

THE CONCEPT OF CRIMES AGAINST HUMANITY AND THE SPIRIT OF OUR TIME

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Abstract: This paper purports to explore the nature of crimes against humanity as a unique family of crimes and how the concept of crimes against humanity embodies the spirit of our time. It argues that what makes crimes against humanity profound crimes is the fact that they are crimes against the metaphysical and practical identity of all human beings; they injure humanity as the intersubjectivity of all human beings. Doing so, it will first demonstrate how the concept of crimes against humanity bears out the truth that the norm of humanity is a legal norm; humanity is a possible object of legal injury and a legitimate subject to which action is held accountable for. It then examines the four basic features of crimes against humanity, indicating that a crime against humanity is a global crime that is motivated to injure humanity, policy-laden, and systematic. Finally, it further discusses the nature and precepts of the laws of humanity in virtue of which crimes against humanity are defined as so and so.

THE DOCTRINE of crimes against humanity singles out a family of crimes in which humanity itself is the receiver of criminal injury. It outlines a range of acts of states (governments) and communities toward citizens or civil populations that are legally prohibited and sanctionable in terms of global justice and the laws of humanity. The doctrine is part of the spirit of our time. As a philosophical problem, the issue of crimes against humanity is one aspect of a more general problem of global justice and cosmopolitanism. In global justice, statutes defining crimes against humanity purport to impose legal obligations on states (governments), communities, and persons with regard to protection of humanity as the metaphysical and practical identity of all human beings, as the supreme value for humankind, and as a species. Global justice imposes legal obligations on how governments, states, or communities ought to treat citizens or civil populations and puts a limit on what states (governments) or communities can do to citizens or civil populations. "Crimes against humanity are now clearly part of a functioning, institutionalized system of international criminal law" (Vernon 2002, 233). And a functioning institutionalized system of international criminal law move further the course of the cosmopolitan project of global justice and humanity.

That being said, some important conceptual and normative questions of crimes against humanity remain outstanding. How best to define the nature, scope, and limit of crimes against humanity in terms of global justice? How best to conceive crimes against humanity as a particular family of legal inversions and offences, demarcated

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from other categories of crimes, e.g., from ordinary murder, or rape, and the like? What make the Holocaust, the Rape of Nanjing, and the Genocides in Rwanda, Kosovo, and East Timor belong in a particular category of crimes against humanity, not simply the crimes of murder and rape, in spite of the facts that these crimes clearly involved murder and rape? How can international laws make claims on crimes against humanity that will have global validity? In connection with the above, crime implies a violation of law. Thus, the concept of crimes against humanity presupposes the concept of the laws of humanity. Then, what are the laws of humanity that define crimes against humanity as such? As a concept purports to “change the face of the world” and “pregnant with a complete upheaval in international law”, to borrow two metaphors from Eugène Aroneanu, Elisabeth Zoller and Norman Geras, the concept of crimes against humanity raises serious questions not only to social-political and legal philosophy, but also to metaphysics.

My objective in the present enquiry is to provide a phenomenological account of crimes against humanity that address some philosophical questions of crimes against humanity. The account is intended to demonstrate crimes against humanity as a family of inversions and offences of juridical modality, not merely a form of great moral evil. It is to demonstrate that crimes against humanity are offences to humanity as a metaphysical and practical identity of all human beings, as the supreme value of human existence, and as a species or bonded family. Evidentially, what can be legally counted as crimes against humanity is defined by international and municipal statutes. A phenomenological reflection of crimes against humanity purports to offer a philosophical reflection of and a critical response to what is in law, which in turn is important to further development of legal understanding of the concept of crimes against humanity. As Vernon indicates, “law...is and should be open to powerful moral influence” (Vernon 2002, 232). By the same token, law should be open to powerful influence of philosophical reflection. Now, without further introduction, I shall start the enquiry.

I

The emergence and development of the concept of crimes against humanity bears out a timely recognition of the norms of humanity and its obligations. It implies a timely recognition that humanity is the metaphysical and practical identity of all human beings which give us normative reasons to perform certain actions and to abstain from certain action; humanity is the supreme value of human existence and humanity as a species both give us normative reasons to perform certain actions and to abstain from certain actions. It enthrones the norm of humanity as a valid and legitimate legal norm. Meanwhile, the concept of crimes against humanity invites us to review the relationships between laws and humanity, as well as justice and humanity.

Not surprisingly, the concept of crimes against humanity is part of the spirit of our time, as humankind’s self-consciousness of its humanity identity is a benchmark of the consciousness of our time. It is conceptually and normatively intertwined with the concepts of global justice, cosmopolitanism and the rule of law. The continuous institutionalization of the norm of humanity as an operating norm of our time and the

institutionalization of crimes against humanity make a benchmark of the development of the spirit of our time. While the concept of crimes against humanity is revealing of our moral experience, our focus here is on its legal dimension.

First, crime means legal transgression, inversion or subversion. The concept of crimes against humanity are not merely a figure of moral speech signifying a form of great moral evil which provokes moral repugnance, but a figure of legal speech indicating what is legally prohibited. It introduces a family of legal offences that invite a legal response of corrective justice, e.g., legal prosecution, not merely moral condemnation. Conceptually, the concept of crimes against humanity implies that the norm of humanity is a legal norm, not merely a moral norm; that there are the laws of humanity that are juridical. As Seyla Benhabib says, “A crime, as distinct from a moral injury, cannot be defined independently of posited law and a positive legal order” (Benhabib, 2006, 14). Accordingly, where there are crimes against humanity, there are the laws of humanity in virtue of which crimes against humanity are defined. The laws of humanity are cosmopolitan laws. They are embodied in international and municipal criminal statutes such as the statutes of ICTY, the ICTR, and the ICC, or municipal statutes such as statutes of various countries. Fair to say, the laws of humanity as cosmopolitan laws have moral contents. Still, the concept of crimes against humanity bears out the fact that the laws of humanity are juridical and the norm of humanity is juridical. And since Nuremberg and UN Declaration of Human rights, the laws of humanity are embodied in a functioning, institutionalized system of international laws, as well as in various municipal laws. They are democratically institutionalized rapidly throughout the entire earth.

The concept of the laws of humanity as juridical and the norm of humanity as juridical is an important development from Immanuel Kant. The norm of humanity is succinctly put forth by Kant as a moral norm. In Kant, the norm of humanity says that humanity is always a purpose in itself, not a tool only to other purpose; basic humanity including basic human dignity and rights is inviolable; “Out of the crooked timber of humanity, no straight thing can ever be built” (Kant 1923, 23; Berlin 1997, v, xi). Since Kant, the norm of humanity has been at the core of enlightened morality and ethics. Various tragedies of inhumanity in the previous and present century only remind us again and again of the Kantian insight. That being said, the statutes of ICTY, the ICTR, and the ICC, or various municipal statutes that forbid or enjoin conducts and practices under a threat of penalty in the name of humanity embody the laws of humanity as juridical laws of global justice. The birth of the concept of crimes against humanity at the down of the 20th century is one of those turning points wherein the laws of humanity as juridical and the norm of humanity as legal present themselves. In content, the concept of crimes against humanity introduces the juridical dimension to the Kantian norm of humanity. Or it develops the Kantian concept of humanity in the legal direction. In nature, the concept of crimes against humanity turns the norm of humanity from the moral into the legal. No wonder, as Judith Shklar, Richard Vernon, and various others indicate, the concept of crimes against humanity still “expressed a sense of moral outrage” (Vernon 2002, 232). That

being said, Yoram Dinstein, Geoffrey Robertson, Aroneanu, Geras and other indicate, “the emergence of crimes against humanity at Nuremberg marked a ‘revolution’, or at any rate the beginning of one in the field of international law” (Geras 2011, 16-17). Of course, as Geras and other also indicate, before Nuremberg, the concept of crimes against humanity had emerged in the Hague Conventions of 1899 and 1907. And the concept of crimes against humanity has changed the face of the earth.

From a historical perspective, the institutionalization of crimes against humanity as part of the functioning legal architecture in the globe represents a crucial turning point of human consciousness in our time: that is, the recognition of the legal obligation to humanity—the recognition of our legal obligation to give due to humanity as the metaphysical and practical identity of all human beings, as the supreme value for humankind, and as a species and bonded family; the recognition of humanity as a legitimate legal subject to which crimes must be held accountable for and a possible legal object which certain crimes can do harm; the recovery of sense that humanity is the purpose, not merely a tool to other purpose of all legally justified human acts. This humanity-turn bears out lessons which we learn from the most recent human history, in particular lessons from those human tragedies of the previous and present centuries, e.g., The Turkish genocide against the Armenians, the Holocaust, the Japanese “rape of Nanjing”, 9/11, the genocides in Rwanda, Kosovo, Bosnia, and East Timor, the glaring injustice and inhumanity in Darfur and the ongoing human destruction in the Middle East and elsewhere on the Earth. In those lessons, we are forced to ask the same question posed by the late medieval French poet Eustache Deschamps in the fourteenth century, “Why are times so dark, men know each other not at all?” (Josephson 1962, 17). In those lessons, we are forced to recognize that certain criminal acts are offenses not only to individual citizens or particular groups of civil populations, but also to humanity and humankind in whole. These criminal acts not only shock our human conscience in an unspeakable degree, but also visit humanity and humankind in whole with gross legal inversion and perversion. By this token. The emergence and development of the concept of crimes against humanity and the institutionalization of crimes against humanity as part of the functioning legal system in the globe reveals the necessity of human civilization.

The concept of crimes against humanity reminds us of the truth that when humanity is violated, justice including global “justice” is a ghost of poverty, pale and dull; when humanity is crooked, nothing really stands straight, to rephrase Kant. By this token, the concept of crimes against humanity is one of the most significant fruits of human civilization in our time. It enables us to recognize a form of legal offense in terms of the laws of humanity or the norm of humanity. It enables us to recognize that the norm of humanity is part of a functioning, institutionalized legal order and that that we are legally obliged to keep humanity standing straight; we are legally obliged to give due to humanity as the metaphysical and practical identity of all human beings, as the supreme value for humankind, and as a species or bonded family.

Second, in connection with the above, the concept of crimes against humanity implies that humanity is a possible object of legal injury, expanding our conception of possible receiver of legal injury. As “Articulated in the Judgment of the International Criminal Tribunal for the Former Yugoslavia (ICTY) in the Erdemovic case, ‘It is

therefore the concept of humanity as victim which essentially characterizes crimes against humanity” (Geras 2011, 57). For the purpose of the present enquiry, I shall simply state here that humanity is understood here as the metaphysical and practical identity of all human beings, the supreme value for humankind, and as a species; it is the intersubjectivity of all human beings. We shall focus on the point that humanity is the victim in crimes against humanity. To claim that humanity is the victim of a crime is to claim that humanity is the harmed object or the harm-receiver in a crime. Thus, the concept of crimes against humanity claims that humanity is a possible object of legal injury. By this token, the concept of crimes against humanity directs our focus to the fact that in certain crimes, legal injury is introduced not only on the physical existences of given individual persons or groups of civil population, but also, and more importantly, on humanity as an identity, a value, and a species.

Robertson also observes, “The very fact that a fellow human would conceive and commit them diminishes every member of the human race” (Robertson 1999, 220). Geras takes a different routine of approach to the same point: “crimes against humanity terrorize us all. They terrorize ... human beings in general” (Geras 2011, 59). Arendt indicates the same point when she points out that after the crimes against humanity which the Nazi has committed, “no people on earth ... can feel reasonably sure of its continued existence without the help and the protection of international law” (Arendt 1964, 273; Robertson 1999, 331; Geras 2011:59). What these philosophers say here ultimately return us back to the truth that humanity as the metaphysical and practical identity of all human beings, as the supreme value for humankind, and as the species can be criminally injured; humanity as the intersubjectivity of all human beings can be criminally injured.

The concept “metaphysical and practical identity” indicates the metaphysical dimension of crimes against humanity. As David Luban, Massimo Renzo notes, in the statutes of the International Criminal Tribunal for the former Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda (ICTR), and the International Criminal Court (ICC), crimes against humanity deny their victims the status of human beings’ and properly concern the whole of humanity.” (Renzo 2012, 448) Here, what are injured are as much victims’ metaphysical existence (e.g., their human statuses) as their physical bodies. What is assaulted on is not limited to the physical welfare of immediate victims (e.g., citizens or groups of civil populations), but extended to humanity as a metaphysical being.

The concept that humanity is a possible object of legal offence and injury indicates that humanity can be materially injured. That is, humanity as a metaphysical and practical identity, as a value, and as a species and communal bond can be materially injured. The qualification “materially” can mean “directly physical or proxy-physical”. For example, in policy-driven acts such as murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, humanity as an identity, a value, and a species is materially injured. Fair to say, it is impossible to quantify or empirically measure the scope and degree which

humanity and humankind in whole is materially injured by a give crime against humanity.

For example, while it can be empirically determined what particular damages are done to a given group of civil population in a crime of ethical cleansing, it is impossible to determine quantitative the scope and degree in which humanity and humankind in whole is damaged. Still, the injury which crimes against humanity introduce is not merely moral or conceptual, but material to the extent that warrants legal sanction and penalty.

For the reason above, Jürgen Habermas rightly criticizes Carl Schmitt's claim that "when a state fights its enemy in the name of humanity, it is not a war for the sake of humanity, but rather a war wherein a state seeks to usurp a universal concept in its struggle against its enemy...The concept of humanity is an extremely useful ideological instrument" (Habermas 1998b, 188). Schmitt's view would be correct if humanity were not a possible object of criminal injury and a legitimate legal subject. Admittedly, if humanity were not a possible object of legal, criminal injury, the concept of the laws of humanity would also be meaningless, at best would be scratching where there is no itch and at worst, would be groundless. Habermas' rejection of Schmitt's view would be unreasonable if humanity were not a possible object of legal injury and a legitimate legal subject. Evidentially, Schmitt is wrong and Habermas is right.

Third, correspondingly, the concept of crimes against humanity implies that humanity is a legitimate legal subject. To claim that humanity is a legitimate legal subject is to claim both that humanity imposes proper legal obligations on state, communities and citizens and that humanity is a subject to which actions are held accountable for. As Renzo indicates, humanity is not only which a crime introduces injury on, but also to which doers of certain actions and practices are legally held accountable for. Thus, Renzo argues that the concept of crimes against humanity indicates that in a crime, a criminal is held accountable and answerable not only to his/her immediate victim(s), but also to humanity itself. Benhabib, one the other hand, argues that the concept of crimes against humanity indicates that the human being is not only a being "worthy of moral respect", but also one "having a legal status" (Benhabib 2006, 14). Needless to say, to have a legal status is to be a legitimate legal subject. The concept of crimes against humanity brings about the idea of legal entitlement and responsibility attached to our humanity identity. It makes clear that wrongdoers must account for their wrongs that they are answerable to the community of humanity (Renzo 2012. 456-457). In short, "crimes against humanity are those that properly concern the whole of humanity" (*Ibid.* 460). In the concept of crimes against humanity, the whole of humankind as the legal subject has claims on those wrongdoers that commit what is characterized as a crimes against humanity and is in a legal position to impose legal obligations individual persons, human communities, and nation/states in the name of humanity.

Now, the concept of crimes against humanity is conceptually and normatively associated with the contemporary aspiration for a cosmopolitan order of global justice. Crimes against humanity are defined by positive laws such as international criminal laws in a cosmopolitan order of global justice as a juridical order. Conversely until it is an order wherein crimes against humanity constitute a major category of crime, a cosmopolitan order as a juridical order is not an adequate one. Cosmopolitan norms of justice “signal the eventual legalization and jurisdiction of the rights claims of human beings” on the earth (Benhabib 2006, 20). The concept of crimes against humanity is deeply rooted in the claims on basic rights of a human being and in the basic claims of humanity in whole. A cosmopolitan order that is juridical necessarily needs a concept of crimes against humanity. A concept of crimes against humanity becomes substantial and meaningful in a cosmopolitan order that is juridical. Geoffrey Robertson makes a suggestive argument for universal jurisdiction, which is at the core of the ideal of cosmopolitanism, as follows: “There are no ‘rights’ without remedies: equally, there are no rights without remedies for human wrongs, in the sense of arrangements for punishing those guilty of crimes against humanity” (Robertson 1999, 203).

In connection with the above, another significant development of the spirit of our time is that the concept of crimes against humanity makes the claim that humanity precedes sovereign statehood or any other things. As Robertson says:

It has been the great achievement of international law, by the dawn of the twenty-first century to lift the veil of sovereign statehood far enough to make individuals responsible for the crimes against humanity committed by states they formally commanded, while at the same time developing a rule that those states have a continuing duty to prosecute and punish them, failing which another state or the international community may bring them to justice (*Ibid.*, 205-206).

The claim that humanity precedes sovereign statehood is a major claim of cosmopolitanism of our time. It rekindles the Kantian motto: Out of crooked timber of humanity, nothing straight can be built.

Here, the concept of crimes against humanity may invite us to revise our concept of positive laws, in particular, those which should be legally sanctionable. At the core of this is also an invitation to revise our concept of the object of legal harm—that is, what can be considered to be the possible object of legal harm? Evidentially, to say that one’s body or physical part is harmed is one thing. To say that one’s freedom, rights or basic human dignity or identity is harmed is quite another. The concept of crimes against humanity further invites us to revise our concept of possible legal subject. Evidentially, to say that a person is a legal subject is one thing. To say that humanity is a legal subject is quite another. To appreciate further the revolutionary ramification of the concept of crimes against humanity, we shall turn to examine the conceptual properties of crimes against humanity.

II

We shall now examine the nature and feature of crimes against humanity. Defined by various international criminal statutes and treaties, the concept of crimes against humanity captures a family of global crimes. David Luban singles out five features of this family of crimes:

- (1) Crimes against humanity are inflicted on victims based on their group membership”;
- (2) They are “crimes committed against fellow nationals as well as foreigners”;
- (3) They are “international crimes”;
- (4) They “are committed by politically organized groups acting under color of policy”;
- (5) They “include the most severe and abominable acts of violence and persecution. (Luban 2004, 109-110).

Luban’s conception of crimes against humanity has the virtue of being consistent with how crimes against humanity are defined in international criminal statutes and treaties. It is also consistent with the human experience of our time. That being said, Luban conceives crimes against humanity mainly in terms of what they have resulted, not in terms of what motivate them. In other words, his conception of crimes against humanity is totally consequentialist. Dropping (2) of Luban’s conception of crimes against humanity above, Massimo Renzo also indicates four features of such a family of crimes: (1) “They constitute particularly odious offences”; (2) “They are international crime”; (3) “they have policy element”; and (4) “they have a collective element” (Renzo 2012, 444). Renzo then defends the following three theses:

First, crimes against humanity are those that ‘deny their victims the status of human being’. Second, crimes of this kind properly concern the whole of humanity and thus have an international dimension ...Third, crimes listed in the Rome Statute and other international statutes deny their victims’ status of human being even when they have no collective element or policy element (Renzo 2012, 448).

Renzo also conceives crimes against humanity in consequentialist terms, though his main argument is that what characterizes crimes against humanity is that humanity is the legal subject to which those whom crimes against humanity should be answerable.

In light of the above, I would like to propose that crimes against humanity are a unique family of crimes that have four necessary moments:

- (1) Crimes against humanity are orient to assault, and focus on assaulting, victims’ basic humanity, and humanity in whole—humanity as the metaphysical and practical identity of all human beings, humanity as the supreme value for humankind, and humanity as a species; crimes against humanity are orient to attack victims’ practical humanity identity; they assault on humanity in whole;
- (2) Crimes against humanity are global crimes;
- (3) Crimes against humanity are conducted as a kind of executing a kind of anti-humanity policy; they are anti-humanity policy-laden;

(4) Crimes against humanity are not just any kind of violation of basic human rights or any kind of inhumanity; instead, this form of crimes is systematic and full range.

Conceiving crimes against humanity as above, my intention is to conceptualize crimes against humanity in terms both of their consequences and motivations, not merely consequences alone.

First, crimes against humanity are conducted to directly violate and injure victims' basic humanity and therefore they directly injure humanity in whole—humanity as the metaphysical identity of human beings, as the supreme value for humankind, and as a species. Not only the violation and injury of victims' basic humanity is the main motivation for such a form of crime, but also the violation and injury of victims' basic humanity is the main cause and objective of this form of crime. The violation and injury of victims' basic humanity and denial of victims' basic human status in turn amount both to deny humanity as a metaphysical and practical identity of all human beings and the humanity status as the metaphysical status of a human being and to injure humankind as a species. Therefore, Hannah Arendt would characterize crimes against humanity as demonstrating “a deliberate inhuman purpose” (Arendt 1964, 256). She conceives crimes against humanity to be a kind of “crime against the human status” (*Ibid*, 268). Because the object of their offence is humanity as an identity, a value, and a race, crimes against humanity are profound crimes. Because they are motivated to and focus on harming humanity, crimes against humanity are voluntary, and consciously against humanity.

Thus, crimes against humanity single out a distinctive family of legal inversion that “differs from (for example) generic inhumanity and from the violation of human rights” (Vernon 2002, 232). In crimes against humanity, humanity is not just the victim, but is designated to be the focal victim; making humanity the victim is the objective, purpose, and motivation of the crimes. For example, if a group of women are deliberately raped because they belong to a particular ethnic group as part of the policy and practice against this particular group, then the crime is a crime against humanity. If a group of women are gang-raped on a Saturday night in a night club, the rape is a regular crime of rape. In the former, what is particularly and directed targeted at by the criminal(s) in the rape is victims' humanity with their practical human identity, e.g., their ethnic identity. The rape purports to injure and deny the humanity of a particular group of women and therefore to injure humanity as a metaphysical and practical identity of all human beings, humanity as a value, and humankind as a species. In the crime, humanity is not just the victim, but is designed to be the focal victim and injuring humanity is the purpose, focus, and motivating force of the crime. In the case wherein a group of women are gang-raped in a Saturday night in a night club, the rape targets at victims' physical bodies and the criminals are motivated to exploit the victims' physical bodies only.

The qualification “as the main objective, focus, and cause” is crucial here. On the one hand, it underscores the emphasis on the distinction between an act or practice that focuses on X and an act or practice that simply causes X. To put it in Aristotelian term, it distinguishes between an act or practice that is due to X and one that simply

brings about X. On the other hand, it underscores the fact that the violation of victims' basic humanity and humanity in whole as a main cause and objective is a necessary condition of crimes against humanity. To put it in a logical form, let: V= the violation of victims' basic humanity and humanity in whole as the main objective and cause of a crime; C = crimes against humanity. We have: If C, Then V; Not V, Not C. Therefore, while all crimes against humanity are inhumane, but not all inhumane crimes are crimes against humanity. "No view of crimes against humanity that fails to take account of the violent presence of inhumanity can be morally persuasive" (Vernon 2002, 236).

In the real world, those who commit crimes against humanity are consciously motivated directly to focus on injuring victims' practical human identity, e.g., their religious, ethnic, communal or ideological identity, instead of their metaphysical humanity identity. Not only the violation of victims' practical human identity such as religious, ethnic, communal or ideological identity is the main motivation for such a form of crime, but also the violation of victims' practical human identity is the intended, targeted result and objective of this form of crime. Arendt thus would see crimes against humanity to be "an attack upon human diversity as such, that is, upon a characteristic of the 'human status' without which the very word 'mankind' or 'humanity' would be void of meaning" (Arendt 1964, 268-269). Vernon indicates, "crimes against humanity strike discriminatingly and with an awful predictability, given that they tend to fall upon the objects of longstanding prejudice" (Vernon 2002, 236; cf Gera 2011, 36). Conversely, only if it involves the violation of victims' practical identity as the main objective and cause of a crime, a crime would not be a kind of crimes against humanity. That is, the condition that violation of victims' practical human identity is the main objective and cause of a crime is both a necessary condition and a sufficient condition of crimes against humanity. To put it in a logical form, let: VM= violation of victims' practical human identity as the main objective and cause of a crime; C = crimes against humanity. We have: If C, Then VM; Not VM, Not C. That being said, violation of victims' practical human identity is a necessary condition, but not a sufficient condition of crimes against humanity. To put it in a logical form, let: VM= violation of victims' practical human identity; C = crimes against humanity. We have: If C, Then VM; Not VM, Not C, but not "If VM, then C; Not C, not VM.

That being said, in crimes against humanity in the form of crimes against a particular group of civil population, the crimes against victims' basic humanity is a crime against general humanity as the metaphysical identity of the victims of crimes against humanity. Victims' basic humanity is a manifestation of general humanity as a metaphysical identity, a value, and a species or bonded family. When victims' basic humanity are violated, their basic rights, dignity, and human personhood are also violated and their identity as human beings are violated, not merely they as members of given religious, ethnic, political or ideological communities are violated. What we need to recover are both the concept that the violation of victims' basic humanity and the violation of general humanity are internally associated with each other and the concept that the violation of particular groups of people's humanity and the violation of humanity in general are internally linked.

Second, crimes against humanity are global offences against the global human community or global humanity as “municipal crimes are offences against the [municipal] community” (Luban 2004, 140). The global community of humanity refers to the global community of human beings. Global humanity here is understood as the intersubjectivity or intersubjective consciousness of the global community of human beings. Luban insists that humankind which crimes against humanity offend “refers to an aggregate of human beings, not a collective entity” (*Ibid.* 141). The concept of global humanity is intended to indicate that the community of humanity which crimes against humanity offends is more than “a physical aggregate of human beings”, but a community with an intersubjective consciousness or communal intersubjectivity; humanity is the intersubjectivity of the global human community in the same way American consciousness is the intersubjectivity of the nation-state called the United States of America. Thus, crimes against humanity are marked or characterized as a shock to the public human conscience of humankind. They are the gravest offense to global humanity as the intersubjective consciousness of the global human community.

The subject-matter of crimes against humanity is part of the concern of global justice. Fair to say, as indicated above, what can be counted as crimes against humanity are legally defined by international treaties such as the Nuremberg Charter, the UN 1948 Declaration of Human Rights and statutes of international law such as the statutes of ICTY, the ICTR, and the ICC, and others municipal statutes. That being said, crimes against humanity are part of the concern of global justice that defines how citizens and civil populations should be treated by communities, states or governments, not to international justice that holds how independent nations, states or communities should relate to one another.

Admittedly, so far as jurisdiction is concerned, as M. Cherif Bassiouni indicates, existing statutes that define “crimes against humanity” as such are all territorial and “as a result, one cannot say that there is conventional law providing for universal jurisdiction for ‘crimes against humanity’” (Bassiouni 2004, 52). In spite of this, claims which international laws and municipal statutes make on crimes against humanity have global validity; the contextual and territorial nature of them as legal judgment in accordance with a particular legal statute does not obscure the global nature of them as legal claims of reason and the laws of humanity. In other words, while crimes against humanity are legally defined by international and municipal statutes, these statutes make claims on crimes against humanity that have global validity. They make claims on crimes against humanity in virtue of the laws of humanity as cosmopolitan laws and global justice which gives citizens a legal status in the global human community. In short, international and municipal statutes that define legally crimes against humanity are agents of the laws of humanity as cosmopolitan laws and of global justice.

This reminds us of the distinction between global justice and international justice. International justice is concerned with relationships between nation-states, while global justice is concerned with individual citizens’ rights, humanity status, and

corresponding obligations. International justice asserts nation-states' sovereign statehood and defend the nonviolability of nation-states' sovereignty. Global justice claims individual citizens' sovereignty. The concept of crimes against humanity, as Robertson puts it, "lift the veil of sovereign statehood far enough to make individuals responsible for the crimes against humanity committed by the states they formally commanded" (Robertson 1999, 205). Noteworthy, the justice which various contemporary international humanitarian interventions to stop genocides and crimes against humanity committed by given governments against their own citizens or political entities against specific groups or portions of civil population is global justice, not international justice.

One may object here that crimes against humanity are defined by international and municipal laws. How can international and municipal laws make claims on global crimes? How can their claims have global validity? My answer is a Habermasian one: that the claims of crimes against humanity are made in international laws or municipal laws indicate the context in which the claims first arise; this does not makes the claims themselves be merely contextual; claims arising in specific contexts can have universal and global validity. This is what Habermas dubs as the *Janus* face of the claims of reason:

As claims, they transcend any local context; at the same time, they have to be raised here and now and be de facto recognized if they are going to bear the agreement of interaction participants that is needed for effective cooperation ... The validity claimed for propositions and norms transcends spaces and times; but the claim is always raised here and now, in specific contexts, and is either accepted or rejected with factual consequences for action (Habermas 1998a, 322).

The claims of crimes against humanity, as claims of legal reason, have a *Janus* face: they arise in the context of international laws and municipal laws. But their validity is global, transcending the international and municipal contexts in which they arise. The laws of humanity in whose names international laws and municipal laws make claims on the crimes against humanity are cosmopolitan laws.

Third, in connection with the above, as Luban and others indicate, crimes against humanity are conducted to execute a kind of policy. They are policy-laden. Crimes against humanity are not just any kind of violation of basic human rights or violation of human dignity. Instead, this form of crime is conducted to execute a kind of state-policy or governmental policy that denies the humanity of citizens and the humanity of a portion of civil population. Being policy-laden in turn reinforces that crimes against humanity are intended to assault on the humanity of a particular portion of civil population.

As Renzo notes, "Crimes against humanity are considered particularly odious because they are not isolated or sporadic events, but rather part of a policy of widespread or systematic atrocities that target the members of a certain group" (Renzo, 2002, 445). Crimes against humanity differ from regular crime introducing injuries on human persons in an important aspect: injuring collectively humanity of individual citizens or the humanity of a particular group of civil population is the

main cause and objective of the crime. Offending the humanity of citizens or of a particular portion of civil population can be the main cause and objective of a crime if and only if the crime is policy-laden. Offending humanity as metaphysical identity of a victim and the metaphysical identity of all human beings is a structural inversion and offense which is possible if and only if it is guided by an articulated policy. Injuring humankind in whole as a species is structural inversion and offense which is possible if and only if it is structured by an articulated policy.

Crimes against humanity are a kind of organized crime. Yet, they are not merely ordinary organized crimes such as organized human traffic, gang violence, and the like. They are a form of organized crime driven and guided by established policies that deny the humanity of citizens or particular civil groups because of their practical human identity, e.g., ethnic, religious, ideological or political. Their forms such as murder, extermination, enslavement, deportation or forcible transfer of population, imprisonment or other severe deprivation of physical liberty, rape, sexual slavery, persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender and the like carry out established policies or a policy-laden agenda.

I would like to add here that being policy-laden gives a crime not only the necessary content and structure that makes it a crime against humanity, but also an institutional resource to materialize it as a crime against humanity; therefore, it is a necessary condition for crimes against humanity. To put the matter in a logical form, let C = crimes against humanity, P = being policy-laden. We have: If C, then P; Not P, not C. Fair to say, being policy-laden is a necessary condition, but not sufficient condition of crimes against humanity. While being policy-laden gives a crime a form, the content of the crime is determined by the content of the policy that generates the crime. Thus, racism in daily life is a form of practice that is policy-laden, but not a kind of crimes against humanity. The content of the policy of racism in daily life does not make it a crime. In comparison, ethical cleansing or genocide is a form of crimes against humanity. Not only ethical cleansing or genocide is policy laden, but also the content of the policy of ethical cleansing or genocide arrives at the level of crimes against humanity. All the same, being policy-laden is the necessary form and component of crimes against humanity.

Being policy-laden also makes a crime whose consequence is not measured by the consequence of an individual criminal act, but by the consequence of a policy, and the anticipated, possible consequence of a form of act. For example, the consequence of Holocaust is measured not merely by deaths of individual Jews. It is measured by the anticipated, possible consequence of the policy of ethnic cleansing of Jews population or the consequence of ethnic cleansing of any ethnic groups of civil population.

Fourth, as Luban and others indicate, being policy-laden, crimes against humanity are systematic, wide-spread crimes. Crimes against humanity are not isolated, individual violations of basic humanity. Instead, they are systematic, wide-

spread violations of humanity. Thus, the Rome Statute of the International Criminal Courts reads:

crimes against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: Murder; Extermination; Enslavement; Deportation or forcible transfer of population; Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; Torture; Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court; Enforced disappearance of persons; The crime of apartheid; Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health (ICC, Article 7, 1).

The qualification term above is "committed as part of a widespread or systematic attack". A crime against humanity in the ICC list is committed not as an individual or isolated attack, but as part of a systematic attack. For this reason, it is not only policy-laden, but also organized and coordinated. For this reason, I find Renzo's argument that crimes against humanity can have no collective character puzzling and misleading.

But we will not be obsessed with the issue whether crimes against humanity have a collective character here. Suffice it to say that in content, crimes against humanity are systematic, comprehensive, and total offenses to humanity as an identity, a value, and a species; they are systematic, organized, and comprehensive assault on humanity as the intersubjectivity of all citizens. Therefore, they are generally marked by the magnitude of offenses which they produce. In scope, crimes against humanity are of full range and ramifications. In substance, they are comprehensive and of full ramifications on humanity as a metaphysical and practical identity, as a value, and as a species. Thus, crimes against humanity are not merely "generic inhumanity" and "the violation of human rights" (Vernon 2012, 232). They are profound crimes of and beyond certain level of assaulting on humanity and humankind in whole. More exactly, they are profound crimes harming humanity in full scope.

Like being policy-laden, being systematic is a necessary condition of crimes against humanity. To put it in a logical form, let C = crimes against humanity, S = being systematic. We have: If C, then S; Not S, not C. Being systematic beings about the unique nature and substance of crimes against humanity. That being said, being systematic is not a sufficient condition of crimes against humanity. There is crime that is systematic but not necessarily a crime against humanity. For example, organized crime in regular sense is systematic, but not crimes against humanity in the sense which we discuss here. Reversely, there can be no crimes against humanity that is not systematic. Holocaust is not regular murder. It is systematic murder of a particular

ethnic group of civil population. The rape of Nanjing is not regular murder and rape, but a systematic rape and murder of Chinese civil population.

The four moments outlined above can be said to be the defining moments of crimes against humanity. They explain the serious nature of crimes against humanity. “Crimes against humanity are inhumane, but inhumane acts of and beyond a certain level of seriousness” (Geras 2011, 49). They explain those practical features of such a kind of crimes, e.g., organized by a state or state-like entity, involving systematic violence, having “unforgivable brutality” (Robertson) and indescribable magnitude of wrong, shocking the public conscience of humankind, and the like. They further explain the necessity and urgency for humankind to stop such a kind of crimes. They illustrate why the concept itself is at the core of the spirit of our time and changes the face of the earth in our time. That being said, while all of these four moments are necessary conditions of crimes against humanity, each of them alone is not sufficient to define crimes against humanity as such. For this reason, I feel hesitant to call them essential moments. Not surprisingly, Vernon’s resistance to conceive crimes against humanity in terms of denying victims’ human status and injuring victims’ human dignity can be answered by the insistence that this is a necessary condition, but not a sufficient condition in its own. Geras’ attempt to add the qualification of seriousness of and beyond certain level to crimes of inhuman-ness in order for them to be qualified as crimes against humanity and his other attempts also remind us of the truth that each of the four moments of crimes against humanity outlined above alone is a necessary condition, but not a sufficient condition of crimes against humanity.

All the same, crimes against humanity are organized, systematic, policy-driven, and profound legal inversion against humanity—humanity as the metaphysical identity of all human beings, as a value, and as a species; humanity as the intersubjectivity of citizens in the global human community. They are concerns of the global human community. Therefore, they are part of the subject-matter of global justice and cosmopolitanism. Crimes against humanity share some common points with genocide, war crimes, and crimes against peace, as indicated in the statutes of ICTY, the ICTR, and the ICC. Yet, crimes against humanity remain a distinctive family of crimes in its own: as crimes, they are against humanity, not something else! They are essentially characterized by the truth that in family of crimes, humanity is the designated, focal victim.

III

As discussed above, crimes against humanity are global crimes. They are defined in terms of the laws of humanity as cosmopolitan and juridical laws and global justice through the vehicles of statutes of international and municipal laws. They affect and properly concern the global human community in whole. Here, we cannot talk about crimes against humanity without mentioning the laws of humanity, just as we cannot talk about crimes against humanity without affirming that humanity is a possible object of legal injury and legitimate legal subject that is entitled to make claim.

Robertson writes: “As one Nazi war crimes tribunal explained, ‘crimes against humanity ... can only come with the purview of this basic code of humanity because the State involved, owing to indifference, impotency or complicity, has been unable or has refused to halt the crimes and punish the criminal’” (Robertson 1999, 208). One can also say that without the laws of humanity, no international or municipal laws can define crimes against humanity.

Historically, the appeal to the laws of humanity may be “essentially a response to a jurisdictional vacuum”, to borrow a line from Vernon, which allows states and particular groups of citizens to have free-ride to act against particular groups of civil populations in forms of murder, deportation, rape, enslavement, enforced disappearances and the like, to engage in war crimes, or to practice apartheid and the like. Today, the appeal to the laws of humanity is essentially an expression of an emerging cosmopolitan juridical order of global justice wherein humanity precedes sovereign statehood and wherein states, governments, communities, and citizens have moral and legal obligations to give due to humanity as an identity, a value, and a specie and are legally held accountable to the global human community in whole; they are legally held accountable for inversion of the human dignity, human rights, and human personhood—in short, basic humanity—of individual citizens or civil population because of their practical human identity and humanity. Since Nuremberg, the laws of humanity are part of the functioning, institutionalized cosmopolitan order anchored around the idea of basic human rights and human dignity.

As indicated above, the concept of the laws of humanity can at least be traced back to “the Martens Clause in the Hague Conventions of 1899 and 1907” (Geras 2011, 5-6). As Luban indicates, “the ‘laws of humanity’ are a recognition of the heightened danger of politics in the modern world” (Luban 2004, 139). Luban holds that the laws of humanity “are not, at bottoms, created by any political community at all, but rather by universal human needs” (*Ibid*). This observation may not have the truth, at least not the whole truth. As juridical laws, the laws of humanity are created by a global community of humanity, not Divine-given or nature-given laws. They are democratically established gradually in the globe. Accordingly, Luban’s view on the normative force of the laws of humanity is also flawed. According to Luban, the normative force of the laws of humanity “does not arise from the fact that they have been positivized in the statutes of the international tribunals and a few domestic legal systems, nor from the tepid commitment of states to enforce them” (*Ibid*). As I shall see it, the normative force of the laws of humanity arises from their legitimacy and sovereignty. Their legitimacy and sovereignty comes partially from the global democratic procedure in which they are established. That they have been positivized in the statutes of the international tribunals and various domestic legal systems is part of the global democratic procedure in which the laws of humanity are established and developed. Therefore, we should go beyond naturalism and positivism to appreciate the normative force of the laws of humanity.

Since Nuremberg and UN 1948 Declaration of Human Rights, the norm of basic human rights has be part of the functioning, institutionalized legal architecture of our time. As Robert Fine argues, “Human rights are a social form of right that has arisen in our own times and is an achievement of our age ... Human rights exist not just in

the mind but as a determinate form external to our own subjective feelings and opinions of it. It has a legal status within international law and has percolated into other areas of international and domestic law” (Fine 2009, 17). On this point, while the Nuremberg Charter serves as the lead, the 1948 United Nations’ declaration of Human rights is a global treaty constructing and defining some basic human rights, and consequently, a rights-centered legal architecture. That the norm of human rights is juridical in a global scale indicates also that the law of humanity is a legal law in the globe. Seyla Benhabib thus indicates, “Since the UN Declaration of Human Rights in 1948, we have entered a phase in the evolution of global civil society which is characterized by transition from international to *cosmopolitan* norms of justice” (Benhabib, 2006, 15-16). The UN Declaration has “the force of treaty law among their signatories,” institutionally defining basic human rights and rights-centered human relations in the globe (Moellendorf 2002, 5). International criminal statutes such as the status of ICTY, the ICTR, and the ICC, or municipal statutes such as statutes of various countries which forbid or enjoined conducts and practices under penalty under the name of humanity represents the law of humanity as a cosmopolitan law, at least an international law.

In light of the Nuremberg Charter, the UN 1948 Declaration of Human Rights, the statutes of ICTY, the ICTR, and the ICC and others municipal statutes such as statutes of various countries, we can conceive the basic content of the laws of humanity as follows:

1. It is legally prohibited to offend the basic humanity of citizens, the humanity of particular groups of civil population, global humanity as an intersubjectivity, and humankind in whole as a species; it is a legal obligation never to offend humanity;
2. It is legally obligatory to treat a human being as a purpose in itself, not merely as means or tools to other ends; crooking humanity is legally prohibited;
3. Every citizen, community, and state (and government), as well as the global human community, bears legal obligation to give due to citizens’ humanity identity, basic human rights, human dignity, and basic human bonds; Every citizen, community, and state (and government), as well as the global human community, bears legal obligation to give due to basic human values and human standards of existence.

Needless to say, what is outlined of the laws of humanity above is intended merely as a working map. Notwithstanding, embodied in the Nuremberg Charter, the UN 1948 Declaration of Human Rights, the statutes of ICTY, the ICTR, and the ICC and others municipal statutes such as statutes of various countries, the laws of humanity is no longer something abstract and merely regulative idea, but a law which is actionable upon. It is evident that there are the laws of humanity as cosmopolitan laws that are actionable just as there are municipal laws that make murder and rape criminal offences.

That being said, what is important for the present enquiry is that the laws of humanity have three features: (1) they are of humanity as the metaphysical and

practical identity of all human beings, the inviolability and the obligatory force of such a metaphysical and practical identity; and the legal sanctionability of offence to such a metaphysical and practical identity; (2) they are of humanity as the supreme value of human existence and the priority of this value over all other values; and legal sanctionability of offence to such a value; and (3) they are of humankind in whole as a species and legal sanctionability of offence to humankind in whole as a species. While the positive force of the laws of humanity comes mainly from those international and municipal statutes which embody them, the dignity of the laws of humanity lies in fact that they are metaphysically, ontologically, ethically, and politically indispensable for humankind to thrive as humankind. While their normative force and sovereignty comes from the democratic process wherein they are institutionalized in the globe gradually, they are cosmopolitan laws which we necessarily assume for the global community of humankind.

IV

In conclusion, crimes against humanity are part of the subject-matter of the spirit of our time. Marked with a scope of magnitude of moral evil, they designate a distinctive family of legal inversions of and offences to the laws of humanity as cosmopolitan laws and of global justice. They are offences against humanity as an identity, as a value, and as a species or bonded family. Their offences against humanity are generally manifested in forms of systematic, violent and profound violation of citizens' humanity—basic human rights, dignity, human personhood, and the like—to and beyond certain level. As the metaphysical and practical identity of all human beings, humanity here is understood as an intersubjectivity of all human beings in the globe. Kant said: Out of the crooked timber, nothing straight can be built. We should see that out of the crooked timber of humanity, no just laws can exist.

Crimes against humanity are morally repugnant, no question of that. But they are first of all legal offences, not merely moral wrong. Their legal sanctionability lays not so much in their cruelty and inhumaneness. Rather it lays in their systematic, comprehensive, and appalling offences to the laws of humanity as cosmopolitan and juridical laws humanity and the norm of humanity as a cosmopolitan and juridical norm. That they are motivated to offend humanity and they are systematic, policy-driven and profound violations of citizens' basic humanity to and beyond certain level vouch for their offences to the laws of humanity and the norm of humanity.

The emergence and development of the concept of crimes against humanity and corresponding international and municipal laws is a defining feature of the spirit of our time. It represents three important progress in human consciousness of our time: (1) the concept of humanity as an identity, a value, and a human bond is restored to the center of our ethical, social-political, and legal thinking, no longer marginal; (2) the rise and development of the ideals of global justice and cosmopolitanism anchored around the ideas of basic human rights and humanity; and (3) a new progress of the idea of the rule of law in the global human community. Meanwhile, the concept of crimes against humanity is still a developing concept, not a developed concept. It is

our task to constantly revise this concept in terms of the spirit of our time and of all times.

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