THE VOICE OF POLITICS AND THE TREMOR OF JUSTICE: ARENDT, EICHMANN, AND THE FUTURE OF EVIL

DANIEL CONWAY
Texas A&M University (USA)
conway@tamu.edu

ABSTRACT
The clash between the political and the unpolitical drives the narrative of Hannah Arendt’s influential report on the trial of Adolf Eichmann. Determined to make visible the justice that was (and was not) done in Jerusalem, Arendt concludes her Epilogue to Eichmann in Jerusalem by providing her readers with an alternative formulation of the verdict handed down by the judges. The point of this exercise is twofold: to reveal the political “ground” of (and motivation for) the trial and the verdict it produced; and to alert her readers to the unpolitical (or extra-political) expression of justice that remains to be realized. According to Arendt, the provisional character of the justice that was done in Jerusalem may yet inspire her best readers to develop a more fully civilized practice of jurisprudence.

KEYWORDS
Arendt; Eichmann; justice; politics; mens rea; crimes against humanity

INTRODUCTION

Hannah Arendt begins Eichmann in Jerusalem (hereafter, EJ) by transporting her readers to the opening of the trial in the House of Justice [Beth Hamishpath].1 Well aware that public opinion regards Beth Hamishpath as the scene of a politically motivated show trial, Arendt is concerned to assure her readers that, contrary to appearances, justice (or, as she prefers, Justice) prevailed in Jerusalem. In support of this assurance, she distinguishes sharply between the political “showmanship” of the prosecutor (EJ, 4), whom she identifies as an agent of the Prime Minister, and the jurisprudential restraint displayed by the presiding judges. While the former gave rise to the

widespread perception of a political spectacle, the latter ensured that Justice would be served, albeit imperfectly, in Jerusalem.

Speaking on behalf of Justice itself, much as she will close her Epilogue by speaking for the aforementioned judges, Arendt reminds her readers of the limited (and well-defined) remit of the court of law:

Justice demands that the accused be prosecuted, defended, and judged, and that all other questions of seemingly greater import...be left in abeyance. Justice insists on the importance of Adolf Eichmann...On trial are his deeds, not the sufferings of the Jews, not the German people or mankind, not even anti-Semitism and racism. (EJ, 5)

As this passage confirms, Arendt understands (and presents) the House of Justice as the contested site of a struggle between the “demands” of Justice and the prerogatives of politics, broadly construed. Whereas the political aspirations of the Prime Minister shaped the Eichmann trial as a nation-burnishing, made-for-television spectacle, the comparatively modest “demands” of Justice mandated a far more restricted focus and a far more disciplined approach.

According to Arendt, the trial of Adolf Eichmann was animated by the familiar struggle between politics and its other. In this case, moreover, the “other” in question was none other than Justice itself, which, as we know, is widely acknowledged as a/the primary aim (and crowning virtue) of politics. Indeed, what makes the Eichmann trial so enduringly fascinating is that the House of Justice became the site of a clash between two competing formulations (or ideals) of justice: the expansive political justice desired by the Prime Minister and the more limited jurisprudential Justice expected of the court of law.

Although Arendt does not account for her decision to speak for Justice, the context of her advocacy suggests that she was concerned to channel (and amplify) a voice that otherwise might have been drowned out by the cacophony in Jerusalem. As it turns out, or so she alleges, the contest waged in the House of Justice was not of the zero-sum variety. As Arendt tells the story, both parties achieved in some measure the objectives they set, respectively, for themselves. Owing to the restraint of the presiding judges, whom she portrays as ever mindful of the “demands” of Justice, “the trial never became a play” (EJ, 9). At the same time, however, she concedes that “the show Ben-Gurion had had in mind to begin with did take place, or, rather, the lessons he thought should be taught” (EJ, 9).

Arendt thus presents the House of Justice as crowded and conflicted, but not necessarily compromised. The Prime Minister’s political didacticism may have captured the attention of the world, thereby eclipsing the quiet, steadfast work of the judges, but it did not obviate the administration of Justice. As Arendt observes, “Justice, though perhaps an ‘abstraction’ for those of Mr. Ben-Gurion’s turn of mind, proves to be a
much stern master than the Prime Minister with all his power” (EJ, 5). Indeed, notwithstanding the myriad distractions associated with the political spectacle it was obliged to stage, the House of Justice remained true to its defining purpose throughout the trial.

Thus, the problem Arendt wishes to address in her Epilogue is not the failure of the Eichmann trial to serve Justice, but its failure to make known the manner in which (and the extent to which) Justice was served. Or, as formulated in the maxim she borrows from Yosal Rogat, “justice must not only be done but must be seen to be done” (EJ, 277). In addressing this problem, moreover, Arendt intends to accomplish two related (and equally controversial) aims: First, she wishes to validate the work of the judges and confirm their adherence to the aforementioned “demands” of Justice. Second, she wishes to alert her readers to the imperfect, provisional character of the justice that was done in Jerusalem, precisely so that her readers will be moved to accept the responsibility to aspire to a more thoroughly “civilized” practice of jurisprudence. Her oft-criticized attention to the flawed prosecution of Eichmann, especially with respect to its failure to acknowledge the alleged “banality” of his motivations, is intended to prompt her readers to take seriously the “new type of criminal” he was claimed by her to exemplify.

1. A NEW TYPE OF CRIMINAL

Hannah Arendt’s chief aim in Eichmann in Jerusalem was not to deliver a definitive reckoning of the life and times of Adolf Eichmann, but to initiate an investigation of the “new type of criminal” he exemplified (EJ, 276). Toward this end, she delivered a “report” devoted, as her subtitle suggests, to the newly emergent “phenomenon” of the banality of evil, which, she believed, would account for the role of this “new type of criminal” in committing (and furthering) crimes against humanity. In doing so, she apparently wished to stage nothing short of a historical intervention, which would alert her readers to the appearance on the modern scene of a new, deadly, and as-yet-unrecognized manifestation of evil.3

2 Yosal Rogat, The Eichmann Trial and the Rule of Law (Santa Barbara, CA: Center for the Study of Democratic Institutions, 1961, p. 34).
In composing her report, however, Arendt did herself few favors. Unable to hide her disdain for Eichmann, and unwilling to exercise the customary degree of reportorial self-effacement, she occasionally comes off as haughty and aloof. Critical of the larger political context of the trial, and unimpressed (if not disgusted) by the “showmanship” of the prosecutor, she allowed personal animosities to cloud her judgment and harden her prose. Her attempts at irony, sarcasm, understatement, and other rhetorical sophistications occasionally fall flat, leading some readers to attribute to her beliefs and positions she actually meant to discredit. Most egregiously, in the opinion of many readers, she displayed a callous lack of sympathetic identification with those Jews whom the Nazis had placed in an impossible position of encumbered leadership.  

What is not often noted, however, is that Arendt also committed the cardinal sin of reportage: She buried her lede. Rather than galvanize her readers and focus international attention on the “new type of criminal” exemplified by Eichmann, she failed to clarify the relationship between her reporting (as advertised by the title of the book) and her cri de coeur (as announced in the subtitle of the book). In particular, we might note, she failed to specify the nature of the connection between her (eminently contestable) remarks about Eichmann and her supposed elucidation of the emergent “phenomenon” of the banality of evil.

If Eichmann is meant to be the poster boy for the “banality of evil,” or so rings a familiar refrain, then Arendt’s account of evil is deeply (and perhaps irreparably) flawed. According to David Cesarini, for example, “[Arendt’s] depiction of Eichmann was self-serving, prejudiced and ultimately wrong.” In a similar vein, Bettina Stangneth goes so far as to depict Arendt as the victim of a clever ruse, perpetrated by a master manipulator:

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Arendt fell into his trap: Eichmann-in-Jerusalem was little more than a mask. She didn’t recognize it, although she was acutely aware that she had not understood the phenomenon as well as she had hoped.7 If Arendt was wrong about Eichmann, however, we should not be terribly surprised. She quickly lost interest in him and his testimony, and she did so precisely because she realized that he was not the traditional, motive-bearing criminal whom she and others had expected to encounter in Jerusalem.8 Early on, in fact, she recognized Eichmann’s penchant for evasion, prevarication, and self-serving reinterpretation as symptomatic of his failure to form the kind of robust intentions that are typically understood to confirm the presence of malevolence or criminal intent. As a direct and fairly immediate consequence of beholding Eichmann “in the flesh,” Arendt formulated (and named) the problem that would occupy her, off and on, for the rest of her life and the remainder of her career—namely, the problem of the emergence of a type of criminal in whom one would only ever discover banal motives.9 Although she understood Eichmann to be representative of this “new type of criminal,” moreover, she evidently did not feel bound by the particulars of his case in her efforts to define this type more generally. Eichmann’s performance in Jerusalem had sparked in her an interest that quickly led her, for better or worse, to leave him behind.

Here we might note that the title of Arendt’s book is noticeably devoid of any mention of its supposed and most obvious context: Yes, Eichmann was in Jerusalem, and that is where Arendt encountered him, locked away in a glass box fashioned for his protection. But there is no titular reference to the trial itself, which was the event or occurrence that precipitated this encounter. It is as if Arendt meant to acknowledge that the trial of Adolf Eichmann was or became of secondary interest, which, I offer, was precisely how she came to see it. She may have arrived in Jerusalem fully prepared to report more narrowly on the trial, but she left Jerusalem fascinated by the “new type of criminal” that her encounter with Eichmann had prompted her to contemplate. To be sure, the resulting document suffers from the limitations and flaws associated with this unexpected turn of events, and it may be said that Arendt failed at times to balance adequately the competing demands of trial reportage and speculative criminology. (She was, after all, a novice reporter.) Still, our sympathetic attention to the ambitious (and,

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The subtitle of Arendt’s book confirms that it was not intended to deliver a report \textit{per se} on the moral or psychological condition of Adolf Eichmann, though it occasionally and of necessity touches on these themes. Nor was it meant to deliver an exhaustive accounting of Eichmann’s investments in anti-Semitism and Nazi ideology, though it ventures by necessity into this territory as well. Instead, the book is meant to report on the emergence of a type of criminal whose share in the evil he originates may and, according to Arendt, must be judged to be \textit{banal}. This “new type of criminal,” she goes on to suggest, presents a new set of problems for modern jurisprudence, ethics, psychology, and politics, as well as the institutions, statutes, laws, and practices they have enjoined:

\begin{quote}
\textit{This new type of criminal, who is in fact hostis generis humani, commits his crimes under circumstances that make it well-nigh impossible for him to know or to feel that he is doing wrong.} (EJ, 276)
\end{quote}

Having already de-centered the trial itself (in her title), she endeavors with her subtitle to push aside Eichmann himself, precisely so that she may steer the “phenomenon” he represents into sharper relief.

Here we may press even further: Arendt does not recommend Eichmann as an ideal token of the type on which she is determined to report, which is why she moves so regularly (and effortlessly) from his case to the more general profile she is determined to construct.\footnote{See, for example, Hannah Arendt, “Thinking and Moral Considerations,” in \textit{Responsibility and Judgment}, ed. Jerome Kohn: 159-89 (New York: Random House/Schocken Books, 2003, p. 159). See also Dana R. Villa, “Eichmann in Jerusalem: Conscience, Normality, and the ‘Rule of Narrative,’” in \textit{The Trial That Never Ends}, eds. Golsan and Misemer: 43-66, pp. 43-45.} Simply put, Eichmann was \textit{token zero}, the man of banal motives whose altogether unremarkable appearance in Jerusalem triggered Arendt’s decision to conduct an investigation of the type itself. Any such investigation must take Eichmann into account, but it need not (and should not) remain exclusively focused on him.

My aim in pursuing this interpretation is not to excuse the limitations of Arendt’s understanding of Eichmann, or the flaws that mar her evaluation of the conduct of his trial, but to situate these limitations and flaws in the broader context of the actual aims of her book. The focal point of her report was not Adolf Eichmann, who very well may have duped her,\footnote{As is claimed, for example, by Stangneth, \textit{Eichman Before Jerusalem}, pp. xxii-xxiv.} but the \textit{banality of evil} he supposedly exemplified. In an obvious attempt to divert attention from the person of Adolf Eichmann, she explains in her Preface that she spoke “of the banality of evil on the strictly factual level, pointing to a
phenomenon which stared one in the face at the trial” (EJ, 287). To reiterate: not a person, much less a person named Eichmann, but a “phenomenon,” heretofore unremarked and unclassified, but possessed nonetheless of a lethal criminality. Hence my interest in re-centering the discussion of what Arendt meant to accomplish in her “report”: even if she was mistaken about Eichmann, as several important scholars have insisted, her identification of a “new type of criminal” nevertheless warrants our attention and compels our thoughtful consideration.

2. POLITICS AND ITS OTHER

Arendt begins her Epilogue to *Eichmann in Jerusalem* by covering some familiar ground. “The irregularities and abnormalities of the trial in Jerusalem,” she writes, “overshadowed...the central moral, political, and even legal problems that the trial inevitably posed” (EJ, 253). Chiding the Prime Minster and the prosecutor for “listing a great number of purposes the trial was supposed to achieve,” she reminds her readers that the “purpose of a trial is to render justice, and nothing else” (EJ, 253). Without disputing the potential value of the “ulterior” purposes the trial was meant to serve, Arendt insists that the “good” to be accomplished by a trial of appropriately circumscribed scope is, quite simply, to “do justice” (EJ, 254). She thus sets out to assess the conduct of the trial on that basis. In doing so, as we shall see, she also wishes to make known the justice that was done in Jerusalem.

Having roundly criticized the prosecution of the trial, Arendt expresses her sympathy for the presiding judges, whom she describes as “helpless...when confronted with the task they could least escape, the task of understanding the criminal whom they had come to judge” (EJ, 276). They were “helpless,” that is, not through any fault or flaw of their own, but because the law itself was not yet prepared to assign responsibility to an...
individual who did not mean to commit the crimes with which he has been charged.\textsuperscript{14} According to Arendt, the statutes and precedents available to these judges did not allow them to assign guilt to a perpetrator in whom criminal intent cannot be found.\textsuperscript{15} As a result, the judges were obliged to improvise, developing what Kant called a “reflective judgment,” for which she apparently means to applaud them.\textsuperscript{16}

This is not to say, of course, that they succeeded thereby in “understanding the criminal whom they had come to judge,” for they did not. (Nor were they helped or expected to do so by the prosecution.) But they did the next best thing, delivering a verdict to which Arendt could lend her provisional assent, a verdict she could reformulate in good faith for her readers. In part, that is, she admires the judges because their magnanimous restraint secured for her the political space in which she might disclose herself in excess of her role as trial reporter.\textsuperscript{17}

The judges’ hands may have been tied, but Arendt’s were not. Having resigned her reportorial objectivity in her Epilogue, she was free to say what needed to be said and, in the process of doing so, to essay an alternative formulation of the verdict. The verdict she pronounced is an alternative, moreover, not in the sense that it recommends a different outcome or sentence, but in the sense that it delivers a different, more “daring” justification of the verdict and sentence handed down by the judges. Eichmann is guilty, as we have seen, but not (only) for the reasons stated publicly by the presiding judges. As we shall see, the actual verdict drew on the authority vested in two canons of justice, one that the judges were free to invoke, and another that Arendt was resolved to disclose. If the House of Justice was in fact the contested site of a struggle between politics and its other, as Arendt maintains, it stands to reason that she would feel compelled to reveal the other canon of justice on which the verdict relied.

In order to appreciate Arendt’s motivation for undertaking this complex maneuver, let us review the final paragraph of the Epilogue, wherein she concludes her alternative formation of the verdict rendered in Jerusalem:

\begin{quote}
14 By way of clarification, Arendt explains, “these modern, state-employed mass murderers must be prosecuted because they violated the order of mankind, and not because they killed millions of people” (EJ, 272).


16 My appreciation of Arendt’s efforts to complete and publicize the “reflective judgment” initiated by the presiding judges is indebted to Matthew Wester, Judgment and Its Limits: Eichmann, Modernity, and the Development of Hannah Arendt’s Theory of Political Judgment (College Station, TX: Texas A&M University Dissertation, 2018, Chapters 6-7.) See also Leora Bilsky, “Truth and Judgment in Arendt’s Writing,” in The Trial That Never Ends, Golsan and Misemer, eds.: 161-90, pp. 169-73.

\end{quote}
And just as you supported and carried out a policy of not wanting to share the earth with
the Jewish people and the people of a number of other nations—as though you and your
superiors had any right to determine who should and who should not inhabit the world—
we find that no one, that is, no member of the human race, can be expected to want to
share the earth with you. This is the reason, and the only reason, you must hang. (EJ, 279)

This last point invites further scrutiny. First of all, the “we” in question assents to a
stringently simplified explanation of the verdict and sentence. In particular, it reduces
the justification for the sentence to a single “reason,” thereby de-cluttering a protracted
legal process overwrought with multiple purposes, detours, digressions, expansions,
pretexts, and so on. Second, the “we” for which Arendt speaks here has juxtaposed an
illegitimate assertion of “right” (on the part of Eichmann and his superiors) with an
apparently legitimate assertion of right—though not identified as such—on behalf of the
collective membership of the “human race.” In doing so, moreover, the “we” in ques-
tion claims to channel the will of each “member of the human race,” including, pre-
sumably, Eichmann’s closest family members. Third, it is this apparently legitimate
assertion of right that authorizes the presiding “we” to translate the stipulated “expecta-
tion” into the determination that “[Eichmann] must hang” (EJ, 279).

If Arendt’s reformulated verdict faithfully expresses what the judges meant and
wished to communicate to the world at large, it is difficult to see that (and how) Justice
(or justice) prevailed in Jerusalem. As several scholars have noted, this revised verdict
appears to rest on a practice of jurisprudence that modern, civilized nations would view
as both inadequate and inimical to the development of widely-recognized courts of
international law. What, then, is Arendt’s point in making known the nature and the
limitations of the justice done in Jerusalem?

Immediately prior to concluding her alternative version of the verdict, Arendt intro-
duces a consideration that she has been careful thus far to resist—namely, the consider-
ation of politics:

Let us assume, for the sake of argument, that it was nothing more than misfortune that
made you a willing instrument in the organization of mass murder; there still remains the
fact that you have carried out, and therefore actively supported, a policy of mass murder.
For politics is not like the nursery; in politics obedience and support are the same. (EJ,
279, emphasis added)

18 See, for example, Butler, Parting Ways, pp. 157-59; and Susannah Young-ah Gottlieb, “Beyond
Tragedy: Arendt, Rogat, and the Judges in Jerusalem” (College Literature 38.1 [Winter 2011], pp. 45-
56).
19 Rogat, The Eichmann Trial, pp. 41-42.
Arendt’s invocation of politics in this final paragraph is both abrupt and decisive. Careful thus far to police a space in which Justice might assert its “demands” with minimal interference, she now grants politics its due, even acknowledging its (presumed) status as the final arbiter in this matter. The stipulated authority of politics receives (and apparently needs) no explanation, and its priority in this matter is simply asserted. While other voices may challenge this damning characterization of Eichmann, including the voice of Hannah Arendt, the voice of politics rings firm, clear, unanimous, and final. Unlike the voice of Justice, the voice of politics brooks no dissent.

It bears noting here that Arendt’s invocation of politics in her alternative verdict effectively tables many of the issues that she herself has raised throughout her consideration of the “type” exemplified by Eichmann. Her discussion of his (potentially extenuating) circumstances had not yet reached a natural or satisfying conclusion, and her own concerns, centered on the alleged “banality” of the evil he perpetrated, had not been thoroughly adjudicated. If anything, in fact, Arendt’s deference to the intervening authority of politics appears to be meant to enforce closure, to settle a question that otherwise might have proven intractable, and to quash a potentially disruptive line of inquiry.

We also should take note of the precise context of Arendt’s deference, on behalf of the “we” for which she speaks, to politics. Just as this “we” has begun to consider some of the potentially extenuating circumstances cited by Arendt herself, e.g., “that [he] had never hated the Jews, and still that [he] could not have acted otherwise” (EJ, 278), the clarifying authority of politics is invoked. Hard luck, misfortune, superior orders, and the like may elicit our sympathies, but they are not exculpatory. That Eichmann “actively supported...a policy of mass murder,” which Arendt herself has given us reason to reconsider, is here declared a “fact,” which the presiding “we” infers (or derives) from the undisputed “fact” that he “carried out” this policy (EJ, 279). (That these two “facts” are equally or in the same sense factual would seem to require further elaboration.)

As we are assured, moreover, “politics is not like the nursery” (EJ, 279). Thus, even if it is determined that Eichmann acted like a child, or displayed childlike naïveté, he nevertheless must be treated and tried as a fully responsible, blameworthy adult. Here one might object, however, that the seemingly decisive comparison of politics to the nursery, though rhetorically effective, is philosophically suspect: Is there really no middle ground or gray area to be explored here? Are we reasonably certain that Eichmann did in fact make himself a “willing instrument in the organization of service of a policy of mass murder”? What, then, was the point of the Epilogue prior to Arendt’s elabo-
ration of the revised verdict, or of her concluding Postscript? Whence her dissatisfaction with the conduct and progress of the trial? Are we to conclude that Arendt herself belongs in “the nursery”? Furthermore, the sheer bluntness of this assertion, as if Arendt and other critics of the trial might be dangerously confused about the nature of Eichmann’s crimes, furthermore suggests that it is meant to head off any consideration of extenuating circumstances. Rather than make the case that he was in fact a “willing instrument,” which presumably would suffice (or nearly so) to establish mens rea, this ad hoc appeal to politics infers his “active support” for “a policy of mass murder” from the “obedience” he indisputably displayed (EJ, 279). (As far as politics is concerned, apparently, the establishment of actus reus is sufficient to determine criminality.) It is for his inferred support of this policy, finally, that Eichmann must hang. Ever practical in its orientation, politics has pronounced the final word on the subject.

But is this Arendt’s final word on the matter? Susannah Gottlieb and Judith Butler have both raised the question of who is speaking in the final paragraphs of the Epilogue.20 The answer, each suggests, is that Arendt is speaking, though in a voice that is not entirely or resolutely her own. Although she pronounces the alternative verdict, that is, she does so on behalf of a “we” to which she belongs only provisionally (or rhetorically), a “we” that yields without complaint to the intrusive voice of politics. In presuming to speak for the judges, Arendt in fact positions herself to deliver a provisional (or partial) endorsement of the verdict she pronounces on their behalf.

Building on the illuminating rhetorical analyses delivered, respectively, by Gottlieb and Butler, I wish to account for Arendt’s decision to withhold her full, unambiguous assent from the alternative verdict she elaborates in her Epilogue. Despite her sympathy for the judges and her recognition of the constraints under which they labored, she does not categorically endorse the verdict she pronounces on their behalf. While she understandably prefers the candor of the alternative version she has produced, the verdict itself does not command her full, unqualified support. In particular, I offer, she does not endorse as final the subordination of justice to politics in the alternative verdict she delivers.

3. POLITICS AND JUSTICE

What, then, is Arendt’s own position? Why does she go out of her way to speak on behalf of a “we” from which she withholds her full assent?

Politics, I wish to suggest, plays a dual role in the final paragraphs of Arendt’s Epilogue. On the one hand, as we have seen, politics intervenes and settles the question, confirming the guilt of Eichmann on the strength of an inference from his oft-remarked “obedience” to his “support” for the Nazi policy of mass murder. On the other hand, the injection of politics into the alternative verdict allows Arendt to signal, and also to enactment, her dissatisfactions with the verdict even as she delivers the candor the judges could not provide. Her rhetorical exercise at the conclusion of the Epilogue thus allows her to perform a (productively) divided office, which faithfully reflects the crowded conditions in the House of Justice: She lends her voice both to politics, as we have seen, and to Justice. That these two voices are in this case discordant, though their discord may yet be resolved, is the upshot of the rhetorical exercise that comprises her efforts to deliver an alternative formulation of the verdict.21

Here we may go further: Arendt withholds her assent from the voice of politics, even as she channels its definitive judgment, because she does not acknowledge the legitimacy of the form or manifestation of politics for which she speaks. As we know, Arendt regarded politics as the domain of the public realm in which individuals are invited to disclose themselves—thereby becoming “who” and not merely “what” they are—on the strength of their actions and speeches, in excess of the limited (and merely productive) social role(s) to which they ordinarily are confined.22 The (degenerate) form of politics we encounter in Arendt’s revised verdict in fact bespeaks a distinctly modern reduction of politics to the crude (if expedient) accumulation and exercise of power, a reduction that reflects the “eclipse” of the “common public world” in which self-disclosure is alone possible.23

To say that these two voices are discordant is not to suggest that the claims of politics and Justice are entirely disjoint. Further complicating Arendt’s rhetorical exercise in her Epilogue is her apparent acknowledgment that the voice of politics credibly trades on the authority vested in a venerable (if pre-modern) canon of justice. Rather than oppose politics to the pursuit of justice, that is, Arendt seeks in her reformulation of the verdict to “make visible” the archaic canon of justice from which the verdict and sentence derived their legitimacy. This is why she concludes her reformulation of the verdict by invoking the lex talionis, according to which vengeance (or restorative retribution) may be understood to deliver a just outcome. In other words, justice was done

21 Here I follow Butler, Parting Ways, pp. 168-72.
in Jerusalem, even though the Eichmann trial failed to live up to the widely acknowledged standards of modern, “civilized” jurisprudence.

Here we recall that Arendt introduces her reformulation of the verdict by rehearsing the distinction, drawn by Yosal Rogat, between “civilized” and “barbaric” canons of justice. As she notes, this distinction rests on the former canon’s attention to, and the latter’s neglect of, mens rea as an element of criminality (EJ, 277). By way of contrast, Rogat explains, the “barbaric” canon of justice authorizes retribution, or restorative justice, on the basis of actus reus alone. Although Arendt does not explicitly endorse Rogat’s distinction, she aligns the “we” for which she speaks with his characterization of this “barbaric” canon:

We refuse, and consider as barbaric, the propositions “that a great crime offends nature, so that the very earth cries out for vengeance; that evil violates a natural harmony which only retribution can restore; that a wronged collectivity owes a duty to the moral order to punish the criminal…” (EJ, p. 277)

Conceding that an archaic canon of justice provided the compelling “ground” for bringing Eichmann to justice and assigning the death penalty, Arendt explains that

[Eichmann] had to be eliminated...[b]ecause he had been implicated and had played a central role in an enterprise whose open purpose was to eliminate forever certain “races” from the surface of the earth. (EJ, 277)

As this passage confirms, Arendt understands Eichmann’s guilt to have been determined independent of any extended consideration of his criminal intent, or of his mental and emotional states more generally. The “purpose” of the “enterprise” in which “he had been implicated” was sufficiently “open”—and sufficiently heinous—that guilt could be assigned in good conscience to him and, presumably, to any and all others who “played a central role” in the execution of this “enterprise.” In this limited respect, in other words, the verdict in the Eichmann trial appears to have been derived from an

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24 Arendt’s borrowed (or provisional) distinction between “civilized” and “barbaric” approaches to jurisprudence fully emerges in her Epilogue (EJ, pp. 276-77). For his part, Rogat prefers to distinguish between, e.g., “modern patterns of thought,” and “older” or “archaic” “way[s] of looking at the world” (Rogat, The Eichmann Trial, p. 20). According to Rogat, moreover, “the greatest irony of the trial [may be] that its two antagonistic forces—Israel and Nazis—have both asserted the older view of membership and identity” (Rogat, The Eichmann Trial, p. 21).

25 I am indebted here to Gottlieb, “Beyond Tragedy,” p. 50; and Butler, Parting Ways, pp. 158-59.

26 Here I note, again following Gottlieb (“Beyond Tragedy,” pp 49-52) and Butler (Parting Ways, p. 158), that Arendt apparently means to offer only an account, and not an endorsement, of the “ground” in question. She is as yet concerned simply to explain what happened in Jerusalem and why what happened there was not necessarily reflected in the verdict the judges delivered.
archaic (or pre-modern) canon of justice. Indeed, the doubled reference in the extracted passage to a proposed “elimination” is suggestive of an application of the *lex talionis*: justice demands swift, uncompromising retribution against an avowed scourge of the Jewish people.

We are now in a position to understand why Arendt’s reformulated verdict dispenses in such short order with the kinds of concerns, including those raised by Arendt herself, that pertain to the question of Eichmann’s state of mind. As determined by the voice of politics, we know, such concerns belong more properly in the “nursery,” where, presumably, one might be inclined toward caution before inferring the “fact” of “support” from the “fact” of “obedience.” Untroubled by questions of *mens rea*, the voice of politics confidently asserts the justice of the verdict and the sentence. Unashamed of its endorsement of (restorative) vengeance, the voice of politics decrees that Eichmann should receive the same kind of treatment, e.g., exclusion from a world he refused to share with others, that he and his superiors had arranged for the victims of their campaign of mass extermination.

In choosing to speak for a “we” to which she does not lend her unconditional assent, Arendt reminds her readers that appeals to justice need not be—and in this case should not be—assumed to be univocal. Arendt’s revised formulation of the verdict thus produces what we might call the *tremor* of Justice, which audibly signals our understanding that the justice done in Jerusalem, though adequate to the occasion, was not consistent with the highest, most fully civilized aspirations of modern jurisprudence. In choosing to speak for this “we,” Arendt lent credence both to the justice that was done in Jerusalem and to the Justice that was deferred in Jerusalem. As such, her efforts to elicit the tremor of Justice faithfully reflect her earlier characterization of the House of Justice as a contested site, wherein the pursuit of justice was seen to clash with the “demands” of Justice.

That justice was done in Jerusalem, which the voice of politics confidently asserts, does not necessarily oblige us to be satisfied with the outcome and aftermath of the Eichmann trial. We may determine, for example, that the justice done in Jerusalem was only provisionally or conditionally satisfying, especially if we agree with Arendt that the type of criminal exemplified by Eichmann was neither acknowledged nor addressed. We also may decide, as we shall see, that the justice done in Jerusalem imposes upon us the responsibility to aspire to a more thoroughly civilized administration of justice.

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27 As Rogat allows, “there is a strong impulse to say simply that Eichmann is guilty in every sense of the word, and be done with it” (See Rogat, *The Eichmann Trial*, p. 33). See also Gottlieb, “Beyond Tragedy,” pp. 50-52.
4. JUSTICE DONE AND JUSTICE DEFERRED

Although justice is often (and traditionally) regarded as the crowning virtue and ideal aim of politics, Arendt’s final paragraphs remind her readers that politics aspires to other ends as well, including the finality and expediency to which her reformulation of the verdict attests. In delivering these other ends, moreover, politics may be expected to comport itself in accordance with principles that we may tend to associate with a simpler, pre-modern canon of justice. In that event, and Arendt’s reformulated verdict is exemplary in this regard, politics proceeds by suspending its allegiance to the modern (or “civilized”) canon of justice, along with its orienting concern to establish mens rea as an element of the crime.

The decisive intervention of politics thus creates, and burdens us with, what might be called a justice deficit. In making visible and audible the justice of what was done in Jerusalem, Arendt effectively discloses to her readers that they have incurred a debt, of which she is perhaps uniquely aware, which corresponds to the deferral of modern (or “civilized”) justice in the name of politics. Indeed, her recognition of this debt, and her apparent willingness to take the steps needed to discharge it, help us to understand why she would speak for, and thus provisionally join, a “we” to which she does not necessarily wish to belong. The debt incurred in Jerusalem belongs to all of us, whether we agree with the judges or not. Engaging in a bit of prophetic speculation, she thus avers that

If genocide is the actual possibility of the future, then no people on earth—least of all, of course, the Jewish people, in Israel or elsewhere—can feel reasonably sure of its continued existence without the help and protection of international law. (EJ, 273)

Those who detect the tremor of justice in this alternative formulation of the verdict are not only implicated in an imperfect administration of justice, but also burdened with a corresponding debt to future generations. So long as justice remains invisible and voiceless, which is the situation Arendt means to address and disrupt, we may proceed as we wish, pretending to be satisfied with the justice delivered in Jerusalem. Having heard the voice of politics, however, and having acknowledged its indifference in this instance to the claims of modern (or “civilized”) justice, we are no longer free to conduct business as usual. We now know ourselves to be indebted, even if involuntarily so, and we now know ourselves to be responsible for addressing (and possibly eliminating) the justice deficit that Arendt has disclosed to us. In other words, the “we” for which Arendt speaks in her alternative verdict has morphed into a “we” that includes herself and all others who are knowingly dissatisfied with the justice of “what was done in Jerusalem.”
The disclosure of this debt, I offer, is a primary aim—and, in any event, a signal accomplishment—of Arendt’s Epilogue and its reformulation of the verdict. In showing her readers that justice was done in Jerusalem, she also shows them/us that the justice done in Jerusalem was provisional in nature. In channeling the voice of politics, while refusing to claim it as fully her own, she thus discloses what politics is neither able nor expected in this instance to articulate. Adeptly mobilizing (and multi-tasking across) the related tropes of the visible and the audible, Arendt acquaints her readers with their newly revealed obligation to address the justice deficit incurred in Jerusalem. Indeed, the disclosure of this debt authorizes the pivot toward the future that Arendt’s Epilogue (and Postscript) are apparently meant to accomplish. Politics may have had the last word in Jerusalem, but Arendt has arranged for modern (or “civilized”) justice to have the next word, if there is to be one.  

For Arendt, the justice deficit incurred in Jerusalem is regrettable, but hardly unexpected. Her confidence in the supposedly permanent reforms inscribed in the “civilized” practice of jurisprudence was tempered by her bracingly realistic assessment of the modest reach of human progress. As Seyla Benhabib has documented, Arendt was persistently ambivalent about the signature aspirations (and pretensions) of European modernity. Whatever the merit of the goals and ideals of the project of Enlightenment, Arendt cautioned, they remained aspirational—and, so, unrealized—to a degree that its most bullish champions were unwilling to acknowledge. She knew from personal experience that even in those cases in which progress was palpable, the peaks of civilization remained fragile, contested, and vulnerable to processes and agents bent on leveling them. Rather than simply pledge her undivided allegiance to the goals and ideals of European modernity, Arendt was more centrally concerned to reckon its actual successes and failures to live up to its preferred image of itself.

As we have seen, the prosecution and outcome of the Eichmann trial may be understood to confirm the wisdom of Arendt’s ambivalence. Despite an avowed and public commitment to the principles of “civilized” jurisprudence, the trial of Adolf Eichmann failed to confront the actual criminal whom it was meant to judge (EJ, 298). And although the trial yielded an outcome that may be affirmed as just, the relevant canon of justice was one with which proponents of “civilized” jurisprudence may and should be dissatisfied. Indeed, the irony here is that Arendt’s modest expectations for the Eichmann trial shielded her from the disappointments expressed by other close observers of the legal proceedings. Rogat, for example, sounds fairly despondent as he urges

other (unnamed) nations to “become capable of making the decision Israel failed to make.”

Although she agrees with Rogat that Israel missed (or declined) an opportunity to further “the development and extension of international law,” Arendt does not regard this opportunity as permanently lost or foreclosed. By making known the extent and the limits of the justice done in Jerusalem, she apparently intends to galvanize an audience that will appreciate this opportunity as both ongoing and ripe. Indeed, the general thrust of her Epilogue and Postscript is to alert her readers to the pressing need for laws and institutions that will allow modern, civilized societies to hold “thoughtless” criminals responsible for their crimes. The option elected in Jerusalem—namely, to revert to “barbaric” propositions of justice—was tolerable to her, but only as an emergency measure. In the case of Adolf Eichmann, she apparently believes, justice was done. In the matter of the “new type of criminal” he exemplified, however, justice was deferred.

A more permanent solution to the problems posed by the emergence of this “new type of criminal” will require modern scholars and practitioners of philosophy, politics, and jurisprudence to mount a concerted effort to update their principles, norms, practices, and statutes, precisely so that criminals may be held responsible even if they are deemed to lack the requisite criminal intent. Having documented the capacity of totalitarian regimes to hijack the conscience and override the traditional commands of morality, Arendt was in a unique position to realize that more criminals like Eichmann, thoughtless and lethal, were likely to appear in the dark and darker times that lay ahead.

CONCLUSION

I am guided in this interpretation of Arendt’s Epilogue by the following remarks of Paul Freund, which she may have known from her acquaintance with Yosal Rogat’s book:

30 Rogat, The Eichmann Trial, p. 43.
31 Rogat, The Eichmann Trial, p. 42.
32 Here I follow Felman, The Juridical Unconscious, pp. 107-09; and Neiman, Evil in Modern Thought, pp. 272-76. See also Bernstein, Hannah Arendt and the Jewish Question, pp. 168-75.
33 Here I follow Gottlieb, “Beyond Tragedy,” p. 50.
34 See Neiman, “Theodicy in Jerusalem,” pp. 77-78.
If we are ever to emerge from the shadow of destruction and the paralysis of fear, it will be through an extension of the rule of law. We shall have to enlarge our sense of community by creating a higher law and higher institutions to interpret it, institutions which must enjoy respect apart from whether this or that decision is pleasing to us. That will be a test of maturity for all peoples.  

Very much in the spirit of the sentiment expressed by Freund, I offer, Arendt challenges her readers to undertake the recommended “extension of the rule of law.” Having reached back to our “barbaric” past to dispense with Eichmann, she believes, we are now obliged to take steps to ensure that similar reversions will not be necessary in the future. Having helped ourselves in Jerusalem to an archaic canon of justice, we now must turn to the task of creating a new, improved, and more fully modernized canon of justice. (Until we do so, she warns, judges will either be tempted or expected to play a legislative role that exceeds the proper bounds of their judicial expertise (EJ, 274).) Like Freund, moreover, Arendt apparently hoped that this pivot toward the future would bear fruit in the form of a more robust network of institutions devoted to the expansion and administration of international law (EJ, 267-71).  


37 Earlier versions of this essay were presented to the Congress of the European Association of Jewish Studies (2018) and the World Congress of the International Association for the Philosophy of Law and Social Philosophy (2019). I am grateful to members of both societies for their helpful comments. I also am indebted to two anonymous reviewers for the journal.