

## Review - Eichmann in Jerusalem

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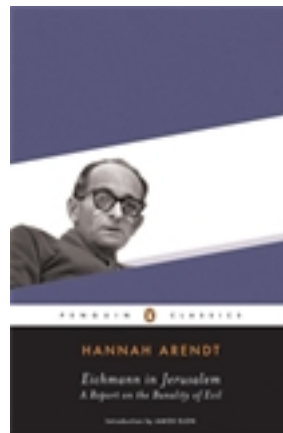
JOSEPH ROYO, NOV 14 2013

Eichmann in Jerusalem: A Report on the Banality of Evil

By: Hannah Arendt

New York: Penguin Books, 1963

### Introduction



Recent reports about drone warfare raise relevant questions about the international legal system's *jus cogens* fundamentals regarding individual rights to life and states' obligations to uphold moral relevancy. One of the questions being raised today regarding the use of drones revolves around the definitions used to describe potential targets: are they criminals, or are they war combatants?

After WWII, a similar debate took place regarding the prosecution of former Nazi officials. In 1963, the political theorist Hannah Arendt tackled one such case of Adolph Eichmann, a mid-level Nazi officer who escaped Germany after the war and fled to Argentina. Israeli officers captured him and deported Eichmann to Israel, where he was tried, convicted, and executed for war crimes by an Israeli court attempting to establish its moral relevancy. The question Arendt raised was, to what extent was he a former combatant and therefore a war criminal? Although the subject of Eichmann's trial as a war criminal is different from that of terrorists being prosecuted by drone force, the ethical decision to uphold moral peremptory norms is similar. Today, our international legal system is being challenged by state decisions to prosecute suspected existential threats under legal definitions that fall somewhere between international human rights laws and laws of war, depending on how one defines an individual. Hannah Arendt's *Eichmann in Jerusalem* is a reminder of the complications and nuance associated with establishing international norms of moral and ethical standards.

Adolf Eichmann was hung on May 31, 1962 in Israel after the state had convicted him for his role as a Nazi official during the Holocaust.[i] He was a mid-level Nazi officer, responsible for organizing Jewish emigration out of German-held territory and for Jewish deportation to concentration and extermination camps. In 1960, Israel captured Eichmann, who was hiding in Argentina, and deported him to Jerusalem where they tried and hung him. Arendt

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covered his trial for *The New Yorker*, compiling her essays into the book *Eichmann in Jerusalem: A Report on the Banality of Evil*.<sup>[ii]</sup> Her book is not only a representation of Eichmann the man; it is also a representation of the “show trial David Ben-Gurion, Prime Minister of Israel, had in mind when he decided to have Eichmann kidnaped in Argentina...”<sup>[iii]</sup> Her scathing criticism of the trial contrasts problems with the preservation of the institution of law with the necessary adjudication of Eichmann’s death, a moral imperative for the newly formed Jewish state. Arendt argues that the “irregularities and abnormalities of the trial [overshadowed] the central moral, political, and even legal problems that the trial inevitably posed.”<sup>[iv]</sup> Yet, she recognizes that the facts of the case warrant Eichmann’s death not only for legal restitution, but also for Israel’s credibility as “the State of the Jews.”<sup>[v]</sup>

## Setting the Stage

Arendt bases her reporting on trial transcripts and other primary and secondary source documents.<sup>[vi]</sup> The book is more than a story; it is a carefully arranged legal brief. She begins by describing the trial setting including the actual courtroom, paying particular attention to editorialize the Israeli presuppositions, most notably those of the Prime Minister, David Ben-Gurion.<sup>[vii]</sup> Arendt describes the court experience as being theatrical, a show whose maestro is Ben-Gurion himself:<sup>[viii]</sup> he knows how the show will end and must direct its cast to that ending. Arendt even concludes the opening chapter with Ben-Gurion saying he did not “‘care what verdict is delivered against Eichmann,’ [and that] it was undeniably the sole task of the Jerusalem court to deliver one.”<sup>[ix]</sup> Her sarcastic opening portrays the “House of Justice” (the title of the first chapter) as delivering predetermined justice, which she continues to argue is a less than legally fair outcome, for Eichmann.<sup>[x]</sup>

Those presuppositions condemn Eichmann pre-trial. Arendt’s point in describing the trial setting illustrates one of the main themes of the book – that Eichmann neither did nor could have received a fair trial, one which afforded him thorough due process. Her stage-setter highlights that Eichmann’s ensuing trial would challenge the institution of law with regard to jurisdiction (Jerusalem v. Germany or an international court), legal due process, and evidentiary i.e. criminal basis, *nullum crimen, nulla poena sine lege*, relative to the nature of Eichmann’s crime *ex ante vis-à-vis ex post facto*.<sup>[xi]</sup> Once she sets the stage, Arendt provides, at length, background information of Eichmann himself, of Eichmann’s role within the Nazi party, and of the chronological evolution of the Holocaust.

## Eichmann the Man

The most notable characteristic of Eichmann that Arendt portrays was that he, for the most part, was unaware of the criminality of his actions. In fact, according to Eichmann, he believed he was “‘Not guilty, in the sense of the indictment.’”<sup>[xii]</sup> That sense called to question the *ex post facto* principle on which Israel tried Eichmann. Eichmann believed Hitler’s orders were law. What Eichmann did, consequently, constituted adherence to Nazi Germany law, as he understood it.<sup>[xiii]</sup> Israel, however, *vis-à-vis* the prosecution, believed Eichmann’s adherence to Nazi law constituted, *ex post facto*, a crime first against the Jewish people, and second against humanity, since the trial allegedly sought to “‘make no ethnic distinctions.’”<sup>[xiv]</sup> The question Arendt raises is to what extent was Eichmann a criminal? Arendt’s handling of Eichmann leads the reader to understand that his role caused him to act less like a human and more like a cog in the machinery of the Third Reich.<sup>[xv]</sup> One of Arendt’s problems with the trial, then, was that the prosecution failed to demonstrate the criminality of Eichmann as a “monster.”<sup>[xvi]</sup>

Moreover, Arendt characterizes Eichmann as thoughtless, to some extent a simpleminded man both incapable of making his own decisions and not really wanting to.<sup>[xvii]</sup> This simplemindedness made Eichmann almost a perfect candidate for his position within the S.S. because he cared more about completing his assigned tasks, obediently, than he did about the effect of those tasks.<sup>[xviii]</sup> Arendt demonstrated his thoughtlessness throughout the book, describing that he remembered very little of what he did, with respect to the actions that led to actual Jewish deaths. For example, she notes that “His memory proved to be quite unreliable about what had actually happened...Eichmann remembered the turning points in his own career...[but not] the turning points in the story of Jewish extermination...”<sup>[xix]</sup> His failure to remember so many things did little to substantiate his behavior as criminal, and it made the prosecution’s job harder in painting a picture of the scope of Eichmann’s involvement with Jewish deaths.

## The Trial

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Arendt explains that the trial expanded the canvas from Eichmann and his specific crimes to include the sentiment of the Jewish people and the gravity of the Holocaust *in toto*. This portrayal of the context of Eichmann's crimes further devalued, in Arendt's opinion, the validity of the trial altogether.[xx] The prosecution brought numerous witnesses to the stand to tell their inconceivable stories of horror. Yet, many of those stories, in Arendt's re-explanation, did not connect directly to Eichmann. She points out that the prosecution's use of numerous, "immaterial" storytelling witnesses did little to establish Eichmann's guilt.[xxi] In fact, they instead pointed to Jewish cooperation in the execution process.[xxii] This was a huge problem for Arendt regarding the trial and its context because revealing Jewish involvement in effect reversed the association of guilt from Eichmann directly to the Jewish people indirectly. Yet, she does also find that this revelation exposed a more dramatic conclusion "because it [offered] the most striking insight into the totality of the moral collapse the Nazis caused in respectable European Society – not only in Germany but in almost all countries, not only among the persecutors but also among the victims." [xxiii] Although the criminality basis, *nullum crimen, nulla poena sine lege*, might have been loosely true in a technical sense, the trial did not firmly establish a legal precedence for conviction. Arendt instead established a moral basis on which criminality rightfully was prosecuted.

Chronologically, she guides the reader through the evolution of the Holocaust from the expulsion of Jews from German territories, to their concentration in camps, and ultimately to their mass execution. Jewish deportation not only occurred in Germany, it occurred in surrounding countries too. She devotes particular attention to deportations from Western Europe – France, Belgium, Holland, Denmark, and Italy – the Balkans – Yugoslavia, Bulgaria, Greece, and Romania – and Central Europe – Hungary and Slovakia.[xxiv] Of note, only Denmark resisted German deportation efforts to the extent that "everything went topsy-turvy." [xxv] Eichmann thought of the Denmark deportation as a failure.[xxvi] She devotes an additional chapter to describe the intensity of killing centers in Eastern Europe, specifically Poland, the Baltic states, and parts of Russia.[xxvii] Her point in spending so much time on these areas is that the trial itself spent a great deal of time laying out the chronological background of the Holocaust. Arendt considers this problematic because for purposes of connecting criminal evidence to Eichmann, the background information "had no apparent bearing upon the case." [xxviii]

She wraps up the book briefly covering the insufficient evidence used to convict Eichmann and the rapid manner in which Israel executed him after his conviction. Two days after his conviction, Israel hung Eichmann, bringing dignity to those who died under his hand. Ironically, Eichmann, went to his death, as Arendt, put it "with great dignity" too.[xxix] The closure she gave to Eichmann's trial represented the closure the Jewish people deserved. More abstractly, it represented the closure she felt Eichmann deserved for having endured the test of what she felt was legal failure. Arendt, does not, however, sympathize with Eichmann. Rather, she sympathizes with what his trial should have stood for – justice.[xxx] Arendt says:

the failure of the Jerusalem court consisted in its not coming to grips with three fundamental issues, all of which have been sufficiently well known and widely discussed since the establishment of the Nuremberg Tribunal: the problem of impaired justice in the court of the victors; a valid definition of the "crime against humanity"; and a clear recognition of the new criminal who commits this crime.[xxxi]

Altogether, Arendt concludes that "the trial had been unfair, the judgment unjust." [xxxii] Interestingly, Arendt did for Eichmann what the prosecution and defense failed to do: that is, she laid out evidentiary evidence of Eichmann's motives, and lack thereof, and of his role, and again lack thereof, in both directly and indirectly causing the deaths of millions of Jews (and others).[xxxiii]

### Irony

In laying out her argument in this fashion, Arendt juxtaposes Eichmann's role as a Nazi official with the procedure of the trial itself. The juxtaposition grows with intensity as she approaches her closing argument. The effect demonstrates that although Eichmann was full of flaws that led to unthinkable acts, the trial too was full of procedural flaws. In Arendt's view, they did less to uphold the institution of law than to satisfy deeply held Jewish vengeance. She notes "Israel herself...confused the issues further by listing a great number of purposes the trial was supposed to achieve, all of which were ulterior purposes with respect to the law and to courtroom procedure." [xxxiv] Arendt

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carried this method of juxtaposition in more subtle ways using irony and sarcasm.

For instance, one of the problems Arendt identified with the trial was with Jerusalem's claim to jurisdiction as opposed to Germany's or an international criminal court. She illustrates in the background chapters that Jews throughout Europe had become a stateless people.[xxxv] Their statelessness gave Germany and other countries license to deport Jews and apply such measures as a "Final Solution" because of their statelessness. Arguably, their (Germany and other European countries') reasoning was based on the question: who would challenge them? They assumed a *de facto* jurisdiction to deal with so-called Jewish problems. Arendt points out, ironically, that Eichmann too became stateless when he hid in Argentina. She argues, "it was Eichmann's *de facto* statelessness...that enabled the Jerusalem court to sit in judgment on him." [xxxvi] Although she argues the issue of jurisdiction was "a clear violation of international law" (with regard specifically to his arrest), she recognizes the benefit of Israel transforming Jewish statelessness to a legitimate Jewish state.[xxxvii]

In another twist of irony, Arendt juxtaposes the anonymity of so many Jewish people whose stories, until the trial, were never known. She finds it problematic that the prosecution used what she considered to be irrelevant storytelling to paint a picture, not of Eichmann, but of the entire situation, as described above. To Arendt, this posed a legal problem of evidentiary credibility because the stories had little to no bearing specifically on his guilt. They did, however, release from anonymity the untold stories of Jews individually and of the Jewish people collectively. She even hypothesizes that events may have turned out differently had those stories been known sooner: "how utterly different everything would be today in this courtroom, in Israel, in Germany, in all of Europe, and perhaps in all countries of the world, if only more such stories could have been told." [xxxviii] Ironically, Eichmann escaped into anonymity until his capture. Although Arendt believes his capture was at some level illegal, she acknowledges the necessity of Israel having captured him. She also recognizes that he was a criminal.[xxxix]

### Absurdity

Along with irony, Arendt illustrates certain aspects of the trial's absurdity in a scathing tone, using the literary technique of absurdity to highlight ironic errors in the trial and compare them to her central thesis of banality. The most obvious example occurs in the opening pages of the book when Arendt describes the trial as figuratively and literally a "show trial". [xl] She uses one of the cast members, the prosecutor, to show that the stated intentions of the trial do not correspond to the underlying intentions: "For 'if we shall charge [Eichmann] also with crimes against non-Jews...this is' not because he committed them, but, surprisingly, 'because we make no ethnic distinctions.'" [xli] She challenges, "was it not logical to bring before the court all the facts of Jewish suffering (which, of course, were never in dispute) and then look for evidence which in one way or another would connect Eichmann with what had happened?" [xlii] Arendt takes issue with the manner in which the prosecution sought to tie Eichmann to all the Jewish suffering rather than present evidence of the suffering he imposed. Nevertheless, Arendt believes the benefits of the prosecution's attempts to connect Eichmann to Jewish suffering were in part valid because she proposes an alternate narrative that should have been read by the judges: "just as you [Eichmann] supported and carried out a policy of not wanting to share the earth with the Jewish people...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." [xlili]

Arendt reveals her underlying feelings regarding the scope of the Holocaust. One senses her deep loathing of Nazi officials and other complicit conspirators such as Carl Goerdeler who proposed payment for Jewish losses.[xliv] She retorted that mistreatment such as robbery and gassing were "such technicalities." [xlv] One also senses that she felt Eichmann deserved to confront his own fears. For instance, she quips, "It was a great pity that Eichmann and Becher could not have been confronted with each other, and this not merely for juridical reasons." [xlvi] She explained that Kurt Becher was "an old enemy of Eichmann" implying that a confrontation between the two might actually provide some entertainment – to see Eichmann's uncomfortable disposition upon witnessing his rival. Yet, she also defends Eichmann when she described the likelihood of his joining a moderate wing of the S.S., one that was too sophisticated for someone like Eichmann who spoke in plain language and "called a spade a spade." [xlvii]

These illustrations of absurdity and literary irony provide the foundation of Arendt's legal brief. They allow her to

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establish both her disapproval of the technical process of the trial, intended to uphold the institution of law, and her recognition that the Jewish people resolve their suffering by convicting a true criminal.

### Conclusion

The title holds Arendt's thesis, as Amos Elon, suggests: that evil, at some level, exists in a banal form.[xlvi] However, Arendt does not actually mean that evil, of the Nazi sort, is commonplace. Rather, she clarifies her intention by suggesting instead that the horrible characteristic of evil, as demonstrated by Eichmann, is in the thoughtlessness with which he administered the Final Solution.[xlix] Her point is that Eichmann and other Nazi party members were neither predisposed to commit such atrocities nor were they altogether mentally twisted. Their systematic and mechanistic approach to murder, to the extent of considering it "liquidation," removed a human element from the act of killing, replacing it with legalistic procedure. This procedural aspect of the way Eichmann went about his job, as if he took more satisfaction in the accomplishment of process than in the outcome of those processes, defines Eichmann's evil as banal, and, therefore, beyond thoughtful horror. One could interpret Arendt's view of the "banality of evil" as exceeding what is "normal" evil, which is to say something inhuman and far worse than evil itself.

Despite her misgivings with the trial, one important reason why Arendt sees the trial as beneficial is that it reinforced the humanity of someone like Eichmann whose defense analogized him to a cog, part of a larger machine with little to no control of the machine itself.[i] She very clearly explains how the trial transformed Eichmann from a thoughtless, inanimate figure unwitting of his crime to a man in need of justice:

But insofar as it remains a crime – and that, of course, is the premise for a trial – all the cogs in the machinery, no matter how insignificant, are in court forthwith transformed back into perpetrators, that is to say, into human beings.[ii]

The irony of the Eichmann case is that he convicted the Jewish people (and others) to death within the scope of a legal framework, albeit a distorted legal framework, while according to Arendt, Israel condemned Eichmann through an extra-legal framework. Eichmann followed the law literally, whereas Israel created law ideally.

One of the challenges one might have with the Eichmann trial is in rectifying the unthinkable horror of atrocity from a supernatural sense by reducing accountability to technical, legal, and contractual language. On one hand rests a notion of moral judgment in the abstract sense; on the other rest derivations of moral judgment – ethics – through strictly rational articulation. The former wrestles with the soul. The latter wrestles with the man. At what point, then, does one cross the line of legal framework whereby man must rectify the soul with reality? Moreover, to what extent does that rectification signify justification? That is the nexus of Arendt's controversial portrayal of the unjust trial of an unjust man.

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[i] I make the distinction that it was Israel, the state, that brought Eichmann to trial and convicted him rather than articulate it was the legal architecture of Israel or of any one person who did it. Throughout Arendt's book, she implicitly suggests that the trial represented something larger than restitution of acts by a single person.

[ii] Arendt, Note to the Reader. She introduces her book explaining how she derived the book from the series of stories she wrote for *The New Yorker*. The book is an expansion of those articles. The remainder of this essay will

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refer to *Eichmann in Jerusalem* as “Arendt” and will attempt to reference specific book locations. Broader generalities derived from the book without specific page references will be clarified by additional footnote commentary.

[iii] Arendt, p. 4.

[iv] Arendt, p. 253.

[v] Arendt, p. 287. She concurs with the judges conclusion that the verdict validated Israel as not only a legitimate international state but specifically “*the State of the Jews.*” (emphasis added)

[vi] Arendt, p. 280.

[vii] Arendt, pp. 3-4.

[viii] Ibid.

[ix] Arendt, p. 20.

[x] Arendt, chapter 1 is titled The House of Justice.

[xi] Arendt, p. 254. In her Epilogue she notes the legal principle of *nullum crimen, nulla poena sine lege* indicating she believes that at some analytical level, the examination of Eichmann’s crimes *ex ante* could exonerate him, strictly legally, of having committed a crime *per se*.

[xii] Arendt, p. 21.

[xiii] Arendt, p. 135.

[xiv] Arendt, p. 6. Arendt uses sarcasm to illustrate absurdity. One such absurdity was that Israel tried Eichmann on behalf of the international community, for crimes against humanity. However, Arendt, implies that Israel’s main goal was to try him for crimes against the Jewish people.

[xv] Arendt, p. 57.

[xvi] Arendt, p. 54.

[xvii] Arendt. p. 49. She demonstrates this point throughout the book, but one of the more illustrative examples is when she says, “The longer one listened to him, the more obvious it became that his inability to speak was closely connected with an inability to think, namely, to *think* from the standpoint of somebody else.” (emphasis included)

[xviii] Arendt, pp. 142-143. Arendt compares Eichmann to Kurt Becher, who was vastly more enterprenurial whereas Eichmann was

[xix] Arendt, p. 53.

[xx] Arendt, pp. 121-122.

[xxi] Ibid.

[xxii] Arendt, pp. 124-125.

[xxiii] Arendt, pp. 125-126.

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[xxiv] Consequently these are the titles of three sequential chapters.

[xxv] Arendt, p. 172.

[xxvi] Arendt, p. 174.

[xxvii] Arendt, p. 206.

[xxviii] Arendt, p. 207.

[xxix] Arendt, p. 252.

[xxx] Arendt, p. 265 she clearly recognizes "the facts of the case were beyond dispute." Also, p. 274 she summarizes the fundamental failure of the Jerusalem court.

[xxxi] Arendt, p. 274.

[xxxii] Arendt, p. 249.

[xxxiii] It is important to note that not only Jews were deported to concentration and extermination camps. Other ethnic and social minorities including Gypsies and Poles.

[xxxiv] Arendt, p. 253.

[xxxv] Arendt, p. 115 & 138.

[xxxvi] Arendt, p. 240.

[xxxvii] Arendt, pp. 286-287. She agrees with the judges verdict the trial in effect recognized Israel as a Jewish state.

[xxxviii] Arendt, p. 231.

[xxxix] Arendt, p. 288. She specifically calls him "one of the greatest criminals of that period."

[xl] Arendt, pp. 4-5.

[xli] Arendt, p. 6.

[xlii] Ibid.

[xlili] Arendt, p. 279.

[xliv] Arendt, p. 102.

[xlv] Arendt, pp. 102-103.

[xlvi] Arendt, p. 141.

[xlvii] Arendt, p. 145.

[xlviii] Arendt, p. ix.

[xlix] Arendt, pp. 287-288. She says that contrary to being stupid, that Eichmann was instead thoughtless and that

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thoughtlessness is not the same as stupidity.

[i] Arendt, p. 57. Arendt revisits the cog theory in her postscript, p. 289.

[ii] Arendt, p. 289.