



THE RIGHT TO HAVE RIGHTS

AN INTERVIEW WITH PEG BIRMINGHAM
PROFESSOR OF PHILOSOPHY AT DEPAUL UNIVERSITY, CHICAGO

We cannot collapse the ontological basis of the right to have rights in natality with the political work of instituting that right.

Text by Vilde Lid Aavitsland

Portrait by Jenny Hjertaas Ljones

Peg Birmingham is professor of philosophy at DePaul University, Chicago, and affiliated research professor at University of Western Sydney. She is one of the leading Hannah Arendt scholars in the US today, critically engaging Arendt's thought on questions of human rights, radical evil, law, violence, political deception, and the temporality of the political. In addition to Arendt, Dr. Birmingham also works on modern and contemporary political thought, focusing on the work of Niccolò Machiavelli, Thomas Hobbes, Jean-Jacques Rousseau, Martin Heidegger, Carl Schmitt, Giorgio Agamben, and Michel Foucault. She is the author of *Hannah Arendt and Human Rights* (Indiana University Press, 2006), co-editor (with Anna Yeatman) of *Aporia of Rights: Explorations in Citizenship in the Era of Human Rights* (Bloomsbury, 2014), and co-editor (with Philippe van Haute) of *Dissensus Communis: Between Ethics and Politics* (Koros, 1995). She is also the editor of *Philosophy Today* and co-editor (with Dimitris Vardoulakis) of the book series *Incitements* at Edinburgh University Press. She is currently completing the manuscript for her next book, *Hannah Arendt and Political Glory: Political Immortality in an Age of Superfluosity*.

In this interview, Dr. Birmingham speaks about Arendt's notion of the right to have rights, political deception, common critiques of Arendt's concept of natality, and of the split between the public and the private, as well as her upcoming work on immortality and superfluosity.

What originally drew you to the work of Arendt, and what makes her work still relevant today?

I can't remember what exactly drew me to Arendt's work. I studied at the University of Wisconsin in Green Bay with Fred Kersten who was a student of Aaron Gurwitsch at the New School and who also took classes with Arendt, although I don't recall ever reading anything by her in his classes. Gurwitsch, yes, but Arendt, no. Kersten was a Husserlian phenomenologist and I spent my undergraduate years studying the phenomenological method with him. At that time in the mid-1970's, no works of Arendt, let alone a seminar or course on her work, were taught either at UWGB or at Duquesne University where I did my graduate work. I read her entirely on my own. When I wrote my dissertation on Heidegger and the problem of freedom and the will, I had Arendt constantly beside me as I thought her understanding of freedom added considerably to Heidegger's work on the topic. I recall giving a copy of my dissertation to Kersten who after reading it remarked, "You wrote a very Arendtian dissertation on Heidegger."

Certainly, Arendt's thought has increasing relevance for today. Her thinking on political deception, the production of superfluosity, and the problem of rightlessness of the stateless and refugees could not be more relevant in our present moment.

Arendt's notion of a "right to have rights" has been critiqued, by thinkers such as Seyla Benhabib, for lacking any normative or philosophical justification. In your first book, Hannah Arendt and the Right to Have Rights, you argue against this claim that the event of natality—the new beginning inherent in every birth and action—and what you call its inherent principle of humanity provides the ontological foundation for human rights. What does this mean, and how does it not become an ontological politics?

Natality is an ontological event for Arendt. But here we need to be careful. Arendt is a radical phenomenologist insofar as for her being and appearing are the same. As she puts it on the very first page of *The Life of the Mind: Thinking*, "Being and Appearing coincide." Thus, Arendt offers a phenomenological-ontology. The event of natality is ontological in the sense of being the foundational event of appearance. The birth of the human is the birth of appearance, it ruptures into time and allows for the new. This event carries its principle within it: both the principle of publicness and the principle of givenness. This event of an unprecedented or unique beginning is an event of publicness insofar as a unique being appears always into a plurality. The principle of givenness points, in this context, to embodiment and material conditions. The event of natality thus carries with it an inherent principle of humanity in the sense that the double principle of publicity and givenness is universal to all human beings in their appearance. Let me add that I am no longer happy with limiting this principle to human beings. Arendt's late work in *The Life of the Mind* provides an opening for extending this ontological event to all appearing beings and not merely the human.

Natality provides the ontological basis for philosophically legitimizing the right to have rights, that is, the right to belong to a public space in which one has significant speech and action, is able to act in concert with others for the sake of something new. This is so because we are appearing beings who appear in the world, and that appearance is a rightful appearance: we have a right to belong. It carries with it the right to have our bodily existence cared for and recognized.

Why does that not lead to an ontological politics, that is, a politics grounded in a set of enduring truths that can then be realized politically? We cannot collapse the ontological basis of the right to have right in natality with the political work of instituting that right. It still demands the further political work of in-

stituting this right to belong to a political community. The right to belong to a community is the work of the political. To establish ontologically the right to have rights does not lead to an ontological politics, but gives an ontological basis of politics. It addresses the question of legitimacy, but it itself does not do the politically necessary work of instituting this right.

The right to belong can be instituted in different ways. It wouldn't necessarily look the same in every political space. But every political space would be animated by the recognition that each individual has a right to belong. Now, with 65 million refugees and stateless, the right to have rights is still very politically urgent. It will demand moving beyond the nation-state and think a concept of the political that is not defined by strict borders and boundaries as delineating a space of territory defined by a national will, which is really what the nation state is. As many have noted, the nation-state defined by limited territory with clear borders that emerged from the 1648 Westphalian Treaty was an answer to the question of stopping the tremendous violence of the Thirty Years War. The tremendous violence we are witnessing today with unending war, the destruction of the earth, and the increasing number of refugees and statelessness calls for thinking another formation of the political.

In The Origins of Totalitarianism Arendt argues that human rights, supposedly universal and given to the human qua human, proved to be worthless when confronted with people who were no longer recognized as citizens. In other words, the supposedly universal human rights can only be secured within the framework of the nation state and thus turn out not to give any protection for people who are either being persecuted by their own nation state or who have had to flee and are living in a nation state of which they are not citizens. Arendt's reformulation of a right to have rights is supposed to point to this problem: it is a right to belong to a political community, which is the very basis for any positive rights claims. Yet, Arendt is faced with the same problem as the universal human rights: is there, or could there be, an institutional framework that can grant this right? She ends The Origins by saying that this is a right that should be given to all and granted by humanity itself, but that it is by no means certain whether this is possible. So where does this leave us? And is it even a right if there is no guarantee of its enforceability?

If we think of *The Declaration of the Rights of Man and of the Citizen* (1789) it is clear that it was already

indexed to citizenship: it was tied to a notion of the homogeneous national will. This right was limited to a particular territory or state, and to a particular will, namely the will of the people. Moreover, it understood the subject as a rights-bearing subject, a possessor of certain inalienable rights. The individual subject is someone who belongs to a sovereign nation state, that confers that right to this subject who is now a citizen. The paradox of course and one that Arendt knew intimately as a refugee is that so-called universal rights only belong to particular citizens.

Arendt's notion of a right to have rights, on the other hand, is founded on a completely different understanding of what it means to be in the world. The political, for her, is not based on a universal notion of a rights-bearing subject who at the same time must belong to a particular territory, rather, it is based on a notion of a common, worldly existence, a worldly space of appearance. The right to have rights, as a right to belong to a political community, is then a matter of the worldly appearance of a person. The worldliness of the person means that one does not have to be a citizen to have a right to have rights. Now, there is still the political and legal work of recognizing that appearance. This forces us to rethink the space of the political, so that it is no longer thought of in terms of territory, a common history and the national will. The notion of territories, the framework within which rights are granted to a subject, would have to be changed to a notion of worldly appearance. Can we think of worldly appearance in worldly spaces that have histories (the notion of the political as a historical space, as an earthly space), histories that are not bounded to strict territories? Arendt is rightly skeptical of a world-government, and for her the political requires limits and boundaries. But these boundaries could be fluid, the way that alliances are fluid: they open up to one another, and they emerge out of common histories. We could for example think of an alliance between Canada, the US, and Latin America. We could begin to see these countries no longer as sovereign states, but as political spaces open up to one another and at the same time, given their shared histories, would allow for much more fluid and shared borders and boundaries. Here I am thinking of Jean-Luc Nancy's notion of *partage*, sharing as an opening out. The thousands of people appearing today on the US southern border are fleeing, in part, from violence that has in many ways been the product of American foreign policies. A

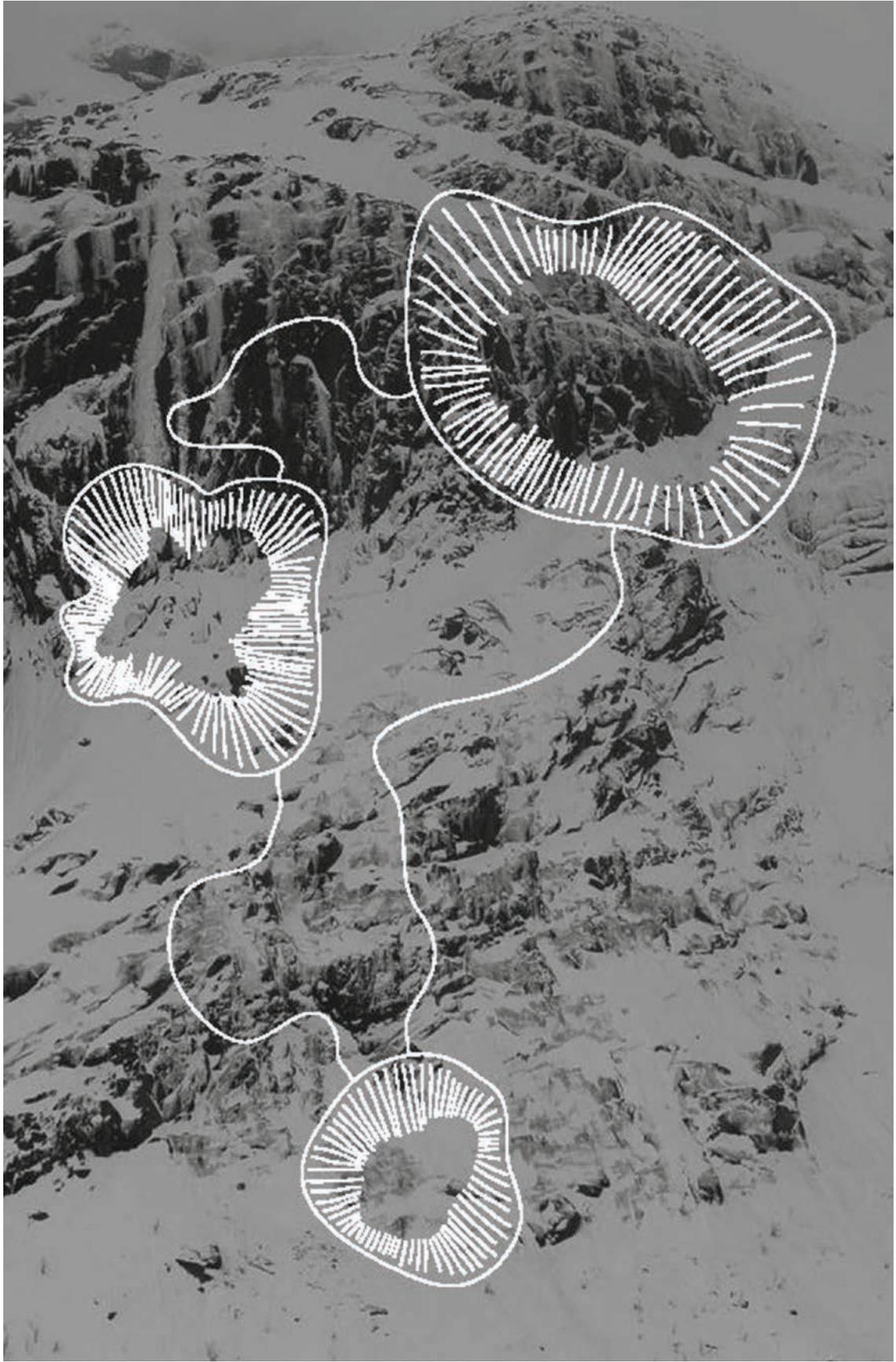
recognition of that shared history would entail a recognition of a shared responsibility for that history which, in turn, allow for an enlarged sense of the political beyond strictly controlled territorial borders.

One of Arendt's most important contributions has been her insistence on natality, rather than mortality, as the foundation of politics. However, Arendt's concept of natality has also faced criticisms. For feminist thinkers such as Adriana Cavarero natality as an abstract, disembodied category becomes emblematic of Arendt's split between the public and the private, and thereby of a re-inscription of female bodies to the realm of the household and male bodies into the scene of politics. Cavarero argues that if we shift the gaze away from "the second birth" of action (marked by a reciprocal relationality between actors) to the event of birth itself, we will have to think natality in terms of asymmetry and dependency rather than equality and reciprocity. What do you say to this challenge to the Arendtian concept of natality?

I think it is very dangerous to reduce the notion of natality to birth. To reduce natality to birth and to the mother, as Cavarero does, is to once again root it in biology. This can give rise to, whether we mean to or not, all kinds of racial connotations. I know that this is not what Cavarero wants to do, but it is a danger inherent to the reduction of natality to nativity. Moreover, to reduce natality to birth and the mother is to miss the radical uniqueness that for Arendt is at the center of natality. The concept of natality is the concept of uniqueness, it is the break in time, the upsurge in time of the radically new and unique. Cavarero thinks that Arendt has overlooked the mother. But I think that Arendt wants to say that even when it comes to birth there is something that transcends the lineage to the mother.

Nevertheless, to the larger question of embodiment in Arendt. Judith Butler as well will say that Arendt is not interested in embodiment, and that her distinction between public and private relegates all matters of embodiment to the household, following the Greek model. But that is not what Arendt means by this distinction. For Arendt the public and the private has been destroyed by the rise of the social. Rather than having political actors we now have the bourgeoisie, with only one interest: financial security for himself and his family. This destroys both the private and the public.

Now what is the private? It is that space of activity around embodiment that cannot bear the light of the



public. These activities need protection. Here I add that private activities have publicity insofar as they appear, but they do not have the same kind of publicity as those in the public space. Moreover, the private and the public are not entirely separate. The walls of the house face out onto the public square and the two realms are united by the law which serves as the boundary between them. Arendt is quite aware that the boundaries of the private are determined legally and therefore politically. We certainly see this in the renewed attempt to overturn *Roe v. Wade* – the 1973 Supreme Court decision that ruled that unduly restrictive state regulation of abortion is unconstitutional – which of course rests on the principle of privacy concerning one's own body. It is precisely this principle, this boundary that is being threatened in the US today. Arendt is not reclaiming the Greek model, she is thinking the history of the distinction, and not taking it up wholesale. Birth demands a private space in which there is shelter and care, death is another event that requires the protection of the private sphere. Embodiment from birth to death has activities that ought to be sheltered and protected. We need rejuvenation, a house where we can go and shut the door at the end of the day. This is something that we as embodied beings need. It seems to me that one of the worst things of being homeless, in addition of course to being completely exposed and without adequate material conditions for life, is not to have a place to go and shut the door and be alone. So, against Butler I would say that Arendt is rather profoundly concerned with embodiment.

I don't think that Arendt ever endorses the role of women as caregivers, she is rather criticizing the social realm, in which life has been reduced to bare life, which again, is life reduced to its function or utility. Life without function or utility is in extreme danger of becoming superfluous. In this view, the only concern is profit and there is no concern with protecting and sheltering and nourishing our bodily being. This is what Cavarero and Butler miss in Arendt's distinction between the public and the private.

Ever since the publication of the infamous "Reflections on Little Rock" (1959) essay Arendt has been accused of racism. The perhaps most damning critique of Arendt in this respect can be found in Kathryn T. Gines' book Arendt and the Negro Question (2014), in which Gines is arguing that a current of anti-blackness is informing Arendt's work from The Origins of Totalitarianism on. Is, in your view, Arendt's

theory inherently racist? Is it possible to think the complexities of inclusion and exclusion along the lines of i.e. gender, race, class, sexuality etc., in Arendt's theory?

I do not think that you can save Arendt on the question of anti-blackness. We also see this in *On Violence* (1970) and the disparaging remarks on black students in the footnotes. I would say that Gines is absolutely right in following that current of Arendt's work and bringing it to light. It needs to be looked at. Does this mean that we abandon Arendt's work completely? No, but it makes us cautious.

Arendt has a brilliant analysis of imperialism in *The Origins of Totalitarianism* – claiming that racism is the driving engine of imperialism. So how can we square the continuous stream of anti-blackness with her insights here on imperialism? My conclusion is that Arendt is a cultural imperialist. She is a little bit what Edward Said said about Kurtz in his book *Culture and Imperialism* (1993). In this book Said has a very long discussion of Conrad's reading of Kurtz. Conrad is a figure who understands the horror of imperialism through Kurtz. He understands it and writes about it, and yet he is blind to his own position. He can both see imperialism, and yet he is blind to his own role in it. And I think that the same can be said of Hannah Arendt. She can see the elements of imperialism, racism, capitalism, the way it is linked to the nation state, to bureaucracy and race as inherently linked in the colonial project. But she cannot see her own biases as a well-educated European subject. This is where I think that her own cultural imperialism emerges. When she talks about the black student movements, she should have seen it as a political movement that demands her solidarity, but she can't do it. I think that it is a problem of judgment. If there is anything that we have to be careful with in Arendt it is her notion of judgment. I think that her notion of judgment is not plural enough.

Could you elaborate on your critique of Arendt's notion of judgment?

As is well-known, Arendt's theory of judgment is in large part Kant's, especially her emphasis on judgment as requiring an enlarged mentality which Arendt understands as imagining myself in the place of the other. Here it is important to note that this imagining is not about the individual perspective *per se*, but how the

world looks from his or her place in it. Problematically, however, and Gines points this out, this notion of representational thinking does not emphasize those who have been excluded from the public space. Instead, she emphasizes those who are present but in another worldly location. Secondly, Arendt's account of representational judgment does not consider the limits of this kind of judgment. While I think Arendt is correct in emphasizing the transcendence of the imagination, how far does this reach? And how does judgment correct its limitations? Is it possible?

At the same time, Arendt gives another account of the judging spectator that I think is better able to answer these questions. This is her notion of the judge as historian. Here the enlarged mentality is gained by engaging in a plurality of histories and counter-histories, an engagement in which a plurality of judging spectators deliberates and debate with one another about particular events that have unfolded or are indeed unfolding. This is the model of judgment she suggests is at work in the spectators and critics who, "from the stands", enthusiastically watch and comment on the French Revolution. Following Benjamin, the judging spectator as historian is concerned not only with the victors but with the victims of history. At the same time, it seems to me that thinking judgment through a plurality of historical narratives better allows for Arendt's claim that judgment allows us to come to terms with what unavoidably and irrevocably exists and to liberate it from forgetfulness. Judging as rooted in a historical-critical, rather than a representational imagination, better allow Arendt's claim in her Kant lectures that judging is the condition for political action insofar as it opens and enlarges the public space through a plurality of standpoints.

You have critiqued Judith Butler's conception of precarity, proposing in its place a concept of superfluosity. Can you speak a bit about your critique of Butler, and what you mean by superfluosity?

Butler's argument in a nutshell is that precarity is the unequal distribution of vulnerability. Therefore, the ethical and political task is to equally distribute vulnerability. The reason why Butler wants to do this is that she wants to find an ontological condition in vulnerability out of which political and ethical obligation follows. I don't think that the project is radical enough. We need to ask *why* precarity is unequally distribu-

ted. Precarity, on my view, is the effect of a production of superfluosity, which emerges out of what Marx would call the original crime of accumulation, the crime of expropriation and the production of superfluosity. Capitalism produces superfluous populations; Marx would say economic and I would add political. Marx's messianic hope is that the superfluous labor will become the new proletariat and the founding of a new politics. I don't agree with Marx on this point.

Superfluosity begins, Arendt will say, in imperialism, where entire groups of people and cultures are rendered superfluous. I think that we are now at a point in which global capitalism has rendered even the conditions of being human, earth, world, and life superfluous. The original crime must be repeated again and again and again until there is nothing left to destroy, including the earth. We need to confront and stop this relentless production of superfluosity. This is the urgent political problem of our time.

Precarity, the unequal distribution of vulnerability, is the effect of this production of superfluosity. Although it is true that we are vulnerable, Butler's notion of precarity seems incapable of addressing the production out of which it emerges. In other words, precarity is produced through the capitalist production of superfluosity. Of course there are degrees of superfluosity producing degrees of precariousness. My point is that the political task is not to better distribute precarity but instead to stop the production of superfluosity that produces it. So how can we respond to the production of superfluosity? This is part of the book that I am finishing at the moment. To think something like political endurance through a concept of immortality. I want to think earthly and worldly endurance as the most urgent problem we face today.

What role does immortality play in politics, and how can we have a politics founded on immortality that does not revert to sacrificial violence à la Hobbes or Schmitt?

For both Hobbes and Schmitt immortality is rooted in sacrificial violence. I gain my immortality in dying for the nation. Schmitt's concept of the political, dedicated to his friend who dies in WWII, is tied to the notion of sacrificing blood. For Hobbes it is a little different. As individuals we desire glory, I desire to be recognized by others for some heroic deed. Hobbes is the link between the Greeks and Schmitt. In the state of nature, I risk being killed, only as a member of the

sovereign nation state can I gain glory or immortality. In fact, Hobbes claims that the desire for glory is fundamental to competition and the desire for power. So, the only way that I can satisfy my desire for glory, is to give up my power to the sovereign. In return I don't just get life, but a glorious life.

This project started because Arendt is often accused of giving a heroic notion of politics. As with the public/private split she looks to the Greeks and seems to embrace a notion of the public space as the space illuminating the deeds of the heroic individual whose heroism is for the most part gained in the violence of war. Achilles is here the exemplary figure. However, this reading is mistaken. Her starting point is not the heroic individual but the preservation of the world, and I would add, the earth. It has nothing to do with the nation state or the heroic individual. The common concern of the *vita activa* is the concern for the worldly endurance; labor, work, and action are activities that in different ways are concerned with and contribute to the endurance of the world, and I would add the earth.

The lens has shifted. Arendt's starting point is not the individual, like Hobbes or Schmitt, but the world and the earth. Pluralizing worlds. Endurance of worlds. This is a way of thinking against the production of superfluosity in global capitalism, which is a destruction of world and earth. The expropriation of cultures, worlds, and individuals are always racialized, as Nancy Fraser has pointed out.

If superfluosity is inherent to capitalism, how is it possible to address it without addressing capitalism itself?

One has, first of all, to address the ways in which capitalism continues to produce superfluosity. This is Arendt's definition of radical evil, as the production of superfluosity. The production of superfluosity through imperialism crystallized for her in the attempt at perfect superfluosity of the death camps.

How can a concept of immortality or endurance address capitalism? Philosophy by itself does not change the world, but it plays a role in resistance in so far as it can help us think of an otherwise, to imagine ways to establish a world differently. In this case, I hope that we can think of a concept of immortality understood as endurance of the world and the earth and ask what that would look like politically and economically. To answer your question straightforwardly, we cannot address superfluosity without addressing

capitalism. To do this is to begin to think a notion of "commons," a notion that was destroyed by the original act of accumulation and expropriation. In my view, Arendt is a thinker of the commons in the sense of a common world, a common earth.

Arendt was deeply concerned with political deception. Today we have the so-called "fake news" and "alternative facts." What specifically is the danger posed by lying in politics? And what is truth for Arendt?

Totalitarianism is fueled by the lie. One of the key elements of totalitarianism is the lying world order. It substitutes reality with lies; it renders factual truths superfluous. A lying world order is inherently tied to ideology, which attempts to replace reality with what she calls the "logic of singular idea" in which reality is organized and understood through the iron-clad logic of one idea such as the superiority of the white race.

Why are these lies so believable? Despite all of the fact checking, all of the work that has been done to detect lies, of Trump, etc., why does this have no effect for the citizens who continue to support Trump? In *The Origins of Totalitarianism* Arendt says that in the period between WWI and WWII people believed that nothing was true, and everything was possible: people are both cynical and gullible. In other words, they have become thoughtless: they do not think. Thoughtlessness is defined as living in clichés, it is the absence of thinking and judging. Think of the false manuscripts of the elders of Zion. Everyone knew they were false, but why were they believed? If your world is one of clichés and ideologies, particularly the ideology of race, which is the ideology of the US; if you are willing to believe that nothing is true, and everything is possible, then you become skeptical and gullible to these lies because you think nothing is true. This is the basis on which totalitarianism can begin.

Truth for Arendt is always that which can be validated in one way or another: rational truths, scientific truths, and factual truths. She is primarily concerned with factual truths insofar as they are the most fragile and the most easily destroyed by fascist regimes whose goal is to replace them with political lies. Factual truths are truths of what has actually happened and therefore is the material of history. A factual truth is that the Berlin wall fell on October 3, 1989. Another is that the US invaded Iraq on March 20, 2003. Arendt gives the example of Trotsky as a Bolshevik leader of the Russian

Revolution. Stalin's attempt to excise him from the history of the revolution is an example of the destruction of factual truth. The problem with factual truths is that they are fragile and could have been otherwise. There was no necessity for the fall of Berlin wall in 1989, in fact it took even the experts by complete surprise. Factual truths are established through witnesses, testimonies, and documents, all of which can be discredited or destroyed. Again, the danger of substituting lies for factual truths is that it leads to a situation in which anything is possible, anything is true. If this is the case, it destroys our capacity for judgement.

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