Law and Inhumanity

In *Law and Inhumanity*, Luigi Corrias explores fundamental philosophical issues underlying the law and politics of atrocity crimes within international criminal justice. Focusing on understanding the experiences of victims and perpetrators, Corrias draws on numerous disciplines to construct his conceptual framework while also using several case studies to examine important issues including references to 'humanity' in the discourse on atrocity crimes; the need for a first-person plural perspective of a 'We' within international criminal justice; the experiences of dehumanisation of both victims and perpetrators; the temporalities of suffering and justice; and the tension between individual criminal responsibility and structural violence.

Luigi Corrias is Associate Professor in the Department of Legal Theory and Legal History at Vrije Universiteit Amsterdam. He is the author of *The Passivity of Law: Competence and Constitution in the European Court of Justice* (2011), for which the Netherlands Association for Philosophy of Law awarded him the Prize for the Best Dissertation in Legal Philosophy in the Netherlands and Belgium in 2009–2010. For his research on *Law and Inhumanity*, he received a fellowship from the Netherlands Institute for Advanced Study in the Humanities and Social Sciences (NIAS-KNAW) in 2019–2020.

Cambridge University Press & Assessment 978-1-009-41898-0 — Law and Inhumanity Luigi Corrias Frontmatter <u>More Information</u>

Law in Context

Series editors

Professor Kenneth Armstrong University of Cambridge Professor Maksymilian Del Mar Queen Mary, University of London Professor Sally Sheldon University of Bristol and University of Technology Sydney

Editorial advisory board

Professor Bronwen Morgan University of New South Wales Emeritus Professor William Twining University College London

Since 1970, the Law in Context series has been at the forefront of a movement to broaden the study of law. The series is a vehicle for the publication of innovative monographs and texts that treat law and legal phenomena critically in their cultural, social, political, technological, environmental and economic contexts. A contextual approach involves treating legal subjects broadly, using materials from other humanities and social sciences, and from any other discipline that helps to explain the operation in practice of the particular legal field or legal phenomena under investigation. It is intended that this orientation is at once more stimulating and more revealing than the bare exposition of legal rules. The series includes original research monographs, coursebooks and textbooks that foreground contextual approaches and methods. The series includes and welcomes books on the study of law in all its contexts, including domestic legal systems, European and international law, transnational and global legal processes, and comparative law.

Books in the Series

Acosta: The National versus the Foreigner in South America: 200 Years of Migration and Citizenship Law Alaattinoğlu: Grievance Formation, Rights and Remedies

Ali: Modern Challenges to Islamic Law

Alyagon Darr: Plausible Crime Stories: The Legal History of Sexual Offences in Mandate Palestine

Anderson, Schum & Twining: Analysis of Evidence, 2nd Edition

Ashworth: Sentencing and Criminal Justice, 6th Edition

Barton & Douglas: Law and Parenthood

Baxi, McCrudden & Paliwala: Law's Ethical, Global and Theoretical Contexts: Essays in Honour of William Twining

Beecher-Monas: Evaluating Scientific Evidence: An Interdisciplinary Framework for Intellectual Due Process

Cambridge University Press & Assessment 978-1-009-41898-0 — Law and Inhumanity Luigi Corrias Frontmatter <u>More Information</u>

> Bell: French Legal Cultures Bercusson: European Labour Law, 2nd Edition Birkinshaw: European Public Law Birkinshaw: Freedom of Information: The Law, the Practice and the Ideal, 4th Edition Blick: Electrified Democracy: The Internet and the United Kingdom Parliament in History Broderick & Ferri: International and European Disability Law and Policy: Text, Cases and Materials Brownsword & Goodwin: Law and the Technologies of the Twenty-First Century: Text and Materials Cane & Goudkamp: Atiyah's Accidents, Compensation and the Law, 9th Edition Clarke: Principles of Property Law Clarke & Kohler: Property Law: Commentary and Materials Collins: The Law of Contract, 4th Edition Collins, Ewing & McColgan: Labour Law, 3rd Edition Cowan: Housing Law and Policy Cranston: Making Commercial Law Through Practice 1830-1970 Cranston: Legal Foundations of the Welfare State Darian-Smith: Laws and Societies in Global Contexts: Contemporary Approaches Dauvergne: Making People Illegal: What Globalisation Means for Immigration and Law David: Kinship, Law and Politics: An Anatomy of Belonging Davies: Perspectives on Labour Law, 2nd Edition Dembour: Who Believes in Human Rights?: Reflections on the European Convention de Sousa Santos: Toward a New Legal Common Sense: Law, Globalization, and Emancipation Diduck: Law's Families Douglas-Scott: Brexit, Union, and Disunion: The Evolution of British Constitutional Unsettlement Dowdle: Transnational Law: A Framework for Analysis Dupret: Positive Law from the Muslim World: Jurisprudence, History, Practices Emon: Jurisdictional Exceptionalisms: Islamic Law, International Law, and Parental Child Abduction Estella: Legal Foundations of EU Economic Governance Fortin: Children's Rights and the Developing Law, 3rd Edition Garnsey: The Justice of Visual Art: Creative State-Building in Times of Political Transition Garton, Probert & Bean: Moffat's Trusts Law: Text and Materials, 7th Edition Ghai & Woodman: Practising Self-Government: A Comparative Study of Autonomous Regions Glover-Thomas: Reconstructing Mental Health Law and Policy Gobert & Punch: Rethinking Corporate Crime Goldman: Globalisation and the Western Legal Tradition: Recurring Patterns of Law and Authority Haack: Evidence Matters: Science, Proof, and Truth in the Law Harlow & Rawlings: Law and Administration, 4th Edition

Cambridge University Press & Assessment 978-1-009-41898-0 — Law and Inhumanity Luigi Corrias Frontmatter <u>More Information</u>

> Harris: An Introduction to Law, 8th Edition Harris, Campbell & Halson: Remedies in Contract and Tort, 2nd Edition Harvey: Seeking Asylum in the UK: Problems and Prospects Herring: Law and the Relational Self Hervey & McHale: European Union Health Law: Themes and Implications Hervey & McHale: Health Law and the European Union Holder & Lee: Environmental Protection, Law and Policy: Text and Materials, 2nd Edition Jackson & Summers: The Internationalisation of Criminal Evidence: Beyond the Common Law and Civil Law Traditions Jeutner: The Reasonable Person: A Legal Biography Kennedy: Inducing Intimacy: Deception, Consent and the Law Kostakopoulou: The Future Governance of Citizenship Kreiczer-Levy: Destabilized Property: Property Law in the Sharing Economy Kubal: Immigration and Refugee Law in Russia: Socio-Legal Perspectives Lewis: Choice and the Legal Order: Rising above Politics Likosky: Law, Infrastructure and Human Rights Likosky: Transnational Legal Processes: Globalisation and Power Disparities Lixinski: Legalized Identities: Cultural Heritage Law and the Shaping of Transitional *Justice* Loughnan: Self, Others and the State: Relations of Criminal Responsibility Lunney: A History of Australian Tort Law 1901–1945: England's Obedient Servant? Maughan & Webb: Lawyering Skills and the Legal Process, 2nd Edition McGaughey: Principles of Enterprise Law McGlynn: Families and the European Union: Law, Politics and Pluralism Mertens: A Philosophical Introduction to Human Rights Miller: An Introduction to German Law and Legal Culture: Text and Materials Moffat: Trusts Law: Text and Materials Monti: EC Competition Law Morgan: Contract Law Minimalism: A Formalist Restatement of Commercial Contract Law Morgan & Yeung: An Introduction to Law and Regulation: Text and Materials Nash: British Islam and English Law: A Classical Pluralist Perspective Ng: Political Censorship in British Hong Kong: Freedom of Expression and the Law (1842 - 1997)Nicola & Davies: EU Law Stories: Contextual and Critical Histories of European Jurisprudence Norrie: Crime, Reason and History: A Critical Introduction to Criminal Law, 3rd Edition Norrie: Rethinking Criminal Justice: Punishment, Abolition And Moral Psychology O'Dair: Legal Ethics: Text and Materials Oliver: Common Values and the Public-Private Divide Oliver & Drewry: The Law and Parliament Palmer & Roberts: Dispute Processes: ADR and the Primary Forms of Decision-Making, 1st Edition

Cambridge University Press & Assessment 978-1-009-41898-0 — Law and Inhumanity Luigi Corrias Frontmatter <u>More Information</u>

> Palmer & Roberts: Dispute Processes: ADR and the Primary Forms of Decision-Making, 3rd Edition Picciotto: International Business Taxation Pieraccini: Regulating the Sea: A Socio-Legal Analysis of English Marine Protected Areas Probert: The Changing Legal Regulation of Cohabitation, 1600-2010: From Fornicators to Family, 1600-2010 Qiao: The Authoritarian Commons: Neighborhood Democratization in Urban China Radi: Rules and Practices of International Investment Law and Arbitration Reed: Internet Law: Text and Materials Richardson: Law, Process and Custody Roberts & Palmer: Dispute Processes: ADR and the Primary Forms of Decision-Making, 2nd Edition Rowbottom: Democracy Distorted: Wealth, Influence and Democratic Politics Sauter: Public Services in EU Law Scott & Black: Cranston's Consumers and the Law Seneviratne: Ombudsmen: Public Services and Administrative Justice Seppänen: Ideological Conflict and the Rule of Law in Contemporary China: Useful Paradoxes Siems: Comparative Law, 3rd Edition Stapleton: Product Liability Stewart: Gender, Law and Justice in a Global Market Tamanaha: Law as a Means to an End: Threat to the Rule of Law Taylor: Fortin's Children's Rights and the Developing Law, 4th Edition Tuori: Properties of Law: Modern Law and After Turpin & Tomkins: British Government and the Constitution: Text and Materials, 7th Edition Twining: General Jurisprudence: Understanding Law from a Global Perspective Twining: Globalisation and Legal Theory Twining: Human Rights, Southern Voices: Francis Deng, Abdullahi An-Na'im, Yash Ghai and Upendra Baxi Twining: Jurist in Context: A Memoir Twining: Karl Llewellyn and the Realist Movement, 2nd Edition Twining: Rethinking Evidence: Exploratory Essays, 2nd Edition Twining & Miers: How to Do Things with Rules, 5th Edition Wan: Film and Constitutional Controversy: Visualizing Hong Kong Identity in the Age of 'One Country, Two Systems' Ward: A Critical Introduction to European Law, 3rd Edition Ward: Law, Text, Terror Ward: Shakespeare and Legal Imagination Watt: The Making Sense of Politics, Media, and Law: Rhetorical Performance as Invention, Creation, Production Wells & Quick: Lacey, Wells and Quick: Reconstructing Criminal Law: Text and Materials, 4th Edition Woodhead: Caring for Cultural Heritage: An Integrated Approach to Legal and Ethical Initiatives in the United Kingdom

Yeung and Ranchordás: An Introduction to Law and Regulation: Text and Materials, 2nd edition

Young: Turpin and Tomkins' British Government and the Constitution: Text and Materials, 8th Edition

Zander: Cases and Materials on the English Legal System, 10th Edition Zander: The Law-Making Process, 6th Edition

International Journal of Law in Context: A Global Forum for Interdisciplinary Legal Studies

The International Journal of Law in Context is the companion journal to the Law in Context book series and provides a forum for interdisciplinary legal studies and offers intellectual space for ground-breaking critical research. It publishes contextual work about law and its relationship with other disciplines including but not limited to science, literature, humanities, philosophy, sociology, psychology, ethics, history and geography. More information about the journal and how to submit an article can be found at http://journals.cambridge.org/jjc

Law and Inhumanity

Dehumanisation, Silent Claims and Atrocity Crimes

LUIGI CORRIAS Vrije Universiteit Amsterdam





Shaftesbury Road, Cambridge CB2 8EA, United Kingdom

One Liberty Plaza, 20th Floor, New York, NY 10006, USA

477 Williamstown Road, Port Melbourne, VIC 3207, Australia

314–321, 3rd Floor, Plot 3, Splendor Forum, Jasola District Centre, New Delhi – 110025, India

103 Penang Road, #05-06/07, Visioncrest Commercial, Singapore 238467

Cambridge University Press is part of Cambridge University Press & Assessment, a department of the University of Cambridge.

We share the University's mission to contribute to society through the pursuit of education, learning and research at the highest international levels of excellence.

www.cambridge.org Information on this title: www.cambridge.org/9781009418980

DOI: 10.1017/9781009418973

© Luigi Corrias 2025

This publication is in copyright. Subject to statutory exception and to the provisions of relevant collective licensing agreements, no reproduction of any part may take place without the written permission of Cambridge University Press & Assessment.

When citing this work, please include a reference to the DOI 10.1017/9781009418973

First published 2025

A catalogue record for this publication is available from the British Library

Library of Congress Cataloging-in-Publication Data Names: Corrias, Luigi, author. Title: Law and inhumanity : dehumanisation, silent claims and atrocity crimes / Luigi Corrias, Vrije Universiteit Amsterdam. Description: Cambridge, United Kingdom ; New York, NY : Cambridge University Press, 2025. | Series: Law in context | Includes bibliographical references and index. Identifiers: LCCN 2025000105 | ISBN 9781009418980 (hardback) | ISBN 9781009418973 (ebook) Subjects: LCSH: Crimes against humanity (International law) | Crimes against humanity – Law and legislation. | Atrocities – Law and legislation. | Criminal justice, Administration of – Philosophy. | Criminal liability (International law) | International criminal law. Classification: LCC KZ7145 .C69 2025 | DDC 345/.0235–dc23/eng/20250114 LC record available at https://lccn.loc.gov/2025000105

ISBN 978-1-009-41898-0 Hardback

Cambridge University Press & Assessment has no responsibility for the persistence or accuracy of URLs for external or third-party internet websites referred to in this publication and does not guarantee that any content on such websites is, or will remain, accurate or appropriate.

Cambridge University Press & Assessment 978-1-009-41898-0 — Law and Inhumanity Luigi Corrias Frontmatter <u>More Information</u>

A Luca

> Wir mögen nicht wissen, was das absolut Gute, was die absolute Norm, ja auch nur, was der Mensch oder das Menschliche und die Humanität sei, aber was das Unmenschliche ist, das wissen wir sehr genau.

> > Theodor W. Adorno

It is sad but true that humankind understands itself partly by the crimes it knows itself to be capable of.

Raimond Gaita

Contents

	Acknowledgements	page xiii			
	Introduction	1			
	Theme and Scope	1			
	A Note on Methodology	6			
	Overview of the Chapters	8			
1	Atrocity Crimes, the Community of Humanity and the Experience				
	of Inhumanity	10			
	1.1 Introduction	10			
	1.2 Humanity's Norms	12			
	1.3 The Dark Side of Humanity	14			
	1.4 Dehumanisation and the Experience of Inhumanity	19			
	1.5 Conclusion	23			
2	'We' and Crimes against Humanity	25			
	2.1 Introduction	25			
	2.2 On the Use and Abuse of Durkheim for				
	International Criminal Law	26			
	2.3 Humanity as Symbolic Order	31			
	2.4 The Self-Constitution of Humanity within International				
	Criminal Law	34			
	2.5 Inhumanity: Ongwen as a Strange Figure	39			
	2.6 Conclusion	43			
3	Crimes against Humanity, Dehumanisation and				
	Rehumanisation: The Case of Duch	45			
	3.1 Introduction	45			

4

5

6

xii

Contents

3.2	Case 001: Duch	46
3.3	Dehumanisation in the Case of Duch	49
3.4	Rehumanisation in the Case of Duch	54
3.5	Reading the Case of Duch with Hannah Arendt	57
3.6	Duch, Arendt and We	62
3.7	Conclusion	65
	nged from the World: The Experience of Dehumanisation as Normative Implications	67
	•	
	Introduction	67
	The Conditio Inhumana: A Phenomenology of Dehumanisation	68
	Alienation: Towards a Critical Theory of Dehumanisation	72
	The Normative Challenge of the Experience of Dehumanisation	77
4.5	Conclusion	84
Law,	Time and Inhumanity: Judging the Imprescriptible	85
5.1	Introduction	85
5.2	The Law of Imprescriptibility	86
5.3	Imprescriptibility and the Unforgiveable	89
5.4	The Time of Imprescriptibility	92
5.5	The Time of Judgement	96
5.6	Conclusion	101
Silent	Claims and the Limits of International Criminal Law	103
6.1	Introduction	103
6.2	Varieties of Suffering	104
6.3	Suffering within and beyond International Criminal Law	106
6.4	Strange Suffering	110
6.5	Silent Claims	115
6.6	Conclusion	119
Epilog	lne	121
Pro	secuting in the Name of Humanity	121
Otł	ner Silences	123
Att	entiveness	124
Biblio	graphy	126
Index		135

Acknowledgements

This book could not have been written without the kind help and support of many people. It gives me pleasure to thank them here. I would like to start expressing my gratitude to my colleagues of Vrije Universiteit Amsterdam. Bart van Klink and Wouter Veraart have encouraged me from the very start to pursue this project. In addition, many people have read and commented on earlier drafts of chapters. I would like to thank Tom van den Berg, Bent Bos, Cheyenne Dunk, Gerben Geessink, Ngyen Nath Minh, Sofia Stolk, Wouter Werner and Bertjan Wolthuis for the time they have dedicated to my work and their helpful comments. I especially would like to mention my former colleague Lyana Francot who has been among the most enthusiastic supporters of this book, even when it was only a vague idea. My thanks also go to Tara Rezvani Daryan for helping me with the preparation of the final manuscript with great patience and care.

Others, outside of my institution, also read parts of the manuscript, or provided me with opportunities to present my work. I especially would like to mention Michiel Besters (Erasmus University Rotterdam), Ligeia Quackelbeen (Tilburg University), Shahin Nasiri, Bas Schotel and Marc de Wilde (all at the University of Amsterdam), Roland Pierik (Maastricht University), Ronald Tinnevelt and Bart van Leeuwen (both at Radboud University), Patrick Hayden (University of St Andrews), Sinja Graf (London School of Economics and Political Science), Kertulli Lingenfelter (Max Planck Institute for Comparative Public Law and International Law), Alessio Lo Giudice (Università degli Studi di Messina), Alessandro Ferrara, Paola Chiarella and Alberto Scerbo (all at Università Magna Graecia di Catanzaro) and Ana Lucía Batalla (University of Valencia).

I also acknowledge the permission of Cambridge University Press (CUP) and Routledge to use material previously published with them:

- Luigi Corrias, 'Crimes against Humanity, Dehumanization and Rehumanization: Reading the Case of Duch with Hannah Arendt', *Canadian Journal of Law & Jurisprudence: An International Journal of Legal Thought*, 29, no. 2 (2016): 351–70;
- Luigi Corrias, 'Law, Time and Inhumanity: Reflections on the Imprescriptible', in *Temporal Boundaries of Law and Politics: Time Out of*

xiv

Cambridge University Press & Assessment 978-1-009-41898-0 — Law and Inhumanity Luigi Corrias Frontmatter <u>More Information</u>

Acknowledgements

Joint, eds. Luigi Corrias and Lyana Francot (London: Routledge, 2018), 53–70.

These appear in this book in a rewritten form as Chapters 3 and 5.

The Netherlands Institute for Advanced Study in the Humanities and Social Sciences (NIAS-KNAW) has kindly supported the research for this book with an individual fellowship in the spring of 2020. Albeit interrupted by the COVID-19 pandemic and a lockdown, I keep fond memories of the time that I could spend reading, writing and engaging with others in the beautiful NIAS institute. At CUP, I am grateful to Tom Randall, Toby Ginsberg and Gemma Smith for their help. I also want to thank the editors of the Law in Context series, Kenneth Armstrong, Maksymilian Del Mar and Sally Sheldon, for their willingness to accept this book in their prestigious series.

Finally, I would like to thank those closest to me who provide me with the daily hustle and bustle that makes up the beauty of life, even if I do not always realise it. I am immensely grateful to Irina Leichenko for her enduring help and support in matters bookish and unbookish. Her loving confidence in my abilities has been crucial to the writing process. This book is dedicated to my son, Luca, who is the kindest, bravest and funniest person I know. In his unique and unstoppable way, he keeps reminding me of everything that really matters.