

[What follows are excerpts from chapters 1, 2, and 5 of David Luban, *Arendt After Jerusalem: The Moral and Legal Philosophy*. This is a rough draft (especially Chapter 5). Not for quotation without permission.]

Chapter One

Arendt at Jerusalem

§1. Judgment as Moral Compass

In May 1960, Israeli agents kidnapped Adolf Eichmann in Argentina and brought him to Jerusalem to stand trial for crimes of the Holocaust. A month later, Hannah Arendt wrote to her friend Mary McCarthy, “I am half toying with the idea to get some magazine to send me to cover the Eichmann trial. Am very tempted. He used to be one of the most intelligent of the lot.”¹ Arendt approached William Shawn, editor of *The New Yorker*. A bit diffidently, Shawn accepted her proposal.² As Arendt explained to her friend and mentor, the philosopher Karl Jaspers, “I would never be able to forgive myself if I didn’t go and look at this walking disaster face to face in all his bizarre vacuousness.”³ Readers who know nothing else about Arendt are likely to know the name she gave the “bizarre vacuousness” she saw, or thought she saw, when she looked at Eichmann: *the banality of evil*.

As we will see in this and the next chapter, the phrase prompted grave misunderstandings of Arendt’s views. There is no denying that Arendt’s powerful phrase is slippery. Its wording suggests that “banality” refers to evil rather than to Eichmann, and “banal” can mean “uninteresting” as well as “shallow,” although the latter is what Arendt had in mind. On that misreading, “banal evil” means “uninteresting evil.” No wonder, then, that one

¹ Hannah Arendt to Mary McCarthy, June 20, 1960, in Carol Brightman (ed.), *Between Friends: The Correspondence of Hannah Arendt and Mary McCarthy 1949-1975* (Harcourt Brace, New York, 1995) p. 81. Henceforth *BF*.

² Arendt to McCarthy, Oct. 8, 1960, *BF*, pp. 98-99; cf. Elisabeth Young-Bruehl, *Hannah Arendt: For Love of the World* (Yale University Press, New Haven, 1982) p. 328. Three years later *Eichmann in Jerusalem: A Report on the Banality of Evil* appeared as a five-part *New Yorker* series as well as in book form. It is her best-known book and has sold more than 300,000 copies.

³ Arendt to Jaspers, Dec. 2, 1960, in Kohler and Saner, pp. 409-10.

prominent critic complained that Arendt was slighting the importance of the Holocaust by downplaying its evil.⁴

In fact, nothing could be further from the truth. Arendt called the Holocaust “the unprecedented crime, ... the crime against humanity – in the sense of a ‘crime against the human status’, or against the very nature of mankind” – just the opposite of denigrating its importance.⁵ As for the wording, Arendt clearly used “banality” to describe Eichmann’s person, not his deeds. Other critics got this point, but accused her of underrating Eichmann’s intelligence and diminishing his role. This too was mistaken, for she held that intelligent people can be banal, and in her eyes Eichmann was “one of the greatest criminals of that period.”⁶

Unfortunately, Arendt failed to define the banality of evil until 1971, when she finally explained that the phrase refers to

no theory or doctrine but something quite factual, the phenomenon of evil deeds, committed on a gigantic scale, which could not be traced to any particularity of wickedness, pathology, or ideological conviction in the doer, whose only personal distinction was a perhaps extraordinary

⁴ Richard Wolin, “The Banality of Evil: The Demise of a Legend,” *Jewish Review of Books*, fall 2014, attributing to Arendt “the idea that the execution of the Nazis’ diabolical plans for an *Endlösung* to the ‘Jewish Question’ could be considered ‘banal’.” Available at <http://jewishreviewofbooks.com/articles/1106/the-banality-of-evil-the-demise-of-a-legend/>. Wolin repeats this misreading in “Thoughtlessness Revisited: A Response to Seyla Benhabib,” *Jewish Review of Books*, Sept. 30, 2014: “if Eichmann was banal, then the Holocaust itself was banal.” Available at <http://jewishreviewofbooks.com/articles/1287/in-still-not-banal-a-response-to-seyla-benhabib/>. Twenty years earlier, Wolin condemned Arendt’s “famous pronouncement that the evil that the Nazis inflicted on the Jews was, for the man on the witness stand, ... ‘banal.’” Richard Wolin, “Hannah and the Magician,” *New Republic*, Oct. 9, 1995, p. 35. Reprinted, with revisions, in Richard Wolin, *Heidegger’s Children* (Princeton: Princeton University Press, 2001). This too is a misreading: Arendt never came close to attributing to Eichmann the opinion that the Holocaust was banal.

⁵ EJ, p. 268. What she means by these labels will be the subject of Chapter ___. Perplexingly, Wolin ignores this statement when he writes, “The most forceful accusation that she could bring against him [Eichmann] and other Nazis was that of ‘thoughtlessness.’” Wolin, “Hannah and the Magician,” reprinted with revisions in *Heidegger’s Children* [check page numbers].

⁶ EJ, p. 288.

shallowness. However monstrous the deeds were,
the doer was neither monstrous nor demonic⁷

Presumably she neglected to define the banality of evil *because* it did not represent a theory or doctrine. To McCarthy, Arendt wrote, “As I see it, there are no ‘ideas’ in this Report, there are only facts with a few conclusions, and these conclusions usually appear at the end of each chapter.”⁸ Two weeks later, she followed up in another letter to McCarthy:

My “basic notion” of the ordinariness of Eichmann is much less a notion than a faithful description of a phenomenon. I am sure there can be drawn many conclusions from this phenomenon and the most general I drew is indicated: “banality of evil.” I may sometime want to write about this, and then I would write about the nature of evil, but it would have been entirely wrong of me to do it within the framework of the report.⁹

So “banality of evil” is a pre-theoretical general description of a phenomenon. Arendt labels it a conclusion because to claim that a phenomenon falls under a concept *is* a conclusion; she does not mean it is a conclusion based on a theory. Near the end of *Eichmann in Jerusalem*, she calls that conclusion “the lesson that this long course in human wickedness had taught us – the lesson of the fearsome, word-and-thought defying *banality of evil*.”¹⁰ This is the only place in the text where the famous phrase appears, and unfortunately Arendt fails to spell out what the lesson is. If we take her at her word, at the time she wrote *Eichmann in Jerusalem* Arendt had no theory that might articulate the lesson—indeed, she explicitly warns that the lesson is “neither an explanation of the phenomenon nor a theory about it.”¹¹ All she had were observations of a phenomenon she found “word-and-thought defying.” In a letter to Rabbi Arthur Hertzberg, Arendt confessed

⁷ Arendt, ‘Thinking and Moral Considerations’, *Responsibility and Judgment*, p. 159. She added that Eichmann’s “extraordinary shallowness ... was not stupidity but a curious, quite authentic inability to think.” The distinction between stupidity and inability to think is not obvious, but it proves to be very important in Arendt’s theorizing. See §5 and Chapter __.

⁸ She adds: “The only exception to this is the Epilog, which is a discussion of the legal aspect of the case.” HA to MM, Sept. 20, 1963, 147-48. In Chapter __, I will discuss the Epilogue in some detail.

⁹ HA to MM, Oct. 3, 1963. 152.

¹⁰ EJ, 252.

¹¹ EJ, 288.

that “the whole truth is that I did not know the answer myself when I wrote the book.”¹²

Should we take her at her word, or did she come to Jerusalem theory in hand? After all, her phrase “bizarre vacuousness” to describe Eichmann comes from a letter written months *before* the trial. Furthermore, ideas anticipating the banality of evil crop up in her writings and correspondence as early as 1945 (more about this later), including in *The Origins of Totalitarianism* and *The Human Condition*.¹³

Arendt had done her homework on Eichmann, and “bizarre vacuousness” suggests she went to Jerusalem primed for his banality, in the sense that it did not take her by surprise. (Her first impression of him on Day One of the trial is already disdainful: “a ghost that happens to have a cold Not even eerie. His only concern, not to lose his composure.”¹⁴) When she wrote to Jaspers about Eichmann’s bizarre vacuousness, she was probably reacting to the sensational interview with Eichmann – the “Sassen interview” – published in *Life* magazine a few days earlier.¹⁵ There Eichmann indeed sounds bizarrely vacuous: he recounts deporting a million Hungarian Jews to Auschwitz in the same flat way he recalls sharing a grilled bacon and onion snack with a Hungarian colonel, as though he couldn’t tell which was more noteworthy.¹⁶

But there is no reason to doubt her disclaimers of having a theory, because Eichmann in Jerusalem caused her to abandon a theory she unquestionably held, her analysis of “radical evil” in *The Origins of Totalitarianism*. Arendt herself thought the ideas of radicality and banality are flatly inconsistent.¹⁷ Later I shall argue that she was mistaken about the inconsistency, but what matters for

¹² Letter from Arendt to Arthur Hertzberg, April 8, 1966, quoted in Young-Buehl, p. 367.

¹³ In a 1963 letter to the journalist Samuel Grafton, Arendt remarks that she had been thinking about the nature of evil for thirty years. The letter is in Jerome Kohn & Ron H. Feldman, (eds.), *Hannah Arendt, The Jewish Writings* (Schocken, New York, 2007), p. 475.

¹⁴ Letter to Heinrich Blücher, April 15, 1961, in WFW, p. 355.

¹⁵ Adolf Eichmann, “Eichmann Tells His Own Damning Story,” part 1, *Life*, November 28, 1960, pp. 19-24, 101-12. A second installment of the interview appeared a week later: “Eichmann’s Own Story: Part II,” *Life*, Dec. 5, 1960, pp. 146- 61. Both are available on Google Books.

¹⁶ “Eichmann Tells His Own Damning Story,” p. 110.

¹⁷ Arendt to Scholem, July 24, 1963, in *The Jewish Writings*. See also her letter to McCarthy, Sept. 20, 1963, BF, p. 148: “the very phrase: ‘Banality of Evil’ stands in contrast to the phrase I used in the totalitarianism book, ‘radical evil.’ This is too difficult a subject to be dealt with here, but it is important.”

now is that in Arendt's own mind, the Eichmann trial required her to discard one of her signature ideas. That suggests she was not using Eichmann merely as a stalking horse for a pet theory, nor that she was seeing in Eichmann only what she wanted to see.

This book will argue that her offhand remark to McCarthy – “I may sometime want to write about this, and then I would write about the nature of evil” – in fact anticipated a turn in her thinking provoked by the Eichmann trial, a turn toward what became a preoccupation of Arendt's final decade: moral philosophy. The turn is especially striking because in her earlier writing she seldom mentioned moral philosophy, and when she did it was usually with offhand disdain. Why the change? In Arendt's last, incomplete, book, she quotes Kantian language to explain that “after having been struck by a fact that, willy-nilly, ‘put me in possession of a concept’ (the banality of evil), I could not help raising the *quaestio juris* [i.e., legal question] and asking myself ‘by what right I possessed and used it.’”¹⁸

Eventually, Arendt did write about the nature of evil, briefly, in two series of classroom lectures from the mid-1960s, published posthumously under the title “Some Questions of Moral Philosophy.” But mostly her final-decade investigation turned out not to be about the nature of evil as such, or at least not directly. Rather, it was an investigation of *judgment* – specifically, of the kind of disastrously bad moral judgment she saw in Eichmann, but also the miraculous moral clarity a few resisters and rescuers displayed even in the darkest moments of the Holocaust.

The latter, for her, was at least as important as the former. As she put it rather dramatically, the fact that under conditions of terror “most people will comply but *some people will not*” is what allows “this planet to remain a fit place for human habitation.”¹⁹ She cites a few examples, prompted by testimony at the Eichmann trial about an ordinary German sergeant, Anton Schmid, who over a period of months rescued 250 Jews from destruction, until he was caught and executed. Thom Gunn's poem about Schmid that is the epigraph of this book captures in a metonym what Arendt found so thought-provoking: it was Schmid's “unusual eyes” with their power “not to mistake the men he saw for gods or vermin.” That perceptual power is the power of moral judgment, and for Arendt

¹⁸ LM/T, p. 5. Arendt is quoting from an unpublished manuscript of Kant's, but the Kantian *quaestio juris* – asking by what right we use concepts – is the famous beginning of the Transcendental Deduction in the *Critique of Pure Reason*, A84-85, B116-17.

¹⁹ EJ, p. 232. Her emphasis.

as for Gunn it kept Schmid “breathing the cold air of his freedom/
And treading a distinct direction.”²⁰

For her final, unwritten book on judgment, Arendt planned as an epigraph a line placed by a Roman poet in the mouth of Cato the Younger, in an epic about the battle that doomed the Roman Republic: “The victorious cause pleased the gods, but the vanquished pleases Cato.”²¹ Cato was her prototype for Anton Schmid: someone whose judgment stays firm and true even when the winds of history blow in the wrong direction. And the epigraph makes it clear that what Arendt cared about, more than the Eichmanns of the world, are the Schmid and Catos: those who know right from wrong when others around them have lost their way – those who, in Gunn’s words, tread a distinct direction. *Eichmann in Jerusalem* can fool us into thinking that Arendt was solely preoccupied with evil, with the “walking disaster” of Eichmann and his banality. No doubt she was immersed in the Eichmann case, but in truth what drove her final decade’s exploration of moral judgment was as much or even more the flip side: her need to understand the quiet and steadfast moral judgment some people maintain in dark times – judgment that makes the planet a fit place for human habitation.

It is important to dispel a possible misunderstanding. In our everyday language practice, “bad judgment” is a mealy-mouthed excuse politicians trot out when they get caught at something potentially career-ending, like corruption or sexual misconduct. Grim-faced before the microphones, stoical wives by their sides, they apologize for their bad judgment (*not* their cheating). What they mean is: “I’m really a good person with sound principles. I’m not a scoundrel; I didn’t mean to do wrong. I *merely* had a lapse in judgment.” In the lexicon of damage control, bad judgment – *mere* bad judgment – counts as a lesser evil.

That is decidedly not what Arendt means when she talks about bad judgment; for her, there is nothing “mere” about it. Judgment, as Arendt thinks of it, is the ability to tell right from wrong without deducing it from rules.²² In other words, judgment

²⁰ Thom Gunn, “Epitaph for Anton Schmidt” (§11 of “Misanthropos”)(1965), in *Collected Poems* (New York: Farrar, Straus & Giroux, 1994), pp. 143-44. Gunn used *Eichmann in Jerusalem* as his source, which is why he and Arendt misspell Schmid’s name the same way.

²¹ She quotes the Latin from Lucan’s *Pharsalia*: “*Victorix causa diis placuit sed victa Catoni.*” Arendt ends *Thinking* with the same quote from Lucan. *Thinking*, p. 216.

²² “Thinking and Moral Considerations,” in *Responsibility and Judgment*, pp. 188-89; “Personal Responsibility Under Dictatorship,” RJ, pp. 27, 41.

is what we sometimes call *moral compass*.²³ Functioning properly, our moral compass points north even in a tempest, when nothing visible to the eye offers a clue to the right course. To have bad judgment means to have a defective moral compass. Viewed this way, the politician's excuse "I have a good character, but bad judgment" makes no sense: defective moral compass *is* defective character. Bad moral judgment, as Arendt understands it, is one of the most serious accusations we can level.

Arendt's conviction that Eichmann's crimes could not be traced to malice, pathology, or ideology seemingly left bad moral judgment as the most plausible alternative. Eichmann's moral compass was disastrously faulty, easily deflected by the local forces of his immediate environment. He exemplified something truly momentous: "an average, 'normal' person, neither feeble-minded nor indoctrinated nor cynical" who nonetheless "could be perfectly incapable of telling right from wrong."²⁴

For now, I postpone discussing the implications she drew from this observation, including the problems she thought it poses for legal systems. I also postpone discussing whether she got Eichmann right; that comes in the next chapter. Here I note only that her conjecture, reflected in the definition of "banality of evil" quoted above, seems to be that when an average, "normal" person commits extraordinary evil, unprompted by malice, pathology, or ideology, the evil arises from defective moral judgment: the wrongdoer simply failed to recognize (= misjudged) that the conduct was evil. Arendt's decade-long investigation of the human faculty of judgment explores that conjecture and aims to supply a theory to anchor it.

Two important cautions must be emphasized here, to avoid serious misunderstanding. First, to attribute evil deeds to the perpetrator's defective moral compass is not to let the evil-doer off the hook either morally or legally. Whether defective moral judgment counts as an exculpating excuse (akin to a defense of diminished mental capacity) or a condition of blameworthiness depends on other theoretical commitments. Arendt's commitments point unequivocally in the direction of blameworthiness; for her,

²³ This is not a term Arendt uses, although she notes that Kant described his categorical imperative as a "compass ... to distinguish what is good, what is bad." "Some Questions of Moral Philosophy," RJ, p. 62, quoting Kant's *Foundations of the Metaphysics of Morals*. Arendt, as we shall see, did not regard the categorical imperative as a moral compass, and her focus on judgment as a faculty quite different from practical reasoning based on principles indicates that in her view the categorical imperative is not even the right kind of thing to serve as a moral compass.

²⁴ EJ, p. 26.

the excuse “don’t blame me, blame my bad judgment” is absurd. Certainly she never let Eichmann off the hook: remember that she labeled him “one of the greatest criminals of that period,” and she called him and those like him “*hostis generis humani*” – an enemy of all mankind. Contrary to complaints by her critics, she repeatedly and emphatically *rejected* Eichmann’s “I was just a cog in a machine” defense, and she accepted the Jerusalem court’s verdict that Eichmann deserved to hang.²⁵

Second, a theory of moral judgment of the kind Arendt hoped to develop will be only a fragment of a theory of evil, because it does not cover the evils that *are* committed from malice, sadism, or fanaticism – in other words, evils arising from something more diabolical (though perhaps no more alarming) than bad moral judgment. She calls the defendants in the Auschwitz trials “monsters” (one is a “ghoul”), about whom she ventures a diagnosis of sadism in a “basically sexual” sense.²⁶ Elsewhere, she distinguishes the evil of the “‘bourgeois’ with all the outer aspect of respectability” within the Nazi movement from the perversions and fanaticisms displayed by others among the Nazi elite, naming Hitler, Goebbels, Göring, and Streicher.²⁷ Their evil was, in her view, anything but banal. And she explicitly contrasts Eichmann’s banality with the pride of Lucifer, the resentment and self-loathing of Richard III, the envy of Cain, the weakness of Macbeth, the depraved hatreds of Iago and Claggart,

²⁵ EJ, 288 (greatest criminals), 282 (*hostis generis humani* – a Roman term for pirates, which in modern times has also been used for international criminals), 279 (“This is the reason ... you must hang.”) Her rejection of the “cog in the machine” is in EJ, 289; more elaborately, in “Personal Responsibility Under Dictatorship,” in RJ, 29-32; also in “Collective Responsibility,” in RJ, 148, and in an interview with Joachim Fest published in *The Last Interview and Other Conversations*, 58. Richard Wolin, a reliably unfaithful reporter of Arendt’s views, wrote “She insinuated that there was no ‘intentionality’ to his crimes: Eichmann was merely a cog in a massive bureaucratic machine.” “Hannah and the Magician,” reprinted in *Heidegger’s Children* [find page number]. This is close to the opposite of her plainly-stated view.

²⁶ Arendt, “Auschwitz on Trial,” in RJ. Monsters: 251; ghoul: 253; sadism: 252. She describes the sickening details of their crimes with a fury unusual in her writing, but perfectly appropriate to the topic. See pp. 252-56. In this essay, she speculates that these might be “perfectly normal people who in normal life had never come into conflict with the law on such counts” – but only to “wonder about the dream world of many an average citizen who may lack not much more than the opportunity.” P. 252. This essay was published in 1966, three years after *Eichmann in Jerusalem*.

²⁷ Hannah Arendt, “Organized Guilt and Universal Responsibility,” in *Essays in Understanding 1930-1954* (Harcourt Brace, New York, 1994), p. 128.

and the covetousness and cupidity we are told is the “root of all evil.”²⁸

What about an alternative diagnosis of Eichmann that also accepts his ordinariness? Perhaps there was nothing wrong with his judgment, but he chose to continue in his horrifying job, knowing how evil it was, out of ambition and opportunism, first cousins to covetousness and cupidity. Before he joined the SS, Eichmann, who never finished high school, was a traveling salesman with middling prospects. His SS job allowed him to make the most of his hitherto-unsuspected talents for negotiation and organization; and of course he wielded the power of life and death over the Jews, which could not help but gratify his thirsty ego.²⁹ He could have quit without physically imperiling himself, but then he would have no career, or at least not a career that made him a somebody. He would once again be a mediocrity. (And indeed, in his exile he worked in low-level jobs, the best of which was managing a rabbit farm.) Couldn't it be that he knew full well the evil of what he was doing but lacked the guts to quit, not out of physical fear but merely out of reluctance to accept demotion? Arendt herself remarked on his unusual diligence in advancing his own career.³⁰

There is much to be said for this diagnosis, and §6 takes it up in greater detail. But, taken by itself, it downplays one of the chief characteristics Arendt spotted in Eichmann: a desire to be thought respectable by the worthies of society. There is no reason to believe Eichmann would have joined the mafia (for example) if that was the only way to get ahead. A successful SS career was appealing precisely because, within the morally perverted world of the Third Reich, it was a respectable career. Not to have seen through this perverse respectability was itself catastrophically bad moral judgment. And so, even a diagnosis of Eichmann's evil that attributes it to raging ambition has explanatory power only if we can understand how Eichmann's moral judgments about the Nazi hierarchy he inhabited could be so utterly wrong.

To recapitulate the main points so far: Arendt's concept of banality of evil is more than an observation, but less than a theory.

²⁸ Hannah Arendt, *The Life of the Mind, Part One: Thinking*, one-volume ed., (Harcourt Brace, New York, 1978) pp. 3-4.

²⁹ This is precisely the portrait of Eichmann that Bettina Stangneth paints in the opening chapter of *Eichmann Before Jerusalem: The Unexamined Life of a Mass Murderer*, trans. Ruth Martin (New York: Alfred Knopf, 2014) (published in German in 2011). She demonstrates in detail Eichmann's ambition to advance in the ranks of the SS, his self-aggrandizement and self-promotion, and his vanity.

³⁰ EJ, 287.

It is a summary interpretation of her observations, and Arendt claims that its observational base makes it “something quite factual,” “a faithful description of a phenomenon,” not a philosophical construction. Theory would come later, and Arendt devoted her final decade toward developing that theory. And, as she came to view things, what that theory needed to explain was how some ordinary people can be wholly lacking in elementary judgment – moral compass – while in others it remains intact.

...

[I omit the remainder of this chapter for space reasons. In §2 I explain what led Arendt to her “banality” diagnosis; she traces it to Eichmann’s inability to think from the point of view of others, which kept him from forming an identity of his own and made him a moral chameleon who changed his colors to fit whatever environment he was in. I review the evidence of thoughtlessness that she cites, and other evidence she didn’t mention. In §3 I ask why she chose the aesthetic term “banality” for his inability to think; I connect this with her ideas about kitsch in “The Crisis in Culture”; there she introduces themes from Kant’s aesthetics that are central to her moral philosophy, as I explain in Chapter 5 below.]

Chapter Two

Did Arendt Get Eichmann Wrong?

§4. How Much Would It Matter if Arendt Got Eichmann Wrong?

From the beginning, Arendt's portrayal of Eichmann was controversial, and many commentators think Eichmann completely fooled her into believing he was something other than he was: a fervent Nazi fully dedicated to the mass murder of the Jewish people. Eichmann offered an "I was only a cog in the machine" defense, and while Arendt steadfastly rejects the defense, she appears to think Eichmann believed it. What if it turns out that Eichmann cynically contrived the defense for trial purposes, and in reality never saw himself as a mere cog in a machine? What if the Eichmann Arendt saw in Jerusalem was a façade adopted purely for the trial? That is the diagnosis of Bettina Stangneth, in her deeply researched *Eichmann Before Jerusalem*:

Hannah Arendt read about Adolf Eichmann in the newspapers for the first time in 1943 at the latest, and eighteen years later she was familiar with all the research on him. ... She read the transcripts of his hearing and the trial more thoroughly than almost anyone else. And for this very reason, she fell into his trap: Eichmann-in-Jerusalem was little more than a mask. She didn't recognize it....³¹

In their own books, the distinguished historians David Cesarani and Deborah Lipstadt concur that Arendt was deeply mistaken about Eichmann.³² Suppose they are right. (I take up that question in the next two sections.) What difference would that make? Obviously, it would immeasurably weaken *Eichmann in*

³¹ Stangneth, pp. xxii, xxiii. The "hearing" Stangneth refers to is Eichmann's 275-hour interrogation by the Israeli police captain Avner W. Less, from which Arendt draws throughout *EJ*. See the book-length excerpt *Eichmann Interrogated*.

Stangneth knows that Arendt had heard of Eichmann by 1943 because that year Arendt wrote a letter to the editor responding to a newspaper story about Theresienstadt that named Eichmann as the "Gestapo Kommissar who terrorized the Jewish community in Prague." Stangneth, pp. 36-37.

³² David Cesarani, *Becoming Eichmann: Rethinking the Life, Crimes, and Trial of a "Desk Murderer"* (2006); Lipstadt, *The Eichmann Trial*.

Jerusalem as a reliable piece of Holocaust history. Arendt's narrative of the trial would remain valuable as a contemporaneous account by a reporter with "a gift for acute observation."³³ But Arendt's portrayal of Eichmann would matter only as a cautionary lesson that skilled acting can fool even an acute observer.

But *Eichmann in Jerusalem* is not only a historical work. It is also a study in moral psychology, and it was the genesis of the moral and legal philosophy Arendt developed in her final decade. How would those be affected if Arendt got Eichmann wrong?

One answer is: not at all. Arendt's investigations of moral phenomena may have been prompted by the Eichmann case, but it is silly to think they rest on it, or indeed on any single case. Tellingly, Eichmann receives no attention in *The Life of the Mind* or the key essays "Thinking and Moral Considerations" and "Some Questions of Moral Philosophy"; she mentions him only to explain what got her thinking about the philosophical themes these works pursue. None of her arguments rests on Eichmann; in philosophy, none of them should. Philosophy stands or falls on the strength of its insights and arguments, not on whether some particular individual exemplifies them.

Although that answer is fundamentally right, it is not fully satisfying. The philosophy, remember, represents Arendt's effort to answer the Kantian *quaestio juris* of what entitles her to the concept "banality of evil," given that she encountered it as a fact. If the fact is no fact, the urgency of the question recedes; perhaps, indeed, there is no question that needs to be answered.

Of course, even if Eichmann was not the banal evildoer Arendt thought he was, it may well be that others were (and are). But then we would like to know whether those others shared the trait Arendt singled out in Eichmann: the inability to think from the standpoint of others, generating the "moral chameleon" phenomenon and loss of moral compass. Part of her philosophical proposal is that these phenomena hang together in an intelligible moral structure; and while that proposal draws on philosophical materials other than the Eichmann case, her diagnosis of Eichmann undeniably helps anchor the argument by keeping it real. Furthermore, the claim that even a high-level active participant in genocide – "one of the greatest criminals of that period"³⁴ – might be banal has independent interest, because on its face it seems so unlikely. Maybe it seems unlikely because it's wrong.

³³Stangneth, p. xxiii.

³⁴ EJ, p. 288.

The discovery that Arendt got Eichmann wrong would be even more damaging to one of her legal conclusions, namely that the ground of his culpability cannot lie in his awareness of wrongdoing (his *mens rea*). Her proposition is that “this new type of criminal, who is in actual fact *hostis generis humani*, commits his crimes under circumstances that make it well-nigh impossible for him to know or to feel that he is doing wrong.”³⁵ Recall that she describes Eichmann as “an average, ‘normal’ person, neither feeble-minded nor indoctrinated nor cynical” who nonetheless “could be perfectly incapable of telling right from wrong.”³⁶ If it turns out that Eichmann *was* indoctrinated and cynical, the challenge to fundamental principles of culpability that reflection on his case discloses may not be as urgent as she believes.

In sum: if it turns out that Eichmann fooled Arendt, it would make little difference to her philosophical arguments, but it would weaken some of her most striking ancillary conclusions.

With these thoughts in mind, consider four possible readings of *Eichmann in Jerusalem* (which I list from the least to the most sympathetic):

1. Arendt got Eichmann thoroughly wrong, and that invalidates – or, at the very least, fails to confirm – the ideas in the book.
2. Even if her diagnosis of Eichmann was wrong, it is right about enough other perpetrators that the banality of evil idea remains important. Perhaps Eichmann was not the “ordinary man” Arendt thought he was; plenty of other *génocidaires* were.³⁷ And not only in Nazi Germany: legal scholar Mark Drumbl has argued in an Arendtian vein that a great many of the perpetrators of the Rwanda genocide were “good citizens” doing what their leaders told them was their patriotic duty.³⁸ Or, to take a very different

³⁵ EJ, p. 276. Recall that *hostis generis humani*, “enemy of all humanity,” is a traditional term used to describe pirates, which gradually expanded to include other violators of universal legal norms.

³⁶ EJ, p. 26.

³⁷ The reference is to Christopher Browning, *Ordinary Men: Reserve Police Battalion 101 and the Final Solution in Poland* (New York: HarperCollins, 1992).

³⁸ Mark Drumbl, *Atrocity, Punishment, and International Law* (Cambridge University Press: 2007). For a more skeptical view of Arendt’s sociology of mass atrocity, see Mark J. Osiel, *Mass Atrocity, Ordinary Evil, and Hannah Arendt: Criminal Consciousness in Argentina’s Dirty War* (Yale University Press, 2001). And for a contrary diagnosis of the Rwandan genocide, see

example, it is hard to see the Indonesian death squad leaders in Joshua Oppenheimer's astonishing documentary *The Act of Killing* as anything other than the banality of evil brought to life, as they deck themselves in drag and cowboy hats to re-enact their 1965 murders, Gangnam style. In Arendt's terms, they seem like clowns, not monsters.³⁹

3. Arendt got Eichmann largely right. She may have underestimated his vainglory and ambition as well as his Nazi outlook, and gotten some details wrong, but these are mistakes of emphasis in a moral-psychological portrait that is fundamentally sound.

Perhaps the most interesting reading is this:

4. Whether Arendt got Eichmann right is unknowable for a reason she got right. Under her diagnosis, Eichmann was a moral chameleon. In the company of Nazis, including the Nazi ex-pats in Argentina, his colors turned toward murderous anti-Semitism. He drew his self-recognition from their recognition, and that is why he puffed up his ideological boasting, including his momentary subjective commitment to what he was saying, when he gave the notorious and damning interviews to SS journalist Willem Sassen in Buenos Aires. But that does not imply that the Eichmann of the Sassen interviews was the "real" Eichmann while Eichmann-in-Jerusalem was an imposter. Both were equally real or, perhaps more accurately, equally unreal.⁴⁰

I suspect that (2) is correct: even if Eichmann turns out not to be the stereotypical "desk criminal," there were and are plenty of desk criminals in the world, committing greater and lesser crimes. But, as noted earlier, one would also want to know whether a significant number of them display the constellation of traits Arendt thought she saw in Eichmann and called "banality of evil"; and this is something that would be empirically challenging to investigate; we would have only accidental anecdotes to go on. If

Mahmood Mamdani, *When Victims Become Killers: Colonialism, Nativism, and the Genocide in Rwanda* (Princeton University Press, 2002).

³⁹ In line with Arendt's diagnosis of thoughtlessness, the death squad leader Anwar Congo becomes shaken when he re-enacts the role of a victim, and the horror of being garrotted dawned on him, apparently for the first time. When he next revisits the scene of one of his crimes, he vomits. I am grateful to Naomi Mezey for the horrifyingly apt "Gangnam style" analogy.

⁴⁰ The Sassen tapes and their unabridged transcripts are Stangneth's chief trove of evidence. Arendt knew of their existence, but she was able to read only the excerpts printed in *Life* magazine in 1960.

Arendt's philosophy is sound, that might itself offers reasons for accepting (2). That would not be a circular argument, precisely because Arendt does not rest the philosophy on the Eichmann case. Reading (2) would be enough to make the philosophy worth studying regardless of whether Arendt got Eichmann right or wrong.

But I don't think we have to settle for (2). My own assessment combines elements of (3) and (4). For reasons set out in the next two sections, I think Arendt very likely got Eichmann right on the most significant points, notwithstanding errors in emphasis; but at the very least, the historical record is sufficiently consistent with the "moral chameleon" diagnosis to conclude there may be no "true Eichmann" to get right. And that itself would support the concept "banality of evil."

I should make clear that I am not reporting independent historical research. I've done none, and have no competence as a historian. In fact, the two sections that follow rely heavily on the research of professional historians who believe Arendt got Eichmann wrong.

§5 How Banal Was Eichmann? (1)

Eichmann may be a riddle, but he was no Sphinx. As Stangneth reveals, Eichmann was acutely logorrheic; he produced reams of memoirs, self-vindications, philosophical pronouncements, even theological forays. In prison, his output sometimes reached eighty pages a day, and he was still writing letters on the day of his execution. His oral style, Stangneth reports, was incessant monologue, and even his German lawyer found his German hard to follow; his written style was convoluted and packed with clumsy, "elevated" mixed metaphors (which I described earlier as kitsch).

His memoirs, interrogation, and testimony remain a riddle because Eichmann was the ultimate unreliable narrator. Before and during the war, he inflated his own importance; in Jerusalem, for obvious reasons, he minimized it. Sometimes he did both at once. Thus, in his Argentinian conversations with Sassen's Nazi circle, we find Eichmann voicing fanatical dedication to the extermination of the Jews, using undiluted Nazi rhetoric. But then:

In actual fact, I was a little cog in the machinery that carried out the directives and orders of the German Reich. I am neither a murderer nor a mass-murderer. I am a man of average character, with good qualities and many faults. I was not the 'Czar

of the Jews,' as a Paris newspaper once called me, nor was I responsible for all the good [sic!] and evil deeds done against them. Where I was implicated in the physical annihilation of the Jews, I admit my participation freely and without pressure. After all, I was the one who transported the Jews to the camps. If I had not transported them, they would not have been delivered to the butcher.⁴¹

Did he call himself a cog because he was already laying the groundwork for a future defense, or because he believed it? Were his vicious racial views puffery and Hitler mimicry for the imagined readers of the Nazi publication Sassen had in mind, or did he really see himself as an all-out warrior against the Jews? In Jerusalem, he denied he was an anti-Semite, and likened his attitude as a “warrior” to that of a combat soldier who has nothing personal against the enemies he is ordered to kill. Could there possibly be any truth to that? His various versions of his story are replete with factual errors; which ones are deliberate lies and which are honest mistakes is sometimes hard to say.⁴² And the versions contradict each other.

As for his lies, they are frequent and mostly obvious, and they were obvious to Arendt as well as the Jerusalem judges. Others were more subtle and went undetected until Stangneth smoked them out.⁴³ His prison memoir *Götzen (Idols)* laments that he had served false gods – just the opposite of his declarations of undying Nazi devotion in Argentina.⁴⁴ Is *Götzen* a last-ditch fiction to wrest a merciful decree from his judges or a genuine change in outlook, and if the latter, how long had he harbored it? Were his invocations of Kant at his trial a revealing window into his conception of duty, as Arendt thought, or a confession that he always knew he was doing wrong, as Lipstadt concludes, or an out-and-out lie, as Stangneth argues?⁴⁵

⁴¹ “Eichmann Tells His Own Damning Story,” part 1, p. 21.

⁴² For example, in his interrogation he refers to Benjamin Murrelstein, one of the Jewish leaders in Vienna, as a rabbi in Prague. *Eichmann Interrogated*, p. 58. Eichmann had no obvious reason to lie; nothing of consequence turned on whether Murrelstein was from Prague or Vienna. Did Eichmann misremember? Misspeak? Or was he deliberately seeding random factual errors into his story to maximize confusion?

⁴³ For example, when Eichmann was asked who was present at the Sassen conversations, he covered for his old comrades by giving the names of people who weren't there instead of those who were.

⁴⁴ Stangneth notes that *Götzen* “reads like a counterargument” to one of his Argentine memoirs. P. 232.

⁴⁵ EJ, 135-36; Lipstadt, p. 135; Stangneth, pp. 217-18.

Or did he, as Arendt would have it, say and write whatever gave him a lift at each moment, indifferent to its truth — changing his chameleon’s colors and scattering truth and lies in response to his surroundings and whatever he imagined were his audience’s expectations? In Harry Frankfurt’s memorable definition, bullshit is speech in which the speaker doesn’t care if it is true or false.⁴⁶ Was Eichmann bullshitting as well as lying, and if so at what points? Might he have been bullshitting himself as well as others? For that matter, Eichmann’s views may have changed over three decades – most people’s do – with his latter-day views distorting his memories. Distinguishing truth from falsehood is hard enough; discriminating among the falsehoods to sort out deliberate lies from boasting, unconscious memory revisions, errors, changes in view, and sheer bullshit is harder still. It is an interpretive and not purely investigative challenge.⁴⁷

Compounding the problem, Stangneth and Lipstadt emphasize that those who worked with Eichmann during the Nazi years were also unreliable narrators. Even before the war ended they realized that the more they could distance themselves from Eichmann and pin every crime on him, the better their own chances for post-war rehabilitation, not to mention survival. Their testimony cannot be trusted. Nor can other sources. Sassen had his own agenda of denying the “myth of six million” in order to inspire a Nazi renaissance and a Fourth Reich. Presumably, Eichmann’s family had ulterior motives as well, financial and otherwise. They are still hanging on to one of his Argentina manuscripts until someone meets their sale price.

For an illustration of the difficulty, Eichmann’s wife Vera recalls that when she arrived in Argentina in 1952 with German news clippings describing her husband as a mass murderer, Eichmann exclaimed “They’ve gone mad, I’m not a murderer, I won’t stand for it. I’m going to go back to Germany.”⁴⁸ This excited utterance might bolster Arendt’s case that Eichmann could not tell right from wrong. But Vera Eichmann’s recollection comes in a 1962 interview she gave to *Paris Match*. There is no way we

⁴⁶ Harry G. Frankfurt, *On Bullshit* (Princeton University Press, 2005), p. 47.

⁴⁷ For example, Stangneth thinks *Götzen* was a ruse aiming to convince the Israelis that Eichmann had converted to humanitarianism (*Eichmann Before Jerusalem*, p. 367), because according to Nazi race theory humanitarianism is the sort of claptrap Jews go for. By contrast, Lipstadt does not find *Götzen* humanitarian at all. Quite the contrary, she sees it as a damning piece of evidence against Eichmann. *The Eichmann Trial*, p. 164. This disagreement between two scrupulous historians (who both think Arendt got Eichmann wrong) illustrates that Eichmann’s texts are anything but self-interpreting.

⁴⁸ Stangneth, p. 121.

can know whether Eichmann really thought he was no murderer, nor whether Vera accurately remembered his words ten years later, nor whether she was lying outright about what he said, to burnish her husband's image.

Those who conclude that Arendt got Eichmann wrong point to four issues: first, that Eichmann gulled her into thinking he was stupid when he was anything but. Second, that Arendt bought into his "I was only following orders" defense, when in fact he was an active agent and tireless initiator of anti-Jewish horrors. Third, that Arendt portrayed Eichmann as a petty bureaucrat and "writing desk murderer," as he misleadingly portrayed himself. Fourth, that Arendt wrongly believed Eichmann when he said he was no anti-Semite; in reality, he had quaffed deeply from the cup of Nazi eliminationist anti-Semitism. Even if Arendt drew halfway reasonable conclusions from the information available to her at the time of the trial, half a century of additional research has unearthed a great deal more that proves that Eichmann was a fervent Nazi. The new information includes, in particular, the tapes and unabridged transcripts of the Sassen conversations, a large chunk of a 1956 autobiographical manuscript, and a great deal more information about his continuing involvement in Nazi circles during his years in hiding. I consider the first three points in this section, and the final point, which requires lengthier treatment, in the section that follows.

Stupidity

The first criticism, that Arendt thought Eichmann was stupid, is one I alluded to earlier as a misunderstanding; but it is so persistent, and seeing it is wrong is so central to understanding Arendt's philosophy, that I take it up again. The source of the error lies in Arendt's crucial description of Eichmann's affliction as inability to think, which may easily be mistaken for charging him with low intellect. Mary McCarthy, who often advised Arendt on English usage, warned her that "thoughtlessness ... doesn't mean what you want it to mean in English."⁴⁹ Remember that what Arendt means by thinking is not computational power, but the ability to think from the standpoint of others, and therefore to engage in inner dialogue and reflection.

McCarthy rightly guessed that Arendt's word choice would mislead her readers, including very distinguished readers. Amos Elon, in an otherwise-acute exegesis of Arendt's views, equates "thoughtlessness" with "brainlessness." Richard Evans refers to "Arendt's belief that Eichmann was unintelligent." Richard Wolin complains that "[b]y underestimating Eichmann's intellect, Arendt

⁴⁹ McCarthy to Arendt, June 9, 1971, in BF 296.

also misjudged the magnitude of his criminality.” Tony Judt wrote that “she argues that evil comes from a simple failure to *think*. If this implies that evil is a function of stupidity, then Arendt is merely indulging a tautology of her own making.”⁵⁰ But the implication is not there, and neither is the tautology.

That this criticism misunderstands Arendt is already clear from *Eichmann in Jerusalem*, where she insisted that Eichmann “was not stupid. It was sheer thoughtlessness — *something by no means identical with stupidity* — that predisposed him to become one of the greatest criminals of that period.”⁵¹ In subsequent writing she repeats the point that “absence of thought is not stupidity; it can be found in highly intelligent people.”⁵² This is plain text. Perhaps Arendt’s critics overlook it because it seems so counterintuitive: what could absence of thought mean if not stupidity? Much of *Thinking* is an effort to answer that question and justify the distinction between thinking and other intellectual powers; examining this answer will be the job of Chapter ___ below. For now, all we need to know is that Arendt explicitly denied that Eichmann was stupid.

Obedience and Agency

⁵⁰ The quotes come from: Amos Elon, “The Case of Hannah Arendt,” *New York Review of Books*, Nov. 6, 1997, pp. 25-29; Richard J. Evans, “‘Eichmann Before Jerusalem: The Unexamined Life of a Mass Murderer’” review, *The Guardian*, Oct. 17, 2014; Wolin, “The Banality of Evil: The Demise of a Legend”; and Tony Judt, “At Home in This Century,” *New York Review of Books*, April 6, 1995, p. 10.

⁵¹ EJ, 277-78 (emphasis added).

⁵² Arendt, *Thinking*, vol. 1 of *The Life of the Mind* (New York: Harcourt Brace, 1978), p. 13. Wolin appears to be misled by a 1964 interview in which Arendt referred to Eichmann’s “outrageous stupidity” (or, in Wolin’s rendering of *empörender Dummheit*, “revolting stupidity”). But he overlooks her next sentence: “Eichmann was perfectly intelligent, but in this respect [i.e., inability to think from another’s point of view] he was stupid. It was this stupidity that was so outrageous.” “Eichmann Was Outrageously Stupid”: Interview by Joachim Fest, *Das Thema*, SWR TV, Germany, Nov. 9, 1964, trans. by Andrew Brown, in Hannah Arendt, *The Last Interview and Other Conversations* (Melville House: 2013), p. 48. Wolin also misses that when Arendt asks herself, in *Eichmann in Jerusalem*, whether Eichmann was afflicted with “outrageous stupidity” (EJ, 51), her answer is an unambiguous no. Rather, “Eichmann needed only to recall the past in order to feel assured that he was not lying and that he was not deceiving himself, for he and the world he lived in had once been in perfect harmony. And that German society of eighty million people had been shielded against reality and factuality by exactly the same means, the same self-deception, lies, and stupidity that had now become ingrained in Eichmann’s mentality.” EJ, 52 (emphasis added). Obviously, she is not suggesting that the eighty million Germans were of sub-par intelligence.

What about the criticism that Eichmann exhibited a level of agency and initiative that belied his “I was only following orders” defense (which he indeed repeated *ad nauseum* in both his interrogation and trial)? David Cesarani attributes to Arendt the view that Eichmann engaged in “robot-like obedience to orders.”⁵³ In the same vein, Lipstadt writes that Arendt “saw an automaton who was just passing on information.”⁵⁴

Actually not. Arendt’s view about Eichmann’s obedience to orders is substantially more subtle, more interesting, and above all more important than that, and it emphasizes that obedience can involve high levels of agency and initiative. What prompts her discussion is Eichmann’s remarkable claim, in both his police interrogation and the trial, that he had tried to live his life by Kant’s principles. He explained that he had read Kant’s *Critique of Practical Reason*, and astonished the judges even further by quoting the categorical imperative more or less correctly: “I meant by this that the principle of my volition and the principle of my life must be such that it could at any time be raised to be the principle of general legislation, as Kant more or less puts it in his categorical imperative.”⁵⁵

Arendt remarks how outrageous it was to invoke Kant in his defense, and guesses that in his own mind Eichmann distorted the categorical imperative to Hans Frank’s Nazi version: “Act in such a way that the Führer, if he knew your action, would approve it.”⁵⁶ In Eichmann’s self-proclaimed version of the categorical imperative “for the little man,” she explains,

all that is left of Kant’s spirit is the demand that a man do more than obey the law, that he go beyond the mere call of obedience and identify his own will with the principle behind the law – the source from which the law sprang. In Kant’s philosophy, that source was practical reason; in Eichmann’s household use of him, it was the will of the Führer. Much of the horribly painstaking thoroughness in the execution of the Final Solution ... can be traced to the odd notion, indeed very common in Germany,

⁵³ David Cesarani, *Becoming Eichmann*, p. 12.

⁵⁴ Lipstadt, *The Eichmann Trial*, p. 115.

⁵⁵ Trial transcript, session 105, July 20, 1961, available at <http://www.nizkor.org/hweb/people/e/eichmann-adolf/transcripts/Sessions/Session-105-04.html>.

⁵⁶ EJ, 135. Arendt says she is quoting from Frank’s 1942 *Die Technik des Staates*. I have not verified the quotation.

that to be law-abiding means not merely to obey the laws but to act as though one were the legislator of the laws that one obeys. Hence the conviction that nothing less than going beyond the call of duty will do.⁵⁷

The call of duty requires going beyond the call of duty. If she is right, there is no contradiction between Eichmann's admission that "I did my job with unusual zeal" and his insistence that he was only following orders – specifically, the Führer's orders which, as Eichmann correctly pointed out, had the force of law in the Third Reich.⁵⁸

This conception of obedience as identification of one's will with the superior's is perfectly consistent with active agency and initiative. Indeed, for someone in an executive position it *demand*s active agency and initiative. In this respect, at least, "obedience to orders" differs decisively from the low-level execution of mechanical tasks that was the subject of Stanley Milgram's famous obedience experiments, although those may shed light on the behavior of low-level perpetrators.⁵⁹

⁵⁷ EJ, 136. Her description to Eichmann's "categorical imperative for a small man's domestic use" is inaccurate. It reads: "True to the law, obedient, a proper personal life, not to come into conflict with the law." Trial transcript, session 105. It does not mention doing more than obeying the law. This inaccuracy is not important for the argument she makes here.

⁵⁸ The quote about zeal is in *Eichmann Interrogated*, p. 156. For Eichmann's invocation of the Nazi legal maxim *Führerworte haben Gesetzeskraft* – the Führer's words have the force of law – see *Eichmann Interrogated*, p. 124; EJ, 148. Arendt fails to mention the source of this legal maxim in the constitutional doctrine of the Roman empire: "What the Emperor has determined has the force of a statute" (*quod principi placuit legis habet vigorem*). Barry Nicholas, *An Introduction to Roman Law* (Oxford University Press, 1976), p. 17.

Hitler disliked putting orders in writing, and one complication to assigning responsibility for particular decisions lies in the fact that, in words of Hitler biographer Volker Ullrich, "Misunderstandings and misinterpretations were an inevitable part of this oral leadership style," which "also opened up considerable room for those around Hitler to exert an influence." Volker Ullrich, *Hitler: Ascent, 1889-1939*, trans. Jefferson Chase (Bodley Head, 2016), pp. 577-78. In other words, those with personal access to Hitler could shape the very decisions they then implemented. According to one of Hitler's personal aides, Goebbels was especially adroit at this strategy. *Ibid.*, p. 578.

⁵⁹ Cesarani complains that "Arendt's assessment possessed almost scientific status thanks to Stanley Milgram's 'research' on the propensity for obedience to orders." P. 11. He is doubtless right that many writers conflate Arendt and Milgram – I have made that mistake myself – but it *is* a mistake. I am uncertain why Cesarani uses scare-quotes to refer to "Milgram's 'research'." It obviously is research, and it is tremendously important. My point is simply that the kind of

Whether or not Arendt is right that this conception of obedience as identification with the superior's will is common in Germany, it is certainly not unique to Germany, or even unusual. Robert Jackall, in his sociological classic about American corporate culture, explains that managers quickly learn the corporate adage that orders should be followed in advance – precisely the model of obedience under discussion. The result is a system where “even the CEO's wishes and whims are taken as commands by close subordinates on the corporate staff, who turn them into policies and directives....‘When he sneezes, we all catch colds’.”⁶⁰ In one sense, the manager is “just obeying orders”: he has his mission, and his own inclinations are beside the point. But foot-dragging acquiescence, or grudging passive obedience, won't do. Ambitious managers don't merely work to the rule; they aggressively pursue their bosses' ends. That is why “overly conscientious managers are particularly useful at the middle levels of the structure. Upwardly mobile men and women...who find themselves in higher status milieux, seem to have the requisite level of anxiety, and perhaps tightly controlled anger and hostility, that fuels an obsession with detail.”⁶¹ (Let me repeat my earlier caution: this comparison is not intended to suggest any moral equivalence between corporate managers and Eichmann. The point is simply that the conception of obedience as active identification with the leader's will is not a quirky one.)

Within the Third Reich, the desire to anticipate the Führer's will set off a competition in radicalism among Party elites and, in words of Hitler biographer Volker Ullrich, “his paladins tried to trump one another with ever more extreme demands and measures.”⁶² Ullrich is referring specifically to the time-period before the war, and to those higher-ups who had face-to-face access to Hitler, as Eichmann did not. But it seems plausible that some of Eichmann's initiatives grew from parallel motivations toward the wishes of his own superiors, which he must have assumed originated with Hitler. One perverse consequence is that functionaries following the Führer's will may have been emboldening or even shaping that will. Probably, then, Arendt's view that Hitler always had the most radical agenda in his

obedience Milgram studied is not the kind of obedience Arendt ascribes to Eichmann.

⁶⁰ Robert Jackall, *Moral Mazes: The World of Corporate Managers* (New York: Oxford University Press, 1988), pp. 21-22.

⁶¹ *Ibid.*, p. 21. There is evidence of “tightly controlled anger and hostility” in Eichmann; see Lipstadt, pp. 116-17.

⁶² Ullrich, *Hitler: Ascent, 1889-1939*, p. 578. This is also the view of another Hitler biographer, Ian Kershaw.

government, and in fact was the sole ultimate decision-maker, is mistaken;⁶³ she underrates the responsibility of other members of the elite, such as Goebbels, for urging ideas on a Hitler who was more indecisive – and maybe emptier – than Arendt supposed. Either way, the crucial point is that an ambitious manager can launch an initiative and describe it as “just following orders” in the sincere belief that taking the initiative *is* following orders. This is a moral phenomenon of immense importance in organizational settings.

None of this denies that Eichmann may have also been predisposed to obedience in the more familiar passive sense. When the Israelis captured him, he requested permission to use the toilet; from behind the closed door he called out “May I begin?” and waited for his captors’ go-ahead before moving his bowels.⁶⁴ But there is no inconsistency between this jaw-dropping deference and the active agency with which he served Hitler’s will during the war.

A Petty Bureaucrat?

As for the claim that Arendt wrongly believed that Eichmann was no more than a petty bureaucrat, the simple answer is that she suggests nothing of the sort.⁶⁵ To be sure, Eichmann described himself this way as part of his defense strategy.⁶⁶ But remember that Arendt called him one of the greatest criminals of the period. She frequently mentions evidence at the trial about Eichmann’s travels and negotiations, his activism, his visits to murder sites, and his leadership of an “Eichmann Commando” – evidence that obviously made his insistence that “all our work was paperwork” absurd.⁶⁷ No wonder, then, that she never labels him a mere functionary or petty bureaucrat.

To be sure, in her essay on the Auschwitz trial she calls Eichmann a “desk murderer par excellence,” but all she meant was that he was not a direct physical perpetrator like the Auschwitz defendants. (Her use of “desk murderer” in that essay cannot mean

⁶³ E.g., “Personal Responsibility Under Dictatorship,” p. 30.

⁶⁴ Lipstadt, p. 17. This anecdote is oddly consonant with a vulgar corporate adage Jackall reports, used by managers to describe “how the power of CEOs ... affects them. ... ‘When he says “Go to the bathroom,” we all get the shits.’” Jackall, p. 22.

⁶⁵ Even Lipstadt, mostly a careful reporter of Arendt’s views, errs on this point, writing, “she declared him a desk-level bureaucrat who showed little initiative and had few talents.” *The Eichmann Trial*, p. 163. Arendt highlighted Eichmann’s special talents at organization and negotiation. EJ, 45.

⁶⁶ *Eichmann Interrogated*, pp. 83, 113.

⁶⁷ *Ibid.*, p. 113.

“petty bureaucrat,” for she also calls Hitler and Himmler desk murderers.⁶⁸) She *does* insist that Eichmann’s role in the Holocaust was not as pre-eminent as the prosecution asserted, or that his own boasting made it out to be – but here the historians agree with her. Eichmann, a lieutenant colonel, was five steps down the chain of command: Hitler, Himmler and Göring, Heydrich, Müller, Eichmann.⁶⁹ That is high enough to make him much more than a mere accomplice (as he described himself), but not one of the architects of the Holocaust. He was upper management but not leadership.

[I omit my detailed discussion of Stangneth’s argument that Arendt got Eichmann entirely wrong. My conclusion is that the evidence Stangneth cites is inconclusive, and in many ways her portrait of Eichmann is consistent with Arendt’s view.]

...

§7. The Eichmann Trial and Arendt’s Turn to Judgment: A Moral and Legal Agenda

I’ve begun with Arendt at Jerusalem because the Eichmann trial brought to the foreground two striking moral phenomena: the banality of evil, and its antithesis – namely, that under conditions of terror “most people will comply but *some people will not*.” Those among the non-compliers who actively resist the terror show immense, almost incomprehensible, courage. But equally important is something less conspicuous: their moral compass, the fact that they recognize evil even when multitudes around them do not. Moral judgment (moral compass) is the counter-banality phenomenon that Arendt thought hardest about – and that is why her late work is worthy of reflection.

Arendt connected Eichmann’s banality to his inability or unwillingness to think from another’s point of view. Being struck by these phenomena raised the *quaestio juris* of what entitled her to describe them in the terms she did, and that question – more properly, that set of questions about banality, moral judgment, evil, and thinking – prompted a turn in her thought. Here’s how she posed the question in the postscript to *Eichmann in Jerusalem*:

⁶⁸ Eichmann as “desk murderer par excellence”: Arendt, “Auschwitz on Trial,” in RJ, p. 241. Hitler and Himmler as desk murderers, p. 238.

⁶⁹ I include Göring, although he was not in the SS chain of command, because it was Göring who commissioned Heydrich to prepare and execute the Final Solution. Letter from Göring to Heydrich, July 31, 1941, available at http://www.yadvashem.org/about_holocaust/documents/part2/doc106.html. However, Göring apparently wrote this letter at Heydrich’s prompting. Yaacov Lozowick, *Hitler’s Bureaucrats: The Nazi Security Police and the Banality of Evil*, Chaim Watzman trans. (London: Continuum, 2000), p. 89.

There remains, however, one fundamental problem, which was implicitly present in all these postwar trials and which must be mentioned here because it touches upon one of the central moral questions of all time, namely upon the nature and function of human judgment. What we have demanded in these trials, where the defendants had committed “legal” crimes, is that human beings be capable of telling right from wrong even when all they have to guide them is their own judgment, which, moreover, happens to be completely at odds with what they must regard as the unanimous opinion of all those around them. ... Since the whole of respectable society had in one way or another succumbed to Hitler, ... [t]hose few who were still able to tell right from wrong went really by their own judgments, and they did so freely; there were no rules to be abided by, under which the particular cases with which they were confronted could be subsumed.⁷⁰

The turn to investigating this “central moral question of all time” happened at approximately the mid-point of Arendt’s book-writing career in the English language, which began with the publication of *The Origins of Totalitarianism* in 1948 and ended with her death in 1975, leaving behind the incomplete trilogy *The Life of the Mind*. It seems natural, then, to regard the composition of *Eichmann in Jerusalem* as a kind of inflection point in Arendt’s thought. Before the Eichmann trial, her books focused on politics, not on moral judgment; afterward, moral judgment became one of her preoccupations.⁷¹

In one late essay she poses a question that arises directly from her astonishment at Eichmann’s apparent inability to think: “Is our ability to judge, to tell right from wrong, beautiful from ugly, dependent upon our faculty of thought? Do the inability to think and a disastrous failure of what we commonly call conscience coincide?”⁷² At the end of that essay she answers yes, but without offering anything like a full argument. Thinking (she speculates) destroys unexamined opinions, and

⁷⁰ EJ, 294-95.

⁷¹ In the essays published posthumously as *Responsibility and Judgment*, a collection assembled and edited by Jerome Kohn. *Lectures on Kant’s Political Philosophy* was also published posthumously, edited by Ronald Beiner.

⁷² TMC, 160.

this destruction has a liberating effect on another human faculty, the faculty of judgment, which one may call, with some justification, the most political of man's mental abilities. It is the faculty to judge *particulars* without subsuming them under those general rules which can be taught and learned until they grow into habits that can be replaced by other habits and rules.⁷³

Presumably, making good on the connection between thinking and judging would have been the task of the unwritten capstone of *The Life of the Mind*, and perhaps it would have provided her answer to the *quaestio juris* raised by the Eichmann trial.

I've called the Eichmann trial an inflection point in her thought: a bend, not a break, for there was no sharp break. Arendt never stopped writing about politics, and as we will see, her political focus strongly influenced her reflections on thinking and judgment – and not always for the better, I will argue. On the other side, some of her later ideas about judgment already appear as brief asides in pre-Jerusalem essays. Nevertheless, I think it is fair to describe the Eichmann trial as Arendt's "turn" from politics to questions of moral philosophy.

The Eichmann trial also caused Arendt to reflect on legal questions. What is the purpose of extraordinary trials of atrocity crimes? What is the appropriate venue for such a trial, and what kind of jurisdiction can a tribunal assert over these crimes? What are the defining characteristics of genocide and crimes against humanity, both legal novelties emerging from World War II, and how should we properly conceptualize them? Finally, what are the grounds for assigning criminal liability to perpetrators like Eichmann, "who is in actual fact *hostis generis humani*," and yet "commits his crimes under circumstances that make it well-nigh impossible for him to know or to feel that he is doing wrong"?⁷⁴

All these questions, those of moral philosophy and those of law, set the agenda for what follows – not only because they are the questions that preoccupied Arendt, but because she was right to be preoccupied by them. They are questions that should matter to us a great deal, as philosophers and as citizens of the world.

...

[Chapters 3 and 4 are a "prequel" to Arendt at Jerusalem: they ask why it was that before the Eichmann trial Arendt showed so little

⁷³ Ibid., 188-89.

⁷⁴ EJ, 276.

interest in, or sympathy for, moral philosophy. She herself explained that she grew up in a generation that thought moralizers were Philistines, and that “*das Moralische versteht sich von selbst*, moral conduct is a matter of course.”⁷⁵ After the Nazis, she adds, “no one in his right mind can any longer claim that moral conduct is a matter of course.”⁷⁶ But I argue that “the case of the missing morality” is not only a matter of her biography, but of her theory. For in her major pre-Eichmann philosophical work, *The Human Condition*, morality simply never appears as part of the human condition. The two chapters offer an extended analysis of the book to explain why – to solve the case of the missing morality. I omit these chapters for reasons of space.]

⁷⁵ “Personal Responsibility Under Dictatorship,” in RJ, p. 22. Originally written in 1964 but published for the first time in unabridged form in RJ.

⁷⁶ “Some Questions of Moral Philosophy,” in RJ, p. 61. Both here and in the previous quotation, she says moral conduct, but she must mean moral standards. Moral conduct has obviously never been a matter of course, and her argument is about the shifting standards of respectability.

Chapter Five

Judgment in Dark Times

Judgment: Introductory Comments

When the Eichmann trial forced Arendt's attention back to moral philosophy, she retained her view that moral standards do not come from a realm of objective moral facts, but rather from practices of human judgment. It seemed self-evident to her that the major moral problems were three: explaining how a seemingly-normal actor like Eichmann could be wholly bereft of the ability to judge right from wrong, while others were not; explaining how others could judge him, even in the absence of transcendent standards of moral judgment; and explaining the objectivity of those judgments – in Kant's technical language, providing a “transcendental deduction” of their objectivity. The practice of judgment, above all else, became the moral phenomenon Arendt wished to understand.

Arendt never got to write her book on judgment. When she died of a sudden heart attack while dining with friends, her typewriter held the title page with two epigraphs, in Latin and German. The title page is as far as she got.

Judging would have been the third part of *The Life of the Mind*, of which the first two (published posthumously) are *Thinking* and *Willing*. The titles are a hat-tip to Kant's three critiques, of pure reason, practical reason, and judgment. They remind us that philosophically Kant remains, as Robert Brandom quips, the great gray mother of us all. Arendt would have concurred with the substance of Brandom's judgment if not the gender: in an early essay she calls Kant the “secret king” of modern philosophy.⁷⁷

Arendt was a heretical Kantian. She drew inspiration from Kant's *Critique of Judgment*, but in an unorthodox way: she called it the political philosophy Kant never wrote. This is doubly provocative, because she dismisses the political philosophy that

⁷⁷ “What Is Existential Philosophy?” in *Essays in Understanding*, p. 168.

Brandom's quip is in *Articulating Reasons: An Introduction to Inferentialism* (Harvard, 2000), p. 80. The suggestive parallel is Seyla Benhabib's observation that for feminist thinkers Arendt is “one of our ‘early mothers’,” although she “remains the mother who eluded us.” Benhabib, *The Reluctant Modernism of Hannah Arendt*, p. xlvii.

Kant did write (“rather boring and pedantic”), and because the *Critique of Judgment* is a book about aesthetics and natural teleology, subjects that could hardly be further removed from politics.

We have only fragmentary evidence about which of the Third Critique’s ideas Arendt found so suggestive. In a handful of essays she broaches some of these ideas more or less in passing, and she discusses others in brief lecture notes published posthumously. These odds and ends offer little more than tantalizing hints. In what follows, I take a crack at reconstructing what she might have said, and correcting some notable lapses in what she did say. Ultimately, of course, the philosophical payoff is not getting Arendt right, or determining whether she got Kant right, but getting moral judgment right.

We saw some of what she had in mind in §3 of the first chapter of this book: Arendt borrows from the *Critique of Judgment* Kant’s “maxims of common human understanding”: to think for yourself, to think consistently, and (especially) to think from the point of view of others.⁷⁸ Plausibly, she treats them as general political virtues.

But that’s not all. Crucially for our purposes, in her 1965 lectures on moral philosophy, she proposes Kant’s aesthetics as a model for *moral* (rather than political) judgment. In effect, the aesthetics becomes a moral philosophy to replace the Kantian ethics she rejects.⁷⁹ The reason she offers for the aesthetic judgment/moral judgment analogy is revealing; it emphasizes how the analogy emerged as a response to the moral catastrophe she witnessed in the early years of the Third Reich:

Kant himself analyzed primarily aesthetic judgments, because it seemed to him that only in this field do we judge without having general rules which are either demonstrably true or self-evident to go by. If therefore I shall now use his results for the field of morality, I assume that the field of human intercourse and conduct and the phenomena we confront in it are somehow of the same nature. In justification, I’ll remind you of our first session when I explained the not very pleasant background of factual experience which gave rise to these considerations.

⁷⁸ *Critique of Judgment*, §40.

⁷⁹ Her “chief reservations about Kant’s philosophy concern precisely his moral philosophy, that is, the *Critique of Practical Reason*.” *Thinking*, p. 222 note 83.

I mentioned the total collapse of moral and religious standards among people who to all appearances had always firmly believed in them, and I also mentioned the undeniable fact that the few who managed not be sucked into the whirlwind were by no means the “moralists,” people who had always upheld rules of right conduct, but on the contrary very often those who had been convinced, even before the debacle, of the objective non-validity of these standards per se. Hence, theoretically, we find ourselves today in the same situation in which the eighteenth century found itself with respect to mere judgments of taste.⁸⁰

The eighteenth century aestheticians recognized that the standard of taste cannot be reduced to a set of rules. Artists don't create from a rule book, except in their student exercises on counterpoint or linear perspective; and audiences appreciate or criticize artworks as particulars, not by check-listing them against aesthetic maxims. (Music lovers rightly mock the Viennese concert society that refused to perform one of Arnold Schoenberg's early masterpieces because it used a chord unrecognized in the textbooks.⁸¹) Evidently Arendt believed that the same is true of moral judgments. In the paragraphs I just quoted, she pugnaciously observes that it was not the tribunes of rule-based morality who resisted the Nazi whirlwind. They simply traded traditional rules for Nazi rules. What better reason to reject rule-reliant morality? And so, she concludes, we face the same puzzle in ethics that Kant and Hume confronted in art: without rules, what entitles us to render judgments about right and wrong (or beautiful and unbeautiful) with any claim to validity beyond subjective preference?

Most of Kant's aesthetics is irrelevant to Arendt's moral philosophy. What does interest her is, first of all, Kant's basic insight about what I will call the rational status of aesthetic judgments. As we've just seen, they have this peculiarity: even though we cannot prove to someone else that a thing is beautiful, we nevertheless think that judgments of beauty can be right or wrong, not just to me but to anyone who gives the beautiful thing a proper chance. And we continue to think that, even when we recognize that in fact some people won't agree. Kant points out that this odd situation makes aesthetic judgments quite different from judgments of what we find agreeable and disagreeable. You

⁸⁰ “Some Questions of Moral Philosophy,” RJ, 138-39.

⁸¹ Schoenberg's bitter recollection is quoted in “Nonexistent Chords,” Schoenberg...resources and personal commentary weblog, Oct. 21, 2012, <http://eschbeg.blogspot.com/2012/10/nonexistent-chords.html>.

like cauliflower; I don't. That's a matter of mere taste, and it never crosses my mind to say that you're wrong for liking cauliflower – *de gustibus non est disputandum* and all that. But if you find no beauty in a fresh-cut Victor Hugo rose, an Alpine meadow on a summer day, or Michelangelo's *David*, I will disagree as confidently as if you got today's date wrong. And this is not arrogance, because the same is true the other way around: if I'm unmoved by music that moves music-lovers whose taste I respect, I humbly recognize this as a flaw or blind-spot in me. I got it wrong.

Furthermore, Kant recognized that this difference in rational status between judgments of mere taste and judgments of beauty doesn't turn on statistical consensus. Nearly everyone likes chocolate, but chamber music, even great chamber music, bores most people. Nevertheless liking or disliking chocolate remains a matter of mere taste, and those who don't like chocolate haven't made a mistake. Liking Brahms's Horn Trio involves judgments of beauty, and Brahms lovers will never shake their sense that the large majority of their neighbors who couldn't bear to sit through the Horn Trio are just wrong. Nor should the Brahms lovers yield to the majority: the fact that judgments of beauty sound in the registers of true/false, right/wrong, valid/invalid doesn't represent a logical mistake. It represents a fact about aesthetic experience to be explained, not rejected. For the moment we reject it, we reject the capacity to love beautiful things for *their* beauty and not only for *our* delectation. In other words, we ascribe "universal validity" to aesthetic judgments despite their unprovability and despite empirical dissensus.

Kant found this phenomenon surpassingly interesting. How can we label unprovable judgments about disputed matters "right" and "wrong"? Yet we do. Why don't we do the same when it comes to nearly unanimous matters of mere taste, like the taste for chocolate? The fact is, we don't. What matters most to Arendt about Kant's aesthetics is, quite simply, that Kant noticed this peculiar phenomenon about our practices of judgment and puzzled over it. I think spotting the phenomenon matters more to her than the elaborate details of Kant's theory. She fastens on Kant's observation because it exactly captures what she takes to be the special character of moral judgments: they can't be proven, people disagree about them, and yet we insist on the validity of the moral judgments we adhere to.

Second, Arendt was deeply impressed with Kant's idea that we learn to make judgments of beauty in a community, and they reflect a *sensus communis* – a common sense – within that community. Again and again Arendt insists that the critique of

aesthetic judgment is the most political of Kant's writings, and it is his comments about the *sensus communis* that she has in mind. Sometimes, as with the pleasure we take in a beautiful vista, the aesthetic community includes nearly everyone. Other times, as with the pleasure we take in chamber music, the community is a small minority of people, and the love must be cultivated over years through what one writer, echoing Kant, calls a "discipline of taste and feeling."⁸² For Kant, crucially, the *sensus communis* he has in mind is not the lowest common denominator, but a community that is formed through reflection and critical discussion.⁸³ For, Kant explains, even though others can't prove judgments of beauty to me, they can "woo" (*erwerben*) my consent.⁸⁴ That is the function of good art criticism: to woo our judgment by directing our attention to things we hadn't noticed or hadn't known that we noticed.

The discipline of taste and feeling bears some comment. One of the joys of youth is discovering for the very first time the music and art you will love for life, and a key step is learning to like it even if it doesn't take at first. A crucial skill we develop along the way is the ability to cultivate tastes on our own. In high school you knew nothing about jazz, and didn't much like what you heard. Then, a few years later, you make a self-conscious decision to learn something about jazz, and you are on your own because your friends aren't interested. But even on your own, cultivating your taste isn't a solitary enterprise. You learn from websites, from recommendations, from listening to the artists who influenced the artists you already like, from talking to the people sitting next to you at jazz clubs. Learning to love jazz turns out to be identical to joining the society of jazz fans – cultivating the *sensus communis*. Accomplished in large part through shared experience and conversation, entering into the *sensus communis* is an aesthetic counterpart to entering into a political community. In Arendt's eyes the conversations that discipline your taste and feeling are quintessentially political even though they aren't about public affairs or the conditions of freedom.

The decisive point, though, is that the culmination of that discipline is becoming an independent judge, so that if for some

⁸² This is as good a place as any to acknowledge how much I have absorbed from Charles Wegener's *The Discipline of Taste and Feeling* (University of Chicago Press, 1992). The book title echoes §50 of the *Critique of Judgment*: "Taste, like the power of judgment in general, consists in disciplining (or training) genius."

⁸³ *Critique of Judgment*, §40.

⁸⁴ *Critique of Judgment*, §19.

mysterious reason the community jumps on the bandwagon of new fads, you won't jump in lock-step with them. When we move from aesthetics to morality, that independence becomes all-important. It is what allows us – quoting Thom Gunn's poem – to breathe the cold air of our freedom and tread a distinct direction.

Political Judgment and Moral Judgment

Arendt's analogy to eighteenth century aesthetics is crucial, but before exploring it I want to emphasize a basic point: where in other writings she recruited Kant's aesthetics for the project of *political* philosophy and the analysis of political judgment, "Some Questions of Moral Philosophy" turns from politics to morals. She barely remarks the change, but it is momentous, once we remind ourselves how different political judgment and moral judgment are.

Political judgment is success-oriented and power-oriented. It involves sizing up people's strengths and weaknesses, keeping your bullshit detector switched on, reading your audience, foreseeing unintended consequences, sensing the winds and tides of public opinion. These are, fundamentally, skills in discerning other people's intentions. They are indispensable political skills, but none of them has much to do with the ability to tell right from wrong.

In fact, political judgment and moral judgment can steer in opposite directions; Machiavelli, remember, taught the prince how *not* to be good. Political judgment means judging how far you can push your agenda without a backlash, and pushing no farther, even if morality requires pushing farther. It means knowing when to lie and conceal. It means recognizing when to forge alliances of convenience with rivals, and knowing when to drop them. (Thus Lord Palmerston's quintessentially political maxim declares that there are no eternal allies or perpetual enemies, only eternal and perpetual interests, "and those interests it is our duty to follow."⁸⁵) And, because sowing and exploiting divisiveness can be a winning political strategy, political judgment sometimes follows the cynical maxim that the whole secret of politics is knowing who hates who.⁸⁶ That takes judgment.

⁸⁵ Palmerston's speech to Parliament, "Treaty of Adrianople—Charges Against Viscount Palmerston," HC Deb 01 March 1848, vol. 97, §122, at <http://hansard.millbanksystems.com/commons/1848/mar/01/treaty-of-adrianople-charges-against>.

⁸⁶ Attributed to the Nixon- and Reagan-era Republican Party strategist Kevin Phillips.

Politics needn't be amoral, and obviously people can and do enter politics for moral reasons. But moral judgment itself appears covered in tarnish when it operates in politics. It often requires distinguishing between morally bad compromises that nevertheless ought to be accepted because they are the best you can do, and rotten compromises that must never be accepted.⁸⁷ It means discerning how dirty you can get your hands without getting them too dirty. This is what passes in politics for placing duty above inclination.

Once we remind ourselves of these truisms, the gulf between political and moral judgment seems large and obvious. Then why did Arendt slide over it? She was acutely aware of the problem of dirty hands in politics. In one late essay she writes that “every resisting of evil done in the world necessarily entails some implication in evil” – as clear a statement as you can find of the problem of dirty hands.⁸⁸ To take a specific instance of dirty hands in politics: Arendt recognized that “the deliberate falsehood and the outright lie used as legitimate means to achieve political ends, have been with us since the beginning of recorded history” – and here the emphasis must fall on the remarkable word “legitimate.” It shows that Arendt fully perceives the gulf between politics and morality.⁸⁹ Lies are morally wrong, but they can nevertheless be politically legitimate. She remarks that in politics moral propositions become “absolutely valid” only when you are politically powerless, which is a backhanded way of saying that whenever we wield political power moral propositions are only conditionally and secondarily valid.⁹⁰ Yet when Arendt draws on Kant's aesthetics to analyze moral judgment as distinct from political judgment, she never acknowledges that she has changed the subject from Machiavellianism to morality, and rather dramatically so. Why?

⁸⁷ Avishai Margalit, *On Compromise and Rotten Compromises* (Princeton, 2009). In Margalit's typology, shady deals, shoddy deals, and shabby deals “are all forms of morally bad deals, yet given the alternatives, they might on occasion be justified.” *Ibid.*, pp. 3-4. Truly rotten deals – those that assault basic human dignity – can never be justified, only, at best, excused.

⁸⁸ “Collective Responsibility,” in RJ, p. 152. In the Kant lectures, she repeats that “by resisting evil, you are likely to be involved in evil.” *Lectures on Kant's Political Philosophy*, p. 50.

⁸⁹ “Lying in Politics: Reflections on *The Pentagon Papers*,” in *Crises of the Republic*, 4.

⁹⁰ “Collective Responsibility,” p. 156.

Emergency Ethics: Moral Compass in the Midst of Moral Collapse

I think the best explanation is that her interest in moral phenomena was limited to the political crises that had preoccupied her for decades. In her late essays on morality, she explains that what prompted her inquiries was the moral collapse of Germany (and Europe more generally) in the face of Nazism. This is clear in the extract from her lectures on morality quoted above. She was not interested in the full range of moral issues – interpersonal morality, sexual morality, the treatment of animals, or everyday moral choices. For Arendt, the overwhelming moral question was what kind of moral stance individuals must adopt in dark times when they confront radical evil in public life.

Do you retreat into private life and cultivate your garden, or throw yourself into the fray? Do you make trouble or stay out of trouble? Do you take risks that might endanger your friends and family? Do you go along with lesser evils – and, if you do, where do you draw the line between lesser evils and intolerable evils? Do you gradually lose your sense of outrage, the way so many Germans in 1933 and 1934 normalized the Hitler regime by saying, “You have to admit that Hitler has done some good things for Germany....”?⁹¹ In the ways we respond to dark political times, and perhaps here alone, moral judgments *are* quintessentially political judgments. They are, precisely, moral judgments about political regimes and about how to conduct yourself in political emergencies.

Moral judgments of this alarming character appear to be the only ones that interested Arendt. Indeed, she announced that “the invocation of allegedly moral principles for matters of everyday conduct is usually a fraud. ... All the things we have been talking about here [regarding moral judgment] are important only in exceptional circumstances,” when “the conventions, the rules and standards by which we usually live, don’t show up too well.”⁹² She was writing for “emergency situations, in times of crises when, so to speak, we find ourselves with our back against the wall.”⁹³

Against Emergency Ethics

Thus in the later writings as in the earlier she remains uninterested in, or even oblivious toward, everyday moral questions. *Das Moralische versteht sich von selbst*: perhaps Arendt

⁹¹ See Peter Fritzsche, *Life and Death in the Third Reich* (Harvard University Press, 2008), 31-36, 56-65.

⁹² “Some Questions,” in RJ, p. 104.

⁹³ *Ibid.*, p. 122.

never quite shook free of her youthful conviction that in mundane matters of right and wrong (mere “behavior”), customs and *mores* provide a complete system that yields the right answer in any dilemma through straightforward application of rules.

This is a blunder. She failed to recognize that in small matters as well as large ones, people regularly confront dilemmas that custom won’t resolve algorithmically. These include dilemmas of conflicting loyalties, keeping secrets, ignoring misconduct rather than calling others on it, dealing with fools and bores, telling small lies, negotiating affairs of the heart with their innumerable hurts and their small and large betrayals – and what makes these issues *dilemmas* is precisely that customs and *mores* don’t dictate the right answer. There is moral depth in small matters as well as grandiose ones. This Arendt seems to overlook.

Let me frame the complaint in different terms. Perhaps surprisingly, Sir Walter Scott greatly admired Jane Austen, though her novels could hardly be more different from his swashbuckling historical romances. He wrote in his journal:

That young lady had a talent for describing the involvements and feelings of characters of ordinary life which is to me the most wonderful I have ever met with. The Big Bow wow strain I can do myself like any other now going but the exquisite touch which renders ordinary common-place things and characters interesting from the truth of the description and the sentiment is denied to me.⁹⁴

All lovers of Jane Austen’s novels would agree. (Austen herself, in a letter to her schoolboy nephew, playfully contrasted his “strong, manly, spirited Sketches, full of Variety & Glow” with “the little bit (two Inches wide) of Ivory on which I work with so fine a Brush.”⁹⁵) We marvel at her “exquisite touch” because Austen shows us moral depth in everyday life – a depth Arendt’s remark about the fraudulence of moral principle in everyday matters denies.

Limiting moral judgment to emergencies, as Arendt does, would wrongly restrict moral choice to the “Big Bow wow strain” – life-and-death choices in four-alarm historical crises – that Sir Walter Scott ruefully admits is the only one he knows how to write. Sir Walter is right to admire both, whereas Arendt’s restriction leaves no room for the moral world of Jane Austen, which is, after

⁹⁴ Sir Walter Scott, *Journal*, March 14, 1826, quoted in Wegener, p. 11.

⁹⁵ Letter to James Edward Austen-Leigh, Dec. 16-17, 1816, *Letters of Jane Austen* (1995), 323.

all, *our* moral world, no matter how remote the rural gentry society her characters inhabit is from ours.

The Common Law as a Model of Moral Reasoning from Conventions

Oddly, the reason that Arendt is so puzzlingly dismissive of everyday moral concerns is not that she underrates conventional morality but that she overrates it. She erroneously supposes that our existing “rules and standards” settle moral questions except in emergencies. And the curious result is that she sells her own philosophy of moral judgment short. Her emphasis on moral judgment that is not algorithmic rule-application shouldn’t be confined to “emergency ethics” when the world is crashing down around us. Taken rightly, it applies to commonplace dilemmas as well.

Now, there is one way in which Arendt is right that conventional morality suffices to settle conventional moral dilemmas: an actor can always reason analogically from “settled” cases to the novel case. What she overlooks is the element of creativity and individual choice and judgment that goes into moral reasoning of this sort. It is anything but the mechanical or formulaic application of rules that she thinks it is.

The paradigm that illustrates what I have in mind is the kind of reasoning engaged in by common law judges applying precedents to novel facts. Put schematically, their reasoning involves three steps. First, the judge canvases the precedents and selects those she deems good law. Next, the judge asks which of the several possible, and possibly competing, precedents provides the best analogy to the new case. Finally the judge extracts the rule those governing precedents stand for and applies it to the new case.⁹⁶

Three points about this model matter here. First, creative judgment figures in every stage. Prior decisions don’t come labeled “good law” or “bad law”; the initial judgment of which precedents (which customs and *mores*) have gravitational force and which don’t requires the judge to critically evaluate the tradition. So too with customs and *mores*. The judge will never describe what she

⁹⁶ Edward H. Levi, *An Introduction to Legal Reasoning* (University of Chicago Press, 1948), pp. 1-5; for a similar but more elaborated account of common law reasoning, Robert B. Brandom, *Reason in Philosophy: Animating Ideas* (Harvard University Press, 2009), pp. 84-88. See also Cass R. Sunstein, “On Analogical Reasoning,” *Harvard Law Review* 106 (1993), pp. 741-91; and for a more complex treatment, Scott Brewer, “Exemplary Reasoning: Semantics, Pragmatics, and the Rational Force of Legal Argument,” *Harvard Law Review* 109 (1996): 923-1028.

does as “critically evaluating the tradition” – that would sound too highfalutin, not to mention unjudicial – but every lawyer learns how to recognize which prior cases matter, which are outliers, and why the outliers are outliers.

At the second stage, determining which analogy best fits the facts is a paradigmatic act of judgment – a judgment of similitude, one that rules can’t capture.⁹⁷ At the third stage, extracting a rule from prior cases – formulating it broadly or narrowly and identifying its implicit exceptions – likewise requires critical judgment and creative choice.

Take a simple illustration. In 1900, an Indiana physician refused a call to treat a gravely ill person. No other doctor was available, the sufferer died, and the estate sued the doctor. Was the physician’s nonfeasance a legitimate cause of action? As the parties argued the case, it devolved into a choice between competing analogies. Is the only physician in town like an innkeeper or common carrier, obliged by settled law to take on all travelers who present themselves? Or is the physician more like a private contractor, free under settled law to turn down a customer for any non-discriminatory reason or for no reason at all? If the former, plaintiff’s suit can proceed to a trial on the facts; if the latter, the estate has no cause of action. Both analogies have something to be said for them; the judge must judge.⁹⁸

⁹⁷ I don’t mean that *in principle* rules can’t capture similitude judgments of the form “*X* is more similar to *A* than it is to *B*.” E.g., “Churchill resembles a bulldog more than a poodle” or “*Paradise Lost* is more like *The Iliad* than like a sonnet of Milton’s own day.” Someday, perhaps soon, self-learning computer programs will make such judgments reliably, in the sense that they reliably replicate the similitude judgments that the most competent human judges make. Presumably, such a program would consist of a complicated algorithm – a rule, which in the case of self-learning machines includes the meta-rules the software uses to teach itself better rules for accomplishing its tasks. And, conceivably, the human brain itself uses a complicated algorithm embodied in neural networks whenever we make similarity judgments. So too, a machine could perhaps be trained to replicate the moral judgments that the Aristotelian *phronēmos*, the person of practical wisdom, makes; and the machine thus trained would likewise use a complex codified algorithm. Analogously, perhaps the brain itself uses a complex algorithm to reach its moral judgments; at least there is no *a priori* argument that it doesn’t.

But there’s an ambiguity in “use,” between the resources we use in our conscious moral deliberations and the underlying mechanisms our brain uses. Think of an analogy: I *use* my calculator to multiply large numbers; my calculator *uses* an algorithm to multiply large numbers. But, in the relevant sense of “use,” I do not use the calculator’s algorithm. Think of my brain as akin to my calculator. In the relevant sense, I do not use the algorithm (supposing there is one) that my brain uses.

⁹⁸ *Hurley v. Eddingfield*, 156 Ind. 416, 59 N.E. 1058 (Ind. 1901).

In one sense, this is what Kant called a “determinative” judgment, that is, a judgment that subsumes a particular under a pre-given concept (a rule). In the example, the court subsumed the facts to the rule governing private contractors, and concluded that the doctor was under no obligation to enter into a contract to treat the patient. Simple rule, straightforward application – easy case. The rhetoric of judicial opinion writing aims to make every judgment sound determinative, as though the law and not the judge has decided the case. Every case should sound like an easy case.

In reality, getting there demands “reflective” judgment, Kant’s term for finding a concept that aptly suits the particular – a creative judgment that moves from particulars to concepts, not a mechanical one that applies concepts to particulars. Here, the court had to choose between the concept of contract and the concept of common carriers. Which best suits the facts? Answering that question calls for reflection, not deduction. Arendt’s objections to rule-based or “legalistic” morality identify it exclusively with determinative judgment, which she regards as too mechanical to be suited to novel circumstances. She overlooks the way that moral reasoning modeled on the common law is reflective and not mechanical.

Second, she describes conventional *mores* as rules produced by human agreement. But the model of agreement is misleading. It suggests a synchronic and reciprocal meeting of minds, but here the process is diachronic and non-reciprocal. The agreement is a one-way street: the judges who created the precedents have no say in whether later judges take them up, ignore them, reject them, limit their scope, maneuver around them, or for that matter misquote them. Earlier decisions constrain but don’t confine the judgment of later judges; they are more like proffers that the later jurists can accept as rules of decision, but can also reject or limit or modify. So too with customary morality, bequeathed to us by the past but accepted (or not) by the present. There was no moment of agreement.

Third, and related: the later judge not only absorbs the tradition and applies its “rule” – in doing so she modifies the body of precedent by adding to it. Applying the rule to a new case changes the rule. In saying this, I am not saying anything novel. Seventy years ago Edward Levi identified this as the special character of common law reasoning: “the classification changes as the classification is made. The rules change as the rules are applied.”⁹⁹ Law is a moving classification scheme.

⁹⁹ Edward H. Levi, *An Introduction to Legal Reasoning* (University of Chicago Press, 1948), 3-4.

I am suggesting that moral reasoning based on conventional rules and standards is more like common law reasoning along the lines just described than it is like deductive reasoning or the application of a mathematical function to a set of numerical inputs. The form of the latter kinds of reasoning asks: given a rule or function, and given an input, what does the rule yield as output? In moral reasoning, we are not “given” a rule – the rule is taken (not given) through a process of reflection that remakes it in small or large ways.

So, while Arendt is right that moral judgment must step in when mechanical rule application fails, she is wrong that the way custom figures in everyday moral reasoning is mechanical rule application. And she is therefore wrong that “the invocation of allegedly moral principles for matters of everyday conduct is usually a fraud.”

This is not to deny that precedents can fail in emergencies. Framed in these terms, Arendt’s “emergency situations” and “exceptional circumstances” are those that are, literally, “unprecedented” in the sense that all the precedents are misleading. At the beginning of *The Origins of Totalitarianism*, she warns against “deducing the unprecedented from precedents, ... explaining phenomena by such analogies and generalities that the impact of reality and the shock of experience are no longer felt.”¹⁰⁰ Let’s suppose (as I do) that she is right about the unprecedented character of twentieth-century totalitarianism and the continent-wide moral collapse it caused. In that case, moral reasoning along the common-law pattern I’ve just described may indeed fail, and fail dramatically. Then a freer kind of judgment “without bannisters” becomes essential, as Arendt insisted.¹⁰¹ It does *not* follow that conventional moral judgment is either mechanical or deductive. It too requires choices made without bannisters, because our choices continuously recreate the conventional rules in the course of applying them.

¹⁰⁰ OT, xxvi.

¹⁰¹ Christine Korsgaard defends, on Kantian grounds, an analogous view about when the virtuous person will take the law into her own hands, notwithstanding that justice prohibits it. “The universalization test cannot serve as a guide ... There is no criterion for deciding when imperfection has become perversion, when things have gone too far. ... In making this kind of decision, you are entirely on your own.” Korsgaard, “Taking the Law into Our Own Hands: Kant on the Right to Revolution,” in *The Constitution of Agency: Essays on Practical Reason and Moral Psychology* (Oxford UP, 2008), 258-59.

Actor and Spectator

Her remarks about emergency ethics are not Arendt's only strategic error in her late writing on moral judgment. One of the most perplexing features of the Kant lectures is Arendt's discussion of agents and spectators in the eighth and ninth lectures. Here she considers Kant's puzzling stance toward the French Revolution. He declared that it is morally wrong to rebel against established government, but at the same time he enthused about the Revolution and insisted that no injustice is done against a tyrant by overthrowing him. Arendt comments: "What you see here clearly is the clash between the principle according to which you should act and the principle according to which you judge."¹⁰² The principle of action prohibits rebellion; the principle of judgment applauds it.

Expanding on this theme, she goes on to draw a sharp distinction between actor and judge. The judge, appraising human affairs at a distance, is disinterested, just like the judge in aesthetic matters; the actor cannot be disinterested, for her urgent question is "what should I do?" Kantian actors are morally constrained; judging spectators are free to take a wider view. Indeed, spectators might conclude that morally forbidden acts like warmaking and rebellion advance human progress overall.¹⁰³

What makes her discussion of actors and spectators in these pages so perplexing is that she seems to confine judging to the realm of post hoc judging from afar, and to separate it sharply from practical deliberation. Ronald Beiner, who edited Arendt's Kant lectures for posthumous publication, believes this is indeed where Arendt wound up: her "final resolution" is "to emphasize the contemplative and disinterested dimension of judgment, which operates retrospectively, like aesthetic judgment. Judgment in the latter sense is placed exclusively within the ambit of the life of the mind," not the ambit of practical deliberation.¹⁰⁴

In *Thinking*, Arendt states outright that "judgment is our faculty for dealing with the past." She adds that the *histōr*, the storyteller or historian, is a *judge*.¹⁰⁵ Perhaps so, but it doesn't follow that the *histōr*, looking backward on things that have

¹⁰² *Lectures*, 48.

¹⁰³ As illustration, Arendt paraphrases one of Kant's observations: "War brings about progress – something no one can deny who knows how intimately the history of technology is connected with the history of wars." *Ibid.*, p. 54.

¹⁰⁴ Beiner, "Interpretive Essay," in *Lectures*, p. 139.

¹⁰⁵ *Thinking*, 216.

already happened, is the *only* true judge – in other words, that judgment is solely a backward-looking human capacity.

In fact, that would be a disastrous place for Arendt to end up. If judgment is solely “our faculty for dealing with the past,” it follows that we don’t judge when we act and deliberate. Not only is that a preposterous view on the merits, Arendt herself quite clearly said the opposite in “The Crisis in Culture,” her first published essay to identify Kant’s theory of aesthetic judgment as a political philosophy. There, she equates political judgment with *phronēsis*, the practical wisdom or insight of a statesman.¹⁰⁶ *Phronēsis* refers to sound judgment in the course of deliberating and acting, not to sound retrospective evaluation by spectators. If judgment were confined exclusively within the ambit of the life of the mind, the result would be a gaping hole where *phronēsis* used to be.

Furthermore, the major point of Arendt’s investigations of judgment would vaporize. It is important to remind ourselves why.

Remember where she began: the Eichmann trial drove her to try to understand what distinguished the righteous resisters to Nazism, like Anton Schmid – those whose moral compass held true – from the multitude who went along for the Nazi ride and spent a decade “heil hitlering” each other, or far worse.¹⁰⁷ “The moral issue arose ... with this, as it were, honest overnight change of opinion that befell a great majority of public figures in all walks of life and all ramifications of culture.”¹⁰⁸ She dates their change of opinion to the dawn of the Third Reich and the advent of “coordination,” the Nazi policy of placing every organization in civil society under Party control.¹⁰⁹ Coordination turned out to be

¹⁰⁶ “The Crisis in Culture,” in BPF (Viking ed.), 221. Beiner points to this same passage, but concludes that her view shifted over the years. “Interpretive Essay,” 140.

¹⁰⁷ Unsurprisingly, Germans adopted this ubiquitous and socially semi-mandatory “German greeting” with varying levels of enthusiasm and sometimes resentment. Peter Fritzsche, *Life and Death in the Third Reich* (Harvard University Press, 2008), pp. 19-24.

¹⁰⁸ “Personal Responsibility Under Dictatorship,” p. 24.

¹⁰⁹ A classic study of “coordination” (*Gleichschaltung*) is William Sheridan Allen, *The Nazi Seizure of Power in a Small Town: The Experience of a Single German Town 1930-1935* (New Viewpoints, 1973), pp. 213-225. See also Fritzsche, *Life and Death in the Third Reich*, 49-51. Readers of Orwell’s 1946 “Politics and the English Language” may recall that “*Gleichschaltung*” appears on his “pretentious diction” list, clear evidence that this now-obscure Nazi buzzword was significant in the eyes of political commentators at the time. George Orwell, *In Front of Your Nose 1945-1950*, vol. 4 of *The Collected Essays, Journalism and Letters of George Orwell*, ed. Sonia Orwell & Ian Angus (Harcourt Brace Jovanovich, 1968), p. 131.

crunch time, morally speaking: the moment when non-Nazi Germans had to decide whether to play or drop out.

Crucially, Arendt ascribes their fateful decision to keep playing to “the almost universal breakdown, not of personal responsibility, but of personal *judgment* in the early stages of the Nazi regime,” which quickly led to “the total collapse of normal moral standards.”¹¹⁰ It prefigures what happened during the war throughout occupied Europe: “the moral collapse the Nazis caused in respectable European society – not only in Germany but in almost all countries.”¹¹¹

This latter language comes from *Eichmann in Jerusalem*, but Arendt fails to explain what she has in mind. The more revealing recollections and reflections in “Personal Responsibility Under Dictatorship” clarify matters: the moral collapse consisted of not grasping how wrong all forms of collusion with the Nazis were. This collapse of judgment began when actors confronted relatively innocuous intrusions of radical evil into their everyday lives, and misjudged that it wasn’t so bad. The decision by Germans who had no Nazi sympathies to remain in “coordinated” institutions rather than quitting allowed the Third Reich to retain a semblance of normality, and the semblance of normality caused the moral compass of the entire society to swerve gradually but ineluctably in the wrong direction.

Thus, when Arendt emphasizes “the almost universal breakdown of personal *judgment*,” she is *not* talking about the disinterested judgment of after-the-fact historians or the judges at the Nuremberg trials and post-war denazification hearings. She is talking about in-the-moment judgments by ordinary Germans as they made up their minds what to do when the Nazis installed a Party apparatchik at the helm of their singing society or chess club or the government office where they worked. Do you go along or get out? Do you stick by your friends, or break off your socially inconvenient relationships with Jews? How much adjustment to the new regime is too much? You must judge – and quickly. With tangible bitterness Arendt recalls the betrayals “not of our enemies but of our friends,” and she blames the betrayals on the breakdown of their personal judgment.¹¹² A parallel breakdown took place in the rest of Europe under the occupation. (No doubt Arendt had Vichy especially in mind.) The success and failure of personal

¹¹⁰ Her emphasis. “Personal Responsibility Under Dictatorship,” 24 (breakdown of personal judgment), 34 (total collapse of normal moral standards).

¹¹¹ EJ, 124-25.

¹¹² “Personal Responsibility,” 24. It’s possible she had Heidegger in mind.

judgment *in this setting* is first and foremost what she wanted to understand. That was her project.

To confine the faculty of judgment to evaluations by onlookers, excluding the deliberations of actors, would rip the heart out of this project. To reiterate: her project was to understand the kind of judgment that “may prevent catastrophes, at least for myself, in the rare moments when the chips are down.”¹¹³ *Prevent*: a forward-looking concept, not a concept of retrospective evaluation. *At least for myself*: not for some spectator, not for tomorrow’s jurists and historians and storytellers (though they too will have to exercise judgment) – but for me, the actor, in the very moment when the chips are down and the game has begun. If she really embraced the separation of acting and judging she describes in the eighth and ninth Kant lectures, this project would be rubbish.

Unfortunately, this seems to be exactly the conundrum Arendt lands herself in in *Thinking*, where she writes that “withdrawal from direct involvement to a standpoint outside the game (the festival of life) is ... a condition for judging.”¹¹⁴ In the final pages of *Thinking*, she labels judgment the faculty for dealing with the past, and abandons the idea that our judgment is the compass by which we navigate our actions going forward, the compass that guides us through catastrophes. Yet these pages are filled with confusions and inconsistencies, a tell-tale sign that Arendt has taken a wrong turn.

First Arendt announces that in *Judging* she will “be in search of the ‘silent sense’” by which we judge, and which in matters of aesthetics is called taste. But in the very next sentence she writes, “In practical and moral matters it [the ‘silent sense’ of judgment] was called ‘conscience,’ and conscience did not judge.” Within the space of two sentences, then, she flatly contradicts herself: conscience both is and is not judgment. She explains that unlike the “silent sense” by which we judge, conscience “told you, as the divine voice of either God or reason, what to do, what not to do, and what to repent of.” Therefore “it cannot be said to be ‘silent’.” However, this explanation is no explanation at all. What we traditionally label the call of conscience is the motivation to do what we have judged to be right and avoid what we have judged to be wrong. Understood metaphorically as an inner prompting to do what is right, conscience isn’t a *substitute* for moral judgment, it depends entirely on a moral judgment, on which it urges us to act.

¹¹³ TMC, 189.

¹¹⁴ *Thinking*, 94.

Adding to the confusion, Arendt lumps together the voice of conscience telling us “what to do” and “what not to do” – forward-looking judgment or *phronēsis* – and the voice telling us “what to repent of” – backward-looking judgment of what we have already done.¹¹⁵

As we work through this paragraph, with its cascading self-contradictions, it’s hard to avoid the sense that Arendt is digging herself deeper and deeper into a hole. And she finds herself in this hole because of her sharp distinction between the actor and the spectator and her stubborn insistence that judgment belongs solely to the spectators.

The Interdependence of Actors and Spectators

It might be objected that there *is* a difference between moral judgment when we are deliberating what to do – forward-looking “actor” moral judgment – and moral judgment by onlookers like courts of law and historians – or, for that matter, by ourselves reviewing our own lives – which is “spectator” judgment, either retrospective or contemporaneous. So, even if we conclude as I have that Arendt never should have excluded the former from the province of judgment, the question naturally arises about whether the two forms of judgment have anything in common beside the name.

This will be a crucial question for our later examination of Arendt’s contributions to legal theory, prompted by the Eichmann trial. She plainly thinks the Jerusalem judges were engaged in judgment of exactly the sort that interested her: judging particulars without bannisters. As she comments approvingly about the post-war trials of Nazi criminals, “the judges in all these trials really passed judgment solely on the basis of the monstrous deeds. In other words, they judged freely, as it were, and did not really lean on the standards and legal precedents with which they more or less convincingly sought to justify their decisions.”¹¹⁶ Of course, they were passing legal judgment, not moral judgment; but, as Arendt insists, “Legal and moral issues are by no means the same, but they have a certain affinity with each other because both presuppose the power of judgment.”¹¹⁷

What, then, does the free style of *ex post* judging she applauds have to do with *ex ante* “actor” judgment, that is, practical judgment about what to do? If actor- and spectator-

¹¹⁵ All quotations in this paragraph come from *Thinking*, 215.

¹¹⁶ EJ, 294.

¹¹⁷ “Personal Responsibility Under Dictatorship,” 22.

judgment turn out to be different in kind – if *deliberation* and *evaluation* are fundamentally different rational practices – then perhaps Arendt’s sharp distinction in her late writing between actor and spectator are right – and, more disturbingly, perhaps there is really no unified faculty of judgment for her or us to talk about.

It’s interesting in this regard to compare the views of Stuart Hampshire, in his remarkable 2001 book *Innocence and Experience*. In conspicuous ways (including a preoccupation with Nazi evil), Hampshire might be the analytic philosopher closest to Arendt. Hampshire, like Arendt, sharply distinguishes two powers of the intellect. One is computational ability in the broad sense that we sometimes call “smartness,” and which includes both logical acumen and means-ends rationality. The other is inner dialogue, “the practice of promoting and accepting arguments for and against a proposal,” what Arendt sometimes calls the “two-in-one.”¹¹⁸ And, like Arendt, he strongly identifies practical reason with the latter. Finally, like Arendt, Hampshire distinguishes the practical judgment of the actor from spectatorial, evaluative judgment.

But, reversing Arendt, Hampshire insists on the primacy of the actor’s judgment over the spectator’s. This comes out forcefully in his critique of Hume:

Not alone among eighteenth-century moralists, Hume represents moral thought as principally the activity of projecting upon reality adjectives of approval or disapproval, as commentary on, and criticism of, human performances. Once again the model of Newton misled all those who aspired to be the Newton of the moral sciences, observing human nature as Newton had observed the starry heavens above.¹¹⁹

When a person actually looks back on his own life in a mood of retrospection and regret, he considers “all those things that he might have done, and that he nearly did, and that were real possibilities or options for him, stretching back into the past.” Should he have chosen differently? Did he deserve his reversals of fortune? Does his history show that he constantly repeated the same patterns in his personal relations? Or does he have less to regret than he had thought?¹²⁰ In other words, real moral judgment requires us to accurately project ourselves back into the choice

¹¹⁸ Hampshire, 53. Arendt labels these two powers “understanding” and “thinking.”

¹¹⁹ *Ibid.*, 102.

¹²⁰ *Ibid.*, 101. The questions are closely paraphrased from Hampshire’s text.

situations we faced in practice, reconstructing the deliberative point of view in order to pass judgments on it that are more subtle than approval or disapproval.

The same must be true in judging the conduct of others. You cannot evaluate someone else's behavior without understanding what was going on in their mind and what reasons were available to them – what they knew and intended and when they knew and intended it; what field of possibilities they saw; what pressures and constraints they took into account. Evaluation, in other words, demands that we reconstruct the actor's deliberations, and that is true even when we utterly condemn them. (To understand is *not* to forgive.) In criminal law, this point translates into familiar doctrinal concepts: the *mens rea* requirement of evaluating knowledge and intention, determining whether the defendant was acting under mistakes of fact or of law, whether she was suffering from diminished mental capacity, was subject to duress, or acted out of perceived necessity.

But I don't think this proves the primacy of actor-judgment, as Hampshire supposes. Rather, it proves the interdependence of deliberation and evaluation. For, when we deliberate about what to do, one factor to consider is how we will look back on it, especially if it misfires; regret analysis is part and parcel of rational deliberation. We may disregard that future viewpoint, or take moral risks for any number of reasons – but that should be a deliberate choice. Those who are so impetuous that they don't even think about how they will look back on their choices are perfect exemplars of bad judgment – a fact that suggests that predicting our own retrodictions is a necessary component of *phronēsis*.

What about estimations of other people's spectator evaluations, future as well as contemporaneous, as well as our own? Taking them into account is a requirement of good moral judgment: we control for the inevitable partiality of our own view by imagining the judgments others will pass on our conduct, not only in the future but in the present.¹²¹

Kant called thinking in this way an “experiment of reason” that is morally imperative whenever our actions affect the rights of others. To perform Kant's experiment, ask yourself whether you could publicly divulge the maxims of your actions without defeating your own purposes. If not, Kant explains, your action is unjust. Kant's experiment of reason won't always yield a determinate result, because some wrong actions might not be self-

¹²¹ As Arendt herself insists: *Lectures on Kant's Political Philosophy*, 55.

defeating even if they were revealed publicly; but conducting the experiment of reason is an essential step in moral deliberation.

It doesn't follow that evaluation and deliberation are the same mental process. Deliberators needn't perform Kant's experiment of reason or indulge in regret analysis, and evaluators can restrict themselves to what Hampshire derisively calls "a bare log-book of events and actions."¹²² But for deliberation to be *moral* deliberation and evaluation to be *moral* evaluation, we must combine the actor's view with the spectator's. Moral judgment is a single, albeit complex, moral power.

As we will see, Arendt connects that power to the kind of "enlarged mentality" Kant praises in the *Critique of Judgment*, and then she connects that with the kind of thinking from the point of view of others that she found so conspicuously absent in Eichmann at Jerusalem. The argument of her later philosophy, in a nutshell, is that the inner two-in-one dialogue that she calls thinking is a necessary condition for enlarged mentality, and enlarging our mentality to embrace multiple perspectives is the guarantor of common sense and the cultivator of the practice of judgment.

¹²² Hampshire, 101.