

TROY DAVIS AND “THE BANALITY OF EVIL”

By Russell Branca
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In 1963 author, philosopher and professor Hannah Arendt published her famous book "**Eichmann in Jerusalem: A Report on the Banality of Evil**". The book was Arendt's report on the trial of Adolf Eichmann, the Nazi bureaucrat and war criminal largely responsible for implementing Hitler's "final solution" that resulted in the systematic murder of millions of Jews.

In pointing out that the remarkable thing about Eichmann was that he was completely unremarkable, she drove home the point that the Nazi crimes were not committed by fanatics or sociopaths but by "*ordinary people who accepted the premises of their state and therefore participated with the view that their actions were normal*". Eichmann was a mild mannered civil servant with a wife and kids who epitomized all the virtues of the German middle class. It was in his dispassionate face at trial that Arendt saw "the banality of evil".

I have heard the rationalizations given for the execution of Troy Davis. As I listened to the explanations that have been offered to justify his execution it all felt eerily similar to what Hannah Arendt was expressing almost 50 years ago. All of the correct procedures had been followed. All of the appeals to all of the judges, parole boards, and other relevant authorities were predicated on whether or not the state had given Davis a fair trial. That is, were all the technical procedures and protocols followed correctly? If they were, then the state had met its obligation and there was nothing more that could be done.

Supreme Court Justice Antonin Scalia, (in my opinion one of the most over-rated minds in America), startled people in 2009 when he made this point regarding the Troy Davis case. There is no constitutional protection for the innocent. It's perfectly legal to execute an innocent man.

He claimed that "*federal courts would be powerless to assist Mr. Davis even if he could categorically establish his innocence*". "*This court has never held,*" Justice Scalia wrote, "*that the Constitution forbids the execution of a convicted defendant who had a full & fair trial but is later able to convince a habeas court that he is 'actually' innocent.*"

Technically he was right, that is, if you omit the fact that the entire criminal justice system exists for the purpose of determining guilt or innocence. What possible rationale does it have to exist in the first place if that distinction is so trivialized as to make it subordinate to procedure? Justice becomes reduced to an empty, mechanical set of protocols that anyone can be trained to robotically follow. Inevitably it leads to Eichmann. Inevitably it leads to Antonin Scalia and all the others that determined that no legal protection had been denied to Troy Davis, that he had received all that the system is required to give.

In 1961 Hollywood gave us one of its greatest films; "Judgment At Nuremburg" about the post WWII trials of Nazi war criminals. It had a brilliant all star cast and was more than 3 hours long. At the end of the film Spencer Tracy, who played the chief American judge, visits Burt Lancaster, who played the distinguished German judge who got sucked into the Nazi hysteria and eventually signed off on the execution of the "feeble minded". Before the war Lancaster's character had enjoyed a fine reputation as a judge of the highest integrity. He is conflicted and is portrayed sympathetically. As Tracy is about to leave, Lancaster looks at him, struggling to preserve some measure of respect by showing he recognizes the magnitude of Nazi crimes and says "Believe me, I never thought it would go that far". To which Tracy responded softly but seriously, "It got that far the first time you condemned to death a man you knew to be innocent."

That scene has always stuck in my mind and surfaces from time to time. This is one of those times. The apathy displayed by the majority of media and the political and intellectual establishments to what happened last night in Georgia can't help from provoking a comparison between the emotionally barren face of a Nazi bureaucrat

50 years ago and the face of a criminal justice system that serenely claims it has done its duty. It's the same face and it's the same "banality of evil" and it scares me.