

Obedience, Responsibility, Punishment

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ABSTRACT

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At the Office of the Prosecutor of the ICC (International Criminal Court) we investigate perpetrators of the worst atrocities in the world on a daily basis, since our Office was established in 2004. We cover 19 situations around the world, including cases of genocide, crimes against humanity and war crimes involving hundreds of thousands of victims. We need to consider the different motives and triggers of the violence at difference levels. Generally, as Raoul Hilberg would say, to understand the point of view of the criminal is one of the secrets of success for complex criminal investigations.

Furthermore, for some specific legal requirements we also need to prove “beyond reasonable doubt” what was happening in the brains of the criminal. Such legal requirements include the “modes of responsibility” and “mental element” of the alleged perpetrator (arts. 25 and 28 of the ICC Statute) for any crime, as well as “dolus specialis” or specific intent for a number of crimes, including the “intent to destroy in whole or in part” a protected group for genocide, the specific motives required for the crime of persecutions, or those required for the crime of forced pregnancy. Reviewing some of the recent cases and accused before the ICC will suggest different hypotheses of causation and mental states behind the crimes.

