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## Testimony and crimes against humanity from Hannah Arendt's perspective

*Testemunho e crimes contra a humanidade a partir da perspectiva de Hannah Arendt*

*Testimonio y crímenes contra la humanidad a partir de la perspectiva de Hannah Arendt*

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**Abstract:** Considering the emergence of testimony as a fundamental source of history and shared memory after the Second World War, this article intends to discuss the role of testimony in Arendt's theory, considering, on the one hand, her criticism of the use of testimonies in the Eichmann trial and, on the other hand, the importance narrative, memory and metaphor acquire in her work. This discussion casts a light on the role of testimonies in historical trials concerning crimes against humanity.

**Keywords:** Testimony; Crime against humanity.

**Resumo:** Considerando a emergência do testemunho como uma fonte privilegiada de história e memória posteriormente à Segunda Guerra Mundial, este artigo pretende discutir o papel do testemunho na teoria de Hannah Arendt, considerando, por um lado, suas críticas à abundância de testemunhos no julgamento de Eichmann e, por outro, a importância que a narrativa, a memória e a metáfora adquirem em sua obra. Essa discussão lança uma luz sobre julgamentos históricos envolvendo crimes contra a humanidade.

**Palavras-chave:** Testemunho; Crime contra a humanidade.

**Resumen:** Teniendo en vista la emergencia del testimonio como fuente primordial de historia y memoria después de la Segunda Guerra Mundial, este artículo pretende debatir el papel del testimonio en la teoría de Hannah Arendt, considerando que, por un lado, su crítica a la abundancia de testimonios en el juicio de Eichmann y, por el otro lado, la importancia que la narrativa, la memoria y la metáfora adquieren en su obra. Esta discusión arroja luz sobre juicios históricos relacionados con crímenes contra la humanidad.

**Palabras clave:** Testimonio; Crímenes contra la humanidad.

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## Introduction

Testimony is a privileged instrument for the production and preservation of memory and in certain cases, it can be said to be the main tool for building shared memories concerning traumatic periods on individual memories. This article intends to discuss the role of testimony in Arendt's theory – considering, on the one hand, her criticism of the abundance of testimonies in the Eichmann trial and, on the other hand, the importance narrative, memory and metaphor acquire in her further work –, and consequently how testimony could rehabilitate justice and judicial trials, specially concerning crimes against humanity.

At least four kinds of testimony of crimes against humanity may be distinguished. First, the judicial testimony, which follows well-defined rules and to help establish the responsibility of the accused. In theory, everything that is not directly linked to the circumstances of the criminal fact should be disregarded. Secondly, close to judicial testimonies, are extra-judicial testimonies such as those produced in Truth Commissions, which is a dispositive used in transitional justice<sup>1</sup>. A third type would include testimonies that are produced in the context of social sciences studies, which is the case of anthropology studies or studies on oral history, and, finally, the fourth and last form: spontaneous testimonies, which usually assume artistic shapes: autobiographical novels, movies, theater plays, interviews? etc.

In trials concerning crimes against humanity, which implicate “a shared memory”, testimony has a preponderant role. Unlike ordinary trials, testimony here has the role of establishing the facts not only to condemn the accused, but also to recognize the victims as such, and honor their individual and collective memory. The testimony produced at judicial instances aim at making oblivion more difficult and, above all, making negationism impossible. As Antoine Garapon reminds us, “listening to testimonies becomes more than an act of procedure conceived to enlighten the court members on a particular case. It means to prevent a criminal project from remaining dubious – it means to prevent its posthumous victory” (GARAPON, 2002, p. 207).

<sup>1</sup> Transitional justice goals: “to judge the criminal dignitaries of the old regime, reestablish the lost dignity of the victims, repair the harms caused, establish and remember the truth of a hurtful past” (ANDRIEU, 2012, p. 13) (translation by the authors from the original: “juger les dignitaires criminel de l'ancien régime, rétablir la dignité perdue des victimes, réparer les torts subis, établir et se souvenir de la vérité d'un passé douloureux”).

Such “new” roles attributed to trials are strongly criticized by certain authors, who deem criminal procedure solely responsible for establishing the facts that are relevant for the judgment of an individual's guilt or innocence. In her report of the Eichmann trial, Hannah Arendt criticized the high number of testimonies for the prosecution, affirming that what was in stake at the Jerusalem court was not whether the victims had suffered, or what they might tell during their testimony, but rather what the accused had done, notably, his criminal actions (ARENDT, 2006).

The analysis of two historical trials, Eichmann's in 1961<sup>2</sup> and Barbie's in 1987<sup>3</sup>, reveals certain common features that give us a chance to discuss testimony and its functions. This approach isn't unprecedented in human sciences' literature, but is always highly instructive. These trials have many common characteristics: both have happened long after Second World War, both were filmed and mediatized and, which is very important for the development of International Criminal Law, they have renewed the discussions concerning the contour and specificity of the definition for “crime against humanity”. The testimonies in both trials allowed the juridical definition of crime against humanity to be refined and deepened.

## Arendt's critique regarding of the role of testimonies in the Eichmann Trial

Leora Bilsky represents the conflict between Arendt's and Hausner positions regarding the role of testimonies in the Eichmann trial as two opposing views on *how* to tell the story: “that is, whether the story should be told through written documents or the oral testimonies of survivors” (BILSKY, 2004, p. 94).

Allegedly, Arendt had interpreted Hausner's attempts to stage the Jewish tragedy, which consisted on digressions from the narrow framework of a criminal trial, as signs that the trial was being used to pursue a political agenda – something reprehensible from the

<sup>2</sup> Otto Adolf Eichmann was judged for crime against humanity and war crimes, in his function as Chief of the Jewish Affairs Section (deportation).

<sup>3</sup> Klaus Barbie was the first person to be accused of a crime against humanity in France. He was tried for three crimes: the raid of February 9th 1943 at the headquarters of the General Union of Israelites of France, at Rue Sainte Catharine, in Lyon (which made him known as “the butcher of Lyon”); the deportation of children and staff of the Maison d'Izieu (Ain); and the responsibility for the authorization of the last convoy sent from Lyon to Auschwitz, on August 11th 1944.

point of view of a liberal theory that regards law and politics as mutually exclusive. However, Bilsky argues that Arendt's main concern was not with the political character of the trial – which couldn't be avoided –, since she was aware that "Eichmann's trial could not be contained within the scope of narrow legalistic considerations (...)" (BILSKY, 2004, p. 95), although, for the author, both Arendt and Hausner tried to hide their political views behind legal concerns. So, the true question would be "which type of politics a trial can legitimately promote in facilitating a transition to democracy while still remaining true to liberal principles of a criminal's defendant's right to a fair trial" (BILSKY, 2004, p. 96).

Arendt's critique to Hausner political enterprise would be rather that his rhetoric divided the world into two groups, us and them, victims and perpetrators, which would make it difficult to understand Nazism in its complexity, as an universal example of the persecution of a minority group and, most importantly, one that is subject to repetition<sup>4</sup>. This rhetoric strongly relied on innumerable testimonies of the Jewish victims.

On the one hand, to rely exclusively or primarily on documents, as did the prosecution at Nuremberg, would introduce distortions in the history of the Jews precisely in the crucial historical moment when the identity of the Israeli people was being defined, since those documents adopted the perspective and language of the perpetrators. It would also mean the obliteration of the victims' voices and their stories of suffering and humiliation. On the other hand, Arendt strongly criticized the use that was made of such documents by the prosecution, since they would reverberate an absent and sterile voice, if compared to the voices of the victims there present:

No doubt one of the chief objective mistakes of the prosecution at Jerusalem was that its case relied too heavily on sworn or unsworn affidavits of former high-ranking Nazis, dead or alive; *it did not see, and perhaps could not be expected to see, how dubious these documents were as sources for the establishment of facts*. Even the judgment, in its evaluation of the damning testimonies of other Nazi criminals, took into account that (in the words of one of the defense witnesses) "it was customary at the time of the

war-crime trials to put as much blame as possible on those who were absent or believed to be dead" (ARENDT, 2006, p. 72).

Of course Arendt didn't intend to focus exclusively on the perspective of the perpetrators of such hideous crimes, but she criticized the exaggeration in the number of Israeli witnesses, the inability of the defense to question those witnesses, the lack of connection between the testimonies and the criminal facts involving Eichmann, and clearly feared that allowing the immeasurable suffering of the victims to enter the courtroom, through their oral testimonies, would undermine the trial's capacity to achieve and provide some measure of understanding (BILSKY, 2004, p. 105):

Who were they, humanly speaking, to deny any of these people their day in court? And who would have dared, humanly speaking, to question their veracity as to detail when they poured out their hearts as they stood in the witness box, "even though what they had to tell could only be regarded as by-products of the trial?" (ARENDT, 2006, p. 209).

This could mean that from a strictly judicial perspective, many testimonies exceeded or didn't fulfill their role, but considering the context in which Eichmann's trial took place, – a moment of profound crisis in which tradition cannot inform one's judgment or understanding of the world – testimonies could serve the purpose of helping understand and judge the past, and even of rehabilitating justice to deal with such a complex and multifaceted past, to which traditional laws and procedures didn't apply.

The Eichmann Trial raised many questions, which Arendt was committed to answer from that moment on<sup>5</sup>. Maybe at the time she couldn't perceive that the theory she would develop on thinking and judging would raise testimony to a prominent place; still, her inquiring whether the courtroom was the proper forum for those testimonies is very pertinent, considering that the prominent role of the victims most certainly undermined the right of the defendant to a trial that focused on proving his actions (BILSKY, 2004, p. 113).

<sup>4</sup> Arendt was also concerned with some omissions in Eichmann's trial, which would produce dangerous gaps in the Israeli collective memory which might undermine a true reconciliation with the past, leading potentially to the recurrence of such tragedies.

<sup>5</sup> In her introduction to *The Life of the Mind*, Arendt affirms that her concern with mental activities related to ethics had one of its origins in the Eichmann trial.

## The role of testimony in Arendt's theory

According to Bilsky, Arendt's opinion on the importance of the victims' testimonies began to change during her reporting on Eichmann's trial, when she states that "Everyone, everyone should have his day in court" (ARENDT, 2006, p. 229), referring to the testimony of Zindel Grynspan, which had touched her deeply. "At this point[, notices Bilsky,] she seems to have abandoned the legalistic framework into which she had tried to fit the trial and was reminded of her own ethics of storytelling" (BILSKY, 2004, p. 114).

In the development of this "ethics of storytelling", Arendt gave great importance to narrative, remembering and metaphor in thought and judgment (LAFER, 2007), these being essential to understanding, and closely related to testimony.

For Arendt, thinking is inextricably linked to remembering: every event that is remembered is thought of, she notes, and to tell a story is an adequate form of thinking it through. The memory to which she refers doesn't necessarily relate to the factual truth that must be established in court; however, it is absolutely essential to understanding: "The interrelationship of thinking and memory consists therein that all thinking is actually a thinking-along things" (ARENDT, 2005, p. 680).

Moreover, Arendt believes that, as the conducting wire for the faculty of thinking, remembrance is also essential to moral philosophy, which is deeply connected in its turn, with the silent dialogue between me and myself. For Arendt, forgetting is the safest way to escape punishment and thinking, since repenting consists in not forgetting what one has done and revisiting it in thought. So, in her view, the worst crimes are not the ones the criminal cannot forget and hunt him to despair, but rather those that are forgotten, because the criminal never took the time to think them through, and "without remembrance, nothing can hold them back" (ARENDT, 2003, p. 95).

Another element that is inseparable from thinking is metaphor. According to Weigel (2009, p. 98), "thinking (...) maintains a proximity to poetry, to the language of metaphor, to sensual perception in analogies and to experience", which is made evident in her *Denktagebuch*. It must be noted that thinking is by no means equivalent to philosophy<sup>6</sup>, and therefore the conceptual and philosophical language is not adequate to the movement of thought. The literary interest demonstrated by Hannah Arendt in her early

writings<sup>7</sup> never quite disappeared, it continued as she became a recognized American author and political theorist, as her *Denktagebuch* expresses through the flow of thought itself and in the many hidden poems. Poetics was "an essential requisite of her thinking and philosophizing" (WEIGEL, 2009).

But how can poetics be defined as "*the path of, or to, thought*" (WEIGEL, 2009)? Mainly because of the metaphorical character they share. On the one hand, the metaphorical character of language is what makes thinking and poetics possible, since "those areas that lie beyond the world of the visible, the material, and the phenomenal" (WEIGEL, 2009, p. 106) rely on metaphorical transposition, which brings them closer to our sensual and known world, and make the invisible somehow apprehensible and communicable. On the other hand, the referred transposition is what evidences the impossibility to reach and retrace the invisible origin of that which is utterly unknowable, namely, the truth (ARENDT, 2005, p. 60-61).

This is coherent with the quote of Plato's "Seventh Letter" by Arendt in her conference dedicated to her friend the poet W. H. Auden in 1970, "Thinking and Moral Considerations". Plato states "(...) there is no way of putting it in words like other things which one can learn. Hence, no one who possesses the very faculty of thinking (*nous*) and therefore knows the weakness of words, will ever risk putting thought down in discourse (...)"><sup>8</sup>. Therefore, there will always remain a certain element in thinking that is invisible and untranslatable, the *nous*. However, thinking itself is the effort made to transpose even this element to language. Although such effort is destined to fail, Arendt still makes it; the existence of the *Denktagebuch* is in itself proof of this, as well as passages such as:

(...) Si ce qu'on a vu  
concentré dans la douleur,  
si la pensée  
arrangée dans les sons  
énoncée en poème,  
puis méditée en chant –  
soustraite à la douleur –  
n'était scellée pour rester  
(ARENDT, 2005, p. 316-317).

<sup>7</sup> Considering her notebooks from 1923, which contained poems, stories, among other genres of writing (*Hannah Arendt's collected papers* – Library of Congress in Washington, DC), her book *Rahel Varnhagen – The life of a Jewess*, her essays on Kafka, Heine et al. in *Die verborgene Tradition* and numerous articles and reviews) (WEIGEL, 2009, p. 102).

<sup>8</sup> Arendt's paraphrase of the passages 341b-343a in "Thinking and Moral Considerations".

<sup>6</sup> It is rather a requisite to philosophy.

In this poem, Arendt tries to translate precisely the aporia of the (im)possibility of thinking, conserving, and therefore understanding an experience of invisible nature, such as pain. When commenting on Zindel Grynspan's moving testimony (ARENDT, 2006), she implies that the ideal medium to tell such a destructive and painful story would be poetry, which, in fact, can be considered a way to testify. According to Derrida (2004, p. 521) the act of testifying is about "constituting your own poetics", a poetics that is at the same time singular and general enough to be understood exemplarily, general enough to build a bridge towards the other and towards the world<sup>9</sup>.

When Arendt discusses the past of totalitarianism she argues that refusing to think the unthinkable was an obstacle to understanding the totalitarian past, because many attempts of translating these experiences had proven inadequate. Every way of exposing suffering, apart from some physical signs, is nothing but the product of the activity of thinking – that which thinking produces from this raw material –, which differs from suffering itself. The moment, therefore, of reflection and transfer to words is the moment of signifying the traces left by the lived experience (ARENDT, 1978). Testimony also relies on the same metaphorical character of language to make the invisible and internal traces apprehensible by themselves and others: "[l]anguage, by lending itself to metaphorical usage, enables us to think, that is, to have traffic with non-sensory matters, because it permits a carrying-over, *metapherein*, of our sense experiences" (ARENDT, 1978, p. 110).

Weigel (2009) also highlights the relationship between metaphor and the understanding of that for which we lack the threads of unmistakable proof, not only in the philosophical and metaphysical world, but also in the realm of human affairs. Testimony is frequently referred to by Arendt – and also by other authors that have extensive work on this subject, such as Derrida – precisely as something that doesn't offer undeniable evidence, thus cannot be considered factual and unmistakable proof, which brings it closer to an effort of understanding and drives it away from an instrument of proof.

In testimony, as the act of testifying, memory conjugates both psychic and physical inscriptions that change the self, inscriptions that can take the form of oblivion, of masking, but that transform profoundly

the subject of the experience, and can constitute the meaning of an event shared by many. Thereby, we resume to the importance of testimony in Hannah Arendt's work, since it is also a way to come into contact with examples, as well as to tell experiences, which are other important components of the arendtian reflection on storytelling and understanding.

### The role of testimonies in trials concerning crimes against humanity

Regardless whether it tells the story or establishes the facts, the word of the testimony is constitutive. As Annette Wieviorka (2002) reminds us, "Testimony has the function of making us visualize the horror through the words of the victim."<sup>10</sup> In the Eichmann trial, the prosecutor Hausner, referring to the presence of the victims that would testify, defended that "the only way to finger touch the truth was to ask each one to tell a tiny fragment of what he has lived". The telling of a certain chaining of circumstances by just one testimony is sufficiently tangible to be visualized. Taken together, the successive disposition of unlike people that have lived different experiences would provide an image eloquent enough to be registered. "So I hoped, (he said) to give the phantom of the past one more dimension, that of the real" (WIEVIORKA, 2002, p. 96-7)<sup>11</sup>.

Laurent Douzou (2009, p. 18) states, on the participation of testimonies in the Barbie trial and on the importance of judicial testimony: "The solemnity of a court of law, where the speech is not distributed arbitrarily, where it doesn't resound like in any other place, where the orality of the debates leaves each one free to take its time, to release the flow of emotion, to choose his own words, to look them up, to babble, such solemnity grants an unique importance to the victims' words."<sup>12</sup> Wieviorka (2002, p. 113) reminds us that "when a testimony is given within the judicial field, it acquires a double dimension: political and social."

<sup>10</sup> Translation by the authors from the original: "Le témoignage a comme fonction de faire visualiser l'horreur au moyen de la parole de la victime".

<sup>11</sup> Translation by the authors from the original: "Ainsi espérai-je, (dit-il) donner au fantôme du passé une dimension de plus, celle du réel."

<sup>12</sup> Translation by the authors from the original: "La solennité d'une cour d'assises où la parole n'est pas distribuée n'importe comment, où elle ne résonne pas comme dans n'importe quel lieu, où l'oralité des débats laisse chacun libre de prendre son temps, de laisser libre cours à l'émotion, de choisir ses mots, de les chercher, de balbutier, cette solennité-là octroie à la parole des victimes une importance singulière."

<sup>9</sup> In *Poétique et politique du témoignage*, Derrida analyses the Paul Celan's poem "Aschenglorie".

From a judicial perspective, Antoine Garapon affirms that the trial for crimes against humanity can be considered as a “symbolical return to life” for the victims, who recover their dignity. The judicial testimony not only certifies the facts, it also gives living proof that the word of the victims has been taken into consideration. According to Garapon (2002, p. 162, 166-167, 256), in such cases “have a formal forum, means to offer the possibility to re-inscribe the individual experience of an unprecedented violence in a political narrative that gives meaning to the events (and) to make such silenced violence audible.”<sup>13</sup>

According to Françoise Sironi, from a psycho-analytical perspective “when it is constituted as testimony in a trial for a crime against humanity, the victim’s speech is psychopolitical. It is once again heard, publicly, due to a trial, and not denied nor turned against itself, as at the time the facts took place” (SIRONI, 2009, p. 151).<sup>14</sup> “The judicial act contributes (pricelessly) to repair the hurt, denied identities: those of the living, as those of the dead. From a psychological perspective, the trial allows the live memory to be appeased [...] then a true work of memory and a work of grief (to take place)” (SIRONI, 2009, p. 152-53).<sup>15</sup>

Particularly in testimonies concerning crimes against humanity, the trial becomes a privileged place of memory. According to Garapon (2002, p. 256), “the trial will put an end to the live history and allow the inauguration of the time of memory.”<sup>16</sup>

It should not be forgotten that it is from Second World War, and from the impact caused by the narratives of concentration camps survivors, that the memory acquires a public role as a theme, connected henceforth with the notion of limit situations and trauma. In the case of Nazi crimes, making use of Hannah Arendt’s terminology, their project of a crime without witnesses, of eliminating the victims without

leaving traces, of anonymous deaths, and of deleting the stories of individual sufferings, has failed. And this is due to testimonies that were constantly challenging oblivion. The project of creating holes of oblivion, in Arendt’s words, was defeated by memory.

## Conclusions

Arendt recognized that trials such as Eichmann’s could not be considered ordinary criminal trials, and, as such, raised unprecedented moral questions and required new and unprecedented solutions so that justice would prevail – at least a justice not based exclusively on the positivity of law and on a singular and linear account of history, since “the unjust cannot always be known from universal normative judgment” (ASSY; HOFFMANN, 2012, p. 24). One of these possible solutions would be to attribute a prominent position to testimonies in trials concerning crimes against humanity.

We have tried to show that testimony is present in Arendt’s theory both as poetics and as storytelling, to which the author, according to Celso Lafer (2007), has always attributed great importance as a mean to achieve understanding. Thereby, testimony would introduce a new dimension in transitional justice trials, regarding an understanding of the criminal fact that exceeds its proof. The connections between testimony, storytelling and poetics are evidently much richer and complex than what has been indicated in this article, which proposes to retrace a path through Arendt’s thoughts that enlightens their importance in her work, despite her criticism of the role of testimonies in the Eichmann trial, which were indeed pertinent. Assy and Hoffmann (2012, p. 24), following a similar path, conclude that “Arendt’s account of judgment is intertwined with her idea of testimony (...). Judgment to her is a political faculty, namely one to articulate the testimony of the defeated. It is closely linked to anamnesis, in which testimony plays a crucial role.”

Consequently, the role of testimonies in historical trials like those of Eichmann and Barbie have allowed the development of transitional justice, together with their particular tools such as truth commissions – considering particularly the South Africa Truth and Reconciliation Commission, where the words of the victims acquire a fundamental role for the outcome of the transitional process. International *fora*, such as the International Criminal Court, have increasingly

<sup>13</sup> Translation by the authors from the original: “disposer d’une instance officielle, c’est se voir offrir la possibilité de réinscrire l’expérience individuelle de cette violence inédite dans un récit politique qui donne du sens aux événements (et) de rendre audible cette violence inouïe.”

<sup>14</sup> Translation by the authors from the original: “Quand elle est témoignage lors des procès pour crime contre l’humanité, la parole de la victime est une parole psychopolitique. Elle est à nouveau entendue, publiquement, du fait d’un procès, et non déniée et retournée contre soi, comme à l’époque des faits.”

<sup>15</sup> Translation by the authors from the original: “L’acte judiciaire contribue (inestimablement) à réparer des identités blessées, déniées: celles des vivants comme celle des morts. Dans une perspective psychologique, le procès permet à la mémoire vive de s’apaiser [...] et qu’un vrai travail de mémoire et un travail de deuil (puissent s’opérer).”

<sup>16</sup> Translation by the authors from the original: “le procès va clore l’histoire vive et permettre d’inaugurer le temps de la mémoire.”

considered the testimony of the victims as a privileged means of proof.

In the case of mass crimes committed in South America by military dictatorships, in Brazil, Argentina and Chile, for example, the testimonies that were produced before the Truth Commissions, at the judicial trials, or even by works of art, have benefited from this period known as “The Era of testimony”, inaugurated by historical trials such as Eichmann’s and Barbie’s, where a privileged space was attributed to the testimonies of the victims.

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