

## *Introduction*

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THE SHEER VOLUME of secondary literature dedicated to the life and work of Hannah Arendt—which has been growing exponentially since her death, and which was reinforced by various events held in 2006 to mark the centenary of her birth—is truly impressive. However (and as Christian Volk has so sharply observed, whilst this literature has explored the question ‘What is Politics?’ from multitudinous vantage points, the question ‘What is Law?’ seems almost entirely to have been neglected, both by the legal academy and by Arendt scholars alike.<sup>1</sup> For sure, there are some plausible explanations for this. It is true, for example, that Arendt never took the time to develop in her *corpus* any detailed theory of law, and indeed lacked the legal background to do so; and yet—as we shall see—a close reading of her work shows Arendt to have had a keen interest in the law, and in particular its relationship with politics.

It must be said that in recent years this trend seems slowly to be changing. Some pieces on Arendt’s views of international law and constitutionalism have been published by influential scholars such as Jan Klabbers and Jeremy Waldron,<sup>2</sup> whilst others have used Arendt’s insights in order to treat specific legal problems.<sup>3</sup> Building on these developments, what we hope to provide in this volume is the first dedicated and systematic (if not comprehensive) treatment of the many, varied and interesting things which Arendt had to say on law and legal processes, and in so doing somehow to find law’s place within the broader scope of her political thought. The contributors invited to participate in the project reflect our intention to spark a dual dialogue *between* ‘Arendtians’ and lawyers, simultaneously asking the former ‘what does Hannah Arendt say *about* law’, and to the latter ‘what might Arendt’s work say *to* the law’. As we shall see, arriving at answers to these questions is not straightforward—for here Arendt was no less elusive, no less inconsistent,

<sup>1</sup> C Volk, ‘From *Nomos* to *Lex*: Hannah Arendt on Law, Order and Politics’ (2010) 23 *Leiden Journal of International Law* 759, 759.

<sup>2</sup> J Klabbers, ‘Possible Islands of Predictability: The Legal Thought of Hannah Arendt’ (2007) 20 *Leiden Journal of International Law* 1; J Waldron, ‘Arendt’s Constitutional Politics’ in D Villa (ed), *The Cambridge Companion to Hannah Arendt* (Cambridge, Cambridge University Press, 2000) 201–20.

<sup>3</sup> See, eg, L Bilsky, *Transformative Justice: Israeli Identity on Trial* (Ann Arbor, University of Michigan Press, 2004).

no more developed and yet for it no less fascinating than she was throughout her political and philosophical reflections. We can think of nowhere better to begin, then, than with an attempt to trace the roots of that ambivalence.

### I. ARENDT'S POLITICAL TURN

Given her reputation as a theorist of action, it seems appropriate to introduce the work with a reflection not on her political thought *per se*, but rather on the experiences, and—in response to those experiences—the actions which led to her political awakening. It is, after all, in these experiences that we find the roots of Arendt's ambivalence towards law, her belief in action and—putting the two together—what she saw as being the constitutive (or at least, the creative) force of action, even *against* constituted law(s).

Considering the breadth and depth of her political thought, it is perhaps a little surprising to learn that a passion for, even an interest in, politics came to Hannah Arendt relatively late in her formative years. Attending university from 1924–29, 'exactly the years of greatest stability for the troubled Weimar Republic,'<sup>4</sup> Arendt was at this time, and by her own admission, as little concerned by the theoretical underpinnings of the public realm taught to her by Karl Jaspers as she was inattentive to the general political climate which surrounded her.<sup>5</sup> It was not until the early 1930s that Arendt took her first steps in the direction of politics. At this time, her biographical work on Rahel Varshagen coincided with a developing interest in Marx and Trotsky, and a curiosity about the major political questions of the day, in particular those which impacted most upon her identity: the Jewish question and the (as she saw them, dubious) achievements of the women's rights movement.<sup>6</sup> What exasperated Arendt more than any other issue, however, was the 'darkening political situation' which surrounded her in Nazi Germany and, more than this, the failure of even leading intellectuals to understand the gravity of the situation which faced them.<sup>7</sup> In a revealing interview with the journalist Günter Gaus, Arendt was able to pinpoint the precise moment of her political awakening:

GAUS: Your interest in political theory, in political action and behavior, is at the center of your work today. In this light, what I found in your correspondence with Professor Scholem seems particularly interesting. There you wrote, if I may quote you, that you 'were interested in [your] youth neither in politics nor in history.' Miss Arendt, as a Jew you emigrated from Germany in 1933. You were then twenty-six years old. Is your interest in politics—the cessation of your indifference to politics and history—connected to these events?

<sup>4</sup> E Young-Bruehl, *Hannah Arendt, For Love of the World* (London, Yale University Press, 1982) 42 (hereafter 'EYB').

<sup>5</sup> EYB 44.

<sup>6</sup> *Ibid* 92–97.

<sup>7</sup> *Ibid* 98.

ARENDR: Yes, of course. Indifference was no longer possible in 1933. It was no longer possible even before that ...

GAUS: For you as well?

ARENDR: Yes, of course. I read the newspapers intently. I had opinions. I did not belong to a party, nor did I have need to. By 1931 I was firmly convinced that the Nazis would take the helm ...

...

GAUS: Is there a definite event in your memory that dates your turn to the political?

ARENDR: I would say February 27, 1933, the burning of the Reichstag, and the illegal arrests that followed during the same night. The so-called protective custody. As you know, people were taken to Gestapo cellars or to concentration camps. What happened then was monstrous, but it has now been overshadowed by things that happened later. This was an immediate shock for me, and from that moment on I felt responsible.<sup>8</sup>

For Arendt, taking up the mantle of responsibility would manifest itself in two ways. For one, she published what remains, to many, the *magnum opus* of her vast body of work: *The Origins of Totalitarianism*. As she said in response to one (particularly stinging) review of the book, ‘my first problem was how to write historically about something—totalitarianism—which I did not want to conserve but, on the contrary, *felt engaged to destroy*’.<sup>9</sup> Her solution, she continued, ‘was to discover the chief elements of totalitarianism and to analyze them in historical terms.’ Not a history of totalitarianism as such, ‘[t]he book ... does not really deal with the “origins” of totalitarianism—as its title unfortunately claims—but gives a historical account of the elements which crystallized into totalitarianism’,<sup>10</sup> with the express hope of eradicating them from the human condition.

A second manifestation of Arendt’s taking of responsibility, however, one for which she is far less renowned, came in the shape of her own resistance to the Nazi regime, in the spring of 1933. Whilst thinking gravely of her own emigration, ‘acting’, for Arendt, would mean covertly offering her Berlin apartment as a welcome stop to Jews and Communists fleeing Germany, as tensions heightened in the immediate aftermath of the conflagration. Risky though her participation in this underground railroad undoubtedly was, her action took an altogether more flirtatious relationship with danger when the German Zionist Organization approached her to undertake illegal work on their behalf. As Young-Bruehl tells it:

They wanted her to collect materials at the Prussian State Library which would show the extent of anti-Semitic action in nongovernment organizations, private circles, business associations, and professional societies. She was to make a collection of the sort

<sup>8</sup> “‘What Remains? The Language Remains’: A Conversation with Günter Gaus’ (hereafter ‘with Gaus’) in P Baehr (ed), *The Portable Hannah Arendt* (London, Penguin, 2000) 3, 5.

<sup>9</sup> H Arendt, ‘A Reply to Eric Voegelin’ (hereafter ‘Reply to Voegelin’) in Baehr (ed), above n 8, 158.

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

of anti-Semitic remarks which would be unlikely to make their way into the German or foreign press.<sup>11</sup>

At the point of undertaking this work Arendt had already come to full consciousness of the predicament in which she and her compatriots had found themselves. Along the path of the underground railroad she had witnessed many arbitrary arrests, particularly of Communists who would be sent to the cellars of the Gestapo or to the concentration camps, recalling them as ‘monstrous’ events overshadowed only by what was still to come. All at the same time, Nazi legislation continued to alienate Germany’s Jewish population, depriving them, amongst other things, of key university posts and civil service appointments.<sup>12</sup> Where ordinary existence was increasingly suffocated *by* the law, and where even a life lived in apathetic legality could no longer guarantee the minimum liberal protection *of* the law, the opportunity to take on such an illicit task was one which Arendt embraced with positive relish. Recalling this climate of indeterminate il/legality as that which ‘marked her [personal] turn to the political’, when invited to explain the nature of her work for the Zionists she confided in Gaus about the arrest which had preceded her own flight from Germany:

I was found out. I was very lucky. I got out after eight days because I made friends with the official who arrested me. He was a charming fellow! He’d been promoted from the criminal police to a political division. He had no idea what to do. What was he supposed to do? He kept saying to me, ‘Ordinarily I have someone there in front of me, and I know what’s going on. But what shall I do with you?’

... Unfortunately, I had to lie to him. I couldn’t let the organization be exposed. I told him tall tales, and he kept saying, ‘I got you in here. I shall get you out again. Don’t get a lawyer! Jews don’t have any money now. Save your money!’ Meanwhile the organization had gotten me a lawyer. Through members, of course. And I sent this lawyer away. Because this man who arrested me had such an open, decent face. I relied on him and thought there was a much better chance than with some lawyer who himself was afraid.<sup>13</sup>

Whilst Arendt was thankful for that piece of good fortune which had led to her release from custody, she was also astute enough to recognise the limits of that luck. Within days she had joined those exiles who had already made their way to Prague, on a journey that would not end until she received American citizenship some 18 years later.

There are three initial (and related) observations that we should like to make about Arendt’s tale of ‘good’ fortune here. First, that the climate in Germany, in particular for Jews and Communists, was, in 1933, one of complete uncertainty.

<sup>11</sup> EYB 104.

<sup>12</sup> *Ibid* 104. Take, for example, *Gesetz zur Wiederherstellung des Berufsbeamtentums* (Law for the Restoration of the Professional Civil Service), passed on 7 April 1933, by which ‘non-Aryan’ members of the civil service were removed, or forced to retire, ‘even where there would be no grounds for such action under the prevailing Law’ (s 1).

<sup>13</sup> Arendt, *with Gaus*, 7.

‘Conscientious, thoughtful people,’ reflected Young-Bruehl, ‘were shocked into the realization that legality no longer mattered’.<sup>14</sup> For the unfortunates this meant not just arrest but indefinite detention—and often torture. For those who might, for want of a better term, be thought ‘fortunate’, there still remained the immediate and burning appreciation that their fortune might desert them at any time.

Secondly, when we stop to reflect on Arendt’s own arrest, we can appreciate her predicament not only in terms of the State’s actual interference with her, but also as one in which Arendt’s awareness of her relationship with the State, her knowledge that she was dominated, told her that she had to act accordingly in order to ‘play safe’; to avoid, if at all possible, the terrifying consequences brought to bear upon so many of her compatriots. ‘I *had* to lie to him,’ she said, knowing full well that if she did not, not only would the ‘organization be exposed’ but her personal well-being would have been gravely endangered. In other words, Arendt could not act freely, could not speak openly about her business with the Zionists, nor of her opinions on the regime for whom her arresting officer worked. She had to censor herself in order to facilitate her own release and protect those closest to her from the regime’s interference. Arendt was unfree, of that there can be little doubt. In 1933, however, that domination was not yet total.

Thirdly, then, despite the fact that she understood clearly the nature of her condition, despite the fact that the range of actions available to Arendt was restricted when she came face to face with the State via her arresting officer, it is difficult not to detect, as Arendt recounts the tale, a sense, almost, of perverse excitement. So—whilst we might be tempted to rebuke Arendt’s abasement here—rather than cringe at a tale of servility, as she is forced to lie and beg her way out of capture, one is left with a sense that, at a micro-level—in *this* encounter—Arendt was the victor. Indeed, it is not impossible to lose sight of the context and feel some pity for the young officer, as the fullness of his naivety in dealing with her, revealed by his eagerness to ‘get her out again’, becomes apparent. The point, however, is this: Arendt was undoubtedly fortunate—she could just as easily have been arrested by a cold, charmless jobsworth, unresponsive to her lies and unimpressed by her character (little wonder, then, her later fascination with Adolf Eichmann and what she famously described as the banality of (his) evil). Nevertheless, the very fact of there being a face-to-face encounter, a human encounter, at least permitted the *possibility* of action, exercised extraordinarily, and capable of breaking the cycle of arbitrary arrest and the monstrous consequences which followed.

On this last matter, let us make three further points. First, this was an *extraordinary* encounter. *Normally*, said the police officer, he would know how to dispose of the person in front of him; but Arendt was different. If this was her fortune, her virtue was to grasp the chance, securing her release without betraying her Zionist colleagues. Secondly, Arendt could hold sway over this officer only *because* of the

<sup>14</sup> EYB 103.

extraordinary nature of the encounter. *Normally*, someone in Arendt's position would accept the legal representation paid for by the Zionists and offered to her. Yet Arendt seemed to sense (in the lawyer's 'fear') that normal channels would not serve her well. What is more, it would seem that Arendt saw the lawyer as an obstruction between the officer and herself: as a barrier, in other words, to action. Through a lawyer her encounter would have to have been refracted, she would have been unable to *act* (with all of its performative connotations) with fullest effect on the officer, and thereby would have been less confident of breaking a cycle which might, ultimately, have led her to the concentration camps. Far from debasing her, one might say that here the opportunity for self-censorship vis-à-vis Arendt's arresting officer itself constituted a moment of action. Thirdly, it was nevertheless at this precise moment—when she discovered law's *futility*—that Arendt was awakened to its importance, and even to its meliorative *potential*. It was, after all, the *juridical* person in man which stood as the first and most resistant obstacle to total domination and, worse still, extermination. Let us return then to *The Origins of Totalitarianism* to explore this thought a little further.

## II. THE JURIDICAL PERSON

It is in the third book of *The Origins* that we find Arendt's first explicit statement of the *function* of law in a system of government:

Positive laws in constitutional government are designed to erect boundaries and establish channels of communication between men whose community is continually endangered by the new men born into it. With each new birth, a new beginning is born into the world; a new world has potentially come into being. The stability of the laws corresponds to the constant motion of all human affairs, a motion which can never end as long as men are born and die. The laws hedge in each new beginning and at the same time assure its freedom of movement, the potentiality of something entirely new and unpredictable; the boundaries of positive laws are for the political existence of man what memory is for his historical existence: they guarantee the pre-existence of a common world, the reality of some continuity which transcends the individual life span of each generation, absorbs all new origins and is nourished by them.<sup>15</sup>

In this account, law is needed in order to secure stability: a sort of counterbalance to the constant movement of political action. Given the importance of the concept

<sup>15</sup> H Arendt, *The Origins of Totalitarianism* (New York, Schocken, 2004) 599–600 (hereafter 'OT'). It is not clear here whether Arendt embraced a positivist or natural law-based approach to law. She states, somewhat ambiguously, that '[b]y lawful government we understand a body politic in which positive laws are needed to translate and realize the immutable *ius naturale* or the eternal commandments of God into standards of right and wrong. Only in these standards, in the body of positive laws of each country, do the *ius naturale* or the Commandments of God achieve their political reality' (*ibid*, at 598).

of totalitarianism in Arendt's political theory,<sup>16</sup> her remarks on the special legality established by totalitarian government cannot pass unnoticed. It is not that totalitarian government was in itself lawless. Rather, for Arendt, its legality was based on the law of movement and not of stability. For this reason, totalitarian government could not respect the rule of law:

At this point the fundamental difference between the totalitarian and all other concepts of law comes to light. Totalitarian policy does not replace one set of laws with another, does not establish its own *consensus juris*, does not create, by one revolution, a new form of legality. Its defiance of all, even its own positive laws implies that it believes it can do without any *consensus juris* whatever, and still not resign itself to the tyrannical state of lawlessness.<sup>17</sup>

This legality was instrumental in *dissolving* the community of men, and in opening the way to their domination. Thus, she said, the 'first essential step on the road to total domination is to kill the juridical person in man'.<sup>18</sup>

To be sure, Arendt did not believe and barely feared that totalitarianism could achieve its aims outright. Totalitarianism, in its fullest, most terrifying form of total, global domination, could not tolerate even the simple plurality of two concurrent totalitarian regimes:

[T]he chances are that total domination of man will never come about, for it presupposes the existence of one authority, one way of life, one ideology in all countries and among all peoples of the world. Only when no competitor, no country of physical refuge, and no human being whose understanding may offer a spiritual refuge, are left can the process of total domination and the change of the nature of man begin in earnest.<sup>19</sup>

In the isolated context of the concentration camps, however, albeit for a fleeting moment, and restricted to limited spatial bounds, the totalitarian regime *had* succeeded in rendering men superfluous, in creating what she called 'living corpses', whose individuality, whose very humanness, had somehow been stripped from them; so much so that their march to the gas chamber seemed no different—from the perspective of neither the murderer nor the murdered—than the procession of a herd to the slaughterhouse: 'There are no parallels to the life of the concentration camps. Its horror can never be fully embraced by the imagination for the very reason that it stands outside of life and death...'<sup>20</sup>

Arendt traced the creation of living corpses to three key moments. The first, the killing of man's 'juridical person', was carried out by selecting for the camps inmates who had, in no real demonstrable way, violated what one might understand as a law or penal code. 'Criminals,' she explained, 'do not properly belong

<sup>16</sup> On this, see M Canovan, *Hannah Arendt: A Reinterpretation of Her Political Thought* (Cambridge, Cambridge University Press, 1992).

<sup>17</sup> OT 596.

<sup>18</sup> *Ibid* 577.

<sup>19</sup> *Ibid* 617–18.

<sup>20</sup> *Ibid* 572.

in the concentration camps, if only because it is harder to kill the juridical person in a man who is guilty of some crime than in a totally innocent person'.<sup>21</sup> The criminal, this was to say, was *already* a 'legal' person: his crime was defined by law; his criminal status was determined by the legal process; his punishment (should he be found to fall within that category) was both contestable (for example, by appeal) and predictable (as prescribed by law). The criminal, therefore, was by definition a rights-bearing individual judged for his unlawful *actions*. What made the status of the 'innocent' in the concentration camp so drastic was that his detention was brought about not because of his *actions*, something which he could control—to which he could consent—but because of his *identity*, something out-with one's control and also, in Arendt's words, something 'outside the normal judicial procedure in which a definite crime entails a predictable penalty'.<sup>22</sup> Jews could not consent to, and therefore could not contest, their identity *qua* Jews; the carriers of disease could not consent to their illness and therefore could not contest the reason for their detention. Consent, then, was rendered meaningless, and with it the very right of those individuals *to have* the (legal) rights and protections afforded to the criminal. Thus, the aim of arbitrary detention was, she said, to pave the way for the total domination of the whole population by destroying the founding myth of social contract: free consent: 'The arbitrary arrest which chooses among innocent people destroys the validity of free consent, just as torture—as distinguished from death—destroys the possibility of opposition.'<sup>23</sup>

With the legal personality of man destroyed, with the basis of his legal protection in free consent rendered meaningless, the next step in the preparation of living corpses is to destroy man's 'moral person'. 'This,' Arendt said, 'is done in the main by making martyrdom, for the first time in history, impossible'.<sup>24</sup> By making it impossible to find out whether an inmate was dead or alive, Arendt suggested that death itself was robbed of its significance. After a man has shed his mortal coil, after all, it is only by remembrance that his death takes on his significance, that his (individual) life story can be told. By making death 'anonymous', the SS 'took away the individual's own death, proving that henceforth nothing belonged to him and he belonged to no one. His death merely set a seal on the fact that he had never really existed'.<sup>25</sup>

With the destruction of man's legal and moral person, the final step, the overcoming of man's individuality, that which makes him human, '[was] almost always successful'.<sup>26</sup> This could be, and was, achieved by a variety of means, all of which served to transform the victim from human to 'beast': pointless torture designed neither to kill nor to extract information; the herding of hundreds of

<sup>21</sup> *Ibid* 577.

<sup>22</sup> *Ibid*.

<sup>23</sup> *Ibid* 581.

<sup>24</sup> *Ibid* 582.

<sup>25</sup> *Ibid* 583.

<sup>26</sup> *Ibid* 586.

human beings into cramped trains, like cattle, for transportation to the camps; the shaving of the head and the issue of intentionally ill-fitting camp clothing, all served to destroy human dignity and individuality.<sup>27</sup> Indeed, the common experience reported by tour guides at Auschwitz today—that visitors to the camp often find the mugshots of the inmates less harrowing than, say, the collections of their glasses, their shoes, or the briefcases which contained their home address and with them traces of identity—perhaps points precisely to the effectiveness of the SS in destroying even the physical individuality of the camps' inmates.

### III. CRISES OF THE REPUBLIC

If Arendt despaired not that totalitarianism would succeed, ultimately, in achieving total domination, she remained concerned that by asserting itself, and by finding an awful reality in the confines of the concentration camps, totalitarianism had

brought forth an entirely new form of government which is a potentially and an ever-present danger [and which] is only too likely to stay with us from now on, just as other forms of government which came about at different historical moments and rested on different fundamental experiences have stayed with mankind regardless of temporary defeats...<sup>28</sup>

It is unsurprising, then, that she came to warn against the emergence of many such pro-tototalitarian elements in that republic which she so cherished above all, the United States of America. The Vietnam War era, she said, had seen the secret service act almost as a shadow government, whose over-classification of sensitive information had deprived 'the people and their representatives [of access to] what they must know to form an opinion and make decisions'.<sup>29</sup> Detached from the people and their representatives,<sup>30</sup> detached even from the intelligence community,<sup>31</sup> the National Security Council operated in a culture of secrecy. Unlike the imperial bureaucracies, however, for whom effectiveness (however perversely defined) superseded democratic legitimacy, the National Security Council was concerned *not even* with this question. Not democracy, not effectiveness,

<sup>27</sup> *Ibid* 584.

<sup>28</sup> *Ibid* 616.

<sup>29</sup> H Arendt, 'Lying in Politics: Reflections on the Pentagon Papers' (hereafter 'LIP') in H Arendt, *The Crises of the Republic* (San Diego, New York, London, Harcourt Brace & Company, 1972) 30.

<sup>30</sup> LIP 21. 'Even when, under Johnson, foreign governments were thoroughly briefed on our plans for bombing North Vietnam, similar briefing of and consultation with congressional leaders seem never to have taken place.'

<sup>31</sup> *Ibid* 22: 'The fact-finding branches of the intelligence services were separated from whatever covert operations were still going on in the field, which meant that they at least were responsible only for gathering information, rather than for creating the news themselves. They had no need to show positive results and were under no pressure from Washington to produce good news to feed into the public relations machine ... They were relatively independent, and the result was that they told the truth, year in and year out.'

but maintaining the *image* of the US as the leading world superpower became the overwhelming aim of their involvement in the region.<sup>32</sup>

Turning her mind to the question of *how* this could come about, Arendt focused her ire on ‘the evils of bureaucracy’—what she called ‘rule by nobody’—making explicit its cross-fertilisation with the concept of representative democracy:<sup>33</sup>

The internal world of government, with its bureaucracy on one hand, its social life on the other, made self-deception relatively easy. No ivory tower of the scholars has ever better prepared the mind for ignoring the facts of life than did the various think tanks for the problem-solvers and the reputation of the White House for the President’s advisers ... [T]he truth of such decisive matters could be successfully covered up in these internal circles—but nowhere else—by worries about how to avoid becoming ‘the first American President to lose a war’ and by the always present preoccupation with the next election.<sup>34</sup>

What Arendt found to be novel about totalitarianism was not (only) its domination of the public realm but with it, its ravishing of the private realm. This malevolent seed, she warned, was precisely what was to be found in the McCarthy era, when many US citizens, from government officials to high-profile entertainers, to educators, trade unionists and private industry employees, found themselves to be the victims of rigorous investigation, on the basis of often false or exaggerated claims that they were either active Communists or passive sympathisers:

Informing is a duty in a police state where people have been organized and split into two ever-changing categories: those who have the privilege to be the informers and those who are dominated by the fear of being informed upon.<sup>35</sup>

As she saw it, the adoption of *this* element of totalitarianism was a quite deliberate, but wholly ill-conceived, attempt to defeat the totalitarian spectre of Communism:

It is the old story: one cannot fight a dragon, we are told, without becoming a dragon; we can fight a society of informers only by becoming informers ourselves ...

<sup>32</sup> One memo to the US Secretary of Defense, Robert S McNamara, from his closest adviser, the then United States Assistant Secretary of Defense for International Security Affairs, John McNaughton, leaked to the *New York Times*, famously listed the US aims in Vietnam in order: ‘US aims: 70%—To avoid a humiliating US defeat (to our reputation as a guarantor). 20%—To keep SVN (and then adjacent) territory from Chinese hands. 10%—To permit the people of SVN to enjoy a better, freer way of life. ALSO—To emerge from crisis without unacceptable taint from methods used. NOT—To “help a friend,” although it would be hard to stay in if asked out.’ (*The Pentagon Papers*, Gravel Edition, vol 3, 694–702. Available online, in full, at <<http://www.mtholyoke.edu/acad/intrel/pentagon/pent1.html>>.)

<sup>33</sup> LIP 20.

<sup>34</sup> *Ibid* 36.

<sup>35</sup> H Arendt, ‘The Ex-Communists’ in H Arendt, *Essays in Understanding 1930–1954* (Jerome Kohn ed) (New York, San Diego, London, Harcourt Brace & Company, 1994) 394.

[However, if] we became dragons ourselves, it would be of small interest which of the two dragons should eventually survive. The meaning of the fight would be lost.<sup>36</sup>

For Arendt, the answer to these creeping ‘crises of the republic’ was—*contra* her contemporary, Ayn Rand’s, virtues of selfishness<sup>37</sup>—not to be found by retreating to our private pleasures and peaceful enjoyment, but rather in a call to arms: a (re) invocation of the very soul of republican government; to find a *virtue* of (for want of a better word) ‘publicness’. After all, to each of the crises which attracted her attention Arendt had attributed the *absence* of the public:

[S]even years of an *undeclared* war in Vietnam; the growing influence of *secret* agencies on public affairs; open or *thinly veiled* threats to liberties guaranteed under the First Amendment; attempts to deprive the Senate of its constitutional powers, followed by the President’s invasion of Cambodia in open disregard for the constitution, which explicitly requires congressional approval for the beginning of a war ...<sup>38</sup>

to say nothing of the ‘quicksand of lying statements of all sorts, deceptions as well as self-deceptions ... apt to engulf any reader who wishes to probe’ the top secret *Pentagon Papers*.

Where the injustices of government lurked in the shadows, remaining illicit, Arendt demanded *of* citizens that the shining light of publicity be cast upon those acts—the citizens themselves the final limitation on the tyrannical corruption of office. Where that injustice was open, defiant even, Arendt demanded *from* citizens the assumption of responsibility: she demanded that they *act*. Perhaps it is an oversimplification, but we can conclude this introduction with a simple proposition which (whether explicit or implicit, whether reaffirmed or denied) will act as a point of reference throughout this volume: that for Arendt the very point of law is to constitute and to preserve a common world—a public realm—where the spirit of action, that defining character of the human condition, can endure.

<sup>36</sup> *Ibid.*

<sup>37</sup> A Rand, *The Virtues of Selfishness: A New Concept of Egoism* (New York, New American Library, 1964).

<sup>38</sup> H Arendt, ‘Civil Disobedience’ in Arendt, *The Crises of the Republic*, above n 29, 74.