

BETWEEN LAW AND JUSTICE:
LEGAL AUTHORITY, LIBERAL DEMOCRACY, AND POSTWAR FICTION

BY

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INTRODUCTION

In 1967, Irving Howe wrote an essay placing the tension between anarchy and authority at the center of the American literary tradition. Howe argued that authors from Melville to Faulkner had struggled to reconcile the nation's "guiding institutions" (premised on practical, non-utopian checks and balances) with "its guiding myth" of radical individual freedom (105). While American social and political life was structured by "the worldly realism of *The Federalist*," its literature clung to "the Edenic nostalgia" of the cabin by the pond and the raft on the river (105). Unwilling to tolerate the "course actualities" of political life, authors turned to an "anarchic vision" where "brotherhood replaces the rule of law." Huck Finn and Natty Bumppo had to escape "even the best law, since law by its very nature must be unjust insofar as it raises abstract standards above personal relations" (108). While the state gradually increased the scope of its power over the nineteenth-century, the nation produced a literature that resisted not only specific, oppressive laws but the very *concept* of law.

For Howe, that literary tendency appeared unlikely to recede in the late twentieth-century, and indeed, he saw it resurging under the sign of the sixties counterculture:

the anarchic impulse - together with the accompanying moral ultimatism and apolitical politics - remains enormously powerful and even those who grow skeptical of its social value must grant that it still has a notable imaginative thrust. If one looks, for example, at the writings of Norman Mailer, it becomes clear that behind all of them lies a fear of stasis, a dread fear of a future ruled by functional rationality. (117)

Howe is clearly one of “those who grow skeptical” about the anarchic vision; it is “a solution as inadequate as it is entrancing,” he writes (108). Yet elsewhere in the essay, he appears much more sympathetic to its core critique. What is Melville’s Captain Vere, he asks, “but an embodiment of the cruel justice which compromises the state?” (115). Vere, Howe explains, “is a man who does his duty before and above all; and *in our time* we have learned what such men can be and do” (115 italics added). The specter that arises in this allusion to “our time” is almost certainly the specter of Nazism. Vere’s fidelity to the law and his failure to follow his conscience make him an apt example of the “banality of evil” - a term Hannah Arendt had controversially coined just a few years prior.¹ Although Howe depicts Mailer’s “dread fear...of functional rationality” as an immature response to the challenges of institutional politics, he also shares with virtually everyone in the postwar world an acute sense of how dangerous impersonal institutions could be.

This dissertation will demonstrate that the tensions Howe sees in the American literary tradition were radically heightened in the decades after the Second World War, when both those who embraced, and those who rejected, institutional politics styled themselves as the enemies of fascism. At the postwar Nuremberg trials, the Allied nations sought to restore legal institutions that they believed capable of restricting authoritarianism. They believed that due process, human rights, constitutionalism, and fidelity to the rule of law, would counteract any one man’s effort to tyrannically impose his own political vision. But for many other observers, the rule of law itself had been to blame for fascist violence. The law had asked German citizens (as it once did Captain

¹ The phrase appears in *Eichmann in Jerusalem* (252). Notably, this is not how Arendt herself reads Captain Vere, as we will see in my first chapter.

Vere) to suspend their own moral judgments in favor of the state's commands. From this alternative perspective, the fate of liberal-democracy seemed to hinge on the capacity of American citizens to re-assert their own conscience above and against the law. As the journalist Martha Gellhorn wrote in her report on the trial of Adolph Eichmann: "The private conscience is not only the last protection of the civilized world, it is the one guarantee of the dignity of man."² In short, while some located their resistance to fascism in the rule of law, others located it in the *defiance* of law. These tensions were particularly visible at the Nuremberg and Eichmann trials but also resonated at home, in the civil rights and anti-Vietnam war movements. Those sympathetic to both causes were still divided on the question of whether justice would be found within or outside the law. Martin Luther King appealed to the Constitution and the Declaration of Independence, while James Baldwin, Malcolm X, and Stokely Carmichael compared the American legal system to the Third Reich. Draft-card burners publicly defied the law, while conscientious objectors asked the Supreme Court to grant a legal status to their own ethical judgments.

Shadowing all these debates - from Nuremberg, to Little Rock, to Vietnam - was a question about how we should understand the law's inevitable abstraction. Does law's alienation from the individual conscience make it purely repressive, reductive, and reactionary? Or, does that same quality make it a useful vehicle for collective political projects that would necessarily compromise any individual vision? If, as Howe notes, the "law must be unjust insofar as it raises abstract standards above personal relations" does

² Martha Gellhorn published "Eichmann and the Private Conscience" in the February 1962 issue of *The Atlantic*.

that make it an imperfect but necessary political form, or, an irredeemable source of moral alienation, not to mention, violence (108)?

The authors I will read in this dissertation - Lionel Trilling, Joseph Heller, John A. Williams, and Mary McCarthy - make these controversies a focus of their fiction: Trilling examines the nature of moral responsibility under totalitarianism; Heller considers how law might serve either protest or arbitrary violence; John A. Williams explores the limitations of both civil rights and human rights discourse; and Mary McCarthy tests the role of ethical judgment in draft resistance. But all four also take up the question posed by Howe: should literature concern itself with the disappointing reality of legal and social institutions, or, should it ally itself with the moral purity and radical freedom of the individual conscience?

Certainly, given these options, most postwar American authors would choose the side of conscience. In the mid-century period, popular sociological works like *The Lonely Crowd*, *White Collar*, and *The Organization Man*, had connected widespread anxieties about Nazi bureaucracy and conformity to virtually every aspect of American life. Novels like *Revolutionary Road*, *One Flew over the Cuckoo's Nest*, or *The Catcher in the Rye*, emphasized the threat to personal freedom posed by everything from suburban neighborhoods to mental institutions to adulthood itself, while more avant-garde art forms like action painting, jazz, and beat poetry sought to counter conformity with the immediacy of personal experience and expression.³ It is no coincidence, I think, that the

³ Daniel Belgrad explores the embrace of authenticity, spontaneity, immediacy, and personal expression across postwar art forms in his book *The Culture of Spontaneity*. Abigail Cheever also emphasizes the importance of this rhetoric to the postwar period in her book *Real Phonies: Cultures of Authenticity in Post-World War II America*. Notably, Trilling's own *Sincerity and Authenticity*, offers yet another intellectual history of authenticity discourse. Trilling argues that,

ur-figure of postwar authenticity - Holden Caulfield - establishes his value system in direct opposition to his father's work as a lawyer. Holden complains "even if you *did* go around saving guys' lives and all, how would you know if you did it because you really *wanted* to save guys' lives, or [if] what you really wanted to do was be a terrific lawyer, with everybody slapping you on the back" (224). While this is no doubt, a familiar critique of the 'phoniness' of lawyers, it also responds to something profound about the unique nature of the law, at least as defined in the liberal tradition. As Arthur Ripstein explains, when Kant advocates for the rule of law and not of men, he means precisely that you will enact the law because it is the law and not because you believe in it.⁴ It does not matter from the perspective of the legal system (or we might add, the guy whose life is saved) whether Holden's father *really* wants to save him. Yet for a postwar intellectual and literary culture bent on defying bureaucratic conformity, the alienation of personal belief demanded by law would seem intolerable. By the late 1960s, the critique of inauthentic institutional life visible in fictional works like *Catcher in the Rye* or sociological works like C. Wright Mills' *White Collar* would come to form the core of the counterculture.⁵

in the twentieth-century, an obsession with personal authenticity supplanted an earlier commitment to interpersonal sincerity.

⁴ In his book on Kantian legal philosophy, *Force and Freedom*, Ripstein writes: "The concept of an official role...introduces a distinction between the mandate created by the office and the private purposes of the officeholder. That distinction shows what it is for laws rather than people to rule, even the actual ruling is done by people" (192). The very concept of constitutionalism thus relies on a division between the real and social self - precisely the condition that Holden Caulfield detests.

⁵ McCann & Szalay discuss this genealogy in their essay "Do You Believe in Magic." Like Howe, they see Norman Mailer as a quintessential anti-statist writer, and they identify similar tendencies in other works of "countercultural fiction, as well, from Ken Kesey's withering assaults on the mental health bureaucracy and labor unions to Thomas Pynchon's anarchist complaint against the state monopoly on the mail" (442). Even political organizing groups like

The texts I will analyze here, however, are more ambivalent about both personal authenticity and the abstraction of law. Trilling, Heller, Williams, and McCarthy each offer protagonists whose personal struggle for justice is set in opposition to unjust legal commands. Yet each is also interested in the more general (and thus, more alienated) perspective of the law - in its qualities of abstraction, neutrality, publicity, power, and universality. With the exception of McCarthy (who, as we will see, represents a special case), each of these authors is suspicious of political approaches grounded in personal morality or authenticity. Legal and institutional forms will always fail to capture both the nuance and the urgency of their protagonist's moral judgments, but they will also enable forms of political collectivity, contestation, negotiation, and transformation that the radically pure individual conscience cannot.

In this way, Trilling, Heller, Williams, and McCarthy stand apart from the postwar culture of authenticity and from the broader "anarchic impulse" that Irving Howe identifies in American literature. Although many of them write or publish in the 1960s (Heller's *Catch-22* appears in 1961, Williams' *The Man who Cried I Am* in 1967, and McCarthy's *Birds of America* in 1971), none fully belongs to that era's counterculture. Heller's novel is taken up by later Vietnam draft-resisters but, I will argue, is much more influenced by an earlier post-war liberal critique of totalitarianism; Williams brings human rights discourse into dialogue with the practical and institutional politics of black

the Students for Democratic Society tended to decry institutional forms and to emphasize individual fulfillment and personal authenticity. In their "Port Huron Statement," they write: "Men have unrealized potential for self-cultivation, self-direction, self-understanding, and creativity. It is this potential that we regard as crucial and to which we appeal, not to the human potentiality for violence, unreason, and *submission to authority*. The goal of man and society should be human independence: a concern not with image or popularity but with finding a meaning in life that is personally authentic..." (66 italics added).

power; McCarthy sympathizes with the New Left but speaks to them through the aesthetic and philosophical commitments of the New York Intellectuals. Those generational and intellectual disjunctures allow these authors to achieve a more critical stance toward the politics of conscience, even as they also emphatically oppose abuses of legal authority.

I begin my dissertation with Lionel Trilling's only novel, *The Middle of the Journey* (1947). I demonstrate that although the text is set in the 1930s, its vision of liberalism is fundamentally shaped by the controversies arising from the Nuremberg trials. Trilling uses allusions to the Moscow trials and to Melville's *Billy Budd*, along with a perplexing local crime, to insist that postwar liberals cannot sacrifice law for conscience, or conscience for law. While Trilling explores the consequences of totalitarianism for individual moral judgment, Joseph Heller considers what it may mean for political contestation. I show that the titular "catch" in *Catch-22* functions as a metonym for totalitarian law. Its perverse enactments disable any effort at collective protest, necessitating Yossarian's ultimately solipsistic desertion. But although many would likely read Heller's novel as a critique of law *as such*, I suggest that it is more consistent with postwar legal and political theories that emphasized the importance of stable, public, legible, and consistent laws (all the things *Catch-22* is not). My third chapter considers how postwar debates about law, conscience, totalitarianism, and human rights resonated within the civil rights and black power movements. In his memoir, *This is My Country Too*, and in his bestselling novel, *The Man who Cried I Am*, John A. Williams examines the limitations of African-American protest novels focused on illustrating the humanity of the black subject. Instead, Williams turns his gaze onto the

state itself - submitting the government to the judgment of the black people, rather than the other way around. My fourth and final chapter considers the fate of the political novel after the rise of postmodernism and the New Left. Mary McCarthy's 1971 novel, *Birds of America*, suggests that personal conscience is the only reliable source of resistance to the Vietnam War. Yet although she welcomes the rise of conscience, McCarthy also suggests that it will make the political novel an "irrelevant" form: if ethical action is tied to personal intuition that leaves little role for the broader social and political criticism that Trilling, Heller, and Williams sought to provide.

In analyzing literary engagements with the politics of conscience, I also aim to address two broader questions. The first is a political-philosophical query that has been posed by many before me: how should we understand the relation of law, conscience, and democratic contestation? The second is a literary-critical question that I see emerging from these texts in particular: how do the modes of thought available in literature differ from those available in political philosophy and what happens when they are brought into dialogue with one another?

The political-philosophical question cuts to the heart of the very concept of liberal democracy. In his essay "Constitutional Democracy – A Paradoxical Union of Contradictory Principles?" Habermas points to the fundamental conflict between the sovereignty of law enshrined in the liberal tradition and the sovereignty of the people as understood in democratic theory. "[T]he idea of a 'rule of law,'" he writes, "which in the past was expressed in the idea of human rights, comes on the scene alongside – and together with – that of popular sovereignty as a second source of legitimation. This duality raises the question of how the democratic principle and constitutionalism are

related” (113). In her book, *Emergency Politics*, Bonnie Honig critiques Habermas’ approach to the problem but describes the paradox in similar terms: “*constitutional democracy...impossibly but necessarily combines written constraint with free popular sovereignty and then derives its legitimation from that impossible, tense combination*” (27 italics hers).⁶ Habermas and Honig point to the conflict between legal and popular sovereignty, while the events of the postwar period bring a third term - individual conscience - to the fore as well. Many agreed with Martha Gellhorn that, after Eichmann, “private conscience” was *the* final defense against tyranny. Surely, the fate of liberal democracy would seem to be in trouble if it depended on three terms - law, popular democracy, and private conscience - that also appeared to be fundamentally irreconcilable with one another.

I approach this difficult problem primarily through the work of Hannah Arendt, who responded to the same events I describe in this dissertation - the Nuremberg trials, the civil rights struggle, and the anti-war movement - with a political theory that simultaneously valued individual moral judgment, collective protest, *and* legal institutions. While Arendt’s theory does not adequately account for both racial and socio-

⁶ Habermas seeks to resolve the opposition by arguing that democratic participation ensures the realization of rights promised by the constitution: “Because the practice of civic self-determination is conceived as a long-run process of realizing and progressively elaborating the system of fundamental rights, the principle of popular sovereignty comes into its own as part and parcel of the idea of government by law” (127). Honig disputes this effort to resolve the problem, and instead argues that it is precisely the paradox’s inevitable irresolution that allows for ongoing contestation and for a more open political imaginary: “The paradox of politics is not soluble by law or legal institutions, nor can it be tamed by universal or cosmopolitan norms. The paradox of politics highlights the chicken and egg circle in which we are law’s authors and law’s subjects, always both creatures and authors of law. Thus, the paradox... teaches that the stories of politics have no ending, they are never-ending” (3). Honig’s approach resembles the stances articulated by her fellow democratic agonists, Hannah Arendt and Chantal Mouffe.

economic inequalities, it provides a useful blueprint for those interested in reading law, democracy, and conscience as mutually complementary, rather than conflicting, principles.⁷ For Arendt, as we will see, it is precisely the alienation of law from individual moral judgment that makes democracy possible. It is because consciences are plural while the law is singular that we need to engage in political contestation about which laws would best represent our values. The law, on this account, is not an eternally fixed or omnipotent decree, but the object around which the agonistic, public sphere organizes its debates, protests, and collective projects.⁸

There is, of course, something aspirational about that vision. Law has always been (at least) as much a source of violence as an expression of democratic will. But, to my mind, this is the kind of vision our politics should work towards - not an abandonment of law *as such* but an effort to achieve both more just laws and a more broadly democratic relationship to the law. That democratic view of law would value civil disobedience and participatory democracy, for example, over strict legalistic enforcement. Crucially, my argument does *not* demand allegiance to a particular legal system - a right to revolution exists in extreme circumstances, like the genocidal threat Williams ultimately imagines.

⁷ As I will explain further in my third chapter, I disagree with the way Arendt consistently minimizes the centrality of racism to American politics and history. I also disagree with her argument (articulated in *The Human Condition* and *On Revolution*) that socio-economic concerns should be kept separate from the sphere of political contestation. My own preference is for a democratic socialist approach that would place socio-economic questions at the heart of political discourse.

⁸ Verity Smith offers a useful gloss on Arendt's theory of law in her essay "Dissent in Dark Times: Hannah Arendt on Civil Disobedience and Constitutional Patriotism." Arendt, she explains, is "committed to the rule of law, as well as to the ongoing agonistic contestation of the law" (109). Indeed, for Arendt, these are complementary forces: "the very limits of the constitutional framework *must* be continuously contested through intermediary institutions, voluntary associations, civil disobedience, and other partial publics: not in order to *disrupt* the framework, but paradoxically, to preserve the space in which plurality might thrive" (112).

But it does call for an acceptance of the *concept* of law - with all its moral, existential, aesthetic, and political limitations - as one crucial feature of any democratic republic, whether an already existing one, or one yet to be (re)built.

Chantal Mouffe offers a similar vision in her book *The Democratic Paradox*, which responds to the same paradox Habermas and Honig describe. Mouffe critiques deliberative-democratic philosophers (Rawls, Habermas) for what she sees as an overly optimistic belief in the rationality of political debate, while also critiquing ethical philosophers (Levinas, Derrida) for their focus on radical alterity and the impossibility of political resolution. Both camps, she argues, refuse to see the role of the “decision” in political life (130). While the one side sees a possible reconciliation of pluralistic difference, the other refuses to put any limits on infinite pluralistic differentiation. By contrast, Mouffe envisions politics as a space for ongoing contestation and debate—debate that must, at various points of decision, resolve into definite (though not eternally fixed) laws, institutions, governments, and political bodies. The kind of political commitment Mouffe advocates thus requires us to reckon with the inherently disappointing or imperfect nature of political authority. In fact, it makes that disappointment the precondition of any ongoing democratic politics. This is why, as Mouffe writes, we cannot close “the gap between justice and law that is a constitutive space of modern democracy” (32).

The title of my dissertation is drawn from both that turn-of-phrase, and from Arendt’s reference, at the end of *The Origins of Totalitarianism*, to the “discrepancy between legality and justice” (462). The space “between law and justice” is where we indict the failures of our existing legal systems, but also the place where democracy is

made possible. It is that site that all of my authors occupy, with varying attitudes toward its simultaneously tragic, infuriating, disappointing, necessary, and productive dimensions.

Across my dissertation, I move from more liberal texts concerned with protecting U.S. democracy to more radical texts critical of the American status quo. This is in keeping with the politics of the period I discuss, which saw anti-totalitarian critique shift its gaze from foreign to domestic threats. While postwar liberals like Trilling and Arendt emphasized the challenge to liberal democracy posed by outside forces like Nazism and Stalinism, those in the New Left emphasized the totalitarian aspects of American life, ranging from racism and McCarthyism to bureaucracy and social conformity. My dissertation follows a similar trajectory; I begin with Trilling's explicitly liberal and anti-Stalinist text, *The Middle of the Journey*, and with Heller's novel *Catch-22*, which combines a liberal-democratic critique of totalitarianism with caustic parodies of postwar American life. I then turn to John A. Williams, who, between *This is My Country Too* and *The Man who Cried I Am*, moves from a cautiously-optimistic, Tocquevillian account of American democracy, to a radical vision of the violence underlying the American state. Finally, I read Mary McCarthy's *Birds of America*, which seems more traditional but ultimately endorses a radical turn to individual conscience as a bulwark against U.S. military aggression. In accordance with that broad trajectory, I dedicate significant portions of my first two chapters to the liberal-democratic account of law, and in particular, to how theorists like H.L.A. Hart, Lon Fuller, and Hannah Arendt struggled to reimagine its relationship to conscience and contestation in the wake of Nazi violence. In my third and fourth chapters, I emphasize challenges to that same vision; Williams

critiques American law's persistent failure to account for race and racism and McCarthy critiques its effort to contain the moral and spiritual power of conscience.

Because Hannah Arendt is my chief figure for understanding postwar liberal-democratic theories of law, my relationship to her thought undergoes a similar process of evolution. My first two chapters approach her writings sympathetically and use them to reconstruct a viable theory of law. My third chapter critiques her consistent failure to address the centrality of racism to American democracy and to adapt her theory accordingly. My fourth chapter examines the work of one of Arendt's closest friends, Mary McCarthy, but focuses on a key moment of disagreement over the nature of civil disobedience and the relation of law to conscience. While my dissertation as a whole is heavily influenced by Arendt's theory of law, Williams and McCarthy introduce crucial challenges and caveats that would need to be incorporated into any complete theorization.

As my authors engage these political-philosophical questions, they also bring my second central question to the fore: what is the relationship between the novel form and political philosophy? In a letter to Arendt, written in the fall of 1970, Mary McCarthy critiques her friend's essay "Civil Disobedience." Arendt, McCarthy argues, is wrong to approach the problem from the perspective of the law, rather than the individual disobedient:

...when you talk about "we," who do you mean? Society presumably, but sometimes, it would appear, the lawmakers or society-as-its-own-lawmaker. In the context, I find this "we" disturbing; as far as I'm concerned, if there's a "We" in the civil-disobedience vis-à-vis the law equation, the "we" is the law-breakers. That is, I identify myself with them and their conscience... Perhaps I'm not making myself clear, but it strikes me that you have seized the problem by the wrong end, and your "we" sums this up. (And the fact that the "we," which is normal for the discourse of political philosophy, should sound – at least in my ears – so dubious in this context probably shows how touchy the subject is.)...

(Brightman, *Between*, 263-264)

Here, McCarthy distinguishes between the individual perspective of conscience and the “we” of political philosophy. All of the novels I explore play with the tension between those two vantages. Each author grants the reader access to the complex, idiosyncratic ethical perspective of their protagonists. At the same time, the works seek to access another kind of omniscient perspective, one that could envision society as a whole, and so, address highly abstract questions like how liberal democracy ought to understand the relation of conscience, law, and protest.

In her book *Bleak Liberalism*, Amanda Anderson argues that “the interplay between first-person and third-person perspectives” was central to nineteenth-century political fiction’s engagement with liberal thought: “Dickens, Trollope, and Eliot each acknowledge the significance of individual moral exemplarity while insisting on the importance of perspectives and practices - sociological, impersonal, and political - that exceed the domain of the individual” (78). The novels I read similarly foreground the interplay between individual and abstract narratorial vantages, although with a specific emphasis on law and conscience, and with rather little focus on the sociological or socio-economic. Trilling uses his fiction to envision the dialectic of law and conscience; Heller envisions an entire political sphere distorted by a single perverse legal form; Williams writes the “King Alfred” memos from the perspective of the state-as-a-whole; McCarthy’s protagonist, Peter Levi, constantly weighs his own ethical decisions from the universalizing perspective of Kant’s categorical imperative. I describe these novels as “political novels” not only because they explore the contrast between individual

experience and political ideologies (roughly, the definition Howe offers⁹), but also because they engage the abstract, omniscient vantage typically claimed by political philosophy.¹⁰

The reader might also note - and this is crucial - that McCarthy describes Arendt's "we" interchangeably as the perspective of "political philosophy" and that of "the lawmakers or society-as-its-own-lawmaker." There is, for her, a fundamental connection between legal commands and political philosophies: both seek to legislate on behalf of the republic as a whole, both issue decrees that are necessarily abstract and alienated from the individual point-of-view. Ultimately, I will argue that Trilling, Heller, Williams, and McCarthy take on the conflict between law and conscience not only as a thematic but as a deep structuring element. Their own efforts to merge the perspectives of narrative form and political philosophy reproduce many of the tensions between law and conscience.

⁹ In *Politics and the Novel*, Howe writes "the novel tries to confront experience in its immediacy and closeness, while ideology is by its very nature general and inclusive. Yet it is precisely from this conflict that the political novel gains its interest and takes on the aura of high drama" (22).

¹⁰ In part because my authors write at the nexus of fiction and political philosophy, I view my project as a work of both literary criticism and intellectual history. I see Trilling, Heller, Williams, and McCarthy as key players in the intellectual history of the postwar period, and I am interested in their fiction largely for the ideas it expresses. At the same time, I am intrigued by their decision to participate in intellectual and political controversies through literary form in particular. With the exception of Joseph Heller, each was well-known for writing in multiple genres: McCarthy and Trilling were also (in Trilling's case, chiefly) literary critics, and McCarthy and Williams both worked as journalists and memoirists. If any of these authors wanted to write a political tract, a journalistic report, or a critical essay, they were more than capable of doing so. Their contributions to intellectual history must thus be read as emphatically and intentionally *literary* contributions. In every case, the novel form provided a form of insight unavailable in other genres. To express their ideas, Trilling and McCarthy need omniscient narration that penetrates the consciousness of their protagonist; Heller needs dystopia, hyperbole, absurdism, and chronological disorientation; Williams needs to blend the roman a clef novel with fictional invention. In short, I am interested in the ideas these novels express but regard novelistic form itself as a vital and inseparable dimension of those ideas.

This way of understanding the relationship between law and the novel form differs from the account offered in Joseph Slaughter's *Human Rights, Inc: The World Novel, Narrative Form, and International Law*. Slaughter argues that the *Bildungsroman* and human rights discourse rose up as parallel technologies for imagining the reconciliation of the individual and the state. He shows that the *Bildungsroman*'s "historical social role" was to "incorporat[e] the problematic individual into the rights and responsibilities of citizenship, and thereby legitimat[e] the democratic institutions of the emergent rights-based nation-state" (94). This account of the novel resonates particularly well with a Hegelian legal philosophy which sees the law's alienating qualities "overcome [when] objectivity and self-consciousness are reconciled as a unity" (Conklin 55). The work of both the *Bildungsroman* and the human rights regime, according to Slaughter's persuasive account, is to naturalize the relation between the individual and the state so that such a reconciliation would seem possible.

The texts I analyze here differ from that more traditional approach in that they seek to preserve precisely the feeling of alienation that human rights and the *Bildungsroman* work to overcome. Trilling's protagonist, John Laskell, directly objects to his friends' desire to reconcile law and morality, while Heller, Williams, and McCarthy emphasize efforts to protest unjust laws. Broadly speaking, they are interested in *thinking* the gap "between law and justice" rather than bridging it. In this way, they help us to understand the unique challenge that postwar anxieties about law and conscience posed for the novel. If it now seemed naive to imagine an ideal reconciliation of the individual and the social, then that would explain, in part, why authors like Salinger, Kerouac, and Kesey opted for a radically anti-social stance instead. The authors I consider were equally

aware that no final reconciliation was possible, yet nevertheless sought to preserve some fidelity to collective, social, and institutional forms. Representing the inevitable clash of law and conscience in their fiction allowed them to think through this ambivalent relationship to legal power.

My analysis of postwar political fiction requires me to both draw on and revise approaches popular in the sub-discipline of “law and literature.” It has become customary in law and literature projects to describe fiction as providing ethical particularity and narrative irresolution in the face of the cold, mechanistic operations of the law. As Slaughter himself explains, “the virtue that literature is traditionally understood to hold over law is its capacity to represent contradiction and paradox without a professional disciplinary obligation to offer a logical resolution” (43). Meanwhile, Wai Chee Dimock argues that, in fiction, “the problem of justice is given a face and a voice, a density of feature that...brings to every act of judicial weighing the shadow of an unweighable residue” (10) and Shoshana Felman asserts that “literature is a dimension of concrete embodiment and a language of infinitude that, in contrast to the language of the law, encapsulates not closure but precisely what in a given legal case refuses to be closed and cannot be closed” (8). I agree with these critics that literature - in contrast to law - will tend to prioritize ambiguity over decisiveness, particularity over abstraction, and sentiment over alienation. But I am less willing to celebrate these features as “virtue[s]...h[eld] over law” (Slaughter 43). I examine authors who occasionally aspire to the forms of abstraction possible in law or political philosophy, who understand that in certain circumstances these may be more useful than ambiguity, irresolution, and particularity. In short, my dissertation is more ambiguous about the concept of ambiguity.

My approach also differs from much law & literature work specifically focused on the Nuremberg and Eichmann trials in that I do not make trauma a central category of analysis. In her 2011 book, *The Judicial Imagination: Writing after Nuremberg*, Lyndsey Stonebridge explains that “the decision to place witness testimony at the heart” of the Eichmann trial has led to a critical focus on trauma, witnessing, and the ethics of care (3):

Many see the traumatic testimonies of the Eichmann trial, and those that have followed in more recent trials, as part of a crucial turn from cold universalising reason towards the more contingent hazards of ethical witnessing in postwar legal history. The narrative that leads from silence to witness, from the calculations of the law to recognising the incalculable nature of what was on trial, has today become standard in understandings of postwar law and justice. (4)

Stonebridge herself hopes to depart from that approach - dominant since the 2002 publication of Shoshana Felman’s *The Juridical Unconscious: Trials and Traumas in the Twentieth Century*. Focusing on works by Hannah Arendt, Rebecca West, Muriel Spark, Elizabeth Bowen, and Iris Murdoch, Stonebridge shows how postwar European writers worked to restore forms of *political* action and judgment in the face of catastrophic suffering. Influenced by Arendt’s critique of witness testimony in Jerusalem, Stonebridge does not celebrate, but works against, the rupturing, dizzying, destabilizing aspects of trauma. *The Judicial Imagination* bears obvious affinities with my own project, although Stonebridge’s authors are still much more concerned with the experience of trauma than mine are. While West, Spark, Bowen, and Murdoch seek to imagine new forms of justice adequate to the pain and loss felt by victims of the Holocaust, stateless people, European refugees, Palestinians, and others, Trilling, Heller, Williams, and McCarthy - somewhat shielded, geographically, from a more direct encounter with the suffering in Europe - are

more focused on what the events of WWII will mean for the concept of legal authority and for the future of American democracy.

Between Law and Justice is perhaps most influenced by the *Post45* school of literary and cultural criticism. Over the past decade, scholars associated with the collective and the journal have opened up a more dynamic approach to the field than was available in work influenced by the New Americanists.¹¹ Many in that earlier school took a binary approach to the postwar cultural world, categorizing texts by whether they were fundamentally complicit in, or opposed to, “consensus” liberalism. *Post45* scholars, by contrast, have been more open to sympathetically reading both liberal and radical texts and to drawing on a broader spectrum of intellectual and political traditions.¹²

My dissertation examines both liberal and radical authors, and finds political value in each. Although I am interested in a liberal-democratic conception of law, I am also persuaded by the critiques of American government advanced in more radical texts.

¹¹ Frederick C. Crews offers a useful gloss on the earlier school in a 1992 essay in *The New York Review of Books*, “the New Americanists, as I have now called the dominant faction in my field, all take their bearings from a rejection of the “liberal consensus” about American literature.” Leading New Americanist scholars like Donald Pease sought to expose the ideological underpinnings of liberal literary criticism, paradigmatically Trilling’s own *The Liberal Imagination* (see Pease, “New Americanists”). They also sought to introduce what Pease describes as “counterhegemonic” critical perspectives - perspectives that would underscore American literature’s complicity in racism, imperialism, and anti-Communism (Pease, *Futures of*, 33). But despite the necessity of that revision, the New Americanist focus on hegemonic and counterhegemonic discourses often produced an overly binaristic approach to the field. This tendency was further compounded by the field-shaping argument advanced in Alan Nadel’s *Containment Culture* which sought to read virtually the entire postwar cultural field in the terms of a single containment ideology.

¹² One *Post45* critic whose approach to intellectual history I have found particularly compelling is Deborah Nelson. Nelson’s first book *Pursuing Privacy in Cold War America* considered the complex entanglements of privacy, surveillance and confession in postwar constitutional law and confessional poetry. Her new book, *Tough Enough: Arbus, Arendt, Didion, McCarthy, Sontag, Weil* explores the work of six postwar women intellectuals, each known for their “cold” or tough approach. Both books are attentive to the structuring roles played by politics and the Cold War without imposing a binary hegemonic/counter-hegemonic frame.

These demonstrate that, due to racism, socio-economic inequality, and global military aggression, the United States has yet to actually meet any of the liberal-democratic ideals it so often professes. Rather than setting liberal and radical texts in opposition, then, I focus on reading across and between them. That approach also makes clear that, on the subject of law at least, American liberals struggled to find the kind of clear “consensus” that New Americanists so often attribute to them. Events like the Nuremberg trials divided their traditional allegiances to the individual subject and to legal institutions - neither law nor conscience could be decisively elevated as *the* priority of liberal hegemony. Instead, American liberals struggled, alongside American radicals, to reconcile multiple conceptions of authority, citizenship, judgment, ethics, and human rights.

My analysis is also influenced by recent *Post45* scholarship that has emphasized the interplay between literary and institutional forms. The best known example of this institutional criticism is Mark McGurl’s *The Program Era*, but it is Sean McCann and Michael Szalay’s work that is most directly relevant to my approach. In their essay, “Do You Believe in Magic?” they argue that American literature and literary criticism since the New Left has often expressed a “knee-jerk disdain for mundane political efforts to work toward imperfect justice” (451). In their scholarly books, McCann and Szalay seek to counter that tendency by paying greater attention to the interaction of literary form with practical, governmental institutions like the New Deal administration, the Presidency, and the Democratic Party.¹³ I share many of McCann and Szalay’s political

¹³ See: McCann’s book *A Pinnacle of Feeling: American Literature and Presidential Government* or Szalay’s works *New Deal Modernism: American Literature and the Invention of the Welfare State* and *Hip Figures: A Literary History of the Democratic Party*.

and critical commitments but my dissertation does not so much analyze a particular institution as the very *concept* of institutionality. I am interested in how authors explore the existential, ethical, political, and aesthetic ramifications of law as a necessarily morally alienating discourse, but a discourse that seems vital nonetheless.

Ultimately, *Between Law and Justice* aims to illuminate the ambivalent status of law in contemporary criticism. In a 2005 essay for *PMLA*, Julie Stone Peters takes stock of the future of “law and literature.” She argues that the sub-discipline grew out of a mutual gesture of projection. Literature saw in the law a way to make real its foiled political ambitions, while law saw in literature an ethical humanism it had left behind:

...law and literature might be seen as having symptomatized each discipline’s secret interior wounds: literature’s wounded sense of its insignificance, its inability to achieve some ever-imagined but receding praxis; law’s wounded sense of estrangement from a kind of critical humanism that might stand up to the bureaucratic state apparatus, its fear that to do law is always already to be complicit, its alienation from alienation itself. (448)

I would like to shift Peters’ categories slightly to suggest that these conflicting desires also shape the two critical fields my dissertation participates in: *Post45* and “law and literature.” McCann and Szalay engage institutional forms in the hopes that they will restore a practical, political effectiveness to literary criticism; Dimock and Felman celebrate literature for its ethical superiority to the alienating and complicit discourse of law. In this sense, the critical field I enter is structured by the same tension that Irving Howe - and each of my authors - identifies. We feel drawn to the law for its promise of real social and political transformation but are simultaneously repelled by its alienation from our deepest, most urgent, most subtly-imagined ethical priorities. It is this profound ambivalence toward the law and its institutions that my dissertation ultimately explores.

The authors I read will be our guide to that perhaps universal ambivalence because they wrote political fiction in a moment when the law seemed as necessary to political life as ever but when its abuse cast a uniquely ominous shadow over the future of human freedom, authenticity, and dignity. In examining their work, my aim will be to imagine more democratic alternatives to legalistic force, but also to undo some of what Peters describes as our “alienation from alienation itself.”

CHAPTER ONE

“LESS THAN GOODNESS”: TRILLING AND ARENDT AT THE LIMITS OF JUDGMENT

“The discrepancy between legality and justice could never be bridged because the standards of right and wrong into which positive law translates its own source of authority... are necessarily general... so that each concrete individual case with its unrepeatable set of circumstances somehow escapes it.”

- Hannah Arendt, *The Origins of Totalitarianism* (462).

“[W]hen we come to look at liberalism in a critical spirit, we have to expect that there will be a discrepancy between... the primal imagination of liberalism and its present manifestations.”

- Lionel Trilling, *The Liberal Imagination* (xxi).

In his 1975 preface to the *The Middle of the Journey*, Lionel Trilling describes a form of judgment that is both routine and exceptional. Critiquing American communists for their tenacious political faith, he writes:

[If] reality [ever] did succeed in breaching the believer's defenses against it, if ever it became unavoidable to acknowledge that the Communist party, as it functioned in Russia, did things, or produced conditions, which by ordinary judgment were to be deplored... then it was plain that ordinary human judgment was not adequate to the deplored situation whose moral justification must be revealed by some other agency, commonly “the dialectic.” (xxix)

Here, an explicitly “ordinary” form of perception figures as the besieged fortress of the liberal mind. Confronted on all sides by ideological mystification, “ordinary human judgment” becomes a sign of exceptional critical consciousness. In her essay collection, *Responsibility and Judgment*, Hannah Arendt also champions the everyday moral

capacities that might enable political opposition. She considers those German citizens for whom participation in the Nazi regime was simply unthinkable. Their resistance, she concludes, cannot be credited to any particular intellectual ability, but only to “the human faculty of judgment” (26). Confronted by the violence of the USSR and the Third Reich, Trilling and Arendt each turn to a vision of innate human judgment. Nevertheless, it is clear, even in their own writing, that this “ordinary” quality has proven fleeting and unstable during moments of political crisis.

Trilling and Arendt are each fundamentally committed to the renewal of liberal-democratic philosophy in the wake of totalitarianism. Although they make judgment central to that intellectual project, they remain troubled by its individual and subjective quality. In his 1947 novel, *The Middle of the Journey*, Trilling binds the fate of liberalism to the moral judgment of his protagonist. Confronted with individual and mass violence, John Laskell demonstrates a nuanced moral perception that far surpasses the ideological devotions of his Marxist and conservative friends. In her essay, “Some Questions of Moral Philosophy,” Arendt draws on Socrates and Kant to elaborate a form of judgment that would be capable of withstanding the pressures of totalitarian ideology. Yet despite this emphasis, Trilling and Arendt each evince an uncertainty about whether individual judgment could function as the basis of a political philosophy. In her essay on Kant, Arendt worries, “one thing is undeniable, and that is the intensely personal...quality of all the criteria that were proposed to you here. This is probably the most objectionable aspect of my considerations...” (110). In “Civil Disobedience,” written several years later, she reverses her investment in Socratic morality, critiquing that conception of judgment as “purely subjective” and “unpolitical” (62). While Trilling is less explicit about his own

reservations, *The Middle of the Journey* oscillates between a strict endorsement of Laskell's nuanced judgment and an ambivalent commitment to institutional politics. Through discussions of legal and aesthetic constraint, Trilling emphasizes the inevitable discrepancy between individual conscience and institutional life. Like Arendt, he is drawn to judgment as a haven of liberal consciousness, yet worries that individual moral perception may be an unstable center for a political philosophy traditionally committed to democratic institutions and to the rule of law.

Why does the question of judgment produce such similar responses in these two, often very different, thinkers? Trilling and Arendt's ambivalence is, I will argue, rooted in a broader crisis of postwar liberalism – a crisis encapsulated by the effort to judge and condemn Nazi law. Although the guilty verdict issued at the Nuremberg trial was seen as ethically self-evident, the trial itself posed a serious challenge to standard conceptions of legal proceduralism and national sovereignty. In her 1964 book *Legalism*, Judith Shklar reflects:

The Nuremberg Trial of 1945 was not remarkable only because it was something entirely new in the history of international law. It was a great drama in which the most fundamental moral and political values were the real personae. Emotionally and philosophically it confronted every thoughtful individual with the necessity of making some clear decisions about his beliefs. For persons of liberal convictions and a strong commitment to legalistic politics it was a genuine moral crisis. (155)

While American liberals were certain that the crimes of the Third Reich merited severe punishment, the legal foundations for this moral reckoning were less clear. At the moment of judgment, the ethical convictions of liberalism thus seemed to run against its traditional alliance with the rule of law. This conflict was magnified by widely diverging interpretations of Nazi crime. For some, it was the *lawlessness* of the Third Reich that

facilitated its most extreme violence, while for others, it was the *legalism* of the German people that had permitted ordinary citizens to ignore their moral responsibilities. The effort to judge Nazi law thus produced two conflicting imperatives. The architects of the trial performed their own fidelity to legal procedures and precedents, believing that this allegiance was the surest way to restore the liberal rule of law. Meanwhile, for many observers, the experience of Nazism only proved the dangers of legal authority. If genocidal atrocity was a matter of ‘following orders,’ then liberal-democracy could only be saved by the turn from law to conscience.

These conflicting lessons internally divided American liberalism, which had long prided itself on its commitment to the reflective individual *and* to the rule of law. Traditionally, liberal legal philosophy had placed its confidence in the sustaining interaction between constitutional law and democratic institutions. The law guaranteed a minimum protection of individual rights, while democratic process, informed by the conscience of the citizenry, held the law accountable to that promise. Fascism, by contrast, relied on the failure of both traditional sources of political legitimacy: the law abandoned even the pretense of equal protection, a gesture that the public, profoundly lacking in moral judgment, permitted. The challenge Nazism posed for post-war politics was therefore clear: how could Americans strengthen the rule of law, teach moral disobedience, *and* make those two aims coincidental?

This crisis explains why the category of judgment might seem so vital, and so fraught, for both Trilling and Arendt. The widespread failure of moral judgment under the Third Reich suggested that the survival of liberal-democracy depended on the individual’s ability to tell right from wrong. At the same time, Trilling and Arendt insist

that conscience should never completely supplant law. In *The Origins of Totalitarianism*, Arendt reads the effort to conflate law and morals as symptomatic of totalitarian ideology. If legal institutions hope to retain their generalizable, democratic legitimacy, she argues, they must remain at some distance from the individual, particularized conscience (462). For this reason, the law will always be “less than goodness” (OR 79). In their strikingly similar readings of *Billy Budd*, Trilling and Arendt emphasize this tragic – but, for them, politically necessary – divide. Their response to mass violence thus relies, simultaneously, on the elevation of conscience *over* law and on the limitation of conscience *by* law. Both thinkers retain their commitments to constitutionalism and democracy although they reimagine the interrelation of those forces. No longer signs of a happy equilibrium, law and conscience are cast as the magnetic poles of the political world, caught in a forceful, but unbridgeable, proximity.

While this tragic view of legal institutions might produce a resignation to injustice, it also clarifies the role of the very practice that most often mediates between law and morals: the practice of politics. By emphasizing the limits of both legal authority and moral judgment, Arendt and Trilling help us to imagine a more rigorous set of criteria for future dissent and critique. How can we justify our actions without recourse to the naturalized authority of either law or conscience? How can we produce meaningful institutional change when we know that political forms will always remain estranged from our own moral will? Arendt and Trilling respond to the crisis of Nuremberg with a vexed, pessimistic insistence on the simultaneous necessity and inadequacy of moral judgment. This response not only captures the dilemma faced by American liberals in the immediate aftermath of the war, but also sets the stage for the debates that would follow,

from Civil Rights to the New Left and beyond.

This chapter explores how two leading postwar liberals navigated the suddenly conspicuous gulf between law and morals witnessed at Nuremberg. I begin by outlining the central legal debates that emerged from the trial. In particular, I trace the rise of H.L.A. Hart's legal positivism, which insisted on the separability of law and morals. In my second section, I consider the role of judgment in Trilling's novel and in Arendt's moral philosophy. Then, in my third and final section, I analyze the limits of judgment as a political practice. I discuss Trilling and Arendt's interpretations of *Billy Budd* and I consider the role of constraint in Trilling's conception of literary form. While many critics read Trilling as a sharply *anti*-institutional thinker, my analysis of his fiction unearths an acute awareness of the limitations of individual political enlightenment. If the turn to conscience is the most immediate and urgent response to the problem of unjust law, then Arendt's and Trilling's meditations on judgment make clear why it could only ever serve as a partial solution to the Nuremberg crisis.

I. "Law itself stood in the dock"¹⁴

In his 1961 trial in Jerusalem, Adolph Eichmann described himself as the "victim of a fallacy" (*Ei* 248). He was, he argued, a man caught between the jurisdiction of two opposing legal regimes: the Nazi authority under which he had committed his crimes and the Israeli court in which he was now judged. While we can easily dismiss this plea of victimization, the paradox Eichmann names had a broader resonance in post-war culture.

¹⁴ In *The Memory of Judgment*, Lawrence Douglas writes: "In the case of spectacular and anomalous trials like Nuremberg and Eichmann, the problem of legitimation looms even larger. In both cases, it can be said that law itself stood in the dock" (114).

The Nuremberg trial, held at the close of the Second World War, challenged traditional conceptions of legal and national sovereignty. Having defeated a regime with an obviously perverse legal system, the Allies sought to establish their own authority as judges of a formerly sovereign nation. Yet in prosecuting Nazi officials, they risked charges of retrospective victor's justice, or worse, ready comparisons to Stalinist show trials. Although few disputed the moral necessity of punishment for high-ranking Nazis, the effort to ground that condemnation in neutral legal precedents seemed more suspect. As Rebecca West notes in her report on the trial, "people all over the world" worried that the defendants were being legally condemned for acts they were commanded to carry out (48).¹⁵ The prosecution thus struggled to align its highly sympathetic moral convictions with its outward commitment to the rule of law. The conspicuous misalignment of law and morals that resulted from this effort raised a set of serious questions for postwar liberal democracy: What is the status of immoral but legal acts, and on what authority can we judge them? If we condemn once-legal acts on moral grounds have we abandoned our allegiance to the rule of law? And, finally, if the law has lost its authority as an arbiter of moral questions, where should we turn instead?

These questions, which emerged directly from the Nuremberg trial, were the subject of the most monumental clash in postwar legal philosophy: the decades-long debate between H.L.A. Hart and Lon Fuller. Hart's thesis, that there is no necessary relationship between law and morals, would come to dominate Anglo-American

¹⁵ West writes: "There was some feeling among those who attended only the end of the trial, and a very great deal of strong feeling among people all over the world who did not attend the court, that these defendants had been put into the dock for carrying out orders as soldiers and sailors must" (48).

jurisprudence in the decades that followed.¹⁶ His school of thought, legal positivism, triumphed over natural law and legal realism – schools that treated law as a practice in the service of ultimate moral ends. Yet positivism would also come to be associated with a disturbing ethical relativism.¹⁷ If law and morals are mutually distinct, what does this mean for the conscientious legal subject? Hart suggests that some laws “are too evil to be obeyed,” yet he offers little indication of how we might determine which laws were worthy of our allegiance (620). This question is at the heart of Trilling and Arendt’s writings on judgment. Before turning to their work, however, I would like to further explore the legal and historical contexts from which it emerges. In this section, I will consider the central challenges of the Nuremberg trial and the attendant rise of Hart’s legal positivism.

Contrary to popular memory, the Nuremberg trial was not primarily concerned with the Holocaust or with the novel charge of “Crimes against Humanity.” The Allied prosecution was much more invested in using the charge of “Crimes against Peace” to condemn aggressive warfare. While there were many reasons for this emphasis (not least of which was the fact that the true magnitude of the Holocaust had not yet been recognized in the Allied nations), the strongest motivation for the prosecution was the desire to act within clear legal precedents. “Crimes against Humanity” was a new concept, created to address unprecedented atrocities. By contrast, many argued that

¹⁶ Hart was British but his thought played a significant role in American legal philosophy.

¹⁷ See: Anthony J. Sebok’s book *Legal Positivism in American Jurisprudence*. “The past forty years have not been kind to legal positivism,” Sebok writes, “Ever since H.L.A. Hart’s famous debate with Lon Fuller over the charge that German legal positivists were partly responsible for the rise of Adolph Hitler, positivism has...been the target of frequent attacks by American lawyers” (1).

aggressive warfare had been criminalized in international law since the Kellogg-Briand Pact of 1928. The focus on “Crimes against Peace” thus helped the prosecution to lessen the perception of retrospective victor’s justice.¹⁸ Moreover, the charges included under Count Four (“Crimes Against Humanity”) began before the outbreak of war, making their status under international law questionable. As the historian Bradley F. Smith explains, “Count Four made it possible at Nuremberg to prosecute actions that had taken place in pre-1939 Nazi Germany...it thus permitted the prosecution of pre-war ‘war criminals’” (14).¹⁹ While military aggression fell under the jurisdiction of international law, prosecuting actions that occurred *within* sovereign states would mark a veritable revolution in legal and moral thinking. The two central charges – “Crimes against Humanity” and “Crimes against Peace” – thus operated in completely different philosophical universes (Luban 337). While the former charge undermined the concept of legal sovereignty, the latter elevated it. “Crimes against Humanity” claimed universal, moral jurisdiction over independent nation-states while “Crimes against Peace” treated the violation of national borders as the ultimate geopolitical sin.

Despite the prosecution’s efforts to remain within clear legal precedents, the inclusion of Count Four indicated a revolutionary approach to national sovereignty. Even

¹⁸ I derive my knowledge of the basic parameters and central controversies of the Nuremberg trials from Bradley F. Smith’s *Reaching Judgment at Nuremberg*, Lawrence Douglas’ *The Memory of Judgment*, David Luban’s *Legal Modernism*, and Scott Shapiro’s presentation “Schmitt at Nuremberg” (University of Toronto, Oct. 17, 2014).

¹⁹ The court, clearly aware of the ethical necessity of including Crimes Against Humanity, adopted a convoluted legal strategy. Count Four would be prosecutable only if the atrocities had been “committed in connection with the war of aggression” (Douglas 75). Robert Jackson, the American Chief Counsel, accommodated this restriction by arguing that the Holocaust had been conducted primarily to facilitate war by removing possible Jewish resistance – an explanation that clearly defied the historical record (76).

more striking in this regard was the official exclusion of “acts of state” and “superior orders” as potential defenses for the Nazi accused (Luban 337). The “acts of state” defense was premised on the idea that sovereigns cannot be tried for crimes committed against other states, since this would mean subjecting one legal sovereign to the jurisdiction of another. “Superior orders” similarly posited that no one acting under the laws and commands of their own sovereign could be tried for those actions. Both defenses invoked the traditional concept of legal sovereignty as a protection against all prosecution. The Allies, however, recognized that their project would be doomed from the outset if such defenses were permitted. As David Luban explains, “the act-of-state and superior-orders doctrines taken together would imply that no one could be held responsible for the crimes the Tribunal was trying,” neither Hitler, nor anyone acting under his command (339). The exclusion of these defenses thus clearly challenged “the classic doctrine of sovereignty...which says that the whole criterion of a rule’s legality is that it has been propounded by the sovereign according to his chosen procedures... [that] anything the sovereign wishes to make law is law” (338). By banning acts of state and superior orders, the Allies denied the priority of legal sovereignty, elevating international over national jurisdiction.

The Nuremberg trial thus radically undermined the authority of law and the sovereignty of the nation-state, igniting a controversy that that would eventually fuel the famous debate between Hart and Fuller. In their oft-cited exchange in a 1958 issue of the *Harvard Law Review*, they debated the legality of retroactive Nazi prosecution. Both drew on the case of a German woman who, in accordance with Nazi law, had reported her husband’s anti-fascist sentiments to the authorities. After the war, she was charged

with depriving her husband of his freedom and tried by a West German court. In his essay, Fuller argues that the woman is unequivocally guilty. Nazi law was so perverse, he insists, that it cannot qualify as law at all.²⁰ West German judges must, therefore, revert back to the pre-war legal standards under which her actions were clearly prosecutable. The dilemma cannot be resolved so easily for Hart. Since, on his reading, the woman's actions were fully legal under the Nazi regime, choosing to punish her under a retroactive law is, at best, "a choice...between two evils" (619). Although the courts are perhaps ethically justified in convicting her, they must admit that, in doing so, they act against the standards of legality. While Fuller hopes to reconcile law and morality by making the woman's well-deserved punishment *legally* defensible, Hart insists that we read her prosecution in terms of the fundamental conflict between law and morals.

Hart's argument is informed by the theory of legal positivism, which has its roots in the work of Jeremy Bentham, John Austin, and Hans Kelsen. At its core, positivism is concerned with defining law in relation to social facts rather than moral or religious norms. For Hart, a law qualifies as such if it is produced through the mechanisms a given society recognizes as law-producing.²¹ This definition serves to isolate "law as it is from

²⁰ See "Positivism and Fidelity to Law," 652-55. Fuller further elaborates his approach in his book *The Morality of Law*. For any system of enactments to be considered law, he explains, they must meet eight criteria: A legal system must have rules (i) that are public (ii), non-retroactive (iii), understandable (iv), non-contradictory (v), capable of being followed (vi), infrequently changed (vii), and consistently applied (viii) (39). These criteria guarantee both the functional operation of a legal regime and a minimum of procedural justice. Fuller's eight requirements are so fundamental to law that, wherever they are absent, a legal system cannot be said to exist. The Third Reich, Fuller argues in "Positivism and Fidelity to Law," showed so much contempt for procedural justice that its operations could never be described as those of a legal system. I will further elaborate his philosophy in my second chapter.

²¹ Hart distinguishes between the primary and secondary rules of a legal system. Primary rules are laws directed at citizens (i.e. "Thou shalt not kill", "Jaywalkers will be fined"). Secondary rules – or rules of recognition – determine who can issue legal commands and under what

law as it ought to be” since, according to the positivist doctrine, a law remains *legally* binding even when it deviates from moral principles (594). Hart’s approach, which rose to prominence after 1940, supplanted both natural law and legal realism, schools of thought that explicitly linked law and morality (Sebok 2). Natural lawyers judged existing law according to transcendent moral and religious systems, while the pragmatic legal realists (who dominated American jurisprudence in the era of the New Deal) read the law as a contingent means for achieving ultimate social goods.²² In the wake of his positivist masterwork, 1961’s *The Concept of Law*, Hart became a (perhaps *the*) major figure in twentieth-century legal philosophy. His early response to the case of the German woman already makes clear why he would become both influential and controversial in the postwar period. Hart’s willingness to confront the disarticulation of law and morals seemed vital in the wake of Nazi atrocity. Yet, as we will see shortly, his insistence that the German woman’s prosecution is “a choice...between two evils” raises more questions than it could possibly answer (619).

For Hart, the primary virtue of legal positivism is its definitional correctness: it simply is not the case that an immoral law ceases to be, in actual fact, *a law*. He argues, quite persuasively, that distinguishing between existing law and ideal law is the only way to facilitate coherent debates in legal philosophy. Yet despite this semantic emphasis, Hart also offers a moral and political justification for his school of thought:

circumstances. They designate, say, a King or a legislature as the law-giving authority, and they describe the kinds of procedures these authorities must follow in order for their pronouncements to be considered law. In Hart’s system, a law is anything that has been produced according to the recognized secondary rules of a given society. See “Law as the Union of Primary and Secondary Rules” in *The Concept of Law*.

²² For more on legal realism, see Stephen M. Feldman *American Legal Thought: From Premodernism to Postmodernism*, 105-115.

Bentham had in mind the anarchist who argues thus: “This ought not to be the law, therefore it is not and I am free not merely to censure but to disregard it.” On the other hand he thought of the reactionary who argues: “This is the law, therefore it is what it ought to be,” and thus stifles criticism at its birth... There are therefore two dangers between which insistence on this distinction will help us to steer: the danger that law and its authority may be dissolved in man’s conceptions of what law ought to be and the danger that the existing law may supplant morality as a final test of conduct and so escape criticism. (598)

Here, legal positivism facilitates censure and critique, against both irresponsible disobedience and blind submission. Separating law and morals, Hart argues, makes it possible to meaningfully evaluate the distance between them; legal positivism offers both definitional and ethical clarity.

In disassociating himself from the claim of the reactionary – “this is the law, therefore it is what it ought to be” – Hart also seeks to rebut the common argument against positivism: that it is fundamentally conservative and, even perhaps, complicit in Nazi atrocity. Hart discusses the charges of Gustav Radbruch, a German legal philosopher, who “had himself shared the “positivist” doctrine until the Nazi tyranny” (616). After the war, Radbruch argued that the school’s slogan, “law is law,” had contributed to the “failure of the German legal profession to protest against the enormities which they were required to perpetrate in the name of law” (617). Hart, by contrast, insists that the German judges could have protested the regime on moral grounds while nevertheless acknowledging that Nazi laws were, in fact, laws. “Surely,” he writes, “the truly liberal answer to any sinister use of the slogan, “law is law”...is, “Very well, but that does not conclude the question. Law is not morality; do not let it supplant morality”” (618). Against those who would read legal positivism as morally legitimating any form of existing law, Hart insists that his philosophy is fundamentally

opposed to such an elision.

Hart is very convincing when he restricts himself to these attractively commonsensical, semantic claims: law is law; morality is morality; the two must be judged and defined separately. Yet his description of retroactive punishment as “a choice...between two evils,” also betrays a disavowed commitment to the moral quality of law. After all, unless the rule of law has *some* claim to our obedience, why would he describe retroactivity as an “evil”? Even his own language in this passage indicates the slipperiness of his claim. In punishing the woman retroactively, Hart argues, we are “sacrificing a very precious principle of *morality* endorsed by most *legal* systems” (italics added 619). In his response, Fuller elaborates this problem:

I hope I am not being unjust to Professor Hart when I say that I can find no way of describing the dilemma as he sees it but to use some such words as the following: On the one hand, we have an amoral datum called law, which has the peculiar quality of creating a moral duty to obey it. On the other hand, we have a moral duty to do what we think is right and decent. When we are confronted by a statute we believe to be thoroughly evil, we have to choose between those two duties...It is like saying I have to choose between giving food to a starving man and being mimsy with the borogoves. I do not think it is unfair to the positivistic philosophy to say that it never gives any coherent meaning to the moral obligation of fidelity to law. (656)

Legal positivism, Fuller insists, cannot void the moral content of law while also attributing some ill-defined moral suasion to the standards of legality. Hart cannot critique “the anarchist who argues...“This ought not to be the law, therefore it is not and I am free not merely to censure but to disregard it”” unless he is willing to argue that obedience is a moral good (598). Throughout his essay, Hart is clear that we should disobey extremely odious laws but he cannot explain why he would seek to protect less self-evidently evil legal systems from the judgment of the anarchist. He perhaps thinks

that, for political and moral reasons, social order is generally preferable to anarchy.²³ But if so, how are we to balance the value of social order against our own moral principles? Certainly, that is *the* crucial question, yet it is one Hart ultimately refuses to answer.

The Nuremberg trial produced a crisis for post-war liberal philosophy because it radically disarticulated law and morals. While the architects of the trials sought to bring atrocity under law's jurisdiction, their efforts to judge the unprecedented in the terms of existing legal frameworks only brought further attention to the divide between legal and moral judgment. Moreover, there was an acute irony in the Allied appeal to the rule of law, given that they were condemning a regime that insisted on its own legality. If Nazi commands were legal in character, certainly little faith could be placed in the law's claim to moral authority. The famous Hart-Fuller debate emerged from this moment of crisis. Hart's legal positivism was a useful response to the Nuremberg trial in that it refuted any naïve belief in the necessary coincidence of law and morals. Yet his persuasive semantic arguments only produced a more opaque picture of the moral obligations of the legal subject. If law and morality are separate, often conflicting, goods, how can we choose between them in a moment of crisis? Where should we locate the boundary marker between responsible allegiance and justifiable disobedience? Hart's revolutionary legal philosophy produced a new set of difficult questions for post-war *ethical* philosophy.

²³ Hart hints at such an argument in *The Concept of Law*: "Older writers who, like Bentham and Austin, insisted on the distinction between what law is and what it ought to be, did so partly because they thought that unless men kept these separate they might, *without counting the cost to society*, make hasty judgments that laws were invalid and ought not to be obeyed." This clarification is not particularly helpful, however, since, in the next sentence, he counters that "this danger of anarchy...may well have been overrated" (211; italics added).

It is in this context that we should read Trilling's and Arendt's investment in judgment. If law had lost its self-evident moral authority, then liberal-democracy now depended on the ethical capacities of post-war subjects. Below, I will consider the appeal of moral judgment as a response to the Nuremberg crisis. Then, in my final section, I will explore its limitations as a remedy for political and institutional failure.

II. "Ordinary Human Judgment"

In his essay "Art and Fortune," Trilling assesses the fate of the novel in the wake of the Second World War. "The world and the soul have split open of themselves and are all agape for our revolted inspection," he writes, "...Indeed, before what we now know the mind stops...there is no possible way of responding to Belsen and Buchenwald. The activity of mind fails before the incommunicability of man's suffering" (*Liberal* 264-5). Ultimately, Trilling concludes that the only way to confront "the terrible circumstances of our time" is to look at them aslant (279). We must:

not succumb to History's most malign and subtle trick, which is to fix and fascinate the mind of men with the pride of their foreknowledge of doom. There are times when, as the method of Perseus with the Medusa suggests, you do well not to look straight at what you are dealing with but rather to see it in the mirror-shield that the hero carried. (280)

Trilling's 1947 novel, *The Middle of the Journey*, is centrally concerned with the "incommunicability" of violence, although it examines Nazi crimes only through indirection. But if the novel follows "the method of Perseus with the Medusa," then it also seeks to rescue "the activity of mind" from its paralysis in the face of mass violence. In *The Middle of the Journey*, post-war liberalism is tasked with developing a new critical consciousness – one that could reckon with the failure of law and the horror of atrocity. If

Hart's legal positivism had suggested that law was no longer a reliable arbiter of morality, then Trilling's novel hoped to instill post-war subjects with a more subtle, urgent form of moral perception.

Throughout the novel, Trilling aligns this pedagogical project with the enlightened perspective of his protagonist, John Laskell. Laskell's subtle judgments are consistently contrasted with the blunt ideological rationalizations of his friends – a conflict Trilling treats as decisive for the future of liberal democracy. Considering “the events in Germany,” Laskell reflects: “even among those terrible people there was the preoccupation with guilt and innocence...for those who are punished are guilty and those who punish are innocent” (170). Here, he critiques fascist ideology for collectivizing guilt and innocence. But Laskell also encounters a similar impulse in his radical and conservative friends: they tend to extrapolate the concept of moral responsibility until it covers entire social groups, even humanity itself. In response, Laskell attempts to recuperate the moral categories that would enable meaningful judgment of individual actions. Against his friends' ideological rationalizations, Laskell offers a “modulat[ed]” vision of responsibility that reflects Trilling's conception of the dialectical “literary idea” (*Middle* 352; *Liberal* 283). This nuanced form of perception is also fundamentally limited, however. Allied with feeling and conscience, Laskell's intuitive, subjective judgment remains ineffable. It is at home in the sphere of literary experience but cannot be translated into any clear political or institutional claim – a deficit that Trilling will critique within the novel itself. Ultimately, *The Middle of the Journey* presents moral judgment as an urgent yet partial answer to the questions that Nuremberg had posed for postwar liberalism.

Arendt's lectures, collected in *Responsibility and Judgment*, offer a similar argument for moral judgment as an alternative to ideologically determined analysis. Throughout the essay collection, she presents Kantian aesthetic judgment as a new kind of moral philosophy, adapted to the postwar period's unreliable ethical universe. Yet unlike Trilling, she argues for a strict distinction between the rigors of judgment and the intuitions of conscience. Her project also retains an institutional aspiration that Laskell's reflections lack: Arendt famously reads the trial of Adolph Eichmann as an opportunity to bridge the divide between moral and legal condemnation. Nevertheless, Arendt is ultimately unable to maintain her distinction between conscience and judgment, a fact she herself acknowledges in her essay on civil disobedience. In this section, I will describe Trilling and Arendt's efforts to elaborate and defend moral judgment while also underscoring their own uneasiness about its ultimate political consequences.

The Middle of the Journey is set in the 1930s and is typically read as an anti-Communist novel of manners. Trilling follows a group of middle-class intellectuals whose friendship is strained by their growing ideological division. Following the death of his fiancée and his own battle with scarlet fever, Laskell visits Nancy and Arthur Croom, both committed socialists, at their home in rural Connecticut. All three are shocked to hear that their friend Gifford Maxim has broken with the Communist party and turned to a religiously inflected conservatism. The ideological tensions in the group are brought to the fore when a local child, Susan, is struck by her father, Duck Caldwell, and dies unexpectedly. While Nancy exonerates Duck as a product of capitalist society, Maxim condemns him as a sinner. Laskell's liberalism then emerges as the only ideology capable of assessing Duck's responsibility for his crime. "An absolute freedom from

responsibility – that much a child none of us can be,” Laskell explains, “An absolute responsibility – that much of a divine or metaphysical essence none of us is” (351). Laskell’s friends consider his epiphany “a good deal of shilly-shally,” and the group separates “touched with unhappiness” and with “the growing knowledge that intelligent people had of the danger in the world” (351, 359).

Due to this overtly ideological content, the novel is most often treated only as a symptomatic text of post-war anti-Communism. In a 1977 essay, William M. Chace reflects, “*The Middle of the Journey*, can...never be seen as a purely *literary* object. It is now attached to history, a glass through which we may darkly view American communism and anti-communism” (139). Because Trilling confessed to modeling Gifford Maxim on Whittaker Chambers, some critics read the novel even more narrowly – as a *roman à clef* about the Hiss trial (which occurred a year after *Middle* was published).²⁴ As Trilling himself explains, post-war readers saw Nancy and Arthur Croom as stand-ins for Alger and Priscilla Hiss, and “attributed [to him] a knowledge of events behind the case which of course [he] did not have” (*Middle*, Intro. xvii). This strong association with historical anti-Communism has unfortunately obscured the formal and thematic complexity of *The Middle of the Journey*. While the novel is undeniably shaped by Trilling’s critique of American socialism, it is also fundamentally concerned with the politics of death, with the nature of responsibility, and with the relationship between freedom and constraint. If we take for granted the obvious fact that the novel is intended as a defense of postwar liberalism against its socialist and conservative foes,

²⁴ This connection is explored at length in Michael Kimmage’s book *The Conservative Turn: Lionel Trilling, Whittaker Chambers, and the Lessons of Anti-Communism*.

than we can focus on Trilling's complex understanding of the liberal project. By reading the novel through contemporaneous anxieties about judgment and conscience, I aim to liberate its insights from their too-close association with the anti-Stalinist turn, and to arrive at a deeper understanding of the relationship between law and liberalism in midcentury America.²⁵

In his introduction to the 1975 edition, Trilling explains that *Middle* was originally conceived as a short novella with a single controlling theme: "what had happened to the way death is conceived by the enlightened consciousness of the modern age" (xx). The novel took on a more explicitly political cast with the decision to include the character of Gifford Maxim, but never shed its central preoccupation with the place of death in critical consciousness (xxiv). When Laskell reflects on the loss of his fiancée, Elizabeth Fuess, he emphasizes the challenge mortality poses to the mind:

Laskell found Elizabeth's death beyond the powers of his thought. He believed that this was because it was impossible to judge the event, and without judgment

²⁵ Many critics read Trilling's work only as a symptom of anti-Communist liberalism and accordingly, pay little or no attention to questions about law, conscience, and judgment. Russell J. Reising, for example, accuses Trilling's literary criticism of lending "intellectual respectability" to "quietism," "conformity," "homogeniety," and "McCarthyite paranoia" (121, 119). In a 1990 article in *boundary 2*, Donald Pease argues that Trilling's critiques of politically tendentious literature produced an "*imaginary separation* between the cultural and the public sphere" that obscured "the otherwise threatening cultural contradictions released by the cold war consensus" (8). For Reising and Pease, Trilling's work is at best representative of anti-Stalinist anxieties, and at worst, a Trojan horse for McCarthyist oppression. This starkly critical account is challenged in more recent scholarship. Adam Kirsch's 2011 book, *Why Trilling Matters*, makes the case for his status "as one of liberalism's most profound expositors" (70). In *Bleak Liberalism* (2016), Amanda Anderson places Trilling's criticism and fiction at the center of her effort to recuperate "the formal and conceptual dimensions of active literary engagements with liberal thought" (100). Along with Kirsch and Anderson, I hope to disentangle Trilling's scholarship from the hostile critical framework imposed by New Americanists like Reising and Pease. By bringing him into conversation with Hart and Arendt on the question of law and conscience, I also aim to make his work accessible to an intellectual tradition and political debate adjacent to the anti-Communist milieu in which he is typically situated. To my knowledge, no critic has yet considered his work in context of the Nuremberg trial or of Hart's legal positivism.

there was no way of thinking about it...No fact, no segment of reality, could be more definite, more self-defining. To think about it at all meant to be involved in questions such as the injustice of the event. But that would have implied the idea of justice, and Laskell knew that question was an impossible one. There was nothing to think about... (43)

This passage prickles with intriguing contradictions: death is both blunt and beyond our grasp; its injustice is readily perceptible, while justice itself remains an “impossible” question; there is “nothing” and everything to think about. Even stranger is the fact that, although death evades judgment in this passage, it also inspires the novel’s starkest condemnations. As Chace writes, “the people in the novel approach death in a wide variety of ways, and in their encounters with it invite understandings of their selves. Death, as it were, delineates and judges them” (138). Indeed, it is the characters’ response to death – both local and global, both individual and catastrophic – that serves as Trilling’s primary mechanism of political differentiation. While, in this passage, Laskell finds that he cannot “judge” Elizabeth’s death, it is his reticence about engaging in a *too-easy* judgment and his willingness to endure tragic experience that will facilitate his final moral epiphany. Meanwhile, it is Maxim and Nancy’s need to rationalize death that will lead to their ideological excesses.

Trilling ties the problem of death to the history of political violence through a curious early scene. When Maxim intimates that the Communist Party may kill him for defecting, Laskell tries to repress his own “foolish anxiety” (7). This resolve is lost in a rush of existential terror, which overwhelms Laskell as he waits alone at the train station:

He did not know what he was afraid of. He was not terrified by anything, he was just in terror... there was the image of the Mexican politician lying on the ground, unconscious while his enemy administered a hypodermic and cut his tongue out. This was something Laskell had read about in a newspaper in his boyhood in the time of Huerta. There was the image of Chinese torture in which a man was shut

in a narrow position in a box and fed at intervals and left to endure like that. This also came from something he had read in his boyhood. And from a newspaper item he had read quite recently there came the image of the man who had spent six days ill in his automobile in a thickly populated street in New Haven, able only now and then to ask children to fetch him water; the children had not spoken of his plight, and he lay there unable to move until on the sixth day a woman noticed him. (10-11)

In “Art and Fortune,” Trilling writes that the post-war world is threatened by “losses worse than that of existence – losses of civilization, personality, humanness” (266).

Laskell’s sudden terror is rooted in his fear of these deprivations. The first two visions raise the specter of oppressive state violence while the third speaks to the social atomism that allows men to suffer in one another’s midst. Each image is an assault on the freedoms of the liberal subject: the Mexican politician is speechless, the Chinese prisoner is immobile, and the sick man is without human community. The scene thus evokes “losses worse than that of existence”; it introduces the suffering endured under fascism.

The moral vertigo Laskell experiences at the train station establishes the political contours of the novel, but the primary plot engages mass violence only through indirection. When nine-year old Susan Caldwell is killed by her father at a local poetry recital, the event serves to index various political orientations towards death. After Susan stumbles over her words, Duck Caldwell – drunk, jealous, and ashamed – strikes her twice with his open palm (299). Susan dies immediately, largely due to an underlying heart condition that had been kept secret by Duck’s wife, Emily Caldwell. The improbable plot device of Susan’s sudden, inexplicable death functions for Trilling as a way of literalizing Maxim’s and Nancy’s political differences: is it the individual will (Duck’s blow) or underlying structures (Susan’s heart “condition”) that are ultimately responsible for human suffering? Their conservative and progressive ideologies

immediately cast Duck either as a corrupted sinner, or as a hapless victim of circumstance. The event also brings attention to the question of complicity, as Laskell struggles to understand his own role in Susan's death. Ultimately, Trilling contrasts Maxim and Nancy's ideologically informed interpretations with Laskell's effort to delineate the structure of individual responsibility.

Laskell, who was having an affair with Duck's wife, and who had meddled with Susan's recital, worries that he is to blame for Duck's explosive reaction. Attempting to trace the events leading to his own questionable behavior, he is overwhelmed by the sheer scale of causality:

There was no logic in it, or perhaps there was too much logic in it. It went back, for that matter, beyond Duck – there was his illness, and Paine and Miss Debry. It probably went back even farther than that....He gave it up, it was getting too involved. When something involved so many things so tenuously, then it was ridiculous to think about it as responsibility. One could no longer *think* about it at all, one could only feel. (312)

At stake in this passage is a question that also preoccupies Judith Shklar in her book *Legalism*: how long is the history of a single crime? Shklar argues that the debates surrounding the Nuremberg trial led to “the confrontation of two entirely different and incompatible notions of causality, the historical and the legal” (194). The court aimed to present a history of the Third Reich while also determining the individual responsibility of the defendants. At what point, however, does remote historical causation transform into direct criminal guilt? “To bring the historian's sense of causality to bear on legal cases would doom lawyers to eternal indecision,” Shklar argues (198). It is this historical perspective that Laskell experiences as “too much logic” (312); when culpability is extended across the causal chain, guilt becomes incomprehensible. Rather than trying to

apportion blame, Laskell chooses to immerse himself in the experience of tragedy, a decision that Trilling depicts as ultimately allowing for a more subtle response.

Laskell's meditations on responsibility are sharply contrasted with Maxim and Nancy's immediate reactions: both offer stark verdicts fundamentally informed by their own ideological leanings. After Susan collapses, Laskell chases Duck, hoping to explain her heart condition and, therefore, Duck's mitigated guilt. Maxim, however, accuses him of pursuing Duck in a murderous rage. Laskell is baffled by this charge, but soon realizes that Maxim is seeking "company in his [own] guilt" (313). Speaking of his underground work for the Communist party, Maxim laments, "my hands are bloody because of what I was, because of what I consented to, because of my associations" (315). Himself guilty-by-association, Maxim seeks to implicate everyone in his own apparent criminality. His newfound religious conservatism thus serves to absolve him of any specific burden. The doctrine of original sin condemns Duck and Laskell along with him, while promising them all the grace of God. Nancy, meanwhile, offers the obverse reaction. Convinced that Duck is not responsible for his own actions, she simultaneously exonerates herself. This position is made clear in a later confrontation with Maxim:

"Who is to blame, Nancy?" Maxim said.

"I told you – Arthur told you. Society."

"Are you a member of society?" Maxim had the Socratic manner.

"Yes, of course I am," said Nancy, submitting to the *elenchus* that was clearly to come.

"Are you to blame for what Duck did? I mean are you to blame in part?"

... "Nancy's not part of society in that sense," Arthur said... "Nor are any of us."

"Is that true, Nancy? Do you agree with that? That you are not part of society in every sense?"

"Well, I'm against the bad in society. If you mean, do I have any share in what Duck did - no, I don't." (348)

In this rather ungenerous parody of Marxist thinking, Nancy shifts responsibility to

society itself, while also emptying the social of its specific human content. If Maxim makes everyone guilty along with Duck, then she insists on the universal innocence of the working class. Nancy and Maxim's seemingly stark verdicts thus serve to eradicate the conditions of meaningful moral judgment. For Trilling, their turn to historical causation and guilt-by-association leads to an elision of responsibility and complicity. Instead of judging Duck's individual crime, they debate the moral standing of humanity itself.

In *Responsibility and Judgment*, Hannah Arendt warns, "Morally speaking, it is as wrong to feel guilty without having done anything specific as it is to feel free of guilt if one actually is guilty of something" (28). The "spontaneous admission of collective guilt," in post-war Germany, "was of course a very effective, though unintended, white-wash of those who *had* done something: as we have already seen, where all are guilty, no one is" (28). For Arendt, a too-far-reaching conception of responsibility threatens to collapse the concept into itself. Before Susan's death, Laskell similarly reflects "Educated people more and more accounted for human action by the influence of environment and the necessities and habits imposed by society. Yet innocence and guilt were more earnestly spoken of than ever before" (169). The later debate over Duck's criminal responsibility illuminates this curious observation. For Trilling, as for Arendt, it is a refusal to address individual responsibility that produces stark conceptions of social innocence and social guilt, necessitating a return to the insights of moral philosophy.

Laskell's final epiphany is thus intended to moderate Nancy and Maxim's absolutism and to restore the foundations of individual moral judgment. In a short speech, Laskell rejects both "absolute responsibility" and "absolute freedom from responsibility"

(351). “I cannot absolve the world or society or God or my parents or nature from all blame from what I am or do,” he explains, “...And for that matter, I cannot avoid my gratitude to them” (351). Trilling seems to recognize that this moderate position has less charismatic power than Maxim’s Dostoevskian religiosity and the monologue is met with derision.²⁶ Yet Trilling also presents its relatively weak appeal as a kind of moral virtue. Laskell’s revelation faces “the anger of the masked will at the appearance of an idea in modulation” (352). Rejecting his friends’ apocalyptic appeals, he is presented as the only one capable of perceiving the nuances of responsibility.

The superiority of Laskell’s response lies, for Trilling, in the distinction between ideas and ideology. In the *Liberal Imagination*, he defines a “literary idea” as “two emotions [in] juxtaposition” (283). In *The Middle of the Journey*, the ability to express a “modulated” idea is rooted in feeling and experience. It is because Laskell himself suffered from a near-fatal disease, because he experienced an existential vertigo at the train station, and because he ‘felt’ the tragedy of Susan’s death, that he is able to offer a subtle, dialectical account of responsibility. By contrast, Maxim and Nancy rely on what Arendt would define as ideological thinking in *The Origins of Totalitarianism*: “The “idea” of an ideology is...an instrument of explanation. To an ideology, history does not appear in the light of an idea...but as something which can be calculated by it” (469). When Laskell resists “thinking” about Susan’s death, he resists this kind of thought; unlike Nancy and Maxim, he does not hope to situate tragedy within a predetermined, logically consistent, explanatory framework. Certainly, it is no coincidence that Trilling

²⁶ Maxim’s character is partly modeled on Dostoevsky’s “The Grand Inquisitor,” as Anthony Hutchison explains in *Writing the Republic* (81).

aligns the literary idea with the perspective of a character who shares his own political preferences, while treating those whose views he disputes as incapable of critical subtlety. Nevertheless, even given the partisanship of Trilling's novel, it is important to understand how he defines the disposition of the liberal subject. Here, it is the literary idea – closely aligned with emotion and experience – that resists the ideological short-circuiting of critical thought, allowing for the renewal of moral perception in the wake of violence.

The 'literary idea' also has its limitations, however. While Laskell is unquestionably positioned as a paragon of moral insight, especially in contrast to his friends, his judgment of Duck is fated to remain implicit rather than explicit. Against Maxim and Nancy's absolutism, Laskell could offer some modulated charge: manslaughter, negligence, abuse. Instead, in accordance with the literary idea, he avoids any clear, legal formulation of his judgment, leaving it in the space of moral feeling. Readers sense that he sees Duck as largely – though not absolutely – responsible for his actions, yet Laskell is unable to articulate whether he should be reintegrated into the community after Susan's death is ruled accidental. From Laskell's moral epiphany through the close of the novel, readers experience (and share) an enduring sense of unease and dislike towards Duck, although we remain uncertain about what kind of specific consequences his actions might merit within the world of the novel.

In many ways, this resistance to legal formulation is unsurprising, especially given that Nancy and Maxim are themselves associated with legalistic thought. Maxim tells Nancy, "You will preach the law for the masses. I will preach the law for the leaders." (355). Laskell's perspective, Trilling suggests, is insightful precisely *because* it

resists the narrowness of the legal verdict. In *The Middle of the Journey*, the literary idea is thus juxtaposed against both ideology *and law*, a contrast that has now become standard in studies of “law and literature.” As Julie Stone Peters explains, many in the sub-discipline championed literature because it “could remind us of the rich humanity that lay behind case reports and judicial decisions, thus serving to chasten the mechanistic rigor of the law” (444). Here, as in Trilling’s work, literature is understood as a more adequate response to tragedy and trauma; the novel endures precisely the experiential complexities that the law must foreclose.

Laskell’s final epiphany thus clearly aligns with many of the core commitments of “law and literature” practitioners. Yet, as we will see later in this chapter, Trilling also suggests that literary judgment might suffer from its own restrictions and limitations. In *The Middle of the Journey*, moral judgment is so tightly bound to Laskell’s enlightened perspective (and to the reader’s sympathy with him) that it could never achieve a public or institutional form – precisely the forms that would be vital to any robust political response to the crisis of Nuremberg. While Laskell provides postwar subjects with a lesson in individual moral judgment, the novel also offers a subtle critique of the political limitations of that same capacity. Through discussions of *Billy Budd* and of the sonnet form, Trilling underscores the productiveness of legal and aesthetic constraint, against the infinite nuance of the literary idea. Laskell’s literary perception is clearly elevated for its subtlety, but these other elements of the novel stress the political impracticality of individual moral judgment. I will explore these counterpoints at length in my third section, but first, we should understand how a similarly ambivalent relationship to judgment arises in Arendt’s response to Nuremberg.

Arendt, like Trilling, is urgently invested in the renewal of moral judgment, but she defines this category in terms that are often markedly different. For Arendt, judgment must be rigorously distinguished from feeling and conscience. Rather than emphasizing the affective experience of tragedy, she aligns judgment with thought – a process that, for her, is capable of bridging subjective and objective perception. Thought, Arendt explains, allows us to engage in dialogue with an imagined other. Accordingly, the judgment that results from thought is grounded in the community rather than the particular conscience. Throughout *Responsibility and Judgment*, Arendt strives to maintain this distinction between solipsistic feeling and rigorous reflection. Ultimately, however, that distinction will become untenable – a fact she herself acknowledges in the contemporaneous essay “Civil Disobedience.” Below, I will first elaborate Arendt’s conception of judgment. I will then consider how the limitations of individual moral enlightenment provide a space for the re-emergence of institutional politics within her writing.

The “wind of thought may prevent catastrophes, at least for myself, in the rare moments when the chips are down,” Arendt writes in *Responsibility and Judgment* (189). Throughout the volume, the colloquialism “when the chips are down” indicates an historical moment when conventional moral and legal systems have become unreliable²⁷. Arendt makes clear in *Eichmann in Jerusalem*, that this is the context in which Eichmann committed his crimes. Because the Germans “acted under conditions in which every moral act was illegal and every legal act was a crime,” the law no longer functioned as an arbiter of right and wrong (*Responsibility* 41). More strikingly, conscience itself became

²⁷ I will focus here on passages from “Some Questions of Moral Philosophy” (1965-66) and from “Thinking and Moral Considerations” (1971).

distorted into a voice of sadism and inhumanity:

The trick used by Himmler...was very simple and probably very effective; it consisted in turning these instincts around, as it were, in directing them toward the self. So that instead of saying: What horrible things I did to people!, the murderers would be able to say: What horrible things I had to watch in the pursuance of my duties, how heavily the task weighed upon my shoulders! (*Eichmann* 106)²⁸

By transforming criminality into a “burden of responsibility,” Arendt argues, Nazism brought the pressures of the conscience into its own service (*Eichmann* 27). Eichmann “had a conscience,” she insists, but it “function[ed] the other way around” (*Eichmann* 95). In *Thinking in Dark Times*, Roger Berkowitz argues, that for Arendt, “the thinker is the one who stands as a beacon not to some particular ideology or policy, but to following one’s conscience” (8). Yet Arendt herself makes clear that conscience is not only an insufficient way of combatting unjust laws but also a potential mechanism for converting injustice into an unconscious impulse. Rather than relying on “the unequivocal voice of conscience,” she turns to Socratic thought and Kantian judgment, reading these as more rigorous forms of ethical response (*Eichmann* 148).

To think is to be in dialogue with oneself, Arendt argues. As such, thought raises the specter of internal disharmony: “If I disagree with other people, I can walk away; but I cannot walk away from myself...if I do wrong I am condemned to live together with a wrongdoer in an unbearable intimacy; I can never get rid of him” (*Responsibility* 90). This awareness of disharmony— which is not dependent on intellectual gifts or cultural training — is the root of ethical action for Arendt. “If [the subject] is a thinking being,

²⁸ Maxim’s guilt in *The Middle of the Journey* takes a similar form. His need to “seek company in his guilt” stems from a kind of self-pity (313). He is burdened with the responsibility of representing — as he writes of Melville’s Captain Vere — “Law in the world of Necessity” (181). Seeing himself as the voice of political realism, he laments the violent actions he must commit in its name, but does not actually repudiate them.

rooted in his thoughts and remembrances, and hence knowing that he has to live with himself,” she explains, “there will be limits to what he can permit himself to do, and these limits will not be imposed on him from the outside, but will be self-set” (101). Because such thought is only accessed through critical, internal dialogue, it is fundamentally opposed to any purportedly universal moral system. Indeed, the strict moralist will be the most vulnerable to corruption when ‘the chips are down,’ when all external ethical systems become unreliable (178). Arendt traces this argument back to Socrates, whose moral choices, she explains, were guided by the fear of “be[ing] out of tune with myself” (90). He was able to defy both the law and public opinion because he made thought the basis of his ethics. While recent critics have disputed Arendt’s claims that Eichmann was “incapable of thinking” by pointing to his purported intellectual abilities, it is important to read her charge in the context of this highly specific definition of ‘thought’ as internalized ethical dialogue (*Eichmann* 49).²⁹

This conception of thought underlies Arendt’s efforts to adapt Kantian philosophy for the postwar age.³⁰ Arendt argues that the events of the twentieth-century have made

²⁹ Bettina Stagneth’s book *Eichmann before Jerusalem* was debated in the *New York Times*, with particular focus on its consequences for Arendt’s legacy. In a September 2014 review essay, Jennifer Schuessler writes: “Listening to Eichmann in Jerusalem, Arendt saw an “inability to think.” Listening to Eichmann before Jerusalem, Ms. Stagneth sees a master manipulator skilled at turning reason, that weapon of the enemy, against itself.” Needless to say, for Arendt, “turning reason...against itself” would not properly qualify as thought anyway. Seyla Benhabib points this out in her rebuttal essay, (defensively titled, “Who’s on trial, Eichmann or Arendt?”): “...when Arendt uses the phrase “the inability to think” to characterize Eichmann’s reduction of conscience to a “voice of blood” and of the categorical imperative to the command of the Führer, she is taking as given the Kantian terminology, in which “to think” means to think for oneself and to think consistently, but also from the standpoint of everyone else.” While one could justifiably critique Arendt for leaving “thought” undefined in *Eichmann in Jerusalem*, it is clear to those familiar with her broader philosophical project that thinking, for her, is not a matter of quick wittedness or clever manipulation.

³⁰ This project is explored at length in Ronald Beiner and Jennifer Nedelsky’s anthology *Judgment, Imagination, and Politics: Themes from Kant and Arendt*. Beiner and Nedelsky

the distinction between right and wrong appear disturbingly subjective. “We find ourselves today in the same situation in which the eighteenth century found itself with respect to mere judgments of taste,” she explains, “Kant was outraged that the question of beauty should be decided arbitrarily...we find ourselves today in exactly the same position when it comes to discussions of moral issues” (*Responsibility* 139). She positions Kantian “common sense” as a useful alternative to conscience, arguing that it does not describe a self-evident “sense common to all of us, but...that sense which fits us into a community with others” (139). When we judge with common sense we make present to ourselves “all those who actually are absent” (140). As such, we can claim for our judgment “a certain general, though perhaps not universal, validity” (140). Kant’s formulation is suited to Arendt’s project because, when deployed in moral philosophy, it permits a conception of ethics that is neither majoritarian nor strictly personal: “I still speak in my own voice and I do not count noses in order to arrive at what I think is right. But my judgment is no longer subjective either, in the sense that I arrive at my conclusions by taking only myself into account” (141). Thinking permits us to be in dialogue with ourselves and with those who “are absent” (140). Through judgment, the potentially “unbearable intimacy” we experience in thought is projected onto the political community, forming the limits of moral action (90).

The lectures collected in *Responsibility and Judgment* clarify Arendt’s investment in the trial of Adolph Eichmann. The trial form is particularly useful, for her, because it eliminates the historical and sociological perspectives that might mitigate (as they do in

acknowledge that “the accuracy of Arendt’s interpretation of Kant can be debated” (xi). I will not take up that debate here as I am primarily interested in Arendt’s own thinking on the subject.

Trilling's novel) our condemnation of the individual criminal. Whether the German people as a whole are complicit in Nazism, or whether there is an "Eichmann in every one of us," has no bearing on Eichmann's specific guilt, Arendt insists (*Eichmann* 286)³¹. His astounding moral failures should be more clearly perceived precisely *because* these explanatory frameworks are made irrelevant by a strictly legal conception of causality. Yet Arendt is disappointed both by the trial and by the hostile reception of her book. She treats each as symptomatic of "the reluctance evident everywhere to make judgments in terms of individual moral responsibility" (*Eichmann* 297). She accuses Israeli Attorney General, Gideon Hausner, of sacrificing the administration of justice to a polemical display; in condemning totalitarianism and anti-Semitism writ large, he made it impossible to assess the individual responsibility of those who supported such ideologies (18-20). What this approach "permits us to judge and even to condemn are trends, or whole groups of people...something so general that distinctions can no longer be made, names no longer be named" (296). The trial should, instead, specify the exact moral failures committed by those acting under a criminal regime. In condemning the regime in its totality, the court misses its opportunity to clarify the nature of moral action under conditions of pervasive criminality.

Arendt and Trilling each read the post-war period as a cultural moment in which

³¹Arendt argues that the German nation does bear a collective, political responsibility for the Holocaust, but she sharply distinguishes this from legal and moral *guilt*. In "Collective Responsibility" (from *Responsibility and Judgment*), she writes: "Every government assumes responsibility for the deeds and misdeeds of its predecessors and every nation for the deeds and misdeeds of the past...[we say], all this was done in my name to the extent that I am a member of this body politic. In this sense, we are always held responsible for the sins of our fathers as we reap the rewards of their merits; *but we are of course not guilty of their misdeeds*, either morally or legally, nor we can ascribe their deeds to our own merits" (italics added, 150).

moral judgment is both increasingly vulnerable and increasingly necessary. The rise of Hart's legal positivism accompanies a broader skepticism about the moral status of law, making liberal democracy contingent on the subject's ability to make ethical judgments without recourse to fixed external rules. In Trilling's novel, this new critical consciousness is modeled by John Laskell, whose willingness to reside in tragic experience allows him to approach the problem of moral responsibility without reverting to his friends' ideological generalizations. Trilling clearly attributes a privileged status to Laskell's insights, and yet, they remain legible only through the reader's intimate experience of his particular consciousness. Laskell judgment, aligned with the 'literary idea,' is, practically by definition, incapable of exact or rigorous presentation.

Arendtian judgment relies on a similarly mysterious, invisible process: the thinking subject engages in dialogue with herself, and by extension, with the absent community. Yet, unlike Trilling's version, Arendtian thought *does* aspire to institutional articulation. Arendt's own judgment of Eichmann at the close of her trial report projects the Socratic rhetoric of "unbearable intimacy" on to the larger political community: "And just as you supported and carried out a policy of not wanting to share the earth with the Jewish people and the people of a number of other nations...we find that no one, that is, no member of the human race, can be expected to want to share the earth with you. This is the reason, and the only reason, you must hang" (279). In these powerful final sentences, it is critical thought – not external or legal rules – that establishes the limits of what the human community can bear. Like Trilling, Arendt turns to individual ethical reflection as a possible salvation of the liberal consciousness. But while Trilling's moral judgment expresses itself through the subtleties and vagaries of the political novel,

Arendt's culminates in a stark, capital imperative: "you must hang."

Both *Responsibility and Judgment* and *Eichmann in Jerusalem*, as we can now see, are dedicated to defending and elaborating moral perception. Yet Arendt's contemporaneous essay "Civil Disobedience," dismisses many of the assumptions underpinning the works considered thus far. Rather than distinguishing between the rigor of judgment and the self-evidence of conscience, that essay treats the two terms as synonymous. It also critiques the very same statements from Socrates that Arendt elsewhere applauds:

The counsels of conscience are not only unpolitical; they are always expressed in purely subjective statements. When Socrates stated that "it is better to suffer wrong than to do wrong," he clearly meant that it was better *for him*, just as it was better for him "to be in disagreement with multitudes than, being one, to be in disagreement with [himself]." Politically, on the contrary, what counts is that a wrong has been done ...[T]he rules of conscience hinge on interest in the self. They say: Beware of doing something that you will not be able to live with... The political and legal trouble with such justifications is twofold. First, it cannot be generalized; in order to keep its validity, it must remain subjective. What I cannot live with may not bother another man's conscience... The second... trouble is that conscience, if it is defined in secular terms, presupposes... that man possesses the innate faculty of telling right from wrong... (62-4)

These passages do not *exactly* repudiate moral judgment, but they make clear that it is a poor substitute for political or legal action. The feeling of "unbearable intimacy" she discussed in *Responsibility and Judgment*, is here distinguished from *objective* political wrongdoing. "What counts" is no longer the subject's feeling of internal disharmony but the fact that "a wrong has been done." Arendt goes on to argue that civil disobedience must be grounded, not in the individual conscience, but in the collective action of "organized minorities" (98). Disobedience, she argues, is justified when it expresses the political will of a voluntary association; it cannot be justified through individual

reflection alone.

Why does Arendt offer two such different approaches to the problem of unjust law? One possible answer is that while *Responsibility and Judgment* functions largely as an answer to fascism, “Civil Disobedience” focuses on the actions of American citizens protesting racial discrimination and the Vietnam War. While her essay defends American civil disobedients, Arendt may see their protests as requiring a higher threshold of justification, compared to the resistance of those living under Nazism. Yet I think the tension goes deeper than historical framing. Even in *Responsibility and Judgment*, Arendt worries: “one thing is undeniable, and that is the intensely personal and, if you will, even subjective quality of all the criteria that were proposed to you here. This is probably the most objectionable aspect of my considerations...” (110). In her own defense, she seems to imply that Kantian judgment will restore an objective dimension to the process of internal dialogue (“I shall come back to [this] in the next lecture when I discuss the nature of judgment” (110)). Nevertheless, even the imagined presence of a community of thinkers is surely less reliable than the actual presence of the political collective described in “Civil Disobedience.” Indeed, it remains difficult to understand how the moral judgment Arendt advocates in her lectures could ever serve, alone, as a persuasive source of legitimacy for either political actions or legal decisions. An inevitable tension thus arises within Arendt’s theory of moral judgment: while it remains an invaluable ethical practice, it falls short as a substitute for political justification. For this reason, it is not exactly clear what kinds of actions moral judgment *could* authorize and in what contexts.

As we have seen, this same tension lies at the heart of Trilling’s novel. Laskell’s judgment is so subtle and particular that it cannot transcend his own consciousness in

order to become a basis for collective action or critique. Both Trilling and Arendt are aware of this difficulty – in fact, I would argue that their work is fundamentally structured by an awareness of the limitations of individual, moral judgment. In my next section, I will describe the ways in which Trilling’s novel registers the tension between law and conscience. Through discussions of Melville’s *Billy Budd* and of the sonnet form, Trilling undercuts Laskell’s commitment to infinitely nuanced moral perception. These passages also echo Arendt’s discussions of law and justice in *The Origins of Totalitarianism* and in *On Revolution*. Ultimately, I will argue that Arendt and Trilling each offer a tragic view of law as necessarily, and properly, estranged from conscience. Together, they thus pose a formidable challenge for the future of democratic politics: Could law and morality ever be reconciled? Under what conditions could conscience authorize legal and political action? Yet in recognizing the fundamental complexity of these questions, they also provide the foundations for any meaningful remedy.

III. “The Anarchist and Impossibilist can Beguile Me.”

In a 1946 letter, Trilling confesses: “the attitude of the Anarchist and the Impossibilist can beguile me: I mean I can like people of the stripe very easily.”³² This line illuminates the affective experience of his ambivalent relationship to judgment. Lured by the infinite complexity of ethical life, he also admonishes himself for succumbing to political naiveté. “I expect a quantum of injustice in any imperium, I expect contradictions as the price of order,” he later adds. The letter expresses a commitment to ethically imperfect

³² The letter is stored with the Lionel Trilling Papers, at the Columbia University Library. It is addressed to ‘Eric,’ and presumably responds to Eric’s own critique of anarchism in a previous letter received by Trilling.

institutions, and, simultaneously, a residual attachment to the “impossible” pursuit of perfect justice, a project necessarily resistant to the inherent contradictions of state power. Laskell’s rejection of legal discourse in favor of an ineffable moral perception makes him akin to the “Impossibilist” described here. But *The Middle of the Journey* also invokes the limitations imposed by any formal political project. In two key debates with Nancy, Laskell expresses the possible value of legal and aesthetic constraint, categories that are juxtaposed with the radical particularity of conscience.

While Trilling’s invocation of the “injustice in any imperium” risks sliding into a conservative resignation, it also helpfully cautions against the possible solipsism of making individual enlightenment a substitute for political action. Below, I will consider Trilling and Arendt’s diagnosis of the inevitable “discrepancy” between legal and moral judgment, focusing on their strikingly similar readings of *Billy Budd*. In my conclusion, I will consider the political and literary-historical implications of Trilling’s fundamentally tragic view of law. In their 2005 essay, “Do You Believe in Magic?,” Sean McCann and Michael Szalay describe Trilling as an anti-institutional, anti-statist thinker. My reading of *The Middle of the Journey*, however, suggests that his relationship to institutions is more complex. In fact, by staging the limits of moral judgment, Trilling offers a critique of conscience akin to McCann and Szalay’s own. Ultimately, I will suggest that the novel offers a politically illuminating (even if pessimistic) anatomy of law and morals.

The Middle of the Journey addresses the existence of legal institutions primarily through a literary-critical version of the Shakespearian play-within-a-play. Maxim writes an essay on *Billy Budd* for the fictional literary magazine “The New Era.” The article is presented to the reader through Laskell’s own interpretation of Maxim’s writing – an

interpretation that it is then disputed by Arthur and Nancy Croom. The reader is thus invited to understand the novel's characters through their own readings of Maxim's reading of Melville (a device that could only be imagined by a literary critic). *Billy Budd* is, of course, well suited to Trilling's purpose. Like Duck Caldwell in *The Middle of the Journey*, Billy kills the sinister Master-at-Arms, John Claggart involuntarily, provoking an extended debate about the nature of law and responsibility.³³ Yet in contrast to his rather didactic exploration of responsibility later in the novel, Laskell's own relation to Melville's story remains somewhat obscured. "He did not defend his own reading of it," Trilling explains (186). How, then, should the liberal subject judge the case of the Handsome Sailor?

Maxim's essay is a vociferous defense of Captain Vere, the embodiment of "Law in the world of Necessity" (185). He argues that to exonerate Billy would be to abandon the reality of institutional political power: "The belief of the modern progressive is that Spirit should find its complete expression at once... To such minds, Captain Vere is culpable because he does not acquit Billy in defiance of all Law" (182). Given their later judgments of Duck Caldwell, we might expect Nancy to take up the role of Billy's "progressive" advocate. Yet she also defends the execution:

If you think about it... you see that it is really quite applicable to the Moscow trials. Even if those men were subjectively innocent – I mean even if they had good motives for what they did, like Budd – I don't believe that's so, but even if it were so – they may have had to be executed for the sake of what [Maxim] calls Law in the world of Necessity. And you remember how they all concurred in their punishment and seemed almost to *want* it. Certainly, before they died they had a

³³ Billy Budd, a paragon of innocence, is falsely accused of plotting a mutiny. When he is confronted by his accuser, the sinister Claggart, and by the ship's Captain, Starry Vere, he involuntarily strikes Claggart, killing him. Vere sees Billy as the victim of a plot, but insists that Claggart's murder still requires death by hanging. "Private conscience," Vere argues, must bend to the dictates of imperial law (342).

proper appreciation of Law. They realized that the dictatorship of the proletariat represented Law. (184-5)

Trilling's point here is that conservative and Communist interpretations coincide because they share an implicit authoritarianism. Nancy has transformed 'spirit' into law, revolutionary idealism into reactionary constraint. Her hopeful progressivism is thus distorted into the mirror image of Maxim's dark political realism.

This resonance also illuminates Maxim and Nancy's opposed reactions to Duck's crime. In a 1994 essay on *Billy Budd*, Nancy Ruttenburg highlights the restricted view of causality advanced by Captain Vere. The court, Vere states, should "confine its attention to the blow's consequence, which consequence justly is to be deemed not otherwise than as the striker's deed" (Melville 339). Ruttenburg explains: "Instead of establishing liability through an account of motivation...[Vere] obliterates to the degree possible all reference to the actor's subjectivity" (90). This restriction reverses the vast historical causality Maxim and Nancy later advance, yet its effect is the same. They treat Billy's action – like Duck's – only as a social and cultural symptom. Nancy's repetitive use of the phrase "even if" ("Even if those men were subjectively innocent"; "even if they had good motives"; "even if it were so") makes clear that for her, as for Maxim, judgment is no longer contingent on the subjectivity of those in the dock. Like Vere, they find that "Budd's intent or non-intent is nothing to the purpose" (Melville 343).

Even Laskell finds himself a "little caught by Maxim's words" when he first reads the essay (183). Soon after, he is overwhelmed by a vague "intellectual nausea" (183). Why? An intriguing entry in one of Trilling's personal journals may illuminate this ambivalence. The entry doubles as an exposition on *Billy Budd* and as a complaint about

his students:

Spirit. The modern feeling that spirit should find its complete expression immediately in the world of necessity and that all that falls short of the full expression of spirit is repulsive. I see this often in gifted students of a particular kind who when they find that, say, a graduate school is not up to their standard and expectation, cannot endure staying and abandon their projects. They have, one might say, no irony – for irony, perhaps, is the awareness with acceptance of the breach between spirit and the world of necessity in situations etc. They insist that spirit be wholly embodied in institutions. If what I have just written were put to them, they would say, why of course, why not?...My student discussing Billy Budd, feel that there is really nothing to be said about the story. Vere is, to them, wholly culpable, Budd being good. Law does not express spirit – even kills it! They insist that this is the whole and final truth in the matter. They think that Vere is a not-exactly-bad man, but a stuffy one, and in objective result bad. They do not understand the tragic choice. They want the reign of spirit immediately. What they do not understand is that if spirit exists in its purity, so does evil in the form of Claggett and that Claggett makes Vere necessary as an intermediate force between him and Budd. Something extensive could be written about this. [sic]³⁴

It seems likely that this passage inspired the novel's discussion of Melville, or vice versa (The journal is dated 1946-48; *The Middle of the Journey* is published in 1947). In either case, it is striking that Maxim, a repressive, reactionary figure, offers an interpretation so close to Trilling's own. The passage also pushes against the assumption that Trilling was a starkly anti-institutional thinker. Here, his rejection of that ethos demonstrates a commitment to some form of legal – and not only moral – judgment.

Trilling's comments on *Billy Budd* come more than a decade after E.L. Watson's influential essay "Melville's Testament of Acceptance," and several years before Phil Withim's rebuttal, "*Billy Budd*: Testament of Resistance."³⁵ While Watson elevates Vere

³⁴ The journal is stored with the Lionel Trilling Papers, at the Columbia University Library. The entry is handwritten so some interpretation was required in order to transcribe it. Trilling appears to write the name Claggart as Claggett, so I have reproduced that here. I have also reproduced his underlining.

³⁵ As Nancy Ruttenburg explains in her essay, the 'acceptance' and 'resistance' schools, inspired by Watson and Withim, dominated *Billy Budd* scholarship for decades (see page 87). This rather

as “the man who obeys the law, and yet understands the truth of the spirit,” Withim insists that Melville’s novel is a scathing critique of Vere’s oppressive legalism (321). Writing in 1950, Withim treats *Billy Budd* as a prophetic warning against the dangers of immoral law: “In local context it suggests that it is wrong to submit to unjust law. Those in power, such as Vere, should do all they can to resist the evil inherent in any institution of government” (121). The historical and legal contexts I have expounded should make clear why Withim, not to mention Trilling’s students, would see resistance of unjust law as an urgent political imperative. Trilling himself refuses this critical reading, but also moves beyond Watson’s “acceptance” frame. In place of either acceptance or resistance, he emphasizes tragedy and irony. The choice between Vere and Billy, between law and conscience, is a “tragic” one; there is no reconciliation of law and spirit, only the difficult decision to sacrifice one or the other.

Trilling’s interpretation thus diverges from both Maxim’s and Nancy’s. Her Stalinist reading envisions the absolute coincidence of law and spirit in the dictatorship of the proletariat. Maxim, despite his professed Christianity, appears to revel in Billy’s allegorical crucifixion. Rather than mourning the death of spirit, he praises law for its alliance with grace: “Maxim went on to speak of tragedy and love, love and tragedy, tragedy depending on love, love depending on tragedy” (183). For Maxim, law is not, in fact, the enemy of spirit, but the instantiation of his own spiritual attachment to the doctrines of original sin and divine grace. Limitation is *itself* his political, spiritual, and moral ideal. It is for this reason that Laskell detects “an odor of corruption” in Maxim’s

Manichean approach to the novel is also critiqued in Barbara Johnson’s essay “Melville’s Fist: The Execution of ‘Billy Budd.’” (see pages 567-68).

otherwise compelling argument (183). Against his and Nancy's efforts at reconciliation, Trilling insists on the irresolvability of the problem: politics cannot, and should not, transcend the realm of limited, human institutions, but this very fact also represents a profound, insurmountable moral failure.

This tragic interpretation anticipates Arendt's reading of the novel in her 1963 book *On Revolution*.³⁶ *Billy Budd*, she argues, is a meditation on the "tragic and self-defeating enterprise the men of the French Revolution had embarked on almost without knowing it" (77). Their recourse to moral absolutes dooms their political project just as Billy's absolute goodness threatens the operation of law:

Virtue – which perhaps is less than goodness but still alone is capable "of embodiment in lasting institutions" – must prevail at the expense of the good man as well; absolute, natural innocence, because it can only act violently, is "at war with the peace of the world and the true welfare of mankind," so that virtue finally interferes not to prevent the crime of evil but to punish the violence of absolute innocence... The tragedy is that the law is made for men, and neither for angels nor for devils. Laws and all "lasting institutions" break down not only under the onslaught of elemental evil but under the impact of absolute innocence as well. (79)

Arendt distinguishes between idealism and 'virtue,' insisting that the latter is the only moral quality appropriate to the sphere of law. If we are accustomed to critiquing legal institutions for their distance from the urgency and nuance of conscience, then Arendt reimagines that distance as proper to law itself. This bears some affinity to Maxim's

³⁶ In *Writing the Republic*, Anthony Hutchison also compares Trilling's and Arendt's interpretations of *Billy Budd*. Yet because he reads Trilling's analysis only in the context of the earlier Moscow trials, he concludes that Vere is an essentially totalitarian figure for Trilling (90). Nancy's and Maxim's sympathies with Vere demonstrate the dangerous perversion of legal necessity under Nazism and Stalinism—a connection Hutchison believes Arendt misses (91). But if the law seems straight-forwardly oppressive in the context of the Moscow trials, it occupies a more much ambiguous place in the Nuremberg trials, which sought to legally condemn the abuse of legal authority.

conservatism, of course, but it also serves as a warning against the authority of individual conscience, whose utopic impulses threaten to become despotic when fully embodied in the political sphere. At its core, her defense of Vere is a defense of liberal, procedural politics, but with the caveat that this may always be “less than goodness.”

Arendt offers a more thorough explanation of this paradox in the final section of *The Origins of Totalitarianism*. There, she describes the totalitarian effort to ground concrete (or positive) law in absolute moral law, and contrasts this project with the morally limited, but democratically legitimate, character of liberal legal institutions:

It is the monstrous, yet seemingly unanswerable claim of totalitarian rule that, far from being “lawless,” it goes to the sources of authority from which positive laws received their ultimate legitimation, that far from being arbitrary it is more obedient to these suprahuman forces than any government ever was before, and that far from wielding its power in the interest of one man, it is quite prepared to sacrifice everybody’s vital immediate interests to the execution of what it assumes to be the law of History or the law of Nature. Its defiance of positive laws claims to be a higher form of legitimacy which, since it is inspired by the sources themselves, can do away with petty legality. Totalitarian lawfulness pretends to have found a way to establish the rule of justice on earth – something which the legality of positive law admittedly could never attain. The discrepancy between legality and justice could never be bridged because the standards of right and wrong into which positive law translates its own source of authority...are necessarily general and must be valid for a countless and unpredictable number of cases, so that each concrete individual case with its unrepeatable set of circumstances somehow escapes it. (461-2)

In this passage, Arendt concedes the moral imperfection of positive law but argues that the very source of its failing – abstract generality – also allows for its democratic legitimacy. It is precisely law’s inability to capture the nuances of the individual case that allows it to retain its relationship to democratic pluralism, to the diversity of cases, circumstances, and beliefs. By contrast, totalitarian law resembles Nancy’s condemnation of Billy Budd – it refuses to perceive the “discrepancy between legality and justice.”

Trilling describes a similar discrepancy in *The Liberal Imagination*. In a passage cited in virtually every essay on his work, he writes: “It is one of the tendencies of liberalism to simplify and...we shall fail in critical completeness if we do not take into account the value and necessity of its organizational impulse” (xx).³⁷ He also warns, however, that this bureaucratic project threatens to rob ideas of their “largeness and modulation and complexity” (xxi). For this reason, he insists that there will always be a “discrepancy” between liberal ideas and liberal institutions, between “the primal imagination of liberalism and its present, particular manifestations” (xxi). I think we can read this “discrepancy” as closely related both to Arendt’s discrepancy and to the “tragic choice” Trilling describes in his journal. Like Arendt, Trilling is interested in naming a necessary contradiction within the liberal-democratic project: subtle moral judgment is vital and yet remains incompatible with (similarly necessary) legal and institutional forms. As Amanda Anderson explains in *Bleak Liberalism*, this oft-quoted passage from Trilling’s preface describes “an odd gap...between political liberalism and liberal aesthetics” (13). Given Trilling’s profound engagement with literature and aesthetics, it no surprise that he would tend to favor one side of this “discrepancy” or “gap” over the other. But he is also well aware of the “value and necessity” of political liberalism’s “organizational impulse.” In *The Middle of the Journey*, this contradiction is expressed by the interplay between Laskell’s moral epiphany and the chastening parable of *Billy Budd*.

Yet although the novel often contrasts literary ideas and legal institutions, it does not rely on a strict binary between literature, on the one hand, and law, on the other.

³⁷ Adam Kirsch decries the over-citation of this particular passage in his book *Why Trilling Matters*: “He...is commonly reduced to a few famous phrases, most of which come from one book – *The Liberal Imagination* – and especially from that book’s preface” (38).

Instead, Trilling uses an argument between Laskell, Nancy, and Duck to argue that both literary form and institutional life are structured by constraint. When the three embark on a leisurely fishing trip, Laskell is mocked for his elaborate fly-fishing equipment. Compared to Duck's more rustic, masculine approach, his appears needlessly contrived. This mockery leads Laskell to an elaboration of self-imposed limitation. "It's a tendency that human life has...It makes requirements and sets limits to itself," he explains, "It's like making sonnets...You set the pattern, a difficult pattern, and the effect comes from conforming to it successfully. And when you conform to it successfully, you overcome it, and it serves your purpose" (203). Laskell's ostensible subject is sport and poetry, but the debate is quickly incorporated into the novel's overarching ideological conflict. Nancy is disgusted by his professorial approach, and even Laskell acknowledges that this is an "old, worn paradox" (203). But the exchange also illuminates their earlier discussion of Melville. Laskell thinks:

...it was not sonnets she was holding in such contempt, but the very idea of conforming. It was a little confusing, for he remembered at that moment her interpretation of Gifford Maxim's article and the relative leniency with which she had spoken about the Commissars who had confessed and, at the end, had cried "God bless Captain Vere!" And yet that confusion strangely enlightened him – that confusion in which Nancy both admired conformity and despised it. For he saw that Nancy's feeling was not about conforming or not conforming, not about freedom or submission. It was a feeling about human nature, a profound dissatisfaction with the way human beings had ever been, some leap of her imagination toward some way she hoped they would be. (203-4)

The question at the heart of *Billy Budd* is no longer freedom or submission, exoneration or punishment, but the potential perfectibility of social institutions and human life. Both Nancy and Maxim punish Billy because this allows them to eradicate the distance between law and spirit; the Commissars are free because the law to which they submit is

an expression of their own will. The sonnet also seeks to reconcile freedom and constraint, but it is important to note that it does so self-consciously. If Nancy's Hegelian-Marxist formulation makes conformity invisible, then literary form foregrounds it.³⁸ In this exchange, Laskell emphasizes the potential productivity and expressivity of constraint when it is negotiated openly and willfully – a gesture that only seems fully possible in the realm of the aesthetic.

While Melville's novel depicts the tragedy of law and conscience, the sonnet offers Trilling a more affirmative vision of limitation. Together, the two discussions serve as a kind of literary-historical counterpoint to the novel's more obvious political thesis. The accounts of constraint offered by *Billy Budd* and the sonnet form – one tragic, one aspirational – undermine Laskell's ineffable moral judgment. The political novel, Trilling ultimately suggests, is not only an expression of "largeness and modulation and complexity" (*Liberal* xxi) but also of limitation and alienation and stricture. The stark reality of institutional constraint and the potential productivity of literary limitation pull against Laskell's desire for infinitely nuanced, ineffable judgment. *The Middle of the Journey* thus stages a dialectical critique that encompasses Laskell's very attachment to dialectical critique: the inexpressible "idea in modulation" encounters the more inflexible forms that underlie both politics and literature (*Middle* 352). No longer a strict defense of moral judgment, the novel is transformed into a site for negotiating the irreconcilable

³⁸ Nancy's reading of *Billy Budd* has obvious Hegelian overtones. In *Hegel's Laws*, William E. Conklin explains that in Hegel's legal philosophy: "I am completely free when there is no objectivity that constrains my consciousness" (32); "Alienation is overcome if objectivity and the self-consciousness are reconciled as a unity" (55).

tension between law and conscience, freedom and constraint.

IV. Conclusion

The Nuremberg trial posed a serious challenge to the ethical authority of liberal legal institutions. If law had been wielded as an instrument of totalitarian oppression under the Third Reich, what intrinsic moral authority could Allied legal regimes claim for *themselves*? While the prosecutors purported to represent the rule of law, the system they condemned brought that very ideal into question. The effort to restore legal authority at the close of the war thus had an unintended effect: it pointed to the fallibility of law itself. Following this crisis, postwar liberals witnessed the ascendance, and infamy, of H.L.A. Hart's legal positivism. Hart's insistence that law and morals were grounded in distinct, often opposed, philosophical universes seemed intuitively true. Under Nazism, the law had clearly radically diverged from any acceptable standards of morality. Yet, to acknowledge this truth was to open an even more difficult set of political and ethical questions. If legal institutions had no necessary ethical authority, why obey them at all? Or, put more precisely: what moral calculations could postwar subjects perform to determine whether they should defy an existing law?

Hannah Arendt, as we have seen, responds to the spectacular immorality of Nazi law by offering a sustained elaboration of moral judgment. Yet this focus on the reflective individual seems to run against her well-known commitment to public, political action, evident elsewhere in her body of work. Trilling, meanwhile, provides a paragon of moral judgment in the character of John Laskell. Privileging a dialectical approach to individual responsibility, Laskell resists both Maxim's fatalism and Nancy's utopianism.

For Laskell, Maxim's defense of "the *status quo*, the accepted thing, the rule of force" makes him "the blackest of reactionaries" (183). Meanwhile, Nancy's desire to transcend "the way human beings had ever been" makes her dangerously idealistic (204). In critiquing both of them, Trilling hopes to avoid sacrificing law for conscience, or conscience for law; he seeks to preserve a non-idealistic approach to politics that is, at the same time, not a mere acceptance of the status quo. That approach, however, would also require that Laskell himself admit the limitations of his own nuanced moral perception. His judgment is subtle and insightful precisely *because* it is also incapable of rigorous political or institutional expression. Ultimately, Arendt and Trilling each come to insist on the inevitable "discrepancy" between law and conscience. Moral judgment, while absolutely vital, cannot, on its own, authorize political actions or legal decisions. Because these latter forms derive their legitimacy from general, democratic consent, they must always remain estranged from the vagaries of the particular conscience.

Certainly, there is nothing especially progressive about this final formulation; indeed, in describing the political sphere as post-lapsarian, Trilling and Arendt might lend credence to those who would abandon political transformation in favor of accommodation to the realities of institutional power. Yet I think Trilling's novel could as easily serve as a cautionary tale for those who would abandon formal politics in favor of a solipsistic commitment to the individual conscience. It is that latter tendency that Arendt decries in "Civil Disobedience": "...conscience is unpolitical. It is not primarily interested in the world where the wrong is committed or in the consequences that the wrong will have for the future course of the world" (60). This form of politics, Arendt argues, is invested in the purity of the subject's own ethical position, rather than in the

effects of her action. This critique of conscience is still relevant today, I would argue. Indeed, we can see it operative in an essay like Sean McCann and Michael Szalay's "Do you Believe in Magic?" (2005). There, McCann and Szalay argue that, following the New Left, post-war literature and literary criticism has privileged obscurantist forms of cultural experience over direct political engagement. There is a kind of "magical" thinking at work, they allege, in which literary critics imagine that a challenging aesthetic encounter is tantamount to political transformation. This tendency, the authors argue, is rooted in a skepticism about the state and the institution – collective forms that might serve as allies in the fight against neoliberal privatization. McCann and Szalay trace this thinking back to none other than Trilling, whose anti-Stalinist suspicion of state power served, they argue, as a precursor to the New Left's anti-statist tendencies (439).

While these elements are certainly present in Trilling's work, my reading of *The Middle of the Journey* suggests that Trilling was also wary of any excessive attachment to individual moral experience, particularly at the expense of formal politics. Ultimately, his novel suggests that we should avoid naturalizing the authority of *both* law *and* conscience. Post-war subjects must retain a critical, skeptical relationship to legal institutions, but they must also resist the urge to ground their political projects in conscience alone. We can thus read *The Middle of the Journey* as an early articulation of McCann and Szalay's more recent polemic. While Trilling is still fundamentally invested in the ethical subtleties associated with literary experience, he also foregrounds the limitations of this mode as a substitute for institutional action. On this account, Arendt and Trilling, far from resigning themselves to the fallenness of political life, call for more demanding forms of practice and critique. How could politics mediate between law and

morals without seeking to collapse the two? How could protesters, civil disobedients, writers, and critics legitimate their political decisions if not through either the external force of law or the naturalized authority of conscience? What forms of collective or critical justification could supplant their allegiance to these once formidable antitheses? If Arendt and Trilling are perhaps overly pessimistic in their account of law and morals, then this pessimism also establishes a set of vital, rigorous criteria for the forms of dissent that I will explore in my next several chapters.

CHAPTER TWO

TO RIDICULE OR REFUTE: LAW AND DISSENT IN *CATCH-22*

“Catch-22 says they have a right to do anything that we can’t stop them from doing.”
-Joseph Heller, *Catch-22* (407)

When Captain Yossarian finally decides to desert at the close of *Catch-22*, he is confronted with a vernacular version of the Kantian categorical imperative: “But Yossarian, suppose everyone felt that way?” Major Danby asks (446).³⁹ “Then I’d certainly be a damn fool to feel any other way, wouldn’t I?” Yossarian retorts (446). Refusing Danby’s invitation to justify his action on generalizable grounds, Yossarian insists on the radical solipsism of individual survival. Many readers have found this intransigency in the face of traditional liberal pieties refreshing; it is part of what makes Yossarian such a memorable character. Yet while Heller’s protagonist insists on placing his own life instincts above any philosophical abstraction, Heller is himself fundamentally engaged with a series of political questions rooted in the liberal tradition Yossarian so spectacularly rejects. Over the several hundred pages that preface his much-cited desertion, *Catch-22* offers a minute, almost obsessive, anatomy of the legal and political structures that postwar liberal thinkers would describe as totalitarian, and it traces the effects of those structures on public discourse, political action, and moral choice. In other words, the mode of inquiry Yossarian resists in the final pages is the very

³⁹ As Kant writes in the *Groundwork of the Metaphysic of Morals*: “Act only according to that maxim whereby you can at the same time will that it should become a universal law” (30).

one in which the *novel* is immersed.

Although set during WWII and published in 1961, *Catch-22* is often described as a Vietnam novel.⁴⁰ The novel's postmodern investments in conspiracy, paranoia, formal experimentation, and absurdist humor make it appear at home in the late sixties counterculture, while its politics seem compatible with the period's rebellious, anti-war mood. The concluding scene of desertion no doubt offered inspiration for Vietnam-era readers looking to elevate the moral status of draft-dodging and desertion. As Morris Dickstein observes in *Gates of Eden*, Heller's anti-war message seemed much less ethically ambiguous once it was transferred from WWII ("a 'just war' if there ever was one" (106)) to the intensely unpopular Vietnam War. It is in this later context that the novel became a revered "bibl[e] of protest" (Dickstein 106), "an etiquette book... that gave a whole generation... instructions in how to undermine the 'establishment'" (Pinsker 606).

Yet while Yossarian's desertion might have served the political purposes of the Vietnam era, the novel as a whole is profoundly enmeshed in an earlier mode of post-war anti-totalitarian discourse. This is an aspect that has gone almost entirely unnoticed in the

⁴⁰ In a 1968 review, Brian Way writes: "Vietnam consummates the absurd vision of *Catch-22* in ways which even Heller's imagination could hardly have devised" (270). The prescience of Heller's critique is also noted by more recent critics. Sanford Pinsker, cited above, argues that the novel provided an 'etiquette of protest' for Vietnam draft resisters (606). Stephen J. Whitfield notes that the novel "became a phenomenal popular success" only after "the military intervention in Vietnam gained momentum" (175). In his book on American literary satire, Steven Weisenburger connects the apolitical nature of the novel's final scene to its affinity with the later anti-war counter culture: "...Heller's fiction leaves one with an image of the survivor in his lifeboat, paddling toward a Sweden that is half-mythical. In retrospect this seems one crucial legacy of the Vietnam era. Instead of seeking political power and a resolution of seemingly hopeless violence, walk away from it all" (175). This tendency is so pervasive that Heller even opens his 1994 "sequel," *Closing Time*, with a corrective for his readers: "When people our age speak of the war it is not of Vietnam but of the one that broke out more than half a century ago and swept in almost all the world" (9).

criticism, despite its centrality to the novel's political critique and formal structure.⁴¹

Indeed, it is only by attending to Heller's anti-totalitarian investments that we can make sense of the novel's central structuring element: the catch itself. Yossarian spends much of the novel railing against the catch, hoping to liberate himself and his fellow soldiers from its dictates. It is only after he learns that the catch "does not exist" as a stable legal object that he abandons that more public, political project in favor of his solipsistic investment in individual survival. Why does the non-existence of the catch doom Yossarian's efforts at collective protest?

If we read the novel in the context of postwar anti-totalitarian critique, we can see that the catch – a law that is both omnipotent and illegible – operates as a precise metaphor for totalitarian law, as it was understood by critics like Hannah Arendt and Lon Fuller. For Arendt, Nazism and Stalinism were characterized by a kind of lawless legalism. They purported to follow an ultimate or supreme law (of Nature or History) while simultaneously refusing to formulate that law in any clear, consistent, or coherent fashion. Under such a regime, the law becomes infinitely mutable. It is minutely attuned to constant changes in power and priority, and is, in this sense, indistinguishable from unpredictable, lawless violence. As one stranger tells Yossarian in *Catch-22*, the law

⁴¹ In a 2011 article in *Comparative American Studies*, Alexander Mantzaris analyses the place of totalitarianism in *Catch-22*. He critiques other readers for focusing on "(often rather platitudinous) concepts [like] the inhumanity and insanity of war, irrational military bureaucracy, the absurdity of the human condition, and so on" (217-18). Instead, he argues, we should focus on the more politically specific discourse of anti-totalitarianism. I agree. Unfortunately, Mantzaris' reading is itself rather superficial. He discusses the "magical," nightmarish, totalitarian "atmosphere" of *Catch-22* (220). This atmosphere, he argues, is produced through repetition, predestination, surrealistic language etc. But Mantzaris does not analyse the actual political and legal *structure* that Arendt, Fuller, and Heller attribute to totalitarianism. That is what I will be exploring here.

“says they have a right to do anything we can’t stop them from doing” (407). For Arendt and for Fuller, this illegibility and mutability have dire consequences for political speech and for democratic contestation. The absence of a stable law to frame the terms of public debate disables critique, dissent, and even communication. Yossarian makes a similar observation; the non-existence of the catch means that there is “no object or text to ridicule or refute, to accuse, criticize, attack, amend, hate, revile, spit at, rip to shreds, trample upon, or burn up” (409). In other words, there is no target, and thus no reliable ground, for the protests he has mounted throughout the text.

The climactic revelation that catch-22 does not exist sets the stage for the novel’s political denouement. Without any means of critique or dissent Yossarian is left to choose either total social conformity (returning to the US as an ideological puppet of the military) or a radical rejection of the novel’s social world (the *deus ex machina* of desertion). Ultimately he chooses desertion, a gesture that Heller casts as heroic and that many Vietnam-era readers would find inspiring. Yet I will suggest that the triumphant tone of the conclusion is at odds with the novel as a whole, which focuses on the ways in which catch-22 disables *any* form of political solidarity, let alone political heroism. Rather than emphasizing Yossarian’s final decision, then, I will analyze the elaborate political structures that lead him to such a Manichean choice - structures encapsulated by the logic of the catch.

By making the catch itself central to our reading of *Catch-22*, we can also reappraise its formal and stylistic idiosyncrasies. The novel is everywhere marked by a pervasive sense of irrationality: the hopelessly jumbled chronology, the constant profusion of minor characters, the kafkaesque quests through institutional quagmires, the

perpetual misapprehension of language – as though every scrap of dialogue were being filtered through a vast game of telephone. Although its individual satiric vignettes are often capable of standing on their own, the novel as a whole is difficult to follow or even to find a foothold in. This feeling of disorientation is typically understood as a strategy for representing the absurdity of war, but I think we can offer a more precise (and less platitudinous) interpretation by noting how each of these features radiate out from the absence at the heart of the novel's political and legal structure. The novel's own irrationality expresses the disorientation of living in a world governed by a non-existent law. Moving between the negative literary modes of satire and dystopia, Heller envisions a landscape pervaded by political violence but lacking in any meaningful political order. While many of the early chapters take a lighter approach to anti-totalitarian critique, satirizing corrupt elements of American culture, the concluding chapters (particularly "The Eternal City") construct a dark, dystopic political terrain. Of course, Yossarian is also a product of this negatively-envisioned novelistic world. He is epistemologically privileged in that he (eventually) understands the nature of the novel's political order, but he cannot meaningfully resist or transcend it; he can only, finally, exit it.

In my last chapter, I argued that debates over the moral status of law exposed an urgent set of tensions at the core of postwar liberal democracy – a political field too often defined under the simplifying rubric of anti-Communist 'consensus.' I suggested that by attending to those debates we would gain a more complex perspective on *The Middle of the Journey* – a novel whose relationship to liberal politics might otherwise seem self-evident. The same is true of *Catch-22*. While the novel's absurdist, irreverent, postmodern style might make it seem alien to liberal-democratic political philosophy,

Heller borrows many of his concerns from postwar critics like Arendt and Fuller, who sought to make the rule of law consistent with democratic contestation. In this way, *Catch-22* stages an apparent disjunction between the liberal rule of law, collective politics, and individual morality. Neither Fuller nor Arendt succeed in fully reconciling that troubling disjunction, I will argue; and neither does *Catch-22*. Yet the novel, like the legal-philosophical discourse it takes up, is clear that the stakes of that reconciliation are high: only a legal order responsive to conscience and contestation could keep creeping totalitarianism at bay.

I. Law without Law

My last chapter considered the subject's moral and existential relationship to legal authority. Both Trilling and Arendt were interested in recovering the forms of individual perception and judgment that would be necessary to recognize and resist a system of unjust law like the one that existed under the Third Reich. Heller's novel is less interested in the problem of individual moral judgment. The bureaucratic system in which Yossarian is immersed leaves him with little to no individual agency, and, in the end, he is left only with the most minimal choice between total co-optation, grave danger, and a gamble at survival. Instead, *Catch-22* works to anatomize the institutional structure of unjust authority. To understand Heller's project, then, we need to shift to a different mode of postwar anti-totalitarian critique than the one explored in my first chapter.

As we have seen, H.L.A. Hart's observation that some legally valid laws are "too evil to be obeyed" prompted much anxiety about how just laws were to be differentiated

from unjust ones (620).⁴² Yet this very premise is rejected by Hart's primary antagonist, Lon Fuller, for whom it is clear that Nazi authority – with its flagrant abuse of liberal legal principles, from due process to non-retroactivity – did not even merit the name of law. Viewing legal power as an *inherently* moral enterprise, Fuller is not interested in discriminating between just law and unjust law, but rather in generating institutional and structural criteria that observers could use to distinguish between legal or nonlegal uses of political power. Perhaps unsurprisingly, the criteria he settles on map rather neatly onto the postwar period's operative assumptions about the differences between liberal-democratic and totalitarian authority. They also share much in common with the view Arendt articulates in her influential work, *The Origins of Totalitarianism*. Taken together, her work and Fuller's define totalitarian authority in the post-war period.⁴³ The structural criteria they outline are thus vital to understanding the critique advanced in *Catch-22*

⁴² Notably, Hart himself did not seem to partake in that anxiety. He was simply interested in (cooly and dispassionately) arguing that there was no necessary correlation between a rule's legal validity and its justice or morality.

⁴³ Of course, "totalitarianism" is itself a vexed term. Radical thinkers like Slavoj Žižek have critiqued Arendt for her conflation of Nazism and Stalinism (see: *Did Somebody say Totalitarianism?*). The very concept of totalitarianism, the argument goes, only serves to enshrine the inevitability of liberal democracy by eliding the alternatives that exist to the right and to the left. Certainly, the equation of Stalinism and Nazism is ideologically convenient for anti-Communists. Moreover, it seems likely that Arendt's historiographical claims *would* be influenced by her desire to emphasize the similarities, rather than the differences, between the USSR and the Third Reich. Nevertheless, it also seems clear to me that some such similarities did in fact exist. More importantly, it is obviously true that anti-totalitarian discourse significantly shaped the politics and culture of the post-war period, regardless of that discourse's descriptive accuracy. As Žižek himself implies, the term functioned for critics like Fuller and Arendt as a negative-alternative that helped them to define their own visions of just law and legitimate power. I am interested in reading Arendt's, Fuller's, and Heller's anti-totalitarian critique to see what *positive* vision of law and democracy underlies it. While I will ultimately endorse some version of their political philosophies, I do not see that endorsement as contingent on the historiographical accuracy of Arendt's reading of Stalinism. Rather, her work helps us to imagine the consequences of a form of power (either historical or hypothetical) that would obscure the content of the laws and the ground of their authority.

despite the near total absence of this discourse from the scholarship on the novel.

This section will outline Fuller's and Arendt's conceptions of totalitarian power, which, as we will later see, resonate sharply with Heller's dystopic world of illegible, mutable, and unpredictable authority. I will also consider the liberal-democratic alternatives envisioned by both Fuller and Arendt. Fuller focuses on the objective ideal of the well-crafted law, while Arendt emphasizes the need for popular contestation and revision. Where he sees the predictability and stability of power as central to its legitimacy, she offers a democratic vision of a legal order perpetually open to its own critique and resistance, most notably through the practice of civil disobedience. Nevertheless, even Arendt remains uncertain of how exactly her vision could be realized - how *exactly* legal authority could be made consistent with its own resistance. As we will see, this is the same dilemma that Heller's fictional critique ultimately finds irresolvable.

H.L.A. Hart and Lon Fuller's much-cited disagreement over Nazism is rooted in a much deeper methodological difference. While Fuller's legal philosophy draws on moral and procedural principles, Hart's depends on a minimal set of social facts. A legal system, Hart argues, exists whenever both "primary" and "secondary" rules are present (*Concept* 94-95). While primary rules speak directly to the citizen ("thou shalt not kill"), secondary rules specify the structure of legal authority (bills are passed in the legislature, the President may veto them), thus allowing citizens to recognize which primary rules are legally binding and which are not. Wherever secondary rules are operative, a legal system exists, regardless of its substantive morality (94-95). Fuller critiques this sociological

approach in his 1964 book, *The Morality of Law*.⁴⁴ Law is not a material datum but a “purposeful enterprise,” Fuller insists (145); we should study not “what it is and does,” but “what it is trying to do or become” (145). Unlike Hart, who focuses on the structure of legal power, Fuller emphasizes the fundamental principles he believes underlie the rule of law – principles of fairness, generality, and consistency. These values may not be fully achievable, he concedes, but they mark the horizon towards which human communities must struggle. Given this more affirmative definition, it is unsurprising that Fuller refuses to grant Nazi authority the name of law. Its disregard for fair and consistent procedure makes it unworthy of his particular brand of legal analysis.

Fuller describes his approach as a subset of natural law theory: he aims to judge existing, positive law by reference to an aspirational and immutable standard. Crucially however, he does not locate this standard in the transcendent space of religious or moral authority. Instead, he reads the ethical principles of fairness and generality as emerging from the very form of legal governance:

Do the principles expounded in my second chapter represent some variety of natural law? The answer is an emphatic, though qualified, yes. What I have tried to do is to discern and articulate the natural laws of a particular kind of human undertaking, which I have described as “the enterprise of subjecting human conduct to the governance of rules”... They are not “higher” laws; if any metaphor of elevation is appropriate they should be called “lower” laws. They are like the natural laws of carpentry, or at least those laws respected by a carpenter who wants the house he builds to remain standing and serve the purpose of those who live in it. (96)

In an extended allegory, Fuller imagines a King who hopes to govern by law but ignores all principles of procedural justice (33-38). First, King Rex decides each case himself on

⁴⁴ Although *The Morality of Law* appears after the publication of *Catch-22*, Fuller was already a prominent legal philosopher in the 1950s. His formalist and proceduralist critique certainly shaped legal discourse at the time of the novel’s writing.

an *ad hoc* basis. Next, he writes a law but keeps it secret, then, offers to explain it only *after* a crime has been committed. When his citizens reject these efforts, he issues another series of legal codes. These are opaque or self-contradictory. They offer prescriptions that cannot possibly be followed, decrees that change daily, and judgments with no discernible relation to the law they claim to interpret. Rex's misadventures represent, for Fuller, "Eight Ways to Fail to Make a Law" (33). These procedural perversions are not only unjust to the citizenry but also make governance impossible. Confronted by "a series of sporadic and patternless exercises of state power," the citizen cannot be free *and* the sovereign cannot hope to orient the actions of his subjects (110). "Lawless terror" might produce a "semblance of 'public order,'" Fuller concedes, but it cannot produce rules properly understood (107). In this way, Fuller establishes an "internal morality of law" – it just so happens, he suggests, that the very procedures that make law effective, also make it fair. The 'craftsman' who can produce a public, consistent, general, comprehensible, law, has assured both the success of his government and a minimum of procedural justice. The sovereign's actions thus accord with the morality of natural law, but only because they also accord with the internal requirements of his endeavor.

Hart critiques this theory in *The Concept of Law*. It may be true, he concedes, that "a minimum of justice is necessarily realized whenever human behavior is controlled by general rules publicly announced and judicially applied" (206), but that minimal, procedural justice is also, "compatible with very great iniquity" (207). While we might prefer these to patternless violence, it is easy to imagine deeply unjust laws that would

meet each of Fuller's procedural criteria.⁴⁵ Fuller would likely respond to this critique by arguing that, while substantive and procedural justice often part ways, it is only a commitment to the rule of law that permits us to make informed critiques of legal authority. "Acting by known rule is a precondition for any meaningful appraisal of the justice of law," he writes (158). Because his laws are known by the citizenry, the good lawmaker is vulnerable to scrutiny and critique in a way that King Rex (with his secret and opaque legal codes) might never be.

Indeed, Fuller's interest in the legibility of the law might illuminate a very curious moment in his book. Reflecting on whether there is any one natural moral principle underlying his legal philosophy, he decides on this command: "Open up, maintain, and preserve the integrity of the channels of communication by which men convey to one another what they perceive, feel, and desire" (186). Where others might place liberty or equality or righteousness, Fuller places communication. Yet it is not exactly clear how we should understand the political import of that priority. At moments, Fuller seems primarily concerned with the "channels of communication" through which sovereigns issue commands to their subjects. When these channels are clear, he suggests, subjects are at least protected from unpredictable violence, and so, can begin to make reasonably informed choices about their speech, action, and movement. Yet his claim that "acting by known rule is a precondition for any meaningful appraisal of the justice of law," also suggests some connection between the clarity of communication and the possibility of

⁴⁵ Segregation and miscegenation laws might be made consistent with his theory (a very relevant concern in 1964). Mandatory minimums, which eliminate the unpredictable discretion of the judge but nevertheless result in harsh racial inequities, are not only consistent with, but expressive of, Fullerian principles.

democratic dissent (158). Unfortunately, however, he spends very little time developing such a connection. Primarily interested in law-making as a practice of sovereign design, he does not explore how that design might be revised, challenged, or even overturned by the broader democratic populace. He thus fails to take up the most promising political implication of his commitments to communication and legibility. For that, we should turn to Hannah Arendt.

In *The Origins of Totalitarianism*, Arendt describes Nazi authority, as at once lawful and lawless.⁴⁶ Unlike petty tyranny, which would express only the whims of the sovereign, totalitarian government claims to operate in the service of “laws”. Yet it vests authority not in legible *positive* laws (the kind Fuller would want) but in the metaphysical laws of History or Nature, which themselves exceed any specific or stable formulation:

Instead of saying that totalitarian government is unprecedented, we could also say that it has exploded the very alternative on which all definitions of the essence of governments have been based in political philosophy, that is the alternative between lawful and lawless government, between arbitrary and legitimate power. That lawful government and legitimate power, on one side, lawlessness and arbitrary power on the other, belonged together and were inseparable has never been questioned. Yet, totalitarian rule confronts us with a totally different kind of government. It defies, it is true, all positive laws, even to the extreme of defying those which it has itself established... But it operates neither without guidance or law nor is it arbitrary, for its claims to obey strictly and unequivocally those laws of Nature or of History from which all positive laws always have been supposed to spring. (461)

Totalitarian law turns from the “petty legality” of imperfect institutions, to the sources of “ultimate legitimation” (462). Yet this form of legalism produces the same kinds of procedural distortions Fuller details in *The Morality of Law*: opacity, illegibility,

⁴⁶ The most crucial passages for my interpretation (those cited from pages 461 and 465) are both part of a concluding section appended to the second edition, published in 1958. These passages seem to expand on and clarify a view of law that was only implicitly expressed in the original 1951 edition (as in the cited passages from pages 244 and 245).

inconsistency, and unpredictability. For Arendt, the consequence of these distortions is not imperfect control (far from it) but the impossibility of public critique. Her reading of totalitarian lawlessness thus leads to a political philosophy predicated on the interdependence of law and dissent.

Arendt begins her analysis of totalitarian law in the era of continental imperialism. While overseas colonialism provided a “geographical distance” between illegal colonial administrations and the ostensibly lawful governance of Western nation-states, continental imperialism required an “open disregard for laws and legal institutions,” and an embrace of the bureaucratic decree (243). The decree, Arendt explains, is defined only by the moment of its application, and so escapes the generalization necessary for the rule of law:

In governments by bureaucracy decrees appear in their naked purity as though they were no longer issued by powerful men, but were the incarnation of power itself and the administrator only its accidental agent... Since the people it dominates never really know why something is happening and a rational interpretation of laws does not exist, there remains only one thing that counts, the brutal naked event itself. (245)

Bureaucracy as a form of government eliminates all legible political structures: neither the hierarchical relationship between the administrator and his subject, nor the “general principles” behind his action survive the moment of the decree’s applicability. The “naked purity” of power is perfected in the totalitarian form, where law is made synonymous with the will of the Fuhrer which is itself assumed to coincide with the will of the German people (405). Because the will is in constant movement, it cannot be stabilized into consistent laws, orders, or hierarchies (even those Hitler himself might

erect). The structure of power and the content of laws is for this reason, unknowable.⁴⁷ For Arendt, the central problem with totalitarian law is that it can neither be read nor interpreted – there are no “general principles” underlying the decree which the subject might use to orient her actions or to ground her protest (244).

Both Arendt and Fuller offer a defense of liberal-democratic legal institutions rooted in a critique of what they describe as totalitarian law. For Fuller, the ultimate aim of these institutions is the production of a well-crafted legal order. He hopes to identify the criteria a judge or legislator might draw on in designing objectively ‘good’ (ie. clear, legible, consistent, non-retroactive) laws. Arendt, by contrast, does not treat good law as an end in itself. Instead, she imagines it as a structure that would facilitate the perpetual process of democratic transformation.

In *The Human Condition*, Arendt identifies two central forces shaping political communities: natality – which allows for change and contestation between generations – and worldliness – the endurance of public objects across generations, ensuring continuity and commonality.⁴⁸ Her defense of law at the close of *Origins* clearly relies on this schema, aligning law with worldliness and democratic critique with natality:

Positive laws in constitutional government are designed to erect boundaries and

⁴⁷ “The inhabitant of [the] Third Reich,” Arendt explains “lived under the simultaneous and often conflicting authorities of competing powers...and was never explicitly told whose authority he was supposed to place above all others” (399). Meanwhile, the law itself often remained secret, since “if it is assumed that the valid law is identical with the ethics common to all and springing from their consciences...there is indeed no further necessity for public decrees” (394).

⁴⁸ “The things of the world,” Arendt explains, “have the function of stabilizing human life, and their objectivity lies in the fact that...men, their ever-changing nature notwithstanding, can retrieve their sameness, that is, their identity, by being related to the same chair and the same table” (137). The dialectical counterpart of worldliness is natality, which assures the continual emergence of the radically new: “the new beginning inherent in birth can make itself felt in the world only because the newcomer possesses the capacity of beginning something anew, that is, of acting” (9).

establish channels of communication between men whose community is continually endangered by the new men born into it. With each new birth, a new beginning is born into the world, a new world has potentially come into being. The stability of the laws corresponds to the constant motion of all human affairs, a motion which can never end as long as men are born and die. The laws hedge in each new beginning and at the same time assure its freedom of movement, the potentiality of something entirely new and unpredictable; the boundaries of positive laws are for the political existence of man what memory is for his historical existence: they guarantee the pre-existence of a common world, the reality of some continuity which transcends the individual life span of each generation, absorbs all new origins and is nourished by them... (465)

Here, it is law that allows for the existence of politics: it demarcates the “common world” that will serve as the space of contestation and establishes the “channels of communication” (a phrase Arendt shares with Fuller) necessary for debate and critique. It acts as a countervailing force against change but it also makes change possible. The problem with totalitarian law, then, is that it destroys law as a common, legible, contestable object.

Of course, Arendt is not naïve about the potential dangers of even well-intentioned legal structures. In *The Origins of Totalitarianism*, she also offers a trenchant critique of the human rights discourse inaugurated by the French Revolution. With the advent of the *Déclaration des Droits de l’Homme et du Citoyen*, she explains, “the same essential rights were at once claimed as the inalienable heritage of all human beings *and* as the specific heritage of specific nations” (230). Because the legal protections promised to all subjects were in fact restricted to French citizens, the very concept of ‘Rights’ produced a corresponding class of stateless, rightless peoples. It is this fundamental contradiction that the Nazis mobilized in their own efforts to exclude Jewish subjects (and others) from the protections of citizenship. Here, Arendt registers the profound violence enabled by legal structures – even and especially those that claim to protect the

subject's inalienable rights. Nevertheless, her recognition of this violence does not prompt her to critique legal authority *as such*. Instead, she calls for the law to be bound up with a broader, more inclusive vision of the democratic public. The problem with the *Déclaration* is that it hopes to locate freedom and equality in humanity as such, thus obviating the necessary function of political community: "Equality, in contrast to all that is involved in mere existence, is not given us, but is the result of human organization insofar as it is guided by the principle of justice. We are not born equal; we become equal as members of a group on the strength of our decision to guarantee ourselves mutually equal rights" (301). "Political life," she argues, must explicitly fulfill its commitment to human equality – it cannot displace that work on to the "dark background of mere givenness" (301). Crucially, Arendt does not see legal authority as justified by certain self-evident or inherent human rights (a more conventionally liberal view). Instead, she argues that its authority is grounded in a public sphere that actively works to produce the equality of its members.

We might note here the difference between this conception of law and the view more recently articulated by Giorgio Agamben, whose book *Homo Sacer* is heavily influenced by Arendt's critique of human rights discourse and by her analysis of the concentration camp in *The Origins of Totalitarianism*. Agamben follows Arendt in arguing that human rights discourse produces a corollary group of rightless people – which for him, are figured by the *homo sacer*. Yet he takes her argument one step further, asserting that the violence committed in the concentration camp – the ultimate space of rightlessness – is only an extreme culmination of the logic underpinning *any* form of legal authority. For him, the camps mark an "inner solidarity between democracy and

totalitarianism” (10). In this way, Agamben transforms Arendt’s critique of human rights into a rejection of legal power as such. Meanwhile, for Arendt herself, that same critique generates a defense of liberal-democratic law as a possible ground of popular freedom. She is interested not only in the law-making powers of the sovereign (Agamben’s central interest), but also, in the potential law-making and law-revising capacities of the democratic public. Indeed, she suggests that such a public can only meaningfully *exist* in the context of a political sphere oriented around some commonly-perceived set of legal structures.

If, as I have suggested thus far, postwar American liberals were centrally concerned with reconciling democratic critique with the rule of law, then the vision Arendt articulates at the close of *The Origins of Totalitarianism* would seem like a promising direction. Her analysis avoids the more radical view taken by those (like Agamben) who would use the example of Nazi law to condemn the very concept of legal authority. At the same time, she avoids the rather triumphalist tone invoked by Lon Fuller, who seems over-confident about the inherent justice of a ‘well-crafted’ legal order. Nevertheless, Arendt’s vision is also a fundamentally enigmatic one: how *exactly* could the law provide for its own critique and transformation? And what kind of limits would it inevitably place on the popular political change it claims to enable?

Arendt takes up these questions in her essay “Civil Disobedience,” collected in *Crises of the Republic*. Responding to civil rights and anti-war protestors, she seeks to reconcile their sympathetic (even urgent) actions with her admiration for the American constitution, and for the rule of law more broadly. The essay is unique for its effort to defend disobedience on specifically political, rather than moral, grounds. While most

theorists of civil disobedience, from Thoreau to Martin Luther King Jr., tended to justify their actions with reference to the ultimate authority of God or conscience, Arendt seeks to situate her theory in a secular, pluralist context in which no such authority can be relied upon. Notably, the thoroughly political perspective of “Civil Disobedience” also significantly departs from her own writings in “Personal Responsibility under Dictatorship” and “Thinking and Moral Considerations,” both explored in my last chapter. Those essays focused on the perspective of the individual subject living in a moment of extreme moral crisis (ie. the Third Reich) and they emphasized the minimal (though no doubt courageous) gesture of non-participation in systematic injustice. In “Civil Disobedience,” by contrast, Arendt sharply distinguishes between moral judgment and political action, between the “good man” and the “good citizen.” While mere non-participation can set the conscience of the good man at rest, she argues that the good citizen must go further – he must seek to promote and effect change in the broader political community. Refusing to rely on the discourse of conscience – which she ultimately deems “unpolitical” – Arendt seeks to offer a more publicly and politically grounded defense of civil disobedience (63).

She finds the key to her defense in the fundamental principle of democracy: the consent of the governed. From the Roman *potestas in populo* to Tocqueville’s *consensus universalis*, democratic theory treats the law as authoritative only to the extent that it represents the will of those it governs. Because popular consent is not adequately expressed by representative democracy, disobedience serves as a crucial mechanism for

restoring democratic participation and ensuring meaningful consent.⁴⁹ “Dissent implies consent, and is the hallmark of free government,” Arendt writes, “one who knows he may dissent knows also that he somehow consents when he does not dissent” (88). Arendt thus justifies defiance of positive law by turning to democratic contestation – precisely the force that should already ground the law’s authority. This justification, in turn, produces specific criteria for civil disobedients. The protester should act not as an individual but as a member of a dissident minority, whose disobedience is performed openly and in public.⁵⁰ In this way, her defiance of positive law expresses a fidelity to the fundamental practice of democratic law-making.

Indeed, Arendt argues that this practice is embedded in American political history. The founding fathers clearly subscribed to a Lockean view of the ‘right of revolution’. More importantly for Arendt’s purposes, they expressed a profound commitment to voluntary association and to democratic participation.⁵¹ For this reason, she argues, disobedients should not be considered “rebels and traitors” (76). Instead, they are “organized minorities” whose protest fulfills the promise of the American republic.

⁴⁹ Representative democracy “itself is in a crisis...partly because it has lost...all institutions that permitted the citizens’ actual participation, and partly because it is now gravely affected by...bureaucratization and the two parties’ tendency to represent nobody except the party machines” (89).

⁵⁰ Arendt writes: “There is all the difference in the world between the criminal’s avoiding the public eye and the civil disobedient’s taking the law into his own hands in open defiance. This distinction between an open violation of the law, performed in public, and a clandestine one is so glaringly obvious that it can be neglected only by prejudice or ill will. It is now recognized by all serious writers on the subject and clearly is the primary condition for all attempts that argue for the compatibility of civil disobedience with law and the American institutions of government” (75).

⁵¹ Tocqueville famously describes inclusive participation as the primary feature of American government in *Democracy in America*. Arendt makes a very similar argument in *On Revolution*. It was the founders’ experience of practical, institutional participation, and their willingness to share this power, that made their revolution more sustainable than the French one, she argues.

“Civil Disobedience” thus imagines a constitution radically open to its own revision, in accordance with the demands of democratic governance.

Rather than a fixed or absolute legal document, it expresses an implicit desire for constant renewal and contestation.

As J.M. Bernstein observes, the civil disobedience essay functions as “a quiet piece of self-criticism” for Arendt – as a rebuke of her more legalistic tone in *On Revolution*. In that book, Arendt praised the founding fathers and their constitution at length, but in “Civil Disobedience,” she acknowledges some of the fundamental flaws of the American Revolution: “There was nothing in the Constitution or in the intent of the framers that could be so construed as to include the slave people in the original compact” (90). Postwar readers should not be surprised then that “the present belated attempts” to integrate African-Americans into the nation’s traditional legal frameworks are not trusted by many civil rights and black power protesters (91). The function of civil disobedience, then, is to transform (rather than simply amend) America’s founding legal documents so that they might more accurately express the will of the people they claim to govern. It is a way of remaining faithful to the democratic spirit of the Constitution, even while defying the letter of its law. For all these reasons, Arendt argues that we must work to make civil disobedience a viable and respected practice with a prominent role in the law-making process.

Yet while the essay is often triumphant about the political value of disobedience, Arendt struggles to reconcile her approach with any consistent theory of legal authority or of constitutional law. “It would be an event of great significance to find a constitutional niche for civil disobedience,” she argues, “– of no less significance,

perhaps, than the event of the founding of the *constitutio libertatis*, nearly two hundred years ago” (83-4).⁵² Nevertheless, it seems unlikely that any such niche could ever exist. “The difficulties of incorporating [civil disobedience] into the American legal system and justifying it on purely legal grounds seems to be prohibitive,” Arendt concedes, “...Obviously, ‘the law cannot justify the violation of the law’” (99). While civil disobedience can be integrated into Arendt’s view of American political history – and while it may yet be integrated into the unpredictable push-and-pull of democratic contestation – it seems impossible to integrate into the legal system *per se* without violating either the law’s claim to authority or the disobedient’s desire for resistance.

Agamben further illuminates this problem in *State of Exception*. He argues that the “right to resistance” presents “clear analogies” to the paradox of sovereignty (10). Whether we are considering the subject’s legal right to defy the law or the sovereign’s legal right to suspend it, “what is ultimately at issue is the question of the juridical significance of a sphere of action that is in itself extrajudicial” (11). “In the last analysis,” Agamben concludes, “the two positions agree in ruling out the existence of a sphere of human action that is entirely removed from law” (11). In other words: by insisting that defiance of the law must be made legally permissible, the right to resistance makes the constitution into an “all-encompassing value” that would circumscribe and contain defiance in advance (11). Just as rebellion loses its allure for the child of rebels, disobedience permitted by law would forfeit its oppositional status. Indeed, Arendt’s essay risks de-fanging protest in precisely that way: by describing civil disobedience as

⁵² i.e. the founding of the American republic.

an expression of the ultimate spirit of the Constitution, she makes it difficult for any disobedient to position themselves *against* the founding ideals of the American republic.

Fuller and Arendt provided the postwar period with two highly influential critiques of totalitarian power. For Fuller, the use of state force under Nazism was so inconsistent, opaque, and unpredictable that it could not merit the name of law. For Arendt, meanwhile, totalitarianism represents a kind of lawless legalism; the state unleashes a flurry of sporadic violence that defies all standards of legality, but does so under the sign of ultimate, absolute legitimation. Together, Fuller and Arendt's critiques suggest some key link between the legibility of state power and the viability of democratic contestation. Fuller notes that only known laws can be meaningfully appraised, while Arendt offers a more robust vision of law as the ground of its own critique. Nevertheless, she struggles to specify precisely how the law could "hedge in each new beginning and at the same time assure its freedom of movement," how it could simultaneously claim respect and facilitate resistance (*Origins* 465).

It is no coincidence, I would argue, that Arendt's theory seems to meet its limit with her call for "a constitutional niche for civil disobedience" (*Civil* 83). This paradoxical formulation is in fact symptomatic of a broader challenge facing postwar liberal democracy. Critics like Fuller and Arendt found it relatively easy to identify the problem with Nazi power but it was more challenging to reconstruct liberal democracy in opposition to that ideological and political challenge. If American liberals sought to condemn and counter both dimensions of lawless legalism then they would need to generate something like a *non-legalistic rule of law*. And indeed that is exactly what Arendt seeks to approximate in her account of constitutional disobedience. Yet that

account itself remains elusive; legal authority would continue to pose a conceptual challenge for postwar liberalism.

II. “Catch-22 did not Exist”

Reading *Catch-22* in the context of postwar anti-totalitarian discourse means setting ourselves against the insistent over-emphasis that both lay and critical readers place on Yossarian’s individual character, and in particular, on his final act of desertion. Readers in the Vietnam Era who sought a model and a justification for their own anti-war resistance naturally applauded Heller’s conclusion. Today, Yossarian’s decision to exit the social world of the novel may appeal less for its specific historical and political contents than for its rather Manichean opposition between the non-conformist hero and the all-encompassing conformist pressures of modern society. That stark opposition would seem to place the novel in the same category as *The Catcher in the Rye*, *One Flew over the Cuckoo’s Nest*, or *On the Road* – mid-century novels of anti-social rebellion that have remained popular (particularly with adolescent readers) but have received decreasing critical attention. The small number of professional critics who *do* engage with *Catch-22* tend to replicate this focus on the psychology of the protagonist, particularly as it is envisioned in the final two chapters. Yossarian’s effort to reckon with the repressed narrative of Snowden’s death has leant itself to readings focused on memory, trauma, and violence.⁵³ Meanwhile, even those who are less sympathetic to

⁵³ Alberto Cacicedo, for example, describes Snowden’s death as *Catch-22*’s “central traumatic” event: “the novel circles around and around the death precisely because Yossarian can neither remember it nor forget it” (359). This reading is especially tempting, perhaps, because the scene with Snowden is drawn from a trauma in Heller’s own life, when a gunner, Carl Frankel, was injured in the back of the plane during a mission to Avignon. His biographer, Tracy Daugherty,

Yossarian's desertion make it central to their interpretation. In *Empires of Conspiracy*, Timothy Melley critiques Yossarian for his individualism. In deserting, Melley argues, he expresses a resistance not only to the "ideological demands of the *nation*" but "to social commitments in general" (66, 79).

Yet none of these approaches offer a satisfying account of the novel's primary (not to mention titular) structuring element: catch-22. It is only by tracing the catch – from its initial form, through its mutations, through the protests against it, and finally to the revelation of its non-existence – that we can make sense of the novel's broader political critique, and the place of Yossarian's desertion within it. The catch, I will argue, defines both the legal and formal obstacles Yossarian struggles to overcome. It simultaneously mandates his continued service (in its first, most literal formulation), disables his efforts to engage in meaningful political speech, and paralyses the plot, producing a feeling of circularity and repetition. Although it initially appears as a relatively narrow satire of opaque military-bureaucratic rules, the catch is gradually revealed to be the central mechanism of a broader dystopic regime. It produces a dark, surreal landscape in which communication and dissent have been rendered impossible. Pitching between this more satirical and more dystopic mode, Heller uses the catch to generate a thoroughly negative image of a political order (in both the photographic and evaluative sense). This is an order that Yossarian cannot overturn, and indeed, even his final escape results from a radical winnowing of his moral choices: catch-22 produces a world that cannot be critiqued or changed. It is totalizing in the sense that he can only be co-opted by it, or leave it entirely.

notes that "the war changed for Heller" after that event (88).

In *Gates of Eden*, Morris Dickstein pays unusual attention to Heller's formal design; on Heller, Vonnegut, and Pynchon, he writes: "Construction is their strong point, mazes of plot, astoundingly complex fictional textures reminiscent of Joyce, Kafka, Borges, and Beckett" (103). Despite this praise, Dickstein then adds "sometimes we may wonder to what point all the energy of formal invention" (103). That is one of the questions this chapter aims to answer. Below, I will begin by outlining the novel's more obvious political oppositions: Heller contrasts the forces of social belonging against Yossarian's radically anti-social posture. But I will also show how a close reading of the catch might complicate that simplistic binary. Yossarian begins with a radically solipsistic disposition but his effort to contest the catch gradually brings him into a "clandestine kinship" with his fellow soldiers (402). His subsequent discovery that the catch does not exist then eradicates those more collective political ambitions, forcing him to revert to his initial solipsism. Yossarian's iconic individualism should therefore not be read as a heroic mode of resistance but only as the corollary of the novel's anomie-inducing political structures. His flight is not an adequate solution to the political problems presented by the novel, but it does help us to better understand the nature of Heller's political critique.

Catch-22 follows Captain Yossarian, an American pilot stationed in Pianosa, Italy, in his quest to end his military service. Initially tasked with a small, set number of bombing missions, his commanders – seeking fame and prestige – continually raise the requirement. In his efforts to protest their increasing demands, Yossarian encounters a range of repressive political and legal structures – most notably the paradoxical "catch-22," which in its initial form dictates that only sane pilots can fly, but that only insane

pilots *would* fly. To request leave on the grounds of insanity thus proves one's sanity, and so invalidates the request. In the final chapters of the novel, Yossarian learns that catch-22 does not "exist" as a stable legal document. He is then offered a return to the U.S. on the condition that he embrace and promote the military. Instead, he opts to desert – a decision that seems to be influenced by the memory of his friend Snowden's death, recounted in the penultimate chapter. While the last few chapters are relatively chronological, the majority of the novel unfolds in a disordered fashion. As Morris Dickstein explains in *Leopards in the Temple*: "Instead of unfolding chronologically, as if there were a real sequence to the men's wartime experiences, the book is anchored by arbitrary points of reference – Yossarian's stays in the hospital, the number of required bombing missions. In this intricate pattern, characters who are already "dead" in one chapter are still alive in a later chapter, pinned all the more ineluctably to their determined fates" (46). This feeling of disorientation is increased by the vast array of minor characters, who often serve only as satiric metonyms for various problematic aspects of American culture (from free-market capitalism, represented by Milo Minderbinder, to the dispossession of Native Americans, represented by Chief White Halfoat).

Timothy Melley's *Empire of Conspiracy: The Culture of Paranoia in Postwar America* helpfully identifies many of the targets of Heller's satire. Melley reads *Catch-22* in relation to the widespread critique of postwar organization culture expressed in popular sociological volumes like David Riesman's *The Lonely Crowd* (1950), C. Wright Mills' *White Collar* (1951), and William H. Whyte's *The Organization Man* (1956). Melley explains that such anti-bureaucratic, anti-social critique is at the heart of *Catch-22*: "Like

Riesman and Whyte, Yossarian understands his “enemies” in this image-obsessed corporate environment as the larger organizations that demand “corporate” forms of behavior from their members, including himself” (64). Yossarian is constantly confronted by collective bodies that demand his incorporation: the nation through Plitchard & Wren’s McCarthyist loyalty oaths (113); capitalist enterprise through Milo Minderbinder’s “syndicate,” in which “everybody has a share” (254); the military in Korn & Cathcart’s offer to bring him home as a hero and patriot (426). In order to resist these enemy forces, Yossarian rejects all forms of collective and social belonging – a posture that results in his famously solipsistic mode of thought. For Melley, this anti-sociality reaches its peak at the novel’s conclusion. When Yossarian deserts: “...he does not reduce the number of missions for his unit. He merely *abandons* his social commitments...Like Huckleberry Finn and other inner-directed heroes of the American past, [he] cannot find himself in the social realm, and so he lights out for the territory” (68). Melley argues that this flight makes both Yossarian and Heller proponents of “liberal individualis[m]” and market capitalism – ideologies that Melley condemns.

I would agree with Melley that Heller shares his critique of bureaucratic and corporate power with critics like Whyte, Riesman, and Mills; undoubtedly these forms of social control are painted as dire threats to Yossarian’s agency. I also agree that Yossarian’s desertion constitutes an abandonment of his social commitments. Nevertheless, I do not think the novel as a whole advocates that simplistic, escapist posture. Indeed, Melley’s reading would make Yossarian a totally flat character. If he is consistently solipsistic, as Melley claims, how can we make sense of his efforts at protest, his buoyed political ambitions, and then, his dramatic disillusionment? Yossarian is not

granted the privilege of remaining so static – he does not stand apart from the novel’s political structures, easily diagnosing and rejecting them. Instead, he is confronted and challenged by them, and gradually comes to know their contours. While he will ultimately revert to a disappointing solipsism, the journey he takes along the way reveals more nuanced and interesting aspects of Heller’s political thought.

Yossarian’s famously individualist perspective is on full display during an early debate with the highly educated but politically naïve Cadet Clevinger. When Yossarian insists that he should not have to fly a bomb run to Bologna, Clevinger reminds him that the men on the ground are “entitled to air support” (123). “But not necessarily by me,” Yossarian retorts:

“We are talking about two different things... You are talking about winning the war, and I am talking about winning the war and keeping alive.”

“Exactly,” Clevinger snapped smugly, “And which do you think is more important?”

“To whom?” Yossarian shot back. “Open your eyes, Clevinger. It doesn’t make a damned bit of difference *who* wins the war to someone who’s dead.”

... “Congratulations... I can’t think of another attitude that could be depended upon to give greater comfort to the enemy”

“The enemy,” retorted Yossarian with weighted precision, “is anybody who’s going to get you killed, no matter *which* side he’s on...” (123-4)

Here, Yossarian does not dispute the justice of the war *per se* but simply refuses to view the conflict from any general or neutral perspective. In other words, he does not provide a moral or political justification for his argument (certainly, it would be difficult to justify why someone *else* should perform the bomb run he refuses). Instead, he offers an indisputable rationality of self-interest. This is a mode of thought that Clevinger, for all his humanistic training (indeed *because* of that training) is unable to perform.⁵⁴ After he

⁵⁴ Clevinger is an expert in “empathy, Aristotle, universals, messages and the obligations of the cinema as an art form in a materialistic society” (69). As Heller summarizes it, “he knew

disappears off the coast of Elba, Heller wryly notes: “Clevinger was dead. That was the basic flaw in his philosophy” (104). These two assertions are not actually parallel, of course: Clevinger’s abstract philosophy operates on a different register from the material fact of his death (and indeed, for Clevinger, his death might not even qualify as a flaw in his philosophy; he is clearly willing to sacrifice himself for a cause he perceives as just). Yet Heller is keen to expose the tension between two radically different dimensions of experience – speculative thought and visceral experience. That conflict is underscored by his decision to narrate Clevinger’s death before he narrates their argument, such that Clevinger’s statements already resonate as the philosophy of a dead man. Yossarian, by contrast, seems likely to survive precisely because he refuses to engage in abstract thought.

Yossarian performs similar life-affirming gestures throughout the novel. He cannot be easily assimilated into the military culture of self-sacrifice because he insists on the reality of death and the urgency of the life instinct; he makes visible what Elaine Scarry would describe as “the body in pain” underlying the ideological mystifications of warfare.⁵⁵ Haunted by the forgotten belongings of a murdered bunk-mate, he repeatedly complains that there is “a dead man in [his] tent” (107). Traumatized by Snowden’s death, he disturbs the authorities by asking, “Where are the Snowdens of yesteryear?” (35) When Aarfy rapes and kills the maid Michaela, he is the only one who recognizes the meaning of his crime: “You’ve murdered a human being...You can’t take the life of

everything about literature except how to enjoy it” (69).

⁵⁵ Scarry argues that while “reciprocal injuring is the obsessive content of war” the body in pain “slips from view” in the language used to describe warfare (67). Melley also draws this connection to Scarry in his chapter on *Catch-22* (see pages 74-75).

another human being...Don't you see?" (418). His refusal to efface death exposes the violence underlying the nightmarish military camp, the misogynistic fantasy-space of the enlisted men's apartment, and the broader global theater of war.⁵⁶

Yossarian's commitment to life always serves to rebuke entrenched power structures, but it does not always take the radically solipsistic form on display during his debate with Clevinger. His more empathetic, humanistic, and self-sacrificing instincts are already visible in his concern for Snowden and Michaela, and they reach their zenith during his final confrontation with the authorities. In a public act of disobedience, he "marche[s] backward with his gun on his hip and refuse[s] to fly any more missions" (392). More than simple anti-social refusal, this protest functions as a form of self-sacrifice. He risks court-martial despite being offered a backdoor deal; he could fly only secure missions ("milk runs") but rejects the deal on the grounds that this would result in more dangerous missions for his fellow soldiers (401). This collective gesture of dissent helps to produce a "clandestine kinship" across the unit, which in turn inspires Yossarian to embrace wild flights of heroic fancy (402). Setting off on an archetypal hero's quest to save an innocent girl (unfortunately known only as "Natelly's whore's kid sister"),

⁵⁶ *Catch-22* is fundamentally interested in the nature of coercion, yet it often seems to miss the coercive nature of its sexual relationships. Heller describes the apartment in Rome as a perfect marriage of lust and desperate, war-time necessity: "The girls had shelter and food for as long as they wanted to stay. All they had to do in return was hump any of the men who asked them to, which seemed to make everything just about perfect for them" (133). The scenes set there are blithely misogynistic. While those women who resist Yossarian's advances are described as frigid and snobbish (156), the others are depicted as fantastically and totally sexual available. "She laid for *everybody*..." Heller writes, "her allure stemmed from her accessibility; like Mt. Everest, she was there, and the men climbed on top of her each time they felt the urge" (133). Michaela's murder near the end of the novel functions as a critique of this sexual fantasy, but the reader should wonder if it is too little too late, especially given that Michaela is not herself a sex worker, but a presumably more sympathetic innocent, one of very few women "whom none of the men had ever slept with" (417).

Yossarian thinks of “all the poor and stupid and diseased people he had seen in Italy, Egypt and North Africa and knew about in other areas of the world.” He concludes: “Somebody had to stand up sometime to try to break the lousy chain of inherited habit that was imperiling them all” (405-6). Here again, Yossarian adopts a self-sacrificial posture. Why does this moment of vast (indeed, ludicrously vast) political ambition give way to the novel’s solipsistic conclusion? Yossarian’s refusal to think in collective terms at the moment of desertion is not, as Melley suggests, a mere continuation of his anti-social posture at the novel’s beginning. Instead, it is a product of the specific structures of catch-22, which make any form of collective politics impossible.

While Heller initially uses the catch to satirize specific aspects of military bureaucracy, the climatic “Eternal City” chapter transforms it into a metonym for the decline of Western civilization itself. As “mobs of policemen” rove a ruined Roman hellscape, committing brazen acts of violence under the sign of catch-22, the catch comes to represent a much broader political, legal, and ideological threat – one that, in the context of WWII, clearly resonates as totalitarian. What begins as a satire of proto-totalitarian elements of American bureaucracy thus grows into a fully dystopic political regime. This regime is characterized by three interdependent phenomena: the conflation of law and force, the distortion of speech, and the impossibility of protest. As we will see, each of these effects is linked to the specific structure of the catch – both in its initial and its final form.

Yossarian and Clevinger first experience the proto-totalitarianism of the American military at their training camp in Santa Ana, California, long before they learn the details of catch-22. Clevinger arrives as a seasoned campus activist (a petition-

circulator, discussion-group-joiner, youth-congress-convener, and youth-congress-picketer (68)) but his mechanisms of protest immediately break down in the face of military power. When Lieutenant Schiesskopf appoints cadet officers, Clevinger insists that they should “elect their own” (69). He tries to voice this concern in an apparently open forum:

“I *want* someone to tell me,” Lieutenant Schiesskopf beseeched them all prayerfully. “If any of it is my fault I *want* to be told.”
“He wants someone to tell him,” Clevinger said.
“He *wants* everyone to keep still, idiot,” Yossarian answered. (69)

Taking the Lieutenant’s words at face-value, Clevinger protests (or at least, the reader infers that he protests; his statement does not itself appear in the text). Although Schiesskopf takes his advice (to positive effect), he also uses it as grounds for a court martial. The “trial” in which Clevinger is judged is replete with the kind of procedural distortions and communicative failures Fuller outlines in *The Morality of Law*.

Schiesskopf himself serves as judge, prosecutor, and defense, and almost every question is met with another. While Clevinger treats the trial as an occasion for substantive, meaningful judgment, those he faces read it only as an expression of force. He concedes that the Action Board could punish him, but insists that they could not find him *guilty*. “I may be stupid,” the colonel responds, “but the distinction escapes me” (78). When Clevinger clarifies that they could not find him guilty and “still be faithful to the cause of...justice” (80), he is told: “Justice is a knee in the gut” (80). Ultimately, of course, he is found guilty; otherwise, “he would not have been accused” (81). In raising his voice for the first and last time, Clevinger encounters the limits of political freedom within the novel; his protest cannot be represented and his appeals for justice cannot be tolerated.

Throughout this early chapter, Clevinger operates on the assumption that words have dependable meanings and that the aim of law and politics is to communicate these. Yet he is met by a regime that reduces language to the brute force of a “knee in the gut.” At the close of the chapter, this regime is explicitly likened to the Third Reich:

Cleavinger recoiled from their hatred as though from a blinding light. These three men who hated him spoke his language and wore his uniform...but he understood instantly that nowhere in the world, not in all the fascist tanks or planes or submarines...not even among all the expert gunners of the crack Hermann Goering Antiaircraft Division or among the grisly connivers in all the beer halls in Munich and everywhere else, were there men who hated him more. (81)

Here, the military hierarchy (which only nominally “[speaks] his language”) becomes an extension of the fascist enemy it purports to fight. In this way, the Santa Ana training camp functions as a transitional space, located somewhere between the democratic values Clevinger learned in college and the totalitarian distortions that threaten to overtake them. This threat will intensify when he and Yossarian arrive in Pianosa – a space where foreign and familiar enemies become virtually indistinguishable. Through this early chapter (which also describes one of the earliest events in the novel’s disordered chronology) Heller establishes the interdependence of law, speech, and protest.

Yossarian first encounters catch-22 well into his military service, when he protests that he is ‘crazy’ and shouldn’t be required to fly further bombing missions. Doc Daneeka explains that he is required to “ground anyone who’s crazy,” but, of course, “there’s a catch”:

There was only one catch and that was Catch-22, which specified that a concern for one’s own safety in the face of dangers that were real and immediate was the process of a rational mind. Orr was crazy and could be grounded. All he had to do was ask; and as soon as he did, he would no longer be crazy and would have to fly more missions. Orr would be crazy to fly more missions and sane if he didn’t, but if he was sane he had to fly them. If he flew them he was crazy and didn’t have to;

but if he didn't want to he was sane and had to. (46)

Crucially, the catch hinges on the impossibility of speech, and protesting speech in particular. "All [Orr] had to do was ask," the narrator explains. But that statement, of course, would invariably be transformed into its opposite: to say you are insane means you are sane. This paradox underscores the specific dilemma political communication presents for the military authorities. Meaningful speech requires rational understanding while the very conduct of war requires the suppression of all rational instincts. In other words, speech cannot occur because everyone has to stay (or at least, appear) insane. In this initial formulation, the catch primarily functions as a critique of the absurdity of war. Yet it also works to underscore the broader political critique that Heller will develop throughout the novel; it demonstrates how unstable legal structures work to disable public speech and action. The law's paradoxical form means that it cannot contain any stable meaning and this, in turn, destabilizes the speech of those subjected to its control: Orr's declaration of insanity becomes a declaration of sanity.

Even in this early form, the catch presents several political *and* formal obstacles for the novel to overcome. It entraps Yossarian while also ensuring the paralysis of the plot and the insignificance of its dialogue. How can Yossarian escape, and how can Heller produce a novel, when speech itself is either circumscribed in advance or rendered meaningless? The formal dimension of this problem is underscored by Yossarian's immediate reaction to the catch. Impressed by its "absolute simplicity," and "spinning reasonableness" he reflects: "There was an elliptical precision about its perfect pairs of parts that was graceful and shocking, like good modern art..." (46). This appreciative response parodies New Critical aesthetic discourse and its commitment to paradox as a

literary form. In 1942's *The Well-Wrought Urn*, for example, Cleanth Brooks, praises the paradox for its refusal to resolve language into a singular, denotative meaning (3). Here, Heller twists that vision into something darker. What happens when paradox moves from an aesthetic register to a legal and political one? What would it mean to live *inside* a suspended dialectic? To occupy a world in which language cannot reliably denote anything? Functioning both as a law and as a literary form, *catch-22* works to inhibit Yossarian's action and speech at every turn.

The unstable language enforced by *catch-22* is reflected by the novel's reliance on miscommunication and misapprehension as sources of absurdist humor. Certainly, if the novel's myriad satiric portraits could be unified by any one characteristic, it is the consistent breakdown of meaningful communication: a debate between General Dreedle and General Peckem is decided by ex-P.F.C. Wintergreen's decision to throw away all of General Peckem's communications, on the grounds that they are "too prolix" (26); Colonel Korn dictates that "the only people permitted to ask questions were those who never did" (35); panic breaks out over the fear that "T.S. Eliot" may be a code word (36-7); Major Major Major Major can only be spoken to when he isn't there (98-99); in the heat of battle, Aarfy infuriatingly insists that he "can't hear" Yossarian's pleas (148-49). In many cases, language is stripped of even the pretense of meaning. Captain Black forces the men to sign loyalty oaths but explains "it doesn't matter whether they mean it or not. That's why they make little kids pledge allegiance even before they know what 'pledge' and 'allegiance' mean" (113). If the pledge is typically thought to represent the consent of the governed and the unity of the republic, then the loyalty oath advanced by Captain Black distorts those ostensibly democratic values into a mere relation of force.

Under the rule of catch-22, the Pianosan military base becomes a nation of isolated subjects with no capacity for speech, agreement, consent, or protest.

These communicative failures go hand-in-hand with the consistent erosion of both legal procedure and political redress. Yossarian stages his first attempted protest after Snowden's horrific death. Refusing to wear his bloody uniform, he appears naked, first, at the funeral, and then, in military formation. The former gesture is misread by the chaplain (who assumes he is hallucinating and hesitates to share this fear with Yossarian (204)), while the latter is explicitly distorted by a hierarchical game of telephone:

“Why isn't he wearing clothes?” General Dreedle demanded over Colonel Cathcart's shoulder...
“Why isn't he wearing clothes?” Colonel Cathcart demanded of Colonel Korn...
“Why isn't he wearing clothes?” Colonel Korn demanded of Captain Piltchard and Captain Wren.
“A man was killed in his plane over Avignon last week and bled all over him,” Captain Wren replied. “He swears he's never going to wear a uniform again”
“A man was killed in his plane over Avignon last week and bled all over him,” Captain Korn reported directly to General Dreedle. “His uniform hasn't come back from the laundry yet.” (218)⁵⁷

Several military ranks intervene between Yossarian's protest and its interpretation by General Dreedle. While his nudity is intended to expose the vulnerable life beneath the bloody trappings of military power, it is this same structure of authority that renders his body illegible as a site of protest. Yossarian's rather concise and elegant gesture is reduced to a problem of bureaucratic administration: where he seeks to disrupt the logic of warfare, Colonel Korn reads only a disruption of the laundry system.

Each of Yossarian's subsequent appeals is met by a similar procedural

⁵⁷ Notably, Colonel Korn becomes Captain Korn in this final line (he is Colonel Korn again shortly thereafter). This is either a typographic error or an extension of the joke: the narrator himself gets tripped up in the game of telephone and displaces Captain Wren's title onto Colonel Korn.

breakdown. He requests the help of Major Major Major Major, who later disappears, and of Doc Daneeka, who suffers a death by paperwork (340-44). Meanwhile, the Chaplain, Yossarian's most dedicated advocate in his campaign to lower the number of missions, is arrested by a group of mysterious men who violate every normal legal procedure. When one asks, "Why don't we knock his goddamn brains out?" another sensibly replies "No, we've got to find him guilty first" (386). But this task turns out to be rather easy to accomplish – after all, "why would we be questioning you if you weren't guilty" (384). When the Chaplain attempts, like Clevinger before him, to invoke the language of justice and right ("You've no right to keep me here" (382)), he is promptly met by brute force. Following this encounter, the chaplain's will to protest is gradually eroded. "I'm going to bring my *protests* to Wing Headquarters!" he declares, filled with righteous indignation (388). Colonel Korn then informs him that there has been a change in command: "'Why, I don't even know General Peckem,'" the chaplain *protested* wretchedly" (388). When he is finally threatened with further criminal accusations, the chaplain "[shakes] his head in baffled *protest*" (389 all italics added). In a page and a half, the chaplain's dissent is reduced from defiance, to despair, to confusion. Like each of the protests that preceded it, it becomes mired in perverse distortions.

The paralysis necessitated by catch-22, and the broader political system it represents helps to explain the curious form of *Catch-22*. Morris Dickstein describes the novel's overwhelming feeling of stasis: "...the hero gets propelled not into familiar human interaction but through a series of external events that are often random, bizarre, even surreal or apocalyptic... Instead of "novelistic" development we find a structure of repetition or intensification: the same thing always happens, but no one will ever *learn*

anything (*Gates* 97).⁵⁸ This structure of repetition is enforced by Heller's haphazard chronology, which eradicates any sense of forward progression. In this respect, *Catch-22* is less a protest novel, then a novel in search of a protest. Rather than allowing his characters to directly critique the system of political repression they face, Heller sketches the contours of that system through the repeated failure of their dissent. This strategy is made clear in a rare moment when (in Dickstein's terms) someone actually *learns* something. Yossarian's discovery that catch-22 does not exist is presented as a genuine revelation (as indicated by Yossarian's stunned reaction: "'What?' Yossarian froze in his tracks with fear and alarm and felt his whole body begin to tingle. 'What did you say?'" (407)). To trace the structure and effects of the catch, I will now turn to a close reading of the novel's final chapters.

At the opening of "Kid Sister" (chapter 38), Yossarian is engaged in an explicit act of civil disobedience: "[He] marched backward with his gun on his hip and refused to fly any more missions" (392). Daring the authorities to court-martial him for desertion of duty, he becomes a symbol of resistance for his fellow soldiers. "All the next evening," Heller writes, "people kept popping up at him out of the darkness to ask him how he was doing, appealing to him for some confidential information with weary, troubled faces on the basis of some morbid and clandestine kinship he had not guessed existed" (402). This is the peak of Yossarian's public, political commitment and it carries him into the first pages of "The Eternal City" – a chapter that functions as the thematic, emotional, and structural center of the novel. Dickstein observes that Heller's "black humor is pitched at

⁵⁸ In this passage, Dickstein is describing not only *Catch-22* but also Vonnegut's *Slaughterhouse-Five* and Pynchon's *V*.

the breaking point where moral anguish explodes into a mixture of comedy and terror” (Gates 97). “The Eternal City” chapter is that breaking point. It is the moment when Heller’s irreverent satire fully gives way to dystopic terror, revealing the dark political machinations that underlay the military’s often comic irrationality. It is these same machinations that will finally dash Yossarian’s more idealistic efforts at collective protest.

In his heroic (though ultimately futile) quest to find “Nately’s whore’s kid sister,” Yossarian journeys through a ruined Roman hellscape – a setting clearly intended to symbolize the demise of Western civilization. When he arrives at the apartment where he expects to find “Nately’s whore,” an unnamed old woman informs him that police officers have raided the apartment and turned the women out onto the street:

“What right did they [the police] have?” [Yossarian asked]
“Catch-22.” [the woman answered]
“*What?*” Yossarian froze in his tracks with fear and alarm and felt his whole body begin to tingle. “*What* did you say?”
“Catch-22,” the old woman repeated... “Catch-22 says they have a right to do anything that we can’t stop them from doing”...
“Didn’t they show it to you?” Yossarian demanded, stamping about in anger and distress. “Didn’t you even make them read it?”
“They don’t have to show us Catch-22,” the old woman answered. “The law says they don’t have to.”
“What law says they don’t have to?”
“Catch-22.”
“Oh, God damn!” Yossarian exclaimed bitterly. “I bet it wasn’t even really there...” (407-8)

The catch, given a definite meaning at the beginning of the novel, is here exposed as a catch-all justification. To his horror, Yossarian learns that the only legal framework it ultimately imposes is the anarchy of naked force (“they have a right to do anything we can’t stop them from doing” (407)). Illegible and unaccountable, the law shape-shifts

according to the needs of the moment: it is catch-22 itself which dictates that the dictates of catch-22 need never be revealed.

The parallels between this vision of totalitarian law and those offered by Fuller and Arendt are myriad. Like the rules issued by Fuller's King Rex, catch-22 betrays every standard of legal proceduralism – it is at once secret, mutable, and self-contradictory. The catch also aptly reflects Arendt's view of bureaucratic and totalitarian law, cited above: "Since the people it dominates never really know why something is happening and a rational interpretation of laws does not exist, there remains only one thing that counts, the brutal naked event itself" (*Origins* 245). Yossarian's immediate reaction to his discovery further underscores these political implications:

Yossarian strode out of the apartment, cursing Catch-22 vehemently as he descended the stairs, even though he knew there was no such thing. Catch-22 did not exist, he was positive of that, but it made no difference. What did matter was that everyone thought it existed and that was much worse, for there was no object or text to ridicule or refute, to accuse, criticize, attack, amend, hate, revile, spit at, rip to shreds, trample upon or burn up. (409)

Yossarian notes that the non-existence of the catch itself "ma[kes] no difference" (409). If the authorities have claimed the right to do "anything we can't stop them from doing" then any possible content has already been superseded by pure force (407). What *does* matter, by contrast, is the law's relationship to the public, the fact "that everyone thought it existed" (409). What Heller delineates here is a clear distinction between the totalitarian implications of the catch and the liberal-democratic principles the soldiers have mistakenly attributed to it. The concrete existence of an "object or text," would impose some restraint on the authorities – it would make them accountable to some fixed standard. More importantly, because these rules would be legible, they would also be

available to debate and contestation. With varying degrees of naivete, Yossarian, Clevinger, and the Chaplain each located their dissent in a vision of law as accountable and contestable. The dystopic truth at the center of the novel is that the catch had already rendered their resistance impossible before these protests even began.

The threat that the ‘law’ of catch-22 poses for those subjected to its authority is poignantly represented shortly thereafter, when Yossarian observes a civilian man being dragged into a police ambulance:

His books were spilled on the ground. “Help!” he shrieked shrilly in a voice strangling in its own emotion, as the policemen carried him to the open doors in the rear of the ambulance and threw him inside. “Police! Help! Police!” The doors were shut and bolted, and the ambulance raced away. There was a humorless irony in the ludicrous panic of the man screaming for help to the police while policemen were all around him. Yossarian smiled wryly at the futile and ridiculous cry for aid, then saw with a start that the words were ambiguous, realized with alarm that they were not, perhaps, intended as a call for police but as a heroic warning from the grave by a doomed friend to everyone who was *not* a policeman with a club and guns to back him up. “Help! Police!” the man had cried, and he could have been shouting of danger. (415-16)

As it is throughout the novel, the relationship between the subject and the law is here marked by a communicative distortion; Yossarian finds that he cannot read the man’s protestations. Yet the ambiguity in this scene is more directly related to the specific structure of the catch. The man appeals to the rule of law for protection (“Help! Police!”), while also fearing that legal authority has been transformed into a mere vehicle of force (“Help! Police!”).⁵⁹ This predicament parallels Yossarian’s: he acts as though the catch could be read, challenged, and appealed to (“Help! Police!”), but its non-existence guarantees that it can only function to limit and repress those same appeals (“Help!

⁵⁹ This ambiguity is also evoked by the image of the “police ambulance,” which combines carceral power with medical aid, punishment with protection.

Police!”). In this sense, “the ludicrous panic of the man screaming for help to the police while policemen were all around him” is also Yossarian’s folly; he and his friends have spent the entire novel appealing to rules designed to entrap them.

The structure of *Catch-22* would thus seem to predict the ultimate failure of Yossarian’s grand gesture of civil disobedience. And indeed, by the time the next chapter begins, Colonels Korn and Cathcart have already found a way to thwart his protest. They agree to send him home, but with a catch (“Catch-22...Of course” (421)). He can return to the United States – avoiding both further missions and a court martial – only if he promises to become a military hero and patriotic champion. The single requirement, the Colonels explain, is that he: “Like us. Join us. Be our pal” (426). Much like Winston Smith at the close of another anti-totalitarian classic, all Yossarian has to do is learn to love Big Brother.⁶⁰ Yossarian initially refuses the offer and retains his commitment to protest. Appealing to political optics (a common strategy in civil disobedience) he explains: “You can’t court martial me for desertion in the in the face of the enemy. It would make you look bad...” (424). But the Colonels already have him cornered; although they cannot try him for his protest, they can arrest him for visiting Rome without a pass. In a move characteristic of *Catch-22*, they shift the legal terrain from beneath Yossarian’s feet so that his direct, public contestation becomes obscured by an unrelated technical infraction. The next chapter (“Snowden”) presents Yossarian’s fully reconstructed memory of Snowden’s death – often read as the moral and emotional core of the novel. But while that trauma obviously helps to underscore the stakes of

⁶⁰ See Mantzaris for a comparison of *Catch-22* and *1984*.

Yossarian's dilemma (who he will betray if he agrees to the Colonels' offer; what he will risk if he continues in combat instead), the dilemma itself is best read through the structural political features I have outlined thus far.

At the beginning of the final chapter ("Yossarian"), he is still undecided about his fate. He worries that he will lose himself morally and spiritually if he goes home, and that he will die if he stays in Italy. It is in the context of this irresolvable quandary that the *deus ex machina* of desertion appears. The chaplain enters suddenly and explains that another soldier – notably, Orr, the same soldier named in the initial formulation of catch-22 – has deserted and been discovered in neutral Sweden. Swiftly committing himself to the same destiny, Yossarian finally reverts back to the solipsistic perspective he first performed in his debate with Clevinger. When Major Danby chides him, "But, Yossarian, suppose everyone felt that way," he responds "Then I'd certainly be a damn fool to feel any other way, wouldn't I?" (446). Rejecting Major Danby's categorical imperative, he also recalls his earlier debates with Clevinger: "I have a queer feeling that I've been through this exact conversation before" (446). Retreating from the moral righteousness and political solidarity he expressed during his public protest and his quest to retrieve "Nately's whore's kid sister," he turns to desertion as an escape from the world ruled by catch-22.

Heller self-consciously responds to the easily-anticipated charge that this concluding gesture is an escapist one. Danby tells Yossarian: "But you can't turn your back on all your responsibilities and run away from them...It's such a negative move. It's escapist" (451). Yossarian responds with "buoyant scorn": "I'm not running away from my responsibilities. I'm running *to* them. There's nothing negative about running away to

save my life. You know who the escapists are, don't you, Danby? Not me and Orr" (451). Heller's need to clarify this point so defensively emerges, I would argue, from the tension that structures the book as a whole: it simultaneously expresses an irreverently solipsistic worldview and a substantial political critique of the totalitarian structure of *Catch-22*. It both decries the oppressive effects of the law on everyone who unwittingly falls under its jurisdiction, and suggests that Yossarian's individual escape is an adequate solution to the much larger moral and political challenges presented in the novel. It is because of this final escapist gesture that Timothy Melley critiques the novel's liberal individualism. He sees in Yossarian's desertion a fundamental disinterest in collective political struggle. But I would argue that even though Yossarian (and Heller) opt for a solipsistic conclusion, the novel as a whole expresses a much more subtle and interesting critique, informed by postwar conceptions of totalitarian law.

In her essay "Questions about The New Fiction," Joan Didion offers a scathing criticism of *Catch-22*, inditing in particular its mixed stance on the moral necessity of the Second World War:

The real vacuity of *Catch-22*, as several writers pointed out, lay in Mr. Heller's disinclination to go all the way with anything, his insistence upon having it both ways, all ways, any way his fancy led; for four hundred pages of *Catch-22*, World War II was a fraud and the only virtue survival, while in the last few pages we learned that the war was worth fighting but some of the officers were maniacs, a rather different proposition. In fact the hallmark of this kind of fiction is its refusal to follow or think out the consequences, let alone take them; it is content to throw up its hands, cry that outrage surrounds us.

I am sympathetic to Didion's frustration with the novel's conclusion, even though I find *Catch-22* much more aesthetically and politically interesting than she does. Indeed, I think we can read Yossarian's final desertion roughly the same way Didion reads Heller's

apparent about-face on the justice of the war: over 400 pages, he gradually develops a sustained and sophisticated critique of totalitarian legal structures only to revert to solipsism at the book's close. I think this results less from a dispositional lack of what Didion calls "moral toughness," however, then from the specific constraints that grow out of Heller's material.

With the law of catch-22, Heller creates a legal structure that systematically destroys his characters' capacity for rational discussion, public contestation, and collective political action. This, in turn, produces a novelistic world where the only options are total co-optation by the social world or total escape; there is no room to "ridicule or refute, to accuse, criticize, attack [or] amend" the social order from within its confines (409). Desertion thus emerges as the only way out for Yossarian, and, for Heller, the only way to a happy ending. It is the conclusion that so many Vietnam-era draft resisters would find most inspiring in the novel. Nevertheless, to my mind it is less successful as a gesture of resistance than as further proof of the disabling effects of catch-22, which leave Heller and his protagonist with a Manichean choice between total incorporation - in other words, totalitarianism - and a utopic radical individualism. In short, Heller's own creative abilities are ultimately bested by his signal achievement: the encapsulation of complex totalitarian legal structures in the neat metonymic package of catch-22.

III. Conclusion

After witnessing the struggle of the anonymous civilian dragged into the police ambulance, Yossarian sinks into the "concealing shelter of the drizzling, drifting,

lightless, nearly opaque gloom” and reflects, “Mobs...mobs of policemen – everything but England was in the hands of mobs, mobs, mobs. Mobs with clubs were in control everywhere” (416). Here, the “mob policemen” are seemingly limited to Nazi-occupied continental Europe (“everything but England”). Yet like the “drifting...gloom,” they also threaten to spread “everywhere.” They represent a totalitarian threat that is both specific to the fascist powers and increasingly pervasive. *Catch-22*’s project is to identify and satirize those tendencies within American culture and politics that might facilitate the spread of that “opaque gloom.” In articulating this anti-totalitarian critique, Heller foregrounds the complex structure of legal authority – a problem that also pre-occupied American liberal thinkers in the immediate postwar era. As we have seen, the “lawless legalism” associated with Nazism demanded a reconceptualization of the relationship between law, conscience, and dissent – between legal institutions, individual morality, and pluralistic politics. That demand in turn exposed the uneasy relationship between liberalism and democracy. What then, can the comic dystopia of *Catch-22* reveal about that broader political-philosophical predicament?

Arendt and Fuller seek to mend the rift between law and dissent by emphasizing the importance of legible legal structures. It is only a predictable legal order that can provide the basis of popular critique, they suggest. By contrast, a system of power built on the shifting sands of local, fleeting, obscure, or private priorities could never be subjected to meaningful democratic contestation. This is a view of law not often articulated in literary criticism. Those critics informed by a deconstructive ethics are not likely to find much inspiration in the invocation of either stable meaning or rational communication. Meanwhile, those influenced by Giorgio Agamben might argue that the

law could never achieve a stable meaning because it is always grounded in the paradox of sovereignty; from that more radical perspective, the liberal rule of law is only ever a cloak for the unchecked violence of the state.

Catch-22 also offers a pessimistic vision of the law. The legal procedures Yossarian and his fellow soldiers endure are consistently perverse and exploitative. In this respect, the novel might seem amenable to the Agambenian mode of critique (the ambiguous cries of the desperate man - “Help! Police!” - seem like a particularly apt expression of life under the state of exception). Yet the novel’s inability to provide an affirmative vision of the law does not necessarily mean that Heller views such a project as impossible or undesirable. Like *1984* (though less direct and less somber), *Catch-22* conjures a dystopic world in order to identify what it sees as the totalitarian tendencies embedded in modern political authority. To say that because *Catch-22* provides no affirmative vision of law it is necessarily against the law *per se* is like saying that because Orwell provides no affirmative vision of political power, he does not think a better political order is worth striving for. Rather than casting the entire novel in the nihilistic position Yossarian sometimes occupies, then, we are better off tracing the specific structure of the novel’s perverse political regime. Heller’s insistent focus on the illegibility of the law and its effects on political speech and action clearly resonate with the concerns raised by Fuller and Arendt. Like them, he treats communication as the crucial mediating term between law and dissent, authority and democracy. He is interested in how the incommunicability of the law seems to generate the incommunicability of protest; he suggests that if the law could ever be made consistent with democratic contestation then it would *at least* need to exist as “an object or text to

ridicule or refute” (409).

But if Heller shares many of the priorities of postwar anti-totalitarian critique, then he also seems to share Arendt’s hesitation to sharply define the relationship between law and dissent. Arendt argues that it would be revolutionary to discover “a constitutional niche for civil disobedience” (83) but stops short of actually identifying such a provision. She insists that protest embodies the spirit of the American constitution but recognizes that it will always be somewhat alienated from the letter of the law (“Obviously, ‘the law cannot justify the violation of the law’” (99)). The challenge here is to articulate how a discourse defined by its own claim to authority could co-exist with a set of political practices dedicated to challenging that claim. Recall that, in his most precise articulation of the novel’s political critique, Yossarian reflects: “there was no object or text to ridicule or refute, to accuse, criticize, attack, amend, hate, revile, spit at, rip to shreds, trample upon or burn up” (409). This account would seem to make the law’s legitimacy as an institutional force dependent on its vulnerability to refutation. On the one hand, this is a perfectly comprehensible liberal-democratic claim: the law’s authority rests on the consent of the governed, which must in turn rest on their freedom to express dissent. But the radical temporal condensation expressed in Heller’s phrase make this formulation less stable. The law is only proved legitimate at the moment it is proved refutable; put otherwise, it is only proved legitimate at the moment of its delegitimation. For law to be democratic, it must be imagined as an object ripped to shreds, as a text on fire. Its stability (the hallmark of legality) and its vulnerability to revision (the hallmark of democratic contestation) have to be thought at the very same moment.

Heller’s novel thus helps us to understand the urgency and complexity of the

dilemma facing liberal democracy in the postwar period. If the totalitarian example seemed to underscore the dangers of lawlessness *and* legalism, then American liberals would need to reconcile the rule of law with meaningful forms of dissent and resistance. Heller takes us some way toward that reconciliation – he suggests that legible law might be an enabling condition of protest, that the law (when conceived in democratic terms) might actually facilitate its own contestation. At the same time, he implies that that formulation is a necessarily elusive one. How *exactly* legal institutions could be made consistent with their own contestation – without eradicating either their claim to authority or the protester’s oppositional status – remains an open one. In this respect, the negative generic modes Heller deploys (satire and dystopia) are particularly well-suited to the political queries the novel takes up. Postwar anti-totalitarian discourse readily identified the abuses of legal authority perpetrated by foreign powers but struggled to offer a fully satisfying, fully coherent *positive* vision of the relationship between law, protest, and conscience under liberal democracy.

While *The Middle of the Journey* focused on the tragic alienation of law and morality, *Catch-22* offers a more concrete, structural analysis of how law might either enable or disable public protest. But despite these different emphases, both novels encounter the same conceptual limit. Both Trilling and Heller are ultimately unable to resolve the ambivalent status of law in liberal democracy; both are unable to reconcile their suspicion of legal power with their residual belief in its political necessity. Taken together, then, the two novels help us to perceive the same philosophical problem from two distinct vantages: the subject’s moral relationship to law, and the law’s relationship to political contestation. My next two chapters will challenge the broadly liberal

democratic vision that Trilling and Heller, despite their wildly different stylistic approaches, ultimately share. John A. Williams will make clear that it cannot respond with sufficient urgency to the crisis of racist oppression, and Mary McCarthy will suggest that it does not do justice to the spiritual and intuitive dimensions of conscience.

CHAPTER THREE

WRITING THE STATE: JOHN A. WILLIAMS BETWEEN RECOGNITION AND EXPOSURE

“You don’t take your case to the criminal. You take your criminal to court.”
- Malcolm X, “The Ballot or the Bullet” (16)

James Baldwin’s 1972 essay “To be Baptized” recounts – alongside his encounters with Malcolm X and Martin Luther King – his efforts to help a friend unjustly accused of murder, arrested in Germany, and extradited to the United States. The story of individual injustice allows Baldwin to view the politics of the American 1960s through the lens of “the fabled Germany of the Third Reich” (104). In an effort to prevent his friend’s extradition, Baldwin and his lawyers seek to persuade the German government that African-Americans are, by definition, “political prisoners” in the United States (113). This plea (which predictably fails) reverses the dynamic of the trials described in my previous chapters; it places Germany in the position of judging the racial violence of the United States, a nation Baldwin believes may be secretly dreaming of its own “final solution” (130). The encounter between “the laws of two different countries, and the psychology of two not so very different peoples” (114) leads him to the same question that Hart, Fuller, Arendt, Trilling, and Heller each pondered in their own way: “Does the law exist for the purpose of furthering the ambitions of those who have sworn to uphold the law, or is it seriously to be considered as a moral, unifying force, the health and

strength of a nation?” (149). Baldwin’s answer, as we might anticipate, is not very optimistic. “If one really wishes to know how justice is administered in a country,” he argues, one must ask:

the unprotected – those, precisely, who need the law’s protection most! – and liste[n] to their testimony. Ask any Mexican, any Puerto Rican, any black man, any poor person – ask the wretched how they fare in the halls of justice, and then you will know, not whether or not the country is just, but whether or not it has any love for justice, or any concept of it. (149)

By insisting that the United States is unjust, not only in its quotidian operations, but even in its moral foundations, Baldwin challenges a longstanding effort to align the nation’s highest legal documents with the cause of racial justice. As Deak Nabers explains in his book *Victory of Law*, nineteenth-century abolitionists often framed slavery as a failure of law *enforcement* (110). Eliding the actual, positive provisions of the Constitution (even as it stood prior to the Fourteenth Amendment) with the moral ideals of natural law, they argued that racial injustice represented, by definition, a violation of constitutional, legal principle (x). This idea received new credence in the twentieth-century, when the Supreme Court ruled – in *Brown v. Board of Education* – that segregation was unconstitutional. It would receive perhaps its most famous iteration in Martin Luther King’s “I Have a Dream” speech, which positions civil rights reform as the fulfillment not only of the Fourteenth Amendment, but of the “promissory note” enshrined in the “magnificent words” of the Declaration of Independence and the 18th century Constitution (217). The hundred-year-old rhetorical tradition that King draws on here suggests that there is a “discrepancy” (to return to Arendt and Trilling’s favored term) between the country’s fundamental “love for justice” and the still unjust treatment of African-Americans. But Baldwin rejects the idea that a mere discrepancy is to blame.

For him, it is a “pale, compelling nightmare” of genocide, not a redemptive “concept” of justice that lies within the “vast private Hinterland of the American heart” (130). Rather than appealing to American law as an ultimate source of justice, Baldwin analogizes it to the most grotesque abuse of legal authority in his readers’ recent memory.

Baldwin’s provocative challenge to the moral status of American law is echoed in the work of the post-war novelist and journalist John A. Williams. Williams concludes his 1970 book on Martin Luther King Jr., *The King God Didn’t Save*, by stating that the book is “basically addressed” to the problem of “reliable authority” (220). After asking his reader, “[t]o what Constitutional, to what moral authority do the black, the poor, and the young now appeal?” (220), Williams responds that, in fact, no such “reliable authority” exists. Instead, he suggests it is:

...time to return to a theme of King’s that once echoed feebly throughout the country. It is the one about an unjust law being no law at all and thus unworthy of being observed. Widen that to authority. In his doctoral thesis - how wise we often are when we are young! - King wrote what many have come to believe: “...Reliable authority simply conserves and hands on to others what has been found to be true by some other test than authority. In other words, the trustworthiness of what is found in an authority does not depend upon the authority...authority like revelation depends on some further test of truth.” On, perhaps, the black people of the United States of America and now, without Martin Luther King Jr. (221)

While he begins by questioning which authority the oppressed might appeal to for justice, Williams ends by repositioning “the black people” as the final arbiters of the law’s authority. In other words, it is no longer black Americans who must appeal to the state for its ratification of their citizenship, but the state which must appeal *to them* for the ratification of its laws.

In making this argument, Williams draws on King’s theory of natural law, which

subjected all positive decrees to a higher order of moral and spiritual judgment. In his famous “Letter from Birmingham City Jail,” King drew on Augustine and Aquinas to argue: “A just law is a man made code that squares with the moral law or the law of God. An unjust law is a code that is out of harmony with the moral law” (77). Williams seizes on this critique of legal power, but he posits a new source of ultimate authority: not God, but “the black people.” This shift is in keeping with his preference for the “power politics” of the black power movement, and his frustration with King’s strategy of “moral suasion” (192). In their book, *Black Power*, Stokely Carmichael and Charles V. Hamilton argue that the key to liberation is the creation of black institutions capable of applying real pressure to the political system. “The concept of Black Power rests on a fundamental premise,” they explain:

Before a group can enter the open society, it must first close ranks. By this we mean that group solidarity is necessary before a group can operate effectively form a bargaining position of strength in a pluralistic society. Traditionally, each new ethnic group in this society has found the route to social and political viability through the organization of its own institutions with which to represent its needs within the larger society. (44)

Carmichael and Hamilton argue that these “new political forms....will be the link between broadened participation (now occurring) and legitimate government...a means whereby a newly politicized people can get what they need from the government” (181). In short, they hope to produce democratic and institutional mechanisms through which the judgment of “the black people” could be brought to bear on the operations of power. For Williams, this is the more effective strategy. “[King’s] failure to achieve moral gains,” he argues, “made others see that the gains could only be political” (181).

But this shift from “moral suasion” to “power politics” also poses a challenge for

the African-American protest novel. In *What was African-American Literature*, Kenneth Warren argues that, in the era of Jim Crow, literature worked to undermine legal discrimination by substantiating the humanity and dignity of black subjects. The African-American literary project as Warren conceives it, thus aligned with the traditional rights project described by Joseph Slaughter: in both accounts, literature, through the representation of its characters' full humanity and dignity, works to make oppressed subjects visible as rights-bearing subjects.⁶¹ But if this is still a structure of appeal oriented toward a legal body (the nation-state or the rights regime), then what kind of text would be needed to represent or prefigure the shift that Williams calls for? What kind of literature could ground a politics that did not ask the law to ratify the humanity of its subjects, but instead, asked citizens (black citizens in particular) to ratify the state's legitimacy? What kind of novel would help "the black people['s]" to become arbiters of the law's claims to authority?

Williams's 1964 journalistic memoir, *This is My Country Too*, is still structured by a more traditional appeal to the state. The book (first published as a series of articles in *Holiday* magazine) follows Williams on a cross-country roadtrip intended to help him assess how the nation was adapting to the burgeoning civil rights movement. Concluding his trip with a visit to the White House, Williams uses his time in D.C. to reflect on his experience of the earlier March on Washington. Unequivocally aligning civil rights with the liberal rule of law, he likens the March to the unrest that precipitated the adoption of

⁶¹ See Slaughter's *Human Rights Inc.*, discussed in my introduction. In a PMLA article drawn from the same project ("Enabling Fictions and Novel Subjects"), he explains that the *Bildungsroman* genre "provides the normative literary technology by which social outsiders narrate affirmative claims for inclusion in the franchise of the nation-state" (1411).

the Magna Carta: “multitudes of people...had gathered there as barons of the American spirit to petition King John on the banks of the Runnymede, petitioning not for a new Magna Charta of guaranteed rights, but for the institution of the old” (147).⁶² The book is structurally and politically oriented toward the state: the road-trip narrative converts the text into a project of national mapping (culminating in the capital), the conclusion calls for the fulfillment of the nation’s founding legal principles, and the title makes a rights-claim for the author on the basis of his American citizenship.

But the work is also shaped by a strange resentment toward its own subject matter; Williams repeatedly complains that he finds talking and writing about civil rights exhausting and oppressive. In his most evocative metaphor, he complains: “civil rights had us as slaves on the waterwheel” (80). Although this phrase directly refers to the repetitiveness of his and his friend’s conversation, Williams’ invocation of slavery obviously undermines the text’s concluding scene of patriotic optimism. This sense of exhaustion, I will argue, is rooted in the circularity (‘the waterwheel’) of the text’s rhetorical project: in asking not for “new rights” but for “the institution of the old,” Williams appeals to the law to become what he claims it already is.

In his bestselling 1967 novel, *The Man who Cried I Am*, Williams abandons this tenuous rhetorical strategy in favor of a project more compatible with his desire to place the legitimacy of the law in the hands of “the black people” (*The King* 221).⁶³ As William

⁶² Williams uses the alternate spelling, Magna Charta, rather than the more standard one I will use, Magna Carta.

⁶³ Despite popular and critical success at the time of publication, *The Man who Cried I Am* has not (yet) achieved canonical status in the African-American or American literary traditions. In his book, *Our Living Manhood*, Rolland Murray notes that the African-American novel fell from prominence in the 1960s, when the Black Power and Black Arts movements emphasized theater and poetry over fiction: “Unlike earlier twentieth-century literary periods – the Harlem

J. Maxwell notes, the novel vacillates between several generic modes, combining “roman à clef payback, historical novel-scaled ambition, and a coordinate expatriate detective mystery” (259). In the text’s brief span of present time, Max Reddick (himself a journalist and novelist) is presented with a briefcase full of US government documents, revealing a secret plot to imprison and kill the black population in the event of racial unrest. These sections draw on the generic conventions of detective and spy novels and on the conspiratorial tone of much postmodern fiction. Williams draws out the suspense of this conspiracy plot by weaving Max’s fateful discovery together with a capacious historical perspective. Lengthy flashbacks follow Max from the early days of WWII through to the apex of the civil rights movement, as he struggles to navigate American racial politics and the African-American literary scene. It is these portions of the book that draw on the historical novel and the roman à clef, offering thinly concealed portraits of Wright, Baldwin, J.F.K., King, Malcolm X, and others. By bringing so many generic modes together, Williams puts pressure on the relationship between history, politics, and literature: how should we read a fictional conspiracy placed alongside a fictionalized

Renaissance – the proletariat era of the 1930s, the potent flowering of integrationist literature after World War II – fiction was not a privileged genre among nationalist aesthetes during the Black Power movement. Breaking with a longer tradition that foregrounded the novel as a vital tool in improving the social standing of the black public, nationalists routinely construed drama, poetry, and autobiography as the preferred modes for disseminating their ideology” (7). While a number of well-known authors, including James Baldwin and Ishmael Reed, continued to publish important works of fiction, these did not occupy the center of African-American cultural and political debate. This may be one reason why *The Man who Cried I Am* has not achieved the critical stature it deserves. Despite earning a few pages of analysis in William Maxwell’s *F.B. Eyes*, it is only mentioned in passing in other recent works of criticism: Michael Szalay’s *Hip Figures* includes a brief discussion of the novel (11); Timothy Melley’s *The Covert Sphere* and Rolland Murray’s *Our Living Manhood* reference Williams but not *The Man who Cried I Am* in particular (10). Merve Emre has a chapter on *The Man who Cried I Am* and paranoid reading in her forthcoming book *Paraliterary: The Making of Bad Readers in Postwar America* (U Chicago P, forthcoming in 2017). She kindly shared a March 2016 draft of that chapter with me.

history?

The novel's historical narrative charts Max's disillusionment with liberal politics, which – perhaps unsurprisingly given Williams's comments at the close of *The King God Didn't Save* – hinges on the failure of constitutional authority. Invited to work as a speechwriter for a liberal President (clearly modeled on J.F.K.), Max quickly realizes that the government has no real interest in civil rights and has been working behind the scenes to appease segregationists. This double-dealing represents for Max: “a constitutional violation by the people entrusted to uphold that Constitution” (311). Of course, his distrust in the American government reaches new heights upon his final discovery of its genocidal plot – a conspiracy meant to evoke, just as Baldwin's essay does, the violence of the Holocaust. But these two discoveries also force Max to reconceptualize his position as an African-American writer. His role as a speechwriter would seem to represent the black public's inclusion in American democracy. Max can speak *for* his community, *through* the nation's highest office (“You are me in this instance,” the President tells him (303)). But Max's discovery that the government was never sincerely interested in civil rights accompanies the realization that while he believed he was *representing* the black freedom movement, the memos he produced for the President were being treated as the reports of a spy or informant. When Max is later presented with the secret government plot (code-named “King Alfred”), he reverses this role; he now works to reveal the state to the people, seeking to disseminate the documents through the political organization of the Malcolm-X-inspired “Minister Q.”

But while this heroic effort fails (Max and the Minister are swiftly assassinated in the novel's final pages), Williams himself takes up Max's doomed project; the novel

becomes a mechanism for the dissemination of “King Alfred.” Moreover, Williams implies that even if the details of this plot are imagined, they remain an accurate representation of the state’s *real* secrets. Max’s friend Harry Ames (modeled on Richard Wright) remarks: “I’d spent so much of my life writing about the evil machinations of Mr. Charlie without really *knowing* the truth, as this material made me know it” (369). Ames’ conspiratorial writings were, Williams implies, only an as-yet-unconfirmed version of the truth. We can infer then, that the vast conspiracy Williams’ novel imagines is to be read as an extension of the detailed realism of the roman à clef, with the important caveat that the state’s “real” secrets can only be made visible through fictional conjecture. Below, I will argue that Williams embraces this strategy in order to instantiate his desire to make “the black people” the arbiters of the law’s authority. While the novel’s title invokes Max’s effort to make himself visible as a rights-bearing subject, *The Man who Cried I Am*, ultimately abandons this appeal made to the state (or the rights-regime) on behalf of the black subject, and instead, turns its representative and imaginative energies onto the state itself.

My previous chapters explored how Nazi law provoked a deep anxiety about the nature of legal authority. In analogizing black oppression to the Holocaust (a common strategy in this period), Williams makes a powerful claim for the ethical and political urgency of racial justice. But that invocation also brings with it a complex set of questions about the law’s claim to moral authority. These are debates that Williams engages in a serious and sustained way; his fiction and nonfiction explores constitutionality, unjust law, democratic participation, human rights, civil disobedience, and state violence. Although his ultimate stance is more radical than either Trilling’s or

Heller's, it is rooted in a similar understanding of the proper relationship between legal authority and the democratic public, with the substantial difference that Williams believes racism has made that ideal unachievable in the United States. This argument also puts pressure on Arendt's analysis of American democracy. Arendt notes, in "Civil Disobedience" that "we need not be surprised that the present belated attempts to welcome the Negro population explicitly into the otherwise tacit *consensus universalis* of the nation are not trusted" (91), but Williams treats this exclusion and ensuing distrust as a much more fundamental failing of American history and politics, one capable of undoing any form of national consensus.

Indeed, one of the goals of this chapter will be to consider how Arendt's core insights - about the potential hollowness of human rights discourse, the depersonalized nature of bureaucratic rule, and the interplay between democratic expression and constitutional law - resonate when applied to an issue that her work consistently failed to adequately address. As Kathryn T. Gines and Michael Rothberg have persuasively demonstrated, her statements on African colonialism (in *The Origins of Totalitarianism*) and American slavery (in *On Revolution*), as well as her critiques of school desegregation (in the infamous "Little Rock" essay) and of black student protesters (in "On Violence") are at best myopic and at worst racist.⁶⁴ Throughout her work, Arendt tended to minimize the centrality of racism to American history and politics (she argued, for example, that slavery and debates about slavery did not play a central role in the American Revolution,

⁶⁴ See Gines, *Hannah Arendt and the Negro Question* for a full exploration of Arendt's comments on race. In the second chapter of his book, *Multidirectional Memory: Remembering the Holocaust in the Age of Decolonization*, Michael Rothberg explores the colonial imaginary underlying Arendt's critique of colonialism in *The Origins of Totalitarianism*. Arendt's essay "Reflections on Little Rock" is collected in *Responsibility and Judgment*.

that as “a social question” slavery “was non-existent for all practical purposes” (*Revolution* 66)). Certainly, she did not approach the topic of anti-black racism with the same sense of moral urgency that informed her writings on anti-Semitism, totalitarianism, or statelessness. By connecting the Holocaust to American racism, Williams pushes liberal-democratic thinkers like Arendt to adopt a more radical stance on civil rights and black power. He suggests that a moral appeal directed toward the state only makes sense if the state has demonstrated minimal respect for the legal rights and democratic expression of African-Americans, has proven itself to be, in fact, liberal-democratic. In the absence of those commitments, the state loses its right to arbitrate moral claims and must be subjected to the judgment of the people instead, who may deem its power illegitimate and so deserving of a radical or revolutionary response.

In this chapter, I will outline three distinct ways of describing the interaction of racial oppression to the law, and I will chart the fictional strategies Williams uses to explore each one. *This is My Country Too* makes an appeal to the state grounded in the rights of national citizenship. To enact this liberal-democratic, civil-rights approach, Williams focuses on the role of the author as a representative of the African-American public. This is also the position Max Reddick aspires to in the first half of *The Man who Cried I Am*, particularly during his stint as a Presidential speechwriter. He will later abandon that vision in favor of an appeal to international rights, grounded in the assertion of abstract humanity and depicted through experimental dialogues with a figment of his imagination (the Saminone). Finally, *The Man who Cried I Am* will reject both those approaches (civil rights and human rights) and turn its gaze from the individual citizen or subject to the state itself, a strategy facilitated by the King Alfred Plan documents. In

exploring these shifts, I will also consider their consequences for Kenneth Warren's controversial argument in *What was African American Literature*. For Warren, the end of Jim Crow in the mid-1960s eliminated the former social purpose of African-American literature: to secure the formal, legal recognition of black subjects. As Warren would predict, Williams' 1967 novel *does* abandon its effort to achieve such recognition. But it replaces that project with an equally urgent political imperative: to expose the forms of "quasiofficial" racism that will rise up to replace Jim Crow (*The Man* 364).

I. "Forced to Hope"

Near the end of *This is my Country Too*, Williams relates an evening spent with his friend Doc Hasbrouck. The two "tal[k] endlessly about America," peruse "Tocqueville,...Paine, Jefferson,...Mills, Du Bois, Olmstead..." and watch a television program called "1776." Noticing the absence of any black characters in the program, Doc remarks "Man, if you aren't in at the beginning, where you *were*, you've missed the damn train; and we're still trying to catch up with it" (130). This comment leads Williams to reflect on the two friends' exhausting effort to reconcile their experiences of racism with their residual commitment to the nation:

We had reached that moment again, the one we always reach when we talk about America. And it is the moment all Negroes reach in their search. You know the moment by the sudden falling away of conversation; the bewilderment and anger, the helplessness...In the very next hour, however, a Negro will say: "Okay, but I can't think of another place in the world where I'd like to leave my passport." So, you are compelled to start searching all over again. (130)

This is My Country Too seems to be born out of this compulsion to begin again; it vacillates between patriotic affirmations of the Constitution and the democratic process,

and a deep pessimism about the possibility of meaningful racial equality. This ambivalence is sometimes registered at the level of the text's explicit political pronouncements, but it also emerges in Williams's occasionally hostile attitude toward his own subject matter. On the one hand, he works to position racial justice as the fulfillment of America's founding legal and moral ideals (in his friend's terms, he works to put African-Americans back "at the beginning"). At the same time, his frequent complaint that civil rights is an exhausting and frustrating topic makes visible the tenuousness of Williams' strategy: to secure legal rights by claiming that the nation's legal documents have already guaranteed them to you; to "catch up with the train" by insisting you were on it all along.

This is My Country Too details the cross-country road-trip Williams began in late September 1963, about a month after the March on Washington (11). Williams travels (mostly by car but sometimes by plane) from his hometown of Syracuse, through New England, to Detroit, through the deep south to New Orleans, back up to Chicago, to Los Angeles, back to Syracuse for Christmas, and, finally, to Washington D.C.⁶⁵ John F. Kennedy is assassinated in November, when Williams is with family in Los Angeles, and Lyndon B. Johnson has been sworn in by the time he arrives in Washington. Williams interviews politicians, activists, writers, soldiers, students, friends, and relatives in the various cities he visits, while also reflecting on current events and narrating aspects of his own biography.

Throughout the book, Williams does not emphasize the potential abuse of legal

⁶⁵ Gilbert H. Muller offers a helpful itinerary in his study, *John A. Williams*, which I drew on to reconstruct Williams' trip (42).

authority, but rather, positions the law as a fundamentally anti-racist force. On his account, it is segregationists who display an insufficient regard for legal authority, who refuse to acknowledge “that a law existed, a federal law, and should be obeyed” (80). In many ways, this framework is unsurprising. As Nabers explains in *Victory of Law*, efforts to cast “law enforcement as the foundation of freedom in the United States” date back to mid-nineteenth century abolitionist discourse (110). Antebellum legal thinkers like Lysander Spooner complicated the typical opposition between natural and positive law by re-imagining the Constitution less as a positive legal document than as a semi-mystical embodiment of “higher law” (17). This effort to collapse constitutional and natural law allowed opponents of slavery to describe its endurance as not only immoral, but as properly illegal. The only reason slavery had not yet been abolished, they suggested, was because “important constitutional provisions had not been enforced” (x).

The twentieth-century provided its own confirmation of this argument in the *Brown v. Board* decision. While some of the presiding Justices worried that their own moral objections to segregation could not be reconciled with a body of law that had previously deemed segregation constitutional, Justice Douglas (whose view ultimately prevailed) believed that “the immorality of segregation was the beginning and the end of the legal inquiry. If segregation was wrong, then it was unconstitutional” (Klarman 78). But while the final decision made clear that desegregation was now legally required, the Justices were much less clear about how that requirement might be enforced. In the 1955 *Brown II* decision they “resolved in favor of vagueness and gradualism” (Klarman 79). Afraid of extreme reactions from Southerners, the Court showed a reluctance to swiftly enforce what it had unequivocally declared to be law. Taken together, then, the two

decisions reinforced the interpretation offered by the abolitionist discourse Nabers describes: that, since the law was undoubtedly on the side of justice, the endurance of racist oppression could only result from the failure to enforce the law.

Williams takes up this rhetoric in *This is My Country Too*, which often describes racism as a violation of legal principle. His few explicit references to the Constitution link it – in a rather obscure way – to the cause of racial justice. Early on, he observes, “if [civil rights] could be solved, the Constitution would have meaning for the first time since it was conceived” (50). In the book’s afterward, he remarks: “that the Civil Rights Act was near passage gave me no joy, for obviously, if the Constitution could not be enforced, then neither could the new laws. They would only become a smokescreen before one could get back to the Constitution” (154). Of course, neither of these invocations make clear *which* aspect of the Constitution – which rule, decree, or amendment – he believes guarantees civil rights. While in the latter citation, he may be referring to the Fourteenth Amendment’s Equal Protection Clause, his earlier reference to the time when the Constitution “was conceived” suggests that he locates an anti-racist imperative within the original document, prior to the addition of the Equal Protection amendment. These references to the Constitution are supported by even more ambiguous references to the nation’s founding principles: “the American dream of the beginning was not yet fulfilled” (117) Williams writes, in a characteristic allusion. On the book’s final pages, he references both “those ideals we set for ourselves,” and “those credos we set for ourselves” (153). The cumulative effect of these references to the nation’s founding is to position civil rights as a quintessentially American political movement, as the

embodiment of its as-yet-unfulfilled moral and legal ideals.⁶⁶

Yet this rhetorical strategy seems to rely on an intentional lack of specificity.

Williams not only fails to cite any particular legal statute, but also refuses to name any of the “ideals” or “credos” that have apparently shaped the country’s moral imagination.

Rather than specify the ways in which the Founding Fathers anticipated the importance of racial justice (which, for obvious historical reasons, would be difficult to do⁶⁷) he allows the reader to project their own commitment to equality, liberty, and freedom, (presumably some of the “credos” he has in mind) back onto the founding moment, thus recasting earlier versions of these concepts in the light of more contemporary political and moral priorities. In this way, Williams’ converts the Constitution from a concrete legal document to an amorphous embodiment of his readers’ collective moral sense.⁶⁸

⁶⁶ The use of “ourselves” in the final two phrases also has the added function of retroactively including African-Americans in the act of founding (153).

⁶⁷ Williams concedes this point in *The King God Didn’t Save*: “Cracker attorney J.B. Stoner told a white mob that, ‘When the Constitution said all men are created equal, it wasn’t talking about niggers.’ Stoner was right; it wasn’t. Therefore the problem...” (191). It is not clear from this quotation whether Williams himself is aware of the other problem with Stoner’s statement: it is not the Constitution but the Declaration of Independence which states that “all men are created equal.”

⁶⁸ In his book, *Human Rights Inc.*, Joseph Slaughter argues that human rights rhetoric relies on a similar appeal to the reader’s “common sense.” Slaughter describes the human rights project as an effort to “positiviz[e] nature” (14): it aims to make a set of apparently self-evident standards – “what everyone knows” (88) – into positive legal commands. In this sense, it may represent the inverse of the process Nabers describes. Where his nineteenth-century sources seek to retroactively attribute natural law principles to a positive legal document, human rights advocates seek to produce positive legal documents that will immediately translate the claims of natural law. Slaughter is particularly interested in the pressure that this strategy places on the purported self-evidence of natural law, in “the language of simplicity and obviousness that pervades human rights discourse” (3). There is a fundamental paradox, he suggests, in any discourse that feels compelled to advance and defend principles that it simultaneously claims are obvious to everyone (and authoritative for precisely that reason). The central rhetorical strategy of human rights, Slaughter concludes, is to make “common sense commonsensical” (7). Williams’ effort to recast certain moral and legal priorities in terms of the reader’s own common sense seems to work in a similar way, although he applies it to the Constitution, rather than to human rights law.

Williams' reference to the Magna Carta in the final section of the book takes this logic one step further. He describes the protestors at the March on Washington as "barons of the American spirit...petition[ing] King John on the banks of the Runnymede, petitioning not for a new Magna Charta of guaranteed rights but for the institution of the old" (147). Here, Williams collapses the "American spirit" embodied by the Constitution with a much longer legal tradition. He makes civil rights coincidental not only with the promise of the American revolution, but with the earliest efforts to use law to constrain sovereign power. By linking vague "credos," the American "spirit," the Constitution, and the Magna Carta, Williams produces a rhetoric of common sense that ultimately serves to collapse the boundary between positive law and moral principle. He aligns the rule of law as such (represented by the Magna Carta) with the unfulfilled promise of "guaranteed rights" – rights that are apparently so self-evident that they need not be named. This chain of association is necessarily slippery. Williams advances no systematic argument for the correlation between law and morality. Indeed, his strategy relies on the implicit claim that his readers *already* share his view of the problem, making argumentation redundant.

Because he aligns American law (and even law as such) with the moral imperatives of the civil rights movement, Williams shifts the target of political pressure from law-making to law enforcement. What is needed is a new commitment to living in accordance with the laws and principles that the country has already enshrined. To address this challenge, Williams turns to a Tocquevillian vision of democratic participation.⁶⁹ The moral authority of governmental institutions might be renewed, he

⁶⁹ Williams appears to be particularly interested in Alexis De Tocqueville's conception of democratic participation, as outlined in *Democracy in America*. The French thinker is mentioned in the list of authors Williams and Hasbrouck read in *This is My Country Too* (see the opening

suggests, if citizens could find a way to participate in them more directly:

Politics, through which we come to have government, has been seen by Americans, I believe, to be an empty thing because they too seldom have an actual part in it. And if the science of politics has little meaning, can government? This nation offers every single person a chance to participate in government, but at the same time denies them that opportunity. Thus, the average man who is concerned with the nation beyond the affairs of his family, town, and self is hard put to find the handle to help change things for the better. The late President Kennedy better should have suggested *ways* and *means* for people to involve themselves in their country than to merely ask them to do so. How does one begin? (137)

Williams seems to find one possible answer to his question in the March on Washington.

When he returns to D.C. in the final pages of the book, he reflects on the unprecedented way that the March embodied the will of the democratic public: "...the people had committed, after so long a time, their *bodies* to a given place at a given time" (149 italics his). The March goes beyond the typical electoral mechanisms that have made the government "an empty thing" and instead, brings "250,000 people, representing millions more, black and white" into intense, physical proximity with the source of federal power (137, 149). In bringing protesting "*bodies*" to the doors of government, the March offers a kind of literal representation of the social contract meant to hold between the people and their legislature (149).

paragraph of this section). He also appears in a brief, enigmatic passage in *The Man who Cried I Am* which I have unfortunately been unable to parse: "What on God's earth did a man do who did not play the game of jacks and jills? Alexis de Tocqueville gave the answer one hundred and twenty years ago; that answer was still valid" (269). Finally, Williams cites De Tocqueville twice in *The King God Didn't Save* although that work also stresses his reservations about him: "Again to refer back to de Tocqueville (and I shouldn't, because he is another of the many historians who viewed America as white and who dealt with the question of slavery, which has since come to plague the nation, as nothing more than an aside)..." (84). Williams' emphasis on civic participation in *This is My Country Too*, clearly echoes De Tocqueville's arguments in *Democracy in America*, although his focus on the White House and the Presidency differs from De Tocqueville's emphasis on more local forms of governance.

This project of democratic representation is paralleled by Williams' own road-trip narrative. As he interviews subjects throughout the country he and his book become repositories of democratic sentiment. His efforts to cover vast amounts of physical space and to meet with people of diverse racial, political, and economic backgrounds gives the project a sense of comprehensiveness. As he grandiosely states on the book's first page: "I wanted to know how *America* was picking its way through a transition that was inevitable even though it was being resisted on almost every side" (11 italics added). If Williams frames his book as an embodiment of national sentiment, then his decision to conclude with a visit to the White House gives an unavoidable narrative meaning to what is, geographically speaking, a quite random route. It suggests that the country somehow culminates in its capital. In this sense, the book reiterates the structure of democracy itself: it gathers together the sentiments of the people and brings them to the seat of governmental power.

Yet while the book performs the project of representative democracy on behalf of the broader American public, Williams also claims a particular representative relationship to the African-American community. When he enters the White House, he uses the first-person plural to position himself as a metonym for generations of black Americans:

We have been in this land for seven generations and are descended from the one African in every ten who outlived death, disease, displacement, and degradation. And *we, in the person of myself*, stood outside the East Gate of the White House. I was not to see the President, but that didn't matter. I, John Alfred Williams, the son of a son of a son of a son of a slave, himself the son of free Africans, was going into the home of Presidents. (150 italics added)

Here, Williams rewrites DuBois' notion of "the talented tenth," instead describing every African-American as a descendant of the tenth "who outlived death" (this is an idea he

first articulates earlier in the book: “I am descended from the one black in every ten who survived the slave raids...and I have pride enough not to want to disgrace that line” (43)).⁷⁰ In this way, he repudiates an older ideal of black bourgeois leadership, and instead, claims representative status on a more democratic basis: his membership in a lineage that includes, by definition, the entire African-American population.

The passage stages an encounter between two metonyms – Williams as a representation of his racial community, and the White House as a representation of American power. As his triumphant tone makes clear, this encounter is meant to betoken the long delayed inclusion of African-Americans in their government. It promises to manifest the claim made in the book’s title, that the United States is his country too. Williams’ final visit to D.C. is thus layered with several interrelated democratic meanings. It casts the book’s narrative structure as a reiteration of the democratic process. It figuratively enfolds the black public into American democracy through the metonym of Williams’ own visit to the White House. And it occasions a reflection on the earlier March on Washington, which afforded a non-figurative (or at least, not entirely figurative) opportunity for African-Americans to participate in democratic governance.

Yet despite that optimistic conclusion, *This is My Country Too* is also shadowed by ambivalence, exhaustion, and resentment. Even in the book’s final paragraph, which is overlaid with an almost sugary patriotic optimism, Williams indicates some residual dissatisfaction with the political program he has endorsed:

I searched and came away with hope. It is there in little pockets. Let it grow; help

⁷⁰ In his 1903 essay “The Talented Tenth,” DuBois argues that more ambitious educational programs are needed to help produce an African-American “aristocracy of talent and character” (847). This group of “exceptional men” will then be capable of leading the race as a whole toward greater prosperity (861).

it grow. I am descended from the one in every ten who survived and somewhere in the continuity of the existences of my forbears I am committed to the search, the hope, the challenge, *whether I want to be or not*, for America has yet to sing its greatest songs. (153 italics added)

Here, Williams stresses that he is “committed to the search, the hope, the challenge” but also makes clear the degree of compulsion involved in that commitment. This ambivalence is made even clearer in the final paragraph of the Afterword, written one year later (in 1964):

I have been to Africa and know that it is not my home. America is; it is my country too, and has been for generations. As I said, I am committed to the search for its true meaning; I hope what I have found is not it. I am forced to hope for it and I have no choice but to meet the challenge of it. Yes, it is true that America has yet to sing its greatest songs, but it had better hurry up and find the key to the tunes. (158)

This conclusion rewrites the book’s original conclusion in more pessimistic terms. The subtle feeling of obligation expressed in the first version is now made explicit; “I am forced to hope...and I have no choice” Williams writes. Indeed, this sense of compulsion echoes across the book, undercutting its often rosy assessments of the American “spirit.”⁷¹ What happens to the book’s liberal-democratic vision when it is redescribed as a compulsory, rather than freely-chosen, belief system?

While *This is My Country Too* often makes triumphant and grandiose claims about the civil rights project, Williams also complains about the many strictures the

⁷¹ Even when Williams has occasion to quote *This My Country Too* in his 1970 book, *The King God Didn’t Save*, he uses the language of compulsion to describe his own writing. He introduces a quote from his earlier work with these sentences: “As I see the March on Washington now, despite its “failure” and it *did* fail to achieve the *intangible* goals that should have been tangible – it certainly could have been a more precious moment in American history than it has become. Months after the March I returned to Washington and toured its route and the ground over which so many people spilled, and I felt compelled to write:...” (59). Although Williams does not explicitly retract or modify his earlier, more optimistic account, his assertion that the March failed and his use of the word “compelled” suggests a degree of alienation from his own description.

movement places on him, limiting the range of his literary ambition, draining his intellectual resources, and forcing him into contorted theoretical postures. After meeting his friend Bill Gulick, Williams expresses gratitude that Gulick, a white man, has not brought up the subject of civil rights: “most white people tend to assume that if a Negro knows nothing else, he knows civil rights. Bill Gulick did not demean me so; he treated me as another guy, another writer” (101). Here (in a book that is by any account *about* civil rights), Williams laments the fact that his race binds him to the subject, restricting his ability to work as just “another writer.” This complaint echoes his earlier “confess[ion]” that he finds civil rights a “boring” topic for literary exploration:

Has any Negro ever confessed that civil rights can be a boring issue – necessary, yes, but boring as well, because it is war and only the sick can ever like war. A man wants and needs peace from travail. If he is not given it, his mind will provide it for him. That is why civil rights can sometimes be as lifeless as a rock. (23)

While he later describes civil rights as the revivification of America’s founding ideals, here, it registers as a “lifeless” “travail.” Far from embodying an idealized coincidence of law, morality, and political participation, the movement is described as a war: the absolute breakdown of the democratic political process and the nadir of moral aspiration.

Williams’ most sustained charge against the civil rights movement is that it forces him into a circular train of thought. When he meets with a white, liberal, newspaper publisher in Greenville, Mississippi, he reflects:

It had almost become a macabre game by now, asking questions and having them answered, or making comments and having them enlarged upon or whittled down. And I found myself trying to concentrate on what he was saying, to find some new nuance. No, civil rights had us as slaves on the waterwheel; we had to go around and around. The questions we asked, the answers we gave, bounded from one corner of a closed box to another, like Mexican jumping beans. I tried to conceal a sudden, billowing tiredness...(80)

While he will later describe the March on Washington as a novel form of democratic expression, here, Williams casts civil rights as a repetitive, rote discourse, offering no “new nuance.” It is an incessantly circular problem that he nevertheless feels *forced* to continue tracing and retracing (“as slaves,” “we had to”). As we have already seen, this rhetoric will be taken up a second time during his later conversation with Doc Hasbrouck. Williams and Hasbrouck feel “compelled to start searching all over again” although they know in advance that the conversation can only conclude with “bewilderment and anger,” and so, with another imperative “to start searching all over again” (130).⁷² These passages further complicate Williams’ concluding claim that he is “forced to hope” (158). Is the optimism he expresses in the book’s final pages only another turn of the waterwheel?

Indeed, we have already seen why Williams might characterize his own rhetorical project as circular. He describes the March on Washington as an event that will help to restore the legal rights apparently *already* guaranteed to African-Americans; he demands that the United States recognize principles that apparently *already* constitute its “spirit.” This approach to the problem is not unprecedented. Several thinkers have described forms of democratic pressure as necessary to the full realization of constitutional principles and supposedly-guaranteed rights. In his essay “Constitutional Democracy – A Paradoxical Union of Contradictory Principles?” Habermas argues that liberal-democracy necessarily involves “a process of realizing and progressively elaborating the system of

⁷² Williams also uses the trope of circularity to describe his family’s despair following J.F.K.’s assassination: “My family... knew that to be any degree of black was to scream down the ages that the American dream of the beginning was not yet fulfilled, and that when opportunity to fulfill it has been presented like the seats of a Ferris wheel, it has only been ignored” (117-18)

fundamental rights” (127). On this definition, “fundamental rights” are not so much guarantees as aspirational ideals toward which the democratic process should work. Claude LeFort makes a similar claim in his essay, “Politics and Human Rights.” “[R]ights,” he argues, “are not simply the object of a declaration, it is their essence to be declared” (257). In other words, rights do not simply exist, but must be claimed and reclaimed as part of an ongoing political process. As we saw in previous chapters, Arendt argues that civil disobedience fulfills the spirit of the American constitution, which relies on democratic participation to extend, complete, and enforce the rights it guarantees.

Although these approaches help to reconcile the tension between the rule of law and democratic participation, they do not capture the frustration felt by those who belong to a class of persons whose supposedly guaranteed rights are still in the process of being “progressively elaborat[ed]” (Habermas 127). In “To Be Baptized,” James Baldwin cites an exchange between Malcolm X and a young civil rights protestor that exposes the limitations of this logic: “‘If you are an American citizen,’ Malcolm asked the boy, ‘why have you got to fight for your rights as a citizen? To be a citizen means that you have the rights of a citizen. If you haven’t got the rights of a citizen, then you’re not a citizen.’” (95). Here, Malcolm X repudiates any political vision that would permit a discrepancy between the rights promised to a subject and the rights actually granted to her. While *This is My Country Too* calls for the enforcement of already “guaranteed rights,” Malcolm X insists that if your rights are not enforced, they don’t exist (in other words, if this really was ‘your country too’ you wouldn’t need to say so). Malcolm X’s critique also calls into question the logic of democratic elaboration invoked by Habermas, LeFort, and Arendt: how can a subject not yet fully incorporated as a citizen achieve the standing necessary to

call for the enforcement of their rights? Perhaps these thinkers would not concede the point made by both Baldwin and Malcolm X: that African-Americans did not possess even the basic rights of citizenship in mid-century America. But if we take the latter's claim seriously (and there is very good reason to do so), then it puts tremendous pressure on a model of liberal democracy that would call for the gradual extension and elaboration of the rights regime.

Williams' ambivalence toward the civil rights movement seems to stem from the conflict between these two visions. On the one hand, he participates in the liberal-democratic logic described by Habermas, Arendt, and LeFort; he calls on African-Americans to use forms of political participation to help fulfill the "spirit" and "meaning" of the American founding. On the other hand, he implies that this fundamental "meaning" may not exist beyond his own projection. Indeed, it is only a tenuous rhetoric of self-evidence that secures his claim that the nation's founding legal documents coincide with his own (and his presumed audience's) moral and political priorities. We might say, then, his rights claim is more an act of writing than an act of reading: Williams does not discover specific guarantees of equality within American law and history but simply posits that they *must* be there. His sense that civil rights discourse reduces him to a "slav[e] on the waterwheel" or "a Mexican jumping bea[n]...inside a closed box," results from the claustrophobic circularity of this rhetorical strategy. He insists on framing his call for justice as a fulfillment of the nation's founding principles, but he must also work to make those founding principles appear coincidental with his call for justice. Ultimately, his book appeals to a set of overarching ideals that are largely defined by the text's own rhetorical projection.

As we have seen, Williams closes his Afterword with the hope that he may yet be able to reconcile himself with the “true meaning” of America (“I am committed to the search for its true meaning; I hope what I have found is not it” (158)). A few pages earlier we get a glimmer of the meaning he has actually “found” but is nevertheless unwilling to fully accept:

From the beginning Americans defied the natural laws of territory and possession, and in the process eliminated from coast to coast and from North to South, almost an entire race of people, the American Indian... We were born of violence. Having finally accepted this most logical conclusion, for it does explain not only our own history but that of the world, I dug into my apartment, hung up the mementos of my travels, and sat down to work on a new novel. (155)

The conclusion reached here – that the United States is “born of violence” – stands in sharp contrast to his often idealizing references to America’s founding principles. Yet despite framing this realization as a solution to the intellectual and political uncertainty that plagues the book, Williams pulls away from it in the book’s final sentences, committing himself to the hope that this may not be the “true” meaning of America.

This reading of the United States as a nation “born of violence” thus stands out as a kind of road-not-taken – or, at least one not taken in *This is My Country Too*. The “new novel” promises to explore the problem which this book cannot. We have very good reason to believe that the novel in question is *The Man who Cried I Am* (hereafter, *The Man*). Williams began writing the novel in 1964 (the same year the Afterword was written) and did not publish any other fiction between that date and the publication of *The Man* in 1967.⁷³ Moreover, *The Man* clearly addresses itself to the problem Williams

⁷³ In his 1984 study, *John A. Williams*, Gilbert H. Muller notes that Williams began writing *The Man* in 1964, “at a time when his travels for the *Holiday* article had left him with serious misgivings about the nation’s social health” (73) Recall that *This is My Country Too* was initially published as a series in *Holiday* magazine.

raises here. It is a work premised on the absence of “reliable authority” and on the foundational role of violence in political life (*The King* 220). It also emphasizes, as this passage begins to do, analogies between American racism and global crises like the Holocaust and colonization. While fiction might allow Williams to conjure up the “true meaning” his journalistic work can only hope for, he instead uses the novel to break his own compulsion to “begin searching all over again.” In my next section, I will consider how Williams uses the King Alfred Plan documents to address the political limitations of *This is My Country Too* and to offer a new vision of the African-American protest novel.

II. The Novelist-as-President, the Novelist-as-Spy

Both *This is My Country Too* and *The Man who Cried I Am* are travel narratives. The first book maps the contours of the United States, while the latter moves through a variety of international locales: Paris, Amsterdam, Leiden, Lagos, and Leopoldville. Williams uses this more global perspective to reframe the racial politics of the United States, likening American racism to the Nazi assault that devastated Paris, Amsterdam, and Leiden, and to the colonial violence that consumed Lagos and Leopoldville. This alienated view of the United States achieves its most literal manifestation in the top-secret documents of the King Alfred Plan, which include a map of possible concentration camp locations (see Fig. 1). This map not only solidifies the connection between American racism and the Holocaust, but allows the reader to view the country, literally, from the outside. *This is My Country Too* viewed the nation from the limited perspective of the individual citizen moving across its vast expanses. This map allows the reader to see the country from an abstracted, inhuman vantage. That change in perspective reflects Williams’ changing

relationship to American law. *This is My Country Too* made its appeal from *within* the parameters of American liberal democracy. *The Man*, by contrast, seeks to gain a vantage on the state as a whole, to make it visible to an African-American public tasked with judging its legitimacy.

The Man opens in Amsterdam in 1964. Max Reddick has returned to Europe to attend the Paris funeral of his friend Harry Ames (modeled on Richard Wright) and has subsequently traveled to Amsterdam, where he reconnects with his ex-wife, Margrit. He then drives to Leiden, where he receives a mysterious briefcase that Harry had asked his mistress, Michelle, to pass on to Max. These opening sections cast an ominous shadow across the novel. First, Max is suspicious about the circumstances of Harry's death.

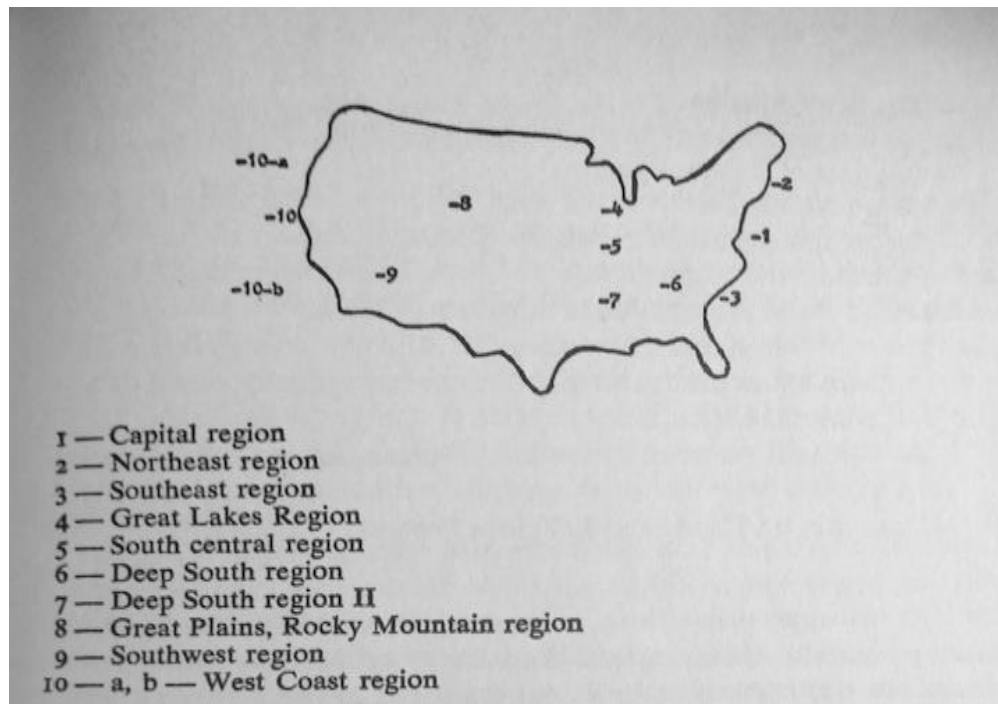


Fig. 1. Map included in the “King Alfred Plan” (*The Man* 373). My own photograph.

Alfonse Edwards, “a black Ivy Leaguer” some suspect of being “a U.S. Government fink” was the only one present when he died (13, 21). Second, he seems deeply pessimistic about the future of American racial politics. As he walks past “the Anna Frank House” in Amsterdam, Max grimly reflects on “what so easily could be at home” (30). Finally, Max himself is suffering from what William J. Maxwell terms “a highly symbolic case of rectal cancer” (262), which threatens to kill him before he can unravel the mystery of Harry’s death.⁷⁴ Williams reveals the contents of the top-secret briefcase gradually. Max first begins reading Harry’s introductory letter (which warns him that, by opening the case, he has already signed his own death warrant) about half way through the four-hundred page novel (205). Sections of the letter are scattered across the subsequent pages, before the King Alfred Plan is finally revealed near the novel’s end (371).

These scenes in Amsterdam and Leiden, which span the last day of Max’s life, are interwoven with an ambitious historical narrative that follows him from 1940 through 1963. These sections chart the major political events of the midcentury, while also tracing Max’s increasing disillusionment with the white literary and political establishments. Max’s inability to secure a job in the New York journalism world (despite the false assurances of his white friends and colleagues) leads to the death of his first love, Lillian, who pursues an unsafe abortion because the couple cannot afford to support a child.⁷⁵ His

⁷⁴ Although he contracts the disease while on a reporting assignment in the Congo, it seems to represent his emasculation at the hands of white America. At one point he describes “the pain that now seemed always centered around his anus” and adds “Washington had done it” (314). Needless to say, this is a disappointingly heterosexist trope.

⁷⁵ This episode emphasizes how racism destroys the black family (conceived in traditional heterosexist terms), depriving the man of his ability to function as a breadwinner, and so turning women away from their supposedly-natural reproductive instincts. We might contrast Lillian’s

contacts later set him up with a position as a speechwriter for an unnamed President obviously based on J.F.K., but this experience only serves to expose the government's hostility toward the civil rights movement and its disregard for the Constitution. Max's alienation intensifies in the days leading up to the March on Washington (a stark contrast to Williams' optimism about the March in *This is My Country Too*). When he begins collecting weapons and practicing shooting, his Dutch wife, Margrit, accuses him of being "paranoid" (358). This argument prompts their separation and his complete repudiation of the American legal system: "the only law people in any nation live by is the law of force," he tells her (356).

In addition to the twenty-four hour suspense thriller and the two-decade historical narrative, the novel includes three brief dialogues between Max and the Saminone, a mocking alter-ego within his own consciousness.⁷⁶ These exchanges draw on what Mark Greif calls "the discourse of man," pitting an abstract vision of human dignity against the encroachment of bare life (11). Max insists, "*I am. I am a man. I am a king,*" while the Saminone retorts, "*Man? You tougher than rats, bedbugs, roaches, ...?*" (187). Evoking species known to thrive and proliferate in inhuman and even apocalyptic conditions, the Saminone calls into question Max's claim that the human essence transcends mere

abortion, for example, with the attitude evinced by a Nigerian woman Max sleeps with in Lagos: "Of course, she would have [his baby], carry it on her butt tied behind her until it walked. It would be loved and cared for and not cast aside..." (327). Here, decolonized Africa is idealized as a place, unlike America, where Max's masculinity can be confirmed by his lover's ability and willingness to bear his children.

⁷⁶ Muller claims that the name Saminone is a contraction of the phrase "Sambo-in-one-person" and so refers to a stereotypical black minstrel character (81). This interpretation seems likely though Muller provides no arguments or citations for it. I am not sure, for example, why he would read "Saminone" as "Sambo-in-one-person" rather than "Sambo-in-oneself" given that the Saminone operates as an internalized figure.

desperate survival. This is a claim that Max himself will begin to question in their final exchange, when U.S. government spies – bent on protecting the King Alfred Plan at any cost – chase him down on a Dutch highway (399).

In the following two sections, Iuj explore the relationship between these diverse elements of the novel: first, the historical narrative, which exposes the limitations of political appeals (like the one articulated in *This is my Country Too*) addressed to the Constitutional, legal order; second, the Saminone discourses, which question the utility of more abstracted, human rights discourse; third, the King Alfred Plan, which reverses the novel's representative gaze, exposing the state to the black public, rather than petitioning the government for the recognition of black Americans' political or human rights. After outlining these three distinct frameworks, I consider how the effort to represent the state offers a new path for the protest novel after what Kenneth Warren characterizes as the end of African-American literature. I close the chapter by considering how the novel's international perspective enables not only the turn to universal human rights discourse, but also, the effort to expose the American state.

The Man who Cried I Am vacillates between a cautiously optimistic vision of law (similar to the one offered in *This is My Country Too*) and a much starker critique of law as a mere effect of sovereign power. After witnessing an attempt to desegregate a southern University, Max asks himself: "Was this what so many places in America were going to be like until the law, *justice* took off her goddamn blindfold and saw what she had been doing with it *on?*" (255).⁷⁷ Here, Williams grammatically elides the boundary

⁷⁷ The scene seems intended to parallel the school desegregation crisis in Little Rock, Arkansas. Max's description – a "white mob howling and bleating, snarling and tearing. It's object...a lone, skinny, unattractive Negro girl who had been admitted as a freshman" – echoes the iconic 1957

between law and “*justice*” (suggesting some enduring belief in natural law) and looks forward to a moment of redemption when the law will finally perceive and rectify its own failings. But the passage also charges the law with the abandonment of the African-American public, beset on all side by illegal and unjust repression. As he did in *This is My Country Too*, Williams expresses anger toward the law, not for its repressive power but for its impotence, rendered as an inability to perceive the violent ways it is applied and misapplied.

Yet although Max here retains some minimal investment in the law’s future self-perfection (“*until the law...took off her goddamn blindfold*” (255 italics added)), he appears to have already abandoned the law as a mechanism of redress several chapters earlier. When Max reports on the trials (and inevitable acquittals) of Southern lynch mobs, Williams writes:

Max had looked at the white defendants, at their relatives in both the jury box and the audience, and had come to know, *really* know that to be oppressed was not enough to win ultimately; that to be in the right was not enough. You had to win the way they had won – with blood. Words, petitions, laws, ideas, were not going to be enough. The common denominator was blood, white blood as much as black blood... You talk about change, man? You’d better talk about an explosion. (208)

Here, Williams suggests another response to the impotence of “words, petitions, laws, [and] ideas.” Rather than waiting for the moment when these might regain their power and so fulfill their democratic promise, he insists on a more urgent response. Tired of seeing “too many dead, mutilated Negroes and tough, alive, giggling crackers,” Max is drawn to a more radical confrontation with the law’s failure to function as an instrument of justice (208).

photograph of Elizabeth Eckford, on her way to Little Rock Central High School.

During Max's final confrontation with his wife, Margrit, he advances yet another account of the relationship between law, justice, and force (one that echoes Baldwin's critique in "To Be Baptized"). He tells her:

The law in this country, just like in most countries, is for the privileged and if you're white in America, you are privileged. We hope for the law to protect us, but it doesn't. I've seen the White House break laws, and I am not about to console myself that if brought before the court for being in a street fight, I can count on a fair dispensation of justice. The other side has guns, Maggie, and power, everything serious killers should have to do their jobs. Without law on my side, I become the law; my guns are the law, and the only law people in any nation live by is the law of force or the threat of force. Love don't do what a good ass-kickin' can. (356)

This passage obviously differs from his call for justice to "take off her goddamn blindfold" (255). No longer seeking to align law with justice, he now defines law only as a relation of force. This claim also differs from Max's response to the lynching trials, despite their similar tone of violent urgency. The first passage aligned "words, petitions, laws, [and] ideas" with being "in the right," and found all of these insufficient. Violence, on this logic, becomes necessary because the white public has failed to respect the rule of law, which, would necessarily protect those "in the right." In this passage, however, Max rejects any correlation between moral right and the rule of law, instead insisting that the law only serves to manifest the privilege of those who possess more guns. Put in legal-philosophical terms: Max abandons natural law and embraces an idiosyncratic version of legal positivism.⁷⁸

⁷⁸ Max's position shares one of the fundamental insights of legal positivism: that law is an effect of social and political power, not an expression of moral principle. Nevertheless, no positivist philosophy that I know of would suggest that any man capable of exerting force is thereby making law. Typically, the capacity to make law is restricted to the sovereign. For H.L.A. Hart it is restricted to the political institutions that a given society recognizes as law-making (see: "Law as the Union of Primary and Secondary Rules" in *The Concept of Law*). In other words, for positivism (but not for Max), all law results from a relation of force, but not all uses of force

Max's experience as a speechwriter for J.F.K. is a decisive moment in this transition. The fact that he has "seen the White House break laws" is treated as a key piece of evidence for his new view of legal power (356). The importance of this event is clear. If the President can break the law then this would seem to demonstrate Agamben's paradox of sovereignty.⁷⁹ It suggests that the law only serves to provide a veneer of legitimacy to an executive authority that it cannot constrain. But it is not only the political-philosophical implications that haunt Max. His encounter with the President also forces a reorientation of Max's understanding of his own role as an African-American novelist. Like Williams at the close of *This is My Country Too*, Max initially perceives himself as a metonymic representative of the black public, capable of manifesting the democratic promise through his own encounter with federal power. Yet he eventually realizes that he has been treated not as a democratic representative, but as a spy or informant. This discovery accelerates Max's disillusionment with American legal and political power and prompts Williams to adopt a different relationship to the public – one manifested through the novel's presentation of the King Alfred documents.

In *A Pinnacle of Feeling*, Sean McCann argues that Richard Wright's *Native Son* aims to attain the "sovereign perspective" of the Presidency (3). Like the madman Bigger Thomas meets in prison, who insists that he will "tell the president and the League of Nations" about the condition of African-Americans, Wright aspires to the national vantage and oratorical power associated with the President.⁸⁰ As we have already seen, in

result in law.

⁷⁹ See *Homo Sacer*, where he argues: "The paradox of sovereignty consists in the fact that the sovereign is, at the same time, outside and inside the juridical order" (15). That is, the sovereign wields the power of the juridical order but is not himself subject to its laws.

⁸⁰ McCann describes how the passage of the New Deal bolstered "progressive hopes in the ability

This is My Country Too, Williams describes his own visit to the White House as an opportunity to – in the language of Wright’s madman – “tell the president” about the racial conflicts dividing the country.⁸¹ Now, as a speechwriter for J.F.K., Max can speak not only *to* the President, but *through* him. His writing promises to take on the aura of authority, allowing him to translate the insights of the black protest novel into direct political and legal power. Indeed, the President’s own comments seem consistent with this optimistic vision of Max’s new role. Although he is himself unwilling to prioritize civil rights over the space race and the Cold War, he suggests that Max stand in his place as a kind of national leader on civil rights, even perhaps, as a President of the black public:

I want you to behave as though civil rights is our most urgent problem. In that light, write what you think about it; I want memos from you every week; I want the closest possible cooperation between you, Jim and Gus. *You are me in this instance*, with all the checks and balances that are bound to the office of President, with the impetus or drag of public opinion included. See the leaders of the movements; talk to them. I want to know every change in their thinking. If something comes up that’s urgent, call Mrs. Agnew and she’ll get you back in here so we can talk about it. (303 italics added)

Here, the President delegates to Max his own political relationship to the African-American public. Max will assume the mantle of federal authority in the “instance” of black oppression and civil rights. Notably, these instructions offer a model of the Presidency consistent with the affirmative vision of liberal democracy Williams

of the president to rise above ordinary politicking and lead a unified nation toward a new era of democratic reform” (6). Wright’s novel, he argues, “appeal[ed] subtly to the transcendent authority of a sovereign president” even as it “undermined that appeal by envisioning the presidency as but one more element of an unresponsive political system” (6).

⁸¹ He is only there to interview Arthur Schlesinger Jr., not to meet the President. But, as I argued in the previous section, the visit is nevertheless cast as an encounter between the black public and executive authority.

expounded in *This is My Country Too*. The President's legitimacy is here made contingent on his subjection to the rule of law ("checks and balances") and to the will of the democratic public ("the impetus or drag of public opinion").⁸² The role allows Max to fulfill the promise of the rule of law through the representation of black democratic sentiment.

This idealistic vision unravels quickly however. A desegregation crisis emerges when a black student named William MacKendrick seeks to enroll at the University of Mississippi. After speaking to MacKendrick, Max learns that the Attorney General had urged the Ole Miss alumni supporting his application to withdraw their signatures, arguing that MacKendrick's enrollment did not fit the President's "timetable" for Southern desegregation (309). For Max, this revelation lays bare the true nature of the American political system:

The facts spoke for themselves now. The administration deliberately and successfully subverted the lawful attempt of a citizen to enroll in an educational institution of his choice. A constitutional violation by the people entrusted to

⁸² Williams' vision of the novelist-as-president thus differs somewhat from the Progressive vision McCann describes in *A Pinnacle of Feeling*. Max's new role relies on his ability to represent the will of a broader public, but it does not grant him an authority that could transcend the rule of law or the mundane institutions of American democracy. McCann focuses on a Progressive vision of the Presidency which hoped to transcend institutional checks and balances and express the will of the people more directly: "In the adoption of representative democracy as the republic's central political form, and in the creation of the system of federalized and divided powers, U.S. political philosophy historically had accepted a fundamental division between state and nation as the price for the restraint of governmental power. In the twentieth century, that restraint often seemed to social democratic thinkers ever less valuable and ever more the obverse face of the powerlessness that individual citizens were fated to in their private lives as much as in their public status as citizens. In the vision of the modern presidency first advanced by Progressive reformers, however, that breach was to be healed by the person of the president, who only in his action or policies, but in his presence and voice was imagined as the suture that could bind together public opinion and political institutions and in so doing restore popular rule" (18). The role of voice, oratory, "eloquence, imagination, and profundity of thought" is, for McCann, the central connection between the Progressive-style Presidency and the novelist (19). TWilliams tempers that populist vision with an insistence on the rule of law is consistent with the transition from New Deal progressivism to postwar liberalism.

uphold that Constitution. (311)

While this passage continues to align the Constitution itself with the cause of racial justice, it makes clear that constitutional dictates bear no meaningful relationship to the actual operation of law and politics in the United States. No longer able to invoke the Federal authorities against the racist abuses of local and Southern powers, Max must abandon his conception of the Presidency as a “reliable authority” toward which he could direct his appeals (*The King* 221). Notably, this realization is presented with the same tone of epistemological certainty that will later frame the King Alfred Plan revelations. In an episode that has pivoted around speechwriting and democratic expression, it is “the facts [that speak] for themselves now” (311).

Max’s conversation with MacKendrick also casts his own role in the administration in a new light. On the one hand, it calls into question the President’s effort to describe Max as a presidential surrogate. Although Max’s role was characterized by the constraints of law and public opinion, we now see that such constraints have little to do with the office of the Presidency, which has just engaged in secret and illegal activity. Second, it has become obvious over the course of the episode that the administration has little interest in Max’s speeches. While he sends constant memos to the President about the progress of the civil rights movement, none of his speeches are actually used. At one point Max complains, “why don’t you people use me? All my life I’ve fought like hell to keep people from using me. I came down here for you to use me, and you won’t” (307). Yet even if he does not see it himself, Max *has* been used, and precisely in the way he has tried to avoid.

At one point in a debate about civil rights, the President’s aides, Jim and Gus,

briefly mention their “sources” in the movement – an ominous allusion considering the novel’s opening charge that Harry Ames may have been assassinated by a “U.S. Government fink” posing as an expatriate African-American writer. Given this framing, the logical conclusion that haunts the speechwriting episode is that Max himself has, albeit unwittingly, worked as just another “source.” Indeed, when we read with this suspicion in mind, the President’s instructions appear more sinister. When he urges Max to report “every change in [the] thinking” of civil rights leaders, he is urging him to act, not as a democratic representative, but as an informant. When the President declares “you are me in this instance” he is transforming Max into a Trojan horse for white, federal power, not christening him as a leader of the black community. This would explain why Max’s effort to make the black community visible to the President did not result in any greater democratic representation. Max has fulfilled the dream of Wright’s madman, to “tell the president,” but this project contributed more to state information-gathering than to national self-expression.

The speechwriting episode concludes by rewriting Williams’ own visit to the White House in *This is My Country Too*, converting the site from a symbol of inclusion to one of alienation, and thus, marking the novel’s decisive turn away from the political stance and representational strategies of the earlier work. Williams writes:

Max walked out of the White House through the East Gate and then back around the front on Pennsylvania Avenue. Once he paused and pressed himself close to the fence with the rest of the sight-seers, and made himself think: The White House. That is where we are getting the best; there’s where the Golden Age begins. Where did it go wrong? We are all like blind men feeling different parts of the elephant and taking that part for the whole. No, not we; they. I know that elephant; it’s tusks, trunk, ears, legs. Elephants? It’s the asses that are in, the donkeys. And I believed. I wanted to believe. I had to believe, and now? (312-313)

Max first believed that the fight against racism hinged on the democratic and literary representation of African-Americans to their national government. Like Williams himself in *This is My Country Too*, he hoped to make the concerns of black Americans visible to those capable of recognizing their rights-claims. But now, with the metaphor of the blind men and the elephant, Williams suggests that it is actually the state that has been *under- or mis-represented*. Civil rights leaders have pitched their pleas for recognition to a state whose real operations are so vast no citizen can perceive them in their entirety. Although Max has now gotten a glimpse of its true nature (“I know that elephant”), it is only the King Alfred Plan documents that will finally bring the whole into focus.

The Plan is darkly foreshadowed in the aftermath of the speechwriting episode when Max meets with the leftist literary critic, Bernard Zutkin, who had referred him for the position in the first place (and who may be a caricature of Irving Howe⁸³). Rejecting the notion that democratic politics could mediate the serious divides produced by American racism, Max wonders whether a more direct, more violent confrontation might be necessary: “haven’t we learned that there exists no substitute for a fight but a fight?” (316). Zutkin warns him that, if so, the black (and for him, Jewish) population is unlikely to survive such a fight. Echoing both Arendt’s banality of evil thesis and Baldwin’s description of “the vast private Hinterland of the American heart” (130), Zutkin warns “I

⁸³ Zutkin is a champion of Harry Ames, paralleling Howe’s praise of Richard Wright in “Black Boys and Native Sons.” When Williams briefly writes from Zutkin’s perspective (in the third-person-limited style usually restricted to Max), he has Zutkin ponder whether the death of Max’s girlfriend Lillian might improve his writing by ripping away “the last ragged curtain of illusion” that had sustained Max’s “petit bourgeois” sensibility (120). The idea that Zutkin would prefer to see black men suffer more for the sake of their art seems to parallel Ellison’s charge (outlined in “The World and the Jug”) that Howe defines authentic black experience solely in terms of extreme suffering.

have seen their faces; they are faces out of nightmares – most ordinary – so ordinary that you can’t believe the brains behind them capable of genocide” (317). The speechwriting episode marked the ultimate failure of constitutional law, representative democracy, and most intriguingly for my purposes, the political promise of novelistic representation. These failures have left the novel in a world without a “reliable authority” to defend against the most extreme forms of violence. To respond to this new reality, Williams offers two alternative strategies: a moral-existential claim linked to the discourse of human rights and an effort to reverse the direction of the novel’s representative gaze.

The tone of existential self-assertion promised by the novel’s title is largely restricted to Max’s three dialogues with the Saminone. The first occurs after Max undergoes surgery for his rectal cancer and wonders how the doctors will dispose of his excised flesh. The passage draws on Hamlet’s speech describing how the King’s body, eaten by worms, which are then used to catch fish, may finally “go a progress through the guts of a beggar” (IV.iii.31-32). Hamlet’s rhetoric demonstrates how biological and ecological processes make the individual’s character and social status irrelevant, but Max subverts it by imagining that his individuality might endure even the disintegration of his body: “Did they flush it away to join the shit and cloudy condoms floating in the rivers? Did fish nibble at it, a delicacy? *Look, man, here’s a piece of Max Reddick! Have a taste!*” (186). Faced with the obvious absurdity of this idea, Max wonders whether existential self-assertion could ever transcend the pressures of biological life: “Why remember more and more the vast laboring distance so filled with internecine horror and commonplace death, the gift of that raving bitch, evolution, nature, now made gentle with the title, Mother, and keep crying I Am?” (186).

It is directly after this question – which explicitly echoes the novel’s title – that the Saminone first appears to counter Max’s claim “to be”:

[S]...*You am whut?*

[M] *The end of the line, as far as it’s come.*

Whut fuckin’ line?

Man.

Man? You tougher than rats, bedbugs, roaches; angleworms, bluebottles, houseflies?

Yes. I kill them all.

Tee, hee, yeah, but you don’t breed as fast, and whut you breed, man, sometimes I just don’t know.

That is not the same and you know it; an insect or a rodent can never be a king. I am. I am a man. I am a king.

...What you king of or over or under?

I told you. The line as far as it’s come.

Youse ain’t no king. Know what youse is? Wanna know? Youse a stone blackass nigger.

...I Am, I told you, damn it, I Am.”

(187 italics in original)

We should not discount the gendered nature of the language used here (Man, king) especially considering the novel’s often misogynistic tone.⁸⁴ Nevertheless, the passage also participates in the broader (at least ostensibly gender-neutral) “discourse of man” described by Mark Greif. That discourse asserted both that there was something special in “Man” worth protecting and that that something special must come from “Man” himself, making his claim to dignity and sanctity self-authorizing (Greif 12). Max stakes his claim for individual dignity on his belonging to the lineage of “Man.” He is a “king” because he

⁸⁴ Above, Max calls nature a “raving bitch” (186); later he complains that “Justice is an uncool lesbian” (387); at another moment he jokes that a woman’s vagina is “pandora’s box” and “would bring misfortune to man” (149). The novel also engages in a gendered discourse of inheritance, casting the development of the African-American novel as an Oedipal drama between subsequent generations of black men. The Baldwin-inspired character, Marion Dawes, argues that he had to repudiate Harry Ames’ literary legacy because “It’s the *duty* of a son to destroy his father” (217). Max’s own Oedipal relationship to Harry is symbolized, in part, by Harry’s decision to name his own son Max (268). See also footnotes 74 and 75.

partakes in a universal humanist inheritance, “the line as far as it’s come” (187).

The Saminone, by contrast, speaks for both bare life and abject racialization. His references to “rats” and “roaches” invoke the anti-semitic propaganda used by the Nazis, while his insistence that Max is nothing more than a “blackass nigger” reminds him of how easily he might be subjected to a similar dehumanization. The Saminone’s responses undercut the philosophical basis of the discourse of man, by suggesting that humanity does not in fact transcend biological life, and, at the same time, serves to recall the very real acts of dehumanization that the discourse of man sought to resist.

The Saminone dialogues bring in a new set of historical and intellectual reference points. Max’s work with the federal government relied on a national vision of civil rights reform, but his exchange with the Saminone draws on an international political discourse that rose up in response to the Holocaust. Mark Greif argues that human rights law represented “the institutionalization of the full historical crisis of man argument in the international process” (87). Although the Saminone dialogues make no reference to the legal order of human rights, these scenes begin to develop an alternative political framework. *This is My Country Too* and the speechwriting episode root their call for legal intervention in American citizenship, but in this exchange, Max gestures to a much broader, more abstracted ground of appeal: his very humanity.

This shift also suggests a different imperative for the African-American novelist. If Max aimed to speak for the black public as a whole in his capacity as a speechwriter, and so echoed Wright’s desire for the “sovereign perspective” of socio-historical analysis (McCann 3), then this exchange with the Saminone is rooted in the more individual, existential perspective that both Ellison and Baldwin championed in their critiques of

Wright.⁸⁵ In “Everybody’s Protest Novel,” Baldwin argues that Wright, by casting Bigger Thomas as a mere embodiment of his racial oppression, expresses a “rejection of life, the human being,...his beauty, dread, [and] power...” (17). In “The World and the Jug,” Ellison insists that Irving Howe’s essay praising Wright (“Black Boys and Native Sons”) seeks to limit the capacity of African-American writers to probe the “human condition” and to “celebrate human life” (112, 114). These frequently analyzed arguments between Wright, Baldwin, Howe, and Ellison, hinge on conflicts between Marxism and liberal integrationism, aesthetic and ideological critique, but they also rely on the discourse of the crisis of man. In their essays, Ellison and Baldwin cast the assertion of one’s simultaneously individual and universal humanity as a bulwark against the dehumanizing practices of racism. Max’s insistent claim, “I Am,” thus represents a possible alternative to the representational project that speechwriting represented. Rather than casting himself as a metonym or spokesman for the black public, he will combat the dehumanizing pressures invoked by the Saminone by stressing his own irreducible individuality, by representing in prose the “mutant, freak, caprice, fluke, Maxwell Reddick” (47).

Yet while this humanist vision will survive Max’s initial disillusionment with the American government, it appears fleeting and unstable by the novel’s close. In the final minutes of his life, Max races down a Dutch highway fleeing U.S. government spies and grimly noting the “Deutschland” license plates and Volkswagen cars that have been too easily re-integrated into the European landscape (394, 398). No longer able to insist on his own humanity, Max turns to the Saminone for reassurance:

[M]...*Just tell me I am.*

⁸⁵ Critiques which are themselves restaged in *The Man*, when the Baldwin-inspired character, Marion Dawes, publishes an essay attacking Harry Ames.

[S] *You am whut?*

[M] *Tell me!*

[M] *...Never mind. I know I am.*

[S] *Then why you keeps on botherin' me?*

[M] *...All you ever want to do is remind me that I am black. But, goddamn it, I also am.*

[M] *...Why are you so quiet? Why don't you say something, Saminone?"*

[S] *Max, sonny boy, there just ain't no more to say."* (399 italics in original)

This exchange reiterates the conflict between racialization and universal humanity presented in their earlier dialogue, though now Max appears much less confident in his own self-assertion. While he clings to the self-evidence of his claim 'to be' ("I know I am"), he also finds this language somehow insufficient. Max presses the Saminone to "say something" that could reconcile his nascent human-rights claim with the obvious rights-violation that his impending political assassination represents.

By interweaving insistence and uncertainty, this final dialogue exposes what Greif describes as the "empty discourse of man." Greif argues that midcentury efforts to define and describe 'Man' were less invested in the actual content of their descriptions and more in the simple assertion that "there must be something to protect" (12). Although discourses on the nature of Man were often hopelessly circular and self-referential, their real purpose was not to settle on a defensible answer but to simply reiterate again and again that Man must have *some* essence worth protecting. "An empty discourse," Greif explains, "is one that behaves as if it wishes to be filled with a single inductive or deductive answer...but in fact generates the continuation of attempts, or tacitly admits to unanswerability" (12). In his dialogues with the Saminone, Max draws on a discourse of man that appears to have little grounding outside itself. He argues that he possesses human dignity because he is a human being and is, therefore, an inheritor of a universal

humanist tradition. The Saminone, by rejecting the very terms of the “empty discourse of man,” exposes its fallacious logic, leaving Max without the comforting reassurance of his earlier clichés. What this final passage records, then, is both Max’s “continuation of attempts” and his “taci[t] admit[tance] to unanswerability” (12). After abandoning his effort to ground his claim for justice in formal citizenship, Max has turned to an abstracted, moral-existential discourse that cannot even give substance to its own philosophical claims, and that certainly cannot serve (on its own) as a defense against dehumanization.

The novel’s title hinges on a tension between generality and specificity. Like *Black Boy*, *Native Son*, and *Invisible Man*, *The Man who Cried I Am*, uses a generic masculine noun to mark the protagonist as a metonym for a broader black experience (Williams makes this strategy explicit when he notes in the Afterword that he chose the name Max because “it rhymes with blacks” (408)). Yet the general condition that the protagonist serves to represent is an intense desire for individual self-assertion. In other words: the fact that the title calls Max “the Man” already indicates that his claim ‘to be’ will fail. This tension also shapes Max’s struggle throughout the novel: he seeks to represent the broader black community in his role as a speechwriter – a project the novel aligns with national civil rights discourse – while also engaging in an internal, existential drama of self-assertion – a project loosely aligned with a more international human rights discourse.

Williams also points to the political limitations of both these strategies however. As we saw in my previous chapter, Arendt critiques the French *Declaration des Droits de l’Homme et du Citoyen* for its effort to collapse the boundary between the rights of the

citizen and the rights of Man. The rights of citizenship come with positive, legal guarantees but are necessarily restricted to the subjects of the French nation-state. The rights of Man, meanwhile, seem to extend beyond national boundaries but lack any legal grounding that would make them politically meaningful.⁸⁶ In his role as a speechwriter, Max discovers that the rights of citizenship are limited not only by the boundaries of the nation-state but also by the dictates of race. African-Americans are not meaningfully included in American democracy, which means that his effort to act as their democratic representative will inevitably prove futile. Meanwhile, his claim to human dignity transcends the framework of the nation-state but comes with no formal political or legal apparatus. Max's human rights claim is literally *all in his head*. What these two disparate strategies share, however, is their desire to achieve legal recognition for the individual subject by a larger political body, either the citizen by the nation-state, or the human being by the international community. It is this appeal for recognition that the novel ultimately abandons in the face of the King Alfred Plan revelations.

III. "Everybody Knows Everything Now"

In *The King God Didn't Save*, Williams questions the assumed correlation between publicity and power. For Williams, King's own fame is "a two-way-street" (164). It gives him "license to act on...behalf" of those praising him but it also forces him to create an image consistent with his new status as a "successful public man" (164). This image can then be exploited by the white establishment which seeks to "castrat[e] [its enemies]

⁸⁶ See "The Perplexities of the Rights of Man," *The Origins of Totalitarianism* (290-302).

under the guise of honoring them” (164). While leaders like King believe that publicity will give force to their demands, Williams insists that “[t]rue power has a vested interest in secrecy” (165):

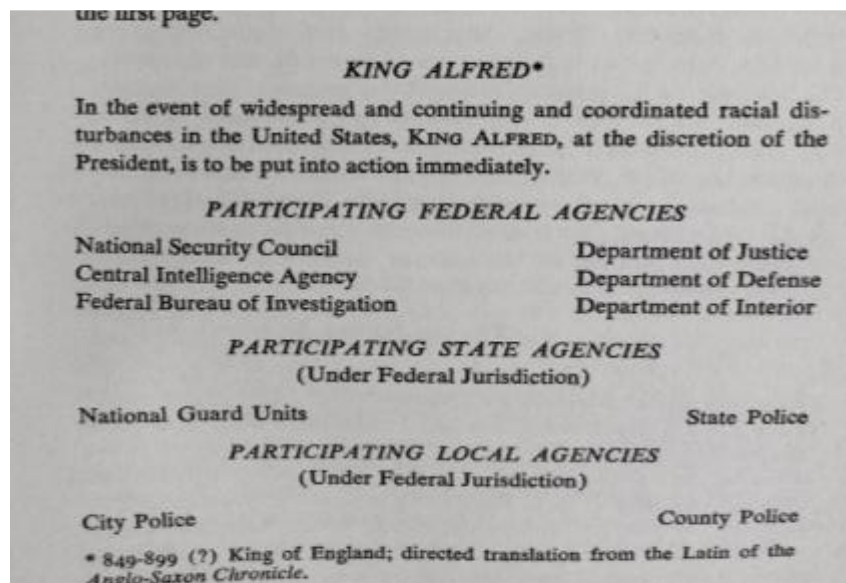
There is another kind of success. The adulation does not come from the masses, but from peer groups. The most powerful men in the United States, and I do not necessarily include the President (especially not Richard M. Nixon), although the office is generally acknowledged to be synonymous with power, are not public men. (164)

Both *This is My Country Too* and the speechwriting episode relied on a democratic conception of the relationship between visibility and power. On this account, publicity helps to balance the power wielded by citizens and by their government. The people are empowered through their representation, while leaders have their power checked by the scrutiny of the public sphere. Williams now begins to question both sides of that equation. Those who are *really* in charge operate in secret, while duping citizens into believing that greater visibility will grant them greater power.

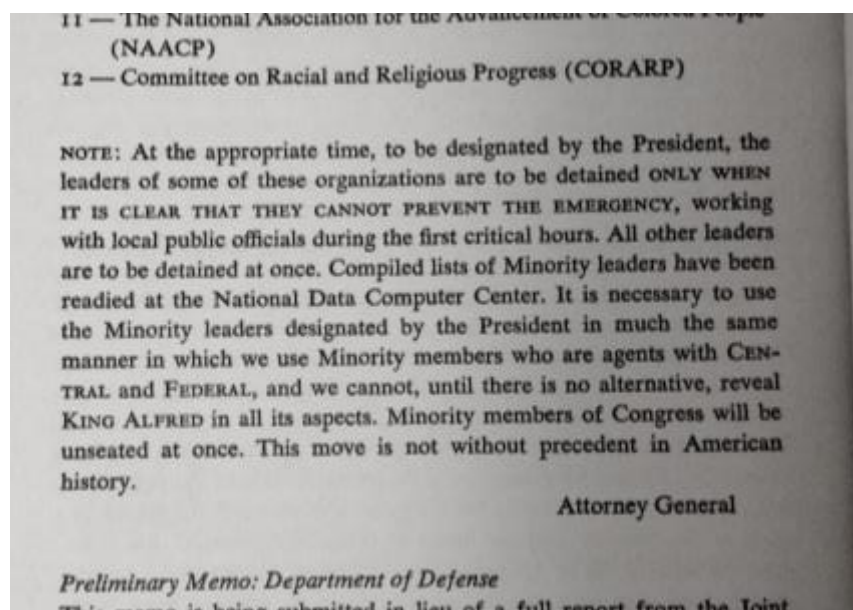
In the same passage, Williams recalls the people he met in “black Africa, Egypt, the Sudan, and parts of Israel” who became angry when he tried to photograph them. He reflects: “I tend to agree in a secret way, with those people, that exposure *does* allow something of the spirit to seep out – to pass into the possession of the photograph – and I am now talking about all kinds of exposure” (164 italics in original). If Williams believes that in photographing a subject he is placing him in “the possession of the photograph” what does this mean for his own status as a novelist? Do his (and Max’s) efforts to represent the demands of the black subject only serve to reify, capture, and instrumentalize him? Does his novel only contribute, like Max’s memos for the President, to the information-gathering project of the state?

The King Alfred Plan device is born out of this anxiety. Frustrated with the representational strategies offered by democratic politics and by the discourse of man, Williams abandons his effort to represent either the black public or the individual subject, and instead, produces a new strategy that will allow the state to *represent itself*. The King Alfred Plan speaks in a disembodied, bureaucratic voice that allows the reader to imagine how a narrative written from the perspective of the state might sound. Ultimately, Williams uses the dissemination of the Plan to inaugurate (or at least augur) a truly democratic politics: rather than asking the people to represent themselves to the state in order to achieve their rights, he represents the state to the people so that they might ratify or, in this case, deny its legitimacy.

Harry's introductory letter explains that the King Alfred Plan was created by the American chapter of the Alliance Blanc, a "quasi-official," "secret" alliance of European and North American nations seeking to secure their supremacy in the wake of African decolonization (364). The American authorities, going much further than their European peers, devise the King Alfred Plan as a response to the "widespread and continuing and coordinated racial disturbances" associated with civil rights and black power (371). If racial unrest continues, the government will choose genocide (and forced statelessness – the Plan notes that "no attempt will be made to seal off the Canadian and Mexican borders" but that other nations are unlikely to offer "political asylum" (373, 374)) before extending political rights and economic well-being to its black subjects. The King Alfred Plan documents list the federal, state, and local agencies which will enact the Plan "at the discretion of the President" (see Fig. 2.1) (371). This list is followed by additional memos from the Chairman of the National Security Council, the Secretary of the Department of



Figures 2.1. First page of the King Alfred Plan documents, list of participating agencies. *The Man who Cried I Am* (371). My own photograph.



Figures 2.2. Memos from the Attorney General and the Department of Defense. *The Man who Cried I Am* (374). My own photograph.

the Interior, the Attorney General, and the Secretary of Defense, detailing their plans for arrest, concentration, military combat, and extermination (see Fig. 2.2).

The documents include various hallmarks of bureaucratic documentation including memos, timelines, and alphabetized lists. More importantly they draw on a euphemistic, depersonalized style strongly reminiscent of the “officialese” Arendt critiques in *Eichmann in Jerusalem* (48-49). In a particularly chilling passage, the Secretary of Defense relates a committee report that (presumably) analyzed the technical machinery of the Holocaust:

“O” Committee Report

Survey shows that, during a six-year period, Production created 9,000,000 objects, or 1,500,000 each year. Production could not dispose of the containers, which proved a bottleneck. However, that was almost 20 years ago. We suggest that vaporization techniques be employed to overcome the Production problems inherent in KING ALFRED. (376)

The author of this report displaces their moral responsibility in several ways: the euphemistic language which dehumanizes victims by referring to their corpses as “objects” and “containers”; the attribution of these conclusions to a depersonalized “committee”; and the sentence construction which positions the noun “Production,” rather than any human agent, as the central actor. The Plan thus reproduces the superficial, formal features of bureaucratic prose (the memos, lists etc.) and embodies the depersonalizing worldwide that Arendt described as “rule by Nobody” (“On Violence,” 178). With the King Alfred Plan, Williams breaks from the novel’s third-person-limited perspective and allows the state to speak in a kind of collective first person – a style characterized by the dispersal of responsibility and agency across that collective.

In this way, the King Alfred Plan fulfills Max’s desire to transcend the partial

view of the state he gains during his time at the White House and to perceive the real scope and scale of its operations. The list of coordinated agencies involved with the Plan belies Jim and Gus's claim that the federal government could not control the actions of Southern agencies (see Fig. 2.1) (306). Indeed, the true effectiveness of the state is revealed when Max calls Minister Q to persuade him to disseminate the Plan to his followers. Government agents tap the call and send out assassins within minutes, a process Williams describes with a rare use of narrative omniscience:

The call had traveled beneath the sewers and subways through one wire which was bound tightly to a thousand others. From the Federal office which the first call reached, still another call was made, this one traveling out of the city, southward to Washington where, in a matter of minutes, the top secret vaults were opened and cross-indexed files traced, one back upon the other. (391)

This is My Country Too traces the borders of the nation in order to make the democratic sentiments of the public visible to the government. Here, Williams abandons that project in favor of an effort to trace the contours and networks of the state apparatus. As Max tries to disseminate his newly gained perspective to the black public through Minister Q's political organization, Williams disseminates that same vision to the reader through both the King Alfred Plan documents and through the narration of Max's own assassination by government agents. Ultimately, both Max and Williams turn from spying for the government, to spying on it, from gathering information for the President, to gathering evidence against him.⁸⁷

⁸⁷ William J. Maxwell offers a similar interpretation in his excellent study, *F.B. Eyes: How J. Edgar Hoover's Ghostreaders framed African-American Literature*. Maxwell argues that the FBI spies who collected massive intelligence reports on black writers from Claude McKay to Audre Lorde were, ironically, some of the most dedicated readers of African-American literature. Black authors, meanwhile, were often aware of this pervasive 'ghostreading' and shaped their own fiction in response. Some developed a literary mode that Maxwell terms the "antifile" – "a type of novelized counterinvestigation that represents and recodes known forms of state surveillance"

Williams' effort to depict the "real" operations of the state obviously requires a leap from the roman à clef genre into fictional conjecture. Yet he insists that the King Alfred Plan documents are, like his portraits of Wright or King, grounded in a fundamental truth. In the letter that introduces Max to the documents, Harry Ames writes, "I'd spent so much of my life writing about the evil machinations of Mr. Charlie without really *knowing* the truth, as this material made me know it" (369). Ames' fiction, in other words, presented an accurate view of the government's "evil machinations" even without the concrete, documentary evidence necessary to verify his most pessimistic conclusions. The implication is that Williams' own novel operates the same way: it penetrates the real secrets of the state even though it must conjure its own evidence. This is already a bold claim, and Williams takes it one step further: he suggests that the novel reveals both a specific government plot and the totality of historical truth. Harry tells Max, "*everybody knows everything now, past and present*" and Max repeats this phrase to himself several pages later (370, 377 italics in original). How could one set of documents, circulated among a small group of murdered and menaced characters, achieve this incredible feat?

Williams' non-fiction helps us to understand the centrality of genocide to his view of the historical "*past and present*." In *The King God Didn't Save*, he describes the solidarity between African-Americans and American Jews in terms of their shared

(258). For Maxwell, the King Alfred Plan is a quintessential antifle (259). Williams' inclusion of the plan is intended to signal to FBI ghostreaders that he is well aware of their machinations, while also exposing those machinations to the reading audience (263). For Maxwell, the novel's "expatriate detective mystery" also participates in a broader effort to expose the limitations of an idealized black diasporic community (259); even outside the nation-state, Max remains subject to the reach of the state intelligence apparatus. I find Maxwell's focus on the FBI intriguing and persuasive, but I also try to situate the novel in a broader political and historical context.

vulnerability to genocide:

...the Jew must have observed that, if Anglo-Saxon America, with its ethnic auxiliaries of lesser backgrounds, decided to rid itself of troublesome minorities, those that insisted on certain rights and opportunities that could only come at the expense of others (which was precisely the way that others got theirs), it would have to begin with that largest, most troublesome, most guilt-provoking minority, the American Negro. That a gentile majority could first consider the exploitation and possible elimination of a minority that was *not* Jewish, was a luxury Jews had never enjoyed anywhere else in this world. (132)

What is remarkable here is not only Williams' willingness to apply the lessons of the Holocaust to the United States, but his assumption that the terms of that application are obvious ("the Jew must have observed that..."). For Williams, genocide emerges as a very clear and likely response to the existence of "guilt-provoking minorities." This conviction is reiterated in an interview Williams conducted with Chester Himes in 1970:

Himes:...It's a calculated risk you know, whether [whites] would turn and try to exterminate the black man, which I don't think that they could do.

Williams: You don't think so?

Himes: ...I don't think the American white man could. Morally, I don't think that he could do this....

Williams: You're saying that *morally* the white man in America is unable to do what the Germans did? (57)

Although it is hard to say for certain based on the transcribed text, Williams reads as slightly incredulous at the suggestion that some intangible *moral* property distinguishes the American white man from the German. Given similar historical circumstances and socio-economic pressures, he seems to suggest, why would things turn out any differently in the United States?

Just as it confirms the "evil machinations" that Ames had already attributed to white America, the King Alfred Plan confirms what should already be an obvious truth in the wake of the Holocaust: that the genocidal tactics used against European Jews could,

and may well be, turned against African-Americans. In this sense, the documents do not simply reveal a single historically-contingent conspiracy. Rather, they legitimate an entire way of reading history, politics, and racial supremacy. They work like Williams' insight that America is "born of violence," described in the afterword to *This is My Country Too* (155). His recognition of the genocide committed against Native Americans somehow explains "not only our own history but that of the world" (and, we may recall, prompts his decision to write a "new novel") (155). This is the broader epistemological consequence of the King Alfred Plan; "*everyone knows everything now*" because the Plan has laid bare the racial and political dynamics underlying the historical process. It offers an explanatory framework for "*past and present*," while leaving open the possibility of a different future – one contingent, perhaps, on our ability to perceive the truth the Plan has unveiled.

This understanding of the Holocaust reveals a surprising point of connection between Williams and Trilling. In his essay "Art and Fortune," Trilling argues that "Belsen and Buchenwald" confirm a truth about human nature that might once have appeared paranoid or fantastic (264): "had the mind been able to fully prove what it believed, it would have fainted before its own demonstration...now everyone knows that Thackeray was wrong, Swift right. The world and the soul have split open of themselves and are all agape for our revolted inspection" (264). Here, Trilling echoes the claim made by Harry Ames in *The Man*: that by confirming our worst suspicions, genocide makes the underlying truth of the world visible to "everyone." Indeed, this shared insight about the epistemological status of mass violence might also help to explain another affinity between Trilling and Williams. After witnessing the acquittal of a white lynch mob, Max

reflects that he would like to write “with the deep overriding tragedy not of Dostoevsky, but an American who knew of consequences to come: Herman Melville” (209). Here, Williams cites two sources that are also central to Trilling’s *The Middle of the Journey* (another historical novel with roman à clef elements). We might say then that these two very different authors share a similar view of the relationship between the Holocaust, the tragic mode, and the political obligations of post-war fiction. For both, Nazi genocide reveals a truth about the human condition that had been implicit in the tragic vision of a writer like Melville, but which now demands an even more thorough and explicit reckoning.

In this sense, the King Alfred Plan does not represent a radical departure from the detailed realism of the novel’s historical narrative. The Plan is, for Williams, continuous with the roman à clef because both tell us something important about the nature of history: one gives us the public details, while the other reveals the tensions at work beneath the surface. While Williams’ decision to enfold a genocidal conspiracy within an otherwise historically grounded narrative is a provocative choice, he pushes the reader to take seriously the idea that the Plan is also a part of midcentury history. He turns from the representation of the black subject and the black community to an imaginative representation of the state, which he intends as a *real* representation of world history.

This approach sets Williams apart from other American novelists interested in conspiracy, the state, and the intelligence apparatus. In *The Covert Sphere: Secrecy, Fiction, and the National Security State*, Timothy Melley argues that the invisibility of state operations during the Cold War and the War on Terror undermined the supposed rationality of the Habermasian public sphere. Authors like Pynchon, Mailer, Doctorow,

Coover, Acker, and Didion used their own fictional projections of the state intelligence apparatus to underscore this challenge to liberal democracy. In his introduction, Melley includes Williams in a long list of writers interested in this problematic, and it is easy to see why (10); Williams uses his own fictionalized vision of the deep state to expose the limits of the public sphere as a site for individual recognition and democratic contestation. Melley does not discuss Williams at any length, however, and there is a good reason for this too.

For Melley, novelistic representations of the covert sphere are necessarily bound up with postmodern anti-foundationalism and with “epistemological skepticism” (36). The authors he analyzes blur the “boundaries between history and fiction, reality and illusion” (111) and emphasize the proliferation of “confusion, fictionality, and incomprehensibility” (142). Williams’ decision to combine a conspiracy plot with a roman à clef obviously trades on this same blurring of boundaries between fact and fiction. But he does not use that generic innovation to challenge truth or knowledge as such. Rather, he is engaged in a quest to uncover a truth that could explain history as a whole, a quest which could hardly be characterized as anti-foundationalist. Like *Catch-22*, *The Man who Cried I Am* uses the disorientation ushered in by a secret and mutable legal regime in order to underscore the importance of public comprehension to both democracy and the rule of law. While Heller focuses on the problem of legibility as such, Williams makes legible one particularly important truth: that Americans are capable of genocide too. Unlike Melley’s authors, then, neither Heller nor Williams treats

epistemological certainty as an illusion to be overcome.⁸⁸ *The Man who Cried I Am* aims to be realistic, historical, and mimetic, with the important caveat that the historical truths it represents include unseen pressures and underlying dynamics, alongside publicized events and well-known figures.

This unique approach also allows Williams to reorient the focus of the protest novel, from explicit, visible laws and policies, to the forms of “quasiofficial” racism too often invisible to the average citizen. In his controversial 2011 book, *What was African-American Literature?*, Kenneth Warren argues that African-American literature, as a distinct and coherent category, existed only in relation to the legalized segregation of Jim Crow. The tradition, he explains, “was oriented by the effort to change or repeal the laws that significantly shaped black social and political life from the 1890s through the 1960s” (96). For Warren, the fall of Jim Crow marks the end of specifically racial forms of discrimination, even as poverty and economic exploitation continue to affect African-Americans disproportionately. Black cultural elites who express a broad race-based solidarity after 1965 thus obscure their own privileged relationship to the majority of African-Americans, who, Warren implies, are victims of neoliberal capitalism more than racism (117). While texts claiming a place in the African-American literary tradition continue to be published, Warren argues that they merely express a nostalgic desire to reclaim a form of racial solidarity lost after Jim Crow.⁸⁹ This claim makes his argument

⁸⁸ See my previous chapter for a discussion of Melley’s interpretation of *Catch-22*, in *Empire of Conspiracy: The Culture of Paranoia in Postwar America*.

⁸⁹ Warren writes, “...there is no broadly useful social end served by viewing contemporary black writing as a collective undertaking. Indeed, despite the best intentions of those who employ the term outside its proper historical boundaries, African American literature does little more than to summon the past as guarantor of the altruistic interests of current elites and to express this cadre’s proprietary interest in the tastes and habits of the more exploited members of our society under

conveniently indisputable in terms of the actual literary record; he turns novels explicitly concerned with the black public into evidence that that public no longer exists and must be intentionally reconstructed.

No doubt, the fall of Jim Crow was an important moment in the history of American racism. Yet many scholars argue that it did not mark the end of specifically racial oppression, but only a new willingness on the part of whites to describe racially-discriminatory laws and policies in ‘color-blind’ terms. Michelle Alexander makes a forceful argument for this interpretation in *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*. She describes “tough on crime” and “law-and-order” rhetoric - which took off during Richard Nixon’s 1968 Presidential campaign and accelerated in the following decades - as a new version of the more explicitly racial rhetoric that the civil rights movement had successfully banished from public life (40-46). Indeed, the rise of mass incarceration that followed from that rhetoric achieved many of the same effects as Jim Crow, subjecting large proportions of the African-American community to forms of discrimination now addressed to those with criminal records, including “employment discrimination, housing discrimination, denial of the right to vote, denial of educational opportunity, denial of food stamps and other public benefits, and exclusion from jury service” (2).⁹⁰

This prompts the question: if a “new Jim Crow” rose up after 1965, wouldn’t a

circumstances in which the success of these elites has less and less to do with type of social change that would make a profound difference in the fortunes of those at the bottom of our socio-economic order” (117)

⁹⁰ Erica Edwards also references the enduring racism of the criminal justice system in her response to Warren, published in the *LA Review of Books*: “Even if, as Warren suggests, racism no longer exists as a function of law, how else are we to understand the relation of race to Death Row...?”

new African-American literature rise up in response to it? We could concede that a fundamental literary and political *shift* took place in the mid-1960s while also disputing Warren's characterization of that shift as an endpoint. The effort to "change or repeal the laws" upholding explicit racial discrimination likely *did* shape African-American literature in fundamental ways prior to 1965 (96). The fall of Jim Crow could thus be expected to produce new literary modes even if it did not eliminate the basis for specifically racial solidarity, as Warren would claim.

The Man who Cried I Am both confirms and refutes Warren's argument. Written between 1964 and 1967, the novel self-consciously stages a turn away from the effort to "change or repeal the laws" through nationally-oriented democratic participation (Warren 96). But Williams also suggests that "quasi-official" forms of racism – the phrase Harry Ames uses to characterize the Alliance Blanc – pose a new and important challenge for the African-American protest novel (364). The chapter that narrates Max's cautiously optimistic response to the *Brown v. Board* decision is preceded by a section from Ames' letter, explaining how the civil rights movement accelerated the development of the King Alfred Plan; "America, with the largest black population outside Africa, had the need of mandatory secrecy. Things were getting damned tense following the Supreme Court decision to desegregate schools in 1954" he writes. Williams uses juxtapositions like this one to cast the victories of the Civil Rights movement in the shadow of an Alliance Blanc conspiracy which allows public challenges to white supremacy even as it develops private plans to maintain it. He thus undermines Warren's assumption that the demise of explicit legal racism is the best metric for judging racial progress.

This insight is also accompanied by a new literary approach. In *This is My*

Country Too and in the speechwriting episode, the black novelist is enfolded in a democratic project consistent with an appeal for legal recognition on the basis of citizenship. In the Saminone dialogues, Max shifts from representing a community to seeking individual recognition as a rights-bearing subject. In narrating his own biography and idiosyncratic personality, he hopes to produce a subjectivity compatible with a claim for human rights. Despite their differences, both these strategies address themselves to a legal order – like Jim Crow – that had thus far failed to recognize the rights of black Americans. These sections of the novel are thus compatible with the African-American literary tradition as Warren defines it. Yet Williams explicitly abandons those techniques and adopts a new strategy premised on the idea that the formal legal recognition of his rights is not enough to eliminate systematic racial discrimination, a view expressed in his own moment by black power thinkers like Stokely Carmichael and Charles V. Hamilton, and borne out by the recent arguments of Alexander and others. Both Warren and Williams treat the end of Jim Crow as a decisive moment for African-American literature, then, but while Warren reads it as an endpoint, Williams reads it as a turning-point.

IV. Conclusion

When the *Brown v. Board* decision is announced in 1954, Max gathers his fellow expatriates in France to read “the Paris, London and New York papers” and to debate the implications of the decision:

“Looks like some very powerful shit to me, man. That ‘with all deliberate speed’ means just that.”

“But you know Charlie and Miss Ann ain’t going to sit still for that – their kids in

the same classroom with black kids.”

“Charlie ain’t got no choice. The *Court* says YEAH!”

“No, man; it’s got to be a fake-out.”

“Wonder how they’re taking the news back home. Max, write to us when you get back, hear? Goddamn these papers; I want to know what our people are saying about it.”

“Those peckerwoods – there’ll be another Civil War.”

“Or a stateside Mau Mau uprising.” (235 italics in original)

The discussion initially hinges on the same question that preoccupied *This is My Country Too*: will the federal government enforce the rule of law or will Southern and local communities succeed in resisting its dictates? But the group also foregrounds its own international perspective on the problem. This vantage is first cast as a limitation; they can’t access “the news back home.” Nevertheless, it also provides them with a unique opportunity to reinterpret domestic law enforcement as the scene of international conflict. They imagine the U.S. riven into two nations, either by white Southern secession, or through a black nationalist rebellion that would extend the project of global decolonization. This vision of a second Civil War - or an anti-colonial war - ruptures the presumed sovereignty of American law and makes it newly visible as a vulnerable, contingent, historical formation.

In this passage, Williams efficiently contrasts an insider and an outsider perspective on American law. That same conflict structures the two works discussed in this chapter: *This is My Country Too* and *The Man who Cried I Am*. Williams’ triumphant vision of the civil rights movement locates justice within the American liberal-democratic tradition. At the same time, his meandering, repetitive trips around and across the country dramatize his feeling that he is “bound[ing] from one corner of a closed box to another, like Mexican jumping beans” (80). In short, the earlier book expresses a fidelity to the

nation-state form but also a subtle frustration with its confines. By contrast, the international perspective of *The Man who Cried I Am*, connects the struggle of African-Americans to the violence experienced by European Jews and African colonial subjects and gives American activists access to new forms of redress, including human rights, international law, and even violent, revolutionary action. These analogies pose a serious challenge for thinkers like Trilling, Heller, and Arendt, who each saw the violent overthrow of Nazism as necessary to the defense of liberal democracy. Williams asks why, if we take his analogy seriously (a big ‘if’ for some readers, perhaps), that same violence would not be justified in the American context, even from a liberal-democratic perspective.

This effort to analogize American racism to the Holocaust was a common rhetorical strategy in the 1950s and 1960s. As Michael Rothberg argues in his book, *Multidirectional Memory*, references to Nazi violence made by anti-racist and anti-colonial thinkers were so common that they may have been partially responsible for the growth of Holocaust awareness between the Nuremberg and Eichmann trials (7). In “Take me to the Water,” Baldwin likens black children fighting to attend southern schools to “small Jewish boys and girls, in Hitler’s Germany, insist[ing] on getting a German education in order to overthrow the Third Reich” (60). In *Black Power*, Stokely Carmichael and Charles V. Hamilton describe an incident when German soldiers, travelling by train to a southern prisoner-of-war camp, were welcomed into the white coach, perhaps by sympathetic segregationists, while the black American soldiers responsible for detaining them waited to be served second, and, in a segregated car (27). In his 1964 speech, “The Ballot or the Bullet,” Malcolm X uses these comparisons to a

ground a new international, political strategy. He wonders why black Americans would stage their fight “under Uncle Sam’s jurisdiction” instead of taking it “into the United Nations [to] let the world see that Uncle Sam is guilty of violating the human rights of twenty-two million” (16, 17). “You don’t take your case to the criminal,” Malcolm X insists, “You take your criminal to court” (16).

These analogies between racism, colonization, and the Holocaust bore real political weight in the postwar period. In opposing racial supremacy in both Germany and Japan, the United States had brought attention back to its own racial crimes – a predicament that black leaders seized on in the post-war period (W.E.B. DuBois formally petitioned the United Nations for the recognition of African-American human rights in 1947, prompting Eleanor Roosevelt’s indignant resignation from the NAACP⁹¹). These external pressures would intensify during the Cold War, when the effort to win over decolonizing nations in Africa created a major impetus for racial progress at home.⁹² In all these cases, the call for justice hinged on the standards of the international community, not on the promises of America’s own founding documents. In shifting their rhetoric from a strictly domestic context to an international one, black writers and activists sought to reorient their relation to U.S. law. Rather than casting the American government as the “court” in which their claims would be arbitrated, they cast it as the “criminal” to be judged by a broader international community.

⁹¹ For background on the DuBois petition see James Dawes, “The Novel of Human Rights” (135). For more information on the relation between human rights discourse and American racism see Carol Anderson, Carol, “A ‘Hollow Mockery’: African Americans, White Supremacy and the Development of Human Rights in the United States.”

⁹² See Thomas Borstellman, *The Cold War and the Color Line: American Race Relations in the Global Arena*.

Like Baldwin, Carmichael, Malcolm X, and, in a different way, Trilling, Heller, and Arendt, Williams brings debates about American law and democracy into dialogue with debates about Nazism and Nuremberg. When applied to American racism in particular, the Nuremberg trial established two different possible precedents. The first was the core claim of the postwar human rights regime: that every human being possesses fundamental rights that cannot be overridden by the particular laws of their own nation. Williams' Saminone dialogues draw on, but ultimately abandon, that universalized human rights discourse. The human rights regime only extends to the international sphere the strategy of "moral suasion" that Williams believed was the limitation of King's civil rights movement (192). Both projects appeal to white-dominated legal systems (national or international) for the recognition of African-American rights. In the literary sphere, both require the representation of the oppressed subject in order to elicit sympathy or outrage from the (white) reading audience. But the events at Nuremberg could establish a different precedent too: not that every person deserves rights, but that no state is beyond condemnation. The trial brought an entire legal-system to the bar of judgment. Rather than working for change *within* German law, it made German law available as a reified object of condemnation. This parallels Williams' effort to expose the state to the judgment of the black people. In both cases, our gaze is shifted from the oppressed subject to the oppressive state. For many, Nazism demonstrated how positive law could radically diverge from any concept of moral justice. For Williams, it demonstrates why African-Americans should no longer appeal *to* the law, but instead, should condemn its injustice and, perhaps through radical means, remake it as an expression of their own democratic will.

CHAPTER FOUR

MARY MCCARTHY'S "IRRELEVANT" FICTION: THE RISE OF CONSCIENCE AND THE FATE OF THE POLITICAL NOVEL

"What is biting me here in Paris is something different: being who I am at this juncture in history. I see myself as irrelevant to practically everything: this room, this street, this city, this world, this universe."

- Mary McCarthy, *Birds of America* (147)

If the 1945-46 Nuremberg trials granted a new urgency to the workings of individual ethical judgment, then the 1965 Supreme Court case, *U.S. v. Seeger*, that gave ethical judgment an unprecedented *legal* standing. Three men (Jakobson, Peter, and Seeger) received official recognition as conscientious objectors to the Vietnam War even though they did not subscribe to any particular religious doctrine forbidding it. Previously, the Selective Service Act had declared that objection could be based in belief in a "Supreme Being" but not in "political, sociological, or philosophical views or a merely personal code" (*U.S. v. Seeger*). The court did not technically overturn that distinction, but it interpreted "Supreme Being" so broadly that it appeared to equate philosophical and religious objections, particularly in Seeger's case. Seeger claimed a "belief in and devotion to goodness and virtue for their own sakes and a religious belief in a purely ethical creed"; he cited as evidence "Spinoza, Plato, and Aristotle" (*US v Seeger*). Although Kant's name does not appear in the decision, Seeger seems to have been, above

anything else, a Kantian. He told the court that his “‘most important religious law’ was that ‘no man ought ever to sacrifice another man’s life as a means to any other end,’” a maxim adapted from Kant’s *Groundwork of the Metaphysics of Morals* (*U.S. v. Seeger*).⁹³

In 1970, Mary McCarthy wrote Hannah Arendt a letter critiquing her essay “Civil Disobedience.” “The tone is somehow too imperative for the matter,” McCarthy explained, “which after all, has to do with freedom, which maybe one can’t be too legislative about” (Brightman, *Between* 263). While Arendt sought to incorporate civil disobedience into an overarching legal and political framework, McCarthy insisted that it was more a question of the “inner light,” “of the separate individual souls saying no” (263). McCarthy conceded, however, that she could not disentangle the particular challenge that civil disobedience posed for lawyers, judges, and the legally-minded: “I see that the whole question of conscience, when religious sanctions are no longer operative, makes civil disobedience a very difficult nut for the law to crack. If we all have the right and/or the duty to break the law whenever conscience urges, then how can there be any law?” (263). A Kantian ethical system like Seeger’s would seem to offer a possible solution to the crisis McCarthy identifies: the retreat of religious authority from the sphere of public, moral deliberation. In the absence of a satisfactory politico-legal framework or a definitive religious doctrine, a secularized philosophy of ethical judgment might assist individuals in choosing whether to defy the law.

Yet elsewhere, McCarthy expresses skepticism about the relevance of precisely that ethical system to the politics of the antiwar movement. In a 1969 letter to Arendt,

⁹³ Kant writes “Now I say that the human being and in general every rational being *exists* as an end in itself, *not merely as a means* to be used by this or that will at its discretion” (37).

McCarthy complains that she is irritated by the pronouncements of young radicals *and* by the admonishments of their parents' generation. Herself a veteran of the postwar anti-Communist left but also a supporter of the late-60s antiwar movement, McCarthy found herself caught between the liberalism of her own generation and the radicalism of the younger one:

Both sides fill me with antipathy, which shifts as if in a balance depending on which side I am reading. In fact all utterances on student violence, black power, etc. fill me with nausea. The "moderates" are almost the worst. I was reading in *Time* today from the parent of some "militant": "There is a proper way to express dissent: through the spoken and written word." That man no doubt supposes he is being *thoughtful*. On the part of older people there is a sudden enormous production of clichés, which is how you know that what's being said is false. And what is strange – and that I've not yet arrived at understanding – is that in this situation truths of political philosophy turned overnight into clichés too, e.g., the ends-means "law." Which perhaps means they are *irrelevant*. As for the language of the young, it resembles incantation. But the incantation may work, as incantations probably did quite often in the days of "superstition." (*Between* 236, italics in original)

For McCarthy, it would seem, the Kantian maxim Seeger draws on in his own anti-war arguments might be both *true* and hopelessly out of step with the feeling of the times.⁹⁴ She suggests that the political and cultural tumult of the late 1960s alienates her from the moral language she once recognized: maxims become clichés, the moral law becomes a scare-quoted "law." The type of defiance McCarthy believes is necessary would resist not only traditional forms of religious authority, and not only the institutional-legal

⁹⁴ As we will see, Arendt and McCarthy have very different views of conscience and civil disobedience, but they do share a desire to move past the moral "laws" Kant lays out in the *Groundwork of the Metaphysics of Morals*. The Kantian ethical philosophy that Arendt offers in *Responsibility and Judgment*, and that I describe in my first chapter, is rooted in a novel and idiosyncratic effort to apply insights from the *Critique of Judgment* to contemporary ethics. By contrast, McCarthy's discussion of Kant seems to be grounded almost entirely in the *Groundwork*. For this reason, a direct comparison of McCarthy's and Arendt's interpretations of Kantian moral philosophy would be very difficult and is not attempted in this chapter.

framework that Arendt imposes, but also the worn-out maxims of systematic ethical and political philosophy.

In her 1971 novel *Birds of America*, McCarthy uses debates about civil disobedience and conscientious objection to explore precisely this conflict between traditional philosophy and youth politics. The book follows Peter Levi, a young American studying at the Sorbonne as part of a college deferment from the Vietnam draft. Peter is a card-carrying “adept of the Kantian ethic” and applies philosophical maxims to his own life in the puritanical fashion typical of morally sensitive teenagers (“‘The Other an End; thy Maxim,’ said a card he carried in his wallet, with his driving license, vaccination certificate, and memberships in SNCC, CORE, and SANE” (6)). Yet while Peter uses ethical philosophy to work through various comically trivial scenarios (tipping in French restaurants, cleaning the communal toilet in his hostel, etc.), he spends very little time worrying about his responsibilities to the major ethical and political movements of his time. Sympathetic to the civil rights and antiwar movements, Peter nevertheless does not extend his meticulous self-examination far enough to indict his own non-participation in current affairs (the membership in SNCC notwithstanding). He is politically correct in his views but bourgeois, nostalgic, and even conservative in his attitude: “Except in the field of civil rights, he was opposed to progress in any direction...and wanted everything in the sensuous world to be the same as it had been when he was younger” (10).

Peter is faced with a new challenge in the final pages of the novel, however, when he is outraged to learn that the United States has bombed North Vietnam (a major moral turning point in McCarthy’s life as well (Brightman, *Writing*, 549-550)). His friend Silly

(Silvanus Platt) points out that a more comprehensive draft order can also be expected, but that they will likely be kept back from the front lines thanks to their fluency in French. “I won’t go,” Peter says. “But how? Unless you’re a Quaker or join the Peace Corps or something?” Silly asks. “I don’t know, but I won’t, that’s all,” Peter responds (323). This is a remarkably succinct and instantaneous declaration for “Peter, the man of reflection” (123). It is perhaps the only time in the novel that he does not feel compelled to offer an elaborate ethical justification for his actions.

But although Peter seems to supplant his agonized philosophizing with what McCarthy elsewhere describes as a “language of action” (*Vietnam*, 93), Kant will return in the closing paragraphs of the novel to get – *literally* – the last word. While Peter is sick in the hospital, Kant appears at his bedside in a kind of dream or vision (a device whose outrageous heavy-handedness I will address shortly):

The tiny man moved forward on the counterpane and looked Peter keenly in the eyes, as though anxious as to how he would receive the message he had to deliver. He spoke in a low thin voice. “God is dead,” Peter understood him to say. Peter sat up. “I *know* that,” he protested. “And you didn’t say that anyway. Nietzsche did.” He felt put upon, as though by an impostor. Kant smiled. “Yes, Nietzsche said that. And even when Nietzsche said it, the news was not new, and maybe not so tragic after all. Mankind can live without God.” “I agree,” said Peter. “I’ve always lived without Him.” “No, what *I* say to you is something important. You did not hear me correctly. Listen now carefully and remember.” Again he looked Peter steadily and searchingly in the eyes. “Perhaps you have guessed it. Nature is dead, *mein kind*.” (332)

Their exchange about the death of God would seem to underscore the secularism of Peter’s refusal to submit to the draft. While Silly asks if he will claim CO status as a Quaker, Peter (like Seeger) draws from an ethical system that does not rely on an anthropomorphic God. But Kant’s claim that Nature is dead troubles that interpretation. In his essay on *Birds of America*, Stephen Schryer connects this concluding

pronouncement to a 1971 interview where McCarthy argued that “if nature...were to disappear...there’d be nothing left to stand on, no ground for ethics” (Gelderman 115).⁹⁵ Read from this perspective, Kant’s final statement announces the irrelevance not only of God, but of ethical philosophy, even of Kant himself. This reading casts Peter’s earlier refusal in a different light. When he tells Silly “I don’t know, I just won’t, that’s all” is he practicing, not ethical philosophy, but the language of “incantation” McCarthy associated with the New Left?

Throughout her life, Mary McCarthy vacillated between liberal and radical political positions, while also maintaining a small-c conservative desire to preserve traditional cultures and their relationship to the natural world. She opposed the Vietnam War in part because she was concerned about how Vietnamese culture would be changed by globalization, commercialism, and American technology.⁹⁶ In *Birds of America*, she also alludes to the way that modern life deprives human beings of a common, physical world that might serve as the ground for a common ethics. It seems to be, in part, Peter’s physical distance from the battles of Selma and Vietnam that allow him to ignore their ethical urgency. The novel’s underlying concern, I will argue, is the possible irrelevance of Kant – or of systematic ethical and political philosophy more broadly – to a rapidly changing and globalizing world caught between the memory of Auschwitz and the

⁹⁵ See Schryer, 826.

⁹⁶ As Sabrina Fuchs Adams explains “For McCarthy, the “West” comes to embody capitalism and mass production, the culmination of which is nuclear energy and instruments of mass destruction. The depersonalization and massification of modern, industrial society also led, in her view, to the degradation of High Culture into the more vulgar and accessible form of Mass Culture. In the radical and romantic tradition, McCarthy turns toward an idealized vision of a pre-industrial, pastoral society as embodying an ideal of ethical and communal values. She projects this idealized vision of the past onto the rural, agrarian culture of North Vietnam...” (90).

prospect of nuclear war. In other words: if Kantian philosophy seems like an anachronistic lens from which to approach the New Left, then I think we can read that anachronism as intentional. *Birds of America* stages the incompatibility of the moral beliefs of McCarthy's own generation with the cultural and political upheavals faced by the younger one.

But if he fictional Kant's final claim that "Nature is dead" serves to subtly undermine the current relevance of his own philosophical project, then this critique is also achieved by the very mechanism of his appearance. As a literary critic, McCarthy wrote extensively about the novel of ideas and about the relationship between intellectual abstractions and narrative specificity. In her 1960 essay "The Fact in Fiction," she argues against the heavy-handed *deus ex machina* with which her own novel concludes: "There are no gods in the novel and no machinery for them; to speak, even metaphorically, of a *deus ex machina* in a novel – that is, of the entrance of a providential figure from above – is to imply a shortcoming" (186). Indeed, even the epigraph McCarthy uses to open her novel pushes against such a gesture. She begins *Birds of America* with an unattributed quote from Kant's *Critique of Pure Reason*: "to attempt to embody the Idea in an example, as one might embody the wise man in a novel, is unseemly..." (3).⁹⁷ In defiance of Kant's own maxim and her own epigraph, McCarthy concludes the novel by quite literally "embody[ing] the wise man in a novel." It seems to me, then, that we have no choice but to read Peter's final vision of Kant as, at least in part, satirical. The scene is McCarthy's way of pushing the traditional novel of ideas to such an extreme level of

⁹⁷ Stephen Schryer identifies the source of the quotation in his essay (Schryer 832). According to Schryer, the line appears on page 487 of the 1965 St. Martin's Press edition of Kant's *Critique of Pure Reason*.

contrivance that it points to its own exhaustion as a form.

While writing *Birds of America*, McCarthy told Arendt that “the traditional novel, which this is, is so undermined that one feels as if one were working in a house marked for demolition” (Brightman, *Between*, 174). At once a “traditional novel” and a kind of postmodern commentary on the demise of that form, at once a product of the New York Intellectual scene and a foray into the New Left, *Birds of America* did not prove particularly popular among readers or critics from either generation (as Stephen Schryer explains “*Birds of America* marked the decline of McCarthy’s critical reputation” (823)). Recent analyses by Schryer and Franny Nudelman may signal a renewed interest in *Birds of America* among Post45 scholars, and Deborah Nelson’s forthcoming book *Tough Women: Arbus, Arendt, Didion, McCarthy, Sontag, and Weil* will likely spark further inquiry into McCarthy’s body of work and her relationship to Arendtian philosophy in particular. Nevertheless, I am interested in the book largely *for* its belatedness and dislocation from its own cultural moment. Its very failure to find a critical home captures some of the tension between the mid-century literary period this dissertation explores and the coming apex of postmodernism in the 1970s.

Ultimately, I will show that *Birds of America* helps us to understand why authors like Trilling, Heller, and Williams perceived an intimate connection between the fate of the political novel and the conflict of law and conscience. McCarthy applauds the ascendance of conscience as an idiosyncratic or intuitive force incompatible with forms of public deliberation, but she also views that ascendance as marking the end of the traditional novel of ideas. Her novel thus oversees a crucial moment of generational, political, ethical, and literary transformation.

I begin this chapter by outlining the debates about conscientious objection and civil disobedience that McCarthy takes up in *Birds of America*. I then describe how the book masquerades as a traditional novel of ideas, while ultimately suggesting that that form is no longer viable.⁹⁸ In the third section, I explore how - in a parallel gesture - the novel undermines its own investment in Kantian ethical philosophy. I close this chapter - and this dissertation - by reflecting more broadly on the ways in which McCarthy's vision departs from some of the foundational assumptions shared by Trilling, Heller, Williams, and Arendt, and I assess what each of my authors might contribute to contemporary political crises.

I. Souls Saying No

The debates initiated by the Nuremberg trials came full circle in the Vietnam era, as resistance to the draft took up the spirit *and* the letter of the earlier tribunal. In a 1969 anthology on civil disobedience, author after author draws a direct line from postwar judgments to American protests.⁹⁹ Noam Chomsky argues: "After the lesson of Dachau and Auschwitz, no person of conscience can believe that authority must always be obeyed. A line must be drawn somewhere. Beyond that line lies civil disobedience"

(202). In his contribution, "Confessions of a Two-Time Draft Card Burner," Tom Jarrell

⁹⁸ I will use the terms "novel of ideas" and "political novel" interchangeably in this chapter. In *Ideas and the Novel* (a series of lectures collected as a book), McCarthy defines the novel of ideas in virtually the same terms that Irving Howe uses to define the political novel in *Politics and the Novel*. Both emphasize the interplay between abstract ideology and quotidian detail, and both draw on Dostoevsky as a paradigmatic figure. Moreover, the "ideas" McCarthy attributes to the various novels of ideas she interprets are usually, perhaps even invariably, explicitly political ideas. I am not sure why McCarthy chose to use a different term than Howe, but for my purposes, they will be treated as synonymous.

⁹⁹ *Civil Disobedience: Theory & Practice*, edited by Hugo Adam Bedau.

writes: “moral courage is where it’s at. That’s what Nuremberg is all about; the willingness to act in public on what your conscience tells you in your private-most hours” (190). Along with the other contributors, Chomsky and Jarrell aptly express the widespread sentiment that Nazism and the Nuremberg trials had, once and for all, demonstrated the potential moral bankruptcy of the law and the necessity of renewed forms of individual moral judgment.

But while some draft-resisters concluded that Nuremberg was “all about” the rejection of legal authority, others viewed it as a vital source of legal precedent. After all, the trial adjudicated the specific question of whether individuals could be held responsible for war crimes committed in their nation’s name. Those American draftees who believed, quite reasonably, that the Vietnam War was a war of aggression and that war crimes were being committed in Southeast Asia, argued that, if they too would be held personally responsible in a future tribunal, they should be given the option not to fight in the first place. In a 1968 anthology, *A Conflict of Loyalties: The Case for Selective Conscientious Objection*, one contributor argues that the U.S. government’s official endorsement of the Nuremberg verdict may make conscientious objection defensible not only morally and politically, but legally as well (Finn 185).

In their correspondence in the late 1960s - when McCarthy is drafting *Birds of America* - Arendt twice recommends *Nuremberg and Vietnam*, a comparative study by the Nuremberg prosecutor Telford Taylor (it is not clear whether McCarthy ever read the book). In his introduction, Taylor describes a recent pamphlet that echoes Tom Jarrell’s call-to-arms:

...beneath these wildly divergent views of the Nuremberg precedent there is a

common denominator: that there are some universal standards of human behavior that transcend the duty of obedience to national laws. “Your country, the United States, has established that a citizen must *not* go along with policies he believes are wrong,” we are admonished in a current leaflet: “*That’s what the Nuremberg Trials were all about!*” As a legal and historical matter that is grossly overstated, but it is fairly representative of views about Nuremberg that are frequently expressed, especially by young people. Furthermore, although the statement is an exaggeration, it is not a total fabrication; the notion of individual accountability before the bar of international law lies at the heart of the Nuremberg judgments, and the reluctance of the Germans to resist oppressive acts of state is widely held to have greatly aided the Nazi seizure of power. (16)

Taylor corrects “young people” who see the trial as establishing a legal right (even a duty) to follow one’s conscience in all instances. Yet he also acknowledges that that erroneous reading emerges from a very real paradox at the heart of the Nuremberg precedent. Throughout this dissertation I have stressed how the trials both enshrined and undermined the rule of law. The Vietnam draft controversy took up both these narratives, with legally-minded *and* anarchistically-inclined activists returning again and again to the same scene of postwar judgment.

As always, the belief that legal authority must sometimes be disobeyed prompted further questions about whether moral, religious, or political convictions would take the place once occupied by law. The *US v. Seeger* case was part of a longer trajectory in the expansion of conscientious objection. The 1948 Selective Service Act provided exemptions only for those who opposed war “by reason of religious training and belief” (Moskos 39). But the 1965 *Seeger* case expanded that category to include tenuously religious commitments like a belief in “goodness” as a Supreme Being. The 1970 *Welsh v. US* case took such reasoning one step further, allowing even atheists to object on the basis of “moral or ethical obligation” (42). The result of this liberalization was that “more young men were being exempted as conscientious objectors by the end of the Vietnam

War than were being inducted into the army” (4). The expansion met its limit, however, the 1971 case *Gillette v. US*. In *Gillette*, the Court barred “selective” CO status, which would include those who opposed not war *in general* but the specific war in question (in this case, Vietnam).¹⁰⁰ It is the right to selectively resist unjustly conducted wars that would seem to follow most closely from the Nuremberg precedent (the Allies clearly weren’t condemning war *as such*, but specific war crimes). Nevertheless, the Supreme Court stopped short of allowing moral and political objections to specific military policies, insisting that COs express a more abstract opposition to war itself.

In this series of landmark cases, the Court granted a *legal* standing to the extra-legal category of conscience. As Justice Black explained in the *Welsh* decision, the law “exempts from military service all those whose consciences, spurred by deeply held moral, ethical, or religious beliefs, would give them no rest or peace if they allowed themselves to become a part of an instrument of war.” Yet the Supreme Court also demanded a highly systematic opposition to war in general that - probably not coincidentally - would be less common and harder to prove. At stake in these decisions, then, was the *kinds* of religious and ethical judgments that could be permitted to supercede the moral authority of the law.

For those whose resistance did not fit the framework of conscientious objection - either because they were only ‘selectively’ opposed to certain wars, or because they did not want to protest through the courts - civil disobedience practices offered an alternative approach. Yet there too, proponents disagreed about whether resistance should be

¹⁰⁰ For a useful analysis of all these decisions, see James L. Moses’ essay “William O. Douglas and the Vietnam War: Civil Liberties, Presidential Authority, and the “Political Question.””

grounded in religious, ethical, or political discourse. For many, civil disobedience was a way to honor one's own moral or religious convictions while *also* recognizing the state's fundamental political authority. That dual allegiance could be expressed by disobeying the law but then willfully submitting oneself to punishment. Milton R. Konvitz, writing in the 1964 anthology *Law and Philosophy*, offers a standard articulation of this view: "the individual conscience must have the last word: If that last word means civil disobedience, which entails the penalty of the law, then the penalty must be imposed, and in this way both conscience and law are vindicated...In this way civil disobedience may render unto Caesar what is Caesar's and unto God what is God's" (27). This solution allows for the recognition of conscience as a vital component of *personal* morality, while leaving the basic authority of the law unquestioned and unexamined.

It is this spiritual and "unpolitical" concept of civil disobedience that Arendt critiques in her own essay on the topic. Arendt concedes that the protester who embraces punishment proves the depth of her commitment. Nevertheless, she argues that sincerity alone cannot serve as a basis of justification: "Single-minded fanaticism is usually the hallmark of the crack-pot, and, in any case, makes impossible a rational discussion of the issues at stake" (67). For Arendt, civil disobedience discourses that radically bifurcate our commitments to conscience and to the state skip over the entire terrain of politics, where we might seek to publicly challenge and ultimately *change* the law in question. She suggests that our fundamental commitment is neither to God nor to Caesar, but to the public world we share with our fellow citizens. In accordance with this line of argument, Arendt turns to the American political tradition - rather than any moral or spiritual discourse - to justify defiance of the law. Arguing that disobedience fulfilled the spirit, if

not the letter, of the Constitution, she cast it as a continuation of the country's greatest democratic traditions. For Arendt, disobedience is necessary not because the morally pure individual conscience is inevitably at odds with the oppressive demands of the state, but because the health of the Republic requires ongoing contestation.

This is the set of debates into which *Birds of America* enters. With Peter finally deciding to resist the draft mere pages before Kant informs him that "God is Dead," the novel explores the role of political, ethical, and religious systems of thought in the conscientious objection and civil disobedience practices of the late 1960s. The letter McCarthy wrote to Arendt critiquing "Civil Disobedience" (sent just as she was putting the final touches on the novel) indicates her depth of thinking about the topic and sheds crucial light on Peter's dilemma.¹⁰¹ In the letter, dated October 14 1970, McCarthy writes that she is on her way to Rome to "take another look at the Sistine Chapel for my next-to-last chapter." But before describing her planned research trip, McCarthy spends several pages detailing her misgivings about Arendt's "Civil Disobedience":

To me, civil disobedience remains a matter of conscience and the inner light, whether it's practiced by one person or a group. What stands out in draft-resistance or tax refusal (or abolitionist activity) is not the collective but the separate individuals who are saying no... I see that the whole question of conscience, when religious sanctions are no longer operative, makes civil

¹⁰¹ One resonance in particular points to the close proximity of the McCarthy's thinking in the novel, and her thinking here. In a portion of the letter excised above, McCarthy explains: "What stands out in draft resistance or tax refusal (or abolitionist activity) is not the collective but the separate individuals souls who are saying no. I think this clear from the fact that nobody could seriously speak of violations of the Prohibition amendment as being instances of civil disobedience...the reason is that nobody broke the law *as a matter of conscience*" (263). When Peter and his mother are briefly arrested for their conduct at a local fair, he comically and grandiosely compares himself to Thoreau. "If anybody feels a law is unjust, he ought to disobey it" he explains to a young woman working at the jail. "You mean like Prohibition?" she asks. "Actually, I was thinking of segregation..." Peter responds (84). It is not clear whether McCarthy added this reference to Prohibition before or after writing her letter, but the direct echo suggests that she saw her novel as working through many of the same questions she poses to Arendt.

disobedience a very difficult nut for the law to crack, i.e. as you say, why should *my* conscience be respected rather than my neighbor's? If we all have the right and/or the duty to break the law whenever conscience urges, then how can there be any law? I can't answer that – certainly not in this letter even try to – and yet I feel that your solution or answer is evasive. Maybe this question simply will not yield to rational analysis and can't be disciplined into doing so. Finally (and perhaps all my three objections are related), when you talk about “we,” who do you mean? Society presumably, but sometimes, it would appear, the lawmakers, or society-as-its-own-lawmaker. In the context, I find this “we” disturbing, as far as I'm concerned, if there's a “We” in the civil-disobedience vis-à-vis the law equation, the “we” is the law-breakers. That is, I identify myself with them and their conscience, whether they are Dwight or Dr. Spock or whoever, and not with the lawmakers or society-as-a-whole which is attempting (in the meeting you attended) to find some way of coping with them, a place to fit them in the American legal fabric. If there *were* a place to fit them, whether you consider it as belonging to a doctrine of a concurrent minority or history of voluntary association, then their activities would have no purpose, since their real purpose is to run counter to society, to collide with the law. In fact, it seems to me that the government by recognizing the right of religious dissent - above all, in the case of pacifists - deprived that dissent of its force and validity...Perhaps I'm not making myself clear, but it strikes me that you have seized the problem by the wrong end, and your “we” sums this up. (And the fact that the “we,” which is normal for political philosophy, should sound - at least in my ears - so dubious in this context probably shows how touchy the subject is.)” (263-4)

Unfortunately, Arendt would never respond to this critique – at least not directly and in writing. The next missive that Arendt sent across the Atlantic from New York to Paris was a short telegraph stating that her husband, Heinrich Blucher, had died. McCarthy flew back to New York, where one imagines that civil disobedience was no longer the most pressing subject of conversation (265-6).

But although we have no response from Arendt, it is worth dwelling on McCarthy's criticism of her essay, which marks a rare moment of passionate disagreement in their correspondence from this period (more often, what appear to be real disagreements about the Vietnam War and the New Left are passed over or minimized). McCarthy takes particular issue with Arendt's effort to reconcile civil disobedience with

the spirit (if not the letter) of American law. As I explained in my second chapter, Arendt views civil disobedience as both technically illegal *and* as an ultimate fulfillment of Constitutional commitments to freedom of speech, conscience, and assembly. While she concedes, “obviously ‘the law cannot justify violation of the law,’” she dreams of discovering “a Constitutional niche for civil disobedience” (99, 83). For McCarthy, the desire to resolve this unresolvable opposition makes Arendt’s whole approach “evasive.” It gives the false impression that the radical freedom of the individual conscience could be reconciled with the necessarily restrictive and delimiting force of law. For McCarthy, civil disobedience cannot and should not be made consistent with the rule of law, since its entire purpose is to mark the limit of legal and governmental power over individual moral action.

In her letter, McCarthy dissents both from the Supreme Court’s view of conscientious objection and from Arendt’s vision of civil disobedience. She views each of these as efforts to “disciplin[e]” defiance into a “rational analysis” unsuited to its personal, spiritual, and intuitive character. In her new book, *Tough Enough*, Deborah Nelson argues that Arendt and McCarthy shared a commitment to cool, rational examination and a distaste for the unthinking swells of emotional politics.¹⁰² But here at least, McCarthy *herself* seems put off by Arendt’s cold, imperious tone. She notes that the “normal discourse” of political philosophy seems “dubious” to her in the context of

¹⁰² Nelson’s book focuses on six women intellectuals (Arendt and McCarthy, along with Didion, Sontag, Arbus, and Weil) who shared a belief in the “aesthetic, political, and moral obligation to face painful reality unsentimentally” (1). Due to this commitment, Nelson argues, “Arendt and McCarthy have been perceived as psychologically cold rather than engaged in an ethical project with different assumptions” (73). Yet in this exchange, McCarthy seems disturbed by Arendt’s cold rationalizing approach and by her failure to recognize the moral passion behind acts of civil disobedience and conscientious objection.

civil disobedience and suggests that this “shows how touchy the subject is” (264). In other words, there is something about draft resistance that provokes McCarthy to abandon her typical intellectual style and philosophical preferences in favor of a commitment to a more spiritual and emotional language. In the next two sections of this chapter, I will argue that *Birds of America* (despite its obsessive references to Kant) ultimately suggests that traditional philosophical perspectives will not be sufficient to take on the new moral challenges of the 1960s and 70s. If, in the postwar period, the moral inadequacy of the law seemed to demand new forms of ethical judgment, then McCarthy insists that that judgment will come from an intuitive, personal, and non-rational place.

II. The Belated Novel of Ideas

Birds of America follows Peter Levi as he struggles to live up to his Kantian ethical philosophy and his political commitment to social egalitarianism.¹⁰³ The first portion of the book is set in the seaside community of “Rocky Port,” where Peter’s mother Rosalind takes him for a summer vacation to “ma[k]e up to him for the fact that she and his divorced father had agreed that he could not go to Mississippi with the Students for Civil Rights Group” (5-6). This substitution seems to secretly please Peter, who suffers from a near-explicit Oedipus complex (“he did not think that, on balance, he would like to sleep with his mother” (13)) and who enjoys the opportunity to possessively monopolize his mother’s attention. Together they spend their summer indulging in nostalgia for the

¹⁰³ Carol Brightman offers a very similar summary in her book, *Writing Dangerously*: “The bulk of the novel’s action, which is serendipitous, a series of encounters designed to test Peter’s faith in equality and the Kantian ethic... takes place in Paris” (526).

American past, with Rosalind attempting to meticulously recreate the cooking and preserving techniques used by early American settlers. This brings them into conflict with the local townspeople who enjoy mass-produced, canned foods and consider Peter and his mother elitist. In the second portion of the novel, Peter travels to Paris, in large part to avoid the Vietnam draft. From Paris, he writes his mother a lengthy letter expounding on his own Kantian moral reflections and scolding her for her elitist attitudes. Nevertheless, his own snobbishness comes back to haunt him, first, when he finds himself irritated by masses of tourists disrupting his appreciation of the Sistine Chapel, and again, when he struggles to follow through on his commitment to help a homeless woman he finds on the streets of Paris.

Throughout these two major sections, *Birds of America* functions as a rather traditional (if particularly didactic) novel of ideas: it explores the value and limitations of a liberal commitment to equality. Nevertheless, I will argue that the bombing of North Vietnam in the final chapter of the novel represents an ethical, political, *and* formal rupture. At that moment, the book ceases to function as a traditional novel of ideas, and in doing so, casts the underlying assumptions of the earlier portions into doubt. Below, I will analyze the two distinct levels on which *Birds of America* operates: first, as a novel of ideas addressing the tension between social egalitarianism and cultural elitism, and second, as a kind of postmodern commentary on the limitations of that genre.

When McCarthy first conceived of *Birds of America* in 1964, she told Arendt “the present idea has to do with equality. I’ve long thought that this is the specter that has been haunting the world since the eighteenth century. Or at least it has been haunting me all my life” (Brightman, *Between*, 163). McCarthy connects her novel to what Arendt

characterizes as the French Revolution's excessive investment in social equality ("all this touches on what you say in your *Revolution* book about compassion" (164)) but she appears to be more interested in how a political commitment to equality comes into conflict with intellectual, cultural, and social elitism. One of the central questions the novel explores (on its surface level) is whether egalitarianism requires that we eliminate the divide between high and mass culture: Is it anti-egalitarian to prefer more rarefied artistic and cultural expressions?

This theme is addressed most explicitly in the scolding letter Peter writes to Rosalind, who is an acclaimed harpsichord player:

You are an accident, Mother, which for some reason you don't want to recognize. Let's say a happy accident. But you can't legislate. That's your great weakness, and you know it. You want your whim or prejudice to be a universal law. Maybe all artists are like that...I'm coming to the conclusion that art is incompatible with democracy. If I want to be a democrat, it's an awful handicap to be the son of an artist. I will have to reject you, if I can. Because – to put it bluntly – you are a snob. (139)

Shortly before this passage, Peter explains that Kantian philosophy is universal "like a theorem in geometry," and so adverse to all individual "whim and prejudice" (138, 139). Kant "was trying to take the taste out of ethics, to base ethics on a universal agreement that would spring from a common recognition of what is evident" (138). For Peter, aesthetic sensibility runs directly counter to a Kantian ethics, not only because it is snobbish and anti-egalitarian, but also because it is grounded in the inherently non-universalistic category of taste.

Yet Peter, who is himself snobbish and bourgeois, constantly fails to live up to his own vision of democratic egalitarianism. His most obvious failing occurs when he argues with one of his teachers about the presence of tourists at the Sistine Chapel. Frustrated by

the noisy crowds who he assumes lack his capacity for informed appreciation, Peter toys with the idea of intellectual screening procedures for museums and galleries (270).

Throughout the book, he also demonstrates a strong attachment to his mother's bourgeois manners and domestic values. Peter shares Rosalind's disgust for mass culture, mass-produced food in particular, and is horrified by the lack of attention that his fellow tenants in cheap Paris hotels and apartments pay to personal and domestic cleanliness (149-153). With these examples, McCarthy points to the little ways in which her own liberal clique might fail to practice its doctrine of egalitarianism.¹⁰⁴

The conflict between egalitarian politics and his bourgeois sensibility reaches its climax when Peter invites a drunk homeless woman (a "*clocharde*") to sleep in his room in Paris. After discovering her on the drafty landing of his building, he reluctantly "obeys the voice of conscience" (316) and leads her to his room to offer her bread, cheese, wine, and a more comfortable night's sleep. But the interaction quickly becomes deeply uncomfortable both for Peter and for the woman, who he realizes too late may be afraid of him. The woman's presence threatens Peter's control over the artifacts of his bourgeois domesticity: "the menace was not to his person but to his sovereignty in the little kingdom he had constructed – his nest of Borromini angels, plants, books, *espresso* pot, the drawing he was making, from nature, of a leaf" (321). The sleeping woman has Peter "on the defensive, as if being himself was a form of hypocrisy;" she highlights in the clearest way how his stated political values run counter to his class sensibility and to its

¹⁰⁴ I think we might also read a gendered critique into Peter's hypocrisy. While he harangues his mother about abstract philosophy and dismisses both her art and her domestic labor, he takes secret pleasure in her cooking, gardening, and housekeeping, and is ultimately unable to shake the sense that these occupy a central place in his cultural value system.

aesthetic, cultural, and domestic values.

But Peter also discovers a philosophical basis for his aversion to the *clocharde*. In the *Groundwork of the Metaphysics of Morals*, Kant argues that the concept of morality is contingent on our belief in the freedom of the human will. It is because it is possible to choose whether to act morally that the category of moral action is meaningful, and even possible.¹⁰⁵ But Peter finds in the *clocharde* evidence that the human will is not in fact autonomous:

If this *clocharde* seemed more alien to him than any brute creature, it was just because she shared with him, supposedly, a moral faculty that animals did not have, and this moral faculty in man was a regulatory instinct that kept in balance with the natural things of the world, which were good without putting out any effort. But it was hard to believe that there was any such universal moral faculty when you had a proof to the contrary a few feet away from you. If it was not the *clocharde's* choice that she had got into this grisly state, then there was no freedom of will, and if it was her choice, of which tonight he felt convinced, then the will's objects were not the same for everybody. Either way, everything he cared about fell to pieces. As for the great "Know yourself," after tonight, he would rather not. It was no use pretending that there was common humanity in *him* when all he could think of in the midst of his philosophizing was how many minutes still had to pass before dawn would come to his rescue. (321-322)

¹⁰⁵ Christine M. Korsgaard outlines the relation between morality and freedom in her introduction to the Cambridge UP edition of Kant's *Groundwork of the Metaphysics of Morals*: "Freedom and morality are therefore analytically connected. A free will is one governed by the moral law, so if we have free wills, we are governed by the moral law...When you act rationally, you take yourself to choose your actions, not to be impelled into them, and you think that you could have chosen otherwise" (xxvii). Put as simply as possible: a moral action does not count as moral if we do not choose it (ie. you do not get credit for doing the right thing under duress, or by accident, or even thanks to the profit-motive and self-interest). Therefore, for morality to be possible, we must have freedom of the will. Relatedly - and this is what Korsgaard stresses - choosing to follow the moral law is what demonstrates that we are free and can make decisions not purely motivated by determinism, interest etc. In this sense, following the moral law is freedom. Peter's concern is that the *clocharde* does not appear to have freedom of will (or at least not a kind recognizable to him). For Kant, that would mean she is not a rational being capable of moral action. Since the categorical imperative requires only that we treat *rational beings* as ends-in-themselves, her existence troubles Peter's entire ethical system. Kant believes all humans are rational beings and so ends-in-themselves, but Peter begins to doubt that all people actually share universal qualities of will that could ground a universal ethical system.

Peter perceives a radical difference between himself and the *clocharde*. If she would prefer to persist in her current state, he reasons, then this demonstrates that human beings can be guided by such radically different aims or motives that it is impossible to speak of a “common humanity” between them that could, in turn, ground a shared ethical system.

Even if we accept the fundamental insight of the passage, it seems unfortunate that this epiphany is prompted by revulsion toward such a deeply disadvantaged person. Nevertheless, the fundamental point for the present is to recognize that this passage marks the end of Peter’s faith in Kantianism. As McCarthy writes, “everything he cared about fell to pieces” (322). It is only a couple hours later (and a couple paragraphs later) that Peter discovers that the United States has bombed North Vietnam. McCarthy opens that passage ominously: “Fate had more in store for him. There was the news in the morning...” (322). This climatic event, I will argue, makes visible an entirely new ethical and political register within the novel – one which will, in turn, call into question many of Peter’s previous actions and insights.

But to understand the radical break that the bombing of North Vietnam produces in *Birds of America*, both politically and formally, it is crucial to consider how the preceding sections of the novel align with McCarthy’s literary-critical conception of the novel of ideas. In her 1980 book, *Ideas and the Novel*, she argues that the “greatest fictions past and present” (her examples include works by Dickens, Hugo, Dostoevsky, and Solzhenitsyn) articulate an intimate connection between “Ideas and facts,” between the “very lofty and the very small” (118-119). McCarthy explains that the traditional novel of ideas worked through abstract philosophical questions but also grounded these discussions in an attention to concrete factuality. She contrasts this approach with the one

taken by Henry James (who, she argues elsewhere, “may have killed the novel, with kindness” (“The Fact,” 193)):

James wished his fictions to dwell exclusively on the *piano nobile*, as he conceived it, of social intercourse – neither upstairs in the pent garrets of intellectual labor nor below in the basements and kitchens of domestic toil. And the garret and the basement have a secret sympathy between them of which the *piano nobile* is often unaware. (*Ideas* 15)

Birds of America consistently sets the “garret” of philosophy in conversation with the “basements and kitchens of domestic toil.” Peter’s effort to live his entire life by a single ethical maxim collides with his attachment to the details of bourgeois, domestic life. As Stephen Schryer explains, “the novel’s continual movement is from Rosamund and Peter’s abstract ideas to their banal realization. Hence, much of the novel’s comedy comes from Peter’s application of the categorical imperative to insignificant ethical dilemmas - for instance, whether to clean the excrement out of his hostel’s communal toilet” (832). In short, *Birds of America* precisely follows McCarthy’s prescriptions for the novel of ideas, exploring the concept of equality through various (comically) concrete scenarios. The interaction of the garret and the kitchen also resonates at the level of the plot with Peter’s near-fanatical philosophizing set in juxtaposition to his mother’s near-fanatical attention to domestic details (neither character, we might note, pays much attention to the “*piano nobile*...of social intercourse”).

Yet if *Birds of America* closely follows McCarthy’s prescriptions for the novel of ideas, this also marks it as fundamentally belated. In *Ideas in the Novel*, she writes: “being of my place and time I cannot philosophize in a novel in the good old way, any more than I can write ‘We mortals.’ A novel that has ideas in it stamps itself as dated, there is no escape from that law” (119). McCarthy further elaborates this view in her

earlier essay, “The Fact in Fiction.” She argues that, in the wake of “Hiroshima,” “Buchenwald and Auschwitz,” the world has taken on a quality of “irreality” that sets it at odds with novelistic realism:

...love of truth, ordinary common truth recognizable to everyone, is the ruling passion of the novel. Putting two and two together, then, it would seem that the novel, with its common sense, is of all forms the least adapted to encompass the modern world, whose leading characteristic is irreality. And that, as far as I can understand, is why the novel is dying. The souped-up novels that are being written today, with injections of myth and symbols to heighten or “deepen” the material, are simply evasions and forms of self-flattery. (200)

McCarthy worries that the “worldwide scandal[s]” of “nuclear fission, radiation poisoning, hydrogen bombs, satellites, and space rockets” are simply too vast and incomprehensible for the novel of ideas. At the same time, they “have dwarfed the finite scandals of the village and the province” – the traditional terrain of fiction. McCarthy recalls her own shock at learning that the United States had dropped a nuclear bomb on Japan: “I remember reading the news of Hiroshima in a little general store on Cape Cod in Massachusetts and saying to myself as I moved up to the counter, ‘What am I doing buying a loaf of bread?’ The coexistence of the great world and us, when contemplated, appears impossible” (200). The novel of ideas cannot capture the enormity of nuclear violence, she suggests, but in the wake of such violence, it also cannot sustain or justify its attention to little general stores and loaves of bread.

Biographer Carol Brightman explains McCarthy’s own shock at learning of the bombing of North Vietnam – the first event in the war that significantly “aroused her conscience”: “[McCarthy] passed a Left Bank kiosk on her way to a bakery and saw the headline announcing the first raids on the 17th parallel...she was reminded of another morning, twenty years before when she saw the Hiroshima headline while a buying a loaf

of Portuguese bread...” (549-550). In the last chapter of *Birds of America*, McCarthy recreates her own moment of disorientation at hearing the news from Hiroshima, and later, from Hanoi. In the midst of his Parisian morning routine, Peter is bombarded by headlines in “giant black letters”: “U.S. PLANES BOMB NORTH VIETNAMESE BASE,” “49 AVIONS U.S... BOMBARDENT DES INSTALLATIONS AU NORD...” (322). After hearing the news, he is struck by a deep feeling of guilt and complicity (“Our country! And we’re part of it. I’d said I’d kill myself if we did this and I’m still alive” (323)) and insists to his friend, “I won’t go... that’s all” (323).

Notably, the news also appears to disrupt Peter’s close affinity with the natural world. When he and Silly visit the zoo to distract themselves from the bombing, they come into conflict with its inhabitants. Silly mocks the animals and pelts them with peanuts, prompting one to attack Peter. Even the plants seem overwhelmed by death: “To his horror, the botanical garden had a derelict, desolate appearance and the rows on rows of denuded plants with their pale-green identifying markers reminded him of a cemetery” (324-325). In these pages, McCarthy captures her own feeling, after Hiroshima, that “the coexistence of the great world and us...appears impossible” (200) Peter no longer knows how to relate to his nation, to his ethical philosophy, and even to the natural world, which had provided him with a feeling of peace and security in the earlier portions of the novel.¹⁰⁶

The bombing of North Vietnam does not only produce a sense of dislocation for Peter, however; it also marks the end-point of the novel’s effort to masquerade as a

¹⁰⁶ It is Peter’s interest in bird-watching that gives the novel its title.

traditional novel of ideas. When McCarthy argues that it may no longer be possible to write novels, she clarifies that she means “real novels – not fairy tales or fables or romances or *contes philosophiques*” (Fact, 184). While the entirety *Birds of America* is riven with unsubtle symbolism and overt philosophizing, these qualities reach a satirical extreme in the book’s final pages. Peter and Silly visit a brown bear and Peter notes that “Aristotle talks about him.” Next, they wander through a labyrinth and observe a black swan battling a white one (on Silly’s urging). When one of the swans bites Peter, he is sent to the hospital, where his mother, looking like a “Delphic Sybil,” comes to comfort him. “You’ve had quite an adventure,” she tells Peter, “...you were bitten by a black swan. Just like a person in a myth.” Finally, in the last several paragraphs, Kant appears in a vision to warn Peter of the death of nature. The images, symbols, devices, allusions, and spokespeople that populate these final passages are marked by their radical distance from the traditional realist novel and by their much closer affinity to myth, fairy tale, fable, romance, and the *conte philosophique*, precisely the forms that McCarthy believes might endure the demise of the novel of ideas.

In his essay on Beethoven’s “late style,” Adorno argues that the composer’s late music does not seek to transcend clichés and conventions but, instead, allows them to appear “bald, undisguised, and untransformed” (565). In relinquishing his effort to disguise the conventions as the product of subjective artistic expression, he demonstrates his own growing alienation from the work of art (566). I think we can read the conclusion of *Birds of America* as a kind of “late style” political fiction that self-consciously draws attention to the ideas and conventions it can no longer integrate into an organic whole. McCarthy writes:

We are all in flight from the novel and yet drawn back to it, as to some unfinished and problematic relationship. The novel seems to be dissolving into its component parts: the essay, the travel book, reporting, on the one hand, and the “pure” fiction of the tale, on the other. The center will not hold. (“The Fact,” 203)

It is this kind of centrifugal force that shapes the final pages of *Birds of America*. The tightly-controlled traditional novel addressing the limitations of social egalitarianism is blasted open by the bombing of North Vietnam and the component pieces of fable, myth, dream, and philosophical prophecy spin outward, turning the concluding chapter into an unexpectedly postmodern constellation.

This formal shift initiated by the attack on North Vietnam goes hand-in-hand with a turn away from the Kantian ethical system. The incident with the *clocharde* leaves Peter’s belief system in tatters and the bombing sends him into further ethical confusion. While wandering through the grim botanical garden, he wonders: “if it could happen that one morning he might wake up and find that trees, plants, and flowers did not seem beautiful to him anymore. That would have to be the end of ethics. It might be starting to happen now” (324). Kant’s claim that “Nature is Dead” would seem to confirm Peter’s fear that he is becoming increasingly alienated from the natural world. And if that means “the end of ethics,” it also means the end of his reverence for Kant. But despite all these dark premonitions, it is *after* the bombing that Peter, for the first time, adopts an ethical stance that might pose some actual risk to his comfortable life: he refuses, without qualification, to be drafted into the Vietnam War. Why does the “end of ethics” seem to leave Peter *better* prepared to exercise his political and ethical judgment?

In the next section of this chapter, I will suggest that the novel’s conclusion allows us to see much of the preceding narrative as a kind of ethical red herring. The

novel's two central locations - Rocky Port and Paris - each substitute for a more direct encounter with the political crises of the 1960s: Peter argues with the townspeople of Rocky Port *instead* of joining the Students for Civil Rights group in their trip to Mississippi; he encounters the homeless woman in Paris because he is there avoiding both the draft and the protests against it. In short, all of Peter's elaborate ethical conundrums present themselves precisely *because* he has kept himself at bay from the more pressing challenges facing his generation. Read from this perspective, Kantian philosophy serves not as an aid to political engagement but as an intellectual distraction from its more urgent, even instinctive, demands.

III. "I Just Won't": From Thinking to Refusal

In April 1965, McCarthy told Arendt: "if [Johnson] bombs Hanoi, that is the end, as far as I am concerned. I would not find it acceptable to be an American anymore" (Brightman, *Between* 179). Although at the time, she felt "anxious and hamstrung" about opposing the war in public because of her husband's job in the foreign service, she would soon become an active anti-war voice, publishing journalistic reports on trips to South and North Vietnam and covering the trial of Ernest Medina, an American charged in the My Lai massacre (179). Against the protests of her publisher, McCarthy put aside *Birds of America* to visit South Vietnam in February 1967 and Hanoi in March 1968 (Nudelman 371). As she explained in a later interview, she saw these trips as intimately connected to her work on the new novel:

The reason I broke off writing *Birds of America* to go to Vietnam was, of course, an itch to act. But that didn't mean that the novel was not powerful enough for me. It was just that it couldn't do what the Vietnam pamphlets did: argue directly

against the war. There was also a more complicated reason for breaking off the novel and getting on a plane, which was simply that it seemed wrong to be writing through the person of a nineteen year old American boy when so many of his age group were being killed there, or fleeing to Canada or elsewhere. Unless I had done something concrete myself, I didn't feel I had the right to go on writing about him and his generation. (Gelderman 201)

Here, McCarthy seems to suggest that travelling to Vietnam gave her insight into the challenges faced by Peter's generation; she could only earn the right to describe their experience by putting herself in comparable danger. But if the trip allows McCarthy to better empathize with Peter, it also allows her to distance herself from what Franny Nudelman describes as his "hypocrisy, shallowness, or cowardice" (371). Peter, notably, is not "being killed [in Vietnam], or fleeing to Canada," but, like McCarthy prior to her trip, comfortably residing in Paris. We might say, then, that McCarthy feels compelled to "act" precisely because Peter does not. Nudelman writes: "Peter embodies McCarthy's concerns over action and inaction, as well as her attraction to martyrdom. And in the figure of Peter she parodies both" (371). Indeed, while many of Peter's ethical conundrums are presented seriously, the overall structure of the novel encourages us to view Peter in a parodic light. His worries about the clocharde or about the tourists at the Sistine Chapel function both as a vehicle for assessing the limits of social egalitarianism *and* as a kind of distraction from the more pressing issues that should trouble both Peter and the reader.

McCarthy's satirical ambitions are most visible in the early portion of the novel, set in a quaint New England town called "Rocky Port." Although Peter is vacationing in lieu of travelling to Mississippi to protest segregation, he ends up enacting a kind of play version of the confrontation planned by the civil rights group. At the apex of Peter and

his mother's ongoing dispute with the townspeople, a police officer confronts Rosamund about her refusal to restore a historical sign to their house.¹⁰⁷ When Rosamund and the officer start arguing, Peter pushes back: "'Is that a town ordinance, officer?' Peter heard his own voice croak. Mindful of his civil rights training, he was making a simple request for information; that was what you did when met by a sheriff and his deputies at a county line" (82). Things soon escalate (Peter swings at the officer while his mother dumps a watering-can over his head) and the two are put in jail overnight.

While imprisoned, Peter reflects on whether it was right of his mother to use her status as a well-known musician to demand preferential treatment. Yet although those meditations are consistent with the novel's interest in the conflict between art and social equality, the sequence more powerfully demonstrates Peter's ethical narcissism. He lectures a young woman working at the jail about the nature of civil disobedience and reflects "he was happy too. He and his mother were jailbirds like Thoreau...He felt safe, with his mother, in this clapboard jail; it had a cosy, small town Yankee atmosphere" (90). In short, Peter is able to persuade himself that he has performed an ethical action akin to civil rights resistance or Thoreauvian abolitionism, all without leaving the comfort of his small town or disrupting his nostalgic relationship to the American past.¹⁰⁸ Although the question about preferential treatment is presented as the central ethical dilemma of the chapter, it functions as a red herring for the ethical dilemma that does not

¹⁰⁷ Their landlady wants to advertise the house's heritage status during a town festival, but Rosamund views this as a kind of commodification of the past.

¹⁰⁸ In her book *Tough Enough*, Deborah Nelson describes a character from McCarthy's short story "A Portrait of the Intellectual as a Yale Man" in terms that could as easily apply to Peter Levi: "His suffering is always minor, unearned, and self-justifying, which nonetheless allows him to reconcile the compromises he has made with his beliefs." (83)

even enter Peter's mind: whether it is morally responsible to remain in Rocky Port (and protest imaginary outrages) rather than do his part protesting segregation in Mississippi.

The larger portion of the novel, set in Paris and other parts of Western Europe, functions in a similar way, although McCarthy's satirical intent is less explicit than in the Rocky Port chapters. During his time in Europe, Peter expresses anti-war sentiments but remains just to one side of any direct political action. He comes across a protest while taking his plant for a walk to absorb the sunshine.¹⁰⁹ Turning a corner, he "realize[s] that he [is] witnessing a demonstration, such as he had read about in history" and stands on the sidewalk to watch (no doubt looking absurd with his arms wrapped around a potted plant) (167). When he sees a friend being arrested, Peter wonders whether he ought to write a letter to the newspaper protesting the injustice, or testify in court against police brutality. His friend scolds him for this liberal-democratic naivete: "Of course the *flics* are sadists. *C'est leur metier*. The French take that for granted. You can't squeal about 'police brutality' in a court here" (172). When Peter attends a Thanksgiving dinner with other American expats and students he becomes so emotional arguing against the Vietnam War that he bursts into tears, embarrassing the group and breaking up their dinner (209). Throughout these scenes, Peter is politically correct in his opposition to the war, but naive and weak in his efforts to oppose it, either through direct protest or simple

¹⁰⁹ This was one of the images with which McCarthy began the novel, apparently. In a 1964 letter to Arendt, McCarthy explains that she was inspired - in part - by "a boy at the Sorbonne called Jonathan Aaron - the son of Daniel Aaron." "A charming detail about Jonathan," McCarthy explains, "is that he had a plant in his room, which was on a dark court, and he used to take his plant for a walk to give it light. This rueful oddity is going to be characteristic of my young hero..." (Brightman, *Between*, 165). This image seems to resonate with the notion that Peter is, for someone of his age and generation (not to mention gender), oddly committed to the cultivation of his domestic space.

conversation.

The chapter that follows Peter's disastrous Thanksgiving dinner begins "if it had not been for his draft status, Peter would have quit the Sorbonne" (214). This sentence, which explicitly serves to introduce several paragraphs about the quality of Peter's education, also introduces the reader to an ethical and political context that Peter has thus far ignored: he is actively evading not only the draft, but the resistance to it. In *Confronting the War Machine* (2003), historian Michael Foley explains that many anti-war protestors passionately insisted on a distinction between draft *resisters* and draft *evaders*.¹¹⁰ While evaders used their social advantage to gain college deferments, legal exemptions, and the like, resisters protested the *system* of the draft, which swept up men of color and poor men much more often than their privileged counterparts: "At its heart, draft resistance turned on this question: What could a man do when his country expected him to participate in a system of conscription that sent some of his fellow citizens to fight in a war he regarded as immoral and illegal yet protected him?" (12).

This is a dynamic that Peter Levi acknowledges but swiftly dismisses:

Like most people his age, he guessed, Peter had a profound wish not to be killed. He was no different from those other guys at the general's Thanksgiving brawl. Though sorry for anybody who had to die in Vietnam, he faced with equanimity the idea that some unknown draftee - maybe even a Negro - should bite the dust instead of him. He could see in principle that student deferment was a bad form of discrimination, that Selective Service - page Darwin - showed middle class society red in tooth and claw, but just the same he had his education to finish. Would a nut like his mother want him to volunteer or go to jail as a C.O. or what? (217)

¹¹⁰ This distinction is also carefully policed in *Chance and Circumstance: The War, the Draft, and the Vietnam Generation*, written by Lawrence Baskir and William Strauss in 1978: "the opprobrium of "evader" is inappropriate for large categories of Vietnam-era offenders. About one third of all draft resisters could have avoided the draft through deferments, exemptions, and legal loopholes, but they insisted on accepting exile or punishment as the consequence of their beliefs" (13).

Peter, whose conscience cannot allow him to pass by a homeless woman sleeping on the stairs, faces “with equanimity” the prospect that he is sending a more disadvantaged young man to die in his place. Usually committed to abstract principles - and indeed, to the *principle* of abstract principles - he easily skips over his own acknowledgement that student deferment is discriminatory “in principle.” To counter that correct ethical judgment, he draws on the supposed self-evidence of bourgeois social convention: he has his education to finish, and he shouldn’t have to act like a nut.

Having passed over his own ethical responsibility to resist the draft, Peter goes on to contemplate it is a pragmatic social policy. This approach violates both the content and the method of the Kantian ethical philosophy he advocates elsewhere, a discrepancy Peter appears not to notice:

If he were in Johnson’s place, he would abolish the draft and finance military training for qualified recruits by taxing people like his parents who could afford it and had children between eighteen and twenty-seven. Anybody over a certain income level who wanted to keep his offspring out of the Army - and ball players and prize fighters and movie stars and Pop singers - would have to pay the price, so that the guys who volunteered to do the fighting would earn, say, what an automobile worker brought home on Friday night. What an instructor or a section man got would be enough to make getting killed attractive. If he had the energy, he would send his plan to Johnson. He had another plan, along the same lines, to submit to socialist countries... (219)

It is difficult to imagine a more obvious violation of the Kantian maxim Peter literally carries in his wallet: “the Other, an end” and not a means. The system he imagines allows the more privileged to literally pay others to die in their place. In passages like this, Peter’s Kantianism begins to look more like an intellectual vanity than an ethical system. He is able to evade and ignore his more pressing ethical obligations without too much guilt precisely *because* he holds himself so rigorously accountable in minor matters.

Seen this way, the novel articulates a fundamental conflict between ethical reasoning and ethical action. As Peter himself briefly acknowledges in a letter to Rosamund: “maybe any action becomes cowardly when you stop to think about it. Conscience doth make cowards of us all, eh, *mamma mia*? If you start an argument with yourself, that makes two people at least, and when you have two people, one of them starts appeasing the other” (127). Here, McCarthy draws on and subverts Arendt’s conception of thinking as an ethical dialogue with oneself (described in my first chapter). “If I disagree with other people, I can walk away;” Arendt wrote, “but I cannot walk away from myself...if I do wrong I am condemned to live together with a wrongdoer in an unbearable intimacy” (*Responsibility* 90). While Arendt believed that “the wind of thought” would make subjects accountable to themselves, McCarthy reimagines the same inner dialogue as a process of appeasement and self-justification. She suggests that, when it really matters - “when the chips are down,” as Arendt would put it - thinking might actually be the enemy of ethical action (*Responsibility* 189). Indeed, she makes just that claim in her report on the trial of Ernest Medina, one of the officers charged in the My Lai massacre:

...one of the revelations that transpired from My Lai 4 was that the average American had a new conception of conscience. It was no longer the still small voice speaking up in the night or the gnawing of remorse... For the men of Charlie Company as heard at the Medina trial, conscience seemed to be chiefly an organ of self-justification. It did not tell you to refrain from an action but helped you explain what you did, afterward, when questioned. (*Seventeenth* 401)

Here, McCarthy characterizes the superior model of conscience as a pre-rational or non-rational instinct, a voice “speaking up” or a “gnawing” feeling. By contrast, the perverse view of conscience on display at the My Lai trials is rationalizing if not exactly rational;

it provides clever arguments and explications for those called to the bar of moral judgment.¹¹¹ Armed with some of the most sophisticated tools of ethical self-justification, Peter remains impassive in the face of his most dramatic ethical failings.

But, as we have seen, all of this changes in the final chapter of the novel, when Peter becomes alienated from nature, his ethical system, his nation, and himself, following the incident with the *clocharde*, and more importantly, the bombing of North Vietnam. Most of the novel is written in a third-person limited voice that gives us access to Peter's elaborate self-reflections. The occasional letters from Peter to his mother, obviously written in the first-person, further deepen our insight into his state of mind. When Peter learns about North Vietnam, however, the narrative voice briefly pulls back to occupy a position just outside Peter's consciousness. Relying much more on short descriptive sentences and reported speech, this passage does not grant the reader any access to the reasoning process that leads to Peter's final statement of resistance;

It was in the *Times* of London too. There was no escaping it, any more than he could have eluded the *clocharde* once he found her in his path. On top of everything, the dentist found a cavity. "Blue Monday" he said waggishly in his Berlitz English. When Peter got out of the chair, Silly was waiting for him. He had been reading the papers Peter had left and looked pale. "It's bad," he agreed. "But maybe it's just a one-shot thing. They say it's a

¹¹¹ McCarthy's critique of conscience in her trial report actually resonates with Arendt's critique of (perverted) conscience in *Eichmann in Jerusalem*, cited in my first chapter. Arendt argued that Eichmann "had a conscience" that worked "the other way around" (95). She later explains: "The trick used by Himmler... was very simple and probably very effective; it consisted in turning these instincts around, as it were, in directing them toward the self. So that instead of saying: What horrible things I did to people!, the murderers would be able to say: What horrible things I had to watch in the pursuance of my duties, how heavily the tasked weighed upon my shoulders!" (106). The soldiers McCarthy describes are similarly self-pitying, self-justifying, and delusional about their own responsibility. "The witnesses [U.S. soldiers] talked about casualties inflicted on them by the enemy as those these were atrocities. That is, as though they themselves were *civilians*" and it was that anger and self-pity that they described as "conscience" (*Seventeenth* 401). The difference between McCarthy's account and Arendt's, however, is that where Arendt sees Socratic inner dialogue as a bulwark *against* such self-justification, McCarthy (via Peter) aligns the two.

reprisal.” Peter shook his head. “Why would Johnson order American families home then? Your ‘poker game’!” “Well, yes, Johnson betrayed us.” “Our country! And we’re part of it! I’d said I’d kill myself if we did this and I’m still alive.” “Let’s go to the zoo,” urged Silly, “It helps usually.” “OK”...
 ...In preference to the Metro, they took a bus. After last night, Peter could not stand any more confinement. He sat with his chin slumped on his chest while Silly tried to make conversation...
 ... “Because we can speak French, they won’t send us into combat. Even if they draft students like in World War II. They’ll keep us back of the front lines, in Saigon, doing liaison with the high-up Vietnamese. I added that up last summer, when Goldwater was making his pitch.” “I won’t go,” said Peter. “But how? Unless you’re a Quaker or join the Peace Corps or something?” “I don’t know, but I won’t, that’s all.”
 They watched Silly’s brown bear for a while, but he was not raking any leaves...
 (322-323)

Subsequent passages will return to the inner monologues typical of the rest of the novel, but this one stands out for its stark alienation from Peter’s consciousness. Peter’s statement of refusal “I won’t go... I don’t know, but I won’t, that’s all” is already notable for its lack of elaboration and self-justification, and it is especially notable in the context of this shift in narrative perspective. The reader is usually party to the full line of reasoning that leads to his most minor decisions. Here, however, all the emphasis is placed on the simple, unexplained gesture of refusal - Peter’s own version of Bartleby’s “I would prefer not to.” Although we cannot know where this refusal will lead, it opens up a more radical form of ethical and political engagement. Rather than following Silly in seeking a special status or exemption, Peter seems prepared to resist cooperation with the draft system, a decision that may well lead, as it does for Bartleby, to arrest and imprisonment.

For all its elaborate Kantian conundrums, *Birds of America* ultimately militates *against* moral philosophy. It sunders Peter’s most courageous ethical and political choice from any visible form of intellectual reasoning or self-reflection. The bombing of North

Vietnam represents both the end of the traditional novel within *Birds of America* and the end of Peter's reliance on the Kantian ethical system. Indeed, those two fates seem deeply interconnected for McCarthy. We have already seen how, for McCarthy, new global crises made the traditional novel of ideas obsolete; it can neither address universe-wide scandal, nor continue to address only the village or the province. I think we can see this same problem of scale in Peter's ethical reasoning: he is instinctively drawn to help the *clocharde* sleeping on the stairs of his building but regards "with equanimity" the prospect that "some unknown person" will have to die in his place in Vietnam. While always provoked by the ethical crises that unfold in front of him (his friend being arrested at the protest, for example), he finds it easy to forget what is happening in Mississippi or Southeast Asia. This is perhaps, an all too human failing, but it suggests that - for McCarthy at least - global violence has pushed both the novel of ideas and the supposedly universal Kantian moral system to its breaking point.

Although she began the novel in 1964 with a plan to explore the theme of social equality, McCarthy's increasingly radical stance on the Vietnam War seems to have produced a more internally divided text. *Birds of America* is a work that presents itself as a traditional novel of ideas about the limitations of egalitarian thought. Ultimately, however, the book challenges both Peter and the reader to consider the more pressing ethical and political questions that the traditional novel form obscures. McCarthy's cryptic statement to Arendt, that in the late 1960s, "the ends-means 'law'" has somehow become "*irrelevant*" is echoed by Peter Levi himself. After telling his mother that he does not feel guilty for staying in Paris while civil rights battles rage at home, he reflects: "What is biting me here in Paris is something different: *being who I am* at this juncture in

history. I see myself as irrelevant to practically everything: this room, this street, this city, this world, this universe” (147). For McCarthy, the demise of the political novel appears to be intimately bound up with the death of systematic philosophy. If real ethical action must stem from intuition rather than intellection, then this leaves the novelist little opportunity to depict the reasoning behind her protagonist’s choices. When events become so unreal that they exceed both the realist imagination and traditional philosophy, the only response that can be articulated is an intuitive “I won’t.” Peter’s repetitive refusal, “I won’t go... I don’t know, but I won’t, that’s all,” may thus bring him closer to “the language of the young [which] resembles incantation” (Brightman, *Between*, 236). With “the truths of political philosophy turn[ing] overnight into clichés,” McCarthy seeks out a form of expression that is less propositional and more performative (236).

Indeed, this was a desire shared by many of the writers of the Beat and New Left generations, although generally not by McCarthy’s own clique of New York Intellectuals. In *Postmodern Belief*, Amy Hungerford argues that authors like Salinger, Ginsberg, and DeLillo responded to crises of religious and political belief in mid-century America by shifting from propositional language to a kind of incantatory literature that emphasized the experience of a word over its content or meaning:

[Ginsberg’s] poetry held out a view of language that allowed it to become mystical to the same extent that it became primarily material, to escape the baggage of propositional content without losing its worldly – and otherworldly power. And as *The Fall of America* itself demonstrates, Ginsberg’s poetry acquired this power at a time when the impossibility of reconciling opposing visions of reality on the Left and the Right was shaking American politics to the core... Ginsberg’s poetic vision... became a technology through which political critique could trade argument for incantation. (51)

Following the decline of religious authority and the rupture of liberal political consensus,

writers like Ginsberg turned away from the effort to argue, persuade, or even produce propositional content, and instead sought out literary forms that would act directly upon the reader. There are significant differences between McCarthy's approach and this one; Peter's statement of refusal still expresses a propositional content even if it is divorced from the philosophical argumentation and explication that take up most of the novel. But I would suggest that McCarthy and Ginsberg are reacting to a similar crisis: the death of God and nature announced at the novel's close and the inadequacy of traditional ethical arguments in the face of global violence and radical political destabilization. While Ginsberg will help to inaugurate a new postmodern response to that crisis, McCarthy offers what she sees as a kind of last traditional novel, one that announces its own belatedness without transcending it.

IV. Conclusion

As we have seen, McCarthy critiques Arendt's "Civil Disobedience" for "seiz[ing] the problem by the wrong end" (264). Rather than reading disobedience from the perspective of the protesters who throw their radical freedom in the face of the law, Arendt looks down on them from the vantage of the legislator and the political philosopher. It is from the conflict between those two perspectives that the central questions of this dissertation arise: does any compromise between the ethical urgency of conscience and the practical institution of law represent a fundamental betrayal of both forces? Is civil disobedience best conceived as a collective, political project or as a personal, moral calling? Does the methodological perspective of political philosophy - its "we" - necessarily run counter to the individual perspective of much narrative fiction? Finally, is fiction allied with

conscience? I conclude my dissertation by re-considering these broad questions in the light of contemporary politics. Which conception of civil disobedience - and which conception of literature - offers the most vital resources for the present?

McCarthy is most persuasive when she critiques Arendt's "evasive" effort to reconcile the opposition of law and conscience. While we might appreciate Arendt's effort to place ongoing resistance at the center of her conception of American democracy and the rule of law, McCarthy's critique recalls Arendt's own claim (explored in chapter 1) that the maintenance of a "discrepancy between legality and justice" is vital to democratic politics (462). Yet although McCarthy is correct to suggest that there is something odd about Arendt's effort to effectively *legalize* civil disobedience, she is wrong to insist that the practice should be conceived primarily in moral and spiritual - rather than political - terms. For McCarthy, civil disobedience is not a collective project but an expression of a personal "inner light." She suggests that although others may join our protest, we do not act as a group, but only identify with one another as a set of "separate individual souls saying no" (263). For Arendt, by contrast, it is this focus on individual morality that can make conscience "unpolitical" (62).

Arendt's position is, for me, more persuasive. We risk being ethically narcissistic when we are concerned primarily with our own moral purity and not with collective political projects and their possible political effects. This does not mean that disobedience has to aim for something moderate or even practical, but that it should be calibrated toward the world (which it may disrupt, challenge, reframe, complicate, or, ideally, change) and not toward the self (which it can only purify). An act like Peter's final refusal will likely do both these things, but it should be valued for the former and not the

latter effect. We should perform civil disobedience because we believe it will help someone else, not because it will expurgate our own feelings of guilt or complicity. In their own lives, both Arendt and McCarthy courageously fought to change their world for the better. And both offer vital perspectives on civil disobedience. Nevertheless, it is Arendt's insistently political language, in contrast to McCarthy's moral and spiritual language, that I think better conveys the core value of civil disobedience and conscientious objection, particularly given the fallibility of supposedly infallible moral and spiritual intuitions.

McCarthy's complaint about the "we" of political philosophy speaks even more directly to the central questions of this dissertation. Arendt, she argues, writes from the perspective of the "lawmakers" or "society-as-a-whole" (263); Arendt observes the Republic from the omniscient vantage of a sovereign, legislator, or judge, and attempts to reconcile not only its competing factions but also its myriad competing priorities: the rule of law, democratic contestation, and individual freedom. This attempt to ascertain a *general* political perspective mirrors John Laskell's effort to balance law and conscience, society and the individual, within his own enlightened consciousness. It is the vantage that Major Danby tries to foist on Yossarian in *Catch-22* - "but suppose everybody felt that way?" - and that Peter Levi scolds his mother for falling short of - "you can't legislate" (139). It is also the perspective that Max Reddick tries to re-appropriate for an African-American public excluded from the real operations of power. As McCarthy herself notes, it is the default methodological vantage of political philosophy, which produces accounts of how the political order, as a whole, ought to be structured. Yet, for McCarthy, the Vietnam War and the New Left make "the truths of political philosophy...

irrelevant” and its methodologies “dubious” (Brightman, *Between* 236, 264). She prefers to write and think from the perspective of an “individual sou[l]” and, in Peter Levi, she gives us a character who is only capable of moral courage when he gives up his legislating and philosophizing habits of mind and rediscovers the immediacy of his personal, ethical intuitions.

Readers might well sympathize with McCarthy’s effort to replace the strained, didactic Kantianism that consumes so much of her novel with a more intuitive, more relatable form of ethical action. Indeed, the idea that novels should not engage in overt philosophizing is usually treated as common sense both in academic literary criticism and in the broader literary world. It is crucial to recall, however, that McCarthy (along with Trilling) mounted one of the strongest defenses of the novel of ideas. Praising Hugo, Dostoevsky, and Dickens, while criticizing James and Woolf, she spent much of her life swimming against the tide that would make subtlety a watchword and the overt expression of philosophical ideas a sin. Yet she also believed that the postwar world could no longer produce great novels of ideas. For her, the inability for political philosophy to address the “worldwide scandals” that the New Left militated against seems to have been directly related to the inability of the novel form to address those same crises. Nostalgic for the novel of ideas and for Kantianism, she abandons both as “irrelevant” to new forms of global violence. If Peter Levi’s only moment of moral courage cannot bear explication, argument, or even narrative omniscience without becoming false and cowardly, then there is no place left in the novel for the explicit working through of ideas.

McCarthy turns away from both the “we” of political philosophy and from the

novel of ideas, but the other writers I examine in this dissertation maintain some form of fidelity to both. Trilling uses his novel to work through the tension between John Laskell's individual moral judgment and the more general perspective taken by legal and governmental institutions. Joseph Heller provides an anti-social hero in Yossarian but also demonstrates how the political, public sphere as a whole might be reshaped by totalitarian legal forms. John A. Williams tries to imaginatively represent the state in its totality - a gesture he believes will provide access to *the* fundamental truths of history and politics. All three authors offer protagonists who, in one way or another, set their personal freedom in opposition to the state or to "society-as-a-whole," yet all three also believe that the omniscient vantage "normal in political philosophy" will enable their fiction to reckon with larger questions about the interaction of law, politics, and ethics, and about how the state is or ought to be structured.

McCarthy's novel seems to announce the obsolescence of this approach to the novel and to politics. Heller and Williams both use tropes and devices that will come to mark the postmodern novel - absurdism, paranoia, and conspiracy - but it is McCarthy's more (seemingly) conventional novel that helps us to understand why so many features of all the texts I have analyzed will seem retrograde by the time postmodernism reaches its apex in the 1970s: their earnest searches for political, ethical, and historical truths (with a capital T); their belief that fiction can communicate those truths to a public that might be galvanized behind them; their investments in the nation and the law; their allusions to political-philosophical figures like Kant and De Tocqueville. For McCarthy, the rise of conscience as something secular, personal, and inexplicable - as an intuitive force *necessarily* opposed to law and to systematic philosophy - makes efforts to bring

conscience into dialogue with more general political, ethical, or legal claims look only like an encroachment on personal freedom.

Nevertheless, although I - and the authors I've examined - have been inclined to emphasize the value of the "we" of political philosophy, there is also a value to the more individualized view of conscience McCarthy describes. Despite her criticisms in "Civil Disobedience," Arendt's essays on *Responsibility and Judgment* focus more on that first-person perspective. Unlike McCarthy, Arendt views the "unequivocal voice of conscience" as all-too fallible and uses Kant and Aristotle to articulate a more rigorous conception of moral judgment (*Eichmann* 148). But like McCarthy, she sees individual resistance as vital "when the chips are down" (*Responsibility* 189). It is moments of extreme ethical crisis, like the Holocaust, when private, individual non-complicity, as opposed to public, collective resistance, becomes a primary virtue - perhaps largely because it is the only viable remaining option. Part of the disagreement between Arendt and McCarthy actually seems to come from their assessment of the political situation in the late 1960s. McCarthy described intellectuals who did not speak out against the Vietnam War as similar "to Nazis whose excuse was, 'Well we didn't know about it,' or 'what could we do, we were just one person.'" (Gelderman 86). She also used her report on the Ernest Medina trial to apply many of Arendt's insights from *Eichmann in Jerusalem* to the My Lai massacre. For McCarthy (as for John A. Williams), the United States in the 1960s was comparable to Nazi Germany, and that changed their calculus on whether democratic contestation, civil disobedience, non-complicity, or even violent resistance was the most appropriate response. Certainly, I would agree that it does not make sense to set conscience in dialogue with law and politics in circumstances, like

Nazi Germany, where law is manifestly evil and where democratic political change is impossible.

But in moments that are less stark - and I would include both the 1960s and the present, while also heeding Williams' warning about how rapidly things might change - there is still a risk to elevating conscience above other modes of critique. The risk is that we will make politics a practice of the perfect rather than the good, that we will read the political scene as a Manichean conflict between our own personal freedom and all the forces of generalization, legislation, and compromise - a romantic vision that both liberals and radicals occasionally fall sway to. The political future is, at present, enormously uncertain. As we look for ways to resist the Trump administration, we face the same question that troubled many in the aftermath of the Second World War: does the rule of law constrain or enable authoritarianism? We may yet find that courts and governmental institutions are best positioned to combat the excesses of the current administration. Or, we may find hope in protests, boycotts, direct actions, and civil disobedience. The 2018 midterms may turn the tide. If all these fail, personal non-complicity may become the most compelling option. In short, we have a range of options before us that include everything from law, to representative democracy, to participatory democracy, to direct action, to individual resistance. The relation between these modes - their value and limitations, their underlying principles and inevitable trade-offs - is what I have sought to illuminate here, with the conviction that all have a role to play and that none is sufficient on its own. Lionel Trilling, Joseph Heller, John A. Williams, and Mary McCarthy offer contemporary readers something vital because they all refuse to neatly resolve the tension between law, democracy, and conscience, between the individual and the "we."

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