

“With my head on the pillow”: Sovereignty, Ethics, and Evil among Undercover Police Investigators

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DIRECT INTERVENTION

At 8:45 p.m. we are walking to a Chinese restaurant for Christmas dinner after five hours of surveillance through urban neighborhoods, on the subway, and in an immigrant suburb. We are looking for connections between suspects in a European-wide Nigerian human trafficking ring. “We” includes myself and four members of an undercover police surveillance team in a southern EU member state.¹ The team consists of seven investigators specializing in transnational, organized crime. On the way, Brian was explaining another case involving a Romanian trafficking ring that circulated teenage prostitutes throughout Western Europe. To close this case, and to satisfy their consciences, the team had to enter the “gray zone”: that space where they can suspend the law (or ignore it) and thus, within limited circumstances, obtain sovereign power over those people tied to their investigations. “We had a high-value informant on the Romanian case. This guy sells drugs, guns, stolen goods, but he has limitless information about the Romanian ring because his girlfriend used to be a prostitute in it. We called him in and told him that we won’t arrest him

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¹ The country in which this team works remains confidential as a condition of ethnographic access. I obtained permission to conduct this fieldwork, and publish research from it, firstly from the team members themselves, then their immediate superior officer, and finally the national director of the team’s home bureaucracy.

unless he stops giving information. He was so well placed that we had to blackmail him. This is illegal. They must give information voluntarily. But we have no ethical problems. The guy is a motherfucker.”

This guy was not the only informant on the case. Another one, an immigrant, owns a cell phone shop. Unwittingly, he sold new phone plans to the ringleader who routinely changed numbers to avoid police phone taps. They could not close the case unless the team knew the ringleader’s current phone number. The shop owner refused to cooperate the first time they approached him. The next time, however, two team members went to his shop and threw everything on the counter onto the floor. They demanded that he provide them with the new numbers that the Romanian had purchased. If he did not, then they would examine his immigration paperwork. The threat gained his cooperation.

We arrived at the restaurant, an illegally-run enterprise that nevertheless gives them privacy. The staff cannot speak the national language, but only Mandarin, and so the team can talk freely amongst themselves away from headquarters. During Christmas dinner, I pushed them on their tactics for gaining these informants’ cooperation. What right do they have to break the law like that? In response, Brian explained the situation of one particular fourteen-year-old girl in this case.

The girl’s mother sold her to this trafficking ring for less than fifty dollars. She was smuggled into the country with a fake ID and made up to look ten years older. An extended family composed the ring with cousins and siblings controlling cells of three or four prostituted girls and women. The team arrested some of the ring, including the leader. They brought the girl into protective custody because the ringleader, from jail, instructed his brother-in-law to threaten to burn her house down if she testified. Crying, she called Frank for help. Frank contacted Brian and said, “We know who made this threat and where he lives.” They consulted their teammates who agreed that they should act directly against the brother-in-law. They knocked on the door of the house where he rented a couple of rooms. A very large man opened the door and filled the frame. Frank pointed his gun at him and said “where are the Romanians?” The man frightfully backed away and pointed to their apartment. The brother-in-law was inside the room with his wife, his sister, and two teenagers. They told him to come with them. He complained with flagrant hand gestures, so Brian restrained him by placing his wrist in a stress position. As they walked him out of the house, the man head-butted the door frame causing streams of blood to run down his face. Brian and Frank remained unfazed, since tougher suspects often attempt to create an impression of police brutality. Frank turned on the siren to show onlookers that the police had the situation under control. Once at the office, they gave him a choice: “You can go home, get your things, and leave the country today, or we will deal with you.” Brian then explained to me, “We don’t bluff. If we make a promise to help you or hurt you, we keep it.” The team never saw him again.

The girl had kept a good relationship with her sister in Romania but could not afford a phone plan to talk to her, and she asked Frank for help. By law, he should have no contact with her lest he biases her as a witness, but he paid for the plan anyway. The girl ultimately succeeded in testifying in court with voice distortion and behind a curtain. Her testimony provided such necessary supporting evidence as the conditions in which she was kept, the brutality she suffered, and the contacts that she knew the ringleader had maintained. The phone taps revealed how the ringleader would coordinate the operation with his relatives: how the girls were to be treated; when they should eat; how much they should charge their clients; and how they were to display themselves on the street. Other evidence included proof of money transfers to Romania, a large amount of cash in their house, and corroborative evidence from the Romanian police. The house also contained several bats used to beat the girls, something confirmed by the girl's testimony and also that of neighbors' who had heard their screams. Surveillance recorded the ringleader beating members of rival gangs and claiming their prostitutes for his own operation. The ringleader is now serving a fourteen-year sentence.

To provide prosecutors with sufficient evidence and do what they deemed to be “the right thing,” the team broke the law four times: illegal entry, illegal detention, abuse of power, and contact with a witness. In addition to risking the potential legal repercussions, they had put themselves in physical danger during the unwarranted arrest. My question to them was simple: “Why did you do all of this? What difference does it make to you if the case is solved or not? You are not responsible for the limits of the law.” I expected an answer about a need to please superior officials, but no such officials were ever involved implicitly or explicitly. After a lengthy discussion among the team, Frank's answer, short and softly spoken as ever, indicated neither bureaucratic pressures nor opportunities for private gain. He simply replied, “We are people. We are parents. We have values.” Then he shrugged as if to say, “Did you think we were more mysterious than that?”

THE INVESTIGATIVE TEAM AND POLITICS IN THE PARTICULAR

My extensive ethnographic research with this undercover investigative team revealed many such ordinary comments in and about extraordinary circumstances. I have been privy to them by participating in many of the team's numerous surveillance runs, socializing and routinely eating lunch with them, interviewing them formally and informally, studying their investigative tactics, examining their open and recently closed cases, and ethnographically studying with them parts of the city and surrounding country where their cases often lead. Nothing striking distinguishes them from others of their generation (all are in their thirties and forties) except perhaps their striking ability to articulate key issues in ethical dilemmas and their unusual self-confidence coupled with unpretentiousness. They well understand that they are no band of rebel cops and

that, despite situations like that just described, they mostly function as instruments of the state's rationalized security procedures.

They have certainly taken a risk in allowing an ethnographer to stay so close to them, because of the illegalities that I see and hear about. David made clear that no journalist would ever be allowed "inside." I hasten to add, though, that the inside is not particularly exotic, foreign, or unimaginable. Rather, it resembles any type of public sector work except for its secrecy, limited oversight, and the time they spend on the street. So why did they bring an ethnographer on board? The answer, I think, resembles the reason that ethnographers hear in many contexts. The team is pleased that someone has taken interest in them. David explained that they can talk to nobody about their work except their wives, who have long since tired of it. Moreover, they sense a lack of appreciation from the general public and are glad to have an opportunity to show someone what they actually do. Jokingly, he added, "This is therapy for us!"

The point of this article is neither to argue that undercover investigators are tough guys with big hearts nor to make heroes of them. Furthermore, we must remain conscious of the fact that, in structural terms, they police the effects of, and thus sustain, global economic inequalities, which drive so much irregular migration. My intent is to show the conditions in which ordinary people—undercover investigators in this case—take risks to initiate actions based on their own ethical judgments against the massive weight of legal and policy prescriptions. I will use these conditions to draw out a basis for sovereign political action premised upon particular speaking subjects rather than abstract citizens logically derived from a transcendent nation-state. Significantly, this argument focuses on the "gray zone" where their actions are not constrained by law. This situation is ripe for the sorts of abuse of power familiar from cases of police brutality, war crimes, and concentration camps. Yet while such abuses commonly occur in many different contexts, they are not inevitable. The present case study suggests the difference that a "space of appearance" might make (Arendt 1998: 199–207). In such a space, those endowed with the power of sovereign violence are more likely to conduct reflective action than thoughtlessly follow prescription. This situation differs from the one examined by the many police ethnographies that study uniformed street police responsible for maintaining public order (see Fassin 2013; Garriot 2011; 2013; Jauregui 2013; Klockars, Ivkovic, and Habersfeld 2004; 2006).² These studies mainly examine cases in which police are literal extensions of legal bureaucracy onto the streets, replete with a hierarchical form and capacity for corruption (see Skolnick 1975).

² Sociologists have long studied undercover policing (see Marx 1989) and cooperative policing between public and private entities (see Hoogenboom 1991). These approaches draw more from institutional theory than does the present argument.

The capacity for people to behave with extreme indifference, often acting with unchecked sovereign authority, received great attention in the mid-twentieth century when social scientists studied the mass movements that unleashed the horrors of the Second World War (Arendt 1968; Fromm 1965 [1941]; Hoffer 1951). A subsequent generation of studies in social psychology explored the role of individual conscience in people who were authorized to commit destructive acts upon others (Adorno et al. 1993 [1950]; Arendt 2006; Schein 1971). The Milgram experiment and the Stanford prison experiment serve as well-known and controversial examples. Less understood, however, is the question of what conditions enable people endowed with sovereign authority to act, not with obedience, brutality, and indifference, but rather with reflection, judgment, and measure toward those under their control. Surely, since social scientists, particularly anthropologists, routinely insist that people are active agents in shaping their world rather than passive conductors of larger power configurations, this phenomenon requires sound explanation.

In dialogue with anthropological studies of phenomenology and ethics, and with Arendt's inquiries into personhood and politics, this ethnographic research draws out several conditions that enable *reflective action* in the gray zone.³ These include (1) the team's particular position in the larger investigative and legal process; (2) their egalitarian organization; (3) their deep familiarity with each other; and (4) their capacity to see similarities between themselves and the people they investigate. To the extent that these conditions are in place, those operating in the gray zone are positioned to pursue reflective action—that is, to judge specific situations according to their own particular assessments, deliberate on a course of action, and jointly pursue it. Consequently, they obtain an experience of *being* themselves rather than being proverbial cogs in machines. The actions they undertake grant them a particular and singular appearance in a world in which they are a directly constituent part. This prospect means that in states of exception the sovereign cannot assume that its executive agents will adhere thoughtlessly to commands to abuse and dehumanize. The importance of this inquiry is to insist that such actions—rare as

³ Hannah Arendt's work has undergone a significant revival across the social sciences in the last two decades as scholars theorize political action in an era of liberal hegemony (Benhabib 2003; Calhoun and McGowan 1997; Holman 2013; Honig 1995; Rensman and Gandesha 2012; Villa 2001). In a different vein, much of the post-Marxist literature on political action tends to dismiss her importance. This dismissal pertains to Arendt's distinction between the political and social, which her critics see as untenable (see Hardt and Negri 2004: 78). However, Arendt never denied the importance of fighting for social-cum-economic issues, but rather insisted that a system that merely reproduces laboring bodies does not by itself bequeath political freedom. Defending Arendt, Benhabib writes, “Engaging in politics does not mean abandoning economic or social issues; it means fighting for them in the name of principles, interests, values that have a generalizable basis, and that concern us as members of a collectivity” (2003: 145).

they might be—can originate as the ordinary course of events. The more extraordinary we assume this type of action to be the less able we will be to understand it as a normal human possibility.

In this article, I define the “ethical” as measures taken to reach agreement with one’s self about how to *be* in our worldly relations with others. This approach avoids defining the “ethical” as a pre-given object of study per Lambek (2010a: 7, 10) and Lempert (2013: 372). In so doing, it heeds Mattingly’s request that we not let third-person explanatory frameworks swallow up first-person virtue ethics (2012; see also Laidlaw 2014: 43). The article thus follows Laidlaw’s line that ethics are irreducible given the sheer variety of forms of human assembly and possible courses of action (2014: 44–45). They cannot be pinned down theoretically, because being human involves the deployment of our capacity to recreate ethics anew to deal with unprecedented circumstances. Our theoretical approach should focus instead on the conditions that enable reflective action that can subsequently constitute political order. Indeed, ethics becomes a precursor to political action when persons jointly constitute sovereign space—space in which no external authority imposes itself—on the basis of their particular standpoints in the world. This situation means that they have not thoughtlessly adhered to pre-given codes of conduct, unquestionable abstract principles, or utilitarian rationales to which particular persons must sacrifice their judgment and to which they themselves are so often sacrificed. In this understanding, politics stands in direct contrast to the technocratic security state, even if the judgments made in each may align with the other.

In what follows, I will discuss recent developments in the anthropology of phenomenology and of ethics to establish a platform from which to understand reflective action in a gray zone. I will then summarize Giorgio Agamben’s argument about the state of exception to clarify why that argument cannot provide a satisfactory perspective on such action. The main reason is that the dialogue between Agamben and his interlocutors fails to exploit, even if it correctly identifies, the difference between the human qua animal (*zōē*) and the human qua political actor (*bios*). Thirdly, I ethnographically examine the conditions that enable this undercover investigative team to take political action as *bios*. Fourthly, I contrast “cognition” and “thinking” (i.e., reflective evaluation) to understand how people make use of “evil” as a premise for political action. Finally, I argue that recognizing how particular speaking subjects undertake political action as a sovereign act of foundation offers a radical alternative to that of actions taken in the name of the transcendent sovereign state, replete with its potential for the violence of indifference.

ETHICS, POLITICS, AND EVIL

Questions of ethics have received increased academic attention bringing forth a variety of approaches (Cassaniti and Hickman 2014; Fassin 2012; Faubion

2011; Lambek 2010b; Lempert 2013). I want to give special attention to phenomenological anthropology’s contribution in order to explain how states of exception can create possibilities for reflective action rather than the violence of indifference. I will link ethics to politics as a foundational sovereign act undertaken by particular people from their particular standpoints in the world. To this end, I pursue Csordas’s (2013) point, initially made by Parkin (1985a) and Caton (2010), that we must develop a greater analytical understanding of how people deploy the category of “evil” if we are to understand ethical and ultimately political action. For my purposes here, if someone regards something as intolerably evil, then one wishes to bear no responsibility for it even by passive participation in its enabling power relations. This approach does not mean, of course, that people explicitly categorize situations or people as “evil” or not. Rather, it recognizes that situations that push people past their ethical threshold compel them to try to rectify it even at their own risk. If they fail to take these situations seriously, then they themselves risk becoming agents (passive or active) of what they themselves understand as evil or at least intolerable. This result would render the otherwise particular speaking subject the proverbial automaton of mass society. It would also lead to a crisis of conscience, or a failure to reach agreement with one’s self about how to live in the world.

This analytical focus on evil dovetails with Throop’s (2010) key point on suffering and ethics in the Pacific island of Yap, because the credence we give to another’s suffering implies that we reject its cause as unjust (see also Biehl, Good, and Kleinman 2007; Das et al. 2001; Das et al. 2000; Kleinman, Das, and Lock 1998). The “ethics of suffering” requires a refusal to domesticate the experiences of the other into the sameness of one’s own being, lest one rob the other not only of their particular suffering but also of their personhood. Assimilation begets social elimination. At work is “a deeper, more primordial recognition of the other’s irreplaceability” that transpires through a “nexus of human subjectivity” (Throop 2010: 276). Nevertheless, the question remains as to why one person would care if another suffers. Usually, we do not. Yet, if we do not care, then we isolate ourselves by denying the equality of others who could similarly recognize us as equal but distinct persons. This mutual recognition, or “nexus of subjectivities,” creates a space governed by the two persons themselves rather than by appeal to transcendent principles. Humphrey likewise explains that “Humans have a capacity to imagine other points of view from that which one is now occupying.” This capacity is something quite different from “changing the signs,” and instead involves the “shift from an ego-centric to an allocentric point of view” (2008: 369). I suggest that this capability helps us understand that Throop’s “primordial recognition” involves more than a need to recognize someone else’s suffering *per se*. It speaks to an impulse to jointly constitute political space with others in which we appear on our own mutually negotiated terms.

In other words, the argument proceeds from ethics to politics because one person only recognizing another's suffering cannot constitute a new sovereign space. Space necessarily exists between persons and it can only be constituted through their mutual recognition as equal but different persons.⁴ This endeavor, likewise, constitutes them as particular subjects who recognize each other in their requisite speech and action. This mutuality distinguishes itself from a liberal perspective, which assumes that individuals meet as pre-formed subjects (see Duranti 2010). If so, then the liberal subject needs no public space except to advance their own private interests through utilitarian relationships. In contrast, the phenomenological approach insists that mutual recognition is the basis of worldly appearance since one cannot appear unless another sees that which has presented itself. (To the phenomenologist, the liberal's *private* life is a *deprived* life because it is isolated by design.) This situation opposes the transcendent state's basis on generic members of a race, class, or nation whose alleged homogeneity moots the need for any particular member to make an appearance.⁵ They are thus to be acted upon by a transcendent sovereign, or to be carried along by the current of predetermined history. In agreement with Lempert (2013: 371), then, "ethics" may be ordinary (see Lambek 2010; Das 2012), but this does not make them "immanent" if that term means immediately present. Ethics—or politics—becomes present when people act on their particular, reflective judgments, which they often do not. Hence, immanent can simply mean potentially present, on the threshold of *being* but not *becoming*.

I use this approach to explain the significance of (1) what motivated the team to assume the risks they did for the Romanian girl; and (2) how that motivation can lead to sovereign acts in states of exception that do not require obedience and the violence of indifference. Working through Zygmunt Bauman, Laidlaw argues that such an agenda would take anthropology and social science beyond a "science of unfreedom," which succeeds only in explaining how external conditions—the "social," "global system," "neoliberalism," "colonialist discourse"—render illusory peoples' "experiences of freedom" (Bauman quoted in Laidlaw 2014: 3–4). It therefore increases our understanding of how "freedom" can appear in the world if we understand that term to mean the actor's presence as one who speaks, judges, and acts from his or her particular standpoint.⁶ Laidlaw (*ibid.*: 45) notes that Csordas's project,

⁴ While a person can impact the world through individual acts, that lone actor remains incapable of constituting a political space because such space necessarily implies the ongoing participation of others.

⁵ However, particular persons can act politically on the basis of shared interests, which might be found in generalities such as class, race, or nation. These actions would express solidarity, but, crucially, these generalities would not homogenize the actors or eradicate their particularities. The generalities do not become transcendent.

⁶ Laidlaw nicely synthesizes discussions on freedom in liberal philosophy with respect to anthropology (2014: ch. 4). I limit my definition of freedom to the experience of being fully present in the undertaking of joint political action. Such action is not antithetical to human institutions. Instead, if

mentioned above, of understanding deployments of “evil” is of a qualitatively different order than his own. Nonetheless, we can align Laidlaw’s notion of “reflective evaluation” (ibid.: 44) with Csordas’s project because one’s reflection on “evil” is inherently an evaluation of one’s ethics (see also Zigon 2008: 18). In each case, reflection is the precursor of action in which a hitherto uncertain and divided subject obtains a singular reality in the act of undertaking joint action with others (see also Humphrey 2008).

ACTION IN THE GRAY ZONE AND THE LIMITS OF AN AGAMBENIAN APPROACH

While Agamben (1998) is not the first theorist to articulate the logics of the gray zone, known in academic circles as the “state of exception,” he has clearly been the most influential since the late 1990s.⁷ He argues that the sovereign is the entity that can suspend law and so act with impunity against those individuals whom it no longer protects. They become *homo sacer* whose vulnerability conceivably knows no ends. Lacking legal protection, *homo sacer* cannot politically assert himself and so can only be acted upon or neglected. *Homo sacer* is not even worthy of a ritual sacrifice because nothing about him is worth offering to a higher principle or deity. Therefore, his murder comes with no penalty for the murderer because the loss of his life has no effect on the order that the principle or deity upholds. *Homo sacer*’s lack of political presence renders him disposable and replaceable. While Agamben’s argument can be criticized as too rational and indifferent to historical particularities, few scholars conclude that he is fundamentally wrong. Rather, recent scholarship working through and against his argument shows that the sovereign’s pre-legal power involves a variety of intentions and yields ethical results that greatly differ from Agamben’s prime example of the concentration camp (for a wide sample, see Fassin and Vasquez 2005; Gupta 2012; Panglese 2009; Rozema 2011). Nevertheless, a common feature emerges from underneath the diverse results in different states of exception: the population was always there to be acted upon by executive agents, rather than engaged with as political equals. Indeed, the sovereign’s goal with a state of exception is not necessarily to destroy biological life, but rather to do with it whatever is

freedom is an effect of concerted action, then its presence in one person can only come forth in the company of others likewise experiencing it. These persons’ organizational form is itself an institution and so a prerequisite of freedom. It establishes a public space where their freedom can appear. What distinguishes an institution supporting freedom from one supporting the transcendent state is that particular people whose lives are tied to it are empowered to change its underlying principle when they see fit (Feldman 2015: 99–100; Graeber 2009: 215–16). Laidlaw nods in a similar direction in his discussion of Mahmood and Hirschkind (2014: 176–77).

⁷ See Hardt and Negri (2004: 7n10) for key texts in the longer trajectory within which Agamben writes.

necessary to ensure social equilibrium within the territorial domain (Foucault 2007: 257–63). This objective could lead to the sovereign nurturing *homo sacer* back to health even while denying it qualified political life. Therefore, the transcendent sovereign's consistent objective is the denial of political life; its objectives with biological life historically vary.

The transcendent sovereign's drive to eliminate political life, and the limits to understanding political action within the debate framed around Agamben's work, rests on an underexploited distinction that appears in the debate itself. That classical Greek distinction maintains that people contain two dimensions within their being. The first, known as *zōē*, refers to human beings as identical specimens of a singular biological species. Each person is fundamentally the same on the basis of having to maintain the body's natural and circular metabolic demands: sleeping, eating, grooming, reproducing, and so forth. The second dimension, *bios*, refers to the politically qualified life among people who can speak from their particular standpoints in the world. Their particularity draws from the fact that, despite *zōē*'s presence in each person, no two people have lived the same life course and so each person, qua *bios*, has a different point of view on, and can attribute different meaning to, the common world. While Agamben argues (correctly, in my view), that *zōē*, who becomes *homo sacer* when legal protection is removed, premises the transcendent state form, he is content to leave *bios* unexamined. If instead persons qua *bios* constitute political space, then they conduct a foundational sovereign act as particular persons with no need to appeal to such abstractions as nation, race, or class. These abstract reference points would limit their presence to the dimension of *zōē*. Returning to the ethics of suffering, the phenomenological approach recognizes *bios* as the basis of *being* in the world while, in contrast, the state strives to reduce *bios* to *zōē* for fear of the former's inherent particularity; that very particularity threatens the state's abstract foundation built upon the generic *zōē*.⁸ Furthermore and much less considered, the sovereign's executive agents—usually recognized as prison guards, police, high-level bureaucrats, and the like—operating in the gray zone are also potential *homo sacer* since they, too, have been reduced from *bios* to *zōē*. They are not empowered to act from their particular standpoints (unlike *bios*), but rather are expected to deploy the state's abstract rationales upon the population of *zōē* and to do so as *zōē*. They, too, risk being neglected or eliminated as often happened in twentieth-century revolutions as leaders of mass movements begin weeding out their own lieutenants and functionaries.

⁸ The actions of *bios* are not decontextualized from non-state institutions, practices, customs, et cetera. *Bios* does not act outside of history. Rather, *bios* acts on the basis of his or her own judgment, which she or he subjectively reaches in negotiation with the surrounding world. Hence, *bios* is a part of the world but is not fully determined by it. In contrast, *zōē* acts upon the transcendent state's rationalized logics and so strives for decontextualization from particular place and time.

If one accepts this distinction between *zōe* and *bios* as a human reality, then it becomes imperative to ask how any person, particularly those endowed with state authority, comes to appear in either dimension in actual historical circumstances. This point directly concerns the police investigative team’s actions in the case we are considering. They refused to be indifferent toward the girl because that would have reduced them to being passive players in the state’s security apparatus, which would have neither prescribed nor endorsed their decision to break the law to help her. Until they acted, however, they remained passive functionaries—as *zōe*—unwilling to assert themselves as particular persons—as *bios*—endowed with the power to judge and to act. The difference speaks to existential crises as much as any other (Feldman 2015), as suggested by Vincent’s comparison of the desk-bound investigator’s work to his own: “Have you seen what they do? Go to their offices and see their forms. It changes you. It’s so boring. Legal shit and bureaucracy.” The decision to act for the girl signified a refusal to succumb to the boredom of bureaucracy premised as it is upon abstract rationales. That situation offers little opportunity to constitute a space in which the team’s members could think, judge, and act on their own accord, as *bios*.

CONDITIONS OF ETHICAL ACTS AND SOVEREIGN PRACTICES BASED ON PARTICULARITY

That the team works in conditions allowing for reflective action testifies to the in-built limits of the state’s technocratic security apparatus. Ideally, an apparatus should operate so efficiently that no particular agent need make an ethical judgment (Feldman 2012: 197–98). Failing that, apparatuses necessarily rely on their own agents to operate in the gray zone to compensate for what the law cannot control or condition. A common example is the need to protect individual liberties while also being able to violate them to gather evidence in criminal investigations. The team often confronts this situation when they cannot obtain a judge’s warrant for a phone tap quickly enough because the evidence they seek will only be available for a short time. Pressed for time, they tap the phone without the warrant. Superior officers either tacitly approve this decision or formally prohibit it while turning a blind eye (though the team fears that these superiors would not support them if they got caught). This contradiction puts the security state’s objectives at risk. The team must make their own particular judgments about the mismatch between those objectives and the actual empirical events they face. This situation does not guarantee reflective action. However, it creates the possibility for it, and by extension, for an alternative sovereign order based on speaking subjects rather than a transcendent state. What are some of the alternatives that enable conditions that animate *bios* over *zōe*?

The team’s location in the investigative process: The team does not work in a vacuum, but rather they are one part of a transnational criminal

investigations unit. Their cases usually begin with state prosecutors asking them to investigate leads on a suspected crime. An office-bound investigator manages the case and liaisons with the prosecutor. Judges must approve operations like home searches, wiretapping, and deep cover operations. If the team gathers sufficient evidence then the prosecutor makes a legal accusation. Thus, the team neither invents justice as it prowls the streets nor dictates the larger investigative process. However, it can create a small, but significant space of autonomy when seeking evidence in a case. This space, a gray zone, is where they obtain sovereign authority. They create a state of exception in which they have the capacity to act with impunity against those whom the law no longer protects.

The team is protected by means of a legal distinction between “evidence” and “intelligence.” “Intelligence” is any information used to investigate suspected criminal activity. It does not appear in court. “Evidence” is information directly tying a suspect to a crime that must appear in court. The team would never present intelligence in court lest the methods of retrieval be exposed. Instead, they later find a legal way to present that same information as evidence, if necessary. For example, the team needed to know if a Chinese owner of suites in a downtown building was running a brothel. However, paying for sex with a prostitute managed by a pimp is illegal and so no team member could patronize the establishment to find out. Yet, they could not determine if it served as a brothel without going inside (and Chinese brothels in the city only cater to Chinese clients). They decided to pay a Chinese informant. The man was given €150 to visit the establishment, which he confirmed was a brothel. This information will be used only as “intelligence” because of the team’s illegal involvement in its procurement. With this intelligence, however, they can plan operations to legally obtain evidence: most likely including the sounds of people having sex; condoms found in the trash cans outside the building; and confessions from people patronizing it when the bust occurs. If a judge, prompted by a defense attorney, were to ask how intelligence was obtained—that is, how they knew the actual use of those suites ahead of the bust—then the team would argue that they cannot reveal their sources lest it jeopardize their informant’s safety. No judge would push further, and they thus tacitly approve the team’s right to invoke a state of exception. Confident that their secrets are safe, they can act against reluctant informants without legal constraints. Nevertheless, while the distinction between “evidence” and “intelligence” protects them in the gray zone, it only creates the possibility for reflective action. It does not motivate it.⁹

Egalitarianism: While the team has a captain and a slight internal ranking system based on seniority, their decisions on major actions and annual priorities

⁹ See Natapoff (2009) for a robust study of the role of informants in U.S. policing.

are reached by consensus regardless of rank. They are not promoted by nomination so they do not compete against each other for career advancement. If a more desirable job became available, then they would compete against candidates from across the ministry or the country. This situation saves them from wondering about each others' hidden agendas. David explains, “In today's society, you are taught to compete. If you have this idea of teamwork ... if Vincent tells me I did wrong and I understand this as competition ... then you won't be able to stand each other.” This kind of egalitarianism creates “a pleasure in working with friends,” Frank explained. Brian added that “we can be our individual selves. This is different from other units. That's an asset for us but it would be a liability in other units. They conform to what leadership expects.” This situation does not grant the team a *carte blanche*, but it does give them opportunities to act on their own judgments. This egalitarianism differs from that of abstract citizenship in the nation-state. It does not equalize people as identical carriers of a putative shared essence. Similarly, it is not a function of each being a properly trained bureaucrat as capable as anyone else of deploying means-ends reasoning.

Instead, their equality derives from the mutual guarantee that each can appear as a particular speaking subject—specifically, that the speaker has a guaranteed audience whom he can try to persuade to undertake an unprecedented course of action. David explained the difference by referring to his basic military training earlier in life: “In the military, team spirit is mostly based on how much you suffer together ... in training exercises, in the conditions you're living in, in taking shit from your superior officers.” In other words, equality is achieved through a common animal endurance rather than soldiers' respective presentations of self in the planning of operations. Skolnick (1975: 11) points out that police units modelled on a military pattern will refer to a martial conception of order where obedience to command is the first priority. In these cases, decisions travel top-down with no soldier distinguishing himself from his comrades by questioning the order (ibid.: 10). Despite its strategic importance during the chaos of war, this demand precludes premising the unit's action on the plurality of perspectives present among the individual soldiers. Regardless of efficiency, the cost of equality through homogenization is political equality among particular subjects endowed with the power of constituent action.

One investigation pushed the team's egalitarianism to the limits because it held ramifications within the broader ministry and potentially among themselves. An important surveillance occurred on a Saturday evening when all but one of the seven team members was on vacation. Obtaining crucial evidence of an association between two suspects could be best done by photographing them in a restaurant that phone taps indicated they would visit. One team member alone could not conduct the surveillance, and given its importance they could not assume that such a meeting would take place again. It

was agreed that the entire team, with the exception of one member vacationing out of town, would join their lone colleague to conduct the Saturday night operation. No one member should be abandoned to such an important task and internal rank should not determine who must work during vacations. They obtained the video images of the men, but were surprised to see that the meeting also included a woman. Her role was to offer sexual favors as an extra incentive to the cash that one of the men would receive for procuring fraudulent travel documents.

The success of this surveillance, however, put the team in a difficult position. As the most experienced team member and the team captain, Frank has acquired much political capital in the ministry along with a host of allies and antagonists. Surveillance results would normally be reported to the team's unit head. However, a higher-ranked official, and Frank's close ally, asked that he be informed first since he wanted credit for breaking the news at a senior meeting on Monday morning. Frank was prepared to honor his ally's request at the risk of offending the unit head until the team pushed back against him. They did not want to irritate the head by skipping up the chain of command. Only Frank could withstand that resentment given his alliance with the next highest official.

The surveillance run concluded at midnight and the six team members returned to headquarters to discuss the matter. Frank sat behind his desk and asked, "Okay, what do you all think?" They launched into an animated discussion with David frequently employing physical comedy to lighten the mood. At times, they grew tired of the discussion and left the building to smoke cigarettes. They reviewed the ramifications depending on which senior official first received the news. Finally, they convinced Frank to first speak to the unit head, and Frank agreed to call him on Sunday evening. Meanwhile, the team turned off their cell phones to avoid any calls from any senior official. Frank had resolved the problem by Monday morning. He told his higher-ranked ally that he must inform his unit head lest he place his team in an awkward position. Frank let the head know that he had already spoken to his ally but that the ally would keep the information to himself, thus leaving the prerogative to the unit head.

If Frank had invoked his bureaucratic rank to achieve his personal agenda with no regard for the team members' interests then he would have set a dangerous precedent. To invoke rank would silence his colleagues and insist on their obedience to his command. This situation would preclude their presence as particular speaking subjects and so their political equality. It would establish them as officers expected to follow orders only. The character of competition between them would then change since each would be inclined to act according to Frank's interest because it would ensure that each of them stayed on his good side. Team members would therefore receive each other's proposals suspiciously, searching for hidden agendas that might come at their own expense. At stake in

Frank’s ultimate decision, then, was not simply the wrath of the unit head, but also the basic conditions of how the team can appear and act together in the gray zone.

Deep familiarity: The team remains on-call twenty-four hours a day to follow leads on investigations, respond to emergency situations, or conduct operations. They spend more of their waking hours with each other than with their families. Most of their operations involve lengthy and slow surveillance runs. One day began at 8 a.m., when Brian, Vincent, and I watched the front door of a low-end pension to see if a young Nigerian woman would emerge whose asylum case was under adjudication. The team needed to learn if she worked as a prostitute, and if so, who controlled her. (This surveillance served the same case mentioned in the introduction.) We parked next to a nearby, decaying apartment complex and wore yellow hard hats to pose as building inspectors. We never saw the woman after four hours of waiting. Brian and Vincent called the other members together for lunch, when they would decide if they should stay on this case or switch to another. The other case involved an owner of a (different) Chinese restaurant. The team had credible evidence that he used the restaurant to cover for a smuggling operation. They needed now to confirm his residential address. They started watching the restaurant at 3:30 p.m., when phone taps indicated he would arrive. Their plan was to follow him home after he left. At 3:00 a.m., the man exited the restaurant and walked to his apartment one block away. This event was the only active part of a nineteen-hour day.

Given so much inactivity, the team occasionally plays the “dilemma game” to pass time. As Brian, explained: “You have to remember Greg that we spend a lot of time together. At this point, we have talked about everything. We know everything about each other. We have nothing left to talk about! So, we play this immature game. We give a kinky sexual scenario to one of the team. We think about it for a long time. It has to be good and hard to answer. Then, we make the guy answer!” The scenarios are crafted to deeply embarrass the player no matter what answer he provides. On one level, the game is simply an immature way for guys to pass time, yet on another it ensures openness to each other. This openness is not the type demanded of a military recruit whose individuality needs to be broken through a hazing ritual. In fact, Max chooses not to play because he finds it too personally invasive. Nevertheless, it cements trustworthiness among different people whose lives are deeply intertwined, and Max’s own is never in doubt anyway.

Indeed, when a place opens on the team, a candidate’s technical skills are not the first priority, but rather his trustworthiness and reliability. The technique can be taught, as David explained, but first “we pick someone who will be there as a friend for us.” Referring to situations when the team must break the law, Brian added, “What we need to [ask] is ‘would that guy have the stomach?’ because we don’t need a guy that in the middle of an operation says, ‘Man, I think that’s illegal,’ because I already know the law. What we need is a guy

willing to take risks, in order to bring to justice guys that [prostitute girls]. And trust me, it's not that easy.... Most of the people in my department would rather watch a football match on TV than watch an asylum center for hours."

Deep familiarity generates respect for each other as complex and particular people. Frank explains, "We know that David's background in the working class gives him a good understanding of the street. Brian has traveled more and is good at understanding where these people [e.g., smugglers and victims] come from. Max is good with databases; he used to work in auditing." Yet, for Frank, who originally cultivated the team's egalitarianism, these differences are more than utilitarian. They create the widest range of perspectives to be compared and contrasted when deciding on the "right thing" to do in the gray zone. This respect for particularities likewise pushes them to recognize similarities between themselves and their targets.

Similarities with targets: The team researches their targets' social backgrounds and modus operandi. They create cluster diagrams on their office walls of the suspected ring with photographs of its members obtained from surveillance runs, and state and EU databases. To gather sufficient evidence for the prosecutors, they must see them as well-rounded people living complex lives rather than as pejorative stereotypes violating the territorial nation's ostensibly pure space. They know first-hand about honor among thieves and appreciate that contingent events, not innate evil, shaped their paths. This generates some respect for the suspects. "I like the talent of theirs in picking a high security door in a minute. I respect the guts for robbing someone's house for three hours. This guy came out with 22,000 Euros, silverware, computers, and two guns They are like us. They really take care of each other. They have good leaders. And a good leader has to have good followers. You have to admire them." This respect ends with violence: "I don't respect men beating up women. I don't respect violence." While the law normally divides the two sides, the team maintains that *thinking* distinguishes them in the gray zone. As David remarked, "a criminal barely thinks about the consequences, only the action. A normal guy thinks." While David's claim here is debatable, he hits on a deeper point to which I will return.

An appreciation of the similarities also carries an understanding of how contingent events shape one's life course. To the question of what leads someone to a life of organized crime, Brian answers:

A [rural] Georgian guy ... finds no jobs, sees his mate joining a socially deep organization and [having] a better life in cities.... They go abroad, they have watches, they have cars. They join the mafia's junior ranks, first just doing small things, then slowly [moving up]. Of course they are not forced to join, but I never saw a Georgian guy 4,000 kilometers from Tbilisi that wasn't a house burglar. Stay in Georgia and you will be guarding sheep for life. Ask how many of us planned to be cops? [Like them,] we all ended up being cops by things that life imposed on us, like unemployment, lack of professional opportunities, or simply no other choice.

This respect checks a potential impulse to exceed reasonable measure when they enter the gray zone, because they do not see those against whom they act as stereotyped “others.” Returning to the blackmailed informants in the opening story, two points should be kept in mind: their acts against them were not done for sadistic pleasure, but instead for the sake of a teenage girl who could not extricate herself from her horrid situation. While they frightened the cell phone shop owner and the Romanian man, their acts were calibrated to what they thought necessary to close the case and protect the girl. If simple sadistic pleasure had been their motive, then they could have done much worse. Speaking to their ability to abuse suspects’ rights, Brian later rhetorically asked me, “Do you know how easy it is for cops to frame people? We could do it very easily if we want to.”

Certain instances have them protecting people from the law. David and Brian were called to the airport to investigate a coyote arranging transport for two dozen Iranians traveling to Germany. Border control officials detained all the passengers but kept aside four of them about whom they remained unsure. These four passengers’ cover story maintained that they were in route to a business conference, but the team learned that no such event was taking place at their final destination. David and Brian told a husband and wife among the four that they could either arrange to send them back to Iran or help them continue to Germany. They needed the couples’ confession to learn more about the coyote. They gave them ten minutes to think it over. When they returned, the couple explained that they were in fact only going to Germany to see relatives and had no business purposes there, contrary to their documentation. David told them to stick with their cover story and to pass through border control. David would protect them by assuring the border officers that their story was straight. The couple was to meet them later at their hotel (the flight for Germany left the next day).

At the hotel, the woman told them where the coyote passed through border control, so they could more easily check the video recordings to identify him. She even volunteered to arrange a meeting with him at his hotel. The couple proceeded by plane to Germany without difficulty and Brian and David filed a report on the coyote. (The case was ultimately dropped.) In the end, David explained, “We were quite happy with the way we acted. And, so were they. We could have gotten into trouble with higher ranks in the airport. They would not have gotten through without us. We kept our word.” Altruism does not explain this story’s significance but rather Brian’s and David’s willingness to consider these travelers’ story in its own terms. In so doing they treated the couple as equals. They had a utilitarian interest in the couple’s cooperation, but they nevertheless did not need to risk a reprimand to get it. The willingness to see others as people with particular needs is a precondition of the political equality that, on one hand, minimizes the risk of abuse in the gray zone, and, on the other, creates situations where one might even take risks for

someone else's sake. Had they followed policy prescription to the letter, David and Brian would not have taken the chance for the couple.

Yet, the importance of law and bureaucratic regulation is the protection it promises from the follies of peoples' particular judgments and actions. I asked, "Why should you take the law into your own hands? What if you judge badly? Why not play by the rules and let the judges judge legally obtained evidence?" David replied "Why should I judge, rather than a judge? Because I am actually seeing girls being abused in prostitution. People who write the codes and the laws are far from reality. I see the reality. I [might have] to make my own rules of engagement, but I must always have the conviction of my colleagues." Note that David's explanation indicates that his colleagues' conviction is not guaranteed, but rather he must necessarily persuade them. Group think is not at work as each team member must negotiate with the others about the just course of action.

THE SPACE OF APPEARANCE: EVIL AND ETHICS IN THE STATE OF EXCEPTION

The key question, again, is what enables people with sovereign authority to act on their own ethical assessments rather than obediently follow orders to abuse, dehumanize, or simply ignore. The individual's impetus would be to avoid being reduced to a cog in a machine of indifference lest it eliminate one's own appearance as a particular speaking subject. On this point the team understands its own work in contrast to that of border control officers whose work they see as monotonous and impersonal. David explained, "There's gotta be some point to what you're doing. If I stamp thirty passports, there are no consequences whether I do it or not." They seek presence as people whose particular perspectives and judgments have an effect in the world. In contrast to border control officers, who literally reach decisions in reference to standardized flow charts, the team's actions pertain to their own assessments of situations, their considerations of the perspectives of the people involved, their judgments about what they think should be done, and their own deliberations about a proper course of action. Their actions, then, feature a corporeality, immediacy, and tangibility of experience as they act *within* the situation rather than *upon* it. Furthermore, it relies upon a strong sense of equality, which, crucially, does not refer to sameness or to moral relativism. Rather, it refers to the consideration of people and situations in the particular circumstances in which one encounters them (Csordas 2013; Caton 2010).

To return to the opening ethnographic story as an example, the plight of the fourteen-year-old girl signified to them an evil constituted in a field of human relations of which the team wished not to be a part. Moved by a sense of injustice, Frank and Brian needed to persuade their colleagues to act against the pimp. Team members allowed the Romanian girl's plight to speak to them in its own terms. When I pushed them on the fact that in fighting

organized criminal rings that facilitate irregular migration they also struggle in favor of global economic inequalities, John wasted no time with his reply, “Maybe, but the Romanian girl who must sell herself for 15 Euros is also unequal. Is anyone doing anything for her?” Per Throop’s (2010) formulation, they did not domesticate her experience into a pre-given frame of reference. Their openness to her situation implied an equality that necessarily recognizes each individual’s “irreplaceability” (ibid.: 276). Equality here pertains not only to interlocutors, but also to those affected by their actions. They considered her situation as best they could on its own terms, after she asked Frank for help. They avoided prejudging her, for example, by dismissing her on the basis of stereotypes about Romanian women or deciding that she is not worthy of the risk in any case. The pimp and the informants, I suggest, likewise stood as equals in their minds, that is, as people whose standpoints they needed to take seriously. If not, then they could have either dismissed them as unimportant or abused them as a matter of indulgence. The emphasis on equality does not mean unquestioning acceptance of others’ actions as a matter of moral relativism. Rather, it means a willingness to assess the perspectives of others, disagreeable as they may be, before deciding how to act in situations involving them (Humphrey 2008: 369). The point is illustrated by the fact that the team exercised measured violence as a means to the end of protecting the girl rather than gratuitous violence as an end in itself.

This situation, which starts with the phenomenological “ethics of suffering,” moves forward to exemplify what Arendt termed a “space of appearance,” the formation of which we can further understand in light of “evil” as an analytical category (Csordas 2013; Caton 2010). The space of appearance only emerges as people jointly constitute it as individuals speaking from their own particular standpoints. As this requires the mutual recognition of all participants, it becomes a sovereign space that materializes not from a transcendent, abstract authority, but from the team members’ own agreed upon organizing principles. The materialization of a space of appearance requires two steps, schematically put. The first step is “thinking” in which actors examine the standpoints of those involved in the ethical dilemma: the fourteen-year-old girl, the brother-in-law, the cell phone shop owner. “Thinking” strives to bring the “thinker” into agreement with the self about how to act in the messy empirical world when pre-given codes of conduct do not apply. Drawing on Socrates himself, Arendt defines thinking specifically as a two-in-one dialogue where I must reach inner agreement to avoid living in contradiction with myself. Thus, thinking’s stimulus lies precisely in how people, events, and situations in the world “out there” impact the particular thinker (Feldman 2013: 145–48; Jackson 2005: 31, 48). This approach does not assume an a priori unified subject. Thinking fractures the erstwhile unitary subject as he or she contemplates how to engage that messy world in such a way as to reach inner agreement. It requires that the thinker “trade places”

with these others, as Husserl would have put it (see Duranti 2010), to see the situation from alternative standpoints.

During the Christmas dinner described earlier, the team engaged in a lengthy discussion about why they acted on the Romanian girl's behalf. Frank observed that he has a daughter the same age and therefore felt closer to a girl trapped in powerless circumstances. Brian decided that the ringleader's acts were inhumane. Their comments signify something more than simply feeling sorry for the girl that Edward well synopsisized and, with it, the political importance of "thinking." He explained that he took the risk for the girl because, "I prefer to sleep at night with my head on the pillow," which he can only do if he has reached agreement with himself. Otherwise, thinking's turbulence would preclude inner agreement when he is alone. To sleep with his head on the pillow, Edward allowed the girl's experience to enter his thinking on its own terms, and he subsequently decided that he did not want to live in a world where such things happen. If he allowed the abuse to continue, particularly as someone capable of stopping it, then he would have to live with someone who supports abuse, namely himself. His reasoning means, however, that to reach self-agreement one must *act* to try to reconstitute the field of human relations, not just *think* about how one should act.

Therefore, the second step sees the actor returning from the solitude of thinking and presenting his thoughts about an ethical course of action. The audience, in this case their own colleagues, accepted the argument for Brian's and Frank's proposed actions, which would come to constitute sovereign space in the form of a space of appearance. Recall again what David said about deciding to violate the law, "I must have the conviction of my colleagues." Their joint actions signified a radically different sovereign act in the state of exception because they neither abused nor ignored those whom they held under sovereign control (i.e., *homo sacer*). They therefore constituted a world, albeit temporarily, on the basis of their own particular ethical judgments. Indeed, to constitute a new world out of lawless space is the foundational sovereign act *par excellence*, which if premised upon particular speaking subjects allows each actor to mutually confirm the others through the joint action itself.¹⁰ The situation reflects Humphrey's (2008) analysis of the reassembly of individual subjects at the moment they decide to initiate original actions in ordinary situations. She argues that the subject remains internally divided until presenting himself on a singular course of action.¹¹ Taking Humphrey's analysis one step further, the now-unified subject's originality can only obtain a worldly

¹⁰ The phrase "to constitute a new world" does not suggest a utopia, but only a political space composed by particular persons, rather than imposed upon people reduced to abstractions.

¹¹ Furthermore, this reunified self does not preclude other ways of being or other possible actions. Humphrey writes that the "decision" to act distinguishes the recomposed subject who starts "plumbing for a specific way of being," and so reprioritizes the other possibilities that were in play until the decisive moment (2008: 363).

appearance in company with others who affirm it by witnessing, or joining, that subject in action. Ultimately, the re-unified subject capable of inaugurating a new chain of events comes into *being*, as it were, through joint action in the world. Strictly speaking, *being* in the world is an inherently political act conducted by “irreplaceable” and particular speaking subjects, that is, *bios*.

Here we must also return to Csordas’s (2013) point that the recent anthropological interest in ethics must necessarily make use of “evil” as an analytical category. Citing Parkin (1985a: 242; see also 1985b), Csordas reasons, “Evil is morality reflecting on itself.” Methodologically, we need not wait for our informants to point their fingers and utter the word “evil” verbatim. Rather, we must stay attuned to when they decide to not stand idle in a situation in which they want no active or passive responsibility for its manifestation. Csordas builds off of Caton’s (2010: 175) use of Arendt by suggesting that anthropologists perceive evil not simply as a cultural construction, and certainly not as a transcendent category. Instead, it must be regarded as “situational evil” located in discrete events so as to identify how an actor’s own ethical conduct emerges through reflections on it. This task requires us to examine the actor’s own thinking, or, as in Arendt’s assessment of Adolph Eichmann, the lack of thinking. Eichmann’s actions in history’s most horrific state of exception signify the converse of another example of Max’s and Brian’s action in the gray zone.¹²

For Arendt, none of the classic causes of evil such as lust, greed, revenge, anger, envy, or pride explain Eichmann’s deeds. Instead, modernity disposing with tradition inaugurated a new cause exemplified in Eichmann that she termed “thoughtlessness” (1978: 3–4; see also Humphrey 2008: 375). Thoughtlessness renders evil a disturbingly “banal” act rather than a spectacular and monstrous one (Arendt 2006). His failure to think—again, to engage in the inner dialogue about how to *be* in the world—made him incapable of examining the perspectives of people with whom he shared the world, in his case the Jews of occupied Europe. The ideology underpinning Hitler’s agenda replaced his dialogue with others, the very stimulus of “thinking.” Ideology adjusts us to the world without having to address its plurality, ambiguities, complications, and contradictions. Ideology makes no room for dialogue with any particular person because its framework of understanding is perfectly rational: it makes sense in the abstract only, leaving anyone’s particular experience to be explained as a mere derivative or deviation. We can better understand ideology in light of Arendt’s (1978) distinction between “thinking” and “cognition.”

¹² Adolph Eichmann was the Nazi officer responsible for organizing the deportation of Jews from occupied Europe to concentration camps. After the war he fled to Argentina where the Israeli Mossad captured him in May 1960. The Israeli government put him on trial in April 1961 for “crimes against the Jewish people,” among other charges, under The Nazis and Nazi Collaborators (Punishment) Law of 1950. The court convicted him on four counts of that indictment in December 1961. Eichmann’s appeal was overruled on 29 May 1962 and he was hanged two days later.

The latter seeks certainty through abstract, logical reasoning and so avoids the conflicting perspectives of actual people inhabiting the empirical world. Therefore, to sacrifice “thinking” for “cognition” is to sacrifice one’s own particular subject-position, because “thinking” (or reflective evaluation) is the prerequisite of appearing in the world as a particular speaking subject. To the extent that Eichmann substituted ideology (based on cognition) for thinking, he rendered himself a “non-person,” what in Greek terms would be *zōe*. For this reason, Arendt describes the evil-doing Eichmann as a “buffoon” rather than a monster, who could only repeat mindless bureaucratic clichés even when confronted with a situation that he could not assimilate into his ideology, including his final utterances just before his execution (*ibid.*: 4). Crucially, she did not argue that he was not an effective and ambitious administrator, but rather that he could not grasp the significance of anything outside the ideological framework to which he routinely referred.

Max’s experience as a trainee in border control offers a counter-example to Eichmann’s thoughtlessness. When a Venezuelan man tried to enter the country as a tourist, Max asked him several first-line questions and the man’s answers began fitting the profile of an illegal immigrant. Rather than proceed to the second-line questions, Max explained “I went straight to the point.” He asked the man, “Are you a Catholic? Do you believe in God? If so, then you’ll tell me the truth.” The man then explained that he had planned to go to another EU country to work with his cousin, but without authorizing papers. The story ends with Max following prescribed measures at the cost of reaching agreement with himself: “He was coming as a simple man. I did a lot of harm to someone’s life. I was enforcing the law. I was enforcing a man’s law to deny another human being’s life to live as I do. It’s enough to feel guilty about. I hated that airport job because of that. [Still,] that Catholic guy thanked me for treating him like a human being because I wasn’t rough with him as I was deporting him.”

Max saw himself as a perpetrator of evil while he conducted the normal, bureaucratized procedures of border control. His thoughts did not challenge the status quo in that situation, but his thinking about it—his very reflection on it—enabled him to see the man’s viewpoint on equal terms with his own.¹³ His

¹³ Laidlaw (2014: 177) uses the term “reflective freedom” to describe what I call the “thinking” that Max conducted. While Laidlaw also considers reflective freedom to be a precondition of ethical life, I think a sharper definition of the term highlights more clearly the relationship between thinking and action. To describe reflection as a freedom suggests that it can be revoked or lost. However, by and large, no one can be forced to *not* think or to *not* reflect, even under the most totalitarian conditions. Furthermore, per footnote number 6, freedom is quintessentially a public thing because it requires organized and concerted action. Thinking and reflection, in contrast, are entirely private and internal to the mind, even though they are stimulated by the world. Thinking and reflection only become public when voiced in front of others. At this point, they become speech acts, and so they become things of the world. It is often not possible to conduct speech acts, but it would be the freedom to speak/act that is impaired rather than the freedom to think/reflect. Hence,

thought-work later prompted his and Brian’s establishment of the “humanitarian corridor,” which they jokingly called their two adjacent passport control booths at the airport. During a subsequent, summer secondment to the border control service, they admitted for several days without questions migrants fitting the profile of those seeking illegal employment in the Schengen Area.¹⁴

Comparing Max and Eichmann, we can understand the “ethical” as the converse of Eichmann’s thoughtless “evil.” Max’s thinking could not let his denial of entry to the Venezuelan man remain a constituent part of his personhood and so he established the humanitarian corridor. In contrast, per Arendt’s assessment, Eichmann endured no such inner dilemma because he was incapable of “thinking”; instead he internalized ideology to orient himself in a complicated world. If Max and Brian did not act, then they could not appear in the world as the persons they had become through reflective evaluation on that “evil.” While Max and Brian acted politically in the “humanitarian corridor,” Eichmann uncritically pursued administrative activity through his creative deployment of instrumental reason (Feldman 2015: 69–72).

Over coffee on a windy river-side afternoon, Brian explained, in biblical terms, the foundation of the investigative team’s ethical code in the gray zone: stealing money during an investigation. If any team member were to steal money while searching a business or residence for evidence, then it would equal Adam and Eve eating the serpent’s apple. Large sums of money seized during an arrest help gain convictions in court. They always look for it and they usually find it. But, if they were to take it for themselves, then, as they all agreed, they would be the same as the criminals they investigate. I asked them why stealing money would be the cardinal sin, rather than, say, stealing phone chargers.¹⁵ Brian replied first, “Because money would be for my benefit only, but phone chargers would be for the team.”¹⁶ David added that “money is the origin of all evil. What is the objective of the guys we investigate? Profit.... If we take money from a criminal then that money was already stolen from someone else who suffered for him [the criminal] to get

constitutions allow or prohibit freedom of speech or of assembly, but say nothing about the freedom of thought.

¹⁴ They would not have undertaken this action, which occurred during their secondment to border control, if they were working with their investigative team. John disagreed with their actions arguing that many of those they later arrest entered the country on false documents. John’s objection was sufficiently strong that Max and Brian would not have opened the humanitarian corridor as a team operation.

¹⁵ They do not count murder as their original sin because they rarely need to even draw their guns, which they estimate happens only three to four times a year. On only one occasion over the last five years did they come close to using their firearms.

¹⁶ Phone chargers are critically important because the team often downloads data from confiscated cell phones. To do this, they need to plug in the phone if its battery is dead. Since their equipment budget cannot cover the cost of the sheer variety of phone chargers they need, they have illegally amassed a sizable collection to use on a moment’s notice.

it.” Frank added, “We are professionals. It’s not our money. If we take the money, then we are the same as them. We have principles.”¹⁷ I asked what these principles are. He replied, “Honesty, loyalty, duty. It’s our job.” Brian chimed in again, “There is a kind of pride in seeing yourself as a good guy. What would be the advantages? Money? There is a certain dedication to the cause, the job, ourselves.... Sometimes the work is dirty. But, we don’t harm anyone we don’t need to.” However, he qualified these remarks, “It’s our conscience, but I believe it is also a matter of not needing it. If one of my kids really needs something that I can’t provide, then probably I would do it.” Therefore, they do not enter the gray zone with a *carte blanche* to break laws or to dehumanize others. Nor do they see themselves in a saintly light. They contain their actions within ethical boundaries that they themselves establish. These boundaries may or may not correspond to the law or the state’s own security objectives. However, the main point is not such alignment, but rather acting in such a way that they can appear as themselves before others and live with themselves when alone.

Hence, the check against violating these basic premises of action in the gray zone is not simply their individual consciences. Instead, it is their recognition of each other as speaking subjects, an act that inherently constitutes their own sovereign space of appearance. Ultimately, one’s worldly reality cannot be achieved either in the solitude of thinking or in isolation. Others must confirm one’s appearance as a unitary subject as either witnesses to or partners in joint action. They are mutually dependent because they are mutually constitutive subjects that do not wish to appear before each other, or to themselves, as “evil” doers. John efficiently expressed this point: “The people [corruptible state agents] that do bad things work alone, stamping passports or whatever. [In contrast,] all of us will end up being a brake for all of the bad things that go on in each other’s minds.”

CONCLUSION: PHENOMENOLOGICAL POLITICS

At this point, phenomenology’s political dimension becomes clear: political action results from subjective experiences in a world so unsettling that particular persons, to maintain harmony in their thought dialogue, must persuade and mobilize each other to (re)constitute a world of “evil” regardless of legal and policy prescription. Particular persons obtain worldly appearances through these joint actions. Entering the gray zone, replete with sovereign authority, the team together decides that they must write new “rules of engagement” to act outside the scope of positive law. In writing those rules they each, first, asked themselves individually if the world that they witness is one they could tolerate as constitutive of themselves. Second, they persuaded each

¹⁷ Skolnick’s (1975: 4) observes in his classic study of policing in “Westville” that corruption involving money is often associated with police brutality.

other of what should be done so that they could plot a course of joint action. Their actions illustrate what phenomenologists describe as a general human experience: “that the world before us is held to be the same sharable world that we mutually inhabit ... that the bodies of others, which are objects and subjects for us, are often the zero point of their experiential fields and vice versa, are all deemed by phenomenologists to be ... the very possibility and constitution of social life” (Desjarlais and Throop 2011: 91; see also Duranti 2010; Jackson 1998).

The political implication of that phenomenological insight becomes clear when the space of appearance is contrasted with Agamben’s state of exception. The latter’s grim result requires that the state’s security agents use its abstract rationales when acting upon *homo sacer*. If they do so, then they are capable of the violence or indifference inherent to that disposition. The executive agent does not recognize the other as a particular person endowed with the political power of speech, but only as a voiceless, organic object. Yet, if they do not do so, then they are poised to act in the messy empirical world on the basis of their own particular ethical judgments. In acting with sovereign authority in this particular way, they effectively constitute political space, acting not upon abstract, animalized humans (i.e., *zōē*), but rather as politically qualified persons (i.e., *bios*) in a dialogue of equals with themselves and with those whom their speech-actions affect.

In other words, people endowed with sovereign power in the gray zone retain the capacity to act either ethically (i.e., according to their own assessment of what must be done) or with extreme indifference (i.e., according to uncritical acceptance of legal requirements, policy prescriptions, or cultural conventions). Agamben’s state of exception is built negatively against the particular speaking subject (*bios*) and upon the animalized individual (*zōē*), yet, given certain conditions, a space of appearance can be built jointly and positively through *bios*. In the latter situation, they do not seek action because of altruism per se. Rather, the absence of positive law, even in a small space of operation, gives them the dual opportunity both to mutually constitute themselves as particular speaking subjects and to so constitute a polity, however fleeting, based on their own worldly viewpoints. This situation enabled them to return home to sleep with their heads “on the pillow.”

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Abstract: Based on intensive ethnographic fieldwork among an undercover police investigative team in a southern European Union member state, I argue that moments arise when this team acts “ethically” in spite of the legal and policy mandates surrounding their work. I understand ethical action to include action that people undertake because they refuse to bear any responsibility (active or passive) for events that they deem to be “evil,” lest such events become constitutive of their own personhood. This situation would preclude individuals from living in agreement with themselves. To this end, the article details some basic conditions in which this team works when operating outside of the law. This ethnographic analysis points to a form of political sovereignty that depends squarely upon particular speaking subjects rather than transcends and homogenizes those subjects as made evident in Agamben’s “state of exception” argument. Those conditions include their particular place in the investigative process; egalitarianism among particular subjects; deep familiarity with each other; and an understanding of similarities between themselves and the targets of their investigations. Though fleeting in its appearance, the impetus to political action and a sovereign form premised upon particular speaking subjects can be well understood by developing certain implications in phenomenological anthropology and the anthropology of ethics. Most important among them is the need for mutual recognition among particular speaking subjects as political equals.