

Session 26 Applbaum, “Professional Detachment: The Executioner of Paris”

Applbaum’s discussion of the case of Sanson, the Execution of Paris, connects to a number of issues that have come up before in this class:

- How should a judge rule who has a moral objection to deciding a case along lines that seem clearly dictated by law? (Hart/Dworkin/Scalia)
- Ought we to do something we’d otherwise find morally objectionable if the law/a legitimate authority/our office demands it? Or does doing it involve a morally problematic sacrifice of autonomy? (Wolff/Raz)
- If we think a practice or profession itself is justified, must we think any action recommended by its rules is justified? What if the considerations that counted in favor of adopting a practice governed by those rules seem to count *against* performing an individual action required by those rules? (E.g. don’t execute an innocent man, even to appease a violent mob.) (Rawls)
- If we think that it’s right that there are lawyers/executioners/soldiers/slaughter-house workers/CIA interrogators, can we consistently think it’s wrong to *be* a lawyer/executioner/soldier/slaughter-house worker/CIA interrogator? (movie; Wasserstrom)

I. *Sanson’s job:*

- Acted as executioner through the long and rapidly changing string of authorities during the period of the French Revolution: the monarch, the Paris Commune, the National Convention, the Jacobins, the Dantonistes, Robespierre, the Thermidorians – in the service of whatever powers happened to hold sway at the time (including, often, executing his previous bosses).
- Viewed himself as a practitioner of a necessary profession.
- Was never, himself threatened with prosecution or held responsible for his actions (at least not in his capacity as executioner).
- Gave expert opinions but clarified instructions with his superiors.
- Acted for money: “it must be remembered that nothing but the desire of gain induces anyone to adopt this calling.”
- Showed “professional detachment.”
- Saw himself as governed by a set of norms internal to the profession, conformity to which was to be best judged by other members of the profession.

The main lines of debate:

“It is absurd that the law should say to a man: do that, and if you do it, you will be abhorrent to your fellow men.” *versus*

“It is in the heart of all good men to shudder at the sight of one who assassinates his fellow man in cold blood. The law requires this deed, it is said, but does the law command anyone to become a hangman?”

II. *Authority and Roles*

Applbaum considers an analogy between the case of the executioner and that of a bureaucrat or subordinate who just blindly follows orders.

Eichmann in Jerusalem

Hannah Arendt described the SS Officer Adolf Eichmann's trial for war crimes and crimes against humanity. Arendt was struck by how utterly ordinary he seemed, and by the complete absence of malicious motives behind his horrific acts. How could such a seemingly ordinary man do such things? (The question is not unlike Mercier's question about Sanson...)

- The dangers of "officialese;" Arendt: "his inability to speak was closely connected to an inability to *think*, namely, to think from the standpoint of somebody else."
 - Recall Wasserstrom's worries about legalese and medicalese, and the morally undesirable distance and power imbalance between professionals and their clients it creates
 - Arendt draws attention to another, perhaps still more worrying aspect of officialese – its tendency to produce a "professional detachment" not just from the client, but from the acts the professional performs.
 - Medical case; military case ("tango down"); lawyer's case (capital punishment might itself be considered a legalese euphemism?)
- Reconceptualization of conscience as obedience to authority, with no personal responsibility taken for one's conduct. (Remember Wolff on the dangers of blind obedience to the law/sacrifice of autonomy...

Sanson in Paris

Is Sanson another example of the banality of evil?

- Applbaum says no:
 - Sanson is a *professional*, not a bureaucrat.
 - He sees himself as bound by the special norms attached to his professional role, not as bound by the dictates of some authority.
 - Applbaum argues that Sanson's role, though requiring technical expertise, does not disguise the nature of his act from him, and that Sanson cannot disappear into his role and escape (self-) scrutiny the way Eichmann could – his notoriety means he is called on to explain himself.
 - Is this true of the other professions that interest Applbaum, like lawyering? Soldiering? Doctoring?
- Note the structural similarities...
 - Just as we asked before whether otherwise wrong actions required by a legitimate law were themselves thereby made legitimate, we're now asking whether actions required by a justifiable professional practice are thereby made justifiable.
 - Just as we asked before whether unquestioningly obeying even a democratically elected authority involved a morally-suspect abandonment of

autonomy, we're now asking whether simply doing as professional norms require, without question, involves a sacrifice of autonomy.

III. *Sanson v. Mercier*

Is Sanson a murderer – the equivalent of a hired assassin?

M: You kill people for pay!

S: My work is my *profession*:

- Other professionals also get paid to do what they do: that does not distinguish me from the lawyer or the doctor or, certainly, the soldier. Getting paid is a mark of a profession.
- (Indeed, I'm better than the lawyer or the doctor – at least *I* don't operate on a fee-for-service model!) What would be *unprofessional* would be to compromise on quality to save a dime – I never do that!
- And my work has other marks of a profession – it's governed by high ethical and technical standards compliance with which is best judged by my fellow practitioners.

M: You have to give me some reason for valuing your work that *I* can comprehend (not just one that moves other executioners!)

S: Fine. You can disagree about whether capital punishment is ever just, but I don't think you do. And "if law is to rule, the executioner must obey a division of labor between his office and the office of the tribunal. To allow personal views about the sentences I execute to interfere with my duty is to substitute arbitrariness for the rule of law. Whatever you think of my character for having chosen this work, whether or not you cringe at the prospect of shaking my hand, you must grant that I do not act unjustly." (p. 476)

"Whatever the law requires is good. The law requires the death of a criminal. By putting the criminal to death, the executioner simply obeys a good law. How can that make him bad?" (p. 477)

M: Whatever the law requires is not necessarily good. And anyway, the law may require executions, but it requires no-one to be an executioner. What kind of person would choose such a trade? (p. 477)

S: It is incoherent to approve of capital punishment but condemn the executioner. (p. 479)

M: Why not? The person who merely benefits from the execution has done no wrong! *You* are building a career out of the bones of your victims!

S: I act in your name, for your benefit, on your direction – my actions are your actions. If I'm blameworthy, so are you.

M: Fine. Then we should conclude, on that basis, that we should disapprove of capital punishment after all, not because it treats the criminal unjustly, but because it turns men into killers! (p. 479)

- S: But you do not think all killers are blameworthy, just because they kill. Justified killing is not blameworthy, on your view (self-defense, killing in war). So you cannot think I'm blameworthy just because I kill. I'm justified in killing.
- M: Maybe there'd be conditions under which your profession would not be monstrous. But you kill for any boss – you have no integrity! (Remember, again, the lawyer as “hired gun.”) You may think you're a blameless mere instrument – but following orders does not absolve you of responsibility! (p. 481) (Wolff)
- S: I'm not a mere instrument – I don't follow commands blindly. Like other professionals, I'm committed to the realization of important values – in my case, the good of social order, stability, and security! To achieve this, the state must maintain its monopoly on violence! If I felt that the state had become so unstable that carrying out its orders would not lead to the stability, I would quit my job. But without me, we'd have vigilante justice – which is to say, no justice at all!
- I'm not justified in acting because I'm an agent of retribution – if so, I would never be justified in executing the innocent. But I am justified in doing so – because I deter lawless punishment of lawlessness through trust! (p. 483)
- M: You think you're justified in killing the innocent!
- S: Yes – if they were condemned by an authorized judicial process! That's what a good executioner does – he sets aside his personal views. I was not needed to *kill* Robespierre – any number of vengeful citizens were prepared to do that – but only I could *execute* him!
- M: You talk about being a good executioner. But you should be a good *man*! If a good professional must be a bad man, it's immoral to be a good professional.
- S: I agree there are bad professions – ones we shouldn't take up. But mine, I've argued, isn't one of them. You say my profession can require me to do bad things – like executing the innocent. But having made a commitment to the role, I cannot then reject the reasons for action the role provides. I am not an instrument – I must judge my role and ask whether it's a worthy one – but the judgment is of a life in the role, not of the particular acts it requires me to perform. (Remember Rawls?) If I start acting in each case on my personal judgment, I cease to be the executioner and become a serial killer!
- M: Why? I'm not asking that you start killing where your role does not require it – just that you not always kill where your role requires it!
- S: But think of how deciding to refuse a professional assignment transforms the assignments I do *not* refuse! Then I kill only where I personally condemn the killer – the person who acts in such a way is no executioner but a hired assassin! I'm not quibbling about definitions of words, but pointing to something about the meaning of actions! (Rawls!)

Who wins this debate? What does it tell us about the role of the lawyer?

MIT OpenCourseWare
<http://ocw.mit.edu>

24.235J / 17.021J Philosophy of Law
Spring 2012

For information about citing these materials or our Terms of Use, visit: <http://ocw.mit.edu/terms>.