

2010

Theatre and the Drama of Law: A 'Theatrical History' of the Eichmann Trial

Michael Bachmann
Mainz University, Germany

Follow this and additional works at: <https://ro.uow.edu.au/ltc>

Recommended Citation

Bachmann, Michael, Theatre and the Drama of Law: A 'Theatrical History' of the Eichmann Trial, *Law Text Culture*, 14, 2010, 94-116.

Available at: <https://ro.uow.edu.au/ltc/vol14/iss1/7>

Research Online is the open access institutional repository for the University of Wollongong. For further information contact the UOW Library: research-pubs@uow.edu.au

Theatre and the Drama of Law: A 'Theatrical History' of the Eichmann Trial

Abstract

In his seminal study, *The Seventh Million*, historian Tom Segev (1993) examines how the changing perceptions of the Holocaust relates to the ways in which Israelis understand themselves, their state, and its connection to the Diaspora. Segev's cultural history begins with a phone call he describes as if it were a direct link to the past. The call, made in 1987, is to writer and Holocaust survivor Yehiel De-Nur, who answers in a 'hushed, choked voice' (Segev 1993: 3). Segev wants to ask him for an interview. Upon hearing his voice, however, Segev is instantly taken back, as it were, to the moment twenty-six years ago when he first heard the Holocaust survivor speak. In 1961, De-Nur was one of the witnesses at the trial against Adolf Eichmann in Jerusalem. His testimony has become famous for the fact that he could utter a mere few sentences before fainting.

Theatre and the Drama of Law: A 'Theatrical History' of the Eichmann Trial

Michael Bachmann

In his seminal study, *The Seventh Million*, historian Tom Segev (1993) examines how the changing perceptions of the Holocaust relates to the ways in which Israelis understand themselves, their state, and its connection to the Diaspora. Segev's cultural history begins with a phone call he describes as if it were a direct link to the past. The call, made in 1987, is to writer and Holocaust survivor Yehiel De-Nur, who answers in a 'hushed, choked voice' (Segev 1993: 3). Segev wants to ask him for an interview. Upon hearing his voice, however, Segev is instantly taken back, as it were, to the moment twenty-six years ago when he first heard the Holocaust survivor speak. In 1961, De-Nur was one of the witnesses at the trial against Adolf Eichmann in Jerusalem. His testimony has become famous for the fact that he could utter a mere few sentences before fainting. Segev remembers that De-Nur spoke 'in a hollow voice, with the intensity of a prophet, oblivious to his physical surroundings. ... Something in his voice and the tone of what he said charged the atmosphere with almost unbearable tension' (1993: 4). Then De-Nur 'collapsed in a faint, slumping, almost theatrically, to the floor. All Israel held its breath. It was the most dramatic moment of the trial, one of the most dramatic moments in the country's history' (1993: 4).

In 1987, De-Nur offered Segev an explanation as to why he fainted. During the trial, he was forced — for the first time — to state that he was the author, Ka-Tzetnik 135633, who wrote texts based on his

Holocaust experience. They included successful novels such as *Beit ha-Bubot* (*House of Dolls* 1953). De-Nur believed the reason for his collapse was having to admit — not only to the public, but also to himself — that he and Ka-Tzetnik were the same person (Segev 1993: 5). As a witness, De-Nur thus encountered the double impossibility of maintaining a distance between his everyday life and his Holocaust experience (delegating the latter to the Ka-Tzetnik persona) and, at the same time, of closing the gap between them. His collapse might then be understood as a failed act of negotiation between ‘De-Nur’ and ‘Ka-Tzetnik’, that is, between two personae representing different parts of the self. It is only twenty-six years later, having undergone a psychotherapy based on LSD, that De-Nur believed himself able to accept that he and Ka-Tzetnik are the same. For Segev, this alleged journey to oneself — ‘Ka-Tzetnik’s Trip’ — parallels ‘Israel’s painful confrontation with the Holocaust’ (1993: 11). According to the historian, both Ka-Tzetnik’s story and the story of Israel encompass ‘a great human drama of repression and recognition, of agonizing engagement with the lessons of the past’ (1993: 11).

‘Ka-Tzetnik’s Trip’, the prologue of Segev’s *The Seventh Million*, is a good starting point for what I would like to call a ‘theatrical’ history of the Eichmann trial, a history that I will attempt to outline. Within this context, the interest in Segev’s prologue lies in its extensive use of theatrical metaphors as well as in the fact that these metaphors are embedded in a larger discourse surrounding the Eichmann trial. Famously, both Susan Sontag in her ‘Reflections on *The Deputy*’ (1964), about the controversial play by German writer Rolf Hochhuth, and Hannah Arendt in her report, *Eichmann in Jerusalem* (1963, rev 1965), have compared the Eichmann trial to forms of theatre and drama. This might be connected to a second level of theatricality at work in Segev’s prologue: namely, that it stages the phone call with De-Nur as a connection to the past, mirroring the use of testimony during the Eichmann trial where more than a hundred witnesses were summoned by Attorney General Gideon Hausner, primarily to ‘conjure’ up the ghosts of the dead Holocaust victims.¹

Bachmann

While a complete ‘theatrical’ history of the Eichmann trial would also have to look at how it has been represented in drama and theatre,² I will only touch upon this dimension, focusing instead on the theatrical discourse in narratives of the trial as well as on the complex theatricality of witnessing, which Segev’s prologue and Hausner’s spectral testimonial theatre both hint at. To retrace this history, I will consider primarily Arendt’s report, Hausner’s memoirs (*Justice in Jerusalem* 1966) and the work of literary scholar Shoshana Felman, arguing that their different perspectives on the relation between theatre and the law might be related to larger historical concerns regarding the place of testimony after 1945 — both within as well as outside the borders of juridical discourse.

A ‘Question of Genre’ or Drama v Theatre

Many studies of the Eichmann trial mention its theatrical dimension but do not make a distinction between theatre and drama (see Bilsky 1996; Felman 2002; and Flessas 2005), yet these concepts have to be carefully distinguished in the ‘theatrical’ history of the trial. Roughly speaking, the concept of drama is linked to certain generic expectations as well as to the idea of literature, in that drama is considered a text that exists independently of its theatrical performance. The concept of theatre — as I will explain — has, from a Western perspective, often been thought to exist in an exclusive relationship to drama, as if its sole purpose was to faithfully perform a given dramatic structure. However, theatre encompasses many forms of spectacle that exist independently of drama as, for instance, in most twentieth-century performance art in which the bodily presence of the performers carries more weight than any given text (cf Fischer-Lichte 2008).

Regarding the ‘theatrical’ history of the Eichmann trial, the relation between theatre and drama is further complicated through a third term: theatricality. In a sense, theatricality is a mode of perception — an event becomes theatrical because it is perceived as such by an audience (Burns 1972). On a basic level, this is what allows us to study or describe that which, per definition, is not theatre — such as a trial — in theatrical

terms. However, things are not as easy as that since the use of theatrical metaphors in legal theory (eg Legendre 1989) or sociological theory (eg Goffman 1959) is more than just a matter of perception on the part of the theorists, and is related to the fact that representation and self-presentation play a major role not only in theatre but in everyday life.³ Whether or not we ‘choose’ to see something as theatrical, then, does not change the fact that it might have a theatrical dimension.

Segev’s prologue employs theatrical metaphors in two distinct ways. Paradoxically, De-Nur’s fainting is described as ‘one of the most dramatic moments’ in Israel’s history and as something appearing ‘almost’ theatrical (1993: 4). While the latter use of the metaphor is clearly pejorative, with ‘theatrical’ suggesting something artificial and staged, the term ‘dramatic’ has a positive meaning, within its context, of emphasising the cultural historical importance of the event. When Segev later speaks of Israel’s and Ka-Tzetnik’s ‘great human drama’ (1993: 11), the connotation remains positive. His choice of words suggests that, despite the agony of having to deal with an unbearable past, there is a structured (dramatic) form underlying and facilitating the painful movements of ‘repression and recognition’ (1993: 11).

Regarding the Eichmann trial, this metaphorical distinction between drama and theatre, in which the latter term is devaluated, may already be found in Arendt’s (1965) study. As *The Seventh Million*, but far more radical, *Eichmann in Jerusalem* employs opposing concepts of theatricality: the ‘good’ one being linked to the idea of drama, the ‘bad’ one relating to artificiality or constructedness, as well as a desire for spectacle. While the relation between theatricality and the socio-political is a complex and much discussed issue in Arendt’s work (eg see Bilsky 1996; Kottman 2008: 15-35), studies of *Eichmann in Jerusalem* emphasise its critique of the trial’s ‘bad’ theatrical (spectacular and artificial) dimension. In an insightful essay on Arendt’s narrative, legal scholar Tatiana Flessas argues that the philosopher’s criticism of the trial begins as a ‘question of genre’ (2005: 218). For Arendt, according to Flessas, ‘trials are not plays’ and everything in them — for example, the witnesses and the rulings — ‘must be in service of something which

Bachmann

itself *cannot* be displayed on a stage': that is, justice (2005: 218). Flessas rightfully reads *Eichmann in Jerusalem* as an attempt to rewrite the trial on a different scale, moving it from the "stage" created for it by the prosecution' to 'the "house" of justice' (2005: 216). As proof of this movement, she quotes from Arendt's postscript: 'Eichmann was not Iago and not Macbeth, and nothing would have been further from his mind than to determine with Richard III "to prove a villain"' (Arendt 1994: 287). For Flessas, this re-positioning of the defendant underscores Arendt's 'assertion that the evil exposed in the proceedings of the trial was factually "banal" rather than dramatic' (2005: 219).

Flessas' reading focuses exclusively on the concept of 'bad' theatricality in Arendt's narrative which seems to leave no room for a positive dimension of theatricality regarding legal proceedings. However, if we distinguish between theatre and drama, a different perspective arises. In Western culture, these concepts seem so closely related that even today — despite the historical avant-gardes and the emergence of performance art since the 1960s — *'the concept of drama has survived as the latent normative idea of theatre'* (Lehmann 2006: 33, original emphasis). That is, for the general public, the theatrical performance is defined in relation to a written text, the drama, that supposedly carries within it all the information needed for its staging. Such a definition, however, would reduce theatre to nothing more than the reenactment of a given structure, and thus to lesser value than the latter — as in Aristotle's *Poetics*, according to which the actual performance is the 'least germane to the art of poetry' (Aristotle 1982: line 1450b). If Arendt is not entirely opposed to a 'theatre of justice' — she quotes the popular idiom that 'justice must not only be done but must be seen to be done' (1994: 277) — this legal theatricality is only 'good' as long as it follows a dramatic structure, that is, as long as the performance has no value in itself and is true to the rules allegedly inscribed in the presumed drama. For Arendt:

... [a] trial resembles a play in that both begin and end with the doer, not with the victim. ... In the center of a trial can only be the one who did — in this respect, he is like the hero in a play — and if he suffers,

he must suffer for what he has done, not for what he has caused others to suffer (1994: 9).

Comparing Eichmann to the hero of a drama seems not only inappropriate but also at odds with the quote where Arendt removes him from the dramatic realm (1994: 287). However, the two paragraphs serve different parts of her argument that should not be confused. The quote from the postscript is meant to metaphorically support Arendt's thesis concerning the 'banality of evil', whereas the other can be read as a defense of drama (that is, 'good' theatricality) in order to fault the trial in Jerusalem for its use of 'bad' theatricality, meaning all theatricality exceeding that which Arendt perceives to be the juridical norm in an adversarial system. This norm, or right scale of theatricality, would be what Shoshana Felman calls the '*dramatic function*' of legal proceedings: 'making justice seen' (2002: 162).

The ambivalence of theatricality, whether or not something is perceived as theatrical, thus returns as a question of drama v theatre: if trials must have a theatrical structure ('making justice seen'), this structure — for Arendt — must not be perceived as such. As long as trials follow their generic expectations (and are dramatic in this sense), their theatricality is 'good' because it vanishes insofar as it does not have any value in itself but only serves something other (the 'making' of justice). However, as soon as trials deviate from their alleged dramatic norm, their theatricality — for Arendt — becomes apparent and 'bad': turning the trial into a form of theatre removed from the '*dramatic function*' of justice, thus putting its legality at risk.

While Flessas is right in her assertion that Arendt's criticism of the trial entails a 'question of genre', her claim that, for Arendt, 'trials are not plays' needs to be modified (2005: 216). It is only true insofar as the relation between trial and play has to remain a metaphorical one. As Cornelia Vismann (1999) notes, the idiom 'theatre of justice' usually implies that 'both domains — court and stage — have been differentiated, so that the latter can be the metaphor for the former' (Vismann 1999: 169). Arendt needs the trial to '*resemble a play*' so that it does not become one. This is the 'question of genre' posed by *Eichmann in Jerusalem*.

Bachmann

For Arendt, the trial has to follow a dramatic structure in order not to 'be' theatre. From this perspective, she can argue that 'it was precisely the play aspect of the trial that collapsed under the weight of the hair-raising atrocities' (1994: 8-9). According to the discursive logic put forth in her study, 'bad' theatricality in a trial begins when theatrical elements (eg the witnesses' testimonies) detach themselves from the presumed dramatic structure and function of legal proceedings, and become a value in themselves. Then, the defendant is not '*like* the hero in a play' (1994: 9) anymore but is staged as if he *was* Macbeth or Iago (1994: 287). Furthermore, the spectacular is not confined to showing the alleged guilt or innocence of the defendant — that is, to 'making justice seen' — but is allowed to run free, thus collapsing the 'play aspect of the trial' (1994: 8) and forcing it to 'degenerate into a bloody show' (1994: 9). 'Good' drama, as it were, turns into 'bad' theatre.⁴

A 'Bloody Show' or Theatricality in Witnessing

From Arendt's perspective, Attorney General Gideon Hausner's approach to the proceedings appears as a prime example of 'bad' theatricality. I have argued that the philosopher accepts theatricality in court only to render visible what at the same time has to remain separate from the theatrical realm: the work of justice. For legal proceedings to be *like* drama thus fulfils the double goal of making justice seen without turning it into a 'show'. This argument draws on a 'strict separation between the legal and the extralegal' (Douglas 2001: 2). Hausner (1967: 292), in contrast, emphasises the 'extralegal' effect of the trial, that is, its 'correctional and educational aspect' for the youth of Israel and the rest of the world. As Hausner writes in his memoirs of the trial, in 'any criminal proceedings the proof of guilt and the imposition of a penalty ... are not the exclusive objects' (1967: 292). For the Attorney General, calling more than a hundred Holocaust survivors into the witness stand seemed the best possible means to evoke something as hard to imagine as the persecution and destruction of the European Jews, and to give Israeli teenagers 'real knowledge ... of the way in which their own flesh and blood had perished' (1967: 291-2). Hausner

thus claims that his use of witnesses did not primarily follow legal aims: 'In order to merely secure a conviction,' he writes, 'it was obviously enough to let the archives speak; a fraction of them would have sufficed to get Eichmann sentenced ten times over' (1967: 291). By putting the emphasis in the proceedings on what Lawrence Douglas (2001) terms 'didactic legality', Hausner subscribes to the political agenda of Israel's then-Prime Minister David Ben-Gurion who understood the trial as an opportunity to underscore the necessity of a sovereign Jewish state (see Yablonka 2004: 46-54). Not surprisingly, both men become targets of Arendt's critique of 'bad' juridical theatricality. Describing the courtroom in Jerusalem's *Beit Ha'am*, indeed a theatre modified to accommodate the proceedings, the philosopher calls it 'not a bad place for the show trial David Ben-Gurion ... had in mind' (1994: 4), and describes him as the 'invisible stage manager' (1994: 5) in whose hands Hausner — with his own 'love of showmanship' (1994: 4) — is a puppet. The judges serve as a counter-example to this 'bad' theatricality and Arendt describes them in a rhetoric of authenticity and sincerity:

Their walk is unstudied, their sober and intense attention, visibly stiffening under the impact of grief as they listen to the tales of suffering, is natural. ... They are so obviously three good and honest men that one is not surprised that none of them yields to the greatest temptation to playact in this setting — that of pretending that they, all three born and educated in Germany, must wait for the Hebrew translation (1994: 4).

Although the alleged authenticity of the judges removes them from the theatrical altogether, it backs 'good' v 'bad' theatricality when Arendt asserts that 'no one knew ... better than the presiding judge' that Eichmann, 'like the hero in the play', should be in the trial's centre (1994: 9). However, the judges' efforts to follow this dramatic structure were futile according to Arendt, and 'the trial never became a play, but the show Ben-Gurion had in mind' (1994: 9). While the distinction between 'good' theatricality, serving the dramatic function of rendering justice visible as well as drawing a line between court and stage, and 'bad' theatricality, where the spectacular does not serve a

Bachmann

legal end anymore, is thus laid out during the first pages of *Eichmann in Jerusalem*, it fully comes into play when Arendt describes the witnesses for the prosecution.

Throughout the book, Arendt voices two main objections against the use of survivor testimony: firstly, survivor testimony lets ‘the trial ... degenerate into a bloody show’ (1994: 9), by piling horror upon horror, thus shifting the focus away from the defendant. It produces, as it were, the wrong drama: for Hausner and Ben-Gurion ‘the play [was to be] the huge panorama of Jewish sufferings’ (1994: 8), regardless of the connection of the testimonies to the accused. Indeed, many studies of the trial have noted that the prosecution often failed to produce a link between testimony and defendant, thus prompting the presiding judge to remind Hausner of his task ‘to eliminate everything that is not relevant to the trial’. The judges felt this should have been done before the actual hearings because, although ‘in many parts of this evidence we have strayed far from the subject’, there was ‘no possibility at all of interrupting evidence such as this, while it is being rendered’ (quoted in Douglas 2001: 137).⁵

Secondly, survivor testimony is as unreliable, and even more so, as any testimony. For Arendt, almost none of the witnesses possessed ‘the rare capacity for distinguishing between things that had happened ... more than sixteen, and sometimes twenty, years ago, and what [the witness] had read and heard and imagined in the meantime’ (1994: 224). While she admits that this problem cannot be easily solved, Arendt blames Hausner for making it worse. In her opinion, the prosecution not only chose witnesses irrelevant to the case, but also showed a ‘predilection ... for witnesses of some prominence, many of whom had published books about their experiences, and who now told what they had previously written, or what they had told and retold many times’ (1994: 224). Only once does Arendt admit to being moved by a testimony, almost against her will, ‘foolishly’ (1994: 229). Regarding the testimony of Zindel Grynszpan, the philosopher praises how the truth about the Shoah is condensed within a ten-minute testimony of ‘shining honesty’ (1994: 230). Again, she describes this ‘honesty’

primarily to emphasise the opposite, that is, that most testimonies fall under the category of 'bad' theatricality — not only because she deems them irrelevant to the 'proper' legal question (Is the defendant guilty?), but also because they are threatened by artificiality. Grynszpan's successful testimony shows, precisely, 'how difficult it [is] to tell the story ... outside the transforming realm of poetry' (1994: 229).

If Grynszpan is Arendt's prime example for 'non-theatrical' witnessing, De-Nur becomes an example of the 'bad' theatricality of the proceedings. Summoned to the witness stand on 7 June 1961, De-Nur spoke in a narrative mode that — for Arendt — had to fall into artificiality. After confirming that he publishes books under the name of Ka-Tzetnik, the witness began:

This is a chronicle from the planet of Auschwitz. I was there for about two years. Time there was different from what it is here on earth. Every split second ran on a different cycle of time. And the inhabitants of that planet had no names. ... They were not born there nor did anyone give birth. Even their breathing was regulated by the laws of another nature. They did not live, nor did they die, in accordance with the laws of this world (quoted in Felman 2002: 136)

Arendt cannot accept this as testimony, setting the term in quotation marks when she claims that 'even Mr. Hausner felt that something had to be done about this "testimony," and very timidly, very politely, interrupted' (1994: 224). Recasting the 'showman' as a polite attorney only serves to underscore the alleged 'bad' theatricality of De-Nur. His collapse is described as the act of an offended artiste. In response to the interruption, 'the disappointed witness, probably deeply wounded, fainted and answered no more questions' (1994: 224). It is ironic, as well as highly problematic, that Arendt employs the language of trauma ('deeply wounded') in order to satirise the witness, given the possibility — mentioned above — that De-Nur's collapse is indeed the symptom of a failed attempt to face trauma. In Lacanian terms, trauma is defined as a missed encounter with the Real: the senses overflow and stop functioning due to the shock inherent in traumatic situations. Thus, the 'greatest confrontation with reality may also occur as an

Bachmann

absolute numbing to it' (Caruth 1995: 6). In order to put into words that which has happened but could not be fully perceived at the time, one has — to a certain extent — to always resort to what Arendt perceives of as deviation from the truth. As De-Nur explains in the witness stand, Ka-Tzetnik is not a pen name, but the name of the people on the 'planet Auschwitz'. Thus, when he writes as Ka-Tzetnik, he writes in the name of that people, even when necessarily 'transforming' their story. What De-Nur cannot accept, however, or only at the price of fainting, is that in speaking for 'them', he is also speaking for a part of himself, that he was actually there and is one of 'them', the victims of the Holocaust.⁶ This understanding that De-Nur cannot reach in words — he speaks in metaphors ('planet Auschwitz') — is acted out bodily. According to Shoshana Felman, 'the witness testifies through his unconscious body' (2002: 163). By fainting, his body 'testifies dramatically and wordlessly beyond the cognitive and the discursive limits of the witness's speech' (Felman 2002: 163).⁷ Felman's reading evades, as it were, Arendt's 'transforming realm of poetry' (1994: 229) through the fact that the witness does not have to speak in order to bear witness. Rather, he or she may testify in the mode of traumatic recall. That which has happened does not return as an orderly narrative but as disruption of narrative. Thus, the numbing quality that characterises the encounter with the Real in traumatic situations is repeated by the numbness of the wordless body.

This explains why, in Segev's reading, the alleged near-theatricality of De-Nur's collapse does not preclude his testimony from becoming a 'most dramatic' moment. In Segev's as well as in Felman's interpretation, theatricality displaces the dramatic act from the realm of words (necessarily 'transforming' the unimaginable reality) to the corporeal, thus letting the body 'wordlessly' act out the 'great human drama of repression and recognition' (Segev 1993: 11). Even when De-Nur speaks, Segev emphasises not the content of his words and what he says, but 'his voice and the tone' (1993: 4).

In his later writings, French philosopher Jacques Derrida (1992, 1999, 2000) takes up the notion of theatricality in witnessing. As

Derrida makes clear, testimony, for structural reasons, must allow itself to be haunted by its alleged opposite: the possibility of fiction. This is due to the fact that its condition of truth is dependent on the possibility of universalising the singular: any given testimony is 'true to the extent that anyone who *in my place*, at that instant, would have seen or heard or touched the same thing and could repeat exemplarily, universally, the truth of my testimony' (Derrida 2000: 41). However, no one can take the place of another witness, nor can the witness him- or herself repeat the actual moment he or she is relating to when bearing witness in court; except, that is, with the help of a specific technique such as language. Testimony is thus dependent on an artificial (or 'theatrical') repeatability of the particular moment, and haunted — from the very beginning — by the possibility of fiction. This makes another level of theatricality necessary, namely, that the witness is not only describing an event but 'performing' its truth (Derrida 1992: 286), by authorising him- or herself through, for instance, the oath to swear the truth and nothing but the truth.

In Felman's and Segev's above description of Ka-Tzetnik's collapse, the failure to speak is regarded as a testimonial performance in this sense, that is, it becomes a bodily authorisation for the truth of that which words cannot easily convey. In their readings, the traumatic disruption of narrative moves the testimony beyond fiction since — for them — Ka-Tzetnik's words are those of a novelist whereas his wordless body is that of the witness. Thus, the wordless body is able to substantiate the words of the novelist, to give them credence by their disruption. For Arendt, it is the other way round. In her view, the fictionality that threatens any testimony reaches its climax in a supposedly meaningless, purely 'theatrical' spectacle, a bodily act that she thinks of as unrelated to the 'dramatic' function of the trial. For her, Ka-Tzetnik's wordless body continues rather than disrupts the putatively artificial narrative; thus, the words of the 'novelist' undermine the wordless body, causing even a failure of bodily functions to seem faked.

In contrast, in both Felman and Segev, this climax of 'bad'

Bachmann

theatricality is (re-)constructed as the turning point enabling a new drama of law, one in which the theatricality of witnessing enhances the testimonial truth effect rather than damaging it from a legal perspective. However, as I attempt to show in the following, the complex theatricality of witnessing cannot be reduced to being either 'good' in Felman's and Segev's sense (that is, performing the Real through a bodily act) or 'bad' in Arendt's sense (that is, being theatrical in a pejorative sense).

Not Facing the Glass Booth or The Advent of the Witness

It has been argued that the Eichmann trial marks the 'advent of the witness' (Wieviorka 2006: 88). Of course, witnesses played a role in legal proceedings before Eichmann, but after the trial something changed in the public perception of witnessing, and testimony itself has undergone conceptual changes in the move from the 'strictly' legal to a broader socio-cultural context. Already in 1977, Elie Wiesel could proclaim that 'our generation invented a new literature, that of testimony' (1990: 7). By now, we have become so accustomed to the idea of Holocaust memory being inextricably bound to witness accounts that it is hard to imagine that it might not always have been this way.

However, from 1945 through the fifties, Holocaust discourses in Europe, the US and Israel were less centred around survivor testimony. For different reasons, these countries and regions did not publicly embrace the surviving victims and their experience (see Bachmann 2010: 100-5). For the US, historian Peter Novick (1999) has shown that the forties and fifties were marked by an integrationist ethos. This did not leave much room for the American Jews to insist upon their particular relation to the events of the Holocaust, either as newly immigrated survivors or as people who would have shared the fate of European Jewry if they had been there at the time. The rejection of an identity politics based on being distinct from the majority was partly caused by the fact of what it would have meant to consider oneself

victimised: 'Whereas nowadays the status of victim has come to be prized,' Novick writes, at the time the 'self-reliant cowboy and the victorious war hero were the approved (masculine) ideals' (1999: 121). While the common notions of heroism and victimhood are not the only reasons for the (public) marginalisation of survivor narratives in the US — others include the Cold War and the putative political need to have West Germany as an ally against the Soviet Union — the relation of heroism and victimhood also determined the place Israel accorded to Holocaust survivors. For Israeli Jews who had immigrated before the war or were born into statehood, the recently arrived survivors represented the 'old' diasporic Jew:

They symbolized ... Jewish weakness, and there were real fears that the new, heroic Jews would be 'infected' with this by the survivors. Although the state laid claim to the memory of the Holocaust, then, this did not refer to the real survivors and their suffering: Israel remembered the Holocaust but forgot the survivors (Loshitzky 2004: 183-4).

The Eichmann trial in Jerusalem was an internationally influential turning point with regard to the status of Holocaust survivors.⁸ For the first time, a considerable group of survivors publicly told their stories to much media attention. They gained a new social identity while — at the same time — the function of Holocaust testimony began to change: now 'the witness became an embodiment of memory, attesting to the past and to the continuing presence of the past' (Wieviorka 2006: 88). According to French historian Annette Wieviorka, this 'advent of the witness' has transformed the way the Holocaust is both remembered and written about: 'the genocide came to be defined as a succession of individual experiences with which the public was supposed to identify' (2006: 88). While this regards the status of the Holocaust survivors and of witnessing at large, that is, not in the legal domain — where witnesses in adversarial as well as inquisitorial systems have always played a major role — it also relates to a paradigm shift in the history of international law. For Douglas (2001: 258) as well as Felman (2002: 132-3), the Eichmann trial is held in a 'testimonial' mode, primarily drawing on

Bachmann

witnesses, as opposed to the ‘documentary’ mode of Nuremberg where the prosecution primarily relied on written documents. For Attorney General Hausner, [i]t was mainly through the testimony of witnesses that the events [of the Holocaust] could be reproduced in court, and thus conveyed to the people of Israel and to the world at large’ (Hausner 1967: 292). For him, the Nuremberg Trials — albeit successful in a juridical sense — failed because they did not ‘reach the hearts of men’ (291) and let the events remain a ‘fantastic, unbelievable apparition’ (292). Only with the help of testimonies, Hausner argues, can ‘the whole extent of the Jewish catastrophe’, which actually ‘surpasses human comprehension’, be made comprehensible (292):

The story of a particular set of events, told by a single witness, is still tangible enough to be visualized. Put together, the various narratives of different people about diverse experiences would be concrete enough to be apprehended. In this way I hoped to superimpose on a phantom a dimension of reality (Hausner 1967: 292).

Segev conjures the ghosts of the past when phoning De-Nur in 1987; Hausner brings them out in his testimonial theatre. The Attorney General’s memoirs speak of the trial as a sort of stage where the dead can — through the living witnesses — become alive once more in order to impeach the accused. In his opening speech, Hausner stated that he was not standing alone before the Judges of Israel ‘to lead the prosecution of Adolf Eichmann. ... With me, in this place and at this hour, stand six million accusers’ (Hausner 1967: 323). When the surviving victims tell about their fate, these accusers would — according to Hausner — ‘come to life for a moment before our eyes, vivid as a scream in the night’ (328). The witnesses supposedly ‘plunge’ the audience into their past experience which becomes, once again, presence:

It seemed that the courtroom itself was now engulfed in the poisonous vapors of the crematoria. At times I could almost smell the lethal gases and the stench of burnt flesh. As the witnesses tonelessly gave their testimony, we relived the nightmare with them (Hausner 1967: 346).

Hausner’s description of the testimonies emphasises their visceral dimension, mirroring Segev’s description of De-Nur’s ‘voice and

tone'. Although Hausner's claim, that 'in order to merely secure a conviction, it was obviously enough to let the archives speak' (291), can be understood as an exaggeration to prove his point, it hints at a new testimonial concept that is neither restricted to establishing evidence nor to the 'truth' effect of testimonial performance. Just as Arendt's disapproval of witnessing does not do away with witnessing completely (she would admit any number of witnesses as long as their narrative was *directly* related to the defendant), Hausner's testimonial theatre does not entirely leave the 'dramatic function' of legal proceedings behind. With the Eichmann trial, however, a testimonial concept gains momentum that puts its emphasis on the transmission rather than on the establishment of facts. In contrast to Nuremberg, Felman (2002) writes, the Eichmann trial sought:

... not only to establish facts but to transmit. ... The tool of law was used not only as a tool of *proof* of unimaginable facts but, above all, as a compelling *medium of transmission* — as an effective tool of national and international *communication* of these thought-defying facts (Felman 2002: 133).

Thus, De-Nur's interrupted testimony can become the most important moment of the trial for Felman, as well as for Segev and Hausner. The testimony's bodily aspect (the witness's 'tone and voice', his actual collapse) serves as the best proof that the past continues to haunt the present. Segev's claim that 'all Israel held its breath' (1993: 4) emphasises the affective power of testimony, making it something bodily for the witness and also for the audience.

The Unconscious Witness or The Theatricality of Bodies

In their seminal work on the relation between testimony and trauma after the Holocaust, Felman and Laub (1992) define testimony 'not as a mode of *statement of*, but rather as a mode of *access to* [the] truth [of an event]' (Felman and Laub 1992: 15-16). In other words, truth does not have to be told in a representational manner but can lie in

Bachmann

the distortions and gaps of a narrative. In the book, Laub gives an example that has since become famous. A Holocaust survivor is relating her memories as an eyewitness of the Auschwitz uprising; memories that are — as a group of historians points out to Laub — not true to the historic facts. For instance, the woman misrepresents the number of chimneys that have been blown up during that revolt. Thus, the historians refuse altogether to accept the survivor's account of the events. Laub contradicts them, arguing that the truth of the event appears, precisely, through the distorted perspective of the woman's memory — a memory that is acted out bodily:

... a sudden intensity, passion and color were fused into the narrative. She was fully there [in Auschwitz]. ... There was a silence in the room against which the woman's words reverberated loudly, as though carrying along an echo of the jubilant sounds exploding from behind barbed wires, a stampede of people breaking loose, screams, shots, battle cries, explosions (1992: 59).

Similar to Hausner's attempt to have the audience 'relive the nightmare' together with the surviving victims (1967: 346), in Laub's example the barriers between the present and the past seem to break down — producing what might be perceived as a *traumatically* defined testimonial truth emerging at the expense of historical facts or a testimonial truth that is defined *legally* in Arendt's sense.

From this perspective, the movements between 'good' and 'bad' theatricality in the 'theatrical' history of the Eichmann trial do not just illustrate the general aporetic condition of witnessing, as described by Derrida, in which fiction and truth constitute and haunt each other. More than that, the movements themselves bear witness to a specific historical moment during which — for a limited time — the bodily presence of the witness could be understood as ultimate bearer of truth. If Hausner summons the witnesses not 'to merely secure a conviction' (1967: 291) but to represent a traumatic history, the absent reality of the Holocaust is brought back as it were, not in order to judge Eichmann but to offer an experience — with the bodily dimension of witnessing symbolised by De-Nur's collapse serving as proof that the distance

between present and past can be overcome in this juridical setting.

Arendt's objection to De-Nur's testimony is based on the fact that for her, this bodily authorisation and affective power detaches itself from any narrative that could be relevant to the trial. Thus, an integral element of witnessing — the need for authorisation — becomes a means in itself instead of serving the 'higher' dramatic function of making justice visible. Paradoxically, this objection can neither be sustained nor overruled but constitutes part of the affective power in question. Theatricality — neither good nor bad — is at work in witnessing since the traumatic recall and bodily dimension, which constitutes the truth of testimony in Felman's (2002: 163) reading, is dependent on a distance that has to be overcome. As Derrida (2000: 41) observes, testimony, due to its very structure, must allow itself to be haunted by the possibility of fiction that cannot be suspended by a traumatic definition of testimony. Contrary to what Felman's reading suggests, the bodily dimension of witnessing — when De-Nur supposedly testifies 'through his unconscious body' (2002: 163) — cannot be reduced to its testimonial truth effect. It needs contextualisation as, for instance, the drama that Arendt seeks to rewrite. The very idea of unconscious testimony being truer than spoken testimony only makes sense as a displacement of theatricality, that is, a 'bad' theatricality overcome by a 'good' one. De-Nur's spectacular suffering fulfils its 'dramatic function' only if understood against the background of a perceived 'bad' theatricality of witnessing in which the witness is at a distance from the related event.

Concerning the Holocaust, this distance has been primarily associated with narrative representation (Adorno 2002). Elie Wiesel, for instance, describes his fear 'that words might betray' what he needs to describe as a writer and witness (2002: 70). His imaginary solution to the problem is a silent testimony, a moment of 'pure' corporeality like De-Nur's collapse, which would be able to communicate its message without betraying it. Wiesel's paradigm for the silent witness is the founder of Chassidism, Baal Shem Tov:

It used to be said that when the Baal Shem Tov came into town

Bachmann

his impact was so strong, he didn't have to speak. ... I think a real messenger, myself or anyone, by the very fact that he is there as a person, as a symbol, could have the same impact (2002: 70).

The 'good' theatricality of witnessing as it appears in Felman's, Hausner's and Segev's accounts of the Eichmann trial relies on an interrupted narrative in favour of 'pure' bodily performance. However, it cannot do without the 'drama' that Arendt reads into the trial. For her, the legitimacy of testimonial theatre is restricted to aiding a formalised narrative of guilt and innocence. If 'theatre' (the affective power of witnessing) and 'drama' (its relevant content) are both constituents of testimony, the Eichmann trial can also be read as a reversal, as I have argued, of this relation between theatre and the drama of law as understood by Arendt. The 'theatrical' history of the Eichmann trial is the story of this shift in interpretation.

Notes

- 1 Created in 1948, during the end of the British Mandate, the Israeli legal system was originally based on English common law but has since become a pluralistic system, combining the former with civil law and Jewish religious law (Yablonka 2004: 141). It is an adversarial system without a jury, that is, the evidence is brought before the court by prosecution and defence, while the case is decided by professional judges.
- 2 Notable plays based on the Eichmann trial include Heinar Kipphardt's documentary theatre piece *Bruder Eichmann* (*Brother Eichmann* 1983) and American playwright Donald Freed's *The White Crow: Eichmann in Jerusalem* (1984). In his recent survey of dramas based on the Shoah, *Holocaust Drama: The Theater of Atrocity*, Gene Plunka (2009) underscores the importance of the Eichmann trial for the history of Holocaust drama, referring to Arendt's study as 'an ennobling treatise that changed the way Nazis were depicted on stage' (2009: 20). Also see Skloot (1998).
- 3 From the perspective of a theatre historian, Rudolf Münz offers a critique of theories like Goffman's, arguing that they usually have a narrow understanding of theatre by confining the latter to its dramatic model (Münz 1998: 82-103). Instead, Münz proposes a view of theatricality as a system of different layers (*Theatralitätsgefüge*) that encompasses (a)

theatre as institutional art form; (b) representation and self-presentation in everyday life; (c) ‘non-theatre’, for example, censorship and writings against the theatre; (d) theatricality as a self-reflexive mode of exposing the role-play in theatre and everyday life.

- 4 Julie Stone Peters (2008) gives an overview of how the idea of ‘theatricality’ figures in theoretical writings on the law as, for instance, in Felman (2002) or in the *Leçons* of French psychoanalyst-lawyer Pierre Legendre (1989). While Peters does not account for the conceptual history of drama and theatre in relation to law, she positions ‘the oscillation between theatricality and antitheatricality’ at the heart of legal history (Peters 2008: 198), thus pointing towards a deeper conceptual history behind my discussion of ‘good’ and ‘bad’ theatricality.
- 5 The full transcript of the Eichmann trial has been published in English translation by the Israeli Ministry of Justice (1992-1998). It may also be accessed online through the Nizkor Project: www.nizkor.org/hweb/people/e/eichmann-adolf/transcripts/. Since the Eichmann trial was broadcast in Israel and throughout the world, a large quantity of audio-visual material exists and has formed the basis for documentaries such as Eyal Sivan’s *Un spécialiste: portrait d’un criminel moderne* (1999).
- 6 In *The Drowned and the Saved*, Holocaust survivor Primo Levi (1989) states a testimonial paradox according to which only the absent victims of the Shoah would have been its ‘true witnesses’. However, they could never have testified, ‘just as no one ever returned to describe his own death’ (Levi 1989: 84). Thus, survivors have to report on behalf of these absent witnesses, speaking ‘in their stead, by proxy’ (84). As I have attempted to show elsewhere (Bachmann 2009), this bifurcation — that might be related to the case of De-Nur/Ka-Tzetnik — concerns the traumatised survivors themselves in that they have experienced the Holocaust directly, but their experience is buried inside them as an absence. Thus, the survivor who talks or writes about the Shoah is a stranger, an ‘absent witness’ to him- or herself.
- 7 Felman’s (2002) *The Juridical Unconscious*, from which these quotes are taken, collects a series of essays evolving around the idea that after 1945 a ‘hidden link between trials and traumas’ has emerged (Felman 2002: 1). Two of the four chapters expand on previously published articles about the Eichmann trial: ‘Theaters of Justice: Arendt in Jerusalem, the Eichmann Trial, and the Redefinition of Legal Meaning in the Wake

Bachmann

of the Holocaust' (Felman 2002: 106-30) and 'A Ghost in the House of Justice: Death and the Language of Law' (131-68).

- 8 Of course, the change brought about by the Eichmann trial did not occur in historical isolation. There are developments leading up to this shift — such as the institutionalisation of the Israeli Holocaust Remembrance Day during the fifties — and others aimed at consolidating the status of survivors, for example, the foundation of the Yale Fortunoff Video Archive for Holocaust Testimonies in 1979.

References

- Adorno T 2002 'Commitment' Trans F McDonagh in Bloch et al 1977: 177-95 (first published 1962)
- Arendt H 1994 *Eichmann in Jerusalem: A Report on the Banality of Evil* (rev and enlarged edn) Penguin Group New York (first published 1963)
- Aristotle 1982 *Poetics* Trans J Hutton W W Norton New York
- Ashplant T G et al eds 2004 *Commemorating War: The Politics of Memory* Transaction Books New York
- Bachmann M 2009 'Life, Writing, and Problems of Genre in Elie Wiesel and Imre Kertész' *Rocky Mountain Review of Language and Literature* 63/1: 79-88
- Bachmann M 2010 *Der abwesende Zeuge: Autorisierungsstrategien in Darstellungen der Shoah* Francke Tübingen Germany
- Bennington G and Derrida J 1999 *Jacques Derrida* University of Chicago Press London (first published 1991)
- Bilsky L Y 1996 'When Actor and Spectator Meet in the Courtroom: Reflections on Hannah Arendt's Concept of Judgment' *History and Memory* 8/2: 137-73
- Bloch E et al 2002 *Aesthetics and Politics: The Key Texts of the Classic Debate within German Marxism* NLB London
- Burns E 1972 *Theatricality: A Study of Convention in Theatre and Social Life* Harper and Row New York
- Caruth C 1995 'Introduction' in Caruth 1995: 3-12
- Caruth C ed 1995 *Trauma: Explorations in Memory* Johns Hopkins University Press Baltimore and London

- Coward H and Foshay T eds 1992 *Derrida and Negative Theology* SUNY Press Albany
- Derrida J 1992 'Post-scriptum: Aporias, Ways and Voices' Trans J Leavy Jr in Coward and Foshay 1992: 283-323
- Derrida J 1999 'Circumfession' in Bennington and Derrida 1999: 3-315
- Derrida J 2000 *Demeure: Fiction and Testimony* Trans E Rottenberg Stanford University Press Stanford (first published 1998)
- Douglas L 2001 *The Memory of Judgment: Making Law and History in the Trials of the Holocaust* Yale University Press New Haven and London
- Felman S and Laub D 1992 *Testimony: Crises of Witnessing in Literature, Psychoanalysis and History* Routledge London and New York
- Felman S 2002 *The Juridical Unconscious: Trials and Traumas in the Twentieth Century* Harvard University Press Cambridge, MA
- Flessas T 2005 'A House Haunted by Justice: Eichmann in Jerusalem' *Law Text Culture* 9: 215-44
- Fischer-Lichte E 2008 *The Transformative Power of Performance: A New Aesthetics* Trans Saskya Jain Routledge London and New York (first published 2004)
- Goffman E 1959 *The Presentation of Self in Everyday Life* Penguin New York
- Hausner G 1967 *Justice in Jerusalem* Nelson London (first published in 1966)
- Kottman P 2008 *A Politics of the Scene* Stanford University Press Stanford
- Legendre P 1989 *Le crime du caporal Lortie: traité sur le père, Leçons 8* Fayard Paris
- Lehmann H-T 2006 *Postdramatic Theatre* Trans K Jürs-Munby Routledge London and New York (first published 1999)
- Levi P 1989 *The Drowned and the Saved* Trans R Rosenthal Routledge London and New York (first published 1986)
- Loshitzky Y 2004 'Postmemory Cinema: Second-Generation Israelis Screen the Holocaust in "Don't Touch My Holocaust"' in Ashplant et al 2004: 182-200
- Münz R 1998 *Theater und Theatralität: Zur Historiographie von Theatralitätsgefügen* Schwarzkopf and Schwarzkopf Berlin
- Novick P 1999 *The Holocaust in American Life* Houghton Mifflin New York

Bachmann

- Peters J S 2008 'Legal Performance Good and Bad' *Law, Culture and the Humanities* 4: 179-200
- Plunka G A 2009 *Holocaust Drama: The Theater of Atrocity* Cambridge University Press Cambridge
- Schumacher C 1998 ed *Staging the Holocaust: The Shoah in Drama and Performance* Cambridge University Press Cambridge MA
- Segev T 1993 *The Seventh Million: The Israelis and the Holocaust* Trans H Watzmann Hill and Wang New York (first published 1991)
- Skloot R 1998 'Holocaust Theatre and the Problem of Justice.' in Schumacher 1998: 10-26
- Sontag S 1966 *Against Interpretation and Other Essays* Farrar Straus and Giroux New York
- Vismann C 1999 "'Rejouer les crimes" – Theater vs. Video' *Cardozo Studies in Law and Literature* 11/2: 161-78
- Wiesel E et al 1990 *Dimensions of the Holocaust: Lectures at Northwestern University* Northwestern University Press Evanston (first published 1977)
- Wiesel E 2002 *Conversations* Ed R Franciosi University Press of Mississippi Jackson
- Wieviorka A 2006 *The Era of the Witness* Trans J Stark Cornell University Press Ithaca NY (first published 1998)
- Yablonka H 2004 *The State of Israel vs. Adolf Eichmann* Trans O Cummings with D Herman Schocken Books New York (first published 2001)