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The Aesthetics of Human Rights

Sharon Sliwinski

Abstract *This essay situates the 1755 Lisbon earthquake as an alternate origin point for human rights discourse. As one of the most destructive earthquakes in recorded history, the event had a broad effect on both scientific and philosophical thought. The quake also represents one of the first modern mass media events in which subjects throughout Europe became spectators to a distant catastrophe. Both visual and verbal representations of the event circulated throughout Europe with incredible efficiency and helped inaugurate a secular notion of human suffering as well as thoughts about its prevention. The story of the quake shows that the notion of ‘the human’ has migrated through public imagination, in part, by virtue of our passionate engagements with pictures. By placing Lisbon at the origin of this discourse, moreover, human rights can be re-imagined as a dimension of political life that has to do with our exposure to vulnerability and the task of responding that follows. As opposed to humans simply being free and equal in dignity and rights, the Lisbon catastrophe reveals that individuals must be judged human in order to enjoy the benefits associated with this title.*

The seeds of universal human rights, historians argue, were sown in the eighteenth century (Hunt 2007; Ishay 2004). Evidence can be found in the paper trail. The opening article of the 1948 Universal Declaration of Human Rights makes a sweepingly simple claim: ‘All human beings are born free and equal in dignity and rights’. The statement is a direct echo of the 1789 French Declaration of the Rights of Man and Citizen which begins with a similar assertion: ‘Men are born and remain free and equal in rights’. This document was influenced in turn by Thomas Jefferson’s memorable opening to the American Declaration of Independence: ‘We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness’. These familiar documents offer a textual history of human rights; they give us a taste of their climate through the flavour of their words. And the dominating theme of this paper trail is a

celebration of the human subject who is endowed with 'self-evident' dignity and rights.¹

The picture trail, however, tells a different story. In contrast to the inalienable dignity and rights boldly asserted in the three Declarations, the visual images that have historically inspired human rights discourse show a world rife with disaster and atrocity. Just prior to the 1948 Universal Declaration, photographs emerging from the liberated Nazi camps stunned the world. Susan Sontag once memorably characterised her encounter with these images as a 'prototypically modern revelation: a negative epiphany' (1989: 19). Such painful aesthetic encounters can be thought of as the pre-legal or perhaps the pre-political affective climate that galvanises human rights discourse. And as with the document trail, these 'prototypically modern' aesthetic encounters have their historical roots in the eighteenth century. In 1755 for instance – several decades prior to the American and French revolutions – an enormous earthquake devastated the city of Lisbon. Subjects throughout Europe and the New World became spectators to this catastrophe through abundant visual and verbal reports that circulated with incredible efficiency. For those who could not read the textual accounts, pictorial engravings available at every alehouse and fairground provided a bystander's view of the destruction wrought upon the city and its inhabitants. These testimonies had a startling effect. Not only did the quake initiate a lively intellectual debate about the nature of the human subject and its place in the world, but also brought into consciousness a global, imagined empathy with the sufferings of distant strangers. Indeed in the eighteenth century, 'Lisbon' was used as a metonym in the same way 'Auschwitz' is used today (Neiman 2002). That is, the word brought to mind a previously unimaginable event and simultaneously shattered the grounds for its understanding. And just as the 'barbarous acts' of the Second World War gave rise to the ideal of universal human rights,² the image of Lisbon's ruins gave rise to a sense of a singular, shared human condition. These two catastrophes, in other words, created an affective landscape that provided fertile ground for the very thought of human rights.

This essay situates the Lisbon earthquake as an alternate origin point for human rights discourse. Placing the quake at the beginning of the story does more than simply change the celebratory tone of the familiar historical narrative. This restructuring allows human rights to be re-imagined as a dimension of political life that has to do with our exposure to human vulnerability and the task of responding that follows. While the three Declarations envisage human dignity and freedom to be inalienable – 'inborn' according to the 1948 document – the testimonies emerging from Lisbon ask individuals to exercise

¹ All three Declarations can be found in Hunt (2007). The critiques of this formulation of rights are as old as the Declarations. The loudest objectors include Edmund Burke who called the French Declaration 'monstrous' and 'tragicomic' and Jeremy Bentham who described the Rights of Man as 'nonsense upon stilts'. Hannah Arendt's critique of the Universal Declaration follows from this 'English' critique (see Menke 2007).

² The Preamble to the Universal Declaration of Human Rights alludes to the Nazi Holocaust: 'Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind ...' (Hunt 2007: 223).

their faculty of judgment. As opposed to humans simply *being* free and equal in dignity and rights, the Lisbon catastrophe shows that individuals must be *judged* human in order to enjoy the benefits associated with this title. The significance of this distinction should not be underestimated. As Hannah Arendt argued, the act of judging is a form of 'exemplary thought', a unique way to 'relate to others' in the human community (2003b: 143, 146). Indeed what is precisely at stake in social breakdown, Arendt proposed, is a lack of judgment that can usher in evil and, at the same time, a 'banality' of thought (1994). Placing Lisbon at the origin point of this narrative changes the definition of human rights from an inalienable quality into a fragile recognition that is bestowed upon subjects through the experimental action of judgment.

The case of the Lisbon disaster, moreover, reveals a surprising proximity between moral and aesthetic judgments. In this respect, the event proffers an important precursor for the relationship between human rights discourse and the circulation of images of suffering so ubiquitous today. Like the engravings of the Lisbon quake, contemporary photographs of suffering make evident the fact that human dignity is not innate, but rather depends on the vicissitudes of human judgment. The aim of my revision to the historical narrative is not to resolve the antimonies surrounding human rights – antimonies Hannah Arendt was so apt at describing. Rather the point is to highlight the significance of judgment, that singular human faculty which Arendt believed could prevent catastrophes in moments when the chips are down.

The quaking of the imagination

When the residents of Lisbon awoke on 1 November 1755 their city was at the height of its power, the seat of an enormous colonial empire. By the middle of the century, the capital had established itself as one of the most prosperous trading ports in the world and home to some 275,000 inhabitants. Lisbon also housed some of Europe's most spectacular buildings: a brand new opera house, the Hospital of All Saints (one of the largest public hospitals in the world at the time), the Royal Palace, which included a 70,000 volume library containing records of Vasco de Gama's explorations, paintings by Titian and Rubens, and many other *objets d'art*, several notable churches, and, of course, the Palace of the Inquisition. By all accounts 1 November was a beautiful and clear day. The churches were crowded for All Saint's Day celebrations and the city was in full festival array. Shops were closed and the air was ripe with incense, church bells, and the collective drone of prayers. By nine o'clock the early morning mass was already underway. But just as the priests began their sonorous chants, the church walls began to pitch and sway. The bells clanged together in violent fits. Stained glass windows shattered. Priests and parishioners alike were thrown to the ground by the earth's violent seizures. The people who survived this first tremor rushed to open ground to escape the landslide of falling timber, marble, and stone. Those who made it outside found the once clear morning sky had turned utterly gloomy and black like the cursed Pharaoh's Egypt. Whole blocks of houses had been reduced to rubble. Gigantic fissures, some stretching as much as five meters across erupted in the city streets swallowing whole buildings. Jets of fine white sand spouted out of these crevices like steam. The first shockwave was quickly

followed by two subsequent tremors, each more devastating than the last, each a few minutes in duration. By the time the earth stopped shaking, Lisbon was all but levelled.

But the violent shaking of the earth was not the only terror. Thousands of residents fled from the shattered core of the city to the waterfront in hopes of escape. There they found the sea had completely receded, as if the ocean had drawn in her breath, leaving ships of all sizes scattered like toys on the floor of the Targus River. Moments later a giant tsunami wave rose out of the sea and slammed into the harbour, drowning the fleeing residents and flooding the entire downtown. An English merchant describes seeing

at some small distance a vast body of water, rising as it were, like a mountain, it came forward foaming and roaring, and rushed toward the shore with such impetuosity that tho' we all immediately ran for our lives as fast as possible many were swept away. (Anonymous 1985: 24)

The destruction did not end here. A terrible firestorm gripped the city for six days after the initial destruction. Almost the entire of Lisbon, ruins and all, was set ablaze. The cause of this last calamity is still unknown. Perhaps it was the candles set out in every church and chapel to honour All Saint's Day. More likely the fires were set by looters attempting to cover their crimes. In the end the city was almost completely devastated. Estimates of the dead varied from 30,000 to 100,000. Charles Richter had not yet invented his comparative scale to quantify the size of an earthquake, but reports show that tremors were felt from Finland to the coast of Africa and tidal waves were recorded as far away as Indonesia. Aftershocks continued to send panic throughout the region until the end of the year.³

Although now largely forgotten outside of Lisbon itself, at the time the cataclysm had a dramatic and, indeed, global effect upon human imagination. Pamphlets of eyewitness accounts were printed and sold with remarkable rapidity throughout Europe. Reports appear in Berlin papers by 11 November, in Paris by 22 November, and in London by 26 November (Larsen 2006: 362). By January, several accounts had even reached the colonies in the New World.⁴ Public desire for news of the disaster was insatiable, further evidenced by the fact that new descriptions of the quake continue to make their appearance for almost a century afterwards. These representations were not only textual. Countless visual images of the disaster were produced all over Europe and several prints have survived the centuries. The vast majority of these representations are engravings, which implies the disaster spawned a

³This narrative is culled from a variety of sources: Walter Benjamin's (1999) radio program; the eyewitness account of Reverend Charles Davy reprinted in Tappan (1914); anonymous accounts collected in de Sousa (1990); as well as from contemporary writers who have reconstructed the devastation, Shradly (2008); Braun and Radner (2005).

⁴Extracts from letters written about the quake can be found in the 8 January 1756 edition of the *Pennsylvania Gazette*, one of the most prominent colonial newspapers of the period.

desire for reproduction, a gravitation toward mass circulation rather than formal commemoration. No doubt this is because so much of Europe was actually touched by the disaster. The quake's effects were felt by almost everyone, even if only through the slightest of tremors.

Given the appetite for news about what was occurring beneath people's feet, the Lisbon earthquake can be thought of as one of the first great mass media events. Although the incident precedes the era of daily newspapers, by the middle of the eighteenth century a rich culture of print communication had long been established. Print shops were plentiful in the larger cities and these businesses sold their wares to a broad cross-section of the public. Alongside the demand for expensive fine art reproductions was a thriving and dynamic popular print trade. Woodcuts and engravings appeared on playing cards, ballads, almanacs, folktales and other illustrated story sequences that circulated as broadsheets and chapbooks. The labouring class and even the peasants had access to cheap, illustrated chapbooks sold at every market, fairground, and alehouse. Although much of this printed ephemera has been lost in the course of history, these exactly repeatable pictorial statements provided a forum for the mass the circulation of ideas and information.⁵ One of the biggest stories of the century was the Lisbon earthquake.

In the intervening centuries, archivists have separated visual images depicting the Lisbon disaster into two basic categories – so-called 'truthful' accounts and 'fantastical' ones – a division that echoes the distinction between high and low visual culture (James and Kozak 2005). The 'truthful' accounts typically offer detailed documentation of the damage wrought upon the city and specifically upon the built environment. Heading this category is an elegant series of copper engravings produced by the French artist Jacques-Philippe Le Bas in 1757 (Figures 1 and 2). The images are derived from drawings executed in Lisbon by Paris and Pedegache and they offer highly detailed records of the important buildings ruined by the disaster. These pictures represent a kind of forensic reporting of the damage. They would have required patient and careful survey of the wreckage, presumably some time after the immediate danger had passed.

The 'fantastical' images, in contrast, attempt to imaginatively represent the catastrophe itself: the tsunami waves, the fires, and the devastation felt by the city's inhabitants (Figures 3 and 4). Terrified citizens people these images, arms raised above their heads as if to ward off whatever horror might next befall them. Many of these 'fantastical' representations were produced far from Lisbon, by artists who had not witnessed the event and probably had never even been to Portugal. In contrast to the forensic reports, these representations often portray the disaster in exaggerated terms. The style of the crumbling architecture is sometimes inaccurate, but the focus here is on the suffering of ordinary citizens rather than an accurate portrayal of structural damage. Portrayed here is a pictorial 'suddenness' that is utterly familiar to us

⁵With regard to the representation of the Lisbon earthquake, Cala (2005) argues that mainstream histories of journalism have neglected the role of these popular press products in the internationalisation of the event.



Figure 1. Copper engraving printed in Paris by Jacques-Philippe Le Bas, 1757, based on drawings by Messrs Paris and Pedegache. Ruins of Church of St Nicholas. Courtesy National Information Service for Earthquake Engineering, University of California, Berkeley.



Figure 2. Copper engraving printed in Paris by Jacques-Philippe Le Bas, 1757, based on drawings by Messrs Paris and Pedegache. Ruins of Patriarchal Square. Courtesy National Information Service for Earthquake Engineering, University of California, Berkeley.



Figure 3. Jan Kamemický, 1755, Broadside printed in Litomysl, Bohemia. Library of Czech National Museum. Courtesy National Information Service for Earthquake Engineering, University of California, Berkeley.

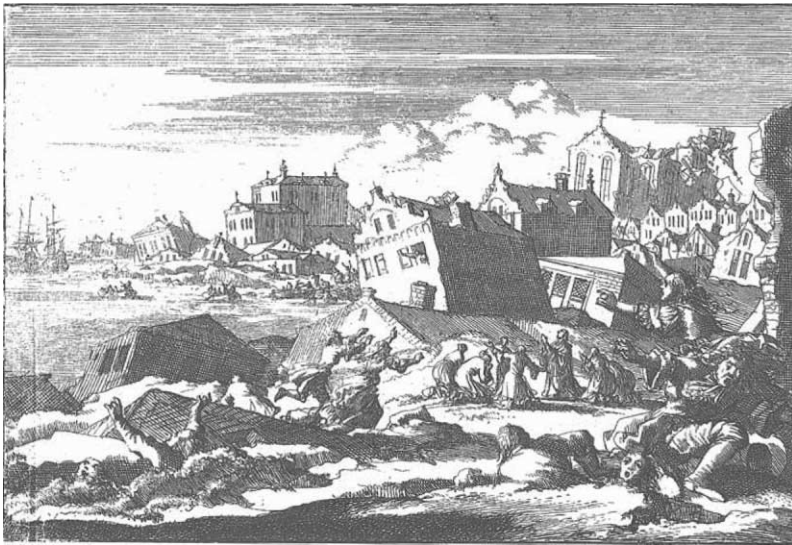


Figure 4. Anonymous 'fanciful' composition of the Lisbon earthquake. Courtesy National Information Service for Earthquake Engineering, University of California, Berkeley.

in the age of the Kodak.⁶ In other words, these ‘fantastical’ pictures anticipate the genre of the snapshot: dramatically rendered portraits of human existence that has been seized and displaced from the usual temporal horizon. Similar to the most memorable photographic snapshots, the ‘fanciful’ engravings of the Lisbon earthquake are specifically designed to elicit fascination, to portray the devastation suffered by the imagination – indeed, to visually conjure up the idea of a shared *humanity*.

The earthquake’s cataclysmic effects are simultaneously visible in the era’s philosophical texts. Prior to the event, the prevailing outlook of the day was optimism, epitomised by Leibniz’s theory of the best of all possible worlds. Faith was in harmony with reason: everything that is, is good. But the Lisbon earthquake spelled the end of this worldview. Voltaire, for one, famously remarked that the disaster cured him of his theodicy. Like many intellectuals of the time, the French writer railed against the optimists’ interpretation that the quake somehow served the greater good. In his famous ‘Poem on the Lisbon disaster’ he demands: ‘What crime, what sin, had those young hearts conceived / That lie, bleeding and torn, on mother’s breast? / Did fallen Lisbon deeper drink of vice / Than London, Paris, or sunlit Madrid?’ (2001: 205). The earthquake also makes a memorable appearance in his satirical novel *Candide*, one of the most vociferous attacks on optimism. Instead of placing faith in natural law and divine judgment, such writers began to argue for individual human freedom and worth. In *Theory of Moral Sentiments* (published just four years after the Lisbon earthquake), Adam Smith (2006) similarly proposes that ‘moral sense’ arises not from utility, but from the experience of *seeing* another’s misfortune. Smith describes ‘spectators’ who naturally feel pity or compassion when encountering the misery of others. It would seem the earthquake shook the very grounds of moral philosophy. The event marks one of the first moments in which people who suffered such misery were understood to be innocent victims, unfortunates who were dealt an unfair hand in the cruel game of chance that is human life.

The philosophers eventually invented a category for such colossal experiences that cannot be imagined in their entirety, which they termed ‘the sublime’. In 1756 – just one year after the Lisbon disaster – Edmund Burke described the sublime as a kind of astonishment in which ‘the mind is so entirely filled with an object, that it cannot entertain any other’ (1909). Although he does not mention the Lisbon quake directly, Burke specifically addresses the status of representations of suffering and catastrophe. Whether real or fictitious, he concludes that such images actually cause *more* pleasure in the spectator than do representations of the beautiful. Aware this observation posed a dilemma for moral sensitivity, Burke further suggested that the appeal of regarding such suffering was motivated by a sympathetic pity based on love. Spurred by Burke’s study, the German philosopher Immanuel Kant’s interpretation of the sublime was no doubt influenced by his obsession with the reports of the devastation that reached him in Königsberg.⁷ Borrowing

⁶ For discussion of the philosophical underpinnings of the strange temporality of ‘suddenness’ see Farrell Krell (2004).

⁷ For discussion of the Lisbon earthquake’s significance to continental philosophy (and in particular to conceptions of the sublime) see Hamacher (1999) and Ray (2004).

from Burke's characterisation of the sublime as two contradicting feelings, Kant called the experience 'a negative pleasure':

The feeling of the sublime is, therefore, at once a feeling of displeasure, arising from the inadequacy of imagination in the aesthetic estimation of magnitude to attain to its estimation by reason, and simultaneously awakened pleasure, arising from this very judgment of the inadequacy of the greatest faculty of sense being in accord with ideas of reason, so far as the effort to attain to these is for us a law. (Kant 1957: 106)

The spectator confronts an object that is so great it strains the limits of the imagination. An initial feeling of horror arises from this breakdown of the imagination in relation to concepts that can have no adequate representation. Kant's second feeling of pleasure (or perhaps 'respect') arrives when we become aware of ourselves in this state. Pleasure is reawakened in the recognition of the inadequacy of our imagination. This is a 'supersensible' recognition: a rational understanding of the imagination's failure. The sublime is a sensation so overwhelming it can no longer be felt, so to speak, and therefore can only be thought. From this encounter with nature's menacing might – and our own limits in the face of it – comes a respect for reason and an awareness of what Kant called 'the idea of humanity in our self' (1957: 106).

Scanning the visual, literary and philosophical texts of the day, one cannot help but be struck by the imaginative impact of the Lisbon earthquake. The circulation of eyewitness reports and images appears to have produced an intense affective climate that provided fertile ground for the notion of a singular humanity. The 1755 disaster marks one of the first instances in which subjects became spectators faced with the ethical and political implications of regarding distant suffering. Or rather, the event marked one of the first times subjects were faced with a barrage of *representations* of distant suffering, 'snapshots' that elicited an imaginative and affective engagement with strangers at a great distance. Over the last two hundred and fifty years, the opportunity for *tele-pathos* – the sympathetic identification with another's suffering at a distance – has increased exponentially. In turn, the vague feeling of respect for the 'idea of humanity in our self' has become the potent political idea we call human rights. Except this 'idea of humanity' did not really begin as an idea at all. Prior to the articulation of this abstract political concept was a shared aesthetic response to the sufferings of imagined others – the 'young hearts' of Lisbon. Human rights were not born from this single event, but the quake does represent one of the first times people imagined themselves responsible for the world into which they found themselves thrown. Or put differently, the event exposed the singular significance of the *human* faculty of judgment. So to place the earthquake at the origin of the story of human rights is to suggest, in the spirit of Emmanuel Levinas (1999), that the so-called Rights of Man are, at their origin, a recognition of one's responsibility for the rights of *the other*.

To rewrite the story of human rights with Lisbon at the beginning does not necessarily purge the concept of its antinomies. In common parlance, human rights refer to a set of legal safeguards for the individual, or at the very

least, to a philosophical principle that each individual person possesses a basic inalienable dignity: a right to freedom from torture or slavery, a freedom of speech, in short, a right to a life worth living. But as Hannah Arendt argued, in reality no such safeguards exist. One cannot be granted human dignity by the principles of law. Inmates of extermination camps know all too well that there is utterly no protection in the 'abstract nakedness of being nothing but human' (2004: 380). Arendt characterised the dilemma of human rights as a structural difference between the category of citizen and the category of human, that is, as a distinction between having 'a legal personality' as opposed to a 'mere existence' (383). To be a human being and to be nothing else – to have lost all of one's distinctive political qualities – is to exist in a state of extreme vulnerability. Our membership within the political community we call humanity is granted by others. One must be *judged* human – and thus be endowed with 'a legal personality' – in order to enjoy the benefits of the title.

Arendt initially argued that nation states are principally responsible for granting this political recognition. But she was also intimately aware (being one of Nazi Germany's refugees) that these entities all too often fail to guarantee the principles of universal human rights. These problems of political membership are indeed pressing. But the story of the Lisbon earthquake makes evident another kind of problem. At the heart of this narrative is a passionate aesthetic encounter between spectators and images of distant suffering. This is inevitably an unruly meeting. Apart from the abstract ideals of justice and responsibility, the spectator is also subject to the play of affect that such meetings engender. This aesthetic scene is marked by the spectator's inevitable failure to grasp the sublime event in its entirety. When faced with such terrible images, there is doubt about what there is to know, about what the good of such knowledge might be, and whether knowing will have any affect on the other. Yet this turbulent encounter – the moment in which external and internal reality collide in our engagement with aesthetic representation – appears to be as significant to human rights discourse as any social or political border. For in the midst of this vexed meeting the spectator is allotted a fragile but critical task: that of judgment. Indeed, in that constellation of feelings that arise in such encounters, there opens the possibility for the recognition of the other *as* human and thus deserving of a measure of dignity.

Judgment in question

Although the Lisbon earthquake is now thought of as one of the great natural disasters, for intellectuals of the era it epitomised the problem of evil. At the time, great debates raged among the clergy as to the significance of the divine violence. The general populace also struggled to interpret the catastrophe as God's judgment. One widely reprinted eyewitness report claimed that so 'compleat a Destruction has hardly befallen any Place on Earth since the overthrow of *Sodom* and *Gomorrah*' (Anonymous 1756). But the earthquake simultaneously sparked doubt as to God's influence upon earthly affairs and the event is frequently cited as having played a crucial role in the Enlightenment project of taking intellectual possession of nature. It is in this respect that Theodor Adorno once listed the 1755 quake as the first of two

great catastrophes that have irrevocably marked the human imagination (1973: 361). The earthquake receives only the briefest of mention in his discussion. Adorno's chief concern is the second item on the list, the Nazi Holocaust. Although he acknowledges that the Holocaust was a 'social catastrophe', the coupling is meant to emphasise the fact that by 1942, human relations had become so reified they were perceived to be immutable, natural laws.⁸ This is to say in Nazi Germany, genocide was as natural an occurrence as an earthquake. Through this provocative pairing Adorno proposes that the differences between atrocity and disaster are less distinct than we may wish to believe. What is at stake in both instances is a breakdown in our faculty of judgment. Such colossal events disturb this critical facility; its foundations are literally *shaken*. When faced with something that shatters sensual perception, exceeds the limits of imagination, and surpasses all preconceived moral or juridical rules, by what means can one judge?

Close to the moment that Adorno was grappling with this problem, Hannah Arendt had begun to suspect that a theory of ethics was latent in Kant's formulation of aesthetic judgment. On several occasions in her writing, she returned to the question of judgment, that 'silent sense', which – when it was dealt with at all – has always, even in Kant, been thought of as 'taste' and therefore as belonging to the realm of aesthetics' (Arendt 1992: 4). The drive for this work came, in part, from her experiences at the trial of Nazi criminal, Adolf Eichmann, which she attended in 1961 on special assignment for *The New Yorker* magazine. In her reflections on the horrors of the Third Reich, which the trial detailed at length, Arendt began to understand that the moral disintegration that struck German society was partly a breakdown of personal *judgment*. Morality collapsed into a mere set of mores – manners, rules, customs, and habits – that were simply replaced by other habits and rules. This was one of Arendt's central apprehensions about totalitarian governments: that their usurpation of law, moral or otherwise, could all too easily transform that the age-old admonition 'Thou shalt not kill' into 'Thou shalt kill' (1994: 150). Horrifically, we have seen Arendt's thesis confirmed in Cambodia, the former Yugoslavia, Rwanda, East Timor, Chechnya, and even now in Darfur.

The Eichmann trial brought several of these latent tensions in the idea of judgment to a head. Anxiety about the issue took several forms. Many of Arendt's readers questioned her own judgment. Some of the most vociferous outrage came in response to her decision to report that some leaders of the European Jewish community had 'cooperated' with Hitler's Final Solution. But for Arendt, it was Eichmann's own judgment – or lack thereof – that was particularly disturbing. During the war, Eichmann was in charge of managing the mass deportation of Jews to the ghettos and extermination camps in Nazi-occupied Eastern Europe. Yet he staunchly denied any wrongdoing during the trial in Jerusalem. He presented himself as a simple soldier performing the duties requested of him by his commanders. For Arendt,

⁸ Adorno does not mention the date 1942; I use this marker to refer to the Wannsee Conference where the senior Nazi officials put into play the so-called 'Final solution to the Jewish question'.

Eichmann's disturbing failure to make a moral judgment independent from Hitler's orders opened broader philosophical questions. How are human beings capable of telling right from wrong when all they have to guide them is their own judgment? 'What happens', Arendt asked, 'to the faculty of judgment when faced with occurrences that spell the breakdown of all customary standards, and hence are unprecedented in the sense that they are not *foreseen* in the general rules, not even as exceptions from such rules?' (2003a: 27). The Eichmann trial, like the Nuremberg trial before it, dealt with a crime not found in any law book and with a kind of criminality previously unknown to any court. The Nazi's crimes against humanity, or as the French Prosecutor Francois de Menthon termed more appropriately, his 'crimes against the human status' were unprecedented in that they were simply unknown (Arendt 1994: 257).⁹ Put another way, such crimes were utterly *illegible* to any previous formulations of morality or law. Central to the question of judgment, Arendt seems to suggest, is the problem of recognition. Crimes against the human status are crimes that are marked by a conceptual aporia, by a kind of blindness that makes them virtually impossible to recognise, let alone judge.

In response to these tensions, Arendt was driven to define a mode of judgment that did not rely on previously existing principles. Part of her problem was that, strictly speaking, 'aesthetic judgment' had no place in Kant's moral philosophy which is governed by the law of practical reason. In Kant's world, 'judgment is not practical reason; practical reason 'reasons' and tells me what to do and what not to do; it lays down the law and is identical with the will, and the will utters commands; it speaks in imperatives' (Arendt 1992: 15). Although the *Critique of Judgment* was initially announced under the title, the *Critique of Moral Taste*, Kant subsequently withdrew moral propositions from aesthetic judgment during the course of his writing. Indeed, Kant's version of practical reason was so rigid, Arendt actually understood him to be evacuating the faculty of judgment from moral decisions. Telling right and wrong was simply a matter of applying prescriptive moral principles, whereas reflective (or aesthetic) judgments relied upon the subject's sense of freedom and creativity to *invent* values as the instance arises.¹⁰ Troublingly, Arendt realised, Eichmann was only capable of following Hitler's command.

⁹ Arendt and the Israeli court were wrong to think that the Nazi Holocaust was the first time crimes against humanity appeared. In point of fact, George Washington Williams first used the phrase in 1890 to condemn Belgian King Leopold's treatment of the native peoples of his colony the Congo Free State. See Hochschild (1999) and Sliwinski (2006).

¹⁰ Arendt clarifies Kant's distinction between the two categories in her series of lectures that deal with the Third *Critique*: 'determinant [moral] judgments subsume the particular under a general rule; reflective [aesthetic] judgments, on the contrary, "derive" the rule from the particular' (1992: 82). As the title alludes, the Universal Declaration of Human Rights is designed to guide determinant judgments. Particular sufferings are subsumed to the abstract, universal principles of the Articles. Aesthetic or reflective judgments, in contrast, invent the rule from the particular judgment. Voltaire's response to the Lisbon quake, for instance, is a reflective evaluation that allowed for the invention of new values derived from the particular event.

As he reiterated at several points throughout the trial, he worked in accordance to what was expected of him, which is to say within the laws and moral maxims of the Third Reich. Against such 'reasoning', Arendt searched determinedly for a version of moral judgment that did not rely on the yardstick of practical reason.

Unfortunately Arendt died before she could fully assemble her thoughts on this topic. It is well known she had planned to write a third volume for her series on the *Life of the Mind* on the status of judgment, but at the time of her death only a single sheet was found in her typewriter, blank except for the heading 'Judging' and two epigraphs. The page is reprinted in the front of her collection of posthumously published *Lectures on Kant's Political Philosophy* and it stands as a melancholic testament to the difficulty of trying to think about something that has strained the very category of thought and of morality, the difficulty of trying to think about something that has ruined our ability *even to imagine*.

The origins of humanity

Centuries after the Lisbon earthquake had faded from memory, the American essayist Susan Sontag wrote of a chance encounter with some photographs in a Santa Monica bookstore. The account bears an uncanny affinity to the eighteenth century response to news of the Lisbon disaster, but instead of images of the devastated Portuguese city, Sontag stumbles across photographs from the Nazi death camps. Apart from these historical circumstances, her response could be mistaken for Voltaire's. Sontag is profoundly shaped by the encounter and offers moving testimony of the pictures' affect:

Nothing I have seen – in photographs or in real life – ever cut me as sharply, deeply, instantaneously. Indeed, it seems plausible to me to divide my life into two parts, before I saw those photographs (I was twelve) and after, though it was several years before I understood fully what they were about. (1989: 20)

Sontag calls her aesthetic experience a 'negative epiphany'. Those in the eighteenth century might have called the encounter 'sublime': a breaching of the mind's limits in relation to the pictures' referent, a profound sense of dismay arising from this inadequacy of the imagination. Like the images from Lisbon, the photographs from the Nazi camps draw the viewer into barely imaginable terrors only to strand them helplessly in a sensational state of shock.

Many scholars have warned against the anaesthetising dimensions of Holocaust representation, suggesting that the proximity of aesthetic pleasure constitutes an immorality in the face of this atrocity.¹¹ Others have shown how the catastrophe exposes the limits of representation.¹² Yet the sheer magnitude

¹¹ This debate was perhaps opened by Theodor Adorno's famously enigmatic statement: 'To write poetry after Auschwitz is barbaric' (2003a: 162). See also Wiesel (1983); Friedlander (1993); Liss (1998).

¹² See Friedlander (1992); Caruth (1996); Van Alphen (1997).

of this event – the measureless extent and details of the suffering – nevertheless summons up the familiar eighteenth century aesthetic category. The art historian Carol Zemel specifically describes the effect produced by the photographs from the Nazi camps ‘Holocaust Sublime’ (2003: 211). It is not coincidental that the old category has returned as an enabling tool of analysis. The encounter with that social disaster of genocide demands contemplation of the problem of evil and therefore the radical limits of the human faculties of imagination and judgment. This is not to suggest Lisbon and Auschwitz are comparable; these two events belong to completely different categories of phenomena. Yet both call forth a similar constellation of intellectual and emotional response, both represent a historical instance when individuals were forced to change their axiomatic beliefs about the world, and both according to Theodor Adorno (1973), had a catastrophic effect on the human imagination. Yet for those who experienced these disasters like Sontag and Voltaire – through a devastating meeting with aesthetic representations – the events also gave rise to an empathetic identification with the strangers pictured, to a powerful wish to restore the victims to the human community from which they were expelled. The reflective responses reveal, in short, how this painful and powerful aesthetic encounter calls forth the faculty of judgment.

But what do such judgments have to do with human rights? Like Adorno, who asked in all seriousness whether it was possible to *live* after Auschwitz (2003b: 435), Arendt grappled with the question of how to rebuild a culture after the ruin of the Holocaust. Although she spent her adult life working through the complexities of this problem, early on she proposed an enigmatic and tentative answer. Buried in the original ‘Concluding Remarks’ to *Origins of Totalitarianism* (a section which she deleted in subsequent editions), Arendt suggests that recognition of the supreme crime – the crime against humanity – can give way to recognition of ‘the one human right’ (2004: 629). A few pages later in this expunged section she defines this one human right as ‘the right to the human condition itself’ (631). These are startling and equivocal phrases from Arendt given her elaborate critique of human rights. Earlier in the book she argues that the language of the three major Declarations – ‘inborn’, ‘inalienable’, ‘self-evident truths’ – speciously implies that human nature is the premise from which laws and rights are to be deduced. That is, they mistakenly assume that something was there, given, already established before human history actually began; that its laws sprang from some transcendent source. In contrast, Arendt proposes that a ‘conscious planned beginning of history’ can only be inaugurated by the recognition of a crime against humanity (2004: 631).

Arendt does not utterly abandon the notion of human rights. Rather, her critique attempts to bring into view their ‘prepolitical foundation’, their ‘prelegal basis’. (2004: 631). If rights cannot be secured by the empty proclamations of an ‘innate’ human dignity, what is the grounds for membership in the human community? From the hindsight afforded by her late work, we can see that Adolf Eichmann provided Arendt with the clearest answer: judgment. The recognition of a crime against humanity implies the exercise of judgment. And conversely, Eichmann’s unwillingness to make his own judgments led him to commit this grave crime. In and of itself, Arendt realised, judgment cannot achieve liberty or justice. Indeed, once particular

reflective judgments are transformed into abstract universal principles (such as the articles of the Universal Declaration), they appear, paradoxically, to lose their effectiveness. As has been made plain by the recent genocides in the former Yugoslavia, Rwanda, and Darfur, the legislation of universal human rights has brought little relief to the world's sufferings. However judgment does imply the *participation* of individuals in the daily strife of existence. It is the action of judgment that galvanises a polity and enables the recognition of those who have been expelled from the human community. We can see this practice of judgment in action in the various responses to the Lisbon disaster as well as in Sontag's moving account of her encounter with the Holocaust photographs. Although these aesthetic judgments are not directly political demands, they provide an affective climate, a 'prepolitical foundation' that can give rise to the thought of human rights – or better, to the thought of the 'one human right': a right to the human condition. Accounts of the Lisbon disaster (and more recently, Auschwitz) make vividly evident the fact that human dignity is not natural. These instances show that people must be actively judged human and that the failure to perform this experimental form of action can lead to disaster. One might call this a negative politics: In place of a celebration of an inalienable human dignity, a history of human rights beginning with Lisbon focuses on our shared frailty, our radical vulnerability, and our susceptibility to what Arendt called the 'banality of evil'. This narrative is undoubtedly less triumphant than the conventional story. Nevertheless, it shows how the notion of 'the human' migrates through public imagination, in part, by virtue of our passionate engagements with pictures. And perhaps such a story can help make manifest the hard truth that our willingness to relate to others through our judgment is the only thing binding 'humanity'.

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