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POSTDOCTORAL STUDIES

Benjamin Waterman

AUTEUR DE LA THÈSE / AUTHOR OF THESIS

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TITRE DE LA THÈSE / TITLE OF THESIS

Professor Jeffrey Reid

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EXAMINATEURS (EXAMINATRICES) DE LA THÈSE / THESIS EXAMINERS

Professor Andrew Sneddon

Professor Daniel Tanguay (absent)

Gary W. Slater

Le Doyen de la Faculté des études supérieures et postdoctorales / Dean of the Faculty of Graduate and Postdoctoral Studies

**Fackenheim, Arendt and Agamben and the Nazi Understanding of
Humanity**

Benjamin Waterman

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In partial fulfillment of the requirements
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Abstract

The argument presented in this paper is that during the Shoah the Nazis were attempting to further enforce the understanding that humanity is essentially self-destructive or superfluous. Several writings are examined more closely to support this argument: Emil Fackenheim's To Mend the World: Foundations of Future Jewish Thought (section IV), Hannah Arendt's The Origins of Totalitarianism (Part 3) and, finally, Giorgio Agamben's Homo Sacer: Bare Life and Sovereign Power (Part 3). Each of these author's writings are used as a focus for a discussion of the self-destructive tendencies that are a part of Nazism in its relationship to: Law, the Idea of Man and Ideology. An effort is made during the discussion of these topics to arrive at an appreciation of the extremely alarming extent to which the Nazis had enforced the creation of a society that was wholly self-destructive.

This argument concerning the Nazi understanding of humanity also recognizes the creation of a society that is wholly self-destructive as an underlying threat that continues to pose an ongoing danger to the post-Shoah world. The recognition of this threat unfortunately demonstrates the relevance of the Nazi understanding of humanity to this world (a relevance which at the outset may not have been apparent). Amongst the challenges this poses is that as the creation of a wholly self-destructive society further intensifies the possibility for philosophy increasingly disappears.

In the concluding chapter, reference is again made to the writings of Fackenheim, Arendt and Agamben. These writings are referred to as part of a discussion of resistance to the threat of creating a post-Shoah world that develops into a society that is wholly self-destructive. Also included in this discussion is the importance of this type of resistance to the possibility for philosophy in this world.

Acknowledgements

I feel it is important to recognize that the writing of this thesis is only one part of this overall thesis project. This is to recognize the importance of the instruction I received during the writing of this work.

The instructor who has had the most significant role in this respect is of course Dr. Jeffrey Reid. In my opinion the clearest insight I had during this project was my impression (from casual acquaintance) that Dr. Reid was someone greatly concerned with helping students. This impression was confirmed initially by the generosity that was required of him to agree to supervise this project, and was continued by him throughout this project in his persistent efforts to improve the content of this work.

I also wish to acknowledge Dr. Sneddon and Dr. Tanguay for agreeing to review my writing. Beyond formality, I wish to recognize their influence on this project, as my attempts to answer their questions appear as a part of this work.

I also would like to acknowledge my family - Betty, Don, and Evan - for actively supporting me during the time I have spent on this work. This support has been echoed by a number of friends; and there are few names that are important to me to recognize – Emily, Julian, Patrick, Matthew, Magda, and Ed. I would also wish to include amongst the names of friends my former teachers, Michael and Bill, for the introduction they have given me to this very troubling area of study.

Amongst those who survived the Shoah and other instances of mass murder, the conviction that they survived only for the sake of their being able to act as a witness to the rest of the world is a recurring sentiment. The concern with ‘living out their days’ seems not to be part of their consideration - as either a goal or as an obstacle to deciding to become a witness after the mass slaughter they witnessed has ended. In part this writing is an attempt to make some sense of this world that now includes those who have acted as witnesses to mass slaughter.

Introduction: The Nazi Understanding of Humanity

It is not incumbent on you to complete the work. But you are not free to evade it.
-Rabbi Tarfon (quoted in To Mend the World by Emile Fackenheim, 30).

H.G. Adler, a survivor and writer of his experiences at the concentration camp of Theresienstadt, states the following in praise of Raul Hilberg's well-known work on the Shoah: "To be noted is Hilberg's The Destruction of European Jews ... It is until now the most significant accomplishment in this topic area and it is not likely to be surpassed very soon, even though it is by far not yet the final portrayal."¹ Adler's description of Hilberg's work as "by far not yet the final portrayal" recognizes an 'encounter' that is fundamental to the task of the historian. The collection of facts is clearly indispensable to this task, however, this unavoidably runs the historian into an encounter with limits. As is well known, the collection of facts can only ever be a limited pursuit, while historical facts are of course endless in number. Contrary to what may be implied by Adler's words, "the final portrayal" of any historical subject necessarily eludes the historian.

But the elusion (and illusion) of the final portrayal of a historical subject need not abort the ability of the historian to begin their task. The historian may move beyond an encounter with the endless procession of historical facts by exercising human judgement. Human judgement presents a historical subject with a beginning that is free of the concern to arrive at the subject's final portrayal. The application of human judgement is of course by no means an automatic process, nor is the concept itself at all self-evident. The exercising of human judgement is notoriously seen as a corruptible influence on any subject it approaches. Although there is no intention here to enter more deeply into a discussion of human

¹ Raul Hilberg, The Politics of Memory: The Journey of a Holocaust Historian (Chicago: Ivan R. Dee Publisher, 1996), 202.

judgement, what I do wish to acknowledge is the widely accepted understanding that human judgement is essential to the practice of the historian. Hannah Arendt for example, in coming to the defence of human judgement, affirms its indispensability to the historian as they perform their task: "The argument that we cannot judge if we were not present and involved ourselves seems to convince everyone everywhere, although it seems obvious that if it were true, neither the administration of justice nor the writing of history would ever be possible."² Human judgement is required to resolve the historian's encounter with *limits*. The resolution provided by human judgement for the historian in their encounter with limits allows the writing of history to proceed.

This fairly general and well-known observation about the task of the historian and the importance of human judgement to their task is relevant to recognizing where the discussion of the Nazi understanding of humanity begins in this writing. This writing, not being historical, adds no new facts to the 'collection' of facts on the subject of the Shoah. The concern is with how to exercise judgement in an encounter with these facts. Encountering these facts can, for me, seem overwhelmingly difficult to deal with - if not instilling a sense of complete defeatism in response to the world these facts describe. The aim of this writing is to encounter facts that have been collected about the Shoah in an effort to make 'peace' with this encounter. To make peace with this encounter involves trying to pursue an understanding of a world where instances of mass murder do not take place. For me, at least, this peace does not seem possible to make by trying to completely avoid a discussion of mass murder. Thus, the purpose in this writing of pursuing a discussion of the Shoah is to develop some understanding of a world where mass murder does not take place. Whether or not peace of

² Hannah Arendt, *Eichmann in Jerusalem: A Report on the Banality of Evil* (New York: Penguin Books, 1977), 295-296.

this type can even be made in an encounter with facts that have been collected about the Shoah - a peace that would work towards overcoming the sense of complete defeatism - is not at all clear to me. Yet the possibility to make this peace in this encounter still remains vitally important in spite of this uncertainty. The promise of making peace encourages my effort here to engage in an encounter with facts that have been collected about the Shoah. The engagement in this encounter has led to a judgement concerning the ultimate aims of the Nazis during the Shoah. The argument to be presented is that during the Shoah the Nazis had decided to promote an understanding of humanity that increasingly enforced the sense that human beings are essentially self-destructive or superfluous. The aim of this writing is to present this argument, along with some of its possible implications, as a reasonable interpretation of the ultimate aims of the Nazis.

Within this argument about the self-destructive tendencies of Nazism a tension becomes apparent between the world's encounter with the Shoah and the world beyond this encounter. This tension is created when the world's encounter with the Shoah is recognized to occur as a decision on the part of the Nazis to intensify the world's experience with a world that is completely self-destructive. The aspect of decision acts as a bridge to a self-destructive world that threatens to spread its grip to the entire world beyond it. But at the same time in the world's encounter with self-destructiveness and superfluity, the aspect of decision also acts as a bridge to a world without self-destructive aims.

The interest in the possibility to make peace in an encounter with facts collected about the Shoah is considered to be inextricably linked with presenting the argument that during the Shoah the Nazis had decided to increasingly enforce the understanding that humanity is essentially superfluous. To me, this argument becomes persuasive by its offering a way to make peace with facts that have been collected about the Shoah. The argument that the aims

of the Nazis were self-destructive is considered in an attempt to identify an aspect of the world where the decision to perpetrate mass murder is accepted. This identification, if accurate, is understood to be instructive for developing some understanding of a world where the decision to perpetrate mass murder is always overcome by the decision to resist against it.

The effort to present the argument that the ultimate aims of the Nazis were self-destructive simultaneously becomes an effort to present this writing as a way of making a 'peace offering' to an encounter with facts collected that have been about the Shoah, and the world described by these facts; that is, if there is any sense in suggesting that in this encounter there may even be a possibility for peacemaking.

On its face, the argument that the ultimate aims of the Nazis involved enforcing an understanding of humanity as being essentially superfluous may seem an extreme position. A review of the historical facts will act as a starting point for investigating the claim of this argument. This review will demonstrate what interpretation of the aims of the Nazis during the Shoah is most reasonably supported by the historical facts. Hilberg's The Destruction of European Jews can be consulted to this end. In the concluding section of this work, Hilberg refers to what he calls "the destructive expansion"³ of the Nazi aims during the Shoah. "The destructive expansion" occurs by means of a three-step process. It is the third or final step of this process that is relevant to this discussion, which Hilberg describes as follows: "We can observe an attempt to set up multiple processes aimed at new victims and pointing to a destruction, group by group, of all human beings within the German reach"⁴ As well, near the concluding lines of his work, Hilberg writes: "When, finally, a society runs amuck in

³ Hilberg, The Destruction of European Jews (New York: Holmes and Meier, 1985), 639.

⁴ *Ibid.*, 639.

limitless destruction, no one will be safe.”⁵ To be clear that he is suggesting that the Nazis had established a society of “limitless destruction,” Hilberg then follows this statement with a quote from an article by psychologist Leo Alexander:

It is one of the laws of psychology, which is in harmony also with more general physiological principles, that destructive urges of great magnitude and depth and destructive concepts arising there-from cannot remain limited or focused but must inevitably spread and be directed against one’s own group and ultimately against one’s own self.⁶

What would seem as a reasonable anticipation from these pronouncements by Hilberg concerning the self-destructive tendencies of Nazism (especially considering the prominent location of one of these passages) is that Hilberg provides substantial evidence to support this claim in his work. Instead, what appears is only a brief 2-page recounting of examples where the Nazis targeted other groups besides the Jews for elimination. Hilberg mentions three groups in his illustration of “the destructive expansion” of Nazi aims – the Gypsies, the Polish people, and German inmates considered to be “ugly” in appearance.⁷ How these examples of these groups illustrate the self-destructive tendencies of Nazi aims (to those who do not already understand the elimination of the Jews as being an indication of Nazism’s self-destructive tendencies) may seem problematic. As with their understanding of the Jews, the Nazis understood the Gypsies and the Poles to be separate nations/races from themselves, and therefore their elimination would not touch the ranks of the German/Aryan race (as well, the elimination of the Poles was carried out by comparably less severe measures than those employed against the Jews). The elimination of “ugly” Germans is perhaps more relevant to showing signs of self-destructiveness within the Nazi aims, however, even though the killing

⁵ Ibid., 764.

⁶ Ibid., 764. These words of Alexander seem to appear in two locations; including in one article entitled: “Destructive and Self-Destructive Trends in Criminalized Society.”

⁷ Ibid., 641-643.

of one prisoner for these reasons is obviously completely unacceptable, the killing of prisoners for this reason was not widespread.

If Hilberg does not provide sufficient evidence to support the claim that the Nazis had self-destructive tendencies in their aims, then perhaps this historical evidence can be supplied by another historian who accepts the view that Nazi aims were self-destructive. Eberhard Jackel, who discusses at length the aims of the Nazis in his book *Hitler's Weltanschauung*, also presents this view, stating that: "He [Hitler] had principles, not moral ones to be sure, in the usual sense of the Western tradition; but he had principles nevertheless, according to which his policies took their course with an obstinate, brutal, and finally self-destructive consistency."⁸ This statement is restated by Jackel near the concluding lines of his study: "His [Hitler's] self-assurance which knew no doubts, his unswerving and finally self-destructive consistency, may have been derived ultimately from his self-consistent *Weltanschauung*. Such considerations, however, lead into the realm of speculation and go beyond the purview of my investigation."⁹ The self-destructive tendencies in the aims of the Nazis are taken to be a historical 'fact' by Jackel. Jackel's interest in his study is to establish as a historical fact that Hitler possessed a *Weltanschauung*; and he only speculates what the relationship might be between this *Weltanschauung* and the 'fact' of the self-destructive tendencies in the aims of the Nazis.

The historians Hilberg and Jackel both accept the view that the Nazis had self-destructive aims, although neither one of them shows great concern in establishing this 'fact.' In this writing, an effort will be made to argue the point that the aims of Nazis can be

⁸ Eberhard Jäckel, *Hitler's Weltanschauung: A Blue Print for Power* (Middletown, Conn: Wesleyan University Press, 1972), 67.

⁹ *Ibid.*, 120.

reasonably interpreted as seeking to enforce the view that humanity is essentially self-destructive or superfluous.

Michel Foucault is perhaps one of the most prominent writers to propose this argument, presenting it as well in a very explicit fashion. Foucault presents his statements about the self-destructive tendencies of Nazism as having an ongoing significance to the world that comes after the appearance of this regime. These statements also pronounce some of the most radical warnings against the ongoing danger posed by the self-destructive tendencies expressed by Nazism (and for this reason alone they are of interest here). The following, for example, appears in The History of Sexuality:

Nazism was doubtless the most cunning and the most naïve (and the former because of the latter) combination of the fantasies of blood and the paroxysms of a disciplinary power. A eugenic ordering of society, with all that implied in the way of extension and intensification of micro-powers, in the guise of an unrestricted state control, was accompanied by the oneiric exaltation of a superior blood; the latter implied both the systematic genocide of others and the risk of exposing oneself to a total sacrifice.¹⁰

As well, in a series of lectures delivered at the College de France and published under the title "Society Must be Defended," Foucault makes the following observation about a change historically in wars and their objectives:

In the nineteenth century – and this was completely new – war will be seen not only as a way of improving one’s own race by eliminating the enemy race ... but also as a way of regenerating one’s own race. As more and more of our number die, the race to which we belong will become all the purer.¹¹

Foucault argues this new conception of war was in operation in Nazi society; which led him to make the following argument about Nazism (and modern states in general):

The objective of the Nazi regime was therefore not really the destruction of other races. The destruction of other races was one aspect of the project, the other being to expose its own race to the absolute and universal threat of death. Risking one’s life, being exposed to

¹⁰ Michel Foucault, The History of Sexuality, translated by Robert Hurley (New York: Vintage Books, 1978), 149-150.

¹¹ Foucault, "Society Must be Defended," translated by David Macey (New York: Picador, 2003), 257.

total destruction, was one of the principles inscribed in the basic duties of the obedient Nazi, and it was one of the essential objectives of Nazism's policies. It had to reach the point at which the entire population was exposed to death ...

We have an absolutely racist State, an absolutely murderous State, and a suicidal state. The three were necessarily superimposed, and the result was of course both the "final solution" ... and then Telegram 71, in which, in April 1945, Hitler gave the order to destroy the German people's own living conditions.

The final solution for the other races, and the absolute suicide of the [German] race. That is where this mechanism inscribed in the workings of the modern State leads. Of course, Nazism alone took the play between the sovereign right to kill and the mechanisms of biopower to this paroxysmal point. But this play is in fact inscribed in the workings of all States.¹²

Foucault's statements about the self-destructive tendencies of Nazism in these passages are not made in the context of a more general or extensive discussion of Nazism. They are offered as support for his discussion of techniques of power, the changing conception of war and its objectives, racism, *etc.* As well, aside from mentioning Hitler's orders in Telegram 71, the view that the Nazi aims were self-destructive are as much treated by Foucault as a historical 'fact' as a point to be argued. As to the claim that all States have self-destructive tendencies as part of their final aims, Foucault indicates his work to support this claim is incomplete: "To prove the point would really take a whole series of lectures (and I would like to do them) ..." ¹³ Foucault clearly has not intended to present an argument that supports a discussion of underlying self-destructive tendencies that were further enforced by the Nazis during the Shoah. Without the support of a more extended discussion of Nazism, Foucault's comments still remain important to this discussion of the ultimate aims of the Nazis. (This becomes especially apparent in the influence Foucault exerts upon the work of Giorgio Agamben.) However, the focus of this writing will be to discuss works that draw upon a more extended analysis of Nazism to support the claim that during the Shoah the

¹² Ibid., 259-260.

¹³ Ibid., 261.

Nazis were enforcing an understanding of humanity as being essentially self-destructive or superfluous.

To varying degrees the writings of Emile Fackenheim, Hannah Arendt, and Giorgio Agamben each present a fairly extensive analysis of Nazism. Within this analysis each of these authors presents arguments that state explicitly that the ultimate aims of the Nazis were self-destructive. The writings of these authors that are of particular interest to this discussion are section IV of Fackenheim's To Mend the World: Foundations of Future Jewish Thought,¹⁴ part three of Arendt's The Origins of Totalitarianism,¹⁵ and finally, part three of Agamben's Homo Sacer: Bare Life and Sovereign Power.¹⁶ A chapter will each be devoted to a discussion of these writers' arguments on Nazism and its relationship to the subjects of Law, the Idea of Man and Ideology. An argument is extracted from each author's discussion of these subjects that is supportive of the claim that Nazism had self-destructive tendencies. The discussion of these subjects will seek to present the argument that these tendencies of the Nazis further enforce an underlying threat that continues to have ongoing significance for the world after the Shoah. In the concluding chapter a presentation will be made from the writings of each of these authors that discuss the possibility of overcoming this continued threat.

The self-destructive world encountered during the Shoah elicits a different response from Fackenheim, Arendt and Agamben. Fackenheim's analysis of the world's encounter with the Shoah understands this encounter to be challenging the post-Shoah world to urgently

¹⁴ Emile Fackenheim, To Mend the World: Foundations of Future Jewish Thought (New York: Schocken Books, 1982).

¹⁵ Arendt, The Origins of Totalitarianism (New York: Harcourt Brace Jovanovich, Publishers, 1973).

¹⁶ Giorgio Agamben, Homo Sacer: Bare Life and Sovereign Power, translated by Daniel Heller-Roazen (Stanford California: Stanford University Press, 1998).

and harshly reassess Law, the Idea of Man and Ideology. The presentation of this challenge is to the detriment of the world after the Shoah, however, Fackenheim still considers how to work towards the benefit of the post-Shoah world by overcoming this challenge. The strength of Fackenheim's argument is to deal with the Shoah - and certain pressing (and almost crushing) concerns this presents - to avoid the world having to face again a challenge that is only detrimental to it.

The strength of Arendt's analysis will be demonstrated in the approximation her argument provides of the understanding of 'reality' that was being enforced by the Nazis during their rule. Of importance to this discussion is the limitations placed upon the internal life of those that experienced a life lived under Nazi rule. This adds a dimension to her analysis that presents the 'reality' enforced by the Nazis as being a virtually all-encompassing and inescapable experience. What will be explained further is the emphasis Arendt places in her argument upon the importance of living a life that moves beyond the limitations placed upon experience by the life enforced by the Nazis, and their attempts at "total domination."

Agamben's discussion is the most explicit in expressing a concern for the threat posed by the presence of underlying self-destructive tendencies within the aims of modern forms of society. Agamben argues that death camps are the logical outcome of the manner in which modern politics is currently practiced - especially as this practice concerns the founding of political rights. Agamben alludes to what "will make it possible to clear the way for the new politics, which remains largely to be invented."¹⁷ Consideration will be given to the clues Agamben provides about the practice of this "new politics" that overcomes the difficulties of a society whose aims border so closely upon an encounter with complete self-destructiveness.

¹⁷ Ibid., 11.

Consideration of the ultimate aims of the Nazis will begin with a discussion of the Nazi treatment of Law. The question immediately arises in this discussion of whether or not there is any sense in talking about the presence of Law in Nazi Germany - especially when this discussion involves the topic of mass murder. For those who are sympathetic to the asking of this question, the commission of mass murder is a crime that clearly earns the sanction and outright opposition of Law; and the various war crimes tribunals set up to prosecute Nazi officials are a testimony to this opposition. Although the conduct of these tribunals is seen as being troublesome in this writing, the discussion of Nazism and Law will ultimately not be evaluated by a consideration of the merits of the war crimes tribunals. The focus for the discussion of Nazism and Law will be placed primarily upon the status of Law under Nazi administration during the Shoah. But first this investigation of Law will commence with the conduct of these tribunals for the sake of taking into consideration the argument that seeks to establish Law's complete oppositional stance to the Shoah. Before beginning this discussion of the Nazi war crimes tribunals (a discussion that will eventually end in an attempt at critique), there should be an acknowledgement of an aim that was central to the efforts undertaken in these trials. To recall, behind the foundation of the trials was the concern with defending the world from the "crimes against humanity" that had been committed by the Nazis during the Second World War (or, to put this slightly differently, these trials were founded out of a concern that the treatment of humanity envisioned by the Nazis was representative of a crime). The concern with the Nazi understanding and treatment of humanity is not only to be considered both greatly encouraging and greatly admired. By showing a concern for the understanding and treatment of humanity during the Shoah these trials are also understood to have established a common ground with this writing - or more

properly speaking these trials have established a groundwork that this writing now wishes to hold in common.

As will be argued, the decision to show a concern for humanity's well-being is where one form of resistance to a world where mass murder is acceptable can begin. In this writing there is an interest in the way that this form of resistance may act as a beginning for a discussion both of the possibility of living life and of making peace in a post-Shoah world.

Chapter 1: National Socialism and Law

Factuality itself depends for its continued existence upon the existence of the nontotalitarian world.
-Hannah Arendt, The Origins of Totalitarianism, 388.

This chapter focuses upon understanding the implications of the Shoah as this concerns the viability of law as an institution.¹⁸ The argument will be considered that law in its “true” form, or what will be referred to here as “Law,” stands opposed to mass murder. Different versions of Law will be considered to defend this position. These include the version of Law held by the Allied powers at Nuremberg; the Allied version of Law with certain alterations; international law; law within a state; or finally, Law as represented not by written laws but as an Unwritten Law of Man shared universally by all human beings. Ultimately, I will use Fackenheim’s work to argue that the Shoah’s very occurrence refutes the claim that Law’s oppositional stance to mass murder is maintained during the Shoah. This suggests to me that in order to maintain its viability in the post-Shoah world, the institution of law’s inability to stand opposed to mass murder must be taken into account.

But before considering the viability of law as an institution in the post-Shoah world, this chapter will discuss the Nazi version of law as this is presented by Fackenheim, Arendt and Agamben.

Part A: The Nazi War Crimes Tribunals’ Version of Law: Law’s Oppositional Stance to the Shoah

State sanctioned murder remains murder.

-Testimony of First Lieutenant Krumbach (Einsatzgruppen) at his war crimes trial (quoted in Helmut Langebein’s Hitler’s Death Squad, 159).

¹⁸ The “institution of law” refers here to the possibility to engage in law and is used without an assessment as to which of the different versions of law is the “true” one. Accordingly, the loss of the institution of law would mean that the possibility to engage in law (in any of its different versions) had been lost.

The Nuremberg trials, as well as the other tribunals set up to bring the former Nazi officials before the courts for their part in the Shoah, mark the historical record as the last encounters between Law and the Shoah. All of these tribunals shared at least one common mission: To mete out punishment at the hands of the Law to those Nazi officials found to be in violation of the Law during the Shoah. This procedure of bringing the defendants before the Law allows these proceedings to pursue, in a demonstrative fashion, one of the 'aims' that they are seeking to establish. This is to establish the 'aim' that Law stands in opposition to the Shoah that occurred, and that the power of Law will serve as a deterrent or as a form of prevention to any future 'Shoahs.'

The legal defence chosen by the Nazi officials at Nuremberg presents a challenge to the court's aim of establishing Law's opposition to the Shoah. The now notorious claim by these defendants of "just following orders" translates into the Nazi officials saying that they themselves were law-abiding citizens. By making this claim, these defendants selected a defence that sought to invoke legality against itself, and rendering obedience to the Law as an accomplice to the perpetration of mass murder. The manner in which these officials have sought to invoke legality against itself is by their making the argument that obedience to the Law was not the deterrent, but instead the motivating factor for committing mass murder.

I would argue that the presiding judges at Nuremberg chose to explain away the type of defence pursued by the defendants as being only an apparent difficulty to the trials purpose of establishing Law's opposition to 'a Shoah.' When I interpret the proceedings at Nuremberg, as well as the proceedings of the other tribunals set up to prosecute the former Nazi officials, I understand all of these tribunals to have been operating under (at least) one assumption – one that was indispensable for the establishment of these courts in the first place. This assumption presumes that the form of rule in Nazi Germany that allowed for the

Shoah to take place is not just to be disregarded, but those who were the architects of this rule deserve punishment at the hands of the Law. In other words, in the eyes of these tribunals, Law, and obedience to the Law, was non-existent in the Third Reich during the time of the Shoah.

Emil Durkheim's observations about the status of legal offences perhaps seem relevant here. Durkheim observes that from a modern legal perspective, legal offences are not matters that stand between private citizens.¹⁹ Instead, legal offences are matters that stand between the Law and its representatives on one side, and the private citizens who are the offending party. This conception of Law implies that private citizens can either be the cause or the object of a legal offence. However private citizens cannot have any part in law enforcement (except in extenuating circumstances). It is the representatives of the Law, presumably in most cases the state officials, which have a monopoly on the enforcement of the Law according to Durkheim's observations of the modern conception of Law.

However, under the interpretation of the tribunals set up to prosecute the former Nazi officials, Nazi rule can be considered to have abdicated the legal sanction that is normally attached to those who are the Law's representatives. The Nazi officials, even though they were state officials claiming to be the Law's representatives, can nonetheless be regarded as having nothing to do with being representatives of the Law. The Nazi government lacked the quality of Law, and could almost literally be said to have had zero Law, or to have been void or empty of Law. In a state where there is a complete absence of Law (which these officials were, after all, responsible for creating), the Nazi officials are to be viewed and treated as 'private citizens.' Seen from this perspective, the Nazi officials are no different than any

¹⁹ See Emile Durkheim, The Division of Labour, translated by W.D. Halls (Toronto: The Free Press, 1997), 48.

other group of private citizens who have tried to “take the Law into their own hands,” and engaged in law enforcement with no legal right to do so.

The Nazi version of Law is not punishable as a competing version of the Law that is inferior to the version of Law being practiced by the tribunals set up to prosecute the Nazi officials, according to the war crimes tribunals. Technically speaking, these tribunals understand there to be no ‘Nazi version of the Law.’ Therefore, the violations committed by the former Nazi officials were not violations committed in how these officials executed law enforcement while serving in the capacity of being the Law’s representatives. Rather, the violations committed by the Nazi officials are punishable as violations committed against the Law.

Therefore, as the view of the historical record being sanctioned by these tribunals would have it, the last encounters between Law and the Shoah are also the first, since the presence of Law was entirely absent in the Third Reich during the time of the Shoah.

Part B: Criticism of the Nazi War Crimes Tribunals: Law’s Oppositional Stance to the Shoah Maintained

Criticisms have been brought against the tribunals set up to persecute the former Nazi officials, which suggest that a discrepancy rests between the interests of these tribunals and the interests of justice. Examples of these types of criticisms are as follows: The tribunals that took place in West Germany during the 1980’s had more to do with serving as a tactic in the

Cold War dispute; and the trial of Eichmann in Jerusalem became entangled in the politics of the Israeli conflict in the Middle East.²⁰

Perhaps the most serious of these types of objections is raised by those who make charges against the Nuremberg trials as being a case of “Victor’s justice.” This objection is particularly acute and problematic to the credibility of this tribunal for its recognition of the charges that were *not* brought against the Nazi officials at Nuremberg. The Nazi “war crimes” and “crimes against humanity” included such violations of international law as instigating an aggressive war, committing the torture and murder of foreign civilians, as well as the torture and murder of foreign soldiers held as P.O.W.’s. What the Nazi indictment at Nuremberg did not include were indictments for the targeting of civilians in aerial bombing campaigns. These were obviously offences the Allied powers had also committed, and thus the Allied sponsored Nuremberg tribunals passed over these kinds of offences in silence.

In these ways, the criticisms mentioned above question whether the tribunals set up to bring the former Nazi officials before the courts managed to serve “the interests of justice.” The concern presented in each of these criticisms is that non-judicial interests seem to be as much, if not more, of a motivating factor in the proceedings of these tribunals as an interest in justice. However, I would suggest that none of these criticisms question the assumption that Law, *per se*, stands opposed to the perpetration of mass murder. Instead, the thrust of each of these criticisms is to call for the extension of the Law’s ability to prosecute those who commit acts of mass murder, and thus further reemphasize and enforce the assumption that Law stands opposed to mass murder. For example, I would suggest that those who make these criticisms would argue that the tribunals in West Germany should not be viewed by either side in the Cold War dispute as an opportunity to gain over the other. Similarly, the

²⁰ Arendt, Eichmann in Jerusalem, p. 13.

verdict in the Eichmann trial should not be viewed as a victory of one side over the other in the Israeli-Mid-East conflict. All sides in these disputes should see benefit in the Law being extended to those who have committed acts of mass murder.

The interference of non-judicial interest is clearly also a concern for those citing the omission of charges of targeting civilians from the indictments handed out at Nuremberg. I would suggest those who make this criticism would argue that the omission of these charges illustrates the discrepancy between the practice of Law in history and the actuality of Law's oppositional stance to mass murder. Thus, Nuremberg's representation of the Law is targeted in this criticism as a way to reemphasize and enforce the assumption that Law stands opposed to mass murder. This stance would have been made more evident if the Nuremberg trials had been more consistent in prosecuting all who offended against the Law - both Allied and Axis - by committing mass murder.

Part C: Power and Kuper: Law's Oppositional Stance to the Shoah Questioned

Samantha Power, however, raises an objection to the Nuremberg trials that potentially begins to question the assumption that Law stands in complete opposition to mass murder.²¹ Power notes another indictment *not* brought against the defendants at Nuremberg which, very curiously, the Allied powers would *not* have also been indictable for in their actions during the Second World War. The indictment at Nuremberg, as has been already noted above, charged the officials of the Nazi government with the murder of foreign nationals that were under their control. Yet absent from the indictment is prosecution of these same officials for

²¹ See Samantha Power, A Problem from Hell: America and the Age of Genocide (New York: Basic Books, 2002), 58.

the murder of different 'groups' of individuals living in Germany (i.e. German civilians) during the time of the Shoah. These groups included, of course, Jews, Gypsies, the "handicapped," homosexuals, political opponents, and others - i.e., all of those who lived in Germany and who were targeted for murder by the Nazis; just as individuals in these 'groups' living elsewhere in Europe had also been targeted.

Power does not herself speculate at the reasons why the Allied powers do not bring charges against the Nazis at Nuremberg for the murder of their own civilians. Power's interest is more to encourage a conception of Law that would allow international law to act in opposition to instances of genocide in the international community both currently and in the future. Power's aim, I believe, is to speak out against the establishment of any legal precedence being set at Nuremberg that would allow state officials who engage in the mass murder of their own citizenry to go unpunished.

However, I would like to draw from Power's observation about these charges not being raised against the Nazis at Nuremberg by contemplating what might explain their absence. One explanation for their absence could be that the Americans (and perhaps the British) were still concerned their public would consider the war to have been fought not out of a concern for their respective 'national interests.' Instead, the war with Germany would be viewed as having been fought for the sake of 'Jewish interests.' Not bringing these charges against the Nazis would help to avoid calling the mass murder of the Jews to recognition, which could perhaps placate those who objected to involvement in the war as 'nothing more than intervening on behalf of the Jews.' If the need for silence were the reason for the omission of these charges being brought against the Nazis for the mass murder of their own citizenry, then this suggests that if it is deemed advantageous to the dictates of Realpolitik,

then Realpolitik can contract out Law to act as an accomplice for covering up the memory of mass murder.

Another possible explanation for the absence of these charges would be there was no legal recourse for the Allies to bring charges against the Nazi government for murdering its own people. This suggests that Law, instead of necessarily serving as a preventative force against genocide, must instead pass over without objection any instances of a particular “type” of genocide. This “type” of genocide would be the murder of civilians by their own governments - or what Hannah Arendt terms as “administrative massacres.”²²

Finally, I would like to suggest one other possible explanation for the Allies’ decision to not bring charges against the Nazi government for the mass murder of its own people. This would be that the Allies’ decision was motivated by their interest in leaving open the possibility for governments to be “legally” capable of committing “administrative massacres.” This suggests that governments can contract Law out in the service of committing mass murder.²³

²² Ibid., 288.

²³ There is not room here to investigate whether the Allied governments were concerned with leaving open the possibility for themselves to “legally” commit mass murder against the populations under their control. However, such activities had been occurring and would continue to occur in the Soviet Union, while the placement of the Asian population living within the United States and Canada into internment camps during the Second World War was certainly an ominous sign.

As for the record of the international community in preventing genocide in the international community since the Second World War, see Kuper, Leo: “Genocide: Its Political Use and Abuse in the Twentieth Century.” This work includes an evaluation of the United Nations, which of course was created in part to act as the organizational body responsible for representing the international community in its efforts to prevent genocide. However, the following remark is typical of Kuper’s appraisal of the United Nations:

In Bangladesh, as in Uganda and Cambodia, slaughter pursued its relatively uninhibited course, until invasion by a foreign power, with supporting local forces. The massacres, starting in March 1971, took place under the full gaze of the outside world, with observer reports, and charges of genocide, filtering through to the world press...

As for the Sub-Commission on Prevention of Discrimination and Protection of Minorities, meeting in August 1971, it speedily disposed of a written request by twenty-two international non-governmental organizations that the Sub-Commission examine the available information and recommend measures for the protection on human rights in East Pakistan. A plea presented in person by the representative of the International Commission of Jurists similarly fell on deaf ears. Only one member is reported as having argued that the Sub-Commission should not remain silent. I found it almost unbearable to read this discussion by a United Nations

Each of these criticisms of the Nuremberg trials seems to mirror the criticisms Leo Kuper lays against the United Nations in his book: Genocide: Its Political Use in the Twentieth Century. In this writing, Kuper evaluates the record of the United Nations in serving as the administrative body that represents international law in its oppositional stance to instances of mass murder within the international community. After detailing the performance of the United Nations in its responses to events that occurred in the 1970's (alone!) in the countries of Uganda, Cambodia, and Pakistan, Kuper makes the following remark:

The performance of the United Nations Organization in the suppression of the crime of genocide is deeply disillusioning, particularly against the background of the humanitarian ideals which inspired its founding, and which the organization continues to proclaim - ideals in which the suppression of war, of crimes against humanity and of genocide were central. But of course the United Nations is not a humanitarian, but a political organization, and its humanitarian goals are at the play of political forces, pressure groups and blocks, in an arena where delegates pursue the diverse interests of the states they represent. Added to this, its ideological commitment to the protection of the sovereignty of the state, with the corollary of non-intervention in its domestic affairs, stands in the way of effective action against 'domestic' (internal) genocide. And above all, it is the rulers of the states of the world who gather together at the United Nations, and it is mainly, though not exclusively, the rulers who engage in genocide.²⁴

Within Kuper's remarks are questions concerning Law's ability to stand in opposition to mass murder, if and when Law is faced with overcoming the dictates of Realpolitik; or, if and when Law is faced with issues of legal jurisdiction and sovereignty that can be appealed to in a manner that renders the Law and the power of the Law impotent in its ability to pursue

body of one of the major genocides of the twentieth century; it was so procedural and so devoid of human compassion (Kuper, p.173).

But what is perhaps even more of an indictment of the international community is the recognition that since the Second World War genocide has occurred at about a rate of once every 2-3 years. To me, this raises questions about whether or not genocide is a part of the way the international community functions or 'does business.'

²⁴ Leo Kuper, Genocide: Its Political Use in the Twentieth Century (New Haven: Yale University Press, 1982), 175-176.

those committing mass murder; or, finally, if and when Law is faced with being made available as a tool for those holding legal powers to commit mass murder.

Returning to Nuremberg, I have been making suggestions about how an omission of the charge of murdering the German people from this court's indictment of the Nazi officials calls into question Law's oppositional stance to mass murder. Quite conceivably, though, this assumption could also avoid being called into question by those who are aware of this criticism of Nuremberg. Law's oppositional stance to mass murder could not just be defended and maintained against this criticism of Nuremberg, but the criticism could even be taken as a call to further re-enforce and expand Law's oppositional stance to mass murder. The omission of the charge of murdering the German people as part of the indictment of the Nazi officials at Nuremberg could (once again) be seen as an illustration of the discrepancy between Law's actuality and the practice of Law in history. A suggestion could then be made about the urgent need to remove this discrepancy, which would hopefully work towards the punishment, and possible prevention, of any future massacres that may occur within the international community.

The criticisms presented thus far of the Nuremberg trials, and the other tribunals set up to prosecute former Nazi officials, may not have yet decided definitively whether or not Law can be assumed to have stood in complete opposition to the Shoah. I would now like to turn to Fackenheim's writings about Law and the Shoah to pursue the question of whether or not Law can be assumed to always be in the service of preventing mass murder. Within these writings, Fackenheim offers a kind of "proof" to demonstrate that Law *did not* stand in opposition to the Shoah. I would like to begin my consideration of Fackenheim's writings by investigating the philosophical background Fackenheim discusses and draws upon to make

this assertion about Law during the Shoah. Investigating this background will provide a context that gives full force to the “evidence” Fackenheim relies upon to make his “proof” about Law no longer being assumed to stand in opposition to the Shoah.

Part D: Fackenheim’s Philosophical Influences Brought to the Shoah

Fackenheim repeats on a number of occasions in his writings a need for all forms of Thought²⁵ to have a firm connection to the reality it purports to represent. Fackenheim will occasionally refer to terms like “Boden,” “seat in life,” “existential matrix,” “ontic versus ontological reality,” “finitude and transcendence,” “history and historicity” – all terms which he uses to make distinctions that underline the point about Thought’s need to be grounded in reality.²⁶ Fackenheim attributes the philosophical origins of this aspect of his thinking to the influence of both Hegel’s philosophy and existentialist philosophy. I would like to very briefly summarize Fackenheim’s description of how Hegelian and existentialist philosophy have had an influence upon his philosophical thinking.

Fackenheim’s examination of Hegelian philosophy begins by arguing that Hegel, upon completion of his philosophical system, himself recognized that his philosophy ultimately suffered from a failure. The ‘failure’ of Hegelian philosophy, Fackenheim goes on to explain, was not simply a flaw or some type of shortcoming in the way Hegel had constructed his philosophical system. The failure of the Hegelian philosophical system represented a failure of the entire Western philosophical enterprise. Hegel’s philosophical

²⁵ The term “Thought” is used by Fackenheim to refer to the history of (Western) philosophy and the different systems of Thought considered to be a part of this tradition. This is not a comment upon thought in general or any of the thinking that occurs outside of this tradition.

²⁶ See Fackenheim, Chapter IV.

system described “absolute reality” (i.e. the world outside of Hegel’s “absolute philosophy” – or, “reality as it should have been”). However, reality did not reflect Hegel’s absolute Thought (or philosophy), and so acceptance of Hegel’s Thought was subsequently revealed to be an inauthentic flight from reality.

Since Hegel’s Thought represented the apex of Thought’s ability to comprehend reality, and seeing as this form of Thought failed to fully comprehend reality, then after the failure of Hegel’s philosophical system questions begin to arise concerning any assumptions about Thought’s ability to comprehend reality. The conclusions that either Thought must now be abandoned in favour of reality, or that reality must now be abandoned in favour of Thought, each begin to appear as quite logical options. However, Fackenheim argues that existentialist philosophy teaches that neither of these conclusions can be accepted, though seemingly they are quite logical. The concern for a post-Hegelian thinker becomes not the decision of abandoning either Thought or reality completely; but instead the discovery of a form of Thought that recognizes the limits humanity’s finite reality places upon Thought. This form of Thought seeks neither to nullify the meaning of finite human reality by transforming reality into something that in Thought is other than finite; nor does it seek to nullify Thought by transforming Thought into something that in reality is incapable of reflecting upon humanity’s finite reality in a meaningful way.

The influence of Hegel and existentialist thought upon Fackenheim suggests to him, then, the need for all forms of Thought to be bounded by reality. Nonetheless, Fackenheim does not conceive of the relationship between Thought and reality to be completely one-sided. The restrictions placed upon Thought by humanity’s ‘situatedness’ in finite reality do not fully negate Thought’s capacity for transcendence. Fackenheim describes the capacity of Thought to achieve transcendence over the finite situation to which it is bounded as being (or

representing) a “hermeneutic circle.” Fackenheim explains how the hermeneutic circle that characterizes the relationship between Thought and human reality is to be understood. This involves a conception of transcendence that, once again, Fackenheim claims to derive from the influence of Hegel’s Thought. This conception of transcendence suggests that Thought’s *very comprehension* of the limital status placed upon Thought by its rootedness in finite human reality is precisely what allows Thought to achieve transcendence over the finite situation to which it is bound. Fackenheim gives the term “authentic reflection” to the form of reflection within Thought that achieves transcendence over humanity’s finite situation through a comprehension of the limits finite reality places upon Thought. This form of Thought does not overlook the limits of humanity’s finite reality for the sake of an absolute reality that has been comprehended in Thought, which Thought would subsequently seek to transform reality into. Comprehension of the limits of humanity’s reality allows Thought to reflect upon the reality outside of Thought in a meaningful way.²⁷

Fackenheim preserves the interplay of Thought and reality, especially Thought’s need to be bounded by reality, as a crucial aspect of his discussion of the Shoah. Thus, Fackenheim acknowledges that, in the face of the reality of the Shoah, Law’s stance should of course *in theory* be complete opposition. However, Fackenheim will only accept as the “evidence” that “proves” Law’s stance to the Shoah what the historical record evidences about the practice of Law during the Shoah.²⁸

Previously, I presented the position that the Third Reich could be characterized by the absence of Law. From the perspective of those who accept this position, Fackenheim’s approach of referring to the historical record to determine the status of Law during the Shoah

²⁷ For this summary of the influence of Hegel and existential thought on Fackenheim, see Fackenheim, 156-166.

²⁸ *Ibid.*, 166.

would seem to demonstrate clearly Law's oppositional stance to the Shoah. Those maintaining this position would hold, I would speculate, that the Nazi version of Law that was in force and obeyed during the Shoah is in no way to be regarded as representative of what the Law involves.

A preliminary concern for those who take this view of Law in the Third Reich is the tremendous volume of Law that the Nazis put into force during the time of the Third Reich. This seems relevant even if the Law that was produced and enforced by the Nazis is considered to be a false representation of the Law. The 'popular' depiction of the Third Reich that is handed down to posterity serves as evidence of the highly intense presence of laws during the Third Reich. This depiction consists of an extremely oppressive and regulated state. Typical of this 'popular' depiction of the Nazi regime is the policing activities of the Gestapo who ceaselessly monitor the lives of private citizens through 'law enforcement,' or, at least, the enforcement of Nazi laws. The image commonly associated with this depiction of the Third Reich is of Gestapo agents spying upon the private activities of members of the general population; or of the Gestapo harassing members of the general population in public, demanding they produce papers that state their legal status in the Third Reich.

Beyond the 'popular' depiction of the Third Reich, and the images this produces, is the Law known to the historical record as having been in force during the Third Reich. One example from this record is the Nazi government's decision of not taking the steps necessary to abolish the constitution of the (then) much-despised Weimar Republic.²⁹ There are, of course, many explanations for this constitution not having been abolished. As well, the constitution's not being abolished does not suggest that the Nazi authorities were in any way observing the Weimar constitution. Still, that the Law of the hated Weimar Republic was kept

²⁹ See Arendt, The Origins of Totalitarianism, 398.

on record during the Third Reich remains a curiosity and possibly problematic for those who maintain that Law was completely incompatible with the Nazi version of Law.

There is also the Third Reich's imposition of the notorious Nuremberg Laws or "anti-Jewish laws." The decision of the Nazi authorities to designate laws as one of their vehicles for oppressing the Jewish population again seems like a troubling development for the view that Law stands opposed to the Shoah.

Besides the Nuremberg Laws, the Nazis of course developed other laws to assist themselves in their perpetration of mass murder. I would like to draw attention to one of the laws that I feel is very significant to a discussion of Law and the Shoah. This was a law the Nazis put into force on the day of their invasion of Poland, stating that the rights of citizenship were to be stripped away from the Jews living under Nazi rule.³⁰ The legal measure of loss of citizenship was also a matter of course for all who were slated as inmates in the Nazi concentration camps and death camps. The legal implication of this law was to remove the type of legal protection that was implied by holding citizenship in the Third Reich.

Depriving inmates in the concentration and death camps of their legal rights as citizens of the Third Reich may seem to establish definitively the opposition of Law to the Shoah. The assumption that Law had no part in the killings that occurred during the Shoah is seemingly verified. However, hoping to establish Law's non-involvement in the Shoah by noting its absence has the unfortunate consequence of also having to recognize the Law would have been made ineffectual when it faced the Shoah, if the Law had not been obliterated outright. And so likewise, having the dismissal of the form of legal protection that accompanies citizenship occur as nothing more than "a matter of course" for those slated to

³⁰ See Agamben, 132

be inmates of the Nazi concentration and death camps clearly does not speak in favour of Law being able to stand opposed to the Shoah.

Furthermore, the decision of the Nazi government to remove these rights seems to indicate the presence of an odd legal sensitivity on the part of the Nazi government. If prior to entering the death camps the rights of citizenship are stripped away from those slated to be their inmates, then whatever is to happen to these prisoners within the space of the death camps can no longer be a violation of these rights. Ensuring the rights of citizenship were not violated seems to indicate the Nazis were acutely aware of these rights and the importance of their observation, although undoubtedly to the outside observer the Nazis awareness of these rights seems extremely perverse.

Finally, the removal of legal rights of citizenship raises questions about the form of rule that was in place within the confines of the death camps. Needless to say, the inmates were obviously not “free to do as they pleased,” but instead had their activities regulated to an extraordinarily degree. The implication here is that noting the loss of citizenship for concentration camp inmates does not necessarily indicate or lead to the assumption that Law was completely absent from life within the concentration camp.

These observations about the Nazi version of Law may or may not seem troubling to those who hold to the position that Law stands opposed to the Shoah. The interpretation may even arise that these same observations actually strengthen the position about the Law and its opposition to the Shoah. I would presume for those pursuing this line of argument, identifying how the Law was distorted under Nazi rule is precisely what suggests that Law cannot reasonably be said to have been represented by the Nazis. However, once the Law’s distortion or lack of representation during the Shoah is admitted, I feel questions are immediately raised about the Law’s potency and viability. To suggest Law was distorted or

absent during the Shoah is to suggest that Law was absent or distorted at the time it was needed most.

Part E: Law's Oppositional Stance to the Shoah Preserved?: Fackenheim and the Unwritten Law of Man

Perhaps, though, a much more reasonable line of argumentation, which is able to maintain Law's oppositional stance to the Shoah, involves finding representation for the Law during the Shoah from another source besides that of the Nazi government. Fackenheim makes precisely this appeal; and to do so, he makes a distinction in his writings between the written laws of Man and the Unwritten Law of Man.³¹ The written laws of Man are easily identifiable as what can ostensibly be pointed to as the laws of the Third Reich put into force by the Nazi government. (Thus far in this writing these laws have been referred to as 'the Nazi version of Law.') The conception of Law upon which the written laws of Man are based, which is of Law being solely a matter for the state to protect and enforce against those private citizens who offend against it, corresponds to the more 'formalistic' conception of Law observed by Durkheim and alluded to earlier in this writing. By contrast, the Unwritten Law of Man conceives of Law as being a matter between private citizens, upheld independently of the state's involvement. In the case of the Shoah, if taking the Nazi version of law as the Law's representative seems dubious to say the least, then the Unwritten Law of Man can act as a much more reasonable representative of the Law. The constituency that would make up the Unwritten Law of Man would not just be the Nazi government officials, but all citizens who had been placed under Nazi rule, taken as a whole.

³¹ Fackenheim, 267.

But what precisely is this “Unwritten Law of Man” that conceives of Law as being a matter between private citizens? Fackenheim introduces this Law as being an “old-fashioned”³² philosophical idea, and its “out-of-date”³³ character being the case even at the time of the Shoah. Fackenheim also acknowledges that this idea is conceptualized as an understanding shared by all of humanity; and yet, as Fackenheim goes on to explain, there were those during the Shoah (just as at all times) who, “knew neither of philosophy nor of unwritten laws.”³⁴ These considerations would seem to discredit any attempts to take the idea of an Unwritten Law of Man at all seriously. However, Fackenheim does take this idea very seriously when discussing the Shoah. The relevance of the Unwritten Law of Man to a discussion of the Shoah is established for Fackenheim by an instance during the Shoah where the idea of an Unwritten Law of Man was invoked in the name of resisting against the mass murder being perpetrated by the Nazis.

Fackenheim’s concern with the Unwritten Law of Man should be made sensible by reflecting upon his approach philosophically to the Shoah discussed earlier in this writing. This is his approach of wanting to take very seriously the ability of Thought to maintain ties to reality. Thus according to the approach Fackenheim is taking, even though there may be some concern theoretically with the status or viability of the idea of an “Unwritten Law of Man,” the appearance of this idea in reality as a form of resistance to the Shoah lends a tremendous amount of credence to the integrity of this idea. This is especially true when comparing the Unwritten Law of Man to perhaps other more theoretically viable philosophical understandings of humanity, which in reality showed no signs of resistance to the mass murder being perpetrated by the Nazis.

³² Ibid., 274.

³³ Ibid., 269.

³⁴ Ibid., 268.

Fackenheim refers to the trial of a philosophy professor by the name of Kurt Huber as the circumstance that brings about the appearance of the Unwritten Law of Man in reality as a form of resistance to the Shoah.³⁵ Fackenheim recounts how Huber was the leader of a student resistance group from Munich that went by the name of “White Rose.” When Huber was brought before the Nazi law courts to answer to the Nazi authorities for his protestation of the Nazi government and its policies, Huber invoked the categorical imperative. Huber quoted Fichte’s modified version of Kant’s moral Law to explain the thinking behind his decision to engage in disobedience: “And act thou shalt as though/ The destiny of all things German/ Depended on you and your lonely acting/ And the responsibility were yours.”³⁶ Fackenheim takes Huber, in this final statement that he makes in defence of his actions, to be equating the categorical imperative with the Unwritten Law of Man.³⁷ However, Fackenheim makes the case that grave concerns surround the status of the Unwritten Law of Man during the time of the Shoah, especially when considering its expression comes in the form of being represented by the categorical imperative.

What troubles Fackenheim is that Huber’s invocation of the categorical imperative at trial calls to mind another trial involving the Shoah where a defendant invoked Kant’s moral Law. This is the trial of Adolf Eichmann in Jerusalem. Fackenheim diagnoses Eichmann’s understanding of the categorical imperative as quite disturbingly being “not altogether mistaken.”³⁸ Fackenheim makes this diagnosis by contending that Eichmann can justify his actions during the Shoah on the basis of very distorted interpretations of the first two formulations of the categorical imperative. The first formulation, “It is morally necessary to

³⁵ Ibid., 266.

³⁶ Ibid., 267.

³⁷ Ibid., 267-268.

³⁸ Ibid., 270.

do duty for duty's sake"³⁹ certainly does not conflict with the sense of duty Eichmann claimed to possess, and which Fackenheim also believes Eichmann clearly demonstrated in his actions. The second formulation of the categorical imperative: "It is morally necessary so to act that the "maxim" of one's acting could become, through one's will, universal" is also consistently formulated by Eichmann. "For there is no doubt," Fackenheim explains, "that the "maxim" of his acting was to make through his own will the Führer's will into universal law."⁴⁰ This will of course involved exterminating all Jews through mass murder, and clearly Eichmann accepted that this will be enforced universally throughout the entire world.

Fackenheim regards these first two formulations of the categorical imperative, which involve notions of "duty" and of "maxims," to correspond more closely to considerations surrounding the written laws of Man. The possibility that Eichmann could align his conduct according to these two formulations of the categorical imperative is certainly quite disturbing. However, there still remains the evaluation of Eichmann's conduct relative to its ability to find agreement with the third formulation of the categorical imperative; which is stated as follows: "It is morally necessary to treat humanity, whether in one's own person or in that of another, never as a means only, always as an end as well." This third formulation of the categorical imperative, Fackenheim argues, is the origin of Huber's philosophical understanding of the Unwritten Law of Man. Fackenheim also argues, perhaps somewhat reassuringly, that such a principle could not have guided the actions of Adolf Eichmann.

To help further appreciate the meaning of this principle of an Unwritten Law of Man, Fackenheim quotes a Kantian scholar by the name of H.J. Paton: "As Kant well knows, men

³⁹ Ibid., 270 (The other two formulations of the categorical imperative quoted later on this text are from the same location). Note: This is Fackenheim's idiosyncratic version of the first formulation of the categorical imperative.

⁴⁰ Ibid., 270.

are not saints. Nevertheless - and this is the fundamental conviction of Kant - a good will is present in every man, however much it may be overlaid with selfishness, and however little it may be manifested in action.”⁴¹ However, Fackenheim argues that Eichmann aligned himself with the principles of Nazism, principles whose aim was in part to target the “good will” in Man for destruction. In short, Fackenheim describes the principles of Nazism as being characterised by a “logic of destruction.” I will return to Fackenheim’s description of the Nazi logic of destruction, and what Fackenheim ultimately describes as this logic’s “Will-to-Self-Destruction.”⁴² For the moment, it suffices to say that the principles of Nazism sought to target Man’s good will with the end in mind of bringing about the elimination of this good will or human personality (the terms are used interchangeably by Fackenheim):

That human personality [i.e. “good will” – my italics] is an end in itself is the heart and soul of Kant’s categorical imperative. As for the Third Reich, *its* heart and soul was the aim to destroy just this principle - by no means only in the case of Jews, “inferior races,” and enemies of the Reich, but also, and perhaps above all, in the case of the “master race” itself.⁴³

Fackenheim leaves no doubt as to his opinion about the “success” Nazism experienced in demonstrating that the sense that all of mankind shares in a good will that motivates their action is something that can be eliminated. The clearest piece of evidence Fackenheim can offer to illustrate this point is simply to call to memory the example of the *Muselmänner*,⁴⁴ as well as the S.S. men who drove prisoners through a regimen of immeasurable torture to this wretched state of existence. “In both cases,” Fackenheim

⁴¹ Ibid., 272.

⁴² Ibid., 264.

⁴³ Ibid., 272.

⁴⁴ The term “*Muselmann*” or “*Muselmänner*” is of ambiguous origin, but ultimately derives from the slang used at the death camps (as confirmed by the testimony of the survivors). The generally accepted understanding is that the term was used with reference to the ‘perception’ (or perhaps ‘misperception’) of the inmates that the *Muselmänner* had a resemblance to Muslims “either praying in a prone position” or “because of bandages around the head.” Gil Anidjar. Q&A AsiaSource Interview. Date unknown.

explains, “that personality [or the good will] was destroyed.”⁴⁵ Fackenheim continues with his argument to describe in no uncertain terms what the destruction of this ‘personality’ within these individuals implies for the status of the Unwritten Law of Man:

It is true that Kant’s belief in humanity could at no time be verified. However, not until the advent of the Holocaust world was this belief *refuted*, for here the *reality* that is the object of the belief was *itself systematically annihilated* ... And thus it could come to pass that Kant’s categorical imperative, with its heart and soul destroyed, was invoked by its most dedicated enemies.⁴⁶

Fackenheim’s point is that when the European population as a whole under Nazi rule is considered, to have even a portion of this population lose its sense of “human personality”- as is the case with the *Muselmänner* and their S.S. torturers - then this is enough to destroy the Unwritten Law of Man and its viability as an idea. And added to this miserable realization, Fackenheim suggests the issue is even further compounded against the idea of an Unwritten Law being shared by all Men when considering the remaining portion of the European population under Nazi rule, and the record of this populace taken as an entirety in acting out in resistance to the mass murder perpetrated by the Nazis: “Why were there so few? Why not a great army of professors, poets, priests, philosophers? The “good in man” can be destroyed. It *was* being destroyed, and by no means only among those exposed to the Nazi logic of destruction.”⁴⁷ Such was the beleaguered status of the Unwritten Law of Man during the time of the Shoah according to Fackenheim’s argument. The written laws of Man, equated with the first two formulations of the categorical imperative, were construed as the motivating principle and/or justification behind the Nazi elimination of the third formulation of the categorical imperative, or the Unwritten Law of Man. The Nazis attempted a kind of

⁴⁵ Ibid., 273.

⁴⁶ Ibid., 273.

⁴⁷ Ibid., 274.

reversal of the relationship between the written laws of Man and the Unwritten Law of Man. The Unwritten Law of Man is construed philosophically by Kant (and others) to be a motivating principle behind the Law that seeks mankind's preservation and well being, and inspiring a corresponding sense of justice within men and the written laws of men. Fackenheim describes the Nazi 'legal' project as using the written laws of Man to instruct men to engage in the destruction of the Unwritten Law of Man. This is to be accomplished by instructing men to engage in the destruction of their fellow Man, and ultimately, by instructing men to engage in their own destruction. As to the "success" of the Nazi project in bringing about the destruction of the Unwritten Law of Man, this is testified to both by the state of this personality within the *Muselmänner* and their S.S. torturers, as well as the complacency of the European population, as a whole, to this destruction as it was being played out in the death camps.⁴⁸

This investigation began with examining the claim that Law stands completely opposed to the Shoah. The starting point for this investigation was the not-so-surprising realization that the Nazi version of law would not maintain Law's claim to standing in opposition to the Shoah. The Nazi version of law was shown to leave the Law either completely unrepresented or extremely distorted during the Shoah. The Shoah clearly represents a defining moment in the history of Law, and so the Law's inability to stand

⁴⁸ For testimony concerning the awareness of the European population under Nazi control about the perpetration of mass murder during the Shoah, see Claude Lanzman's film, "The Shoah." Consider also Arendt's statement that: "Of course the population at large and the party members specifically know all the general facts – that concentration camps exist, that people disappear, that innocent persons are arrested; at the same time, every person in a totalitarian country knows also that it is the greatest crime ever to talk about these 'secrets.'" Her words suggest that open discussion of the concentration camps, at least in the eyes of the Nazi authorities, represented a challenge if not a form of outright resistance to the mass murder they were in the midst of carrying out. In my opinion this reaffirms Fackenheim's position that the European population as a whole under Nazi control were presented with a choice of whether or not to oppose the mass murder being perpetrated by the Nazis; but this opportunity was neglected.

opposed to the Shoah raises very troubling questions about the effectiveness of the institution of Law. Thus, an appeal was made to have the Unwritten Law of Man act as the Law's representative, in the hopes of rescuing the Law unscathed from the troubling implications posed to it by the Shoah. Whereas the Nazis were taken as the Third Reich's representatives of the written laws of Man, the constituency that comprises the Unwritten Law of Man would be represented by the entirety of the European population under Nazi rule. However, the Unwritten Law of Man was also shown to be unable to provide the Law with a form of representation that would have allowed the Law to maintain a stance of complete opposition to the Shoah. This was demonstrated by following Fackenheim's method of evaluating the effectiveness of a theory – in this case a theory of Law – through examining the practice of that theory “in reality” (or in “history”). That the Unwritten Law of Man could not maintain Law's oppositional stance to the Shoah was illustrated by the occurrence “in reality” of the following:

1) The Unwritten Law of Man maintains that all human beings have within them at least (some) share in its practice. This indispensable supposition of the Unwritten of Man is refuted by the appearance in reality of the *Muselmänner*, and the S.S. men who drove men to the state of being a *Muselmann*. In both cases, the Unwritten Law of Man was destroyed within these individuals

2) The goal of bringing about the destruction of European Jewry was not openly resisted by the majority of individuals under Nazi rule. This majority was not, as Fackenheim describes it, currently being “exposed to the Nazi logic of destruction.” Or, to state this more plainly, this majority was not currently being targeted for mass murder by the Nazis. This refutes the idea that, when possible, the Unwritten Law of Man will motivate Man to stand opposed to the perpetration of mass murder.

3) Finally, a disastrous conclusion for Law was Fackenheim's argument that one of the methods used to undermine the Unwritten Law's attempt to stand opposed to the Shoah was from a form of Law itself. This form of Law was the written laws of Man; at least in the way these laws were formulated by the Third Reich.

And yet, despite the reality of what occurred to the idea of an Unwritten Law of Man during the Shoah, Fackenheim still maintains that after the Shoah, promise remains for the Unwritten Law of Man; and by extension, the possibility of other "authentic"⁴⁹ forms of thought being able to exist after the Shoah. As has been argued above, the Unwritten Law of Man may indeed be incapable of surviving the Shoah intact and in the way it claims to persist. That is, as the idea of a motivating principle that exists inside of every human being, incapable of ever disappearing completely, and acting as a guide within each and every human being that always allows each person the chance to pursue what is "good." However, what speaks to the resourcefulness of the Unwritten Law of Man, according to Fackenheim, is although this idea may have been fragmented during the Shoah, it did at least make an appearance in some form - even if only as a remnant of the original idea it represented. Most spectacular about this appearance was that it occurred as part of what acted in resistance to the Nazi slaughter. Huber's invocation of the Unwritten Law of Man in his defence of his decision to resist against the Shoah is the evidence that realizes that this Law made such an appearance in resistance to the Nazi slaughter, *in reality*.

The implications for philosophical Thought of the appearance of the Unwritten Law of Man will be a crucial part of the discussion that makes up the concluding section of this work. For now, what must be recognized from what has been argued is the following extremely disheartening conclusion: The Unwritten Law of Man did not provide Law with a

⁴⁹ Ibid., 277.

form of representation that allowed the Law to maintain its oppositional stance to the Shoah. This conclusion begins to raise disturbing, though perhaps sobering questions about the status of Law during the Shoah.

Part F: Fackenheim, Arendt and “The Banality of Evil”

To continue my investigation into the status of Law during the Shoah, I would now like to consider Hannah Arendt’s conception of the Nazi version of law. To commence my understanding of Arendt on this matter, I want to begin by considering an objection Fackenheim raises against Arendt. His objection is directed at Arendt’s “theory of the banality of evil.” The full extent of what Arendt stated on this matter is unknown to me. However, I think a consideration of what Arendt had to say about the “banality of evil” within her book, Eichmann in Jerusalem: A Report on the Banality of Evil, may be helpful to clarify Arendt’s position. This will hopefully answer the objections put forward by Fackenheim, as well as other similar objections that have been made against Arendt for her statement of “the banality of evil.” I am also hoping that answering Fackenheim’s objection will perhaps make clearer Arendt’s conception of the Nazi version of law.

Fackenheim’s objection is not that Arendt’s “theory of the banality of evil” fails to be consistent with the version of law that (taking Eichmann as their representative) the Nazis were *trying* to put into force. The issue, Fackenheim maintains, is that the Shoah illustrates that it is precisely this conception of law that needs to be put into question and then firmly rejected. Fackenheim’s objection implies that Arendt herself approves of the “theory of the banality of evil.” He argues that Arendt’s approval of this “theory” comes (first) through her accepting that the Nazi conception of law plausibly accounts for the manner in which the

operation of law took place during the Shoah. Secondly, Fackenheim's argument implies that Arendt also accepts that the Nazi conception of law, and the "theory of the banality of evil" upon which this conception of law is based, accounts for the way Law works in other modern Western societies besides just Nazi Germany; which is to say Arendt accepts that Nazi law reflects 'the reality of the way the Law works.'

I would summarize Fackenheim's criticism of Arendt in the following way: The notion of the "banality of evil" can be perceived to offer support for the well-known argument of the Nazi government officials that those who orchestrated mass murder during the Third Reich were a part of a "system;" and this "system" should be understood to have alleviated the individuals who took part in it of any and all responsibility. Consider Fackenheim's recounting of this argument about the guilt of officials in the modern (bureaucratic) justice system, an argument that he understands is based upon the notion of "the banality of evil," as well as his explanation of how a "theory of the banality of evil" should not be allowed to help justify mass murder:

The "extreme" evil, then, which is unarguably present in the Holocaust world lies not – so the argument for the banality of evil concludes – in the doers, right up to and including the ultimate one, all of them banal, but rather in the deeds; and the doers yielded to the deeds only because they were enmeshed in a dynamic, escalating, "totalitarian" system – ever-escalating, as it were, by itself...

[However] The conclusion to be drawn is that the doctrine of the banality of evil is only a half thought and half the truth, and the complete thought and the complete truth is that *just as the "totalitarian" system produced the rulers and operators, so the rulers and operators produced the system*. In however varying degrees, those manipulated *let themselves* be manipulated; those obeying ever-escalating orders *chose* to obey without limits; those surrendering in a blind idealism *made a commitment* to blindness. Not only Eichmann, but *everyone* was more than a cog in the wheel.⁵⁰

I would answer Fackenheim's objection to Arendt by noting that very curiously, Fackenheim's objection is to some degree a restatement of Arendt's own rejection of a

⁵⁰ Ibid., 237-238.

conception of law that is based upon “the banality of evil.” The correspondence between Fackenheim’s objections to Arendt, and Arendt’s own original views, can perhaps best be demonstrated by comparing Fackenheim’s words of criticism of Arendt just cited above, with some of the final words of the Epilogue to Eichmann in Jerusalem, which properly speaking (that is, excluding the post-script) are the final words of Arendt’s work:

The justice of what was done in Jerusalem would have emerged to be seen by all if the judges had dared to address their defendant in something like the following terms:

“You 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 indeed quite a common conclusion, but one we are not willing to grant you...

“No matter through what accidents of exterior or interior circumstances you were pushed onto the road of becoming a criminal, there is an abyss between the actuality of what you did and the potentiality of what others might have done. We are concerned here only with what you did, and not with the possible non-criminal nature of your inner life and your motives or with the criminal potentialities of those around you ... Let us assume, for the sake of argument, that it was nothing more than misfortune that made you a willing instrument in the organization of mass murder; there still remains the fact that you have carried out, and therefore actively supported, a policy of mass murder.”⁵¹

These words, put into the mouth of the judges by Arendt, though clearly meant as her own, illustrate Arendt’s comprehension of “the banality of evil” and the conception of Law that this notion brings forth. This is a conception of Law that accepts that a guilty verdict cannot be passed upon those who accept a part in the organization of mass murder. But Arendt’s words in this passage also articulate an alternative understanding of the Law to that which is produced through the notion of “the banality of evil.” This alternative understanding explains how to reject a conception of Law that condones the monstrous implications of proclaiming the innocence of those who participate in the organization of mass murder. Her rejection of the notion of “the banality of evil” is achieved through her holding to the

⁵¹ Arendt, Eichmann in Jerusalem, 278-279.

understanding that anyone who is faced with participating in the organization of mass murder *always* has the *choice* to resist against accepting such a role.

Before making clearer Arendt's rejection of the notion of "the banality of evil," one general difficulty should be noted in the first place before any objections are put forward against Arendt for advocating a "theory of the banality of evil." In the post-script to Eichmann in Jerusalem, Arendt very explicitly rejects the notion that her purpose was to build a theory of evil; a theory which presumably would have been based on her previous work on totalitarianism: "This book" Arendt explains "does not deal with the history of the greatest disaster that ever befell the Jewish people, nor is an account of totalitarianism, or a history of the German people in the time of the Third Reich, nor is it, finally and least of all, a theoretical treatise on the nature of evil."⁵² Arendt explains her purpose in the opening sentence of the same post-script, "This book contains a *trial report* (her italics)."⁵³ And what she understands herself to be reporting on is to be found stated very clearly in the concluding sentence of the post-script: "The present report deals with nothing but the extent to which the court in Jerusalem succeeded in fulfilling the demands of justice."⁵⁴ Perhaps the most obvious questions that now arise would be concerning the following: What does Arendt understand to be involved with a report; and why does the Eichmann trial strike Arendt as an appropriate event to make a report on justice?

To answer the first of these questions, consider Arendt's acknowledgement and response in her post-script to the controversy and criticisms surrounding her report. In this response, Arendt takes care to delineate what she thinks is the generally accepted standards or boundaries to which a report must conform. These standards or boundaries include providing

⁵² Ibid., 285.

⁵³ Ibid., 280.

⁵⁴ Ibid., 298.

an accurate representation of what is to be reported on. She then references the sources she used to make her report. The suggestion she seems to be making by referencing her sources is that criticisms of her report should come in the form of difficulties with the sources upon which her report is based, and whether or not these sources, and her representation of them, are appropriate and accurate. However, many of the criticisms that have been brought against her report have not been made against her in this fashion. Instead, as can be seen with the criticism levelled against Arendt by Fackenheim, Arendt seems to have been criticized for the content of what she was reporting on, as if this content was representative of her own views of the matters discussed in the report.

In any case, I want to suggest that Arendt's interest in limiting her discussion to a concern with the status of justice, when this is recognized, helps to bring her entire report of the Eichmann trial into focus. The second question asked earlier of why Arendt chose to take the opportunity to report on the status of justice during the Eichmann trial can now more clearly be responded to. The focus of her report of the Eichmann trial is that Arendt has serious concerns about the correlation between, or more properly speaking, the lack of correlation between the "the interests of justice" and the interests of the current "justice systems." These are the justice systems that (speaking obviously in a very general sense) base their practices upon the 'modern Western legal tradition.' To Arendt, Eichmann's trial highlights this discrepancy between the interests of justice and the interests of these current justice systems. It could be said that Eichmann's trial in Jerusalem did not just place the defendant on trial, but also placed all of the justice systems that have arisen from the Western tradition on trial as well - although to make such an argument would undoubtedly be a bit of an overstatement.

With the scope of Arendt's interests in the Eichmann trial (hopefully) now recognized, I would now like to return to Fackenheim's criticism of Arendt. Fackenheim has suggested that Arendt accepts that "the banality of evil" accurately accounts for the administration of justice in the modern Western world. However, as Arendt states: "The administration of justice, measured by such theories, is an extremely unmodern, not to say outmoded, institution."⁵⁵ These words of Arendt's are representative of the argument she makes throughout her post-script concerning the current state of justice. This is the argument that the trial of Eichmann demonstrates that a split has occurred between the "administration of justice" and the administration of justice within modern justice systems.

Arendt states that the status of justice in the Eichmann trial "touches upon one of the central moral questions of all time, namely upon the nature and function of human judgement."⁵⁶ The practice of human judgement, then, is understood by Arendt to be an extremely important component for the administration of justice. Arendt also describes, at various points of the post-script, how human freedom is essential for the ongoing administration of justice.⁵⁷ What, then, is Arendt's understanding of the relationship between the administration of justice, human judgement, and human freedom? Concerning Arendt's conception of this relationship, I would conclude the following: One of the very important means by which the expression of human freedom occurs in the legal realm is through 'human judgement.' Subsequently, the expression of human freedom through the use of human judgement is one way the administration of justice can occur. And yet, Arendt argues that talk of the impossibility of 'passing judgement' is becoming more and more prevalent in current discussions of a far range of topics; including discussions surrounding the

⁵⁵ Ibid., 290.

⁵⁶ Ibid., 294.

⁵⁷ For example: Ibid., 294.

administration of justice.⁵⁸ Arendt's suggestion is that human freedom can and has been constricted within current systems of justice. Furthermore, Arendt recognises this loss of human freedom that is being experienced under these current systems of justice as something that distantly begins to echo the more severe loss of human freedom that occurred during the Shoah under the rule of law imposed by the Nazi "justice system."⁵⁹

But far from condoning or simply lamenting the way justice is being practiced in modern systems of justice, I would argue Arendt identifies this loss of freedom experienced in current justice systems as a way of speaking out against it. Arendt is not simply cataloguing or keeping an inventory of the way freedom is being removed within modern justice systems. Arendt also "documents" evidence of acts that occurred during the Eichmann trial that express human freedom. For example, Arendt observes:

We heard the protestations of the defence that Eichmann was after all only a "tiny cog" in the machinery of the Final Solution ... In its judgement the court naturally conceded that such a crime could be committed only by a giant bureaucracy using the resources of a government. 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.⁶⁰

To me, exercising legal judgement to bring about the transformation of individuals from 'machine parts' to 'human beings' is an expression of human freedom that resists against attempts to 'systematize' the humanity out of individuals. By noting such an expression of human freedom, Arendt highlights or encourages the ways human freedom is able to overcome its possible suppression within current systems of justice - systems of justice that (as Eichmann may have accurately perceived) can dangerously share a penchant for an understanding of law that is based upon the notion of "the banality of evil."

⁵⁸ See *Ibid.*, 296–298.

⁵⁹ "These Crimes undeniable took place within a "legal" order" (*Ibid.*, 290).

⁶⁰ *Ibid.*, 289.

To be clear, what is at stake here for Arendt is not simply the safeguarding of an abstract or ideal notion of human freedom. The Shoah is an event where “administrative massacres” occurred. To Arendt, the threat of these kinds of measures being put into practice once again – measures that involve the system “calling for” the destruction of the very population it is in place to oversee – continues to be a very real possibility. The annihilation of human freedom becomes of paramount importance, then, if a system is to be successful at perpetuating the destruction of its own population. Consider Arendt’s observations about what the loss of human freedom experienced in the character of Eichmann led to: “That such remoteness from reality and such thoughtlessness can wreak more havoc than all the evil instincts taken together, which, perhaps, are inherent in man – that was in fact, the lesson one could learn in Jerusalem.”⁶¹ In a manner of speaking, human freedom is the “battle ground” on which a system’s ability to engage in “administrative massacres” is fought. This well-worn metaphor aside, Arendt argues that the practice of human freedom had a tangible role in the Eichmann trial. Without recounting the entirety of the argument put forward by Arendt in the post-script (concerning the resources available within the current legal system to judge as guilty those who support the perpetration of mass murder), Arendt states that she has serious concerns about:

...the inadequacy of the prevailing legal system and of current juridical concepts to deal with the facts of administrative massacres organized by the state apparatus. If we look more closely into the matter we will observe without much difficulty that the judges in all these trials really passed judgement solely on the basis of monstrous deeds. In other words,

⁶¹ Ibid., 288. Arendt is further explaining here her lack of interest in discussing “the nature of evil,” etc. The next line of this passage reads: “But it was a lesson, neither an explanation of the phenomenon nor a theory about it.” The “phenomenon” in question here is Eichmann’s character, and Arendt is trying to be clear that the “nature” of Eichmann’s character, whatever it may be, can certainly not be described as being evil. The implication of this is of course not to say that Eichmann’s character can be described as being good either. To me, the suggestion here is that Eichmann lacked the humanity to choose between good and evil. Instead, he resided in a space with “such remoteness from reality” that for all intents and purposes any trace of human freedom, which would have granted him the capacity to choose between good and evil, had been annihilated.

they judged freely, as it were, and did not really lean on the standards of legal precedents with which they more or less convincingly sought to justify their decisions.⁶²

For Arendt, human freedom allowed the judges to step outside the logic of “a field [as] obsessed with consistency as jurisprudence⁶³” to produce a verdict that was clearly in “the interests of justice.”

These considerations about the ability of human freedom to overcome its removal within modern systems of justice bring to the limit the investigation in this chapter of Arendt’s discussion of Law and the Third Reich. In the concluding section of this work more will be said about the importance of the ability of human freedom to overcome the ongoing dangers posed to Law by the Shoah. For now, I wish to return to Arendt’s discussion of Law and Nazism to investigate her description of the terrible mechanisms by which Nazism relentlessly seeks to destroy all vestiges of human freedom. The aim of this investigation will be to explain how perhaps a somewhat ‘abstract’ notion like “human freedom” had a tangible role in the success or failure of the Nazi ambitions to massacre whole populations.

Part G: The ‘Strength’ of Unreality: Arendt and the Nazi Version of Law

Arendt discusses in the Origins of Totalitarianism the relatively well-known and infamous practices of the Nazi “justice system.” Despite the familiarity that many of her readers may have with these practices that she discusses, what Arendt has to say about the aims of the Nazi *system* of justice, and how the Nazi justice system helps to create a system of “*unreality*,” to me, remains a challenge to how Law is understood after the Shoah. Her comments that point to this dangerous aspect of “unreality” that is a part of the Nazi system

⁶² Ibid., 294.

⁶³ Ibid., 294.

of justice explain how this system contained a drive to annihilate the capacity of choice within those who were placed under its sway. In its most disturbing form, the loss of this capacity for these individuals occurs to the extent that the aim to bring about their own self-destruction begins to appear as their only viable option. I will argue that an awareness of the danger of creating a system of ‘unreality,’ and the subsequent loss of the capacity of choice that begins to ensue from such a system, helps to illuminate the ongoing threat the Shoah continues to pose to the practice of Law within current justice systems. To present this threat, I would like to begin by presenting some of Arendt’s observations of Nazi law and its creation of an ‘unreality.’

As would be expected, the Nazis used the Law to prosecute “common criminals,” and to prosecute “political criminals.” Nazi Law would have regarded the violations committed by these offenders as a matter of individual decision or choice. The element of choice present in these offences would have led these individuals to be classified as “subjective enemies” of the Nazi state. However, another category of “offenders” was a part of the Nazi state. Their “offences” were considered far more severe in the eyes of Nazi Law. This was the category of offenders designated as “objective enemies”⁶⁴ of the (Nazi) state. The individuals belonging to this category of offenders were considered guilty not for any act of transgression they chose to commit against the Nazi government. The “objective enemy” was guilty of transgressing Nazi Law as a matter of being a member of a group of “people” that, by definition, was ‘offensive’ to the Nazi state. The Nazis themselves of course provided the definition of which groups were to be designated as ‘offensive’ to the Nazi state.

⁶⁴ Arendt, The Origins of Totalitarianism, 423.

Groups of ‘people’ included amongst those classified as ‘objective enemies’ by the Nazis, were, first, the mentally ill and mentally and physically handicapped Germans, German Jews, German Roma, and German homosexuals. Then, as Nazi territory expanded, Jews and Gypsies in the conquered territory were also forced to face this classification. As well, Poles, Russians, and the other Slavic peoples were at times treated as objective enemies of the Nazi state. Nazi plans also suggested that the entirety of the Polish, Russian, and Slavic population would eventually be treated as objective enemies. Arendt also notes that another population ‘group’ that was slated in Nazi plans for classification as objective enemies of the Nazi state were “racially unfit Germans.” The Germans who fell to this classification were to be determined according to the proposed “National Health Bill,” which was drafted by Adolf Hitler himself.⁶⁵ This bill stated: “After a national X-ray examination, the Führer is to be given a list of sick persons, particularly those with heart and lung disease.”⁶⁶ As Arendt explains, this program was “proposing ‘to isolate,’” these individuals and “their families;” “their physical elimination being of course the next step in this program.”⁶⁷

The mass murder perpetrated by the Nazis and carried out for the sake of their concern with their notion of racial purity is obviously unspeakably disturbing for the depths of horror it invokes. The ‘racial intolerance’ present, if such a term is even appropriate here for conveying the destruction that was enacted against the populations targeted by the Nazis during the Shoah, perhaps immediately is the most striking element of this horrific massacre. However, as part of her analysis, Arendt is also very concerned with Law; and I understand this type of analysis to have great importance when considering the significance of the massacring of civilians for how Law is to be understood after the Shoah. Clearly the idea of

⁶⁵ Ibid., 310, 416, 433.

⁶⁶ Ibid., 310.

⁶⁷ Ibid., 416.

massacring millions for the sake of racial purity is an obscene and ridiculous notion; and racial intolerance obviously played a key role in enabling millions to be murdered to this end. But I would also like to focus on what Arendt has to say about the Nazi version of law, and how this law served as a mechanism for perpetrating these massacres.

Perhaps the most immediate response to the racial views of Nazism is to be struck by how ridiculously unreasonable these views are. Arendt herself provides an excellent analysis of the misconceptions that have arisen during the history of racism and antisemitism in Europe in the first two parts of her Origins of Totalitarianism. However, Arendt does not underestimate the ability of Nazism (as a totalitarian state) to counter what in (non-totalitarian) reality is ridiculously unreasonable, with what is completely sensible according to the rationality of totalitarian unreality.⁶⁸ Normally the ridiculousness of the Nazi views is cited as their weakness. However, precisely the opposite is the case, as the ability of Nazism to bring together and organize its followers around ideas that are ridiculously out of touch with reality speaks to the terrible strength and power (although obviously not to the wisdom) of the Nazi movement. Arendt even suggests that the unreality of the Nazi views was a generally accepted truth for those who were a part of the Nazi movement. Arendt explains how such lies were acceptable to the followers of the Nazi movement. This is made possible through the belief of these followers that all of politics and political reality is nothing more

⁶⁸ Term used by Arendt to describe the Nazi version of reality. The term is not used as a means of designating that the Nazi version of reality, *as a form of reality*, somehow was lacking in the quality of reality or was less real (for example, that in this version of reality empirical qualities become harder to perceive, *etc*). Instead, Arendt uses this term, I believe, as a comment upon the Nazi *relationship to* reality, which she expresses as having an overriding element of “contempt for reality” (Arendt, 458).

As an example, when the Soviet Union under Stalin (the other totalitarian movement discussed by Arendt) asserts that the only way that a subway can be built is the Soviet way, after learning of the existence of a subway in Paris the response is not that the Soviet view was inaccurate. Instead, the view is taken by the Soviet Union that reality is wrong, and the way to prove this is to take over Paris (and eventually the rest of the world) and destroy its subway (Arendt, 458). In this sense reality is viewed contemptuously by Nazi thinking, as it actively seeks to destroy reality when it deems this to be necessary. Its version of reality becomes “unreal” since its preference is for what the contents of the head perceive to be true, over what occurs in reality.

than a series of lies and hypocrisy.⁶⁹ The response of Nazism, with such an understanding of the political climate, is to strive to be the most skilled at lying, manipulating, etc., for the sake of what serves the interests of the Nazi movement; instead of responding by striving to create a political climate where such tactics are unacceptable.

These considerations are beginning to stray from considerations of Law and the Shoah. I would like to refocus this discussion by asking the following question: How did Law serve as a mechanism for turning the unreasonable racial views put forward by Nazi rational into reality? The short answer (in need of further explanation) to this question on behalf of Arendt is as follows: In the field of justice, Nazism strove to create a reality that eliminated the capacity for human freedom and justice within the population it oversaw. Arendt observes that the stages in which Nazi oppression took form and developed are not unheard of throughout the history of the world's cruellest regimes. Sadly, even the large-scale massacre of civilians is a part of this history. However, Arendt strongly cautions against confusing Nazi oppression with other forms of oppression. As far as Law is concerned, what separates Nazism and the form of oppression it exercised, was this desire to remove human freedom from the reality of how justice was conducted in the Third Reich.⁷⁰

An important observation that I feel Arendt makes about Nazi Law is its redefinition of both the criminal and of crime.⁷¹ This redefinition occurs with the notions of the "objective enemy" and the "possible crime." The "objective enemy," as already discussed, is a designation that was used to incarcerate large segments of the population who have not themselves committed any act that in reality would warrant the attention of the Nazi legal authorities. A similar statement can be made about those individuals or groups found guilty

⁶⁹ Ibid., 331.

⁷⁰ Ibid., 440

⁷¹ Ibid., 433.

of a “possible crime.”⁷² A “possible crime” consists of being found guilty not of acts committed in reality. Guilt in this case is a result of “objective” circumstances that determine for the Nazi legal authorities that the offender will commit a crime. The point about the reliance of Nazi law upon the notions of “objective enemies” and “possible crimes” is not simply to recognize that these notions may seem either completely ridiculous and unreasonable, or transparent, or opportunistic, or perhaps all of these things at the same time. Instead, I would suggest the greatest danger that Arendt is illustrating concerning Nazi law and its use of these notions of crime and the criminal, is its preference for unreal scenarios over what occurs in reality. The Nazi desire for this fictitious world was not something that was haphazardly pursued, either, but instead was the persistent drive of Nazism - if not from the earliest moments of its inception, then certainly from the time of its transforming into a “popular movement” and subsequently rising to power.

Of even further concern, Nazi rationale was quite capable of undermining reasonable protests that were made against it for its reliance upon a fictitious world.⁷³ For example, consider the difficulty of those who protested against the organization of society according to racial or racist categories. Their argument would undoubtedly be that organizing people in this way was completely unreasonable, as well as something that could not even possibly be sensibly carried out. However, these individuals suddenly found themselves and their protests undercut once the Nazis had already organized the population according to racist principles; *i.e.* “racial origin” became the determiner of the rights of citizens – deciding everything from their share of rations, to whether or not they would receive a sentence in the death camps.⁷⁴

⁷² Ibid., 426.

⁷³ This term is also used to describe the “unreality” that Nazism was seeking to create.

⁷⁴ Ibid., 363.

Organizing the citizenry and the rights they experience according to racist principles is one way that Nazi law was used to reinforce the other “world” or reality that Nazism sought to create. Hopefully, rather than trying to provide a more exhaustive list of how Nazi law was used to this purpose, this one example will suffice to illustrate the point that simply calling attention to the unreasonable views of Nazi rationale was not sufficient enough to withstand these views, or to prevent them from being put into practice. For the same reasons, looking back in retrospect and recognizing the utter ridiculousness of these views does not seem sufficient enough to dismiss the terrible significance and ongoing danger of these views. The more relevant questions would seem to arise concerning this question of how Nazism thwarted the criticism made against it and its unreasonable views; and how, then, could a critical stance towards the creation of a murderous ‘unreality’ that holds widespread appeal and/or domination be taken on in a way that more effectively renounces the persistence of these views.

An inquiry into the stance that more effectively combats the ongoing threat posed by Nazi rationale and its views is to me a very important undertaking. But before beginning this inquiry, I feel more must be understood of how Nazi law relied upon its creation of an ‘unreality’ to eliminate the sense of justice and human freedom from amongst its citizenry. I think some of the outlines of how this was attempted were presented in the discussion of the “objective enemy” and the “possible crime,” and a certain “underlying feature” that was shared by these notions. To recall, these notions shared a preference for “unreal scenarios” in favour of reality. This was shown by the way that the actions committed in reality by individuals and/or large segments of the population were of no concern to these notions whatsoever, as far as these actions serve as a method for determining the guilt or innocence

of the citizenry in the eyes of Nazi law. A discussion was then made of the reliance of Nazi law upon an 'unreal' world or reality.

I would now like to draw attention away from this 'unreal' world itself, and focus more upon the significance of the notions of the "objective enemy" and the "possible crime" to the actions of the citizenry living under the rule of Nazi law. Turning away from what transpires in reality has the consequence of negating the significance of acts committed by the citizenry in reality - in both the eyes of those who administer, and those who live under the administration of, Nazi law. But of course the administration of Nazi law had very real consequences in reality, seeing as it was used as an instrument for determining which segments of the population would be slated for mass extermination.

There is an underlining supposition here concerning the establishment of law, the actions of the citizenry, and the development of a sense of justice amongst the citizenry. The citizenry requires that the acts they commit in reality hold legal significance; otherwise, the development of a sense of justice that the citizenry shares amongst itself will struggle severely to avoid suffering its full nullification. So, being held legally accountable for offences that occur in an 'unreality' that is completely inaccessible to them, and has no relation to the actions they commit, threatens to defy any aspirations the citizenry may have for developing a sense of what is just according to the justice system they live under the authority of. To summarize: The establishment of laws that take into consideration the actions committed by the citizenry in reality, allows the citizenry to develop a sense of what is just in response to the laws that have been established.

A comparison by example can illustrate how the relationship between the establishment of laws and the action of the citizenry develops a corresponding sense of justice amongst the citizenry. For instance, a set of laws that takes seriously the claim to

promote equality amongst its citizenry will lead the citizenry living under those laws to have expectations of equality. In the case of laws that legislate some form of inequality amongst its citizenry, i.e., the votes of certain citizens will count for two-thirds of the value of the votes of other citizens, or quotas concerning the schooling or occupations of certain segment of the citizenry – will still lead the citizenry, even those who have been slated for inequality, to have certain expectations about what is just according to those laws (i.e. entitlement to a vote that is worth two-thirds, at least being granted access to a more limited amount of schooling and employment, etc.). Even a society governed by complete tyranny, where all political liberty has been taken away from everybody, will still lead the citizenry to have a sense of what is just according to such tyrannical laws. That is, the citizenry have the expectation from these laws that they will at least be left alone to live their lives, so long as there are willing to live a life without political liberty. Certainly, a tyrannical form of government may still, for example, prosecute members of its citizenry who even manage to avoid violating the oppressive laws established in complete tyranny. In this circumstance, the sense of justice held by the citizenry would not have been lived up to; but failure to meet these types of expectations of the citizenry is by no means a phenomenon that is peculiar only to a tyrannical form of government.

The question of how the reliance of Nazi law upon an ‘unreality’ prevents the population under the purview of its authority from developing a sense of justice still remains to be attended to. Still with the comparison involving the relationship between law, action, and justice, Arendt notes that Nazi law took away political liberty from its citizenry in a way similar to how law would be administered by an extremely oppressive form of tyrannical government. However, she goes on to explain that what distinguishes Nazi law from even the most oppressive forms of tyranny is that it is unwilling to allow its citizenry to be left alone

to live a life without political liberty.⁷⁵ This is another way of saying what was stated earlier: Nazi law is not satisfied with only prosecuting its citizenry for violations of the laws that have been established in reality, but also for the prosecution of offences that are committed beyond whatever actions they take in reality. The citizenry under the administration of Nazi law, willing or not, may be living without political liberty, so that they can be in compliance with the laws that have been established in reality. But even in this very unfortunate state of affairs, the reliance of Nazi law upon the other world or unreality it has created allows it to still subject the citizenry to prosecution for the “commission” of offences.⁷⁶ The citizenry submitting to Nazi law must face a justice system of otherworldly origins and enforced in reality with murderous implications. The expectation that the prosecution of the citizenry who renounce all claims to political liberty is not even “rightfully” experienced as a violation of justice for those living under the administration of Nazi law. The explanation for this, as discussed earlier, is the citizenry’s acceptance of the Nazi unreality (i.e., the willingness to allow a racist unreality to be willed into reality). “Common sense protests desperately that the masses are submissive and that all this gigantic apparatus of terror is therefore superfluous;”⁷⁷ states Arendt. However:

The totalitarian attempt to make men superfluous reflects the experience of modern masses of their superfluity on an overcrowded earth. The world of the dying, in which men are taught that they are superfluous through a way of life in which punishment is meted out without connection with crime ... is a place where senselessness is daily produced anew.⁷⁸

Of note, a point Arendt makes about this sorry state of affairs created by Nazi law is that for the citizenry, when their actions begin to lose legal significance, the possibility that violating the established laws will act as an effective means of protesting against Nazi law

⁷⁵ Ibid., 475.

⁷⁶ Ibid., 451.

⁷⁷ Ibid., 457.

⁷⁸ Ibid., 457.

begins to vanish more and more. In a system where all of the citizenry are subject to prosecution anyway, volunteering to suffer prosecution at the hands of the law seems to be either a pointless or futile gesture, or possibly even more in compliance with that system than trying to avoid the attention of the prosecuting authorities.⁷⁹

Arendt argues that the purpose of Nazi law is ultimately not to destroy the practice of law. Instead, she argues that Nazi law is trying to replace the conception of law that considers the actions of the citizenry legally relevant. In its place, Nazi law relies upon “the other world or ‘unreality’” that Nazism has created – or what is more typically referred to as the “ideology” of the Nazi movement – to provide itself with the laws for governing over its citizenry. These “ideological laws” dictate to the Nazi authorities that those who have committed no act of transgression against the law in reality – or, in other words, those who are completely innocent – are suitable candidates for incarceration in a death camp. Arendt cautions against confusing Nazi oppression with an extremely ruthless form of tyranny. Tyranny aims at pacifying its citizenry. Only after Nazism managed to obliterate any significant challenges to its rule from within did its oppression of its citizenry begin in earnest: “Terror increased,” she writes, “in inverse ratio to the existence of internal political opposition, so that it looked as though political opposition had not been the pretext of terror (as liberal accusers of the regime were wont to assert) but the last impediment to its full fury.”⁸⁰

⁷⁹ Ibid., 433.

⁸⁰ Ibid., 393. Arendt later restates this same claim in another passage: “The extraordinarily bloody terror during the initial stage of totalitarian rule serves indeed the exclusive purpose of defeating the opponent and rendering all further opposition impossible; but total terror is launched only after this initial stage has been overcome and the regime no longer has anything to fear from the opposition” (Arendt, 440).

Arendt describes how the reliance of Nazi law upon the unreality created by Nazism produces a dependence or need for criminal activity that cannot possibly ever be met by the activities of the citizenry in reality:

Any, even the most tyrannical, restriction of this arbitrary persecution to certain opinions of a religious or political nature, to certain modes of intellectual or erotic social behaviour, to certain freshly invented "crimes," would render the camps superfluous, because in the long run no attitude and no opinion can withstand the threat of so much horror; and above all it would make for a new system of justice, which, given any stability at all, could not fail to produce a new juridical person in man, that would elude the totalitarian domination.⁸¹

Arendt explains with these words how the citizenry are simply not motivated enough to perpetuate the concentration camp in its demand for inmates. What does perpetuate the needs of the concentration camp for 'human resources' is the compulsion Nazi law has towards its own ideology. This ideology creates an opportunity for Nazi law to prosecute its citizenry endlessly since guilt is determined without regard for the actions of the citizenry in reality but is instead determined according to a world created by Nazi Ideology. That the citizenry cannot have the sense that justice is in any measure a matter of the actions they commit in reality is something that stands as an ideological necessity for Nazi law. Nazi ideology demands that no conception of what is just can be held outside of what it itself dictates to be so.

The objection may be raised that Nazi law, no matter how divorced from reality the ideology upon which it is based may be, does produce laws. Laws by design are stable, and so even ideological laws based in a fictional unreality will still be proscribing themselves in reality, allowing the citizenry to have a sense of what is just according to them. This argument would stand were not these ideological laws drawing from the understanding that the only law that holds validity is a law that can only be perpetuated by constantly and

⁸¹ Ibid., 451.

continually targeting its citizenry for prosecution. This continuous state of prosecution requires that Nazi law take on ever-new forms to avoid the annulment of the one “true” law that underlies its ideology.

Arendt suggests the law underlying Nazi ideology is their conception of “the law of nature.” She explains that nature should be understood here not as a “given,” as in the ancient sense of the term. Instead she suggests that Nazi Ideology has a conception of nature that is produced as some sort of derivative of the Darwinian “evolutionary” notion of the term; and it appears in Nazi thought in the following form:

If it is the law of nature to eliminate everything that is harmful and unfit to live, it would mean the end of nature itself if new categories of the harmful and unfit-to-live could not be found ... In other words, the law of killing by which totalitarian movements seize and exercise power would remain a law of the movement even if they ever succeeded in making all of humanity subject to their rule.⁸²

With these words, Arendt is clearly asserting the position that the aim of Nazi law is to seek to kill everyone under its administration, and to carry this destruction up to the point of complete self-destruction.

Part H: Sovereign Power and the Question of the Right to Live Within a Community:

Agamben and the Nazi version of Law

For the first time in history . . . at once it becomes possible both to protect life and to authorize a holocaust.
- Michel Foucault (Quoted in Giorgio Agamben, *Homo Sacer: Bare Life and Sovereign Power*, 3).

The starting point for Agamben’s discussion of Nazi law involves his reflecting upon what possible connections this form of law may have to any other experiences of law throughout history. Agamben’s search for these connections demonstrates to him that Nazi

⁸² Ibid., 464. Note that this statement is not intended to be made as a comment about either “The Law of Nature” itself or the scientific conception of this Law but instead to illustrate the Nazi conception of “The Law of Nature.”

law – although it would undoubtedly seem to represent an ‘unprecedented’ experience within the history of law - is by no means completely severed from the law’s history. Nor is it even, regrettably, a highly marginalized experience of the law. Instead, Agamben explains that:

In the pages that follow, we shall try to show that certain events that are fundamental for the political history of modernity (such as the declaration of rights), as well as others that seem instead to represent an incomprehensible intrusion of biologico-scientific principles into the political order (such as National Socialist eugenics and its elimination of “life that is unworthy of being lived,” or the contemporary debate on the normative determination of death criteria), acquire their true sense only if they are brought back to the common biopolitical (or thanatopolitical) context to which they belong. From this perspective, the camp – as the pure, absolute, and impassable biopolitical space (insofar as it is founded solely on the state of exception) – will appear as the hidden paradigm of the political space of modernity, whose metamorphoses and disguises we will have to learn to recognize.⁸³

Agamben’s claims in this passage most likely seem extraordinarily radical if not fantastical: The “high watermarks” of the Western legal traditional, and the racism and murderous violence of the Nazi regime, are to be recognized as sharing a common ground. Furthermore, the recognition of this common ground allows these seemingly incomparable events to “acquire their true sense.” As well, the additional claim that the Nazi concentration camp “appears as the hidden paradigm of the political space of modernity” only seems to compound the outrageousness of Agamben’s claims.

Much of the burden of explanation in this passage seems to lie with (Agamben’s use of) Foucault’s term “biopolitics.” I would suggest that for Agamben, the term “biopolitics” is understood to be framing a question that is an underlining concern for every political community, including that of the Third Reich. This is the concern with deciding who enjoys the right to live within any given community. As the term “biopolitics” obviously makes clear, this decision has in some senses been arbitrated upon by making reference to “biological criteria” during political discussion. Biopolitics, then, is the use of political

⁸³ Agamben, 122-123.

discussion or activity that focuses around biological considerations as the means to solve the problem of who enjoys the right to live in a community. Agamben wishes to argue that within the Western legal tradition, and in particular the modern form of this tradition,⁸⁴ the solution to the problem of who enjoys the right to live within a given political community has increasingly been sought through reference to biology. While the numerous occasions where a “declaration of rights” occurred are attempts to find a solution to this biopolitical problem (solutions that Agamben sees as unsatisfactory in their own ways), Agamben also sees the “Final Solution” as being an attempt, undoubtedly the most vicious one, to find a solution to the problem posed by biopolitics.

However, beyond what is being merely hinted at or suggested here so far about the possible basis for the claims Agamben makes in the passage above, perhaps his argument can be expanded upon more clearly by first considering his comments regarding “the state of exception;” or what is (perhaps) more commonly referred to in modern terms politically as a state of emergency or the rule of martial law.

⁸⁴ To me, the terms “modern” or “modernity” are less representative of a precise chronological moment. Instead, they are notions that are used to indicate (what is seen as) a ‘significant’ development within the (more recent) history of a given tradition or context. For example, the “modern Western legal tradition” is represented by significant developments that have occurred relatively more recently within the history of the Western legal tradition. The “modern aspect” of these developments has less to do with when they occurred chronologically, and more to do with how these developments are in some sense ‘different’ from other developments that have occurred previously within the history of the Western legal tradition. For example, the *Magna Carta* (or aspects of it) is in many ways seen as a modern legal document for its redefinition of the powers enjoyed by the sovereign monarch over their citizenry. A similar argument could be made with the history of warfare, in which modern warfare is (apparently) marked by a dramatically higher percentage of civilian casualties versus that of uniformed combatants; a development that would be the reversal of what was experienced in the history of warfare previous to it.

To explain the relevance of “the state of exception” to this discussion, I would like to begin by citing comments made by Adolf Eichmann in response to a question posed by his interrogator, Inspector Avner Less,⁸⁵ during his pre-trial examination in Jerusalem:

Less: Did the Law of the Reich provide for the final solution of the Jewish question?

Eichmann: The final solution itself - I mean, the special mission given to Heydrich – to put it bluntly, the extermination of the Jews, was not provided for by Reich law. It was a Führer’s Order, a so-called Führer’s Order ... According to then prevailing interpretation, which no one questioned, the Führer’s order’s had the force of law. Not only in this case. In every case. That is common knowledge. The Führer’s orders have the force of law.⁸⁶

Obviously, Eichmann’s words should be taken with reservation; and in this passage, Eichmann is seeking to build his case that his oath to the Führer somehow mitigates his decision to murder millions of civilians. Be that as it may, what is indicated by Eichmann in this passage is that the massacring of civilians that occurred during the Shoah found its legislative basis through the powers invested in the Führer – or the sovereign representative of the Nazi state. The state of exception that Agamben refers to in the passage cited above (as well as repeatedly throughout his writing), is nothing other than the power of the sovereign being exercised or put into force within a community. The crux of Agamben’s argument is that sovereign power is what the community uses to make their decision about who enjoys the right to life.⁸⁷ This decision arbitrates over whether or not any of the acts committed towards a person, including killing, are an indication that “rights” have been violated; or if the same acts directed towards a person have no bearing upon the community whatsoever. Also, and as part of this decision, the community declares that its own actions, including killing, towards those it chooses to exclude do not represent a violation of “rights.” As

⁸⁵ Adolf Eichmann, Jöchen von Lang, Claus Sibyll, Eichmann Interrogated: Transcripts from the Archives of the Israeli Police, translated by Ralph Manheim (New York: Farrar, Straus, Giroux, 1983).

⁸⁶ Ibid., 124. As well, Agamben also states in his work: “*Führerworte haben Gesetzkraft*, as Eichmann did not tire of repeating at his trial in Jerusalem” (Agamben, 184).

⁸⁷ See Agamben, Parts One and Two.

Agamben repeats on numerous occasions in his writing, the decision to exclude is simultaneously a method of inclusion, or an inclusion through exclusion. This is to say that on the one hand, inclusion in a community means that a person's relationship to that community is mediated by all of the rights, agreements, etc. specific to that community. However, it is not the case that all those excluded from a community have no relation to the community they have been "excluded" from. This is true in the sense that their relationship to that community becomes one of not having been afforded all (or any) of the rights, agreements, etc., of that community.

Agamben contends that the state of exception, or the decision between exclusion and inclusion, is the founding principle upon which community is based.⁸⁸ He also identifies a character from Roman times, known as *homo sacer*, who occupies this position of being included through exclusion. As the name indicates, *homo sacer* is neither entirely of the world of man (*homo*), nor entirely of the world of the sacred (*sacer*). They are somewhere between life and the afterlife, a sort of ghost or living dead. My interest does not involve the origins of community and the state of exception, nor of the version of *homo sacer* that was created by the state of exception in ancient times. I wish to concern myself with these concepts of the state of exception and *homo sacer* as Agamben discusses them in the modern context, and of course, especially in terms of the importance of these concepts to Nazi law.

While I intend to deal more fully with the modern version of *homo sacer* in my chapter discussing the Idea of Man, I think a brief description at this point of this somewhat mysterious figure would help to clarify what the powers of the sovereign and the state of exception involve. The situation of a foreigner in another country who has been denied

⁸⁸ Agamben, 181. Agamben distinguishes his own view from Foucault with this claim. Foucault, Agamben contends, argued that biopolitics has only become an issue in modern times.

“rights” within a community (for example: to employment or for residence) perhaps can help to explain the concept of *homo sacer*. The person who finds themselves in this situation participates in that community, but in and through their being not able to participate, their part in that community being one of having been set apart, etc. – in other words, inclusion through exclusion. Their person is not void of meaning to the community, but instead is considered to have meaning as a ‘foreigner;’ and most likely they have had the experience of what it means to be a foreigner in another country from which they have been excluded. This type of situation is compounded for refugees, who, in addition to being excluded from the country they have set foot in, also find themselves a foreigner to every country.

The double movement that occurs as sovereign power is exercised through the state of exception should hopefully now be clear: simultaneously and as a part of the biopolitical decision over who has the right to life within a community, the decision is also being made about who is to be *homo sacer* to that same community. I would now like to add to this observation by more closely examining the modern version of the state of exception, which takes the form of a state of emergency or martial law. To me, this circumstance appears very much as an opportunity for the sovereign to revisit the decision over who has the right to life within a community. When the state of exception takes on the form of a state of emergency, it becomes more difficult to describe sovereign power as being involved with making a decision over who has the right to live within a community. By this I mean that the right to live does not appear to be in the process of being expanded upon or enriched amongst the community. Instead, during a state of emergency, sovereign power seems to be strictly in the process of removing rights from its citizenry.

Agamben notes that a state of emergency was in effect in Nazi Germany. This indicates that Nazi law was characterised by its being under the absolute dominance of

sovereign power. He also recognises that the state of emergency is not unique to Nazi Germany, as many constitutions have provisions that allow for its declaration. This includes the constitutional tradition in Germany prior to the ascendancy of the Nazis to power. The Weimar governments had used their constitution to invoke a state of emergency on a number of occasions. As well, the same constitutional term, *Schutzhaft*, which the Weimar governments had used to intern suspected communists in their concentration camps for “protective custody,” was also adopted by the Nazis for interning prisoners in their concentration camps (concentration camps of a very different sort, of course, from those set up by the Weimar governments). “Yet there was an important novelty,” Agamben explains, between the state of exception declared by the Weimar governments, and the one declared by the Nazi government when they seized power in 1933:

No mention at all was made of the expression, *Ausnahmezustand* (“state of exception”) in the text of the decree ... The decree remained de facto in force until the end of the Third Reich ... *The state of exception thus ceases to be referred to as an external and provisional state of factual danger and comes to be confused with juridical rule itself.* National Socialist jurists were so aware of the particularity of the situation that they defined it by the paradoxical expression “state of willed exception” (*einen gewollten Ausnahmezustand*).⁸⁹

Recognizing this permanent state of exception, Agamben then proceeds to expound upon the distaste of Nazi law for “any situation of external fact,” as well as for any legal rules that have been established *a priori*.⁹⁰ Nazi law under a permanent state of exception consists of “*a juridical rule that decides the fact that decides on its application.*”⁹¹ Nazi law, as it is exercised through the state of exception, functions entirely on the basis of what sovereign power and its representatives determine to be a “legal fact.” (To put this more bluntly, there are no facts that exist independently of what Nazi law determines to be real). No restrictions

⁸⁹ Ibid., 168.

⁹⁰ Ibid., 172.

⁹¹ Ibid., 175.

or borders are permitted to have any bearing in mediating the exercising of these legal powers upon the citizenry. This includes laws, written or otherwise, which would represent an (binding) agreement between the sovereign and its citizenry. Laws must only represent what the sovereign determines them to be, and they must also be available to change as the interest of the sovereign changes. Independent or external “facts” must also not interfere with the practice or “application” of Nazi law. They require being abandoned if they threaten to involve a compromise with the citizenry’s interest as a part of legal decisions, and interfere with the establishment of the complete dominance of sovereign power in such matters. Finally, once sovereign power determines what constitutes a “legal fact,” it then also is the sole determiner of the law’s application to these facts.

These observations concerning the state of exception and “factual reality” are reminiscent of Arendt’s argument that Nazi law, in providing itself with evidence for determining legal transgressions, relies upon offences that occur in an ‘unreality’ in favour of the actions committed by its citizenry in reality. For Agamben, the state of exception nullifies any consideration of external “facts” and binding laws as part of the juridical decisions instituted by Nazi law. However, the state of exception is not disassociated from Nazi law - it is instead the locus of power from which Nazi law draws its basis.

What, then, according to Agamben, does Nazi law concern itself with while being exercised through the state of exception; and with the consideration of such legal operatives as binding laws and external facts having been removed from being a part of the practice of this form of law? The circumstance that this produces is one where matters involving biopolitics become the focus of Nazi law. Agamben provides a description of how the transaction of law took place in Nazi Germany with the decision over the right to live within a community being thought of in biopolitical terms to an unprecedented degree:

A concept such as the National Socialist notion of race (or, in the words of Schmitt, of “equality of stock”) functions as a general clause (analogous to “state of danger” or “good morals”) that does not refer to any situation of external fact but instead realizes an immediate coincidence of fact and law. The judge, the civil servant, or whoever else has to reckon with such a notion no longer orients himself according to a rule or a situation of fact. Binding himself solely to his own community of race with the German people and the Führer, such a person moves in a zone in which the distinction between life and politics, between questions of fact and questions of law, has literally no meaning.⁹²

The sole basis for determining the right to live within a community becomes race, and the meaning of the concept of race is decided upon entirely by sovereign power without restriction—including even reference to the “facts” of the “natural life” of the populace. The concept of race appears as a conduit in this formulation that allows the decision about who has the right to live within a community to be made by sovereign power however it so chooses.

How is the problem of biopolitics (which is so ruthlessly decided upon by the representative of sovereign power in Nazi Germany - the Führer) formulated in modernity in a manner that can lead to administrative massacres? Agamben explains that the “old *nomos*” of “*land, order, birth*”⁹³ has been ruptured by the formation of the nation state. Under its current structure, the political formation that the nation state represents presents serious, if not irreconcilable, difficulties when facing the decision over who enjoys the right to life within a community. When the “old *nomos*” is thought increasingly in terms of biopolitics, the decision over who enjoys the right to live within a community becomes increasingly dogmatic. This is reflected in the summarily way in which the sovereign power decides upon this question, rather than a decision being arrived at in a way that would reflect the interests of all whose lives are touched by its making.

⁹² Ibid., 172.

⁹³ Ibid., 175.

Certainly, understanding how the “*old nomos*” of “*land, order, birth*” would be formulated - such that, increasingly, all who live under its structure would be able to thrive - is of crucial concern to Agamben’s discussion of the modern political situation. But as for what is happening under the current political structure, as Agamben explains:

Something can no longer function within the traditional mechanisms that regulated this inscription, and the camp is the new, hidden regulator of the inscription of life in the order – or, rather, the sign of the system’s inability to function without being transformed into a lethal machine.⁹⁴

The concentration camp appears as the state of exception being given form, physically or geographically, as a “space.” This space is used by sovereign power to “deal” with the challenges that are presented to it by the modern political structure. The “disfunctionality” with which sovereign power approaches the decision over who has the right to life within any given modern political community – communities which have been given form as the modern nation state – is what gives sense to Agamben’s claim cited earlier that: “The camp – as the pure, absolute, and impassable biopolitical space (insofar as it is founded solely on the state of exception) – will appear as the hidden paradigm of the political space of modernity.”

Agamben understands the program of population extermination undertaken by the Nazis as having been unrestricted, or in the process of becoming wholly self-destructive. He states that: “When its biopolitical program showed its thanatopolitical face, the Nazi Reich was determined to extend itself over all its citizens.”⁹⁵ As well: “Nazism determines the bare life of *homo sacer* in a biological and eugenic key, making it into a site of an incessant decision on value and nonvalue in which biopolitics continually runs into thanatopolitics and

⁹⁴ Ibid., 175.

⁹⁵ Ibid., 150.

in which the camp, consequently, becomes the absolute political space.”⁹⁶ Agamben also claims that under the current political situation in the West, mainstream thought has come to the point where it is “risking an unprecedented biopolitical catastrophe.”⁹⁷

As for the catastrophe that did occur during the time of the Shoah, it is clear for each of the arguments presented by Fackenheim, Arendt, and Agamben, the practice of Nazi law ends with all of the citizenry held under its power in death camps. Fackenheim has stated that the aims of Nazi law were above all to transform the “master race” into individuals devoid of “human personality,” with the *Muselmänner* being representative of their “ideal.” This claim is still in need of further support from Fackenheim’s argument (and to which his discussion of the Nazi “logic of destruction” will be especially relevant). Arendt’s argument has contended that Nazi law aimed to enforce an ideological law that could only be realized as long as a process of population elimination continued. And Agamben has been concerned with what he sees as an increasing dependence in Nazi law upon biopolitics to answer the question of who has a right to live in a community. His argument established that the biopolitical responses of the Nazis to this question transformed into thantopolitical measures whose solutions were only realizable in the Nazi death camps.

In the next chapter on Nazism and the Idea of Man, I intend to discuss the figures that came to reside in these death camps, as well as the Idea of Man that their images present.

⁹⁶ Ibid., 153.

⁹⁷ Ibid., 188.

Chapter 2: Nazism and the Idea of Man

Their life is short, but their number is endless; they, the *Muselmänner*, the drowned, form the backbone of the camp, an anonymous mass, continuously renewed and always identical, of non-men who march and labour in silence, the divine spark dead within them, already too empty really to suffer. One hesitates to call them living; one hesitates to call their death death.

-Primo Levi, Survival in Auschwitz (quoted in Emil Fackenheim, To Mend the World, 99-100).

Section A: Introduction: Fackenheim and the Idea of Man

At Auschwitz, not only man died, but the Idea of Man died as well.

-Elie Wiesel, Legends of Our Time (quoted in Emil Fackenheim, To Mend the World, 273.)

In the last chapter, Fackenheim's writings presented the argument that Law was unable to stand opposed to the Shoah. Obviously, appealing to the reigning laws of the Third Reich to provide this form of opposition was not a viable option. Initially, Fackenheim's writings were investigated in an effort to find a form of representation for law that would fill the 'void' in representation left by the Nazi version of law. Specifically, this meant an appeal to the "Unwritten Law of Man." To most, such a law may appear to be very ephemeral. The evidence Fackenheim uses to make his assessment of the "Unwritten Law of Man" is whether this 'theoretical' law had actually demonstrated an ability to stand opposed to the Shoah in reality. Fackenheim did indeed find evidence that the "Unwritten Law of Man" acted in resistance towards the Shoah. However, in spite of this promising evidence (evidence which is highly significant to the post-Shoah world) Fackenheim's overall assessment of the "Unwritten Law of Man" leads to the conclusion that this form of law was clearly unable to stand opposed to the Shoah. To consider, on the whole, the European population held under Nazi power and the lack of resistance to the Shoah displayed by their actions is enough to demonstrate the inability of the "Unwritten Law of Man" to act as a form of law that is

capable of standing in opposition to the Shoah. But the most damaging evidence presented against the “Unwritten Law of Man” was the appearance of the *Muselmänner*. The creation of *Muselmänner* offers conclusive evidence to Fackenheim that not all men can be said to have a share in the “Unwritten Law of Man.” I would like now to examine in this chapter how Fackenheim understands the appearance of the *Muselmänner* to be significant to the Idea of Man. This discussion will culminate (hopefully) with an appreciation of Fackenheim’s claim that the *Muselmänner* are an indication that the Nazis were ultimately producing the Idea that Man is self-destructive.

Contemplation of how resistance took place during the Shoah is an essential concern of Fackenheim’s overall consideration of the event. His discussion of resistance also becomes instrumental to an appreciation of his understanding of the Idea of Man and the Shoah. This is why the exploration of Fackenheim’s understanding of the Idea of Man will draw heavily from his discussion of resistance. The starting point for discussing Fackenheim’s understanding of resistance will be to consider a ‘common conception’ that seems to be a part of discussions-in-general of resistance and the Shoah. This conception of resistance will be taken as a model for all forms of resistance whose measurement of success begins and ends with a concern with winning victories in “substantive reality.” The conclusion to be drawn after considering this model of resistance will be to recognize its failure to capture an appreciation of a form of resistance that Fackenheim sees as emerging from the Shoah. To have an appreciation of this form of resistance will (hopefully) help to explain Fackenheim’s view that the opportunity to explore other avenues of resistance has been opened up by acts of resistance that took place during the Shoah.

Part B: A 'Common Conception' of the Resistance that Took Place During the Shoah and its Limitations

The 'common conception' of resistance and the Shoah involves the formulation of hypothetical scenarios construed in the form of a personal ethical dilemma. This dilemma will be formulated here according to either one of two well-known hypothetical scenarios. One of these scenarios poses the question of whether or not an individual would have risked their own lives to save the lives of others (had that individual been alive and living under Nazi rule). The other hypothetical scenario poses the question of whether or not an individual would have risked participating in a violent uprising to escape imprisonment and an eventual death sentence (had that individual been alive and facing imprisonment in a Nazi death camp). Discussions of resistance and the Shoah when seen from the perspective of these two hypothetical scenarios seem to have as their focal point questions surrounding "personal integrity" and "courageousness" - as will be explained below.

In both of these hypothetical scenarios of resistance, a commitment to substantive reality is thoroughly affirmed and maintained. Substantive reality refers to the engagement into a certain type of calculus. This calculus involves calculating which course of action will yield the greatest outcome (in substantive reality). In the case of the Shoah, the "outcome" being measured and calculated in substantive reality is the capacity to save lives. Strictly speaking, this implies that resistance involves taking a body count - a count of how many bodies will be able to continue breathing. The role of "personal integrity" and "courage" in this calculus is that these qualities allow an individual to have the fortitude to act upon the course of action that secures the most favourable outcome in substantive reality. As far as this model of resistance is concerned, it is the 'body count' that counts, and nothing more. In the

hypothetical scenarios discussed above, the sides of the equation are clear: The Nazis represent those who wish to make an assault on “substantive reality.” Their goal is to make a body count that yields an outcome with the least amount of bodies that are able to continue breathing. Sheltering others from the Nazis who are to be killed, committing violent actions against the Nazis to escape murder at their hands, etc. – these courses of action represent clear-cut victories in the calculus of substantive reality. Why? They involve a course of action that directly opposes the actions selected by the Nazis.

A course of action cannot be counted as a form of resistance, according to this line of thinking, without that course of action having a concern with winning victories in substantive reality. And to a certain extent, the description here of a calculus of ‘substantive reality’ complies with Fackenheim’s account of some of the choices those living through the Shoah had to face.⁹⁸ Significantly, what is lacking from the description of resistance provided thus far is Fackenheim’s presentation of ‘concerns’ that moderate the need for a strict devotion to the calculus of ‘substantive reality.’ Fackenheim is attentive in his description of resistance and the Shoah to the possibility for these ‘concerns’ to present other models or avenues of resistance that do not wholly conform to the restrictions presented by the need for a single-minded devotion to ‘winning’ victories in the calculus of substantive reality. These avenues of resistance become especially pertinent when the possibility for a favourable outcome in substantive reality has either been all but closed off, or would not lead to “the most favourable outcome,” or could possibly even lead to “an unfavourable outcome” for those who are engaging in acts of resistance to the Shoah. To put this slightly differently, when the option to continue breathing has either been made nearly impossible, of secondary

⁹⁸ See Fackenheim, 213-214.

importance, and/or of questionable benefit to those who are to continue breathing, then a crisis arises for those wanting to resist against the Shoah.

Part C: Fackenheim and Examples of “Essential Resistance to the Holocaust World”

When Fackenheim discusses resistance during the Shoah, he refers to a number of examples, many of which suggest that the ability to produce a favourable outcome in substantive reality was a ‘luxury’ that those living through the Shoah could not always ‘afford.’ This shifts the center of focus in these examples of resistance and the Shoah away from securing victories in substantive reality. Fackenheim suggests that, predominately, for those living through the Shoah the possibility of achieving victories in the calculus of substantive reality: “Could be to the Nazi Reich even at best only insignificantly”⁹⁹ carried out. These types of victories, he explains, were open only to the massive military force and power of the Allied armies. Therefore when discussing the resistance of those living under Nazi rule the focus shifts towards what Fackenheim describes as “essential resistance to the Holocaust world.”¹⁰⁰ But what precisely does Fackenheim mean by “essential resistance to the Holocaust world?” I would equate the meaning of this phrase with the ‘concerns’ that moderate the need to achieve victories in the calculus of substantive reality that were alluded to earlier; but these ‘concerns’ still need to be identified and explained. To offer this explanation, I would like to mention four examples related by Fackenheim of “essential resistance to the Holocaust world.” These four examples of resistance to the Shoah given by Fackenheim all involve instances of resistances carried out by those who had been targeted

⁹⁹ Ibid., 202.

¹⁰⁰ Ibid., 203.

for mass murder by the Nazis. These include: The actions of some Jewish women going through pregnancy during the Shoah;¹⁰¹ the recounting of a dilemma faced by a group of Hasidim imprisoned at Buchenwald;¹⁰² the participants in the Warsaw and Bialystock Ghetto uprisings;¹⁰³ and finally, the words of a survivor by the name of Pelagia Lewinska.¹⁰⁴

In the example of the pregnant Jewish women, Fackenheim relates how the Nazis were particularly ruthless in their treatment of prisoners going through pregnancy. In light of this, the Rabbis in the death camps had decreed that the normally strong prohibition against abortion be lifted. To go through with the pregnancy would have in effect been signing a death warrant for both mother and child. This meant that having an abortion became the only way to achieve a victory in substantive reality. The mothers would continue breathing (for the time being at least), and they would not be giving birth to children who would end in the hands of the Nazis - only to be inflicted with the especially cruel torture and death that the Nazis had decreed for them. Yet, under these circumstances, there were Jewish women who decided to continue with their pregnancy and give birth to their children. Fackenheim considers the decision of these women to do this to be nothing short of a miracle.¹⁰⁵

For some, the actions of these women are comprehensible within the context of the calculus of substantive reality. The extreme devotion required by the women in this example for achieving a victory within this calculus - a victory that would come at such a grave risk to their own lives that its pursuit borders closely on suicide - is accounted for by the power of a

¹⁰¹ Ibid., 216-217.

¹⁰² Ibid., 218-219.

¹⁰³ Ibid., 219-223.

¹⁰⁴ Ibid., 217-218.

¹⁰⁵ Lacking testimony from the women themselves, a definitive answer over their actions is more difficult to provide. However I feel that Fackenheim's suggestion that some women underwent pregnancy as an act of resistance against the Nazis seems plausible to me, which is the reason for the inclusion of this explanation.

mother's love for a child. However, Fackenheim suggests that a devotion to winning a victory in substantive reality is not an explanation that makes the actions of these women comprehensible: "To be sure, it is natural for women to want to give birth, to love their children even before they are born. In the Holocaust world was this not unnatural by all ordinary standards? Did natural love for the unborn not dictate their abortion?"¹⁰⁶

Fackenheim's argument seems to be that the decision of these women to continue with their pregnancy represents a turning away from the course of action that would yield the most favourable outcome in the body count. But how are the actions of these women understood as a form of resistance? More must still be learned from the other examples of resistance for a greater appreciation of the action of these women.

Before leaving this example, however, I acknowledge that there is room for interpretation concerning whether or not these women had chosen to abandon the possibility of winning victories in substantive reality. Although the circumstances seem to favour interpreting the actions of these women as a break from a single-minded devotion to the calculus of substantive reality, Fackenheim provides no evidence from the women themselves to explain their actions. Most likely there is no such evidence, and in the absence of such evidence, the possibility that these women's actions can be explained as a matter of devotion to substantive reality remains open. As well, one objection may be raised: Some may argue that the decision to break one's commitment to substantive reality is always an indication of an extreme form of submissiveness or resignation. To grant the argument that the decision of these women to continue with their pregnancy represents a break on their part from the calculus of substantive reality leads to the harsh conclusion of attributing to these women this extreme form of resignation and lack of fortitude. By contrast, for those who comprehend the

¹⁰⁶ Ibid., 216.

actions of these women as an example of extreme devotion to the calculus of substantive reality, what makes the decision of these women to risk their own lives in the face of insurmountable odds seem more understandable is that a mother's love for her child has the power to grant these women tremendous strength and fortitude. However, Fackenheim has suggested that a mother's love for her child would seem to dictate having an abortion in these circumstances. This means that the decision to break with substantive reality and give birth to their children, instead of representing an extreme form of resignation and lack of fortitude, required that these women have the ability to choose a course of action that demanded of them that they overcome their love for their child.

The dilemma faced by a group of Hasidim involved the decision to acquire a sacred religious object, a *tefillin*, in exchange for a quantity of bread. The quantity of bread demanded was of such a volume that to give it up the Hasidim would risk starving to death.¹⁰⁷ At first glance, choosing to exchange the bread for this religious object, as the Hasidim chose to do, seems to represent a break from the calculus of substantive reality. However, Fackenheim himself seems to suggest otherwise, as he mentions that for the Hasidim, the *tefillin* "strengthened the spirit, and hence the body as well,"¹⁰⁸ even more so than the bread that had been given up in exchange. To the non-believer, religious devotion of this type may seem like a wasted, foolhardy effort. But to the Hasidim this course of action had the ability to empower them with a greater amount of fortitude, allowing them to produce a more favourable outcome in the calculus of substantive reality. But Fackenheim does not comprehend these actions of the Hasidim in resistance to the Shoah as a matter of devotion to

¹⁰⁷ Ibid., 218.

¹⁰⁸ Ibid., 219.

the calculus of substantive reality. He explicitly closes off the possibility that the appeal of the Hasidim to a religious realm was in any way an expression of their devotion to winning a victory in a calculable reality of a 'higher' or more divine origin than that of substantive reality: "We find that the concepts of nature and will are inadequate and ... so is recourse to a mystical dimension."¹⁰⁹

The Hasidim were not looking to win victories in a "divine calculus" in order to win the favour of God. As well, and as in the case of the Jewish mothers, the resistance of the Hasidim to the Shoah took place without a focus on the ability to keep breathing. However, the form of resistance this implies - one that is not restricted to a need to find victories in substantive reality, or a calculable reality of any other sort - remains to be identified more clearly.

The actions of the Jewish resistance fighters during the Warsaw and Bialystock Ghetto uprisings seems the most understandable to those whose understanding of resistance involves a concern with securing victories in a calculus of substantive reality. The clear equation of risking one's life to save the lives of others, and of doing violence to those who are taking the lives of others is apparently established by this example of resistance. However, Fackenheim demonstrates that upon closer examination the decision of these members of the Jewish resistance to participate in the uprisings clearly undermines the need to win victories in a calculus of substantive reality. These resistance fighters had come from outside the Ghetto walls to participate in the uprising. This means the fighters were not engaging in the uprising to escape Nazi control and save their own lives. The fighters had already evaded Nazi control, and so were choosing to place themselves into harm's way so

¹⁰⁹ Ibid., 219.

they could protect the inhabitants of the ghettos who could not fight for themselves. But from Fackenheim's description, the 'protection' these fighters could offer should only be understood as a symbolic, and not a substantive act. The battle to save the inhabitants of the ghettos was from a military perspective a lost cause. From the perspective of winning the most favourable outcome in substantive reality, the course of action that would have yielded the lowest body count would have been for the resistance fighters to abandon the inhabitants of the ghettos, and live "to fight" the Nazis "another day" in strategically more effective positions. But the Jewish resistance fighters, by taking up a position of arms in the ghettos, rejected taking a course of action that was restricted to the need to win victories in substantive reality. Fackenheim offers an (emphatic) interpretation of what their decision meant:

Their people, already caught and helpless in the ghettos, were about to be subjected to the Nazi logic of destruction in its extremity: just then these young fighters decided that they must share in the Jewish fate. Why? Not – a perverse and even obscene suggestion – because of some subconscious masochistic wish to submit. On the contrary, because of an unprecedented and wholly conscious decision to resist ... Unlike other uprisings, it was not inspired by hope but began, and could begin, only when all hope had come to an end.¹¹⁰

This "unprecedented decision to resist" that occurs "when all hope has come to an end" is the "essential resistance to the Holocaust world" to which Fackenheim refers. This is a form of resistance that begins when the opportunity to influence substantive reality ends.

The model of resistance that looks for victories in substantive reality has been demonstrated to be inadequate in these examples for providing an explanation of the form of resistance that occurred during the Shoah. Fackenheim has also closed off the possibility of access to some form of mystical reality, as well as any other alternative forms of reality, that through a transcendence of substantive reality is able to provide an explanation of what is

¹¹⁰ Ibid., 222.

involved with “essential resistance to the Holocaust.” This removes the possibility of winning calculable victories in a divine calculus or in a calculus corresponding to a reality of any other sort. But how can resistance that has no aspirations for winning a calculable victory in a reality of any sort be anything but a matter of futility? Fackenheim acknowledges this difficulty:

One may well ask whether these forms of resisting and being should not be viewed much rather as forms of madness. (We have ourselves stressed that they are not “natural” ... that they are not in the sphere of the voluntary). But one considers that the *Unwelt* in which they occurred was a topsy-turvy world, and concludes that, rather than madness, this resistance, this existence was a case of sanity.¹¹¹

This *Unwelt*, or the “Holocaust world,” to which Fackenheim refers is a world that succeeds in all but eliminating the ability of its victims to achieve a victory in substantive reality. This means the victims have essentially lost the opportunity to calculate and act upon a course of action that would allow either themselves or others the possibility to continue breathing.

Here, in the face of this bleak realization about the “Holocaust world,” is where I would like to explicitly address issues surrounding the Idea of Man. When Fackenheim discusses the Idea of Man in connection with the Shoah, he explicitly places the *Muselmänner* at the very center of his concerns: “We must conclude,” he states, “that the *Muselmann* - ‘one hesitates to call him living, and hesitates to call his death death’ - is the most notable, if indeed not the sole, truly original contribution of the Third Reich to civilization. He is the true *novum* of the New Order.”¹¹² Fackenheim is clear in this statement (as well as in others) that he always has the *Muselmänner* at the center of his concerns when he discusses the Idea of Man and the Shoah. Although I feel the central position occupied by

¹¹¹ Ibid., 224.

¹¹² Ibid., 215.

the *Muselmänner* is of great benefit to this discussion, it does present a difficulty. It seems that most commentators on the Shoah, including Fackenheim, caution against reaching an understanding of the *Muselmänner* that would fail to reflect anything but their unwavering and horrid form of silence. The perspective of the *Muselmänner* is to be understood as a perspective that is absent of perspective. Even in the case of those who suffered being a *Muselmänner*, but managed to live to 'tell' about it, the silence remains unbridgeable. What these individuals live to 'tell' is of the experience of not being able to tell. It as if they are describing something that they witnessed happening to someone else - a someone who, during the time they are describing, happened to be occupying their body.

Although Fackenheim is careful to establish a boundary within his writings that cautions against explaining the perspective of the *Muselmänner*, he does not shy away from making statements about what leads men and women into the position of becoming a *Muselmann*. These statements are of the utmost importance for understanding Fackenheim's discussion of the Idea of Man and the Shoah. I would like to refer to the words of the survivor Pelagia Lewinska, which Fackenheim quotes at length, as a basis for his comprehension of the circumstances that led prisoners into becoming a *Muselmann*. These words read as follows:

At the outset the living places, the ditches, the mud, the piles of excrement behind the blocks, had appalled me with their horrible filth ... And then I saw the light! I saw that it was not a question of disorder or lack of organization but that, on the contrary, a very thoroughly considered conscious idea was in the back of the camp's existence. They had condemned us to die in our own filth, to drown in mud, in our own excrement. They wished to abase us, to destroy our human dignity, to efface every vestige of humanity, to return us to the level of wild animals, to fill us with horror and contempt toward ourselves and our fellows.

But from the instant that I grasped the motivating principle ... it was as if I had been awakened from a dream ... I felt under orders to live ... And if I did die in Auschwitz, it would be as a human being.¹¹³

Lewinska has identified in her words how the Nazis had conspired to effectively remove any opportunity she or her fellow inmates had to win a calculable victory in substantive reality: "They had condemned us to die in our own filth." Not only this, the Nazis had made this possible by trying to force their victims to see themselves and their fellow prisoners as responsible for their own (collective) demise. In the face of this, Lewinska explains how she has set aside the need to win victories in a calculable reality as her chosen form of resistance: "If I did die in Auschwitz, it would be as a human being." To avoid dying was less of a priority than being a "human being."

The Nazis have aimed to reduce Lewinska to the lack of influence she exerts on the ability of the body - the bodies of others as well her own body - to continue breathing. Lewinska refuses to allow herself to be reduced by the Nazis in a way that equates the ability to continue breathing with "life" and all that life has to offer. Her form of resistance involves grasping that her opportunity to act upon a course of action that yields a favourable outcome in substantive reality has been taken away. This recognition helps Lewinska to choose to continue with "life."

A similar grasp of their situation has already been found in Fackenheim's description of the Jewish resistance fighters: "By deciding to stay, the fighters in Warsaw, Bialystock, and all the other ghettos had already chosen to share their people's fate. Now they chose, so far as was possible, to defy that fate."¹¹⁴ These fighters had comprehended that their ability to

¹¹³ Ibid., 217.

¹¹⁴ Ibid., 222.

influence substantive reality would be compromised by engaging in an uprising; but they had chosen to relinquish this influence, not as an act of resignation and suicide, but as an act of defiance in celebration of “life.” The sense of resistance shared by the pregnant Jewish women, the Hasidim, the resistance fighters and by Lewinska, involves a certain view or understanding of “life.” This is the view that the ability to continue breathing, or survival, is not a definitive concern for the continuation of “life.” Rather, the reversal becomes apparent - the concern with continuing “life” is the beginning for the concern with securing the ability to continue breathing. In other words, the concern with survival could not continue without a concern for continuing a “life” beyond survival.

The Nazis sought to establish an increasing sense of helplessness within those under their power. The helplessness was to be experienced through the inability to influence substantive reality. The “Holocaust world” was the core of the Nazi effort to produce an unfavourable outcome in the body count of those who were able to continue breathing. The testimony of witnesses that attests to the constant pre-occupation of the inmates with survival in the death camps is a testament to the insecurity experienced by the inmates in the occupation of survival. Efforts to resist against the Nazis through winning victories in substantive reality could only be carried out in a negligible way by those forced to live under Nazi rule. But what could be resisted against was the Nazi decision to fully equate “life” with the ability to continue breathing. This is why in a discussion of resistance to the Shoah, to speak of favourable outcomes in substantive reality misses the mark, or fails to grasp the resistance of those who acted in “resistance to the Holocaust world essentially.” The ability to secure victories in the calculus of substantive reality had been all but completely undermined for the targets of Nazi persecution while the “Holocaust world” was ongoing. Resistance meant holding on to “life” while the opportunity to secure the ability to continue breathing

had been lost. Only with a change of circumstances could a discussion begin again about the opportunity of living a “life” where victories in substantive reality could be secured.

The circumstances that created the *Muselmänner* can now be discussed with greater clarity. These circumstances can best be articulated by reflecting upon the words of Lewinska. Lewinska, upon recognizing her inability to influence substantive reality, chose to resist by continuing with “life.” I would suggest that for other prisoners this same recognition about their inability to influence substantive reality led them to resigning themselves to the idea that “life” had been taken away. The prisoners in the death camps who have resigned themselves to giving up on “life” once they come to the realization that they have lost the ability to influence substantive reality presents a description of the circumstances that led to the creation of *Muselmänner*. The Nazis wished to reduce “life” to an individual’s influence upon the ability of the body to continue breathing, and this reduction seems to have been internalized by those prisoners who became *Muselmänner*. Perhaps this can explain the description of the *Muselmann* as someone who continues breathing even they no longer seem to “have life.”

Fackenheim’s conception of the Idea of Man presented by the Shoah is represented by the spectre of the *Muselmänner*. These individuals have been described here as persons who have recognized their inability to influence substantive reality in a favourable way. But those who acted in resistance to the Shoah were also described as having arrived at the same recognition. The Nazis sought to reduce “life” to the experience of being helpless at securing the ability to continue breathing. This led to the suggestion that a circumstance that leads to the creation of *Muselmänner* is when these prisoners in the death camps resign themselves to internalizing the Nazi equation of “life” as being synonymous with the lack of influence

exerted on the body and its ability to continue breathing. In the examples discussed here: the Jewish mothers, the Hasidim, the resistance fighters, and Pelagia Lewinska, the equation of “life” being reduced to the ability to continue breathing is soundly rejected. Instead, these examples demonstrate that the ability to continue breathing should not come at the cost of giving up on “life.” This means that for those acting in resistance to the Shoah, the concern with securing the ability to continue breathing should not remove the ability of: mothers to engage in motherhood; religious devotees to engage in religious devotion; fighters to engage in fighting for the protection of civilians; and human beings to engage in survival while maintaining their sense of humanity.

The question now arises of what sort of Man were the Nazis creating with the *Muselmänner*? What has been learned (so far) about this Man is that they care not for the continuation of “life” even though they continue walking the earth and breathing. This is to say that with the *Muselmänner* the Nazis created the ‘ideal prototype’ of a Man who is wholly self-destructive. In the next chapter on Nazi Ideology, Fackenheim’s discussion of the Nazi “logic of destruction” will continue to further elaborate upon a description of this Man. The argument Fackenheim makes in the discussion of the Nazi “logic of destruction” is that the creation of the *Muselmänner* isn’t understood as the most expedient means to eliminate the entire Jewish population. Instead, a Man who is wholly self-destructive is the prototypical subject in the completely self-destructive state envisioned by the Third Reich.

Part D: Arendt and the Idea of Man: ‘Unreality’ and the Destruction of Spontaneity

The manipulators of this system believe in their own superfluosity as much as in that of all others, and the totalitarian murders are all the more dangerous because they do not care if they themselves are alive or dead, if they ever lived or never were born.

-Hannah Arendt, The Origins of Totalitarianism, 459.

The site that marks the point of focus for Arendt's investigation of Nazism and the Idea of Man is the Nazi death camps. The conclusion Arendt draws about the ultimate aims of Nazism helps to explain why she places her focus upon this site:

What totalitarian ideologies therefore aim at is not the transformation of the outside world or the revolutionizing transmutation of society, but the transformation of human nature itself. The concentration camps are the laboratories where changes in human nature are tested, and their shamefulness therefore is not just the business of their inmates and those who run them according to strictly "scientific" standards; it is the concern of all men.¹¹⁵

Arendt's understanding of human nature in this passage (and throughout her discussion of Nazism) is that this "nature" is by no means a given. She provides a description of the results of the Nazi experimentation into human nature's possible manifestations:

Total domination, which strives to organize the infinite plurality and differentiation of human beings as if all of humanity were just one individual, is possible only if each and every person can be reduced to a never-changing identity of reactions, so that each of these bundles of reactions can be exchanged at random for any other.¹¹⁶

Arendt outlines three steps that take place as a necessary part in the process that creates a Man who has been reduced to an interchangeable bundle of reactions.¹¹⁷ The first of these steps, which was discussed in the previous chapter on Nazism and Law, involves the destruction of the juridical Man within men. The next two steps involve, first, the destruction of moral Man,¹¹⁸ followed secondly by the destruction of all forms of individualism within

¹¹⁵ Arendt, p. 458.

¹¹⁶ Ibid., 458. Likewise, Arendt also states: "Pavlov's dog, the human specimen reduced to the most elementary reactions, the bundles of reactions that can always be liquidated and replaced by other bundles of reactions that behave in exactly the same way, is the model "citizen" of a totalitarian state; and such a citizen can only be produced imperfectly outside of the death camps" (Ibid., 456).

¹¹⁷ Ibid., 447-455.

¹¹⁸ When Arendt refers to the destruction of Moral man, I would suggest she is discussing the (potential) removal of the possibility for Man to be moral, and not an elaboration of what it means to exercise this possibility. Arendt offers further explanation of the conditions required for Man to be moral when she discusses in The Human Condition "Action" and the ability of human beings to act insofar as humanity can be considered as a plurality. Still, her discussion does not include a prescription of what actions must be committed in the exercising of this possibility. See the section on "Action" in The Human Condition, especially p. 176 and p. 245-246.

men. These remaining two steps in the process of reducing Man to an undifferentiated and superfluous state of interchangeable reactions will be described in this chapter. This leaves to the final chapter on Nazism and Ideology a discussion of the circumstances that led Nazism to take up the extremely peculiar and extremely dangerous aim of reducing Man to a state of superfluity.

As with the Nazi treatment of Law, and the destruction of juridical Man to which this leads, the reliance upon the creation of a fictitious world of unreality acts as the basis for the Nazi treatment of the Idea of Man - and the destruction of Moral man and the individualism within Man to which this leads. Not only this, but the process by which Nazism employs the creation of a fictitious world of unreality for the purpose of dismantling moral Man and the individualism within Man is analogous to the process by which juridical Man is eliminated. However, this analogy extends only to the logic employed in this process, and not to the means. The Nazi destruction of juridical Man was carried out by means of assigning death sentences without any consideration of the actions of the citizenry committed in reality. The destruction of moral Man and the destruction of the individualism within Man each also require a different set of means for their destruction to occur. But as assuredly as the fictitious unreality of Nazi Law is completely non-responsive to the juridical interests of its citizenry, the fictitious unreality corresponding to the Nazi Idea of Man is equally unresponsive to the moral and individualistic interests of its citizenry.

Arendt treats the subject of the means by which Nazism destroys moral Man and the individualism within Man with a certain amount of brevity. Nonetheless, in her discussion of the destruction of moral Man, Arendt wishes to make two points very clear. The first of these

points involves the Nazi effort to remove from existence all memory of those who were the victims of their campaign of mass murder. By its very design the momentum behind mass murder achieves this goal by murdering many of those who were present to act as witnesses. Additionally, the Nazi authorities ensure that the memory of those who were the victims of mass murder is something that remains ‘nobody’s business.’ This is ensured through maintaining the silence of those who were not “selected” for mass murder - a silence that is enforced by means of the very real threat of having these witnesses themselves become one of the number of ‘nobody’s’ whose lives have been obliterated from memory.

But what purpose is served by assailing the victims with the additional indignity of having their deaths made anonymous? In her description, Arendt repeatedly gives the label “holes of oblivion”¹¹⁹ to the concentration camps. The intention of this statement can perhaps be gleaned by way of an example Arendt relates:

How important to the total-domination apparatus this complete disappearance of its victims is can be seen in those instances where, for some reason or another, the regime was confronted with the memory of survivors. During the war, one SS commandant made the terrible mistake of informing a French woman of her husband’s death in a German concentration camp; this slip caused a small avalanche of orders and instructions to all camp commandants, warning them under no circumstances was information ever to be given to the outside world. The point is that, as far as the French widow was concerned, her husband had supposedly ceased to live at the moment of his arrest, or rather had ceased ever to have lived.¹²⁰

Existence itself - in the sense of having the capacity to exist (or not) - is entirely contingent upon the fictitious unreality that has been created by the Nazis, and what this unreality determines to be “real.” To receive reports about life in the “holes of oblivion” would be no different than if someone in the land of the living had received news about the fate of someone in Hell.

¹¹⁹ For example: *Ibid.*, 434.

¹²⁰ *Ibid.*, 434.

The point of arrest and entrance into the concentration camps marks the point in the story of the Nazi fictitious unreality where the life of the individual who has been arrested ends, and so is removed from ever having been a part of the story. There can be no life for these unfortunate individuals or for any other individual under Nazi rule outside of the life that has been determined for them by the Nazi fictitious unreality. Information about life that takes place independently of the reality that has been assigned to it by the Nazi fictitious unreality threatens to destroy the fiction. The same type of dependence on the fictitious unreality of the Nazis was found with Law. For example, Arendt explains how the operations of the Secret Police under Nazi rule are distinguishable from the operations of the Secret Police in a tyranny. In a tyranny, the Secret Police instigate criminal investigations to learn about the “wrong-doings” of the general populace. This gives their organization the capacity to decide who is a legal threat to the state. However, “Under totalitarian regimes”:

The kind of knowledge that can be possessed only by the police has undergone an important change: the police are no longer concerned with knowing what is going on in the heads of future victims (most of the time they ignore who these victims will be), and the police have become the trustees of the greatest state secrets. This automatically means a great improvement in prestige and position, even though it is accompanied by a definite loss of real power. The secret service no longer know anything that the Leader does not know better; in terms of power, they have sunk to the level of the executioner.¹²¹

As was seen in the previous chapter, the guilt or innocence of the acts committed by the citizenry are of no interest to the Nazi legal authorities, as far as these acts serve as a method for determining the guilt or innocence of its citizenry. The Secret Police are incapable of knowing anymore about the criminal activity of the general populace beyond what is stated in the official story about this activity by the Leader. The Police are prevented from being knowledgeable about this activity for the simple reason that there is no reality to be knowledgeable about. The possibility for there to be a reality that is created by the actions of

¹²¹ Ibid., 426.

the citizenry and originating independently from the Nazi fictitious unreality has simply been disallowed.

Just as it is non-responsive to the legal activities of its citizenry in reality, the Nazi fictitious unreality is also non-responsive to the very existence of its citizenry in reality. A fictitious world has clearly been created when the lives of the citizenry living under Nazi rule are determined to be non-existent; and when the continued existence of those living under Nazi rule becomes completely dependent upon what the Nazi fictitious unreality determines to be existent.

The second point Arendt makes in her discussion of the means by which the Nazis dismantle Moral man is that Nazism seeks to quite literally destroy the opportunity for its citizenry to be moral. The participation of the citizenry in a life with moral choices or a life with a moral reality is annihilated under Nazi rule. This is accomplished through the creation of an unreality that makes the continued existence of the citizenry contingent upon their willingness to comply with mass murder. Participation in the Nazi fictitious unreality is designed to remove the possibility for its citizenry to live a life in a moral reality with its own set of concerns that arise independently. Even suicide is ruled out as a possibility to act out in a form of moral protest to the Nazi system that demands that all citizens become mass murders. The reason is that a suicide conducted for these purposes represents a crime, with the punishment being enacted not on one's self but as a death sentence for one's closest relatives. "The alternative," Arendt observes, "is no longer between good and evil, but between murder and murder."¹²² In the unreality that the Nazis employ for the purpose of destroying moral Man, a suicide that would be intended as a selfless act of moral protest against a murderous system is transformed into a selfish act of immoral compliance with a

¹²² Ibid., 452.

murderous system. The Nazi treatment of moral Man is described as an unreality for its aim of removing the opportunity for the citizenry under Nazi rule to be moral. In addition even to this, the treatment of moral Man within the Nazi unreality transforms the efforts of its citizenry to be moral into conduct that supports mass murder.

The continued existence of those living under Nazi rule becomes completely dependent upon the Nazi fictitious unreality. This dependence occurs in both the case of the Nazi effort to remove from all memory the lives of those who are the victims of its campaign of mass murder, and the Nazi effort to destroy the opportunity of those living under Nazi rule to be moral. There can be no life that exists independently of the life whose continued existence is dependent upon what the Nazi fictitious unreality determines to be real; and there can be no moral life outside of the life whose continued existence is dependent upon an immoral compliance with the Nazi reality of mass murder. Without a memory of the moral life of Man in the past, and with no opportunity for the engagement in a moral life in the present, the possibility for the continued existence of moral Man in the future is being severely tested, if not threatened with outright extinction.

The brevity of Arendt's discussion of the means by which the destruction of the individualism within Man is carried out reflects her acknowledged unwillingness to examine the torture and cruelty the Nazis "experimented with" in their "laboratories" (the concentration camps) to destroy individualism. What is highly significant within Arendt's discussion of the Nazi destruction of individualism within Man, however, is an observation she provides concerning what it is about Man that the Nazis are targeting. Arendt's argument is that the three-step process that reduces men to a superfluous state of interchangeable and redundant bundles of reactions is essentially the process whereby all forms of spontaneity within Man are targeted and destroyed. What this means is that throughout this process that

starts with the destruction of juridical Man, followed by the destruction of moral Man, and ending with the destruction of individualism within Man, the target (spontaneity) is the same. The difference between the destruction that occurs in each of these steps is the form in which spontaneity is being expressed, until the destruction of spontaneity in every form of expression occurs.

Arendt equates spontaneity with individualism (“to destroy individuality is to destroy spontaneity”¹²³), which raises the following concern: If the destruction of individuality is equated with the destruction of spontaneity, then the destruction of spontaneity that supposedly had already occurred during the destruction of juridical and moral Man would now seem redundant. In other words, logic would seem to dictate that the possibility that there is a need for the destruction of different forms of spontaneity in the first two steps of this process (occurring as part of the destruction of juridical and moral Man) has been excluded considering that the destruction of spontaneity in every form is going to occur anyway in the third step of this process (as part of the destruction of the individuality within Man). The explanation for this apparent confusion is that Arendt, by discussing juridical Man and moral Man, has singled out the forms of individual or spontaneous expression that have the greatest amount of political relevance. The third step in this process is the destruction of all other remaining vestiges of individual or spontaneous expression (of highly dubious political relevance). This can be appreciated through Arendt’s comment that: “Those who aspire to total domination must liquidate all spontaneity, such as the mere existence of individuality will always engender, and track it down in its most private forms, regardless of how unpolitical and harmless these may seem.”¹²⁴ After the possibility has been removed for

¹²³ Ibid., 455.

¹²⁴ Ibid., 456.

spontaneous or individual expression to occur in its most political relevant forms (that is, as juridical or moral expression), whatever other forms of spontaneous or individual expression remain (artistic, or religious, etc.) are then targeted for destruction by the Nazi fictitious unreality.

Arendt's description of the process whereby the destruction of juridical Man, moral Man and the individualism within men occurs provides her sense of the Idea of Man that Nazism is seeking to create. A summary of this process can (again) be provided by referring to one of the three locations where Arendt speaks on the theme of the Nazi efforts to transform human nature:

The camps are meant not only to exterminate people and degrade human beings, but also serve the ghastly experiment of eliminating, under scientifically controlled conditions, spontaneity itself as an expression of human behaviour and of transforming the human personality in to a mere thing, into something that even animals are not; for Pavlov's dog, which, as we know, was trained to eat not when it was hungry but when a bell rang, was a perverted animal.¹²⁵

"The preparation of living corpses" is also a term that Arendt gives to this process that - by means of a fictitious unreality that is completely non-responsive to the interests of the citizenry to engage in spontaneous or individual expression - leads to the creation of men that have been reduced to a superfluous state of undifferentiated and redundant bundles of reactions. The citizenry are prevented from creating a reality of their own by participating in the Nazi fictitious unreality that forces them to live a life whose continued existence is completely dependent upon the Nazi unreality. The reliance of the Nazis upon a fictitious unreality may provide a reasonable explanation of the Nazi Idea of Man, whose aim is the "preparation of living corpses." But what explanation can be given to the purpose the Nazis

¹²⁵ Ibid., 438. The other locations where Arendt speaks on this theme have been cited in note 108.

have with this aim of creating an Idea of Man, that, through the reliance upon a fictitious unreality removes the possibility of its citizenry to engage in a reality of their own, creates men who are completely incapable of any form of spontaneous or individual expression?

“Terror” is the term that Arendt uses to refer to the Nazi effort to forcefully bring into reality their creation of a fictitious unreality. As is stated above, the Nazi Idea of Man was achieved through terror or the enforcement of a fictitious unreality; and Arendt’s description of the aims of Nazi terror explains the purpose of the Nazis in creating an Idea of Man whose aim was the destruction of all vestiges of individuality or spontaneity:

Terror is the realization of the law of movement; its chief aim is to make it possible for the force of nature or of history to race freely through mankind, unhindered by any spontaneous human action. As such, terror seeks to “stabilize” men in order to liberate the forces of nature or history. It is this movement which singles out the foes of mankind against whom terror is let loose, and no free action of either opposition or sympathy can be permitted to interfere with the elimination of the “objective enemy” of History or Nature, of the class or the race. Guilt or innocence become senseless notions; “guilty” is he who stands in the way of the natural or historical process which has passed judgement over “inferior races,” over individuals “unfit to life,” over “dying classes and decadent peoples.”¹²⁶

The “law of movement” Arendt refers to in this passage is the concern of the Nazi fictitious unreality, or Nazi Ideology, with “race.” This concern begins with the “purification of the Aryan race” as a satisfaction of the higher laws of Nature. In compliance with these laws, the logic of Nazi Ideology calls for the “removal,” or eventually the elimination of “inferior races.” As quoted in the last chapter, Arendt states that:

It would mean the end of nature itself if new categories of the harmful and unfit to live could not be found ... In other words the law of killing by which totalitarian movements seize and exercise power would remain a law of the movement even if they ever succeeded in making all of humanity subject to their rule.¹²⁷

¹²⁶ Ibid., 465. Regarding the contrast in this passage between spontaneity and stability: Spontaneity has the ability to create a version of reality other than the unreality Nazi Ideology seeks to create. Since Nazi Ideology holds any other version of reality in contempt, it seeks to eliminate spontaneity and encourage stability. In the case of this Ideology, this means creating human beings that conform to the image of Man that reacts in a way that is completely self-destructive.

¹²⁷ Ibid., 464.

Arendt's appreciation of Nazi terror and its aim of realizing "The Law of Nature" through the "purification" or elimination of "inferior races" leads her to observe that from the reality of the: "Everyday experience of the evergrowing masses of our century. The merciless process into which totalitarianism drives and organizes the masses looks like a suicidal escape from this reality."¹²⁸

The Nazi Idea of Man, "the preparation of living corpses," is essential to Nazi Ideology as it "strives ... toward a system in which men are superfluous."¹²⁹ The aim of the Nazi Idea of Man is to "stabilise" men so that the citizenry have no experience of reality other than the experience of a reality that is totally dominated by Nazi Ideology and what Nazi Ideology determines to be real. Arendt's contention is that the experience of being superfluous does not originate with Nazi Ideology but arises as a reflection of the experiences of a large portion of the modern masses. This is why in the next chapter the experience of superfluity - its origins, its significance to Nazism - will be the focus of the investigation into Arendt's understanding of Nazi Ideology.

Part E: Agamben and the Nazi Idea of Man: The Futility of Isolating "Natural Life"

Power would no longer be dealing simply with legal subjects over whom the ultimate dominion was death, but with living beings, and the mastery it would be able to exercise over them would have to be applied at the level of life itself; it was taking charge of life, more than the threat of death, that gave power its access even to the body ... What might be called a society's "threshold of modernity" has been reached when the life of the species is wagered on its own political strategies.

- Michel Foucault, The History of Sexuality, 143.

The argument Agamben makes in his discussion of law is that every political community authorises sovereign power to be the vehicle for deciding who has the right to

¹²⁸ Ibid., 478.

¹²⁹ Ibid., 457.

live within the boundaries of its community. This decision represents an immediate politicization of life, as the right to live in a community represents a political decision. Agamben explains that the understanding of “life” in classical politics reflects how the decision over who has the right to live in a community was realized in classical politics. This is illustrated by his recalling the two words in ancient Greece that were used to describe what in modern English is meant by the term “life:” *zoē* and *bios*.¹³⁰ Agamben uses the terms “bare life” and “natural life” interchangeably with *zoē*; while “form of life” or “political life” are used interchangeably with *bios*.¹³¹ In classical politics it was not the natural life but the political life of the citizenry that was examined to determine who had the right to life within a community. Modern politics on the other hand attempts to abolish any political rights or privileges (for example, the privileges of nobility) that, as part of prior commitments in political life, had been extended only to certain portions of the populace. To accomplish this goal modern democracy sought to establish equal rights for all citizens on the basis of the “rights of man” - that is, on the basis that the natural life of the populace is a guarantor that all citizens are to be treated with equality. Agamben describes the pursuit of this goal in modern politics, and then assesses the outcome of the process that transpires in the pursuit of this goal:

If anything characterizes modern democracy as opposed to classical democracy, then, it is that modern democracy presents itself from the beginning as a vindication and liberation of *zoē*, and that it is constantly trying to transform its own bare life into a way of life and to find, so to speak, the *bios* of *zoē*. Hence, too, modern democracy’s specific *aporia*: it wants to put the freedom and happiness of men into play in the very place – “bare life” – that marked their subjection. Behind the long, strife-ridden process that leads to the recognition of rights and formal liberties stand once again the body of the sacred man with his double sovereign, his life that cannot be sacrificed yet may, nevertheless, be killed ... Democracy, at the very moment in which it seemed to have finally triumphed over its adversaries and reached its

¹³⁰ Agamben, 1.

¹³¹ For the sake of clarity, as much as possible natural life and political life will be used (respectively) as the substitutes (and as the only substitutes) for *zoē* and *bios*.

greatest height, proved itself incapable of saving *zoē*, to whose happiness it had dedicated all its efforts, from unprecedented ruin ...¹³²

... This is modern democracy's strength and, at the same time, its inner contradiction: modern democracy does not abolish sacred life but rather shatters it and disseminates it into every individual body, making it into what is at stake in political conflict.¹³³

Agamben's argument contends that the decision over who has the "right to have rights"¹³⁴ has become alarmingly dangerous in the modern political scene, with of course Nazi law being the most lethal example of how this decision was realized. The strict separation between natural life and political life in classical politics prohibited political discussion from having a "say" in the constitution of natural life, just as natural considerations were prohibited from determining the constitution of political life.

In light of the events that took place in the Nazi death camps, Agamben makes the following remark:

We no longer know anything of the classical distinction between *zoē* and *bios*, between private life and political existence, between man as a simple living being at home in the house and man's political existence in the city ... There is no return from the camps to classical politics. In the camps, city and house become indistinguishable, and the possibility of differentiating between our biological body and our political body - between what is incommunicable and mute and what is communicable and sayable - was taken from us forever. And we are not only, in Foucault's words, animals whose life as living beings is at issue in their politics, but also - inversely - citizens whose very politics is at issue in their natural body.¹³⁵

As was demonstrated in the discussion of Nazi law, and expressed again by Agamben's words in the passage quoted above, natural life and political life were increasingly intertwined and made indistinguishable under Nazi rule. The implications that the intertwining of natural and political life have for the Nazi Idea of Man will be the focus for the discussion of Agamben's work in this chapter.

¹³² Ibid., 9-10.

¹³³ Ibid., 124.

¹³⁴ Arendt, 296.

¹³⁵ Agamben, 187-188.

Homo sacer is the central character throughout Agamben's investigation. These individuals are the "other side" of the decision over who has the right to life within a community. Those who are not excluded by this decision (i.e. they are not *homo sacer*) have added to their natural life the possibility to enjoy a form of political life that includes legal rights, etc. Those who are excluded by this decision and become the individuals designated as *homo sacer* have imposed upon their natural life a form of political life arising from the power of the sovereign. The moniker Agamben affixes to *homo sacer* is "those who can be killed, but not sacrificed."¹³⁶ This means that the killing of these individuals by any member of the community does not represent the commission of a homicide. Figuratively speaking, their natural life is ended by means of a political decision, and more specifically, a biopolitical decision. Agamben's discussion of Nazi law presented the argument that this version of law increasingly became concerned with matters of biopolitics. The interest of the Nazi authorities was the expansion of sovereign power and allowing sovereign power to exercise its decision over who has the right to live in a community without any form of restrictions. In a state of exception (or emergency) all political decisions are decided solely on the basis of sovereign power. The declaration of a permanent state of exception in Nazi Germany was the evidence presented (in the last chapter) to support the assertion that Nazi law was interested in the expansion of sovereign power.

The direction in which the logic of the argument proceeds concerning the Idea of Man being created by Nazi Law is easy to perceive. If *homo sacer* is a figure who can be killed at

¹³⁶ Ibid., 8. Curiously, this character also caught the attention of Nietzsche, who dedicates his "appendix of songs" in the *Gay Science* to Prince Volgenfrei. "Volgenfrei," as Walter Kaufmann explains, "literally "bird-free" or free as a bird, usually signifies an outlaw whom anybody may shoot at sight" (Friedrich Nietzsche, *The Gay Science*, Trans. Walter Kaufmann (Toronto: Random House, 1974), 349.) However the association seems purely incidental, as Nietzsche's interests appear unrelated.

the behest of sovereign power without inhibition, and if Nazi law sought the expansion of sovereign power to the point where - with this power becoming the sole basis of its rule - all of the citizens under Nazi rule could be transformed into *homo sacer*, then the Idea of Man that Nazism produces is one where each and every one of its citizens can be killed at the behest of sovereign power without any inhibition. Unfortunately, the dangers presented by Agamben's argument concerning the expansion of sovereign power are even worse than this. With the expansion of sovereign power also came the expansion of the different Ideas of Man that Nazism had occasioned.

Further comment about the "natural life" of *homo sacer* will help to describe the different images of Man arising from the expansion of sovereign power. Clearly the natural life of *homo sacer* is not isolated from their political existence. As mentioned, the form of political life given to the natural life of *homo sacer* arises from sovereign power. Sovereign power, Agamben contends, by its design is an extremely ambiguous form of political life. Sovereign power cuts through and removes the political life that has been added to the natural life of those who have been extended the right to live in a community. This leaves sovereign power in direct confrontation with natural life. However the confrontation that opposes sovereign power to natural life is a confrontation that is constructed by political means. Instantaneously and unavoidably sovereign power infuses the natural life of *homo sacer* with political significance in this confrontation. The act of stripping *homo sacer* bare of its political life (*i.e.*, the orchestration of the confrontation between natural life and sovereign power) is a political act and it automatically gives the natural life of *homo sacer* a political constitution. Agamben describes the exchange between sovereign power and the natural life of *homo sacer* as follows:

Let us now observe the life of *homo sacer*, or of the bandit ... He is pure *zoē*, but his *zoē* is as such caught in the sovereign ban and must reckon with it every moment, finding the best way to elude or deceive it. In this sense, no life, as exiles and bandits know well, is more “political” than his.¹³⁷

When sovereign power attempts to lay the life of *homo sacer* bare and natural, in a sense it ends up encountering itself, bringing a political significance to the natural life of these individuals (and necessarily so). This is a demonstration of the futility of this whole endeavour that sovereign power chooses to engage in with natural life.

The attempts to expand sovereign power by eliminating political life and produce a foundation for sovereignty that is constituted solely on the basis of nonpolitical life will always fall short. Sovereign power cannot avoid adding even just a tinge of political significance to any nonpolitical life that it comes into contact with. This political significance grants to natural life a political life and political rights - however meagre this political life and the rights it affords may be. The goal of sovereign power in modern democracy, to provide a foundation for its sovereignty by eliminating all rights or ‘privileges’ arising from political life, and thereby establishing itself on the natural rights that follow from natural life, will then have been thwarted. This means the foundation sovereign power wishes to establish for itself will always and necessarily slip away from it - so long as this foundation is thought to rest in nonpolitical life and upon ‘natural rights.’ (The concept of rights only seems to make sense in a political context - which means ‘natural rights’ begin to appear as a contradiction in terms.) Whatever the relationship is precisely between natural life, political life, and ‘rights’ in modern democracy, this much is clear: Whenever sovereignty touches upon “natural life” to strike a foundation, this foundation will always bear the mark of sovereignty.

¹³⁷ Ibid., 184 –185.

Nonetheless, in the modern context sovereign power does not recognize this futility; and so Agamben observes:

One of the essential characteristics of modern biopolitics (which will continue to increase in our century) is its constant need to redefine the threshold of life that distinguishes and separates what is inside and out. Once it crosses over the walls of the *oikos* and penetrates more and more deeply into the city, the foundation of sovereignty - nonpolitical life - is immediately transformed into a line that must be constantly redrawn ... And when natural life is wholly included in the *polis* - and this much has, by now, already happened - these thresholds pass, as we will see, beyond the dark boundaries separating life from death in order to identify a new living dead man, a new sacred man.¹³⁸

Sacred life refers to the life of *homo sacer* - a life that is neither entirely naturally or entirely political, but instead a troubling combination of natural life and sovereign power. If the home is representative of the dwelling place of natural life, and the city representative of political life, then the camp is representative of the dwelling place of sacred life. (As perhaps a morbid form of symbolism, the act of tattooing the camp prisoners has significance as a reflection of sovereign power's ambition to (literally) inscribe itself upon natural life).

Agamben's analysis of "sacred life" presents a very fundamental challenge to the traditional conception of "natural life" and "political life" within classical politics. The challenge he presents is to question whether or not a clear distinction between "natural" and "political" life is even possible. After discussing the conflicts arising from the dynamic between natural, political, and sacred life, Agamben asks in a critical spirit: "Does *zoē* really need to be politicized, or is politics not already contained in *zoē* as its most precious center? The biopolitics of both modern totalitarianism and the society of consumer hedonism and consumerism certainly constitute answers to these questions."¹³⁹ Although it is possible to

¹³⁸ Ibid., 131.

¹³⁹ Ibid., 11. The idea that natural life is already politicized is implicit throughout Agamben's discussion; although Agamben does offer more explicit statements concerning his position. For example: "The same bare life that in the *ancient regime* was politically neutral and belonged to God as creaturely life and in the classical world was (at least apparently) clearly distinguished as *zoē* from political life (*bios*) now fully enters the

speculate, the precise connection Agamben has in mind between biopolitics and “a society of consumer hedonism and consumerism” is not evident to me from any of the arguments he provides. Doubt may also rest in the suggestion that the example of totalitarian society is a clear indication that natural life is inherently political. The difficulties experienced in isolating natural life may be viewed as being a consequence of the distortions of a totalitarian form of government rather than an example of the futility of engaging in the effort to isolate natural life. Whether or not natural life can be isolated completely from political life will not be decided here. The focus of the discussion of Agamben’s work, as stated earlier, is to develop a sense of the Idea of Man that is produced as sovereign power intensifies and expands.

Agamben’s discussion of human rights is relevant to this discussion of the expansion of sovereign power. Agamben discusses the political status of sacred man as this relates to the enjoyment of rights by the refugee. A comparison to classical politics can perhaps be illuminating in this regard; and a passage from Arendt can supply a description of this sort of comparison:

We became aware of the existence of a right to have rights ... and a right to belong to some kind of organized community, only when millions of people emerged who had lost and could not regain these rights because of the new global political situation. The trouble is that this calamity arose not from any lack of civilization, backwardness, or mere tyranny, but, on the contrary, that it could not be repaired, because there was no longer any “uncivilized” spot on earth, because whether we like it or not we have really started to live in One World. Only with a completely organized humanity could the loss of home and political status become identical with expulsion from humanity all together.

Before this, what we must call a “human right” today would have been thought of as a general characteristic of the human condition which no tyrant could take away.¹⁴⁰

structure of the state...” (Ibid., 127). The “apparently” in this passage reflects the critical stance Agamben presents in his position towards the idea that complete separation can occur between natural and political life.
¹⁴⁰ Arendt, 296-297.

Agamben's discussion of human rights also expresses both reservations and even suspicion of hidden dangers lurking within the conceptualization of these rights: "Humanitarian organizations ... can only grasp human life in the figure of bare or sacred life, and despite themselves, maintain a secret solidarity with the very powers they ought to fight."¹⁴¹ Agamben's point can be grasped by recognizing how the distinction between an individual who is suffering at the hands of some form of crime and can thus seek justice in a court of law, and an individual suffering through a "humanitarian crisis," is in the end untenable. Even if the unjust acts being committed against these individuals are identical, the response to their suffering will be carried out with vastly different expectations. This aside, Agamben's argument concerning "human rights" is that this form of rights affirms the decision by a sovereign power to exclude these individuals and their right to life within an "organized community." "Human rights" lower the bar for the form of political life that a refugee lives. This life is further cemented in the ground of sovereign power when the offences committed against the individuals who have been classified as refugees are actions that also abolish the rights of these individuals to have rights within any community.

As was already noted in the chapter on Nazism and Law, Agamben observes how the Nazis took the care of removing the rights of citizenship of the German Jews who were interned in the death camps: "One of the few rules to which the Nazis constantly adhered during the course of the 'Final Solution' was that Jews could be sent to the extermination camps only after they had been fully denationalized (stripped even of the residual citizenship left to them after the Nuremberg laws)."¹⁴² From this observation, the following two

¹⁴¹ Agamben, 133.

¹⁴² Ibid., 132. See also Arendt, 296: "Even the Nazis started their extermination of Jews by first depriving them of all legal status (the status of second-class citizenship) and cutting them off from the world of the living by herding them into ghettos and concentration camps; and before they set the gas chambers into motion they had

conclusions seem as though they can be easily drawn: The Nazis were looking to ensure the life of the Jews - having been laid bare and natural - had become synonymous with the sacred life of *homo sacer*. And as well, the removal of the Jew's rights of citizenship (in the Third Reich) by the Nazis recognizes that the rights of the refugee as a citizen of no country are far more "permissible" to infringe upon. This same recognition is made within the concept of human rights, although obviously the Nazis make this recognition about the refugee in an incomparably more sinister fashion, as the Nazis use the status of the refugee as their permission to commit inhuman treatment.

Part F: *Homo Sacer* and the *Muselmänner*: A New Form of Life; A New Idea of Man

As they were with each of the sections in this chapter discussing Fackenheim's and Arendt's work, the *Muselmänner* or "living corpses" are also the central figure of Agamben's discussion of the Nazi Idea of Man. As may have been expected, in Agamben's work the *Muselmann* is a form of life that is a version of *homo sacer* – that is, a "sacred life" or a form of natural life that is constituted by sovereign power. Agamben argues the *Muselmann* is a figure that emerges from the unprecedented and cruel means that the Nazis employed at the death camps during the Shoah. Their sacred life is a form of life that is stripped bare of its political life and left only with a natural life that is placed in direct confrontation with Nazi sovereign power. As with any other prisoner in the camps the Nazis sought to impose upon the natural life of the *Muselmänner* a form of life that was constituted by the Nazi version of sovereign power. This form of life was constituted by a biopolitical decision that determined

had carefully tested the ground and found out to their satisfaction that no country would claim these people. The point is that a condition of complete rightlessness was created before the right to live was challenged."

who had the right to live and who had “life unworthy of being lived.”¹⁴³ This distinction was of course decided upon with “racial criteria” or, to use Agamben’s phrase, by means of “a eugenic key”¹⁴⁴ that separated Jewish life from Aryan life.

Yet Agamben argues that the encounter between the Nazi officials at the death camps and the *Muselmänner* did not transpire as these officials had anticipated. To their surprise, in the life of the *Muselmänner* the Nazi officials did not encounter a form of life stripped bare of its political life, which they could then confront as natural life and impose a form of life upon these prisoners that would be constituted solely by sovereign power. Agamben describes (instead) the *Muselmänner*’s form of life; and how this influenced the encounter between the Nazi officials and these prisoners:

He [the *Muselmann*] was not only, like his companions, excluded from the political and social context to which he once belonged; he was not only, as Jewish life that does not deserve to live, destined to a future more or less close to death. He no longer belongs to the world of men in any way; he does not even belong to the threatened and precarious world of the camp inhabitants who have forgotten him from the very beginning...

What is the life of the *Muselmann*? Can one say that it is pure *zoē*? Nothing “natural” or “common,” however, is left in him; nothing animal or instinctual remains in his life. All his instincts are cancelled along with his reason. Antelme tells us that the camp inhabitant was no longer capable of distinguishing between pangs of cold and the ferocity of the SS. If we apply this statement to the *Muselmann* quite literally (“the cold, SS”), then we can say that he moves in an absolute indistinction of fact and law, of life and juridical rule, and of nature and politics. Because of this, the guard suddenly seems powerless before him, as if struck by the thought that the *Muselmann*’s behaviour – which does not register any difference between an order and the cold – might perhaps be a silent form of resistance. Here a law that seeks to transform itself entirely into life finds itself confronted with a life that is absolutely indistinguishable from law, and it is precisely this indiscernibility that threatens the *lex animata* of the camp.¹⁴⁵

As yet, Agamben’s description of “a law that seeks to transform itself entirely into life” has not been fully explained. Agamben does attach a great deal of importance to this

¹⁴³ Agamben traces this phrase back to its original publication, which surprisingly was not found amongst Nazi literature. The phrase first appeared in 1920 in a book on Euthanasia: “Authorization for the Annihilation of Life Unworthy of Being Lived.” See Agamben, 136-143.

¹⁴⁴ Ibid., 153.

¹⁴⁵ Ibid., 185. Robert Antelme is a Shoah survivor and writer.

notion, stating: “The radical novelty implicit in this conception has not been sufficiently noticed by historians of law.”¹⁴⁶ Further clarification of this issue will be provided in the chapter on Agamben’s discussion of Nazi Ideology; the pertinence being that the “coincidence of fact and law” is described by Agamben as being the ultimate goal of Nazi Ideology.

For now, this much is clear: With the *Muselmann* the Nazis had created an encounter with “a new living dead man, a new sacred man.” The natural life of *homo sacer* is targeted by sovereign power so that their life can be brought to an end. As has been noted with the version of *homo sacer* that the outlaw represents: “He is pure *zoē*, but his *zoē* is as such caught in the sovereign ban and must reckon with it at every moment, finding the best way to elude or deceive it.” But for the *Muselmann*, the new version of *homo sacer*, “the new living dead man,” or finally, the new Idea of Man that emerges from the Shoah, the option of eluding sovereign power is not even presented as a possibility. Instead of the life of the *Muselmann* being ended by a decree of sovereign power, sovereign power extends their life beyond death, leaving them in a state of “living death.” The *Muselmänner* have lost both instinct and reason, both their natural life and political life have been obliterated to the extent that their form of life is now completely constituted by sovereign power.

The constitution of “Aryan life” and “Jewish life” can perhaps be more fully appreciated in light of what is being said about the constitution of the *Muselmann*’s life (and especially considering what has already been argued earlier about Arendt’s description of the fictitious ‘unreality’ created by Nazi law and the Nazi Idea of Man that has no basis in a reality that is independent from this ‘unreality’). Using Agamben’s description of the Nazi Idea of Man as a guide, the opposition of “Aryan life” to “Jewish life” is not an opposition

¹⁴⁶ Ibid., 173.

between two forms of “natural life.” The distinction between “Aryan life” and “Jewish life” is a political determination of who has the right to live in a community that is made on the basis of biopolitical criteria - that is, by a consideration of concerns that represent a mixture of biology and politics. Therefore, as a product of a biopolitical decision, both “Aryan life” and “Jewish life” represent a form of life that is created without reference to the natural or political life of the populace that is constituted independently of sovereign power. They represent a form of life that is solely a creation of sovereign power.

The “Jewish life,” and ultimately the life of the *Muselmänner*, represent the most extensive effort of the Nazis to isolate natural life and establish upon this natural life a “foundation for its sovereignty.” However, these efforts only demonstrated to the Nazis that the life of the *Muselmänner*, a life that had become unimaginably passive, represented a form of resistance to their rule. What further lengths would have the Nazis gone to in the care of “Aryan life” to isolate a natural life that would provide a “foundation for its sovereignty?”¹⁴⁷ Fortunately a definitive answer cannot be provided to this question. But the Nazis would have had to expand their efforts to “isolate natural life” amongst the population under their rule if they were to establish for themselves the “holy grail” of a sovereign power based upon a foundation of pure natural life. It is difficult to imagine the Nazis coming across a form of life even more horrid or miserable than the *Muselmänner* - “the new living dead man, the new sacred man” - as their efforts to expand sovereign power intensified. Nonetheless, there is no question that according to Agamben’s argument concerning the Nazi Idea of Man, Nazi rule had been established and would have to continue to be established in the future on the foundation of an Idea of Man that reflected their efforts to isolate a pure form of natural life:

¹⁴⁷ “The *Volksgemeinschaft* was merely the propagandistic preparation for an “Aryan” racial society which in the end would have doomed all peoples, including the Germans” (Arendt, 361).

in other words, on a *Muselmann* or “a living dead man.” Clearly the expansion of sovereign power for the purpose of augmenting the number of individuals who fit the description of this new version of *homo sacer* created by the Nazi Idea of Man – an idea which is a product of the furthest point in the development of the Nazis efforts to expand sovereign power – is nothing other than the promotion of individuals who would be suited to become citizens in the wholly self-destructive state.

Chapter 3: Nazism and Ideology

What totalitarian rule needs to guide the behaviour of its subjects is a preparation to fit each of them equally well for the role of executioner and the role of victim. This two-sided preparation, the substitute for a principle of action, is the ideology.

- Hannah Arendt, The Origins of Totalitarianism, 468.

The discussion of Nazi Law and the Nazi Idea of Man in the previous two chapters focused upon the ways Nazism sought to transform reality mostly by considering how Nazism tried to destroy the reality of the world with which it was confronted. The Nazi versions of Law and the Idea of Man only afforded a glimpse of the world Nazism sought to create. In this chapter, the investigation of Nazi Ideology is intended to give a more complete sense of the Nazi transformation of reality insofar as this involves the version of reality that Nazism was seeking to create.

Part A: Introduction to Fackenheim and Nazi Ideology

Is shooting a human person - quickly, cleanly - harder on the nerves than conducting the slow, methodical process by which a person is reduced . . . to a human being who is dead while he is still alive? Beyond doubt this living death was not a means to death only, but also an end in itself.

-Emil Fackenheim, To Mend the World, 215.

Fackenheim acknowledges his unwillingness to dwell on any aspect of Nazi thinking, and Nazi Ideology is for him little more than an aspect of Nazi thinking. Possibly this attitude explains why an extended analysis of Nazi Ideology is simply absent from To Mend the World. But while an in-detail analysis of Nazi Ideology is strictly avoided by Fackenheim, he does pursue an explanation of Nazi thinking at its essence or core. Fackenheim describes this essence or core as the “Nazi logic of destruction.” This “logic of destruction” operates as a sort of “conatus” that gives a sense to the nonsense of Nazi Ideology. I would suggest that Fackenheim presents the following picture of the relationship between Nazi thinking, Nazi

Ideology, and the Nazi “logic of destruction”: Nazi Ideology stipulated for itself the pursuit of a number of doctrines. The viability of each of these doctrines to Nazism (or Nazi thinking) was dependent upon their compatibility with the “logic of destruction.” Fackenheim concludes that the Ideological concern with annihilating the Jews experienced such a high degree of viability within Nazi thinking that this doctrine became completely indistinguishable from the Nazi “logic of destruction.”

To make the observation that is being made here - that Nazi thinking above all else strove for the elimination of the Jews - is for most not an earth-shattering revelation. What will be of interest here, though, is that in the process of making this observation about Nazi thinking Fackenheim is also led to conclude that the Nazi “logic of destruction” is indistinguishable from a “logic of self-destruction.” This claim is more stated than argued by Fackenheim. But to an extent, Fackenheim’s discussion of the Nazi “logic of destruction” provides a foundation to support the claim that this logic was self-destructive; and the foundation for this argument is what will be explored here. First, though, a review of Fackenheim’s more general discussion of Nazi thinking is presented for the sake of providing some background to his discussion of the Nazi “logic of destruction.” This discussion begins with his consideration of the musings of other commentators who have addressed the subject of Nazi thinking.

Part B: The ‘Why’ of the Shoah: Determinism, Coercion and the Element of Choice

Fackenheim is extraordinarily dismayed by how others commenting upon Nazi thinking often conclude that the Nazis (and their collaborators) are not entirely responsible for their decision to commit mass murder. These commentators discuss ‘other factors’ that

influenced the decision of S.S. Men, bureaucrats, generals, common soldiers, 'bystanders,' etc. to assist in the mass extermination of the Jews of Europe. Fackenheim notes the presence of either one of two general themes in each of these arguments. One theme employs the sense that a 'diminished capacity' was somehow present amongst those who partook in the mass murder. This is sometimes described as an unprecedented form of collective hysteria. Or, either separately or in conjunction with this mass hysteria, the insanity of a few individuals who occupied key positions in the offices of the Third Reich - a certain number of extremely sadistic S.S. prison guards, and/or members of the Nazi leadership such as Eichmann, Hess, Heydrich, Himmler, and, of course, Hitler himself - is held responsible for leading the Nazis and their followers into catastrophe.

"An hypothesis so vast" Fackenheim states "explains too little because it explains too much."¹⁴⁸ He also argues elsewhere that: "We cannot make the Nazi murderers into a species separate from all humanity, with the results that their actions become a product of (historical, genetic, or medical) fate."¹⁴⁹ The notion that a kind of determinism, of any form, is capable of accounting for the Shoah having taken place is simply dismissed by Fackenheim as a complete improbability. Fackenheim stresses the importance of recognizing that only the sheer fact of the Shoah's occurrence, which is both unbelievable and undeniable, is able to account for why it took place.¹⁵⁰ The phrasing of the question drifts somewhere between 'why' the Shoah occurred and the more factual concern with 'how is it known' that the Shoah occurred. Ultimately, the only answer Fackenheim accepts to the question of why the Shoah took place is that the Nazis chose to make it occur. But with this response Fackenheim has no intention of making the answer to the question of why the Shoah took place any less

¹⁴⁸ Fackenheim, 233.

¹⁴⁹ Ibid., 235.

¹⁵⁰ Ibid., 233.

unanswerable. Fackenheim argues that there can be no answer to the question of why the Nazis would choose to make the Shoah happen. He explains that their decision can be grasped (or acknowledged), but not understood.¹⁵¹ The crux of Fackenheim's argument is precisely this: There is no answer to the question of why the Nazis would choose to make the Shoah happen, and this prevents there from being any answer to the question of why the Shoah occurred. Fackenheim accepts the validity of Raul Hilberg's appraisal that "They [the Nazis] did it because they wanted to do it."¹⁵² This appraisal, although unable to provide a response to the extremely important question of why the Shoah took place, by no means suggests becoming non-responsive to the decision of the Nazis to partake in mass murder. Instead, Hilberg's words help to clarify how a response to the Nazis involves making a decision, specifically, the decision to act in resistance to mass murder, instead of choosing to partake in it.

Fackenheim's dismissal of a deterministic account of why the Shoah occurred may seem hasty to some. The suggestion that certain "historical, genetic, or medical" factors could have determined the actions of those who partook in mass murder may seem far from improbable. The Shoah would no longer be a matter of the decision of the Nazis and their followers to devise, instigate, promote, pass over in silence, and/or commit acts of violence for the sake of committing mass murder. Determinism could present a picture of the Shoah that is capable of either partially or fully removing the element of choice from discussions of why it took place. To an extent, I would contend that arguments that discuss notions of determinism illustrate a weakness in Fackenheim's argument. Fackenheim is insistent on maintaining that a barrier must be erected when examining the Shoah. This barrier refuses to

¹⁵¹ Ibid., 247.

¹⁵² Ibid., 231.

accept that ultimately anything other than the *choice* (a choice that was not a one time act, but was supported by an ongoing decision to commit a countless number of acts that perpetuated mass murder) of the Nazis to engage in mass murder accounts for why the Shoah took place. To me, recognizing this barrier is indispensable to an understanding of the discussion of what allowed the Shoah to take place. However, Fackenheim presents this barrier in a fashion that I feel overstates the limits that are established by it. The exaggeration of this barrier makes a discussion of the Nazi decision to engage in mass murder unnecessarily opaque or mysterious. At a risk of over-extending the metaphor, Fackenheim establishes more of a barricade than a barrier around his discussion of why the Shoah took place. While I agree with Fackenheim's assessment that the decision of the Nazis and their followers to partake in mass murder was their own, I also think there can be (more of) a discussion of the circumstances surrounding the decision to commit mass murder. Moreover, a discussion of these circumstances is not just possible, but extremely important.

Before examining this 'weakness' in Fackenheim's argument more closely, I would like to elaborate upon the discussion of "deterministic accounts" of why the Shoah took place. These accounts suggest that the Nazis and their followers were determined by 'circumstance' (historical, genetic, medical) to partake in mass murder. Presumably these circumstances have limitations, if for no other reason than mass murder - especially in the 'unprecedented' way it was conducted by the Nazis - is not the constant occupation of human beings. To suggest that this set or these sets of circumstances have limitations is to suggest that these circumstances, when identified, are potentially avoidable and therefore not wholly deterministic.

The description of the determinism in effect during the Shoah could also possibly be presented on a larger scale. For example, the suggestion could arise that mass murder forms a

part of the 'natural' cycle of humanity - meaning that if there are times that human beings do not engage in mass murder, then this is still a part of the cycle that determines that human beings will commit mass murder at another point in their history. However, a number of objections could be raised against this view of humanity's relationship to mass murder. For example, Arendt distinguishes the occurrence of 'administrative massacres' - where a government chooses to pursue the annihilation of the very population it is in place to oversee - as a more recent phenomenon within the examples of mass murder that have occurred throughout history. A change in how mass murder is carried out seems to imply that human activity intervenes upon the practice of mass murder. (Identifying how human beings 'structure' themselves in ways that promote mass murder is, I would suggest, an extremely important lesson of Arendt's work.) This example, by pointing out that administrative massacres are a development within the history of mass murder that has not always been present, begins to raise questions about whether or not human beings are also able to intervene on a 'natural' cycle that determines them to commit mass murder. If human intervention is admitted as a possibility, then the 'natural' cycle that determines human beings to commit mass murder is potentially avoidable.

So far there has been a discussion of 'partial' forms of determinism. They are partial in the sense that the activities of human beings place a limitation upon the set of circumstances that (presumably) are the basis for these forms of determinism being enacted or coming into force. This means that even granting the claim that human beings can somehow be determined to commit mass murder when a certain set of circumstances are met, human activity would still have the capacity to intervene against this form of determinism. The intervention can take place by selecting a course of action that avoids the set of circumstances that enact these forms of determinism. I would note, then, that a discussion of

how human activity is capable of avoiding scenes of mass murder will always, at least potentially, be a part of a discussion of any 'partial' forms of determinism. There remains though, a discussion of the more complete form of determinism. This is the form of determinism that suggests that human beings have absolutely no influence upon the course of action they engage in; and are simply locked into a set of circumstances that determines whether or not they commit mass murder. For example, if human beings engage in mass murder, and at times there is a respite from this activity, or if in the course of human history human beings develop a form of mass murder that can be described as "administrative massacres," which is distinguishable from all other forms of mass murder that have been developed before it throughout human history, etc.; then all of these developments were determined in their occurrence from the very inception of humankind. In other words, this view holds that human beings have absolutely no capacity for choice. If the complete form of determinism is consistently maintained, then the opportunity for human activity to intervene upon the course of action that pre-determines whether or not human beings will engage in mass murder is entirely closed off.

The complete form of determinism may initially seem to present a view of humanity that is dramatically overbearing or oppressive in its grip upon human activity. But upon closer inspection the view appears tremendously 'watered-down' in the implications it presents for human activity. Claims concerning whether or not human activity is pre-determined or not pre-determined seem to be beyond the scope of human inquiry. Every action that human beings commit is open to being interpreted as either a matter of pre-determination or an expression of free will. Definitive evidence in this matter seems not just unavailable, but inconceivable. As such, there seems to be no words that can be stated about whether or not human activity is pre-determined, or not pre-determined. Therefore, to claim

that human activity is pre-determined to either commit or not commit mass murder, or to claim that there is no pre-determination in this matter, only adds a further difficulty to the original question of whether or not human activity is pre-determined. The inquiry into whether or not human activity is pre-determined seems, in a manner of speaking, to be in a state of suspension or indecision. To me, the suspended state of this inquiry does not imply that a concern with resisting against mass murder must also be suspended. But how is acting in resistance to mass murder possible when there is not even a clear understanding of whether or not human activity is pre-determined? The concern should be with “choosing” what seems to be the most “sensible” or “reasonable” course of action. First and foremost, I would argue that this begins with “choosing” to resist against mass murder; and then further developing an understanding of how to resist against mass murder. The possibility that all discussion about the capacity of human beings for “choice” is “in reality” a completely unreasonable understanding of human activity must be acknowledged. But after recognizing the lack of any definitive evidence about what can be said about human activity - and whether or not human activity can be understood to be pre-determined or not - I would again state that the most reasonable course of action is to appreciate and emphasize how human activity can choose to intervene against mass murder being committed.

Besides the arguments involving some form of ‘diminished capacity,’ the other general theme that Fackenheim identifies within the arguments concerning how the Nazis and their followers are not entirely responsible for committing mass murder involves some notion of coercion. These arguments contend that the Nazis and their followers were either persuaded into assisting with mass murder because of the extraordinarily persuasive power of Nazi Ideology; or, because of the practical considerations of a bureaucrat to do their job, of a

soldier to follow their orders, etc. Both of these types of considerations outweighed the less practical and high-minded pursuit of protesting against the mass murder of civilians. As to the first of these two arguments involving coercion, which discusses the power of Nazi Ideology, Fackenheim responds that:

If we locate ... the Holocaust ... in but a single “demonic” individual, then we at once falsely endow this one individual with a diabolical omnipotence that is *beyond* all humanity and, equally falsely, ascribe to all those ordered or inspired by him an all-encompassing manipulability that is *beneath* all humanity: between these two extremes, man is lost.¹⁵³

If Nazi Ideology had the ability to ‘cause’ human beings to surrender their capacity to be responsible for their decisions, and in particular, their decision to assist in mass murder, then either those who espouse Nazi Ideology are required to have a power to manipulate others that reaches inhuman proportions, or those who follow Nazi Ideology have a susceptibility to being manipulated that also reaches inhuman proportions. Fackenheim’s argument is insistent that what cannot be forgotten is that the course of action the Nazis and their followers were choosing to assist with was mass murder. To suppose that the lure of an Ideology could be so coercive that the ability to decide against assisting with the mass murder of entire populations simply disappears seems ludicrous. As will be made clear in Arendt’s discussion of Nazi Ideology, her analysis suggests that this Ideology is presented as a “reasonable” option to its followers. But she also absolutely refuses to accept that the “solutions” of Nazi Ideology were somehow inescapable or incapable of being rethought and, in short, in any way closed off to resistance.

The other direction taken with the argument that suggests that coercion is somehow involved with the decision of the Nazis and the followers to commit mass murder seems to employ the same type of logic that is contained in the argument involving Ideology.

¹⁵³ Ibid., 235.

Professional considerations (or possibly other “practical considerations”) are proposed as having been more of a concern to the Nazis and their followers than a concern for the mass murder of entire populations. The importance of these types of concerns to another person is something that those who did not experience them are not in a position to assess. The suggestion is that the mixture of “practical concerns” with “moral questions” suddenly and automatically produces a “grey area” where there is a prohibition against evaluating the different courses of action that the Nazis and their followers selected. Fackenheim is completely dismissive of any discussion that suggests that judgement cannot be passed upon the Nazis and their followers by those who were not in their position: “We cannot, on the grounds that all men are sinners, dissolve or weaken the distinction between those who *might* have done it and those who *did* it.”¹⁵⁴ He presents an example that effectively demonstrates how preposterous this argument would have had to be. This example shows what the implications would have been if the inability to secure sufficient resources for carrying out the forced emigration of European Jews into ghettos was viewed strictly as an administrative or professional problem: “It seems if a bureaucrat has sleepless nights because he cannot house and feed masses of men, women, and children entrusted to his care, then the best *losing* of the problem (and an end to the sleepless nights) is wholesale murder.”¹⁵⁵ This example makes the point dramatically, however, the trade-off between professional considerations and a consideration of those who were being mass murdered was undoubtedly not always so stark. To be presented with the choice of assisting with the perpetration of mass murder for the sake of a gain economically, a gain in prestige, or even to save one’s own neck is not a sufficient amount of coercion to merit compliance. Clearly any trading-off of

¹⁵⁴ Ibid., 235. The similarity to Arendt’s words in Eichmann in Jerusalem again seems very striking. (See Chapter 2, section F.)

¹⁵⁵ Ibid., 245.

professional or practical concerns for the concern with the welfare of those being mass murdered is not a decision that is made naively, nor with a sense of neutrality towards those being annihilated.¹⁵⁶

Fackenheim dismisses the arguments that the Nazis and their followers were either suffering from a “diminished capacity” or were being coerced into committing mass murder. Instead of supposing that a “diminished capacity” has the ability to determine that human beings will commit mass murder, the argument made here suggested that the more reasonable outlook was to suppose that human activity has the ability to intervene against mass murder being committed. As well, the suggestion that coercion played a part in the decision to assist with the Shoah involves the idea that other concerns could reasonably be placed ahead of the concern for refusing to be part of the mass murder of entire populations - and in no way can this idea be accepted as adequate. The decision of the Nazis and their followers to commit mass murder should be held accountable for ‘why’ the Shoah took place. However, Fackenheim has argued that this decision can be grasped but not understood. What then can be said about this decision?

Part C: Fackenheim and the Nazi “Logic of Destruction”

¹⁵⁶ Of note is Christopher Browning’s study of a Reserve Police Battalion that engaged in mass shootings of the Jewish population in Poland. Browning’s study finds that there was no evidence to suggest the soldiers were threatened with execution if they refused to perform their gruesome task. Based upon the (incriminating) testimony given by the soldiers themselves after the war, individual participation in the mass shootings, although coerced through threats and jeers of their peers (for not displaying a sufficient amount of a soldier’s “toughness”), was essentially voluntary. As such, some soldiers never participated, while others participated at some periods of time but not at others, while still other soldiers had enthusiastically gone about performing their duty at all times. See Christopher Browning, Ordinary Men: Reserve Police Battalion 101 and the Final Solution in Poland (New York: Harper, 1993).

Ultimately, Fackenheim maintains a certain degree of silence over why the Nazis and their followers would decide to perpetuate mass murder instead of choosing to resist against it. But with his discussion of the Nazi “logic of destruction” Fackenheim is describing what he thinks can be said about this decision of the Nazis. The phrase “logic of destruction” is one that he adopts from Shoah survivor and writer Jean Amery. However, after considering a few examples of Nazi atrocities and abuses, Fackenheim is led to ask: “Does even ‘destruction’ exhaust this ‘logic’? The Gulag has rightly been called a ‘destructive labor camp.’ The SS logic of destruction aimed at their victims’ *self*-destruction.”¹⁵⁷ Fackenheim further supports this assessment by describing a regimen of torture employed by the SS guards that was known to the inmates as “excremental assault.” This routine made the maintenance of personal hygiene impossible for the prisoners, as visits to the latrine were strictly forbidden by the threat of severe beatings. This alone would have been a great enough difficulty, but beatings were also enacted for any prisoner whose state of hygiene was not ‘well-maintained’ in the eyes of the prison guards.

Such treatment leads to questions about what the Nazis were trying to impress upon their prisoners through the form of punishment they were enacting. By comparison to other forms of punishment, punishment has been designed for the purpose of retribution, rehabilitation etc. As Fackenheim suggests, not even destruction seems to fully capture the aim of the treatment being handed out by the Nazis to the inmates of the death camps. Were this so, bullets rather than fists seem like the most expedient means to eliminate the prisoners. And if there were beatings, then these beatings would not have been severe but always to the death. Fackenheim asserts that the Nazis prolonged the life of some prisoners so that these prisoners could be tortured. He backs this assertion with a number of observations, including

¹⁵⁷ Fackenheim, 208.

the following: “Clearly, excremental assault was *designed* to produce in the victim a ‘self-disgust’ to the point of wanting death or even committing suicide.”¹⁵⁸ Why then, leave prisoners alive only for the purpose of keeping them in a state of torture? As argued in the previous chapter, the *Muselmann* is the ‘model’ prisoner who develops from the treatment meted out by Nazis in their death camps. (“Non-men who march and labour in silence, the divine spark dead within them, already too empty really to suffer. One hesitates to call them living; one hesitates to call their death death.”¹⁵⁹) However, the creation of *Muselmänner* has significance that extends beyond the death camp. Those who have become entirely indifferent to life and death through the constant monitoring of state officials also represent the ideal citizen in a completely self-destructive state.¹⁶⁰

Quite clearly, the decision of the prisoners to continue living under these circumstances - knowing that this would also suit the needs of those who wished to keep them in existence only for the sake of their being kept in a state of torture - would have been an excruciating one. (But to recall, an attempt was made in the section in the last chapter concerning Fackenheim’s discussion of the Nazi Idea of Man to describe what would have been required of the prisoners to go on living so that resistance could be conducted against the “Holocaust world” of the Nazis.)

The focus of the discussion now, though, will be Fackenheim’s discussion of the self-destructive tendencies that Nazism expressed towards the citizens of the Third Reich living outside of the death camps. In the chapter on Nazism and Law, Eichmann’s invocation of the categorical imperative was discussed, and the conclusion arrived at by Fackenheim was that

¹⁵⁸ Ibid., 209.

¹⁵⁹ Primo Levi, quoted in Fackenheim, 99-100.

¹⁶⁰ This phrase is an adaptation of Arendt’s: “The model “citizen” of a totalitarian state” (Arendt, 456).

an aim of Nazism was the destruction of “human personality.” This conclusion leads

Fackenheim to put forward the following observation:

As for the Third Reich, *its* heart and soul was the aim to destroy just this principle - by no means only in the case of Jews, “inferior races,” and enemies of the Reich, but also, and perhaps above all, in the case of the “master race” itself. From the start the great dream was to stamp out personality as the *Volk* marched in unison at the Führer’s behest; and the dream was not destroyed when, at the time of the apocalypse, it turned into a nightmare.¹⁶¹

As further evidence, Fackenheim cites Hitler’s orders “at the time of the apocalypse” to flood the sewers of Berlin, where German civilians were hiding from the advancing Soviet armies; commenting that: “This would not stop the Russian armies. However, it would drown German children.”¹⁶² This leads Fackenheim to remark that the Third Reich: “revealed itself not as a Will-to-Power but rather as a Will-to-Destruction which, being universal, was a Will-to Self-Destruction.”¹⁶³ Fackenheim also describes the transformation Nazi Ideology underwent as it was forced to submit to the suicidal tendencies of the Nazi “logic of destruction.” For example, initially the explanation given by Nazi Ideology for why the annihilation of the Jews was a necessity was for the sake of protecting Germany. But at the end of the Third Reich resources such as trains were diverted away from the effort to preserve the Third Reich and protect the German people for the sake of increasing the effort to annihilate the Jews.

The argument could be made that the self-destructive path that Nazism headed down in its last days is only an indication that the aims of Nazism had suddenly undergone a

¹⁶¹ Ibid., 272. Note: Fackenheim offers this claim about the aims of the Third Reich towards the “master race” after considering those individuals in the S.S. who were responsible for the creation of *Muselmänner* (inmates who were indifferent to life or death) while in the full knowledge that these individuals were punished without any regard for the actions they had committed. Fackenheim has also discussed how it was required of the “master race” to stand idly by while others are arbitrarily selected for a mass murder that aims at the elimination of entire populations. It is this indifference towards the life or death of human beings, taken to the extreme in the concentration camps by those who were the elite of the “master race,” that leads Fackenheim to the conclusion the “human personality” of the *Volk* was being targeted for destruction.

¹⁶² Ibid., 188.

¹⁶³ Ibid., 264.

complete change, and not that Nazism had a commitment to self-destruction that had been present within its aims throughout. Presumably, this argument would be able to provide responses to the question of why a change was made to become (of all available possibilities) self-destructive. However, assuming an answer to this question could be provided, a challenge presented by this argument is its dismissal of any evidence that illustrates the self-destructive tendencies of Nazism - if this evidence occurred as the Third Reich was collapsing. This evidence, as a consequence of when it occurred, will be argued to be irrelevant to the overall Nazi aims and ambitions stated within Nazi Ideology. According to this argument, the overall aims of Nazi Ideology could only be said to be self-destructive if there were evidence of self-destructive tendencies in this Ideology prior to the collapse of the Third Reich.

Whether or not evidence of self-destructive tendencies within Nazi Ideology prior to the collapse of the Third Reich could be provided, the argument that suggests that the overall aims of Nazi Ideology are not self-destructive obviously does not remove the significance of the evidence that establishes that Nazism did develop into to a self-destructive state upon its collapse. Nor does this argument remove the significance of the evidence that establishes the sheer destructiveness of Nazi Ideology. This Ideology of course included the mass murder of Germans who were physically and mentally ill and handicapped, Germans Jews, German Gypsies, German "homosexuals," German communists and other German "political dissidents;" as well as the planned extermination of German families with "a history of heart and lung ailments." For those who will argue that the overall aims of Nazism were not self-destructive, the evidence just cited will be appraised for how it falls short of being self-destructive. However, I would argue that this evidence should also be appraised in a way that acknowledges how it is an indication of the alarming extent to which the Third Reich

managed to develop into a completely self-destructive state. The mass murder of large segments of the German population and the continued planning for its expansion amongst this population - which took place prior to the collapse of the Third Reich, as well as the self-destructive tendencies expressed during the collapse, these developments are all important in showing the extent to which the overall aims of Nazism were progressing towards the creation of a self-destructive state.

There has also been more definitive evidence presented within Fackenheim's somewhat fragmentary discussion of Nazi Ideology to suggest that self-destructive tendencies were a part of the aims of Nazism prior to and during the collapse of the Third Reich. The treatment of prisoners by the Nazis that led to the creation of *Muselmänner* is sufficient to recognize how self-destructive tendencies were inextricably linked to the overall aims of Nazism. As was stated earlier in this chapter, clearly the most expedient means for carrying out mass extermination does not involve prolonging the lives of those who are to be exterminated in a state of torture for the sake of making the victims completely self-destructive. These men do not offer the slightest resistance to receiving a death sentence that has been arbitrarily assigned to them by the state officials, but instead are incapable of reacting to anything with anything other than complete passivity (as Agamben was quoted earlier: "All his instincts are cancelled along with his reason"). The *Muselmänner* have lost all ability to exercise a concern for "well-being" (both of others and of their own) - even as this relates to matters of life and death. As such, the *Muselmänner* are not only the "model prisoner" of the death camps; they also serve as a prototype of the ideal citizen in the completely self-destructive state.

Additionally, the *Muselmänner* are simultaneously the realization and implementation of a state comprised of citizens who have become entirely self-destructive. As well, those

who are behind the forced creation of men who become wholly self-destructive - both the architects of mass murder and the S.S. Men who execute wholly arbitrary and excruciatingly horrid and vicious death sentences – in my opinion represent ideal “citizens” within a state that is geared to its own self-destruction. This is why the *Muselmänner* and those who aim to force their creation through the means of unspeakable torture are evidence that Nazi thinking was making preparations for the creation of a completely self-destructive state. The creation of *Muselmänner* expresses self-destructive tendencies within Nazism that establish a sense of continuity between the overall aims of Nazism prior to and during the collapse of the Third Reich.

Before concluding the discussion of Fackenheim’s understanding of Nazi Ideology, one further point should be made about Fackenheim’s description of the decision of the Nazis and their followers to carry out the Shoah. Previously, the assertion was made that Fackenheim discusses this decision in a manner that makes it seem unnecessarily opaque or mysterious. The barrier he wishes to place around the decision of the Nazis and their followers to assist with mass murder is one that would make this decision anything but their own. This would exclude the incorporation of mitigating factors into this decision that would disperse its ownership elsewhere besides the *choice* of the Nazis and their followers to assist with committing mass murder. In addition to this, Fackenheim also is fairly silent about the circumstances that led to the Nazis and their followers to choose to assist with mass murder and the enhancement of self-destructive tendencies. Fackenheim is insistent that this choice can be grasped but not comprehended. What makes this decision incomprehensible is that the Shoah represents pure evil, and therefore choosing to assist with the Shoah is the most evil course of action possible. Nonetheless, independently of whether or not the decision to assist with the Shoah is considered to be an expression of pure evil, the question still remains as to

why this decision led the Nazis and their followers to pursue the course of action they chose to pursue. The decision of the Nazis and their followers to partake in, rather than resist, the Shoah is beyond comprehension, however what can be grasped is why the course of action taken by the Nazis was one of mass murder and the perpetration of a wholly self-destructive state. I would like to turn to Arendt's discussion of Nazi Ideology for an understanding of how this course of action became the most reasonable in the view of the Nazis and their followers.

Part D: Introduction: Arendt and the Mass Basis for Nazi Ideology

Although racism and communism have become the decisive ideologies of the twentieth century they were not, in principle, any "more totalitarian" than the others; it happened because the elements of experience on which they were originally based - the struggle between the races for world domination, and the struggle between the classes for political power in the respective countries - turned out to be politically more relevant than other ideologies.

-Hannah Arendt, The Origins of Totalitarianism. 470.

Arendt discusses "population superfluity," "mass unemployment," "uprooted and stateless masses" etc., as part of her explanation of what accounts for the creation of Nazism and the Third Reich. She does not view these concerns simply as preconditions that, despite being 'necessary' for the establishment of a murderous state, are (nonetheless) set apart or divorced from the workings of this type of state once it has been established. The significance of these concerns extends much further. "Superfluosity," "mass unemployment," "uprooted or stateless masses" etc., are representative of an experience of reality that has become reflected in a certain mentality or understanding of how the "reality" of the world works. One outlook that has arisen as an expression of this mentality is Nazi Ideology. The significance of this mentality is even greater, considering that Arendt's appreciation of Nazi Ideology occurs less in terms of the specific set of doctrines it laid down. More representative

of this Ideology is its mentality, or its way of thinking through ‘situations’ and how things transpire in reality. To be clear, this mentality has nothing to do with the suggestion that there is a view of the world that is shared by everyone who is without employment, a nationality, etc. Instead, it involves the decision to view the experience of mass unemployment and the experience of large segments of the population without a state to claim as their own as being indicative of humanity’s superfluity. Both those who are and those who are not going through these types of experiences are capable of adopting the view that humanity, in whole or in part, is superfluous. In the case of Nazi Ideology, the view that humanity is essentially superfluous extends not just to those segments of the population who are experiencing the hardships of being unemployed and/or uprooted. This Ideology embraces the view that superfluity is the essential characteristic of all of humanity and all human beings regardless of ‘accidental’ features like social status.

Totalitarianism in power uses the state administration for its long-range goal of world conquest and for the direction of the branches of the movement; it establishes the secret police as the executors and guardians of its domestic experiment in constantly transforming reality into fiction; and it finally erects concentration camps as special laboratories to carry through its experimentation in total domination.¹⁶⁴

These words provide a summary of the investigation of Arendt’s work that was presented in the previous two chapters. The stages of Nazi rule discussed in those chapters were the Nazi use of a fictitious ‘unreality’ that produced a version of law that removed any conception of what is just from its justice system. This fictitious ‘unreality’ was then most fully realized upon the inmates of the concentration camps, where the Nazis used the version of reality they had created to enforce an Idea of Man who is wholly self-destructive. What remained after the exploration of these stages in the development of Nazi rule was an account

¹⁶⁴ Ibid., 392.

of why Nazism would pursue the goals of “transforming reality into a fiction” for the purpose of “experimentation in total domination.” To understand this, there will be in this chapter an exploration of the process that led to the Nazis rise to power. This process will be examined to learn about some of the features that characterized Nazi rule in its origins. More specifically, the features that will be examined will be those that Arendt describes as having an ongoing and lasting significance to Nazi Ideology. The content of many of the original views presented by Nazi Ideology underwent a radical transformation in a fairly short period of time. This would seem to suggest their overall lack of importance to Nazi Ideology, especially when considering this Ideology in its later stages of development. However the very transience of these views is one of the features that characterize Nazi Ideology from its origins, as will be discussed. Investigating the origins of Nazi Ideology will help to appreciate how this Ideology progressed into developing a worldview that all of humanity is subject to becoming superfluous.

I will present Arendt’s argument that Nazi Ideology designed itself with the idea of making an appeal to the worldview of the “masses.” Nazi Ideology did not simply pay lip service to this worldview, but instead the incorporation of the masses’ concerns was formative to Nazi Ideology. The masses’ worldview demonstrated deep concern over the state’s dominance over political power, and their concern over this dominance became expressed in the form of resentment towards the state and all of its representatives. The masses’ resentment of the state stemmed from their having been excluded from it. As the Nazis rose to power, resentment towards the state was reflected in Nazi Ideology, and continued to be reflected by the Nazis during their rule. Besides the resentment the masses expressed towards those who were able to act within the state, the masses’ exclusion from the state led them to have fantasies about the possibility of gaining political power from the state

and its representatives through the formation of a “suprastate” organization. Arendt suggests the aspirations of the masses to gain political power in this manner led them to have great admiration for the ‘organizations’ that they perceived as having been able to rise above the state (as opposed to sink beneath it as they had); while at the same time the masses felt resentment towards the individuals who were the members of these “suprastate” organizations.

These features of the masses’ worldview that Nazi Ideology incorporated into its own thinking will be discussed in further detail. As well, I will discuss the “innovations” that Arendt argues Nazi Ideology brought to the masses’ anti-state and antisemitic worldview. These innovations of Nazi Ideology include a disregard for “race as an idea” for the sake of promoting “racism.” This means that whatever content was representative of race as an idea was of a far lesser degree of importance to the Nazis than their commitment to the idea that race could explain everything that transpires in reality. The use Nazi Ideology was able to make of the masses’ concerns in antisemitic discussion also represents another of its innovations. The mixture of admiration and resentment that was a part of the masses’ longing for political power by means of organization was characteristic of the masses’ attitude toward the Jews. This mixture was exploited obviously to great effect by Nazi Ideology. Another innovation of Nazi Ideology was their interest in not just simply managing the interests of the masses, but in actually transforming the interests of the masses through a transformation of the masses themselves. The Nazis accomplished this by making the masses involvement in their organization contingent upon individual “heredity.” The division of the masses into the (hereditary-based) categories of Aryan and non-Aryan laid the groundwork for the masses to be transformed into something that was a product of Nazi Ideology.

Part E: The Masses' Worldview and the "Innovations" of Nazi Ideology

Arendt provides a blueprint of the features of the masses' worldview that Nazism exploited in its rise to power. These included an attack on the state's existence as an institution, and hence an alignment with everything and everyone that expressed opposition to the state. This opposition could be found in the resentment that was expressed towards state institutions such as the class system and the political parties. Often this resentment was expressed by those who were expelled and/or excluded from the class system in its current form. This produced large segments of the population who felt unrepresented by the mainstream political parties. When speaking of the social status of the European population, Arendt describes this as being comprised of several groups: mainstream bourgeoisie culture, the elite, the mob, and the masses. Relative to mainstream bourgeoisie culture, each of these groups is to be regarded as an outsider. This outsider status is in reference to the non-compliance of each of these groups to the value system of the bourgeoisie. These 'outsider' groups can be distinguished by the different relationship they each had to bourgeoisie culture. Arendt classifies the mob as having the same value system as the bourgeoisie, only with the exception that this value system has been "cleansed of its hypocrisy."¹⁶⁵ The elite profess a different set of values from mainstream culture. Their outsider status nonetheless shares a commonality with mob culture. Both mob culture and the more 'individualistic' elites elect to continue their support for their own (respective) value systems; and these value systems manage to maintain their integrity in spite of the 'outsider' status of the constituents who make up these groups. The masses are representative of those individuals that have been forcibly expelled from mainstream culture. This "mass" lacks a value system of its own that

¹⁶⁵ Ibid., 334.

would act to collect these individuals who have been (arbitrarily) thrown together into a class or any other form of organization. “The masses,” are described by Arendt as those, “whose chief characteristic is that they belong to no social order or political body, and who therefore present a veritable chaos of individual interests.”¹⁶⁶ Of the groups who did not fit within the current manifestation of the state-sponsored class system and political system, Arendt describes the stateless and/or unemployed masses as being the group that Nazi Ideology was designed to make its appeal. Arendt explains that the mobilization of the masses out of its formerly chaotic state is what carried the Nazis to power: “Totalitarian movements are possible wherever there are masses who for one reason or another have acquired the appetite for political organization.”¹⁶⁷

The political parties (on the other hand) represented the interests of the dominant bourgeoisie class. Arendt describes how the members of the bourgeoisie who were a part of the ruling political parties and so were in the position of acting as the representatives of state power took for granted the security of their position. This was based on their assumption that state institutions guaranteed a monopoly on the instruments of power. Added to this was their assumption that the mass majority who had no access to political power through state channels would be unable to offer a significant challenge to their rule. Arendt describes the political climate this created:

None of the old parties was prepared to receive these masses, nor did they gauge correctly the growing importance of their numbers and the growing political influence of their leaders. This error in judgement by the older parties can be explained by the fact that their secure position in Parliament and safe representation in the offices and institutions of the state made them feel much closer to the sources of power than to the masses; they thought the state ... would remain the decisive element in all domestic crises. They therefore felt free to ridicule the numerous paramilitary formations which had sprung up without any officially

¹⁶⁶ Ibid., 348.

¹⁶⁷ Ibid., 311. Also: “The totalitarian movements aim at and succeed in organizing masses not classes” (Ibid., 308).

recognized help. For the weaker the party system grew under the pressure of movements outside of Parliament and classes, the more rapidly all former antagonism of the parties to the state disappeared.¹⁶⁸

Obviously, the reverse of what the class-oriented political parties predicted took place in Germany, and the masses under the guidance of National Socialism overthrew the state powers that had been held under the leadership of the bourgeoisie.

However, the masses' assault on the bourgeoisie's representation of state power was not in the final analysis directed as an assault against any one particular class or political party, *per se*. Instead, this attack was directed against classes and political parties as institutions (of the state) and ultimately against the very existence of the state itself.¹⁶⁹

Classes were seen as representatives of the state economic system, while class-oriented political parties were seen as the institution acting as the state's representative in politics.¹⁷⁰

The distaste of the masses for the class system is indicative both of their composition and social position: "Masses are not held together by a consciousness of common interest and they lack that specific class articulateness which is expressed in determined, limited, and obtainable goals."¹⁷¹ To the masses, the class system did not just represent a form of organization that they were simply lacking and so had no bearing on their present social

¹⁶⁸ Ibid., 262.

¹⁶⁹ Ibid., 262. "Every movement had a greater chance than any party because the movement attacked the institution of the state and did not appeal to classes. Fascism and Nazism always boasted their hatred was directed not against individual classes, but the class system as such, which they denounced as an invention of Marxism."

¹⁷⁰ Ibid., 314. "The breakdown of the class system meant automatically the breakdown of the party system, chiefly because these parties, being interest parties, could no longer represent class interests."

¹⁷¹ Ibid., 311. Thus, when comparing the political aspirations of the mob to the masses, Arendt observes: "The mob, the underworld of bourgeoisie class, hoped that the helpless masses would help them into power, would support them when they attempted to forward their private interests, that they would be able simply to replace the older strata of bourgeoisie society and to instill into it the more enterprising spirit of the underworld" (Ibid., 337). In other words, the mob wished to establish a state ruled under the domination of their class. This is entirely distinct from the aspirations of the masses as these are being presented here. Their aspirations involved abolishing the class system as part of the dismantling of the entire state apparatus.

position. It was also a system of organization in which the masses found themselves at the “bottom of the pile” in a manner of speaking.¹⁷²

In place of the class system the Nazis (with the support of the masses) were not looking to establish a form of rule that was conducted through the Nazi political party for the obvious reason that this form of leadership would mean the re-establishing of a state institution. Nor, as may have been expected, were the Nazis looking to establish their rule by means of a “German” nation composed of only “German” people.¹⁷³ The Nazis aimed to establish their rule by means of a political movement constituted by a racial community (the “*Volksgemeinschaft*”) under the direction of the Leader.¹⁷⁴ Arendt explains that “National Socialism” has not...

...Proclaimed a new form of government or asserted that its goals were reached with the seizure of power and the control of the state machinery. Their idea of domination was something that no state and no mere apparatus of violence can ever achieve, but only a movement that is constantly kept in motion: namely, the permanent domination of each single individual in each and every sphere of life ... a political goal that would constitute the end of the movement simply does not exist.¹⁷⁵

These words do not only describe the ability of the Nazis to exploit the resentment the masses felt towards the state. Mentioning the endless and ceaseless goal of dominating not just the political apparatus but also the citizenry itself begins to describe the “innovations”

¹⁷² The titles and sub-headings Arendt uses in her section on “Totalitarianism” are the most obvious clues for understanding her position about the distaste of the masses for the class system: The title of Chapter 10 being “A Classless Society”; while one of the sub-headings of Chapter 12 being “The So-called Totalitarian State” (Ibid., xlii-xliii).

¹⁷³ Arendt describes the declining role of both the party and the notion of the “Nation of German people” in Nazi thinking. With regards to the party, its declining influence is seen with the center of power shifting away from the party and into the hands of the secret police (first the S.A., then the S.S., then the storm trooper branch of the S.S., etc.), as is typical of the organization of totalitarian movements (Ibid., 368). As for the status of the “German Nation” within Nazi thinking, Arendt provides evidence of the Nazis going so far as to consider removing the word “National” from the name of their organization. She emphasizes Hitler’s preferences for thinking of the master race in terms of being “Aryan” instead of “German” (Ibid., 359-361).

¹⁷⁴ Ibid., 357: “Hitler repeated many times: ‘The state is only a means to an end. The end is: Conservation of race.’ He also stressed that his ‘movement does not rest on the state idea, but is primarily based on the closed *Volksgemeinschaft*.’”

¹⁷⁵ Ibid., 326.

Nazi Ideology added to the masses' worldview. The starting point for understanding these innovations is an appreciation of the manner in which the Nazis brought the antisemitic aspects of the masses' worldview to the forefront of their Ideology.

In addition to the resentment the masses felt towards those elements in society who participated as part of the mainstream culture of the state, which they - the masses - were themselves unable to participate in, the masses also expressed resentment towards another element in society that was perceived as being outside of the state - the Jews. Unlike the masses, who were perceived as being beneath the state, for those who accepted the antisemitic rhetoric, the Jews were perceived as being above the state and connected by a "suprastate" organization. Arendt suggests the aspirations of the masses to gain political power in this manner led them to have great admiration for the organizations that they perceived as having been able to rise above the state, while at the same time the masses felt resentment towards the individuals who were the members of these "suprastate" organizations:

The masses' furious interest in the so-called "suprastate powers" (*überstaatliche Mächte*) - i.e., the Jesuits, the Jews, and the Freemasons - did not spring from nation or state worship but on the contrary, from envy and the desire to become a "suprastate power" ...¹⁷⁶

Arendt explains there was nothing novel about the resentment expressed by Nazi Ideology towards the state, and state institutions such as the class system and political parties, even when this resentment was expressed in combination with the idea of a "Jewish world

¹⁷⁶ Ibid., 258. As well, Arendt discusses the "mass appeal" of the Protocols of the Elders of Zion: "The discovery of the Nazis was that the masses were not so frightened by Jewish world rule as they were interested in how it could be done, that the popularity of the Protocols was based on admiration and eagerness to learn rather than on hatred. ... They [The Protocols] are antinational in principle and picture the nation-state as a colossus with feet of clay. ... They [The Protocols] promise to the people that, regardless of superiority in numbers, territory, and state power, they will be able to achieve world conquest through organization alone" (Ibid., 358-359).

conspiracy.”¹⁷⁷ In spite of this lack of innovation found in the content of Nazi Ideology, Arendt contends that the Nazis were extraordinarily innovative in their usage of this Ideology for the purpose of gaining and exploiting political power. Arendt’s analysis of the Nazi appreciation of “The Protocols of the Elders of Zion” demonstrates how Nazi Ideology in its discussion of antisemitism reflected the masses’ fantasy to rule the world by means of a “suprastate” organization:

The Protocols presented world conquest as a practical possibility, implied that the whole affair was only a question of inspired or shrewd know-how, and that nobody stood in the way of German victory of the entire world but a patently small people, the Jews, who ruled it without possessing instruments of violence - an easy opponent, therefore, once their secret was discovered and their method emulated on a large scale.¹⁷⁸

As Arendt observes: “The delusion of an already existing Jewish world domination formed the basis for the illusion of future German world domination.”¹⁷⁹

Another innovation of Nazi ideology discussed by Arendt involved its refusal to adhere to, or ultimately even to profess to, any unambiguously stated doctrines that would form the content of an ideology based upon race. What may have been expected with Nazi Ideology and its intense interest in the “Jewish race” would be for this Ideology to be very concerned with having an appreciation of the full range of content expressed about race as an idea. But the understanding of race presented by Nazi Ideology was extremely short sighted, and its conclusions obviously lacked any sort of merit. This neglect did not mean the Nazis failed to maintain their unflinching commitment to the idea that race explains everything that transpires in reality; only that this commitment was maintained without any concern for the content attributed to race as an idea. Their neglect of the content attributed to race as an idea

¹⁷⁷ Ibid., 358. “The actual content of postwar antisemitic propaganda was neither a monopoly of the Nazis nor particularly new and original.”

¹⁷⁸ Ibid., 360.

¹⁷⁹ Ibid., 360.

even included a disregard for the content of what Nazi Ideology has said itself about race. For example, the Nazi party's (antisemitic) 25-point plan formulated in its earliest days was all but ignored by Hitler.¹⁸⁰ Arendt argues that the aim of Nazi Ideology was to empty itself of any and all content.¹⁸¹ She explains that the shifting and ultimately completely vacuous content of Nazi Ideology allowed the Nazis to cater to the masses and their need to experience a fictitious but wholly predictable 'unreality.' This predictability explains why the Nazis were concerned with ensuring that nothing in the content of race as an idea could prevent them from maintaining an unflinching commitment to the idea that race could explain everything that transpires in reality:

Their [the Nazi] art consists in using; and at the same time transcending, the elements of reality, of verifiable experiences, in the chosen fiction, and in generalizing them into regions which then are definitely removed from all possible control by individual experience. With such generalizations, totalitarian propaganda establishes a world fit to compete with the real one, whose main handicap is that it is not logical, consistent, and organized. The consistency of the fiction and strictness of the organization make it possible for the generalization eventually to survive the explosion of more specific lies - the power of the Jews after their helpless mass slaughter...

The assumption of a Jewish world conspiracy was transformed by totalitarian propaganda from an objective, arguable matter into the chief element of the Nazi reality; the point was the Nazis acted as though the world were dominated by the Jews and needed a counterconspiracy to defend itself. Racism for them was no longer a debatable theory of dubious scientific value, but was being realized every day in the functioning hierarchy of a political organization whose framework it would have been very "unrealistic" to question.¹⁸²

Arendt argues that treating an idea as being capable of explaining everything in reality without any consideration of the actual content of the idea and how well the content of the idea is reflected in reality is an approach that is very much in keeping with "ideological" thinking.¹⁸³

¹⁸⁰ Ibid., 324.

¹⁸¹ Ibid., 348: "Totalitarian movements use socialism and racism by emptying them of their utilitarian content."

¹⁸² Ibid., 362.

¹⁸³ "Idealism, foolish or heroic, always springs from some individual decision and conviction and is subject to experience and argument ... But within the organizational framework of the movement, so long as it holds together, the fanaticized members can be reached neither by experience nor argument; identification with the

Part of the skill involved in emptying the concept of race of all content involves another innovation in the Nazi usage of Ideology. This involved a re-conceptualization of antisemitism so that race as an idea had no meaning outside of what was dictated about it by Nazi Ideology. Prior to this innovation of Nazi Ideology, the dominant understanding of Judaism in antisemitic discussion was as an organization standing outside of the masses and acting against their interests. This understanding of Judaism was transformed by the version of “heredity” that Nazi Ideology introduced into its discussion of antisemitism.¹⁸⁴ This version of heredity made Judaism an individual characteristic that had nothing to do with what transpires in reality outside of or independently of the ‘unreality’ being created by Nazi Ideology. Judaism (or, more appropriately, “non-Aryanism”) then became a force, but not one that can be perceived by external examination of the actions committed by an individual in reality. Nazi Ideology contended that Judaism was a force that operated beyond human volition, compelling individuals to act. The only means by which Judaism can be perceived is by conducting an “internal investigation“ of an individual’s heredity to “discover” if Judaism is one of that individual’s “characteristics.” Arendt explains that this usage of Nazi Ideology allows the Nazis to lay the groundwork for a rule by terror; as rule by terror, when it is complete and total, removes any consideration of the reality that exists outside of the fictitious ‘unreality’ created by Nazi Ideology.

Arendt explains that the Nazi method of “personalizing” antisemitism for the masses also laid the groundwork for these masses to not just have their interests manipulated for the sake of political purposes. Nazi Ideology could now also be used to transform the interests of the masses so that the masses could become a version of humanity that was a product of the

movement and total conformism seem to have destroyed the very capacity for experience, even if it be as extreme as torture or the fear of death” (Ibid., 307-308).

¹⁸⁴ Ibid., 356.

fictitious ‘unreality’ created by the Nazis. She comments that previous attempts had been made to make a “science” out of gauging and measuring the ‘response’ of the masses to different political ‘stimuli.’¹⁸⁵ “Yet whatever the shortcomings of positivism, pragmatism, and behaviourism,” in pursuing this type of endeavour, Arendt argues that:

None of these theories assumes that it is possible “to transform the nature of man” as totalitarianism indeed tries to do. On the contrary, they all implicitly or explicitly assume that human nature is always the same, that history is the story of changing objective circumstances and the human reactions to them, and that interest, rightly understood, may lead to a change of circumstances, but not to a change of human reactions as such. “Scientism” in politics still presupposes that human welfare is its object, a concept which is utterly alien to totalitarianism.¹⁸⁶

The transformation of the masses’ interests to the dictates of Nazi Ideology is clearly a further realization of the need for predictability. Any element of unpredictability is removed from the masses’ interests once these interests lose their independence and become a product that is completely under the control of the fictitious ‘unreality’ created by the Nazis.

The masses’ worldview has been described as both anti-state and antisemitic. Nazism and Nazi Ideology was just one of the many ideologies and political organizations that responded to these concerns of the masses. Arendt discusses the innovations that Nazi Ideology devised that allowed Nazism to gain prominence in Germany over other anti-state and antisemitic political organizations. These innovations involved recognizing the masses’ admiration of “suprastate” organizations; disregarding the content of race as an idea and replacing this content with the idea that race could explain everything that transpired in reality; and - as part of the interest of transforming the masses rather than simply engaging in the management of their interests - using “heredity” to establish that ideological questions

¹⁸⁵ Ibid., 346.

¹⁸⁶ Ibid., 347.

were of personal concern to every individual who found themselves a member of the masses. All of these innovations prepared the Nazis to rule by forming an organization that removed from all consideration the reality of the world outside of the fictitious ‘unreality’ created by their Ideology. Ultimately, the masses themselves transformed into a “product” of the fictitious ‘unreality’ created by Nazi Ideology.

But what precisely was the worldview that Nazi Ideology had in a sense “stumbled upon” and inherited from the masses? The unemployed and/or stateless masses’ anti-state and antisemitic resentment was born of their experience of having been excluded from political power by the state apparatus. While the longing to replace those who held political power can easily be appreciated, what remains unaccounted for is the masses’ longing for “predictability” and a version of reality that has become wholly predictable.

Part F: Nazi Ideology: Loneliness, Superfluity and the Wholly Self-Destructive State

Arendt argues that the masses considered both the individual and collective fate of humanity as being determined by forces that were beyond the control of human beings. These forces also acted without any regard for either the well-being of any one individual or for the collective well-being of humanity. Probably the most often cited ‘feature’ of the masses that Arendt repeats in her description is their disregard for their own well-being: “Selflessness in the sense that oneself does not matter, the feeling of being expendable, was no longer the expression of individual idealism but a mass phenomenon.”¹⁸⁷ In describing the appeal of Nazi Ideology to the masses, Arendt also provides a sense of the extreme form of resignation

¹⁸⁷ Ibid., 315: “Compared with their nonmaterialism, a Christian monk looks like a man absorbed in worldly affairs” (Ibid., 315-316). Other examples of Arendt’s description of the masses selflessness can be found on: Ibid., 307-308, 329, and 348.

present amongst the masses' experience of the world. She also describes what constituted the aspirations of the masses in the face of the bleak outlook that they had formed about the reality of their own lives: "The language of prophetic scientificity," that is characteristic of ideology, "corresponded to the needs of the masses who had lost their home in the world and now were prepared to be reintegrated into eternal, all dominating forces which by themselves would bear man, the swimmer on the waves of adversity, to the shores of safety."¹⁸⁸ This need, which developed as a reaction to having no place in the world, was (as mentioned earlier) the need for predictability. Arendt describes how the longing for predictability was to the masses a suitable reaction to the "reality" of their situation:

The masses' escape from reality is a verdict against the world in which they are forced to live and in which they cannot exist, since coincidence has become its supreme master and human beings need the constant transformation of chaotic and accidental conditions into a man-made pattern of relative consistency ... Before the alternative of facing anarchic growth and total arbitrariness of decay or bowing down before the most rigid, fantastically fictitious consistency of an ideology, the masses probably will always choose the latter and be ready to pay for it with individual sacrifices - and this not because they are stupid or wicked, but because in the general disaster this escape grants them a minimum of self-respect.¹⁸⁹

The masses' experience of the world had demonstrated to them that their actions made no difference to how their lives unfolded. To the masses, the determining factor in the universe is not individual merit and decision-making but "suprahuman" forces that decided the fate of individuals and the world in which they lived.

One of the more curious aspects of the hardships that were experienced by the masses is that in many cases these hardships were understood to transpire independently of the course of action that they as individuals chose to pursue. All throughout history there have been populations who have had to take part in a mass exodus, and Arendt explains that the

¹⁸⁸ Ibid., 351.

¹⁸⁹ Ibid., 352.

“curiosity” of the particular form of hardship being experienced by the stateless masses can perhaps be appreciated by comparison. In the other examples where a mass exodus has taken place the population being expelled understands that their expulsion occurs as a result of political or religious defiance, etc. These groups had the expectation that they would be welcomed by communities in the lands to which they were travelling by those who shared similar political or religious views. What is characteristic of the modern stateless masses is their expulsion is not considered to be a response to any act of defiance that they have committed against the state from which they are being expelled. “Their plight is ... not that they are oppressed but that nobody wants even to oppress them.”¹⁹⁰ An analogous argument could be made for those who understand mass unemployment to be not a matter of individual shortcomings but a phenomenon of a particular system of economic exploitation. The point being that “joblessness” occurs for the masses without any regard for the actions committed by these individuals. Bourgeoisie society requires that a certain portion of the population must necessarily remain unemployed in order for its economic system to continue functioning. Whether or not this understanding of unemployment is considered generally acceptable, the masses, after having been convinced of the inability of human beings to commit a course of action that intervenes upon the forces that determine the course of human history, conclude that the only opportunity for an individual to experience greatness rests with their ability to align themselves with the forces that are determining human history. The ultimate aims of these forces were still understood to be beyond individual control. This meant that individual achievement did not leave open the option to decide whether an individual’s “greatness” would allow them to be counted amongst those who benefited humanity, or as someone who would live on in the memory of mankind in infamy.

¹⁹⁰ Ibid., 296.

The interplay in the masses' worldview between human action, "suprahuman" forces, and an individual's aptitude at aligning themselves with these "forces of destiny" is perhaps subtle; but it is also crucial for understanding how the masses' experience of reality is formed. Arendt remarks that:

In this atmosphere of the breakdown of class society the psychology of the European mass man developed. The fact that with monotonous but abstract uniformity the same fate had befallen a mass of individuals did not prevent their judging themselves in terms of individual failure or the world in terms of specific injustices. This self-centered bitterness, however, although repeated again and again in individual isolation, was not a common bond despite its tendency to extinguish individual differences, because it was not a common interest, economic or social or political.¹⁹¹

This passage describes how the mentality of the masses' has a propensity for "personalizing" the events that transpire in the world around them. Arendt describes this mentality as being reflective of a perception of the world that is peculiar to one particular experience of reality. This experience is the experience of loneliness. Arendt argues that the masses' worldview is born from the experience of being cut off from experiencing all aspects of the human condition except for "loneliness," an experience which "is at the same time contrary to the basic requirements of the human condition *and* one of the fundamental experiences of every human life."¹⁹² Loneliness acts as a limitation upon the masses' experience of reality that constrains their available range of experiences. This does not mean that loneliness prevents the masses from witnessing certain events. It does mean though that the ability of the masses to interpret the events they witness in the world they live in has been constrained to experiencing this world only through the "eyes of loneliness."

Two questions immediately present themselves concerning Arendt's discussion of loneliness; the first of these being: How can the same experience of the world - in this case

¹⁹¹ Ibid., 315.

¹⁹² Ibid., 475.

loneliness - be capable of acting as the experience that forms the basis for “the worldview” of a diverse group of individuals - especially a group as disconnected as the masses (*and* especially considering that this worldview, in a manner of speaking, “colours” almost each and every one of the experiences of the individuals who are a part of this diverse group)? Secondly, and tied to the first: What sort of framework did loneliness give to the masses’ experience of reality (i.e.: What does it mean to see the world through the “eyes of loneliness”)? As to the first question, the very experiences - unemployment and statelessness - that are definitive in the process whereby the masses become masses are the experiences upon which loneliness thrives. These experiences have the tendency to isolate men; and Arendt explains that: “isolation can (but must not) be the preliminary condition for loneliness.” Thus, Arendt concludes: “What prepares men for totalitarian domination in the non-totalitarian world is the fact that loneliness, once a borderline experience usually suffered in certain marginal social conditions like old age, has become an everyday experience of the evergrowing masses of our century.”¹⁹³ What is extremely important to recognize in Arendt’s description of the relationship between isolation and loneliness is that isolation does not necessitate loneliness. Isolation is a physical condition, whereas loneliness is an individual’s response to their surrounding environment. As Arendt observes, loneliness can be felt even when in the physical presence of others.¹⁹⁴

Concerning the question of how the world is experienced “through the eyes of loneliness;” loneliness has already been described as a limitation that constrains an individual’s experiences. More specifically, loneliness constrains individuals to the need for experiencing predictability and to the feeling of being expendable. These constraints are a

¹⁹³ Ibid., 478.

¹⁹⁴ Ibid., 476.

reflection of the lonely man's relationship to the world. The lonely man feels alienated and of no use to the world, and this accounts for his feeling of being expendable. But these feelings of alienation also make the lonely man feel as though the world is of no use to him, leaving him to his own resources. Arendt also explains that an individual in the state of loneliness loses their "common sense."¹⁹⁵ "Common sense" can be taken somewhat literally here as the lonely man feels he has no one to share his experiences of the world with. The lonely man forms his image of the world without consulting anyone or anything in the world around him. Thus he arrives at his comprehension of the world by looking internally. Arendt's argument suggests that the lonely man's means of comprehending the world makes these individuals susceptible to ideology. As was suggested earlier, the process of "ideological thinking" operates through an ideology beginning with an idea and committing itself to the understanding that that idea is capable of explaining everything that transpires in reality. Arendt describes how this process occurs:

The preparation of victims and executioners which totalitarianism requires ... is not the ideology itself - racism or dialectical materialism - but its inherent logicity. The most persuasive argument in this respect, an argument that Hitler like Stalin was very fond, is: You can't say A without saying B and C and so on, down to the end of the murderous alphabet.¹⁹⁶

This process of "logical deduction" (as Arendt describes it) is supported by the lonely man's/the masses' worldview that they have been abandoned, or more properly speaking, their sense that they have been abandoned to their own resources. They believe that only what is inside their head - ideas and the process of logical deduction - can be consulted to comprehend reality. This logical process functions by deriving consistency, which becomes reflected by the masses in their need to find predictability in the world.

¹⁹⁵ Ibid., 475-476.

¹⁹⁶ Ibid., 472.

The idea that is the most obvious candidate for supplying the content from which Nazi Ideology commences its process of logical deduction is the idea of race. Arendt emphasizes repeatedly however that this content is not essential to the means by which Nazi Ideology operates. Arendt discusses the seemingly paradoxical phenomenon that the masses' mentality was "utterly fanatical as long as the movement exists, [but] will not follow the example of religious fanatics and die the death of martyrs (even though they were only too willing to die the death of robots.)"¹⁹⁷ Observations of this sort about the followers of Nazism have led to the conclusion that the masses were shallow and insincere, never really being committed to or internalizing the views of the Nazi movement, as the masses renounced their former beliefs in a cowardly fashion. However Arendt argues that the quick and easy transition of the former members of the Nazi movements back into masses should be seen as a sign that the lessons of Nazi Ideology had been thoroughly convincing to their followers: "They will quietly give up the movement as a bad bet and look around for another promising fiction or wait until the former fiction regains enough strength to establish another mass movement."¹⁹⁸ (This raises questions about what would have made the Nazi movement a "good bet" for the masses!) The tremendous infidelity of the masses towards Nazi Ideology is a demonstration of their tremendous fidelity towards Ideological thinking.

The masses' only resource in a world they see through lonely eyes is the contents of their head; these contents being the process of logical deduction applied to an idea. Arendt argues that if the idea that provides the content of an Ideology draws the source of its content

¹⁹⁷ Ibid., 363.

¹⁹⁸ Ibid., 363. I would liken the discussion of the content of Nazi Ideology to the discussion of the offices of political power in the Third Reich. The ostensible seats of government in the Third Reich had no real power in comparison to its "shadow" government. Likewise, race as the ostensible content of Nazi Ideology was of far less significance than the less visible idea that all of humanity is superfluous – as will soon be explained.

from external reality then that idea is not “essential” to the Ideology. For an Ideology to concern itself with the contents of external reality to any degree would represent a compromising of the internal world that comprises the Ideology. If ideological thinking is to persist then it can broker no such compromise. More characteristic of an ideology is its mode of interpreting the world through the process of logical deduction. Loneliness enforces upon the masses the sense that the world is of no use to them and they can only trust their own internal thought process. Loneliness also enforces upon the masses the sense that the world has no use for them, which gives rise to the idea that is definitive for the masses to become masses. This is the masses’ idea of being expendable, disposable or - to use Arendt’s term - “superfluous.” This idea is entirely a creation of the internal understanding of the masses’ lonely worldview and represents no compromise with external reality. Arendt underlines the internal aspect of the masses idea of “superfluity” by contrasting the (external) conditions of “isolation” and “uprootedness” with the (internal) ideas of “loneliness” and “superfluity.” These internal ideas provide an interpretation of the world that is formed upon the basis of how these ideas experience the world: “To be uprooted means to have no place in the world recognized and guaranteed by others; to be superfluous means not to belong to the world at all. Uprootedness can be the preliminary condition for superfluosity, just as isolation can (but must not) be the preliminary condition for loneliness.”¹⁹⁹ Thus, the idea of superfluity is essential to the masses’ Ideology. The masses’ employment of Ideological thinking begins with the idea of being superfluous and then through the process of logical deduction commits itself to the idea that being superfluous can explain everything that transpires in “human” reality. With the masses’ experience of loneliness acting as the basis for Nazi Ideology, the

¹⁹⁹ Ibid., 475.

ideological thinking employed by Nazism can only conclude its process of logical deduction once all of humanity is demonstrated to be superfluous.

This is indeed what Arendt states about the ultimate aims of Nazism:

Totalitarianism strives not toward despotic rule over men, but toward a system in which men are superfluous ... As long as all men have not been made equally superfluous - and this has been accomplished only in concentration camps - the ideal of totalitarian domination has not been achieved. Totalitarian states strive constantly, though never with complete success, to establish the superfluity of man.²⁰⁰

Arendt describes the outlook that all of humanity is superfluous as being extremely dangerous. When comparing this outlook to that of the mob who, of course, as a part of their livelihood had experience in carrying out executions, Arendt observes: "For the ruthless machines of domination and extermination, the masses of co-ordinated philistines provided much better material and were capable of even greater crimes than so-called professional criminals, provided only that these crimes were well organized and assumed the appearance of routine jobs."²⁰¹ Arendt argues that there is something even more alarming about the masses than their capacity to commit mass murder. In the previous passage quoted above, Arendt states: "As long as all men have not been made equally superfluous - and this has been accomplished only in concentration camps - the ideal of totalitarian domination has not been achieved." This sentence equates the idea of all of humanity being superfluous with the ideal of Nazism/total domination. The full realization or accomplishment of this ideal occurs only (according to Arendt) in the concentration camps. Therefore, the ideal of Nazi Ideology that all of humanity is superfluous can only be fully accomplished with the "victory of the concentration camp system." "A victory," Arendt argues, that "would mean the same inexorable doom for human beings as the use of the hydrogen bomb would mean the doom of

²⁰⁰ Ibid., 457.

²⁰¹ Ibid., 337.

the human race.”²⁰² This means that the ideal of Nazi Ideology that all of humanity becomes superfluous is only realizable through the creation of the wholly self-destructive state. As Arendt remarks: “The manipulators of this system believe in their own superfluousness as much as in that of all others, and the totalitarian murderers are all the more dangerous because they do not care if they themselves are alive or dead, if they ever lived or never were born.”²⁰³

In conclusion, the ideal of Nazi Ideology that all men are superfluous can only be fully realized through the creation of the wholly self-destructive state; *i.e.*, a society that has become indistinguishable from a concentration camp. Loneliness became the basis for the masses’ experience of reality, and gave the masses their sense that they had been abandoned to their own resources. This meant that the masses came to the understanding that the only resource they could trust for comprehending their reality and the world surrounding them was the contents of their head. The interpretation provided by loneliness of the conditions they faced led the masses to conclude that they were of no use to the world and the world was of no use to them. Being of no use to the world led the masses to the idea of being superfluous; while the conclusion that the world was of no use to them led the masses to comprehend reality through the process of logical deduction. The masses’ idea of being superfluous became essential to their experience of the world, acting as the idea that was the starting point for their employment of ideological thinking (or the process of logical deduction). When superfluity becomes the idea that is used to explain everything that transpires in reality, the

²⁰² Ibid., 443. As evidence that Arendt herself makes the association between the worldview that humanity is superfluous and the demise of the human race, consider that the phrase “radical evil” (to my knowledge) only appears in The Origins of Totalitarianism near the two locations quoted above (Ibid., 443 and 457). The connection is even further established by the weighty significance Arendt attaches to her description of this term.

²⁰³ Ibid., 470.

only outcome that becomes consistent with ideological thinking is if the supporters of this Ideology are able to demonstrate that all of humanity is superfluous. And this demonstration can only be realized through the creation of the wholly self-destructive state - a situation that indicates once and for all that Nazism has been a “good bet” for its followers. An alternative path must be presented to resist the idea that all of humanity is superfluous once this horrible connection is made between superfluity and ideological thinking. Otherwise, there will be no halt to the creation of the fully self-destructive state; and no preventing the human race from imploding.

Part G: Agamben: Nazi Ideology and Life as a Political Task

[Wars] are waged on behalf of the existence of everyone; entire populations are mobilized for the purpose of wholesale slaughter in the name of life necessity: massacres have become vital. It is as managers of life and survival, of bodies and the race, that so many regimes have been able to wage so many wars, causing so many men to be killed ... If genocide is indeed the dream of modern powers, this is not because of a recent return of the ancient right to kill; it is because power is situated and exercised at the level of life, the species, the race, and the large-scale phenomena of population.

-Michel Foucault, The History of Sexuality, 137.

The focus of concern for Agamben’s discussion of Nazi Ideology is a book that was released in 1942 by Nazi sympathisers in France entitled State and Health. This publication quoted Nazi “experts” on the “character and merits of National Socialist politics in matters of health and eugenics.”²⁰⁴ Agamben explains what he sees as its significance: “Of all the official and semiofficial publications of the National Socialist regime, this work perhaps most explicitly thematizes the politicization (or political value) of biological life and the consequent transformation of the entire political horizon.”²⁰⁵ Perhaps more plainly stated, “the politicization of biological life” that results in the “transformation of the entire political

²⁰⁴ Agamben, 144.

²⁰⁵ Ibid., 144.

horizon” begins when a nation’s wealth – as this is determined by means of a political estimation - is calculated not with the focus primarily upon land and natural resources, but with a focus upon the ‘value’ of the population.²⁰⁶

Thus the primary concern for the Nazi government - if it was to ensure the full value of the wealth of its nation would be exploited - became the care and cultivation of the natural (or biological) life of the populace. Arendt describes the extremity with which the ‘value’ of the populace is given weight by totalitarian governments in their calculation of their nation’s wealth. She observes:

To Stalin constant growth and development of police cadres were incomparably more important than the oil in the Baku, the coal and ore in the Urals, the granaries in the Ukraine, or the potential treasures of Siberia – in short the development of Russia’s full power arsenal. The same mentality led Hitler to sacrifice all Germany to the cadres of the SS; he did not consider the war lost when German cities lay in rubble and industrial capacity was destroyed, but only when he learned the SS troops were no longer reliable.²⁰⁷

Agamben’s concern in drawing attention to the Nazi interest in making the natural life of the populace the focus of its political concerns is to understand the implications this had for the activities that the Nazis engaged in during their rule. The thesis of Agamben’s argument in reference to Nazi Ideology is that for the Nazis, biological life did not represent or was not conceived of as something that was either ‘natural’ or a ‘given.’ With the focus of political activity under National Socialism being directed towards the care and cultivation of the populace, the biological (or natural) life of the populace was conceptualized by Nazi Ideology as a *political task*. This tenet of Nazi Ideology – that biological life represented a political task - led to both a transformation and expansion of sovereign power in ways that strengthened the capacity for the sovereign to act. This transformation and expansion of sovereign power was expressed in National Socialism’s treatment of race, death and life.

²⁰⁶ Ibid., 144-145.

²⁰⁷ Arendt, 418.

These issues will be discussed here in the context of a discussion of Agamben's description of the impact that Nazi Ideology, in its conceptualization of life as a political task, had upon the transformation and expansion of sovereign power. However the starting point for this investigation will be to understand how Nazi Ideology's conviction that biological life was neither a natural nor a given concern was reflected in this Ideology's understanding of race.

Agamben's discussion of Nazi law and the Nazi Idea of Man already presented some of the difficulties posed by bringing race criteria into discussions of politics. Discussion of the subject of race has a tendency to accentuate the role of sovereign power in political discussion, and (as was argued) shifts the focus of political discussion to matters of biopolitics. Political discussion transforms literally into a discussion of biology; although in the process of this transformation a hybrid form of political discourse is produced that is neither entirely political nor entirely biological. The decision made politically over who has the right to live in a community is decided upon dogmatically and with no real discussion at all. 'Biology' is presented by Nazi Ideology as a fact or natural 'given' that is not up for (political) discussion, and yet can enter into political discussions for the sake of making political decisions. A similar process could also be observed when politics was brought into the discussion of the natural (or biological) life of the population under the control of the Third Reich. The natural life of this population was constituted by means of a political determination ("Aryan" versus "Jewish" life). Political discussion was referred to in a dogmatic fashion for determining if the natural life of an individual did - or did not - satisfy the biopolitical criteria being used to decide who had the right to live within the community. Discussion of biological matters has literally been transformed into a political discussion, although once again this transformation process produces a hybrid form of discourse - in this

case a discourse on matters of biology - that is neither entirely political nor entirely biological.

The ambiguity of this hybrid form of discourse that is present within Nazi Ideology is underlined in a shocking way by an observation Agamben provides of the Nazi concept of race. The idea of using racial criteria to determine who has the right to live in a community has obvious shortcomings. To base such a decision on an arbitrarily determined biological 'fact' is both cruel and irresponsible (to say the least). However, the reference to race within Nazi Ideology does not even take advantage of the meagre or minimal benefits associated with being confined to an 'objective' biological 'fact.' Agamben's discussion of Nazi Ideology and its use of the concept of 'race' demonstrates the refusal of the Nazis to allow sovereign power to be restricted by the input of external 'facts.' In reference to the definition of race arising from Nazi Ideology in its biopolitical discussion - which, as has been shown, is a hybrid form of discourse that is neither entirely political nor entirely biological - Agamben makes the following observation:

"Race," Fischer [one of the authors of State and Health] writes, "is not determined by the assembly of this or that measurable characteristic, as in the case, for example, of a scale of colors ... Race is genetic heredity and nothing but heredity."

... Thus the concept of race is defined, in accordance with the genetic theories of the age, as "a group of human beings who manifest a certain combination of homozygotic genes that are lacking in other groups" ... Pure race is, according to this [Nazi Ideology's] definition, almost impossible to identify (in particular, neither the Jews nor the Germans constitute a race in the strict sense - and Hitler is just as aware of this when he writes *Mein Kampf* as when he decides on the Final Solution).²⁰⁸

Race had been treated as an 'objective' biological 'fact' when it made its appearance within Nazi politics. In spite of this, Nazi Ideology's definition of race reproduced by Agamben in the passage above clearly does not treat race as an 'objective' concept ("measurable characteristics" vs. "heredity"). The decision to eliminate entire populations for

²⁰⁸ Agamben, 146.

the sake of racial purity with a full consciousness that racial purity is a fictional concept (or at least a concept that has no 'factual' basis in the then current understanding of biology) is extremely alarming and raises questions concerning the final aims of this type of endeavour that the Nazis were engaging in.

Agamben suggests that the racially motivated activities of the Nazis are a demonstration of their interest in expanding sovereign power. As has been illustrated by the passage from Agamben's work quoted above, the concept of race is both ambiguous and indeterminately defined within Nazi Ideology. The racial characteristics Nazi Ideology uses to measure the 'value' of the populace's life are not measurable biological 'facts' existing independently of the reality created by Nazi Ideology. This ambiguity and indeterminacy present in Nazi Ideology's definition of race and the 'racial life' of the populace is a reflection of the exercising of sovereign power in matters of politics and biology. Agamben's argument is that Nazi Ideology originates as a creation of sovereign power. The definition of the concept of race in Nazi Ideology reflects the interest of sovereign power of transforming the natural life of the populace into a political task. Thus, the concept of 'racial life' in Nazi Ideology - being a mixture of both politics and biology - has its origins not in the natural life or in the political life of the populace, but instead as a creation of sovereign power.

As part of the process of engaging in racially motivated activities for the purpose of expanding sovereign power the Nazis must confront certain issues associated with equating their concept of 'racial life' with the constitution of the natural and political life of the populace. Agamben explains that the concentration camps are the site where the verdict over what constitutes 'racial purity' (i.e. what constitutes "Jewish life" and what constitutes "Aryan life") reaches its finality: "The camp is the space of this absolute impossibility of deciding between fact and law, rule and application, exception and rule, which nevertheless

incessantly decides between them.”²⁰⁹ A contradiction is produced when the decision over who has the right to live in a community is determined on the basis of the hybrid discourse arising from the biopolitical discussion of Nazi Ideology - a discourse that is neither entirely a political discussion, nor entirely a biological discussion. This discourse produces a definition of ‘racial life’ that has no basis in biological or political life of the populace. Yet a decision had to be (or was still) made by the Nazi authorities on the basis of biological and political concerns about what constituted the ‘racial life’ of the populace. The division of the ‘racial life’ of the populace into “Jewish” and “Aryan” life employed circular reasoning. “Jewish” and “Aryan” life is simultaneously a ‘fact’ of natural life constituted by a political designation while also being a political designation constituted by a ‘fact’ of natural life. For Nazi Ideology, why certain natural ‘facts’ or characteristics constitute a ‘race’ is entirely a political decision; while the decision politically about what constitutes a race is (supposedly) based upon natural ‘fact.’ The decision over what constituted the ‘racial life’ of the populace according to Nazi Ideology became completely empty and essentially lost sight of any proscribed limits. In the death camps the concept of race became a means for sovereign power to enact its decision over the inmates’ right to live, without restrictions. No meaning was proscribed beforehand for the constitution of the ‘racial life’ of the populace by means of legislation. With the concept of race being completely vacuous the meaning given to the ‘racial life’ of the populace by the Nazi authorities was being determined by what occurred ‘on the spot’ in the death camps in the actions of the Nazi officials and the inmates in the death camps. In other words, Nazi Ideology’s concept of the ‘racial life’ of the populace determined the constitution of the community by granting the officials in the death camps the authority to make the decision over who had the right to live. The only individuals who have

²⁰⁹ Agamben, 173.

the right to live are those who the Nazi officials 'say' have the right to live, without a consideration for either the biological or political concerns of the inmates.

Therefore, the contradiction that is inherent in making a definite decision over who was the right to live in the Third Reich on the basis of the indefinite criteria 'established' by the concept of race arising from Nazi Ideology was dealt with in Nazi Germany by the manner in which the concentration camps were used to 'resolve' problems. This meant the Nazis were not only consigning large segments of the population to death while being conscious that no clear distinction could be provided on which members of the population were racially pure (since even in their own eyes the concept of racial purity did not exist - a practice that by its design already shows signs of being classified as a self-destructive activity). In addition even to this, if the concept of race as defined by Nazi Ideology is nonexistent, then the elimination of entire segments of the population will be conducted with obvious futility. This futility is not expressed solely as a judgement upon the futility of establishing a society that is racially pure. Instead, the concept of race, as defined by Nazi Ideology, is itself unrealizable, as there were no actions that could have been committed that would have brought this idea into 'reality.' Nonetheless, their aspirations to create a "racially pure society" by means of engaging in a process of eliminating segments of the population still persisted in spite of their goal being unachievable. Agamben provides a description of the Nazi efforts to create a "pure race," which commenced their involvement into an endless process of population elimination:

The Jews are the representative par excellence and almost the living symbol of the people and the bare life that modernity necessarily creates within itself, but whose presence it can no longer tolerate in any way...

The fracture that was believed to have been overcome by eliminating the people (the Jews who are its symbol) thus reproduces itself anew, transforming the entire German people into a sacred life consecrated to death, and a biological body that must be infinitely purified (through the elimination of the mentally ill and the bearers of hereditary diseases) ... Only a

politics that will have learned to take the fundamental biopolitical fracture of the West into account will be able to stop this oscillation and to put an end to the civil war that divides the peoples and cities of this earth.²¹⁰

The realization of a society that is established on the basis of racial purity by means of eliminating entire segments of the population that are (deemed) racially 'impure' was an inherently futile effort for the Nazis to engage in; and this can be determined on the basis alone of their using the 'unrealizable' concept of race produced by Nazi Ideology.

The transformation of the natural life of the populace into a political task not only led to the redefinition of race as a biopolitical concept. The concepts of 'life' and 'death' also became engaged in a confrontation with sovereign power. In the previous chapter, Agamben's discussion of the Nazi Idea of Man presented the argument that the figure of the *Muselmänner* who, residing in a state of "living death," demonstrated that sovereign power as exercised by the Nazis had extended life beyond death. This observation is presented quite literally in Agamben's argument in the sense that the Nazis had created a new form of death. The example of the *Muselmänner* illustrates that for certain individuals in Nazi Germany death was experienced not strictly or entirely as a matter of biology. This is not to say that the death of these individuals was strictly a matter of political design and completely disassociated from matters of biology. Agamben's argument is suggesting that the death experienced by these individuals was a creation that originated from sovereign power, presenting a mixture of political and biological concerns. The claim that death is anything other than strictly a matter of biology may seem outlandish; and so to make this argument seem more familiar Agamben discusses examples of life outside of the death camps that illustrate that death is not strictly a biological matter. The examples he cites are from the field of medicine; in particular, Agamben takes into consideration individuals in a coma and the

²¹⁰ Ibid., 179-180.

medical profession's treatment of these individuals. Agamben describes how in these situations the biological operations of the patient would bring the life of that patient to an end. The life of the patient is sustained instead by means of medical intervention; however, this intervention is not just a temporary form of treatment that allows the biological operations of the patient to resume once again on their own. The example Agamben is concerned with is the life of the "overcomatose" person (a medical designation to which Agamben refers). For these individuals, their life is sustained by means of the ongoing intervention of medical devices upon their biological operations (and further, barring an unforeseen development, the biological operations of these patients are not expected to return to a state where they no longer require medical assistance). The biological operations of these patients would be unable to operate on their own and Agamben suggests that the lives of these patients have been extended to a state of life beyond death. This new state of death is not strictly a matter of biology, but nor does it take place in complete independence from biological matters either.

Agamben proceeds to explain that a redefinition of "death criteria" occurred within the medical profession as a response to coma patients whose biological operations required ongoing medical intervention to be sustained. He argues that the presence of sovereign power becomes strongly reflected in this process of redefinition (a process from which the designation of the "overcomatose" person arises). The traditional definition of death in the medical profession is that death occurs with "the stopping of the heartbeat and the cessation of breathing."²¹¹ The concept of "brain death" was then introduced into the medical profession to accommodate the situation of the overcomatose person. This concept defined the overcomatose person as being "dead." However, in the circular fashion reminiscent of

²¹¹ Ibid., 161.

Nazi Ideology's definition of the concept of race, "brain death" was then defined in terms of the overcomatose person, as is evident from the definition of death presented in a Harvard medical study entitled "A Definition of Irreversible Coma" cited by Agamben: "Our first objective is to define irreversible coma as a new criterion of death."²¹² The overcomatose patient is defined as being "dead" on the basis of "brain death;" while "brain death" is defined as being "dead" on the basis of the overcomatose patient. Besides the circular reasoning present in the definition of death criteria, Agamben provides even clearer evidence of the involvement of sovereign power in the redefinition of death criteria: "Once adequate medical tests had confirmed the death of the entire brain (not only the neocortex but also of the brain stem), the patient was to be considered dead, even if, thanks to life support technology, he continued breathing."²¹³ The redefinition of death criteria allows members of the medical profession to decide what death is independently of the biological operations of the patients. In an inhumane fashion, the Nazis had decided the inmates in the camps could be considered dead independently of whether or not their biological operations continued. As well, the *Muselmänner* - who are described as existing in a state of living death - in many respects seem to have internalized the understanding that, independently of the continuation of their biological operations, for all intents and purposes they consider themselves dead.

The concept of 'life' underwent a process of transformation in Nazi Ideology similar to the concept of 'death.' When the Nazis placed 'life' – in this sense of what constitutes being alive – in a confrontation with sovereign power, what constituted being alive was determined not strictly as a matter of biology. In accordance with Nazi ideology 'life' became a political task. The issue that Agamben uses to explore this point is again drawn from the

²¹² Ibid., 162.

²¹³ Ibid., 162

field of medicine, although in this case the issue he discusses is euthanasia. Alongside a more general discussion of this issue, Agamben discusses the Nazi euthanasia program; stating:

“The problem of euthanasia is an absolutely modern problem, which Nazism, as the first radically biopolitical state, could not fail to pose.”²¹⁴ Agamben considers what motivation the Nazis had in pursuing this program. Economically, logistically, and politically this program posed a problem for the Nazis, as it was expensive, difficult to organize, and unpopular.²¹⁵

Agamben also argues that: “The concept of “life unworthy of being lived” is clearly not an ethical one, which would involve the expectations and legitimate desires of the individual.”²¹⁶

Finally, the idea that eugenic principles guided the decision of the Nazis to implement the program is perhaps seemingly the most likely explanation but nonetheless remains problematic. As Agamben observes, the targets of the euthanasia program “mainly children and the elderly” were not reproducing and would not be reproducing in the future (the forced sterilization program had already ensured this would be the case).²¹⁷ This means the motivation for the Nazi euthanasia program did not arise from either strictly political or strictly biological concerns. What concerns motivated the Nazi euthanasia program?

To summarize what has been stated so far in response to this question: During the Nazi euthanasia program, the question of what constituted being alive in the view of Nazi Ideology was extended beyond being strictly a matter of biology. A decision was made politically over ‘life,’ but of course the ‘life’ of the populace was still dependent upon biology matters. The decision Nazi Ideology made about who was allowed to be alive in the Third Reich was therefore neither entirely a biological matter nor entirely a political matter,

²¹⁴ Ibid., 143.

²¹⁵ Ibid., 141.

²¹⁶ Ibid., 142.

²¹⁷ Ibid., 141.

but a combination of both of these concerns. This combination of concerns displayed during the Nazi euthanasia program demonstrates signs that the decision over what constituted being alive in the view of Nazi Ideology was reflecting the presence of sovereign power. Agamben describes the dynamic of sovereign power that was at work in this issue: “Euthanasia is situated at the intersection of the sovereign decision on life that may be killed and the assumption of the care of the nation’s biological body. Euthanasia signals the point at which biopolitics necessarily turns into thanopolitics.”²¹⁸ This transition point that emerged with the issue of euthanasia marked the beginning of two disturbing developments in Nazi Germany. The decision made by sovereign power over who had the right to live in a community was no longer restricted to being exclusively under the command of political officials but had been expanded to officials in the field of medicine. Secondly, the issue of euthanasia reflects an exercising of sovereign power that treats the natural life of all members of the populace as a political task. This task does not exclude the employment of “thanopolitics” - or “care” for the ‘life’ of the populace that does not exclude treatment that makes the decision over who has the right to life in a community independently of biological concerns such as an individual’s ability to continue breathing.

The intermixing of biology and politics was not accomplished as thoroughly by the Nazi medical officials during the euthanasia program as it would be by the officials at the death camps. This program is still not without its importance to Nazism and its implementation of homicidal practices: “The fact is,” Agamben states, “that the National Socialist Reich marks the point at which the integration of medicine and politics, which is one of the essential characteristics of modern biopolitics, began to assume its final form.”²¹⁹

²¹⁸ Ibid., 142.

²¹⁹ Ibid., 143.

This “final form” is realized when sovereign power can make the decision over who was the right to live in a community without regard to any proscribed or well-defined limits. This again recalls Agamben’s citation of Hitler’s orders to eliminate all citizens of the Third Reich who either suffered from or who had a (medical) history of “relatives” that suffered from heart and lung ailments.²²⁰

The Nazi euthanasia program presupposed the view that the natural life of the entire populace was a political task. This view permitted the officials in charge of the program to decide upon what constituted being “alive” independently of biological concerns. Therefore, by means of this decision the issue of euthanasia allowed sovereign power to expand its decision over who had the right to live in a community over the entire population under its rule. In making a comment on the state of the political scene in the Western world that is also clearly applicable to Nazi Germany, Agamben observes that with the expansion of sovereign power that takes place in euthanasia: “Bare life is no longer confined to a particular place or a definite category. It now dwells in the biological body of every living being.”²²¹ This statement implies that the moniker of “a life that may be killed without the commission of a homicide”²²² now (to varying degrees of intensity) designates a structure that is internal to every living person.

The description here of the concepts of ‘race,’ ‘death,’ and ‘life’ (in the sense of what constitutes being a race, being dead, and being alive) within Nazi Ideology is defined and treated in a manner that reflects this Ideology’s conviction that the natural life of the populace should be treated as a political task. This transformation of natural life into a political task

²²⁰ Ibid., 150.

²²¹ Ibid., 140.

²²² Ibid., 159.

allowed sovereign power to be expanded and to extend its decision of who has the right to live within a community into a discussion of race, death, and life. Characteristically of sovereign power, these subjects are described by means of a hybrid discourse that is an intermixing of biological and political matters. The entrance of biology into politics ensured that political discussion was carried out without debate, while the entrance of politics into biology ensured that anything that may have been considered a biological 'given' would no longer be of neutral political significance. The constitution of race, death, and life, in the Nazi community was decided upon by sovereign power independently of a concern for biological or political understanding.

As would be expected, the height of sovereign power's ability to treat the natural life of the populace as a political task occurs for the Nazis in the death camps. The life of the inmates in the death camps displays the final aims of the process that attempts to turn natural life into a political task through the overlapping of biology and politics. Agamben's discussion of the Nazi Idea of Man demonstrated the inherently futile efforts of the Nazis to place the natural life of the inmates in confrontation with sovereign power and impose a form of life upon the inmates that was entirely a creation of sovereign power. 'Pure' natural life was supposed to provide a "foundation for sovereignty" that could be used both for the elimination of arbitrary rights (such as "The Rights of Englishman") based on political privilege. Instead, this "foundation" would provide the basis for the formation of self-evident "human rights." However the isolation of a pure natural life was shown to be an impossibility. Sovereign power still proceeded with its effort of eliminating all of the political rights of the citizens under its rule, while "human rights" laid the groundwork for sovereign power to exercise its decision over all human beings of who has the right to live.

What is especially relevant from Agamben's discussion of the Nazi Idea of Man to his discussion of Nazi Ideology is the anxiety – or at least the concern or interest – of sovereign power to provide a foundation for its rule that is based upon a completely isolated or 'pure' form of natural life that has become emancipated from the political life of the populace. In the confrontation of sovereign power and natural life, sovereign power immediately and inescapably infuses the natural life of the populace with political significance. The distinction between what is a 'fact' of natural life becomes indistinguishable from what decision has been made (by sovereign power) about a 'fact' of natural life. In the death camps, the natural life of the populace (and the 'facts' of their natural life) no longer exists independently of sovereign power.²²³ Agamben describes the situation produced in the death camps once the natural life of the inmate has become indistinguishable from the exercising of sovereign power:

What confronts the guard or the camp official is not an extrajudicial fact (an individual biological body belonging to the Jewish race) to which he must apply the discrimination of the National Socialist rule. On the contrary, every gesture, every event in the camp, from the most ordinary to the most exceptional, enacts the decision on bare life by which the German biopolitical body is made actual.²²⁴

In the death camps the Nazis attempted to impose a form of life on the populace that was entirely a creation of sovereign power. Sovereign power imposes upon the natural life of the populace a form of life that has no biologically or politically independent existence from the form of life created by sovereign power. Only the form of life created by sovereign power and imposed upon the populace - and not the natural or the political life of the populace that exists independently from this form of life - is of concern to the Nazis as they make their (biopolitical) decision over who has the right to live in 'their' community.

²²³ Agamben states: "Politics is now literally the decision concerning the unpolitical." *Ibid.*, 173.

²²⁴ *Ibid.*, 173-174.

Quite clearly, within the confines of the death camps, the biopolitical decision over who had the right to live in a community was exercised without restriction. Beyond even what occurred in the camps, the extremely dangerous and disturbing consequences of Nazi Ideology's conviction that natural life represents a political task becomes even more alarming when this conviction is placed in conjunction with the Nazi pursuit of the inherently futile endeavour of isolating a 'pure' natural life. The process of isolating 'pure' natural life led to an examination of the natural life of the entire populace under Nazi rule, with the most intense efforts being directed towards the inmates of the concentration camps. In the process of isolating 'pure' natural life the Nazis slated for destruction all the inmates whose natural life persisted in exhibiting a political life. The creation of a "pure" race or "pure" form of natural life demanded that the "impure" race or natural life be annihilated. But the political life of the inmates necessarily persisted in exhibiting itself within their natural life. With the isolation of a "pure" form of natural life being an unrealizable goal, once the process of eliminating the political life of the inmates was pursued the view that the life of all inmates must be slated for destruction was an unavoidable conclusion for the Nazis. Thus, expanding the ability of sovereign power to examine the natural life of the entire populace for the purpose of deciding which members of the populace possessed a "pure" form of natural life and therefore had a right to live would seem to imply the following: If the Nazis did not deviate from their path, then they would have unavoidably been led to the conclusion that the lives of all members of the populace - being unable to exhibit the unrealizable goal of a "pure" form of natural life - must be slated for destruction. The description of a society composed entirely of citizens who must be slated for destruction, I think unfortunately, can quite reasonably be said to fit the description of a wholly self-destructive state.

Conclusion: The Ongoing Threat of National Socialism and the Possibility of Post-Shoah Philosophy

If from the inside of the *Lager*, a message could have seeped out to free men, it would have been this: take care not to suffer in your own homes what is inflicted on us here.

-Primo Levi (quoted in Flowers for Hitler by Leonard Cohen, 11).

Throughout the course of this study the *Muselmann* has emerged as a central figure in the descriptions of Fackenheim, Arendt and Agamben's work. Fackenheim describes this figure as "the sole, truly original contribution of the Third Reich to civilization. He is the true *novum* of the New Order."²²⁵ His argument has presented the contention that this figure produces a "rupture" within history, including the history of philosophy; and that this rupture can only be repaired by means of a special kind of "mending" (as will be explained below). The term '*Muselmann*' does not appear in The Origins of Totalitarianism, although Arendt provides the following disquieting description of inmates in the concentration camps:

We attempt to understand the behaviour of concentration camp inmates and SS-men psychologically, when the very thing that must be realized is that the psyche *can* be destroyed even without the destruction of the physical man; that, indeed psyche, character, and individuality seem to express themselves only through the rapidity or slowness with which they disintegrate. The end result in any case is inanimate men, *i.e.*, men who can no longer be psychologically understood, whose return to the psychologically or otherwise intelligibly human world resembles the resurrection of Lazarus.²²⁶

Aside from this description, the inmates referred to as *Muselmänner* seem to form a central part of the presentation of Arendt's argument. This argument involved her description of inmates in the concentration camps who have lost a sense of justice, morality and eventually all vestiges of spontaneity within themselves, until they are "reduced to a never-changing identity of reactions, so that each of these bundles of reactions can be exchanged at

²²⁵ Ibid., 215.

²²⁶ Arendt, 441.

random for any other.”²²⁷ In Agamben’s work the *Muselmänner* are mentioned in only a few paragraphs; but their importance seems unquestioned. He refers to the *Muselmänner* as being a version of the figure of *homo sacer*, who Agamben refers to as being the “protagonist”²²⁸ of his work. In Agamben’s argument the version of *homo sacer* represented by the *Muselmänner* - an Idea of Man that was wholly self-destructive - reflected the goal of Nazi biopolitics. The concern with biopolitics was of course itself a central theme of his discussion, as the argument was presented that the Nazis employed biopolitics to decide who had the right to live in ‘their’ community.²²⁹

The appearance of *Muselmänner* has been presented as evidence that demonstrates the Nazi aims were directed towards creating a wholly self-destructive state. The creation by the Nazis of prisoners who show a complete indifference to life or death produces citizens whose presence is suited only for a society that has become wholly self-destructive. For Fackenheim, their creation is realized by means of a “logic of destruction;” for Arendt, by means of aspirations for “total domination;” and for Agamben, by means of an exercising of “biopolitics” that is so unrestricted and/or unlimited that it transforms into an unrelenting “thantopolitics.” The creation of the wholly self-destructive state is clearly the underlying threat that was enforced by the activities of the Nazis during the Shoah - a threat that continues to pose an ongoing danger to the post-Shoah world. Fackenheim, Arendt, and Agamben have each represented this underlying threat in different ways. What remains to be seen is their response to the question of how to respond to this underlying threat:

²²⁷ Arendt, 458.

²²⁸ Agamben, 8.

²²⁹ Agamben has produced a series of four books under the title of *Homo Sacer*. The central theme of the third work in this series is devoted to a discussion of the *Muselmänner*. See Giorgio Agamben, *Homo Sacer III: Remnants of Auschwitz and the Witness*, translated by Daniel Heller (Stanford, California: Stanford University Press, 1998)

Part A: Fackenheim

Fackenheim's argument discusses the serious toll enacted by the world's encounter with the Shoah that those living in the post-Shoah world must continue to pay. This includes: being a witness to the demolition of the concept of an Unwritten Law of Man. It includes the recognition that a concern for the ability of oneself and others to continue breathing is a 'luxury' that can be taken away indefinitely and potentially permanently for both individuals and entire populations. And it is to recognize that the decision had been made to enforce the creation of a world that is completely self-destructive. The recognition of these challenges posed by the world's encounter with the Shoah seem to cast the post-Shoah world and concerns that are important to it (the Unwritten law of Man, Man's ability to act in matters of life and death, the available usages of Man's decision making powers) in an extremely unfavourable light. Fackenheim's way of dealing with the challenges posed to the post-Shoah world by its encounter with the Shoah is to try to prevent the reverence felt towards such concerns from contributing to a despondent indifference towards tendencies that threaten to consume the whole world. This includes a reassessment of any and all things held dear to the post-Shoah world if this reassessment becomes necessary for confronting the challenges posed to it by the world's encounter with the Shoah. The willingness and determination to cope for the sake of trying to work towards the benefit of humanity in spite of whatever difficulties, concerns, or issues may have to be confronted in this effort - this is perhaps the most important lesson of Fackenheim's work. This lesson seems to have some form of persistence independently of the specific issues that Fackenheim addresses in his discussion of the toll taken by the Shoah upon the post-Shoah world. Be that as it may, indispensable to

Fackenheim's discussion of the challenges posed by the Shoah is a concern for how life may be conducted in the post-Shoah world in the face of the unfavourable light that has been cast upon this world through its encounter with the Shoah. The concept that becomes crucial in this regard is "Tikkun" or "mending."

Fackenheim envisions philosophy learning from Jewish Thought and drawing inspiration from an idea contained within this form of Thought - an idea known as "Tikkun".²³⁰ A "Tikkun" would serve the purpose of helping to repair the damage done to the Unwritten Law of Man during the Shoah. The idea of Tikkun is one Fackenheim explains that he borrows from "kabbalistic Judaism" and in general terms he describes the concept as follows:

It is not easy to say whether the kabalistic impulses goes so far as to assert, at the price of "verging on the blasphemous," a rupture in the very substance of Divinity ... It is precisely if the rupture, or the threat of it, is total, that all powers must be summoned for a mending ... If the threat is to God ... then human power must aid the divine. And if this can be said without blasphemy, it is because the human aid is *itself* aided by the Divine.²³¹

The rupture that is of concern here is not to the Divine, but of course to the Unwritten Law of Man during the Shoah. Of significance though is the experience in Judaism that brings about a sense of rupture. This is the Diaspora and the life lived as an exile that this experience entails. A Tikkun involves as part of its concept a choice to continue following a way of life even after events occur that demonstrate the limitations of a particular way of life as a viable one. To be noted in the passage quoted above is the source of a Tikkun. Human beings initiate a Tikkun by giving their power to the Divine, although humanity's power itself rests in the Divine. In other words, the act of Tikkun operates by humanity calling upon Him to draw upon His own divine powers for the sake of coming to His own rescue. The perhaps

²³⁰ Fackenheim, 266.

²³¹ *Ibid.*, 252.

apparent circularity contained in the concept of Tikkun is far from establishing a Tikkun as a pointless act. The rupture being experienced (which is of course a precondition for a Tikkun to take place) can only be avoided by humanity choosing to call for the employment of its share of the power of the Divine to come to His rescue.

Within the history of philosophy, an act of Tikkun is perhaps best comparable (in an approximate sense) to a Kierkegaardian “leap of faith.” Consider Kierkegaard’s example of the knight of faith. The knight of faith recognises the impossibility of his winning the princess’ love that he desires; and yet he still fully expects to win this love. The knight of faith recognises a limit is prescribed upon his love for the princess. This limit prescribes that the knight of faith is limited from ever being able to conduct his love for the princess in a way that has any resemblance to the familiar understanding of how love is conducted. Nevertheless, the knight of faith’s continued observance of his love for the princess seems to preserve the integrity of this love. The knight’s actions can be thought of in terms of a Tikkun (although speaking of a Tikkun in this sense is somewhat improper). The knight of faith is faced with experiencing the threat of a rupture in his love for the princess. By committing an act of Tikkun the knight’s love for the princess restores this love and is restored by it through his contained observance of his love.

As for the act of Tikkun and its significance to the Unwritten Law of Man and the Shoah, Fackenheim argues the Shoah demonstrates the ability of Man to use the written laws of Man to blot out the “Unwritten Law of Man.” This occurs through the perpetration of mass murder against large segments of the population and as part of an elimination process with no clear end in sight. Furthermore, all of this occurs while only being met with negligible resistance from the general populace. This evidence establishes that the Unwritten Law of Man had been ruptured during the Shoah. Realising this may lead to accepting the

understanding of humanity that suggests that human beings are essentially preoccupied with bringing about their own destruction. An act of Tikkun, however, would recognise the limits that the Unwritten Law of Man may continue to persist within in a post-Shoah world. These limits prescribe that those living in a post-Shoah world can no longer view the Unwritten Law of Man in the way this concept has been understood prior to the world's encounter with the Shoah – *i.e.*, as a concern within each and every human being that ultimately prevails in securing Man's well-being and continued existence. However, an act of Tikkun would preserve the integrity of the Unwritten Law of Man in a post-Shoah world *if* those living in a post-Shoah world continue their - observance of, belief in, quest for, or inquiry into - the Unwritten Law of Man and how a world can be created that shares a concern for this concept. By preserving the integrity of the Unwritten Law of Man in the post-Shoah world, an act of Tikkun would work towards undermining the ongoing threat posed by the understanding of humanity that the Nazi treatment of Law sought to enforce.

Fackenheim considers Huber's invocation of the categorical imperative in defence of his decision to resist against the Shoah as the act of Tikkun during the Shoah that is most relevant to the conduct of a post-Shoah philosophy. To recall, this action led to the restoration of the Idea of Man - what Fackenheim calls philosophy's "noblest achievement."²³² Fackenheim describes the workings and significance of Huber's action both at the time of its occurrence during the Shoah and for the post-Shoah world:

He [Huber] *gave* strength to the Idea even as, in turn, he *was given* strength *by* it... He was old-fashioned enough to invoke the unwritten law as if ... it were accessible when in fact his own present was so divorced from it that only a Tikkun could make it accessible. However, his action was the required Tikkun. In obeying the unwritten law he restored that law ... *by writing it into his own heart*. In acting in behalf of Kant's Idea of Humanity, he *mended* that Idea - it was broken - for he recreated the matrix or *βoden* of it in

²³² *Ibid.*, 277.

actual humanity, even if only in his own person. Such was Huber's Tikkun of philosophy, in the age of its most catastrophic rupture.

This Tikkun, then and there, created the possibility and necessity of a post-Holocaust philosophy, here and now ... [brought] to a post-Holocaust consciousness. The Idea of Man can be - has been - destroyed, for humanity can be - has been - destroyed. But because humanity *has been* mended ... the Idea of Man *can* be mended. In the foregoing, we have come upon two *nova* of our age, a rupture and a Tikkun. Now we have come upon these same two *nova*, in the form that makes a post-Holocaust philosophy both necessary and possible.²³³

To recall, the “*nova*” that represents a rupture being experienced within the Unwritten Law of Man (which is equated with the destruction of the Idea of Man) occurs during the Shoah through the appearance of both the *Muselmänner* and their S.S. torturers. In response to this rupture the other “*nova*” makes its appearance. This is an act of Tikkun that mends the Unwritten Law of Man. As Fackenheim explains, the rupturing of this concept represents its ‘darkest hour.’ Its observance has disappeared, leaving the Unwritten Law of Man shattered and broken. At precisely this moment Huber decided upon a course of action that chooses to observe the Unwritten Law of Man (and the discarded shreds are suddenly transformed into a persisting remnant). Simultaneously as Huber's resistance against the Shoah is given resolve by the Unwritten Law of Man, his decision to follow the Unwritten Law of Man in resistance to the Shoah lends resolve to this Law.

The examples of the acts of resistance committed by the pregnant Jewish woman at Auschwitz, the Hasidim at Buchenwald, the Jewish resistance fighters in the Warsaw and Bialystock Ghetto uprisings and the resolve expressed in the words of Pelagia Lewinska should also all be viewed as acts of Tikkun. In each case, the participants in these examples had chosen to resist against the Nazis by overcoming the equation of ‘life’ with the concern for the ability to continue breathing - that is, the concern for survival. The understanding of ‘life’ they choose to support provides resolve to the actions of each of these individuals or

²³³ Ibid., 275-276.

groups; while simultaneously their actions also provide resolve for the understanding of 'life' they have chosen to support. This understanding of 'life' viewed the possibility of survival to emerge only when 'life' involved some sense of concern for the 'well-being' of that 'life' (*i.e.*, a sense: of mothers who engage in motherhood, of religious devotees who engage in religious devotion, of fighters who engage in fighting for the protection of non-combatants, and, of human beings whose concern for survival is limited by a concern for 'humanity'). As was argued, the Nazis had accepted the view that humanity and the 'life' of human beings is to be equated with survival - though with the added condition that humanity and the 'life' of human beings involves nothing other than experiencing an inability to secure their own survival and the survival of others. This understanding of humanity represents Fackenheim's formulation of the connection the Nazis made to an underlying threat that continues to have an ongoing significance to the post-Shoah world.

The decision to create a world that intensifies the experience of being unable to secure the ability to survive was most thoroughly internalized by the *Muselmänner* and their S.S. torturers. The underlying threat posed by this understanding of humanity intensifies the decision of the Nazis to create a world where the presence of these individuals is included; while the presence of these individuals intensifies the threat posed by this underlying and self-destructive view of humanity. The actions of the Nazis represent a rupture - the opposite of an act of mending or Tikkun. The acts of Tikkun committed by the pregnant Jewish woman, the Hasidim, the Jewish resistance fighters, Pegalia Lewinska, as well as by Kurt Huber, become an extremely crucial response to the intensification of this underlying threat, especially as this threat takes on an ongoing significance. Their acts of resistance to the Shoah represent a decision to (in a sense) reverse the equation of well-being and survival by placing a concern for 'life' ahead of the concern for survival. Rather than devaluing the

concern for survival, this reversal presents the possibility for survival to become 'valuable' once again.

The Nazis attempted to create a world where 'life' is equated with the experience of being completely helpless at surviving. This is prevented from becoming the complete experience of the world by those who decided to resist against this experience by pursuing activities that included a sense of well-being as part of the concern for 'life.' This decision points to a world beyond the Shoah where the ability to act upon a concern for one's own survival and the survival of others may be experienced. The extent to which the post-Shoah world can become a world where the possibility to show a concern for the well-being of humanity and the 'life' of human beings represents humanity's ongoing decision about the world human beings choose to create for themselves to live in. Clearly this decision about the concern for the well-being of humanity and the 'life' of human beings - as this involves both a concern for survival and concerns other than survival - is difficult to imagine as being anything other than of indispensable significance to "a post-Holocaust philosophy, here and now ... [brought] to a post-Holocaust consciousness."

Part B: Arendt

More than any other book, The Origins of Totalitarianism taught me to see the phenomenon of human superfluosity as fundamental to the human dilemmas of the modern era.

-Richard L. Rubenstein, "Totalitarianism and Population Superfluity" (quoted in The Realm of Humanitas, edited by Ruben Garner, 101).

Arendt's description of the Nazi enforcement and intensification of an underlying threat that continues to pose an ongoing significance to the post-Shoah world may perhaps

best be brought into focus in the context of the following objection raised against her work by Agamben:

Hannah Arendt had ... analyzed the process that brings *homo laborans* - and, with it, biological life as such - gradually to occupy the very center of the political scene of modernity. In The Human Condition, Arendt attributes the transformation and decadence of the political realm in modern sciences to this very primacy of natural life over political action ... [But] Arendt establishes no connection between her research in The Human Condition and the penetrating analysis she had previously devoted to totalitarian power (in which a biopolitical perspective is altogether lacking) ...²³⁴

An examination of the content of The Human Condition²³⁵ and The Origins of Totalitarianism very quickly demonstrates a great deal of coincidence in the subject matter of the two works. Some of this subject matter has already been discussed in this writing: for example, world alienation, the destruction of “common sense,” and the subsequent reliance upon internal thought processes as the only resource for understanding reality, and, as well, the phenomenon of large segments of the population who have lost their claim to a land which they call ‘their own.’ These subjects have been discussed here with reference to a totalitarian context, whereas in The Human Condition they are discussed by Arendt with reference to a non-totalitarian context. Most likely, then, when Agamben claims there is “no connection” between Arendt’s research in the Human Condition and her earlier research on totalitarianism he is only considering the specific subject matter (the ever-increasing convergence of biological and political concerns) that he describes in the quotation above. Whether or not there is evidence to support Agamben’s assertion in this matter will not be explored here. The relevance of Agamben’s claim to this discussion is only to the extent that this claim supports the interpretation that there is no continuity between the content of the two works.

²³⁴ Agamben, 3-4.

²³⁵ Arendt, The Human Condition (Chicago: University of Chicago Press, 1958).

The objection may be raised that despite the coincidence of the subject matter of world alienation and uprootedness in The Human Condition and The Origins of Totalitarianism, the main focus of these two works (the human condition and totalitarianism) is very far afield. Hence with the divergence of this focus it becomes difficult to speak of continuity between their content. This objection may be answered with reference to an element of the human condition that acts as a focal point for organizing Arendt's analysis of this condition in both a non-totalitarian and a totalitarian context. This focal point is formed on the basis of the duality that is central to Arendt's analysis of the aspects of the human condition that, thus far, has been expressed in terms of natural life versus political life. In The Human Condition Arendt expresses the distinction upon which this duality rests in a number of different ways. These include a differentiation between whether the aspects of the human condition are passive or active, are a matter of necessity or freedom, are predictable or unpredictable, or finally, are directed towards a concern for human beings considered as a singularity or as a plurality. I intend to explain (in a brief fashion) how recognizing the aspects of the human condition in these other terms is illuminating for a discussion of the *origins* of totalitarianism; specifically, as this pertains to Arendt's discussion in The Origins of Totalitarianism of how to overcome the persisting influence of these origins in their survival beyond the fall of the two major totalitarian regimes. To be concerned with the persisting influence of the origins of totalitarianism is another way of expressing the concern that is the focus of the discussion of Arendt's work in this chapter. This is the concern for an understanding of the underlying threat the Nazis further enforce during the Shoah - a threat that continues to pose an ongoing danger to the post-Shoah world - and a concern for an understanding of how this threat can be overcome.

The relevance of the distinction between singularity and plurality is immediately evident to Arendt's discussion of loneliness in The Origins of Totalitarianism. Loneliness is clearly an experience that emphasizes those aspects of the human condition associated with human beings considered as a singularity. However, the connection between loneliness and singularity is perhaps not established in the most obvious meaning of the terms. Arendt indicates in her discussion of loneliness and isolation that the physical presence of others (or lack thereof) is not the definitive feature of loneliness, and the situation is no different with singularity. The connection between loneliness and singularity is established with reference to the "human condition." This means that the description that has been used to describe the experience of loneliness - the increasing reliance upon internal thought processes as the only resource for understanding reality - is also an appropriate description of those aspects of the human condition that are concerned with human beings considered as a singularity. The connection between loneliness and singularity provides an explanation of the experience that is the basis for totalitarianism (loneliness) by making reference to which aspects of the human condition the experience of loneliness places its emphasis upon (*i.e.* those aspects of the human condition that consider human beings as a singularity).

Recalling the distinction between loneliness and isolation can perhaps act as a sensible starting point for explaining loneliness with reference to the human condition. Isolation and uprootedness were described in The Origins as being the preconditions for the decision to view reality in terms of loneliness and superfluosness.²³⁶ The connection between isolation and loneliness is re-established in The Human Condition: "The eclipse of a common public world, so crucial to the formation of the lonely mass man and so dangerous in the formation of the worldless mentality of modern ideological mass movements, began with the

²³⁶ Arendt, 475.

much more tangible loss of a privately owned share in the world ...²³⁷” The removal of a common public world and the isolation that ensued is again described (as it was in The Origins) as leading the masses to experience loneliness. Ideology became more acceptable to the masses, as it formed its understanding of the world on the basis of the experience of loneliness. Loneliness was explained as representing the decision to view the world outside of the contents of an individual’s head as being an unreliable resource for understanding reality; leaving internal thought processes as the only reliable resource for understanding reality.

In The Human Condition Arendt describes a similar development occurring within the non-totalitarian world, giving her assessment of this development in a very damning tone:

Modern man ... did not gain this world when he lost the other world, and he did not gain life, strictly speaking, either; he was thrust back upon it, thrown into the close inwardness of introspection, where the highest he could experience were the empty processes of reckoning of the mind, its play with itself.²³⁸

Arendt goes on to explain in The Human Condition that the concerns of these internal thought processes are directed exclusively towards those aspects of the human condition that are concerned with human beings considered as a singularity. These interests include a concern for the necessities of human existence and (subsequently) a disinterest in the pursuit of concerns that are free of the necessities of human existence.²³⁹ Another set of terms Arendt uses to describe this reliance upon internal thought processes - which is reached in its extremity through the experience of loneliness - is as an interest in the pursuits of needs that are passively received as the givens of human existence, while having a disinterest in concerns that must be freely selected and actively pursued. The overall understanding of the human condition when human beings are considered as a singularity becomes one of a human

²³⁷ Arendt, The Human Condition, 257.

²³⁸ *Ibid.*, 320.

²³⁹ *Ibid.*, 320: “What was not needed, not necessitated by life’s metabolism with nature, was either superfluous or could be justified only in terms of the peculiarity of human as distinguished from other animal life ...”

species made up of individuals who happen to share basic common needs without any form of ‘commonality’: “What was left was a “natural force,” the force of the life process itself, to which all men and all human activities were equally submitted.”²⁴⁰ Any other association between individuals (literally) becomes ‘unnecessary.’”

On numerous occasions throughout the Human Condition Arendt warns against the dangers of a “society of labourers” or a society of individuals who possess the type of understanding of the world and the human condition that is presented by loneliness and singularity:

What we are confronted with is a society of laborers without labor, that is, without the only activity left to them. Surely, nothing could be more dangerous...²⁴¹

Consumption is no longer restricted to the necessities but, on the contrary, mainly concentrates on the superfluities of life, [this] does not change the character of this society, but harbours the grave danger that eventually no object of the world will be safe from consumption...²⁴²

The trouble with modern theories of behaviourism is not that they are wrong but that they could become true, that they actually are the best possible conceptualization of certain obvious trends in society. It is quite conceivable that the modern age ... may end in the deadliest, most sterile passivity history has ever known ...²⁴³

This is of course to cite but a few of the warnings that Arendt offers in The Human Condition concerning the status of the human condition in modern society.

In The Origins of Totalitarianism the subscription to a totalitarian movement and its ideology was shown to lead to an understanding of reality that was highly restricted to the necessary and predictable processes of Nature and History - as these processes were conceived of by ideology. In The Human Condition Arendt describes how these restrictions associated with the necessities of human existence had already begun to be put into place in a

²⁴⁰ Ibid., 320.

²⁴¹ Ibid., 5.

²⁴² Ibid., 133.

²⁴³ Ibid., 322.

non-totalitarian context: “Man began to consider himself part and parcel of the two superhuman, all-encompassing processes of nature and history, both of which seemed doomed to an infinite progress without ever reaching any inherent *telos* or approaching any preordained idea.”²⁴⁴ In a totalitarian context the processes of Nature and History provided a “law of movement” for each of the major ideologies of the two major totalitarian movements. Reminiscent of her comment in The Human Condition just quoted above, the utilisation of the processes of Nature and History by totalitarian ideology “unmasked the true nature of these movements insofar as it clearly showed that there could be no end to this process;” a development that becomes all the more alarming when considering that totalitarian ideology understood the movement of these processes to be governed by a “law of killing.”²⁴⁵

Totalitarianism is of course the most extreme example of society that has become pre-occupied with the aspects of the human condition that are concerned with treating human beings as a singularity. Loneliness (the experience of an individual that the world is of no use to them) and superfluosity (the experience of an individual that they are of no use to the world) are the experiences that allowed the totalitarian regime of the Nazis to thrive. When these experiences were crystallized within an ideology they inevitably led the entire population under Nazi control into an intensifying process of self-destruction. Ideology responds to the reliance of the experiences of loneliness and superfluity upon the contents in an individual’s head as the only resource for understanding reality. These contents are the logical thought processes of the mind that demand the world becomes consistent with the understanding that human beings are superfluous. But throughout both The Origins and The

²⁴⁴ Ibid., 307.

²⁴⁵ Arendt, The Origins of Totalitarianism, 464.

Human Condition Arendt describes how individuals always have a choice about how they decide to understand the world and the human condition. The understanding of the human condition associated with the concerns of human beings considered as a plurality presents human beings with the possibility to strike a balance between the necessities of human existence and the opportunity for human beings to intervene upon whatever consequences are presented as being a necessary part of their existence.

Obviously Arendt's discussion of "action" in The Human Condition provides a description at length of an understanding of the human condition that considers human beings as a plurality.²⁴⁶ But the interest in the possibility for human beings to intervene upon the consequences that are presented as being a necessary part of human existence is also discussed in The Origins. Arendt articulates this interest with references to passages by Augustine that also appear in her discussion of "action" in The Human Condition. In The Origins this passage appears in the closing lines of the work: "*Initium ut esset homo creatus est* - that a beginning be made man was created."²⁴⁷ Arendt describes Man's capacity to begin a new course of action as presenting human beings with the opportunity to be released from consequences that appear as a necessary part of their existence. In a totalitarian context the capacity to begin presents Man with the opportunity to act against accepting the decision to enforce an understanding of reality that is consistent with the view superfluosity is a necessary consequence of human existence. The ultimate consequence of this view when submitted to a totalitarian ideology and its rigorous demand for consistency - that deduces

²⁴⁶ See especially the sections in "Chapter V. Action" on "Irreversibility and the Power to Forgive" and "Unpredictability and the Power of Promise" (Arendt, The Human Condition, 236-247).

²⁴⁷ Augustine, quoted in Arendt, The Origins of Totalitarianism, 479).

that all of humanity must become superfluous²⁴⁸ - may be undermined by the possibility that beginning presents for human beings. This is the possibility to pursue a new course of action that offers a new set of consequences for human existence. Beginning becomes the very possibility for resistance against totalitarianism - in either its origins or at any other stage of its development.

The discussion of Ideology and terror has argued that terror is used to demonstrate that the Nazi 'unreality' created by Nazi Ideology can be brought into reality by means of force. The objection may be raised that Ideology and terror was a form of government²⁴⁹ that the Nazis used to enforce a sense of 'unreality' that obliterated justice, morality, and spontaneity itself within the population under its control and led this same population to become self-destructive and accepting of the understanding that all of humanity is superfluous. Despite the promise of Arendt's description of beginning it seems entirely reasonable to conclude that beginning has no more of a chance (or no chance) of surviving against Nazism or any other form of totalitarian oppression. To this very disturbing objection Arendt furnishes the following response:

Over the beginning, no logic, no cogent deduction can have any power, because its chain presupposes, in the form of a premise, the beginning. As terror is needed lest with the birth of each new human being a new beginning arise and raise its voice in the world, so the self-coercive force of logicity is mobilized lest anybody ever start thinking - which as the freest and purest of all human activities is the very opposite of the compulsory process of deduction. Totalitarian government can be safe only to the extent that it can mobilize man's own will power in order to force him into the gigantic movement of History or Nature which supposedly uses mankind as its material and knows neither birth nor death.²⁵⁰

²⁴⁸ "Loneliness and the logical-ideological deducing the worst that comes from it represent an anti-social situation and harbour a principle destructive for all human living-together. Nevertheless ... Its danger is that it threatens to ravage the world as we know it - a world which everywhere seems to have come to an end - before a new beginning rising from this end has had time to assert itself" (Arendt, The Origins of Totalitarianism, 478).

²⁴⁹ This is of course a reference to the title of the final chapter of The Origins of Totalitarianism.

²⁵⁰ *Ibid.*, 473.

In this passage Arendt describes the distinction between the mental processes of deduction and thinking, and their relationship to beginning. Beginning acts as a reminder that an individual's pursuit of either thinking or deduction occurs as a matter of individual decision or choice. Therefore, if totalitarianism has its basis in the *decision* of individuals to pursue a line of logical deduction as their sole means of understanding reality, then the consequences of this line of deduction always has the potential to be undermined by individual's *decision* at any point to end the chain of logical deduction and begin thinking.

The voluntary aspect that is implied in these two alternatives - logical deduction and thinking - is no more apparent in Arendt's discussion of the alternative experiences of loneliness and solitude. The experience of solitude is described by Arendt with reference to a quotation by Cato:

Numquam minus solum esse quam cum solus esset, "never was he less alone than when he was alone," or, rather, "never was he less lonely than when in solitude" ... The solitary man ... is alone and therefore "can be together with himself" since men have the capacity of "talking with themselves." In solitude, in other words, I am "by myself" together with my self, and therefore two-in-one ... All thinking strictly speaking, is done in solitude and is a dialogue between me and myself; but this dialogue of the two-in-one does not lose contact with the world of my fellow-men because they are represented in the self with whom I lead the dialogue of thought. The problem of solitude is that this two-in-one needs the others in order to become one again ... For the confirmation of my identity I depend entirely upon other people; and it is the great saving grace of companionship for solitary men that it makes them "whole" again, saves them from the dialogue of thought in which one remains always equivocal, restores the identity which makes them speak with the single voice of one unexchangeable person.²⁵¹

The experience of solitude and its focus upon the concerns of human beings considered as a plurality is apparent in this passage. Even though solitude occurs when an individual is alone, the focus of solitude is other human beings who are even represented in solitude by the "self." Arendt explains that the recognition of others is involved with the limit

²⁵¹ Ibid., 476. The quotation by Cato of course also appears in The Human Condition within its closing lines (Arendt, The Human Condition, 325).

that forms the basis for the occasion of the experience of solitude. The aspirations to engage in thinking during the experience of solitude cannot be realized until the conformation of others indicates that the concerns of human beings considered as a plurality had indeed been represented in an individual's dialogue with themselves.²⁵² Arendt describes in The Human Condition the limit that the conformation of others also places upon thought - considering that the experience of solitude is a precondition for thought: "Unfortunately, and contrary to what is currently assumed about the proverbial ivory-tower independence of thinkers, no other human capacity is so vulnerable."²⁵³ Arendt also describes modern society in terms of how it echoes a society where thought has disappeared (that is, the ivory tower has been overrun):

If it should turn out to be true that knowledge (in the modern sense of know-how) and thought have parted company for good, then we would indeed become the helpless slaves, not so much of our machines as of our know-how, thoughtless creatures at the mercy of every gadget which is technically possible, no matter how murderous it is.²⁵⁴

Clearly a society where thought is no longer possible is of grave concern to an interest in a post-Shoah philosophy.

Arendt describes mass unemployment and the presence of uprooted populations on a mass scale as the conditions that led to the creation of masses that understand reality in terms

²⁵² A similar argument is presented by Arendt when she describes "action" in a general sense and not just in relation to the "activity of thinking." This is described through a discussion of the etymology of the word "action" in The Human Condition: "Greek and Latin, unlike the modern languages, contain two altogether different and yet interrelated words with which to designate the verb "to act." To the two Greek verbs *archein* ("to begin," "to lead," finally "to rule") and *prattein* ("to pass through," "to achieve," "to finish") correspond the two Latin verbs *agere* ("to set into motion," "to lead") and *gerere* (whose original meaning is "to bear"). Here it seems as though each action were divided into two parts, the beginning made by a single person and the achievement in which many join by "bearing" and "finishing" the enterprise, seeing it through.

... Thus the role of the beginner and leader, who was a *primus inter pares* (in the case of Homer, a king among kings) ... [involved the] interdependence of action, the dependence of the beginner and leader upon others for help and the dependence of his followers upon him for an occasion to act themselves (Arendt, The Human Condition, 189).

²⁵³ *Ibid.*, 324.

²⁵⁴ *Ibid.*, 3.

of the experiences of loneliness and superfluity. These conditions acted as the underlying threat that Nazism responded to by attempting to realize their creation of an ‘unreality’ that treats all human beings and all of humanity as if it were superfluous. Within The Origins of Totalitarianism Arendt asserts in no uncertain terms the ongoing danger that the underlying threat of mass unemployment and the presence of uprooted populations on a mass scale continues to pose to the post-Shoah world:

The danger of the corpse factories and holes of oblivion is that today, with populations and homelessness everywhere on the increase, masses of people are continuously rendered superfluous if we continue to think of our world in utilitarian terms. Political, social, and economic events everywhere are in a silent conspiracy with totalitarian instruments devised with making men superfluous. The implied temptation is well understood by the utilitarian common sense of the masses, who in most countries are too desperate to retain much fear of death. The Nazis and the Bolsheviks can be sure that their factories of annihilation which demonstrate the swiftest solution to the problem of overpopulation, of economically superfluous and socially rootless masses, are as much of an attraction as a warning. Totalitarian solutions may well survive the fall of totalitarian regimes in the form of strong temptations which will come up whenever it seems impossible to alleviate political, social, or economic misery in a manner worthy of man.²⁵⁵

In this passages Arendt describes the activities of the Nazis during the Shoah as further intensifying the underlying threat posed by the creation of the masses. The Shoah demonstrates the reality of finding a solution to this underlying threat that is based upon the understanding that all of humanity is superfluous - an understanding of humanity that of course if it could ever be fully realized would indeed become the “final solution” to humanity’s problem. Arendt provides a description of the “realization” that develops as an alternative in response to this, the totalitarian solutions to this underlying threat. This is:

The realization that the only standard for a necessary war is the fight against conditions under which people no longer wish to live ... Thus the fear of concentration camps and the resulting insight into the nature of total domination might serve to invalidate all obsolete political differentiations from left to right and to introduce beside and above them

²⁵⁵ Arendt, The Origins of Totalitarianism, 459.

the politically more important yardstick for judging events in our time, namely: whether they serve totalitarian domination or not.²⁵⁶

A post-Shoah philosophy would seem to share a similar commitment to acting in resistance to totalitarianism and totalitarian regimes; and of course, the resistance offered by this form of philosophy would not have to be restricted (nor excluded from) situations that involve declarations of war. I would argue that if a post-Shoah philosophy is to confront the underlying threat that continues to pose an ongoing danger to the post-Shoah world, then this form of philosophy must at some point confront the creation of masses. These masses could provide conformation that the concerns of humanity “considered as a plurality” have been represented during the time the post-Shoah philosopher attempts to engage in the act of thinking when they are alone. In other words, the response of the masses to the philosopher’s attempts at the activity of thinking would confirm if these philosophers had actually been taking part in the experience of solitude and the thinking this experience engenders.

Part C: Agamben

Agamben has demonstrated throughout his argument a deep concern for the dynamic between political and natural life in modernity and modern societies. Agamben at one point in his argument responds to a description of this dynamic provided by Aristotle, stating that:

In contrasting the “beautiful day” (*euēmeria*) of simple life with the “great difficulty” of political *bios* ... Aristotle may well have given the most beautiful formulation to the *aporia* that lies at the foundation of Western politics. The 24 centuries that have since gone by have brought only provisional and ineffective solutions ... Western politics has not succeeded in constructing the link between *zoē* and *bios* ... that would have healed the fracture. Until a completely new politics - that is, a politics no longer founded on the *exceptio* of bare life - is at hand, every theory and every praxis will remain imprisoned and immobile,

²⁵⁶ Ibid., 442.

and the “beautiful day” of life will be given citizenship only either through blood and death or in the perfect senselessness to which the society of the spectacle condemns it.²⁵⁷

The “solution” that Agamben alludes to in this passage is one that “heals the fracture” within Western politics between natural life and political life. This solution involves a politics that expresses the “natural sweetness” of *zoē* (as the “beautiful day” of natural life is also described by Aristotle).²⁵⁸ Perhaps the clearest description Agamben provides of this form of life is with his (fairly brief) reference to the figure known as the *Flamen Diale*, who was a type of priest in Ancient Rome. The form of life of this figure is of a natural life that is expressed in political life though without their natural life being the “*exceptio*” of the political community that they are a part of:

In the life of the *Flamen Diale* it is not possible to isolate something like a bare life. All of the *Flamen*’s *zoē* has become *bios*; private sphere and public function are now absolutely identical. This is why Plutarch (with a formula that recalls the Greek and medieval definition of the sovereign as *lex animata*) can say that he is *hōsper empsuchon kai hieron agalma*, a sacred living statue.²⁵⁹

The identity between private (natural) and public (political) life is also a characteristic that Agamben uses to describe the life of the inhabitants of the Nazi death camps.²⁶⁰ This coincidence does not seem incidental, but helps to clarify the pertinence of Agamben’s recognition of this somewhat obscure figure from the ancient world for the post-Shoah world. Agamben’s decision to recognize the form of life of the *Flamen Diale* is reflective of his concern to provide an alternative to the form of life of the camp inhabitant. The natural life of the camp inhabitant only had political significance in that it was referred to as the justification for forcing these individuals to take part in the community of the Third Reich as

²⁵⁷ Agamben, 11.

²⁵⁸ Ibid., 2.

²⁵⁹ Ibid., 183.

²⁶⁰ “In the camps, city and house became indistinguishable, and the possibility of differentiating between our biological body and our political body - between what is incommunicable and mute and what is communicable and sayable – was taken from us forever” (Ibid., 188).

its exception. The *Flamen Diale* shares with the camp inhabitant a natural life that has become fully expressed within politics. But their form of life offers a clear contrast to that of the camp inhabitant by being a natural life that is expressed in politics not as an exception, but as a “beautiful day.”

Agamben’s description of a form of life that is representative of a natural life expressed in politics as a “beautiful day” will be further explained. The benefits of this description are accepted with reservation in light of concerns with this description that seem to follow from Arendt’s discussion of “action” and the *vita contempliva* in the Human Condition. The description of the life of the *Flamen Diale* represents only part of Agamben’s response to the world’s encounter with the Shoah. Agamben also discusses the possibility of a post-Shoah philosophy, whose benefits must for the same reasons also be accepted with reservations. Both Agamben’s description of this form of philosophy and his description of life of the *Flamen Diale* share a concern for (Agamben’s understanding of) the underlying threat that was further enforced by the Nazis during the Shoah - a threat that he of course sees as continuing to pose an ongoing danger to the post-Shoah world. Before proceeding with Agamben’s responses to this underlying threat, a quick review of his arguments already presented in the previous chapters of this writing may help to clarify his explanation of this underlying threat.

Agamben’s argument has discussed the possibility that the Nazi death camps are representative of a catastrophic attempt to respond to the challenge of how the decision over who has the right to live in a community is presented in the modern Western political tradition. An overriding feature of the Nazi response to this challenge is an increasing concern with matters of biopolitics for resolving this decision. This entailed an increasing

reliance upon sovereign power and an increasing indifference to either the natural or political life of the populace that exists independently from the reality created by sovereign power. This expansion of sovereign power furthered the Nazi attempt to establish a society based upon their version of “natural rights.” “Natural rights” are of course a fundamental concern of the modern Western political tradition. The activities of the Nazis seem to demonstrate that this concept of rights is susceptible to mixing the concerns of the political and natural life of the populace; and typically, this sort of mixture occurs as a part of the exercising of sovereign power. “Natural rights” arise from the natural life of the populace rather from their political life even though these rights are expected to have significance in a political context.

To achieve this goal of establishing a society based upon their version of “natural rights” the Nazis sought to isolate the “pure” natural life of the entire populace under its power. The means employed by the Nazis to achieve this goal involved abolishing any political privileges that, as a part of prior political life, had been extended either to just part of the populace or to the populace as a whole. All that the Nazi efforts directed toward this end were able to demonstrate was that the political life of the populace was impossible to abolish completely. The persistence of the political life of the populace was not necessarily an expression of the will of the populace to maintain this type of life for themselves. The decision of the Nazi authorities to isolate natural life represented a political concern and therefore unavoidably added political significance to the natural life of the populace. Still the Nazis persisted with their efforts to pursue the goal of isolating a “pure” form of natural life. The pursuit of this unachievable goal became both horrid and dangerous once the understanding prevailed amongst the Nazis that the natural life that was viewed to be “impure” was considered to be a threat to the “pure race” unless it was eliminated. The association the Nazis developed between the “care” of the populace and the necessity of

employing lethal measures is described by Agamben as being the point when the Nazis made the transition to “thanopolitics.” The initial targeting of the “mentally ill and the incurably sick” for massacres reflected the conviction of the Nazi representatives of sovereign power that their decision over who had the right to live extended over the entire populace under their control (including of course the German population). The process that was employed to designate segments of the population as a part of those who would be slated for elimination involved an examination of the natural life of the entire populace and making a determination about what constituted “being alive.” The Nazis then continued their process of eliminating the “impure” natural life by targeting the segments of the population - the Jews and the Gypsies - that according to their view were “symbolic”²⁶¹ of the natural life that was most persistent in displaying a political existence. The argument was then presented that unless the Nazis deviated from their path of “protecting” or “caring” for the natural life of the “pure race” by eliminating the most “impure” forms of natural life from amongst the populace, then the Nazis were heading towards the creation of a society that was completely self-destructive.

Agamben’s argument also considered the implications that the increasing dependence in modern Western politics upon matters of biopolitics (as the means for determining the question of who has the right to live in community) has for the “old *nomos*” of “land, order, and birth.”²⁶² According to the conception of the old *nomos* in classical politics, natural life or “land and birth” were considered to be the “givens” that were unchanged by the political life or “order” of the day. Of course, one way that resentment could grow amongst the populace was if the response of the political order to their natural life seemed arbitrary or did not satisfactorily reflect this aspect of their life in some other fashion. But the reigning

²⁶¹ Ibid., 179.

²⁶² Ibid., 174-176.

political order confined its activities to responding to the natural life that confronted it. Modern politics has undergone a reversal of the old *nomos* through its conviction that the reigning political order can alter natural life. “Order” is treated more and more as a given, while “land and birth” are presented as accidents that happen to fall within the reigning political order and are subject to alteration so as to maintain their compliance with this order. Agamben argues this re-conceptualization of “land, order, and birth” in modern politics had been accepted by the Nazis. He explains their activities introduced “the camp [as] the fourth, inseparable element that has now added itself to - and broken - the old trinity composed of state, the nation (birth) and land.”²⁶³ The camp acts as “the space” that allows the reigning political order to be exercised entirely as a matter of sovereign power. This implies that in the camp the decision over who has the right to live can be decided without a concern for the natural or political life of the populace that exists independently from the reality created by sovereign power. The natural life of the camp inhabitant is displayed in a political context as an “exception” to the community it is a part of - or, in other words, as a figure: “who can be killed, but not sacrificed.”

The figure of the *Flamen Diale* illustrates that the natural life of the populace does not necessarily have to be altered once it is put on display in a political context. Their form of life represents a natural life that is given expression not as a form of life that is imposed by sovereign power, but as “a *bios* that is only its own *zoē*.”²⁶⁴ Agamben elaborates:

Yet how can a *bios* be its own *zoē*, how can a form of life seize hold of the very *haplōs* that constitutes both the task and the enigma of Western metaphysics? ... We give the

²⁶³ Ibid., 175.

²⁶⁴ Ibid., 188.

name form-of-life to this being that is only its own bare existence and to this life that, being its own form, remains inseparable from it.²⁶⁵

The entrance of natural life into politics does not necessarily entail a situation where natural life dictates political life. This entrance can possibly be to the benefit of politics through the introduction of a limit into political life by natural life. For example, a limit could be established in politics that ensures that individuals are not to be excluded from enjoying the right to live in a community on the basis of the constitution of their natural life. Similarly, the entrance of political life into natural life also does not necessarily entail a situation where political life dictates natural life. Perhaps, for example, this entrance could benefit natural life by establishing a limit that no political ‘grouping’ of individuals can exclude them from enjoying their natural life.

However, on behalf of Arendt’s discussion of “action” and the “*vita contemplativa*,” an objection can be raised against Agamben’s description of a natural life displayed in a political context that presents an alternative to the form of life experienced by the camp inhabitant. Aristotle’s juxtaposition of the “natural sweetness” of *zoē* and “the great difficulty of political life” is illustrative of a ‘prejudice’ against being involved in political life that Arendt argues is present throughout the Western tradition. The discussion of “eternity versus immortality” in The Human Condition describes the preference for the contemplation of an otherworldly eternity that occurs as a part of the *vita contempliva* over the concern for the promise of immortality of human affairs that occurs as a part of the life of “action.”²⁶⁶ The individual experiencing the former of these two aspects of the human condition is suspended in a state of absolute stillness that is characteristic of wonder. Arendt explains that for philosophers since Plato this state of wonder represents the beginning and end of philosophy,

²⁶⁵ Ibid., 188.

²⁶⁶ Arendt, The Human Condition, 17-21.

and is also the highest of human pursuits.²⁶⁷ From the perspective of the *vita contemplativa* even the immortality that political activity promises is seen as fleeting. Arendt argues that the event that entrenches the value placed on the *vita contemplativa* in the Western tradition is the fall of the Roman Empire. This event is seen as a testament to the durability of the eternal over the immortal, contributing to the rise of Christianity and its clear support of otherworldly eternity in favour of the immortality that is experienced as a part of human affairs.

Arendt's responds to the preference for eternity over immortality by questioning whether the *vita contemplativa* is to be placed above labour, work and action as the highest pursuit within the human condition. Arendt presents evidence that the *vita contemplativa* is really the disposition of *homo faber* - the craftsman who performs "work" - in disguise. Agamben's argument does not mention this debate between eternity and immortality. However, Agamben's assessment that "In contrasting the 'beautiful day' (*euēmeria*) of simple life with the 'great difficulty' of political *bios* ... Aristotle may well have given the most beautiful formulation to the *aporia* that lies at the foundation of Western politics," seems to reflect the distaste for political life that Arendt cautions against.

As well, Agamben suggests at one point in his argument that the challenges the Western tradition currently faces in the areas of politics and metaphysics are somehow linked.²⁶⁸ He then describes pursuing a response to these challenges that seems to be a clear reflection of the passiveness and inactive stillness that is characteristic of the state of wonder experienced as a part of the *vita contemplativa*: "Bare life is certainly as indeterminate and

²⁶⁷ Ibid., 20-21.

²⁶⁸ Agamben, 182.

impenetrable as *haplōs* Being, and one could say that reason cannot think bare life except as it thinks pure Being, in stupor and in astonishment (*almost astonished*, Schelling).²⁶⁹

Agamben perhaps does not enter into this debate on either the side of Arendt or on the side of the tradition. Still, a discussion of the debate between eternity and immortality seems important for his response to the underlying threat that is further enforced by the activities of the Nazis during the Shoah. Despite both Agamben's praise of Aristotle's words in favour of natural life over political life, and his recommendation of adopting a stance of "stupor and astonishment," his response to this threat seems to share agreement with Arendt's views on the matter. Agamben's description of a natural life given expression in a political context seems to heed Arendt's caution in The Human Condition against a "public realm ... [that is] no true public realm, but only private activities displayed in the open."²⁷⁰ Agamben's reference to "a *bios* that is only its own *zoē*" seems concerned with the treatment of human beings with the equality that is associated with being a peer - indispensability and uniqueness; as opposed to the equality associated with being superfluous - that is, dispensability and redundancy. And it is this sense of equality that is considered to be present amongst peers that Arendt describes as being essential to "action" - the aspect of the human condition where, according to her argument, all of the highest pursuits of human beings take place including the activity of thinking that is engaged in by philosophers.

Agamben's concern with the relationship between natural life and political life in the Western political tradition is by no means lessened by the objections raised against his argument on behalf of Arendt. Instead, a consideration of the *vita contemplativa* and "action" is a part of developing an understanding of the relationship between natural and political life

²⁶⁹ Ibid., 182.

²⁷⁰ Ibid., 134.

in the context of a post-Shoah world and a post-Shoah philosophy. Agamben's explicitly recognizes a connection to philosophy in his response to the underlying threat furthered enforced by the Nazis that continues to pose an ongoing threat to the post-Shoah world. This is the threat of removing all natural life out of political existence - to which Agamben responds to by encouraging the creation of a world where no natural life is excluded from political existence. Clearly the conception of natural life in a political context that this would entail is of interest to the concerns of a post-Shoah philosophy.

In the opening chapter of this writing the interest in inquiring into the Nazi understanding of humanity was framed as a concern for making 'peace' in an encounter with facts that have been collected about the Shoah. This peace was described as being tied to the effort to understand a world where mass murder does not take place. The consideration rather than the avoidance of a discussion of mass murder was presented as being an indispensable part of this effort. This consideration recognized that the ultimate aims of the Nazis involved the decision to create a society that is wholly self-destructive. Clearly the response to the creation of this society has involved a concern for resistance. This writing has been an attempt to present the benefits of resistance that is conducted in a world where the alternatives offered in making a decision to resist are increasingly not a reflection of the alternatives offered for resistance in a society that is wholly self-destructive. The aim of developing an understanding of these alternatives of resistance is to avoid further instances of mass murder through simultaneously developing a further understanding of 'humanity' and the range of its alternatives. These alternatives were presented by mending, beginning, and a concern for the "sweetness" or 'indisposability' of life.

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