Ordinary Ethics

ANTHROPOLOGY, LANGUAGE, AND ACTION

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For Aram Yengoyan

and in memory of Roy (Skip) Rappaport

especially Webb Keane's characteristically insightful discussant's commentary. A revised version was presented to the Anthropology Department at University College London. I am grateful also for a very helpful discussion at that gathering, and especially for Martin Holbraad's generous and penetrating commentary and for helpful suggestions from Allen Abramson. For comments on written drafts, I should like to thank Susan Bayly, Matei Candea, Caroline Humphrey, Michael Lambek, and Jonathan Mair.

Abu Ghraib and the Problem of Evil

Steven C. Caton

I want to think about the prison abuses committed in Abu Ghraib during the U.S. military counter-insurgency in the Iraq War of 2003 to 2005 within the framework of ordinary ethics.[1] In some ways this is easier said than done, not least because there was hardly anything "ordinary" about what is alleged to have transpired behind the walls of Abu Ghraib. Yet we must be mindful that those who committed acts we might call evil were, by and large, ordinary men and women in the U.S. armed services who were thrown into extraordinary circumstances. By stressing this, I by no means wish to exonerate authorities stretching from the White House to

the Department of Defense and generals in the U.S. army of responsibility for possible war crimes. Their culpability is now being explored in a number of different works.[2] What I find compelling is not that there were powerful actors behind the scenes responsible for the evil committed in Abu Ghraib but that there were "ordinary" ones.

Another way in which this essay tries to work within the framework of this volume, albeit uneasily, is in its address to what might be called "the problem of evil." Ethics, even ordinary or perhaps especially ordinary ethics, is ultimately about how to do good and avoid evil in life and the world, and yet it is striking that, in modern anthropological and philosophical discourses on ethics, "evil" is hardly ever raised as a question for reflection (as in "What is evil?" "How do we understand it?" "What can be done about it?"); rather, it is subsumed under the more general category of the unethical. Perhaps Abu Ghraib (the metonym I will use for the abuses committed therein) represents a limit case of our thinking on ethics, for, to my mind, there is something profoundly unsatisfying in calling what happened in Abu Ghraib "unethical" (though surely it was that) as opposed to "evil." To put the same point differently, Abu Ghraib exceeded what we might call the "unethical" and might be better captured under the category of evil.

If the category of evil is necessary for understanding Abu Ghraib, it bears repeating that modern philosophy and anthropology have all but abandoned it as an analytical construct.[3] It would seem that, after Kant, the problem of evil was consigned to theology and after that largely ignored in philosophy, with the possible exception of Nietzsche or Hannah Arendt, whose work on the subject I will examine later.[4] As for anthropology, any number of ethnographic works have talked about "evil" (e.g., Evans-Pritchard's 1937 classic on Azande witchcraft and the conundrum of why a particular granary should have fallen on a particular individual sitting beneath it, with mortal consequences), but they have not asked whether

2. See Jane Mayer (2008), a careful critique of the Bush administration's systematic assault on anything that curtailed presidential power and that administration's handling of the war on terror, including its designation "enemy combatant" for terrorists or terrorist suspects that, it was was argued, would circumvent prisoner treatment according to the Geneva Conventions, to which the United States is a signatory. For the confusing and often contradictory ways in which the U.S. military interpreted the administration's dicta and tried to implement them, see also Gourevitch and Morris (2008: 45–56).

3. Though see Ricoeur (1967).

4. See Nieman 2002 for an attempt to recuperate the category of evil for philosophical analysis and for singling out Arendt in that project.

evil ought to exist as a category of analysis or theory in its own right. That is to say, in most such works, evil is a cultural category, something that belongs to local cosmological systems and as such is an object of description or cultural interpretation, not of theory. To talk about evil in contemporary anthropology, then, is to talk about it in relation to a particular belief system.

I intend to think about evil here as an analytical category, but I also ask whether this requires an ontological commitment to universals (evil as a transcendental category, as in Kantian philosophy), and if not, whether the alternative must be relativistic (that is, evil is part of a particular belief system or cosmology). Must we be caught between the Scylla of universalism and the Charybdis of relativism? I propose as an alternative the concept of "situational evil" and argue that Abu Ghraib was an instance par excellence of such a category.

Another question this essay asks is: "How do we understand guilt or culpability for such evil?" As I will demonstrate, there have been two concepts in philosophy, broadly speaking, through which guilt has been determined: intentionality and contingency. The first argues that, if one did not intend to commit evil, one is not judged culpable or evil in turn; the second argues that contingencies or circumstances may have caused one to commit evil, which is why one *can* be morally excused for what one did. Both of these concepts are at work in moral judgments about Abu Ghraib, and yet I argue that, once again, there is something profoundly absent in this discussion of moral judgment, which has to do with a notion of responsibility. For our understanding of this concept, the work of Arendt is particularly salient (Arendt 1963, 1971, 2003, and 2006).

Closely linked to the problem of evil and responsibility is moral judgment, or the capacity to judge a situation as evil and determine what to do about it. Here, I would argue, philosophy, and again the work of Arendt, has been more helpful than anthropology in clarifying the terms of our discourse, though the essay by Michael Lambek in this volume is an important contribution and I will enter into a conversation with some of its ideas.

One caveat. Perhaps the most unusual thing to have come out of Abu Ghraib is the haunting, disturbing images documenting prisoner abuse committed by its Military Police. To be sure, atrocities have been caught on camera before by innocent bystanders or journalists (for example, during the Spanish Civil War), but it is rarer (though not unprecedented) to find ordinary men and women carrying out what are deemed abuses and

to be the ones taking the pictures of them, with themselves as the perpetrators in the camera frame. This is obviously an important aspect of the history of photography, which, to my knowledge at least, has yet to be written. In Abu Ghraib, what we might call a reflexive documentation, in the sense that the abuser documents himself or herself committing the abuse, was not ad hoc or occasional but prolific and systematic, numbering in the hundreds if not thousands of acts and made over a period of weeks. There has been endless speculation as to why it was done, and to date no completely satisfying or convincing explanation has been given (or may ever be forthcoming). I will describe the abuses performed through taking pictures, but I will not analyze those images in this essay. I have attempted to do so elsewhere (Caton 2006; see also Eisenman 2007). The circulation of these images expanded from within the prison walls via the Internet to family members and friends, and from there eventually to mass newspapers and television news networks around the world. In May 2009 the Obama administration decided not to release the full archive of these images deposited with the U.S. military, arguing that this would further incite Arab and Muslim anger against U.S. troops, particularly in Afghanistan. The reaction that the initial release of these images provoked in various interpretive communities both within the United States and especially in the Muslim and Arab worlds has yet to be thoroughly analyzed (though see Caton 2006 for a start), but it is in part this history that supposedly influenced the administration's decision. It is not entirely clear, however, that Arabo-Muslim reaction would have been as the administration claims.

Background: The Legal and Administrative Codes Behind Abu Ghraib

Before embarking upon a philosophical/anthropological discussion of evil in Abu Ghraib, it is important to understand, insofar as it is possible to do so, the multiple problems—legal, bureaucratic, and military—that beset the "war on terror" and entities like Abu Ghraib created to combat it. This understanding forms the background from which to judge moral responsibility and the difficulty of moral judgment.[5]

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5. There have been cases in which the U.S. army has been implicated in atrocities committed during times of war, for instance, the My Lai Massacre in the Vietnam War, in which Lt. Calley gave the orders to shoot mostly old people, women, and children at a village called My Lai, for which crime he was convicted and sent to prison, though no one higher in the army chain of command was

Shortly after the attacks of September 11, 2001, Vice President Dick Cheney gave a now famous interview on *Meet the Press* in which he explained how the administration would respond to the terrorist threat: "We'll have to work sort of the dark side, if you will." Over the next several months, the administration's tactics in response to the terrorist threat were developed and carried out, some in deepest secrecy. The designation of the attacks on the United States as a war, not a crime, justified President George W. Bush, at least in the eyes of his administration as well as many in Congress, to assume extraordinary powers and take extraordinary actions based on them, all with the supposed aim of safeguarding the nation in a time of war against further attacks. Such tactics included: a domestic e-mail and telephone surveillance program, which the Department of Justice argued could be conducted against citizens and noncitizens alike without first obtaining a court order and which Congress was only too ready to grant the President in the Patriot Act; allowing rendition to countries where torture is routine (Egypt, Morocco, and Jordan), often with air bases in western European nations serving as intermediary stopping-off points or with assistance from those nations' security forces in rounding up suspects for deportation (a program the Obama administration has decided to continue, though pledging to monitor prisoner treatment); and the indefinite incarceration of these "illegal enemy combatants" without trial in off-shore penal colonies such as Guantánamo (which the Obama administration has decided to close down, moving prisoners to other installations and allowing some defendants to stand trial).

A legal structure, put in place by the Justice Department and legal counsel to the President of the United States, made possible—though did not explicitly condone—abuses like the ones in Abu Ghraib. First and foremost was the designation of terrorists as "illegal enemy combatants," a category not recognized in international law and therefore not covered by the Geneva Conventions. This would allow agents to operate on what Dick Cheney called "the dark side" (until the Supreme Court began to overturn some of the Bush administration's assumptions, particularly with regard to Guantánamo and its status, that would have repercussions for the application of habeas corpus). Numerous investigators of crimes against

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charged. In Vietnam some soldiers took pictures of civilians being beaten or otherwise mistreated by members of the U.S. army, and the Abu Ghraib images brought back these memories in the minds of some soldiers. See Nelson 2008 for an account of how U.S. soldiers are or are not confronting the truth about atrocities committed in Vietnam by the U.S. army, a process that has not yet begun with veterans of the Iraq and Afghan wars.

humanity have pointed out that part of the process through which people are socialized, as it were, into accepting and perpetrating exceptional acts of one sort or another is first made possible by "language rules" (Arendt 1963).

Of course, the rules were far more than linguistic. As Abu Ghraib was a military prison, what are called Standard Operating Procedures, or SOPs, had to be formulated for the treatment of illegal enemy combatants. (They were compiled from previous experience in Vietnam and Afghanistan.) These bureaucratic rules also spelled out how the ordinary soldier was supposed to react to any possible contingency inside prisons, ranging from prisoner riot to inclement weather. It should be noted that the MPs in Abu Ghraib received these SOPs rather late in the counter-insurgency (Gourevitch and Morris 2008: 91), and they were not always properly instructed or trained in them. One of the gray areas in question, as we shall see, had to do with the mandate of the MPs to "soften up" detainees before they were handed over to MIs (Military Intelligence) for interrogation. (It was these "softening up" tactics that were captured in the Abu Ghraib photographs.) It is now coming to light in recently released documents that the C.I.A. authorized and supervised many interrogation techniques later judged to be abusive (Mazzetti and Shane 2009).

Let us now turn to the bureaucratization of work within the prison. MIs were trained in gathering up suspects and bringing them to the prison, where another subgroup of them extracted information presumed to be valuable in efforts to suppress the insurgency. MPs were the guards and wardens of the prison, and they too were differentiated according to roles and functions. The social-psychological literature on authoritarian organizations, like the army or the police, that inherently use force and violence to carry out their objectives suggests that this piecemeal distribution of work, an outcome of the rationalization of bureaucracies, can give an individual the impression that he or she is merely a "cog in the machine"; more importantly, it makes it difficult for that individual to see himself or herself as being responsible in any large way for the wrongdoings that that organization commits (Kelman and Hamilton 1989). But what is peculiar about Abu Ghraib is that these roles and functions, rather than being kept discrete, were often blurred, a fact lamented by military experts commenting on what went wrong in the prison. What became blurred, specifically, was the distinction between the operations conducted by MIs and by MPs. MPs were asked to "soften up high-value targets" before they were interrogated by the MIs, the assumption being that information could be more rapidly extracted in the interrogation phase after

the "softening up" had taken place. The MPs were not trained in such techniques, and though many of these were approved by the C.I.A., as already noted, the MPs ended up *improvising* many of them as well, by demeaning the prisoners. These attempts drew on assumptions concerning Arab and Muslim shame regarding the naked body or religious concerns with impurity and desecration.

Besides the legal system and the bureaucratic organization of work, other factors to consider in weighing the soldiers' reactions were the extreme conditions in Abu Ghraib, especially overcrowding. The "gathering up" of suspects routinely covered a wide sweep of individuals who might have been present or nearby some "incident" that had occurred (though, as it turned out, they more often than not had nothing to do with causing it, let alone any involvement with the insurgency). Among the suspects who were interrogated, tortured, and even killed, some were determined to be innocent "after the fact." (It is difficult if not impossible to give accurate figures or percentages for such cases.) Due to the fact that suspects were taken in faster than they could be registered, many ended up in prison without any official record of their incarceration, making it extremely difficult for families and others to track them down or for the military prison system to examine their cases when complaints arose and to discharge them if they were held without cause. Like other detention centers inside Iraq, Abu Ghraib soon became overpopulated, both worsening the squalor and exacerbating the stress on inmates and MPs alike. A peculiarity of Abu Ghraib was that it was inside the field of military operations and thus was subjected to almost daily attack and bombardment (another violation of the Geneva Conventions, which stipulate that prisoners of war must be held far enough behind the line of combat so as to be safe from military fire—but then they were not designated prisoners of war). Not only were MPs exhausted from having to deal with an overcrowded prison, their physical well-being was in constant danger because of insurgency attacks.

The Abuses

Many different kinds of abuses were committed. Among these were: being shackled naked in a cell for hours at a time, sometimes with a derisive female present or with female underwear pulled over the prisoner's head; facing snarling dogs, which at times were allowed to charge and attack the naked prisoner; and sleep deprivation. Physical restraint meant to cause

extreme discomfort and pain included being "trussed" with hands behind the back and hoisted above the head, sometimes causing dislocation of the joints and even asphyxiation. In addition, prisoners were verbally assaulted or subjected to extremes of noise and temperature. None of the above-mentioned tactics is sanctioned by the Geneva Conventions (but then, because the prisoners were designated as "illegal enemy combatants," it was not clear to the MPs whether the Conventions applied).

Finally, one must consider the use of the camera, or more exactly, taking pictures as an instrument of abuse. Among the pictures taken in Abu Ghraib are scenes of soldiers on the "stage" on which the physical torture or psychological humiliation was taking place, snapping pictures or wielding a camera as if they were taking pictures and doing so with the prisoner's cognizance. In other words, in these scenes the camera is itself an instrument of abuse, as much as the collar and leash, the female undergarment pulled over the face, and the snarling dog. The thinking behind it was presumably that an Arab, due to cultural notions of honor and shame, is terrified of having images of his humiliation made public, especially to his family, and to avoid that he would be willing to be compliant or cooperative. What did not emerge until months after the release of the photographs is that some acts of prisoner abuse captured on film were actually staged. This was the case, for example, for one of the most iconic images from Abu Ghraib, the picture of a prisoner in black poncho and hood who was made to stand on a box with "electrodes" running from his extended arms, the presumption being that he would have been electrocuted had he stepped down or fallen from his makeshift platform. Once the soldiers had taken their picture of him in this costume and bodily position, he was allowed to step down and change clothing. It is unclear whether the prisoner knew all along that his torture was faked, but even if he did, he presumably had no choice but to go through with this "ritual" of humiliation. Nevertheless, the picture was taken to be "real" by the press and the public at its initial release. For me, what is most interesting is the question of the picture's ontological status. It is not a document of abuse in the same way as many other prison photographs were, because the abuse was staged specifically for the camera; the photograph itself is the abuse, or is *performing* the evil, and as such is different from the others.

One last point before we go on to our philosophical discussion of the problem of evil in Abu Ghraib has to do with the model of a security apparatus of power. Caton and Zacka (2010) explain why Abu Ghraib is perhaps best understood not as a prison in the disciplinary sense as Foucault (1977) elaborates it, but as a nodal point in a security apparatus as

Foucault (2007) also discusses. A security apparatus had been hastily and haphazardly put in place in Iraq almost immediately after the insurgency began. It was meant to sweep up "dangerous" elements, contain them for interrogation, and then either release them back into the population or send them to other, more permanent security locations in Guantánamo and elsewhere. Much has been made of the fact that, if only the rules of engagement with "enemy non-combatants" had been made clearer and put in place in Abu Ghraib sooner, the prisoner abuses we saw might have been avoided entirely. In other words, it was a technical glitch, a failure in the "rational" processes of bureaucratic institutions. It turns out, as noted above, that the Bush administration's legal counsel was obsessed with the problem of rationalizing (in the Weberian legal sense) the physical and psychological punishment of prisoners so as to extract the maximum of intelligence information while avoiding "torture" or "abuse," and so this argument about a lapse of bureaucracy seems tenuous at best. In fact, Foucault's model of the security apparatus presupposes an *improvisatory* power, a creative and often ad hoc performance of prisoner treatment much in the way the MPs created abuses in Abu Ghraib, suggesting that this was due less to a flaw in the prison system, a dearth of rules, or a few "rotten apples" among the soldiers than to the entailments of a security apparatus built to fight an insurgency. With this model, it is important to bear in mind that unforeseen contingencies and unique events are the rule rather than the exception for soldiers and intelligence gatherers in the field (or what Foucault called the milieu). It is this *eventfulness* and the *emergence* of relatively innovative responses to it by of soldiers in the Iraqi counter-insurgency that are essential to understanding the evil soldiers perpetrated and their prisoners confronted.

Evil and Responsibility in Abu Ghraib

A transcendent ethic, at least as formulated by Kant in his notion of radical evil (see his *Religion Within the Boundary of Mere Reason*), presupposes categories of judgment that are beyond particular situations. As I understand it, Kant's notion entails two concepts of the radical: one with the meaning "root," derived from the Christian doctrine of inherited sin, which makes us all inherently tempted by evil; the other with the meaning "exemplary" and "hyperbolic," as we might say of Hitler that he was the exemplar of radical evil in the modern world—the limit case, if you will—against which all other evil is to be compared and judged (Pol Pot, Slobodan Milošovič,

Idi Amin, Saddam Hussein, etc.).[6] A Kantian or transcendent notion of good and evil informs contemporary rights discourse when it speaks of "human rights" of one sort or another whose violation must be punished by "international law." Ethics in this view is supposedly derived a priori (by a rational human subject, who is seen to be at the heart of ethical judgment), and anyone who challenges its universality must be "backward." The lesson often drawn from Abu Ghraib, for example, is that we had "forgotten" the American (and by extension universal Geneva) doctrine of rights by which this country has conducted itself in war (in spite of the many documented counter-examples when America did not so conduct itself in war). In other words, our failing was due to our forgetfulness of the laws, not to the possibility that our laws need to be questioned.

What is missing in these transcendent views of good and evil is the possibility that ethical conduct is not simply assured by following an ethical code, but that such conduct *emerges* in a given situation. This is true in any instance of ethical conduct, but particularly so in cases like Abu Ghraib, in which unforeseen circumstances and unique events, as I have argued above, are the rule rather than the exception for security apparatuses confronting insurgencies. I do not mean to suggest that soldiers go into these situations without any knowledge of ethical codes, quite the contrary, for the MPs held to various ethical convictions ranging from Christianity to the U.S. military code of conduct to prison or correctional codes, none of which condone the abuses that were committed. Yet it is startling that these were put in abeyance or temporarily forgotten on the grounds that the evil being faced by counter-insurgents was exceptional (in Kantian terms "radical"), thus seemingly justifying the evil treatment of prisoners as exceptional or even regrettable but necessary and unavoidable. This was U.S. Vice President Dick Cheney's reasoning in his expression, "the dark side": to combat evil requires evil deeds in turn, though supposedly harnessed to a greater good. I am certainly not saying that evil does not exist or that the U.S. counter-insurgency in Iraq did not confront evils at the same time that it was committing them, but what I am saying is that it is not helpful or particularly illuminating to invoke a transcendent category of evil by which to know and judge them, just as it is not particularly helpful to invoke a transcendent category of good. The whole point is to understand the singularity or particularity of both the evil and the good we condemn or espouse. The Bush administration's invocation of the "axis

6. I thank Judith Baker for pointing out to me the differences in meaning Kant intended by the term *radical evil*.

of evil" is indicative of the problem of thinking about evil in capital letters, or EVIL, that is, as a universal or transcendent category, however effective a rhetorical tool it might have been. To be sure, there was quite a lot of evil committed by the Saddam regime, as there is by many another, but the question to ask was: "How was it *singularly* evil?" How was it linked to the historical challenges faced by a government trying to rule this particular country, to a particular totalitarian regime and the cult of personality developed around its leader, and so forth. To put the point more generally, I am asking whether, as in certain discourses that speak of "situational truths," we can also speak of "situational evil" or an "evil of singularity."

To some my arguments will smack of "relativism," thus of giving up on the problem of evil altogether. To reiterate, I am not saying that moral judgment is simply a matter of applying a particular cultural ethic to a given situation, with the result that people with different ethical calibrations of the situation will inevitably conduct themselves differently in it. I am concerned with singular *events*, unpredictable and haphazard, which exceed the instituted ethical codes and institutions available to individuals caught up in them. Again, this is not to say that codes of conduct are not relevant (or as Michael Lambek says, in his essay in this volume, that "criteria" are not relevant) or that they will not be invoked retrospectively to justify what ought to have been done, but only that they will ineluctably fall short in giving answers to individuals confronting problematic situations. As such, events require of actors to *think* critically about the situation the event has thrown them into, and, further, it requires them to *construct a truth or truths about the evil of the situation and their responses to it.*

Now let me turn to another theme in my discussion of the problem of evil at Abu Ghraib, that of moral responsibility. That the MPs at Abu Ghraib did not (and do not) *profess* moral responsibility is stunningly apparent in the film *Standard Operating Procedure* (2008, directed by Errol Morris), which is based on their paid testimonies. Though they express all kinds of other feelings about what they did, remorse or contrition (a sense of responsibility for what happened inside the prison) is not one of them, and this is even after they have served prison sentences and can no longer incriminate themselves. Here is an instance where ordinary language, as used in this volume, fails. They express shame for having let down the honorable tradition of their military families (Jeremy Sivits), or resentment for having become scapegoats for the higher ups who are "really responsible" for the moral wrongs committed in Abu Ghraib (Ken Davis),

or resentment of having been sexually violated and psychologically manipulated by male commanding officers (Lynndie England). But they do not confess to any moral responsibility for the abuses they committed. Even when Sabrina Harman entertains that possibility (Gourevitch and Morris 2008: 273), she understands her actions as a "dereliction of duty" (of not following military rules of conduct by reporting what appeared to be criminal acts), not as a lapse of conscience. The question here is not whether MPs like Ken Davis thought what they were doing in Abu Ghraib in the name of the war on terror was immoral, for some of them clearly did (Gourevitch and Morris 2008: 104). The question, rather, is to what extent, if any, he and others like him felt any responsibility for those immoral actions because of not doing anything or not doing enough to stop them. It is a matter of performance or action, precisely in the terms Lambek talks about in the Introduction to this volume.

Of course, there was an MP, Joseph Darby, who did do something by turning in to military command the pictures taken by Harman, Graner, Ambuhl, and others. He was honored with the John F. Kennedy Profile in Courage Award and became the only "hero" of Abu Ghraib. Yet even his actions seem ambiguous to some. Soldiers who were familiar with Darby later doubted his motives or intentions, suggesting they were more self-serving than altruistic. Though it was reported in the press at the time that he had seen the pictures for the first time in late December 2003 and turned them in to military command several weeks later, in mid-January of 2004, the interval was in fact much longer. He later said he had hesitated for a number of reasons: a conflict of loyalty with his fellow MPs at the prison; a conflict with military command, his own morals, and the U.S. army code of ethics; a fear of reprisal by his comrades or the military authorities; and the loneliness of being the only soldier who seemed to think that the pictures were wrong (which was in fact not the case, as others had their doubts as well). What he did not say was that, by having delayed the reporting of the pictures by six weeks, he helped to perpetuate the evil inside the prison that much longer, and he knew it. This gets us to the problem of intention: Does it matter what Darby's motives were, so long as he did the right thing in the end? Why do individuals like Darby act responsibly? Must they rely, first of all, on adherence to a universal code of good versus evil?

Let us examine the problem of intention more closely, for it is one basis by which guilt can be determined in the law. Jurisprudence views crimes done with malice and forethought as being heinous. John Yoo, deputy chief in the Justice Department's Office of Legal Counsel (2001–3) and one of the architects of the Bush administration's policies regarding the use of torture on "illegal combatants," emphasized that intent was crucial in determining criminality in war crimes (Mayer 2008: 256). According to this reckoning, the intentions of the men and women who abused prisoners in Abu Ghraib were not evil because they never *meant* to inflict harm beyond what was "instrumentally necessary," and there is no prima facie reason to doubt the assertions about their intentions. This conceit of the kindly intentioned soldier, for example, is behind the construction of Specialist Sabrina Harman, the woman who took most of the photographs of the Abu Ghraib abuses: it was said by her comrades in arms that she literally "couldn't hurt a fly" (her sobriquet being Mother Theresa) and that she was simply "the wrong person in the wrong place." And indeed, vicious or gratuitously sadistic treatment of prisoners seems to have been relatively rare. The closest to a manipulative sadist and diabolical figure, a radically evil person in Kant's sense, is Charles Graner, who said to one confederate, "The Christian in me knows it's wrong, but the corrections officer in me can't help but love to make a grown man piss himself" (Gourevitch and Morris 2008: 127). Most of the time, however, the guards did not seem to enjoy the pain or humiliation they thought had to be inflicted on prisoners to obtain "valuable" intelligence (to be sure, it has long been known by intelligence services that testimony extracted under torture is of questionable intelligence value, given that a person will say anything in order to stop the pain). Sometimes it is claimed that the MPs hated their prisoners because of racist attitudes towards Arabs and Muslims, supposedly ingrained in American culture. Literature on authoritarian organizations stresses the importance of such "dehumanizing" stereotypes of the Other (Kelman and Hamilton 1989), yet there is little evidence of such hatred in the Abu Ghraib case. "None of the MPs who spent their working hours doling out affliction on the MI block spoke of such hatred for their prisoners. They regarded them as enemies, with varying degrees of fear, anger, hostility, and contempt" (Gourevitch and Morris 2008: 157). On the basis of intention, therefore, few of the soldiers who committed abuses at Abu Ghraib would be viewed as culpable of evil acts.

Another basis for judging culpability is contingency or circumstance. One of the most pervasive of these in the twentieth century, with its massive bureaucracies, is the "cog in the machine" argument Adolf Eichmann adopted in his defense, as analyzed by Arendt in her *Eichmann in Jerusalem* (1963). A central insight of her book, one of the most important twentieth-century texts on evil, is that evil can often be "banal" in its face, or take ordinary forms. Despite his own (and the prosecution's) representation of

his power, Eichmann, according to Arendt, was such a person, a nonentity. How does one match the enormity of the war crimes with which he was charged to someone who appears to be merely a cipher?

Intentionality also became relevant to Eichmann's trial in a big way. His defense claimed that he had never been a "Jew hater" (indeed, several witnesses testified to the "civility" with which he ordinarily treated the Jews with whom he came into contact, in contrast to the brutish behavior of many other Nazi officials) and that he had never willed the murder of human beings. It was circumstance or contingency that was his most salient defense, in which Eichmann described himself as a selfless bureaucrat, a victim, so to speak, of a murderous regime, not a culprit. It was the heads of state, the formulators of a heinous policy (e.g., Adolf Hitler, Reinhardt Heydrich, and Heinrich Himmler), who ought to have been held accountable and punished, not the hirelings like himself, who were simply "doing their duty" or, like true civil servants, being "obedient to the state's laws."

It is tempting to talk about the soldiers in Abu Ghraib as "cogs in the machine," though, as we have seen, perhaps a not very well-oiled machine at that, embodying what Arendt called the banality of evil even if they were not guilty of atrocities of the same scale and viciousness as those committed by Eichmann. The fact that the C.I.A. obsessed about interrogation techniques seems to bolster this view. But if Foucault's model of the security apparatus is credible, then Abu Ghraib was a nodal point in it, and the description of the soldiers as mere ciphers in a counter-insurgency machine is less convincing.[7] They were supposed to be left to their own devices, to be given space for improvisation in their treatment of the prisoners, so long as the desired intelligence was obtained by the MIs in the next round of abuses. There is willfulness or agency here, not mere obedience to orders. That is also why Abu Ghraib bears only superficial resemblance to the sort of situation Stanley Milgram (1974) created in his famous experiments on obedience to scientific authority. The soldiers were authorized to improvise, not to follow instructions blindly.

Closely connected to the "cog in the machine" argument, in fact an extension of it, is the replacement or substitution argument. The army has a term, *replacement*, to refer to a soldier who takes the place of another in a military unit, either because of loss or to complete a quota. Individuals are not replaced, holders of functions or work are. Following this line of reasoning, it is sometimes said that it would hardly have mattered if one

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7. I thank Bernardo Zacka for this insight.

of the MPs in Abu Ghraib had objected to the treatment of its prisoners, for he or she would have been replaced by someone else who could be counted on to toe the line. The same cog-in-the-wheel reasoning came up in the Eichmann trial, of course, and Arendt had no difficulty in poking holes in the "argument":

> If the defendant excuses himself on the ground that he acted not as a man but as a mere functionary whose tasks could just as easily have been carried out by anyone else, it is as if a criminal pointed to the statistics on crime— which set forth that so-and-so many crimes per day are committed in such- and-such a place and declared that he only did what was statistically expected, that it was mere accident that he did it and not somebody else, since after all somebody had to do it. (Arendt 1963: 289)

Arendt broke with moral reasoning according to intentionality and contingency by insisting that there is an ethic of responsibility—an ethic that had not been worked out very clearly in philosophy or law to date—under whose rubric judgments of culpability, or sin, have to be judged (Nieman 2002: 277).

Besides the "cog in the machine," the argument based on contingency or circumstance can take another version, namely, "the fog of war," apparently coined by former Secretary of Defense Robert S. McNamara and made famous in another documentary bearing this phrase in its title.[8] The awful conditions at Abu Ghraib, exacerbated by daily enemy bombardment, which threatened prisoner and jailer alike, could cloud a soldier's practical judgment. Of course, some circumstances can be extenuating, as when oneself or a family member might be killed for not following orders, even if the orders be heinous. But one might argue that one still has a choice—albeit a horrible one—even in such circumstances, which were not applicable to Abu Ghraib in any case. (At most, MPs faced imprisonment and/or discharge from the army for dereliction of duty.) This argument is often coupled with another having to do with the "ordinariness" of human beings and the conviction that one cannot expect too much of them under terrible circumstances. Nevertheless, the U.S. Government saw fit to award Joseph Darby, the whistle blower on Abu Ghraib, a special citation for courage.

In spite of the fact that Eichmann did not present the face of evil in the form one might have expected, Arendt was nevertheless convinced that he

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8. *The Fog of War: Eleven Lessons from the Life of Robert S. McNamara* (2004), directed by Errol Morris (Sony Pictures).

should hang for war crimes (as indeed he did). If the legal basis was not exactly clear (if not intention or circumstance, then what?), one thing was clear to her: the peculiar form or presentation of evil in modern, highly bureaucratized, and totalitarian society needs to be recognized and understood:

> When I speak of the banality of evil, I do so only on the strictly factual level, pointing to a phenomenon which stared one in the face at the trial. Eichmann was not Iago and not Macbeth, and nothing could have been farther from his mind than to determine with Richard III "to prove a villain." Except for an ordinary diligence in looking out for his personal advancement, he had no motives at all. . . . *He merely*, to put the point colloquially, *never realized what he was doing.* (Arendt 1963: 287; emphasis in the original)

If neither intentionality nor contingency, the two bases on which moral judgments of evil have existed in philosophy, seemed altogether plausible or sufficient to convict Eichmann, then perhaps one was left with the concept of moral responsibility to do so. The philosopher Susan Nieman (2002) argues that Arendt's way of formulating the question, in terms of responsibility rather than intentionality or circumstance, is what makes her text both original in moral philosophy as well as important for understanding evil in modern society. That said, a fully worked-out theory of responsibility is not what one finds in *Eichmann in Jerusalem*. For that one needs to turn to a later work, *Responsibility and Judgment* (2003), an anthology of lectures and essays written by Arendt toward the end of her life in which she wrestles with the questions of personal responsibility and moral judgment.

Judgment and Will

A key essay in that volume is "Personal Responsibility under Dictatorship," in which there is an important passage I will cite at length. Arendt asks whether there is any difference between those who fully supported the Nazi regime and those who, although they did not rise in full rebellion against it, refused to collaborate or give public support to Nationalist Socialism, and she answers the question in the affirmative, saying that

> the non-participants, called irresponsible by the majority, were the only ones who dared judge by themselves, and they were capable of doing so not

because they disposed of a better system of values or because the old standards of right and wrong were still firmly planted in their mind and conscience. On the contrary, all our experiences tell us that it was precisely the members of *respectable* society, who had not been touched by the intellectual and moral upheaval in the early stages of the Nazi period, who were the first to yield. They simply exchanged one system of values for another. I therefore would suggest that the non-participants were those whose consciences did not function in this, as it were, automatic way—as though we dispose of a set of learned or innate rules which we then apply to the particular case as it arises, so that every new experience or situation is already prejudged and we need only act out whatever we learned or possessed beforehand. Their criterion, I think, was a different one: they asked themselves to what extent they would still be able to live in peace with themselves after having committed certain deeds; and they decided that it would be better to do nothing, not because the world would then be changed for the better, but simply because only on this condition could they go on living with themselves at all. Hence, they also chose to die when they were forced to participate. To put it crudely, they refused to murder, not so much because they still held fast to the command "Thou shalt not kill," but because they were unwilling to live together with a murderer— themselves. (Arendt 2003: 44)

The passage is interesting not least because it envisions a context in which moral judgment is made without holding on to preconceived standards, norms, or general rules ("Thou shalt not kill") under which the particularities of the case are to be subsumed. In other words, circumstances or events can be unprecedented and not foreseen in the general rules, even as exceptions. If not by application of a rule to a case, how, then, is moral judgment possible under such circumstances? Here Arendt evokes a quasi-Socratic method: one asks oneself, "Can one live with oneself after having acted in such and such a way?" Moral conduct, in this view, depends on a person conducting a colloquy with herself, a colloquy that depends on a *thinking* subject, which Arendt adapts from the Platonic dialogues:

> even though I am one, I am not simply one, I have a self and I am related to this self as my own self. This self is by no means an illusion; it makes itself heard by talking to me—I talk to myself, I am not only aware of myself—and in this sense, though I am one, I am two-in-one and there can be harmony or disharmony with the self . . . as I am my own partner when I am thinking, I am my own witness when I am acting. (Arendt 2003: 90)

She goes on to argue that the subject who goes through such a thinking process or act and arrives at moral judgments becomes a person.

Arendt went on to devote an entire book to the philosophical under-
standing of thought and the will (Arendt 1971), a full investigation of
which would go beyond the scope of this essay. It is important to note,
however, that in her view, just as philosophy had neglected the problem
of evil and responsibility, so too had it ignored the question of will (both
in the sense of choice and of creating something new or unprecedented),
on the grounds that it applies to subjective experience only and could al-
ways be explained away in terms of cause or determinism. Arendt (1971)
attempted to write a "history" of the will's "discovery" (or what we might
call its "invention"), showing along the way how closely a concept of the
will is tied to evil and to ethics more generally. In that sense, for contem-
porary students of ethics who ground their analyses in Aristotle, who made
little if any room for will in a world where matter was due either to chance
or to necessity, the voluntarism behind ethical action will be back-
grounded or denied. Yet ethical action is not only a matter of judg-
ment—of applying "criteria," in Lambek's words—to particularities or
situations, it is also the *will* to apply them (or not). The Darbys of this
world have to decide to act responsibly. The problem of voluntarism,
however, is as neglected as the problem of evil in contemporary anthropo-
logical thought.

Arendt's notion of the subject accords with Bakhtin's notion of the "di-
alogical self" (Bakhtin 1981; see also Vološinov 1973 [1928]), as well as an
older pragmatist notion of the reflexive individual whose attention is
caught by something in the situation that is unexpected or new and who
then has to think about that eventfulness (my term) to determine his or
her active relationship to it. The pragmatist philosopher George Herbert
Mead (1964) stressed long ago in his reflexive, interactionist sociology this
ability of the individual to think critically about what he or she thinks is
right in a given situation. Such moral conclusions are, however, always
provisional and never infinite or closed. Finally, there is no way to deter-
mine in advance which individuals will act ethically or even evilly in given
situations; in the sense that this is "spontaneous," the individual, as Kant
insisted, is free to choose.

No doubt the possibilities for a process of moral judgment like that I
have sketched out are severely curtailed in a military or warlike situation,
where following orders is at a premium, but that is also an argument for
why these situations are morally the most "dangerous" and require the
greatest vigilance. It may be argued that there is no time to think under
fire, let alone to think critically or to question and evaluate, but this is
precisely what leaders who formulate evil policies are counting on, so that

the obedient civil servant or soldier will blindly carry out their orders. If
heroism under fire may be the exception but hardly a rarity in war, then
why not also critical moral judgment and responsible action in cases of
war's abuses?

Conclusion

In this essay, I have tried to develop, however schematically and provision-
ally, a notion of situational evil and to argue that it is helpful in under-
standing Abu Ghraib. This concept contextualizes evil, making us realize
its singularity, as well as its connection to specific events. In spite of efforts
by the C.I.A. to routinize prisoner torture and by the military administra-
tion to rationalize the softening up of terror suspects, Abu Ghraib, by
virtue of being part of a security apparatus, always exceeded the rules by
which it was supposed to be ruled. In fact, improvisation and making
things up as one went along were a creative response for the soldiers in
such a situation. Knowing what to do that is also what is right is an emer-
gent knowledge, a matter of judgment in regard to particularities and can
never be merely a following of ethical rules.

How does one apply practical as well as moral judgment to that which
is unexpected and novel? How does one judge personal responsibility for
acts committed in such a situation? I have argued that transcendent ethical
categories, though not entirely irrelevant, are, in fact, not particularly use-
ful in such a situation. More than one system or code is likely to be appli-
cable, and conflicts between them rife. Moreover, as we saw in the Abu
Ghraib case, several soldiers sensed or even understood that what they saw
happening during the softening up phase was wrong, by either a religious
standard or the army code of conduct, and yet only one in the end did
anything to stop it. The rest voiced no personal responsibility for remain-
ing silent or acquiescent.

Intentionality and contingency, for long the two most prominent crite-
ria for determining culpability in philosophy, are not particularly satisfy-
ing for judging the Abu Ghraib abuses. Many of the soldiers did not intend
to do harm; they also were operating within a bureaucratic chain of com-
mand. Does this then exonerate them? We are left with a notion of per-
sonal responsibility that depends on a particular kind of subject (what
Arendt calls a person), a thinking and critical subject, who is able to attend
to a problematic situation and make a personal judgment about it. Even
that is not enough, for that person has to *will* to do what he or she deems

right. If we think of ethics on the model of the Austinian performative ("I confess that . . .") or of the Aristotelian notion of *technē* ("I am a virtuous citizen"), the problem of will, which I argue is fundamental to ethics, may be obscured, though for different reasons, given that the performative requires an intentional as opposed to a willing subject, the notion of *technē*, educability or discipline. But to do right and to avoid evil requires more; it requires the will and the courage to do right. Thus, in the end what is important is not inculcating the person with a particular code of ethics but inculcating him or her with a particular kind of moral thinking and action.

PART FOUR

Punishment and Personal Dignity