

Arendt's Aspirational Constitutions: Toward a Supplemental  
Framework of Judgement through Ethical Subjection

by

Robert W. Farwell

A thesis submitted in partial fulfillment of the requirements  
for graduation with Honors in Rhetoric Studies.

Whitman College  
2019

*Certificate of Approval*

This is to certify that the accompanying thesis by Robert W. Farwell has been accepted in partial fulfillment of the requirements for graduation with Honors in Rhetoric Studies.

---

Dr. Matthew Wesley Bost

Whitman College  
May 08, 2019

## Table of Contents

Acknowledgements.....	iv
Abstract.....	v
Introduction: The Courtroom and Its Questions.....	2
Chapter 1: Foundations.....	8
1.1 Problematizing the Juridical Form.....	8
1.2 On Constitutive Rhetoric.....	10
1.3 On Subjection and Rhetoricity.....	13
1.4 On Rhetorical Response-ability.....	17
1.5 Working at the Limits of Intelligibility.....	19
1.6 Cosmopolitanism and the Public Use of Reason.....	21
Chapter 2: The Accused, his Defense, and Arendt’s Critique.....	25
2.1 The Eichmann Epilogue.....	25
2.2 Fear and Loathing of Eichmann’s Normality.....	28
2.3 “One that <i>we</i> are not willing to grant you.”.....	32
2.4 A Troubling Defense.....	36
Conclusion: “It will do justice.”.....	40
Bibliography.....	46

## Acknowledgements

I spent a great deal of time reading for and reflecting on this project. Not a dose of such reflection would have been possible were it not for the guidance and support of many.

Thank you to my advisor Matt Bost for your advice, kindness, and encouragement through the writing process this year and in years past. My gratitude is in the domain of “that for which no words really work,” to use Butler’s words. The amount of time and energy you have given to this department in my time at Whitman is nothing shy of miraculous. Have a wonderful sabbatical. You have certainly earned it.

To Heather Hayes: Your passion for rhetoric in action is the primary reason I decided to study in your department. Your work on rhetoricoviolence is of inescapable importance, your ability to inspire students is magical, and your faculty to persuade is redoubtable and awesome. You are the critic I aspire to be.

To Julia Ireland, whose Butler seminar kept me reading new texts up to the night before my thesis was due. It seems that there is always something more to add, to complicate, and to ponder.

To Kaitlyn Patia and Nicole Simek who agreed to read and engage my work.

To my parents Jane and Bruce, who have provided me the opportunity to spend time studying--what an immeasurable gift.

And Emma, who has taught me that there can hardly be a legible I without you.

## Abstract

This paper investigates Hannah Arendt's constitutive rhetoric at the end of the epilogue to *Eichmann in Jerusalem*. I argue that Arendt's constitutions are aspirational invocations which inaugurate a particular kind of collective subject that is best situated within a mode of ethical subjection. The invocations are constituents of a cosmopolitan community, and that community is endowed with a supplemental capacity for judgement, which is additive to other institutionally legitimate forms of judgement. The paper begins by setting the contextual stage of the Eichmann trial in 1961 Jerusalem, and an explanation of Arendt's criticisms of the moment. The paper then moves into a discussion of constitutive rhetoric and the critical paradox of subject assertions. Next, we enter a discussion of rhetoricity, modes of coming-into-being, and frames of legibility and ask what it mean to be rhetorically response-able, as is a condition of Levinasian ethical subjection. Finally, with that mode of subjection in mind, we textually analyze Arendt's constitutions to demonstrate their legitimacy within the conversations discussed above, and to perform critique of Eichmann's defense in accordance with the ontological frames we have thus repositioned. In sum, I move for an expansion of a constitutive rhetoric to include aspirational audiences. Arendt's fictive constitutions offer the conditions of possibility for audience to seeing itself as a member of a plurality within cosmopolitanism, from which she formulates and so enacts her theory of judgement. This expansion is also an example of a constitutive rhetoric which may be mobilized for other than nationalist aims, as it is most frequently.

*“The proximity of the neighbor - the peace of proximity - is the responsibility of the ego for an other, the impossibility of letting the other alone faced with the mystery of death.”*

-Emmanuel Levinas

## Introduction: The Courtroom and Its Questions

SS-Hauptscharführer Adolf Eichmann, the accused, sits confined in a glass box for his protection, isolated from rest of the courtroom on 11 April 1961. He is flanked by two Israeli guards and for most of his months long trial he remains stoic, frustratingly emotionless for the gravity of the punishment he faces and will almost certainly endure. The courtroom in Jerusalem is a grand auditorium which makes it impossible to ignore the event as a spectacle. No part of this trial is commonplace; not the crimes involved, not the indictments listed, not the defense's argument, nor the conditions of the court's justiciability. The location of the trial in this place and the authority of the state to try an individual for these crimes, is conducted under dubious jurisprudential claims. The defendant was kidnapped, as it were, caused to appear in Israel under no legal form of extradition from Argentina, where he had been living in hiding under an assumed identity. Eichmann's alleged crimes were many, but each count falls under the two titles of previously uncodified transgressions: crimes against the Jewish people, and crimes against humanity.<sup>1</sup>

The stakes of this exercise in jurisprudence loom over the courtroom. The lead prosecutor in the case, Israel's Attorney General Gideon Hausner, is tasked with articulating the severity and significance of the crimes Eichmann committed. His narrative aim is to paint the defendant as a deeply anti-Semitic murderer, knowingly and willingly the agent under whose control millions of Jewish and Romani people were systematically exterminated. Led by Dr. Robert Servatius, the defense argues that the accused acted as a

---

<sup>1</sup> Details provided by numerous texts. Among them, Moshe Pearman, *The Capture and Trial of Adolf Eichmann*, and, Hannah Arendt, *Eichmann in Jerusalem*. For more detailed information about the history of the trial, refer to these texts.

mere cog in a machine, from within which resistance was futile. Three judges preside over the trial at the front of the courtroom, sitting on the highest tier of seats. Their task is the proper adjudication of justice; minimizing spectacle, rendering judgement according to existing legal doctrine. What “proper adjudication” would look like in this unprecedented moment remains an open question for the duration of the trial and in academic deliberation thereafter. The influence of Israeli Prime Minister David Ben-Gurion equally looms over the courtroom despite his absence. The very reason Eichmann is found and put on trial in Jerusalem is at the Prime Minister’s insistence.

When a crime is committed, it is proper to ask: who has been transgressed and what is at stake in the transgression? In Eichmann’s unprecedented crimes, Hannah Arendt sees an opportunity to articulate a different notion of judgement than the one operative in the courtroom, and so must construct the audience against which the crime is enacted. Hannah Arendt was a student of Martin Heidegger's at the University of Marburg and received her doctorate in Philosophy at the University of Heidelberg under Karl Jaspers.<sup>2</sup> Offering to be the field reporter for the New Yorker magazine, Arendt was a twelve-year stateless German-Jew who relocated from Germany to France in 1939, and eventually fled Europe for the United States in 1941. She became a citizen of the United States ten years later. Arendt’s works *The Origins of Totalitarianism* and *The Human Condition* remain seminal texts in the politics of the Nazi regime and the intersections of thinking, politics, and philosophy. She preferred the term “thinker” to the title of “philosopher.”

Arendt is in the audience as the defendant enters the chamber and sits so void of emotion. She approaches the Eichmann trial with a critical eye toward its peculiarities, its

---

<sup>2</sup> Peter Baehr, introduction to *The Portable Hannah Arendt*, ed., Peter Baehr (New York: Penguin Books, 2000), vii-xlv.

absurdities, and its incongruencies as she saw them. Arendt writes five article installments while on contract with the *New Yorker*, which are finally published serially in February and March of 1963. Consolidated and published under one title: *Eichmann in Jerusalem; a Report on the Banality of Evil*, Arendt includes her criticisms of the accused man, elaborations on the significance of the unprecedented crimes at hand, and complications of a great deal more than just the thoughtless villainy of the accused.

In the final pages of *Eichmann in Jerusalem*, Hannah Arendt engages in a particular style of constitutive rhetoric that aspirationally invokes her audience. She employs this aspirational invocation of plurality as a subject position in order to ground her theory of judgement in the unprecedented crimes at hand. Arendt is able to mobilize her constituted plurality as that community against whom the crime was enacted. As a work of critique in the Foucauldian sense,<sup>3</sup> Arendt's text describes the "regime of truth" of judgement and justice that exists at the time and around the rhetorical situation that was the Eichmann trial, and offers a framework for recognizing the defendant as having acted against a different community than had previously been conceptualized when explicating notions of justice and criminality. From within the same truth regime, Arendt uses its norms to critique its structure. The result of these moves, I will argue, is the basis for a supplemental notion of judgement in the form of critique that re-envision the crimes Eichmann committed in terms of a plurality--a cosmopolitan community the accused has acted against.

Through Arendt's critiques of the peculiarities of the trial of Eichmann in Jerusalem, she engages in a rhetorical act that offers an inroad into a theory of judgement

---

<sup>3</sup> Foucault, Michel. "What is Critique?" in *The Politics of Truth*. (Los Angeles: Semiotext(e), 1997), 41-82.

while she also critiques both Eichmann the man, and the court in which he is tried, for significant breaches in the form that justice is allowed to take, when confronted with crimes unprecedented. She faults the court *ex post facto* for failing to follow her particular theories of judgement. In order to ground her theory of judgement, she needs to constitute the body of subjects and the world in which it would operate. The immediate implications of my argument are that Arendt is able to create the conditions of possibility for a framework of responsibility that grounds itself not in laws of the state, but in individual capacity for judgement founded in a notion of subject as constituted in ethical relation to alterity. Thinking--that is, the practice of formulating the self in relation to ethical norms and the assessing the validity thereof--is the very work of the political and is the basis of judgement. To be un-thinking, then, is to disturb the very notion of leading a communal life and to abdicate the prerogative of judgement endowed to every thinking human.

While at first a prerogative for judgement appears disjointed from a court's capacity for adjudication, it is in fact a supplement to that institutionalized form of judgement that finds its legitimacy in a human plurality. It may seem to be a form of judgement that falls entirely outside of the courtroom and outside of the boundaries of a nation state. Yet, it is an individual capacity for judgement that rests in each member of a cosmopolitan community. What I move for here is an expansion of a constitutive rhetoric to include aspirational audiences. Arendt's fictive constitutions offer the conditions of possibility that open the audience to seeing itself as a member of a plurality within a cosmopolitanism, from which she formulates and so enacts her theory of judgement.

In this project, cosmopolitanism will be a term from Kant's works on *Perpetual Peace*. I take up this vocabulary from his writings for the community that is created when

we begin to conceptualize the world as one collectivity rather than fragmented political associations, as was the case with 20th century global politics of this moment. When discussing crimes against humanity, the community transgressed is necessarily a cosmopolitan one. The basis of solidarity is precisely in that the crimes Eichmann is being tried for were committed against a plural community.<sup>4</sup> While cosmopolitanism and plurality are not perfectly synonymous--they originate from different philosophical traditions and times--their messages are strikingly similar. The distinction I draw is that where I discuss a cosmopolitan community, I think in terms of a social knowledge framework complete with codes and norms. When referring to the term plurality, I am addressing an aggregated population, represented by a collection of bodies signaling death in their exposure,<sup>5</sup> abstractly connected in a human essence, but nonetheless meaningful in that they are governable life susceptible to the influence of contingent norms.

The courtroom is an enactment of an institutionalized form of judgement that carries its own validity through its capacity to deliver socially-historically-politically legitimate punishment. A spectator in a courtroom, however, lacking institutional prerogative to try, adjudicate, sentence, and hang a man for certain crimes, might be said to lack all judgmental agency whatsoever. I aim to confound and complicate such a proposition in this project, instead suggesting that a supplemental theory of judgement is possible, merited, and productive. I will ground my suggestion in a notion of rhetorical response-ability to alterity and a precondition for communal existence.

---

<sup>4</sup> Diane Davis, *Inessential Solidarity: Rhetoric and Foreigner Relations*, (Pittsburg: University of Pittsburgh Press, 2010), 7.

<sup>5</sup> Judith Butler, "Violence, Mourning, Politics." in *Precarious Life*. (New York: Verso, 2006), 20.

In short, we are furthering Arendt's notion of judgement as a supplement to other institutionally legitimate forms of judgement. We cannot exist without a framework of legitimate judgement, nor can we afford to omit individual capacities for judgement operable through ethical subject formation from those institutionalized forms.<sup>6</sup> It is imperative that the reader conceptualize the formation of the ethical subject with a certain rhetorical responsibility to recognize oneself within a plural cosmopolitan world.

---

<sup>6</sup> Judith Butler, "Hannah Arendt, Ethics, and Responsibility" (Lecture, European Graduate School, Saas-Fee, Switzerland, Sep 30, 2009. 1/10. "For Arendt, the consequence of non-thinking is genocidal, or certainly can be."

# Chapter 1: Foundations

## 1.1 Problematizing the Juridical Form

A simple application of jurisprudential wisdom is only one small aspect of what takes place in the Jerusalem courtroom over these many months.<sup>7</sup> When a courtroom is called to order, it relies on a series of contextual facts. Among them are, (1) deference to legal precedent, (2) harm done against a certain plaintiff, and (3) the necessity of punishment as an appropriate remedy to that wrong--the right of due process, fulfilled. A trial at its base is none other than the location of an institutionalized form of judgement, bound by its form, procedure, and precedent. A trial is the exercise of the state's power to administer justice. But, what does justice look like? Rather than an oversimplified call to give each what they are due, what if we were to amend the premise of justice instead to be the process of determining the severity of crimes taken place as a function of the sort of community such crime has been acted against? The difference between the former and the later iteration is a shift in burden of actants from (1) a system of judgement whose responsibility structurally rests within itself, where the acting subjects are judges, prosecutors, and defense attorneys, to (2) a structure of judgement that necessarily charges each member of a community with an obligation to determine what the terms and conditions for judgement ought to be, and what communities are transgressed in action or in an act of thinking or not. It is critical to understand that jurisprudential wisdom is valid

---

<sup>7</sup> What Chief Justice Roberts likens to a referee calling the plays, not getting involved in pitching or batting. Senate confirmation hearing in September, 2005.

insofar as it is historically contingent.<sup>8</sup> Doctrine, precedent, and legal traditions are valid insofar as they are and have been valid. It becomes necessary at certain points to question the validity of a court's adjudication power—to challenge a taken-for-grantedness--such as when the world is confronted by crimes unprecedented as were brought up in the Eichmann trial. This moment raises structural questions about jurisprudential practice in the current state of affairs. It is quite reasonable to call into question the framework of legitimacy that is the basis for administering justice when the court is confronted with newness and strangeness, as it was in this case.

Structurally, this modified iteration of the practice of justice is not too distant a cousin of the form in which rhetoric takes to Aristotle: a capacity for seeing all available means of persuasion and then rightly picking the one to employ.<sup>9</sup> It is quite reasonable to ask: How do we go about seeing in the new terms of this paradigm shift? For Hannah Arendt, such a change is a natural occurrence in her theory of judgement.

Arendt would be disheartened to say the least if we failed to remind ourselves of just how truly bizarre this trial was--how truly abnormal it became. While purporting to act as purely a methodological site of meting out just punishment for a crime, there is much more at play in this case. We must ask of both the trial's form and function. If it is not exclusively performing an adjudication of justice, what purpose does it truly serve? If there are disparities between what a trial ought to accomplish and what this one does accomplish, it is quite right to suggest that a serious critique of the trial's pretense is merited. Indeed, the stakes in this case are no less than the possibility of ending a man's life, the punishment

---

<sup>8</sup> Consider Supreme Court Associate Justice Robert Jackson's remark: "We are not final because we are infallible, but we are infallible only because we are final." *Brown v. Allen*, 344 U.S. 443 (1953).

<sup>9</sup> Aristotle, *Rhetoric: Book I*. Trans. W. Rhys Roberts. Dover Thrift Editions, 2004.

brought to bear against the defendant's alleged killing of six million people. Arendt makes note of these questions early on in her Eichmann writings. She addresses the showmanship of the prosecutors and the rhetorical rather than referential language they employ. In Mr. Hausner's famed opening statement he decrees that he is "not standing here alone" but rather "standing here as the mouthpiece of six million prosecutors who cannot point their fingers at the box and utter 'J'accuse' against the man who sits there."<sup>10</sup> Arendt notes the obligation of the judges to maintain juridical order, lest they seem to the public as not blind mediators of justice but mere pawns in Ben-Gurion's nation-legitimizing publicity stunt. Judge Landau steadfastly adheres to this calling, or at least, does his very best to ensure the legitimacy of the juridical practice despite the celebrity and oddities of this particular trial. Explicating each of her points of contention with the Eichmann trial is no small feat. Arendt does so nevertheless. From her work, a great deal more can be drawn than only criticisms.

## 1.2 On Constitutive Rhetoric

Constitutive rhetoric is a term used for rhetorical language which, aptly, constitutes subjects. That is to say, the subject does not pre-exist its ontological frames, but is inaugurated and conceptualized from within them. When I assert myself using strategic essentialism in saying "as a college student" before elaborating my position, I constitute myself within that established subject category; one that both precedes myself and that I create through iteration. It could be said that one element of this gesture is performative, an illocutionary speech act that carries material effects.<sup>11</sup> This particular act is called

---

<sup>10</sup> Hannah Arendt, *Eichmann in Jerusalem; a Report on the Banality of Evil*. (New York: Viking Press, 1963), 260.

<sup>11</sup> Austin, J.L. *How to do Things with Words*. Second Edition. eds., J. O. Urmson and Marina Sbisa. (Cambridge: Harvard University Press, 1955), 5

subjection, and carries questions of radical agency, responsibility, and temporality in relation to the subject. Where we begin is with the characteristics of a constitutive rhetoric, which I will engage in order to conceptualize Arendt's work within it.

Maurice Charland begins his piece on constitutive rhetoric by invoking the Burkean transition from rhetorical "persuasion" to "identification," which allows for a reformulation of rhetoric as supplemental not only to the conditions and circumstances of a text in its context, but additionally to "the constitution of the subject where the subject is precisely he or she who simultaneously speaks and initiates action in discourse (a subject to a verb) and in the world (a speaker and social agent)."<sup>12</sup> The subject's persuadability, then, exists in its very "subject-as-audience"<sup>13</sup> that cannot exist but within an already constituted identity.

Charland then moves to explain the process of interpellation, whereby a subject becomes itself in the act of turning to answer a call made to it. The famous Althusserian example is in reply to a policeman's hail of "hey you!" in the street. The subject is interpellated as an answerable subject, a subject's whose legibility is conditioned on its responding to the call. Here, we find ourselves in a double-bind. "Thus, this rhetoric paradoxically must constitute the identity [...] as it simultaneously presumes it to be pre-given and natural."<sup>14</sup> Charland further explains that "Narratives 'make real' coherent subjects."<sup>15</sup> In engaging constitutions, the rhetor seeks to "make real" a representational

---

<sup>12</sup> Charland refers his reader to discourse based theories of the subject from Kaja Silverman, *The Subject of Semiotics*, (New York: Oxford University Press, 1983), 43-53, 126-131.

<sup>13</sup> Maurice Charland, "Constitutive Rhetoric: The Case of the People Québécois," in *Routledge Reader in Rhetorical Criticism*. eds. Brian L. Ott and Greg Dickinson, (New York: Routledge Taylor & Francis, 2013), 432.

<sup>14</sup> Charland, "Peuple Québécois" 435. Note here the grand paradox of a constitutive rhetoric. An essentialist notion of the subject is an inescapable challenge we are confronted with as we attempt constitutive designations. Here, this question remains unresolved.

<sup>15</sup> Charland, "Peuple Québécois" 437.

world that has a deep ambivalence to absolute meaning. Whether that constitution is effective, that is, a subject who accepts its constitution, is an open question.

How I engage constitutive rhetoric via Charland is to suggest that constitutive moves, such as an act of interpellation, may be read not only as the assertion of an always already delineated subject category, but may be aspirational in nature. A rhetor may seek to constitute a previously un-constituted subject category in order to do material things in the world. This does not equate to a totally unhinged radical formative agency, but rather offers the space for a new iteration, a possibility of difference.<sup>16</sup> When Arendt writes her critique of Eichmann, she asserts a subject category that may or may not be enacted through a “turning toward” to meet the hail. It is notable that in Althusser’s example it is an authority of the state who initiates the act of subjection. This is one detail which I believe Arendt would find indicative and it is a neat point of departure from Althusser to Arendt’s writing. In how I read Arendt, the act of constituting a plurality is more about creating the possibility of that subject category rather than asserting one as already given. That is to say, her constitution is an aspirational call into the future rather than a call to a subject already delineated. She aspires for her audience to occupy a position of a collectivized cosmopolitan community.

This sort of constitutive rhetoric is of a different nature than the aims for which it is usually invoked. Most commonly, a constitutive rhetoric is employed in nationalist projects. Charland’s ‘peuple Québécois’ is a fitting example, as is President Bush’s

---

<sup>16</sup> For a fully fleshed debate on the characteristics of and differences between a) the power enacted by the subject and b) the power that transitively enacted upon it, see: Judith Butler, *The Psychic Life of Power*, 1997. See also footnote 29.

invocation of an Iraqi national identity.<sup>17</sup> The former succeeds where the latter does not in constituting a collective that fundamentally already exists prior to the act of naming. Zagacki writes of how through numerous foreign policy speeches President Bush constitutes a national identity that he ignorantly assumes is accurately representative of the nature of a national community. The President's constitutive rhetoric failed insofar as he did not take into account the pre-existing ontological views of the population under a Sunni and Shia dualism confounded the capacity for rhetorical transformation by his speech acts. I will take up this conversation to investigate the possibility of cosmopolitan constitutions through the trial of crimes unprecedented. To alter Zagacki's point of interjection, "I suggest how constitutive rhetoric may articulate alternative political identities in the midst of [an unprecedented moment.]"<sup>18</sup> This reformulation of the capacity of a constitutive moment, I will argue, creates an opening for a supplemental exercise of judgement.

### 1.3 On Subjection and Rhetoricity

I will be situating Arendt's aspirational constitutions within a rhetoric of responsibility provided by Diane Davis, which extrapolates on Burke's investigation in the rhetoricity of identification. She reiterates his assertion that "belonging is not a fixed ontology" and subjects, even those who are collectivized, do not "constitute an essence."<sup>19</sup> The goal of this body of work is to locate an original rhetoricity of a subject position, a subject's "affectability" or "persuadeability" as "the condition for symbolic action."<sup>20</sup>

---

<sup>17</sup> Kenneth S. Zagacki, "Constitutive Rhetoric Reconsidered: Constitutive Paradoxes in G. W. Bush's Iraq War Speeches." (*Western Journal of Communication*, Vol 71. No. 4, 2007), 274.

<sup>18</sup> Zagacki, "Constitutive Rhetoric Reconsidered," 275.

<sup>19</sup> Diane Davis, *Inessential Solidarity: Rhetoric and Foreigner Relations*, (Pittsburg: University of Pittsburgh Press, 2010), 1.

<sup>20</sup> Davis, *Inessential Solidarity*, 2.

While Charland understands constitutions as a site of identification, Davis's position is operative in a moment prior to identification. This is the site I wish to locate Arendt's aspirational invocations of plurality- from the very moment of subjection, a moment that can constitute the ethical subject.

Davis offers insights into rhetoric's ability to yield immense power over an other, power that makes subjects legible at all. She makes references to Heidegger in sharing that there is no form of being that is not already "being-with"<sup>21</sup> and that one is "thrown"<sup>22</sup> into being, and so a rhetorical act cannot be seen to act in a void where subjects are isolated beings, delinked from the conditions of their legibility. We arrive at the realization that an essential notion of a self is nonexistent prior to the rhetorical act. In order to implicate a subject in a certain ideology, the rhetor must constitute a subject according to his or her own terms, and also always in conjunction with the always already established conceptions of that term within its ideology.<sup>23</sup> So, no, we have not done away with agency; the rhetor-as-subject may still introduce new iterations of terms and iterations of semantic fields, but they are never wholly unhinged to the degree that the social legibility of those performances is made perfectly anew. Davis cautions us from becoming too comfortable with essentiality of subjects as it easily becomes the closure of the political if we allow it.<sup>24</sup>

---

<sup>21</sup> Martin Heidegger, *On Being and Time*. Quoted in Diane Davis, *Inessential Solidarity: Rhetoric and Foreigner Relations*, (Pittsburg: University of Pittsburgh Press, 2010), 2.

<sup>22</sup> Martin Heidegger, "Letter on Humanism." in *Martin Heidegger: Basic Writings*. ed., David Farrell Krell. (New York: HarperCollins Publishers, 1977), 234.

<sup>23</sup> This is the constitutive paradox which we are forced to exist within. Butler calls it an "irresolvable ambiguity." We are forced to both essentialize and reject essentialization. Additionally, the use of term ideology comes in its most recent use from Louis Althusser, *On the Reproduction of Capitalism: Ideology and Ideological State Apparatuses*. trans. G.M. Goshgarian. Verso Books, 2014.

<sup>24</sup> Jean-Luc Nancy, *Sense of the World*, quoted in Diane Davis, *Inessential Solidarity: Rhetoric and Foreigner Relations*, (Pittsburg: University of Pittsburgh Press, 2010), 7. This is also relevant in Butler's terms on how the assertion of identity should not become the ends of the political in itself. That assertion comes of short of challenging the titles at their limits.

One method for coming into existence as a legible subject is through a constitutive rhetoric. In order to come into being, the subject may have begun with the constitution of itself, but this act proves to be more communal, relational, task than the relatively isolated process of Hegelian self-certainty. A subject necessarily involves an other when it asserts itself as an “I.” Indeed, “I” am not “I” absent you. I require engaging a “you” whenever I attempt to explain and understand myself. I cannot give, let alone construct, an account of myself but *to* another and existing on behalf of and always in relation *to* that other.<sup>25</sup> These intrinsic relationships are the conditions which allow Arendt's constitutive rhetoric to come into effect, and to demonstrate how the subject of Eichmann can become incongruent, situationally anachronistic outside of his own frame of defense, such as when a new notion of judgement is inaugurated by the constitution of a plurality. It is a result of this transition and Eichmann's subsequent illegibility that Arendt is inclined to hold him up as an example of the “banality of evil.”<sup>26</sup>

We have said that the “I” exists as always situated in relation to the other. In this sense, it is clear that one element of the self is ek-static.<sup>27</sup> One part of the self always is present in the form of the other, and to understand the primary subject of the self we have to always take up its relationality to the other as well. Later in this chapter we will develop an understanding of the subjective process as laced with and conditioned on ethical obligation to an other, which we will then collectivize to ground a notion of plurality. We have thus far determined that the other is a necessary part of self-certainty and subjectivation. Next, it is equally necessary to explain that a subject is legible only within

---

<sup>25</sup> Judith Butler, *Giving an Account of Oneself*, (New York: Fordham University Press, 2005), 10.

<sup>26</sup> Hannah Arendt, *Eichmann in Jerusalem; a Report on the Banality of Evil*. (New York: Viking Press, 1963), 266.

<sup>27</sup> <sup>27</sup> Judith Butler, “Violence, Mourning, Politics.” in *Precarious Life*. (New York: Verso, 2006), 22.

a specific and collectively agreed upon social ontology, the frame of legibility within which it is made manifest.

In her later work, Butler reformats her own notion of subject formation in a framework of relational ethics.<sup>28</sup> Rewriting the terms and conditions of subject formation, she then conceptualizes the (a) original transitive power--that power under which the subject emerges distinct from (b) the one it mobilizes--as the location of coming into being.<sup>29</sup> In terms that necessitate another acting agent distinct from the seemingly isolated consciousness that Hegel imagines as mutually confrontational in lord-bondsman of *Phenomenology*, Butler writes herself away from a Nietzschean rage and cynicism of bad conscience, and tends towards Foucault's reflexivity which emerges in taking up moral codes.<sup>30</sup> By reformatting her thoughts to align more closely with the later Foucault, she remarks, "I perhaps too quickly accepted this punitive stance of inauguration of the subject."<sup>31</sup> She writes instead, "There is no making of oneself (*poiesis*) outside of a mode of subjectivation (*assujettissement*) and, hence, no self-making outside of the norms that orchestrate the possible forms the subject may take."<sup>32</sup> In this particular case, rather than seeing Eichmann-as-subject inaugurated in the Israeli capacity for punishment, for Butler, Eichmann might engage in self-formation from within his own norms-those which render

---

<sup>28</sup> Judith Butler, *Giving an Account of Oneself*.

<sup>29</sup> For a fully fleshed debate on the characteristics of and differences between (a) the power enacted by the subject and (b) the power that transitively enacted upon it, see: Judith Butler, *The Psychic Life of Power*, 1997. Butler suggests that the subject is a "site of ambivalence" which itself is the "condition for possibility of a radically conditioned form of agency." pp. 15. She further indicates that an "irresolvable ambiguity arises" when we try to distinguish the two. I bring this conversation up as a point of contestation over the apparent simplicity in the process of subjection I consider through Arendt's constitutions. As I will indicate later, it is important to note that Butler moves away from ideas of subjection in a primarily punitive sense. She explains her decided reformulation in her later works.

<sup>30</sup> Judith Butler, *Giving an Account of Oneself*, (New York: Fordham University Press, 2005), 16.

<sup>31</sup> Judith Butler, *Giving an Account*, 15.

<sup>32</sup> *Ibid.*, 17. This is a notable difference in Althusserian interpellation, whose reply to a hail is under the pretense of punitive aims.

him illegible to (or at the very least, incongruent with) both Arendt and the norms which constitute the rhetorical situation of the courtroom at that date in 1961.

#### **1.4 On Rhetorical Response-ability**

We hear from Butler that it is impossible to constitute the self beyond the norms of its originary ontological framework, what we might call in rhetoric and critical theory, a “frame of legibility.” In order to reposition the conditions for coming into being, we must shift our particular mode of subjectivation. In a cosmopolitan community, therefore, we say the responsibility to alterity shall remain paramount. In a cosmopolitan community, there is no “I” which exists wholly outside of or existing prior to the “you” by which the very “I” is called into being. That relationality is always existent, so is the radical dependence on the other. The other, therefore, is the limiting condition for becoming a subject within a cosmopolitan community. Said another way, the other is the frame through which the “I” becomes legible as an “I.” If you exist in a realm outside of this relational responsibility, --that is, the ability and in fact obligation to respond as the very condition of your being--you are not living in this cosmopolitan world.

“But as a singularity, finite and exposed, “I” come into being only inasmuch as “I” respond to the other, and this preoriginary obligation to respond is called “my” responsibility. Responsibility, from this Levinasian perspective, is not something a self-sufficient subject chooses to take up; rather, “the subject” is ethically structured as response-ability: “the subject” is the response to alterity.<sup>33</sup>

---

<sup>33</sup> Diane Davis, *Inessential Solidarity: Rhetoric and Foreigner Relations*, (Pittsburg: University of Pittsburgh Press, 2010), 114.

Not only are we exposed to the other, but this exposure comes at the level of potential death. “Death marks the absolute limit of identification,”<sup>34</sup> so our “openness”<sup>35</sup> to each other, this finitude, this exposure of our subject to the other, denotes the purpose of community itself: “[community] serves to communicate your exposedness and so to shove you out of yourself, toward the other, to make you responsive to and responsible for the other.”<sup>36</sup> What we gather from these realizations is the inescapability of the other to the self when in a community. The work we do here seeks to extrapolate these always related positions to Arendt's constitutions, and reformulation of ethical action according to a cosmopolitanism.

Yet, in order to inaugurate this supplemental notion of judgement in accordance with a cosmopolitan community whose members are constituted on their very obligation to respond to the other, Arendt needs to implicate the accused Eichmann within her theory. She cannot rewrite legal code and try him under a new frame of justice, as she is but a journalistic audience member attending the trial. However, Arendt can take pen to paper and perform critique of these institutionalized forms of judgement. Her constitutions, then, are performative. She obeys no standing law, she carries no sovereign authority when she sentences him to death at the end of the Epilogue.<sup>37</sup> It is a fictional hanging, as is her constituted plurality. What I suggest in this paper is that a “fictive”<sup>38</sup> invocation should not be merely written off as an academic engaging in erroneous thought exercises in a purely

---

<sup>34</sup> Davis, *Inessential Solidarity*, 10.

<sup>35</sup> *Ibid.*, 10.

<sup>36</sup> Maurice Blanchot, *The Unavowable Community*, (Barrytown: Station Hill Press, 2000), 11. Cited by Diane Davis, *Inessential Solidarity: Rhetoric and Foreigner Relations*, (Pittsburg: University of Pittsburgh Press, 2010), 10. Similar sentiments are expressed throughout Butler's *Prekarious Life*, especially in her response to Levinas in chapter five.

<sup>37</sup> Judith Butler, “Hannah Arendt, Ethics, and Responsibility” (Lecture, European Graduate School, Saas-Fee, Switzerland, Sep 30, 2009), 7/10.

<sup>38</sup> See Charland, “Peuple Québécois” for word choice.

hypothetical world; on the contrary, I hope to explain how these aspirational constitutions are still productive and allow room for an inauguration of a notion of judgement grounded in responsibility, and toward a cosmopolitan purpose. The term “judgement” for us in this analysis is the exercise of grasping “what constitutes the acceptability of [this] system [of jurisprudence]”<sup>39</sup> which allows criticism to operate from a critical distance to the knowledge-power of institutionalized forms or critique. This capacity and function to critique these institutionalized forms are those which Butler offers in her lectures.<sup>40</sup>

### **1.5 Working at the Limits of Intelligibility**

We may thus carry that relationality to alterity is a necessary condition for constitution of a subject in the sort of responsible community that Davis suggests.<sup>41</sup> We can, as hardly a leap of faith, continue with this framework of relationality to express our condition of existence as a subject constructed in a socially accepted ontology of responsibility--a collective adherence to, respect of, and disciplining by, a moral code.<sup>42</sup> Just as a subject is constructed within social limits and are intelligible within that context, so too are the ethical formulations rendered acceptable within their own ontological limits. What this means functionally in the Eichmann case is that the defendant exists as one who is able to be called to account for his actions, but his individually constructed moral

---

<sup>39</sup> Michel Foucault, “What is Critique?” In *The Politics of Truth*. ed., Sylvère Lotringer. trans. Lysa Hochroth & Catherine Porter. (Los Angeles: Semiotext(e), 1997), 61. Additions mine.

<sup>40</sup> Judith Butler, “Hannah Arendt, Ethics, and Responsibility.” Lecture, European Graduate School, Saas-Fee, Switzerland, Sep 30, 2009.

<sup>41</sup> Diane Davis, *Inessential Solidarity: Rhetoric and Foreigner Relations*, (Pittsburg: University of Pittsburgh Press, 2010).

<sup>42</sup> Without moving too far toward the vocabulary of *Discipline and Punish*. In this paper, we stick more closely to “ethic” as our key term, taken from the Levinas.

framework is at odds with the collective one.<sup>43</sup> Eichmann refuses to feel responsible for his actions, and cannot see their wrongness because of his own stubbornness. In this way, he feels he is -un-response-able, for that which he is accused of. He is not only a subject called to answer in the punitive sense which Butler reminds us of,<sup>44</sup> but a thoughtless, baseless anomaly, trapped in a world where responsibility to alterity is not the crucible of a legible and ethical subject. That formulation of a subject Eichmann cannot even reject let alone refute--because he cannot will himself to see it. Most importantly to the points of our case, Arendt's invoked subject of plurality comes to exist from within the context of this historical moment. In this example, the 'coming-to-being' for plurality is born of a moment in which genocide is the result of a collection of subjects<sup>45</sup> failing to understand themselves as implicated in that very plural community which Arendt articulates.

So, what's our next move? Rhetoric's task is to explicate those very limits, the limits which created the possibility of a subject like Eichmann and his superiors. Rhetoric must render these conditions visible, and introduce new conditions of possibility for introducing an interruption in order to inaugurate newly acceptable ontological criteria. Said more simply, rhetoric works at the limit of intelligibility rather than at the level of identity,<sup>46</sup> so that when we question a subject's constitution we must consider first the conditions which govern it. As Charland offers, we ought to read those limits as rhetorical and mutable rather than fixed.

---

<sup>43</sup> Which in this case, is a moving target between two systems of judgement: 1. adherence to existing law, or 2. adherence to abstract principle. The collective framework, the one being pursued in the courtroom at the time is equally at odds with Arendt's envisioned plurality. This is the basis for her multi-layered critique. For more, see, Judith Butler, "Hannah Arendt, Ethics, and Responsibility" (Lecture, European Graduate School, Saas-Fee, Switzerland, Sep 30, 2009).

<sup>44</sup> See footnote 29.

<sup>45</sup> The agents, officers, politicians, and thinkers of the Third Reich.

<sup>46</sup> Julia Ireland, course notes, PHIL 321: Judith Butler Seminar. January 16, 2019. Notes pp. 65.

[In] order to overcome the constraints of ideology, rhetorical theory must see through the ‘givenness’ of what appears to be the delimitable rhetorical situation, where the ontological status of speaker, speech, audience, topic, and occasion offer themselves as unproblematic. It must recognize that ultimately, the position one embodies as a subject is a rhetorical effect.<sup>47</sup>

The subject is a rhetorical effect, which in Butler’s terms would mean that we are capable of performing it otherwise.<sup>48</sup> These movements, I will argue, represents the site for Arendt’s cosmopolitan plurality which her audience is offered a place within. We have to posit the existence of a responsible subject in order to try Eichmann in those terms. In order for Arendt to claim that his crimes which not only caused the death of millions, but also were more problematically crimes which attacked the very conditions of existence. The notion of criminality which Arendt offers in the Eichmann text, grounded in ethical relation and the very constitution of a responsible subject at all, is for us, a necessary point of establishment. Rhetoric will aim to delimit the subject as responsible *to* an other as the basis for ethical thought, the omission which Arendt indicts Eichmann principally.

## **1.6 Cosmopolitanism and the Public Use of Reason**

There is a characteristic of Kant’s *Perpetual Peace*, on which the possibility of that imagined world rests: it is a cosmopolitan community. Through deliberating the many conditions and characteristic changes on current democracies and republics that would be necessary, he engages in a thought exercise which envisions a world of perpetual peace. His deliberations are subsumed by the realization that adherence to a plural and

---

<sup>47</sup> Maurice Charland, “Constitutive Rhetoric: The Case of the People Québécois.” in *Routledge Reader in Rhetorical Criticism*, eds. Brian L. Ott and Greg Dickinson, (New York: Routledge Taylor & Francis, 2013), 445.

<sup>48</sup> Judith Butler, *Performative Acts and Gender Constitution: An Essay in Phenomenology and Feminist Theory*, (Baltimore: Johns Hopkins University Press, 1988), 528.

cosmopolitan community is paramount to this vision. We have already addressed the dependence of crimes against humanity on cosmopolitanism. The former necessarily presupposes the latter. For Kant, the precursor to a cosmopolitan world is a unified human race, endowed with the capacity for reason that is then constructed into “definite practical principles”<sup>49</sup> which then “is transformed into a *moral* whole.”<sup>50</sup> Each of those moves exists as steps towards what Kant conceptualizes as “the highest purpose of nature, a universal *cosmopolitan existence*,” which, “will at last be realized as the matrix within which all the original capacities of the human race may develop.”<sup>51</sup> It is not, as some may suggest, a post-national move. We are introducing this notion as a supplement to, rather than a replacement of, institutional forms of judgement, i.e. a justice system built on the courtroom, laws to which citizens are held accountable. We do not do away with the act of trial, or sentencing a guilty party, but we do aim to reconstitute juridical form in an additive sense. In this paper, we aim to locate cosmopolitan transgressions in the subjective process, the very constitution of a subject as that which takes into account a universal notion of humanity.<sup>52</sup>

It is all well and good to understand the intricacies of the Eichmann trial and Arendt’s critiques of the man and the peculiar event, but of more pressing concern is the reader’s understanding of their obligation in judgement, learned from this historical moment and its critique. In his distinction between private and public use of reason, Kant

---

<sup>49</sup> Immanuel Kant, “Ideas for a Universal History with a Cosmopolitan Purpose,” in *Kant Political Writings*. ed., Hans Reiss. trans. H.B. Nisbet. Second Edition. (Cambridge: Cambridge University Press, 1991), 45.

<sup>50</sup> Kant, “Ideas for a Universal History,” 45.

<sup>51</sup> *Ibid.*, 51.

<sup>52</sup> The potential of a universal cosmopolitan purpose Kant narrates is an aspirational. In this case, it is much more of a thought experiment than I wish to ascribe to Arendt’s work on the Eichmann trial. I disregard the notion that Arendt’s writings are anything less than truly hopeful and forward looking.

writes “The *public* use of a man’s reason must always be free, and it alone can bring about enlightenment among men;”<sup>53</sup> It is imperative to give oneself over to a political community in thinking and in ethical subjection. When existing in community, one cannot help but take up the responsibility *to* the other, *for* the other, be called to answer *to* the other, and articulate itself *to* the other. And it must think with the other in mind.

To bring the idea of cosmopolitanism closer to our discussion of the Eichmann trial, it is against the very category of human that Arendt says the accused has acted--against what it means to be human. In this sense, Eichmann’s crimes were infractions not against the institutionalized law of nation-states, but against humanity; to try him for crimes in a courtroom of a nation for crimes against the Jewish people is, then, at the very least a dubious move. We will transition at the conclusion of this section to Arendt’s constitutive invocations of human plurality in the Eichmann Epilogue, which I argue is best categorized within a framework of moral code that originates within subjectivation as an answerable subject, in the context of a cosmopolitan community. It is under this frame of judgement that we can construct a supplemental framework that operates in conjunction with other legitimate institutionalized forms. To situate the constitutions, we invoke the cosmopolitan community:

The peoples of the earth have thus entered in varying degrees into a universal community, and it has developed to the point where a violation of laws in *one* part of the world is felt *everywhere*. The idea of a cosmopolitan law is therefore not fantastic and overstrained; it is a necessary complement to the unwritten code of political and international law, transforming it into a universal law of humanity.<sup>54</sup>

---

<sup>53</sup> Immanuel Kant, “An Answer to the Question: What is Enlightenment?” in *Basic Writings of Kant*. ed., Allen W. Wood. trans. Thomas. K. Abbott. (New York: The Modern Library, 2001. Orig: Königsberg, 1784), 54.

<sup>54</sup> Immanuel Kant, “Toward Perpetual Peace” in *Kant Political Writings*. ed., Hans Reiss. trans. H.B. Nisbet. Second Edition. (Cambridge: Cambridge University Press, 1991), 107.

All told, through a constitutive rhetoric, Arendt's Epilogue aspirationally invokes a community against whom Eichmann's crimes transgress. Through these constitutions, Arendt creates the conditions of possibility for the inauguration of her audience as the constituted plurality which offers the opening for a supplemental framework of judgement. The legitimacy of this judgement is a subject who is constituted by virtue of its responsibility to the other, which is the condition for human existence within a cosmopolitan community.

## Chapter 2: The Accused, his Defense, and Arendt's Critique

### 2.1 The Eichmann Epilogue

We move now into our primary artifact for this analysis: the Epilogue of *Eichmann in Jerusalem*. Taking into account the discussions from chapter one, we will take moments of the text as constitutions of a subject of human plurality. We will then localize their inception within a framework of cosmopolitanism, in what Arendt terms plurality, to demonstrate the possibility of a supplemental form of judgement that is located within a moral code of relationality to the other that is inherent to our notion of subject formation.

Arendt's aspirational invocation of a human plurality in her work is a move that offers an opening for a supplemental form of judgement that may be mobilized within current legitimate judgmental forms, e.g. courtrooms, judges, indictments, the governing apparatus itself.<sup>55</sup> When we say "aspirational," we indicate that the constituted audience is one to which we ought to aspire. In her condemnation of the accused and his deeds, Arendt reformulates the community against which Eichmann's deeds transgressed, a community which is a subject position to which Arendt aspires for her reader to envision and so become.

Arendt's writing on the trial of Adolf Eichmann captured the attention of the public and of academics alike immediately upon its publication in the *New Yorker* in February 1963. The task now is to articulate what the effects of these intricacies are and how they come together in such a way to complicate our understanding of the role of the critic,

---

<sup>55</sup> Ronald Walter Greene. "Another Materialist Rhetoric," in *Routledge Reader in Rhetorical Criticism*. eds. Brian L. Ott and Greg Dickinson, (New York: Routledge Taylor & Francis, 2013), 541.

judgement, conditions for legitimate judgement, and other independent capacities for criticism of those legitimate forms.<sup>56</sup>

We return to Davis on solidarity from chapter one to expound the relevance of these constitutions in relation to Arendt's critique of the trial's form. Eichmann is held to account for crimes unprecedented, but through an indictment that characterizes his crimes as transgressing the Jewish people in addition to humanity. Let us now attempt to position Eichmann the accused as a subject within a framework of judgement that does not appear to take "response-ability" to alterity as any transgression at all. For this omission on the defendant's part, Arendt is able to performatively hang him for his thoughtlessness.

How do we then move from Arendt's indicting language to see a rhetoric of responsibility function? Davis reminds us of a now obvious truism from Burke's *Rhetoric of Motives*, that "belonging is fundamentally rhetorical."<sup>57</sup> She continues:

The priority of the other is not a matter of the subject's choice [...] but of its inescapable predicament. "Ethical responsibility for the other is prior to subjectivity," Ronell explains, and "it's only through this ethical relationship that a subject can emerge." Thanks to an undeniable rhetorical imperative [...] You are already marked by this being-for-the-other—that is, you are indebted, kind of guilty, kind of ready to assume responsibility prior to anything else."<sup>58</sup>

In the Epilogue, Arendt constitutes a subject of human in a plurality. In her critique of Eichmann's judgements, she explicates what it means to be a part of what she terms plurality, a collective subject that itself constitutes a possibility of a new kind of

---

<sup>56</sup> Judith Butler, "Hannah Arendt, Ethics, and Responsibility" (Lecture, European Graduate School, Saas-Fee, Switzerland, Sep 30, 2009), 2/10.

<sup>57</sup> Diane Davis, *Inessential Solidarity: Rhetoric and Foreigner Relations*, (Pittsburg: University of Pittsburgh Press, 2010), 27-28.

<sup>58</sup> Avital Ronell, quoted by Diane Davis in *Confessions of an Anacoluthon: Avital Ronell on Writing, Technology, Pedagogy, Politics, 269-70*, quoted in *Inessential Solidarity: Rhetoric and Foreigner Relations*, (Pittsburg: University of Pittsburgh Press, 2010), 114.

transgression, that of a crime against humanity. And that a crime against that collective identity is a crime unprecedented, more heinous than any previously seen. In Davis's sense, this would also fall as a crime against rhetoricity, an abdication of the ethical responsibility as prior to subjectivity.<sup>59</sup> In this context for Davis, a constitutive rhetoric falls short of responsibility when it is not naming open to a plural community--when the constitution does not comprehend the "openness" the subject, "as if the being *were* or *existed* absolutely."<sup>60</sup> We have said that it does not. For that astounding omission, Arendt sharply critiques nearly all aspects of the circumstances of the trial. In order to develop an understanding for the example of constitution that Arendt employs, I will work through interrogations prior to and testimony from the Eichmann trial. I will put in conversation the remarks during Eichmann's interrogation in Israel after being kidnapped from Buenos Aires with Arendt's criticisms of his defense and reasons for innocence. Then, I will engage Arendt's theory of judgement, and contextualize the significance of a constitutive rhetoric within a philosophical framework. All told, I seek to explicate the significance of a constitutive rhetoric which creates a collective subject for which a framework of judgement is being posited, and how a subject might navigate a world that Arendt's theory envisions. A plurality exists if we manage to throw ourselves into occupying that subject position, but it is subject to failure if it is not adequately "taken up" by the audience.

---

<sup>59</sup> Davis, *Inessential Solidarity*, 15

<sup>60</sup> Martin Heidegger, *Being and Time*, quoted in Diane Davis, *Inessential Solidarity: Rhetoric and Foreigner Relations*, (Pittsburg: University of Pittsburgh Press, 2010), 4.

## 2.2 Fear and Loathing of Eichmann's Normality

Arendt does not mince her words as she shifts to an accusatory register in the end of the Epilogue. In what Butler calls a “subjunctive ventriloquism”<sup>61</sup> Arendt speaks on behalf of multiple voices in the room, only one of which is her own. Twice in the final three pages she uses language that speaks to what ought to have happened, had the judges or other representative characters been so bold as to say what she thinks they ought to have said. First, she addresses those who argued that Israel should have relinquished Eichmann to another adjudicating authority. She says they, “should have gone one step further and declared” that the practice of adjudicating this particular crime renders judgement in its current form obsolete. Her second use of a subjunctive mood, which I am more interested in, comes in the final paragraph of the Epilogue where she famously sentences Eichmann to death according to her own logic.<sup>62</sup> She does not deliver the fatal judgement without first mentioning that these words which she is now uttering would be merited “if the judges had dared to address their defendant in something like the following terms:”<sup>63</sup> Already saying the arguments employed did not go far enough, Arendt continues, “these modern, state-employed mass murderers must be prosecuted because they violated the order of mankind, and not because they killed millions of people.”<sup>64</sup> Here she speaks to a classic Western tradition of punishment and responsibility that grounds the wrongness of a crime not in the act so much as in transgressing the trust, the commonality, the code of behavior which

---

<sup>61</sup> Judith Butler, “Hannah Arendt's Death Sentences,” (University Park, PA: Penn State University Press, *Comparative Literature Studies*, Volume, 48. No. 3, Special Issue Trials of Trauma (2011): 280-295), 290.

<sup>62</sup> Mind you, three years after the man had already been hanged.

<sup>63</sup> Hannah Arendt, *Eichmann in Jerusalem; a Report on the Banality of Evil*. (New York: Viking Press, 1963), 272.

<sup>64</sup> *Ibid.*, 272.

binds society. However, here she takes it a step further to speak more directly on her notion of the unprecedented in terms of transgression.

Nothing is more pernicious to an understanding of these new crimes, or stands more in the way of the emergence of an international penal code that could take care of them, than the common illusion that the crime of murder and the crime of genocide are essentially the same. The point of the latter is that an altogether different order is broken and an altogether different community is violated.<sup>65</sup>

For Arendt, the crime that Eichmann commits is not the murder of millions (though that was indeed the result), and not even just the transgression of a legal code (which also took place in that the act was criminal),<sup>66</sup> but in that a *different community had been violated*. This word choice at sentence close is the first indication the reader has in the Epilogue of Arendt's invoking a new subject position. Since the crimes committed by Eichmann are of the degree of possibility of genocide they are transgressions against another type of community. Butler notes of Arendt: "She writes at the time, the horror itself [...] seemed to transcend all moral categories and to explode all standards of jurisdiction. It was something men could neither punish adequately nor forgive."<sup>67</sup> Necessarily, then, moving beyond standards of the day allow Arendt to conceptualize a theory of judgement that at the time seems abstract and unfounded, but can be said to truly speak to a cosmopolitan world. Genocide, therefore, becomes a transgression against humanity itself, against the very category of the human. At this moment in the text Arendt returns to contextualize the

---

<sup>65</sup> Hannah Arendt, *Eichmann in Jerusalem; a Report on the Banality of Evil*. (New York: Viking Press, 1963), 272.

<sup>66</sup> Judith Butler, "Hannah Arendt, Ethics, and Responsibility" (Lecture, European Graduate School, Saas-Fee, Switzerland, Sep 30, 2009), 7/10.

<sup>67</sup> *Ibid.*

crime of genocide using her terminology of the unprecedented. “And it is essentially for this reason: that the unprecedented, once it has appeared, may become a precedent for the future, that all trials touching upon crimes against humanity must be judged according to a standard that is today still an ‘ideal.’”<sup>68</sup>

It is curious that even in suggesting what the judges should have said, she too notes that the judges understood their positionality as obeying the limits of law themselves. In a deviously mirrored moment of acceptance of rule of law absent creating possibility of refusal, the judges sentence Eichmann on the counts for which he was charged. Arendt writes, “we must stress the judges’ firm belief that they had no right no become legislators,”<sup>69</sup> It is precisely this limitation to which Arendt objects, both in her critique of the man and of the court. “They had to conduct their business within the limits of Israeli law, on the one side, and of accepted legal opinion, on the other.”<sup>70</sup> This is quite bothersome for Arendt, who offers a theory of judgement based on individual endowment of thinking and which criminalizes thoughtless adherence to commands or doctrinal rule. What Arendt invokes through her language in the Epilogue is precisely the sort of person which may have the capacity to be a legislator. On this note, she rebukes the authority of the court on its very subject matter jurisdiction insofar as it fails to be reflexive and so falls short of what she would deem to be a legitimate form of judgement.

That is to say, by his thoughtlessness, Eichmann managed to act according to “Hitler’s orders,” which at the time possessed “the force of law” in the Third Reich.<sup>71</sup> But,

---

<sup>68</sup> Hannah Arendt, *Eichmann in Jerusalem; a Report on the Banality of Evil*. (New York: Viking Press, 1963), 273.

<sup>69</sup> Hannah Arendt, *Eichmann in Jerusalem*, 274.

<sup>70</sup> *Ibid.*, 274.

<sup>71</sup> *Ibid.*, 24.

he failed to act according to Arendt's notion of law insofar as that law would necessitate recognition of self within plurality, a recognition of the responsibility to the other.

My guilt lies in my obedience, my compliance with the duties of the service, duties of war service, and my oath of allegiance to the flag. Moreover, since the outbreak of war, I was bound by the laws of war. This obedience was not easy. And all who have had to submit to commands and obedience know what can be demanded of a human being.<sup>72</sup>

So while he passes the first test in his arguments of defense, he falls short of seeing himself within a human plurality which necessitates an understanding of cohabitation with the other as a precondition for existence. Put in Arendt's terms from the Epilogue: "Crimes against humanity, whose intent and purpose were unprecedented, was clarified. [...] At no point, however, either in the proceedings or in the judgement, did the Jerusalem trial ever mention the possibility that extermination of whole ethnic groups."<sup>73</sup> A genocidal politic, therefore, is a crime of thoughtlessness--a failure to comprehend the ethical obligations of plural existence.

In the penultimate section of the Epilogue, Arendt speaks to the gravity of of universalizing Eichmann's acts. "The trouble with Eichmann was precisely that so many were like him, and that the many were neither perverted nor sadistic, that they were, and still are, terribly and terrifyingly normal."<sup>74</sup> Eichmann himself says that he is not a monster,<sup>75</sup> and on this point, Arendt agrees. He was not a savage, ruthless killer, but alarmingly plain. His deeds were not done with aggression nor a ruthless urge to rid the earth of impurity. No, he saw his task in terms of obligation to an oath. Again and again, he argued

---

<sup>72</sup> Moshe Pearlman, *The Capture and Trial of Adolf Eichmann*. (New York: Simon and Schuster, 1963), 615.

<sup>73</sup> Hannah Arendt, *Eichmann in Jerusalem*, 276.

<sup>74</sup> *Ibid.*, 276.

<sup>75</sup> Moshe Pearlman, *Capture and Trial*, 617.

that his crime was in his act of obedience. He followed orders.<sup>76</sup> Arendt continues, “From the viewpoint of our legal institutions and of our moral standards of judgement, this normality was much more terrifying than all the atrocities put together, for it implied [...] that this new type of criminal [...] commits his crimes under circumstances that make it well-nigh impossible for him to know or to feel that he is doing wrong.”<sup>77</sup> Therein lies the ultimately frightening detail for Arendt, what she famously calls the “fearsome word-and-thought-defying banality of evil.”<sup>78</sup> The accused was operating in a frame of logic and governance that made it possible for the man to not see his complicity in a politic of genocide. More plainly, he failed to comprehend how obedience induced by thoughtlessness entangles the self with his community.

### **2.3 “One that *we* are not willing to grant you.”**

In the final moment of the Epilogue, Arendt returns to a subjunctive mood and speaks for the judges who did not speak how she believes they ought to have spoken. Charland explicates a notion of constitutive rhetoric that keeps close to an Althusserian interpellative process. I would like to directly engage this theory with the final section of the Eichmann Epilogue. Charland notes: “persuasive discourse requires a subject-audience who is already constituted with an identity and within an ideology.”<sup>79</sup> While Charland is grounded in a rhetorical discussion, he speaks to Arendt’s intent and purpose

---

<sup>76</sup> A point which he notes himself, is usually expressed as a virtue. Moshe Pearlman, *The Capture and Trial of Adolf Eichmann*. (New York: Simon and Schuster, 1963), 616.

<sup>77</sup> Hannah Arendt, *Eichmann in Jerusalem; a Report on the Banality of Evil*. (New York: Viking Press, 1963), 276.

<sup>78</sup> *Ibid.*, 266.

<sup>79</sup> Maurice Charland, “Constitutive Rhetoric: The Case of the People Québécois,” in *Routledge Reader in Rhetorical Criticism*. eds. Brian L. Ott and Greg Dickinson, (New York: Routledge Taylor & Francis, 2013), 433.

which has fundamentally rhetorical layer to it. To change a keyword of Charland's and to replace it with Arendt's I would say this: "To tell the story of a [human plurality] is implicitly to assert the existence of a collective subject."<sup>80</sup> Whereas in Charland's case the asserted identity is a Québécois identity which hinges on the desire to have one's own country--an identity that is capable of the full rights and privileges of citizen as such-- for Arendt, the constituted citizen is of a plurality which sees itself also as collectivized, and equally bounded in a sovereign aspiration, but rather than a collective one this aspirational constitution rests in Arendt's theory of judgement rather than a nationalist politic. Charland notes on constitutive rhetoric, "Furthermore, and hardly surprisingly, the ultimate justification for these claims is the subject's character, nature, or essence."<sup>81</sup> To put it another way, Arendt must, to some degree, essentialize a plural human community in order to posit a theory of judgement of which she sees Eichmann in direct violation.

In response to Eichmann's suggestion that he had no motive to kill, Arendt replies: "We find this difficult, though not altogether impossible, to believe;"<sup>82</sup> Her sentence subject use is notably ambiguous. It is unclear at the moment which subject Arendt has just made plural.

You also said that your role in the Final Solution was an accident and that almost anybody could have taken your place, so that potentially almost all Germans are equally guilty. What you meant to say was that where all, or almost all, are guilty, nobody is. This is an indeed quite common conclusion, but one that *we* are not willing to grant *you*.<sup>83</sup>

---

<sup>80</sup> Charland, "Peuple Québécois," 436. Edit mine.

<sup>81</sup> Charland, "Peuple Québécois," 435.

<sup>82</sup> Hannah Arendt, *Eichmann in Jerusalem; a Report on the Banality of Evil*. (New York: Viking Press, 1963), 277.

<sup>83</sup> Hannah Arendt, *Eichmann in Jerusalem*, 277. Emphasis Butler's.

Argument aside, what can be seen here is yet another moment of collectivization. Who is the “we” Arendt uses? Arendt creates her own unprecedented: that of the formation of the subject position of a human plurality. At the end of *Eichmann*, Arendt occupies the voice of judge in directly addressing the defendant to highlight the absurdities of his defense. Yet, a few sentences later she changes the subject of the sentences to use “we” which at the moment remains what seems to be an intentionally nonspecific speaker. This is one constitutive moment that is strategically vague. It is as if Arendt is giving her reader cause to second guess the plainness of her sentence subjects. I take her up on the offer. The “we” that is not willing to grant “you” is operative precisely in our formulation of the subject as constituted rhetorically as responsible to the other. She places the ethical capacity of plurality into the communal subject itself, citing its inability to grant the “you” his defense. Despite the subject being ambiguous at first read, what remains clear are the grounds for the rejection. It is the accused’s faulty conclusion that Arendt suggests he rephrase: “What you meant to say is that where all, or almost all, are guilty, nobody is.” These invocations of subjects both on the “we” side and the “you” side of her transitive’s call to attention the ambiguities and contingencies of subject positions at all. From this strategic ambiguity, Arendt is able to challenge the institutional framework under which Eichmann was tried. The institutional framework for judgement there operates at the level of identities and not on the level of the larger plural community. In this way, her thoughtful ambiguity becomes a site of critique. Essentially, we are inaugurating a new relationship between the state-apparatus of judgement and the individual’s position from within it--a form of critique.

The “you” that Arendt is interpellating, we have said, must be seen as intentionally vague. It neither pre-exists nor is wholly created anew. Her reader is caused to consider

what plural she is addressing. The subject position is offered, but Arendt has neither the authority nor capacity to ensure that call is taken up. She may only aspirationally create the conditions of possibility to challenge the governing apparatus. That is to say, interpellations have their limits. Part of Arendt's project via the text is to offer plurality as a position of possibility. Yet, she understands that the interpellation is ineffectual if it is not taken-up by her interpellated plural. It goes that one cannot occupy the "you" before the "you" is invoked, but equally the "you" is not a complete "you" until it turns to meet its naming. Here, we have a constitution made visible. Her audience, an audience for which it is unclear if Arendt sees as being addressed as plurality itself, becomes a possible formulation of plurality. Charland writes: "Interpellation occurs at the very moment one enters into a rhetorical situation, that is, as soon as an individual recognizes and acknowledges being addressed."<sup>84</sup> Said plainly, there is a receptive moment of constitution which will either accept and so complete, or refuse and so end, a particular constitutive act.

In what may be her most famous quip short of coinage of the term "banality of evil," Arendt eloquently, constitutively, symbolically, hangs Eichmann on her own terms.

For politics is not like the nursery; in politics obedience and support are the same. 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.<sup>85</sup>

---

<sup>84</sup> Maurice Charland, "Constitutive Rhetoric: The Case of the Peuple Québécois." in *Routledge Reader in Rhetorical Criticism*, eds. Brian L. Ott and Greg Dickinson, (New York: Routledge Taylor & Francis, 2013), 436.

<sup>85</sup> Hannah Arendt, *Eichmann in Jerusalem; a Report on the Banality of Evil*. (New York: The Viking Press, 1963), 277-279.

Arendt continues the use of the ambiguous “we,” and then remarkably clarifies it in one use and not the other. “We”, that is, “no member of the human race” becomes the subject; one that cannot be expected to share the world with a man who believes he may decide with whom he ought to share the world. Here the reader gets but a taste of what the constituted subject is. It is collective, it is human and it is founded on the notion that plurality is a category of difference, and that difference must be respected. Moreover, failing to respect this conceptualization is the “*only reason*” for which he must hang. Let that “*only*” not go unnoticed.

## 2.4 A Troubling Defense

When compiled, the evidence found in Eichmann’s capture, added to his interviews with the Israeli police, and testimony from previous Nazi leaders during their trials at Nuremberg, represents more than adequate information to, without difficulty, find Eichmann guilty before the trial ever begins. What then, is the purpose of this procedure in which the court engages? Eichmann himself does not deny the allegations made against him. He does not refute that he did what they say he had done. He does not wish to become one of those men he greatly disdains, who fail to hold to their principle and so say that they are one of the Nazi’s who had been against it from the beginning.

I have no desire to evade that responsibility in any way whatsoever. Because I can’t. On the other hand, I refuse to take responsibility for things I had no orders for and for which were not in my department. I am not one of the people who said in 1945 and still say today: “I was always against it” --who try to save their necks with the sort of--let’s say--sort of tawdry explanation. It wouldn’t be true.<sup>86</sup>

---

<sup>86</sup> *Eichmann Interrogated*, eds. Jochen von Lang, Claus Sibyll. trans. Ralph Manheim, (New York: Farrar, Straus & Giroux, 1983), 200.

Though his anti-Semitism was relatively muted compared to other Nazis in his cohort, Eichmann stands by what he explains to be his “Kantian sense of duty” to orders and to a very specific formulation of the categorical imperative. “It has always been familiar to me. In fact, it’s my norm. I have taken Kant’s categorical imperative as my norm, I did long ago. I have ordered my life but that imperative,” he said.<sup>87</sup> His reformulation, acting according to how the Führer would act, was downright preposterous to Arendt.<sup>88</sup>

He prefers to be one who accepts himself, what he had said, what he had believed, and what he had been ordered to do. He relies on the defense that he was merely following orders. He knows a refutation of the facts of his case are largely indefensible. His defense counsel Dr. Servatius relied in large part on a defense strategy he had mounted in a previous Nazi defense cases at Nuremberg. Avner W. Less, the interrogator during Eichmann’s detainment, writes:

Knowing that his life was at stake, [...] He would lie until defeated by documentary proof, [...] When that didn’t help, he would present himself as a little cog in the machine and put all the blame on others, subordinates as well as superiors. And most frequently he would plead [...] “orders from above.”<sup>89</sup>

So the argument goes, that any man in his position would have acted the same under the chain of command. Arendt refutes this argument soundly, writing, “even if eighty million Germans had done as you did, this would not have been an excuse for you.”<sup>90</sup> The

---

<sup>87</sup> *Eichmann Interrogated*, eds. Jochen von Lang, Claus Sibyll. trans. Ralph Manheim, (New York: Farrar, Straus & Giroux, 1983), 288.

<sup>88</sup> Judith Butler, “Hannah Arendt, Ethics, and Responsibility” (Lecture, European Graduate School, Saas-Fee, Switzerland, Sep 30, 2009. 2/10.

<sup>89</sup> *Eichmann Interrogated*, vii.

<sup>90</sup> Hannah Arendt, *Eichmann in Jerusalem; a Report on the Banality of Evil*. (New York: Viking Press, 1963), 278.

reader can hear Arendt's scoff, and see her notion of thinking bearing down on the accused.

Eichmann tells Mr. Less:

I obeyed. Regardless of what I was ordered to do, I would have obeyed. Certainly, I would have obeyed. I obeyed, I obeyed. I can't shed my skin, Herr Hauptmann. I... that was my attitude at the time, and that's the way it was. When I received an order, I obeyed. An oath is an oath. In the observance of that oath, I was uncompromising.<sup>91</sup>

Clearly, he clings to obedience as his chief defense. He adheres to oath, holds fast to blind obedience; it is a move which renders thinking obsolete. Not for a minute it seems does he grasp how damning his articulation of obedience really is to his defense. Eichmann creates a moment of universality in which no man can be held to account for his actions if a certain logic framework is provided. It can hardly be said that such a logic be the basis for ethic or responsibility. Where Eichmann claims to engage in a Kantian adherence to maxims, Arendt seems to better truly exercise such an obligation. Her imperative is in regard to respecting the establishment of a plural community. We have already noted, she seems to abhor the accused invoking Kant to justify his blind obedience.

It is necessary that we see his defense as a grave fallacy. It is on one key component that Arendt finds fault in his actions, the *only* reason he must hang: He does not think. He does not use reason. He does not in any legitimate method out of a categorical imperative, surely no murder can will it to be a universal law that those he murdered would have the right to do equally. So, of what use is this trial? It is necessary, we must affirm. Surely, we cannot let a man who acted on the basis of a genocidal politic, even if what he did cannot rightly be called thinking, remain free. It must be so not because he might engage in such

---

<sup>91</sup> *Eichmann Interrogated*, eds. Jochen von Lang, Claus Sibyll. trans. Ralph Manheim, (New York: Farrar, Straus & Giroux, 1983), 198.

action again, but because justice demands that he be tried. So we must come up with a frame of logic to allow this trial. Proclaiming Eichmann to be a “stateless person” was the first step to legitimize his abduction from Argentina. That move has an eerily familiar ring to the First and Second Solutions to the Jewish Question. The Nazi’s claimed Jews stateless, passed laws to make it statutorily true in the Rhineland, but then also administratively made stateless Polish Jews and Roma alike.

It behooves us to review under what logic and for what crimes the trial and Arendt performatively send Eichmann to hang. For her language is all at once quite stylistic. It is for failure to think on numerous accounts that Arendt indicts him. He and his superiors had the gall to assume that they could choose with whom they may share the world. Arendt’s death sentence is handed down at the end of the Epilogue, “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.”<sup>92</sup> It is curious that in her final words of the text Arendt frames the death sentence as a reciprocal moment between the accused and those he committed acts against. In the capacity for judgement against he who dares assume the authority to declare who may be included in that community, the community itself rejects his inability to understand himself as a communal member. There is no more fitting a punishment than the removal from the same collectivity against which he acted, on that community’s behalf. Moreover, two distinct cosmopolitan communities can be referred to here. The first is the global populace which Arendt sees as the plural community Eichmann infringes upon. The second is the community which Arendt calls upon aspirationally to comprehend his acts as transgressing the first. In her aspirational invocations of a plural

---

<sup>92</sup> Hannah Arendt, *Eichmann in Jerusalem; a Report on the Banality of Evil*. (New York: The Viking Press, 1963), 277-279.

community, Arendt is able to position an argument for a supplemental framework of judgement that her reader may take up and engage when considering the possibilities of the formulation of an ethical subject. Eichmann, for her, is all that we ought not to be. Butler rightly points out, “the problem of course is that [Arendt] summons and produces a figure of sovereign authority outside of all law to make that judgement.”<sup>93</sup> It is for this point that I locate Arendt’s aspirational constitutions within a moment of ethical subjection rather than a discursively-constituted and newly endowed sovereign authority. This, of course, is the critical paradox of a constitutive rhetoric, and the double-bind that confronts and complicates the Burkean rhetorical turn.<sup>94</sup>

## **Conclusion: “It will do justice.”**

Arendt begins the Epilogue of *Eichmann in Jerusalem* by answering the question most commonly asked about the Eichmann trial: “What good does it do?” She replies, “there is but one possible answer: It will do justice.”<sup>95</sup> Indeed, even the man who continuously used such empty quips and clichés in explaining events and his thought process around them says, “*I cannot deny my responsibility*, and any attempt to do so would be absurd.”<sup>96</sup>

This paper highlights the strategic rhetorical moves employed by Hannah Arendt in the Epilogue of her Eichmann text which constitute a human plurality and demonstrate the role of a supplemental capacity for judgement toward a cosmopolitan purpose. We have

---

<sup>93</sup> Judith Butler, “Hannah Arendt, Ethics, and Responsibility” (Lecture, European Graduate School, Saas-Fee, Switzerland, Sep 30, 2009), 7/10.

<sup>94</sup> Kenneth Burke, *A Rhetoric of Motives*, (New York: Prentice-Hall, 1950).

<sup>95</sup> Hannah Arendt, *Eichmann in Jerusalem; a Report on the Banality of Evil*. (New York: Viking Press, 1963), 254. Emphasis mine.

<sup>96</sup> *Eichmann Interrogated*, eds. Jochen von Lang, Claus Sibyll. trans. Ralph Manheim, (New York: Farrar, Straus & Giroux, 1983), 104. Emphasis mine.

seen thus far that in the trial of Adolf Eichmann, pinpointing an immutable notion of justice is a pernicious aim. In sum, we have investigated a supplemental notion of what it means to render judgement, what subject positions are constituted as endowed with the capacity for judgement, what makes those supplemental judgements legitimate, and finally to what end they ought to aim.

How has Arendt gone about reconceptualizing judgement in the bizarre case of Adolf Eichmann? Eichmann was kidnapped from Argentina and held to account for unprecedented crimes within the juridical structure of a nation state, for crimes which transgressed a larger and more abstractly defined community. While Israel argued that its own sovereign state was the best forum to render justice over crimes against its people, the indictment listed seven counts of crimes against humanity in addition to the six counts of crimes against the Jewish people. Here, it is crimes against humanity which introduces an opening for a new body of transgressed persons, and so a new form of juridical practice. Through her constitutions of plurality in the Eichmann epilogue, Arendt offers the suggestion that her audience may constitute that community against which the accused man acted, and that this community is endowed, in fact obligated through its particular form of subjection, to reject the defense of the accused on their cosmopolitan grounds. Arendt's text demonstrates her belief that the best defense we have against the banality of evil is thinking and judgement.

It seems that sending Eichmann to the gallows was a foregone conclusion. He himself notes its inevitability. "I know the death penalty awaits me. I am not asking you for mercy, because I am not entitled to it. In fact, if it seems to be a greater act of atonement, I am prepared, as an example and deterrent to all the anti-Semites of the earth, to hang

myself in public.”<sup>97</sup> This is quite an admission. Remember, Eichmann is both vehemently defending himself with full knowledge that his life is at stake at the same time as he makes startlingly logical realizations and admissions such as this one. This quote speaks to what Arendt notes of the accused. He is “terribly and terrifyingly normal.”<sup>98</sup> I find this to be a moment which convinces me that a supplemental notion of judgement is merited and productive. What Arendt seeks to criticize is the existence of a situation whereby a man like Eichmann, in the same office, and under the same logical arguments, may find himself committing crimes against humanity and as a matter of structure and omission, an inability to see the wrongness of his action. Her move is to suggest an international tribunal that removes the Israeli justiciability question from this trial and establishes a precedent for crimes of this nature. While I agree that such a move would have been productive, I choose to make the turn toward the conceptualization of the ethical subject whose moment of subjection is conditioned on its responsibility to the other, which could be indicated by a recognition of the self within a plural community. The failure to think for which Arendt hangs Eichmann is a failure to recognize oneself within the plural community, not just a terribly and terrifyingly normal mental lapse.

Where has this analysis gotten us? In his short essay, “Ideas for a Universal History with a Cosmopolitan Purpose,” Kant lays out the proposition of a body politic in which “all its members, each of which has an interest in maintaining the whole.”<sup>99</sup> A feeling such as that is not unique to cosmopolitanism. Interest in collective political projects is most

---

<sup>97</sup> *Eichmann Interrogated*, eds. Jochen von Lang, Claus Sibyll. trans. Ralph Manheim, (New York: Farrar, Straus & Giroux, 1983), 292.

<sup>98</sup> Hannah Arendt, *Eichmann in Jerusalem; a Report on the Banality of Evil*. (New York: Viking Press, 1963), 276.

<sup>99</sup> Immanuel Kant, “Ideas for a Universal History with a Cosmopolitan Purpose,” In *Kant Political Writings*. ed., Hans Reiss. trans. H.B. Nisbet. Second Edition. (Cambridge: Cambridge University Press, 1991), 51.

notably a characteristic of nationalism, as we have addressed. What is different, however, from a nationalist project whose citizens also aim to maintain its whole, is that a cosmopolitan identity is necessarily inclusive rather than exclusive--it is delimited from the categories of a nation state and instead dictates that the individual be rhetorically responsible. Kant envisions a “universal *cosmopolitan existence*,”<sup>100</sup> one that we imagine Arendt too could envision. It is important to reiterate that what we are suggesting in this paper is not this embodiment of cosmopolitanism as an organizing notion. Rather, we are illustrating a notion of what characteristics of cosmopolitanism may become implicated in the daily affairs of judgement in the current nation-state structure, and how any citizen within that polity ought to act in accordance with that maxim which recognizes itself within a plural society of a global scale where no one exists at another’s request, in which each is strikingly vulnerable and able to be undone, and each are legible and legitimated insofar as they are responsible to the other.

What have we added to the body of work on constitutive rhetoric? In short, we have expanded the limits of possible constitutions to include cosmopolitan ends. As I have said, a constitutive rhetoric is most frequently employed in pursuit of nationalist politics. We have worked at the limits of categories of intelligibility rather than at the level of identity to suggest possible changes of reiteration of the juridical practice. Arendt enacts precisely the sort of work she is calling on her constituted audience to enact itself. Through the Eichmann text, she is performing a work of criticism that critiques institutionalized forms of judgement and creates an opening for difference as a new iteration of justice. Butler calls

---

<sup>100</sup> Kant, “Ideas for a Universal History,” 51.

this a “Mode of responsibility, made necessary by situation, where moral frameworks had proved inadequate.”<sup>101</sup>

To answer Butler, then, I say yes. Let us take up Arendt’s cue in the final pages of the Eichmann text; let us view ourselves as a member of a plurality; let us occupy that subject position; recursively constitute ourselves within it; and let us embrace all the responsibility of being independent thinkers whose very act of thinking implicates us in a plural community when the thinking becomes action, as it does in language.<sup>102</sup> I do not attest that it will be easy. Ethical thinking requires a great deal more than adherence to either law or abstract principle, as Butler says of Arendt on the Eichmann case: “We had to learn from scratch. In the raw, as it were, without the help of categories and general rules under which to subsume our experience.”<sup>103</sup> Butler suggests on behalf of Arendt that, “moral judgement involve[s] probing, experimenting, relying on the imagination when it comes to forming judgements of this time and in the name of shared human life.”<sup>104</sup> That is quite a tall order indeed, but one that we are endowed with when constituted in a moment of ethical subjection.

We aim for the eventual congruence of institutional forms of judgement with a faculty for independent thought grounded in formation of an ethical subject. For us, it is the one who acts in accordance with respect to an Arendtian plurality. It is the subject who is not only self-aware but one who engages in a process of “self-formation as an “ethical subject,” that “delimits that part of himself that will form the object of his moral practice,

---

<sup>101</sup> Judith Butler, “Hannah Arendt, Ethics, and Responsibility” (Lecture, European Graduate School, Saas-Fee, Switzerland, Sep 30, 2009), 7/10.

<sup>102</sup> Ibid.

<sup>103</sup> Ibid.

<sup>104</sup> Ibid.

defines his position relative to the precepts he will follow, and decides on a certain mode of being that will serve as his moral goal. And this requires him to act upon himself, to monitor, test, improve, and transform himself.”<sup>105</sup> We see this not as a distant aspiration for a newly conceptualized world, but as a humble request to recognize the subject’s inherent responsibility to alterity, one that can be taken up today.

---

<sup>105</sup> Michel Foucault, “The Use of Pleasure,” *The History of Sexuality, Vol 2*. (New York: Random House, 1985), 28.

## Bibliography

- Agamben, Giorgio. *Homo Sacer: Sovereign Power and Bare Life*. Translated by Daniel Heller-Roazen. Stanford: Stanford University Press, 1998.
- Agamben, Giorgio. "The State of Exception." in *Politics, Metaphysics, Death: Essays on Agamben's Homo Sacer*. Edited by Andrew Norris. 2005.
- Althusser, Louis. *On the Reproduction of Capitalism: Ideology and Ideological State Apparatuses*. Translated by G.M. Goshgarian. Verso Books, 2014.
- Arendt, Hannah. *Eichmann in Jerusalem: a Report on the Banality of Evil*. New York: The Viking Press, 1963.
- Arendt, Hannah. *Origins of Totalitarianism*. New York: Harcourt, Brace and Company, 1951.
- Arendt, Hannah. "What is Freedom?" in *Between Past and Future: Eight Exercises in Political Thought*. New York: Penguin Books, 1961.
- Aristotle. *Rhetoric: Book I*. Translated by W. Rhys Roberts. Dover Thrift Editions, 2004.
- Austin, J.L. *How to do Things with Words*. Second Edition. Edited by J. O. Urmson and Marina Sbisa. Cambridge: Harvard University Press, 1955.
- Baehr, Peter. Introduction to *The Portable Hannah Arendt*. vii-xlv. Edited by Peter Baehr. New York: Penguin Books, 2000.
- Benjamin, Walter. *On the Concept of History*. Cambridge: Harvard University Press, 1940.
- Biesecker, Barbara. "Michel Foucault and the Question of Rhetoric." from *Philosophy & Rhetoric*, Vol. 25, No. 4. pp. 351-364. University Park, PA: Penn State University Press, 1992.
- Bitzer, Lloyd F. "The Rhetorical Situation." from *Philosophy & Rhetoric*, Vol. 1, No. 1. pp. 1-14. University Park, PA: Penn State University Press, 1968.
- Burke, Kenneth. *A Rhetoric of Motives*. New York: Prentice-Hall, 1950.
- Butler, Judith. "Desire, Rhetoric, and Recognition in Hegel's *Phenomenology of Spirit*." in *The Judith Butler Reader*, 39-89. Edited by Judith Butler and Sara Salih. Malden, MA: Blackwell Publishing, 2004. First published as Butler's Ph.D. dissertation "Subjects of Desire," Yale University, 1984.
- Butler, Judith. *Giving an Account of Oneself*. New York: Fordham University Press, 2005.

- Butler, Judith. "Hannah Arendt's Death Sentences." Penn State University Press, *Comparative Literature Studies*, Volume, 48. No. 3, Special Issue Trials of Trauma (2011): 280-295.
- Butler, Judith. "Hannah Arendt, Ethics, and Responsibility." Lecture, European Graduate School, Saas-Fee, Switzerland, September 30, 2009.
- Butler, Judith. "On Linguistic Vulnerability." in *Excitable Speech: A Politics of the Performative*. Now York: Routledge Taylor and Francis, 1997.
- Butler, Judith. *Performative Acts and Gender Constitution: An Essay in Phenomenology and Feminist Theory*. Baltimore: Johns Hopkins University Press, 1988.
- Butler, Judith. "Preface." "Violence, Mourning, Politics." and "Precarious Life." in *Precarious Life: The Powers of Mourning and Violence*. New York: Verso, Paperback Edition, 2006.
- Butler, Judith. *The Psychic Life of Power*. Stanford: Stanford University Press, 1997.
- Butler, Judith. "What Is Critique? An Essay on Foucault's Virtue." in *The Judith Butler Reader*, 302-322. Edited by Judith Butler and Sara Salih. Malden, MA: Blackwell Publishing, 2004. First published as Raymond Williams Lecture at Cambridge University, 2001.
- Charland, Maurice. "Constitutive Rhetoric: The Case of the Peuple Québécois" in *Routledge Reader in Rhetorical Criticism*, Edited by Brian L. Ott and Greg Dickinson, New York: Routledge Taylor and Francis, 2013.
- Clark, E. Culpepper and Raymie E. McKerrow. "Rhetorical Construction of History." in *Doing Rhetorical History: Concepts and Cases*. Edited by Kathleen J. Turner. Tuscaloosa: University of Alabama Press, 1998.
- Cloud, Dana. "Limbo of Ethical Simulacra." in *Routledge Reader in Rhetorical Criticism*, Edited by Brian L. Ott and Greg Dickinson, New York: Routledge Taylor and Francis, 2013.
- Cloud, Dana. "Materiality of Discourse as Oxymoron: A Challenge to Critical Rhetoric." in *Routledge Reader in Rhetorical Criticism*, Edited by Brian L. Ott and Greg Dickinson, New York: Routledge Taylor and Francis, 2013.
- Cordova, Nathaniel I. "The Constitutive force of the *Catecismo del Pueblo* in Puerto Rico's popular democratic party campaign of 1938-1940." *Quarterly Journal of Speech* Vol 90, No. 2, (2004): 212-233.
- Davis, Diane. *Inessential Solidarity: Rhetoric and Foreigner Relations*. Pittsburg: University of Pittsburgh Press, 2010.

- Eichmann Interrogated*. Edited by Jochen von Lang and Claus Sibyll. Translated by Ralph Manheim. New York: Farrar, Straus and Giroux, 1983.
- Elon, Amos. Introduction to *Eichmann in Jerusalem, vii-xxiii*. Written by Hannah Arendt. New York: Penguin Classics, 2006.
- Foucault, Michel. "Preface." and "The Human Sciences." in *The Order of Things*. New York: Random House, 1966.
- Foucault, Michel. *The History of Sexuality, Vol 1: An Introduction*. Translated by Robert Hurley. New York: Random House, 1978. Originally published: Paris: Éditions Gallimard, 1976.
- Foucault, Michel. "The Use of Pleasure." in *The History of Sexuality, Vol 2*. New York: Random House, 1985.
- Foucault, Michel. "What is Critique?" in *The Politics of Truth*. Edited by Sylvère Lotringer. Translated by Lysa Hochroth and Catherine Porter. Los Angeles: Semiotext(e), 1997.
- Glissant, Édouard. *Poetics of Relation*. Translated by Betsy Wing. Ann Arbor: University of Michigan Press, 1990.
- Greene, Ronald Walter. "Another Materialist Rhetoric." in *Routledge Reader in Rhetorical Criticism*, Edited by Brian L. Ott and Greg Dickinson, New York: Routledge Taylor and Francis, 2013.
- Gunn, Joshua. "Refitting Fantasy: Psychoanalysis, Subjectivity, and Talking to the Dead." in *Routledge Reader in Rhetorical Criticism*, Edited by Brian L. Ott and Greg Dickinson, New York: Routledge Taylor and Francis, 2013.
- Hegel, G.W.F. *Phenomenology of Spirit*, translated by A. V. Miller with analysis of the text and foreword by J. N. Findlay. Oxford: Clarendon Press, 1977.
- Heidegger, Martin. "Letter on Humanism." in *Martin Heidegger: Basic Writings*. Edited by David Farrell Krell. New York: HarperCollins Publishers, 1977.
- Heidegger, Martin. "On Being and Time." in *Martin Heidegger: Basic Writings*. Edited by David Farrell Krell. New York: HarperCollins Publishers, 1977.
- Ippolito, Michela. "What are Subjunctive Conditionals?" in *Subjunctive Conditionals: A Linguistic Analysis*. Cambridge: MIT Press, 2013
- Jaspers, Karl. "Who Should Have Tried Eichmann?" *Journal of Criminal Justice* 4, 853-858. Oxford University Press, 2006. First published in *Der Monat* May, 1962.

- Kant, Immanuel. "An Answer to the Question: What is Enlightenment?" in *Basic Writings of Kant*. Edited by Allen W. Wood. Translated by Thomas. K. Abbott. New York: The Modern Library, 2001. First published: Königsberg, 1784.
- Kant, Immanuel. "Ideas for a Universal History with a Cosmopolitan Purpose." in *Kant Political Writings*. Edited by Hans Reiss. Translated by H.B. Nisbet. Second Edition. Cambridge: Cambridge University Press, 1991. First published: 1784.
- Kant, Immanuel. "Toward Perpetual Peace." In *Kant Political Writings*. Edited by Hans Reiss. Translated by H.B. Nisbet. Second Edition. Cambridge: Cambridge University Press, 1991. First published as *Perpetual Peace: A Philosophical Sketch*. Translated by M. Campbell Smith. M.A. New York: The Macmillan Company, 1795.
- Levinas, Emmanuel. "Peace and Proximity." in *Basic Philosophical Writings*. Edited by Adriaan T. Peperzak, Simon Critchley, and Robert Bernasconi. Indianapolis: Indiana University Press, 1996. First published: 1984.
- McCormick, Samuel. *Letters to Power: Public Advocacy Without Public Intellectuals*. University Park, PA: Penn State University Press, 2011.
- McGee, Michael Calvin. "In Search of the People: A Rhetorical Alternative." in *Routledge Reader in Rhetorical Criticism*, Edited by Brian L. Ott and Greg Dickinson, New York: Routledge Taylor and Francis, 2013.
- McKerrow, Raymie. "Critical Rhetoric: Theory and Praxis." in *Routledge Reader in Rhetorical Criticism*, Edited by Brian L. Ott and Greg Dickinson, New York: Routledge Taylor and Francis, 2013.
- Norris, Andrew. "The Exemplary Exception: Philosophical and Political Decision in Giorgio Agamben's *Homo Sacer*." in *Politics, Metaphysics, Death: Essays on Agamben's Homo Sacer*, 262-282. Edited by Andrew Norris. 2005.
- Nussbaum, Martha C. "Kant and Cosmopolitanism." in *Perpetual Peace, Essays on Kant's Cosmopolitan Ideal*, Edited by James Bohman and Matthias Lutz-Bachman. Cambridge: MIT Press, 1997.
- Olsen, Gary A. and Lynn Worsham. "Changing the Subject: Judith Butler's Politics of Radical Resignification." in *The Judith Butler Reader*, 325-356. Edited by Judith Butler and Sara Salih. Berkeley: Blackwell Publishing, 2004.
- Pearlman, Moshe. *The Capture and Trial of Adolf Eichmann*. New York: Simon and Schuster, 1963.
- Schwartz, Jonathan Peter. *Arendt's Judgement*. Philadelphia: University of Pennsylvania Press, 2016.

*The Portable Hannah Arendt*. Edited by Peter Baehr. New York: Penguin Books, 2000.

Vivian, Bradford. *Commonplace Witnessing: Rhetorical Invention, Historical Remembrance, and Public Culture*. Oxford: Oxford University Press, 2017.

Wander, Phillip. "The Third Persona, An Ideological Turn in Rhetorical Theory." in *Routledge Reader in Rhetorical Criticism*, Edited by Brian L. Ott and Greg Dickinson, New York: Routledge Taylor and Francis, 2013.

Zagacki, Kenneth S. "Constitutive Rhetoric Reconsidered: Constitutive Paradoxes in G. W. Bush's Iraq War Speeches." *Western Journal of Communication* Vol 71. No. 4. pp. 272-293. Published online, 2008.

#### Citations from acknowledgements and epigraph

Judith Butler, *Prekarious Life: The Powers of Mourning and Violence*, (New York: Verso, 2006), 134.

Emmanuel Levinas, "Peace and Proximity." in *Basic Philosophical Writings*. eds. Adriaan T. Peperzak, Simon Critchley, and Robert Bernasconi, (Indianapolis: Indiana University Press, 1996), 167.