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# On Hannah Arendt's Study of Constitutionalism in the Aftermath of Totalitarianism: A Philosophical Search for the Principle to Secure the Foundations of Modern Politics

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ON HANNAH ARENDT'S STUDY OF CONSTITUTIONALISM IN THE AFTERMATH OF  
TOTALITARIANISM: A PHILOSOPHICAL SEARCH FOR THE PRINCIPLE TO  
SECURE THE FOUNDATIONS OF MODERN POLITICS

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TOTALITARIANISM: A PHILOSOPHICAL SEARCH FOR THE PRINCIPLE TO  
SECURE THE FOUNDATIONS OF MODERN POLITICS

by

JOSEPH DE LEON FLORES, B.A.

THESIS

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Finally, I would like to dedicate this work to my grandmother Dolores, who was the first philosopher to engage in dialogue with me.

## **Abstract**

Hannah Arendt faces the grotesque appearance of totalitarianism, and with bravery goes on the offensive, herself armed with contemporary philosophical tools of analysis, to do battle in the field of existential-phenomenology against this modern monster. Totalitarianism, birthed from the seeds of lawless action, claims to be the most lawful mode of human existence. The monstrous existence of totalitarianism demonstrates a crisis in the very foundations of modern man's political mode of being. In order to find a solution to this modern political crisis Arendt closely studies the experience of constitution writing at the moment the men of action are about to will themselves into the abyss of freedom. The American Revolution, as a prior experience to constitution writing, gives Arendt the elements for a powerful instrument to wield against the modern monster of totalitarianism. From these revolutionary elements Arendt fashions an instrument to wield against totalitarianism, the vital activity of pluralistic power. But the shadow of totalitarianism runs deep in the spirit of man, who can easily be atomized. Arendt teaches one that one must enact thoughtfulness in our speech and be judicious in our action.

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# **On Hannah Arendt's Study of Constitutionalism in the Aftermath of Totalitarianism: A Philosophical Search for the Principle to Secure the Foundations of Modern Politics**

## **Introduction**

Hannah Arendt's political philosophy seeks to find the principle that will enable for the foundational security of modern politics. The modern form of government that Arendt identifies as totalitarianism presents modern politics with a problem of foundations. Totalitarianism is a crisis of modern politics. Because totalitarian regimes violate their own constitutions for self-benefit, while simultaneously claiming to be the most lawful, Arendt faces a problem of origins, Arendt faces a problem of foundations.

In order to find the indispensable principle that is needed for the secure foundation of a modern state, Arendt closely studies the two original modern revolutions that led to the formation of the first modern constitutions. The American and French Revolutions present Arendt with the prior experience that led to the foundation of the American and French Republics. Arendt finds in the American Constitution a principle for a secure political foundation. The principle that Arendt finds becomes philosophically abstracted and integrated into her own political philosophy. The principle that Arendt finds is the vital activity of pluralistic power. But this principle is not a static phenomenon, rather it is a principle that requires constant enactment.

My thesis is made up of three chapters. A short synopsis of each chapter is presented below. Additionally, after the synopsis of each chapter has been presented, I schematically explain what I consider is Arendt's method of analysis. I call her method of analysis the Existential-Phenomenological Analysis.

The first chapter of my thesis is entitled: “Totalitarianism as the Foundational Crisis of Modern Politics”. In this chapter I attempt to follow the role constitutions play in the totalitarian regimes that are analyzed by Arendt. After closely following the analysis carried out by Arendt to define totalitarianism, I then arrive at the description of the nature of totalitarianism. I conclude this chapter by analyzing the description presented by Arendt concerning the nature of totalitarianism. This last analysis leads me to conclude that totalitarianism is a crisis in the foundations of modern politics.

The second chapter of my thesis is entitled: “Arendt’s Study of the American Constitution — the Vital Activity of Pluralistic Power”. I begin this chapter by presenting the foundational crisis that is presented by totalitarianism. The problem of foundations leads me to Arendt’s critique of the French model of constitution writing, I then move on to analyze Arendt’s study of the American Constitution. I argue that Arendt’s philosophical concepts of Power, Pluralism, and the Vita Activa are abstractions that follow her inexplicit analysis of the First Amendment of the Constitution of the United States. Additionally, I argue that it is the First Amendment itself that is the model of that indispensable principle that Arendt finds for a secure political foundation. I conclude this chapter by visiting Arendt’s concept of the Vita Activa and Civil Disobedience as fundamental institutions for a modern constitutional political body.

The third chapter of my thesis is entitled: “Arendt’s Study of a Totalized Atomized man and a Concluding Personal Reflection”. Arendt’s study of the problem of totalitarianism is not restricted to the macro systematic level. Arendt refines her study of totalitarianism by analyzing the phenomenon of Eichmann. Because a trial is an attempt to present in an aseptic environment the facts of a case, it is the aseptic nature of a trial that presents Arendt with the opportunity to analyze the phenomenon of Eichmann in a controlled environment. Given the broad breadth of



analysis that Arendt presents in her *Eichmann in Jerusalem*, I judged it prudent to concentrate mainly on “Chapter. VIII: Duties of a Law-Abiding Citizen”. Eichmann’s thoughtless existence serves as a warning to us all that our individual judgment is critical for our constitutional order. I conclude with some personal thoughts.

### **Schematic Explanation of Arendt’s Existential-Phenomenological Analysis—Contradictions and Origins**

I find it necessary to explain what I mean when I say that Arendt’s method of analysis is an Existential Phenomenological Analysis. By this I mean that Arendt synthesizes the Existential method of analysis with the Genetic Phenomenological analysis. Arendt’s Existential-Phenomenological Analysis is developed early in her *Love and Saint Augustine*. What Arendt does is adopt from the philosophy of Jaspers (who was Arendt’s dissertation advisor) the seeking of contradictions that serve as the boundary of the existence. From Husserl, Arendt adopts the Genetic Phenomenological Reduction that seeks the origins of the phenomenon. Because of the length requirements set for this essay I cannot fully elaborate on the method of analysis that Arendt developed; but because throughout this thesis I make mention of contradictions and origins, it is necessary to briefly explain what is meant by the Existential-Phenomenological Analysis. Furthermore, Arendt’s method of analysis is central to understanding Arendt’s philosophical structures of Pluralism, Power, Totalitarianism, and the analysis that is carried out to understand Eichmann. In the following schematical explanation of Arendt’s method I do not include the critique she presents of Heidegger—including this critique would be a distraction from the aim of this essay.<sup>1</sup>

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<sup>1</sup> But for anyone who is interested in knowing Arendt’s critique of Heidegger they can refer to *Love and Saint Augustine*, pg. 56 and on the same page n.44. This critique is the point of departure for the Arendt’s own philosophy.

Arendt writes a peculiar set of lines in the introduction to *Love and Saint Augustine*.

Arendt writes:

The parallel trains of thought to be shown here defy systematic conjunction. They cannot even be joined in antithetical form, unless we wish to impose on Augustine a systematic and logical exactitude he never had. The several parts of this essay are linked only by the question concerning the other human being's relevance. ... This disjointedness is merely apparent because a single question posed by the author serves as a connecting link, and this disjointedness rests fundamentally on the disjointedness of Augustine's own work, which at the same time makes for its particular abundance and fascination.<sup>2</sup>

Arendt, from the very beginning of her analysis of Augustine, communicates to the reader the inherent "disjointedness of Augustine's own work,"—but what kind of disjointedness is Arendt referring to? Arendt is preparing the reader to face the inherent contradictions found in Augustine's thinking. Arendt is preparing the reader to accept Augustine's contradictory presentation of love. Arendt will explain that:

The result is that he [Augustine] had to declare love derivative and to claim that there is no other alternative for relating to a desired object except either use (*uti*) or enjoyment (*frui*). This clearly results in a degradation of love, which contradicts the central place love occupies in Augustine's thought.<sup>3</sup>

What Arendt is teaching us, through her analysis of Augustine, is the importance of not only being able to identify the contradictions within someone's thinking but also, equally important, to face and accept the contradictions. Arendt's acceptance of Augustine's contradictory thinking concerning love allows her to identify a different source of love. Arendt explains:

The love of my neighbor, or generally love between human beings, derives from a source altogether different from appetites and desires. A different concept of love comes into play ....<sup>4</sup>

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<sup>2</sup> Arendt, *Love and Saint Augustine*, 4.

<sup>3</sup> Arendt, *Love and Saint Augustine*, 43.

<sup>4</sup> Arendt, *Love and Saint Augustine*, 43-44.

Arendt's positive use of a contradiction is bizarre, especially when contradictions are traditionally used to prove by reduction ad absurdum, or as a way to demonstrate the inconsistency of a system.<sup>5</sup> What inspired Arendt to accept contradictions instead of attempting to logically overcome them? The answer can be found in the *Philosophy*<sup>6</sup> of Jaspers. Arendt's identification of contradictions, and the positive use of them in her analysis of Augustine, is an implementation of Jasper's teachings of existential philosophy.<sup>7</sup> What does Jaspers explain concerning contradictions and the encompassing?

Jaspers brings one's attention to the antinomies of Kant<sup>8</sup> writing:

Kant showed in his doctrine of antinomies that endlessness and reality—reality as the objective existence of things in the world—are incompatible. We cannot help asking whether reality consists of smallest particles or in endless divisibility, whether the world is closed or endless, whether or not there is such a thing as “the smallest” or “the largest,” and so forth. We cannot say that either side of these alternatives is true; we have to think both of them.<sup>9</sup>

Jaspers is pointing out the boundary of rational knowledge of the world. Or, as Wallraff explains, “we can think consistently about objects within the world, but not about the world in its entirety.”<sup>10</sup> What Jaspers is attempting to teach one is the need to not only be able to identify the

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<sup>5</sup> Euclid uses contradictions to prove via reduction to absurdity. Aristotle writes the following concerning contradictions: “For of contraries, one is a privation no less than it is a contrary—and a privation of the essential nature; and privation is the denial of a predicate to a determinate genus. If, then, it is impossible to affirm and deny truly at the same time, it is also impossible that contraries should belong to a subject at the same time, unless both belong to it in particular relations, or one in a particular relation and one without qualification,” (*Metaphysics*, Bk. IV: Ch.6, ln 1011b 18-24, p. 749).

<sup>6</sup> Jaspers, Karl; *Philosophy* Vol. 1, 2, and 3; translated by E.B. Ashton; The University of Chicago Press, 1956.

<sup>7</sup> The aim of this section is not to present an exhaustive explanation of Existenz philosophy, only the main point pertinent to this study of Arendt's *Love and Saint Augustine* is touched on.

<sup>8</sup> Kant identifies four antinomies. Kant shows that reason is able to present antithetical theses of equal weight. Kant writes: “thus the antithetic does not deal at all with one-sided assertions, but considers universal cognitions of reason only in regard to their conflict. ... each of them [the antinomy] not only is in itself without contradiction, but even encounters conditions of its necessity in the nature of reason—except that, unfortunately, the counterproposition has on its side equally valid and necessary bases for its assertion,” (Kant, *Critique of Pure Reason*, A421/B449, 454).

<sup>9</sup> Jaspers, *Philosophy* Vol.1, 134;

<sup>10</sup> Wallraff, Charles; *Karl Jaspers An Introduction to His Philosophy*; Princeton University Press, 1970; pg. 160.

contradictions of existence but also to be able to face and work through the contradictions.

Jaspers writes:

Infinity and reality, on the other hand, unite for us in the present which is at once tangible and impenetrable, in the present which we are; but as soon as we would objectively establish this infinity as knowably existing, we get into contradictions. Here the contradictions themselves, as the unity of opposites in reality, come to be the real limit of world orientation. The dialectics in each known reality of the mind will either bring the contradictions to the fore or conceal them under the sham resolution of dialectically closed systems.<sup>11</sup>

Jasper's teaching is difficult to accept: "[the] common reaction among academically trained thinkers is blank incredulity, followed by an affirmation of faith in the traditional laws of thought."<sup>12</sup> Once one overcomes the common reaction to an antinomy, when the contradiction comes to the fore, then one is ready, for the encompassing. Jaspers explains that,

... the encompassing appeared in *two* modes. The encompassing in which *being itself* appears is called the *world*. The encompassing that *I am* and the *we are* is called *consciousness in general*.<sup>13</sup>

But what exactly is the encompassing? Jaspers presents the encompassing to be the source of all speculative horizons. Jaspers explains:

... the encompassing is not the horizon of our knowledge at any particular moment. Rather, it is the source from which all new horizons emerge, without itself ever being visible even as a horizon. ... [the] encompassing always merely announces itself—in present objects and within the horizons—but it *never becomes an object*.<sup>14</sup>

The "encompassing" can be conceptualized as the very extent of rational development, a space where contradictions emerge as simultaneous valid consequences of pure reason. Wallraff quotes from Jaspers's *Psychology of Worldviews* the following:

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<sup>11</sup> Jaspers, *Philosophy* Vol. 1, 134.

<sup>12</sup> Wallraff, 162; furthermore, Wallraff provides some examples of antinomies in real life, "in trying to be tolerant we increase our intolerance of intolerance. In promoting liberty beyond our boundaries we deny to other nations the freedom to reject freedom, forcing them, as Rousseau said, to be free," (Ibid.).

<sup>13</sup> Jaspers; *Philosophy of Existence*; University of Pennsylvania Press; pg. 20.

<sup>14</sup> Jaspers, *Philosophy of Existence*, 18.

He who evades an antinomy by ignoring the antithesis has to work against and in spite of it. But it is possible to derive strength from it. ... An Antinomy may inspire and strengthen the will in its struggle to approach a unity that can be realized only partially. ... Synthesis of antinomies exist only as living acts, endless and enigmatic from the standpoint of animalian existence and equally so when submitted to the impartial analysis of the disinterested observer. But this is where we enter upon the life of the spirit.<sup>15</sup>

Jaspers teaches that contradictions are a source of strength in order to philosophize.

Contradictions are not feared or evaded. When valid antinomies are found, these are to be understood in order to realize a deeper understanding of the grounds upon which the thought that led to such contradictions stands.

Jaspers in his *The Great Philosophers*, which was edited by Hannah Arendt, adopts the analysis carried out by Arendt in her *Love and Saint Augustine*. Jaspers accepts the analysis carried out by Arendt, and writes the following concerning contradictions in Augustine's thinking:

No philosophy is free from contradictions—and no thinker can aim at contradictions. But Augustine is one of the thinkers who venture into contradictions, who draw their life from the tension of enormous contradictions. He is not one of those who strive from the outset for freedom from contradictions; on the contrary, he lets his thinking run aground on the shoals of contradiction when he tries to think God. Augustine faces the contradictions. ... [Augustine] presses them to their utmost limits.<sup>16</sup>

Arendt, by employing Jaspers's method of analysis from existential philosophy, is enabled to present valid interpretations of contradictory trains of thought that would otherwise be ignored or covered-up.

Origins is a central concept to Arendt's thinking. This becomes evident through an interpretation that Arendt presents of Augustine. Arendt interprets Augustine's assertion, "I have

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<sup>15</sup> Wallraff, *Karl Jaspers An Introduction to His Philosophy*, 164; here Wallraff is quoting Jasper's, *Psychologie der Weltanschauungen*. Beling: J. Springer, 1919, pg. 241.

<sup>16</sup> Jaspers, *The Great Philosophers*, 221.

become a question to myself”,<sup>17</sup> as the beginning of, “the quest for his own being.”<sup>18</sup> Arendt explains,

... the quest for his Being is actually a quest for his origin—for the Creator of the creature. In this quest, which takes place in memory, the past comes back into the present and the yearning for a return to the past origin turns into the anticipating desire for a future that will make the origin available again.<sup>19</sup>

Central to Arendt’s thinking is the word “origin.” This word makes various appearances in Arendt’s analysis. “Origins” is central to Arendt’s explanation of “Social Life” in *Love and Saint Augustine*—“Man’s origin is at the same time both the beginning of the man-made world in Adam’s original sin and the origin of his separation from God.”<sup>20</sup> How is Arendt understanding the word “origin”?

The term “origin” has a special meaning within the tradition of phenomenology. Klein, points out the words of Husserl: “philosophy ..., by its very essence, is the science of true beginnings, of origins, the ριζώματα πάντων [the roots of all things].”<sup>21</sup> Klein’s words, and the analysis that Klein presents in this essay, brings one’s attention to a particular work of Husserl: *The Origins of Geometry*.<sup>22</sup> Husserl’s *The Origins of Geometry* is not only relevant to this short analysis because of the use of the word “origins” but because it reveals what Husserl means by this word.

As the title of this work enunciates, Husserl is after the “origins of geometry.” But, it is not mathematics (as interesting as the analysis may be) which is here sought. Husserl’s *The*

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<sup>17</sup> Arendt, *Love and Saint Augustine*, 57.

<sup>18</sup> Arendt, *Love and Saint Augustine*, 57.

<sup>19</sup> Arendt, *Love and Saint Augustine*, 57.

<sup>20</sup> Arendt, *Love and Saint Augustine*, 104.

<sup>21</sup> Klein, Jacob; “Phenomenology and the History of Science” in *Jacob Klein Lectures and Essays*; St. John’s College Press, 1985; p. 65. Here Klein is quoting Husserl’s essay: “Philosophie als strenge Wissenschaft.”

<sup>22</sup> Husserl, Edmund; “The Origins of Geometry” in *The Crisis of European Sciences and Transcendental Phenomenology*; translated by David Carr; Northwestern University Press, 1970; pg. 353-379.

*Origins of Geometry* presents to the reader in a succinct manner the philosophical method that is being employed by Husserl in order to carry out his analysis. Husserl explains:

The question of the origin of geometry ... shall not be considered here as the philological-historical question, i.e., as the search for the first geometers who actually uttered pure geometrical propositions, proofs, theories, or for the particular propositions they discovered, or the like.<sup>23</sup>

Husserl is here presenting an immensely important distinction that is at the heart of this development in the phenomenological method. Seeking for the “origins” is not historical in the usual manner of historicity. But if Husserl is not recounting events in a historical manner, then what is Husserl after? “Rather than this [the usual historical study of the subject], our interest [Husserl explains] shall be the inquiry back into the most original sense in which geometry once arose”<sup>24</sup>—but how does one understand this? Husserl presents a key observation: “... geometry which is ready-made, so to speak, from which the regressive inquiry begins, is a tradition.”<sup>25</sup> When studying geometry (or any other phenomenon) historically, in the sense that Husserl means, in order to get to the origins, there is a manner of reading language as an ongoing dynamic process which is being considered. Husserl explains:

... we shall concentrate on the sentences of language as they come to us passively and are merely received. In this connection it must also be noted that sentences give themselves in consciousness as reproductive transformations of an original meaning produced out of an actual, original activity; that is, in themselves they refer to such a genesis.<sup>26</sup>

Husserl is describing the reactivation of intentional genesis. Klein explains this process as:

... intentional genesis belongs to the “life of consciousness,” and consciousness itself is primarily constituted as an “absolute stream” determined by the “internal temporality.” “Internal temporality” is thus the universal eidetic “form” of the intentional genesis. In any inner experience of an intentional object, that object is given originally in the mode of immediate “presence”; this immediate

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<sup>23</sup> Husserl, “The Origins of Geometry”, 354.

<sup>24</sup> Husserl, “The Origins of Geometry”, 354.

<sup>25</sup> Husserl, “The Origins of Geometry”, 354.

<sup>26</sup> Husserl, “The Origins of Geometry”, 365.

“presentation” is followed, of necessity, by a “retention” of the object, in which the object appears in the mode of “just-having-been-experienced”; through all the successive modes of retentive consciousness –that is to say, through a continuous “modification”–the object is constituted as persisting, as one and the same (identical, “invariant”) object.<sup>27</sup>

It is important to understand this method of intentional history because it presents to one what is meant by “origin”. This method of analysis is of distinct importance to identify because it provides us with the analysis Arendt is carrying out. Donohoe explains the following:

...[with] genetic phenomenology we are no longer confronted with completed systems of constitution, but are drawn into a consideration of a history of the reciprocal relationships between noesis and the emergent noema. Genetic analysis is intended to uncover the temporal becoming and the temporal relationship of one experience to the next thereby revealing a temporal depth of any experience.<sup>28</sup>

But genetic phenomenology is not confined to the reactivation of an original intention. Through the method of genetic phenomenology Husserl reaches intersubjectivity.

Husserl develops intersubjectivity by following the consequences of the method of genetic phenomenology. Husserl explains:

... there is also still another kind of unity, lying at a deeper level: when through memories, starting from a perception, I am led back into my own past, this past is precisely *my* own, the past of this same subject who is present and living. And the past environing world ... which is now remembered belongs to the *same world* as the world in which I now live, only it is presentified in a fragment of its past. ... Everything has its unity in that it has its fixed temporal position in this objective world, its place in objective time.<sup>29</sup>

Husserl realizes that oneself, as a consciousness, is related to an Other by virtue of the temporal dimension of intersubjective noetic/noematic intentionality formations. Donohoe explains the priority of the Other as follows:

Husserl explains that the priority of the Other is not as an Other in complete opposition to the ego, but as an other considered in terms of the community of

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<sup>27</sup> Klein, “Phenomenology and the History of Science”, 73.

<sup>28</sup> Donohoe, Janet; *Genetic Phenomenology, Intersubjectivity and the Husserlian Account of Ethics*; Doctor of Philosophy Dissertation, Boston College, 1998; p 38.

<sup>29</sup> Husserl, Edmund: *Experience and Judgment*; Northwestern University Press, 1973; pg. 162-163.



Others who are with the ego. ... [the] Other has a certain generative priority to the ego since it is only because of the inherited traditions and sedimented habits that the ego has any conception of its own birth and its own death.<sup>30</sup>

Put simply: before the ego determines itself as a self, as an identity to itself, the Other exists, prior to the first stratification of self-identity.<sup>31</sup> Husserl explains this as follows:

[M]y primal *ego* implies an “infinity” of primal *egos*, each implying each other and therefore inherently implying this infinity, and thus my *ego* as well, in which everything that is implied, as this is, is also implied again in each. Every existent lies in each conceivable sense in me — with the teleological harmony, which makes possible the universal totality as an all-inclusive unity. But all Others lie within me in their totality of infinity, and lie in me as implying every existent in itself in each sense — each equivalent to me therein.<sup>32</sup>

What this brief presentation of the usage of the concept of origin has demonstrated is that the method belongs to a later phenomenological development in the method of Husserl. In this method temporal cognition takes central stage. The method involves the peeling away of strata, layers, of tradition in order to reactivate, or to become conscious of, the original intent. But what is, from an ethical perspective, important is that this genetic phenomenological method provides Husserl with a way to develop a theory of intersubjectivity. This is of great importance because the abstracted consciousness, the ego, is no longer isolated from the phenomena that pass by in front of it. Time connects this abstracted consciousness with the Other. This method, or manner of understanding Origins, is adopted by Arendt in her own analysis of Augustine and plays a central role in the manner she comes to understand the law ‘to love thy neighbor as oneself.’

Both the existential analysis of contradictions and the phenomenological analysis for origins are central to the method of Arendt. Contradictions present Arendt with boundary

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<sup>30</sup> Donohoe, *Genetic Phenomenology, Intersubjectivity and the Husserlian Account of Ethics*, 119.

<sup>31</sup> Donohoe explains: “in our regressive inquiry back to the origins of the ego, we are faced with a foundational level which precedes individuation of the ego in its concrete form. This suggests that the ego has a foundation which is not of its making, and which connects the ego to other egos, prior to the individuation of any ego,” (*Genetic Phenomenology, Intersubjectivity and the Husserlian Account of Ethics*, 77).

<sup>32</sup> Donohoe, *Genetic Phenomenology, Intersubjectivity and the Husserlian Account of Ethics*, 118; here Donohoe is quoting and translating Husserl from the German: *Husserliana XV*, pg. 587-588.

situations of existence.<sup>33</sup> Origins present Arendt with the structural analysis of the phenomenon. By synthesizing these two forms of analysis Arendt is able to analyze the phenomenon from its beginning to its boundary situation. This existential phenomenological analysis is present throughout the works of Arendt.

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<sup>33</sup> Jaspers explains, “the antinomical structure of existence is obvious to clear thinking, and yet as a boundary situation it can remain as though under a shroud,” (*Philosophy* Vol. 2, 219).

## Chapter 1. Totalitarianism as the Foundational Crisis of Modern Politics

The existence of Nazi-Germany and of Stalinist-Russia serve for Arendt as markers of the boundary of her political reality. Situated, on the political-spectrum, to the far-right Nazi-Germany *contradicts* Stalinist-Russia, which is situated far to the left. From these two contradictory political phenomena Arendt attempts to situate the origins of totalitarianism, and to describe its structure. But in her description of totalitarianism, Arendt stumbles into the question of constitutional law. Arendt's analysis describes how lawful power is dissolved and devoured by the Leader; power is grabbed from the body of laws and usurped by the Leader. Laws degenerate into decrees, that is: into the brute will of the Leader.

Arendt's description of totalitarianism begins by looking at the role the Weimar Constitution and the 1936 Constitution of the Soviet Union played within these two politically contradictory regimes that is, the regimes in Nazi-Germany and the regimes in Stalinist-Russia. By looking into the role these two constitutions played within these two contradictory regimes, Arendt attempts to derive the structure of these two totalitarian regimes. What Arendt's analysis arrives at is that neither of these two totalitarian regimes have a proper political structure, rather totalitarianism is shapeless. These two totalitarian regimes never evolved from their initial pre-power organizational structure (which Arendt describes to be that of an onion). The totalitarian regime maintains the pre-power organizational structure by carrying out the "movement" of the masses. But the movement is a bastardization of the law of History and of the law of Nature; this bastardization produces ideology and terror. The masses, atomized by total loyalty for the leader, are homogenized by terror and cowed by ideology.

## 1.1: The Constitution in a Totalitarian Regime

The two regimes analyzed by Arendt are the regimes of Nazi-Germany and Stalinist-Russia.<sup>34</sup> It is through the description of the manner these two totalitarian regimes contend with their respective constitutions that gives insight into the structure of totalitarianism. Arendt argues that the political structure of totalitarianism is non-existent, totalitarianism is shapeless.

Arendt points out that, “the Nazis had never bothered to rewrite the penal code, just as they had never bothered to abolish the Weimar Constitution.”<sup>35</sup> Loewenstein<sup>36</sup> makes the same observation, “the Constitution of Weimar was never formally repealed.”<sup>37</sup> This fact of the Nazi regime is of peculiar interest.<sup>38</sup> One would expect for the regime to have abolished the Weimar Constitution. But instead, the Nazi regime left the constitution to carry on. What reason does Arendt present for the Nazi-regime’s preservation of the Weimar Constitution?

Arendt explains that,

In the early years of their power the Nazis let loose an avalanche of laws and decrees,<sup>39</sup> but they never bothered to abolish officially the Weimar constitution; they even left the civil services more or less intact—a fact which induced many

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<sup>34</sup> The analysis is derived mainly from Arendt’s *The Origins of Totalitarianism*.

<sup>35</sup> Arendt, “Auschwitz on Trial”, 244.

<sup>36</sup> “Visiting Professor of Political Science, Amherst College; formerly, Lecturer in Constitutional Law at the University of Munich and member of the Munich bar,” (“Dictatorship”, 537).

<sup>37</sup> Ibid., 545.

<sup>38</sup> Arendt repeats this fact in *Eichmann in Jerusalem*, when describing, “the N.S.D.A.P., ... which shared with the Weimar Constitution the curious fate of never being officially abolished,” (43). Furthermore, Steinweis et al., point out the same fact: “the Weimar Constitution, while in reality a dead letter, was never formally revoked occasional initiatives directed to establishing a National Socialist Constitution,” (*The Law in Nazi Germany*, 79-80).

<sup>39</sup> Among these are, “the Nuremberg Laws with their distinction between Reich citizens (full citizens) and national (second-class citizens) without political rights) had paved the way for a development in which eventually all nationals of “alien blood” could lose their nationality by official decree,” (*The Origins of Totalitarianism*, 288). Loewenstein presents an interesting legal analysis concerning the legal theory of the National Socialist legal theory. He explains: “National Socialist legal theory, based on the racial myth, clearly reveals different elements. Historically, it is an outgrowth of crude and uninspired romanticism. *Philosophically, the racial myth is similar to the class myth in Marxist economic determination, with which it has in common the fact that everything is explained in terms of one denominator* [emphasis added; Arendt’s analysis of this point will be presented below]. Psychologically, the racial theory, through its over-simplification, has an irresistible appeal to the masses, who, because of their ignorance, admire science and erudition. The race myth is within the grasp of the lowest intellect, and tends to release the inferiority complex created by the war-time defeat,” (“Law in the Third Reich”, 786-787).

native and foreign observers to hope for restraint of the party and for rapid normalization of the new regime.<sup>40</sup>

Arendt does not voice the Nazi intent for preserving the Weimar Constitution, instead she presents the hopes of the observers. The preservation of the Weimar Constitution produced hope for normalcy and for a deterrence of the political violence carried out by the Nazis. Yet, in her critical essay<sup>41</sup> of the book *Hitler's Table Talk*, Arendt points out the following:

... from minutes of Reich cabinet meetings of January 30 and March 15, 1933, which are now available. The great concern was how to bring about the two-thirds needed in the Reichstag itself to pass the Enabling Act by which the Weimar constitution could be circumvented and the legislative function transferred from the Reichstag<sup>42</sup> to the Reich cabinet.<sup>43</sup>

The Nazi regime's intent was not to abolish the Weimar constitution, but rather to use the Weimar constitution in order to legally transfer power from the legislative to the Reich cabinet. This is evident from the The Enabling Act of 23 March 1933, also known as "Law to Remove the Distress of the People and the State."<sup>44</sup> Yet, the legal maneuvering the Nazi's carried out to cement their power via the Weimar constitution, "was created mainly by fraud and terrorization."<sup>45</sup> The Enabling Act was passed while, "*the mob unleashed by the government ruled the capitol* [emphasis added] and the vote was taken in an indescribable atmosphere of terrorization and coercion."<sup>46</sup> Steinweis et al., provide one with the wording of The Enabling Act, which reads:

The Reichstag has passed the following law, which is, with the approval of the Reichsrat, herewith promulgated, after it has been established that it meets the requirements for legislation altering the Constitution.

Article 1. National laws can be enacted by the Reich Cabinet as well as in

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<sup>40</sup> Arendt, *The Origins of Totalitarianism*, 394.

<sup>41</sup> Arendt, "At Table with Hitler", in *Essays in Understanding 1930-1954*, 285-296.

<sup>42</sup> The Reichstag was the legislative body under the Weimar Constitution.

<sup>43</sup> Arendt, "At Table with Hitler", 289.

<sup>44</sup> Steinweis et al., 194. The second title implies that the people and the state would be freed from distress, yet the reality is that the people and the state are being removed from the way to power.

<sup>45</sup> Loewenstein, "Dictatorship", 541.

<sup>46</sup> Loewenstein, "Dictatorship", 544.

Accordance with the procedure established in the Constitution. This also applies to the laws referred to in Article 85, Paragraph 2, and in Article 87 of the Constitution.

Article 2. The national laws enacted by the Reich Cabinet may deviate from the Constitution as long as they do not affect the position of the Reichstag and the Reichsrat. The powers of the President remain undisturbed.

Article 3. The national laws enacted by the Reich Cabinet shall be prepared by the Chancellor and published in the Reichsgesetzblatt. They come into effect, unless otherwise specified, the day after their publication. Articles 68-77 of the Constitution do not apply to laws enacted by the Reich Cabinet.<sup>47</sup>

Article 4. Treaties of the Reich with foreign states which concern matters of national legislation do not require the consent of the bodies participating in legislation. The Reich Cabinet is empowered to issue the necessary provisions for the implementation of these treaties.

Article 5. This law becomes effective on the day of its publication. It becomes invalid on April 1, 1937; it also becomes invalid if the present Reich Cabinet is replaced by another.<sup>48</sup>

What does the Enabling Act achieve? Loewenstein explains that,

The Enabling Act ... was not only an amendment of one or several clauses of the constitution but it amounted to a complete overthrow of the constitutional order then existing.<sup>49</sup>

The Weimer Constitution is eviscerated by these five articles. “Article 2” that, “... laws enacted by the Reich Cabinet may deviate from the Constitution,” sums up the Enabling Act—this article, the intent of the Enabling Act, is to elevate the Reich Cabinet above the law. But to what extent does the Reich Cabinet demonstrate their existence above the law?

Arendt describes how the Enabling Act secured the Nazi regime to exist in a state so far above the law, that the regime no longer cared for their own legislation. Arendt explains:

...when with the issuance of the Nuremberg Laws this development had come to an end, it turned out that the Nazis themselves showed no concern whatsoever about their own legislation.<sup>50</sup>

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<sup>47</sup> Loewenstein comments that, “a process of supplementing the [Weimar Constitution] with a new type of legislation, the so-called government decrees ... and thus indirectly superseded Articles 68 to 77 of the constitution,” (“Dictatorship”, 541).

<sup>48</sup> Steinweis et al., *The Law in Nazi Germany*, 194.

<sup>49</sup> Steinweis et al., *The Law in Nazi Germany*, 543.

<sup>50</sup> Arendt, *Origins of Totalitarianism*, 394.

Arendt points out the complete state of lawlessness of the Nazi regime. According to Arendt the Nazi,

...state of lawlessness found expression in the fact that “a number of valid regulations [were] no longer made public.” Theoretically, it corresponded to Hitler’s dictum that “the total state must not know any difference between law and ethics”; because if it assumed that the valid law is identical with the ethics common to all and springing from their consciences, then there is indeed no further necessity for public decrees.<sup>51</sup>

Here Arendt connects lawlessness to the Leader. But what does she mean by this? Loewenstein’s analysis of “Judicial Power and Administration of Justice” provides one with insight into what Arendt is attempting to convey. Loewenstein explains:

Thus the postulate of justice according to law is fulfilled to the letter when it is realized that the law is the will of one human man alone and that justice is no longer shaped in conformity with the ethical standards of public opinion, because public opinion is molded by the few at the top.<sup>52</sup>

No longer is public opinion developed in the freedom of the political space, but it is fabricated, “by means of coercive terror applied from outside and coercive ideological thinking unleashed from within.”<sup>53</sup> In the words of Loewenstein:

National Socialism attains its political ends by destruction of the rule of law. Separation of powers, independence of judges, judicial control of administration, impartial efficiency of the civil service, a Bill of Rights as safeguard against executive and legislative encroachment, all these elements of the rule of law are over-ruled by the monocratic omnipotence of the “Führer” and the party.<sup>54</sup>

Thus far only the evisceration of the Weimar Constitution by the Nazi regime has been presented. What of the politically contradictory regime? How does Arendt describe the role of the 1936 Constitution of the Soviet Union?

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<sup>51</sup> Arendt, *The Origins of Totalitarianism*, 394.

<sup>52</sup> Loewenstein, “Dictatorship”, 565.

<sup>53</sup> Arendt, “*Introduction into Politics*”, 121.

<sup>54</sup> Loewenstein, “Law in the Third Reich”, 802.

Arendt presents the following explanation concerning the 1936 Constitution of the Soviet Union:

[Stalin] introduced the Soviet constitution as the symbol of the existence as well as the powerlessness of the Soviets. (None of its paragraphs ever had the slightest practical significance for life and jurisdiction in Russia.) The ostensible Russian government, utterly lacking the glamour of tradition so necessary for a façade, apparently needed the sacred halo of written law.<sup>55</sup>

Unlike the Nazi regime in Germany, that used the Weimar constitution as a means to legalize power, Stalin was already in power when the 1936 Soviet Constitution was published. Schmidt points out that, “Stalin’s 1936 Constitution declared the triumph of the Soviet system.”<sup>56</sup> But according to Getty,

... the Soviet Constitution of 1936 was adopted on the eve of the Great Terror of the late 1930s; the “thoroughly democratic” elections to the first Supreme Soviet permitted only uncontested candidates and took place at the height of the savage violence in 1937. The civil rights, personal freedoms, and democratic forms promised in the Stalin constitution were trampled almost immediately and remained dead letters until long after Stalin’s death.<sup>57</sup>

Arendt’s analysis indicates a correlation between the publication of the 1936 Constitution and the “the Great Terror of the late 1930s.”<sup>58</sup> Arendt writes:

Yet the publication of the constitution turned out to be the beginning of the gigantic superpurge which in nearly two years liquidated the existing administration and erased all traces of normal life and economic recovery which had developed in the four years after the liquidation of kulaks and enforced collectivization of the rural population. ... Stalin could afford one more absurdity—with the exception of Vishinsky<sup>59</sup>, all those who had drafted the never-repudiated constitution were executed as traitors.<sup>60</sup>

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<sup>55</sup> Arendt, *Origins of Totalitarianism*, 398.

<sup>56</sup> Schmid, “Constitution and narrative”, 436.

<sup>57</sup> Getty, “State and Society under Stalin”, 18.

<sup>58</sup> Getty, “State and Society under Stalin”, 18.

<sup>59</sup> Getty provides one with the names of the drafters of the 1936 Constitution: “Stalin was elected chairman of the commission, with Viacheslav Molotov and Mikhail Kalinin as vice-chairs. The chairman of the subcommissions were a virtual galaxy of the Stalinist élite: Stalin (general and editorial), Andrei Vyshinskii (legal) Ivan Akulov (central-local relations), Andrei Zhdanov (education), Lazar Kaganovich (labor), Kliment Voroshilov (defense), and Maksim Litvinov (foreign affairs),” (“State and Society under Stalin”, 19). Getty, in his essay “State and Society under Stalin” provides a detailed history of the creation of the 1936 Russian Constitution.

<sup>60</sup> *The Origins of Totalitarianism*, 394-395.



Stalin, by publishing the 1936 Constitution indicates the creation of a state (a written constitution gives form to the state) but the state that is formed by the 1936 is terrorized. The terrorization and inevitable destruction of the state corresponds to Stalin's "state theory" (speaking in "double talk" according to Arendt):

We are in favor of the State dying out, and at the same time we stand for the strengthening of the dictatorship of the proletariat which represents the most powerful and mighty authority of all forms of State which have existed up to the present day. The highest possible development of the power of the State with the object of preparing the conditions for the dying out of the State; that is the Marxist formula.<sup>61</sup>

The correlation between the publication of the 1936 Constitution and the superpurgues that followed reflect Stalin's execution of his "state theory"; the correlation between these two events is symbolic, Stalin was sending a message of terror, indicating the non-existence of the state and the supremacy of the center, the supremacy of the leader. Getty, quoting Oleg V. Klevniuk, "calls it 'unquestionably an action directed from the center, planned and administered from Moscow'."<sup>62</sup>

The analyses that are presented by Arendt concerning the Weimar constitution, and the 1936 Soviet constitution point out how these two constitutions were used by these two regimes. The Nazi-regime used the Weimar constitution to legitimize their regime into power; but, as Loewenstein explains: "... the Weimar Constitution, although never formally abolished, was deconstitutionalized."<sup>63</sup> The 1936 Soviet Constitution was published in correlation with a reign of terror and superpurgues. From these two examples Arendt comes to the following assertion:

...totalitarian rule confronts us with a totally different kind of government. It defies, it is true, all positive laws, even to the extreme of defying those which it has itself established (as in the case of the Soviet Constitution of 1936, to quote

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<sup>61</sup> Arendt, *The Origins of Totalitarianism*, 357, note 40.

<sup>62</sup> Getty, "Excesses", 114.

<sup>63</sup> Loewenstein, "Law in the Third Reich", 802.

only the most outstanding example) or which it did not care to abolish (as in the case of the Weimar Constitution which the Nazi government never revoked).<sup>64</sup>

The defiance of any constitutional order presents one with the problem of structure. Consider what Arendt explains concerning the meaning of “constitution” when she writes:

The word ‘constitution’ obviously is equivocal in that it means to act of constituting as well as the law or rules of government that are ‘constituted’, be these embodied in written documents or, as in the case of the British constitution, implied in institutions, customs, and precedents,<sup>65</sup>

From this explanation one can understand that a constitution provides a political form to the political body. Therefore, if a totalitarian regime does not abide by any constitutional structure, then it is “shapeless” (it is a tumor, a cancer)—Arendt explains:

What strikes the observer of the totalitarian state is certainly not its monolithic structure. On the contrary, all serious students of the subject agree at least on the co-existence (or the conflict) of a dual authority, the party and the state. Many, moreover, have stressed the peculiar “shapelessness” of the totalitarian government. Thomas Masaryk saw early that “the so-called Bolshevik system has never been anything but a complete absence of system.”<sup>66</sup>

Politically, totalitarianism has no form. Instead, what one encounters, as per the analysis of Arendt, is a prolongation of the pre-power organizational structure of the movement.

## **1.2: The Organizational and Political Structure of Totalitarianism**

How does Arendt describe the organizational structure of totalitarianism? Arendt describes the structure of totalitarianism in the following manner:

... the proper image of totalitarian rule and organization seems to me [to Arendt] to be the structure of the onion, in whose center, in a kind of empty space, the Leader is located; whatever he does; whether he integrates the body politic as in an authoritarian hierarchy or whether he oppresses his subjects like a tyrant, he does it from within, and not from without or above.<sup>67</sup>

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<sup>64</sup> Arendt, *Origins of Totalitarianism*, 461.

<sup>65</sup> Arendt, *On Revolution*, 136.

<sup>66</sup> Arendt, *Origins of Totalitarianism*, 365.

<sup>67</sup> Arendt, “Authority in the Twentieth Century,” 77-78.

Arendt's image of an onion describes the many walls that surround and protect the leader and distinguishes the leader from the members of the movement. Arendt presents the following description:

The front organizations surround the movements' membership with a protective wall which separates them from the outside, normal world; at the same time, they form a bridge back into normalcy, without which the members in the prepower stage would feel too sharply the differences between their beliefs and those of normal people, between the lying fictitiousness of their own and the reality of the normal world.<sup>68</sup>

Arendt's description presents the following understanding: each layer of the totalitarian organization structure, "forms the façade in one direction and the center in the other, that is, plays the role of normal outside world for one layer and the role of radical extremism for another."<sup>69</sup> The leader stands radically insulated from the world by the various layers of membership.

At the center of the onion-organizational-structure of totalitarianism stands the leader.

In the center of the movement, as the motor that swings it into motion, sits the Leader. He is separated from the elite formation by an inner circle which corresponds to his "intangible preponderance." His position within this intimate circle depends upon his ability to spin intrigues among its members and upon his skill in constantly changing its personnel. He owes his rise to leadership to an extreme ability to handle inner-party struggles for power rather than to demagogic or bureaucratic-organizational qualities.<sup>70</sup>

But if the leader is insulated from the world, then how does the leader relate to the masses?

Arendt explains this relationship between the leader and the masses as a mixture of gullibility and cynicism that permeates each layer of the totalitarian structure. Arendt explains,

The whole hierarchical structure of totalitarian movements, from naïve fellow-travelers to party members, elite formations, the intimate circle around the Leader,

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<sup>68</sup> Arendt, *The Origins of Totalitarianism*, 366.

<sup>69</sup> Arendt, "Authority in the Twentieth Century," 77-78.

<sup>70</sup> Arendt, *The Origins of Totalitarianism*, 373.

and the Leader himself, could be described in terms of a curiously varying mixture of gullibility and cynicism with which each member, depending upon his rank and standing in the movement, *is expected to react to the changing lying statements of the leaders and the central unchanging ideological fiction of the movement* [emphasis added].<sup>71</sup>

What does Arendt mean when she states, “the changing lying statements”? What does Arendt have in mind when she writes “the central unchanging ideological fiction of the movement”?

By “the changing lying statements” Arendt means mass propaganda. “Mass propaganda discovered that its audience was ready at all times to believe the worst, no matter how absurd, and did not particularly object to being deceived because it held every statement to be a lie anyhow.”<sup>72</sup> What then is meant by Arendt by “the central unchanging ideological fiction of the movement”? The central unchanging ideological fiction is,

...[the] essential conviction shared by all ranks, from fellow-traveler to leader, is that politics is a game of cheating and that the “first commandment” of the movement: “The Fuehrer is always right,” is as necessary for the purposes of world politics, *i.e.*, world-wide cheating, as the rules of military discipline are for the purposes of war.<sup>73</sup>

The central ideological fiction is that the leader “is always right in his actions ... .”<sup>74</sup> The relationship between the mass membership and the centralized leader is defined by a mixture of gullibility, cynicism and lies.

To a member of a totalitarian movement this knowledge has nothing to do with truth and this being right nothing to do with the objective truthfulness of the Leader’s statements which cannot be disproved by facts, but only by future success or failure. The Leader is always right in his actions ...<sup>75</sup>

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<sup>71</sup> Arendt, *The Origins of Totalitarianism*, 383.

<sup>72</sup> Arendt, *The Origins of Totalitarianism*, 382.

<sup>73</sup> Arendt, *The Origins of Totalitarianism*, 382.

<sup>74</sup> Arendt, *The Origins of Totalitarianism*, 383.

<sup>75</sup> Arendt, *The Origins of Totalitarianism*, 383.

The organizational structure, and the relationship established between the outside members and the leader, as described by Arendt, forms the proper structure of totalitarianism; a structure that is prolonged after the reins of political power have been obtained.

As the last section explains, Totalitarianism does not have a proper political structure due to the disregard for any written constitution. The disregard for any written constitution is explained by Arendt as an attempt to avoid the slowing down of the movement. Arendt writes,

The transformation never occurred in the totalitarian, the Bolshevik and the Nazi movements. At the time it seized power the danger to the movement lay in the fact that, on one hand, it might become “ossified” by taking over the state machine and frozen into a form of absolute government, and that, on the other hand, its freedom of movement might be limited by the borders of the territory in which it came to power. To a totalitarian movement, both dangers are equally deadly: a development toward absolutism would put an end to the movement’s interior drive, and a development toward nationalism would frustrate its exterior expansion, without which the movement cannot survive.<sup>76</sup>

The *movement* is that which galvanizes the masses,<sup>77</sup> “who for one reason or another have acquired the appetite for political organization,”<sup>78</sup> at it must be kept moving, the movement cannot come to a halt; “the perpetual-motion mania of totalitarian movements . . . can remain in power only so long as they keep moving and set everything around them in motion.”<sup>79</sup> The masses are linked, via the *movement*, to the Leader; and the Leader, by keeping the *movement* in motion, is supported by the masses. Arendt, again looking at the politically contradictory Nazi and Stalinist regimes, presents the following analysis:

Hitler’s rise to power was legal in terms of majority rule and neither he nor Stalin could have maintained the leadership of large populations, survived many interior

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<sup>76</sup> Arendt, *The Origins of Totalitarianism*, 389.

<sup>77</sup> Arendt presents a loose definition of the masses, explaining: “The term masses applies only where we deal with people who either because of sheer numbers, or indifference, or a combination of both, cannot be integrated into any organization based on common interest, into political parties or municipal governments or professional organizations or trade unions, (*Origins of Totalitarianism*, 311).

<sup>78</sup> Arendt, *The Origins of Totalitarianism*, 311.

<sup>79</sup> Arendt, *The Origins of Totalitarianism*, 306.

and exterior crises, and braved the numerous dangers of relentless intra-party struggles if they had not had the confidence of the masses.<sup>80</sup>

The *movement* is the force that keeps the Leader affixed to power, and the masses transfixed by the Leader. Arendt explains, “without him [the leader] they [the masses] would lack external representation and remain an amorphous horde; without the masses the leader is a nonentity.”<sup>81</sup> But what exactly is the *movement*?

### 1.3: The Movement

The phenomena of the mass movements of peoples has been a topic of philosophical inquiry since Homer who, through his poetical-history *The Iliad*, “immortalize[s] [the Trojan War] several hundred years later.”<sup>82</sup> Homer immortalizes a mass movement through *The Iliad*. In a similar poetical-historic manner, the book of *Exodus* presents the movement of a peoples as they emancipate themselves from an oppressive ruler. Tolstoy, in an attempt to refute Hegel’s philosophy of history<sup>83</sup>, explains how history is, “one uninterrupted development of the Spirit,”<sup>84</sup> and makes a phenomenological attempt, to understand “the laws of historical movement.”<sup>85</sup>

Tolstoy explains,

The first fifteen years of the nineteenth century in Europe present an extraordinary movement of millions of people. People abandon their usual occupations, rush from one side of Europe to the other, plunder, kill each other, triumph and despair, and the whole course of life is altered for several years and presents an intense

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<sup>80</sup> Arendt, *The Origins of Totalitarianism*, 306.

<sup>81</sup> Arendt, *The Origins of Totalitarianism*, 325.

<sup>82</sup> Arendt, *The Human Condition*, 197.

<sup>83</sup> Juharyan explains, “although Tolstoi claimed that he could not understand Hegel, he confidently took it upon himself to expose the falsity of his philosophy and to explain the reasons for its mistaken popularity. In *War and Peace* (1869), he presents lengthy arguments against Hegel’s philosophy of history,” (“Tolstoi’s Own Master”, 30). An example of Tolstoy’s thinking concerning history is the following comparison between history and jurisprudence: “...this fundamental difference between the views of history and of jurisprudence comes from the fact that jurisprudence can speak in detail of how, in its opinion, power must be organized and what power is, existing immutably outside time; but to historical questions about the meaning of power as it changes in time it can give no answer,” (Tolstoy, *War and Peace*, 1188).

<sup>84</sup> Arendt, “*The Concept of History*”, 75.

<sup>85</sup> Tolstoy, *War and Peace*, 821.

movement, which initially increases, then weakens. Human reason asks, what was the cause of this movement, or according to what laws did it occur?<sup>86</sup>

Tolstoy's question: "Human reason asks, what was the cause of this movement, or according to what laws did it occur?"—is appropriate for this investigation. Arendt's inquiry can be styled after the question presented by Tolstoy. One can formulate the question that Arendt is asking to be: what is the cause of the totalitarian movement, or according to what laws did it occur? Arendt presents an answer to this question: the enforcement of the law of history, and the law of nature.

Arendt explains that:

[for totalitarianism] all laws have become laws of movement. When the Nazis talked about the law of nature or when the Bolsheviks talk about the law of history, neither nature nor history is any longer the stabilizing source of authority for the actions of mortal men, they are movements in themselves.<sup>87</sup>

What then "are [these] movements in themselves"? Firstly, one must understand that the law of nature and the law of history are equivocated by Arendt; by equivocating the law of history and the law of nature, Arendt demonstrates that the Nazi and Stalinist totalitarian movements have a similar origin. Yet, regardless of their similar origin, the Nazi regime and Stalinist Russia are politically contradictory. Secondly, by pointing out the equivocality between the law of history and the law of nature, Arendt exposes the totalitarian break with the legal tradition, and so therefore presenting the bastardization of law. Thirdly, Arendt explains that the break with the legal tradition presents the opportunity of usurping law by a mode of being otherwise than legal, by the brute will of the leader, through terror and ideology.

How does Arendt equivocate the law of history and the law of nature? The equivocation between the law of history and the law of nature is presented explicitly in *The Origins of Totalitarianism* and hinted at by Arendt in various other works. Arendt explicitly explains that,

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<sup>86</sup> Tolstoy, *War and Peace*, 821.

<sup>87</sup> Arendt, *The Origins of Totalitarianism*, 463.

...the movement of history and the movement of nature are one and the same. Darwin's introduction of the concept of development into nature, his insistence that, at least in the field of biology, natural movement is not circular but unilinear, moving in an infinitely progressing direction, means in fact that nature is, as it were, being swept into history, that natural life is considered to be historical. The "natural" law of the survival of the fittest is just as much a historical law and could be used as such by racism as Marx's law of the survival of the most progressive class. Marx's class struggle, on the other hand, as the driving force of history is only the outward expression of the development of productive forces which in turn have their origin in the "labor-power" of men. Labor, according to Marx, is not a historical but a natural-biological force—released through man's "metabolism with nature" by which he conserves his individual life and reproduces the species.<sup>88</sup>

Arendt equivocates Marx's historical law with Darwin's law of nature<sup>89</sup> by pointing out the very naturalistic language used by Marx in his definition of Labor. Arendt points out that labor is a natural force that demonstrates the interaction between the human being and nature; that is, that labor is the demonstration of the "metabolism with nature." Said otherwise: the human consumes nature and produces through the consumption of nature. Best explains this metabolism with nature in the following manner:

In their interaction with nature through productive activity, human beings concretize and embody their personality and creative powers in their objects. As they shape and change their world, they simultaneously shape and change themselves.<sup>90</sup>

The equivocation between the law of nature and the law of history reveal to one that the propaganda presented by the politically contradictory Nazi and Stalinist movements are in fact

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<sup>88</sup> Arendt, *The Origins of Totalitarianism*, 463-464.

<sup>89</sup> Darwin explains in his *On the Origin of Species*, "Owing to this struggle for life, any variation, however slight and from whatever cause proceeding, if it be in any degree profitable to an individual of any species, in its infinitely complex relations to other organic beings and to external nature, will tend to the preservation of that individual, and will generally be inherited by its offspring. The offspring, also, will thus have a better chance of surviving, for, of the many individuals of any species which are periodically born, but a small number can survive. I have called this principle, by which each slight variation, if useful, is preserved, by the term of Natural Selection," (Darwin, 58). Totalitarianism bastardizes the scientific theory of Natural Selection, the law of nature, by reducing it to the idea of survival of the fittest which; by simplifying and fitting this complex scientific theory into short logical process the Nazi regime turned it into ideology, as will be explained in more detail below.

<sup>90</sup> Best, *The Politics of Historical Vision*, 70.



the same. Arendt fixes the equivocation between the Nazi and Stalinist movements when she states that with "...these ideologies, the term 'law' itself changed its meaning: from expressing the framework of stability within which human actions and motions can take place, it became the expression of the motion itself."<sup>91</sup> The motion itself is the act of killing.

Arendt expresses the logical consequences of the bastardization of Darwin's scientific theory and of Marx's philosophical theory. Arendt explains the following logical consequence of the bastardization of Darwin's scientific theory: "if it is the law of nature to eliminate everything that is harmful and unfit to live, it would mean to end nature itself if new categories of the harmful and unfit-to-live could not be found."<sup>92</sup> In other words, *an extreme weaponization* of Darwin's theory of natural selection would end up with the destruction of nature itself. The executed idea weaponized by the totalitarian regime is the idea that it is natural to "eliminate everything that is harmful and unfit to live." How contrarian, what a bastardization, is the totalitarian claim of the law of nature from the traditional understanding of the "Lawes of Nature."<sup>93</sup> The traditional rendering of the Law of Nature states:

The Lawes of Nature therefore need not any publishing, nor Proclamation; as being contained in this one Sentence, approved by all the world, *Do not that to another, which thou thinkest unreasonable to be done by another to thy selfe*, [according to Hobbes];<sup>94</sup>

Kant elaborates this law of nature by his teaching: "*So act that you use humanity, in your own person as well as in the person of any other, always at the same time as an end, never merely as a means.*"<sup>95</sup> What totalitarianism does is replace the traditional legal rendering of natural law with a scientific theory.

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<sup>91</sup> Arendt, *The Origins of Totalitarianism*, 464.

<sup>92</sup> Arendt, *The Origins of Totalitarianism*, 464.

<sup>93</sup> Hobbes, *Leviathan*, 163.

<sup>94</sup> Hobbes, *Leviathan*, 163.

<sup>95</sup> Kant, *Groundworks for the Metaphysics of Morals*, 41.

Arendt explains the following logical consequence of the bastardization of Marx's law of history: "if it is the law of history that in a class struggle certain classes 'wither away,' it would mean the end of human history itself if rudimentary new classes did not form, so that they in turn could 'wither away' under the hands of totalitarian rulers."<sup>96</sup> What Arendt explains is that totalitarianism will turn against the very masses that empowers the regime. Arendt expresses the criminal nature of these ideologies, writing: "these ideologies always result in the same 'law' of elimination of individuals for the sake of the process or progress of the species."<sup>97</sup>

It is a fact that the theory of natural selection presented by Darwin is a difficult scientific theory to fully understand. It is also a fact that Marx's critique of capitalism is rooted in the tradition:

For when Marx stated that labor is the most important activity of man, he was saying in terms of the tradition that not freedom but necessity is what makes man human. And he followed this line of thought throughout his philosophy of history, according to which the development of mankind is ruled by, and the meaning of history contained in, the law of historical movement;<sup>98</sup>

and so, necessitates a great deal of effort, and dedication in order to reach the summit of Marx's argument. What Arendt points out in her attempt to understand the manner the totalitarian movement comes about is the reduction of these two highly complex scientific and philosophical theories into *simple ideas*. The simplification of these complex ideas is done to the point of falsification of the original theories of Darwin and Marx. Through the falsification of these ideas the,

People are threatened by Communists propaganda with missing the train of history, with remaining hopelessly behind their time, with spending their lives uselessly, just as they are threatened by the Nazis with living against the eternal

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<sup>96</sup> Arendt, *The Origins of Totalitarianism*, 464.

<sup>97</sup> Arendt, "On the Nature of Totalitarianism", 341.

<sup>98</sup> Arendt, "Karl Marx and the Tradition of Western Political Thought", 290.

laws of nature and life, *with an irreparable and mysterious deterioration of their blood* [emphasis added].<sup>99</sup>

Arendt points out the connection between scientificity and the masses. Arendt explains that the,

The “collectivism” of masses was welcome by those who hoped for the appearance of “natural laws of historical development” which would eliminate the unpredictability of the individual’s actions and behaviour.<sup>100</sup>

Arendt elaborates her insight in the *Human Conditions*, where she explains:

The unfortunate truth about behaviorism and the validity of its “laws” is that the more people there are, the more likely they are to behave and the less likely to tolerate non-behavior.<sup>101</sup>

The behavior of the masses is controlled via the falsification of natural and historical law and given momentum by the collective size of the masses. The larger the mass that follows the falsified natural or historical law, the more momentum the mass gains.

At the heart of the totalitarian movement is a propaganda program that takes over the political dialogue by falsifying scientific and philosophical theory. Through the falsification of scientific and philosophical theories totalitarianism achieves a control over the masses. But this control over the masses comes about through a need that is craved by the masses themselves. Arendt explains that,

The language of prophetic scientificity corresponded to the needs of masses who had lost their home in the world and now were prepared to be reintegrated into eternal, all-dominating forces which by themselves would bear man, the swimmer on the waves of adversity, to the shores of safety. ... For masses, ... want victory and success as such, in their most abstract form.<sup>102</sup>

The masses can be controlled by the falsified scientific and philosophical theories of totalitarianism due to their pre-existence as homeless in their own world. Yet the subversive

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<sup>99</sup> Arendt, *The Origins of Totalitarianism*, 345.

<sup>100</sup> Arendt, *The Origins of Totalitarianism*, 346.

<sup>101</sup> Arendt, *The Human Condition*, 43

<sup>102</sup> Arendt, *The Origins of Totalitarianism*, 350.

attacks brought about by totalitarianism is a reconditioning of the mass's communal behavior. The mass's acceptance of the falsification of scientific and philosophical theory that totalitarianism presents, prepares the masses to be dominated. The masses become reconditioned to exist in "a desert of neighborliness and loneliness."<sup>103</sup>

#### **1.4: The Elements of Totalitarian Lawfulness: Loyalty, Terror, and Ideology**

The *sensus communis*, common sense, understood as the sense of a community is smothered by totalitarianism. According to Arendt,

the only character of the world by which to gauge its reality is its being common to us all, and common sense occupies such a high rank in the hierarchy of political qualities because it is the one sense that fits into reality as a whole our five strictly individual senses and the strictly particular data they perceive. ... A noticeable decrease in common sense in any given community and a noticeable increase in superstition and gullibility are therefore almost infallible signs of alienation from the world.<sup>104</sup>

The masses, as part of a movement, are duped into believing they are part of a community when in fact the movement worsens their individual loneliness. Arendt distinguishes solitude from loneliness, explaining, "in solitude, in other words, I am "by myself," together with myself, and therefore two-in-one, whereas in loneliness I am actually one, deserted by all others."<sup>105</sup> How does the movement worsen the lonely condition of the mass participant?

The totalitarian movement succeeds in destroying the little common-sense present in communities by organizing already "atomized, isolated individuals."<sup>106</sup> But more terrifying is the demand made by the totalitarian movement, that is:

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<sup>103</sup> Arendt, "On the Nature of Totalitarianism", 349.

<sup>104</sup> Arendt, *The Human Condition*, 208-209.

<sup>105</sup> Arendt, *The Origins of Totalitarianism*, 476.

<sup>106</sup> Arendt, *The Origins of Totalitarianism*, 323. Arendt explains the term "atomized society" and "isolated individuals", she means by these terms, "a state of affairs where people live together without having anything in common, without sharing some visible tangible realm of the world," ("On the Nature of Totalitarianism", 356-357).

[the] demand for total, unrestricted, unconditional, and unalterable loyalty of the individual member. This demand is made by the leaders of totalitarian movements even before they seize power.<sup>107</sup>

The demand for total loyalty from the individual simultaneously blinds and usurps, eventually destroying, the sense of community. Total loyalty for the leader of the totalitarian movement blinds each member of the movement from each other. The distant leader, himself isolated from the outer perimeter members by protective circles of sycophantic subordinates, usurps the position of one's neighbor, of the next of kin. By *demanding total loyalty* the leader demands to be placed above all else within the appearances of one's immediate consciousness. The common loyalty for the leader expressed by the mass of atomized individuals provides a false sense of community. What the masses fail to see, due to their blind loyalty for their leader, is that they have willingly destroyed their own community. A community cannot exist if the totality of the individual member's loyalty is affixed towards the leader, against all others, and including one's neighbor. The member's loyalty to the leader is an artificial, intimate connection that usurps law. Arendt explains that,

the original meaning of the word *lex* is 'intimate connections' or relationship, namely something which connects two things or two partners whom external circumstances have brought together.<sup>108</sup>

By demanding loyalty, the leader demands to be given the privilege of having this intimate connection, thus becoming the ultimate law within one's consciousness. Total loyalty for the leader secures the atomization of the masses by maintaining the idea of the leader in the consciousness of the individual, so that the individual acts, "in such a way that the Führer, if he

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<sup>107</sup> Arendt, *Origins of Totalitarianism*, 323.

<sup>108</sup> Arendt, *On Revolution*, 179.

knew your action, would approve it.”<sup>109</sup> But if the demanded total loyalty for the Leader atomizes the masses, how then are the masses fit together?

“The most horrible aspect of terror is that it has the power to bind together completely isolated individuals and that by so doing it isolates these individuals even further.”<sup>110</sup> Arendt uses the concept of terror in a very specific manner. Arendt uses the term Terror,

... in the sense ... not so much something which people may fear, but a way of life which takes the utter impotence of the individual for granted and provides for him either victory or death, a career or an end in a concentration camp, completely independent of his own actions or merits.<sup>111</sup>

Terror in the way that Arendt is thinking is the law that governs the individual to move regardless of the individual own will. “Terror is the realization of the law of movement; its chief aim is to make it possible for the force of nature or of history to race freely through mankind, unhindered by any spontaneous human action.”<sup>112</sup> In order to destroy the spontaneity of human action, Terror must “substitute for the boundaries and channels of communication between individual men a band of iron which hold them so tightly together that it is as though their plurality had disappeared into One Man of gigantic dimensions.”<sup>113</sup> Terror strips away the citizen of their individuality, their distinctness, and turns them into a voiceless part of a homogenous whole; terror strips away the victim from their distinctness turning them into a number scheduled towards a predestined location for processing. Arendt explains,

Terror, therefore, as the obedient servant of natural or historical movement has to eliminate from the process not only freedom in any specific sense, but the very source of freedom which is given with the fact of the birth of man and resides in his capacity to make a new beginning.<sup>114</sup>

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<sup>109</sup> Arendt, “*Eichmann in Jerusalem*”, 136.

<sup>110</sup> Arendt, “On the Nature of Totalitarianism”, 356.

<sup>111</sup> Arendt, “On the Nature of Totalitarianism”, 357.

<sup>112</sup> Arendt, *Origins of Totalitarianism*, 465.

<sup>113</sup> Arendt, *Origins of Totalitarianism*, 465.

<sup>114</sup> Arendt, *Origins of Totalitarianism*, 466.

Arendt explains that once the space between human beings that allows for motion to occur in the public realm has been devoured by terror, totalitarianism needs a way to guide the behavior of the masses. This control of the behavior of the masses is achieved through ideology. Ideology is understood by Arendt to be, “the logic of an idea.”<sup>115</sup> The dangerous aspect of ideology is the inflexibility of allowing any contradictory, or opposing argument, into the space of thought. Arendt explains, “the prohibition of contradictions, became ‘productive’ so that a whole line of thought could be initiated, and forced upon the mind, by drawing conclusions in the manner of mere argumentation.”<sup>116</sup> Ideology replaces any critical thinking with simplified reasoning. “Ideological thinking orders facts into an absolutely logical procedure which starts from an axiomatically accepted premise, deducing everything else from it; that is, it proceeds with a consistency that exists nowhere in the realm of reality.”<sup>117</sup> The ideology of the Nazi law of nature is simple: according to the law of the survival of the fittest the strong inherit the earth while the weak die off, therefore it is lawful to exterminate those who are naturally weak. The ideology of Stalin’s law of history is simple: according to the law of history classes die off, therefore “‘a dying class’” consisted of people condemned to death, to be purged out of the regime. The very simplicity of ideology is its strength because it substitutes reason with a shortcut, it substitutes reasoning with a simple chain of logic.

### **1.5: Lawless Actions and Lawful Claims: The Contradictory Origins of Totalitarianism**

This chapter commenced by an attempt to understand the role a constitution plays within totalitarianism. As Arendt’s analysis shows the two politically contradictory Nazi and Stalinist

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<sup>115</sup> Arendt, *Origins of Totalitarianism*, 469.

<sup>116</sup> Arendt, *Origins of Totalitarianism*, 470.

<sup>117</sup> Arendt, *Origins of Totalitarianism*, 471.

Regimes employed their constitutions legalize their lawless existence. The Nazi Regime employed the Weimar Constitution as a means to consolidate power; the Stalinist Regime employed the 1936 Russian Constitution as a symbol of consolidated power followed by super purges. The relatively nascent constitutions of Germany and the Soviet Union degenerated into a homogenized totalized mass movement. The analysis this chapter presents attempts to describe this degeneration of the a political body into a totalized mass movement. But Arendt makes an observation that is of great importance: neither the Weimar Constitution nor the 1936 Russian Constitution were abolished. This observation leads Arendt to describe the nature of totalitarianism.

Arendt describes the nature of totalitarianism in two locations: (1) in the essay “On the Nature of Totalitarianism”, and (2) *Origins of Totalitarianism*. Both descriptions for the most part are comparatively similar for the exception of a few descriptive details. Arendt, in “On the Nature of Totalitarianism”, explains the following,

Totalitarian government is unprecedented because it defies comparison. It has exploded the very alternative on which definitions of the nature of government have relied since the beginning of Western political thought—the alternative between lawful, constitutional or republican government, on the one hand, and lawless, arbitrary, or tyrannical government on the other. *Totalitarian rule is “lawless” insofar as it defies positive law; yet it is not arbitrary insofar as it obeys with strict logic and executes with precise compulsion the laws of History and Nature. It is the monstrous, yet seemingly unanswerable claim of totalitarian rule that, far from being “lawless,” it goes straight to the sources of authority from which all positive laws—based on “natural law,” or on custom and tradition, or on the historical even of divine revelation—receive their ultimate legitimation [emphasis added].*<sup>118</sup>

Arendt in *Origins of Totalitarianism* explains,

Instead of saying that totalitarian government is unprecedented, we could also say that it has exploded the very alternative on which all definitions of the essence of governments have been based in political philosophy, that is the alternative between lawful and lawless government, between arbitrary and legitimate power.

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<sup>118</sup> Arendt, “On the Nature of Totalitarianism”, 339.



The lawful government and legitimate power, on one side, lawlessness and arbitrary power on the other, belonged together and were inseparable has never been questioned. *Yet, totalitarian rule confronts us with a totally different kind of government. It defies, it is true, all positive laws, even to the extreme of defying those which it has itself established (as in the case of the Soviet Constitution of 1936, to quote only the most outstanding example) or which it did not care to abolish (as in the case of the Weimar Constitution which the Nazi government never revoked). But it operates neither without guidance of law nor is it arbitrary, for it claims to obey strictly and unequivocally those laws of Nature or of History from which all positive laws always have been supposed to spring [emphasis added].*<sup>119</sup>

The consistency that appears in the two descriptions of totalitarianism that Arendt presents are:

(1) “Totalitarian rule is “lawless” insofar as it defies positive law; yet it is not arbitrary insofar as it obeys with strict logic and executes with precise compulsion the laws of History and Nature” (“On the Nature of totalitarianism”),

(2) “totalitarian rule confronts us with a totally different kind of government. It defies, it is true, all positive laws, even to the extreme of defying those which it has itself established ... or which it did not care to abolish. But it operates neither without guidance of law nor is it arbitrary, for it claims to obey strictly and unequivocally those laws of Nature or of History from which all positive laws always have been supposed to spring,” (*Origins of Totalitarianism*).

In other words, totalitarianism is based on the contradictory action of lawlessness (that is the disobedience to the constitutional order, and to positive law) and claim of absolute lawfulness (enactment of the laws of Nature or of History). The very nature of totalitarianism presents Arendt with a problem of foundations. Both the Nazi government and the Stalinist government emerge out of the newly founded German and Russian Republics. Arendt’s analysis of the origins of totalitarianism presents her with the foundational crisis of modern politics. The next chapter will discuss how Arendt attempts to solve this foundational crisis of modern politics through her study of the American Constitution.

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<sup>119</sup> Arendt, *Origins of Totalitarianism*, 461.

## Chapter 2: Arendt's Study of the American Constitution—the Vital Activity of Pluralistic Power

Arendt's analysis of totalitarianism demonstrates the central role a constitution plays in the manifestation of a totalitarian form of government. A constitution serves as a legal platform of positive law from where the emergent totalitarian regime dictates the, "claim to obey strictly and unequivocally those laws of Nature or of History from which all positive laws always have been supposed to spring."<sup>120</sup> And even though constitutions have been a philosophical topic of discussion since antiquity (consider Aristotle's *Politics*, specifically, Bk. IV: Ch. 14-16 and Plato's dialogue *The Laws*) totalitarianism demands that constitutionalism be reassessed. The rise of totalitarianism presents Arendt with a modern crisis of foundations of modern politics. But for Arendt, "under modern conditions, the act of foundation is identical with the framing of a constitution."<sup>121</sup> Therefore, totalitarianism presents Arendt with the dire political and philosophical problem of constitution writing. What principle of constitutional foundation does Arendt find to solve the problem presented by totalitarianism?

There are two immediate examples of modern constitution writing available to Arendt, these are: the American model and the French model. Arendt extensively compares these two models in *On Revolution*. Even though Arendt does not explicitly state it, both her comparison and her critique of these two models intimate that they are contradictory in essence. The French model of constitution writing is heavily critiqued by Arendt in her interview with Roger Errera. Arendt, in her interview with Errera, remarks:

...I don't know how many constitutions you have had since the French Revolution. As far as I remember, by the time of World War I, you had had fourteen. And how many you then had—I don't want even to tackle that.<sup>122</sup>

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<sup>120</sup> Arendt, *Origins of Totalitarianism*, 461.

<sup>121</sup> Arendt, *On Revolution*, 116.

<sup>122</sup> Arendt, "Interview with Roger Errera", 493.

This remark is of significant notability because it reminds one of the necessity for the continuance of the foundational document, that is, of the original constitution. In *On Revolution* Arendt points out that,

The constitutional history of France, where even during the revolution constitution followed upon constitution while those in power were unable to enforce any of the revolutionary laws and decrees, could easily be read as one monotonous record illustrating again and again what should have been obvious from the beginning, namely that the so-called will of a multitude ... is ever changing by definition, and that a structure built on it as its foundation is built on quicksand.<sup>123</sup>

But what is Arendt's most scathing critique of the French model of constitution writing is the degeneration of the young republic into what is effectively a modern dictatorship. The young French Republic degenerated through,

the extraordinary ease with which the national will could be manipulated and imposed upon whenever someone was willing to take the burden or the glory of dictatorship upon himself. Napoleon Bonaparte was only the first in a long series of national statesmen who, to the applause of a whole nation, could declare: 'I am the *pouvoir constituant*' [the constituent power].<sup>124</sup>

In comparison with the French attempt at constitution writing, Arendt points out that, "here [in the United States] there is one Constitution, and this Constitution has now lasted for not quite two hundred years [Arendt's interview with Errera occurred in 1973]."<sup>125</sup> It is the continuity of the American Constitution from the foundation of the Republic, through the Civil War, until 1973 (when Arendt was last interviewed), that attests to a peculiar principle of foundation that must be analyzed. What is the foundational principle that is necessary for a secure constitutional order?

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<sup>123</sup> Arendt, *On Revolution*, 154.

<sup>124</sup> Arendt, *On Revolution*, 154.

<sup>125</sup> Arendt, "Interview with Roger Errera", 492.

What is the understanding Arendt presents concerning the phenomenon of the American Constitution? Arendt explicitly answers this question in her interview with Roger Errera. In this interview Arendt expresses the following understanding concerning the United States and the Constitution. Arendt speaks:

*Mon impression dominante.* Well, you see, this is not a nation-state, America is not a nation-state and Europeans have a hell of a time understanding this simple fact, which, after all, they should know theoretically; this country is united neither by heritage, nor by memory, nor by soil, nor by language, nor by the same place of origin. There are no natives here. The natives were the American Indians. Everyone else is a citizen and these citizens are united only by one thing, and that's a big thing: that is, you become a citizen of the United States by consenting to its Constitution. The Constitution—that is a scrap of paper, according to French as well as German common opinion, and you can change it. No, here it is a sacred document, it is the constant remembrance of a sacred act, the act of foundation. And the foundation is to make a union out of wholly disparate ethnic minorities and religions, and still (a) have a union and (b) not assimilate or level down these differences. And all this is very difficult to understand for a foreigner. It's what foreigners never understand. We can say this is a government by law and not by men. To the extent that is true, and needs to be true, the well-being of the country, of the United States of America, of the republic, depends on it.<sup>126</sup>

Though Arendt's response to Roger Errera includes various important insights, this analysis will concentrate on only two of Arendt's points. These two points are: (1) Arendt's view that the Constitution is "a sacred document"; and (2) Arendt's understanding that "the foundation is to make a union out of wholly disparate ethnic minorities" in such a way as to preserve Plurality. These points will serve as a point of departure for the analysis that follows. What insight do these two points present one concerning Arendt's existential-phenomenological analysis of the American Constitution? For Arendt the American Constitution, when read from a purely philosophical perspective, enacts a pluralistic power. The American Constitution, for Arendt, presents her with the realization of a political phenomenon where the intertwine between power

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<sup>126</sup> Arendt, "Interview with Roger Errera", 489-490.

and pluralism amplify the potency of each—that is: power protects the plurality of its political body simultaneously as the plurality of the political body gives potency to power.

## 2.1: The Abyss of Freedom: Foundation and Initiation

Arendt presents a strange account of the inspirations for the foundations of the American Republic. “The founders of the American Republic were well acquainted with Roman as well as Biblical antiquity.”<sup>127</sup> Arendt points out two ancient legendary archetypes that are essentially contradictory. Which legendary archetypes of foundations is Arendt specifically pointing out? Arendt refers to,

...the Biblical story of the exodus of Israeli tribes from Egypt, which preceded the Mosaic legislation constituting the Hebrew people, and Virgil’s story of the wanderings of Aeneas, which led to the foundation of Rome—“*dum conderet urbem*,” as Virgil defines the content of his great poem even in its first lines. Both legends begin with an act of liberation, the flight from oppression and slavery in Egypt and the flight from burning Troy (that is, from annihilation); and in both instances this act is told about from the perspective of a new freedom, the conquest of a new “promised land” that offers more than Egypt’s fleshpots and the foundation of a new City that is prepared for by a way destined to undo the Trojan war.<sup>128</sup>

Immediately one can recognize the contradictory nature of each of the archetypes identified by Arendt. On the one hand the Biblical story of Exodus can be interpreted as a history of the Hebrew people, a history that can be interpreted as a chronology of the Hebrew people; on the other hand, *The Aeneid* is Virgil’s poetical creation, that mimics *The Odyssey* of Homer in revers

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<sup>127</sup> Arendt, *The Life of the Mind/Willing*, 206. Arendt’s *The Life of the Mind/Willing* was posthumously published in 1978. This is notable because in 1963 in *On Revolution* Arendt wrote almost the same exact words: “...there were only two foundation legends with which they were fully acquainted, the biblical story of the exodus of Israeli tribes from Egypt and Virgil’s story of the wanderings of Aeneas after he had escaped burning Troy. Both are legends of liberation, the one of liberation from slavery and the other of escape from annihilation, and both stories are centred about a future promise of freedom, the eventual conquest of a promised land or the foundation of a new city—*dum conderet urbem*, as Virgil even in the beginning of his great poem indicates its actual content,” (*On Revolution*, 197).

<sup>128</sup> Arendt, *The Life of the Mind/Willing*, 204.

thus, “Virgil’s reversal of Homer is deliberate and complete.”<sup>129</sup> Yet, even though these two legends might be interpreted as contradictory in nature (*Exodus* being a historical rendering of the Hebrew people as well as a theological text of divine revelation, while *The Aeneid* is a direct poetical argument aimed for political ends<sup>130</sup>), Arendt finds the similarities of both. What are the similarities that Arendt finds between these two contradictory legendary archetypes of foundations? Arendt explains,

The parallel with the tales is astoundingly close: in both instances the act of foundation had come about through the deeds and the sufferings of exiles. This is true even of the Biblical tale as told in Exodus; Canaan, the promised land, is by no means the original Jewish home, but the land of the Jews’ former “sojourn” (Exodus 6:4). Virgil insists still more strongly on the theme of exile: Aeneas and his companions were “driven ... to distant places of exile in waste land,” weeping at leaving “the shores and the havens ... where once was Troy,” exiles “uncertain whither the fates carry us or where a resting-place is given.”<sup>131</sup>

Both archetypes teach about liberation, freedom and foundation. What Arendt points out is that these two legendary archetypes of foundations provide a guide for the will of “men of action”<sup>132</sup> towards the “abyss of freedom.”<sup>133</sup>

What is the “abyss of freedom”? The “abyss of freedom” is a temporal paradox that is confronted by anyone who is initiating anything new, it is truly the “problem of beginning”. How does Arendt explain the “problem of beginning”? Arendt explains, “the problem of beginning—a problem because beginning’s very nature is to carry in itself an element of complete

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<sup>129</sup> Arendt, *The Life of the Mind/Willing*, 204.

<sup>130</sup> Grebe explains the political ends of *The Aeneid* writing: “Vergil’s epic is a piece of propaganda, though a very sophisticated one, in that it reinforces the divine foundation of the Emperor’s *auctoritas*. The *Aeneid* offers two ultimate sources for the Emperor’s *auctoritas*—the mythic origins of Rome and of the Roman people, on one hand, and the divine sphere on the other. To this end, Vergil traces Augustus’ political position not merely to Romulus, the mythic founder of Rome, but even further back in Roman history to Aeneas, the founder of the Roman people. It was the mythic origins of Rome and of the Roman people which authorized Augustus to act as *primus inter pares*, the first among equals,” (“Augustus’ Divine Authority and Vergil’s ‘Aeneid’”, 36-37).

<sup>131</sup> Arendt, *The Life of the Mind/Willing*, 206.

<sup>132</sup> Arendt, *The Life of the Mind/Willing*, 207.

<sup>133</sup> Arendt, *The Life of the Mind/Willing*, 207.

arbitrariness.”<sup>134</sup> The very arbitrariness that makes up the nature of a beginning presents an abyss, “of nothingness that opens up before any deed that cannot be accounted for by a reliable chain of cause and effect and is inexplicable in Aristotelian categories of potentiality and actuality.”<sup>135</sup> What a new beginning presents is a break in “the causal chain”<sup>136</sup> of events that forces the actor(s) to face the necessity to begin anew, to face a nothingness,

... after liberation has been achieved, because liberation, though it may be freedom’s *conditio sine qua non*, is never the *conditio per quam* that causes freedom—there is nothing left for the “beginner” to hold on to. The thought of an absolute beginning—*creatio ex nihilo*—abolishes the sequence of temporality no less than does the thought of an absolute end, now rightly referred to as “thinking the unthinkable.”<sup>137</sup>

The American Revolution is interpreted by Arendt as a hiatus, “between end and beginning, between a no-longer and a not-yet.”<sup>138</sup> Following Arendt’s interpretation of the nature of the American Revolution it is after the war that the colonies find themselves truly facing a beginning and the “abyss of freedom”:

Not only is it [the beginning] not bound into a reliable chain of cause and effect, a chain in which each effect immediately turns into a cause for future developments, the beginning has, at it were, nothing whatsoever to hold on to; it is as though it came out of nowhere in either time or space. For a moment, the moment of beginning, it is as though the beginner had abolished the sequence of temporality itself, or as though the actors were thrown out of the temporal order and its continuity.<sup>139</sup>

Freedom, and the beginning that freedom presents to the actor(s), is abysmal because of the uncertainty of the future state of existence after the beginning has been initiated. “The remedy for unpredictability, for the chaotic uncertainty of the future, is contained in the faculty to make

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<sup>134</sup> Arendt, *The Life of the Mind/Willing*, 207.

<sup>135</sup> Arendt, *The Life of the Mind/Willing*, 207.

<sup>136</sup> Arendt, *The Life of the Mind/Willing*, 207..

<sup>137</sup> Arendt, *The Life of the Mind/Willing*, 207-208.

<sup>138</sup> Arendt, *On Revolution*, 197.

<sup>139</sup> Arendt, *On Revolution*, 198.

and keep promises.”<sup>140</sup> In other words, the men of action willed themselves into the abyss of freedom not by presupposing an absolute beginner (God as is exemplified in the *Old Testament*), but by borrowing from the *Old Testament* the act of making covenants, by the “faculty to make and keep promises.”<sup>141</sup>

Arendt explains that, “the power of stabilization inherent in the faculty of making promises has been known throughout our tradition.”<sup>142</sup> Again, Arendt reminds one of the Hebrew and Roman traditions of promise making. Arendt writes,

[the tradition of making promises can be traced] ... back to the Roman legal system, the inviolability of agreements and treaties (*pacta sunt servanda*); or we may see its discoverer in Abraham, the man from Ur, whose whole story, as the Bible tells it, shows such a passionate drive toward making covenants that it is as though he departed from his country for no other reason than to try out the power of mutual promise in the wilderness of the world, until eventually God himself agreed to make a Covenant with him.<sup>143</sup>

In other words, the American Constitution, as interpreted by Arendt, is an attempt to stabilize the uncertain future events after the beginning had arrived, to stabilize *the immediate time after* the hiatus of the Revolutionary War. But what, according to Arendt, makes the American Constitution, as an act of foundation, so stable that it allows for its continuance? An answer to this question can be found in how the concept of constitution is understood by Arendt.

Firstly, revolution is understood by Arendt to be “inextricably bound up with the notion that the course of history suddenly begins anew, that an entirely new story, a story never known or told before is about to unfold.”<sup>144</sup> What is crucial for Arendt and the understanding of “revolutions in the modern age is that the idea of freedom and the experience of a new beginning

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<sup>140</sup> Arendt, *On the Human Condition*, 237.

<sup>141</sup> Arendt, *The Human Condition*, 237.

<sup>142</sup> Arendt, *The Human Condition*, 243.

<sup>143</sup> Arendt, *The Human Condition*, 243-244.

<sup>144</sup> Arendt, *On Revolution*, 18-19.



should coincide.”<sup>145</sup> The writing of the constitution therefore is the culmination of this coincidence between freedom and beginning. Again,

Under modern conditions, the act of foundation is identical with the framing of a constitution, and the calling of constitutional assemblies has quite rightly become the hallmark of the revolution ever since the Declaration of Independence initiated the writings of constitutions for each of the American States, a process which prepared and culminated in the Constitution of the Union, the foundation of the United States.<sup>146</sup>

The American Constitution is understood by Arendt, from the perspective of an analysis of intentional history, to be the coincidence between the act of beginning something new and freedom. Conceptually, though, Arendt understands the American Constitution hermeneutically:

The word ‘constitution’ obviously is equivocal in that it means the act of constituting as well as the law or rules of government that are ‘constituted’ be these embodied in written documents or, as in the case of the British constitution, implied in institutions, customs, and precedents.<sup>147</sup>

Constitution, conceptually, therefore means the literal make-up and form of the political body, as well as the written law. A constitutional government, Arendt explains,

Means nothing more or less than government limited by law, and the safeguard of civil liberties through constitutional guarantees, as spelled out by the various bills of rights which were incorporated into the new constitutions and which are frequently regarded as their most important part.<sup>148</sup>

But this explanation of constitutional government contradicts a later interpretation presented by Arendt. It is in the later contradictory interpretation of constitutional government where one finds Arendt’s own philosophical structures coinciding with the act of constitution-writing. Arendt’s structures of “plurality” and “power” make an appearance in her interpretation of the writing of the American Constitution. Arendt explains,

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<sup>145</sup> Arendt, *On Revolution*, 19.

<sup>146</sup> Arendt, *On Revolution*, 116.

<sup>147</sup> Arendt, *On Revolution*, 136.

<sup>148</sup> Arendt, *On Revolution*, 134.

It was not constitutionalism in the sense of ‘limited’, lawful government that preoccupied the minds of the founders. ... When they declared their independence from this government [that is “England’s King and Parliament<sup>149</sup>], and after they had foresworn their allegiance to the crown, the main question for them certainly was not how to limit power but how to establish it, not how to limit government but how to found a new one.<sup>150</sup>

Arendt presents two contradictory interpretations of constitutional government, these are: (1) constitutional government as government limited by law, and (2) constitutional government as a government that establishes power. In order to establish a new power, Arendt explains,

the founders and men of the Revolution brought to bear the whole arsenal of what they themselves called their ‘political science’, for political science, in their own words, consisted in trying to discover ‘the forms and combinations of power in republics’.<sup>151</sup>

The “founding fathers” when searching their political science found, “the oracle who is always consulted and cited on this subject ... the celebrated Montesquieu.”<sup>152</sup> Montesquieu, Arendt explains, “maintained that power and freedom belonged together.”<sup>153</sup>

What maxim was borrowed from Montesquieu for the structuring of the constitution?

Madison explicitly points out Montesquieu’s influence and the central idea that is being used to structure the Constitution:

The reasons on which Montesquieu grounds his maxim are a further demonstration of his meaning. [1]“When the legislative and executive powers are united in the same person or body,” says he, “there can be no liberty, because apprehensions may arise lest *the same* monarch or senate should enact tyrannical laws to execute them in a tyrannical manner.” [2] Again: “Were the power of judging joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control, for *the judge* would then be *the legislator*. [3] Were it joined to the executive power, *the judge* might behave with all the violence of an *oppressor*.”<sup>154</sup>

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<sup>149</sup> Arendt, *On Revolution*, 139.

<sup>150</sup> Arendt, *On Revolution*, 138-139; Arendt further explains the reason why the “fever of constitution-making which gripped the country immediately after the Declaration of Independence prevented the development of a power vacuum, and the establishment of a new power,” (*On Revolution*, 139).

<sup>151</sup> Arendt, *On Revolution*, 140.

<sup>152</sup> Madison, 162; see also, *The Federalist*, No. XLVII.

<sup>153</sup> Arendt, *On Revolution*, 141.

<sup>154</sup> Madison, 164; see also, *The Federalist*, No. XLVII.

Here Madison reminds the public of the dangers of uniting the different political activities of human beings. As the following subsection will show, Montesquieu's separation of powers did not only influence the inner structure of the American Constitution, but also Arendt's own philosophy of plurality, power, and consequently the conceptualization of the "vita activa."

## **2.2: Separation of Powers—Power and Pluralism**

Montesquieu and Kant are the two philosophers that indubitably guide Arendt's study of modern politics and constitutionalism. These two philosophers make their appearance in the thinking of Arendt when she makes an attempt to describe the nature of totalitarianism. How are these two philosophers intertwined in the thinking of Arendt?

The intertwining between Montesquieu and Kant can be explicitly found in Arendt's essay *On the Nature of Totalitarianism: An Essay in Understanding*. In this essay Arendt attempts to reveal the nature of totalitarianism by using the philosophical concept of politics developed by Montesquieu and Kant. As a result, Arendt extensively explains the relationship between these two thinkers. Arendt explains that Montesquieu is, "famous chiefly for his discovery and articulation of the division of powers into the executive, legislative, and judiciary, [and] defines governments as though power is necessarily sovereign and indivisible."<sup>155</sup> But it was not Montesquieu but Kant who "redefined the structure of governments according to Montesquieu's own principles."<sup>156</sup> How does Kant redefine the structures of government using Montesquieu's principles?

Arendt explains that Kant distinguishes between "forms of domination" and "forms of government." Arendt points out Kant's assertion that, "Constitutional or lawful government is

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<sup>155</sup> Arendt, "On the Nature of Totalitarianism", 330.

<sup>156</sup> Arendt, "On the Nature of Totalitarianism", 330.

established through the division of power so that the same body (or man) does not make the laws, execute them, and then sit in judgment on itself.”<sup>157</sup> But what is to be taken from Arendt’s bringing together of Montesquieu and Kant? Arendt explains,

Montesquieu alone had a concept of power that lay absolutely outside of the traditional category of means and ends. The three branches of government represent for him the three political activities of men: the making of laws, the execution of decisions, and the deciding judgment that must accompany both.<sup>158</sup>

The articulation of the division of power brought about by Montesquieu initiates a modern kind of political science, that is implemented by Kant in order to redefine the known forms of government. Employing Montesquieu’s discovery of the division of power, “Kant indicated two basic structures of government: republican government, based on the division of powers ... and despotic government, where the powers of legislation, execution, and judgment are not separated.”<sup>159</sup> The intertwining of Montesquieu and Kant in the thinking of Arendt manifests itself in their agreement on the following point: “that only division of powers can guarantee the rule of law.”<sup>160</sup> How does the division of power guarantee the rule of law? To answer this question one must understand what power is. How exactly is power being understood by Montesquieu and Kant? Power is being understood by Montesquieu and Kant in the same way that Arendt distinguishes between power and strength. In other words, Arendt’s structure of power that is presented in her *The Human Condition* is Arendt’s attempt to reactivate the notion

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<sup>157</sup> Arendt, “On the Nature of Totalitarianism”, 330.

<sup>158</sup> Arendt, “The Great Tradition I: Law and Power”, 722. Following this explanation, I consider the three critiques of Kant to be direct elaborations bursting out of Montesquieu’s political philosophy; so that Kant’s *Critique of Pure Reason* can be interpreted as the study of the legislative faculty of human beings, the *Critique of Practical Reason* can be correlated with the executive faculty of human beings—that is, the study of how to apply the law that one gives oneself, how to apply the practical imperative— and lastly, the *Critique of Judgment* is the study of the human faculty of judgment, a study of how to practice and how to develop judgment.

<sup>159</sup> Arendt, “On the Nature of Totalitarianism”, 330.

<sup>160</sup> Arendt, “On the Nature of Totalitarianism”, 333.

of power that is being used by Kant, Montesquieu, and Madison when speaking concerning the Constitution.

The immediate error in attempting to understand the concept of power arises from the conflation of power and strength. Power is not strength; strength is not power. What does Arendt understand by strength? Strength, according to Arendt, is “nature’s gift to the individual which cannot be shared with others.”<sup>161</sup> Strength and violence are intertwined in the process of work, “violent exertion of a strength with which man measures himself against the overwhelming forces of the elements and which through the cunning invention of tools he knows how to multiply far beyond its natural measure.”<sup>162</sup> Because strength is inextricable from the individual, that is strength cannot be separated from the one who naturally possesses it or naturally develops it (i.e., the body builder, the athlete, or the worker), strength is commonly associated with the strong man. But the very nature of the strong man is isolation, because of the very fact that their strength is proper to themselves. Arendt critiques the common belief in the “strong man”, writing:

The popular belief in a “strong man” who, isolated against others, owes his strength to his being alone is either sheer superstition, based on the delusion that we can “make” something in the realm of human affairs—“make” institutions or laws, for instance, as we make table and chairs, or make men “better” or “worse”—or it is conscious despair of all action, political and non-political, coupled with the utopian hope that it may be possible to treat men as one treats other “material.”<sup>163</sup>

Here Arendt critiques the common misunderstanding committed by the masses who commit themselves to a “strong man”. “Making” is a term belonging to fabrication to which the natural

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<sup>161</sup> Arendt, *The Human Condition*, 203.

<sup>162</sup> Arendt, *The Human Condition*, 140.

<sup>163</sup> Arendt, *The Human Condition*, 188.

possession of strength by one man is associated; the consequence of this association is the use of a human being as a means to an end, like any other “material.”

Power is nonexistent without plurality – this is a central tenet of the teachings of Arendt. Power is understood by Arendt as a potentiality that can only exist among human beings in their condition of Plurality. “Power springs up between men when they act together and vanishes the moment they disperse.”<sup>164</sup> One of Arendt’s most beautiful set of lines is the following description concerning the actualization of power:

Power is actualized only where word and deed have not parted company, where words are not empty and deeds not brutal, where words are not used to veil intentions but to disclose realities, and deeds are not used to violate and destroy but to establish and create new realities.<sup>165</sup>

How can this description of power be understood? For power to be actualized among human beings what is spoken amongst human beings must correlate with what is done amongst human beings. An intention is that to which one consciously is directed towards, and so among a community of egos to “veil intentions” is to veil oneself from the rest of the community – “to veil intentions” is to fracture the community. Reality is not static, it changes through deeds and words – the very foundation of the American Republic is the creation of a new political reality. But power is not an eternal reality, “violence, curiously enough, can destroy power.”<sup>166</sup> Arendt reminds one of Montesquieu’s insight that is, “power can of course be destroyed by violence; this is what happens in tyrannies, where the violence of one destroys the power of the many.”<sup>167</sup> But violence, “can never become a substitute for it,”<sup>168</sup> violence cannot substitute power. How can

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<sup>164</sup> Arendt, *The Human Condition*, 200.

<sup>165</sup> Arendt, *The Human Condition*, 200.

<sup>166</sup> Arendt, *The Human Condition*, 203.

<sup>167</sup> Arendt, *On Revolution*, 142.

<sup>168</sup> Arendt, *The Human Condition*, 202.

power be kept from being destroyed? The answer lies in Arendt's observation that, "violence begins where speech ends."<sup>169</sup>

According to Arendt,

Power can be stopped *and* still be kept intact only by power, so that the principle of the separation of power not only provides a guarantee against the monopolization of power by one part of the government, but actually provides a kind of mechanism, built into the very heart of government, through which new power is constantly generated, without, however, being able to overgrow and expand to the detriment of other centres or sources of power.<sup>170</sup>

The key to the success of the American Constitution, is its enactment of pluralistic power.

Pluralism, Arendt explains, "is the condition of human action because we are all the same, that is, human, in such a way that nobody is ever the same as anyone else who ever lived, lives or will live,"<sup>171</sup>—at the heart of the human condition is a real contradiction! This is Arendt's quintessential existential-structure in the sense that it describes the phenomenon of human existence at its "boundary situation."<sup>172</sup> Through the existential-structure of pluralism, Arendt is describing a reality that has been exploited throughout the tradition of great political societies. Through pluralism, Arendt is further developing the notion that is identified by Montesquieu and enacted by Madison via the American Constitution. Arendt explains that "Montesquieu's" discovery of both the divisible nature of power and the three branches of government sprang from his preoccupation with the phenomenon of action as the central data of the whole real of politics."<sup>173</sup> What Montesquieu correlates is the plurality of powers with the plurality of human

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<sup>169</sup> Arendt, "Understanding and Politics", 308.

<sup>170</sup> Arendt, *On Revolution*, 142-143.

<sup>171</sup> Arendt, *On the Human Condition*, 8.

<sup>172</sup> Jaspers, *Philosophy Vol. 2*, 220.

<sup>173</sup> Arendt, "The Great Tradition: I. Law and Power", 723.

existence that appear through human beings's "speech and action."<sup>174</sup> Madison, directly influenced by Montesquieu, as Arendt explains,

[discovered the] federal principle for the foundation of large republics, was partly based upon an experience, upon the intimate knowledge of political bodies whose internal structure predetermined them, as it were, and conditioned its members for a constant enlargement whose principle was neither expansion nor conquest but the further combination of powers.<sup>175</sup>

Arendt is referring to the experience of the: "action [the coming together for some interest] had led to the formation of power and the power was kept in existence by the then newly discovered means of promise and covenant [by speech]."<sup>176</sup> From the explanations presented by Arendt, it follows that the First Amendment to the Constitution, that:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances,<sup>177</sup>

is a power generating law. Is the First Amendment the foundational principle that guides Arendt towards a solution to the crisis of foundations presented by totalitarianism? Arendt's understanding of speech and action, based on the analysis of the Greek concepts of *νομός* and the Roman concept of *lex*, indicates that the First Amendment is the founding principle that sheds light on the problem cast by the shadow of totalitarianism.

### **2.3: The *First Amendment* understood through *νομός*, *lex*, and Neighborly Love**

Earlier the following explanation presented by Arendt concerning power was quoted:

Power can be stopped *and* still be kept intact only by power, so that the principle of the separation of power not only provides a guarantee against the monopolization of power by one part of the government, *but actually provides a*

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<sup>174</sup> Arendt, *The Human Condition*, 176.

<sup>175</sup> Arendt, *On Revolution*, 159.

<sup>176</sup> Arendt, *On Revolution*, 167.

<sup>177</sup> *U.S. Constitution*, 558.



*kind of mechanism, built into the very heart of government* [emphasis added], through which new power is constantly generated, without, however, being able to overgrow and expand to the detriment of other centres or sources of power.<sup>178</sup>

The “mechanism, built into the very heart of government” is the First Amendment. While the American Constitution defines the different powers that make up the government (that is, the legislative, the judicial, and the executive offices), the First Amendment enacts the constant development of Power by safeguarding speech and action, the plurality of religions, and the right to assemble, against the encroachment of government. Even though Arendt is not explicit about her analysis of the First Amendment, her analysis of νόμος, *lex*, and the moral law, leads one to the following consideration: that the inner structure of the First Amendment is rooted in the original antinomic structures of the concepts of law inherited from the tradition, and is also a negative application of the moral law — the First Amendment is positive law rooted in contradictions.

Let us briefly analyze, that is, break down the First Amendment, using the legal structures that Arendt points out throughout her writings. First, the command “Congress shall make no law” is indicative of the Greek concept of law, of νόμος, which is restrictive. Secondly, the restriction against the government, “respecting an establishment of religion or prohibiting the free exercise thereof,” is a negative application of the moral law, it is a negative application of neighborly love. Thirdly, “the right of the people peaceably to assemble, and to petition the Government for a redress of grievances” can be analyzed from the Roman concepts of *lex* and *consensus iuris*. Finally, central to the First Amendment is the guarantee against, “abridging the freedom of speech, or of the press,” which enables the people to appear and be part of the world.

The Greek concept of law, of νόμος is explained by Arendt as follows,

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<sup>178</sup> Arendt, *On Revolution*, 142-143.

The very word νόμος, which, apart from its etymological significance, receives its full meaning as the opposite of φύσις or things that are natural, stresses the ‘artificial’, conventional, man-made nature of the laws. Moreover, although the word νόμος came to assume different meanings throughout the centuries of Greek civilization, it never lost its original ‘spatial significance’ altogether, namely, ‘the notion of a range of province, within which defined power may be legitimately exercised.’<sup>179</sup>

Two points are to be immediately understood from the conceptual analysis that Arendt presents of νόμος: (1) νόμος is contradictory to φύσις, law is man-made and not from nature,<sup>180</sup> (2) νόμος has a spatial connotation. Following Arendt’s explanation of the distinction between νόμος and φύσις it follows that law, understood in its Greek root, does not exist outside the city, the city being the epitome of a man-made creation. Νόμος and the city (*polis*) are intertwined. This intertwining between νόμος, and the city is rooted in that, “*nomos*, derives from *nemein*, which means to distribute, to possess (what has been distributed), and to dwell. The combination of law and hedge in the word *nomos* is quite manifest in a fragment of Heraclitus.”<sup>181</sup> The Greek concept of law understood from its spatial connotation presents the understanding of boundaries. Arendt’s understanding that, “positive laws in constitutional government are designed to erect boundaries and establish channels of communication between men whose community is continually endangered by the new men born into it,”<sup>182</sup> is a direct corollate of her understanding of νόμος. But how does this explanation of νόμος explain the restriction imposed by the First Amendment against the government? The First Amendment’s command against the government, “Congress shall make no law,” erects a wall between the government and the communities of

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<sup>179</sup> Arendt, *On Revolution*, 179.

<sup>180</sup> Arendt, explains in *The Human Condition*, the “fundamental Greek distinction between things that are by themselves whatever they are and things which owe their existence to man, between things that are *physei* and things that are *nomos*,” (*The Human Condition*, 15).

<sup>181</sup> Arendt, *The Human Condition*, 63n.62.

<sup>182</sup> Arendt, *Origins of Totalitarianism*, 465.

peoples (the plural existence of human beings).<sup>183</sup> “Before men began to act, a definite space had to be secured and a structure built where all subsequent actions could take place ... .”<sup>184</sup>

To claim that the First Amendment promotes “neighborly love,” is both radical and contradictory to the traditional reading of the First Amendment. But analyzing the First Amendment’s imperative that the government, “shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof,” by using the interpretation presented by Arendt, leads one to the realization that the restriction frames the divine law in a negative manner, thus making it into a positive law. According to Arendt, “Love of neighbor is man’s attitude toward his neighbor, which springs from *caritas*.”<sup>185</sup> Furthermore, Arendt elaborates her understanding of neighborly love, writing,

the law bids us love one another. *This is the essence of the law and that toward which all the other laws aim* [my emphasis added]. The law regulates and determines what is done in the world by man who regards the world as a desert and lives in relation to his own source. Since this world has always been constituted by men, it defines how men act toward each other.<sup>186</sup>

Arendt’s understanding of neighborly love indicates the fundamental role this divine law plays in intersubjectivity. Neighborly love serves as a foundational law between human beings that enables the constitution of a community. Arendt explains,

the Christian can thus love *all people* [emphasis added] because each one is only an occasion, and that occasion can be everyone. Love proves its strength precisely in considering even the enemy and even the sinner as mere occasions for love. It is not really the neighbor who is loved in this love of neighbor—it is love itself.<sup>187</sup>

But Madison is clear that the intention of the First Amendment is to separate Church and State, “In the Papal System, Government and Religion are in a manner consolidated, & that is found to

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<sup>183</sup> The government defined by the three offices is separated from the power emerging from the public realm.

<sup>184</sup> Arendt, *The Human Condition*, 195.

<sup>185</sup> Arendt, *Love and Saint Augustine*, 93.

<sup>186</sup> Arendt, *Love and Saint Augustine*, 93

<sup>187</sup> Arendt, *Love and Saint Augustine*, 97.

be the worst of Gov[ernments].”<sup>188</sup> Furthermore Madison explains the power that can be found in the plurality of sects,

This freedom arises from the multiplicity of sects, which pervades America, and which is the best and only security for religious liberty in any society. For where there is such a variety of sects, there cannot be a majority of any one sect to oppress and persecute the rest. ... The United States abound in such a variety of sects, that it is a strong security against religious persecution, and it is sufficient to authorise [sic] a conclusion, that no one sect will ever be able to outnumber or depress the rest.<sup>189</sup>

Instead of directly applying the divine law that commands neighborly love, a prohibition has been established against the government in order to secure a plurality of religious practices, in order to protect any one religion from being persecuted by another. By negating the government’s ability for establishing or denying religious practice the divine law of neighborly love has been turned into a positive neighborly tolerance of religions among the communities of people.

“[T]he right of the people peaceably to assemble, and to petition the Government for a redress of grievances” can be analyzed from the Roman concepts of *lex* and *consensus iuris*. Arendt explains that “the Roman word for law, *lex*, ... indicates a formal relationship between people rather than the wall that separates them from others.”<sup>190</sup> A similar explanation is presented by Arendt in *On Revolution*,

The original meaning of the word *lex* is ‘intimate connection’ or relationship, namely something which connects two things or two partners whom external circumstance have brought together.<sup>191</sup>

How does this notion of *lex* develop sociability? The Roman notion of *lex* that brings together partners develops the notion of *societas*. Arendt explains in her essay “Introduction to Politics”,

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<sup>188</sup> Madison, *The Complete Madison*, 311.

<sup>189</sup> Madison, *The Complete Madison*, 306.

<sup>190</sup> Arendt, *The Human Condition*, 63 n.62.

<sup>191</sup> Arendt, *On Revolution*, 179.

...that the laws with which Rome first organized the regions of Italy and then the countries of the world were not simply treaties in our sense of the word, but that they aimed at a lasting tie, which was the essential implication of an alliance. From these allies Rome's, from these *socii*, almost all of which were enemies who had been conquered at some point, there emerged the Roman *societas*, which has nothing to do with society but rather with a cooperative community that fostered relationships between partners.<sup>192</sup>

*Societas*, according to Arendt, “means alliance. Such an alliance gathers together the isolated strength of the allied partners and binds them into a new power structure by virtue of ‘free and sincere promises’.”<sup>193</sup> The right to come together, to peaceably assemble, and associate with others is distinctively rooted in the Roman concept of law. Arendt explains that the force that brings people to assemble is interest. “These interests constitute, in the word’s most literal significance, something which *inter-est*, which lies between people and therefore can relate and bind them together.”<sup>194</sup> The most powerful form of interest is the consensus to the law.

The right to “to petition the Government for a redress of grievances” can be understood through the Roman concept of *consensus iuris*. Arendt, in *The Origins of Totalitarianism*, explains:

[the] *consensus iuris* which, according to Cicero, constitutes a “people,” and which, as international law, in modern times has constituted the civilized world insofar as it remains the foundation-stone of international relation even under the conditions of war. Both moral judgment and legal punishment presuppose this basic consent; the criminal can be judged only because he takes part in the *consensus iuris*, and even the revealed law of God can function among men only when they listen and consent to it.

The guarantee “to petition the Government for a redress of grievances” is rooted in this Roman idea of the *consensus iuris* because it guarantees the people’s ability to express their lack of consent for the laws passed down by the Government. Our ability to challenge the law is

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<sup>192</sup> Arendt, “Introduction into Politics”, 185-186.

<sup>193</sup> Arendt, *On Revolution*, 161.

<sup>194</sup> Arendt, *The Human Condition*, 182.

fundamental to a constitutional order. A case in point is the landmark decision: *United States v. Alvarez* 617 F. 3d 1198; in this case Alvarez challenged the *Stolen Valor Act of 2005*. In her case brief Rose explains,

On June 28 2012, a divide U.S. Supreme Court, in *United States v. Alvarez*, struck down as unconstitutional a federal law that criminalizes lying about being awarded military decorations or medals and imposes an enhanced penalty for lies involving a Congressional Medal of Honor. The case involved a California man, Xavier Alvarez, whose conviction for lying about being awarded the Congressional Medal of Honor was overturned on Appeal.<sup>195</sup>

Furthermore, Rose explains the method employed by the U.S. Supreme Court to arrive at this decision. Rose writes:

Applying the “strict scrutiny” standard of judicial review, a plurality of justices said the law, known as the Stolen Valor Act, was written so broadly that it infringed on free speech protected by the First Amendment and threatened to do more harm than good.<sup>196</sup>

Justice Anthony Kennedy concludes the opinion by writing:

The Nation well knows that one of the costs of the First Amendment is that it protects the speech we detest as well as the speech we embrace. Though few might find respondent’s statements anything but contemptible, his right to make those statements is protected by the Constitution’s guarantee of freedom of speech and expression. The Stolen Valor Act infringes upon speech protected by the First Amendment.<sup>197</sup>

The point of the matter is that the *consensus iuris* is a fundamental aspect of the inner structure of the First Amendment. The *consensus iuris* was fundamental to the understanding of constitutionality in antiquity, to Cicero, as much as it is fundamental to *us*, in our modern political world, as is demonstrated by the case *United States v. Alvarez*.

To sum up, Arendt’s reactivation of the Greek understanding of νόμος and of the Roman understanding of *lex* present two legal concepts that shed light into the inner structure of the First

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<sup>195</sup> Rose, “Summary of United States v. Alvarez”.

<sup>196</sup> Rose, “Summary of United States v. Alvarez”.

<sup>197</sup> *United States v. Alvarez* 617 F. 3d 1198, p 18.

Amendment. The First Amendment following the Greek concept of law (*vóμος*) creates a boundary between two powerful entities; a wall is created between the established power of the Government and the ever new, the ever-beginning power of the public realm. The First Amendment following the Roman concept of law (*lex*) creates the possibility for a society to come together, for the emergence of “[the] *res publica*, the life of public affairs;”<sup>198</sup> *lex* (ley), “here then the law is something that establishes new relationships between men ... .” But, Arendt explains, “the Roman *lex*, which was very different from and even *contrary* [emphasis added] to what the Greeks understood by *nomos*,”<sup>199</sup> — *vóμος* and *lex* are antinomical, they are contradictory. From this follows that the First Amendment is positive law that is rooted in a contradiction. Furthermore, in a radical sense, by negatively applying divine law, the First Amendment creates a positive law for religious tolerance. Additionally, the First Amendment protects the *consensus iuris*. The First Amendment, therefore, is that “mechanism, built into the very heart of government.”<sup>200</sup> This is the principal model that sheds light to the foundational crisis caused by Totalitarianism. The First Amendment creates a wall that protects the space for a political active life, a *vita activa*, of speech and action and civil disobedience.

## 2.4. The Vita Activa and Civil Disobedience

Arendt defines the *Vita Activa* by designating, “three fundamental human activities: labor, work, and action.” From these three fundamental activities it is “Action” which is fundamental to this attempt. Action, Arendt explains, is the “only activity that goes on directly between men without the intermediary of things or matter, corresponds to the human condition of plurality, to

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<sup>198</sup> Arendt, “Introduction to Politics”, 180.

<sup>199</sup> Arendt, “Introduction to Politics”, 178-179. Arendt juxtaposes the contradictoriness between the Greek *vóμος* and the Roman *lex* in *The Human Condition*, 63 n.62, and also in *On Revolution*, 179.

<sup>200</sup> Arendt, *On Revolution*, 143.

the fact that men, not Man, live on the earth and inhabit the world.”<sup>201</sup> Action and plurality are intertwined. In order to substantiate her claim about the pluralistic condition of politics, Arendt revisits the Roman and Hebrew traditional thoughts by analyzing their speech, their manner of linguistically representing themselves. From the Roman tradition Arendt points out, “the Romans, perhaps the most political people we have known, used the words ‘to live’ and ‘to be among men’ (*inter homines esse*) or ‘to die’ and ‘to cease to be among men’ (*inter homines esse desinere*) as synonyms,”<sup>202</sup> in order to explain plurality. From the Hebrew tradition Arendt employs the story of *Genesis* to explain action; “the human condition of action is implicit even in *Genesis* (‘Male and female created He *them*’)” — the creation of the “them” entangles plurality with action. Arendt refines her thinking concerning plurality and action in “§24. The Disclosure of the Agent in Speech and Action” of *The Human Condition*, writing:

Human plurality, the basic condition of both action and speech, has the twofold character of equality and distinction. If men were not equal, they could neither understand each other and those who came before them nor plan for the future and foresee the needs of those who will come after them. If men were not distinct, each human being distinguished from any other who is, was, or will ever be, they would need neither speech nor action to make themselves understood.<sup>203</sup>

Here Arendt has further refined what she has in mind when speaking of the *Vita Activa* as action. Action and speech are intertwined. In the condition of plurality human beings are equal but distinct. For Arendt equality does not imply homogeneity.

It is the fact that a heterogeneity of equals exists that makes speech and action critical for human existence. Totalitarianism, in its most fundamental violence towards human beings, attempts to destroy this heterogeneity of equals, by homogenizing human beings into a total unit

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<sup>201</sup> Arendt, *The Human Condition*, 7.

<sup>202</sup> Arendt, *The Human Condition*, 7-8.

<sup>203</sup> Arendt, *The Human Condition*, 175-177.



of, “endlessly reproducible repetitions of the same model ... .”<sup>204</sup> Existentially, Arendt asserts, it is through Speech and Action that the distinctness among human beings is asserted,

Speech and action reveal this unique distinctness. Through them, men distinguish themselves instead of being merely distinct; they are the modes in which human beings appear to each other, not indeed as physical objects, but *qua* men.<sup>205</sup>

Because Speech and Action asserts the heterogeneous existence of human beings amongst human beings it is the quintessence of humanity<sup>206</sup>,

A life without speech and without action, on the other hand—and this is the only way of life that in earnest has renounced all appearance and all vanity in the biblical sense of the word—is literally dead to the world; it has ceased to be a human life because it is no longer lived among men [human beings].<sup>207</sup>

The preservation of speech and action is integral to the preservation of one’s being in the world.

This internal mechanism of the *consensus iuris* written into the First Amendment, that is “to petition the Government for a redress of grievances,” creates the mechanism that preserves the quintessence of humanity. Arendt explains the power of speech and its intertwine with action by analyzing Ancient Greek drama, she writes,

Man cannot defend himself against the blows of fate, against the chicanery of the gods, but he can resist them in speech and respond to them, and thought the response changes nothing, neither turning ill fortune aside nor prompting good fortune, such words belong to the even as such. If words are of equal rank with the event, if, as is said at the end of *Antigone*, “great words” answer and requite “great blows struck from on high,” then what happens is itself something great and worthy of remembrance and fame. Speech in this sense is a form of action, and our downfall can become a deed if we hurl words against it even as we perish.<sup>208</sup>

But how to act when our words fail to be heard?

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<sup>204</sup> Arendt, *The Human Condition*, 8.

<sup>205</sup> Arendt, *The Human Condition*, 176.

<sup>206</sup> The technical developments of labor and the interaction with the physical world, without a doubt have improved the quality of life for human beings; but the humanities are what define and further develop the essentiality of humanness, by furthering the perfection of our being in the world.

<sup>207</sup> Arendt, *The Human Condition*, 176.

<sup>208</sup> Arendt, “Introduction to Politics”, 125.

Arendt explains that,

... the First Amendment unequivocally defends only “the freedom of speech and of the press,” whereas the extent to which “the right of the people peacefully to assemble and to petition the government for a redress of grievances” protects freedom of action is open to interpretation and controversy. According to Supreme Court decisions, “conduct under the First Amendment does not enjoy the same latitude as speech does,” and “conduct, as opposed to speech, is [of course] endemic” to civil disobedience.<sup>209</sup>

What Arendt is pointing out is the unclear basis on which “civil disobedience” can stand on.

Regardless of the realization that Arendt arrives at through the reading of the First Amendment presented above, Arendt advocates for civil disobedience to be established as an institution. “The establishment of civil disobedience among our political institutions might be the best possible remedy for the ultimate failure of judicial review.”<sup>210</sup> Arendt recognizes that, “the civil disobedient is a member of a group, and this group whether we like it or not, is formed in accordance with the same spirit that has informed voluntary associations.”<sup>211</sup> Arendt points out that,

civil disobedience arises when a significant number of citizens have become convinced either that the normal channels of change no longer function, and grievances will not be heard or acted upon, or that, on the contrary, the government is about to change and has embarked upon and persists in modes of action whose legality and constitutionality are open to grave doubt.<sup>212</sup>

What is distinctive about civil disobedience is the assembly of a group of people acting together without the use of violence. Arendt is very clear about this requirement. Arendt writes,

*... the only one that can justify their being call “rebels” is the means of violence [emphasis added].* Hence, the second generally accepted necessary characteristic of civil disobedience is nonviolence, and it follows that “civil disobedience is not revolution. ... The civil disobedient accepts, while the revolutionary rejects, the frame of established authority and the general legitimacy of the system of laws.”<sup>213</sup>

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<sup>209</sup> Arendt, “Civil Disobedience”, 82-83.

<sup>210</sup> Arendt, “Civil Disobedience”, 101.

<sup>211</sup> Arendt, “Civil Disobedience”, 98.

<sup>212</sup> Arendt, “Civil Disobedience”, 74.

<sup>213</sup> Arendt, “Civil Disobedience”, 77.

Violence, as it has been explained above, dissolves power. The power inherent to the civil disobedient is the plurality to which they belong to, and the speech that they enact; “violence begins where speech ends,” at this point, the civil disobedient(s) becomes a rebel (this change can occur in an instance).

Arendt calls for the establishment of civil disobedience as a political institution. Arendt calls for “the same recognition for the civil-disobedient minorities that is accorded the numerous special-interest groups;”<sup>214</sup> special interest groups such as “registered lobbyist ... [who] are permitted to influence and ‘assist’ Congress by means of persuasion.”<sup>215</sup> Secondly, Arendt critically calls out the judicial assertion pointed out above that,

the First Amendment neither in language nor in spirit covers the right of association as it is actually practiced in this country—this precious privilege whose exercise has in fact been (as Tocqueville noted) ‘incorporated with the manners and customs of the people’ for centuries.<sup>216</sup>

The advocacy Arendt calls for concerning Civil Disobedience sounds radical, but it is politically reasonable. Especially in the shadow of the potential existence of Totalitarianism.

Hannah Arendt is confronted with the existential problem presented by the rise of Totalitarianism. The crisis that is caused by Totalitarianism is the foundational to modern politics. Totalitarianism, “operates neither without guidance of law nor is it arbitrary, for it claims to obey strictly and unequivocally those laws of Nature and of History from which all positive laws always have been supposed to spring.”<sup>217</sup> In order to present a possible solution to this fundamental problem of modern politics Arendt systematically reassesses Constitutionalism in order to find a foundational principle that can help guide future emerging constitutions, and

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<sup>214</sup> Arendt, *Civil Disobedience*, 101.

<sup>215</sup> Arendt, *Civil Disobedience*, 101.

<sup>216</sup> Arendt, *Civil Disobedience*, 101.

<sup>217</sup> Arendt, *Origins of Totalitarianism*, 461.

protect present constitutional orders, from disintegrating into Totalitarianism. Revolutions are the prior conditions to modern attempts at found constitutional orders. The sacredness of foundation is not related to the assertion of prime mover, or an absolute beginner; the sacredness of foundation is the willingness to initiate a constitution when facing the abyss of freedom, when facing the nothingness. What Arendt finds and analysis is the internal mechanism for the power that is written as the First Amendment. These findings are incorporated by Arendt into an existential philosophy, that is *The Human Condition* and *The Life of the Mind*. But Arendt's continual analysis of the problem the emergence of Totalitarianism presents to the modern world is not restricted to the systematic analysis as exemplified by *The Origins of Totalitarianism* or *On Revolution*. Arendt continues her study of Totalitarianism at the individual level, at the level of the isolated person. This is what one learns from her analysis of Eichmann in *Eichmann in Jerusalem*, and it is her findings of that isolated man that speaks much more directly to each one of us who can read and understand the analysis that she presents.

## Chapter 3. Arendt's Study of a Totalitarian Atomized Man and a Personal Reflection on Arendt

This chapter is divided into two subsections. Subsection 3.1 concentrates on a narrow analysis concerning the law-abiding defense Arendt reports on in *Eichmann in Jerusalem*. Subsection 3.2 presents some concluding personal reflections about my study of Arendt.

### 3.1: The Case of Eichmann – the Atomized *cliché*

Arendt's *Eichmann in Jerusalem* has been at the center of controversy from the moment her report “appeared in *The New Yorker* from February 16 to March 16, 1963.”<sup>218</sup> Norberg explains the manner Arendt's work was received by her readership, Norberg writes:

To many of the first readers and reviewers of *Eichmann in Jerusalem*, Arendt's approach—or her lack of one—was part of the problem with the book. Originally reporting for the magazine the *New Yorker*, Arendt seemed to speak as a member of an urbane literary elite who aimed to dazzle rather than to analyze, and her report was criticized as impressionistic, perversely concerned with its own brilliance, and attuned to aesthetic rather than moral values.<sup>219</sup>

What are the controversies that surround Arendt's *Eichmann in Jerusalem*? Rabinbach lists four controversies that surround Arendt's *Eichmann in Jerusalem*, explaining:

To varying degrees almost all her critics took up Arendt's most controversial points: [1] her characterization of Eichmann as a thoughtless and “banal” cipher of totalitarian rule, [2] her judgments of the behavior of the Jewish leaders and Zionist official in Eastern Europe, [3] her analysis of legal charges against Eichmann, [4] and her accusation that the court proceedings were, in effect, a “show trial.”<sup>220</sup>

From the four controversies that Rabinbach lists, the most pertinent controversy for this thesis is the first controversy, namely Arendt's, “characterization of Eichmann as a thoughtless and

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<sup>218</sup> Rabinbach, “Eichmann in New York”, 97.

<sup>219</sup> Norberg, “The Political Theory of the Cliché”, 74.

<sup>220</sup> Rabinbach, “Eichmann in New York”, 97.

‘banal’ cipher of totalitarian rule.”<sup>221</sup> How has Arendt’s characterization of Eichmann been understood? When analyzing the characterization Arendt presents of Eichmann, there are two points of analysis that serve as points of inquiry: 1) Eichmann’s invocation of Kant’s categorical imperative as a defense, and 2) Eichmann’s cliché-ridden pattern of speech – this manner of speaking leads Arendt to coin, “word-and-thought-defying *banality of evil*,” (which itself has become a cliché). In the following paragraphs three analyses are presented concerning the following: 1) an attempt to understand Eichmann’s evil as not banal; 2) an analysis of Eichmann’s actions within Kantian philosophy; and 3) an analysis of Eichmann’s clichés as political speech. These analyses will serve as a point of departure for my own analysis of Arendt’s *Eichmann in Jerusalem*. My analysis of Arendt is guided by the proposed thesis that: the overarching method of Arendt’s analysis is informed by Existential-Phenomenology.

### 3.1.A: Review of the Literature Concerning *Eichmann in Jerusalem*

Barry Clarke, in the essay “Beyond ‘the Banality of Evil’,” argues that: “it is not entirely clear from her report of the trial of Eichmann exactly what the phrase ‘the banality of evil’,”<sup>222</sup> means.<sup>223</sup> Clarke goes on to argue that,

it was presumably intended to contrast with Kant’s notion of ‘radical evil’ and to convey Eichmann’s appearance in the court as a ‘thoughtless’ individual with no ‘monstrous’, ‘satanic’ or other startingly obvious evil intentions.”<sup>224</sup>

Clarke develops his argument against Arendt’s portrayal of Eichmann as “banal” from the preceding presupposition, and clearly presents his argument, writing:

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<sup>221</sup> Rabinbach, “Eichmann in New York”, 97.

<sup>222</sup> Clarke, “Beyond ‘The Banality of Evil’”, 417.

<sup>223</sup> Though Arendt concludes her book *Eichmann in Jerusalem* with the phrase, “*banality of evil*” without providing an explanation, Arendt in her essay, “Thinking and Moral Considerations,” does provide an explanation of what she meant.

<sup>224</sup> Clarke, “Beyond ‘The Banality of Evil’”, 417.

I conclude that the evil of Eichmann is, *contra* Arendt, not ‘banal’ but ‘heteronomous’, and that Eichmann provides an almost paradigmatic case for understanding the possibility of a free, that is undetermined, agent, who for lack of autonomy is willingly led into doing an evil which otherwise he would not have actively and independently willed.<sup>225</sup>

What is at the heart of Clarke’s argument against Arendt’s analysis of Eichmann? Clarke’s argument develops out of his presupposition that Arendt presents the phrase “banality of evil” in order to compare it to “radical evil.” This presupposition is further developed by Clarke, by presenting Kant’s distinction between the “spontaneity of *Willkür* (which all men have) and the autonomy of *Wille* which is exhibited only in morally good action... .”<sup>226</sup> Clarke goes on to argue that,

Arendt was undoubtedly correct in regarding Eichmann’s *appearance* as banal, but if Eichmann was *truly* banal, that is incapable of reason and thought and will and judgment, he could hardly be held to be morally culpable for his actions. But the apparent absence of these faculties in his appearance was not due to incapacity but to abnegation. The faculties of thinking, willing, and judging may be freely abnegated or the opportunities available to cultivate and develop them freely passed by. The acts of abnegation and neglect are free is guaranteed by *Willkür*, which is a capacity of all sane humans and which cannot be abnegated. Thus, even those who ‘will not to will’ are responsible for their inaction.<sup>227</sup>

Clarke then reappraises Arendt’s portrayal of Eichmann, arguing:

The effect of this absence of judgment is far-reaching. Not only did it mean that Eichmann had no independent standards or means by which he could judge what he was doing; *it also meant that he was at the mercy of others in this respect* [my emphasis added]. In lacking reflective judgment he not only came to speak in clichés and officialese, gave up his potential for active reason and became narrow-minded and prejudiced; he also needed to be led by others in perceiving and assessing the meaning and significance of what he was doing.<sup>228</sup>

Clarke’s reappraised portrayal of Eichmann is very problematic. Clarke’s assessment that, “it also meant that he [Eichmann] was at the mercy of others in this respect,” essentially victimizes

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<sup>225</sup> Clarke, “Beyond ‘The Banality of Evil’”, 418.

<sup>226</sup> Clarke, “Beyond ‘The Banality of Evil’”, 424.

<sup>227</sup> Clarke, “Beyond ‘The Banality of Evil’”, 425.

<sup>228</sup> Clarke, “Beyond ‘The Banality of Evil’”, 420.

Eichmann. And furthermore, reacting to Eichmann's assertion that he "sensed a kind of Pontius Pilate feeling," Clarke argues: "in this act Eichmann effectively surrendered his reflective judgment on these matters to the judgment of others." Again, Clarke's reassessment presents Eichmann as a victim who was influenced by the judgment of others. Given the problematic victimization Clarke's argument leads to, one must seriously reassess the initial presupposition with which Clarke commences his argument. Did Arendt intend her phrase "banality of evil" to be compared to Kant's "radical evil"?

Laustsen and Ugilt (henceforth Laustsen, et al.) in the essay "Eichmann's Kant" adequately commence their analysis by stating: "what was most disturbing in Adolf Eichmann's trial in Jerusalem was his claim that in practice he had followed Kant's categorical imperative."<sup>229</sup> Yes, Eichmann's invocation of Kant as his defense is "most disturbing." But what is even more disturbing than Eichmann's invocation of Kant as a defense, is to indulge Eichmann's feigning of being a Kantian by asking: "But how could he [Eichmann] consider himself to be a Kantian? Moreover, how can it at all be of interest to someone concerned with Kantian moral philosophy to deal with the challenge lurking in Eichmann's claim to Kantianism?"<sup>230</sup> Laustsen et al., both misrepresents Arendt's critique presented in chapter "VIII: Duties of a Law-Abiding Citizen" of *Eichmann in Jerusalem*, and also misrepresents Kant's moral philosophy. There are two points of error in the argument presented by Laustsen et al., these are:

1. "The possibility for Eichmann's distortion is already given in the first formulation of the categorical imperative (to make one's maxim a universal law). The moral law is not obeyed for specific causes but solely because it is a law,"<sup>231</sup> this assumes that Eichmann read Kant's philosophy, a point that is dismantled by Arendt in her own analysis.

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<sup>229</sup> Laustsen et al., "Eichmann's Kant", 166.

<sup>230</sup> Laustsen et al., "Eichmann's Kant", 166.

<sup>231</sup> Laustsen et al., "Eichmann's Kant", 167.



2. “The real challenge of Eichmann’s Kant is found in the idea that Eichmann in a sense establishes an actual fulfillment of the project of Kantian moral philosophy. He successfully integrates the universal moral law in the particular and phenomenal (in the figure of the *Führer*), thus allowing reason to come to terms with itself as practical reason,” this line of reasoning is utter nonsense.

A diligent reading of Arendt’s chapter “VIII” demonstrates that the initial assumption made by Laustsen et al., namely that Eichmann read Kant, is erroneous, and therefore the second point of “the real challenge of Eichmann’s Kant” is non sequitur.

Norberg, in the essay “The Political theory of the Cliché: Hannah Arendt Reading Adolf Eichmann,” presents a great interpretation of Arendt’s analysis of clichés. Norberg interprets Arendt’s analysis of Eichmann’s clichés as an argument against psychology. According to Norberg,

Arendt’s focus on cliché in *Eichmann in Jerusalem* indicates that she may have been more affiliated with the idiosyncratic sensibilities of literary authors such as Flaubert and Kraus than with the scientific gaze of a contemporary social psychologist. Indeed, *Eichmann in Jerusalem* not only makes a case for the validity of the aversion of clichés as a device when determining Eichmann’s fatal inabilities. The report in effect argues that it is a superior instrument of analysis, a position that emerges in Arendt’s discussion of alternative diagnoses, such as those delivered by the many psychiatrists called in to profile Eichmann.<sup>232</sup>

Norberg is correct to point out the linguistic analysis carried out by Arendt. Furthermore, Norberg points out that,

To Arendt, the psychiatric technique of examination and testing, insofar as they are geared toward the classification of an individual along a scale from normal to pathological, are therefore less illuminating in the Eichmann case, in which the problem is not that the accused cannot be identified as a member of a certain type, but that he is, as the perfect medium of a jargon, nothing beyond a type.<sup>233</sup>

Norberg’s analysis is valid. But the point of disagreement with his analysis rests on Norberg’s inability to identify the primary method of analysis Arendt applies. Arendt is not presenting a

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<sup>232</sup> Norberg, “The Political Theory of The Cliché”, 87-88.

<sup>233</sup> Norberg, “The Political Theory of The Cliché 88.

psychological analysis of Eichmann, instead Arendt is bracketing psychology as a method of analysis. Arendt is not analyzing Eichmann as a psychological patient that is being fitted into a predefined psychic category; rather, Arendt is analyzing Eichmann as an existential phenomenon, this kind of analysis is much more primitive and perceptive.

To sum up, there are three problems that will guide my analysis of Arendt's *Eichmann in Jerusalem*. These problems are: 1) what is the intention behind Arendt's expression "banality of evil"? 2) what is the critique Arendt presents of Eichmann in chapter "VIII" of *Eichmann in Jerusalem*?; 3) how does one come to understand the cliché as part of a broader analysis of Eichmann as an existential phenomenon?

### **3.1.B: Arendt's Existential-Phenomenological Analysis of Eichmann**

Arendt's method of analysis is an existential-phenomenological analysis. As has been explained previously in the introduction to this thesis, Arendt seeks the contradictions of the observed phenomenon (of the thinker being analyzed, e.g., of Augustine, or Marx; or the system being analyzed such as in politics, the politically opposite Nazi and Stalinist regimes are employed)—the contradictions serve as a marker of the boundary of that phenomenon. This seeking of contradictions is a direct adaptation of the teachings of Jaspers who explains that, "reality appears as the play of antithetical forces that yield results by exclusion, by compromise, or by synthesis."<sup>234</sup> Once the contradictions, or antinomies, are found in the phenomenon (or the existent phenomenon in the case of Eichmann) then a phenomenological analysis back to the origins is carried out. Jaspers explains: "in philosophy the greatest efforts have been made to *overcome* contradictions by bringing them into the original thought, not to *resolve* them by

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<sup>234</sup> Jaspers, *Philosophy Vol. 2*, 218.

rational elimination.”<sup>235</sup> Jasper’s teaching leads one to the methodology of Husserl. Arendt adopts this secondary resolution of contradictions from Husserl who explains that,

Wherever we meet with animals and men and cultural objects (implements, works of art, or whatever), we no longer have mere nature but the expression of mental being-sense. Then we are carried beyond the domain of what is given in simple sensuous perception.<sup>236</sup>

But how does one reach the originaive intention of the phenomenon? Husserl explains:

In order to attain the truly ultimate and original self-evidence of prepredicative experience, we must go back *from these founded experiences to the simplest, and thus leave all expression out of play.*

Arendt interprets and develops Husserl’s *Origin* (originär) early on in her analysis of Augustine.

Arendt writes: “Man initiates the quest for his own being—by asserting ‘I have become a question to myself’;”<sup>237</sup> here Arendt expresses the initial (initium) self-reflective act towards thinking. Thinking, in its very original sense, is the dialogue one has with oneself—“it is this *duality* of myself with myself that makes thinking a true activity, in which I am both the one who asks and the one who answers.”<sup>238</sup> So how does Arendt apply this existential-phenomenological analysis to the existential phenomenon of Eichmann?

In order to search for contradictions, Arendt diligently describes the history of Eichmann’s life. Chapters “II” through “VII” of *Eichmann in Jerusalem* present to the reader a detailed examination of every stage of Eichmann’s life, commencing with his early life leading to his initial involvement with the Nazi party and culminating with his participation in the Wannsee Conference. There is nothing outstanding about Eichmann’s life. Eichmann’s early life

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<sup>235</sup> Jaspers, *Philosophy Vol. 1*, 264.

<sup>236</sup> Husserl, *Experience and Judgment*, 55.

<sup>237</sup> Arendt, *Love and Saint Augustine*, 57.

<sup>238</sup> Arendt, *The Life of the Mind/Thinking*, 185.

is not extraordinary, “since he ‘had not exactly been the most hard-working’ pupil.”<sup>239</sup>

Eichmann’s early involvement with the Nazi party was not original, as Arendt explains it:

[Eichmann] did not enter the Party out of conviction, nor was he every convinced by it—whenever he was asked to give his reasons, he repeated the same embarrassed clichés about the Treaty of Versailles and unemployment; rather, as he pointed out in court, “it was like being swallowed up by the Party against all expectations and without previous decision. It happened so quickly and suddenly.” He had no time and less desire to be properly informed, he did not even know the Party program, he never read *Mein Kampf*.<sup>240</sup>

Eichmann just joined the Nazi party without caring for, or wanting to know, what the aim of the party was. This same lack of care, or desire to know is a constant feature of Eichmann’s decisions throughout his career in the party. Arendt explains,

[Eichmann] seems to have known nothing either of the nature of the S.D. when he entered it; this is quite possible, because the operations of the S.D. had always been top secret. As far as he was concerned, it was all a misunderstanding and at first “a great disappointment. For I thought this was what I had read in the *Münchener Illustrierten Zeitung*; ... In short, I had mistaken the Security Service of the Reichsführer S.S. for the Reich Security Service ... .”<sup>241</sup>

The point is that Eichmann’s career and his way of being in the world is mediocre.

Aside from the mediocrity of Eichmann’s being in the world, what comes forth from both the transcribed biographical data and the experience of Eichmann, as a phenomenon, is Eichmann’s contrived form of speech. This is what Arendt notices when she is analyzing the mass amount of biographical data for contradictions. What Arendt finds is a contradiction that is spoken through clichés, of which Eichmann is not aware of. This is the observation that gives Arendt insight into the phenomenon of Eichmann. Arendt explains:

... the judges tried to appeal to his [Eichmann’s] conscience, they were met with “elation,” and they were outraged as well as disconcerted when they learned that the accused had at his disposal a different elating cliché for each period of his life and each of his activities. In his mind, there was *no contradiction* [emphasis

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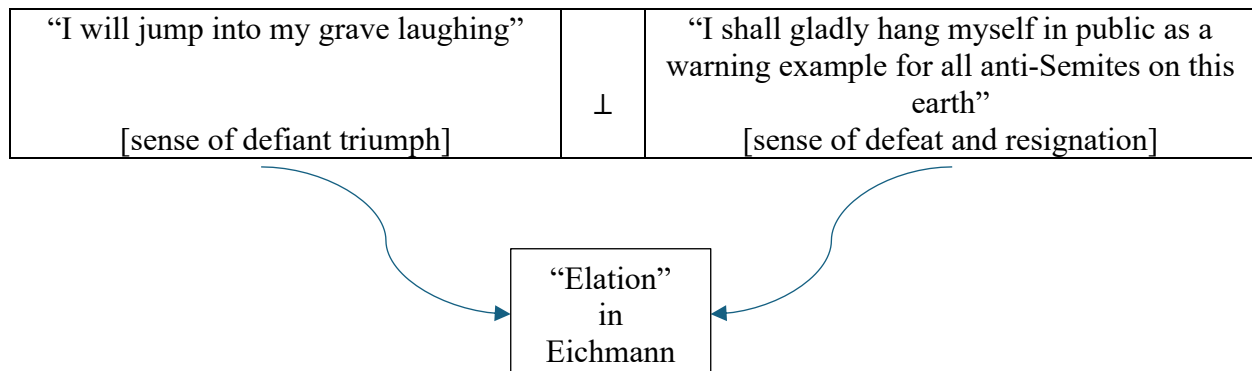
<sup>239</sup> Arendt, *Eichmann in Jerusalem*, 28.

<sup>240</sup> Arendt, *Eichmann in Jerusalem* 33.

<sup>241</sup> Arendt, *Eichmann in Jerusalem* 36.

added] between “I will jump into my grave laughing,” appropriate for the end of the war, and “I shall gladly hang myself in public as a warning example for all anti-Semites on this earth,” which now, under vastly different circumstances, fulfilled exactly the same function of giving him a lift.<sup>242</sup>

How is one to understand the observation just described by Arendt?



“I will jump into my grave laughing” communicates a sense of defiant triumph that *contradicts* the sense of defeat and resignation communicated by “I shall gladly hang myself in public as a warning example for all anti-Semites on this earth;” and yet, the effect these contradictory statements produce is the same: “elation.” Furthermore, Arendt points out other inconsistencies. For example: Eichmann declared that “no judge in the world or any other authority will ever be capable of making me swear an oath, to give sworn testimony,”<sup>243</sup> and yet he preferred “to testify under oath?”<sup>244</sup> Or, Eichmann’s defiance not “to plead for mercy” and yet he “submitted a handwritten document, containing his plea for mercy?”<sup>245</sup> These observations of linguistic contrivances and unaware inconsistencies lead Arendt to the following explanation:

...when he did succeed in constructing a sentence of his own, he repeated it until it became a cliché ... The longer one listened to him, the more obvious it became that his inability to speak was closely connected with an inability to *think*, namely, to think from the standpoint of somebody else. No communication was possible with him, not because he lied but because he was surrounded by the most reliable

<sup>242</sup> Arendt, *Eichmann in Jerusalem* 53-54.

<sup>243</sup> Arendt, *Eichmann in Jerusalem*, 54.

<sup>244</sup> Arendt, *Eichmann in Jerusalem* 55.

<sup>245</sup> Arendt, *Eichmann in Jerusalem*, 55

of all safeguards against the words and the presence of others, and hence against reality as such.<sup>246</sup>

In what sense is Arendt speaking about the action of thinking? And why is the cliché the linguistic phenomenon of non-thinking?

From the perspective of composition theory, “the cliché interferes with conceptions of the writer’s originality, the writer’s propriety in discourse, and the writer’s ownership of meaning.”<sup>247</sup> Students of writing are taught that even though it is difficult to “think outside the box” one must “avoid [clichés] like the plague”. Why are clichés stylistically abhorred? Stylistically, “the cliché does not initiate paradigm shifts; rather, the cliché verifies that one belongs to an existing paradigm, an operating discourse.”<sup>248</sup> Arendt explains that,

Clichés, stock phrases, adherence to conventional, standardized codes of expression and conduct have the socially recognized function of protecting us against reality, that is, against the claim on our thinking attention that all events and facts make by virtue of their existence.<sup>249</sup>

At the core of Arendt’s critique of clichés is a thesis concerning the intertwining of language and thinking. Arendt explains:

Our mental activities, by contrast, are conceived in speech even before being communicated, but speech is meant to be heard and words are meant to be understood by others who also have the ability to speak, just as a creature endowed with the sense of vision is meant to see and to be seen. Thought without speech is inconceivable; “thought and speech anticipate one another. They continually take one another’s place”; they actually take each other for granted.<sup>250</sup>

Following Arendt’s line of thinking concerning the inseparability of thinking and speech one comes to understand the aversion of clichés. Clichés serve as a break between the action of thinking, and the experience of reality. The cliché structures the mental correlate to reality in

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<sup>246</sup> Arendt, *Eichmann in Jerusalem*, 49.

<sup>247</sup> Stark, “Clichés and Composition Theory”, 453.

<sup>248</sup> Stark, “Clichés and Composition Theory”, 456.

<sup>249</sup> Arendt, *The Life of the Mind/Thinking*, 4.

<sup>250</sup> Arendt, *The Life of the Mind/Thinking*, 32.

such a way that it violently distorts the reality to which the language is being applied. For example, as Arendt recounts,

When Eichmann was asked how he had reconciled his personal feelings about Jews with the outspoken and violent anti-Semitism of the Party he had joined he replied with the proverb [a cliché]: “Nothing’s as hot when you eat it as when it’s being cooked.”<sup>251</sup>

But what does this even mean? Finnette explains that the original expression in German is: “Es wird nichts so heiß gegessen, wie es gekocht wird,” and it can come to be understood to mean,

as an expression to signify that we often tend to expect things to be worse than they really are, it equally applies to the world we operate in. One where many of us chase the latest and greatest, always trying to be ahead of the curve, capitalizing on the weakest of signals before they become mainstream.<sup>252</sup>

The original question Eichmann is asked attempts to understand the correlation between the violent reality lived by Jews and his own “personal feelings;” Eichmann responds with a proverbial cliché that signifies that things were not as bad as they seemed. The proverbial cliché Eichmann speaks normalizes the violent reality of *Kristallnacht* and the Nuremberg Laws. But the danger of the distorting power of clichés can be murderous, as Arendt explains.

Eichmann’s defends himself with the cliché excuse that he was a law-abiding citizen. As part of his defense, Eichmann invokes Kant’s moral philosophy. Eichmann effectively makes Kant’s moral philosophy into a cliché. But Eichmann is not a Kantian. One must carefully follow the critique Arendt presents of Eichmann’s defense. By following Arendt’s critique of Eichmann’s defense one will understand why the cliché-ridden manner of speaking of Eichmann is so important for Arendt. The clichés used by Eichmann gave Arendt insight into his self-contradictory nature and into his thoughtlessness.

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<sup>251</sup> Arendt, *Eichmann in Jerusalem*, 39.

<sup>252</sup> Finnette, “Learnings From Cooking (And German Sayings)”

There are two parts to the defense Eichmann presents. The first part of Eichmann's defense claims that he was only being a "law-abiding citizen."<sup>253</sup> Eichmann's claim is that, "he did his *duty* ... he not only obeyed *orders*, he also obeyed the *law*."<sup>254</sup> Eichmann here equivocates duty with following orders and obeying the law (positive law). The second part of Eichmann's defense is the claim Eichmann makes. Eichmann argues, "that he had lived his whole life according to Kant's moral precept, and especially according to a Kantian definition of duty."<sup>255</sup> Eichmann makes an attempt to substantiate his claim to Kantian moral philosophy by presenting,

...an approximately correct definition of the categorical imperative: "I meant by my remark about Kant that the principle of my will must always be such that it can become the principle of general laws."<sup>256</sup>

For purposes of accuracy let us read Kant's words.

There are two locations where one can find Kant's categorical imperative; the first source is the *Critique of Practical Reason*, the second source is the *Groundwork of the Metaphysics of Morals*. Kant's categorical imperative reads: "So act that the maxim of your will could always hold at the same time as a principle of a universal legislation."<sup>257</sup> The categorical imperative also appears in the *Groundwork of the Metaphysics of Morals*: "*act only according to that maxim through which you can at the same time will that it become a universal law*."<sup>258</sup> Eichmann's parroting of the categorical imperative sounds similar to what Kant writes; but it is obvious that Eichmann doesn't understand what Kant is teaching. Eichmann's "duty" and "general laws" are not the same as the "Duty" and "universal legislation" of Kant.

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<sup>253</sup> Arendt, *Eichmann in Jerusalem*, 135.

<sup>254</sup> Arendt, *Eichmann in Jerusalem*, 135.

<sup>255</sup> Arendt, *Eichmann in Jerusalem*, 136.

<sup>256</sup> Arendt, *Eichmann in Jerusalem*, 136.

<sup>257</sup> Kant, *Critique of Practical Reason*, AK 31, p. 45.

<sup>258</sup> Kant, *Metaphysics of Morals*, 4:421, p.34.



First, in the *Critique of Practical Reason*, Kant writes concerning Duty the following:

*Duty!*—you sublime, grand name which encompasses nothing that is favored yet involves ingratiating, but which demands submission, yet also does not seek to move the will by threatening anything that would arouse natural aversion in the mind and terrify, but merely puts forth a law that on its own finds entry into the mind and yet gains grudging veneration (even if not always compliance), a law before which all inclinations fall silent even if they secretly work against it: what origin is worthy of you, and where does one find the root of your noble descent that proudly rejects all kinship with inclinations, the root from which to be descended is the irremissible condition of that worth which human beings alone can give themselves?<sup>259</sup>

Kant's style of writing has been critiqued for being very dry, and convoluted;<sup>260</sup> and yet the passage concerning duty (even though it is one sentence) is *poetically gorgeous*. Duty for Kant is “sublime”—this term is not to be overlooked, because it holds a special place within the structure of Kant's analytical project concerning judgment. Kant develops the concept of the sublime in “Book II. Analytic of the Sublime” in his *Critique of Judgment*; but “Book II. Analytic of the Sublime” contains 32 sections—and so it's important to ask about which section might Kant be alluding to in his description of duty? Arendt presents us with an answer in her *Lectures on Kant's Political Philosophy*, Arendt points us in the direction of “§ 40. On Taste as a Kind of *Sensus Communis*” of “Book II. Analytic of the Sublime” in Kant's *Critique of Judgment*. Kant explains in the *Critique of Judgment*:

...we must [here] take *sensus communis* to mean the idea of a sense *shared* [by all of us], i.e., a power to judge that in reflecting takes account (a priori), in our thought, of everyone else's way of presenting [something], in order *as it were* to compare our own judgment with human reason in general and thus escape the illusion that arises from the ease of mistaking subjective and private conditions for objective ones, an illusion that would have a prejudicial influence on the judgment. Now we do this as follows: we compare our judgment not so much with the actual as rather with the merely possible judgments of others, and [thus]

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<sup>259</sup> Kant, *Critique of Practical Reason*, AK 86, p. 111.

<sup>260</sup> Parfit in the preface to his book *On What Matters* critiques Kant's style of writing in the following manner: “It is Kant who made really bad writing philosophically acceptable. We can no longer point to some atrocious sentence by someone else, and say ‘How can it be worth reading anyone who writes like that?’ The answer could always be ‘What about Kant?’” (Parfit, *On What Matters*, xlii).

put ourselves in the position of everyone else, merely by abstracting from the limitations that [may] happen to attach to our own judging.<sup>261</sup>

Arendt interprets the passage above in the following manner:

After, this, follow the maxims of this *sensus communis*: Think for oneself (the maxim of enlightenment); Put oneself in thought in the place of everyone else (the maxim of the enlarged mentality); and, the maxim of consistency, Be in agreement with oneself (“mit sich selbst Einstimmung denken”).<sup>262</sup>

But what principle guides the “maxim of the enlarged mentality”? The enlarged mentality is guided by the moral law. The moral law that Kant presents is also the origins of duty.

Kant presents the moral law in two locations: (1) the *Critique of Practical Reason*, and (2) *Groundwork for the Metaphysics of Morals*. In the *Critique of Practical Reason*, Kant writes:

Now, this origin is the basis of many expressions that designate the worth of objects according to moral ideas. The moral law is *holy* (inviolable). The human being is indeed unholy enough, but the *humanity* in his person must be holy to him. In all of creation everything one wants and over which one has any power can also be used *merely as a means*; only the human being, and with him every rational creature, is a *purpose in itself*.<sup>263</sup>

Kant here presents the categorical imperative’s corollary that is, the practical imperative. Kant develops the practical imperative in a much simpler manner in his *Groundwork for the Metaphysics of Morals*, writing: “So act that you use humanity, in your own person as well as in the person of any other, always at the same time as an end, never merely as a means.”<sup>264</sup> And furthermore, Kant teaches:

For all rational beings stand under the *law* that each of them is to treat itself and all others *never merely as a means*, but always *at the same time as an end in itself*. But by this there arises a systematic union of rational beings through common objective laws.<sup>265</sup>

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<sup>261</sup> Kant, *Critique of Judgment*, AK 294, p. 160. Arendt quotes the same passage, though translated slightly different, in her *Lectures on Kant’s Political Philosophy*, 71.

<sup>262</sup> Arendt, *Lectures on Kant’s Political Philosophy*, 71.

<sup>263</sup> Kant, *Critique of Practical Reason*, AK 87, p. 112.

<sup>264</sup> Kant, *Groundwork of the Metaphysics of Morals*, 4:429, p. 41.

<sup>265</sup> Kant, *Groundwork of the Metaphysics of Morals* 4:433, p. 45.

Let us sum up what has been analyzed so far concerning Kant's conceptualization of duty: Duty rests on the pillar of the categorical imperative which corollary is the practical imperative, the moral law.

Following the previous short analysis of Kant's moral philosophy, we are now able to more securely understand Arendt's critique of Eichmann's defense. Arendt explains that Eichmann's defense, "was outrageous on the face of it, and also incomprehensible, since Kant's moral philosophy is so closely bound up with man's faculty of judgment, which rules out blind obedience."<sup>266</sup> Eichmann's defense is without merit. Eichmann was not following the moral law that is at the foundation of Kantian-Duty. Instead, Eichmann was following, "the categorical imperative in the Third Reich," which Eichmann might have known: 'Act in such a way that the Führer, if he knew your action, would approve it'.<sup>267</sup> Arendt observes that,

Eichmann tried a number of times to explain that during the Third Reich "the Führer's words had the force of law", ... which meant, among other things, that if the order came directly from Hitler it did not have to be in writing.<sup>268</sup>

Arendt clarifies the law of the land in the Third Reich, writing:

... the law of Hitler's land demanded that the voice of conscience tell everybody: "Thou shalt Kill," although the organizers of the massacres knew full well that murder is against the normal desires and inclinations of most people.<sup>269</sup>

Eichmann's defense, that he was following the spirit of Kantian law albeit distortedly, demonstrates his willfulness to participate in a murderous regime.

Arendt reinforces her critique of Eichmann's defense in *The Life of the Mind*. In *The Life of the Mind* Arendt connects the activity of thinking and its connection with Kant's categorical imperative. Consequently, what Arendt is able to argue is an elaboration of the contradictory

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<sup>266</sup> Arendt, *Eichmann in Jerusalem*, 136.

<sup>267</sup> Arendt, *Eichmann in Jerusalem*, 136.

<sup>268</sup> Arendt, *Eichmann in Jerusalem*, 148.

<sup>269</sup> Arendt, *Eichmann in Jerusalem*, 150.

nature of Eichmann's statements. Arendt explains, that "Thinking, existentially speaking, is a solitary but not a lonely business."<sup>270</sup> It is not a lonely business because when thinking, one is in dialogue with oneself: "since Socrates, thinking was understood as the inner dialogue in which one speaks with himself."<sup>271</sup> This inner dialogue is the two-in-one a, "*duality* of myself with myself that makes thinking a true activity, in which I am both the one who asks and the one who answers."<sup>272</sup> But this duality necessitates that one, "the two who carry on the dialogue be in good shape, that the partners be *friends*,"<sup>273</sup>—in other words, one cannot be against oneself, one cannot contradict oneself. This friendliness with oneself, Arendt shows, is at the heart of Kant's Categorical Imperative. Arendt explains,

Underlying the imperative, "Act only on the maxim through which you can at the same time *will* that it should become a universal law," is the command "Do not contradict yourself." A murderer or a thief cannot will that "Thou shalt kill" and "Thou shalt steal" be general laws, since he naturally fears for his own life and property. If you make yourself an exception, you have contradicted yourself.<sup>274</sup>

In other words, Eichmann's argument that he is was a law-abiding citizen, carrying out the Führer's law: "Thou shalt Kill"—shows that he made an exception to himself and therefore is in contradiction with himself. Furthermore, Arendt explains:

A person who does not know that silent intercourse (in which we examine what we say and what we do) will not mind contradicting himself, and this means he will never be either able or willing to account for what he says or does; nor will he mind committing any crime, since he can count on its being forgotten the next moment.<sup>275</sup>

According to Plato, Socrates spoke at his trial the following words: "...the unexamined life is not worth living for men."<sup>276</sup> What Arendt's analysis shows is that,

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<sup>270</sup> Arendt, *The Life of the Mind/Thinking*, 185.

<sup>271</sup> Arendt, *The Human Condition*, 291.

<sup>272</sup> Arendt, *The Life of the Mind/Thinking*, 185.

<sup>273</sup> Arendt, *The Life of the Mind/Thinking*, 188.

<sup>274</sup> Arendt, *The Life of the Mind/Thinking*, 188.

<sup>275</sup> Arendt, *The Life of the Mind/Thinking*, 191.

<sup>276</sup> Plato, *Apology*, 38a-5, p 33.

A life without thinking is quite possible; it then fails to develop its own essence-it is not merely meaningless; it is not fully alive. *Unthinking men are like sleepwalkers.*<sup>277</sup>

Eichmann was a “sleepwalker”.

Eichmann’s thoughtless nature made an appearance through his pattern of speech that pointed out the self-contradictoriness of his existence. Eichmann’s thoughtlessness made its last appearance before his execution, where he spoke:

After a short while, gentlemen, *we shall all meet again*. Such is the fate of all men. Long live Germany, long live Argentina, long live Austria. *I shall not forget them.*”<sup>278</sup>

Eichmann contradicts himself through his last words and he is not even aware of the contradiction. But unlike Kant who tabulates his antinomies and is aware of both the thesis and antithesis and is fully aware of the contradictory consequences; or Augustine’s “parallel trains of thought” that “defy systematic conjunction” but are developments of the question of how to love one’s neighbor; or Jasper’s awareness of “The Antinomical Structure of Existence”—Eichmann is not aware of his self-contradictoriness. And it is this blind self-contradictoriness expressed by Eichmann’s ill applied clichés, at his last moment of his life, that moves Arendt to speak, “the fearsome, word-and-thought-defying *banality of evil*.”<sup>279</sup> Arendt is clear about the intent of her words, she:

...meant with this not 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 personal distinction was a perhaps extraordinary shallowness.<sup>280</sup>

Finally, Arendt reminds one of how clichés warp reality,

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<sup>277</sup> Arendt, *The Life of the Mind/Thinking*, 191.

<sup>278</sup> Arendt, *Eichmann in Jerusalem*, 252.

<sup>279</sup> Arendt, *Eichmann in Jerusalem*, 252.

<sup>280</sup> Arendt, “Thinking and Moral Considerations”, 159.

Clichés, stock phrases, adherence to conventional, standardized codes of expression and conduct have the socially recognized function of protecting us against reality, that is, against the claim on our thinking attention which all events and facts arouse by virtue of their existence. If we were responsive to this claim all the time, we would soon be exhausted; the difference in Eichmann was only that he clearly knew of no such claim at all.<sup>281</sup>

### 3.1.C: Response to Clarke, Laustsen et al., and Norberg

Clarke's analysis, presented at the beginning of this essay, lead to the question: Did Arendt intend her phrase "banality of evil" to be compared to Kant's "radical evil"? Though Arendt's critique of Eichmann is grounded on a knowledge and understanding of Kant's moral philosophy, there is very little evidence in Arendt's *Eichmann in Jerusalem* that the term "banality of evil" is to be compared to Kant's "radical evil". Additionally, in her essay "Some Questions on Moral Philosophy," Arendt explains that "Kant called the fact that man is tempted to do wrong by following his inclinations "radical evil."<sup>282</sup> Eichmann, as Arendt goes on to show lacked any inclinations; his complicity with the murderous regime was due to his thoughtlessness.

Laustsen, et al. present an extremely disturbing thesis in their essay "Eichmann's Kant". Eichmann doesn't pose a challenge to Kant's moral philosophy in the manner Laustsen, et al. argue. Eichmann is not a Kantian. Eichmann's parroting of Kant's categorical imperative is just that, a parroting that essentially turned Kant into a cliché. This is the true challenge posed by Eichmann to Kant; that is, making Kant into a cliché. Arendt's analysis is an attempt to demonstrate the absurdity of Eichmann's claim.

Norberg's analysis of *Eichmann in Jerusalem* is valid. He is correct in pointing out the clichés that Arendt analyzes. And even though he correctly intuitively the central importance of

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<sup>281</sup> Arendt, "Thinking and Moral Considerations", 160.

<sup>282</sup> Arendt, "Thinking and Moral Considerations", 160.

Arendt's analysis of Eichmann's clichés, Norberg misses the existential-phenomenological method at the heart of Arendt's analysis. The clichés that Arendt analyzes are the phenomena that give Arendt insight into Eichmann's unseen existence. The clichés demarcate Eichmann's self-contradictions, and so his existential thoughtlessness. Eichmann turns out to be a perfect example of an atomized man – a man who as a participant of a regime – is ultimately lonely. Eichmann is lonely because he was unable to “split up into the two-in-one,”<sup>283</sup> that is, Eichmann did not think.

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<sup>283</sup> Arendt, *The Life of the Mind/Thinking*, 185.

### 3.2: Concluding Personal Reflection

Arendt's philosophy presents us, modern political entities, us modern human beings, with indispensable intellectual instruments that can help us navigate through the complexities of our modern political world. Mr. Chief Justice Warren opined that:

Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education.<sup>284</sup>

Following Justice Warren's opinion, Arendt's philosophy is, without a doubt, a necessary requirement in the curriculum of a modern education. Arendt's work not only exposes the student to the contemporary forms of thinking called Existential Philosophy and Phenomenological Philosophy, but also exposes the student to seriously consider ancient philosophy (e.g., Plato, Aristotle, Augustine, amongst others). As Arendt insisted time and time again, one cannot escape from politics in our contemporary world.

The novel constitutional form that was brought about into reality by the American Constitution demands from each individual that reason be well informed, and that judgment be well practiced. To exist within a constitutional order, "presupposes an independent human faculty, unsupported by law and public opinion, that judges in full spontaneity every deed and intent anew whenever the occasion arises"<sup>285</sup>; to be without a king means to not be the subject of an isolated judgment, but to judge our will to be subjects of the law. It is this prerequisite that

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<sup>284</sup> *Brown v. Board of Education*, 347 U.S. 483

<sup>285</sup> Arendt, "Personal Responsibility Under Dictatorship", 41.



makes philosophy indispensable from our political life. Philosophy is a necessary requirement for our contemporary education precisely because one cannot escape from politics; that is, philosophy is intertwined with politics.

I wish I could conclude this thesis on a major chord, by presenting a shining horizon one can expect but the reality is otherwise than what we idealize. As Arendt shows, totalitarianism can emerge from either side of the political spectrum. It does not matter whether the political body spirals to the extreme left or to the right, in the end the modern political structure of totalitarianism is to be expected. Arendt lifts the veil of ignorance by identifying for us what is to be expected in our modern political world: one should expect: a constitutional government or a totalitarian government.

I find the following words spoken by Arendt in 1973 to be resoundingly appropriate for our current state of affairs:

...the present concern with politics in Europe<sup>286</sup> can be traced back to disturbing political experiences, notably the experiences of two world wars, totalitarian regimes,<sup>287</sup> and the dreaded prospect of atomic war. In one respect these events found philosophy better prepared for and the philosophers more willing to acknowledge the relevance of political happenings than they had been in the past.<sup>288</sup>

The totalitarian goal to destroy the plural nature of a community and make it into a singular-mass manipulated through terror and programmed by the ideology of a strong-man, that Arendt presents, requires us to reconsider our relationship with constitutionality.

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<sup>286</sup> The current war in Ukraine serves as the primary example of our current political experience.

<sup>287</sup> Russia exemplifies the elements of a totalitarian regime: Putin acts as a despotic isolated leader, who terrorizes his own people, who employs the law of history to ideological support the atrocities against an equally sovereign, yet less powerful, state.

<sup>288</sup> Arendt, "Concern with Politics", 431.

Arendt's own experience in "New York in October 1973,"<sup>289</sup> expressed in the following words, powerfully speak to our own current domestic political crisis:

... this constitutional crisis consists—for the first time in the history of the United States—in a dead-on clash between the legislative and the executive. And here the Constitution itself is somehow at fault, and I would like to talk about that for a moment. The Founding Fathers never believed that tyranny could arise out of the executive office, because they saw this office as the executor of what the legislative decreed. ***We know today that the greatest danger of tyranny is from the executive*** [emphasis added].<sup>290</sup>

But what does Arendt mean when she explains that "the Founding Fathers never believed that tyranny could arise out of the executive office"? Immediately one is drawn to the following distinction made between a President and a King:

The President of the United States *would be an officer elected by the people* [emphasis added] for *four* years; the king of Great Britain is a perpetual and *hereditary* prince. The one [the President] would be amenable to *personal punishment and disgrace*<sup>291</sup>; the person of the other [the king] is sacred and inviolable. The one [the President] would have a *qualified* negative upon the acts of the legislative body; the other [the king] has an *absolute* negative. ... The one [the President] *has no particle of spiritual jurisdiction*<sup>292</sup>; the other [that is the king] is the supreme head and governor of the national church!<sup>293</sup>

Yet, Arendt's words of 1973—and *our current political crisis*—points out that,

National security now covers everything, and it covers, as you may know from the interrogation of Mr. Ehrlichman, all kinds of crime. For instance, "the president has a right" is now read in the light of "the king can do no wrong"; that is, ***the president is like a monarch in a republic*** [emphasis added]. He's above the law, and his justification is always that whatever he does, he does for the sake of national security.<sup>294</sup>

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<sup>289</sup> Arendt, "Interview with Roger Errera", 489.

<sup>290</sup> Arendt, "Interview with Roger Errera", 492.

<sup>291</sup> [emphasis added]

<sup>292</sup> [emphasis added]; how does one understand the words expressed by Hamilton that the President, "*has no particle of spiritual jurisdiction*"? Madison presents the answer: "And in a Govt of opinion, like ours, the only effectual guard must be found in the soundness and stability of the general opinion on the subject. Every new & successful example therefore of *a perfect separation between ecclesiastical and civil matters, is of importance* [emphasis added]. And I have no doubt that every new example, will succeed, as every past one has done, in shewing that religion & Govt will both exist in greater purity, *the less they are mixed together* [emphasis added]," (Madison, *The Complete Madison*, 309).

<sup>293</sup> Hamilton, *The Federalist Papers*, "No. 69: The Real Character of the Executive", 420-421.

<sup>294</sup> Arendt, "Interview with Roger Errera", 493.

The point is this: The American Republic is not immune from tyrannical temptations, understood in the traditional sense, which should always be the fear of all its citizens, of all of us. But what is terrifying, is the possibility of a complete collapse into a state of totalitarianism. Watergate presented for Arendt, as does our current political circumstances, with a constitutional crisis where, “it’s the whole fabric of government which actually is at stake;”<sup>295</sup> specifically: this constitutional crisis poses an existential threat to all of us as equal citizens under the law. Put simply, expanding on the example presented by Arendt: if the president is recognized by the court to have special legal privileges, then that individual is granted a status above everyone else, and so the very idea of republicanism immediately ceases to exist.

The most recent interview of Ex-president Trump, conducted by the *Time Magazine*,<sup>296</sup> presents a barrage of responses that indicate the authoritarian bearing of Mr. Trump. Firstly, one must remember that in 2022 the ex-president can be quoted having said:

A Massive Fraud of this type and magnitude allows for the termination of all rules, regulations, and articles, *even those found in the Constitution* [emphasis added].<sup>297</sup>

It is difficult to understand, but not impossible to find reasons, as to why this statement does not *immediately* disqualify Mr. Trump from holding the executive office. Mr. Trump’s discontented slip of the tongue is revelatory. Notice that Mr. Trump is in contradiction to himself and that he does not even realize it. Mr. Trump, simultaneously, both (A) wants to be president of the United States which is a constitutional order, and (B) is calling out for the termination of the

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<sup>295</sup> Arendt, “Interview with Roger Errera”, 492.

<sup>296</sup> “Former President Donald Trump sat down for a wide-ranging interview with TIME at his Mar-a-Lago Club in Palm Beach, Fla., on April 12, [2024] and a follow-up conversation by phone on April 27 [2024],” and was interviewed by Eric Cortellessa. A full transcript of the interview can be found at: <https://time.com/6972022/donald-trump-transcript-2024-election/>.

<sup>297</sup> Demirjian et al., “White House rebukes Trump’s suggestion to suspend Constitution over 2020 election”.

Constitution. Following Arendt's model, Mr. Trump then is *thoughtless*. So, either Mr. Trump is thoughtless, or he is an authoritarian. Either way, Mr. Trump poses a great threat to the rest of we citizens of the republic. How dictatorial Mr. Trump's argument is, was clearly presented before the Colorado Courts; Mr. Trump's argument intends for the President to be above the Constitution, above the laws of the United States:

"The framers excluded the office of President from Section Three purposefully," [and that]... "Section Three does not apply, because the presidency is not an office 'under the United States,' the president is not an 'officer of the United States,' and President Trump did not take an oath 'to support the Constitution of the United States.'"<sup>298</sup>

Mr. Trump's claim is contradictory to the traditional understanding of the oath of presidency,

I appear before you to address you briefly, and to take, in your presence, the oath prescribed by the Constitution of the United to be taken by the President "before he enters on the execution of his office."<sup>299</sup>

But Mr. Trump's authoritarian mindset is clearly revealed by the response he gave to Cortellesa, who asked:

Well on that question, your lawyer, John Sauer, argued in court recently that if you as President ordered a Navy SEAL team to assassinate a political rival, you shouldn't be prosecuted. Do you agree with your lawyer?<sup>300</sup>

To which Mr. Trump responded:

Well, I understood it differently. I thought it was a political rival from another country. I think I understood it differently, and I'm not sure. And John Sauer also said that first you go through an impeachment and then you make that determination based on impeachment. But a president, if you don't don't [sic] have immunity from prosecution, fairly strong immunity from prosecution. Now, if you do something just overtly very bad and very stupid, that's a different situation. That may be one of those cases.<sup>301</sup>

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<sup>298</sup> Palmer, "Donald Trump Says He Never Swore Oath 'to Support the Constitution'".

<sup>299</sup> Lincoln, "First Inaugural Address", 215.

<sup>300</sup> Cortellesa, Eric, "Read the Full Transcripts of Donald Trump's Interviews With TIME". Cortellesa is referring to the argument presented by John Sauer representing Mr. Trump at the Supreme Court when arguing for Absolute Presidential Immunity.

<sup>301</sup> Cortellesa, Eric; "Read the Full Transcripts of Donald Trump's Interviews With TIME"

Here Mr. Trump, again by the slip of his tongue, reveals his authoritarian mindset. Instead of denying the violent and lawless retribution against a political rival, Mr. Trump qualifies his response by pretending to understand the question to mean, “a political rival from another country,” which is an absurdity. Firstly, the very fact that Mr. Trump did not reject the use of violence against a political rival only indicates his willfulness for such violence if allowed. Secondly, the response Mr. Trump presents to Cortellessa is absurd because how can the statement “a political rival” be understood to mean, “a political rival from another country”? A political rival only exists within the same political jurisdiction one is in. “[A] political rival from another country” can only exist if a political rival goes abroad, (e.g. like when Trotsky left Russia for Mexico, and who was then assassinated in Mexico by Stalin).

Finally, Mr. Trump was asked by Cortellessa:

You said you only want to be dictator for a day. What did you mean by that?

[to which Mr. Trump responded]: That was said sarcastically as a joke on Sean Hannity. He said, “Do you want to be a dictator?” I said, “Only for one day. I want to close up the border and I want to drill, baby, drill.” Then I said, “After that, then I never want to be a dictator.” That was done. That was said sarcastically. That was meant as a joke. Everybody knows that.

Instead of wholly denying any attempts to become a dictator Mr. Trump answers by repeating political clichés, such as: he wants “to close up the border” and “to drill, baby, drill.” In our contemporary age, dictatorships are not a laughing matter. North Korea, Syria, and the Authoritarian Regime of Putin in Russia, to name a few, are existential demonstrations of the abhorrent form of political life these regimes can offer. One day of dictatorship is a day too many; and given the pattern of authoritarians throughout history, and this is well known, that one day of dictatorship would be perpetuated indefinitely. And if there is a common denominator to

all authoritarian leaders, it is that they have no sense of humor.<sup>302</sup> Humor is the artistic pinnacle of the freedom of speech, that brings forth the contradictions of our reality in order to laugh at them. Authoritarian leaders have no sense of humor because humor, being the freedom of speech, is an affront to their own authoritarian dicta.

I would like to conclude by reminding the reader of the courageous words publicly spoken against fascism by that Quixotesque Existential Philosopher Don Miguel de Unamuno,<sup>303</sup> at the Ceremonial Hall of the University of Salamanca. Unamuno directly and gorgeously responded to the fascist dictum: “‘Muera la Inteligencia!’ – ‘To death with Intelligence!’”<sup>304</sup> Don Miguel responded to the fascist dictum the following gorgeous words:

This is the temple of intellect. And I am its high priest. It is you who are profaning its sacred precincts. ... I have always, whatever the proverb may say, been a prophet in my own land. You will win, but you will not convince. You will win, because you possess more than enough brute force, but you will not convince, because to convince means to persuade. And in order to persuade, you would need what you lack—reason and right [lawfulness] in the struggle. I consider it futile to exhort you to think of Spain. I have finished.

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<sup>302</sup> Trump is the well known for having snubbed the correspondents’ dinner, which is known for the traditional roasting of the president. According to CNN, “Donald Trump and his wife, Melania, attend the correspondents’ dinner in 2015. They didn’t attend any of the dinners while he was president,” (Wollenberg).

<sup>303</sup> Miguel de Unamuno was Rector of the University of Salamanca in 1936.

<sup>304</sup> Portillo, “Epilogue: Unamuno’s Last Lecture”, 270; the words were spoken by the fascist General Millan Astray at the Ceremonial Hall in the University of Salamanca. “Death to Intelligence” is death to the freedom to speak because it is through speech that intelligence makes itself be known.

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## Vita

I am originally from El Paso, Texas. After graduating in 2008 from Jefferson Highschool, I went to study in the Great Books Program at St. John's College in Santa Fe, NM. After my sophomore year I returned to El Paso, Texas where I enrolled at the University of Texas at El Paso for one academic year. I continued my studies in philosophy which culminated in reading Kant's treatise on art the *Critique of Judgment*, with the guidance of Dr. Simon. It was through this seminar that I first encountered the work of Hannah Arendt. Arendt's *Lectures on Kant's Political Philosophy* revealed to me the political aspects of Kant's *Critique of Judgment*; I finished my introductory studies on Kant with an essay *On Art as the Midwife to Politics*. I returned to St. John's College in Santa Fe, NM to finish my last two years of college. After finishing my studies at St. John's College I then joined the U.S. Navy. I served as an Aviation Electronics Technician for five years. While in the Navy I did not stop my readings in philosophy. After separating from the Navy, I decided to complete my B.A.; this was accomplished by writing my first extended academic paper entitled: *On the Concept of Imaginary Number in Descartes's The Geometry: A Study of the Structural Development of Descartes's Concept of Imaginary Number from Antiquity to The Geometry*. After successfully defending my undergraduate senior paper, I was conferred the B.A. degree in Philosophy and the History of Math and Science. After completing the B.A. I enrolled at the El Paso Community College where I successfully completed a certification in paralegal studies. While completing the paralegal studies at the El Paso Community College, I revisited the work of Hannah Arendt. Her dissertation *Love and Saint Augustine* was a decisive factor for me to pursue the M.A. in philosophy. This thesis is the culmination of my studies in philosophy so far. I now work as a legal assistant.