

Ethics and History: Can Critical Lawyers Talk of Good and Evil?

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Abstract This essay explores what we might mean by good and evil, and argues that these terms remain salient for a critical, socio-historical, understanding of criminal law. It draws upon a meta-ethics of freedom and solidarity to explain what good means in recent mercy killing cases in England and Wales, and what evil means in Arendt's phrase, the 'banality of evil'.

Keywords Law · Critique · Ethics · Good · Evil · Mercy killing · Arendt

Introduction

This essay explores what we might mean by good and evil, and argues that these terms remain salient for a critical, socio-historical, understanding of criminal law. It draws upon a meta-ethics of freedom and solidarity to explain what good means in recent mercy killing cases in England and Wales, and what evil means in Arendt's phrase, the 'banality of evil' Arendt 1964. My original title was 'the Scene and the Crime', and the basic argument was that if we are to understand 'the crime', we need to understand its 'scene', which includes substantive ethical terms like good and evil. What might be surprising in this is the link between this argument for ethics and the general thrust of a critical understanding of criminal law.

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