable of understanding and which therefore leaves me with a feeling of wonder and fear. Like virus or bacteria we do not relate to the ones we call evil as subjects. We rather – and precisely – reflect on how they seem to be beyond the reach of our cognitive capacities. We ask in (forced) bewilderment “Why do they hate us so?” and like that we make a sublime evil out of them. The point is that this manoeuvre precisely is not ethical. It is rather an aesthetic one.

Conclusion

A decade after 9/11, one of the crucial political challenges facing world politics is the status of law and right and especially human rights. We have seen legal measures and forms of political repression emerge even in democratic states that have been severely criticised by the institutions of international human rights law (see, e.g., ECHR Fourth Section, 2010; ECHR Grand Chamber 2009). One could of course argue that the very fact that institutions such as the European Court of Human Rights are capable of intervening in this environment, and that they are actually doing it, should lead us to think that the system of international law is in fact working quite well. Conversely, it can certainly also be argued that the fact that it is at all necessary for the court to intervene against the legislation and the practices of the courts and the police in a legal state such as the United Kingdom, calls for a heightened attention by the academic community concerning the current state of affairs in relation to human rights.

As I have pointed out, the standard way for the academic community to respond to this challenge has been to adopt an overall moralistic or ethical framework. The argument I have put forward here seeks to show that it might be prudent to open up this framework in a direction that draws as much upon aesthetic theory as it does upon theories of ethics. In so many words we have many reasons to study closely the aesthetics of human rights.

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