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Before Adolf Eichmann: A Kafkian Analysis of the ‘Banality Of Evil’¹

Abstract

Arendt’s account of Adolf Eichmann as acting only out of banal intentions remains controversial. I supplement our understanding of the “banality of evil” by demonstrating that Arendt also meant it to describe a factual social arrangement characterized by a form of false consciousness. I apply an original interpretation of Kafka’s *The Trial* to *Eichmann in Jerusalem*, and I show that Eichmann’s trial was “before” him in the same way as the Kafkian man from the country is “before” the Law.

Keywords

Arendt, Kafka, Banality of Evil, Eichmann, Crimes against Humanity

Introduction

Ever since Hannah Arendt published *Eichmann in Jerusalem* (henceforth, *EJ*) in the early 1960s, almost every aspect of her analysis and critique of Adolf Eichmann’s trial has been scrutinized, which has been mostly directed at the accuracy of Arendt’s description of Adolf Eichmann as embodying “the banality of evil.” Arendt’s account of Eichmann as a facilitator of state-sponsored genocide acting only out of commonplace (*viz.* banal) intentions still

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generates controversy.² In this essay, I will revisit some central aspects of Arendt's analysis of Adolf Eichmann and his trial. My goal is to uncover and discuss some important themes that have been underappreciated or neglected by readers both sympathetic and unsympathetic to Arendt.

Debate about the banality of evil has been a debate about the accuracy of Arendt's account of Adolf Eichmann, and rightly so, for she used the term to describe what she perceived to be Eichmann's lack of criminal intentions. I do, however, think that Arendt also intended to describe more than just facts about Eichmann's subjectivity. I believe that in addition to describing certain interior states of Eichmann (i.e. non-criminal intentions and motivations), Arendt hoped to draw attention to a complex (and dangerous) social situation that arose between Eichmann and those whose task it was to bring him to justice. In what follows, I will describe in detail this complex social situation and connect it to Arendt's larger discussion of the "dark times" of late modernity.

In order to bring these underappreciated elements of the banality of evil into view, I develop an original interpretation of Franz Kafka's *The Trial*, particularly the parable "Before the Law." First, I will demonstrate that to be 'before' the Law involves much more than simply waiting before a doorway; it is to be a part of a complex situation that I argue involves a form of false consciousness. Then, I apply my interpretation of "Before the Law" to Arendt's *EJ*. I argue that the actors at Eichmann's trial were 'before' him (Eichmann) in a similar way as was a man from the country is 'before' the Law. In both works we find individuals in situations or settings whose dynamic forces are not properly understood. The banality of evil, I argue, designates not simply a lack of criminal intent, but unwitting invitations to misinterpretation that this lack produces.

I: "Before the Law"

One of the central features of *The Trial* is the *mise en abyme* it contains, the parable "Before the Law." "Before the Law" is supposed to recast the encounter of Kafka's protagonist (Josef K.) with 'the court' in terms of an encounter of a 'man from the country' with 'the Law.' Here, I shall only be concerned with the text of the parable, as opposed to the entire narrative trajectory of *The Trial*. Prior to telling Josef K. the parable, the priest (who is

² The two most critical studies of Arendt's analysis of Eichmann's trial are those of David Cesarani and Bettina Stangneth. See Cesarani 2006 and Stangneth 2014.

also an official of 'the court') states that the parable serves a specific purpose: to alert Josef K. to the fact that he is "deceiving [himself] about the court [...]" (Kafka 1998, 215). According to Ingeborg Henel, "Kafka's text is at this point completely unambiguous [...] the purpose of the legend is thus to show Josef K. his error concerning the court and its representatives" (Henel 1976, 43). K. is supposed to interpret the parable such that his self-deception becomes clear to him by locating an analogous form of self-deception in the man from the country. In *The Trial*, self-deception and understanding 'the Law' are intertwined. In this sense, interpreting "Before the Law" is about self-knowledge.³ Stanley Corngold has described this dimension of the parable by noting that "[K.] is inculcated by his very impatience to find himself innocent; it prevents him from taking on the question: What, apart from my need to find myself innocent, is the authority of the court that has arrested me?" (Corngold 1988, 238).

Josef K. is supposed to see how the man from the country deceives himself about the Law. Doing so, in turn, requires that he read the parable's narrative trajectory as being (unwittingly) driven by the man from the country, despite the fact that it may be easier to conclude that he is being manipulated by the Law and its representatives.

(a) "Before the Law" and Self-Deception

The context in which "Before the Law" appears in *The Trial* is crucial to understanding its purpose. Rolf Goebel notes that the parable is "constructed around questions of legitimacy, power, and deceit that arise from the man's desire to enter the Law" (Goebel 2002, 56). Upon his arrival, a doorkeeper informs the man that going through the doorway is possible, but not at the present moment. The man decides to wait; he is not invited or directed to do so, yet he also fails/refuses to own the decision as their own. At the conclusion of the parable, the man, currently dying, learns that the doorway before which he has lived "was meant solely for [him]" (Kafka 1998, 217). The fact that the doorkeeper closes the gate only when the man from the country dies suggests that the doorway stands open only insofar as the man waits for permission to enter. From this, I infer that entrance

³ My emphasis on knowledge and on the *knowability* of the court is not ubiquitous amongst commentators on Kafka's work. Louis Begley writes that the purpose of the parable is to reveal the, "that the ways of the Court [...] and the Law itself cannot be penetrated by the human mind, and do not concern themselves with human notions of justice" (See Begley 2008, 193).

is not possible—at least not in the way the man understands it. The Law, it seems, stands open only insofar as someone willingly waits for entrance. Whatever the larger purpose or significance of the doorway is, it does not serve the usual function of a doorway (*viz.* to facilitate or to prevent entrance). The fact that the man from the country waits in front of the door for the remainder of his life is due to unexamined (but not necessarily unreasonable) assumptions that he has made about the nature of the doorway.

The nature of the Law becomes clearer if we pay close attention to the two ways that it presents itself in “Before the Law.” For the majority of the parable, the Law is characterized by its seeming to invite entry by way of an open door. At the end, the Law appears to the man in a different fashion. As he dies, the Law is characterized by the door shutting at the moment when there is no longer anyone awaiting entrance. “Before the Law” suggests that it is not (and never was) possible for the man to pass through the doorway. He learns something useful (*viz.* that admittance is not a *real* possibility) only when he cannot put this knowledge to productive use (*viz.* as he is dying). Thus, a lot hangs on the assumptions that he makes on the basis of the appearance of the Law as an open door. When we take a careful look at these assumptions, the nature of his self-deception becomes clearer.

Because the parable is supposed to describe the man’s self-deception, I believe we must assume the man from the country is not coerced into living and dying before the Law. The fundamental reasons for his doing so are unrecognized assumptions he makes about the Law as it initially appears to him. His fundamental mistake is to assume that the Law is positive. Perhaps the man believes that the Law is a structure that is capable of giving his life meaning and that the prospect of a favorable judgment is worth waiting for. However, the man is mistaken. In Henel’s words, “[the Law] does not lead to a universal, generally valid law, comprehensible by reason and accessible to any rational person of good will” (Henel 1976, 48). I agree with Henel that the Law is not positive, but its incomprehensibility does not follow from this fact.

K. is supposed to use the parable in order to come to know something about the court. What he learns about the court, in turn, is supposed to show him how he has been deceiving himself about his trial. Interpreting the parable requires that he (and any reader of *The Trial*) discover the characteristics of the Law about which the man from the country deceives himself. To be sure, Josef K. fails to perform this interpretive task; but his inability

or unwillingness to do so does not mean that the Law is incomprehensible. We must do what Josef K. cannot: closely examine what the man assumes about the Law and come to see how these assumptions inform his actions such that these actions (and inactions) amount to self-deception.

First, the man believes that the Law makes a universal claim on all people. The man does not realize that the Law is meant only for him until the doorkeeper so informs him at the end of the parable. The precise nature of this claim is unknown to him because he is positioned 'outside' the doorway. The man believes that he is simultaneously before the Law *and* excluded from it. In virtue of this claim and because he takes it seriously, the man from the country decides to wait in order to learn more about 'the Law.' He makes his home in a liminal space, in the vicinity of the Law but not at its center.

Second, because the man understands the Law to be making a universal claim, he believes that the Law possesses determinate content. If he could only gain admittance, the man thinks, he could determine the precise nature of its claim. His belief that the Law possesses determinate content also necessitates his belief that its content *ought* to be universally accessible. In his mind, the Law must be universally accessible because he believes it is universally applicable.

These two assumptions are founded upon a more basic, third assumption: that there is a difference between access to the Law and waiting for access to the Law. At bottom, the reason why he is willing to spend all of his possessions (and his life) in an attempt to gain access to the Law is because he believes that there is something different (and desirable) on the other side. The man from the country assumes that there is a meaningful difference between being on one side of the entrance and being on the other side. Put another way, the man from the country thinks that the 'interior' concealed by the entrance is qualitatively distinct from its outward appearance.

(b) 'The Law' as Mere Appearance

The textual evidence that supports my claim that the self-deception of the man from the country is closely related to the assumptions he makes about the Law is that 'admittance' to the Law is mentioned only by the man from the country. The doorkeeper never mentions admittance nor directly suggests it as a real possibility. To be sure, the doorkeeper understands what the man means by admittance when he asks to go through the doorway—

he replies, “it is possible, but not now” (Kafka 1998, 215). The notion of admittance to the Law enters into the parable through the mouth of the man from the country. And, as we shall see, that the doorkeeper’s opaque response that neither confirms nor denies the reality of admittance is consistent with the unique nature of the Law.

Yet, doesn’t the doorkeeper’s evasive answer deceive the man from the country into thinking that there is such a thing as admittance to the Law? Without ever presenting himself as such to the man, the doorkeeper becomes a *trustworthy* representative of ‘the Law’ in the man’s eyes. The man from the country trusts what the doorkeeper tells him and follows his instructions without question, despite the fact that he has no evidence of the doorkeeper’s trustworthiness. The dependence of the man on the doorkeeper is such that “he forgets the other doorkeepers and this first one seems to him the only obstacle to his admittance to the Law” (Kafka 1998, 216). Yet, like the priest in relation to Josef K., the doorkeeper “wants nothing from [the man]” (Kafka 1998, 224). The doorkeeper’s purpose is not to facilitate (or prevent) the man’s access to ‘the Law’ just as the purpose of the priest is not to help (or harm) Josef K. in his doomed struggle with ‘the court.’ Indeed, it was Josef K.’s own Manichean outlook on his trial—determined, he thought, by officials that were either for him or against him—that prompted the priest to announce K.’s self-deception.

If we bracket the man’s beliefs and assumptions, we see that the sole function of the Law is to ensnare the man from the country and to keep him waiting. Its open entrance serves to elicit certain assumptions about its nature that lead the man to *freely choose* to wait. As soon as the man can no longer wait for admittance, the doorkeeper closes the entrance. I believe that Kafka structured the Law such that its defining feature is its capacity to weaponize those who come before it against themselves. Once the man from the country makes key assumptions about the nature of the Law, no coercion or deception is needed to make him spend his life waiting for entrance.

If the function of the Law is to keep individuals suspended before it, then there is no reason to think terms such as ‘exclusion/inclusion’ or ‘exterior/interior’ necessarily apply to the Law in any traditional sense. The Law could function in its capacity to suspend individuals before it as long as it is able to elicit the assumption that there is something like admittance. In actual fact, there are two ‘Laws’ at work in the parable. There is the real ‘Law’ and there is another ‘Law.’ The first corresponds to the actual nature of ‘the Law’ and the second corresponds to what the man assumes about

'the Law.' He surreptitiously infers the second 'Law' from the appearance of the first. To be sure, the man would insist that there is only one 'Law' (the second); he is unaware of the fact that he is supplying 'the Law' with the content that leads him to wait before it. The manner in which the Law initially *appears* seems to me to be key to its capacity to elicit the assumptions that lead the man to choose to wait before it in perpetuity. I will call this characteristic of the Law its *mere appearance*. The Law is an appearance to which a deeper, more meaningful reality need not necessarily correspond; it could very well be the case that on the other side of the entrance is simply another stool and another doorman.

Yet, the fact that the man from the country makes a number of seemingly reasonable assumptions about the Law that are unfortunately misguided does not imply self-deception. His willingness, however, to spend his entire life before the Law, waiting for admittance, implies something like a compulsive unwillingness to question these assumptions. Insofar as he doesn't question these assumptions, he deceives himself. This raises the following question: what explains the man from the country's total reliance on his initial assessment of the Law? The judgment of the man is bound (perhaps willingly so) to traditional concepts and categories. Upon encountering the Law, he quickly applied orthodox categories of legality and legitimacy to the Law and remained trenchant in his initial assessment of it. Presumably, he assumed that the Law is a positive law because he was unable or unwilling to consider any other sort of law.

Although the man from the country bases his assessment of the Law on the way that it appears to him (*viz.* as an open doorway), his decision to wait for admission is guided by what he assumes the doorway conceals. In the context of the parable, the centrality of appearance with reference to the Law is a negative measurement—the Law must *not* be evaluated according to any deeper reality or content, implying the primacy of appearance to its proper evaluation.

II: Before Adolf Eichmann

Now, I turn to similar themes that are present, but underappreciated, in *EJ*. My discussion of *EJ* will not be comprehensive. *EJ* is complex and difficult to understand. Seyla Benhabib has pointed out that one of the reasons for this difficulty is because "there are at least three sociohistorical narratives in *Eichmann in Jerusalem*, each of which could have been the topic of several

volumes [...]” (Benhabib 2000, 68). According to Benhabib, these are: the story of Eichmann’s trial; the story of the Jewish councils; and finally, “[Arendt’s] attempt to come to grips with the behavior of so-called ‘ordinary German citizens’ during the Nazi regime and the Holocaust” (Benhabib 2000, 68). Here, I am primarily concerned with what Benhabib identifies as the third sociohistorical narrative embedded in *EJ*: her analysis of Adolf Eichmann as embodying the banality of evil.

First, I demonstrate that appearance is important to the adequate legal judgment of Eichmann in the same way that appearance was important to the adequate assessment of the Law. By ‘adequate,’ I mean an assessment that does not amount to what Kafka called “self-deception.” We shall see that (in Arendt’s view) an adequate assessment of Adolf Eichmann is equivalent to an assessment that is not surreptitiously guided by what his manner of appearance is assumed to conceal. I believe that a similar concept of appearance is central to the evaluation of the Law and to the evaluation of Adolf Eichmann in roughly the same way.

Then, I turn to the topic of traditional concepts. In my analysis of *The Trial*, I emphasize that traditional notions of law are not helpful to the person. In fact, such notions are harmful. I will show that Arendt believed traditional juridical concepts (such as guilt implying criminal intent) were harmful in roughly the same way. She worried that such concepts were assumed (problematically) by those whose job it was to pronounce judgment on Eichmann. The material I present in these two sub-sections will demonstrate that those whose task it was to legally judge Eichmann were ‘before’ him in the same way as the man from the country was ‘before’ the Law.

(a) Eichmann and Appearance

One of the most important components of Arendt’s analysis of Eichmann is her insistence on his shallowness. She associated Eichmann’s ‘shallowness’ with “something entirely negative: it was not stupidity but a curious, quite authentic inability to think” (Arendt 2003, 159). Eichmann’s shallowness—literally the fact that he lacked a deeper level of juridically relevant intent or motivation—meant that he needed to be judged in a new way. Arendt believed because Eichmann lacked criminal intent, he could not be convicted in the same way as could many others who had committed similar crimes.

Let us revisit some of Arendt’s most controversial claims about Eichmann.

Arendt emphasized evidence that suggested Eichmann did not fit the psychological profile of a mass murderer. There have been numerous studies suggesting that Arendt's confidence in this evidence was misplaced and that Arendt was duped by Eichmann.⁴ I shall not engage with these arguments in any detail here, as my purpose is not to argue that Arendt was correct (or incorrect) in her analysis of Eichmann.

Arendt used the term 'banal' to describe the motivations and intentions for his actions as a member of the SS. In the words of Richard Bernstein, "[Arendt] came to the conclusion that [Eichmann] committed monstrous deeds without being motivated by monstrous evil intentions" (Bernstein 2002, 218). After witnessing Eichmann at his trial, she became convinced Eichmann did not facilitate state-sponsored genocide out of ideological indoctrination or antisemitism. He had no particular desire or personal drive that made him enjoy his duties, yet he carried them out nonetheless. She worried that those around her (particularly the prosecution) had already made up their minds about Eichmann, assuming that his manner of appearance in court was a charade intended to conceal a very different interior. Arendt was wary of making an inferential leap from the enormity of Eichmann's crimes to a corresponding set of criminal motivations.

In *EJ*, Arendt operated according to a 'two-Eichmann' theory. By 'two-Eichmann' theory I mean that Arendt believed that there was the 'real Eichmann' and there was the Eichmann that the prosecution presented to the court. According to Arendt, these two Eichmann's were distinct. The two Eichmann's correspond to the two versions of 'the Law' that I presented in the first section of this paper. Like 'the Law,' the real Eichmann is an appearance to which a deeper, more meaningful reality does not correspond. Elements of his trial of which Arendt was critical inferred the existence of another dimension to Eichmann's subjectivity based on the seeming absurdity of the way the real Eichmann appeared in court.

Eichmann's banality did not imply that Arendt believed that the banality of evil captured the workings of the entire apparatus of genocide developed by the Nazis. The 'banality' in the banality of evil did not describe the crime of state-sponsored genocide, but rather some of the criminals that helped to facilitate it (Eichmann). As Dana Villa has put it, "[the Holocaust] could hardly have worked as well as it did had not countless normal [individuals] seen it as their obligation to fight their inclinations and perform their specific duties as long as the law of the land required it" (Villa 2017, 60).

⁴ See Cesarani 2006 and Stangneth 2014.

Arendt's belief in Eichmann's banality is what motivated her to avoid the prosecution's assumption at the trial that Eichmann had committed his crimes out of anti-Semitism or ideological indoctrination and that his clumsy manner in court was an attempt to conceal these criminal facets of his personality.

Arendt's analysis of Eichmann as thoughtless made his manner of appearance the most important factor in understanding him. Because Eichmann lacked any deeper substratum of motivations beneath those with which he appeared in court, Arendt thought that it was of tantamount importance that he be judged according to his manner of appearance. In discussing *The Trial*, I emphasized the importance of appearance to the assessment of 'the Law.' Appearance was important to evaluating the Law just because the Law lacked any further content or depth. Eichmann's appearance takes on a similar importance in *EJ*. Because Arendt was convinced that Adolf Eichmann lacked criminal intent, it was of the utmost importance to take seriously his ridiculous appearance and not to assume occasional lies and discrepancies in his testimony were the familiar attempts of a traditional criminal to deceive.

Arendt's diagnosis of Eichmann does not suggest that he lacked an inner life, just one that was legally relevant to judging him. Daniel Conway has helpfully clarified this, writing that "For Arendt, the question of the *real* Eichmann, the actor behind the masks, the schemer behind the schemes, was simply a non-starter" (Conway 2017, 80). Banal evildoers (like Eichmann), are able to do what they do out of everyday motives, and their doing so, Arendt worried, challenged Western jurisprudence with its reliance on criminal guilt being dependent upon determining criminal intent. Arendt's exhortation to take Eichmann's appearance seriously was a warning that Eichmann lacked further depth of any juridical significance. Like 'the Law' in "Before the Law," Arendt's Eichmann is *mere appearance*. When we consider *EJ* alongside *The Trial*, Arendt's insistence on the primacy of appearance to the judgment of Eichmann is a warning about the unique danger that attends the banality of evil. Arendt believed that the prosecution at Eichmann's trial was seizing on occasional lies and factual discrepancies in Eichmann's testimony in order to support a decision that they had already made about who Eichmann was—that he was a dedicated, indoctrinated, and highly manipulative totalitarian agent.

Arendt did not dispute that Eichmann lied; she disputed that his lies were intended to hide or obscure his true, ideologically rigid intentions. Many of Arendt's critics argue that Arendt was duped by Eichmann. Stangneth states

that Arendt “fell into his trap: Eichmann-in-Jerusalem was little more than a mask” (Stangneth 2014, xxiii). I believe that the language of trickery or duping is inappropriate, recapitulating the very error that Arendt took herself to be pointing out. For, in Arendt’s view Eichmann did not dupe or trick those who took it upon themselves to bring him to justice. Or, if he had done so, he was not immune to or in control of the charade. Arendt believed that Eichmann’s guilt needed to be grounded in a satisfactory understanding of what sort of criminal Eichmann actually was. In Arendt’s view, understanding Eichmann meant considering that his manner of appearance in court was not an attempt to conceal anything.

Just as the man from the country was not duped by ‘the Law’ or the door-keeper, Eichmann did not dupe those who sought to bring him to justice. As a result, Arendt believed, the court in Jerusalem failed to comprehend the individual whose task it was to judge. The verdict the court rendered was correct, but insufficiently grounded in a comprehensive knowledge of the criminal. In other words, Eichmann was guilty but the manner of his guilt was not accurately reflected in the verdict rendered by the court. Eichmann’s importance lay in his mediocrity. Thanks to the bureaucratic/totalitarian framework in which he worked, Eichmann had facilitated state-sponsored genocide in the absence of any intent that could be described as criminal. One of Arendt’s greatest worries in *EJ* was that the trial failed to grasp the fact that a new type of criminal had taken the stage because of its insistence that the new criminal was not new at all.

(b) Eichmann and Precedent

Let us recall that my interpretation of *The Trial* demonstrated two things about the Law: (i) the importance of appearance in assessing its meaning/significance, and (ii) the danger of traditional concepts and categories. The reliance of the man from the country on the notion of positive law was what led them to willingly wait before a doorway through which they could never enter. I argued that his inability or unwillingness to assess the doorway in the absence of the traditional notions to which he appears bound is the self-deception that the parable describes.

In order to complete my analysis, I will demonstrate that the traditional juridical resources available to the court in Jerusalem were (in Arendt’s view) unhelpful. The only traditional juridical resource that I want to discuss is that of criminal guilt implying criminal intent. By unhelpful I simply mean that Arendt believed that the idea of criminal guilt requiring a prior deter-

mination of criminal intent was misleading in Eichmann's case because Eichmann facilitated genocide in the absence of criminal intentions. The assumption that Eichmann's guilt necessitated the presence of criminal intentions and motivations would, in Arendt's view, lead the trial away from an adequate understanding of him. As we shall see, Arendt hoped that the court in Jerusalem would defy juridical concepts such as guilt implying criminal intent.

Arendt believed the most important task of Eichmann's trial was to "prosecute and to defend, to judge and to punish Adolf Eichmann" (Arendt 2006, 273). However, she also thought that the trial had another purpose: to establish a valid precedent for unprecedented crimes. The foremost crime amongst these new crimes was the crime against humanity. Arendt believed that the trial succeeded in its first task, but she also noted that "this last of the Successor trials will no more, and perhaps even less than its predecessors, serve as a valid precedent for future trials of such crimes" (Arendt 2006, 272). While Eichmann's trial succeeded in judging him, the manner in which it passed its judgment was such that posterity was denied a valid precedent for future criminals like him.

Arendt's analysis of crimes against humanity in *EJ* has long been the subject of scholarly literature. There is a tendency to minimize the importance and accuracy of Arendt's thesis concerning the banality of evil. Benhabib downplays the importance of the banality of evil, writing, "Arendt's contribution to moral and legal thought in this century will certainly not be the category of the 'banality of evil' [...] the category that is closest to the nerve of her political thought as a whole [...] is that of "crimes against humanity" (Benhabib 2000, 76). Yet, Arendt understood the task of adequately understanding the new 'crimes against humanity' as inextricable from the task of adequately understanding Eichmann. Arendt did not believe that crimes against humanity were possible without the assistance of banal individuals such as Eichmann.

Arendt recognized that the success of state sponsored genocide required the complicity of everyday individuals. Thus, the banality of evil and crimes against humanity are two sides of the same coin. Recall that in Kafka's "Before the Law," 'the Law' was able to rely on ordinary individuals (such as the doorkeeper). The doorkeeper did not need any privileged knowledge or familiarity with 'the Law' in order to be an effective agent in its service. There is also no evidence that the doorkeeper's interaction with the man from the country was motivated by malicious intent. The bureaucratic structure of the Nazi state provided an ideal framework for individuals such as

Eichmann to be effective agents without requiring any authentic commitment or ideological indoctrination. In this sense, we might say that Eichmann resembles both 'the Law' and the doorkeeper, who patrols the liminal space outside of 'the Law' without (necessarily) possessing any privileged information about it. Arendt thought that an adequate understanding of crimes against humanity required an adequate understanding of the banality of evil. Thus, it is unwise to minimize the importance of one at the expense of the other—an adequate understanding of Arendt's analysis of crimes against humanity must be grounded in an adequate understanding of her notion of the banality of evil, and vice versa.

Arendt described the secondary task of Eichmann's trial as involving three interrelated things: "the problem of impaired justice in the court of the victors; a valid definition of the 'crime against humanity'; and a clear recognition of the new criminal who commits this crime" (Arendt 2006, 274). In Arendt's view the task of defining the concept of crimes against humanity was bound up with the fact that its appearance was precipitated by a new type of criminal. Arendt took her analysis of crimes against humanity to be inseparable from her notion of the banality of evil. Here, I shall only focus on the banality of evil.⁵ I will examine what Arendt meant when she characterized Eichmann as a 'new criminal.' My purpose is to discuss Eichmann's unprecedentedness. Arendt's analysis suggests that Eichmann's banality elicited the prosecution and, to a lesser extent, the judges to turn him into an ordinary criminal.

Arendt was worried by what she perceived to be vigorous attempts to force Eichmann to fit into traditional legal categories that (in Arendt's view) did not apply to him. Arendt thought that the commitment of genocide by Eichmann in the absence of criminal intent needed to be frankly acknowledged, and judgment needed to be rendered in the absence of the determination of criminal intent. Instead, the prosecution tried to prove that Eichmann was a traditional criminal by insisting that many of his actions implied criminal intent. Arendt was very critical of such attempts, particularly in her discussion of the rejection of Eichmann's appeal (Arendt 2006, 249). According to Arendt, Eichmann's significance did not just lie in the fact that his crimes were new, but also in that his appearance in Jerusalem was such that his testimony and defense elicited what she considered to be a form of juridical denial.

⁵ I am indebted to Seyla Benhabib, whose scholarship on Arendt's analysis of crimes against humanity allows me to focus on the banality of evil in this chapter. See Benhabib 2003, 184–185 as well as Benhabib 2009, 331–350.

I think it will be helpful to return to a couple of points from my analysis of *The Trial*. I argued that the Law was not just unprecedented in the sense that it was not positive. The unprecedentedness of the Law went hand in hand with its ability to elicit the assumption that it was not unprecedented. One of the most important reasons for this, I argued, was that Kafka structured 'the Law' so that its appearance invited such assumptions about its meaning and significance. These aspects of *The Trial* are helpful in understanding some unappreciated dimensions of Arendt's analysis of Adolf Eichmann. For Arendt, his bumbling and underwhelming appearance in Jerusalem were not only characteristics that needed to be taken seriously; these very same characteristics were also the means by which he (unwittingly) elicited the use of legal categories that not only did not apply to him, but the use of which resulted directly in the trial's failure to generate a valid precedent.

It is important to connect Eichmann's curious ability to cause the prosecution to avoid understanding him to Arendt's larger concerns in *EJ*. Arendt believed that Eichmann required "clear recognition." "Clear recognition" entailed the fact that Eichmann committed crimes against humanity without criminal intentions. Hence, Arendt believed that Eichmann's guilt could and should not be measured by proving that he had criminal intentions. One of the central problems that the Eichmann trial was poised to confront was that of how to judge an individual guilty of crimes against humanity in a way that was not grounded in the presence of criminal intent to do so. In order to accomplish this, however, those who were to bring Eichmann to justice would need to have taken seriously what Arendt called his banality.

Conclusion

Once we recognize the structural similarities between the situations described in "Before the Law" and *EJ*, a number of salient features of the banality of evil emerge more clearly. First, the banality of evil should be understood as a form of what I have called *mere appearance* in the first section of this essay. That is, banal evil is an appearance that does not possess a deeper, more significant reality. In her famous rejoinder to Gershom Scholem, Arendt wrote that banal evil "can overgrow and lay waste the whole world precisely because it spreads like a fungus on the surface [...] because thought tries to reach some depth, and the moment it concerns itself with evil, it is frustrated because there is nothing. That is its 'banality'" (Arendt 2007, 471). In this passage, Arendt clearly states that her notion of banal evil was tailored explicitly to describe the fact that banal evil lacked further depth.

It is my view that the banality of evil describes more than Eichmann's shallowness. My analysis of "Before the Law" described a complex relationship between the man from the country and the Law, and not just the fact that a person waited before a doorway. Similarly, I believe that Arendt used the phrase 'banality of evil' to describe a complex social situation that she perceived in real time at Eichmann's trial. The banality of evil names a complex social situation, wherein non-criminal motives in the service of crimes against humanity invite onlookers and interpreters to attribute criminal intent where none can be found. The banality of evil both licenses and hides from view the new type of criminal who is responsible for crimes against humanity.

I take the banality of evil to describe a kind or species of false consciousness on the part of those who insist that motives must be proportional to the effects (or consequences) that are produced. The banality of evil names a "factual" social arrangement or system that includes the banal motives of the perpetrator, the reflexive attribution of criminal intent by those keen to address the evil that is produced, the ongoing invisibility or unavailability of the criminal themselves, the consequent failure to acknowledge the emergence of this new type of criminal, and perhaps the redirection of righteous outrage toward the messenger in question (Hannah Arendt herself).

Finally, I would like to end this essay with a final remark on my interpretation of *The Trial*. I have read *The Trial* and *EJ* in conjunction with one another according to an interpretation of the former that I developed in the first section of this essay. One of the central arguments I have presented is that the two works are sufficiently similar so as to mutually clarify one another. One major point of divergence between them is that at no time in the parable does a figure emerge whose job it is to disrupt the dynamic relationship between the man from the country and the Law. There was nobody in "Before the Law" who could assist the man from the country in coming to know the extent of his own role in being ensnared before the Law. Such an onlooker would, perhaps, attempt to make the man aware of the way he was framing the Law surreptitiously as positive law as well as the dangers of such a frame.

Such a figure would, of course, correspond to Hannah Arendt. In writing *EJ*, I believe that she saw herself as providing just such a critical intervention into a dangerous relationship that she perceived taking place at Eichmann's trial. In writing *EJ*, Arendt took herself to be diagnosing and describing an epistemic situation in which we are largely powerless to identify and address the emergence of a new type of criminal. One of the most important

critical functions of her analysis in *EJ* is her attempt to draw attention to the fact that the court was surreptitiously framing Eichmann in a certain way. Arendt's critical intervention not only attempts a factual description of Eichmann, it also attempts to show how totalitarian/bureaucratic regimes have rendered the framing of criminal guilt by way of criminal intent irrelevant. And finally, Arendt's *EJ* attempts to warn us of the dangers of becoming too reliant upon past ways of framing issues such as criminal guilt.

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